[Cite as *State v. Rodriguez*, 2009-Ohio-4280.]

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

State of Ohio — Court of Appeals No. WD-08-013

Appellee — Trial Court No. 2007CR0212

v.

Jose Rodriguez — **DECISION AND JUDGMENT**

Appellant — Decided: August 21, 2009

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, Gwen Howe-Gebers and Jacqueline M. Kirian, Assistant Prosecuting Attorneys, for appellee.

Lawrence J. Daly, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Jose Rodriguez, appeals from a decision of the Wood County Court of Common Pleas wherein he was convicted of trafficking in marijuana, a violation of R.C. 2925.03(A)(2)(C)(3)(f). For the reasons that follow, we affirm.

{¶ 2} Appellant asserts the following assignments of error:

{¶ 3} "I. The trial court committed prejudicial error when it overruled appellant Jose A. Rodriguez's Crim.R. 12(B)(3) Motion because the police who effectuated the warrantless stop, arrest, and search of his person and property did so in the absence of probable cause, as required by the Fourth Amendment to the U.S. Constitution and Section 14, Article I of the Ohio Constitution.

{¶ 4} "II. The trial court committed prejudicial error when it overruled appellant Jose A. Rodriguez's Crim.R. 29(A) Motions for Judgment of Acquittal due to insufficiency of evidence."

{¶ 5} In his first assignment of error, appellant contends that the court erred in denying his motion to suppress. A suppression hearing commenced on August 14, 2007. Agent Mark Apple, an investigator with the Ohio Attorney General's Office, Criminal Division, testified that on June 1, 2007, he was working in an undercover capacity when he went to the Meijer's store in Rossford, Ohio with a confidential informant. The informant had arranged a meeting with Luis Melendez. The purpose of the meeting was to purchase marijuana. In the store, Luis Melendez, accompanied by appellant, told Agent Apple that they had 80 pounds of marijuana for sale for $675. Agent Apple agreed to the price. He told appellant and Melendez that the money was 15 minutes away in Bowling Green, Ohio.

{¶ 6} Appellant and his son, Scott Rodriguez, got into a Chevy S10 pick-up truck. Behind appellant was Agent Apple in his vehicle. Behind Agent Apple were

Melendez and his passenger, Kyle Tolka, in a Ford F150 pick-up truck. The three vehicles headed down I-75 towards Bowling Green.

{¶ 7} Agent Mike Ackley, a Wood County Sheriff's deputy, testified that he assisted in the investigation with Agent Apple. He testified that he knew what the suspects' trucks looked like. After receiving information that Melendez, accompanied by appellant, had offered to sell Agent Apple and his informant 80 pounds of marijuana, Ackley decided to make an investigative stop of the two pick-up trucks. The stop and subsequent search led to appellant's drug trafficking charge. Ackley testified that he decided to stop the trucks before they arrived in Bowling Green to ensure the safety of Agent Apple.

{¶ 8} In reviewing a motion to suppress "an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence." *State v. Montoya* (Mar. 6, 1998), 6th Dist. No. L-97-1226 (citing *State v. Guysinger* (1993), 86 Ohio App.3d 592, 594). "[T]he appellate court must then independently determine as a matter of law, without deferring to the trial court's conclusions, whether the facts meet the applicable legal standard." Id. (citing *State v. Klein* (1991), 73 Ohio App.3d 486, 488).

{¶ 9} "A warrantless arrest is * * * reasonable under the Fourth Amendment to the United States Constitution when there is probable cause to believe that a criminal offense has been or is being committed." *State v. Mitchell*, 6th Dist. No. L-07-1092, 2007-Ohio-5316, ¶ 14 (citing *United States v. Watson* (1976), 423 U.S. 411, 417-424).

"[P]robable cause to arrest depends on 'whether, at the moment the arrest was made * * * the facts and circumstances within [the law enforcement officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [defendant] had committed or was committing an offense.'" Id. (quoting *Beck v. Ohio* (1964), 379 U.S. 89, 91).

{¶ 10} Here, appellant's vehicle was under constant surveillance as being involved in the present drug transaction. Agent Ackley, who ordered the stop of appellant's vehicle, had been in communication with one of the other agents working on the case, and had knowledge of all conversations that took place at the Meijer store involving appellant. Accordingly, we find that Ackley had probable cause to stop and ultimately arrest appellant for drug trafficking. Finding that the court did not err in denying appellant's motion to suppress, appellant's first assignment of error is found not well-taken.

