

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
MARION COUNTY

STATE OF OHIO,

PLAINTIFF-APPELLEE,

CASE NO. 9-14-35

v.

ANGELO DETREZ BOYKINS,

OPINION

DEFENDANT-APPELLANT.

Appeal from Marion County Common Pleas Court
Trial Court No. 14-CR-274

Judgment Affirmed

Date of Decision: March 16, 2015

APPEARANCES:

Robert C. Nemo for Appellant

Denise M. Martin for Appellee

ROGERS, P.J.

{¶1} Defendant-Appellant, Angelo Boykins, appeals the judgment of the Court of Common Pleas of Marion County convicting him of one count of trafficking in heroin. On appeal, Boykins argues that the jury's verdict was not supported by sufficient evidence; and, that the jury's verdict was against the manifest weight of the evidence. Finding that the verdict was supported by sufficient evidence and was not against the manifest weight of the evidence, we affirm the ruling of the trial court.

{¶2} On May 28, 2014, the Marion County Grand Jury returned a one count indictment against Boykins, charging him with one count of trafficking in heroin in violation of R.C. 2925.03(A)(1) & (C)(6), a felony of the fifth degree.

{¶3} The matter proceeded to trial on August 26, 2014. The State's first witness was Lieutenant Chris Adkins of the Marion City Police Department. Lieutenant Adkins testified that he was assigned to the drug task force back in January 2013. As part of his duties, he stated that he supervises confidential informants ("CI's") that will perform controlled buys on behalf of the task force. He explained that each CI is searched prior to any controlled buy. This is to guarantee that the CI has no money or drugs on his or her person. A similar search is performed after the CI has returned with the drugs to make sure the CI did not steal any of the drugs or money. Lieutenant Adkins testified that Cindy Whitaker

was one of his CI's and was used to set up a controlled buy from Boykins. Whitaker was a drug addict that contacted the task force in an attempt to straighten out her life. After a few initial discussions, Whitaker signed a contract to work for the task force.¹

{¶4} On May 21, 2014, Lieutenant Adkins contacted Whitaker to set up a controlled buy from Boykins. He testified that he gave Whitaker \$60, \$20 towards heroin and \$40 towards a drug debt owed by Whitaker. Lieutenant Adkins also fit Whitaker with a body wire and video recording device. Although Lieutenant Adkins would not be able to personally see the buy, he would be able to listen while the events occurred. He stated that after Whitaker returned, she handed him a small plastic bag that he suspected contained heroin. He also testified that he reviewed the video after the buy was performed. Lieutenant Adkins stated that Whitaker was searched both prior and subsequent to the buy.

{¶5} Lieutenant Adkins authenticated several different exhibits that were admitted into evidence. The first was a photograph of the \$60 he gave to Whitaker to buy the heroin. The second was a photograph from Whitaker's video feed showing her cell phone, which displayed the name "Lo" and that person's phone number. The third was a photograph showing Whitaker with the \$60 in hand while meeting with Boykins. The fourth was a photograph showing Boykins with

¹ We note that Whitaker was never "employed" by the task force or the police department. Instead, she was paid in increments of \$0-\$300 for each controlled buy in which she participated.

the \$60 in his hand. The fifth was a photograph of the substance Whitaker allegedly received from Boykins and handed over to Lieutenant Adkins. The sixth exhibit was the substance, which was confirmed to be heroin.

{¶6} On cross-examination, Lieutenant Adkins authenticated two different exhibits that were later admitted into evidence. Both made up the confidential informant agreement between the task force and Whitaker. He testified that although the contract forbids Whitaker from doing drugs, Whitaker admitted to him that she still uses occasionally. However, he stated that he will not use a CI if she appears to be under the influence. He testified that on May 21, 2014, he did not believe Whitaker was under the influence of any drug or alcohol. Lieutenant Adkins also explained that CI's are compensated for their participation, and Whitaker was no exception.

{¶7} Samuel Fortner was the next witness to testify. Fortner stated he was a forensic scientist employed by the Ohio Attorney General and the Bureau of Criminal Investigation. He was offered and accepted as an expert witness in the field of chemical analysis of controlled substances. Fortner then explained the process by which he tested the substance in this case. He first performed a series of chemical color tests. In those tests, Fortner added “a little reagent to a spot plate and add[ed] a sample to it and look[ed] for a presence or absence of a color change.” Trial Tr., p. 190. The substance tested in this case resulted in purple,

which indicated it was an opiate. Next, Fortner performed a gas chromatograph mass spectrometry, which confirms the sample. After explaining to the jury the scientific process behind this test, Fortner testified that the test resulted in a confirmation of heroin. Fortner also authenticated his laboratory report, which was admitted into evidence.

