[Cite as *State v. Ashbridge*, 2010-Ohio-3572.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JOSEPH WILLIAM ASHBRIDGE

Defendant-Appellant

JUDGES:
Hon. W. Scott Gwin, P. J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

Case No. 2009 CA 00308

O P I N I O N

CHARACTER OF PROCEEDING: Criminal Appeal from the Court of Common Pleas, Case No. 2008 CR 01419

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: August 2, 2010

APPEARANCES:

For Plaintiff-Appellee

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Wise, J.

{¶1} Appellant Joseph William Ashbridge appeals from the decision of the Court of Common Pleas, Stark County, which terminated his community control and imposed a term of imprisonment. The relevant facts leading to this appeal are as follows.

{¶2} On December 16, 2008, appellant entered a plea of guilty to one count of operating a motor vehicle under the influence of alcohol, R.C. 4511.19(A)(1)(a)/(f), a felony of the third degree.[1] On December 31, 2008, after a pre-sentence investigation, appellant was ordered to serve sixty (60) days of incarceration and was placed on community control for a period of three (3) years.

{¶3} On November 23, 2009, appellant's probation officer, Arlune Culler, conducted a home visit. During this visit, Officer Culler saw items which caused him to call for assistance and conduct a fuller search of appellant's home. On November 24, 2009, Culler filed a motion to revoke appellant's community control, based on items found during the search. Culler based the motion on alleged violations of five rules for appellant's community control, which required appellant to (1) obey all laws, (2) follow his P.O.'s orders, (3) possess no firearms, weapons, or ammunition, (4) possess no drugs or alcohol, and (5) follow the rules of intensive supervised probation.

{¶4} On December 17, 2009, after an evidentiary hearing, the trial court granted the motion to revoke and imposed a prison term of five years, with credit for sixty days served.

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[1] The offense was charged as a felony based upon appellant's prior felony OMVI conviction.

{¶5} Appellant filed a notice of appeal on December 21, 2009, and herein raises the following sole Assignment of Error:

{¶6} "I. THE TRIAL COURT ABUSED ITS DISCRETION IN FINDING THAT THE APPELLANT VIOLATED THE TERMS OF HIS PROBATION."

I.

{¶7} In his sole Assignment of Error, appellant contends the trial court abused its discretion in finding appellant in violation of his community control conditions. We disagree.

{¶8} "The privilege of probation [or community control] rests upon the probationer's compliance with the probation conditions and any violation of those conditions may properly be used to revoke the privilege." *State v. Russell*, Lake App.No. 2008-L-142, 2009-Ohio-3147, ¶7, quoting *State v. Bell* (1990), 66 Ohio App.3d 52, 57, 583 N.E.2d 414. Because a revocation hearing is not a criminal trial, the State only has to introduce evidence showing that it was more probable than not that the person on probation or community control violated the terms or conditions of the same. See *State v. Stockdale* (Sept. 26, 1997), Lake App. No. 96-L-172. Once a trial court finds that a defendant violated community control conditions, it possesses discretion to revoke the defendant's community control. In that event, appellate courts should not reverse trial court decisions unless a court abused its discretion. *State v. Wolfson* (May 25, 2004), Lawrence App. No. 03CA25, 2004-Ohio-2750, ¶7-¶8; *State v. Umphries* (July 9, 1998), Pickaway App. No. 97CA45, 1998 WL 377768.

{¶9} In the case sub judice, during the home visit of November 23, 2009, Probation Officer Culler first saw empty beer bottles (which were not in the home during

previous visits) on a back patio, a costume police hat and duty belt, a police baton in a closet, and a container of pepper spray. These items caused him to conduct a more thorough search of the house. Tr. at 16-18, 27-29. Culler had previously instructed appellant to remove all alcohol, including empty bottles, from the home. Appellant maintained the beer bottles had been purchased and their contents consumed by his girlfriend and her friends outside of the home. Tr. at 29-30. The police baton was part of a costume which included a fake gun and badge. Tr. at 31-42. Culler referred to the pepper spray he found as "law enforcement pepper spray." Tr at. 19. Appellant indicates that the term "law enforcement" is just part of the brand name on the label. See Tr. at 40. Appellant asserted that he owned this spray when he worked as a bouncer and had given it to his girlfriend for her protection. Tr. at 41, 74.

{¶10} Additional items found during the expanded search were a heavy sword with no handle, a bow with steel-tipped arrows, several knives, ammunition, a homemade potato gun, some baseball bats, a pool cue, two partially full bottles of liquor, and suspected marijuana. Tr. at 18-21, 30.

