[Cite as *State v. Bussle*, 2010-Ohio-4943.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2009-P-0061**
- vs -	:	
QUILLIE BUSSLE, JR.,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Court of Common Pleas, Case No. 2008 CR 0711.

Judgment: Affirmed.

Victor V. Vigluicci, Portage County Prosecutor, and *Pamela J. Holder*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Erik E. Jones, Corrigall & Jones, Inc., 57 South Broadway Street, Third Floor, Akron, OH 44308 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Quillie Bussle, Jr., appeals his convictions, following a jury trial in the Portage County Court of Common Pleas, for Trafficking in Cocaine, Aggravated Trafficking in Drugs, four counts of Trafficking in Heroin, and Tampering with Evidence. Bussle received an aggregate prison sentence of three years. For the following reasons, we affirm Bussle's convictions.

{¶2} On December 5, 2008, Bussle was indicted by the Portage County Grand Jury for the following: Trafficking in Cocaine (Count One), a felony of the fifth degree in

violation of R.C. 2925.03(A) and (C)(4)(a); Aggravated Trafficking in Drugs (Count Two), a felony of the fourth degree in violation of R.C. 2925.03(A) and (C)(1)(a); Trafficking in Heroin (Count Three), a felony of the fifth degree in violation of R.C. 2925.03(A) and (C)(6)(a); Trafficking in Heroin (Count Four), a felony of the fifth degree in violation of R.C. 2925.03(A) and (C)(6)(a); Trafficking in Heroin (Count Five), a felony of the fourth degree in violation of R.C. 2925.03(A) and (C)(6)(b); Trafficking in Heroin (Count Six), a felony of the fourth degree in violation of R.C. 2925.03(A)(2) and (C)(6)(c); Possessing Criminal Tools (Count Seven), a felony of the fifth degree in violation of R.C. 2923.24(A) and (C); and Tampering with Evidence (Count Eight), a felony of the third degree in violation of R.C. 2921.12(A)(1) and (B).

{¶3} Counts One and Two arose out of a controlled drug buy that occurred on March 26, 2008.

{¶4} Count Three arose out of a controlled drug buy that occurred on November 12, 2008.

{¶5} Count Four arose out of a controlled drug buy that occurred on November 13, 2008.

{¶6} Count Five arose out of a controlled drug buy that occurred on November 17, 2008.

{¶7} Counts Six, Seven, and Eight arose out of Bussle's arrest by agents of the Portage County Drug Task Force that occurred on November 18, 2008.

{¶8} On December 9, 2008, Bussle was arraigned and entered a plea of not guilty to the charges. Counsel was appointed to represent Bussle. Bond was set at $10,000 but not paid and Bussle remained confined at the Portage County Jail.

{¶9} On December 16, 2008, Bussle, through counsel, filed a Demand for Discovery pursuant to Crim.R. 16(A) and (B) and a Request for Bill of Particulars pursuant to Crim.R. 7(E).

{¶10} On January 13, 2009, Bussle, acting pro se, filed a Request for Discovery and Inspection; to Suppress Evidence; and Motion for Acquittal or Dismissal pursuant to Crim.R. 16, Crim.R. 12(C)(3) and (4), Crim.R. 29, and R.C. 2945.15.

{¶11} On February 2, 2009, the State responded to Bussle's discovery request pursuant to Crim.R. 16(B)(1)(e).

{¶12} On February 6, 2009, counsel appointed to represent Bussle filed a Motion to Withdraw as Counsel, citing "a complete breakdown in communication" and Bussle's unwillingness to heed counsel's advice.

{¶13} On February 10, 2009, the trial court granted defense counsel's Motion to Withdraw.

{¶14} On February 13, 2009, new counsel was appointed to represent Bussle.

{¶15} On February 17, 2009, the trial court released Bussle on his own recognizance, pursuant to R.C. 2937.29. On this date, Bussle executed a Waiver of his speedy trial rights.

{¶16} On June 1 through 4, 2009, Bussle was tried before a jury. The following police officers testified on behalf of the State: Lieutenant James Carrozzi of the Portage County Sheriff's Department, Patrolman Duane Ryan Kaley of the Ravenna Police Department, Patrolwoman Joan Bauer of the Ravenna Police Department, and Detective Mike Wadlington of the Aurora Police Department. These officers were all assigned at this time to the Portage County Drug Task Force. Also testifying on behalf

of the State were confidential informants, Jennifer Jones and Amanda Sloey, and forensic scientists, Barbara DiPietro and Shervonne Bufford, of the Ohio Bureau of Criminal Identification and Investigation.