{¶8} Cindy Whitaker was the next witness to testify. Whitaker testified that she first met Boykins around April 2014. She stated that she bought drugs from him and that he goes by the nickname “Lo.” Whitaker testified that she began to work for the task force in early May 2014. She explained that she went to work for the task force because she needed help turning her life around. She was a drug abuser, but wanted to quit. She figured that if she gained a reputation as a snitch for the task force then no one would sell drugs to her anymore. Additionally, she needed help with a warrant for failure to report to her probation officer. Whitaker also stated that she had previous convictions for theft, complicity to theft, and receiving stolen property.

{¶9} She described that she would only do controlled buys from people she had bought from in the past. Boykins was one of those people. She explained that she owed Boykins \$60 for heroin that was fronted to her.

{¶10} On the morning of May 21, 2014, Whitaker was picked up by Lieutenant Adkins to perform a controlled buy. Whitaker testified that she was

taken to the police station and searched by Detective Christy Utley. After the search was performed, the three got into Lieutenant Adkins' vehicle. Whitaker attempted to get a hold of someone other than Boykins, but what was unable to. Thus, Whitaker suggested that she do a controlled buy from Boykins.

{¶11} At that time, Whitaker called Boykins. The telephone conversation was recorded, played for the jury, and admitted into evidence. During the phone conversation, Whitaker said that she had \$60 to give to Boykins: \$40 towards her drug debt and \$20 to get some "boy." Whitaker explained that "boy" was slang for heroin. Boykins agreed to meet Whitaker behind the Nazarene Church on Church Street in Marion. After the phone call, Whitaker was dropped off near the church.

{¶12} A video recording of the church incident was played for the jury and admitted into evidence. Whitaker testified that while waiting for Boykins to arrive, she called Boykins. During this conversation, Boykins told Whitaker that he wanted to meet her at Taco Bell. Therefore, she returned to the car. She was then dropped off near Taco Bell.

{¶13} A video recording of the Taco Bell incident was played for the jury and admitted into evidence. This recording showed Whitaker's encounter with Boykins as well as other people. After waiting near Taco Bell for a couple minutes, Whitaker contacted Boykins to see where he was. Whitaker testified that

Boykins told her to come to a nearby apartment. While walking over there, Whitaker ran into another alleged drug dealer named Eli Brown. She stated that she exchanged phone numbers with Brown with the thought that she could perform a controlled buy on him later. No money or drugs were exchanged between the pair. The video then showed Whitaker making contact with Boykins. She can be seen one second with the \$60 in one hand, and the next second the money is in Boykins hand. However, the camera did not pick up the exchange of any drugs.

{¶14} After she purchased the heroin, Whitaker returned to Lieutenant Adkins' vehicle. She handed over the drugs and was searched again by Detective Utley.

{¶15} On cross-examination, Whitaker was asked about three to four days she had stayed with Boykins. She testified that she drove him around to do various things, such as attending AA meetings and selling drugs. Whitaker explained that she left him after she was dropped off at her grandfather's house because she had racked up a \$60 debt in drugs. During cross-examination, the following exchange occurred:

Q: On that Thursday didn't [Boykins] give you some money after the AA meeting to go buy some chicken and beer?

A: No, he did not.

Q: He didn't give you \$60?

A: To go buy chicken, no.

Q: Did he give you \$60 to buy anything?

A: \$60 in drugs, yes.

Q: Did you ever get any money from him?

A: No. Not cash money, no.

Id. at 239. She further testified that she called Boykins on May 20, 2014, to ask him to give her clothes back. She was also asked about her drug abuse history. Whitaker testified that she would have tested positive for heroin the day of trial, but she stated that she did not use that day.

{¶16} Detective Christy Utley of the Marion County Sheriff's Office was the last witness to testify on behalf of the State. She testified that she assisted in the controlled buy on Boykins. Specifically, Detective Utley was the person who searched Whitaker both prior and subsequent to the controlled buy. During this testimony, the following exchange occurred:

Q: Was there a search conducted of [Whitaker]?

A: Yes, I searched her.

Q: Where did you search her?

