[Cite as *State v. Reed*, 2009-Ohio-6900.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 09AP-84
v.	:	(C.P.C. No. 07CR10-7261)
John A. Reed,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 29, 2009

Ron O'Brien, Prosecuting Attorney, and *Sheryl L. Prichard*, for appellee.

Jana DeLoach, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, John A. Reed, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. For the following reasons, we affirm that judgment.

{¶2} On April 16, 2007, appellant picked up Lesslie Harris at her house to drive her to a wedding. On the way to the wedding, appellant and Harris stopped to eat some food and to get some money from Harris' nephew. Harris drove appellant's car as they left her nephew's house. Shortly thereafter, Officers Andrew Ward and Veronica Logsdon of the Columbus Police Department stopped Harris for failing to stop at a stop sign and for not using a turn signal. When the officers discovered that Harris did not have a valid

drivers license and that appellant had an outstanding arrest warrant, they arrested them and placed them in the back of their police car.

{¶3} Because neither appellant nor Harris could drive the car away, the officers impounded appellant's car. Ward performed an inventory search of the car. Ward found a white shopping bag inside the car's trunk that contained a pair of woman's boots and some Chinese food. Ward found a large quantity (163.06 grams) of crack cocaine inside one of the boots. The officers also searched appellant and found $900 cash.

{¶4} As a result, a Franklin County Grand Jury indicted appellant and Harris with one count of possession of cocaine in violation of R.C. 2925.11. The count also contained a major drug offender designation pursuant to R.C. 2941.1410. Appellant entered a not guilty plea and proceeded to a jury trial. At trial, Ward and Logdson testified to the version of events previously described. Harris testified that she did not know there was crack cocaine in the trunk of appellant's car. She further testified that when appellant and Harris were in the police car together, appellant asked her to tell the police that the crack cocaine was hers.

{¶5} The jury found appellant guilty as charged, and the trial court sentenced him accordingly. Appellant appeals and assigns the following errors:

> [I]. THE TRIAL COURT ERRED IN NOT GRANTING THE APPELLANT'S RULE 29 MOTION FOR ACQUITTAL BECAUSE THERE WAS INSUFFICIENT EVIDENCE PRESENTED BY THE APPELLEE TO CONVICT SAID APPELLANT OF POSSESSION OF COCAINE A MAJOR DRUG OFFENDER SPECIFICATION. IN ADDITION, THE APPELLANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.
>
> [II]. THE TRIAL COURT ERRED IN NOT PERMITTING THE APPELLANT TO CROSS EXAMINE THE TESTFYING CO-DEFENDANT ON THE ISSUE OF WHAT SENTENCE SHE FACED IF SHE WAS FOUND GUILTY OF A FIRST-

DEGREE FELONY OF POSSESSION OF COCAINE AND A MAJOR DRUG OFFENDER SPECIFICATION.

{¶6} We address appellant's assignments of error in reverse order. Appellant contends in his second assignment of error that the trial court improperly limited his cross-examination of Harris. He claims that the trial court's limitation prevented his trial counsel from establishing Harris' motive to lie, thereby denying him his right to confront witnesses. We disagree.