{¶17} Jones and Sloey are both drug addicts. Jones testified to having two prior theft convictions and Sloey testified to approximately seventeen prior theft convictions.

{¶18} In March 2008, Agent Bauer arrested Jones for possession of heroin. Jones agreed to work undercover for Bauer in exchange for monetary compensation, rather than for consideration on her charge of possession. Agent Wadlington met Sloey in the summer of 2008, coming out of a drug house in Ravenna. Sloey agreed to work undercover for Wadlington in exchange for monetary compensation. Bauer testified that it is necessary to use confidential informants in drug investigations because some dealers will not sell to persons with whom they are not familiar.

{¶19} With respect to the March 26, 2008 controlled buy, Agent Bauer met Jones at Terrill Commons Apartments in Ravenna, Ohio. Bauer searched Jones to confirm that she was not then in possession of controlled substances. Bauer wired Jones with devices for audio transmission and for audio/visual recording. Bauer gave Jones $100 to purchase drugs from Bussle. Jones contacted Bussle by phone to arrange a buy.

{¶20} Bussle arrived at the apartments riding as a passenger in a Saturn driven by a woman. Jones exited the apartment and purchased crack cocaine and three Methadone tablets from Bussle. Agent Bauer recognized the passenger in the vehicle as Bussle. She observed a transaction between Jones and Bussle, but could not see

what was exchanged. The recording device produced images of a man, identified as Bussle, sitting in the car and conducting an exchange with Jones.

{¶21} After the buy, Agent Bauer again searched Jones and recovered the drugs and $20. Bauer paid Jones $100 for performing the buy. Bufford testified that the drugs involved were crack cocaine and Methadone.

{¶22} With respect to the November 12, 2008 controlled buy, Agent Bauer met with Sloey and searched and wired her in the same manner as she had done to Jones. Bauer gave Sloey $160 to purchase drugs from Bussle and drove her to a location near 322 Orchard Street, in Ravenna, Ohio, where Bussle's mother lived and where Bussle sometimes stayed. Bauer was able to observe Bussle on the front porch of the residence and Sloey enter the residence. Sloey testified that she purchased three blue packets or "bindles," each containing a single unit dose, of heroin from Bussle for $60. Bussle kept the remaining $100 because Sloey owed him money. There was no visual record of the transaction as the video recording device was inadvertently disconnected.

{¶23} After the buy, Agent Bauer again searched Sloey and paid her $100 for performing the buy. DiPietro testified that the three packets contained heroin in an amount less than one gram.

{¶24} With respect to the November 13, 2008 controlled buy, Agent Wadlington met with Sloey and searched her for contraband and wired her. Wadlington gave Sloey $120 to purchase drugs from Bussle and drove her to the Circle K on North Chestnut Street in Ravenna, Ohio. Sloey contacted Bussle by phone and arranged to purchase drugs. A vehicle, in which Bussle was riding as a passenger in the back seat, pulled up to the Circle K and Sloey entered the vehicle. Sloey testified she purchased five

packets of heroin from Bussle for $100. Sloey asked to be dropped off at her aunt's house on Chestnut Street.

{¶25} Agent Wadlington observed the vehicle with Bussle and Sloey exit northbound on Chestnut Street and pull into a residential driveway. Wadlington picked Sloey up walking southbound on Chestnut. He recovered the five packets of heroin and paid her less than $100 for performing the buy, since she had failed to previously disclose that she owed Bussle money. DiPietro testified that the five packets contained heroin in an amount less than one gram.

{¶26} With respect to the November 17, 2008 controlled buy, Agent Bauer met with Jones and arranged for her to purchase drugs from Bussle at the house on Orchard Street. Bauer searched, wired, and provided Jones with $60 with the understanding that she owed Bussle $20. Bauer dropped Jones off near the Orchard Street residence but did not observe Bussle outside. Sloey entered the residence and testified that she purchased two packets of heroin from Bussle for $40. The video recording of the transaction only showed the persons present to waist-height. The video showed the presence of two children in the residence, one of whom was in a playpen and can be heard babbling about "daddy." After the buy, Bauer recovered the two packets and paid Jones $100 for performing the buy. DiPietro testified that the two packets contained heroin in an amount less than one gram.

{¶27} On November 18, 2008, Agents of the Portage County Drug Task Force obtained an arrest warrant for Bussle and a search warrant for the Orchard Street residence. The search of the residence did not produce any contraband, but Agent Bauer learned that two children resided there, ages one and three.

