COURT OF APPEALS
THIRD APPELLATE DISTRICT
ALLEN COUNTY

STATE OF OHIO

PLAINTIFF-APPELLEE **CASE NO. 1-99-86**

v.

CHARLES L. WILLIAMS **O P I N I O N**

DEFENDANT-APPELLANT

CHARACTER OF PROCEEDINGS: Criminal appeal from Common Pleas Court

JUDGMENT: Judgment affirmed

DATE OF JUDGMENT ENTRY: June 6, 2000

ATTORNEYS:

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WALTERS, J. Defendant-Appellant, Charles L. Williams, brings this appeal from a judgment of conviction and sentence issued by the Court of Common Pleas of Allen County entered pursuant to a jury verdict of guilty on one count of trafficking in marijuana and one count of possession of marijuana, violations of R.C. 2925.03(A)& (C)(3)(c) and R.C. 2925.11(A) & (C)(3)(d), respectively. For the reasons set forth in the following opinion, we affirm the judgment of the trial court on all matters presented.

The record reveals that in August and September of 1996, the Lima/Allen County Drug Enforcement Unit utilized a confidential informant to participate in three controlled drug buys wherein he purchased marijuana at an auto body shop located in Lima, Ohio, and operated by Appellant and his brother, Frank Williams. The drug buys took place on August 21, 1996; September 5, 1996; and September 25, 1996. Based upon the information gathered from these occurrences, a search warrant was issued for 851 West Elm Street in Lima, an address that authorities believed Appellant had been residing at with his girlfriend. Execution of the search warrant resulted in the uncovering of several pounds of marijuana; various packaging materials; rolling papers and money that had been provided to the confidential informant for purposes of the controlled drug buys.

The Allen County Grand Jury subsequently issued an April 15, 1999 indictment against Appellant for three counts of trafficking and one count of

possession. After entering an initial appearance, Appellant pled not guilty to the charges. Thereafter, Appellant filed various motions, including a motion to dismiss the indictment, claiming that the prosecution's thirty-one month delay in bringing the charges constituted speedy trial and due process violations. Appellant also filed a motion to suppress the evidence seized from the home, asserting, among other things, that the affidavit to secure the search warrant lacked probable cause. After conducting separate hearings on the matters, the trial court overruled both motions.

The case proceeded to a jury trial in September 1999. Following the presentation of evidence from both parties, the jury returned a guilty verdict on one count of trafficking and the possession charge. Appellant was found not guilty on the remaining two trafficking charges. The trial court entered judgment accordingly and continued sentencing to allow for the preparation of a presentence investigation report.

The court then held a hearing on sentencing on October 22, 1999. After considering various sections of Ohio's sentencing statutes and making the requisite findings, the trial court ordered Appellant to serve a maximum five year prison term on each count. The court then ordered the sentences to be served consecutively for a total of ten years. This appeal followed.

I.

The trial court erred in failing to suppress the evidence seized as a result of the search warrant issued herein which were the fruits of a search without probable cause and in violation of the hearsay requirements of *Illinois v. Gates* (1993), 462 U.S. 213.

The record demonstrates that just hours after the third controlled drug buy on September 25, 1996, Chris Gutman, an investigator with the Lima/Allen County Drug Enforcement Unit, submitted an affidavit in support of a search warrant for 851 Elm Street, stating that there was probable cause to believe that certain items, including marijuana and packaging materials, were being concealed inside the residence. An Allen County Common Pleas Court judge subsequently issued the warrant. Upon executing the warrant, investigators discovered several pounds of marijuana, various types of packaging materials, rolling papers, and some of the money that had been exchanged during the controlled drug buys.

Similar to the arguments advanced in his motion filed in the trial court, Appellant now complains that the evidence should have been suppressed due to the fact that the affidavit lacked adequate probable cause to allow the judge to properly issue a warrant. We are not convinced.

