

[Cite as *State v. Blevins*, 2011-Ohio-381.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 24006
v.	:	T.C. NO. 09CR2292
JESSICA A. BLEVINS	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 28th day of January, 2011.

ANDREW T. FRENCH, Atty. Reg. No. 0069384, Assistant Prosecuting Attorney, 301 W. Third Street, 5th Floor, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

ADELINA E. HAMILTON, Atty. Reg. No. 0078595, Assistant Public Defender, 117 S. Main Street, Suite 400, Dayton, Ohio 45422
Attorney for Defendant-Appellant

FROELICH, J.

{¶ 1} Jessica A. Blevins appeals from a judgment of the Montgomery County Court of Common Pleas, which found her guilty, after a bench trial, of tampering with evidence. In reaching its verdict, the trial court considered inculpatory statements made by Blevins, finding that such statements were not

barred by the corpus delicti rule. The trial court sentenced Blevins to one year in prison. No motion for stay or to expedite the appeal was filed.

{¶ 2} Blevins appeals from her conviction. For the following reasons, the trial court's judgment will be affirmed.

I

{¶ 3} Blevins's sole assignment of error states:

{¶ 4} "THE JUDGMENT OF CONVICTION AGAINST THE DEFENDANT-APPELLANT FOR TAMPERING WITH EVIDENCE SHOULD BE REVERSED BECAUSE IT IS BASED ON LEGALLY INSUFFICIENT EVIDENCE AS A MATTER OF LAW."

{¶ 5} In her assignment of error, Blevins argues that her statements to law enforcement officers should not have been admitted into evidence, because they were barred by the corpus delicti rule. She further claims that the State's evidence, even when considering her statements, was insufficient to support her conviction for tampering with evidence. We begin with Blevins's sufficiency argument.

{¶ 6} "A sufficiency of the evidence argument disputes whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or sustain the verdict as a matter of law." *State v. Wilson*, Montgomery App. No. 22581, 2009-Ohio-525, ¶10, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. When reviewing whether the State has presented sufficient evidence to support a conviction, the relevant inquiry is whether any rational finder of fact, after viewing the evidence in a light most favorable to the

State, could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Dennis*, 79 Ohio St.3d 421, 430, 1997-Ohio-372, citing *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d. 560. A guilty verdict will not be disturbed on appeal unless “reasonable minds could not reach the conclusion reached by the trier-of-fact.” *Id.*

{¶ 7} Although Blevins has challenged the admissibility of some of the evidence offered by the State and admitted by the trial court, the Supreme Court of Ohio has stated that, in reviewing the sufficiency of the State’s evidence, an appellate court must consider all of the evidence that was admitted by the trial court, without consideration of whether any of that evidence should have been excluded. *State v. Brewer*, 121 Ohio St.3d 202, 2009-Ohio-593, following *Lockhart v. Nelson* (1988), 488 U.S. 33, 38, 109 S.Ct. 285, 102 L.Ed.2d 265; *State v. Troisi*, 124 Ohio St.3d 404, 2010-Ohio-275, ¶7. “By permitting a reviewing court to consider all the evidence presented at trial, *Lockhart’s* holding recognizes that the [S]tate may rely upon the trial court’s evidentiary rulings in deciding how to present its case.” *Brewer* at ¶19. Thus, “when evidence admitted at trial is sufficient to support a conviction, but on appeal, some of that evidence is determined to have been improperly admitted, the Double Jeopardy Clauses of the United States and Ohio Constitutions will not bar retrial.” *Brewer* at ¶25.

{¶ 8} At trial, the State presented the testimony of Montgomery County Deputy Sheriff Herbert Thornton and Douglas Hall, a detective in the Narcotics Bureau of the Dayton Police Department. Their testimony established the following facts.

{¶ 9} At approximately 8:00 p.m. on July 15, 2009, Detective Hall was in the area of West Second Street and North Orchard Avenue in Dayton, conducting an investigation of a heroin-selling operation that was being executed by cell phones. Hall had received intelligence that buyers were to call a specific phone number and ask to speak to “Dog”; buyers would then receive directions to get to a specific area to purchase the heroin.

{¶ 10} While observing the area from his cruiser, Detective Hall saw a gray Buick with a Greene County license plate drive up to and stop at the stop sign at West Second and North Orchard; the driver and a passenger got out of the vehicle and switched places. Detective Hall followed the vehicle until it went onto eastbound State Route 35 toward Greene County. Hall returned to the area of West Second and North Orchard, got out of his cruiser, went onto the porch of an abandoned house on West Second Street, and focused his attention on the first alley to the west of the intersection.

