

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

STATE OF OHIO,	:	APPEAL NO. C-081236
Plaintiff-Appellee,	:	TRIAL NO. B-0709945
vs.	:	<i>JUDGMENT ENTRY.</i>
MARQUEZ McCOY,	:	
Defendant-Appellant	:	
	:	

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

On the night of April 4, 2007, Cincinnati police, using a confidential informant, set up a “controlled buy” at a Shell station on the corner of Paddock and Tennessee in the city of Cincinnati. Prior to the transaction, police frisked the informant to make sure she did not have any contraband, gave her a \$20 bill, and recorded the serial number, and they then observed the events from another gas station across the street. Eventually, a 1984 Oldsmobile Cutlass arrived at the Shell station and the informant entered the automobile. The informant exchanged the recorded \$20 bill for what was subsequently determined to be .28 grams of crack cocaine. After the exchange, the informant left the automobile, which promptly exited from the gas station. The informant returned to the observing officers across the street, gave the crack cocaine to them, and was frisked once more to make sure

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

she did not have any excess contraband. At all times, the informant never left the sight of the observing officers.

Minutes later, the police stopped the Cutlass for reckless driving and running a red light. Defendant-appellant Marquez McCoy (“McCoy”) was the driver. McCoy and the automobile were searched, but police recovered no drugs or other contraband. In addition, the recorded \$20 bill was never recovered. However, according to police testimony, the true purpose of the stop was not to arrest McCoy at that particular time, but to acquire his true name (all the police had at the time was an alias provided by the informant). The intent of the police was to arrest McCoy for trafficking at a later date to protect the identity of the confidential informant.

Later in 2007, McCoy was indicted for one count of trafficking in cocaine. He was convicted of this count in a bench trial. McCoy asserts three assignments of error in his appeal.

In his first assignment of error, McCoy argues that the trial court erred in allowing evidence of McCoy’s prior “bad acts” to be admitted into evidence. Specifically, McCoy points to the testimony of the informant regarding how she had come to know McCoy. When asked by the prosecutor how she knew McCoy, the informant answered, “Because I used to smoke crack and I would buy crack off him.” The informant later answered affirmatively when asked if she knew the defendant because she had previously purchased crack cocaine from him.

Evid.R. 404(B) prevents evidence of other crimes, wrongs, or acts to prove the bad character of a person and to show conforming conduct. McCoy alleges that the informant’s testimony about previously purchasing crack cocaine from him was improper character evidence used to show that he had to be guilty in this particular instance as well.

McCoy's first assignment of error ultimately fails for two reasons. First, although Evid.R. 404(B) prevents the admissibility of evidence of prior bad acts, the rule goes on to say that such evidence is admissible for other purposes, such as identity. The record is clear that the informant was testifying as to how she knew McCoy. As we have previously noted, the informant only knew McCoy by his alias; she did not know McCoy's true name. The informant's testimony was used to establish how she knew from whom to purchase the crack cocaine, not for the purpose of proving McCoy's character through prior bad acts. Second, this was not a jury trial, but a trial to the bench. McCoy cannot show any harm suffered through the admission of this evidence. For these reasons, McCoy's first assignment of error is overruled.

McCoy's second assignment of error asserts that his conviction was not supported by sufficient evidence and was against the manifest weight of evidence. However, a review of the record indicates that the evidence appropriately supported a conviction in this case.

To determine the sufficiency of evidence, "the relevant inquiry on appeal is whether any reasonable trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt."² When examining the manifest weight of evidence, a reviewing court "review[s] 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 [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered."³

² *State v. Jenks* (1991), 61 Ohio St.3d 259, 273, 574 N.E.2d 492.

³ *State v. Thompkins* (1977), 78 Ohio St.3d 380, 387, 678 N.E.2d 541, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

From a complete review of the record, the following facts are clear: (1) police observed the drug transaction the entire time; (2) the informant was frisked beforehand to make sure she did not have any contraband; (3) after the transaction, the informant possessed .28 grams of crack cocaine; (4) the informant was frisked again after giving police the purchased crack cocaine; and (5) McCoy was pulled over minutes later driving the automobile in which the drug transaction had taken place. We cannot say that McCoy's conviction was not supported by sufficient evidence or was against the manifest weight of the evidence. Therefore, McCoy's second assignment of error is overruled.

In his final assignment of error, McCoy argues that it was error for the trial court not to inform him at the sentencing hearing that he could be subject to post-release control. After reviewing the record, we note that the trial court did fail to advise McCoy of the possibility of postrelease control. We also note, however, that McCoy was sentenced to six months' confinement. McCoy served the entire six months and was not given postrelease control. Therefore, any error committed by the trial court for failure to advise McCoy of postrelease control was not prejudiced. McCoy's third assignment of error is overruled.

Accordingly, we affirm the trial court's judgment.

A certified copy of this judgment entry is 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., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 4, 2009

per order of the Court _____
Presiding Judge