In reviewing a magistrate's decision to issue a search warrant, this court is prohibited from considering the issue under a *de novo* standard. *State v. George* (1989), 45 Ohio St.3d 325, paragraph two of the syllabus, following *Illinois v. Gates* (1983), 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527. Instead, our duty, like that of the trial court, "is simply to ensure that the magistrate had a substantial

basis for concluding that probable cause existed." *Id.* The magistrate's decision is to be accorded great deference, thus, "doubtful or marginal cases in this area should be resolved in favor of upholding the warrant." *Id.*

When deciding whether an affidavit presented in support of a search warrant contains sufficient probable cause, the obligation of the issuing magistrate is to "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Id.* at paragraph one of the syllabus, quoting *Illinois v. Gates* (1983), 462 U.S. 213, 238-239, 103 S.Ct. 2317, 2332-2333, 76 L.Ed.2d 527, 548-549.

Thus, in following *Gates*, the Supreme Court of Ohio adopted a "totality of the circumstances" test. That is, while factors such as the "veracity" and "basis of knowledge" of any hearsay source remain relevant aspects of consideration, they must be viewed in light of all the surrounding circumstances. See, e.g. *State v. Swearingen* (1999), 131 Ohio App.3d 124, 128. "[P]robable cause is a fluid concept- turning on the assessment of probabilities in particular factual contexts - not readily, or even usefully, reduced to a neat set of legal rules." *Gates,* 76 L.Ed.2d at 544.

In the instant case, Appellant specifically asserts that Investigator Gutman submitted a deficient and misleading affidavit in that he failed to disclose that the majority of the document was based on hearsay; that he intentionally included false statements; and that he failed to provide the issuing judge with a statement as to the "veracity" and "basis of knowledge" of the hearsay sources. The affidavit at issue states as follows:

> **The Affiant is a Police Officer with the Lima Police Department and has been for approximately seventeen (17) years and is currently assigned to the Lima/Allen County Drug Enforcement.**
>
> **On Wednesday, August 21, 1996 Investigators of Lima/Allen County Drug Enforcement met with a confidential informant hereinafter referred to as C.I. The C.I. agreed to purchase Marijuana from Frank Williams at Williams Body Shop, 1000 St. Johns Avenue, Lima, Allen County, Ohio. Investigators, using a standard procedure of searching the informant prior to and after a controlled drug buy, wiring the informant, and debriefing the informant was used. The informant was then issued a known amount of funds belonging to the Lima/Allen County Drug Enforcement. The C.I. walked to 1000 St. Johns Avenue * * * where C.I. purchased a known amount of Marijuana from Frank Williams through Charles Williams. After the controlled drug buy, the C.I. was searched as he was prior to and no guns, money, evidence or contraband being found. A cassette tape recording of this transaction was made and entered into evidence by Investigators.**
>
> **On Thursday, September 5, 1996, Investigators met with C.I. who again agreed to purchase Marijuana from Frank Williams at Williams Body Shop * * *. Investigators again used the standard procedure for all controlled buys. During the controlled drug buy, Charles Williams left the Williams Body Shop to pick up the marijuana. Investigators lost sight of Charles Williams in the area of Collet and Faurot Streets. After**

> **several minutes, Charles Williams was again spotted in the same area when he drove back to the Williams Body Shop at which time the transaction was completed involving his brother, Frank Williams. Charles Williams drove a white Chevy pickup which is registered to Charles Williams and lists his address as 851 W. Elm St. Lima, Ohio; said pick-up was used in the trafficking of marijuana on prior occasions.**
>
> **On Wednesday, September 25, 1996, Investigators met with C.I. who again agreed to purchase Marijuana from Frank Williams. Investigators used the standard procedure for all controlled buys. During this controlled drug buy, Charles Williams left the Williams Body Shop and was followed by Investigators to 851 W. Elm Street * * *. This residence is located very near where Charles Williams disappeared during the controlled buy on September 5, 1996. Charles Williams was observed going into and exiting the residence. Charles Williams was then followed back to the Williams Body Shop where he again gave possession of the Marijuana to his brother, Frank Williams, who, in turn, sold the Marijuana to the C.I. Investigators are able to say that Charles Williams made no other stops either to or from 851 West Elm Street * * *.**
>
> **Both Charles Williams and Frank Williams have prior convictions of drug trafficking and they are known throughout the drug community as being large scale Marijuana dealers. Because of their prior convictions, it would be logical to assume that both Charles Williams and Frank Williams take special precautions in attempting to keep themselves somewhat isolated from the located where the Marijuana is stored. It is for this reason that Investigators are certain that Charles Williams and Frank Williams keep their supply of Marijuana at 851 West Elm Street * * * *.**

