[Cite as *State v. Hanshaw*, 2009-Ohio-2515.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF MEDINA	)	

STATE OF OHIO	C. A. No. 08CA0078-M
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
THERESE HANSHAW	COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO
Appellant	CASE No. 07CR0640

DECISION AND JOURNAL ENTRY

Dated: June 1, 2009

WHITMORE, Judge.

{¶1} Defendant-Appellant, Therese Hanshaw, appeals from her conviction in the Medina County Court of Common Pleas. This Court affirms.

I

{¶2} On December 9, 2007, Officer Cliff Nicholson stopped Hanshaw at approximately 10:30 p.m. after observing her vehicle going left of center. Upon approaching Hanshaw and the two passengers with her, William Culp and Elizabeth Zeh, Officer Nicholson observed that all three had red, glassy eyes. Officer Nicholson also realized that Hanshaw was driving on a suspended license and that Culp's license was suspended as well. Thus, he decided to have the vehicle towed and called for another officer to assist him while he conducted an inventory of the vehicle. Once Officer Michael Oyler arrived at the scene to assist Officer Nicholson, all three passengers exited the vehicle.

{¶3} During his inventory search of the vehicle, Officer Nicholson found a rock of crack cocaine in the pleat of the driver's seat. Additionally, while Hanshaw and Zeh were waiting in front of Office Oyler's cruiser, he found a small corner portion of a sandwich baggy on the ground in front of Hanshaw, approximately six inches away from her foot. It was empty, but contained a white residue, which was tested and found to be cocaine.

{¶4} On December 28, 2007, Hanshaw was indicted on one count of possession of crack cocaine which was later amended to possession of cocaine, in violation of R.C. 2925.11(A)(C)(4)(a), a fifth-degree felony. On August 11, 2008, the trial court held a bench trial and at the close of the State's case, Hanshaw moved for acquittal. The trial court denied her motion and Hanshaw then testified in her own defense. The trial court found Hanshaw guilty and later sentenced her to three years of community control subject to several conditions, including her receipt of mental health and substance abuse treatment.

{¶5} Hanshaw now appeals the trial court's denial of her motion for acquittal and asserts one assignment of error for our review.

II

Assignment of Error Number One

> "THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S CRIMINAL RULE 29 MOTION FOR ACQUITTAL AND ENTERED A FINDING OF GUILT AGAINST APPELLANT FOR ONE COUNT OF VIOLATING 2925.11(A)(C)(4)(A) OF THE REVISED CODE, POSSESSION OF DRUGS (COCAINE)."

{¶6} In her sole assignment of error, Hanshaw argues that her conviction was not supported by sufficient evidence. Specifically, she asserts that there was a lack of direct evidence that she possessed any drugs and that there was an equal amount of evidence

implicating either of her passengers, Culp or Zeh, as the one who possessed the cocaine found by police. We disagree.

{¶7} Crim.R. 29(A) provides that a trial court "shall order the entry of a judgment of acquittal *** if the evidence is insufficient to sustain a conviction[.]" This Court has noted that:

> "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted 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 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. Smith*, 9th Dist. No. 23288, 2007-Ohio-1680, at ¶3, quoting *State v. Galloway* (Jan. 31, 2001), 9th Dist. No. 19752, at *3.

"In essence, sufficiency is a test of adequacy." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386.

{¶8} It is a violation of R.C. 2925.11(A) to "knowingly obtain, possess, or use a controlled substance." A person is guilty of possession under this section "[i]f the drug involved *** is cocaine or a compound, mixture, preparation, or substance containing cocaine[.]" R.C. 2925.11(C)(4). Possession is defined under R.C. 2925.01(K) as "hav[ing] control over a thing or substance[.]" Possession 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." Id. We have previously concluded that "a person may knowingly possess a substance or object through either actual or constructive possession." *State v. Hilton*, 9th Dist. No. 21624, 2004-Ohio-1418, at ¶16, citing *State v. McShan* (1991), 77 Ohio App.3d 781, 783. See, also, *State v. Bewsey* (June 16, 1993), 9th Dist. No. 15857, at *5. Furthermore,

> "There are many types of evidence or factors, such as owning the premises or proximity to contraband, that on their own do not establish constructive possession. However, viewing these factors together as a whole can be used as circumstantial evidence to establish constructive possession. For instance, 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. In addition, evidence that the defendant owns, leases, or occupies the premise along with the defendant's presence or proximity to the contraband, can be considered in establishing constructive possession." (Internal citations and quotations omitted.) *State v. Owens*, 9th Dist. No. 23267, 2007-Ohio-49, at ¶23.

Additionally, "drugs that are found in plain view and are in close proximity to a defendant can establish constructive possession[.]" *State v. Woods*, 9th Dist. No. 22267, 2005-Ohio-2681, at ¶25.

{¶9} At trial, Officer Nicholson testified that he stopped Hanshaw's vehicle at approximately 10:30 p.m. after observing her drive left of center. Upon approaching the vehicle, Officer Nicholson noted that everyone in the vehicle had red, glassy eyes. Once he realized that Hanshaw and Culp both had suspended licenses, Officer Nicholson decided to have the vehicle, which was owned by Culp's grandmother, towed. Because it was being towed, Officer Nicholson had to perform an inventory of the vehicle's contents.

