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

STATE OF OHIO,	:	APPEAL NO. C-080509 TRIAL NO. B-0702268
Plaintiff-Appellee,	:	
vs.	:	*D E C I S I O N.*
TERRY KENDRICK,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: August 7, 2009

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Scott M. Heenan*, Assistant Prosecuting Attorney, for Appellee,

Michaela M. Stagnaro, for Appellant.

Please note: This case has been removed from the accelerated calendar.

HILDEBRANDT, Judge.

{¶1} Defendant-appellant, Terry Kendrick, appeals the judgment of the Hamilton County Court of Common Pleas convicting him of four counts of dogfighting and six counts of trafficking in marijuana. He was convicted after a jury trial.

Gabrielson is Introduced to Kendrick

{¶2} During a regional investigation of dogfighting, Sergeant Michael Gabrielson of the Kettering, Ohio, Police Department came into contact with Cory Burnett. Burnett was associated with Hung Jury Kennel, an illicit dogfighting operation in Dayton, Ohio. Feigning an interest in dogfighting, Gabrielson ostensibly became an investing partner in the operation with Burnett and Larontay Bennett.

{¶3} On March 31, 2006, Burnett introduced Gabrielson to Kendrick, the operator of the OG Posse Kennel, at Kendrick's residence in Hamilton County. The parties arranged a dogfighting event between the respective kennels to take place on May 20, 2006, in Cincinnati.

{¶4} As a preliminary matter to the fight, Bennett paid Kendrick a sum of "forfeit money," in the event that Hung Jury failed to attend the fight or failed to bring an eligible dog. Kendrick described one of the fights that he had arranged for the May 20 event. And during their meeting, Kendrick showed Gabrielson an underground dogfighting magazine as well as a trophy that OG Posse had won in a previous dogfight.

The Dogfighting Events

{¶5} On May 20, 2006, Gabrielson witnessed a dogfighting event on Central Avenue in Cincinnati. When nearly 100 patrons had congregated in the basement of the building, Kendrick instructed everybody to leave so that they could properly reenter by paying an admission fee. Prior to the start of the fighting, Kendrick announced over

a public-address system that any members of law enforcement present at the event had to identify themselves and leave, and that if they did not do so, then any activity would amount to entrapment. He added that he did not know whether the activity that was about to occur was illegal.

{¶6} Kendrick then described the impending show, which was to include six fights. While the third fight was in progress, somebody yelled "police," and the patrons quickly fled from the basement. Cincinnati police raided the event, and the fights were not resumed that night.

{¶7} But the three remaining fights occurred the following day in Dayton, Ohio, which is in Montgomery County. Because Kendrick had placed a dog in the first of the remaining fights, he closely monitored that fight. When Kendrick's dog lost to a Hung Jury dog, Kendrick paid Burnett for their bet. Kendrick stayed and watched the second fight. Before he left, Gabrielson gave Kendrick $50 for a subscription to a dogfighting magazine.

{¶8} Later, Gabrielson selected a warehouse for dogfighting in Moraine, Ohio, which is also in Montgomery County. Gabrielson had the warehouse outfitted for police surveillance. He showed Kendrick the warehouse on October 2, 2006, and Kendrick said that he wanted to use it for a dogfighting event.

{¶9} Kendrick scheduled a fight to occur at the warehouse on October 7. At the October 7 fight, Kendrick was involved in the weighing of the dogs, he accepted money, he provided money for the fight's purse, and he gave the referee two bite sticks that were used to separate the dogs.

{¶10} A dogfighting event also occurred on October 28 at the warehouse. Kendrick arrived with a dog for the first scheduled fight, along with others from the OG Posse. Kendrick gave the referee $2000 for a bet he had placed with Burnett. Kendrick witnessed the weighing of the dogs and gave instructions to the handler of the OG Posse

dog during the fight. Kendrick also asked for and received half of the admission proceeds.

{¶11} A dogfight took place on December 30, 2006, in Cincinnati. At that fight, Kendrick was in the pit and acted as the referee.

{¶12} At a dogfighting event on March 24, 2007, at the Moraine warehouse, Kendrick directed his wife to collect the entrance fees, directed his son to walk one of the dogs prior to its fight and to retrieve medical supplies, and directed Gabrielson to bring items to wash the dogs. Police raided that event, arresting Kendrick and others.

{¶13} When officers executed a search warrant at Kendrick's house, they recovered a large number of confined dogs, many of which appeared to have suffered fight-related injuries. Officers also found an extensive array of paraphernalia commonly used to train dogs for fighting, as well as a large quantity of marijuana.

