

[Cite as *State v. Young*, 2003-Ohio-4064.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 82096

STATE OF OHIO	:	
	:	JOURNAL ENTRY
Plaintiff-Appellee	:	
	:	and
-vs-	:	
	:	OPINION
MICHAEL YOUNG	:	
	:	
Defendant-Appellant	:	
	:	

DATE OF ANNOUNCEMENT OF DECISION:	<u>JULY 31, 2003</u>
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CHARACTER OF PROCEEDING:	Criminal appeal from Common Pleas Court Case No. CR-425200
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JUDGMENT:	Affirmed.
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DATE OF JOURNALIZATION:

APPEARANCE:

For Plaintiff-Appellee:	WILLIAM D. MASON Cuyahoga County Prosecutor EDWARD J. CORRIGAN Assistant County Prosecutor 8 th Floor Justice Center 1200 Ontario Street Cleveland, Ohio 44113
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For Defendant-Appellant:	JEROME EMOFF 55 Public Square Suite 1300
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Cleveland, Ohio 44113-1971

PATRICIA ANN BLACKMON, J.:

{¶1} Michael Young appeals from a judgment of the common pleas court which found him guilty of possession of criminal tools and complicity to drug trafficking in connection with a "buy-bust" operation conducted by the police. On appeal, he assigns the following error for our review:

{¶2} "Appellant's convictions were based upon insufficient evidence and were against the manifest weight of the evidence."

{¶3} Having reviewed the record and pertinent law, we affirm the judgment of the court.

{¶4} The record reflects the grand jury indicted Young and a co-defendant, Allen Shine, for trafficking in drugs, possession of drugs, possessing criminal tools, and complicity to drug trafficking.

{¶5} At the bench trial that ensued, Detective Hall testified that he, together with Detective Roddy and a "Confidential Reliable Informant, or "CRI", conducted a "buy-bust" operation on June 4, 2002 in the area of E. 139th and Kinsman Streets, a high drug activity area.

{¶6} Detective Hall testified that he first searched the CRI to ensure the individual was free of any drug, contraband, or money. After observing Shine, a drug abuser known to the police, flagging down vehicles and pedestrians, Detective Hall handed a

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marked \$20 bill which had been photocopied by the police to the CRI. When the CRI exited Hall's undercover police vehicle, he was immediately approached by Shine. Shine and the CRI briefly exchanged words and they walked together across Kinsman Street onto 139th Street, where Shine met up with Young, who was accompanied by an unidentified juvenile.

{¶7} Detective Hall stated he then observed Young and Shine make a hand-to-hand transaction which indicated to him that a drug transaction was taking place in which Young was a drug dealer and Shine a contact person, or "mule." Shine immediately returned to the CRI and the two completed their own hand-to-hand transaction, in which Shine handed an unknown object to the CRI and the CRI handed Shine the \$20 bill. Shine then walked back to Young while the CRI returned to Detective Roddy with the expected contraband. As Young walked away from the area, the police arrested him and found the prerecorded money on his person.

{¶8} Detective Hall further testified that the CRI immediately handed the object he obtained to a "control officer," who then secured it in a field drug evidence bag. The lab later identified the object as a rock of crack cocaine

Detective Roddy gave a similar account of the incident leading to Young's arrest. In addition, Detective Raspberry testified that he worked on a takedown unit in the area of 139th and Kinsman on June 4, 2002. After receiving an instruction from Detective Hall, he located Young and the accompanying juvenile, and saw him toss a bag when the police approached. While patting down these two individuals, he found the prerecorded \$20 bill

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on Young. Furthermore, the police later determined the tossed bag to contain crack cocaine.

{¶9} Young testified in his defense. He denied selling drugs on June 4, 2002, explaining instead that Shine asked for change for a \$20 bill and he gave Shine two \$10 bills.

{¶10} The court found him guilty of possession of criminal tools and complicity to drug trafficking and subsequently sentenced him to one year of community control for his convictions.

{¶11} In his sole assigned error, Young claims his convictions of possessing criminal tools and complicity to drug trafficking are not supported by sufficient evidence and are also against the manifest weight of the evidence.

