

[Cite as *State v. Singer*, 2011-Ohio-917.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 25321

Appellee

v.

DANIEL L. SINGER

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 09 10 3135

Appellant

DECISION AND JOURNAL ENTRY

Dated: March 2, 2011

BELFANCE, Presiding Judge.

{¶1} Appellant, Daniel L. Singer, appeals his conviction from the Summit County Court of Common Pleas. For the reasons that follow, we affirm.

BACKGROUND

{¶2} On October 13, 2009, Detective Gerald Forney, a sergeant in the Street Narcotic Uniform Detail ("SNUD") Unit of the Akron Police Department, was conducting surveillance on a parking lot. He had received a tip that a drug transaction might occur there. He observed a woman, later identified as Krystal Cook, who drove into the parking lot. Ms. Cook parked her car in the lot and sat in the parked vehicle for approximately ten minutes and made some calls on her cell phone.

{¶3} After about ten minutes, a red Ford Focus drove into the lot. Ms. Cook exited her vehicle and walked over to the open passenger side of the Ford Focus. She and the driver of the Ford Focus made a hand-to-hand exchange through the window of the Ford Focus. Ms. Cook

returned to her car. Detective Forney testified that, based on his experience, he believed that the exchange in the parking lot was likely a drug transaction.

{¶4} After the exchange, both cars left the lot. Detective Forney followed the Ford Focus out of the lot. Over his police radio, he informed other officers of the vehicle's description and location as he was able to see that it had turned onto another street. Detective Brian Nida, another SNUD officer, stopped Mr. Singer, whose vehicle matched the description and location given by Detective Forney. At the time of the stop, Detective Nida found that Mr. Singer had \$150 in his wallet and \$80 under his leg. Ms. Cook turned over a bag of crack cocaine to the police officers who stopped her car as she attempted to exit the parking lot.

{¶5} At trial, Detective Forney identified Mr. Singer as the driver of the red Ford Focus. Ms. Cook testified that she knew Mr. Singer personally and she had paid him \$80 for crack cocaine as they were observed by Detective Forney.

{¶6} Mr. Singer pleaded not guilty to trafficking in cocaine and driving under suspension. He was found guilty on both counts following a jury trial. He was sentenced to fourteen months on the trafficking charge and six months for driving under suspension, with the sentences to be served concurrently.

{¶7} Mr. Singer has appealed his conviction for trafficking in cocaine. Although Mr. Singer asserts only one assignment of error, he challenges both the sufficiency and weight of the evidence. This Court will, therefore, address both the sufficiency of the evidence and the manifest weight of the evidence. *See State v. Gulley* (Mar. 15, 2000), 9th Dist. No. CA19600, at *1 (“[E]valuations of the sufficiency of the evidence put forth by the state and the weight of the evidence adduced at trial are separate and legally distinct determinations.”).

LAW AND ANALYSIS

{¶8} Mr. Singer asserts that his conviction is not supported by sufficient evidence.

“[A]n 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 verdict will not be disturbed unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier of facts.” (citation omitted.) *State v. Jenks* (1991), 61 Ohio St.3d 259, 273.

It is axiomatic, then, that the sufficiency of the evidence is an inquiry entirely distinct from the credibility of the evidence. Mr. Singer alleges insufficient evidence, then, only in his argument that the evidence is not adequate to identify him as the person who participated in the exchange observed by Detective Forney. Both Ms. Cook and Detective Forney, however, identified Mr. Singer as the other participant in the exchange. Based on the evidence admitted at trial, a reasonable person could conclude that Mr. Singer was the person observed by Detective Forney. The evidence admitted at trial, if believed, is therefore sufficient to establish the identity of Mr. Singer as the person observed.

{¶9} Mr. Singer also asserts that the prosecution failed to prove that a drug transaction occurred between Mr. Singer and Ms. Cook and that his conviction is therefore against the manifest weight of the evidence. “When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a thirteenth juror and disagrees with the factfinder's resolution of the conflicting testimony.” (internal quotations and citation omitted.) *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387.

When determining whether a conviction is supported by the manifest weight of the evidence,

“an appellate court must 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. Cepec*, 9th Dist. No. 04CA0075-M, 2005-Ohio-2395, at ¶6, quoting *State v. Otten* (1986), 33 Ohio App.3d 339, 340.

{¶10} We must only invoke the discretionary power to grant a new trial in "extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant." *State v. Flynn*, 9th Dist. No 06CA0096-M, 2007-Ohio-6210, at ¶9, citing *Otten*, 33 Ohio App.3d at 340. When reviewing a conviction pursuant to the manifest weight standard, we must determine whether the State met its burden of persuasion. *Cepec* at ¶6.

{¶11} Mr. Singer asserts that no credible evidence presented at trial supports the jury’s finding that he sold drugs to Ms. Cook while Detective Forney was observing them in the parking lot. He argues that his conviction is against the manifest weight of the evidence because Detective Forney admitted that he never saw money or drugs exchange hands and further suggests that Detective Forney’s testimony was the only evidence at trial offered to prove that Mr. Singer sold drugs to Ms. Cook. However, Ms. Cook testified that Mr. Singer sold crack cocaine to her. She testified that she gave Mr. Singer \$80. Detective Nida testified that when he stopped Mr. Singer a short time later, he found \$80 in cash under Mr. Singer’s leg, separate from Mr. Singer’s other cash, which was in his pocket. Thus, although Detective Forney testified that he believed he had witnessed a drug sale, there was also direct testimony that Mr. Singer did sell drugs to Ms. Cook.

CONCLUSION

{¶12} Given the evidence adduced at trial, we cannot conclude that this is the exceptional case where the finder of fact clearly lost its way and created a manifest miscarriage of justice. Upon weighing all of the evidence and assessing the credibility of the witnesses, it was not unreasonable for the jury to conclude that Mr. Singer sold crack cocaine to Ms. Cook.

Accordingly, we conclude that Mr. Singer's conviction was supported by sufficient evidence and that it was not against the manifest weight of the evidence.

{¶13} Mr. Singer's assignment of error is therefore overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

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.

EVE V. BELFANCE
FOR THE COURT

CARR, J.
WHITMORE, J.
CONCUR

APPEARANCES:

MICHELE A. TOMER, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.