

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 23298
Plaintiff-Appellee	:	
	:	Trial Court Case No. 08-CR-3361/2
v.	:	
	:	(Criminal Appeal from
HARRIS NEAL	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 19th day of March, 2010.

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FAIN, J.

{¶ 1} Defendant-appellant Harris Neal appeals from his conviction and sentence upon one count of Possession of Crack Cocaine. Neal argues that his conviction is against the manifest weight of the evidence and that it is not supported by sufficient evidence. We conclude that Neal’s conviction is supported by sufficient

evidence and that it is not against the manifest weight of the evidence. Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 2} At 5:00 a.m. on July 4, 2008, Montgomery County Sheriff's Deputies Haas, Creech, and Feehan were on foot patrol in the area of the Good Night Motel in Harrison Township. As they walked through the parking lot, an acquaintance stopped the deputies and told them that the people in Room 173 had drugs. When the deputies approached the room to investigate, the door opened, and Todd Mangeot started to exit the room. Upon seeing the deputies, Mangeot backed into the room and sat in a chair to the left of the door. The deputies saw a crack pipe in plain view on the table, giving them probable cause to enter the room.

{¶ 3} In addition to Mangeot, there were six other occupants in the small motel room. Anthony Ross was seated on the far side of the table, while Neal was seated at the near side of the table. Kenneth Winn was seated on the near side of the bed, and three women were seated on the far side. The deputies saw a lot of movement in the room. The three women moved to the far side of the room; Mangeot reached under his thigh; Ross walked behind the door; and Neal bent toward his feet, which he moved closer together as if hiding something. The deputies ordered the occupants to put their hands on their heads and stop moving.

{¶ 4} Deputy Haas asked Neal to stand up, and the deputy found crack cocaine and a crack pipe at Neal's feet. Deputy Haas found a bag of crack cocaine under Mangeot's thigh and a crack pipe on his person. The crack pipe, which was in plain view, was located directly in front of the chair that Ross had vacated. Under

that chair, Deputy Haas found crack cocaine. Deputy Haas also found crack cocaine in Winn's possession. The four men were placed under arrest. The deputies found no drugs or paraphernalia on the three women.

{¶ 5} Neal, who resides in Troy, claims that at the time of his arrest, he was driving an unlicensed cab in Dayton. When he dropped two men off at the Good Night Motel, he saw Winn, who offered him \$10 to drive him to a nearby intersection. Because Winn was not ready to leave, Neal waited in Winn's motel room with Winn, Ross, Mangeot, and the three women. When Neal became impatient with Winn's delay, Winn offered Neal another \$5 to wait.

{¶ 6} Neal denied having crack cocaine in his possession that day, and he insisted that he had not used the drug for many years. He admitted that he had been in the room for about 40 minutes, yet Neal claims that he never saw any drugs or paraphernalia in the room, nor did he know that there was crack or a pipe lying at his feet. Neal admitted bending over when the officers were at the door, but he explained that he was rubbing his legs and knees, which trouble him when he sits for very long.

{¶ 7} Neal was indicted on one count of Possession of Crack Cocaine. A jury found Neal guilty, and the trial court sentenced him to five years of community control. From his conviction and sentence, Neal appeals.

II

{¶ 8} Neal's First Assignment of Error is as follows:

{¶ 9} "THE TRIAL COURT ERRED IN OVERRULING MR. NEAL'S

CRIMINAL RULE 29 MOTION BECAUSE THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE CONVICTION.”

{¶ 10} Neal’s Second Assignment of Error is as follows:

{¶ 11} “MR. NEAL’S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶ 12} In his First Assignment of Error, Neal maintains that the trial court should have sustained his Crim.R. 29 motion for acquittal, because his conviction is not supported by sufficient evidence. In his Second Assignment of Error, he contends that his conviction is against the manifest weight of the evidence. After a review of the record, we conclude that Neal’s conviction is supported by sufficient evidence and that it is not against the manifest weight of the evidence.

{¶ 13} Criminal Rule 29(A) requires a trial court to enter a judgment of acquittal “if the evidence is insufficient to sustain a conviction of such an offense...” A sufficiency of the evidence argument challenges whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or to sustain the verdict as a matter of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. The proper test to apply to such an inquiry is the one set forth in paragraph two of the syllabus of *State v. Jenks* (1991), 61 Ohio St.3d 259: “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."