{¶ 11} A few minutes later, Detective Hall observed a maroon Ford Escort with an Indiana license plate drive north on North Orchard Avenue, west on Second Street, and then right into the first alley, which was consistent with the intelligence reports regarding the directions that would be given by “Dog” to heroin buyers. A female passenger was talking on her cell phone. Hall saw the car pull over onto the west side of the alley (which, from the officer’s vantage point, was to his left). A man came out from between the houses and garages, walked directly to the passenger of the Escort, and reached his hand into the passenger’s open window. The man withdrew his hand very quickly and walked away westward. Hall believed

that he had witnessed a drug transaction, and he radioed to other officers in the hope that the Escort could be stopped.

{¶ 12} Deputy Thornton heard the radio call from Detective Hall reporting that he had just witnessed a drug transaction in the area of West Third Street and West Second Street and that a vehicle was heading toward James H. McGee Boulevard. Thornton was aware of the intelligence reports that a man in a specific house was selling drugs in an alleyway, and he headed toward Hall's location. The Escort left the area before Deputy Thornton and other officers could arrive.

{¶ 13} Several minutes later, Detective Hall saw a black Buick following the same route to the alley. The vehicle stopped on the west side in the same general location as the Escort. Fairly quickly, a different man came from between the houses in the same area as the first man, and he walked directly to the driver's door, reached his hand in the open window, and then withdrew his hand. The man turned around and began to walk away from the Buick.

{¶ 14} As Deputy Thornton and several other officers continued toward the area, Thornton heard Detective Hall state that another drug transaction was taking place in an alleyway just off West Second Street. Deputy Thornton responded to the alleyway in a marked cruiser and entered the alleyway from the south. Officer Steckel entered the alleyway from the north in a marked Dayton police cruiser. Thornton observed a vehicle parked in the alleyway and a man standing by the car. As Deputy Thornton drove toward the rear of parked vehicle, the man ran off. Deputy Thornton saw three women inside the car. When he brought his cruiser to a stop, Thornton saw the front seat passenger, who was later identified as Blevins,

“duck[] down below the line of sight of the vehicle.” Deputy Thornton and Officer Steckel got out of their cruisers and ran up to the vehicle. Thornton testified: “In her dropping down below the line of sight, we didn’t know whether she was trying to hide a gun, drugs, or whatever the case may be. We wanted to get them out of the vehicle to further investigate what was going on.”

{¶ 15} The officers asked for and obtained identifications from each of the women, and the officers gave *Miranda* warnings to them. Blevins initially told the officers that she “was just along for the ride” and “didn’t know what was going on.” Deputy Thornton went to talk with the driver of the vehicle and then returned to Blevins. At this time, Blevins stated that the women were in the area to buy heroin and that she swallowed three gel capsules of heroin when she ducked down in the car.

{¶ 16} Deputy Thornton and Officer Steckel searched the women’s vehicle. They discovered three syringes, three spoons, and a shoelace under the driver’s seat. Deputy Thornton testified that Blevins seemed coherent and did not appear to be sick, sweaty, or intoxicated. She did not vomit. The deputy did not look inside Blevins’s mouth or take her to the hospital.

{¶ 17} As Deputy Thornton and Officer Steckel investigated the Buick, Detective Hall and two other detectives located the two men inside 126 North Woodward. Hall observed approximately 70 individually-packaged capsules of heroin, which were ready for sale, along with a scale and money.

{¶ 18} Detective Hall also spoke with Blevins. Blevins initially denied any involvement in drug activity. She next claimed that the deal was interrupted before

the women had obtained the drugs. Afterward, Blevins stated that she had gotten \$30 from sex with an unknown man and had driven to Dayton to purchase \$30 of heroin. Blevins admitted that she ate the heroin upon seeing the police because she did not want to go to jail. Detective Hall arrested Blevins for tampering with evidence.

{¶ 19} The offense of tampering with evidence is defined, in pertinent part, as follows: “No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall *** [a]lter, destroy, conceal, or remove any record, document, or thing [in this case, capsules of heroin], with purpose to impair its value or availability as evidence in such proceeding or investigation[.]” R.C. 2921.12(A)(1).