{¶10} Officer Nicholson testified that before beginning his search he had the parties exit the vehicle. Hanshaw exited the driver's door, Zeh exited the passenger's front door; and Culp exited the passenger's side rear door. Each passenger was patted down as they exited the vehicle and no contraband was found on anyone's person. Next, Officer Oyler arrived to assist Officer Nicholson at the scene, and Culp was placed in the back of Officer Nicholson's cruiser. Hanshaw and Zeh remained outside the vehicle and stood in front of Officer Oyler during the inventory.

{¶11} While inventorying the car, Officer Nicholson heard Officer Oyler, who was monitoring Hanshaw and Zeh outside the vehicle, ask the women about something he had apparently seen on the ground near them. Officer Nicholson suspended his inventory search and saw Officer Oyler retrieve a "parachuted, kind of still cupped, small corner of a sandwich bag

*** [from] right next to [Hanshaw] near her feet." The baggy was dry and clean and looked as if the corner of the bag had been stretched and the top of it torn off. The baggy contained a white residue, which based on his experience, was consistent with a finding of cocaine. Based on this finding, Officer Nicholson realized he "was dealing with something very small so [his] search was becoming more and more thorough."

{¶12} Officer Nicholson then found a small white rock that he suspected was cocaine in the pleat of the driver's seat, where the bottom of the seat intersected with the upright, back portion of the seat. He testified that he believed the rock he found would have been crushed if it had been placed there while someone was driving the vehicle. Thus, it was his opinion that the rock was placed there after he stopped the vehicle. Officer Nicholson testified that he found the cocaine rock "by touch," not by sight. Both the residue in the baggie and the small rock found in the driver's seat tested positive for cocaine.

{¶13} Officer Nicholson admitted he never saw Hanshaw or Zeh take anything out of their pockets or throw anything to the ground, nor was he in a position to do so because he was searching the vehicle. He testified that, based on where the baggy that was found, it "appeared as though it was just dropped" and it was recovered "directly below [Hanshaw's] location or hands." The baggy, however, was not inspected for fingerprints. Officer Nicholson testified that it was his opinion that Zeh was not close enough to Hanshaw to drop the baggy at Hanshaw's feet, although he conceded it was possible. Additionally, he testified that he did not take Zeh or Culp back to the station to interview them relative to the drugs he found in the vehicle. When questioned at the scene, Hanshaw denied the cocaine was hers. Officer Nicholson took Hanshaw to the station where she again denied, both in her conversations with him and in her written

statement, that the cocaine was hers. She did, however, admit to Officer Nicholson that she had used cocaine in the past.

{¶14} Officer Oyler testified that his primary duty at the scene was to monitor Hanshaw and Zeh while Officer Nicholson inventoried the vehicle. While standing with the women, Officer Oyler saw part of a small plastic baggy approximately six inches from Hanshaw's foot, in between his right foot and her left foot. He testified that he had not seen the baggy there just moments before, nor did he see either of the women throw anything on the ground. Officer Oyler was "within two feet" of Hanshaw and Zeh the entire time. Despite there being a light dusting of snow on the ground where they were standing, Officer Oyler testified the baggy was completely dry, with a "white powdery residue." The gravel next to the baggy had some white powder residue on it as well, which was just starting to dissolve as it was on a piece of moist gravel. Officer Oyler was able to see the baggy and residue on the rock because the headlights from both police cruisers were shining on the women at the time.

{¶15} Upon reviewing the evidence adduced by the State, we disagree with Hanshaw's assertion that the trial court improperly denied her motion for acquittal. At trial, the State produced evidence that police found a rock of cocaine in the pleat of the seat that Hanshaw had just vacated and Officer Nicholson testified that no other passenger had exited the driver's side of the car where Hanshaw had been sitting. Furthermore, a plastic baggy containing cocaine residue was found within six inches of her foot once she was standing outside the car. Officer Nicholson testified that baggy appeared to have been recently dropped and was just below Hanshaw's hand. Thus, the rock of cocaine and the baggy were found within sufficient proximity of Hanshaw to evidence that she was in constructive possession of both. See *Owens* at ¶23. That Hanshaw did not own the car she was driving and that she denied that the cocaine was

hers does not persuade this Court that there was insufficient evidence to support her conviction. *State v. Grundy* (Dec. 9, 1998), 9th Dist. No. 19016, at *10 (noting that, when determining if a motion for acquittal was properly denied "[i]t is irrelevant that Defendant did not own *** the car, in which the cocaine was found *** [and] that he did not admit that the cocaine was his.").

{¶16} Upon viewing the evidence in a light most favorable to the prosecution, we conclude that the trial court did not err in denying Hanshaw's motion for acquittal because a rational trier of fact could have found that the essential elements of cocaine possession were proven beyond a reasonable doubt. See *Smith* at ¶3. Accordingly, Hanshaw's assignment of error lacks merit.

III

{¶17} Hanshaw's assignment of error is overruled. The judgment of the Medina County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

MOORE, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

TODD E. CHEEK, Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and MICHAEL P. MCNAMARA, Assistant Prosecuting Attorney, for Appellee.