[Cite as *State v. Bland,* 2010-Ohio-5874.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-327 (C.P.C. No. 09CR-03-1967)
Dominic N. Bland,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 2, 2010

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

Eric J. Allen, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶1} Defendant-appellant, Dominic N. Bland, appeals from a judgment of the Franklin County Court of Common Pleas finding him guilty, pursuant to jury verdict, of one count of possession of cocaine, a felony of the third degree. Because sufficient evidence and the manifest weight of the evidence support the trial court's judgment, we affirm.

I. Facts and Procedural History

{¶2} In an indictment filed March 31, 2009, the state charged defendant with one count of violating R.C. 2925.11 through possession of cocaine in an amount equal to or

exceeding five grams but less than 10 grams, a felony of the third degree. Defendant entered a plea of not guilty.

{¶3} According to the state's evidence presented at a trial commencing February 2, 2010, Officers Steven Dyer and Kevin George, Columbus Division of Police, were working as patrol officers on August 27, 2008. In the course of their routine patrol, they saw defendant at the intersection of Lockbourne and Marion Road, sitting in the driver's seat of a parked car with both windows down. Dyer found that scene to be "odd" due to the rainy conditions of the day, so they decided to pull the patrol car next to defendant's car. (Trial Tr. 11.)

{¶4} When Dyer exited the patrol car, he "walked over to [defendant's] window, and in plain view [he] saw a bag of marijuana sitting on [defendant's] lap." (Tr. 14.) After confiscating the marijuana, Dyer asked defendant to step out of the car and put his hands behind his back. As Dyer started to conduct a pat-down search of defendant, defendant "wiggled out" of Dyer's grip, "elbowed" Dyer in the lip, and "took off running southbound." (Tr. 16.) Dyer ran after defendant on foot while George pursued defendant in the patrol car.

{¶5} Although Dyer lost sight of defendant for "eight to ten seconds" during the chase, he located defendant hiding behind a commercial-grade dumpster. (Tr. 39.) George, with his service weapon pointed at defendant, was instructing defendant to get on the ground. The other garbage dumpsters in the area, approximately six feet high with two lids that flip open on the top, were closed and had trash inside of them, but the one defendant was hiding behind had one of the lids open.

{¶6} According to George, he caught up to defendant behind the dumpsters, and defendant "looked nervous." (Tr. 57.) George indicated he found a bag of crack cocaine inside one of the dumpsters that was "completely empty except for that bag of cocaine and some water" from the day's rain. (Tr. 29.) George immediately identified the bag as containing crack cocaine based on his experience of making "tons of arrests for crack cocaine." (Tr. 61.) He picked up the bag containing the cocaine and observed the top of the bag "was dry and the bottom baggie was wet from where it had been in the puddle." (Tr. 63.) George did not see anyone else in the vicinity of the dumpster during that time. Neither officer saw defendant in physical possession of the bag of cocaine or saw defendant throw the bag of cocaine into the dumpster.

{¶7} Dyer handcuffed defendant, searched defendant's person, found $273 and two cellular telephones in defendant's pockets, and placed him in the patrol car; a third cellular telephone later was found in defendant's car during a routine inventory of the vehicle. A subsequent laboratory analysis confirmed the substance found inside the dumpster to be 7.79 grams of crack cocaine. During an interview, defendant told George he ran from the officers that day because he believed they would discover an outstanding warrant for his arrest stemming from delinquent child support payments.

{¶8} Defendant called no witnesses. Following deliberations, the jury returned a guilty verdict on one count of possession of cocaine. At a sentencing hearing held March 30, 2010, the trial court sentenced defendant to two years in prison and journalized its decision in a March 31, 2010 judgment entry.

II. Assignments of Error

{¶9} Defendant timely appeals, assigning the following errors:

Assignment of Error Number One

THE CONVICTION FOR POSSESSION OF COCAINE WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE

Assignment of Error Number Two

THE CONVICTION FOR POSSESSION OF COCAINE IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE

III. First Assignment of Error – Sufficiency of the Evidence

{¶10} Defendant's first assignment of error contends sufficient evidence does not support the trial court's judgment.

{¶11} Whether the evidence is legally sufficient to sustain a verdict is a question of law. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. Sufficiency is a test of adequacy. Id. We construe the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; *State v. Conley* (Dec. 16, 1993), 10th Dist. No. 93AP-387.

{¶12} In order to convict defendant of possession of cocaine, the state was required to prove beyond a reasonable doubt that defendant knowingly possessed cocaine in the specified amount. R.C. 2925.11(A); *State v. Reed*, 10th Dist. No. 09AP-84, 2009-Ohio-6900, ¶17. "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).

{¶13} Possession of a controlled substance may be actual or constructive. *State v. Saunders*, 10th Dist. No. 06AP-1234, 2007-Ohio-4450, ¶10, citing *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.; *State v. Norman*, 10th Dist. No. 03AP-298, 2003-Ohio-7038, ¶29; *State v. Messer* (1995), 107 Ohio App.3d 51, 56. Constructive possession exists when a person knowingly exercises dominion or control over an object, even though the object may not be within the person's immediate physical possession. *State v. Hankerson* (1982), 70 Ohio St.2d 87, syllabus; *Saunders* at ¶11, citing *State v. Wyche*, 10th Dist. No. 05AP-649, 2006-Ohio-1531, ¶18, and *State v. Chandler* (Aug. 9, 1994), 10th Dist. No. 94APA02-172. Because the cocaine here was not found on defendant's person, the state was required to prove defendant constructively possessed it.