We first point out that, contrary to Appellant's assertions, it does not appear that the affiant failed to disclose that many of these occurrences were personally observed by someone other than himself. Indeed, except for the introductory

paragraph, the affidavit never specifically refers to Investigator Gutman. The affidavit instead describes the events by stating that "*investigators*" observed Charles Williams' actions outside the body shop. Thus, we cannot say that this misled the issuing judge in any way.

Additionally, as far as the alleged failure to disclose the fact that some of the statements contained in the affidavit were based upon information that the confidential informant related, we find, as did the trial court, that this is easily inferred. As the trial court stated, "that's implicit in the fact that they were using a confidential informant. An informant informs." Therefore, Appellant's assertion regarding a failure to disclose hearsay sources is without merit.

We also find Appellant's argument that Investigator Gutman intentionally included false statements in the affidavit not well-taken. Appellant maintains that since the evidence adduced at the hearing on the motion to suppress illustrates that the registration on the white pick-up truck does not list his address as 851 West Elm Street, Investigator Gutman intentionally fabricated the information to bolster the affidavit.

However, Investigator Gutman testified that the statement "Charles Williams drove a white chevy pickup which is registered to Charles Williams and lists his address as 851 West Elm Street", was a handwritten response to a question lodged by the issuing magistrate and contains an inadvertent error.

Investigator Gutman then stated that the sentence should read "Charles Williams drove a white chevy pickup which is registered to Charles Williams and *he* lists his address as 851 West Elm Street * * *." The officer admitted that although he was aware that the pickup registration does not indicate 851 West Elm as Appellant's address, other documents gathered as part of the investigation do so indicate and were the basis for the statement.

Based upon this testimony, we find that Appellant cannot demonstrate that Investigator Gutman knowingly included a false statement in the affidavit. "Allegations of negligence or innocent mistake are insufficient" to properly challenge the veracity of search warrant. *State v. Gantz* (1995), 106 Ohio App.3d 27, 37, quoting *Franks v. Delaware* (1978), 438 U.S. 154, 171, 98 S.Ct. 2674, 2684, 57 L.Ed.2d 667, 681-682.

With that said, we move on to address Appellant's argument that the affidavit was inadequate due to Investigator Gutman's failure to include a statement as to the "veracity" or "basis of knowledge" of the hearsay sources. It is true that the affidavit does not contain specific statements of this nature. Nonetheless, it has been held that "[o]bservations of fellow officers of the Government engaged in a common investigation are plainly a reliable basis for a warrant applied for by one of their number." *State v. Taylor* (1992), 82 Ohio App.3d 434, 442, quoting *State v. Henderson* (1990), 51 Ohio St.3d 54, 57. Thus,

the statements regarding Appellant's departure from the body shop during the drug buys, and the fact that he was seen entering and exiting 851 West Elm Street during the final incident, are plainly reliable.

Moreover, we find that the information related to the officers via the confidential informant is reliable in this case. Unlike the facts in our recent opinion of *State v. Swearingen* (1999), 131 Ohio App.3d 124, the investigators herein substantiated or corroborated the information through the use of independent police work, i.e. the investigators followed Appellant during the times that the confidential informant was inside the body shop in order to determine the likely extent of Appellant's involvement in the transactions. Therefore, in adhering to the aforementioned standard of review, we are convinced that the magistrate had a substantial basis to conclude that probable cause existed to properly issue a search warrant for 851 West Elm Street.

