

[Cite as *State v. Taliaferro*, 2004-Ohio-1691.]

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Julie A. Edwards, J.
vs.	:	
	:	
PAUL TALIAFERRO	:	Case No. 2003AP070051
	:	
Defendant-Appellant	:	
	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 2002CR080270

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: March 18, 2004

APPEARANCES:

For Plaintiff-Appellee

DAVID C. HIPP

For Defendant-Appellant

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Farmer, P.J.

{¶1} On August 27, 2002, the Tuscarawas County Grand Jury indicted appellant, Paul Taliaferro, on one count of possession of crack cocaine in violation of R.C. 2925.11. A bench trial commenced on May 8, 2003. By judgment entry filed May 9, 2003, the trial court found appellant guilty. By judgment entry filed June 26, 2003, the trial court sentenced appellant to six months, suspended in lieu of two years of community control.

{¶2} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶3} "THERE WAS INSUFFICIENT EVIDENCE TO CONVICT THE APPELLANT OF POSSESSION OF COCAINE."

I

{¶4} Appellant claims his conviction was against the manifest weight of the evidence. We disagree.

{¶5} On review for sufficiency, a reviewing court is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks* (1991), 61 Ohio St.3d 259. On review for manifest weight, a reviewing court is

to examine the entire 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." *State v. Martin* (1983), 20 Ohio App.3d 172, 175. See, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380. The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175. We note the weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. Jamison* (1990), 49 Ohio St.3d 182, certiorari denied (1990), 498 U.S. 881.

{¶6} Appellant was convicted of one count of possession of cocaine in violation of R.C. 2925.11 which states, "No person shall knowingly obtain, possess, or use a controlled substance."

{¶7} On August 3, 2002, Ohio State Highway Patrol Trooper Arthur Wood stopped a vehicle wherein appellant was a passenger. T. at 15-16. Trooper Wood observed two pieces of crumpled paper come out of the passenger's window. T. at 16. During the stop, Trooper Wood was joined by his supervisor, Sergeant Joseph Fetty. T. at 21-22, 61. Sergeant Fetty retrieved the papers from the side of the roadway, opened them and detected what he believed to be crack cocaine. T. at 21-22, 63. Trooper

Wood took custody of the papers and testified each paper contained what appeared to be a rock of crack cocaine. T. at 25-26, 57, 64. Trooper Wood transported appellant to the Justice Center. T. at 35. Upon inspection, Trooper Wood removed what appeared to be a piece of crack cocaine from appellant's shoe. T. at 36. Both Trooper Wood and Sergeant Fetty sealed the evidence and filled out the HP 28 Property Control form. T. at 29, 38, 42-43, 57-58, 67-68, 76-77. The form listed two pieces of crumpled paper and three possible pieces of crack cocaine. T. at 42, 58, 68. The lab report (State's Exhibit C) confirmed the substances were crack cocaine. T. at 33-34.

{¶8} Appellant argues the state failed to prove the number of pieces of crack cocaine found and the number of pieces of crack cocaine analyzed.

{¶9} Trooper Wood testified State's Exhibit B contained the pieces of crack cocaine found along the roadway and the piece taken from appellant's shoe. T. at 28-29, 37-38. Admittedly, the exhibit does not indicate the crack cocaine was seized from two separate locations, but Trooper Wood specifically handled the crack and testified two rocks were seized from the crumpled paper and one rock was seized from appellant's shoe. T. at 25-26, 57. Trooper Wood recounted that appellant admitted to throwing the two pieces of paper out the passenger window, but he did not include this fact in his original written report. T. at 45-49. Sergeant Fetty admitted the information should have been included in the original report. T. at 72.

{¶10} Sergeant Fetty testified he personally found rocks of crack cocaine in the crumpled papers he retrieved from the edge of the roadway. T. at 63. Trooper Wood sealed the evidence bag. T. at 64. Sergeant Fetty did not recall how many rocks he found in the crumpled papers. T. at 65-66. He never observed the crack cocaine taken from appellant's shoe. T. at 67. Although Sergeant Fetty made a notation on the evidence form that there were three rocks, he was unsure how many were in the crumpled papers. T. at 67-68.

{¶11} Defense counsel developed the record to point out to the trial court the lack of clean police procedure in labeling the evidence and in completing the original police report. T. at 103-104.

{¶12} At the bench trial, the trial court as the trier of fact had the opportunity to determine the credibility of the officers' testimonies. The record supports the finding that Trooper Wood observed papers thrown from the passenger side of the vehicle at the initiation of the stop. T. at 16, 18-20, 49-50. Rocks of crack cocaine were found in these papers and in appellant's shoe, and all the rocks were analyzed and found to be cocaine. T. at 33-34. Upon review, we find the trial court's decision was based upon sufficient credible evidence.

{¶13} The sole assignment of error is denied.

{¶14} The judgment of the Court of Common Pleas of Tuscarawas County, Ohio
is hereby affirmed.

Judgment affirmed.

Wise and Edwards, JJ. concur.

By Farmer, P.J.

JUDGES

SGF/jp 0225

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IN THE COURT OF APPEALS FOR TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

PAUL TALIAFERRO

Defendant-Appellant

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JUDGMENT ENTRY

CASE NO. 2003AP070051

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Tuscarawas County, Ohio is affirmed.

JUDGES