Trafficking in Marijuana

{¶14} Gabrielson also testified about a number of drug transactions. In June 2006, Gabrielson witnessed Kendrick sell marijuana to a juvenile. Then, on a December 13, 2006, visit to Kendrick's residence, Gabrielson mentioned that he wanted to pick up some "product." Kendrick responded that he "dealt in green," he handed Gabrielson a bag containing several ounces of marijuana, and he asked if Gabrielson could buy marijuana in ounces at $110 per ounce. Thereafter, Gabrielson purchased marijuana from Kendrick with the understanding that he would resell it.

Trial and Sentencing

{¶15} At trial, Kendrick rested without presenting evidence. The jury found him guilty of engaging in dogfighting for the fights that had occurred in Hamilton County on May 20, 2006, and on December 30, 2006. He was also found guilty of promoting the May 20, 2006, event, and of training dogs for dogfighting. He was not

indicted for planning or for participating in the fights that had occurred in Montgomery County.

{¶16} The jury also found Kendrick guilty of the drug offenses, and the trial court sentenced him to an aggregate prison term of 13 1/2 years.

Hearsay and Confrontation Clause

{¶17} In his first assignment of error, Kendrick now argues that the trial court erred in admitting into evidence the statements of Burnett implicating Kendrick in the offenses. He first argues that the statements were inadmissible hearsay.

{¶18} Under Evid.R. 801(D)(2)(e), statements made by a co-conspirator in furtherance of a conspiracy are not hearsay and are admissible for the truth of the matters asserted. But Kendrick argues that because dogfighting is not one of the enumerated offenses under the conspiracy statute, R.C. 2923.01, the statements were inadmissible.

{¶19} The Supreme Court of Ohio has rejected this argument, holding that statements of a co-conspirator may be admitted even though conspiracy is not charged as a substantive offense.[1] Here, the state established that Kendrick, Burnett, and others were part of a conspiracy to stage dogfights. Burnett's statements were made when he was bringing Gabrielson into the dogfighting operation and when the fights were being planned and conducted. The statements were therefore made in furtherance of the conspiracy, and they were admissible under Evid.R. 801(D)(2)(e).

{¶20} Moreover, virtually all of the challenged statements were confirmed by Gabrielson's observations and the statements of Kendrick himself. Burnett's statements were therefore merely cumulative to other evidence.

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[1] *State v. Skatzes,* 104 Ohio St.3d 195, 2004-Ohio-6391, 819 N.E.2d 215, ¶105, citing *State v. Robb*, 88 Ohio St.3d, 59, 68, 2000-Ohio-275, 723 N.E.2d 1019.

{¶21} Nonetheless, Kendrick also argues that the admission of the statements violated his right to confront his accusers under *Crawford v. Washington*.[2] We disagree. Burnett's statements were not in the nature of a confession and were not made in response to interrogation; the statements were part of the conspiracy itself and were therefore not testimonial within the meaning of *Crawford*.[3] Accordingly, the admission of the statements did not violate Kendrick's rights, and we overrule the first assignment of error.

Other Acts

{¶22} In his second assignment of error, Kendrick contends that he was denied a fair trial because of inadmissible "other acts" evidence. He first argues that it was erroneous to admit evidence of the fights that had been staged outside of Hamilton County.

{¶23} Evid.R. 404(B) provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

{¶24} But the general inadmissibility of "other acts" evidence does not prevent the state from demonstrating "the 'setting' of a case."[4] Thus, the state may present other acts that are "inextricably interwoven with the crime charged in the indictment"[5] and that are "necessary to give the complete picture of what occurred."[6]

{¶25} In this case, the state presented evidence that significant parts of the planning and preparation for the Montgomery County fights had occurred in

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[2] (2004), 541 U.S. 36, 124 S.Ct. 1354.
[3] See, e.g., *State v. Ha,* 9th Dist. No. 07CA0089-M, 2009-Ohio-1134, ¶56.
[4] *State v. Wilkinson* (1980), 64 Ohio St.2d 308, 317, 415 N.E.2d 261.
[5] Id.
[6] Id. at 318, 415 N.E.2d 261.

Hamilton County. Although he was not charged with the Montgomery County fights, the evidence of those fights was relevant in establishing that Kendrick had been engaged in promoting dogfights from his home, and that his involvement had reached beyond merely attending fights. The jury was entitled to know that aspect of the case, and we find no error in the admission of the evidence for that purpose.

{¶26} Kendrick also argues that the trial court erred in admitting evidence of his guilty pleas to federal dogfighting-related charges.