However, assuming, *arguendo*, that that affidavit in this case did not contain sufficient probable cause, we would nevertheless uphold the search based upon the "good faith exception" to the exclusionary rule as set forth in *United States v. Leon* (1984), 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677. In interpreting this exception, the Supreme Court of Ohio held the following:

> **The Fourth Amendment exclusionary rule should not be applied so as to bar the use in the prosecution's case-in-chief of evidence obtained by officers acting in objectively reasonable reliance on**

> **a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause.**

State v. George, supra, at paragraph three of the syllabus. The court went on to state:

> **The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right. * * *Where the official action was pursued in complete good faith, however, the deterrence rationale loses much of its force. * ** This is particularly true * * * when an officer has obtained a search warrant from a judge or magistrate and acted within its scope. In most such cases, there is no police illegality and thus nothing to deter. * * * In the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination or his judgment that the form of the warrant is technically sufficient. * * * Penalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations.** [Citations omitted.]

George, 45 Ohio St.3d at 331, quoting *Leon, supra.*

Notwithstanding the seemingly broad-sweeping effect of the "good faith exception", courts have admonished that an officer's reliance on a magistrate's determination of probable cause must be objectively reasonable. *Id.* Consequently, suppression remains a valid remedy under the following circumstances:

> **Where the affiant/police officer has an awareness that the affidavit upon which the magistrate relies is false or misleading, where the issuing magistrate wholly abandoned his judicial role, where an officer relies on a warrant based on an affidavit so lacking in indicia of probable cause as to render official belief in**

> **its existence entirely unreasonable, and where the warrant is so facially deficient, i.e., in failing to particularize the place to be searched or the things to be seized, that the executing officers could not reasonably presume it to be valid.**

State v. Swearingen (1999), 131 Ohio App.3d at 131, citing *Leon*, 468 U.S. at 923, 104 S.Ct. at 3420-3421, 82 L.Ed.2d at 698-699; *George*, 45 Ohio St.3d at 331.

In this case, we find the "good faith exception" to be applicable. As we have already stated, we cannot find that Investigator Gutman knowingly included false or misleading statements in the affidavit. Nor do we believe that any of the remaining circumstances warranting suppression exist in this matter. Thus, even if we found that the affidavit lacked adequate probable cause, we would not alter our decision to uphold the search.

Based upon the foregoing, Appellant's first assignment of error is overruled.

II.

> **The trial court erred in failing to dismiss the indictment herein for the reasons that the State of Ohio unjustifiably delayed the Defendant's indictment for the instant matter which resulted in actual prejudice to the Defendant and is a violation of the right to due process of law under Section 16, Article 1 of the Ohio Constitution and the 5th and 14th amendments to the United States Constitution.**

In addressing the precise issue raised by Appellant herein, the Supreme Court of Ohio recently held that "where a defendant moves to dismiss an indictment and presents evidence establishing substantial prejudice resulting from

preindictment delay, the state bears the burden of producing evidence of a justifiable reason for the delay." See *State v. Whiting* (1998), 84 Ohio St.3d 215, 217, confirming the Court's prior pronouncement in *State v. Luck* (1984), 15 Ohio St.3d 150. Accordingly, the defendant must first establish that the delay between the commission of the offense and the indictment therefor has resulted in *actual* prejudice to the defense. *Whiting*, 84 Ohio St.3d at 217. In the event that the defendant is successful in producing such evidence, the state must move forward with evidence of a justifiable reason for the preindictment delay. *Id.* The court then reviews any prejudice suffered by the defendant in light of those reasons. *Id.*

With respect to the subject of prejudice, Appellant testified that the thirty-one month delay in this case has caused his memory to fade somewhat. Appellant also stated that he could no longer locate certain witnesses who would be crucial to the defense. However, we must point out that Appellant has not made a bona fide attempt to find these people outside of just "asking around."

Moreover, the record indicates that at the time of the institution of these proceedings, Appellant was also facing a pending charge of engaging in a pattern of corrupt activity in Hancock County wherein the instant drug buys served as the predicate offenses. Appellant has never mentioned these alleged witnesses in the Hancock County matter even though much of the

evidence is obviously the same in both cases. Thus, we do not find that Appellant has suffered actual prejudice as the above-mentioned precedent requires.