{¶12} In connection with his sufficiency challenge, Crim.R. 29(A) states, in relevant part:

{¶13} “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.”

{¶14} In *State v. Jenks*,¹ the court set forth the following standard for our review of a sufficiency challenge:

{¶15} “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

¹(1991), 61 Ohio St.3d 259, paragraph two of syllabus.

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whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The 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.”

{¶16} We consider Young’s conviction of possessing criminal tools first. This offense is defined in R.C. 2923.24 as follows:

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

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

{¶19} “(1)Possession or control of any dangerous ordnance, or the materials or parts for making dangerous ordnance, in the absence of circumstances indicating the dangerous ordnance, materials, or parts are intended for legitimate use;

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

{¶21} “(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.”

{¶22} This court had considered on numerous occasions a claim that the evidence showing the police found money on a defendant’s person is insufficient to support a conviction of possession of criminal tools. We have consistently held that where evidence shows that a defendant engaged in a controlled drug purchase and that marked currency from that sale was found in the possession of the defendant, this evidence is sufficient to

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support a conviction for possession of criminal tools. In *State v. Wilson*,² we provided the following analysis:

{¶23} “A prima facie case of criminal purpose is shown when the substance, device, instrument or article is commonly used for criminal purposes and the circumstances indicate the item is intended for criminal use. R.C. 2923.24(B). Since currency does not fall within one of the circumstances which constitute ‘prima facie evidence of criminal purpose’ under R.C. 2923.24(B), the state was required to prove, beyond a reasonable doubt, that appellant possessed or had control over this money with purpose to use it criminally, without the benefit of the inference provided by this statute.”³

{¶24} In *Wilson*, the state presented evidence that the police utilized a confidential informant to execute a controlled buy of crack cocaine with a marked \$20 bill and later recovered the marked money from the defendant among a sum of three hundred seventy dollars. We concluded there that this evidence was sufficient to establish that the defendant was actively engaged in the sale of crack cocaine and that he intended to use the money found on his person for criminal purposes as part of his illegal drug activities.⁴

{¶25} Here, the state presented evidence to show that the police, through the use of a CRI, executed a “buy-bust” operation

²(June 9, 1994), Cuyahoga App. Nos. 64442, 64443.

³*Wilson*, citing *State v. Woods* (May 14, 1992), Cuyahoga App. No. 60332; *State v. Anderson* (1981), 1 Ohio App.3d 62.

⁴*Wilson*, citing *State v. Porter* (July 19, 1990), Cuyahoga App No. 57251 (affirming jury's finding that money was a criminal tool); *State v. Strickland* (Jan. 24, 1991), Cuyahoga App. No. 58032; *State v. Woods*, supra (affirming jury's finding that money was a criminal tool); *State v. Furst* (Nov. 15, 1990), Cuyahoga App. No. 59757; *State v. Reese* (Aug. 18, 1988), Cuyahoga App. No. 54105; *State v. Hill* (June 9, 1993), Lorain App. No. 5458.

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with a prerecorded marked \$20 bill on E. 139th and Kinsman. They observed a hand-to-hand transaction between Young and his co-defendant, Shine, followed by another hand-to-hand transaction between Shine and the CRI, in which the CRI handed Shine the marked bill and obtained from Shine an item which later tested to be a rock of crack cocaine. The police subsequently retrieved the prerecorded bill from Young.

{¶26} Construing this evidence in the light most favorable to the prosecution, we conclude any rational trier of fact could have found Young possessed the money with the purpose of using it to facilitate his drug transactions. Accordingly, Young's conviction of possessing criminal tools is supported by sufficient evidence.⁵ Relying on the infinitive in the phrase "with purpose to use it criminally" in Section (A) of R.C. 2923.24, Young contends the state must prove he intended to use the \$20 bill *in the future* in a criminal manner. This contention lacks merit. The infinitive phrase has several meanings; here, it is not used to indicate a future event; rather, it is used to denote a purpose. This usage is apparent when we read R.C. 2923.24(A) in conjunction with 2923.24(B). Section (B), states that prima-facie evidence of criminal purpose includes possession of dangerous ordnance in the absence of circumstances indicating the dangerous ordnance is

⁵See *State v. Tolbert* (1996), 116 Ohio App.3d 86; *State v. Powell* (1993), 87 Ohio App. 3d 157; *State v. McShan* (1991), 77 Ohio App. 3d 781; *State v. Giles* (May 2, 1996), Cuyahoga App. No. 69367; *State v. Banks* (January 26, 1995), Cuyahoga App. No. 66811; *State v. Graves* (Oct. 6, 1994), Cuyahoga App. No. 66238.

