[Cite as *State v. Harris*, 2010-Ohio-3423.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93758

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHARLES L. HARRIS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-522534

BEFORE: Dyke, J., Rocco, P.J., and Blackmon, J.

RELEASED: July 22, 2010

JOURNALIZED:

ATTORNEY FOR APPELLANT

Michael P. Maloney, Esq.
24441 Detroit Road, Suite 300
Westlake, Ohio 44145

ATTORNEYS FOR APPELLEE

William D. Mason, Esq.
Cuyahoga County Prosecutor
By: Daniel T. Van, Esq.
Erin Donovan, Esq.
Assistant County Prosecutors
1200 Ontario Street
Cleveland, Ohio 44113

ANN DYKE, J.:

{¶ 1} Defendant Charles Harris appeals from his conviction for possession of criminal tools. For the reasons set forth below, we affirm.

{¶ 2} On April 1, 2009, defendant and co-defendant Charles Allen were indicted pursuant to a four-count indictment. Count 1 charged them with trafficking in less than one gram of heroin, in violation of R.C. 2925.03(A)(1) (sell or offer to sell). Count 2 charged them with trafficking in less than one gram of heroin, in violation of R.C. 2925.03(A)(1) (distribute a controlled substance). Count 3 charged them with drug possession of less than one gram of heroin, in violation of R.C. 2925.11(A), and Count 4 charged them with possession of criminal tools, "to wit: cell phones and/or money." All counts also set forth with

money and cell phone forfeiture specifications.

{¶ 3} Defendant pled not guilty and the matter proceeded to a jury trial on April 27, 2009.

{¶ 4} The state's evidence demonstrated that on March 24, 2009, Det. Frank Cusumano of the Cleveland Police Department met with "Squid," a confidential drug informant, regarding an undercover heroin sale. Det. Cusumano searched the informant and determined that he had no money or drugs. Det. Cusumano then fitted him with a small voice recorder and gave him $120 in "buy money," the serial numbers of which had been recorded and photocopied.

{¶ 5} The informant called defendant regarding obtaining heroin and was directed to Aetna Road in Cleveland. After arriving near this location, the informant called defendant again and was directed to the area of East 97th Street and Dunlop Avenue. The informant then picked defendant up at this location and they drove to the area of East 79th and Cedar Road to obtain heroin.

{¶ 6} Det. Franklin Lake, who was watching from an undercover vehicle, testified that defendant got out of the car at this location and appeared to shake hands. Det. Franklin identified this as a hand-to-hand drug transaction with a man in a parking lot. Defendant then returned to the informant's vehicle.

{¶ 7} Defendant and the man from the parking lot, later identified as Charles Allen, were subsequently arrested. At this time, defendant had $40 of the buy money, and Allen had the remaining $80 in buy money. Det. Vu Nguyen

testified that he patted defendant down and discovered two bags of two packets of a substance that was later determined to be .02 grams of heroin hidden within the drawstrings of his sweat pants.

{¶ 8} The trial court subsequently granted the defendant's motion for a judgment of acquittal as to Count 2 and all the forfeiture specifications.

{¶ 9} Defendant was convicted of the charge of drug possession, and the charge of possession of criminal tools, and acquitted of the charge of offering to sell drugs. The trial court sentenced defendant to one year of imprisonment. He now appeals and sets forth two challenges to the conviction for possession of criminal tools.

{¶ 10} For his first assignment of error, defendant asserts that the trial court erred in failing to grant his motion for a judgment of acquittal on the charge of possession of criminal tools.

{¶ 11} Crim.R. 29(A), which governs motions for acquittal, states:

{¶ 12} "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, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses."

{¶ 13} "Pursuant to Criminal Rule 29(A), a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt." *State v. Bridgeman* (1978), 55 Ohio St.2d

261, 381 N.E.2d 184, syllabus.

{¶ 14} The material elements of possession of criminal tools are set forth in R.C. 2923.24, as follows:

{¶ 15} "(A) No person shall possess or have under the person's control any substance, device, instrument, or article, with purpose to use it criminally.

{¶ 16} "(B) Each of the following constitutes prima-facie evidence of criminal purpose:

{¶ 17} "* * *

{¶ 18} "(2) Possession or control of any substance, device, instrument, or article designed or specially adapted for criminal use;

{¶ 19} "(3) Possession or control of any substance, device, instrument, or article commonly used for criminal purposes, under circumstances indicating the item is intended for criminal use."

{¶ 20} This court has previously held that the actual possession of "buy money" has been deemed sufficient to support a conviction for possession of criminal tools. See *State v. Rosado* (July 6, 1995), Cuyahoga App. No. 68112. Accord, *State v. Allah,* Cuyahoga App. No. 91955; *State v. Goss,* Cuyahoga App. No. 91160, 2009-Ohio-1074.

{¶ 21} In addition, a cell phone has previously been found to be a criminal tool under circumstances that indicate they were intended for criminal use. *State v. Reeves,* Cuyahoga App. No. 81916, 2003-Ohio-3528.

{¶ 22} In accordance with the foregoing, we cannot conclude that the trial

court erred in denying defendant's motion for judgment of acquittal as to the charge of possession of criminal tools.

{¶ 23} The first assignment of error is without merit.

{¶ 24} For his second assignment of error, defendant asserts that his conviction for possession of criminal tools is against the manifest weight of the evidence.

{¶ 25} "Weight of the evidence concerns 'the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.'" *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, 678 N.E.2d 541. When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a "thirteenth juror" and disagrees with the factfinder's resolution of the conflicting testimony. Id. at 387, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652.

{¶ 26} In evaluating a challenge to the verdict based on 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 evidence, the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *State v. Thompkins*.

{¶ 27} In this case, the evidence demonstrated that the informant called defendant about obtaining heroin. Defendant directed him to locations and at

the second location, defendant got out of the car and had a hand-to-hand transaction with a man in a nearby parking lot. Thereafter, defendant was arrested with $40 in the prerecorded buy money, and two packets of heroin were later recovered from the drawstring of his sweat pants. In light of the foregoing, we cannot conclude that the jury lost its way in convicting defendant of the charge of possession of criminal tools.

{¶ 28} The second assignment of error is without merit.

Affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANN DYKE, JUDGE

KENNETH A. ROCCO, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR