

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO,	:	
	:	CASE NO. CA2014-09-180
Plaintiff-Appellee,	:	
	:	<u>OPINION</u>
	:	5/26/2015
- VS -	:	
	:	
MARRIO WILLIAMS,	:	
	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2014-05-0745

Michael T. Gmoser, Butler County Prosecuting Attorney, Lina N. Alkamdawi, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

Fred S. Miller, Baden & Jones Building, 246 High Street, Hamilton, Ohio 45011, for defendant-appellant

M. POWELL, J.

{¶ 1} Defendant-appellant, Marrio Williams, appeals his conviction in the Butler County Court of Common Pleas for drug trafficking and possession of drugs.

{¶ 2} Appellant was indicted in June 2014 on two counts of trafficking in cocaine, one count of trafficking in heroin, and one count of possession of cocaine. One of the cocaine

trafficking counts was accompanied by a forfeiture specification of \$340.¹ A jury trial held on September 4, 2014, revealed the following facts.

{¶ 3} The events that formed the basis of the charges against appellant took place on April 21, 2014, in and near a house on Linden Avenue in Middletown, Ohio.

{¶ 4} Police Officer James Wilcox testified that prior to April 21, 2014, the police "made controlled purchases of crack cocaine from Mr. Williams at [the] Linden Avenue [residence] over a period of time." On April 21, 2014, Officer Wilcox was conducting an undercover surveillance of the Linden Avenue residence when he observed appellant park a car in front of the house, walk up to the front door, and use a key to enter the house. Two or three minutes later, as a man later identified as Jason Thompson walked past the officer and into a nearby park, Officer Wilcox observed appellant leave the house and meet Thompson in an alley across the street, directly in front of the house. Officer Wilcox observed the two men engage in a hand-to-hand drug transaction.

{¶ 5} At the request of Officer Wilcox, two nearby uniformed police officers apprehended appellant and Thompson. Appellant had \$340 on his person; Thompson had a small piece of crack cocaine and a capsule of heroin on his person. Subsequently, Officer Wilcox approached the house where he observed Linda Davis "peering out the front door" at appellant and the uniformed officers. After Davis stepped outside and away from the front door of the house, Officer Wilcox advised her he was a police officer and that he had a search warrant for the house.² Asked whether there was anyone else in the house, Davis

1. The other three counts were also each accompanied by a forfeiture specification of \$100. However, these specifications were dismissed by the state at the close of the evidence.

2. Officer Wilcox testified the search warrant was obtained following the controlled purchases of crack cocaine from appellant at the Linden Avenue residence. The officer also testified his April 21, 2014 undercover surveillance of the house was based upon information that the doors to the house were barricaded and that there were weapons in the house. No weapons were found during the search. However, a photograph of the front door shows it was barricaded. A police officer explained that drug dealers typically "put a two by four [barricade] on the backside of [a] door" to prevent individuals from getting into the residence and to reinforce the door in the

told the officer that appellant's nine-year-old daughter was upstairs in a bedroom. Indeed, appellant's daughter was found upstairs in a bedroom.

{¶ 6} Inside the Linden Avenue residence, the police found a white sock containing six individual baggies of crack cocaine. The largest baggy contained 30.15 grams of crack cocaine. The street value of the crack cocaine found in the sock was about \$3,000. The sock was found on the floor in the "family, living room area," "which was the first area in the house from the main door," between a coffee table and a couch. Officer Wilcox testified that his investigation revealed no evidence that the crack cocaine found in the house was trafficked by "anyone besides [appellant]."

{¶ 7} Upstairs, the police found men's and women's clothing in the master bedroom. The men's clothing was located in a dresser, a closet, and a hamper. According to one of the police officers testifying on behalf of the state, men's "basketball type shorts *** appeared to have just been washed or cleaned." Photographs taken by the police during the search show children's toys in a bedroom and three toothbrushes in the bathroom. The police also found a receipt in the house from September 2013 bearing appellant's name.

{¶ 8} On September 4, 2014, the jury found appellant guilty as charged. On September 8, 2014, the trial court sentenced appellant to an aggregate prison term of ten years, imposed a mandatory fine of \$10,000, and ordered the forfeiture of the \$340 in cash found on appellant's person.

{¶ 9} Appellant appeals, raising one assignment of error:

{¶ 10} THERE WAS INSUFFICIENT EVIDENCE TO JUSTIFY A CONVICTION FOR TRAFFICKING IN COCAINE AND POSSESSION OF COCAINE.

{¶ 11} Appellant argues his convictions for trafficking in cocaine and possession of

cocaine, which were based on the crack cocaine found in the house, are not supported by sufficient evidence because the state failed to prove he lived in the house and thus, failed to prove he either controlled or possessed the drugs. Appellant asserts the evidence at trial only shows he was "a person who was in and out of a home where drugs were found."

{¶ 12} When reviewing the sufficiency of the evidence underlying a criminal conviction, an appellate court examines the evidence in order to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Brown*, 12th Dist. Butler No. CA2013-03-043, 2014-Ohio-1317, ¶14. Therefore, "[t]he 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." *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. The appellate court is not to assess "whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction." *State v. Thompkins*, 78 Ohio St.3d 380, 390 (1997).