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"intended for legitimate use,"⁶ possession of substance "adapted for criminal use,"⁷ and possession of substance commonly used for "criminal purposes" under circumstances indicating the item is "intended for criminal use."⁸ The wordings in these subsections leave no doubt that the infinitive "to use it criminally" in section (A) is not employed to indicate a future tense, but rather to denote a purpose.

{¶27} We next consider whether Young's conviction of possession of criminal tools is against the manifest weight of the evidence. When an appellant challenges a conviction on manifest-weight grounds, we review the record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, "and 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."⁹ The discretionary power to grant a new trial should be exercised only in exceptional cases in which the evidence weighs heavily against the conviction.¹⁰

⁶R.C. 2923.24(B)(1).

⁷R.C. 2923.24(B)(2).

⁸R.C. 2923.24(B)(3).

⁹*State v. Martin* (1983), 20 Ohio App.3d 172,175, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 38, 42. See, also, *State v. Thomkins* (1997), 78 Ohio St.3d 380.

¹⁰*Martin*, citing *Tibbs*. See, also, *Thomkins*.

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{¶28} Furthermore, we are mindful that the weight of the evidence and the credibility of witnesses are primarily issues for the trier of fact,¹¹ because the jury is in the best position to observe the witnesses' demeanor, voice inflection, and mannerisms in determining each witness's credibility.¹² We also recognize that the jury is entitled to believe or not to believe all, part, or none of the testimony of the witnesses.¹³

{¶29} Here, weighing the evidence and all reasonable inferences, and considering the credibility of witnesses, we cannot say that in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed.¹⁴

{¶30} Regarding his conviction of complicity to drug trafficking stemming from the state's charge that he aided or abetted Shine in trafficking in drugs, Young similarly complains his conviction is not supported by sufficient evidence and is against the manifest weight of the evidence.

¹¹*State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of syllabus.

¹²See *State v. Saunders* (Nov. 21, 2000), Franklin App. No. 99 AP-1486.

¹³*State v. Antill* (1964), 176 Ohio St. 61.

¹⁴For our rejection of a similar manifest weight claim, see *State v. Studgions* (May 31, 2001), Cuyahoga App. No. 78307; *State v. Burson* (Feb. 1, 1996), Cuyahoga App. No. 68544; but, see, *State v. Novak* (Jan. 28, 1993), Cuyahoga App. No. 61799, (evidence that defendant had five dollars or fifty dollars on his person, alone, is not enough to sustain a conviction for possession of criminal tools.)

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{¶31} Here, the evidence shows that during the “buy-bust” operation, Detective Hall observed a hand-to-hand transaction between Young and Shine, who then handed to the CRI an object later identified to be a rock of crack cocaine, in exchange for a \$20 bill prerecorded by the police, which the police subsequently found on Young’s person. Given this evidence, viewed in a light most favorable to the prosecution, we conclude any rational trier of fact could have found the crime of complicity to drug trafficking proven beyond a reasonable doubt.

{¶32} Regarding his manifest-weight challenge, the evidence shows that Young countered the state’s evidence by testifying that he obtained the prerecorded money from Shine, who asked for change for a \$20 bill.

{¶33} Given this state of the evidence, we cannot say that the trier of fact in resolving conflicts in the evidence clearly lost its way and created such a manifest miscarriage of justice in its conviction of Young of complicity to drug trafficking.

{¶34} Based on the foregoing, we overrule Young’s assigned error.

Judgment affirmed.

It is ordered that appellee recover of appellant its 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

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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.

KENNETH A. ROCCO, A.J., and

DIANE KARPINSKI, J., CONCUR.

PATRICIA ANN BLACKMON
JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).