{¶ 11} In his second assignment of error, appellant contends that the court erred in denying his Crim.R. 29 motion for acquittal. Crim.R. 29(A) provides that a judgment of acquittal shall be entered "if the evidence is insufficient to sustain a conviction of such offense or offenses." In reviewing a record for sufficiency, a court must determine whether the evidence submitted is legally sufficient to support all of the elements of the offense charged. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386-387. Specifically, the court must determine whether the state has presented evidence which, if believed,

would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Nicholson*, 6th Dist. Nos. L-08-1136, L-08-1137, 2009-Ohio-518, ¶ 45.

{¶ 12} The relevant elements of R.C. 2925.03 are as follows:

{¶ 13} "(A) No person shall knowingly do any of the following:

{¶ 14} "* * *

{¶ 15} "(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person."

{¶ 16} Among those witnesses who testified at trial were Melendez, Tolka, confidential informant Saul Ramirez, Agent Apple and Agent Ackley. Based on their experience, Agents Apple and Ackley were both deemed by the court as experts in drug organizations and testified as to how drug organizations generally work. Testimony of the events and circumstances leading up to the arrest are as follows.

{¶ 17} Agent Apple was involved in the present drug transaction in an undercover capacity, working with Ramirez. He testified that he was in constant communication with Ramirez on May 31, 2007, and that he and Ramirez set up a meeting at a Meijer store in Rossford, Ohio on June 1, 2007. Agent Apple also testified that a briefing was held on May 31, 2007 with law enforcement agencies in the area. There it was decided that a traffic stop would be conducted on anyone who showed up to meet with Ramirez and Agent Apple at the Meijer store on June 1, 2007.

{¶ 18} At the store, Agent Apple and Ramirez discussed the price of the marijuana with Melendez. Appellant was not a part of the discussion about price; however, Agent Apple testified that afterwards, appellant shook his hand and talked about how they wanted to "get out of there because there were too many cops around."

{¶ 19} Agent Ackley testified that he and his team pulled over the S10 and the F150 pick-up trucks per instructions to look out for two pick-up trucks, one smaller one and one larger white one. He testified that he was present during the search of both vehicles, and that the marijuana was found in the F150 truck. The registration for the F150 truck was found in the S10 truck, and was in appellant's name. He also testified that appellant had a little over $900 in cash on his person.

{¶ 20} Ramirez testified that he had never met appellant prior to the meeting at the Meijer store, but that he shook both appellant's and appellant's son's hands as they were exiting the store. He also testified that he did have conversations with someone on a two way radio, and that Melendez told him the conversations were with appellant.

{¶ 21} Ramirez, a former drug dealer, testified that he knew Melendez before the present drug transaction. Ramirez testified that Melendez had begun as a mule and then started dealing drugs himself. According to Ramirez' testimony, a "mule," or driver, is paid to transport the drugs and would be someone who is trusted by the drug "supplier." He testified that when there is more than one vehicle traveling, it is common for the supplier to either be the "lead" vehicle or to be following behind the mule. He also

testified that Melendez had offered to sell him a kilo of cocaine a few weeks before the present transaction.

{¶ 22} Melendez testified that he had met appellant in Texas, and that they had known each other for nine years. Melendez testified that he met with appellant, his son, and Tolka in Indianapolis, and the four of them then traveled to Chicago. He claimed that once in Chicago, appellant and appellant's son left with the F150 pick-up truck and when they returned it contained the marijuana. Melendez also testified that he received $10,000 from a customer, which he gave to appellant. He claimed that out of that, appellant paid him $2,000 for his role in the drug transaction, and $4,000 was sent via Western Union in four separate transactions by appellant, appellant's son, Tolka, and himself.

{¶ 23} Melendez testified that appellant was not a party to any of the conversations about the drug transaction at the Meijer store, but that appellant called him afterwards, when they were on the freeway, and told him that he and his son had a feeling "they were cops." Melendez also testified that he had been transporting marijuana for appellant for months.

{¶ 24} Tolka testified that he has known appellant for about a year and that he became involved in the present drug transaction because appellant's son asked him if he wanted to "make some money."

{¶ 25} We find that this testimony, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. Accordingly, appellant's second assignment of error is found not well-taken.

{¶ 26} On consideration whereof, 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.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Richard W. Knepper, J. _____
CONCUR.
JUDGE

Judge Richard W. Knepper, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.