

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 09CA0063

Appellee

v.

EVAN T. SOMMERS

APPEAL FROM JUDGMENT
ENTERED IN THE
MUNICIPAL COURT
COUNTY OF WAYNE, OHIO
CASE No. CRB-09-07-00962

Appellant

DECISION AND JOURNAL ENTRY

Dated: October 25, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Officer Jeffrey Carter saw Evan Sommers smoking marijuana with some men near a pond in the Killbuck Marsh Wildlife Area. His partner, Officer Jeremy Carter, recovered a marijuana pipe from one of the other men. Officer Jeremy Carter cited Mr. Sommers for possession of marijuana under Section 2925.11(C)(3) of the Ohio Revised Code and possession of drug paraphernalia under Section 2925.14(C)(1). Following a bench trial, the trial judge found Mr. Sommers guilty of the offenses. Mr. Sommers has appealed, arguing that his convictions are against the manifest weight of the evidence and that the trial court incorrectly allowed a law enforcement officer to testify as an expert about some residue that was found in the pipe. This Court affirms because the trial court correctly allowed the officer to testify as an expert and Mr. Sommers's convictions are not against the manifest weight of the evidence.

MANIFEST WEIGHT

{¶2} Mr. Sommers's first assignment of error is that his convictions are against the manifest weight of the evidence. If a defendant argues that his convictions are against the manifest weight of the evidence, this Court "must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction[s] must be reversed and a new trial ordered." *State v. Otten*, 33 Ohio App. 3d 339, 340 (1986).

{¶3} Officer Jeffrey Carter testified that, on July 5, 2009, he and his partner were at the wildlife area working on a vandalism and littering problem at one of its ponds. They hid their vehicles so that they could observe activity at the pond without alerting anyone to their presence. Around 8:30 p.m., a vehicle pulled into the parking lot next to the pond. Officer Jeffrey Carter walked around the pond to the side across from the parking lot so that he could have a clear view. Through a pair of binoculars, he saw three men at the pond. Two of the men were fishing. Mr. Sommers was walking between them, holding a beer can.

{¶4} According to Officer Jeffrey Carter, he was still watching the men when another vehicle entered the parking lot. He heard somebody ask "[d]id you bring any beer?" Someone else replied "[n]o, I've got some weed." He saw a man walk from the parking lot to the pond, joining the three men who were already there. That man was later identified as Chad Hunt. Another person, carrying a rifle, walked in a different direction away from the second vehicle. At the pond, Mr. Hunt produced a smoking device. He passed the device to two of the other men, who used it in a manner that was consistent with marijuana smoking. One of the men who

used the device was wearing black shorts and a pair of sunglasses. That man was later identified as Mr. Sommers.

{¶5} Officer Jeffrey Carter testified that, after the men used the smoking device, they returned it to Mr. Hunt, who put it in one of his front pockets. A little while later, the other man who had arrived in the second vehicle approached the group at the pond. He began speaking to the men and gesturing in the direction of where the officers had hidden their vehicles. As he was talking, the other men began packing up to leave. Officer Jeffrey Carter, therefore, told his partner to intercept the men.

{¶6} Officer Jeremy Carter testified that he watched the men who arrived in the first vehicle through a set of binoculars from behind a briar patch. Two of the men were fishing and the other was holding a beer can. He testified that, when the second vehicle arrived, his partner told him that one of the men had a rifle and to position himself closer to the group at the pond in case they left in a hurry. He did not see the men again until his partner told him that they were packing up and to approach them. According to Officer Jeremy Carter, the men appeared nervous when he approached them. He called Mr. Hunt over to him and told him that he needed the marijuana pipe from his front pocket. Mr. Hunt gave him the pipe, which was warm and had the odor of burnt marijuana residue. He bagged the pipe as evidence and later took it to the Ashland Police Department for testing.

{¶7} Lieutenant Tim Shreffler testified that he is a police officer for the Ashland Police Department. He further testified that he did a microscopic and chemical analysis of the residue that was in the pipe, which tested positive for marijuana.

{¶8} Mr. Sommers called several witnesses on his behalf. Wayne Greegor testified that he drove to the pond with Mr. Hunt to go hunting. He said that, when they arrived, Mr.

Hunt walked down to the pond to the group of men that was already there. At the same time, Mr. Sommers walked up from the pond toward him. When an officer approached the group at the pond, however, Mr. Sommers walked down to the officer.

{¶9} Trent Shimanek testified that he went to the pond with Mr. Sommers and Ryan Morrison. According to him, Mr. Hunt and Mr. Greegor were already there. He testified that, while he was fishing, Mr. Hunt pulled a pipe out of his pocket. He did not know whether Mr. Hunt smoked it because he was paying too much attention to his bobber.

{¶10} Mr. Morrison testified that he drove Mr. Shimanek to the pond. Mr. Sommers arrived later with Mr. Hunt and Mr. Greegor. While they were at the pond, Mr. Hunt produced a marijuana pipe. He did not see Mr. Sommers smoke anything from the pipe.

{¶11} Mr. Hunt testified that he went to the pond with Mr. Greegor. Mr. Sommers, Mr. Morrison, and Mr. Shimanek were already there. As he was walking down to the pond, Mr. Sommers walked to the parking lot to talk with Mr. Greegor. He said that he had a marijuana pipe on him and that he was “drying” it while at the pond, attempting to take a hit off of the marijuana residue that was in the pipe. According to Mr. Hunt, he did not offer the pipe to anyone else at the pond.

