

[Cite as *State v. Peterson*, 2015-Ohio-789.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CHAMPAIGN COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

TECKO BARUTI PETERSON

Defendant-Appellant

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C.A. CASE NO. 2014-CA-1

T.C. NO. 13CR295

(Criminal appeal from
Common Pleas Court)

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OPINION

Rendered on the 6th day of March, 2015.

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DONOVAN, J.

{¶ 1} Defendant-appellant Tecko Baruti Peterson appeals his conviction and sentence for two counts of possession of cocaine, in violation of 2925.11(A)(C)(4)(a), both felonies of the fifth degree. Peterson filed a timely notice of appeal with this Court on January 10, 2014.

{¶ 2} The incident which forms the basis for the instant appeal occurred shortly before midnight on September 18, 2013, when Urbana Police Division (UPD) Sergeant David Reese received an anonymous report regarding possible drug activity being conducted at a residence located at 809 Concord Street in the City of Urbana. Sgt. Reese contacted UPD Patrol Officer Kip Michael, and they travelled to the area in different cruisers and began surveillance of the residence. Sgt. Reese maintained direct surveillance of the Concord residence while Officer Michael positioned himself nearby on West Light Street. Shortly thereafter, Sgt. Reese observed two men, later identified as Kevin L. May and defendant-appellant Peterson, emerge from the Concord residence and approach a white Pontiac Grand Am that was parked in the driveway.¹ Sgt. Reese noticed that both men were carrying plastic bags. After placing the plastic bags into the trunk of the Grand Am, May and Peterson got inside the vehicle. May was located in the driver's seat, and Peterson sat in the front passenger seat of the vehicle. At that point, May backed the vehicle out of the driveway and drove towards West Light Street. From his position, Sgt. Reese observed that the vehicle had a non-functioning rear license plate light and relayed that information to Officer Michael.

{¶ 3} Officer Michael subsequently initiated a traffic stop of the vehicle based on the faulty license plate light, and Sgt. Reese responded to the scene in order to assist in the investigation. Upon exiting his cruiser, Officer Michael approached the driver's side of the vehicle and made contact with May, who was the owner of the vehicle. Simultaneously, Sgt. Reese approached Peterson on the passenger side of the vehicle. Upon making contact with Peterson, Sgt. Reese immediately observed a twenty-four

¹May was a co-defendant in the instant case, as was the individual who was living at the Concord residence at the time, Jeana Kearns.

ounce can of beer in the center console. Peterson admitted that the beer was his but explained that he did not know it was illegal to consume alcohol in a motor vehicle. Sgt. Reese ordered Peterson out of the vehicle.

{¶ 4} Sgt. Reese led Peterson to the rear of the vehicle. Sgt. Reese testified that Peterson appeared to be nervous. Peterson was talking very quickly, asking several questions, and continuously looking away from Sgt. Reese in order to see what Officer Michael and May were doing. After getting Peterson's consent, Sgt. Reese patted him down and found four Phenergan pills inside his right front pocket. Peterson admitted to Sgt. Reese that he did not have prescription for the pills and stated he had obtained the pills from an unidentified "lady in Springfield." Sgt. Reese handcuffed Peterson and sat him down on the curb behind the Grand Am. Sgt. Reese then requested and obtained consent from May to search the vehicle.

{¶ 5} Upon searching the vehicle, Sgt. Reese found a small amount of marijuana and two pieces of heroin in the glove compartment. Sgt. Reese also discovered two "bindles" or small packages of crack cocaine underneath the middle of the front passenger side floor mat. In the trunk of the vehicle, Sgt. Reese found the following items: 1) a white plastic bag containing an unopened beer bottle; 2) a white plastic bag containing used and unused syringes, a partially smoked marijuana cigarette, and a digital scale; and 3) a plastic bag containing a large quantity of unused hypodermic syringes. Sgt. Reese testified that the bags in the trunk appeared to be the same plastic bags that he had observed Peterson and May carrying when they exited the Concord residence. Peterson admitted to Sgt. Reese that the digital scale and the syringes were his, but he denied any knowledge of the heroin found in the glove compartment and the

crack cocaine located under the floor mat where he had been sitting when the vehicle was stopped.

{¶ 6} Peterson was subsequently arrested and taken to the UPD jail where he was interviewed by Sgt. Reese. Peterson explained that he intended to distribute the syringes to people he knew who used heroin and had intravenous drug problems. Peterson also admitted that he had smoked crack cocaine earlier on September 18, 2013, at the Concord residence.

{¶ 7} On October 3, 2013, Peterson was indicted for one count of possession of heroin (Count I), two counts of possession of crack cocaine (Counts II and IV), and two counts of possession of criminal tools (Counts III and IV). On December 5, 2013, the State moved to dismiss one of the counts of possession of criminal tools which the trial court granted prior to trial. The case proceeded to a jury trial beginning on December 10, 2013. At the close of its case, the State moved to dismiss the count for possession of heroin, which the trial court granted. Peterson was found guilty of two counts of possession of crack cocaine, and not guilty of the remaining count of possession of criminal tools.

{¶ 8} The trial court sentenced Peterson to twelve months on Count II, possession of crack cocaine, and six months on Count IV, possession of crack cocaine, for an aggregate sentence of eighteen months in prison.

{¶ 9} It is from this judgment that Peterson now appeals.

{¶ 10} Peterson's sole assignment of error is as follows:

{¶ 11} "THE VERDICT OF THE JURY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 12} In his sole assignment, Peterson contends that the verdict finding him guilty of Count II, possession of crack cocaine, was against the manifest weight of the evidence. Peterson does not raise any assignment of error related to his conviction for the possession of cocaine charge in Count IV. Specifically, Peterson argues that the State failed to prove beyond a reasonable doubt that the crack cocaine discovered underneath the middle of the front passenger side floor mat in the Grand Am was his.

