

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 23670
Plaintiff-Appellee	:	
	:	Trial Court Case No. 08-CR-4950
v.	:	
	:	
RODNEY E. PERRINE	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

.....

O P I N I O N

Rendered on the 8<sup>th</sup> day of October, 2010.

.....

MATHIAS H. HECK, JR., by MICHELE D. PHIPPS, Atty. Reg. #0069829, Montgomery County Prosecutor’s Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422  
Attorney for Plaintiff-Appellee

BYRON K. SHAW, Law Office of Byron K. Shaw, 4800 Belmont Place, Huber Heights, Ohio 45424  
Attorney for Defendant-Appellant

.....

BROGAN, J.

{¶ 1} Rodney E. Perrine appeals from his conviction and sentence on one count of illegal drug manufacturing in violation of R.C. 2925.04(A) and one count of illegal assembly or possession of chemicals for manufacturing drugs in violation of R.C. 2925.041(A).

{¶ 2} In his sole assignment of error, Perrine contends both convictions are against the manifest weight of the evidence.

{¶ 3} The record reflects that police executed a search warrant at the home of John Coldwell in December 2008. During the search, they discovered a meth lab in the basement. They also discovered various ingredients and equipment necessary to produce methamphetamine and a ventilation system used to operate the lab. Perrine was indicted on the charges set forth above based on his alleged involvement with the meth lab. The matter proceeded to a two-day jury trial in August 2009. Based on the evidence presented, the jury found Perrine guilty of both charges. The trial court imposed an aggregate three-year prison sentence.

{¶ 4} On appeal, Perrine contends his convictions are against the weight of the evidence for the following reasons: (1) he testified at trial and denied making methamphetamine or possessing the supplies to make methamphetamine; (2) “numerous” prosecution witnesses testified about never seeing him make methamphetamine or possess any necessary supplies at Coldwell’s house; (3) prosecution witnesses testified that he did not live at Coldwell’s house “to know what was going on”; (4) certain police officers never saw him prior to trial despite participating in execution of the search warrant; (5) the meth lab found in Coldwell’s basement was non-functional; and (6) there was no link established between the meth lab and Perrine.

{¶ 5} When a conviction is challenged on appeal as being against the weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, 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. Thompkins* (1997), 78 Ohio St.3d 380, 387 (citations omitted). A judgment should be reversed as being against the manifest weight of the evidence “only in the exceptional case in which the evidence weighs heavily against the conviction.” *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 6} The first statute under which Perrine was convicted, R.C. 2925.04(A), provides: “No person shall \* \* \* knowingly manufacture or otherwise engage in any part of the production of a controlled substance.” The second statute, R.C. 2925.041(A), states: “No person shall knowingly assemble or possess one or more chemicals that may be used to manufacture a controlled substance in schedule I or II with the intent to manufacture a controlled substance in schedule I or II in violation of section 2925.04 of the Revised Code.” Having reviewed the record, we conclude that Perrine’s convictions under these statutes are not against the manifest weight of the evidence.

{¶ 7} John Coldwell testified that Perrine moved in with him and began operating a meth lab in the basement. (Trial transcript at 50, 53-54). Coldwell testified about helping Perrine make methamphetamine there. Coldwell also went to the store to purchase Sudafed, Coleman fuel, and filters for Perrine. (Id. at 54-55). Coldwell estimated that he had seen or assisted Perrine in making methamphetamine fifteen to twenty times in the basement and kitchen. (Id. at 67). Coldwell testified about using ephedrine, Coleman fuel, Muratic acid, coffee filters, lithium batteries, and other items to manufacture methamphetamine. (Id. at 71-74). He never operated the meth lab alone, however. It was always with Perrine. (Id. at 93). Finally, Coldwell testified that Perrine was present at the

house when police executed the search warrant. (Id. at 101).

{¶ 8} Another witness, Doyle Allen, testified that he also resided with Coldwell during the relevant time. (Id. at 114). Allen recalled Perrine moving in after him and staying various places. (Id. at 116). Allen testified that he discovered the meth lab in the basement in December 2008 when he went down to wash laundry. (Id. at 118). Allen added that he never personally saw Perrine or Coldwell making methamphetamine in the basement. (Id. at 121-122). He added, however, that he frequently was not home and seldom went into the basement. (Id. at 124-127, 130). Allen did see Perrine in the basement one time in the vicinity of the meth lab. (Id. at 122, 130). Allen also confirmed that Perrine was present when police executed the search warrant. (Id. at 120).

{¶ 9} A third witness, Jeremiah Lyons, testified that he met Perrine at Coldwell's house. (Id. at 136). Lyons stated that he used methamphetamine with Perrine and would trade him Sudafed for the drug. (Id. at 138). Lyons explained that he obtained the Sudafed at the direction of Coldwell and Perrine. (Id. at 144). Lyons also testified about watching Perrine make methamphetamine at Coldwell's house. (Id. at 139-141). On cross examination, Lyons testified that he saw Perrine at Coldwell's house but that Perrine did not appear to live there. (Id. at 153).