Even if we were to assume for the sake of argument that Appellant has experienced actual prejudice, the State of Ohio presented sufficient evidence to establish a justifiable reason for the preindictment delay. The prosecution offered evidence to indicate that although the charges could have been brought shortly after the controlled drug buys took place, the delay was due, in large part, to an on-going effort between the State of Ohio and Appellant's attorneys to resolve the pending Hancock County case and the instant matters in one negotiated plea agreement. In fact, the issue of plea negotiations and whether the charges would be brought in Allen County was being discussed between the parties as late as spring 1999.

Despite Appellant's assertions to the contrary, we find that this constitutes a justifiable reason for the delay, not an attempt to gain a "tactical advantage" over Appellant. This is especially true in light of the fact that Appellant has been represented by counsel throughout the Hancock County proceedings. Therefore, when weighing the state's reasons for the delay against any prejudice suffered by Appellant, we conclude that the trial court did not err in refusing to grant Appellant's

motion to dismiss. For these reasons, Appellant's second assignment of error is overruled.

III.

The trial court committed prejudicial error and abused its discretion by not permitting defense counsel to cross-examine the state's witnesses as to their credibility pursuant to Evidence Rule 607, 608 and 611, depriving Defendant-Appellant due process of law as guaranteed by the state and federal constitutions.

During the examination of Investigator Gutman, defense counsel attempted to attack the witness' credibility by eliciting testimony as to his lack of knowledge of certain facts described in the affidavit submitted in support of the search warrant. During an off-the-record bench conference, the trial court apparently prohibited counsel from engaging in this particular line of questioning. In response to the adverse ruling, counsel proffered the evidence likely to be adduced so as to preserve the issue for review. Appellant now complains that the trial court committed reversible error in refusing defense counsel's initial request. We are unpersuaded by this argument.

Evid.R. 611(B) provides that "[c]ross-examination shall be permitted on all relevant matters and matters affecting credibility." It is well settled, however, that decisions concerning evidentiary matters, including the scope of cross-examination, are within the broad discretion of the trial court and are not subject to reversal on appeal in the absence of an abuse of that discretion. *In re Estate of*

Bednarczuk (1992), 80 Ohio App.3d 548, 554; *O'Brien v. Angley* (1980), 63 Ohio St.2d 159, 163. An abuse of discretion has repeatedly been defined as an arbitrary, unreasonable or unconscionable decision. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

In the case at bar, the court did not abuse its discretion by limiting the cross-examination of Investigator Gutman in this manner. As we have already stated, the affidavit does not aver that Investigator Gutman had personal knowledge of all facts contained therein. Rather, it is easily inferred from both the language of the document and the context of the controlled drug buys that Investigator Gutman was only one of several individuals involved in this particular law enforcement operation. Despite Appellant's contention, the affidavit does not contain prior inconsistent statements as to the witness' *own* observations of Appellant's activities. Thus, the trial court did not err in refusing to allow the jurors to hear this testimony.

Notwithstanding, even if we were to presume that the affidavit did contain prior inconsistent statements as to the witness' personal knowledge, we still would not reverse. The admission of prior inconsistent statements that are collateral to the issue being tried and that relate only to the credibility of a witness is a matter within the court's wide discretion. *State v. Shaffer* (1996), 114 Ohio App.3d 97, 102. The issue of probable cause to search and the sufficiency of the affidavit was

not a matter before the jury. Defense counsel effectively cross-examined the witness as to the material issues being tried. Therefore, we cannot say that the trial court abused its discretion in this respect.

Appellant's third assignment of error is overruled.

IV.

The trial court committed prejudicial error and abused its discretion by allowing Johnnie Brewster to testify after the state failed to disclose his identity in violation of Criminal Rule 16(B)(1)(e), thereby depriving Defendant-Appellant of his due process of law rights as guaranteed by the federal and state constitutions, 6th and 14th amendments to the United States Constitution and Article 1, sections 10 and 16 of the Ohio Constitution.