{¶7} The Sixth Amendment's right to confront witnesses guarantees a criminal defendant the right to cross-examine witnesses. *City v. Miller* (Sept. 12, 1989), 10th Dist. No. 89AP-111. A criminal defendant's right to confront and cross-examine a witness is not unlimited. *State v. Albanese*, 11th Dist. No. 2005-P-0054, 2006-Ohio-4819, ¶56 (citing *Delaware v. Van Arsdall* (1986), 475 U.S. 673, 679, 106 S.Ct. 1431, 1435). The extent of cross-examination with respect to an appropriate subject of inquiry is within the sound discretion of the trial court. *State v. Green* (1993), 66 Ohio St.3d 141, 47 (quoting *Alford v. United States* (1931), 282 U.S. 687, 691, 51 S.Ct. 218, 219). A trial court has considerable discretion to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant. *State v. Treesh*, 90 Ohio St.3d 460, 480, 2001-Ohio-4 (citing *Van Arsdall*); *State v. Kish*, 9th Dist. No. 02CA008146, 2003-Ohio-2426, ¶12. A trial court's limitation on cross-examination will not be disturbed in the absence of an abuse of discretion. Id. An abuse of discretion means more than an error of judgment; it implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶8} Appellant's trial counsel questioned Harris extensively about her cooperation with the state in this matter. Harris testified that she was charged with the same offenses as appellant and that the charges against her were still pending at the time of appellant's trial. Appellant's trial counsel repeatedly asked Harris if her testimony was an attempt to "look good" and to get a break on her own case. Harris admitted that she wanted to cooperate and that she wanted a break on her own case. Nevertheless, Harris testified that she had not been promised anything and that she did not know what would happen with her own case.

{¶9} Appellant contends that the trial court should have allowed his trial counsel to question Harris about the potential penalties she faced if convicted of the charges pending against her. Appellant argues the trial court improperly restricted his counsel's ability to emphasize Harris' motive to lie. We note, however, that Harris twice admitted on cross-examination that she faced a potential lengthy prison sentence in her case. See *City v. Bishop*, 10th Dist. No. 08AP-300, 2008-Ohio-6964, ¶20 (no error excluding certain testimony where subject matter of excluded testimony was admitted as evidence in another way). First, trial counsel asked her "you know that if you get convicted of what you're charged with, it's a mandatory ten years in prison, do you not?" Harris replied "Exactly." (Tr. 47.) Although the trial court sustained an objection to the question, the prosecutor did not move to strike the answer. Nor did the trial court instruct the jury to disregard Harris' answer. Later, when asked if she wanted a break on her case, Harris replied "I don’t want to go to jail for ten years." (Tr. 53.) Thus, the jury was aware that Harris faced a potential lengthy prison sentence, notwithstanding the trial court's purported limitation. Therefore, the jury considered that testimony in judging Harris' credibility.

{¶10} Although a defendant is entitled an opportunity to establish a witness' motive to lie, a trial court may limit cumulative cross-examination if the defendant has already elicited the testimony demonstrating that potential motive. *State v. Gonzales*, 151 Ohio App.3d 160, 2002-Ohio-4937, ¶45 (citing *United States v. Nelson* (C.A.7, 1994), 39 F.3d 705, 708). A defendant does not have an unlimited right to emphasize that motive. Id.; *Nelson* at 708 (once cross-examination reveals motive to lie, "it is of peripheral concern to the Sixth Amendment how much opportunity defense counsel gets to hammer that point home to the jury").

{¶11} Here, appellant's trial counsel questioned Harris extensively about her cooperation with the state and her desire to "look good" in order to receive a reduced sentence in her case. That questioning adequately established Harris' motive to lie. Id. (cross-examination adequate where jury had sufficient information to make a discriminating appraisal of the witness' motives and bias). The trial court did not abuse its discretion by limiting trial counsel's attempt to further hammer home Harris' motive by questioning her in greater detail about the possible penalties she faced, especially in light of the fact that appellant was charged with the same offenses. See *State v. Gresham*, 8th Dist. No. 81250, 2003-Ohio-744, ¶10 (no error refusing to allow cross-examination of testifying co-defendant about potential penalties where penalties were the same as defendant's and would improperly inform jury of possible sentence). Cf. *Gonzales* at ¶48 (noting that federal cases have held that it is not an abuse of discretion to limit inquiry into potential sentences faced by a cooperating witness).

{¶12} For these reasons, we overrule appellant's second assignment of error.

{¶13} Appellant contends in his first assignment of error that his conviction is not supported by sufficient evidence and is against the manifest weight of the evidence. We disagree.

