

[Cite as *State v. Fuller*, 2010-Ohio-3493.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 25131

Appellee

v.

GREGORY FULLER

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 09 03 0731

Appellant

DECISION AND JOURNAL ENTRY

Dated: July 28, 2010

WHITMORE, Judge.

{¶1} Defendant-Appellant, Gregory Fuller, appeals from the judgment of the Summit County Court of Common Pleas. This Court affirms.

I

{¶2} On March 4, 2009, security officers from an apartment building on Everton Drive contacted the Akron Police Department after observing an individual, later identified as Fuller, smoke cocaine from a pipe in the building’s elevator. A security officer directed the police officers to an apartment on the top floor after they arrived. Officers found Fuller and several others in the apartment and detected the odor of marijuana. Fuller stepped into the hallway at the officers’ request and admitted to having marijuana in his pocket. A search of Fuller’s person also revealed a glass pipe. Officers arrested Fuller and placed him in their cruiser. When the jail transport wagon arrived, officers removed Fuller from their cruiser and observed what appeared

to be cocaine on the backseat. Officers collected the material, which was later confirmed to be cocaine.

{¶3} On March 19, 2009, a grand jury indicted Fuller on the following counts: (1) tampering with evidence, in violation of R.C. 2921.12(A)(1); (2) possession of cocaine, in violation of R.C. 2925.11(A)(C)(4); (3) illegal use or possession of drug paraphernalia, in violation of R.C. 2925.14(C)(1); and (4) possession of marijuana, in violation of R.C. 2925.11(A)(C)(3). A jury trial took place on October 21, 2009. The jury found Fuller not guilty of tampering with evidence, but guilty of possession of cocaine and illegal use or possession of drug paraphernalia. The court then found Fuller guilty of possession of marijuana, a minor misdemeanor that was tried to the bench. The court sentenced Fuller to six months in prison and appointed him appellate counsel.

{¶4} On February 24, 2010, Fuller's appointed counsel filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, and requested permission to withdraw as Fuller's counsel. Fuller did not respond to his counsel's *Anders* Brief or request to withdraw as counsel, and the State did not file a brief on its own behalf.

II

{¶5} Fuller's counsel raises two proposed assignments of error based on sufficiency and manifest weight. He asserts, however, that the record does not contain a meritorious claim for appeal. Upon a review of the record, we agree with Fuller's counsel that no meritorious claim exists.

{¶6} In order to determine whether the evidence before the trial court was sufficient to sustain a conviction, this Court must review the evidence in a light most favorable to the prosecution. *State v. Jenks* (1991), 61 Ohio St.3d 259, 274. Furthermore:

“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.” *Id.* at paragraph two of the syllabus; see, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386.

“In essence, sufficiency is a test of adequacy.” *Thompkins*, 78 Ohio St.3d at 386.

{¶7} R.C. 2925.11(A) provides that “[n]o person shall knowingly obtain, possess, or use a controlled substance.” R.C. 2925.14(C)(1) provides that “[n]o person shall knowingly use, or possess with purpose to use, drug paraphernalia.” “A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.” R.C. 2901.22(B).

{¶8} Officer Charles Artis, a twelve-year veteran of the Akron Police Department, testified that he arrived at an apartment building on Everton Drive after building security informed him they had a surveillance video recording of Fuller smoking cocaine from a pipe while riding in the building’s elevator. After Officer Artis found Fuller in an apartment on the top floor, he smelled marijuana. Fuller admitted to having marijuana in his pocket. Officer Artis searched Fuller and found both a bag of marijuana and a glass pipe, containing a Chore Boy filter. Officer Artis also found a “white powdery crumb-like” substance on the backseat of his cruiser after he removed Fuller from it for transport.

{¶9} The State introduced a surveillance video from the elevator in Fuller’s apartment building and the lab reports from the materials police confiscated from Fuller. Fuller’s counsel stipulated to the authenticity of these items. The video recording depicts Fuller using a pipe and then placing the pipe in his pocket, where Officer Artis later found it. The lab reports confirm

that the materials Officer Artis confiscated from Fuller and found on the backseat of his cruiser were marijuana and cocaine, respectively. Thus, the record contains sufficient evidence to support Fuller's convictions for possession of both cocaine and marijuana, as well as for the illegal use or possession of drug paraphernalia.

{¶10} When considering a manifest weight argument, the Court:

“[M]ust review 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 trier of fact 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. Otten* (1986), 33 Ohio App.3d 339-340.

A weight of the evidence challenge indicates that a greater amount of credible evidence supports one side of the issue than supports the other. *Thompkins*, 78 Ohio St.3d at 387. Further, when reversing a conviction on the basis that the conviction was against the manifest weight of the evidence, the appellate court sits as the “thirteenth juror” and disagrees with the factfinder’s resolution of the conflicting testimony. *Id.* Therefore, this Court’s “discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.” *State v. Martin* (1983), 20 Ohio App.3d 172, 175; see, also, *Otten*, 33 Ohio App.3d at 340.

{¶11} Officer Artis and his partner, Officer Karlton Starks, both testified that officers routinely check their police cruisers before commencing their patrols. They testified that they checked their cruiser before arresting Fuller that day and did not find anything unusual, including cocaine, on the backseat. Both officers also testified that it would have been possible to miss any cocaine that Fuller had on his person when they searched him because rocks of cocaine are very small and can be easily concealed. Officer Starks noted that he observed Fuller fidgeting in the back of the cruiser while they were waiting for the transport wagon to arrive. Although Fuller

did not admit to possessing cocaine, he also never admitted to possessing the glass pipe that Officer Artis found in his pocket. Based on all of the foregoing, we cannot conclude that Fuller's convictions are against the manifest weight of the evidence.

{¶12} Apart from the assignments of error proposed by Fuller's counsel, this Court has conducted a full, independent examination of the proceedings in accordance with *Anders v. California* (1967), 386 U.S. 738. We conclude that there are no appealable issues in this case. Fuller's appeal is without merit and frivolous under *Anders*.

III

{¶13} The judgment of the Summit County Court of Common Pleas is affirmed. Appellate counsel's motion to withdraw as counsel is hereby granted.

Judgment affirmed.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

CARR, J.
BELFANCE, P. J.
CONCUR

APPEARANCES:

MICHAEL E. GEORGE, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.