

RENDERED: February 13, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 97-CA-0057-MR

QUINN EMMANUEL WILSON

APPELLANT

v. APPEAL FROM McCRACKEN CIRCUIT COURT
HONORABLE RON DANIELS, JUDGE
ACTION NO. 95-CR-000334

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

* * *

BEFORE: BUCKINGHAM, KNOPF, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from a judgment convicting appellant of first-degree possession of a controlled substance. Appellant argues there was not sufficient evidence to support the conviction. We disagree and, thus, affirm.

On September 7, 1995, at about 10:45 p.m., City of Paducah police officer Rob Estes stopped the car in which appellant, Quinn Wilson, was a passenger, for failing to obey a stop sign. Officer Estes asked the occupants of the vehicle for identification. When the occupants could not produce identification, Officer Estes questioned them, taking their names

and dates of birth. As Officer Estes was in his vehicle checking the information, the occupants ran from the car. Officer Estes pursued appellant on foot, while an assisting officer pursued the driver. While in pursuit, Officer Estes lost sight of appellant for several minutes. Officer Estes called for assistance, relaying a description of the appellant and the direction in which he was running.

Minutes after eluding Officer Estes, appellant was apprehended by Officer Hodge and Officer Hodgson. At the time of his arrest, appellant had in his possession \$206 in cash, \$60 worth of food stamps and two pagers. Officer Hodgson searched the area surrounding the arrest and found a bag of crack cocaine in a city garbage can. The garbage can in question was 36 feet away from the spot where appellant was apprehended and also was in the path of appellant as he was fleeing the police officers.

Officer Hodgson described the garbage can as being virtually empty at the time he found the bag of crack cocaine inside, as if it had recently been emptied. Officer Hodgson further described the garbage can as being wet, grimy and dirty on the inside. The bag of cocaine inside, however, was clean and dry.

As a result of the above incident, appellant was indicted for possession of a controlled substance in the first degree. At the jury trial on said charge, the Commonwealth presented the testimony of six witnesses, five of whom were police officers involved in the case. The other witness was a

forensic scientist for the Kentucky State Police. Appellant offered no proof in the case. After the Commonwealth rested its case and at the close of all the evidence, appellant moved for a directed verdict based upon insufficient evidence. The court denied the motions. Appellant was convicted of first-degree possession of a controlled substance and sentenced to four years' imprisonment. This appeal followed.

Appellant's sole argument on appeal is that the trial court committed reversible error when it denied his motions for a directed verdict. Appellant maintains there was insufficient evidence that he had been in possession of the cocaine found in the garbage can.

On a motion for directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991). If the evidence in favor of the Commonwealth is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty, a directed verdict should not be given. Id. On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then is the defendant entitled to a directed verdict of acquittal. Id.

Under the definition of "possession" in KRS 500.080(14), a defendant is not required to be in actual possession of the controlled substance in order to be convicted of first-degree possession of a controlled substance pursuant to

KRS 218A.1415. Constructive possession may be shown by establishing that the controlled substance was subject to the defendant's dominion and control. Clay v. Commonwealth, Ky. App., 867 S.W.2d 200 (1993); KRS 500.080(14). Circumstantial evidence of possession is sufficient to support a conviction for possession of a controlled substance. See Howard v. Commonwealth, Ky. App., 787 S.W.2d 264 (1989).

Appellant cites to U.S. v. White, 932 F.2d 588 (6th Cir. 1991), wherein it was held that physical proximity to drugs or mere presence in an area where drugs are found is not sufficient to establish constructive possession. While we would agree that evidence of mere physical proximity to drugs is not sufficient to support a conviction for possession of a controlled substance, in the instant case, there was other circumstantial evidence that appellant had been in possession of the bag of cocaine found in the garbage can.

First, the fact that appellant ran from the police tends to show that he was involved in some illegal activity. In United States v. Morales-Cartagena, 987 F.2d 849 (1st Cir. 1993), the Court looked to the fact that the appellees attempted to flee when the authorities arrived as evidence that the appellees were in constructive possession of drugs found in the area. Second, the two pagers and cash found on appellant at the time of his arrest were evidence of drug-related activity. See Jett v. Commonwealth, Ky. App., 862 S.W.2d 908 (1993); overruled on other grounds by Weaver v. Commonwealth, Ky., _____ S.W.2d _____

(1997). Third, the garbage can in which the bag of cocaine was found was in the path of appellant's flight and only 36 feet away from the site where appellant was apprehended. Further, said garbage can was wet and dirty, while the bag of cocaine was dry and clean, suggesting that the bag of cocaine had only been in the garbage can for a short time. Finally, there was no evidence that anyone else, who could have thrown the bag of cocaine inside the can, was in the vicinity of the garbage can around that time.

From all of the above circumstantial evidence, we believe the jury could reasonably have concluded that appellant had been in possession of the bag of cocaine found in the garbage can. Accordingly, the court properly denied the motions for a directed verdict.

For the reasons stated above, the judgment of the McCracken Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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