

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 22CA011874

Appellee

v.

GLENN LEE JENKINS, JR.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 20CR02315

Appellant

DECISION AND JOURNAL ENTRY

Dated: July 31, 2023

STEVENSON, Judge.

{¶1} Appellant, Glen Lee Jenkins (“Jenkins”), appeals from the judgment of the Lorain County Common Pleas Court. We affirm.

I.

{¶2} Detectives from the Lorain Narcotics Unit met with a confidential informant (“CI”). The CI had pending charges and wanted to work them off. To do so, the CI agreed to cooperate with the detectives in conducting three controlled drug buys from a potential target. The CI informed the detectives that he could purchase drugs from Jenkins.

{¶3} On March 5 and March 10, 2021, a detective met with the CI and arranged controlled drug buys between the CI and Jenkins. On each occasion the CI was able to arrange to purchase drugs from Jenkins.

{¶4} Jenkins was arrested in his vehicle on March 16, 2021. Approximately \$7,360.00 was found in the center console as well as the cell phone used to set up the controlled buys. Prior

to his arrest, the detectives obtained a search warrant relative to Jenkins' residence. During the search of the residence, narcotic detectives found various illegal drugs, a scale with cocaine residue, and a small amount of cash.

{¶5} During that search, Jenkins made a statement to the police in which he admitted to dealing drugs, having drugs inside of his residence, knowing the identity of the CI, and that the money recovered from his vehicle was made by selling drugs. In a jail call made shortly after his arrest, Jenkins admitted to having cocaine inside of his home in the exact amount that was recovered.

{¶6} Jenkins was indicted on 11 felony drug charges including trafficking in drugs, and possession of drugs and criminal tools. Three of the counts included a major drug offender specification. Two of the counts included a specification for forfeiture of money in a drug case.

{¶7} A bench trial was held on September 27 and 28, 2021. On the first day of trial, over the objection of the State, the trial court ordered the State to disclose the name of the CI. The defense issued a subpoena for the CI's appearance the same day. On September 29, 2021, the trial court found the CI in contempt for failure/refusal to appear at the trial and issued a capias for his arrest. The trial court rescheduled the trial twice to allow time for the CI to be apprehended on the capias, the first time for November 10, 2021, and the second time for January 25, 2022.

{¶8} The trial resumed on January 25, 2022. Defense counsel stated in his opening remarks that the CI had not yet turned himself in on the warrant or been found, and that "I don't think that he is ever going to show up at the trial." Defense counsel did not request a further continuance, but instead, informed the court that he and the State had entered into stipulations regarding the text messages and jail calls and that he wished to allow the State to reopen its case to memorialize those stipulations on the record.

{¶9} On April 13, 2022, the trial court rendered its verdict orally on the record, finding Jenkins guilty on all counts. However, it did not journalize its verdict until April 26, 2022. The CI was arrested by the Lorain County Sheriff on April 19, 2022. A notation of the arrest was entered on the case docket.

{¶10} Jenkins' sentencing hearing was held on June 8, 2022. Jenkins did not make any argument regarding the CI's testimony. The trial court found that counts one, two, three, four, nine, and ten were allied offenses which merged for the purpose of sentencing. Jenkins was sentenced to 11 years on counts one and two; three years on counts three and four; two years on counts five, six, seven, and eight; and nine months on counts nine, ten and eleven. The trial court ordered the sentences to run concurrently for a total of 11 years. The trial court also ordered the forfeiture of the \$7,360.00 found in Jenkins' vehicle.

{¶11} Jenkins timely appealed and asserts a single assignment of error for our review.

ASSIGNMENT OF ERROR I

APPELLANT'S RIGHT TO COMPULSARY (SIC) PROCESS UNDER THE UNITED STATES CONSTITUTION AND THE STATE OF OHIO CONSTITUTION WAS VIOLATED WHEN THE APPELLANT WAS NOT ADVISED THAT A WITNESS WHOM APPELLANT HAD SUBPOENAED AND FOR WHOM THE TRIAL COURT HAD FOUND IN CONTEMPT FOR NONAPPEARANCE AND HAD ISSUED A WARRANT HAD BEEN ARRESTED BY THE LORAIN COUNTY SHERIFF PRIOR TO THE (SIC) WHEN THE TRIAL COURT JOURNALIZED ITS VERDICT.