{¶ 13} Appellant was convicted of drug trafficking in violation of R.C. 2925.03(A)(2), which provides that "[n]o person shall knowingly prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance * * * when the offender knows or has reasonable cause to believe that the controlled substance * * * is intended for sale or resale by the offender or another person." Appellant was also convicted of drug possession in violation of R.C. 2925.11, which provides that "[n]o person shall knowingly obtain, possess, or use a controlled substance[.]" Both offenses required the state to prove "possession" as an element of the crime.

{¶ 14} Possession 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). A person

may be in actual or constructive possession of a substance. *Brown*, 2014-Ohio-1317 at ¶ 17. "An accused has 'constructive possession' of an item when the accused is conscious of the item's presence and is able to exercise dominion and control over it, even if the item is not within the accused's immediate physical possession." *State v. Jester*, 12th Dist. Butler No. CA2010-10-264, 2012-Ohio-544, ¶ 25. A person may knowingly possess or control property belonging to another; the state need not establish ownership to prove constructive possession. *Brown* at ¶ 17; *State v. Alexander*, 8th Dist. Cuyahoga No. 90509, 2009-Ohio-597, ¶ 24.

{¶ 15} Constructive possession may be proven by circumstantial evidence alone. *State v. Blair*, 12th Dist. Butler No. CA2014-01-023, 2015-Ohio-818, ¶ 45. Absent a defendant's admission, the surrounding facts and circumstances, including the defendant's actions, are evidence that the trier of fact can consider in determining whether the defendant had constructive possession. *State v. Stradford*, 8th Dist. Cuyahoga No. 95116, 2011-Ohio-1566, ¶ 16. The discovery of readily accessible drugs in close proximity to the accused constitutes circumstantial evidence that the accused was in constructive possession of the drugs. *Jester* at ¶ 25. "Inherent in a finding of constructive possession is that the defendant was conscious of the [drugs] and therefore had knowledge of [them]." *Alexander* at ¶ 24.

{¶ 16} Upon reviewing the record, we find that appellant's constructive possession of the crack cocaine found in the house was sufficiently established by circumstantial evidence, and therefore, his convictions for cocaine trafficking and cocaine possession are supported by sufficient evidence.

{¶ 17} Testimony at trial indicates that the Linden Avenue residence was owned by a person other than Davis or appellant, and that Davis likely rented the house. When asked on cross-examination whether they were aware appellant "actually lived" on a different street in Middletown, two of the state's witnesses replied, "No, sir." However, an individual need not

reside at a particular address in order to possess drugs found inside. *State v. Edwards*, 8th Dist. Cuyahoga No. 91841, 2009-Ohio-4365, ¶ 16. A frequent visitor to a home can be found to have constructive possession of drugs found inside. *Id.*

{¶ 18} In the case at bar, Officer Wilcox testified that prior to April 21, 2014, the police "made controlled purchases of crack cocaine from Mr. Williams at [the] Linden Avenue [residence] over a period of time." The officer testified that during these controlled buys, appellant "either came to the residence just prior to the controlled purchase being made or was already at the house when we made the controlled purchase." In fact, "on occasion, [appellant would] actually c[o]me out on the front porch and st[an]d on the front porch while individuals were walking around the park."

{¶ 19} On April 21, 2014, the police observed appellant park a car in front of the house, walk up to the front door, and use a key to enter the house. Two or three minutes later, as Thompson walked into a nearby park, the police observed appellant leave the house and meet Thompson in an alley across the street, directly in front of the house, where the two men engaged in a hand-to-hand drug transaction.

{¶ 20} Inside the Linden Avenue residence, the police found a white sock containing six individual baggies of crack cocaine. The sock was found on the floor in the "family, living room area," "which was the first area in the house from the main door," between a coffee table and a couch. Officer Wilcox testified that his investigation revealed no evidence that the crack cocaine found in the house was trafficked by "anyone besides [appellant]."

{¶ 21} Upstairs, the police found men's and women's clothing in the master bedroom. The men's clothing was located in a dresser, a closet, and a hamper. According to one of the officers, men's "basketball type shorts * * * appeared to have just been washed or cleaned." Upstairs, the police also found appellant's daughter in a bedroom. Photographs taken by the police during the search of the house show children's toys in a bedroom and three

toothbrushes in the bathroom. The police also found a receipt in the house from September 2013 bearing appellant's name. Finally, immediately before the execution of the search warrant, appellant sold crack cocaine to Thompson, the same drug found in the home.

{¶ 22} Viewing the foregoing evidence in a light most favorable to the state, we find that circumstantial evidence shows that appellant had constructive possession of and was conscious of the crack cocaine found in the residence. The fact that appellant had keys to the Linden Avenue residence shows he had dominion and control over the residence where the drugs were found. *Jester*, 2012-Ohio-544 at ¶ 20. The discovery downstairs of the crack cocaine in the first room of the house shows the drugs were readily accessible and in close proximity to appellant, and thus, constitutes circumstantial evidence appellant was in constructive possession of the drugs. *Id.* at ¶ 25.

{¶ 23} We therefore find that appellant's convictions for cocaine trafficking and cocaine possession were supported by sufficient evidence. Appellant's assignment of error is overruled.

{¶ 24} Judgment affirmed.

PIPER, P.J., and HENDRICKSON, J., concur.