During its case-in-chief, the prosecution called John Brewster as a witness. Brewster is an inmate at the London Correctional Institute, where he is serving prison time for possession of cocaine; possession of marijuana and engaging in a pattern of corrupt activity. With respect to the instant charges, Brewster testified that on September 24, 1996, the day before investigators obtained and executed the search warrant for 851 West Elm Street, he delivered ten pounds of marijuana to Appellant at that residence.

Prior to Brewster's testimony, however, counsel for the defense lodged an objection on various grounds, including the fact that the prosecution did not disclose its intent to use Brewster as a witness until the filing of a supplemental response to defendant's demand for discovery on August 24, 1999, just two weeks

prior to the commencement of trial. The trial court subsequently overruled the objection and allowed the witness to testify. On appeal, Appellant argues that this action constitutes reversible error.

Crim.R. 16(B)(1)(e) provides that upon defendant's motion, witness names, addresses, and criminal records are subject to disclosure by the prosecuting attorney. Crim.R. 16(E)(3) goes on to state the following:

> **If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may make such other order as it deems just under the circumstances.**

This statute clearly "provides for the regulation of discovery in a criminal case and permits a trial court to exercise discretion in determining the appropriate sanction for a discovery violation." *State v. Scudder* (1994), 71 Ohio St.3d 263, 268. Accordingly, such a decision is not subject to reversal on appeal in the absence of an abuse of discretion.

In order to determine whether an error has occurred in the admission of evidence purportedly not appropriately disclosed under Crim.R. 16, the Supreme Court of Ohio has established a tripartite test:

> **A trial court does not abuse its discretion * * * where the record fails to disclose (1) a willful violation of the rule, (2) that foreknowledge would have benefited the accused in the**

> **preparation of his or her defense, or (3) that the accused was unfairly prejudiced.**

Id. at 269; *State v. Heinish* (1990), 50 Ohio St.3d 231, syllabus; *State v. Stockton* (May 5, 1997), Shelby App. No. 17-96-15, unreported.

In applying this test to the case *sub judice*, we find that the trial court did not abuse its discretion. The record indicates that the discussion regarding the admissibility of Brewster's testimony focused mainly on counsel's argument that it was violative of the rule against the use of "other acts evidence." The conversation concerning the alleged discovery violation was brief and indistinct. As such, the record entirely fails to disclose the reason why the prosecutor did not disclose the witness' name until two weeks prior to trial, let alone whether that was an intentional act aimed to deceive or surprise the defense in some fashion. Additionally, Appellant's attorney makes nothing more than a general statement that the defense was prejudiced because of the state's discovery practices; there is no evidence to suggest exactly how preparation of the defense was hindered.

Based upon the foregoing, we believe that the trial court did not abuse its discretion in admitting Brewster's statements. Consequently, Appellant's fourth assignment of error is overruled.

V.

The trial court committed prejudicial error and abused its discretion by overruling Defendant-Appellant's criminal Rule 29 motion for acquittal at the close of the presentation of the state's

> **evidence and at the close of the presentation of the Defendant's evidence.**

Crim.R. 29 states, in pertinent part:

> **(A) Motion for judgment of acquittal. The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment * * * if the evidence is insufficient to sustain a conviction of such offense or offenses. * * *.**

When considering a claim that the trial court erred in refusing to grant a defendant's motion for acquittal, "the relevant inquiry is whether any rational factfinder 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* (1997), 79 Ohio St.3d 421, 430; *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. "The verdict will not be disturbed unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier-of-fact." *Dennis*, 79 Ohio St.3d at 430.

In this case, Appellant was convicted of one count of trafficking in marijuana for his participation in the September 5, 1996 drug buy; and one count of possession of marijuana. On appeal, he claims that the evidence is such that reasonable minds could not have entered a conviction as to these charges.

