[Cite as *State v. Barnes*, 2010-Ohio-5922.]

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

STATE OF OHIO	C.A. No. 09CA009690
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
WALLACE MARVIN BARNES, JR.	COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO
Appellant	CASE No. 08CR075849

DECISION AND JOURNAL ENTRY

Dated: December 6, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Wallace Barnes failed to stop at two stop signs. Officer Mike Gidich and his partner observed Mr. Barnes's traffic violations and stopped him. Upon approaching the passenger side of Mr. Barnes's van, Officer Gidich observed Mr. Barnes making a crumbling motion with his hand between his legs. The officers arrested Mr. Barnes for consuming an alcoholic beverage in a motor vehicle. Officer Gidich then discovered a substance that he determined to be crack cocaine on the driver's seat. Mr. Barnes waived his right to a jury trial. Following a bench trial, the trial court found Mr. Barnes guilty of possession of drugs and sentenced him to three years community control. This Court affirms his conviction because it is supported by sufficient evidence and is not against the manifest weight of the evidence.

BACKGROUND

{¶2} Officer Mike Gidich, a member of the Lorain Police department, testified that, while on patrol, he observed a minivan fail to make complete stops at two stop signs. He and his partner stopped the van. As Officer Gidich approached the passenger side door, he observed the lone occupant, who was later identified as Wallace Barnes, lowering a beer can from his mouth. He testified that he also observed Mr. Barnes, while speaking with Officer Gidich's partner, making a crumbling motion between his legs with his hand. Officer Gidich's partner advised Mr. Barnes to step out of the car and placed him under arrest for consuming an alcoholic beverage in a motor vehicle.

{¶3} Officer Gidich then looked inside the van and saw on the driver's seat "an off-white chunky substance" that he identified as crack cocaine. Collecting as much of the substance as he could, he placed it in an evidence bag. Another officer on the scene performed a field test, which indicated that the substance was cocaine.

{¶4} The sample was sent to the Ohio Bureau of Crime Identification and Investigation for testing. Shervonne Bufford, a forensic scientist at the Bureau, testified that she tested the substance according to Bureau protocols. The results indicated that the substance contained trace amounts of cocaine.

SUFFICIENCY OF THE EVIDENCE

{¶5} Mr. Barnes's first assignment of error is that his conviction for possession of drugs is not supported by sufficient evidence. Sufficiency of the evidence claims are reviewed de novo. *State v. Rucker*, 9th Dist. No. 25081, 2010-Ohio-3005, at ¶9 (citing *State v. Thompkins*, 78 Ohio St. 3d 380, 386 (1997)). Viewing the evidence in the light most favorable to the prosecution, this Court must determine whether the evidence could have convinced an average

fact finder beyond a reasonable doubt of Mr. Barnes's guilt. *State v. Jenks*, 61 Ohio St. 3d 259, paragraph two of the syllabus (1991).

{¶6} Mr. Barnes was convicted of possession of drugs, a violation of Section 2925.11(A) of the Ohio Revised Code. Under Section 2925.11(A), "[n]o person shall knowingly obtain, possess, or use a controlled substance." It is a violation of Section 2925.11 to possess any amount of a controlled substance. That section "does not qualify the crime by stating that the amount of the drug must be of a certain weight." *State v. McShepard*, 9th Dist. No. 06CA009024, 2008-Ohio-1460, at ¶16 (quoting *State v. Teamer*, 82 Ohio St. 3d 490, 491 (1998)).

{¶7} Possession is defined by Section 2925.01(K) of the Ohio Revised Code as "having control over a thing or substance . . . ." Possession may be either actual or constructive. *State v. Newton*, 9th Dist. No. 07CA009303, 2008-Ohio-3210, at ¶20 (citing *State v. Lamb*, 9th Dist. No. 23418, 2007-Ohio-5107, at ¶12). "Constructive possession will be found when a person knowingly exercises dominion or control over an item . . . ." *Id*. (citing *State v. Hankerson*, 70 Ohio St. 2d 87, syllabus (1982)). Further, "[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." R.C. 2901.22(B).

{¶8} Officer Gidich testified that he saw Mr. Barnes crumbling something between his legs and, "[b]ased on [his] past drug arrests of things of this nature, that's what people do when they're crumbling cocaine, crack cocaine." He testified that proper police procedures were followed in collecting a sample of the substance found on Mr. Barnes's driver seat. Further, Ms.

Bufford testified that the proper procedures were followed in testing the substance at the Bureau of Crime Identification and Investigation. The substance was found to contain cocaine.

{¶9} Mr. Barnes was the sole passenger in the van. According to Officer Gidich's testimony, Mr. Barnes exhibited behavior that law enforcement officers often deem to be actions taken to destroy or hide crack cocaine. Viewing the evidence in the light most favorable to the State, there was sufficient evidence to demonstrate beyond a reasonable doubt that Mr. Barnes knowingly possessed drugs. Mr. Barnes's first assignment of error is overruled.

MANIFEST WEIGHT OF THE EVIDENCE

{¶10} Mr. Barnes's second assignment of error is that his conviction is against the manifest weight of the evidence. When a defendant argues that his conviction is against the manifest weight of the evidence, this Court "must review 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 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." *State v. Otten*, 33 Ohio App. 3d 339, 340 (1986).

{¶11} Mr. Barnes has argued that he could not knowingly possess the cocaine found on the driver's seat of his van because Officer Gidich stated on cross-examination that there was no way to be "[one hundred] percent" certain that the substance was cocaine until it was tested by the Bureau of Crime Identification and Investigation. As stated above, "[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." R.C. 2901.22(B). For a person to act knowingly, they only need to be aware that their conduct is likely to cause a certain result. They do not need to be positive that it will.

{¶12} Officer Gidich identified the substance as crack cocaine when he first saw it on the seat. The tests merely confirmed his judgment. Further, Officer Gidich testified that he observed Mr. Barnes place his hand between his legs and make a crumbling motion in the vicinity of where the cocaine was discovered. Based upon his experience as a police officer, Officer Gidich testified that this was typical behavior for someone trying to destroy crack cocaine, which would indicate knowledge of its presence. While Mr. Barnes has raised possible alternative versions of the events in an effort to undermine Officer Gidich's testimony, nothing in the record calls the officer's credibility into question. The trial court was entitled to believe Officer Gidich's testimony. Accordingly, this Court cannot say that the trial court lost its way in finding Mr. Barnes guilty of possession of drugs. Mr. Barnes's second assignment of error is overruled.

CONCLUSION

{¶13} Mr. Barnes's conviction for possession of drugs is supported by sufficient evidence and is not against the manifest weight of the evidence. The judgment of the Lorain County Common Pleas Court 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 Lorain, 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.

CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
BELFANCE, J.
CONCUR

APPEARANCES:

ERIN A. DOWNS, attorney at law, for appellant.

DENNIS WILL, prosecuting attorney, and BILLIE JO BELCHER, assistant prosecuting attorney, for appellee.