

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-08-069

Appellee

Trial Court No. 2007CR0549

v.

Jeffrey Hackl

DECISION AND JUDGMENT

Appellant

Decided: June 19, 2009

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, Aram
Ohanian and Jacqueline M. Kirian, Assistant Prosecuting
Attorneys, for appellee.

Jerome Phillips, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This case is before the court on appeal from the judgment of the Wood County Court of Common Pleas, which, following a trial to the bench, found that appellant, Jeffery Hackl, had committed the offense of possession of dangerous ordnance,

in violation of R.C. 2923.17(A), a felony of the fifth degree, beyond a reasonable doubt, but also found appellant not guilty by reason of insanity. On October 7, 2008, the trial court ordered appellant to be committed to North Coast Behavioral Health Care for treatment not to exceed 12 months. Appellant timely appealed the decision of the trial court and raises the following assignments of error:

{¶ 2} "First Assignment of Error

{¶ 3} "There was insufficient evidence to support the finding beyond a reasonable doubt that appellant unlawfully possessed dangerous ordnance.

{¶ 4} "Second Assignment of Error

{¶ 5} "The finding beyond a reasonable doubt that the appellant unlawfully possessed dangerous ordnance was against the manifest weight of the evidence."

{¶ 6} The following relevant evidence was adduced at trial. On November 8, 2007, Rossford police officers were called to the parking lot of a Meijer store in Rossford regarding a possibly intoxicated male. Perrysburg Township police, the first to arrive on the scene, found appellant sitting in his vehicle with his head on the steering wheel, murmuring to himself. The officers placed appellant in handcuffs until Rossford police arrived. Rossford police officers testified that they had dealt with appellant on several occasions and, when they arrived, placed him in their patrol car. Sergeant Mark Marek testified that he noticed at least six gas cans, three to six containers of fuel octane boost and fuel injector cleaner, duffle bags, and bottles which appeared to have metal objects finely cut up in them in appellant's vehicle. Appellant, a self-described "journeyman

electrician," explained that he was returning from a cross-country trip. The officers released appellant and asked him to leave. He refused, resulting in the officers ordering him to leave. Appellant then physically threatened Officer Mark Skala, for which he was placed under arrest.

{¶ 7} The officers then commenced a search of appellant's vehicle, finding, along with the aforementioned items, duct tape, matches, lighters and camouflage face paint, as well as a bag full of quarters. The officers called the bomb squad, who advised the officers to call the fire department, cordon off the area, and wait for a bomb technician to arrive. When the bomb technicians came, one of them approached the vehicle and, after approximately ten minutes, declared it safe to approach. Officer Sam Geiser, bomb technician, testified that the items found in the vehicle, although seemingly harmless, could be combined together to form an "incendiary device." Geiser, however, saw no wick, detonator or timer, which generally is used to set off bombs.

{¶ 8} In determining the sufficiency of the evidence, this court must determine if the evidence is, "legally sufficient to support all of the elements of the offense." *State v. Smith*, 6th Dist. No. WM-08-016, 2009-Ohio-2292, ¶ 23, citing *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386-387. The evidence must be such that it "would convince the average mind of the defendant's guilt beyond a reasonable doubt." *Id.*, citing *Thompkins* at 390. The question 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." *State v. Jenks* (1991), 61 Ohio

St.3d 259, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307.

{¶ 9} It is not the role of the appellate court to weigh the evidence. *State v. Olekshuk*, 11th Dist. No. 2004-A-0030, 2005-Ohio-5275, ¶ 16. Rather, as stated by the Ohio Supreme Court, "factual determinations are best left to those who see and hear what goes on in the courtroom." *State v. Cowans* (1999), 87 Ohio St.3d 68, 84. As such, in considering the sufficiency of the evidence, a reviewing court must not substitute its evaluation of the witnesses' credibility for that of the trier of facts. *State v. Benge* (1996), 75 Ohio St.3d 136, 143. "The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80.

{¶ 10} R.C. 2923.17(A) states that "[n]o person shall knowingly acquire, have, carry, or use any dangerous ordnance." The definition of "dangerous ordnance," as set forth in R.C. 2923.11(K)(2), includes any explosive or incendiary device. R.C. 2901.22(B) defines the mens rea of "knowingly" as follows: "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist."

{¶ 11} In determining whether a defendant "knowingly" possessed dangerous ordnance, the Ohio Supreme Court has stated that R.C. 2923.17(A) requires that "the state must prove that a defendant know or be aware of the probability that the item in his possession is dangerous." *State v. Jordan* (2000), 89 Ohio St.3d 488, 494-495. Furthermore, the Ohio Supreme Court held that "the definition of 'knowingly' found in R.C. 2901.22(B) does not require the state to show that a defendant knew the *specific* characteristics of the item possessed that made it a dangerous ordnance." *Id.* at 494 (Emphasis in original). In determining the element of "knowledge," the trier of fact can rely on "permissible inferences of knowledge, based at least in part upon fact." *Id.* at 495. Thus, even "if the accused did not know for certain that the item in his possession was dangerous ordnance, the state can still show culpability by objective demonstrations of the defendant's mental state." *Id.*