{¶ 20} Upon review of the record, we conclude that Blevins’s conviction was based on sufficient evidence. The path of the black Buick to the alley was consistent with intelligence reports concerning a heroin-selling operation in that area and Detective Hall’s observations of a drug transaction that had occurred in the same location minutes before. Detective Hall observed what appeared to be a completed drug transaction between a male and the driver of the black Buick, of which Blevins was the front seat passenger. When Deputy Thornton stopped his cruiser behind the Buick, he saw Blevins duck down as if to hide something. Upon apprehending the males who had been apparently selling drugs in the alley, detectives discovered 70 heroin capsules ready for sale. And, significantly, Blevins admitted to the officers that she had come to the area to purchase heroin and that she had ingested three heroin gel capsules when she saw the police coming

because she did not want to go to jail. Viewing the evidence in the light most favorable to the State, the trial court could reasonably find, beyond a reasonable doubt, that Blevins knew that she about to be investigated for illegal drug activity and that she ingested three heroin capsules with the purpose to destroy the evidence against her and impede the investigation.

{¶ 21} Blevins argues that the evidence was insufficient, because there was no direct evidence that Blevins had heroin or that she consumed heroin. She emphasizes that none of the officers observed her with heroin capsules or ingesting them, and no tests were performed to substantiate that she had consumed heroin. Blevins cites to *State v. Williams*, Cuyahoga App. No. 83574, 2004-Ohio-4476, to support her contention.

{¶ 22} In *Williams*, the Eighth District found that there was sufficient evidence to support Williams's conviction for tampering with evidence, stating:

{¶ 23} "Williams was obviously aware that the police wanted to investigate him; when the officers stopped their car and ordered him over to the vehicle, he took off running. Furthermore, Officer Roberts testified that he observed Williams put something in his mouth before he started running and Officers Roberts and Rusnak both testified that when they finally caught Williams, they observed him chewing and trying to swallow something. They testified further that when they were able to get Williams' mouth open, they observed crack cocaine particles in his mouth. On this evidence, a reasonable fact finder could have concluded that Williams knew that an official investigation into his drug activity was in progress and that he altered or destroyed the evidence of that activity with the purpose to impede

the investigation.” Id. at ¶43.

{¶ 24} Although the *Williams* court had direct evidence that the defendant ingested the drugs while fleeing from the police, the State was not required to establish tampering with evidence with direct evidence. Circumstantial evidence and direct evidence possess the same probative value, *State v. Jenks* (1991), 61 Ohio St.3d 259, and from the combination of significant circumstantial and direct evidence in this case – including Blevins’s admission to having ingested the heroin capsules – the trial court could have reasonably concluded that Blevins tampered with evidence.

II

{¶ 25} Blevins further asserts that the trial court should have sustained her objection to the admission of her statements under the corpus delicti rule.

{¶ 26} The corpus delicti of an offense consists of the act and the criminal agency of the act. *State v. Edwards* (1976), 49 Ohio St.2d 31, overruled on other grounds, (1978), 438 U.S. 911, 98 S.Ct. 3147, 57 L.Ed.2d 1155. Before a confession to a crime may be admitted at trial, the State must introduce evidence independent of the confession to establish the corpus delicti. See *State v. Maranda* (1916), 94 Ohio St. 364, paragraphs one and two of the syllabus; *State v. Van Hook* (1988), 39 Ohio St.3d 256, 261. The corpus delicti rule is designed to protect “persons who confess to crimes that they not only did not commit themselves, but which were never committed by anyone.” *State v. Nobles* (1995), 106 Ohio App.3d 246, 261. Accordingly, “this rule does not require evidence, other than the confession, showing that the accused committed the crime but, rather,

requires some evidence that a crime was, in fact, committed.” *State v. Hopfer* (1996), 112 Ohio App.3d 521, 561.

{¶ 27} The evidence necessary to satisfy the corpus delicti rule is not the same as is required to defeat a Crim.R. 29 motion. “The evidence presented need not be so strong that it is capable of persuading a factfinder on some element of the crime beyond a reasonable doubt.” *Nobles*, 106 Ohio App.3d at 262. Nor must the evidence be “even enough to make it a prima facie case.” *Maranda*, supra, at paragraph two of the syllabus. Rather, the evidence is sufficient to satisfy the corpus delicti rule “if there is some evidence outside of the confession that tends to prove some material element of the crime charged.” *Id.* The evidence need not relate to all elements of the crime, *Van Hook*, 39 Ohio St.3d at 262, and the State may rely on circumstantial, rather than direct, evidence, *State v. Nicely* (1988), 39 Ohio St.3d 147, 152. In short, the corpus delicti rule is satisfied by “a rather low” evidentiary standard, *State v. Barker*, Montgomery App. No. 23691, 2010-Ohio-5744, ¶10, and the Supreme Court of Ohio has indicated that rule need not be applied “with a dogmatic vengeance.” *Edwards*, 49 Ohio St.2d at 36.

