

[Cite as *State v. Patterson*, 2009-Ohio-4041.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91945

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MICHAEL PATTERSON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-508307

BEFORE: Rocco, P.J., Blackmon, J., and Stewart, J.

RELEASED: August 13, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

KENNETH A. ROCCO, P.J.:

{¶ 1} Defendant-appellant Michael Patterson appeals from his conviction after a jury found him guilty of possession of cocaine.

{¶ 2} He presents one assignment of error in which he challenges the sufficiency and the weight of the evidence presented to support his conviction.

Since this court finds his conviction is supported by both sufficient evidence and the manifest weight of the evidence, his conviction is affirmed.

{¶ 3} Patterson's conviction results from an incident that took place on January 31, 2008 at the Riverview Tower, a property owned by the Cleveland Metropolitan Housing Authority ("CMHA"). Just before noon, CMHA police received a complaint of a man "panhandling" on the 11th floor of the building.

{¶ 4} Officers Charles Toles and Donald Mollohan responded to the complaint. By that time, the building's security guard had detained the man, eventually identified as Patterson, in the lobby.

{¶ 5} The officers soon discovered Patterson was neither a resident nor the guest of one. They were in the process of advising him to leave when Mollohan observed something "sticking out of [Patterson's] jacket." It looked to Mollohan "like a length of pipe with a plastic formed handle on it."

{¶ 6} Mollohan described the object as “maybe fourteen to sixteen inches long, three-quarters of an inch around, metal pipe.” The pipe was capped by a piece of plastic, like a handle, “formed to fit your fingers.” Mollohan asked Patterson what it was.

{¶ 7} Patterson “said he had made that because he had been having some problems.” Mollohan ordered Patterson to relinquish the object. As Patterson complied, Toles informed him that it “was being confiscated because it appeared to be a weapon.” Patterson “asked if he could have the rubber handle from the end of it.”

{¶ 8} Mollohan could see no “harm giving him a piece of rubber * * *, so I went to take it off the metal portion, and * * * heard something rattling around inside.” When Mollohan “got the handle off, [he] tipped the open end into [his] palm, and several pieces of glass came out. It looked like a broken crack pipe.” Mollohan knew what it was “from the shape of the tubing, the look of the glass, the scorching marks on it, the residue * * *.”

{¶ 9} Mollohan at that time placed Patterson under arrest. When Mollohan patted down Patterson, he discovered what appeared to be a rock of crack cocaine wrapped in tissue. Patterson told the officers that it was “a piece of rock salt [he] picked up off the ground,” and that he was “going to try and sell it for a few bucks.” Subsequent laboratory analysis of the two items

proved that the residue on the glass “tested positive for cocaine,” while the rock did not.

{¶ 10} Patterson was indicted on one count of possession of cocaine in an amount less than five grams. His case proceeded to a jury trial. After hearing the evidence, the jury found Patterson guilty.

{¶ 11} Patterson appeals from his conviction with the following assignment of error.

{¶ 12} **“There was insufficient evidence to support the guilty verdict, and Appellant’s conviction was against the manifest weight of the evidence.”**

{¶ 13} Patterson argues the state failed to establish that he “knowingly” possessed any drugs, as required for a conviction under R.C. 2925.11(A).

{¶ 14} Crim.R. 29(A) requires a trial court to “order the entry of a judgment of acquittal of one or more offenses charged in the indictment, * * * if the evidence is insufficient to sustain a conviction of such offense or offenses.” In order to determine whether the evidence before a trial court was sufficient to sustain a conviction, an appellate court must view that evidence in a light most favorable to the state. *State v. Dennis* (1997), 79 Ohio St.3d 421, 430, 1997-Ohio-372.

{¶ 15} An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt.

State v. Thompkins (1997), 78 Ohio St.3d 380, 386, 1997-Ohio-52. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the state, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *Id.*

{¶ 16} R.C. 2925.11 provides, in pertinent part, as follows:

{¶ 17} "(A) No person shall knowingly obtain, possess, or use a controlled substance."

{¶ 18} The record in this case contains sufficient evidence to prove Patterson knowingly possessed cocaine; thus, the trial court properly denied his motion for acquittal.

{¶ 19} Mollohan testified that Patterson admitted having made the make-shift weapon himself. Mollohan further testified that upon being informed he could not keep the item, Patterson immediately asked for the handle. The handle contained a broken crack pipe that tested positive for cocaine.

{¶ 20} This court has consistently held that a defendant can be found guilty of drug possession when he possesses paraphernalia containing drug residue, since the quantity of a controlled substance is not a factor. *State v. Nash*, Cuyahoga App. No. 86301, 2006-Ohio-1351, ¶14, citing, inter alia, *State v. Teamer* (1998), 82 Ohio St.3d 490, 1998-Ohio-193; *State v. Eppinger* (2005), 162 Ohio App.3d 795, 800, 2005-Ohio-4155.

{¶ 21} Moreover, Patterson admitted he made the weapon; the weapon included an attached handle to conceal a used crack pipe. This was sufficient to show he knowingly possessed drug residue. *State v. Teamer*, supra; *State v. Smith* (July 6, 2000), Cuyahoga App. No. 76501. Accordingly, any rational trier of fact could have found the essential elements of possession of drugs proven beyond a reasonable doubt.

{¶ 22} With respect to Patterson's argument that the manifest weight of the evidence does not support his conviction, this 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 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. Thompkins*, supra at 387.

{¶ 23} Toles, who was watching the entire exchange, corroborated Mollohan's description of the incident. Under these circumstances, this court concludes that Patterson's conviction finds support in the manifest weight of the evidence.

{¶ 24} Since a review of the testimony and evidence presented at trial demonstrates Patterson's conviction is supported by both sufficient evidence and the manifest weight of the evidence, his assignment of error is overruled.

{¶ 25} Patterson's conviction is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
MELODY J. STEWART, J., CONCUR