{¶ 14} In contrast, when reviewing a judgment under a manifest weight standard of review "[t]he 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 [factfinder] 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 evidence weighs heavily against the conviction." *Thompkins*, supra, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 15} Neal was convicted of Possession of Crack Cocaine, in violation of R.C. 2925.11(A), which states: "No person shall knowingly obtain, possess, or use a controlled substance." He does not deny the fact that the substance retrieved from the floor was, in fact, crack cocaine weighing less than one gram. Instead, Neal argues that the State failed to meet its burden of proving that he "knowingly possessed" that crack cocaine.

{¶ 16} "Knowingly" is defined as follows: "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). "In terms of 'knowing possession,' knowledge must be determined from all of the facts and circumstances surrounding the incident." *State v. Pounds*, Montgomery App. No. 21257, 2006-Ohio-3040, ¶34, citing *State v. Williams*, Montgomery App. No.

20271, 2005-Ohio-1597, ¶37, in turn citing *State v. Teamer*, 82 Ohio St.3d 490, 1998-Ohio-193.

{¶ 17} “Possess or possession means 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.” R.C. 2925.01(K). Possession may be actual or constructive. *State v. Wolery* (1976), 46 Ohio St.2d 316, 329. “Constructive possession exists when an individual exercises dominion and control over an object, even though that object may not be within his immediate physical possession.” *Id.* A finding of constructive possession may be supported by evidence that shows that the accused was in close proximity to readily usable drugs. *State v. Gray*, Montgomery App. No. 19493, 2003-Ohio-2822, ¶22, citing *State v. Barnett*, Montgomery App. No. 19185, 2002-Ohio-4961.

{¶ 18} The thrust of Neal's arguments is that his testimony was credible and that the jury should have believed him rather than the deputies. The credibility of witnesses and the weight to be given to their testimony are primarily matters for the trier of fact to resolve. *State v. DeHass* (1967), 10 Ohio St.2d 230, 231. The jury heard the testimony of all of the witnesses and saw their demeanor on the stand. The jury “is particularly competent to decide ‘whether, and to what extent, to credit the testimony of particular witnesses,’ we must afford substantial deference to its determinations of credibility.” *State v. Spears*, 178 Ohio App.3d 580, 2008-Ohio-5181, ¶12, quoting *State v. Lawson* (Aug. 22, 1997), Montgomery App. No. 16288. “This court will not substitute its judgment for that of the trier of facts on

the issue of witness credibility unless it is patently apparent that the trier of facts lost its way in arriving at its verdict.” *Pounds*, supra, at ¶39, citing *State v. Bradley* (Oct. 24, 1997), Champaign App. No. 97-CA-03.

{¶ 19} Despite his having been in the room for 40 minutes, Neal claimed that he never saw either drugs or paraphernalia in the room. Yet, the State’s evidence shows that when the deputies looked into the open door of Room 173, they immediately saw a crack pipe in plain view on the table in front of Ross, the same table at which Neal was seated. As they entered the room, Deputy Haas saw Neal lean toward his feet and move his feet together as if he were hiding something. When Neal stood up, Deputy Haas found both crack and a crack pipe at Neal’s feet. The State’s evidence is sufficient to establish constructive possession. Although the crack was not found on Neal’s person, it was found in close proximity to him under circumstances suggesting that he had just placed it there, permitting a reasonable inference by the jury that he acted knowingly. See, e.g., *Grey*, supra.

{¶ 20} Viewing the evidence, as we must, in a light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime of Possession of crack cocaine beyond a reasonable doubt. Therefore, Neal’s conviction is supported by sufficient evidence. Furthermore, the jury’s verdict reflects that they found the testimony of the State’s witnesses to be more credible than that of Neal. A jury does not lose its way simply because it chooses to believe the State’s witness over the defendant. *Pounds*, supra, at ¶40. Based on the record before us, Neal’s conviction is not against the manifest weight of the evidence.

{¶ 21} For the foregoing reasons, both of Neal’s assignments of error are

overruled.

III

{¶ 22} Both of Neal's assignments of error having been overruled, the judgment of the trial court is Affirmed.

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GRADY and FROELICH, JJ., concur.

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