

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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| STATE OF OHIO | : | JUDGES: |
| | : | Hon. W. Scott Gwin, P.J. |
| Plaintiff-Appellee | : | Hon. Craig R. Baldwin, J. |
| | : | Hon. Earle E. Wise, Jr., J. |
| -vs- | : | |
| | : | |
| JAMES E. CROSSEN | : | Case No. 16-COA-033 |
| | : | |
| Defendant-Appellant | : | <u>OPINION</u> |

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case No. 16-CRI-023

JUDGMENT: Affirmed

DATE OF JUDGMENT: May 22, 2017

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Wise, Earle, J.

{¶ 1} Plaintiff-Appellant, James Eric Crossen, appeals his July 14, 2016 conviction entry and August 30, 2016 sentencing entry of the Court of Common Pleas of Ashland County, Ohio. Defendant-Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On March 18, 2016, the Ashland County Grand Jury indicted appellant on one count of possession of heroin in violation of R.C. 2925.11, one count of possessing criminal tools in violation of R.C. 2923.24, and one count of possessing drug abuse instruments in violation of R.C. 2925.12. Said charges arose from the execution of an arrest warrant for appellant's girlfriend, Amber Morris, at the home of appellant's mother and stepfather.

{¶ 3} A jury trial commenced on July 12, 2016. The jury found appellant guilty of the possession of heroin and possessing drug abuse instruments counts, and not guilty of the possessing criminal tools count. By judgment entry filed August 30, 2016, the trial court sentenced appellant to an aggregate term of twelve months in prison.

{¶ 4} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶ 5} "APPELLANT'S CONVICTIONS WERE AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

I

{¶ 6} In his sole assignment of error, appellant claims his convictions for possession of heroin and possessing drug abuse instruments were against the sufficiency and manifest weight of the evidence. We disagree.

{¶ 7} On review for sufficiency, a reviewing court is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks*, 61 Ohio St.3d 259, 579 N.E.2d 492 (1991). "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." *Jenks* at paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). On review for manifest weight, a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine "whether in resolving conflicts in the evidence, the jury 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. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). See also, *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541. The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175.

{¶ 8} We note the weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. Jamison*, 49 Ohio St.3d 182, 552 N.E.2d 180 (1990). The trier of fact "has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the

written page." *Davis v. Flickinger*, 77 Ohio St.3d 415, 418, 1997-Ohio-260, 552 N.E.2d 1159.

{¶ 9} Appellant was convicted of possession of heroin in violation of R.C. 2925.11(A) which states: "(A) No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog." He was also convicted of possessing drug abuse instruments in violation of R.C. 2925.12 which states:

(A) No person shall knowingly make, obtain, possess, or use any instrument, article, or thing the customary and primary purpose of which is for the administration or use of a dangerous drug, other than marihuana, when the instrument involved is a hypodermic or syringe, whether or not of crude or extemporized manufacture or assembly, and the instrument, article, or thing involved has been used by the offender to unlawfully administer or use a dangerous drug, other than marihuana, or to prepare a dangerous drug, other than marihuana, for unlawful administration or use.

{¶ 10} R.C. 2925.01(K) defines "possession" as, "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." "Possession" may be actual or constructive. *State v. Wolery*, 46 Ohio St.2d 316, 348 N.E.2d 351 (1976). Constructive possession is when an individual is conscious of the presence of an item and is able to exercise dominion or control over it, even if the person does not have the item within his/her immediate physical possession.

Id.; *State v. Hankerson*, 70 Ohio St.2d 87, 434 N.E.2d 87 (1982). We note, "[a] person may knowingly possess or control property belonging to another; the state need not establish ownership to prove constructive possession." *State v. Peyton*, 12th Dist. Butler No. CA2015-06-112, 2017-Ohio-243, ¶ 44, citing *State v. Williams*, 12th Dist. Butler No. CA2014-09-180, 2015-Ohio-2010. "In addition, two or more persons may have possession of an object together if they have the ability to control it, exclusive of others." *Id.*, citing *State v. Weckner*, 12th Dist. Brown No. CA2001-06-009, 2002-Ohio-1012.