A: It was in the basement, but I searched her - - normally when you search a CI, when it's a female you search the upper around their collar, around their bra, because you can hide it. Normally[,] I take their bra out and kind of wiggle it around in case they have something at the bottom. I run my fingers around the back of the

bra, then I work my way down, put my fingers around the waistband, go all the way around so I can check and make sure they don't have anything there, and obviously from the groin area down on both legs. If they have rolled up pant legs, I check there.

* * *

Q: When you're checking, do you check her pockets?

A: Right, if they have pockets on them. Obviously when we're searching, once I check there, if they have pockets on them I usually make them turn them inside out and I make sure I put my hands on the pockets and squeeze to make sure there's nothing in there and sometimes I'll put my hand or if I think something's in there I'll put my hand in their pocket, ask them first, do you mind, what's in there, what is it, and then I go in and get it.

Q: When you check their waistband what does that entail?

A: I put my thumbs around the inside of their waistband. I'm usually behind them. I start from the front and put my thumbs in there and go all the way around to make sure they don't have anything tucked behind their pants or the waistband of their underwear if they have it on.

* * *

Q: Do you check for any hidden places where drugs could be hidden inside a pocket within pockets?

A: If they have a jacket on or a sweater[,] I usually ask them to remove it so that way I can grab ahold of it and feel it and do what I need to do to check it.

* * *

Q: And on [May 21, 2014,] again, you had conducted that search?

A: Correct.

Id. at 267-269.

{¶17} Detective Utley testified that although she was not able to see any of Whitaker's actions during the controlled buy, she was able to listen live via the body wire. After Whitaker returned with the drugs, Detective Utley performed another search of her person in the car. Detective Utley was also asked about the several changes in location for the drug deal. Detective Utley stated that this was normal for drug dealers to do since they know what vehicles the task force drive. By doing this, she testified drug dealers are better able to determine if the task force is nearby.

{¶18} After Detective Utley's testimony, the State rested. At that time, Boykins moved for acquittal pursuant to Crim.R. 29. The motion was denied.

{¶19} Boykins testified on his own behalf. Boykins testified that he was originally from Mississippi, but moved to Marion after his cousin told him he could get a job in Ohio. Boykins claimed he did not meet Whitaker until approximately May 12, 2014. He testified that he gave Whitaker a ride and a place to stay after she was kicked out of an apartment. Boykins stated that Whitaker stayed with him for about four days. During this time, Boykins stated that she would drive him to places, including AA meetings.

{¶20} Boykins testified that on the fourth day, he gave Whitaker \$60 to purchase chicken, beer, and gas. According to Boykins, she never returned. He

testified that he was able to contact her when he ran into her brother on May 20, 2014. Boykins said that he borrowed her brother's phone and talked to Whitaker.

{¶21} Boykins stated that on May 21, 2014, he received a phone call from Whitaker saying she had \$40 that she owed him. Because she owed him \$60, Boykins made sure she had the full amount owed under the debt. He testified that he never intended to meet Whitaker behind the Nazarene Church. When she kept calling him, he told her to go to Taco Bell and he would meet up with her. But he never did. The two talked again on the phone, and this time Boykins testified that he told her to come to the nearby apartments. Once she arrived, he stated that he got the \$60 from her and walked away. He testified that he did not give her anything in exchange for the \$60.

{¶22} On cross-examination, Boykins admitted that since he arrived in Ohio he never held a job. Further, he admitted to staying with known drug dealers.

{¶23} After Boykins' testimony, the defense rested, and Boykins renewed his motion for acquittal pursuant to Crim.R. 29. The trial court denied Boykins' motion.

{¶24} On August 27, 2014, the jury returned a guilty verdict on the sole count of trafficking in heroin. The trial court issued its judgment entry of sentencing on September 4, 2014, which imposed a ten-month prison sentence.

{¶25} Boykins filed this timely appeal, presenting the following assignments of error for our review.

Assignment of Error No. I

THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S MOTION FOR DIRECTED VERDICT [SIC].²

Assignment of Error No. II

THE GUILTY VERDICT AGAINST APPELLANT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

Assignment of Error No. I

{¶26} In his first assignment of error, Boykins argues that the jury's verdict was not supported by sufficient evidence. We disagree.

{¶27} When an appellate court reviews the record for sufficiency, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *State v. Monroe*, 105 Ohio St.3d 384, 2005-Ohio-2282, ¶ 47. Sufficiency is a test of adequacy. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997), *superseded by constitutional amendment on other grounds as stated in State v. Smith*, 80 Ohio St.3d 89 (1997).