{¶14} Circumstantial evidence alone may be sufficient to support the element of constructive possession. *Jenks* at 272-73. Absent a defendant's admission, the surrounding facts and circumstances, including 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. Stanley*, 10th Dist. No. 06AP-323, 2007-Ohio-2786, ¶31; *Norman* at ¶31; *State v. Baker*, 10th Dist. No. 02AP-627, 2003-Ohio-633, ¶23.

{¶15} "Although inferences cannot be built upon inferences, several conclusions may be drawn from the same set of facts." *State v. Grant* (1993), 67 Ohio St.3d 465, 478, citing *Hurt v. Charles J. Rogers Transp. Co.* (1955), 164 Ohio St. 329, paragraph three of

the syllabus. "And it is equally proper that a series of facts or circumstances may be used as the basis for ultimate findings or inferences." *Hurt* at 334. "Because reasonable inferences drawn from the evidence are an essential element of the deductive reasoning process by which most successful claims are proven, the rule against stacking inferences must be strictly limited to inferences drawn exclusively from other inferences." *State v. Evans* (Dec. 27, 2001), 10th Dist. No. 01AP-594, quoting *Donaldson v. N. Trading Co.* (1992), 82 Ohio App.3d 476, 481. See also *Motorists Mut. Ins. Co. v. Hamilton Twp. Trustees* (1986), 28 Ohio St.3d 13, 17 (remarking on the rule's "dangerous potential for subverting the fact-finding process and invading the sacred province of the jury").

{¶16} Defendant does not dispute that the substance recovered from the dumpster was cocaine. Rather, defendant argues insufficient evidence establishes he knowingly possessed the cocaine. When viewed in a light most favorable to the prosecution, the evidence presented at trial was legally sufficient to prove defendant's constructive possession of the bag of cocaine found in the dumpster.

{¶17} When Officer Dyer began to conduct a pat-down search of defendant's person, defendant broke free from the officer's grasp and fled. See *State v. Williams*, 79 Ohio St.3d 1, 11, 1997-Ohio-407 (stating " '[i]t is today universally conceded that the fact of an accused's flight, escape from custody, resistance to arrest * * * and related conduct, are admissible as evidence of consciousness of guilt, and thus of guilt itself' "), quoting *State v. Eaton* (1969), 19 Ohio St.2d 145, 160, vacated on other grounds (1972), 408 U.S. 935, 92 S.Ct. 2857. See also *State v. Shepard*, 10th Dist. No. 07AP-223, 2007-Ohio-5405, ¶8. When the officers eventually caught defendant, he was found hiding behind the dumpster in which the cocaine was discovered. See *State v. Pilgrim*, 184 Ohio App.3d

675, 2009-Ohio-5357, ¶29 (concluding sufficient evidence established constructive possession where officers found the cocaine in the location where defendant was standing when police arrived on the scene). Dyer lost sight of defendant for eight to ten seconds, or enough time for defendant to throw the bag of cocaine into the dumpster.

{¶18} Although defendant notes no testimony indicated the officers heard defendant open the lid of the dumpster, Officer George testified rainwater was in the bottom of the dumpster, indicating the dumpster was open when defendant arrived. Further, the bag of cocaine was mostly dry, suggesting it was not inside the dumpster in the rainy conditions for very long. Not only was no one else in the vicinity of the dumpsters during that time, but defendant displayed nervous behavior when George instructed him to come out from behind the dumpster. With that evidence, the jury could reasonably find from inferences drawn from the individual pieces of evidence, not from impermissibly stacking inferences, that defendant threw the drugs in the open dumpster in order to prevent police from detecting them.

{¶19} Because sufficient evidence supports defendant's conviction for constructive possession of cocaine in an amount exceeding five grams but less than ten grams, we overrule defendant's first assignment of error.

IV. Second Assignment of Error – Manifest Weight of the Evidence

{¶20} Defendant's second assignment of error asserts the manifest weight of the evidence does not support the trial court's judgment.

{¶21} When presented with a manifest weight argument, we engage in a limited weighing of the evidence to determine whether sufficient competent, credible evidence supports the jury's verdict to permit reasonable minds to find guilt beyond a reasonable

doubt. *Conley*, supra; *Thompkins* at 387 (noting that "[w]hen a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as 'thirteenth juror' and disagrees with the factfinder's resolution of the conflicting testimony"). Determinations of credibility and weight of the testimony remain within the province of the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. The jury thus may take note of the inconsistencies and resolve them accordingly, "believ[ing] all, part or none of a witness's testimony." *State v. Raver*, 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶21, citing State v. Antill (1964), 176 Ohio St. 61, 67.

{¶22} Defendant does not contend the jury lost its way in resolving any credibility issues of the witnesses. Rather, defendant argues no reasonable jury could have concluded the bag containing the cocaine was in close enough proximity to defendant to permit the conclusion defendant constructively possessed the cocaine. Our resolution of defendant's first assignment of error regarding the sufficiency of the evidence resolves defendant's argument. Contrary to his contention, the jury logically could conclude defendant threw the bag of cocaine into an open dumpster during his flight from police, especially where defendant was nervous, defendant was the only person in the vicinity, and the bag was mostly dry despite the rainy conditions. See, e.g., *Pilgrim* at ¶35 (addressing and rejecting defendant's argument that jury's verdict defies logic and concluding ample evidence allowed the jury to reach the conclusion defendant discarded cocaine behind some bushes).

{¶23} Accordingly, the manifest weight of the evidence supports defendant's conviction. We thus overrule defendant's second assignment of error.

V. Disposition

{¶24} Based on the foregoing, both sufficient evidence and the manifest weight of the evidence support defendant's conviction for possession of cocaine. Having overruled defendant's two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK, P.J., and FRENCH, J., concur.

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