{¶12} Mr. Sommers testified that he went to the pond with Mr. Morrison and Mr. Shimanek. About five to ten minutes after they arrived, Mr. Greegor and Mr. Hunt arrived. When Mr. Hunt walked to the pond, he greeted him and then walked to the parking lot to talk with Mr. Greegor. He walked with Mr. Greegor for a few minutes, until they saw the officers’ vehicles. Then they turned around and walked back to the group at the pond. When they got back to the pond, he saw Mr. Hunt smoking the marijuana pipe. According to Mr. Sommers, he did not hold the pipe or smoke it.

{¶13} Under Section 2925.11(A) of the Ohio Revised Code, “[n]o person shall knowingly obtain, possess, or use a controlled substance.” Under Section 2925.14(C)(1), “[n]o person shall knowingly use, or possess with purpose to use, drug paraphernalia.” “‘Possess’ . . . means having control over a thing or substance . . .” R.C. 2925.01(K). Mr. Sommers has not disputed that marijuana is a controlled substance or that Mr. Hunt’s marijuana pipe was drug paraphernalia. His only argument is that the trial judge lost his way when he found that he had possessed and smoked the pipe.

{¶14} Officer Jeffrey Carter was the only witness who claimed to have seen Mr. Sommers possess the pipe and smoke from it. Although Mr. Sommers’s friends denied that Mr. Sommers held the pipe or smoked from it, their stories were inconsistent. According to Mr. Greigor and Mr. Hunt, Mr. Sommers was already at the pond when they arrived. According to Mr. Morrison, however, Mr. Sommers drove to the pond with Mr. Greigor. While Mr. Shimanek agreed that Mr. Sommers drove to the pond with Mr. Morrison and him, he testified that Mr. Greigor and Mr. Hunt got there before the three of them.

{¶15} According to Mr. Greigor, Mr. Sommers talked to him in the parking lot for a few minutes. According to Mr. Sommers, however, Mr. Greigor and he took a walk. During their walk, they discovered the officers’ vehicles, at which point, they turned around and walked back to the pond. In addition, while Mr. Greigor, Mr. Hunt, and Mr. Sommers testified that, when the second vehicle arrived, Mr. Hunt walked down to the pond and Mr. Sommers walked up to the parking lot, Mr. Shimanek testified that all five men were in the parking lot together and then Mr. Morrison, Mr. Hunt, and he walked down to the pond.

{¶16} Officer Jeffrey Carter testified that he had a clear view of the men at the pond. Although he was on the opposite side of the pond, he had binoculars and could identify the men

by the clothes they were wearing. He accurately identified Mr. Hunt by his clothing as the one who produced the pipe and to whom the pipe was returned. Accordingly, we can not say that the trial court lost its way when it chose to believe that Officer Jeffrey Carter saw three men smoke the marijuana pipe, one of whom was Mr. Sommers. Mr. Sommers's first assignment of error is overruled.

EXPERT TESTIMONY

{¶17} Mr. Sommers's second assignment of error is that the trial court incorrectly allowed Lieutenant Shreffler to testify as an expert. Under Rule 702 of the Ohio Rules of Evidence, "[a] witness may testify as an expert if all of the following apply: (A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons; (B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony; [and] (C) The witness' testimony is based on reliable scientific, technical, or other specialized information."

{¶18} The trial court has discretion to determine whether an individual qualifies as an expert. *State v. Hartman*, 93 Ohio St. 3d 274, 285 (2001) (citing Evid. R. 104(A)). "Neither special education nor certification is necessary" *State v. Drummond*, 111 Ohio St. 3d 14, 2006-Ohio-5084, at ¶113. "The individual offered as an expert need not have complete knowledge of the field in question, as long as the knowledge he or she possesses will aid the trier of fact in performing its fact-finding function." *Id.*

{¶19} Mr. Sommers has argued that the prosecution failed to lay a proper foundation to qualify Lieutenant Shreffler as an expert. He has argued that, although Lieutenant Shreffler testified that he took a two-day training class on marijuana identification, he did not discuss what

the class involved, the manner in which he was instructed, the methods that were taught during the class, or whether it qualified him for any certification.

{¶20} The State introduced a training certificate from the Ohio Peace Officer Training Council verifying that Lieutenant Shreffler had completed 16 hours of advanced training in marijuana identification and 4 hours in narcotic field testing and identification. Lieutenant Shreffler testified that he has performed about 200 identification tests. He described the method that he was taught at the training class and that he uses when testing. On review of the record, we conclude the trial court exercised proper discretion when it allowed Lieutenant Shreffler to testify as an expert witness regarding the residue in the pipe. We further note that, in light of Officer Jeremy Carter's testimony that the pipe was warm and smelled like burnt marijuana when he confiscated it and Mr. Hunt's testimony that there was marijuana residue in the pipe, any possible error by the trial court was harmless. Mr. Sommers's second assignment of error is overruled.

CONCLUSION

{¶21} The trial court exercised proper discretion when it allowed a law enforcement officer to testify as an expert witness, and Mr. Sommers's convictions are not against the manifest weight of the evidence. The judgment of the Wayne County Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Municipal Court, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
WHITMORE, J.
CONCUR

APPEARANCES:

MICHAEL J. ASH, attorney at law, for appellant.

MARTIN FRANTZ, prosecuting attorney, and LATECIA E. WILES, assistant prosecuting attorney, for appellee.