**[Cite as *State v. Solis*, 2009-Ohio-6683.]**

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio — Court of Appeals No. WD-08-042

Appellee — Trial Court No. 2007-CR-0340

v.

Rolando Rios Solis — **DECISION AND JUDGMENT**

Appellant — Decided: December 18, 2009

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, Gwen Howe-Gebers, Chief Assistant Prosecuting Attorney, and Jacqueline M. Kirian, Assistant Prosecuting Attorney, for appellee.

William F. Hayes, for appellant.

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OSOWIK, J.

**{¶ 1}** This is an appeal from a judgment of the Wood County Court of Common Pleas that found appellant guilty of one count of complicity to trafficking in drugs. For the following reasons, the judgment of the trial court is affirmed.

**{¶ 2}** On August 15, 2007, appellant was indicted on one count of complicity to trafficking in drugs in violation of R.C. 2923.03(A)(2) and 2925.03(A)(2) and (C)(3)(e). Appellant entered a plea of not guilty and, on May 8, 2008, a jury found him guilty of the charge. The trial court imposed a four-year term of imprisonment.

**{¶ 3}** Appellant sets forth two assignments of error:

**{¶ 4}** "Assignment of Error No. I

**{¶ 5}** "The trial court erred to the prejudice of Solis and denied his right to due process and a fair trial by not granting the Rule 29 motion for judgment of acquittal as to the single count of the indictment at the end of the state's case.

**{¶ 6}** "Assignment of Error No. II

**{¶ 7}** "The trial court erred and deprived appellant of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article One Section Ten of the Ohio Constitution by finding him guilty of complicity to trafficking in drugs, in that the verdict was not supported by sufficient evidence and was also against the manifest weight of the evidence."

**{¶ 8}** We will first address appellant's second assignment of error, in which he argues that his conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. These arguments will be considered together as both can be resolved by examining the evidence presented at trial as summarized below.

**{¶ 9}** "Sufficiency" of the evidence is a question of law as to whether the evidence is legally adequate to support a jury verdict as to all elements of the crime.

*State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 1997-Ohio-52. When reviewing the sufficiency of the evidence to support a criminal conviction, an appellate court must 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. 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." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. A conviction that is based on legally insufficient evidence constitutes a denial of due process, and will bar a retrial. *Thompkins*, supra, at 386-387.

**{¶ 10}** In contrast, a manifest weight challenge questions whether the state has met its burden of persuasion. *Thompkins*, at 387. In making this determination, the court of appeals sits as a "thirteenth juror" and, after "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." *Thompkins*, supra, at 386, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

**{¶ 11}** R.C. 2925.03, trafficking in drugs, provides in relevant part:

**{¶ 12}** "(A) No person shall knowingly do any of the following:

**{¶ 13}** "* * *

**{¶ 14}** "(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person."

**{¶ 15}** R.C. 2925.03(C)(3)(e) sets forth the penalty for a violation of the foregoing statute where, as in this case, the drug involved is marijuana and the amount equals or exceeds five thousand grams but is less than 20,000 grams.

**{¶ 16}** R.C. 2923.03(A)(2), complicity, provides that "[n]o person, acting with the kind of culpability required for the commission of an offense, shall * * * aid or abet another in committing the offense * * *."

**{¶ 17}** The state's first witness was Saul Ramirez, who testified that he sold drugs for 15 or 20 years. At the time of appellant's arrest, he was working as a confidential informant with Wood County authorities, who arranged for the dismissal of some local charges against Ramirez in exchange for his cooperation in this case. Ramirez testified that in August 2007, he arranged with an individual named Baldo for the shipment of 50 to 100 pounds of marijuana from Texas to Ohio. Ramirez was told that the drugs would be brought to Ohio by two people driving a black Xterra and one person driving a white pickup truck. Ramirez explained that one vehicle would carry the drugs and the other would be following closely in order to distract law enforcement from the first vehicle if necessary. Ramirez further explained that he arranged with Jesus Alejandro, one of the drivers, to meet at a motel a few hours after they arrived in Wood County. Ramirez

testified that he did not have contact with appellant at any time during the drug transaction but stated that Baldo told him appellant would be "the contact, the person to bring it here * * *."

**{¶ 18}** Juan Lopez also testified for the state. He stated that in August 2007, he was asked to drive an air compressor from Texas to a location 18 hours away and was told he would be paid $7,000. Lopez agreed, and drove his pickup truck from his hometown to another town in Texas, where several individuals took the truck to another location to get the compressor. He testified that he did not know that there was marijuana in the compressor. After the air compressor was put in the back of his truck, Lopez was joined by appellant and another man, neither of whom he had previously known. Lopez followed the two men, who were in their own car, and later learned they were driving to Ohio. During the trip, Lopez communicated with the men by cell phone. Eventually, they exited the highway in Bowling Green, Ohio, and the two men told Lopez to pull into a Burger King and wait.

**{¶ 19}** The state's next witness was Jesus Alejandro, a retired school administrator from Texas, who was arrested in Bowling Green, Ohio, on August 6, 2007, for transporting marijuana. Alejandro testified that when his friend Baldo asked him if he would take some marijuana to Toledo, he agreed. Alejandro was to be paid $4,000. He further testified that he met appellant through Baldo two or three months before the trip from Texas to Ohio. He met appellant at Baldo's house, where the three men discussed how the marijuana would be transported. Alejandro testified that appellant was to find

someone to transport the drugs hidden inside an air compressor in the back of a pickup truck. While still in Texas, Alejandro and appellant met with Lopez. The three men then left for Ohio, with appellant and Alejandro in Alejandro's Nissan Xterra and Lopez driving his truck. When they reached Bowling Green, appellant told Lopez not to stop at the spot where he and Alejandro pulled off the road.

