

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91786

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JENNETTA HALL

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-485843

BEFORE: Blackmon, J., Gallagher, P.J., and Rocco, J.

RELEASED: July 2, 2009

JOURNALIZED:

ATTORNEY FOR APPELLANT

Scott D. Claussen
Law Office of Scott Claussen
8813 Memphis Villas Blvd.
Brooklyn, Ohio 44144

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

John Wojton
Lisa Reitz Williamson
Assistant County Prosecutors
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant Jennetta Hall appeals her conviction following a bench trial.

Hall assigns the following error for our review:

“I. There was insufficient evidence to support the guilty verdict, and appellant’s conviction was against the manifest weight of the evidence.”

{¶ 2} Having reviewed the record and pertinent law, we affirm Hall’s conviction. The apposite facts follow.

{¶ 3} On June 15, 2006, at approximately 6:00 a.m., members of the Federal Bureau of Investigation (“FBI”) and the Cleveland Police Department went to 10011 Anderson Avenue in Cleveland to execute an arrest warrant for Muhammad Dye. The FBI SWAT team approached the front door, knocked, and announced their presence. After no response, the SWAT team members broke into the house.

{¶ 4} After entering the house, the agents cleared the first floor rooms, and then entered the master bedroom, where they found Dye and Hall. The agents arrested Dye without incident. After Dye was removed, and while agents continued to check the bedroom for possible attackers, they discovered a bullet-proof vest underneath the bed. The bullet-proof vest was later determined to have been stolen from the Cleveland Police Department.

{¶ 5} Based on the discovery of the bullet-proof vest, the agents secured the premises, while they sought and obtained a search warrant for the residence. Upon executing the search warrant, the agents discovered a plastic bag containing crack cocaine behind a stereo speaker on top of a dresser located in the master bedroom. The agents also discovered over one thousand rounds of ammunition, two electronic scales, photographs of suspected gang members, and \$2,339 in cash. In addition, the agents discovered personal and government mail addressed to both Dye and Hall, and bank deposit slips for accounts belonging to both Dye and Hall, which contained an available balance of approximately \$11,500.

{¶ 6} On September 5, 2006, the Cuyahoga County Grand Jury indicted Hall on one count each of drug trafficking with juvenile specification, drug possession, and receiving stolen property. On September 20, 2006, Hall pled not guilty at her arraignment, and thereafter she filed a motion to suppress.

{¶ 7} After a hearing, the trial court determined that the agents' entry into the residence was lawful, that the vest was found pursuant to a lawful protective sweep, but that the search was ongoing before the search warrant arrived. Consequently, the trial court granted the motion to suppress as to all seized items except the bullet-proof vest.

{¶ 8} The State appealed the trial court's ruling on Hall's motion to suppress. In *State v. Hall*,¹ we reversed holding that the trial court's determination regarding the ongoing nature of the search was not supported by the evidence. Further, we concluded that the items would have been found during a lawful investigation and accordingly, they were within the inevitable discovery rule.² Consequently, we remanded the matter for further proceedings.

{¶ 9} On May 2, 2008, Hall waived her right to a jury trial and a bench trial commenced.

Bench Trial

{¶ 10} The evidence at trial established that the instant case arose from a federal investigation of the "Dirty 30" gang, which operated primarily on the east side of Cleveland, Ohio. The FBI determined that Hall's co-defendant, Dye, was an integral part of the gang's drug operation. The FBI, executed the aforementioned arrest warrant at Hall's home, which she learned from Cuyahoga Metropolitan Housing Authority.

{¶ 11} At trial, the State presented the testimony of three witnesses including FBI agent Edward Satterfield, who testified that on June 15, 2006, he assisted in the execution of the search warrant. Agent Satterfield testified that while searching

¹Cuyahoga App. No. 89209, 2007-Ohio-6309.

²*Id.*

Hall's bedroom, he observed a bagged item behind a stereo speaker located on top of a dresser. Agent Satterfield stated that upon closer inspection, he determined that the bag contained crack cocaine. Agent Satterfield stated that the crack recovered was later determined to weigh approximately 2.04 grams.

{¶ 12} Agent Satterfield testified that in addition to the crack recovered in the bedroom, he also found various amounts of currency, gold jewelry, a digital scale, and paperwork belonging to Hall and Dye. Agent Satterfield stated that he found a bank receipt from an account at National City Bank belonging to both Dye and Hall, which had an available balance of \$11,502.80. Agent Satterfield stated that a second digital scale and an unspecified amount of currency was found in the upstairs hallway closet. Agent Satterfield stated a third digital scale, over one thousand rounds of ammunition, a gun bag for a rifle or shotgun, and an ammunition clip were found in the basement.

{¶ 13} After the State rested, the trial court granted Hall's motion for acquittal as to receiving stolen property. On May 12, 2008, the trial court found Hall not guilty of drug trafficking, but guilty of drug possession. On June 16, 2008, the trial court sentenced Hall to a one-year term of community control sanctions.

Sufficiency

{¶ 14} In her sole assigned error, Hall argues the evidence was insufficient to support the guilty verdict and her conviction was against the manifest weight of the evidence. We disagree.