{¶14} The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different. *State v. Thompkins* (1997), 78 Ohio St.3d 380, paragraph two of the syllabus. Therefore, we will separately discuss appellant's sufficiency of the evidence and weight of the evidence arguments.

{¶15} The Supreme Court of Ohio delineated the role of an appellate court presented with a sufficiency of the evidence argument in *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus:

> An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. * * *

{¶16} Whether the evidence is legally sufficient is a question of law, not fact. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. Indeed, in determining the sufficiency of the evidence, an appellate court must give "full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 2789. Consequently, the weight of the evidence and the credibility of the witnesses are issues primarily determined by the trier of fact. *State v. Yarbrough,* 95 Ohio St.3d 227, 2002-Ohio-2126, ¶79; *State v. Thomas* (1982), 70 Ohio St.2d 79, 80. A verdict will not be disturbed unless, after viewing the evidence in the light

most favorable to the prosecution, it is apparent that reasonable minds could not reach the conclusion reached by the trier of fact. *Treesh* at 484; *Jenks* at 273.

{¶17} In order to convict appellant of possession of cocaine, the state had to prove beyond a reasonable doubt that appellant knowingly possessed cocaine. R.C. 2925.11(A). Appellant claims the state failed to present sufficient evidence to prove that he knowingly possessed crack cocaine. We disagree.

{¶18} "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist." R.C. 2901.22(B). " '[P]ossession' means having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found." R.C. 2925.01(K).

{¶19} Possession of a controlled substance may be actual or constructive. *State v. Burnett*, 10th Dist. No. 02AP-863, 2003-Ohio-1787, ¶19 (citing *State v. Mann* (1993), 93 Ohio App.3d 301, 308). A person has actual possession of an item when it is within his immediate physical control. Id. (citing *State v. Messer* (1995), 107 Ohio App.3d 51, 56). Constructive possession exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within his immediate physical possession. *State v. Pilgrim*, 10th Dist. No. 08AP-993, 2009-Ohio-5357, ¶27 (citing *State v. Hankerson* (1982), 70 Ohio St.2d 87, syllabus). A finding of constructive possession encompasses a finding that the defendant knowingly possessed the controlled substance. *State v. Alexander*, 8th Dist. No. 90509, 2009-Ohio-597, ¶24. In

the instant case, because the crack cocaine was not found on appellant's person, the state was required to establish that appellant constructively possessed it.

{¶20} Circumstantial evidence alone may be sufficient to support the element of constructive possession. *Jenks* at 272-73; *Alexander* at ¶25. Absent a defendant's admission, the surrounding facts and circumstances, including the defendant's actions, constitute evidence from which the trier of fact can infer whether the defendant had constructive possession over the subject drugs. *State v. Norman*, 10th Dist. No. 03AP-298, 2003-Ohio-7038, ¶31; *State v. Baker,* 10th Dist. No. 02AP-627, 2003-Ohio-633, ¶23. The mere presence of an individual in the vicinity of illegal drugs is insufficient to establish the element of possession, but if the evidence demonstrates that the individual was able to exercise dominion or control over the drugs, he or she can be convicted of possession. *State v. Wyche,* 10th Dist. No. 05AP-649, 2006-Ohio-1531, ¶18; *Burnett* at ¶20.

{¶21} Viewed in a light most favorable to the state, the state presented sufficient evidence for reasonable minds to find that appellant constructively possessed the crack cocaine in the truck of the car. Although there was conflicting evidence regarding whether appellant owned the car or rented the car, it was undisputed that appellant drove to Harris' house to pick her up. It was also undisputed that appellant was a passenger in the car when it was stopped. When a person is the driver or a passenger in a car in which drugs are within easy access, a trier of fact may find constructive possession. *State v. Fry*, 4th Dist. No. 03CA26, 2004-Ohio-5747, ¶41 (citing *State v. Morehouse* (Oct. 19, 1989), 8th Dist. No. 56031) (driver found in constructive possession); *State v. Brittman* (Feb. 10, 1994), 10th Dist. No. 93AP-1005 (passenger in car knowingly possessed drugs found in car); *State v. Kelly* (Mar. 25, 1998), 9th Dist. No. 2670-M (defendant, who was passenger of car, knowingly possessed drugs found in trunk).