{¶ 12} In *Jordan*, however, the court cautioned against punishing "[e]ntirely innocent conduct" where a defendant, in good faith, had no way of determining that the item he possessed was dangerous or hazardous. *Id.* at 495. As illustration, the Ohio Supreme Court noted that, although it would be readily apparent that a defendant knew he was possessing dangerous ordnance if he possessed "a rocket launcher, grenade, or torpedo," in circumstances involving "nitroglycerin or picric acid," knowing possession would not be so readily apparent. *Id.*

{¶ 13} In his first assignment of error, appellant argues that the state failed to prove the essential elements of the offense charge, specifically, that he had the requisite

mens rea, i.e., "knowingly," required for conviction. Appellant argues that evidence beyond the existence of the items discovered in his vehicle was necessary to establish knowing possession of dangerous ordnance. Particularly, appellant asserts that the lack of evidence in his home regarding bomb-making goes against proving that he knowingly possessed dangerous ordnance. Also, although appellant admits that intent can be proven through circumstantial evidence, he contends that the items in the vehicle were all harmless by themselves, and that they were reasonable in light of both his mental capacity and his recent cross-country trip.

{¶ 14} We, however, find that a lack of practice materials, or bomb-making instructions, in appellant's home, or some other location, is inconsequential to the issue of whether appellant knowingly possessed dangerous ordnance on the day in question. Also, although appellant relies heavily on the fact that the items found in his vehicle were simple household items when looked at individually, we find that it was the combustible nature of the items when combined which led the trial court to make the inference that appellant knew he possessed dangerous ordnance.

{¶ 15} At trial, Geiser, who is trained in explosives, testified at length regarding the potential effect of combining the items in appellant's possession. Geiser noted that a number of the items present in the vehicle, such as the octane boost, could be used as an accelerant to expedite an explosion. He also stated that the empty bottles combined with the cut up pieces of Styrofoam could be used as a method of creating napalm, and that combining the cut-up matches found in the vehicle with duct tape could create a blasting

cap, which could be used to initiate an explosion. He testified that, based on previous experience, the bag of coins could be taped to a bomb in order to create shrapnel, thereby causing more damage. Geiser explained that, in order to ascertain whether a person was combining innocent household items for illegal use, he looked to the "multiplicity" of the items in order to determine if there was some attempt being made to create a homemade explosive. While noting that all of the items found in appellant's vehicle were innocuous household products when viewed separately, Geiser stated that the only other time he had seen a collection of similar items was at the bomb range.

{¶ 16} As stated previously, the court is able to make reasonable inferences in order to prove an essential element of the offense, and the evidence must be viewed in a light most favorable to the prosecution. Based on Geiser's testimony regarding the potential use of the combination of products found in appellant's vehicle, as well as his statement that the only other time he had seen the combination of these products was at the bomb range, it was reasonable for the trial court to infer that appellant had knowledge, or was aware of the probability, that the items in his vehicle were dangerous. Geiser's testimony was deemed credible by the trial court, who, through its role as trier of fact, was in the best position to determine the facts based on the evidence it was presented. Since it is not within the province of the appellate court to question such determination of fact where, as here, there is sufficient basis for the trial court's finding, this court must defer to the trial court.

{¶ 17} Accordingly, after viewing the evidence in a light most favorable to the prosecution, we find that there was sufficient evidence upon which the trial court could rely in determining that the state established each element of the offense beyond a reasonable doubt. Appellant's first assignment of error therefore is found not well-taken.

{¶ 18} Relying on the same arguments as he had with respect to his first assignment of error, appellant argues in his second assignment of error that the decision of the trial court was against the manifest weight of the evidence. The standard of review regarding manifest weight "implicates a weighing of the evidence wherein the appellate court acts as a thirteenth juror, assessing whether the jury lost its way with a resulting manifest miscarriage of justice warranting reversal * * *." *State v. Smith*, 6th Dist. No. WM-08-016, 2009-Ohio-2292, ¶ 23, citing *Thompkins*, 78 Ohio St.3d at 387. "A reviewing court will not reverse a conviction where there is substantial evidence upon which the court could reasonably conclude that all the elements of an offense have been proven beyond a reasonable doubt." *State v. Eskridge* (1988), 38 Ohio St.3d 56, 59, citing *State v. Eley* (1978), 56 Ohio St.2d 169, syllabus.

{¶ 19} Upon our thorough review of the record, we find that the evidence presented established that appellant possessed a myriad of potentially explosive substances. As we held with respect to appellant's first assignment of error, a reasonable inference could be drawn that, because of the variety, amount, and potential combustibility of the materials if combined, that appellant knew he possessed dangerous ordnance. Further, we note that there was no competing testimony concerning, or

explaining, the existence of cut-up matches, small pieces of metal in jars, pieces of Styrofoam, a bag of quarters, or camouflage paint, within appellant's vehicle.

Accordingly, we find that the trial court did not lose its way in determining that all the elements of the offense had been proven beyond a reasonable doubt. Appellant's second assignment of error therefore is found not well-taken.

{¶ 20} On consideration whereof, this court finds that appellant was not prejudiced or prevented from having a fair trial and the judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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