{¶ 15} The sufficiency of the evidence standard of review is set forth in *State v. Bridgeman*:³

“Pursuant to Criminal Rule 29(A), a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt.”⁴

{¶ 16} *Bridgeman* must be interpreted in light of the sufficiency test outlined in *State v. Jenks*,⁵ in which the Ohio Supreme Court held:

“An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence submitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the

³(1978), 55 Ohio St.2d 261, syllabus.

⁴See, also, *State v. Apanovitch* (1987), 33 Ohio St.3d 19, 23; *State v. Davis* (1988), 49 Ohio App.3d 109, 113.

⁵(1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

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. (*Jackson v. Virginia* [1979], 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560, followed.)”

{¶ 17} After reviewing the evidence in a light most favorable to the State, we find that the evidence, if believed, could convince a rational trier of fact that the State had proven beyond a reasonable doubt each element of the charge of drug possession.

{¶ 18} Possession is defined as having “control over a thing or substance,” but it 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.”⁶ Possession can be actual or constructive.⁷ 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.⁸

⁶R.C. 2925.01(K).

⁷*State v. Whitted*, Cuyahoga App. No. 88979, 2007-Ohio-5069, citing *State v. Wolery* (1976), 46 Ohio St.2d 316, 329. See, also, *State v. Haynes* (1971), 25 Ohio St.2d 264, 267; *State v. Barr* (1993), 86 Ohio App.3d 227, 235.

⁸*Id.*, citing *State v. Hankerson* (1982), 70 Ohio St.2d 87.

{¶ 19} We have previously stated that, “while proof of presence in the vicinity of the cocaine is not enough to prove possession, if the evidence presented at trial supports that the cocaine was in the appellant’s constructive possession, such as where the appellant was in close proximity to the drugs, a rational trier of fact can conclude that it was within the appellant’s dominion or control.”⁹

{¶ 20} Applying the foregoing, we note that the State’s evidence demonstrated that the agents discovered the crack cocaine in Hall’s legal residence, which she leased from Cuyahoga Metropolitan Housing Authority and where she resided with her three children. Specifically, the agents discovered the drugs in Hall’s master bedroom.

{¶ 21} In addition, the crack cocaine was not hidden or concealed, but open and easily observable. Agent Satterfield testified that he saw the bag containing the crack behind a stereo speaker on Hall’s bedroom dresser. Consequently, reviewing this evidence in a light most favorable to the prosecution, any rational trier of fact could have found that she constructively possessed crack cocaine.

{¶ 22} Moreover, in addition to the crack cocaine found in Hall’s master bedroom, the agents discovered three digital scales, one of which was located in the master bedroom. The agents also discovered over one thousand rounds of

⁹*State v. Johnson*, Cuyahoga App. No. 82340, 2003-Ohio-6634, quoting *State v. Pruitt* (1984), 18 Ohio App.3d 50, 58.

ammunition, an ammunition clip, a gun bag, as well as currency in excess of \$2,000. Further, the agents found bank receipts belonging to both Dye and Hall including one with an available balance exceeding \$11,000. Hence, the discovery of the additional items belies Hall's assertions and lends credence to the State's argument that she constructively possessed the drugs found in her master bedroom.

{¶ 23} Nonetheless, Hall argues her conviction is against the manifest weight of the evidence. We are not persuaded.

{¶ 24} In *State v. Wilson*,¹⁰ the Ohio Supreme Court recently addressed the standard of review for a criminal manifest weight challenge, as follows:

“The criminal manifest-weight-of-the-evidence standard was explained in *State v. Thompkins*, 78 Ohio St.3d 380, 1997- Ohio-52, 678 N.E.2d 541. In *Thompkins*, the court distinguished between sufficiency of the evidence and manifest weight of the evidence, finding that these concepts differ both qualitatively and quantitatively. Id. at 386, 678 N.E.2d 541. The court held that sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, but weight of the evidence addresses the evidence's effect of

¹⁰113 Ohio St.3d 382, 2007-Ohio-2202.

inducing belief. *Id.* at 386-387, 678 N.E.2d 541. In other words, a reviewing court asks whose evidence is more persuasive -- the state's or the defendant's? We went on to hold that although there may be sufficient evidence to support a judgment, it could nevertheless be against the manifest weight of the evidence. *Id.* at 387, 678 N.E.2d 541. 'When 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 a 'thirteenth juror' and disagrees with the factfinder's resolution of the conflicting testimony.' *Id.* at 387, 678 N.E.2d 541, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652."

{¶ 25} As discussed above, the State presented sufficient evidence to establish that Hall constructively possessed the crack cocaine found in her master bedroom. The agents discovered the cocaine in an area of the house that Hall arguably exercises exclusive dominion and control. Thus, we cannot say that the trial court clearly lost its way and created such a manifest miscarriage of justice that the conviction is against the manifest weight of the evidence. Accordingly, we overrule Hall's sole assigned error.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA ANN BLACKMON, JUDGE

SEAN C. GALLAGHER, P.J., and
KENNETH A. ROCCO, J., CONCUR