

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

STATE OF OHIO,	:	APPEAL NO. C-090104
Plaintiff-Appellee,	:	TRIAL NO. B-0804534-C
vs.	:	<i>JUDGMENT ENTRY.</i>
OVELLA JOHNSON,	:	
Defendant-Appellant.	:	

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

Following a jury trial, defendant-appellant Ovella Johnson was convicted of two counts of permitting drug abuse,² and she was sentenced to five years' community control. Johnson appeals from her conviction, arguing that it was against the weight and sufficiency of the evidence, and that she was denied the effective assistance of counsel at trial. We affirm.

After investigating codefendants Robert Forte and Dwaine Jones in June 2008, Cincinnati police officers executed a search warrant at Johnson's home. During the execution of the warrant, officers found heroin inside a bowl that had been sitting on Johnson's porch, and inside her home, officers found a digital scale, plastic baggies, heroin, crack cocaine, and a crack pipe.

Johnson was given her *Miranda* rights, and she told police that Forte was her cousin, that she did not know Jones, and that she knew Forte had sold drugs on her

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

² R.C. 2925.13(B).

property. She also told an officer that she had contemplated telling Forte to stop selling drugs, and that although she knew that he was selling drugs on her property, she had never allowed him to sell drugs inside her home.

Johnson initially argues that her convictions for permitting drug abuse were against the weight and sufficiency of the evidence.

When reviewing the sufficiency of the evidence to support a criminal conviction, we must examine the evidence admitted at trial in the light most favorable to the state. We must then determine whether that evidence could have convinced any rational trier of fact that the essential elements of the crime had been proved beyond a reasonable doubt.³

A review of the weight of the evidence puts the appellate court in the role of a “thirteenth juror.”⁴ We must review the entire record, weigh the evidence, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.⁵ A new trial should be granted only in exceptional cases, where the evidence weighs heavily against the conviction.⁶

The convictions for permitting drug abuse required the state to prove that Johnson had knowingly permitted her premises to be used for the commission of a felony drug-abuse offense. We are convinced that the state met its burden.

Johnson admitted that she knew that Forte had sold drugs outside her home. Johnson’s home and property were riddled with indicia of drug trafficking and abuse: heroin was found in a bowl on Johnson’s porch, and inside her home, police discovered a digital scale, packaging materials, crack cocaine, and other drug paraphernalia. The state produced ample evidence to support Johnson’s convictions, and her first assignment of error is overruled.

³ See *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

⁴ See *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

⁵ *Id.*, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211.

⁶ *Id.*

Johnson also contends that she was deprived of the effective assistance of trial counsel. Officer Michael Schneider testified that Johnson had told him that she had ingested cocaine three weeks earlier, and her trial counsel's failure to object to this testimony is the basis of her ineffective-assistance argument.

In making an ineffective-assistance claim, the defendant must show (1) that counsel's performance was deficient, and (2) that the deficiency prejudiced the defendant.⁷

Even if we were to assume that her trial counsel's failure to object to Schneider's testimony was deficient, Johnson cannot show that she was prejudiced because the other evidence overwhelmingly established that she had knowingly allowed drugs to be sold from her home. Johnson's ineffective-assistance claim is overruled.

Having overruled Johnson's assignments of error, we affirm the judgment of the trial court.

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.

CUNNINGHAM, P.J., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on January 27, 2010

per order of the Court _____
Presiding Judge

⁷ See *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052; *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraphs two and three of the syllabus.