

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Earle E. Wise, Jr., J.
-vs-	:	
	:	
ANTHONY WOODY	:	Case No. 17-CA-27
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No. 2013CR00604
--------------------------	--

JUDGMENT:	Affirmed
-----------	----------

DATE OF JUDGMENT:	December 8, 2017
-------------------	------------------

APPEARANCES:

For Plaintiff-Appellee

HAWKEN FLANAGAM
20 South Second Street
4th Floor
Newark, OH 43055

For Defendant-Appellant

ROBERT C. BANNERMAN
P.O. Box 77466
Columbus, OH 43207-0098

Wise, Earle, J.

{¶ 1} Defendant-Appellant, Anthony Woody, appeals his April 12, 2017 conviction in the Court of Common Pleas of Licking County, Ohio. Plaintiff-Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On October 4, 2013, the Licking County Grand Jury indicted appellant on one count of trafficking in drugs (cocaine) in violation of R.C. 2925.03 and one count of possession of drugs (marijuana) in violation of R.C. 2925.11. Said charges arose from undercover drug task force work at the All Good Music Festival on July 19, 2013.

{¶ 3} After a couple nonappearances by appellant, a jury trial commenced on April 11, 2017. The jury found appellant guilty of the trafficking count and the trial court found him guilty of the possession count. By judgment entry filed April 12, 2017, the trial court sentenced appellant to six months in prison.

{¶ 4} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶ 5} "THE JURY'S VERDICT WAS BASED UPON LEGALLY INSUFFICIENT EVIDENCE AND WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I

{¶ 6} In his sole assignment of error, appellant claims his conviction for trafficking in cocaine was against the sufficiency and manifest weight of the evidence. We disagree.

{¶ 7} On review for sufficiency, a reviewing court is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991). "The 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." *Jenks* at paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). On review for manifest weight, a reviewing court is to examine 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 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*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). See also, *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997). 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.

{¶ 8} Appellant was convicted of trafficking in drugs (cocaine) in violation of R.C. 2925.03(A)(1) which states: "No person shall knowingly * * * [s]ell or offer to sell a controlled substance or a controlled substance analog."

{¶ 9} We note the jury was instructed upon complicity on the trafficking charge in addition to principal offender language. T. at 181-182. Complicity is set forth in R.C. 2923.03 as follows:

(A) No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:

(1) Solicit or procure another to commit the offense;

(2) Aid or abet another in committing the offense;

(3) Conspire with another to commit the offense in violation of section 2923.01 of the Revised Code;

(4) Cause an innocent or irresponsible person to commit the offense.

{¶ 10} As explained by this court in *State v. Butcher*, 5th Dist. Stark No. 2016CA00207, 2017-Ohio-4154, ¶ 20-22:

To support a conviction for complicity, the State must demonstrate the defendant supported, assisted, encouraged, cooperated with, advised, or incited the principal in the commission of the crime, and the defendant shared the criminal intent of the principal. *State v. Johnson* 93 Ohio St.3d 240, 754 N.E.2d 796, 2001-Ohio-1336. Intent may be inferred from the circumstances surrounding the crime. *Id.* The fact that defendant did not articulate her intent will not allow her to escape responsibility for her clear actions of complicity by aiding and abetting in the commission of the crimes. *Id.*

In order to constitute aiding and abetting, the accused must have taken some role in causing the commission of the offense. *State v. Sims*

(1983), 10 Ohio App.3d 56, 10 OBR 65, 460 N.E.2d 672. "[T]he mere presence of an accused at the scene of a crime is not sufficient to prove, in and of itself, that the accused was an aider and abettor." *State v. Widner* (1982), 69 Ohio St.2d 267, 269, 23 O.O.3d 265, 431 N.E.2d 1025. Additionally, even if the accused has knowledge of the commission of the crime, his presence at the scene is not enough to convict him of aiding and abetting. *State v. Cummings* (Apr. 21, 1992), Franklin App. No. 90AP-1144, 1992 WL 82783, citing *United States v. Head* (C.A.6, 1991), 927 F.2d 1361, 1373; *State v. Woods* (1988), 48 Ohio App.3d 1, 2, 548 N.E.2d 954.

Aiding and abetting may be shown by both direct and circumstantial evidence, and participation may be inferred from presence, companionship, and conduct before and after the offense is committed. *State v. Cartellone* (1981), 3 Ohio App.3d 145, 150, 3 OBR 163, 444 N.E.2d 68, citing *State v. Pruett* (1971), 28 Ohio App.2d 29, 34, 57 O.O.2d 38, 273 N.E.2d 884. Aiding and abetting may also be established by overt acts of assistance such as driving a getaway car or serving as a lookout. *Id.* at 150, 3 OBR 163, 444 N.E.2d 68. See *State v. Trocodaro* (1973), 36 Ohio App.2d 1, 65 O.O.2d 1, 301 N.E.2d 898; *State v. Lett*, 2005–Ohio–1308, ¶¶ 27–29, 160 Ohio App. 3d 46, 52, 825 N.E.2d 1158, 1163.