{¶ 11} On February 11, 2016, Ashland Police Sergeant John Simmons and Ashland Police Officer James Coey executed an arrest warrant for appellant's girlfriend, Amber Morris, at the home of appellant's mother and stepfather. T. at 16-17, 25. Sergeant Simmons knocked on the front door while Officer Coey went around to the back of the residence. T. at 18. Appellant's stepfather, Scott Clantz, answered the door and invited Sergeant Simmons into the home. T. at 18, 45. As Ms. Morris was being taken into custody, Mr. Clantz "yelled something to the effect of, James, I cannot believe that you did this, and your mom and I almost got a divorce over this the first time." T. at 19, 62. Sergeant Simmons testified Mr. Clantz "came out of the rest room when he said that." T. at 19.

{¶ 12} Mr. Clantz testified after inviting Sergeant Simmons into the home, he observed appellant go into the bathroom, shut the door, and emerge without flushing the toilet. T. at 45. Mr. Clantz went into the bathroom and noticed the shower curtain open, a footprint on the bathtub edge, and three syringes and a wrapper containing what was later determined to be heroin in a knee brace up on the shower ledge. T. at

20, 46-47, 127, 129-130; State's Exhibits 1-6. Mr. Clantz called to the officers, and Officer Coey entered the bathroom and observed the syringes and the wrapper containing heroin. T. at 46-47, 62-63, 68. The wrapper was a store receipt dated that day and was for a pack of Juicy Fruit gum. T. at 20, 63; State's Exhibits 6, 10. Following appellant's arrest, an unopened pack of Juicy Fruit gum was discovered in his right front pants pocket. T. at 23-24; State's Exhibit 12. Appellant told the officers he had gone to the bathroom to dispose of a marijuana joint since they had arrived. T. at 37. Mr. Clantz did not find a marijuana joint in the bathroom. T. at 37. Mr. Clantz stated appellant and his girlfriend were the only individuals living in the home that were addicted to drugs. T. at 58.

{¶ 13} Ms. Morris testified the heroin found in the bathroom belonged to her, and she pled guilty to possession of the heroin. T. at 76, 93-94. She had purchased the heroin from her drug dealer "Brad." T. at 76-77, 90-91. Appellant was with her when she made the deal. T. at 77, 90-91, 100. Prior to the deal, appellant used her child support card with her permission and purchased a pack of gum and obtained an advance of \$50.00 to make the deal. T. at 78, 86, 90. Ms. Morris admitted appellant was a heroin user and was using on the day in question. T. at 78. She did not know where the heroin was when the police arrived. T. at 80, 84. She admitted it was a possibility that appellant possessed the heroin and he could have hidden it in the bathroom. T. at 91-92. Heroin was not found on Ms. Morris's person following her arrest. T. at 84, 97.

{¶ 14} Ashland County Police Detective Brian Evans testified he interviewed Ms. Morris the next day and she denied that the heroin belonged to her. T. at 107.

{¶ 15} Appellant presented no witnesses. He argues no one witnessed him with the heroin and syringes, and he was convicted solely on his presence in the bathroom, his stepfather's accusation that the heroin belonged to him, and his association with Ms. Morris. Appellant's Brief at 6-7.

{¶ 16} The evidence established appellant purchased gum and obtained funds for the heroin deal. He went with Ms. Morris to purchase the heroin. Appellant was observed entering the bathroom upon the arrival of the police. Immediately following his from the bathroom, heroin and syringes were discovered therein. The heroin was wrapped in the gum purchase receipt.

{¶ 17} Upon review, we find sufficient evidence was presented, if believed, to support the convictions, and do not find any manifest miscarriage of justice.

{¶ 18} The sole assignment of error is denied.

{¶ 19} The judgment of the Court of Common Pleas of Ashland County, Ohio is hereby affirmed.

By Wise, Earle, J.

Gwin, P.J. and

Baldwin, J. concur.

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