{¶28} Agent Kaley located Bussle in front of the Majestic Cleanville on Cedar Avenue. Kaley testified it had been snowing heavily that day. Kaley attempted to effect an arrest but Bussle fled northbound. Kaley pursued on foot at "full sprint." As he pursued, Kaley noticed "small blue items" that were "flying off of him when he's running." Kaley apprehended Bussle at the corner of Chestnut Street and Highland Avenue. Lieutenant Carrozzi and Kaley immediately began to search for the blue items that had fallen off of Bussle and recovered twenty-two blue packets or bindles. These were damp on account of the snow. Eleven of the packets contained a substance which could be tested by Gas Chromatograph Mass/Spectrometer. DiPietro tested the substance and determined it to be heroin in the amount of .29 grams. Bufford tested the same and determined it to be heroin in the amount of .048 grams.

{¶29} At the close of trial, defense counsel moved the court, pursuant to Crim.R. 29, for acquittal on Counts Seven (Possessing Criminal Tools), Eight (Tampering with Evidence), and a specification to Count Five (Trafficking in Heroin) that the crime was committed in the vicinity of a juvenile. The trial court granted Bussle's motion to dismiss with respect to Count Seven (Possessing Criminal Tools) only.

{¶30} On June 5, 2009, the jury found Bussle guilty of Trafficking in Cocaine (Count One), Aggravated Trafficking in Drugs (Count Two), Trafficking in Heroin (Count Three), Trafficking in Heroin (Count Four), Trafficking in Heroin (Count Five) with an additional finding that the crime was committed in the vicinity of a juvenile; Trafficking in Heroin (Count Six); and Tampering with Evidence (Count Eight).

{¶31} On July 13, 2009, a sentencing hearing was held.

{¶32} On July 16, 2009, the trial court entered an Order and Journal Entry, memorializing Bussle's sentence as follows: a term of imprisonment of six months for Counts One and Two of the Indictment; a term of imprisonment of nine months for Counts Three, Four, and Six of the Indictment; a term of imprisonment of one year for Count Five of the Indictment; and a term of imprisonment of three years for Count Eight of the Indictment. All terms of imprisonment were ordered to be served concurrently for an aggregate prison term of three years.

{¶33} On September 29, 2009, Bussle filed a Motion for Delayed Appeal and Notice of Appeal. This court granted Bussle's Motion on December 31, 2009.

{¶34} On appeal, Bussle raises the following assignments of error:

{¶35} "[1.] Appellant's right to a speedy trial was violated."

{¶36} "[2.] The trial court erred when it denied appellant's Criminal Rule 29 motion for acquittal for the charge of Tampering with Evidence."

{¶37} "[3.] The trial court erred when it denied appellant's Criminal Rule 29 motion for acquittal for the charge of Trafficking in the Vicinity of a Juvenile."

{¶38} "[4.] Appellant's convictions were contrary to the manifest weight of the evidence."

{¶39} "[5.] Appellant received ineffective assistance of counsel."

{¶40} In his first assignment of error, Bussle argues that his statutory speedy trial rights were violated, in that he was not brought to trial within 270 days of arrest as required by R.C. 2945.71. Bussle did not file a motion in the court below alleging a violation of his speedy trial rights. Since he asserts in his fifth assignment of error that the trial court was negligent for failing to do so, we shall consider Bussle's argument.

{¶41} "The standard of review of a speedy trial issue is to count the days of delay chargeable to either side and determine whether the case was tried within the time limits set by R.C. 2945.71." *State v. Sherrod*, 11th Dist. No. 2009-L-086, 2010-Ohio-1273, at ¶29 (citation omitted). A person charged with a felony "[s]hall be brought to trial within two hundred seventy days after the person's arrest." R.C. 2945.71(C)(2). "Upon motion made at or prior to the commencement of trial, a person charged with an offense shall be discharged if he is not brought to trial within the time required by sections 2945.71 and 2945.72 of the Revised Code." R.C. 2945.73(B). "[S]uch discharge is a bar to any further criminal proceedings against him based on the same conduct." R.C. 2945.73(D).

{¶42} For the purposes of calculating time under the speedy trial statute, "each day during which the accused is held in jail in lieu of bail on the pending charge shall be counted as three days." R.C. 2945.71(E). Moreover, "[t]he time within which an accused must be brought to trial *** may be extended" for "[a]ny period of delay necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused." R.C. 2945.72(E).

