

Delaney, J.

{¶1} Defendant-Appellant William G. Bozarth II appeals his June 3, 2019 conviction and sentence by the Licking County Court of Common Pleas. Plaintiff-Appellee is the State of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} On January 3, 2019, the Licking County Grand Jury returned an indictment charging Defendant-Appellant William G. Bozarth II with one count of Aggravated Trafficking in Drugs (Methamphetamine), a second-degree felony in violation of R.C. 2925.03(A)(2)(C)(1)(d) based on the amount of methamphetamine equal or exceeding five times bulk but less than fifty times bulk and Forfeiture (U.S. Currency) in violation of R.C. 2941.1417(A) and 2981.02(A)(2).

{¶3} Bozarth entered a plea of not guilty and the matter proceeded to a jury trial. The following evidence was adduced at trial.

{¶4} B.R. and J.W. lived together in an apartment on Union Street in Newark, Ohio. B.R. and J.W. occasionally allowed their friend, Chris, to spend the night at their apartment. On December 20 and 21, 2018, they allowed Chris to come to the apartment, but Chris wanted a friend to come with him and the roommates agreed. Chris arrived at the apartment with Bozarth and a woman named Amber. B.R. and J.W. had never before met Bozarth or Amber. When Bozarth came to the apartment, J.W. observed that Bozarth was carrying a black bag with a handle on top.

{¶5} While at the apartment, B.R. saw Bozarth smoking from what he thought was a vape pen. Bozarth told B.R. it was like a Swisher Sweet cigar. B.R. tried the “cigar” and it made him feel ill, so he went to lay down. B.R. saw Chris and Amber smoke the

“cigar” as well. B.R. was later told by the police the “cigar” he smoked was a pipe and it contained drugs.

{¶6} After B.R. went to lay down, he heard some people leave the apartment and then come back. He heard loud talking and he came out of his bedroom. As he walked out of his bedroom, he saw Bozarth sitting at the kitchen table and a white powdery substance all over his kitchen table. Bozarth was putting things in cellophane bags. He sat in the living room and overheard a conversation that he did not understand, but he knew something was wrong. He decided to call 911.

{¶7} Shortly after B.R. called 911, he heard a loud knock on the door. Chris tried to get to the door first, but B.R. pushed him out of the way. Two police officers, Officer Adam Carter and Nolan Gossett of the Newark Police Department, responded to B.R.’s call. Chris told the officers they could not come in but B.R. gave permission to the officers to enter his apartment. Once the officers entered the apartment, B.R. did not feel well and was transported to the hospital.

{¶8} J.W. was in his bedroom and came out when he heard loud talking. He spoke with B.R. before B.R. called the police. J.W. saw Bozarth sitting at the kitchen table with baggies, money, and a scale. There was money on the scale and a white powder on top of the money. Amber was also sitting at the table. Before the officers arrived, J.W. heard Bozarth speaking on his cell phone, saying he would be there in a little bit. When the police came in, J.W. saw Bozarth trying to wipe down the things on the table and trying to hide it, but a police officer told Bozarth to stop.

{¶9} At trial, J.W. identified a photograph of his kitchen table and the black bag sitting on the table as the black bag Bozarth was carrying while he was in his apartment.

{¶10} Officer Adam Carter testified that Chris told him and Officer Nolan Gossett they could not enter the apartment, but B.R. waved them in and said he was on the lease. B.R. pointed Officer Carter to the kitchen, where the officer saw Bozarth sitting at the kitchen table. He stated that once Bozarth saw him, Bozarth looked like the deer in the headlights and frightened to see him there. Amber was also sitting at the table, with her back to the officer. He saw Bozarth start to pick up a black bag, slide the items on the table toward another black bag, and then put his hands in his lap. Officer Gossett attempted to speak with Chris, but he was acting jittery and twitchy, so the officer had him sit down.

{¶11} Officer Carter attempted to speak with Bozarth and Amber but they would not respond. The officer began identifying individuals and Bozarth stood up and threw a five-dollar bill that he had been holding in his hands on the kitchen table. Officer Carter asked Bozarth about drug deals or if there were any drugs in the apartment and Bozarth said there were drugs behind the black bag. Officer Carter moved the bag and found crystal shards, which he suspected to be methamphetamine. He found a blue digital scale and plastic baggies. Officer Gossett testified there were six baggies and three had a substance in them. Bozarth admitted to Officer Carter that the black bag was his and he gave the officer permission to search the bag. He found a glass pipe with white and brown residue wrapped inside a towel and several small plastic baggies. Officer Carter examined the five-dollar bill that Bozarth threw on the table and saw that it was folded up and contained a clear, hard white substance later identified to be methamphetamine.