With respect to the trafficking charge, Appellant was found guilty of violating R.C. 2925.03(A) and (C)(3)(c) by knowingly selling or offering to sell

marijuana, in an amount exceeding two hundred grams, but less than one thousand grams, with the transaction taking place in the vicinity of a school. R.C. 2925.01(P) states that an offense is "'committed in the vicinity of a school' if the offender commits the offense on school premises, in a school building, or within one thousand feet of the boundaries of any school premises." "School Premises" is defined as either of the following:

> **(1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed;**
>
> **(2) Any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.**

R.C. 2925.01(R)(1) and (2).

The record reveals that on September 5, 1996, confidential informant, Demetrius Sims, agreed to participate in a second controlled drug buy at the Williams Body Shop. Investigators for the Lima/Allen County Drug Enforcement Unit stated that prior to the transaction, they conducted a standard search of the informant. Finding no drugs, money or weapons on his person, they then wired Sims with a transmitter and provided him with $650. Sims testified that upon

entering the body shop, he asked Frank Williams for a half pound of marijuana. In response to this request, Appellant stated, "Just a few minutes."

Shortly thereafter, Appellant drove away in a white pick-up truck. Investigators then followed Appellant's vehicle. Although they lost sight of the truck for a short time, investigators testified that they observed Appellant's vehicle within two blocks of 851 West Elm Street. Investigators came across Appellant's vehicle again as it pulled into the body shop parking lot. Upon returning to the body shop, Sims testified that Appellant handed a bag to Frank Williams who then furnished Sims with what investigators discovered to be 231 grams of marijuana.

In addition to the evidence surrounding this particular transaction, the prosecution also offered testimony from the Lima City Engineer who stated that Williams Body Shop is located 803 feet from the Whittier Elementary School. David Shanks, principal of Whittier Elementary School, testified that the institution is operated by the Lima City Board of Education, which prescribes minimum standards under R.C. 3301.07.

When viewing this evidence in a light most favorable to the prosecution, we believe that a reasonable factfinder could conclude that on September 5, 1996, Appellant was engaged in trafficking in marijuana within the vicinity of a school. Thus, the trial court did not err in denying Appellant's motion for acquittal.

We also find that the trial court correctly decided the issue with respect to the possession charge, which specified that Appellant knowingly possessed marijuana in an amount that exceeds one thousand grams but does not exceed five thousand grams in violation of R.C. 2925.11. Investigators for the Lima/Allen County Drug Enforcement Unit testified that they observed Appellant's vehicle at 851 West Elm Street at least fifteen times during early morning and late night surveillances. On September 25, 1996, during the time that the confidential informant was executing the third transaction, officers observed Appellant's vehicle pull into the driveway of 851 West Elm Street. Appellant retrieved a large dog food bag from the trunk, entered the residence, and exited a short time later with the same bag. He then drove back to the body shop. The confidential informant came out of the building with a half pound of marijuana no more than five minutes after Appellant's return. In addition, prosecution witness, John Brewster, stated that on September 24, 1996, the day before officers searched the residence, he delivered ten pounds of marijuana to Appellant at 851 West Elm Street. Investigators later uncovered several pounds of marijuana during the search of the residence.

Despite defense counsel's assertions at trial that Appellant had no knowledge of the presence of drugs at that address, we conclude that any

reasonable jury could have found otherwise. Accordingly, we find no error in the trial court's refusal to enter an acquittal on the possession charge.

Appellant's fifth assignment of error is overruled.

VI.

The trial court committed prejudicial error and abused its discretion by sentencing the Defendant-Appellant, Charles L. Williams, to consecutive five year terms for counts 2 and [4] of Defendant-Appellant's indictment in contravention of O.R.C. 2929.12, 2929.13 and 2929.14.

Under R.C. 2953.08(G)(1), this court is mandated to vacate a sentence and remand it to the trial court for rensentencing if we clearly and convincingly find that: (a) the record does not support the sentence; * * * [or] (d) [t]hat the sentence is otherwise contrary to law." In this assignment of error, Appellant complains that the trial court erred in imposing prison rather than community control, and further, that the record does not support the imposition of maximum, consecutive terms. We find otherwise.