{¶43} A total of 271 days[1] elapsed from the date of Bussle's arrest on November 18, 2008[2], until he signed the Waiver of Speedy Trial on February 17, 2009. Accordingly, Bussle has made a prima facie demonstration his speedy trial rights had been violated prior to the execution of the waiver.

1. Ninety of these days are calculated under the "triple-count" provision of R.C. 2945.71(E); Bussle was released from jail the day he signed the Waiver. The actual number of days elapsed was 91 days.
2. For the purpose of calculating the time within which Bussle had to be brought to trial, the count began on November 19, 2008, the day after his arrest. Crim.R. 45(A) ("[i]n computing any period of time prescribed *** by any applicable statute, the date of the act or event from which the designated period of time begins to run shall not be included").

{¶44} Pursuant to R.C. 2945.72(E), however, the filing of the Demand for Discovery and Request for Bill of Particulars on December 16, 2008, extended the time within which the State had to bring Bussle to trial. *State v. Brown*, 98 Ohio St.3d. 121, 2002-Ohio-7040, at the syllabus ("[a] demand for discovery or a bill of particulars is a tolling event pursuant to R.C. 2945.72(E)"). The State responded to Bussle's discovery requests on February 2, 2009, a period of 144 days for the purposes of extending the speedy trial period.[3] When this credit is applied against the 271 days elapsed prior to Bussle's execution of the Waiver of Speedy Trial, the State still had a considerable amount of time (143 days) within which to bring him to trial. See, e.g., *State v. Hadden*, 11th Dist. No. 2008-T-0029, 2008-Ohio-6999, at ¶21; *State v. Vazquez*, 11th Dist. No. 2006-A-0073, 2007-Ohio-2433, at ¶24. Thus, Bussle's statutory speedy trial rights were not violated and counsel was not constitutionally ineffective for failing to move for the dismissal of the charges on those grounds.

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

{¶46} Bussle's next three assignments of error raises issues concerning the weight and the sufficiency of the evidence.

{¶47} "'[S]ufficiency' is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury," i.e. "whether the evidence is legally sufficient to support the jury verdict as a matter of law." *State v. Thompkins,* 78 Ohio St.3d 380, 386, 1997-Ohio-52, quoting Black's Law Dictionary (6 Ed. 1990), 1433. Essentially, "sufficiency is a test of adequacy," that challenges whether the state's

3. Because Bussle was held in jail during the discovery period, the triple-count provision applies to the number of days tolled. The actual number of days elapsed was 48 days.

evidence has created an issue for the jury to decide regarding each element of the offense. Id.

{¶48} "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 319. In reviewing the sufficiency of the evidence to support a criminal conviction, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *Jenks,* 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶49} Weight of the evidence, in contrast to its sufficiency, involves "the inclination of the *greater amount of credible evidence.*" *Thompkins,* 78 Ohio St.3d at 387 (emphasis sic) (citation omitted). Whereas the "sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, *** weight of the evidence addresses the evidence's effect of inducing belief." *State v. Wilson,* 113 Ohio St.3d 382, 2007-Ohio-2202, at ¶25 (citation omitted). "In other words, a reviewing court asks whose evidence is more persuasive -- the state's or the defendant's?" Id.

{¶50} Generally, the weight to be given to the evidence and the credibility of the witnesses is primarily for the trier of fact to determine. *State v. Thomas* (1982), 70 Ohio St.2d 79, at the syllabus. When reviewing a manifest weight challenge, however, the

appellate court sits as the "thirteenth juror." *Thompkins,* 78 Ohio St.3d at 387 (citation omitted). The reviewing court must consider all the evidence in the record, the reasonable inferences, and the credibility of the witnesses, to determine whether, "in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." Id., quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶51} In the second assignment of error, Bussle argues that he was entitled to acquittal on the charge of Tampering with Evidence because the Indictment failed to state a mens rea for the crime. Bussle relies upon the Ohio Supreme Court's decisions in *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, and *State v. Colon*, 119 Ohio St.3d 204, 2008-Ohio-3749, for the proposition that the failure to charge a mens rea element of a crime constitutes structural and/or plain error.

{¶52} In *State v. Horner*, Slip Opinion No. 2010-Ohio-3830, however, the Ohio Supreme Court held: "An indictment that charges an offense by tracking the language of the criminal statute is not defective for failure to identify a culpable mental state when the statute itself fails to specify a mental state." Id. at paragraph one of the syllabus, overruling *Colon*, 2008-Ohio-1624, and overruling in part *Colon*, 2008-Ohio-3749.