{¶11} The sword was apparently an old wall decoration that had broken when it fell and was left behind a buffet. See Tr. at 18, 70.

{¶12} The bow and the steel-tipped arrows were found in the basement. Tr. at 39-40. Appellant insisted that he did not know the bow, which was very old and had belonged to his father, was still in the house. Tr. at 73.

{¶13} Four of the knives in question were pocket knives, which were discovered in the basement. Tr. at 21-22, 41. A pocket knife was also found on the kitchen table. Tr. at 34-35. Culler agreed that such knives could be considered "tools" rather than

"weapons." Tr. at 42, 53. Another probation officer found a knife on a dresser in the living room, described as a "butterfly" knife. Tr. at 33, 41.

{¶14} The officers also located some ammunition in a gun cabinet, even though appellant had been previously ordered to remove several firearms from his home. Tr. at 22, 76-77. Appellant maintains that a friend removed several gun cabinets containing firearms but mistakenly left the box of ammunition. See Tr. at 47, 62-64, 76-77[2].

{¶15} A homemade potato gun was also found in the basement. Tr. at 43. "A potato gun is a device that shoots potatoes into the air by use of a propellant." *Kiser v. Coffey*, Clark App.No. 07 CA 29, 2008-Ohio-5170, ¶2. Appellant argues that the device is not a true weapon but is more akin to a toy or amusement item.

{¶16} The three baseball bats and a "broken," i.e., two-piece screw-together, pool stick were discovered in a closet near the front door. Tr. at 19-23. Appellant points out that he does have a pool table in his basement. See Tr. at 46.

{¶17} The two partially full bottles of liquor were found in an entertainment center behind a set of collector glasses. Tr. at 72. Appellant denied knowing they were still in the house. Id.

{¶18} Finally, the suspected marijuana was found in a dresser drawer in the bedroom appellant shares with his girlfriend. Tr. at 21. Appellant points out that no lab test results scientifically identifying the substance were presented at the hearing. See Tr. at 5-6. He also maintains Culler was not shown to have the necessary qualifications to identify drug substances. According to the record, appellant told Culler and his fellow probation officers that any marijuana would belong to his girlfriend and must have been

[2] The friend, Sean Hinkle, testified on behalf of appellant at the revocation hearing.

in her underwear drawer. Tr. at 47. When Culler talked with appellant's girlfriend, she neither admitted nor denied the substance belonged to her. Tr. at 48.

{¶19} Appellant, in his well-detailed brief, concedes that the liquor, the beer bottles on the back porch, the pepper spray, the bow and arrows, and the sword behind the buffet are contraband. Appellant's Brief at 7. However, he argues the beer was outside the home and was the property of his girlfriend, and that the home belonged to appellant's parents and still contained much of their personal property. Appellant also urges that the fact that he was regularly screened during his probation and never tested positive for drugs or alcohol supports a conclusion that the suspected drug and alcohol items were not used or possessed by him. See Tr. at 29-30. He also points out that prior to the revocation hearing, appellant had completed his community service, a victim awareness course, the "day reporting" program, and had not been charged with any new criminal offenses. See Tr. at 48-50. Finally, appellant challenges Culler's testimony as allegedly "laced with misleading references, exaggerations, and inconsistencies." Appellant's Brief at 8.

{¶20} However, as the State responds in its brief, the weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. See, e.g., *State v. Jamison* (1990), 49 Ohio St.3d 182, 552 N.E.2d 180. Upon review, we find there was sufficient evidence that appellant violated the terms of his community control, and the trial court did not abuse its discretion in its decision to revoke appellant's community control sanction.

{¶21} Appellant's sole Assignment of Error is therefore overruled.

{¶22} For the foregoing reasons, the judgment of the Court of Common Pleas of Stark County, Ohio, is hereby affirmed.

By: Wise, J.

Gwin, P. J., and

Delaney, J., concur.

/S/ JOHN W. WISE_____

/S/ W. SCOTT GWIN_____

/S/ PATRICIA A. DELANEY_____

JUDGES

JWW/d 0706

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

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
JOSEPH WILLIAM ASHBRIDGE	:	
Defendant-Appellant	:	Case No. 2009 CA 00308

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio, is affirmed.

Costs assessed to Appellant.

/S/ JOHN W. WISE_____

/S/ W. SCOTT GWIN_____

/S/ PATRICIA A. DELANEY_____

JUDGES