

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

STATE OF OHIO,	:	APPEAL NO. C-170279
		TRIAL NO. B-1603819
Plaintiff-Appellee,	:	
		<i>JUDGMENT ENTRY.</i>
vs.	:	
EUGENE CLIFFORD,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Eugene Clifford appeals his convictions, following a jury trial, for trafficking in heroin, trafficking in cocaine, and having a weapon under a disability.

In his first assignment of error, Clifford argues the trial court committed structural error when it failed to administer an oath to the jury venire prior to the commencement of voir dire. We disagree.

The trial court's admitted failure before the start of voir dire to swear the venire to answer questions truthfully was not a constitutional defect subject to a structural-error analysis, but a statutory defect subject to plain-error review. *See State v. Conway*, 108 Ohio St.3d 214, 2006-Ohio-791, 842 N.E.2d 996, ¶ 52-55; *State v. Glaros*, 170 Ohio St. 471, 166 N.E.2d 379 (1960); *United States v. Wiman*, 875 F.3d 384, 386-387 (7th

Cir.2017). The record reflects, moreover, that when the matter was brought to the trial court's attention, the empaneled jury had already been sworn, and Clifford's counsel affirmatively waived any objection to the court's failure to swear the venire. Clifford, moreover, has not argued, nor does the record reflect, that any juror confusion or dishonesty resulted from the trial court's omission. As a result, we overrule his first assignment of error.

In his second assignment of error, Clifford challenges the weight and sufficiency of the evidence adduced to support his convictions.

When viewed in the light most favorable to the prosecution, testimony from the state's witnesses could have convinced a reasonable trier of fact beyond a reasonable doubt that Clifford had committed the offenses of trafficking in cocaine, trafficking in heroin, and having a weapon under a disability. *See State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

The state presented testimony that over a six-week period, police had installed a camera to monitor drug trafficking at a particular house. During this time, they watched Clifford lock and unlock the house with keys almost daily. Clifford entered and exited from the house and engaged in activities consistent with drug trafficking. Police observed Clifford engaging in transactions with persons who drove up to the house. Clifford would meet individuals in front of the home, walk to the side of the house out of view of the surveillance camera, and then return moments later with these individuals who would then leave the property. The day police executed a search warrant, they watched Clifford unlock the front door and enter the house. When they executed the warrant, Clifford was standing on the front porch with three other people. Clifford had keys to the house on his person along with \$4500 in small bills and a cell phone.

During their search of the house, police recovered a loaded revolver inside a window near the front door and a loaded rifle hanging on a basement wall. In a kitchen pantry, police recovered multiple-sized bags of heroin totaling 29 grams, a large and small bag of cocaine totaling 41 grams, a scale with heroin residue, a scale and Pyrex mixing bowl with cocaine residue, and a box of plastic sandwich baggies.

When interviewed by police, Clifford acknowledged that drugs were being sold from the house, but he denied any involvement, claiming instead that other individuals were responsible. Subsequent DNA testing, however, revealed Clifford's DNA on a knot on a smaller bag of cocaine that was located on a middle shelf in the pantry. Police testified the large amount of money found on Clifford's person in such small denominations was consistent with drug trafficking. This evidence was sufficient to permit the reasonable inference that Clifford had possessed the heroin and cocaine and it was being prepared for distribution. *See State v. Williams*, 1st Dist. Hamilton No. C-040747, 2005-Ohio-6772, ¶ 19; *State v. Hart*, 1st Dist. Hamilton No. C-060686, 2007-Ohio-5740, ¶ 15-18; *State v. Radford*, 2d Dist. Clark No. 2016-CA-80, 2017-Ohio-8189, ¶ 18-23.

With respect to the having-a-weapon-under-a-disability offense, Clifford stipulated to a prior drug-possession conviction that made it illegal for him to possess a firearm. Clifford argues the evidence failed to establish that he had possessed the two firearms in the house. The state produced sufficient circumstantial evidence that Clifford had constructively possessed both firearms. Clifford was seen multiple times over a six-week period using keys to enter the house. When police executed the search warrant, Clifford was standing on the front porch in close proximity to the loaded revolver, which was lying in a window near the front door. The loaded rifle was hanging on a bedroom wall in the basement. Clifford told police that all of his friend's

possessions were in the basement. Clifford's friend testified that he lived in the house, but he had been ill and had been hospitalized. He had given Clifford keys to the house several months earlier to help take care of the premises. He stated that he owned the rifle, but it was unloaded and inoperable, and that if another weapon had been found in the house it did not belong to him. The jury could reasonably conclude that Clifford had control of the house, came and went frequently, and knew of the firearms because they were kept in plain view. Based on this evidence, reasonable minds could find that Clifford had knowingly exercised dominion and control over the firearms, and he had constructively possessed them. *See State v. Finnell*, 1st Hamilton Nos. C-140547 and C-140548, 2015-Ohio-4842, ¶ 41-45; *State v. English*, 1st Dist. Hamilton No. C-080872, 2010-Ohio-1759, ¶ 30-35.

While Clifford's theory at trial was that he was working on vehicles on the premises, and he presented testimony from his friend who lived at the house, his mother, and two individuals who claimed to have paid Clifford \$3500 to repair their vehicles, the jury, as the trier of fact, was in the best position to judge these witnesses' credibility. *See State v. Antill*, 176 Ohio St. 61, 67, 197 N.E.2d 548 (1964). After reviewing the record, we cannot conclude that the jury lost its way and created a manifest miscarriage of justice by finding the testimony of the state's witnesses to be credible than the testimony of Clifford's witnesses, and convicting Clifford of the offenses. *See Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541. We, therefore, overrule his second assignment of error.

In his third assignment of error, Clifford argues the record does not support the sentence imposed by the trial court because it failed to make the findings necessary to impose consecutive sentences.

Under R.C. 2953.08(G)(2), “an appellate court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that the record does not support the trial court’s findings under relevant statutes or that the sentence is otherwise contrary to law.” *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1. In order to impose consecutive sentences, the trial court must make the findings required by R.C. 2929.14(C)(4) “at the sentencing hearing and incorporate its findings into its sentencing entry, but it has no obligation to state reasons to support its findings.” *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus. At the sentencing hearing, the trial court stated that it had considered all the mitigating evidence Clifford had presented. The trial court made the statutorily required findings to impose consecutive sentences both orally at the sentencing hearing and in the judgment entry of conviction. Clifford’s mere disagreement with the court’s findings does not establish that they are not supported by the record. We, therefore, overrule the third 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.

MYERS, P.J., MILLER AND DETERS, JJ.

To the clerk:

Enter upon the journal of the court on May 30, 2018

per order of the court _____
Presiding Judge