{¶22} Additionally, Harris denied knowing there was crack cocaine in the trunk and denied owning the woman's boots found in the trunk. She further testified that appellant asked her to tell the police that the drugs were hers and that he had nothing to do with it. Finally, there was a large amount of crack cocaine in the car's trunk. The greater the amount of illegal drugs involved, the greater the likelihood that the defendant knew the drugs were present. *State v. Barbee*, 9th Dist. No. 07CA009183, 2008-Ohio-3587, ¶28. This is strong evidence that appellant knew the crack cocaine was in the trunk of the car.[1]

{¶23} Viewing the totality of the evidence in a light most favorable to the state, the evidence is sufficient for reasonable minds to conclude that appellant knowingly possessed the crack cocaine found in the truck of his owned or rented vehicle. Accordingly, appellant's conviction is supported by sufficient evidence.

{¶24} Appellant's manifest weight of the evidence claim requires a different review. The weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *State v. Brindley,* 10th Dist. No. 01AP-926, 2002-Ohio-2425, ¶16. When presented with a challenge to the manifest weight of the evidence, an appellate court, after " 'reviewing 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.' " *Thompkins* at 387 (quoting

[1] To the extent that appellant implies that Harris possessed the drugs, we note that objects such as drugs may be jointly possessed, when two or more persons have the ability to control an object, exclusive of others. *State v. Fletcher*, 9th Dist. No. 23171, 2007-Ohio-146, ¶20; *State v. Callender* (Jan. 20, 1998), 10th Dist. No. 97APA03-391; *In re Farr* (Nov. 9, 1993), 10th Dist. No. 93AP-201.

Statev. Martin (1983), 20 Ohio App.3d 172, 175). An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " Id.

{¶25} A defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial. *State v. Raver,* 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶21. The trier of fact is free to believe or disbelieve all or any of the testimony. *State v. Jackson* (Mar. 19, 2002), 10th Dist. No. 01AP-973; *State v. Sheppard* (Oct. 12, 2001), 1st Dist. No. C-000553. The trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimony is credible. *State v. Williams,* 10th Dist. No. 02AP-35, 2002-Ohio-4503, ¶58; *State v. Clarke* (Sept. 25, 2001), 10th Dist. No. 01AP-194. Consequently, an appellate court must ordinarily give great deference to the fact finder's determination of the witnesses' credibility. *State v. Covington,* 10th Dist. No. 02AP-245, 2002-Ohio-7037, ¶28; *State v. Hairston,* 10th Dist. No. 01AP-1393, 2002-Ohio-4491, ¶74.

{¶26} Appellant argues that his conviction is against the manifest weight of the evidence because Harris' testimony was not credible given the long prison sentence she faced for the same offense. We disagree. The jury was aware that Harris was charged with the same offense as appellant and that she potentially faced a long prison term. The jury was also aware that Harris sought a break on her own case and wanted to "look good" in her testimony. Nevertheless, the jury apparently found her testimony credible. That determination is within the province of the jury. The jury is in the best position to determine credibility. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the

syllabus; *State v. Thompson*, 10th Dist. No. 08AP-22, 2008-Ohio-4551, ¶21; *State v. McLean*, 10th Dist. No. 04AP-527, 2005-Ohio-3274, ¶34.

{¶27} The jury did not lose its way so as to create a manifest miscarriage of justice. Accordingly, appellant's conviction is not against the manifest weight of the evidence.

{¶28} Appellant's conviction is supported by sufficient evidence and is not against the manifest weight of the evidence. Therefore, we overrule appellant's first assignment of error.

{¶29} Having overruled appellant's two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

McGRATH and TYACK, JJ., concur.