{¶53} The Indictment for Tampering with Evidence alleges that Bussle, "on or about the 18th day of November, 2008, *** did knowing that an official proceeding or investigation is in progress, or is about to be likely to be instituted did, alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value of

availability as evidence in such proceeding or investigation." This language tracks the language of R.C. 2921.12(A)(1)[4] and, therefore, is not defective for failing to identify a culpable mental state (mens rea).

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

{¶55} In the third assignment of error, Bussle argues there was no admissible evidence sufficient to convict him of Trafficking in the vicinity of a juvenile, as charged in Count Five of the Indictment.

{¶56} "An offense is 'committed in the vicinity of a juvenile' if the offender commits the offense within one hundred feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within one hundred feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense." R.C. 2925.01(BB). A "juvenile" is defined as "a person under eighteen years of age." R.C. 2925.01(N).

{¶57} Bussle maintains that Agent Bauer's testimony as to the ages of the children present in the video, admitted over counsel's objection, was without foundation and inadmissible. Without this evidence, there is no evidence on which the jury could have found the vicinity of a juvenile specification proven beyond a reasonable doubt. We disagree.

4. "(A) No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall do any of the following: (1) Alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation ***." R.C. 2921.12(A)(1). We further note that both the Indictment and the statute identify two culpable mental states: knowledge with respect to an official proceeding or investigation and purpose with respect to conduct.

{¶58} "The [trafficking in the vicinity of a juvenile] statute does not require the state to prove the specific age of the alleged juvenile, but rather, that such individual is under the age of eighteen." *State v. Creech*, 12th Dist. No. CA2006-05-019, 2007-Ohio-2558, at ¶18.

{¶59} Both children present at the November 17, 2008 drug buy were recorded by the surveillance camera worn by Jones. This video was admitted into evidence and played before the jury. The children appear to be of very young ages, as evidenced by their physical appearance and speech, and there are items present in the house, such as a playpen and sippy cup, appropriate to toddler-age children. This evidence is sufficient for the jury to find that the sale of heroin occurred within one hundred feet of and/or within view of persons under the age of eighteen. Cf. *State v. VanNoy*, 2nd Dist. No. 09-CA-23, 2010-Ohio-2927, at ¶2 and ¶22 (the presence of a juvenile demonstrated by witness' testimony regarding a young boy and police surveillance photographs of a "small head in the passenger seat" of defendant's vehicle).

{¶60} The third assignment of error is without merit.

{¶61} In the fourth assignment of error, Bussle asserts the evidence was insufficient to convict him of Tampering with Evidence, inasmuch as the only evidence presented was Agent Kaley's testimony that "blue items [were] falling off him while he's running."

{¶62} In order to convict Bussle of Tampering with Evidence, the State needed to demonstrate that he, "knowing that an official proceeding or investigation is in progress," did "[a]lter, destroy, conceal, or remove any *** thing, with purpose to impair

its value or availability as evidence in such proceeding or investigation." R.C. 2921.12(A)(1).

{¶63} The State presented evidence of these elements at trial sufficient to support Bussle's conviction. There was evidence that Bussle knew an official proceeding or investigation was in progress. Agent Kaley testified that, as he approached Bussle, he announced "you have an arrest warrant through the Drug Task Force and they want to see you," and "you need to come with me, you're under arrest."

{¶64} There was evidence that Bussle removed and/or destroyed the blue packets of heroin in his possession by abandoning them during his flight from Agent Kaley and that his purpose in doing so was to impair its value and/or availability in the investigation. After subduing Bussle, Kaley had to retrace his steps to locate the packets that fell off of him during flight. These were partially concealed by the snow, and half of the packets recovered were damaged by moisture so that the forensic scientists could not determine their contents. While there was no direct evidence that Bussle was abandoning the packets - Kaley could only observe them falling off him - or of his purpose, these elements may reasonably be inferred from the evidence presented.