**{¶ 20}** Mark Ellinwood, a special agent with the Bureau of Criminal Identification and Investigation ("BCI"), testified that he and his narcotics detection dog searched Lopez's truck after it pulled off the highway in Bowling Green. The dog alerted to the air compressor and the car was seized. Ellinwood further testified that in his experience as a narcotics officer he has found that it is common for multiple individuals and vehicles to be used to transport one shipment of drugs. In such a scenario, the second or third vehicles, which do not contain drugs, are used for counter surveillance and can be used to draw the attention of law enforcement away from the vehicle carrying the drugs if a stop appears likely.

**{¶ 21}** Michael Ackley, a Wood County Deputy Sheriff, testified that Ramirez has worked for him as an informant for several years and has provided reliable information. Through their work with Ramirez, Ackley and his task force were aware of the shipment coming to Bowling Green from Texas. Ramirez informed Ackley that the drugs would be brought in by two Hispanic males in a black Xterra with Texas license plates and another Hispanic male in a Chevy pickup also with Texas license plates. Arrangements had been made, through Ramirez, to pay approximately $40,000 for the marijuana.

Ackley was also informed by Ramirez that the vehicles would exit at Bowling Green, which they did. When the vehicles pulled into the parking lots of two adjacent restaurants, Ackley and Ellinwood approached the pickup truck and two other officers approached the Xterrra. After the dog alerted to the air compressor, the men were taken into custody. Inside the air compressor, officers found ten sealed packages of what appeared to be marijuana. When Ackley examined the cell phone he confiscated from appellant, he found an entry and number for "Baldo," the individual with whom Ramirez, the informant, had worked to arrange this drug transaction. Ackley confirmed Ellinwood's testimony that it is common for two or more vehicles to be used as "trail vehicles" or "surveillance vehicles" along with the "mules," who are actually carrying the drugs. Finally, he testified that appellant was in the Xterra with Alejandro when the stop was made in Bowling Green.

**{¶ 22}** Anthony Ferchau, a forensic scientist with the BCI, testified that he examined the contents of two containers of "vegetable matter" submitted to him in this case. Through his analysis of samples of the material, Ferchau was able to identify it as marijuana. One container held 11,295 grams of marijuana and the second held 8,103 grams of marijuana.

**{¶ 23}** Lastly, appellant testified on his own behalf that Alejandro asked him to drive to Ohio with him so that he could tow two trucks back to Texas after Alejandro purchased them. He further testified that Alejandro did not say anything about transporting drugs. Appellant did not notice any other vehicles following them on the

drive to Ohio and did not observe any unusual activity on Alejandro's part. Appellant further testified he did not know Lopez and saw him for the first time in jail.

**{¶ 24}** Deputy Ackley testified on rebuttal that in his opinion the vehicle appellant and Alejandro drove from Texas was not powerful enough or in good enough condition to pull anything, let alone a trailer with two other vehicles hitched to it, back to Texas.

**{¶ 25}** In support of his second assignment of error, appellant essentially argues that he did not knowingly aid Ramirez, Lopez, Alejandro and Baldo in transporting the marijuana found in the air compressor from Texas to Ohio.

**{¶ 26}** This court has thoroughly considered the entire record of proceedings in the trial court and the testimony as summarized above and finds that the state presented sufficient evidence from which, when viewed in a light most favorable to the state, a rational trier of fact could have found appellant guilty beyond a reasonable doubt of complicity to trafficking in drugs in violation of R.C. 2923.03(A)(2) and 2925.03(A)(2) and (C)(3)(e).

**{¶ 27}** As this court has consistently affirmed, the trier of fact is vested with the discretion to weigh and evaluate the credibility of conflicting evidence in reaching its determination. It is not within the proper scope of the appellate court's responsibility to judge witness credibility. *State v. Hill*, 6th Dist. No. OT-04-035, 2005-Ohio-5028 at ¶ 42. Further, based on the testimony summarized above and the law, this court cannot say that the jury clearly lost its way or created a manifest miscarriage of justice by finding appellant guilty of the charge of complicity to trafficking in drugs.

**{¶ 28}** Accordingly, we find appellant's second assignment of error not well-taken.

**{¶ 29}** In his first assignment of error, appellant asserts that the trial court erred by denying his Crim.R. 29 motion for judgment of acquittal.

**{¶ 30}** A judgment of acquittal shall be entered "if the evidence is insufficient to sustain a conviction of such offense or offenses." Crim.R. 29(A). An appellate court reviews a trial court's decision on a Crim.R. 29 motion for acquittal using the same standard as that used to review a sufficiency of the evidence claim. *State v. Moore*, 3rd Dist. No. 14-08-43, 2009-Ohio-2106, ¶ 20; *State v. Newson*, 6th Dist. No. H-02-036, 2003-Ohio-4729. In light of our finding as to appellant's second assignment of error as set forth above, we find that the trial court did not err by denying appellant's Crim.R. 29 motion for acquittal. Accordingly, appellant's first assignment of error is found not well-taken.

**{¶ 31}** On consideration whereof, this court finds that appellant was not prejudiced or prevented from having a fair trial and the judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

Thomas J. Osowik, J.
CONCUR.

JUDGE

JUDGE