

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

STATE OF OHIO : **CASE NO. 2013 CR 00356**
Plaintiff :
vs. : **Judge McBride**
FELICIA ANN CLANCY : **DECISION/ENTRY**
Defendant :

Catherine Adams, assistant prosecuting attorney for the state of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103.

Christopher Feldhaus, assistant public defender for the defendant Felicia Ann Clancy, 10 South Third Street, Batavia, Ohio 45103.

This cause came before the court for trial on October 29, 2013. At the conclusion of the trial, the court took the issues raised at the trial under advisement.

Upon consideration of the record of the proceeding, the evidence presented for the court's consideration, the oral arguments of counsel, and the applicable law, the court now renders this written decision.

The defendant is charged in a one-count indictment with Theft of Drugs in violation of R.C. 2913.02(A)(1), a felony of the fourth degree.

FINDINGS OF FACT

On May 14, 2013, Howard Sipe was in his home located at 264 North Charity Street, Bethel, Clermont County, Ohio. Sipe suffers from several conditions including paranoid schizophrenia with anxiety and depression, Type I diabetes, and degenerative disk disease. He takes a number of medications on a daily basis including amitriptyline, clonazepam, and oxycodone.¹ He puts 10 of each of his pills in a seven-day pill organizer, which he keeps in a cabinet in his kitchen. The rest of his pills are hidden elsewhere in his home due to prior thefts.

Sometime around noon on May 14th, Sipe heard a knock at his door. He answered the door and encountered the defendant Felicia Clancy, who asked if she could use his bathroom. Sipe found the request strange but allowed Clancy to use his bathroom because she was pregnant. Sipe had met Clancy once before when she came to his home with a mutual friend Tracy Jones.

Sipe walked the defendant through the living room and kitchen to the bathroom. Clancy came out of the bathroom and Sipe asked her to sit on the couch when he heard another knock at the door. A woman whom Sipe did not recognize named Charity Cook, who is the defendant's cousin, was at the door and asked if she could use the bathroom.

After Cook went into the restroom, she opened the door slightly and asked Sipe for a bag because she stated she was undergoing menstruation. Sipe brought Cook the bag and when Cook exited the bathroom she walked quickly into a nearby room with a tanning bed.

¹ State's Exhibit 2.

Cook asked Sipe if she could use the tanning bed and he replied negatively. Cook moved quickly from one part of the house to another commenting on different aspects of the house, such as the molding. Cook eventually ended up in what Sipe referred to as a “seating room” where she looked carefully at a blue elephant statue. The kitchen area was not visible from this seating room.²

Sipe estimated that Charity Cook was in the house for approximately three minutes. When Cook and Sipe walked toward the front door, Sipe noticed the defendant sitting on the stairs which led to the upstairs portion of the home. The defendant and Cook then walked toward the front door, and as she was leaving, the defendant told Sipe “I wouldn’t rob you.”

Soon after the defendant and her cousin left the home, Sipe noticed a cabinet door standing open in his kitchen. Sipe went to look and could not find his seven-day medicine holder. Sipe at first started running after the car the defendant was in, and then returned to his home, locked the doors, got into his truck, and began to follow the car.

Sipe lost track of the car that the defendant was in after a red light separated them, so he drove directly to the Bethel police department.

Officer Shane Bininger was on duty at the Bethel police department at that time and he and a fellow officer interviewed Sipe. Officer Bininger testified that Sipe was extremely upset, agitated, emotionally distraught, and depressed. It took Sipe some time to calm down to be able to communicate effectively with the officers because he initially hyperventilated when he began to talk. Ultimately, Officer Bininger asked Sipe to provide him with a written statement about the incident and Sipe did so.

² State’s Exhibit 4.

LEGAL ANALYSIS

R.C. 2913.02(A)(1) states in pertinent part that “[n]o person, with purpose to deprive the owner of property * * * shall knowingly obtain or exert control over the property * * * [w]ithout the consent of the owner or person authorized to give consent.”

R.C. 2913.02(A)(6) provides that “[i]f the property stolen is any dangerous drug, a violation of this section is theft of drugs, a felony of the fourth degree * * *.”

A “dangerous drug” is defined in part as “[a]ny drug * * * which * * * [u]nder Chapter 3715. or 3719. of the Revised Code, the drug may be dispensed only upon a prescription.”³ A “controlled substance” is any drug included in schedule I, II, III, IV or V⁴, and Ohio statutory law classifies oxycodone as a Schedule II drug.⁵ “Because oxycodone is a controlled substance, a person must be statutorily authorized to be in possession of it.”⁶ Therefore, oxycodone is a dangerous drug.⁷

As made evident by the findings of fact set forth above, the court found the testimony given by Howard Sipe to be credible and reliable. While the court agrees with defense counsel that Sipe’s estimate that the defendant’s cousin was in his home for only three minutes is likely too short of an amount of time for what took place on that day, the court does not find that this impairs Sipe’s credibility. People often estimate lengths of time incorrectly and Sipe was extremely upset and agitated by this

³ R.C. 4729.01(F)(1)(b).

⁴ R.C. 3719.01(C).

⁵ R.C. 3719.41, Schedule II, (A)(1)(n).

⁶ *State v. Robinson* (May 31, 2002), 3rd Dist. No. 14-02-01, 2002-Ohio-2714, ¶ 35, citing, R.C. 3719.09.

⁷ *Id.*

experience, which could reasonably impact upon his perception of the amount of time this event took to transpire.

There were issues that were raised for which it would have been helpful if more evidence had been presented. An example would be with relation to the circumstances under which Tracy Jones first introduced the defendant to Sipe some months earlier. Since Tracy Jones was a friend to both of the parties, and the defendant alleged that she provided sex in return for drugs to Sipe, which was flatly denied by Sipe, it would have been helpful to have heard from her.

However, while there were unanswered questions, which is not unusual in any trial, the court does not find that the defendant's testimony that she traded Sipe sex for drugs to be credible or reliable.

Meanwhile, the court finds that Sipe's testimony was credible. The level of detail provided by Sipe with respect to his encounter with the two defendants seemed to be consistent with someone who was recalling what occurred and describing it to the best of his ability. The most significant fact seems to be that the defendant's explanation for why he became so upset after the defendant left his house, and why he followed her car and immediately went to the police, seems to be much more plausible than the explanation provided by the defendant.

While there are issues for which the court would have liked to have heard more, none of these issues have served to create a reasonable doubt in the court's mind as to the defendant's guilt in this case. As such, the court finds that the state has proven beyond a reasonable doubt that the defendant knowingly took Sipe's medicine holder, which held multiple medications including oxycodone, a dangerous drug, from his home

on May 14, 2013, with the purpose to deprive Sipe of these medications. The court further finds that the defendant took these medications without the permission of Howard Sipe.

CONCLUSION

The court finds that the state has proven beyond a reasonable doubt the defendant's guilt to the charge of Theft of Drugs in violation of R.C. 2913.02(A)(1), a felony of the fourth degree.

The Probation Department is hereby ordered to complete a presentence investigation and to submit to the court a presentence report. The sentencing in the case will be held on December 9, 2013 at 8:30 a.m.

IT IS SO ORDERED.

DATED: _____

Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile/E-Mail/Regular U.S. Mail this 20th day of November 2013 to all counsel of record and unrepresented parties.

Administrative Assistant to Judge McBride