{¶65} The number of Ohio courts which have upheld convictions for Tampering with Evidence based on similar factual patterns, i.e. defendants abandoned drugs in their possession while in flight from the police, is considerable. *State v. Holt*, 3rd Dist. No. 9-09-39, 2010-Ohio-2298, at ¶61 ("the evidence demonstrated that Holt ran when confronted by the police, thereby *removing* the heroin from the house, whereupon he then *removed* the heroin from his pocket, and threw it while the police were running

after him; all of which was in an effort to impair its availability in an investigation and/or subsequent prosecution against him for possession of heroin"); *State v. Pickett*, 9th Dist. No. 23408, 2007-Ohio-4135, at ¶12 ("[a]ppellant removed evidence from his person over a several block area while attempting to elude the police"); *State v. Salaam*, 1st Dist. No. C-020324, 2003-Ohio-1021, at ¶6 ("evidence of a defendant seen throwing away a bag of illegal drugs while fleeing from police is sufficient to establish the elements of the offense of tampering with evidence"); *State v. Ross*, 2nd Dist. No. 19036, 2002-Ohio-6084, at ¶8 ("Ross toss[ed] two pieces of crack cocaine in the parking lot upon seeing the approaching police cars").

{¶66} Bussle further argues under this assignment of error that his convictions are against the manifest weight of evidence, in that the State's evidence rests upon the testimony of Jones and Sloey, admitted drug addicts who were motivated by monetary compensation. We disagree.

{¶67} Initially, we note that two of Bussle's convictions, those for Trafficking in Heroin (Count Six) and Tampering with Evidence (Count Eight), were based solely on the testimony of Drug Task Force agents and forensic scientists. The March 26 drug buy was directly observed by Agent Bauer. And Bauer confirmed Bussle's presence at the November 12 drug buy, although she did not observe the transaction itself.

{¶68} The testimony of Jones and Sloey with respect to the other drug buys is not wholly uncorroborated. On November 13 and 17, 2008, Agents Bauer and Wadlington searched Jones and Sloey before the alleged drug purchases to confirm that the informants did not have drugs in their possession and that, in fact, drugs were being purchased. On November 17, the transaction took place at a residence where

Bussle was known to reside. Moreover, the heroin recovered from the November 13 and 17, 2008 drug buys was packaged in the same small blue packets or bindles as was the heroin recovered on November 12 and 18, 2008, thus indicating a common source.

{¶69} While Jones' and Sloey's addictions and motivations have some bearing on their credibility as witnesses, these facts do not render their testimony so improbable or untrustworthy that Bussle's convictions constitute a miscarriage of justice.

{¶70} The fourth assignment of error is without merit.

{¶71} In the fifth and final assignment of error, Bussle claims he received constitutionally ineffective assistance of counsel at trial.

{¶72} To reverse a conviction for ineffective assistance of counsel, the defendant must prove "(1) that counsel's performance fell below an objective standard of reasonableness, and (2) that counsel's deficient performance prejudiced the defendant resulting in an unreliable or fundamentally unfair outcome of the proceeding." *State v. Madrigal*, 87 Ohio St.3d 378, 388-389, 2000-Ohio-448, citing *Strickland v. Washington* (1984), 466 U.S. 668, 687-688.

{¶73} Bussle's claim that counsel was ineffective for not moving for dismissal of the charges on the grounds of speedy trial violations has been addressed under the first assignment of error.

{¶74} Bussle further claims counsel was ineffective for not challenging inadmissible and irrelevant evidence, not impeaching the State's witnesses, not subpoenaing witnesses on his behalf, not requesting the narcotics be fingerprinted, and for allowing the testimony of an intoxicated witness.

{¶75} On cross-examination, Sloey admitted that, at lunch time that day, she had taken prescription medicine, Percocet, prescribed for her following surgery. Sloey stated she abuses the medicine by "tak[ing] more than I'm supposed to, because I have a high tolerance." Bussle does not explain why this admission would render her testimony inadmissible, rather than merely bear on her credibility.

{¶76} Beyond this, Bussle does not cite to specific examples in the record where trial counsel committed the errors alleged and/or how he was prejudiced thereby. *State v. Drummond*, 111 Ohio St.3d 14, 2006-Ohio-5084, at ¶223 (claim of ineffective assistance lacked merit where the appellant did "not mention any specific instances of counsel's failure to investigate or explain how he was prejudiced"). Our review of the record demonstrates that trial counsel rendered effective assistance, objecting to evidence, such as when Agent Bauer testified to the birthdates of the children living in the Orchard Street residence, and impeaching the State's witnesses, such as probing their drug dependency and dubious motives for assisting in the investigation.

{¶77} The fifth assignment of error is without merit.

{¶78} For the foregoing reasons, the Order and Journal Entry of the Portage County Court of Common Pleas, entering judgment on Bussle's convictions for Trafficking in Cocaine, Aggravated Trafficking in Drugs, four counts of Trafficking in Heroin, and Tampering with Evidence, is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J.,

COLLEEN MARY O'TOOLE, J.,

concur.