

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-12-1043

Appellee

Trial Court No. CR0201101690

v.

Marcus Rutledge

**DECISION AND JUDGMENT**

Appellant

Decided: April 12, 2013

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Kevin A. Pituch, Assistant Prosecuting Attorney, for appellee.

Mollie B. Hojnicky, for appellant.

\* \* \* \* \*

**YARBROUGH, J.**

**I. Introduction**

{¶ 1} Appellant, Marcus Rutledge, appeals the judgment of the Lucas County Court of Common Pleas, finding him guilty of possession of cocaine, trafficking in cocaine, and trafficking in marijuana, and sentencing him to one year in prison. For the following reasons, we affirm.

## **A. Facts and Procedural Background**

{¶ 2} In early 2011, law enforcement officials received a tip from a confidential informant that drugs were being sold from a residence located at 3243 Glenwood in Toledo, Ohio. Although the building appeared to be a single-family residence, Rutledge operated a convenience store out of the front room. After receiving the tip, the Toledo Police Department (TPD) began to monitor the premises. Ultimately, the TPD initiated a controlled buy using another confidential informant. Prior to entering the premises, the confidential informant was searched by the TPD to ensure that he had no contraband on him. While inside, the informant successfully purchased one oxycodone pill.

{¶ 3} Using information obtained from its surveillance of the premises and the controlled buy, TPD officers completed an affidavit for search warrant, and a “no knock” warrant was issued for 3243 Glenwood. The warrant was executed on February 24, 2011. Initially, the officers struggled to enter the premises due to the fact that Rutledge had locked two “Armor Guard” iron gates covering the front door and the entryway into the second story. Upon entrance into the second story, the officers observed Rutledge attempting to hide \$1,515 in cash. In addition to Rutledge, the officers secured four other individuals who were present within the home, two of whom had tried to escape out of the back of the house and were arrested.

{¶ 4} After finally securing the premises, the officers conducted a thorough search, ultimately leading to their discovery of various drugs, a digital scale, and baggies presumably used to package the drugs. The officers also discovered a handgun

underneath a couch in the front area of the house. The drugs were located in two places: (1) in plain view on a table in the dining room; and (2) in a modified paint can designed to conceal the drugs.

{¶ 5} On May 10, 2011, Rutledge was indicted by the Lucas County Grand Jury on multiple drug-related counts and two counts of having a weapon under disability. The case proceeded to a bench trial, and Rutledge was found guilty on three of the 17 counts including possession of cocaine, a felony of the fourth degree, trafficking in cocaine, a felony of the fourth degree, and trafficking in marijuana, a felony of the fifth degree. Rutledge was acquitted of the remaining drug offenses, as well as the weapons offenses, because the trial court determined that the state had failed to establish beyond a reasonable doubt that Rutledge was in possession of the handgun or the drugs contained in the fake paint can. On January 25, 2012, the trial court conducted a sentencing hearing, at which it merged the two cocaine offenses and sentenced Rutledge to a prison term of 12 months for trafficking in cocaine and 11 months for trafficking in marijuana.<sup>1</sup>

### **B. Assignment of Error**

{¶ 6} Rutledge has timely appealed these convictions, assigning the following error for our review:

The evidence at trial was insufficient to support the convictions and appellant's convictions are against the manifest weight of the evidence.

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<sup>1</sup> The trial court, both during the sentencing hearing and in its judgment entry, failed to specify whether the sentences were to run consecutively or concurrently.

## II. Analysis

{¶ 7} Although Rutledge combines his sufficiency argument and manifest weight argument, the two are different legal concepts. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). Consequently, a bifurcated analysis is required. *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 25.

{¶ 8} “A sufficiency review entails an elements-based analysis of the evidence.” *State v. Mick*, 6th Dist. No. L-11-1034, 2012-Ohio-3296, ¶ 13. Sufficiency of the evidence is purely a question of law, seeking to test the adequacy of the evidence. *Thompkins* at 386. The proper analysis 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, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 9} Here, Rutledge was found guilty of two separate offenses: (1) possession of cocaine under R.C. 2925.11(A); and (2) trafficking in cocaine/marijuana under R.C. 2925.03(A)(2). As to the possession offense, R.C. 2925.11(A) provides: “No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog.” Rutledge argues that the evidence failed to establish that he possessed the drugs. He notes that several people were present in the house when the police arrived, no drugs were found on him, and the drugs were discovered in the common area of the house. Consequently, Rutledge contends that the court’s finding of guilt was speculative.

{¶ 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.” The state acknowledges that Rutledge did not have actual possession of the drugs at issue. However, possession may be actual or constructive. *See State v. Wolery*, 46 Ohio St.2d 316, 329, 348 N.E.2d 351 (1976); *State v. Haynes*, 25 Ohio St.2d 264, 267, 267 N.E.2d 787 (1971); *State v. Carter*, 6th Dist. No. L-99-1048, 1999 WL 575795, \*2 (Aug. 6, 1999).