{¶12} While Bozarth was being handcuffed, Officer Carter obtained Bozarth's cell phone. The lock screen of the cell phone showed a text message that stated, "Ok forget

tonite...I need a oz tomorrow if y... * * * Dude I'm twacked." Officer Carter explained that "oz" meant an "ounce" in drug terminology.

{¶13} Officer Derrick Beach of the Newark Police Department was called to the apartment due to the large amount of drugs found by the officers. Officer Beach escorted Bozarth to his patrol car and advised him of his *Miranda* rights. Officers Gossett and Carter showed Officer Beach the evidence and Officer Beach recognized the items as consistent in drug trafficking, such as the digital scale and plastic baggies, some empty and some filled with what was later identified as methamphetamine. He testified that in his experience, drug dealers will use a folded bill to load the crystal methamphetamine into the plastic bag. The folded five-dollar bill with methamphetamine in Bozarth's possession appeared to have been used for that purpose. Officer Gossett also testified that based on his training and experience, the digital scale, baggies, and methamphetamine were consistent with packaging for drug sales.

{¶14} After analysis, the amount of methamphetamine recovered from the apartment equaled 31.56 grams. During the search of Bozarth's person, the police officers discovered \$160.00. Officer Beach testified that \$160.00 would not be enough to purchase the amount of methamphetamine found by Bozarth.

{¶15} The police officers did not arrest Chris or Amber.

{¶16} At the close of the State's case, the trial court granted Bozarth's Crim.R. 29 motion and dismissed the Forfeiture specification. The jury ultimately found Bozarth guilty of Aggravated Trafficking in Drugs. Bozarth waived a pre-sentence investigation. Via judgment entry issued on June 3, 2019, the trial court sentenced Bozarth to a mandatory

prison term of five years and a fine of \$7,500.00, suspended based on Bozarth's indigency.

{¶17} It is from this judgment entry that Bozarth now appeals.

ASSIGNMENTS OF ERROR

{¶18} Bozarth raises two Assignments of Error:

{¶19} "II. APPELLANT'S DUE PROCESS RIGHTS UNDER THE STATE AND FEDERAL CONSTITUTIONS WERE VIOLATED BY A CONVICTION FOR AGGRAVATED DRUG TRAFFICKING THAT WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE.

{¶20} "II. THE CONVICTION FOR AGGRAVATED DRUG TRAFFICKING WAS NOT SUPPORTED BY THE WEIGHT OF THE EVIDENCE."

ANALYSIS

{¶21} Bozarth's first and second Assignments of Error are related and will be considered together. He argues his conviction is not supported by sufficient evidence and is against the manifest weight of the evidence. We disagree.

{¶22} The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different. *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541, paragraph two of the syllabus. The standard of review for a challenge to the sufficiency of the evidence is set forth in *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991) at paragraph two of the syllabus, in which the Ohio Supreme Court held, "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 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.”

{¶23} In determining whether a conviction is against the manifest weight of the evidence, the court of appeals functions as the “thirteenth juror,” and after “reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines 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 overturned and a new trial ordered.” *State v. Thompkins, supra*, 78 Ohio St.3d at 387. Reversing a conviction as being against the manifest weight of the evidence and ordering a new trial should be reserved for only the “exceptional case in which the evidence weighs heavily against the conviction.” *Id.*

{¶24} Bozarth was charged with a violation of R.C. 2925.03(A)(2)(C)(1)(d), aggravated trafficking in drugs (methamphetamine). It states, “No person shall knowingly * * * [p]repare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or a controlled substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person.” R.C. 2925.03(A)(2). The statute further reads, “[w]hoever violates division (A) of this section is guilty of one of the following:

- (1) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or schedule II, with the exception of marihuana, cocaine, L.S.D., heroin, any fentanyl-related

compound, hashish, and any controlled substance analog, whoever violates division (A) of this section is guilty of aggravated trafficking in drugs. The penalty for the offense shall be determined as follows:

* * *

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term a second degree felony mandatory prison term. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term a first degree felony mandatory prison term.

