

[Cite as *State v. Washington*, 2018-Ohio-5271.]

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 18CA011250

Appellee

v.

JAMES WASHINGTON

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 12CR085077

Appellant

DECISION AND JOURNAL ENTRY

Dated: December 28, 2018

HENSAL, Judge.

{¶1} James Washington appeals his conviction for possession of drugs in the Lorain County Court of Common Pleas. For the following reasons, this Court affirms.

I.

{¶2} When the United States Postal Service discovered a package that contained drugs, it contacted the Lorain Police Department to coordinate a controlled delivery. Mr. Washington received and signed for the package, which was addressed to “A. Lee[.]” He opened the package a few minutes later, which the postal service detected from a device it had placed in the package. After Mr. Washington opened the package, law enforcement conducted a search of the residence. Officers found the package in a bathtub. It contained a zip lock bag that held two smaller zip lock bags. Each of the smaller bags contained two tubes of a white powdery substance that tested positive for cocaine. The tubes were wrapped in green leaves. The smaller bags also contained a spicy, mustardy liquid, assumedly to mask the odor of the cocaine.

{¶3} The Grand Jury indicted Mr. Washington for trafficking in drugs, possession of drugs, and drug paraphernalia offenses. The trafficking and possession charges included major drug offender specifications. Following a trial to the bench, the court found Mr. Washington guilty of possession of drugs and the major drug offender specification associated with that offense. It found him not guilty of the other offenses. The court sentenced him to 11 years in prison. Mr. Washington has appealed, assigning as error that his conviction is against the manifest weight of the evidence.

II.

ASSIGNMENT OF ERROR

APPELLANT’S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶4} Mr. Washington argues that his conviction for possession of drugs is against the manifest weight of the evidence. If a defendant asserts that a conviction is against 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. Otten, 33 Ohio App.3d 339, 340 (9th Dist.1986). Weight of the evidence pertains to the greater amount of credible evidence produced in a trial to support one side over the other side.

State v. Thompkins, 78 Ohio St.3d 380, 387 (1997). An appellate court should only exercise its power to reverse a judgment as against the manifest weight of the evidence in exceptional cases.

State v. Carson, 9th Dist. Summit No. 26900, 2013-Ohio-5785, ¶ 32, citing *Otten* at 340.

{¶5} Mr. Washington argues that he did not knowingly obtain, possess, or use the cocaine that was in the package. He contends that he received the package at his aunt’s house as

a favor to her and put it in the bathtub to open it because it appeared to be leaking. He notes that, although postal inspectors testified that Mr. Washington's hands were wet when they executed the search warrant, the detail was not included in the report prepared following the search. Mr. Washington notes that other law enforcement officers who were involved in the search did not recall him being wet. He also notes that his aunt admitted that she was a long-term drug user and that she did not want to lose her job from being charged with a felony. He further notes that he signed his own name when he received the package, which a postal inspector testified is not normal for someone receiving a shipment of drugs.

{¶6} The trial court found Mr. Washington guilty of possession of drugs, in violation of Revised Code Section 2925.11(A). That section provides that “[n]o person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog.” “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). “Possess” means “having control over a thing or substance” R.C. 2925.01(K). It may be actual or constructive. *State v. McShan*, 77 Ohio App.3d 781, 783 (8th Dist.1991).

{¶7} The alleged testimony that Mr. Washington points to for the reason the package was in the bathtub was actually from his counsel's opening statement, which was not evidence. *State v. Frazier*, 73 Ohio St.3d 323, 338 (1995). We note that Mr. Washington's aunt testified that the reason Mr. Washington was at her house that day was because he had asked her if he could have a present for his girlfriend delivered there. The trial judge was in the best position to evaluate her credibility as well as the credibility of the postal inspectors. *State v. Oswald*, 9th Dist. Summit No. 28633, 2018-Ohio-245, ¶ 25. Upon review of the record, we cannot say that

the court clearly lost its way when it determined that Mr. Washington knowingly possessed the cocaine contained in the package. Accordingly, we conclude that Mr. Washington's conviction for possession of drugs is not against the manifest weight of the evidence.

{¶8} Mr. Washington also argues that the court's finding that he was a major drug offender is against the manifest weight of the evidence. Section 2925.11(C)(4)(f) provides that, if the drug involved is cocaine and "equals or exceeds one hundred grams of cocaine, * * * the offender is a major drug offender * * *." Mr. Washington argues that the State did not prove beyond a reasonable doubt that the package had 100 grams of cocaine. He notes that, although the white powdery substance weighed 496 grams, it was a mixture of both cocaine and a cutting agent. He also notes that there was no testimony about the amount of actual cocaine within the mixture.

{¶9} In *State v. Gonzales*, 150 Ohio St.3d 276, 2017-Ohio-777, the Ohio Supreme Court explained that "fillers are an inherent part of powder cocaine." *Id.* at ¶ 12. "Accordingly, the total weight of the drug, including any fillers that are part of usable cocaine, should be weighed to determine the appropriate cocaine-possession penalty under [Section 2925.11(C)(4)]." *Id.* Applying *Gonzales* to the facts of this case, we conclude that, because the white powdery substance containing cocaine that was recovered from the package delivered to Mr. Washington weighed more than 100 grams, Mr. Washington's conviction as a major drug offender is not against the manifest weight of the evidence. Mr. Washington's assignment of error is overruled.

III.

{¶10} Mr. Washington's assignment of error is overruled. The judgment of the Lorain 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 Lorain, 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(C). 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.

JENNIFER HENSAL
FOR THE COURT

SCHAFFER, P. J.
CARR, J.
CONCUR.

APPEARANCES:

JACK W. BRADLEY, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and LINDSEY C. POPROCKI, Assistant Prosecuting Attorney, for Appellee.