{¶ 11} Constructive possession exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within the individual’s immediate physical possession. *State v. Hankerson*, 70 Ohio St.2d 87, 91, 434 N.E.2d 1362 (1982). Moreover, proof by circumstantial evidence is sufficient to support constructive possession. *See Jenks* at 272-73. Therefore, “readily usable drugs or other contraband in close proximity to a defendant may constitute sufficient and direct circumstantial evidence to support a finding of constructive possession.” *State v. Loper*, 8th Dist. Nos. 81400, 81297, 81878, 2003-Ohio-3213, ¶ 44, citing *State v. Pruitt*, 18 Ohio App.3d 50, 58, 480 N.E.2d 499 (8th Dist.1984).

{¶ 12} Applying the foregoing to the case sub judice, we conclude that the state presented sufficient evidence to support a guilty verdict for possession of cocaine. The evidence shows that Rutledge’s convenience store was located on the first floor of the house near the dining room table where the drugs were found. From his vantage point at

the front door, Rutledge could easily see the drugs lying on the dining room table in plain view. In light of his close proximity to the drugs on the dining room table, we find that the state presented sufficient circumstantial evidence to support a finding that Rutledge constructively possessed the drugs. The mere fact that others were in the house does not mean that Rutledge could not exercise dominion and control over the drugs. *State v. Howard*, 8th Dist. No. 85034, 2005-Ohio-4007, ¶ 16.

{¶ 13} As to the trafficking offenses, R.C. 2925.03(A)(2) provides:

(A) No person shall knowingly do any of the following:

\* \* \*

(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or a controlled substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person.

{¶ 14} Regarding the trafficking convictions, Rutledge argues that the state failed to show that he was engaged in “one or more of the proscribed acts under the statute, and [his] mere presence in a building where controlled substances, a scale and baggies were located is insufficient for a conviction under the statute.” We disagree.

{¶ 15} Notably, numerous courts have determined that items such as plastic baggies, digital scales, and large sums of money are often used in drug trafficking and may constitute circumstantial evidence of conduct proscribed by R.C. 2925.03(A)(2).

*State v. Garrett*, 12th Dist. No. CA2008-08-076, 2009-Ohio-2806, ¶ 23; *State v. Harry*, 12th Dist. No. CA2008-01-0013, 2008-Ohio-6380, ¶ 50; *State v. Floyd*, 8th Dist. No. 90705, 2008-Ohio-5262, ¶ 16; *State v. Malott*, 12th Dist. Nos. CA2007-02-006, CA2007-02-007, CA2007-02-008, 2008-Ohio-2114, ¶ 20; *State v. Smallwood*, 9th Dist. No. 07CA0063, 2008-Ohio-2107, ¶ 23; *State v. Kutsar*, 8th Dist. No. 89310, 2007-Ohio-6990, ¶ 20; *State v. Fain*, 5th Dist. No. 06CAA120094, 2007-Ohio-4854, ¶ 38; *State v. Fry*, 9th Dist. No. 23211, 2007-Ohio-3240, ¶ 50; *State v. Williams*, 1st Dist. No. C-040747, 2005-Ohio-6772, ¶ 19. Here, the state established that marijuana and cocaine was found on the dining room table accompanied by a digital scale and packaging materials. Further, Rutledge was found with \$1,515 in cash on his person. Although Rutledge argues that the money was derived from the sale of goods from his convenience store, we must view the evidence in a light most favorable to the prosecution. In doing so, we find that a rational trier of fact could have found the essential elements of drug trafficking proven beyond a reasonable doubt. Therefore, Rutledge's sufficiency-of-the-evidence arguments are without merit.

{¶ 16} In contrast to his sufficiency-of-the-evidence argument, Rutledge's manifest weight challenge questions whether the state has met its burden of persuasion. *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541. When reviewing these challenges,

The court, 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. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 220.

{¶ 17} Upon due consideration of the record before us, we cannot say that the trier-of-fact clearly lost its way or created a manifest miscarriage of justice when it concluded that Rutledge was guilty of possessing cocaine and trafficking in both cocaine and marijuana. The fact that Rutledge attempted to evade police, was found with a large sum of money on his person, and was standing in clear view of the drugs, scale, and packaging materials, weighs in favor of the judge's determination of guilt. Consequently, Rutledge's manifest weight argument is without merit.

{¶ 18} Accordingly, Rutledge's sole assignment of error is not well-taken.

### **III. Conclusion**

{¶ 19} Based on the foregoing, the judgment of the Lucas County Court of Common Pleas is affirmed. Costs are hereby assessed to Rutledge in accordance with App.R. 24.

Judgment affirmed.



A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Stephen A. Yarbrough, J.

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JUDGE

James D. Jensen, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
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