{¶25} At trial and on appeal, Bozarth asserts the evidence used to convict him of aggravated trafficking in drugs was insufficient and his conviction was against the manifest weight because of the presence of Chris and Amber at the apartment on February 20 and 21, 2019. Bozarth argues the evidence showed that the police never questioned, detained, or arrested Chris or Amber to determine whether they were the perpetrators even though they were also present at the apartment where the black bag and methamphetamine were discovered. Bozarth contends there was no evidence to show the black bag belonged to Bozarth, that there was methamphetamine in the black bag when it was brought into the apartment, or that the methamphetamine belonged to him. Bozarth further argues the evidence did not support a charge of drug trafficking.

{¶26} Bozarth contends there is no direct evidence connecting him to the black bag and the methamphetamine, nor is there direct evidence that he was engaged in drug trafficking. If the State relies on circumstantial evidence to prove an essential element of an offense, it is not necessary for “ ‘such evidence to be irreconcilable with any reasonable theory of innocence in order to support a conviction.’ ” *State v. Parke*, 5th Dist. Licking No. 18-CA-118, 2019-Ohio-3629, 2019 WL 4273788, ¶ 25 quoting *State v. Crist*, 5th Dist. Fairfield No. 15-CA-63, 2016-Ohio-7750, 2016 WL 6695996, ¶ 39 quoting *State v. Jenks*, 61 Ohio St.3d 259, 272, 574 N.E.2d 492(1991) at paragraph one of the syllabus. “ ‘Circumstantial evidence and direct evidence inherently possess the same probative value [.]’ ” *Jenks*, 61 Ohio St.3d at paragraph one of the syllabus. Furthermore, “ [s]ince circumstantial evidence and direct evidence are indistinguishable so far as the jury’s fact-finding function is concerned, all that is required of the jury is that i[t] weigh all of the evidence, direct and circumstantial, against the standard of proof beyond a reasonable doubt.’ ” *Jenks*, 61 Ohio St.3d at 272, 574 N.E.2d 492. While inferences cannot be based on inferences, a number of conclusions can result from the same set of facts. *State v. Lott*, 51 Ohio St.3d 160, 168, 555 N.E.2d 293 (1990), citing *Hurt v. Charles J. Rogers Transp. Co.*, 164 Ohio St. 329, 331, 130 N.E.2d 820(1955). Moreover, a series of facts and circumstances can be employed by a jury as the basis for its ultimate conclusions in a case. *Lott*, 51 Ohio St.3d at 168, 555 N.E.2d 293, citing *Hurt*, 164 Ohio St. at 331, 130 N.E.2d 820.

{¶27} There was direct evidence connecting Bozarth to the black bag. J.W. observed Bozarth come into the apartment carrying the black bag. Bozarth admitted to the police that the black bag belonged to him.

{¶28} As for connecting Bozarth to the methamphetamine and trafficking, there was circumstantial evidence to support the jury's conviction. J.W. and B.R. both saw Bozarth sitting at the kitchen table that was covered with a white powdery substance. They saw plastic bags and a blue scale. Before he called 911, B.R. saw Bozarth putting things into cellophane bags. When the police came into the apartment, the officers saw Bozarth move the black bag and try to clear the table. Bozarth looked frightened when he saw the officers come in. The police officers found the black bag, digital scale, and plastic baggies containing methamphetamine. Bozarth produced a folded five-dollar bill that was covered in methamphetamine. Officer Beach testified that a folded bill is often used to pour drugs into the plastic baggie.

{¶29} 31.56 grams of methamphetamine were found in the apartment. The police officers found \$160.00 when they searched Bozarth, which was not enough to purchase 31.56 grams of methamphetamine. When Bozarth was arrested, Bozarth's cell phone was collected. A message appeared on the lock screen stating, "Ok forget tonite...I need a oz tomorrow if y...* * * Dude I'm twacked."

{¶30} In this case, there was sufficient evidence for the jury to find beyond a reasonable doubt that Bozarth brought the black bag, baggies, digital scale, and methamphetamine to the apartment and he was preparing the methamphetamine, a Schedule II controlled substance, with an intent to sell it. We cannot say the jury clearly lost its way and created a manifest miscarriage of justice. Bozarth's first and second Assignments of Error are overruled.

CONCLUSION

{¶31} The judgment of the Licking County Court of Common Pleas is affirmed.

By: Delaney, J.,

Wise, John, P.J. and

Baldwin, J., concur.