{¶ 28} Blevins’s conviction for tampering with evidence was based substantially on her admission that she was in the area to purchase heroin and that she swallowed three capsules of heroin when she ducked down in the vehicle.

{¶ 29} Prior to the admission of Blevins’s statements at trial, Deputy Thornton had testified that he had heard radio calls from Detective Hall reporting two drug transactions at the same location, that he and Officer Steckel had responded to the alleyway in separate cruisers and entered the alleyway from

separate directions, and that he had observed a man standing next to a parked vehicle, of which Blevins was the front seat passenger. Thornton had further testified that, after stopping his cruiser, he observed Blevins ducking out of sight and he was concerned that she may have been hiding drugs or a weapon. Blevins was removed from the vehicle, informed of her *Miranda* rights, and initially denied knowing what was going on.

{¶ 30} When the prosecutor asked Deputy Thornton if Blevins subsequently made a different statement, Blevins's counsel objected, citing the corpus delicti rule. The court overruled the objection, but indicated that "if after hearing more evidence, I would determine that the statement would violate the corpus delicti rule, then we would end up striking that statement and the Court would not consider it. But I think in order for me to be able to determine whether or not the doctrine of corpus delicti applies, I should hear what the statements were and the circumstances and other totality of circumstances with regard to the statements so I can make a better determination as to whether or not corpus delicti applies."

{¶ 31} The court's statements made clear that it was making a provisional ruling on the corpus delicti objection, allowing the State to offer Blevin's admissions at that time, but indicating that the court would not consider the inculpatory statements if the corpus delicti of tampering with evidence were not ultimately established. The State subsequently presented substantial circumstantial evidence that the women had come to the alley with drug paraphernalia to purchase capsules of heroin, that such a transaction had taken place, and that no heroin was found in the vehicle.

{¶ 32} After the trial, the trial court issued a written entry overruling Blevins's corpus delicti objection and finding Blevins guilty of tampering with evidence. In addressing Blevins's corpus delicti objection, the court considered all of the evidence admitted at trial and concluded that "there is evidence outside of the confession that tends to prove some material element of the crime charged, tampering with evidence." After summarizing the State's evidence, the court found: "The evidence shows that the occupants of the Buick purchased heroin, had the tools available to inject heroin, and the *** male that approached the Buick was in the business of selling heroin. No heroin, however, was found. Under these circumstances, and applying the rule of corpus delicti as set fourth [sic] by the Second District Court of Appeals, Defendant's confession will be admitted into evidence."

{¶ 33} We agree with the trial court's conclusion. Upon considering all of the State's evidence, the evidence was sufficient to establish the corpus delicti of tampering with evidence. Accordingly, the trial court properly concluded in its written entry that Blevins's inculpatory statements were admissible and properly considered Blevins's statements in finding her guilty of tampering with evidence.

{¶ 34} We emphasize that the trial court provisionally allowed evidence of Blevins's statements during the course of a bench trial, not a jury trial. "We certainly accord a judge conducting a bench trial considerable latitude on procedure and evidentiary matters." *Baker v. Fickert* (Sept. 13, 1995), Miami App. No. 95-CA-21; *Harold v. Joyner*, Montgomery App. No. 19137, 2002-Ohio-3808, ¶11. See, also, *State v. Blanton* (1960), 111 Ohio App. 111, 119 ("The law in Ohio is

very clear that the rules as to the admission or exclusion of evidence are different when a case is being tried without a jury or by a three-judge court sitting as both judge and jury.”) And, without some affirmative indication in the record to the contrary, an appellate court presumes that a trial court considers only relevant and competent evidence. *State v. Sieng*, Clark App. No. 2003 CA 35, 2003-Ohio-7246, ¶32. Because the trial court, not a jury, had the role of trier of fact, the court did not err in allowing testimony of Blevins’s inculpatory statements to be offered, provided that the court would strike those statements if the State failed to lay a proper foundation, i.e., evidence of the corpus delicti of the offense.

III

{¶ 35} Blevins’s assignment of error is overruled. The judgment of the trial court will be affirmed.

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GRADY, P. J. and DONOVAN, J., concur.

Copies mailed to:

Andrew T. French
Adelina E. Hamilton
Hon. Mary L. Wiseman