{¶ 11} Adam Hoskinson, a detective with the Central Ohio Drug Task Force, was working undercover at the All Good Music Festival at the Legend Valley Concert venue

on July 19, 2013. He was assigned "to look for and take action for any drug transactions, anything out of the ordinary that we might see that appeared to be drug transactions, or if we saw drugs, to take some sort of action as far as legally." T. at 93-94. While standing in the wood line of the parking lot, Detective Hoskinson was watching a campsite and noticed hand-to-hand transactions which, pursuant to his experience and training, appeared to be common drug transactions. T. at 95, 123. He described it as "[s]omebody taking stuff out of their waist band, giving the other person something, and then obviously it's drugs to one person, money to the other, and then he would stick the money back in his waist band." T. at 95. The individual doing the transactions was later identified as Leroy Thomas. *Id.* As Detective Hoskinson was observing Mr. Thomas, he heard two men coming from behind him yelling "Yeyo, Nuggets, Yeyo, Nuggets." *Id.* One of the men, later identified as appellant, looked at Detective Hoskinson and said, " 'I got what you want.' " *Id.* The other man was later identified as Joshua Dermady. T. at 96. "Yeyo" is a slang term for cocaine, and "Nuggets" is a slang term for marijuana, specifically, hydroponics marijuana. *Id.* Detective Hoskinson asked, " 'You got Yeyo?' " and Mr. Dermady turned around and said, " 'Yes, I have Yeyo, \$70.00 a gram.' " T. at 96-97. Detective Hoskinson told Mr. Dermady he needed to get some money and Mr. Dermady pointed to the campsite where Mr. Thomas was and said, " 'we're going to be right here at this campsite.' " T. at 97-98. Appellant was walking ahead of Mr. Dermady and walked to the campsite. *Id.* Uniformed officers were sent to the campsite. T. at 99. The only individual the officers found at the campsite was Mr. Dermady and he was taken into custody. T. at 100. After Detective Hoskinson read Mr. Dermady his rights, Mr. Dermady admitted that he

had offered to sell him cocaine and in fact had sold cocaine at the music festival that day. T. at 102-103. Mr. Dermady explained he, appellant, and Mr. Thomas had driven to the festival from New York. T. at 102. Mr. Dermady was in possession of a digital scale and some marijuana. T. at 103. Eventually, the uniformed officers took appellant and Mr. Thomas into custody. T. at 104. Appellant was in possession of marijuana on his person and Mr. Thomas possessed cocaine and marijuana. *Id.* Appellant denied everything, stating to Detective Hoskinson that he never spoke to him. T. at 105. Several minutes later, appellant stated "when I talked to you," and after Detective Hoskinson pointed out that he initially had denied talking to him, appellant again denied speaking to him. T. at 106-107. A search of the vehicle the three traveled to the festival in revealed \$3,800 in cash, a portion of which was found in the center console, "the other portion was in a McDonald's bag." T. at 107. When appellant was asked how much money he brought to the concert, he said "40 or 50 bucks." T. at 105-106. After appellant saw that officers had seized the McDonald's bag, he changed the amount from \$40 to \$50 to \$1,400.00. T. at 108. Detective Hoskinson admitted the drugs found on each of the three individuals was more typical of personal use and not selling. T. at 121.

{¶ 12} Todd Green, an officer with the Central Ohio Drug Task Force, was also working the music festival on July 19, 2013. T. at 134. Officer Green observed appellant approach people, talk to them, "return to a tent, go inside the tent for a short period of time, then be back outside the tent meeting with other people, and then back to the tent." T. at 135. Officer Green observed appellant with "a couple different people who appeared to be doing the same thing on that day," later identified as Mr. Thomas

and Mr. Dermady. T. at 135-136. Officer Green testified through his training, experience, and what he observed, "it appeared to me that they were making some sort of transaction." T. at 136. Officer Green stated when Mr. Dermady was taken into custody, appellant "walked away quickly, went into another tent, ditched his hat, took off his t-shirt. He had a black tank top on underneath. He peered - - he was peering out the tent." T. at 137. After the uniformed officers left, appellant continued approaching people. *Id.* Officer Green explained he kept an eye on appellant because "[t]hat's who looked like was doing the most business to me at that point." T. at 140. Officer Green observed appellant and the other two "doing the same pattern," talking to people and going in and out of tents. T. at 141.

{¶ 13} Beth Underwood, a forensic scientist with the Bureau of Criminal Investigation, analyzed the substances seized from the three individuals. T. at 148. She confirmed the substances were cocaine and marijuana. T. at 150.

{¶ 14} We note the weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. Jamison*, 49 Ohio St.3d 182, 552 N.E.2d 180 (1990). The trier of fact "has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page." *Davis v. Flickinger*, 77 Ohio St.3d 415, 418, 674 N.E.2d 1159 (1997).

{¶ 15} Also, circumstantial evidence is that which can be "inferred from reasonably and justifiably connected facts." *State v. Fairbanks*, 32 Ohio St.2d 34, 289 N.E.2d 352 (1972), paragraph five of the syllabus. "[C]ircumstantial evidence may be more certain, satisfying and persuasive than direct evidence." *State v. Richey*, 64 Ohio St.3d 353, 1992-Ohio-44, 595 N.E.2d 915. It is to be given the same weight and

deference as direct evidence. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991).

{¶ 16} Appellant was heard advertising "Yeyo" and "Nuggets" and told Detective Hoskinson "I got what you need." His activities were suspicious to the trained eye, as were the activities of his two traveling companions, Mr. Dermady and Mr. Thomas. Mr. Dermady admitted to selling cocaine at the music festival. Thousands of dollars of cash were discovered in their vehicle. We find all of this evidence sufficient to establish that appellant knowingly engaged in the selling of drugs and/or supported, assisted, encouraged, cooperated with, advised, or incited the selling of drugs.

{¶ 17} Upon review, we find sufficient credible evidence, if believed, to support the convictions, and do not find any manifest miscarriage of justice.

{¶ 18} The sole assignment of error is denied.

{¶ 19} The judgment of the Court of Common Pleas of Licking County, Ohio is hereby affirmed.

By Wise, Earle, J.

Delaney, P.J. and

Hoffman, J. concur.

EEW/sg 1122