

[Cite as *State v. Campbell*, 2010-Ohio-4449.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RANDON RAYMOND CAMPBELL

Defendant-Appellant

JUDGES:

Hon. Julie A. Edwards, P. J.

Hon. W. Scott Gwin, J.

Hon. John W. Wise, J.

Case No. 2009 CA 00261

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 2009 CR 00122

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

September 20, 2010

APPEARANCES:

For Plaintiff-Appellee

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Wise, J.

{¶1} Appellant Randon Campbell appeals his conviction, in the Stark County Court of Common Pleas, on three counts of cocaine trafficking. Appellee is the State of Ohio. The relevant facts leading to this appeal are as follows

{¶2} In early 2008, the Stark County Metro Narcotics Unit received reports from a confidential informant (CI) that cocaine was being sold by a man using the street name "Black." The CI later informed metro officers this alleged dealer was appellant. The Metro officers began arranging for a series of controlled drug buys.

The Wal-Mart Parking Lot Buy

{¶3} The first controlled buy in the present case was arranged to take place on March 5, 2008 in the Massillon Wal-Mart parking lot. Using the CI, Officer John Wellman set up the buy via a telephone call that was tape recorded by Detective Jason Greenfield.

{¶4} Metro officers met the CI at a designated spot and searched both his person and vehicle for controlled substances. Finding none, they outfitted the CI with an audio and video recording device and \$1,200 in cash, which had been previously photocopied so that it could later be identified by serial numbers. The metro officers followed the CI to the Massillon Wal-Mart. Positioning himself across the street, Officer Wellman observed a man in a white Hummer pull up next to the CI's vehicle. Wellman observed the CI get out and then enter a white Hummer. After a couple of minutes, the CI left the white Hummer and returned to his vehicle. Some of the metro officers then followed the CI to a designated location, while others, including Wellman, followed the Hummer, recording the license plate.

{¶15} The metro officers found out that the Hummer's license plate number traced back to the Avis Rental Car Company desk at the Akron-Canton Airport. They also discovered that appellant had rented the Hummer; in fact, appellant had applied to be an Avis "preferred" member. Finally, the officers later verified that the CI had returned from the white Hummer with more than 25 grams of powder cocaine. No money or contraband was found on the CI other than this cocaine.

The J.C. Penney Parking Lot Buy

{¶16} The same CI assisted in a controlled buy from appellant one week later. This time, the events took place in the J.C. Penney parking lot at the Canton Centre Mall. By telephone call from the CI to appellant, the controlled buy was set for March 12, 2008. The officers searched the CI and his vehicle, wired the CI, obtained \$1,100 in cash, photocopied the bills and followed the CI to the parking lot. A number of officers were in various positions around the area, watching the transaction as it occurred and listening by means of the digital audio recorder. They saw the CI leave his vehicle and get into the white Hummer. The buy was recorded by audio and video, parts of which were played for the jury. The CI returned from the Hummer with more than 25 grams of powder cocaine. Again, no money or contraband was found on the CI other than the cocaine he had just purchased.

The Subway Parking Lot Buy

{¶17} The third controlled buy took place on April 25, 2008 using a similar protocol. The CI met appellant at the Subway Restaurant near Market Avenue and 12th Street NE in Canton. This time, Officer Wellman positioned himself inside the restaurant outfitted with audiotape. Wellman observed appellant arrive driving a Chrysler 300,

which was later determined to have been rented at the Avis airport desk. Wellman got a clear look at appellant and identified him at trial. The CI followed appellant to an apartment complex near Spring Avenue in Canton. Officers recorded the conversation between the CI and appellant. The CI thereupon returned more than 27 grams of powder cocaine.

{¶8} On February 2, 2009, the Stark County Grand Jury indicted appellant on three counts of trafficking in cocaine, R.C. 2925.03(A)(1)(C)(4)(d), all felonies of the third degree. Appellant pled not guilty to all three charges.

{¶9} The case proceeded to a jury trial on September 8, 2009. Appellant was permitted, over the State's objection, to file a notice of alibi outside the time period set forth in the Criminal Rules. The State presented five witnesses and several exhibits, including video and audio tapes of the alleged drug buys. At the close of the State's case, appellant filed a motion for acquittal, which the trial court denied.

{¶10} In his defense phase, appellant presented his alibi witness, his cousin, Amber Thomas. According to Amber, appellant was visiting her in Columbus, Ohio, on April 25, 2008, the date of the "Subway" drug buy. Appellant also took the stand in his own defense, despite contrary advice from defense counsel. Appellant testified that he did not participate in any of the three above drug buys, suggesting that it may have been one of his brothers who stole his identify to rent the Avis vehicles and thereafter sold the drugs to the CI.

{¶11} After hearing the evidence and receiving instructions from the trial court, the jury found appellant guilty on all three charges. On September 11, 2009, appellant returned to the trial court for sentencing. The trial court imposed a five year prison

sentence on each count, to run concurrently, for a total term of five years. An optional period of three years post-release control was imposed, along with a mandatory \$5,000 fine and six-month license suspension. See Judgment Entry, October 1, 2009.

{¶12} On October 15, 2009, appellant filed a notice of appeal. He herein raises the following sole Assignment of Error:

{¶13} “I. THE JURY VERDICT FINDING APPELLANT GUILTY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE.”

I.

{¶14} In his sole Assignment of Error, appellant contends his conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. We disagree.

{¶15} In reviewing a claim of insufficient evidence, “[t]he 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.” *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus. R.C. 2925.03(A)(1) sets forth the essential elements of the present offense of trafficking in drugs: “No person shall knowingly sell or offer to sell a controlled substance.” See *State v. Moore*, Stark App.No. 2008-CA-00228, 2009-Ohio-4958, ¶ 12.

{¶16} Our standard of review on a manifest weight challenge to a criminal conviction is stated as follows: “The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and

determines whether in resolving conflicts in the evidence, the jury 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. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. See also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. The granting of a new trial “should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.” *Martin* at 175, 485 N.E.2d 717.

{¶17} In the case sub judice, as sometimes occurs in drug buy trials, the State presented its case without calling the CI as a witness. Appellant chiefly challenges the convictions by questioning whether he was alone in his vehicles during the drug buys, or, in the alternative, whether one of his five brothers was possibly misidentified as appellant. He further points out that the State did not seek fingerprint or DNA testing on the physical evidence in this instance. Nonetheless, the jurors in this case were provided with the opportunity to connect the dots of the three alleged drug buys by weighing the testimony of Metro Officers Wellman and Greenfield and Criminalists Spencer and Taylor, as well as by reviewing the pertinent video and audio recordings of the drug transactions. Furthermore, the jury was able to consider the circumstantial testimony of the Avis manager, Kristi Fredmonsky, who detailed the procedures at her agency for customer rentals, and who provided written documentation of appellant’s interaction involving the Hummer and Chrysler 300 vehicles. The jurors were also in the best position to accept or reject the defense testimony of appellant and his alibi witness. Upon review, we find reasonable jurors could have found the essential elements of the crime of drug trafficking proven beyond a reasonable doubt, and we further conclude

the jury did not clearly lose its way and create a manifest miscarriage of justice requiring that appellant's convictions be reversed and a new trial ordered.

{¶18} Appellant's sole Assignment of Error is therefore overruled.

{¶19} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Stark County, Ohio, is hereby affirmed.

By: Wise, J.

Edwards, P. J., and

Gwin, J., concur.

JUDGES

JWW/d 0819