Accordingly, the question of whether the offered evidence is sufficient to sustain a

² We note Boykins incorrectly claims his motion for directed verdict was denied. Motions for a directed verdict are available in civil cases only. *See* Civ.R. 50. Motions for acquittal are available in criminal cases. *See* Crim.R. 29. Although they may seem similar, they are different remedies available only in their respective areas of the law.

verdict is a question of law. *State v. Wingate*, 9th Dist. Summit No. 26433, 2013-Ohio-2079, ¶ 4.

{¶28} If a person knowingly sells or offers to sell heroin, then he or she is guilty of trafficking in heroin. R.C. 2925.03(A)(1) & (C)(6). “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). “ ‘Sale’ includes delivery, barter, exchange, transfer, or gift, or offer thereof, and each transaction of those natures made by any person, whether as principal, proprietor, agent, servant, or employee.” R.C. 3719.01(AA).

{¶29} At trial, Whitaker testified that Boykins agreed to give her heroin in exchange for \$60. Whitaker stated that she handed Boykins the \$60, and he handed her the drugs. Further, the video played for the jury showed the exchange of the money, although it did not show any exchange of drugs.

{¶30} Further, Fortner testified that he tested the substance obtained from the controlled buy and the test came back positive for heroin.

{¶31} Upon review of the record, we find that any rational trier of fact could have found that Boykins trafficked heroin beyond a reasonable doubt. There was testimony from the CI saying she gave Boykins money in exchange for

the drugs. Further, the substance was confirmed to be heroin. Thus, after viewing the evidence in the light most favorable to the prosecution, we find that any rational trier of fact could have found the essential elements of trafficking heroin beyond a reasonable doubt.

{¶32} Accordingly, Boykins' first assignment of error is overruled.

Assignment of Error No. II

{¶33} In his second assignment of error, Boykins argues that the jury's verdict was against the manifest weight of the evidence. We disagree.

{¶34} When an appellate court analyzes a conviction under the manifest weight standard, it "sits as the thirteenth juror." *Thompkins*, 78 Ohio St.3d at 387. Accordingly, it must review the entire record, weigh all of the evidence and its reasonable inferences, consider the credibility of the witnesses, and determine whether the fact finder "clearly lost its way" in resolving evidentiary conflicts and "created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). When applying the manifest weight standard, a reviewing court should only reverse a trial court's judgment "in exceptional case[s]" when the evidence "weighs heavily against the conviction." *Id.* at paragraph three of the syllabus.

{¶35} Having disposed of Boykins' sufficiency arguments, we similarly reject his manifest weight arguments. Boykins argues that the jury mistakenly found the testimony of Whitaker, a drug addict, to be more credible than Boykins' testimony. Additionally, he argues that the search performed by Detective Utley was insufficient because of how easy it could be to conceal the small amount of heroin Boykins allegedly sold to Whitaker. However, the jury heard from Whitaker who testified that Boykins agreed to sell her \$20 worth of heroin and that she gave Boykins an additional \$40 towards a drug debt. It heard from Lieutenant Adkins and Detective Utley who listened along to Whitaker's wire during the transaction. It heard Lieutenant Adkins testify that he reviewed the video recording. The jury was able to see this video, which included the audio, for itself. Finally, the jury heard Detective Utley describe in detail the way in which she searches all CIs prior and subsequent to a controlled buy, including Whitaker.

{¶36} Thus, it appears the jurors found the State's witnesses more credible than Boykins' own testimony. *See State v. Wareham*, 3d Dist. Crawford No. 3-12-11, 2013-Ohio-3191, ¶ 25 (“[J]urors are entitled to believe the testimony offered by the State's witnesses”); *State v. Clark*, 101 Ohio App.3d 389, 400 (8th Dist.1995) (“It is well established that the * * * credibility of witnesses [is] primarily [a] matter[] for the trier of fact.”). After a thorough review of the record, we cannot say that this is the exceptional case where the trier of fact lost its way

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and committed a miscarriage of justice by finding Boykins guilty of trafficking in heroin.

{¶37} Accordingly, we overrule Boykins' second assignment of error.

{¶38} Having found no error prejudicial to Boykins in the particulars assigned and argued, we affirm the trial court's judgment.

Judgment Affirmed

SHAW and PRESTON, J.J., concur.

/jlr