

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-060996
	:	TRIAL NO. B-0607493
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
MARCUS HICKS,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Defendant-appellant, Marcus Hicks, appeals the judgment of the Hamilton County Court of Common Pleas convicting him of trafficking in cocaine in proximity to a school, a felony of the fourth degree as charged. He was convicted after a jury trial.

Early one morning, Cincinnati Police Officer Jason Bley was investigating drug activity with the aid of a confidential informant. The informant was given a \$20 bill as “buy money” after the officer had photocopied the bill.

As Bley and the informant were driving down the street, the informant spotted Hicks, whom he had known before the morning in question. Bley pulled over to the side of a street near an elementary school. The informant got out and asked Hicks for \$20 worth of crack cocaine. The sale was completed, and the informant got

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

back into the vehicle. The informant then gave Bley the cocaine, and the two drove away.

Bley called for another officer to arrest Hicks. The arresting officer soon arrived at the scene of the sale and saw Hicks walking with a woman. He arrested Hicks but did not find the buy money or any drugs on Hicks's person.

After the jury had found Hicks guilty, the trial court sentenced him to 15 months' imprisonment.

In his first and second assignments of error, Hicks now argues that his conviction was based on insufficient evidence and was against the manifest weight of the evidence. We address the assignments together.

In the review of the sufficiency of the evidence to support a conviction, the relevant inquiry for the appellate court "is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."<sup>2</sup> To reverse a conviction on the manifest weight of the evidence, a reviewing court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and conclude that, in resolving the conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice.<sup>3</sup>

R.C. 2925.03(A)(1), governing drug trafficking, provides that "[n]o person shall knowingly \* \* \* [s]ell or offer to sell a controlled substance." Under R.C. 2925.03(C), the level of the offense is increased if the controlled substance is sold "in the vicinity of a school."

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<sup>2</sup> *State v. Waddy* (1992), 63 Ohio St.3d 424, 430, 588 N.E.2d 819.

<sup>3</sup> *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

In this case, the conviction was in accordance with the evidence. Bley testified that he had seen the informant purchase \$20 worth of crack cocaine from Hicks in the same block as an elementary school.

Although Hicks notes that the arresting officer did not recover the buy money or any drugs from him, the officer testified that it was a common practice for drug dealers to have an accomplice hold money or drugs for them in case of arrest. And because Hicks was walking with another person shortly after the transaction in this case, the jury could have reasonably inferred that he had jettisoned any incriminating evidence. We overrule the first and second assignments of error.

In his third assignment of error, Hicks argues that the trial court erred in overruling his motion to suppress his statement requesting the arresting officer to “tell [the informant] I’ll see him in court.” He made the statement during the intake process at the Hamilton County Justice Center.

Hick concedes that he had been given the warnings mandated by *Miranda v. Arizona*,<sup>4</sup> but he argues that because approximately 50 minutes had elapsed between the warnings and the statement, the waiver of his rights was not knowing and voluntary. The trial court held that the statement was spontaneous and not the product of custodial interrogation.<sup>5</sup>

The trial court correctly denied the motion. The arresting officer stated that Hicks had initiated a conversation with him about why he had been arrested. After the officer had explained the basis of the arrest, Hicks made the veiled threat against the informant. The statement was not the product of interrogation, and we overrule the third assignment of error.

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<sup>4</sup> (1966), 384 U.S. 436, 86 S.Ct. 1602.

<sup>5</sup> See, e.g., *State v. Stamper* (1986), 33 Ohio App.3d 104, 106, 514 N.E.2d 725.

In the fourth and final assignment of error, Hicks argues that the 15-month prison sentence was excessive. Under *State v. Foster*,<sup>6</sup> trial courts have full discretion to impose a sentence within the statutory range.

In this case, the sentence was within the statutory range for a felony of the fourth degree. Hicks had numerous prior convictions for drug-related offenses and had served two prison terms. Under these circumstances, the trial court did not abuse its discretion in imposing the 15-month sentence. We overrule the fourth assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., SUNDERMANN and CUNNINGHAM, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on December 12, 2007  
per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>6</sup> 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.