With the July 1, 1996 enactment of Senate Bill 2, trial courts are now compelled to make various findings before imposing a felony sentence. With regard to those findings, this court has repeatedly declared that "it is the trial court's findings under R.C. 2929.03, 2929.04, 2929.11, 2929.12, 2929.14 and 2929.19 which in effect, determine a particular sentence and that a sentence unsupported by these findings is both incomplete and invalid." *State v. Russell* (Mar. 13, 2000), Auglaize App. No. 2-99-38, unreported, quoting *State v.*

Bonanno (June 24, 1999), Allen App. No. 1-98-59 and 1-98-60, unreported. A trial court must be in strict compliance with the relevant sentencing statutes by making all necessary findings on the record at the hearing on sentencing. *Bonanno, supra,* at **6. Furthermore, when required, the court must state its particular reasons for doing so. *Id.*

When sentencing an offender on a third degree felony, a trial court may impose a prison term ranging from one to five years. See 2929.14(A)(3). Generally, when deciding whether to impose prison or a community control sanction for an offense of this degree, the court is required to "comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code and section 2929.12 of the Revised Code." R.C. 2929.13(C).

R.C. 2929.11 provides that in making a sentencing determination, a trial court must consider the overriding purposes of the felony sentencing laws, i.e. to protect the public and punish the offender. R.C. 2929.12 then mandates that the court consider various seriousness and recidivism factors and make any applicable findings.

Thereafter, in the event that the court concludes that a prison term is an appropriate punishment, the court must then turn to R.C. 2929.14 to determine the length of the sentence. As we have already stated, R.C. 2929.14(A)(3) provides that a prison sentence on a third degree felony may range from one to five years.

In order to properly impose the maximum sentence, the court must find, among other things, that the offender committed one of the worst forms of the offense or that the offender poses the greatest likelihood of committing future crimes. Pursuant to R.C. 2929.19(B)(1)(e), the court is then required to state its reasons for imposing such a sentence at the sentencing hearing. See also, *State v. Edmonson* (1999), 86 Ohio St.3d 324. That is, in addition to making the required findings, the court must "provide a factual explanation setting forth the basis for those findings." *State v. Russell* (Mar. 13, 2000), Auglaize App. No. 2-99-38, unreported.

Furthermore, if multiple prison terms are imposed for convictions of multiple offenses, as in this case, the court must also decide whether to order the sentences to be served in a concurrent or consecutive manner. R.C. 2929.14(E) provides, in relevant part:

> **[T]he court may require the offender to serve the prison terms consecutively if the court finds that the consecutive sentence is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:**
>
> *** * ***
>
> **(b) The harm caused by the multiple offenses was so great or unusual that no single prison term for any of the offenses committed as part of a single course adequately reflects the seriousness of the offender's conduct.**

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

When imposing consecutive sentences, the court must also adhere to the mandate contained in R.C. 2929.19(B)(2)(c), which requires the court to state its particular reasons at the sentencing hearing.

In reviewing the trial court's decision to order Appellant to serve maximum, consecutive prison terms, we find that the court properly considered all relevant statutes and made the required findings. The transcript of the sentencing hearing also indicates that the court clearly stated its reasons for fashioning such a punishment, such as the fact that the large amounts of marijuana sold to the confidential informant and found in the residence suggest Appellant's role as a "large scale" drug dealer in and around the Allen County community. In addition, the court mentioned Appellant's criminal history, which includes prior convictions for possession of marijuana and trafficking in cocaine.

While Appellant argues that the court's findings are clearly and convincingly unsupported by the record, Appellant's brief fails to identify any facts to substantiate this assertion. Indeed, our own consideration of the factual evidence reveals a competent, credible basis for each of the trial court's sentencing findings. Accord, *State v. Newport* (Feb. 2, 2000), Auglaize App. No. 2-99-28, unreported.

Appellant's sixth assignment of error is overruled.

Having found no error prejudicial to the Appellant herein, in the particulars assigned and argued, the judgment of the trial court is hereby affirmed.

Judgment affirmed.

HADLEY, P.J., and BRYANT, J., concur.

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