{¶27} Under Evid.R 410(A)(1), a guilty plea is admissible unless the plea was later withdrawn. In this case, Kendrick argues that withdrawal of his pleas was still a possibility at the time of the proceedings below. But the pleas had not been withdrawn at the time of the trial, and the evidence was therefore properly admitted.

{¶28} Next, Kendrick argues that the trial court erred in admitting evidence of contraband that was not related to dogfighting. Specifically, he challenges the admissibility of "bootleg" DVDs that were in his possession.

{¶29} The state offered the DVDs in response to Kendrick's assertion that he had been entrapped into engaging in dogfighting and trafficking in marijuana. The state contended that the ready access to the contraband demonstrated that Kendrick was not averse to engaging in criminal activity and that he had not been entrapped. As the Supreme Court of Ohio has held, evidence is properly admitted for that purpose.[7] Accordingly, there was no error in the admission of the DVDs.

{¶30} Finally, Kendrick challenges the admission of video recordings depicting dogfights in which, he contends, he did not participate. Kendrick refers to the fights on October 28, 2006, and to a fight on February 3, 2007.

{¶31} The trial court did not err. Kendrick was present as the "host" of the October 28 dogfighting event, and there was evidence that he had placed a bet on the

[7] *State v. Doran* (1983), 5 Ohio St.3d 187, 192, 449 N.E.2d 1295.

February 3 fight. Thus, the recordings were relevant to Kendrick's involvement in promoting and engaging in dogfighting. We overrule the second assignment of error.

Sufficiency and Weight of the Evidence

{¶32} In his third assignment of error, Kendrick maintains that his convictions were based on insufficient evidence and were against the manifest weight of the evidence.

{¶33} 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."[8] 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.[9]

{¶34} The dogfighting statute, R.C. 959.16, provides that "[n]o person shall knowingly * * * (1) Promote, engage in, or be employed at dogfighting * * * [or] (3) Sell, purchase, possess, or train a dog for dogfighting." R.C. 2925.03, governing drug trafficking, states that "[n]o person shall knowingly * * * (1) Sell or offer to sell a controlled substance; (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."

{¶35} In this case, the state presented overwhelming evidence of Kendrick's guilt. Kendrick had participated in dogfighting by organizing and scheduling fights,

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[8] *State v. Waddy* (1992), 63 Ohio St.3d 424, 430, 588 N.E.2d 819.
[9] *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

arranging bets, weighing the dogs, serving as the referee, and taking money for admission. The evidence further established that Kendrick had maintained a dogfighting kennel in his basement, where injured dogs and numerous items of training equipment were discovered. As for the trafficking charges, Gabrielson established that Kendrick had sold him quantities of marijuana in packages that were intended for resale.

{¶36} Gabrielson captured a large portion of the alleged criminal activity on hidden surveillance equipment, and the state presented compelling physical evidence to establish the crimes. Accordingly, we overrule the third assignment of error.

Jury Instructions

{¶37} In the fourth and final assignment of error, Kendrick argues that the trial court erred in instructing the jury. He first argues that the court erred in defining certain statutory terms for the jury. He does not argue that the definitions were inaccurate or misleading; rather, he contends that the jurors should have been permitted to define the terms themselves.

{¶38} This argument is not persuasive. The trial court's definitions of the terms "promoted," "engaged," and "employed" were taken from a dictionary and were in accordance with standard definitions of the terms. Because the jury was not misled, Kendrick can demonstrate no prejudice to have arisen from the instructions.

{¶39} Kendrick next argues that the trial court erred in giving an instruction on complicity. This argument is also without merit. The state presented ample evidence that Kendrick had aided and abetted others in staging the dogfights in addition to having engaged in the offenses as a principal.

{¶40} Finally, Kendrick argues that the court erred in giving an instruction on "conspiracy." He argues that, because dogfighting is not one of the specified offenses under the conspiracy statute, the instruction was improper.

{¶41} There was no reversible error in the conspiracy instruction. The jury was not instructed on conspiracy as a separate offense; it was merely given the definition of conspiracy as part of the complicity charge to demonstrate that Kendrick could be convicted for aiding and abetting the offenses. In light of the compelling evidence that Kendrick was guilty as a principal and as an accomplice, he has failed to demonstrate prejudice.[10] We overrule the fourth assignment of error and affirm the judgment of the trial court.

Judgment affirmed.

HENDON, P.J., and **SUNDERMANN, J.**, concur.

Please Note:

The court has recorded its own entry on the date of the release of this decision.

[10] See *State v. Sidders*, 3rd Dist. No. 14-08-24, 2009-Ohio-409, ¶39.