{¶ 13} In order to prove a violation of R.C. 2925.11(A), the State was required to prove beyond a reasonable doubt that Peterson knowingly possessed a controlled substance, namely the crack cocaine found under the passenger seat floor mat in the vehicle where he had been sitting when the vehicle was stopped.

{¶ 14} When an appellate court analyzes a conviction under the manifest weight standard it must review the entire record, weigh all of the evidence and all of the reasonable inferences, consider the credibility of the witnesses and determine whether in resolving conflicts in the evidence, the fact finder clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). Only in exceptional cases, where the evidence “weighs heavily against the conviction,” should an appellate court overturn the trial court’s judgment. *Id.*

{¶ 15} The credibility of the witnesses and the weight to be given to their testimony are matters for the trier of facts to resolve. *State v. DeHass*, 10 Ohio St.2d 230, 231, 227 N.E.2d 212 (1967). “Because the factfinder * * * has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find

that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the factfinder's determinations of credibility. The decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness." *State v. Lawson*, 2d Dist. Montgomery No. 16288, 1997 WL 476684 (Aug. 22, 1997).

{¶ 16} This court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the trier of fact lost its way in arriving at its verdict. *State v. Bradley*, 2d Dist. Champaign No. 97-CA-03, 1997 WL 691510 (Oct. 24, 1997).

{¶ 17} Knowingly is defined in R.C. 2901.22(B):

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.

{¶ 18} "Possession" is defined in R.C. 2925.01(K):

Possess or 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.

{¶ 19} Possession of a drug may be either actual physical possession or constructive possession. *State v. Butler*, 42 Ohio St.3d 174, 538 N.E.2d 98 (1989). A person has constructive possession of an item when he is conscious of the presence of the object and able to exercise dominion and control over that item, even if it is not within

his immediate physical possession. *State v. Hankerson*, 70 Ohio St.2d 87, 434 N.E.2d 1362 (1982); *State v. Wolery*, 46 Ohio St.2d 316, 348 N.E.2d 351 (1976).

{¶ 20} Readily usable drugs found in very close proximity to a person may constitute circumstantial evidence sufficient to support a finding that the person constructively possessed those drugs. *State v. Miller*, 2d Dist. Montgomery No. 19174, 2002-Ohio-4197. In determining whether a defendant knowingly possessed a controlled substance, it is necessary to examine the totality of the relevant facts and circumstances. *State v. Teamer*, 82 Ohio St.3d 490, 492, 696 N.E.2d 1049 (1998); *State v. Pounds*, 2d Dist. Montgomery No. 21257, 2006-Ohio-3040. The State may prove constructive possession solely through circumstantial evidence. *State v. Barnett*, 2d Dist. Montgomery No. 19185, 2002-Ohio-4961. Circumstantial evidence and direct evidence have the same probative value. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991).

{¶ 21} Peterson argues that the evidence establishes that there were other potential suspects who could have possessed the cocaine located underneath the middle of the front passenger side floor mat in the Grand Am. In particular, Peterson asserts that it would have been a reasonable inference for the jury to have concluded that the crack cocaine belonged to the driver and owner of the vehicle, May.

{¶ 22} At trial, May testified that he picked Peterson up in Springfield, Ohio, on the evening of September 18, 2013. May further testified that Peterson requested to be taken to a location where he could purchase crack cocaine. May drove Peterson to a location in Springfield so that he could buy crack cocaine. May testified that the drug transaction took approximately ten minutes. May remained in the vehicle while Peterson purchased the crack. When Peterson returned to the vehicle, May testified that he

believed the appellant possessed crack cocaine.

{¶ 23} After the drug transaction, May and Peterson travelled to Urbana. During the car ride, Peterson smoked crack cocaine. May testified that he did not provide Peterson with the crack nor the pipe from which he smoked. While May admitted that the heroin in the glove compartment was his, he testified that he did not have knowledge of any crack cocaine being present in his car prior to picking up Peterson in Springfield. At all times while in May's vehicle, Peterson sat in the front passenger seat. Furthermore, it is undisputed that the two "bindles" of crack cocaine were found underneath the front passenger seat floor mat. Kearns, the individual who lived at the Concord residence, testified that Peterson possessed and smoked crack while he was at her house. Moreover, Peterson admitted to Sgt. Reese that he smoked crack earlier in the day. May and Kearns testified that they did not supply Peterson with the crack that he smoked at the Concord residence on September 18, 2013. On this record, the evidence adduced by the State, at a minimum, establishes that Peterson constructively possessed the crack cocaine discovered underneath the front seat passenger floor mat.

{¶ 24} Therefore, we find no merit in Peterson's manifest-weight challenge. It is well settled that evaluating witness credibility is primarily for the trier of fact. *State v. Benton*, 2d Dist. Miami No. 2010-CA-27, 2012-Ohio-4080, ¶ 7. A trier of fact does not lose its way and create a manifest miscarriage of justice if its resolution of conflicting testimony is reasonable. *Id.* Here the jury quite reasonably could have credited May and Kearns' testimony regarding Peterson's purchase and possession of the crack cocaine. Accordingly, the jury did not lose its way and create a manifest miscarriage of justice in reaching a guilty verdict.

{¶ 25} Peterson's sole assignment of error is overruled.

{¶ 26} Peterson's sole assignment of error having been overruled, the judgment of the trial court is affirmed.

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FAIN, J. and HALL, J., concur.

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