{¶12} Jenkins argues that his constitutional right to compulsory process was violated when neither he nor his trial counsel were advised that the CI had been arrested, thus depriving him of the opportunity to present the CI's testimony before the trial court journalized its finding of guilt. We disagree.

{¶13} The Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution provide an accused with a right of compulsory process to obtain a

witness's testimony. *State v. Lavery*, 9th Dist. Summit No. 20591, 2001 WL 1280565, *5, citing *Pennsylvania v. Ritchie*, 480 U.S. 39, 56 (1987); *Columbus v. Cooper*, 49 Ohio St.3d 42, 44 (1990). “Criminal defendants have the right to the government’s assistance in compelling the attendance of favorable witnesses at trial and the right to put before a jury evidence that might influence the determination of guilt.” *State v. Dugan*, 9th Dist. Wayne No. 2566, 1990 WL 188403, *2, (Nov. 21, 1990), citing *Ritchie* at 56.

{¶14} The right to compulsory process is not, however, without some limitations. *State v. Otero*, 9th Dist. Summit No. 21512, 2004-Ohio-1072, ¶ 23. The accused’s right to call witnesses on one’s behalf “does not automatically permit presentation of evidence which is irrelevant.” *Id.* “To establish a violation of a defendant’s constitutional right to compulsory process the defendant must show how the exclusion of testimony would have been both material and favorable to his defense.” *Dugan* at *3, citing *United States v. Valenzuela–Bernal*, 458 U.S. 858, 867 (1982).

{¶15} Also, the right to compulsory process does not require the State to locate a witness for the defendant. *Lancaster v. Green*, 175 Ohio St. 203, 205 (1963). Nonetheless, for that right to have value, the defendant must be given reasonable time to locate the witness. *State v. Wooten*, 11th Dist. Lake No. 88-L-13-233, 1990 WL 187776, *4 (appellate court seriously questioned whether three-day continuance to locate witness was sufficient; however, any error was deemed harmless because defendant failed to go forward with his defense).

{¶16} Jenkins does not allege that the trial court denied any of his requests for compulsory process. When Jenkins asked the trial court to issue a warrant for the CI’s failure to appear, the court did so over the State’s objection and continued the trial for four months to give law enforcement time to apprehend the CI. In granting Jenkins’ request for the warrant, the trial court acknowledged the various factors that related to the potential materiality of the CI’s testimony;

specifically, that the CI was Jenkins' only witness; that Jenkins faced significant jail time if found guilty; that Jenkins needed to examine the nature of the relationship between the police and the CI; and that Jenkins needed to determine whether the CI had access to Jenkins' residence.

{¶17} We conclude that the trial court did not violate Jenkins' constitutional right to compulsory process and to obtain a witness in his favor when it moved forward with the trial on January 25, 2022. First, the four-month continuance allowed plenty of time to compel the CI's attendance pursuant to the capias. Also, during the proceedings on January 25, 2022, one of the detectives testified that the CI called the police department upon receipt of the warrant. The detective advised the CI he needed to come to court. Yet, the CI did not appear for trial. Thus, based on the foregoing, the trial court did not violate Jenkins' constitutional right to compulsory process when it moved forward with the trial despite the absence of the CI.

{¶18} Jenkins also contends that there is no evidence in the record that his trial counsel was on notice of the CI's arrest. We disagree. Parties are charged with the duty to keep themselves apprised of entries upon the court's docket and to monitor the progress of the suit. *Knapp v. Husa*, 9th Dist. Medina No. 20CA0019-M, 2020-Ohio-6987, ¶ 26-27; *Jeter v. Gosden Construction Co., Inc.* 9th Dist. Summit No. 18352, 1997 WL 775683, *2, (Oct. 29, 1997). The CI's arrest was entered on the case docket; therefore, Jenkins is charged with knowledge of it.

{¶19} Accordingly, based on the foregoing, we conclude that the trial court did not violate Jenkins' constitutional right to compulsory process. Having so concluded, we need not address whether the CI's testimony would have been material or favorable.

{¶20} Wherefore, based on the foregoing, Jenkins' single assignment of error is overruled.

III.

{¶21} The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, 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(C). 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.

SCOT STEVENSON
FOR THE COURT

FLAGG LANZINGER, J.
CONCURS.

HENSAL, P.J.
CONCURS IN JUDGMENT ONLY.

APPEARANCES:

MARK R. MARSHALL, Attorney at Law, for Appellant.

DAVE YOST, Attorney General, and MICAH R. AULT, Assistant Attorney General, for Appellee.