{¶ 10} Another witness, detective Michael Hild, testified that he observed items consistent with a meth lab in the trash outside Coldwell's house. (Id. at 170-171). On the day the search warrant was executed, Hild saw Perrine at the house. (Id. at 172-173). Upon executing the warrant, Hild observed additional items needed to manufacture methamphetamine. He also found a meth lab in the basement. (Id. at 174). On cross examination, Hild acknowledged that Perrine was searched at the scene and that no

methamphetamine-related items were found in his possession. (Id. at 189). Hild also acknowledged that Perrine was not arrested that day. (Id. at 197).

{¶ 11} Two additional witnesses, Dwight Aspacher of the Ohio BCI and detective David Tidd, testified that they observed a meth lab in Coldwell's basement. (Id. at 205, 233). Aspacher described the lab as "functional," or capable of producing methamphetamine, but "not up and running" when he dismantled it. (Id. at 207, 227). On cross examination, Aspacher confirmed that it "was not at the time producing methamphetamines." (Id. at 224).

{¶ 12} For his part, Tidd testified that the ingredients to operate a meth lab were present, but he did not know whether it was "actually cooking." (Id. at 234, 238). Tidd did not see Perrine at the scene. (Id. at 237-238).

{¶ 13} Detective Bill Toney provided similar testimony. He described seeing various meth-making materials being brought by police out of Coldwell's house. (Id. at 253). Toney had "no doubt" that there was a meth lab in the residence. (Id. at 254). Deputy Paul Henson likewise saw a meth lab in the basement. (Id. at 258). Another witness, detective Tim Brady, testified that Coldwell initially was charged in connection with the meth lab because it was his house. (Id. at 284). Brady testified that Coldwell ultimately entered into a plea agreement and cooperated in providing additional information about the meth lab. (Id. at 286). Among other things, Coldwell identified Perrine as staying at his house and "being one that was actively cooking methamphetamine." (Id. at 286).

{¶ 14} Detective Diane Taylor testified that she served as the custodian of evidence and personally identified and logged various meth lab-related items taken from

Coldwell's residence. (Id. at 295-301). Forensic chemist Gary Shaffer testified that he conducted tests and identified residue found inside Coldwell's home as methamphetamine, a schedule II controlled substance. (Id. at 320-321, 325, 339).

{¶ 15} Perrine testified on his own behalf as the only defense witness. He admitted being present in Coldwell's kitchen when police entered the residence. (Id. at 342). Perrine testified that he had a poor relationship with Jeremiah Lyons ever since he started seeing Lyons' ex-girlfriend. (Id. at 343-344). Perrine suggested that Lyons' testimony against him was retaliatory. (Id. at 344). Perrine testified that he did not live at Coldwell's house. He merely stayed there once in a while. (Id. at 345). Perrine also suggested that a person named Josh Sloan was responsible for making methamphetamine at Coldwell's house. (Id. at 347-348). In addition, Perrine testified that he had a mixed relationship with Coldwell and that several individuals had "threatened" him regarding this case. (Id. at 348). The implication was that these individuals might testify falsely against him. Perrine testified that he never saw any meth-lab related items at Coldwell's house. He also denied knowing how to make methamphetamine. (Id. at 351-352). On cross examination, Perrine denied spending the night at Coldwell's house more than five or six times. (Id. at 355). He insisted that the case against him was a "set up" over his relationship with Lyons' ex-girlfriend. (Id. at 356). Perrine testified that he only went into Coldwell's basement "once or twice" to work out. (Id. at 362). He denied having any knowledge of the meth lab or making methamphetamine. (Id. at 368-370).

{¶ 16} Having reviewed the record, we cannot say that Perrine's convictions for illegal drug manufacturing and illegal assembly or possession of chemicals for manufacturing drugs are against the manifest weight of the evidence. Although Perrine

contends the case against him was a set up over a female, the jury reasonably could have rejected that explanation and elected to believe the State's witnesses. In particular, the jury could have credited the testimony of Coldwell and Lyons, both of whom testified about Perrine manufacturing methamphetamine in Coldwell's basement and possessing the materials to do so. Finally, regarding Perrine's argument that the meth lab was non-functional, the State's evidence actually established that it was capable of producing methamphetamine but was "not up and running" at the time of the raid. The jury did not clearly lose its way and create a miscarriage of justice. The evidence does not weigh heavily against Perrine's convictions.

{¶ 17} The sole assignment of error is overruled, and the judgment of the Montgomery County Common Pleas Court is affirmed.

.....

FAIN and GRADY, JJ., concur.

Copies mailed to:

Mathias H. Heck, Jr.  
Michele D. Phipps  
Byron K. Shaw  
Hon. Dennis J. Langer