

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-001525-MR

DARRELL LAMONT DAMONS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 1997-CR-000014

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: EMBERTON, KNOPF, and KNOX, JUDGES.

KNOPF, JUDGE: Darrell Damons appeals from a June 11, 1997, judgment of the Fayette Circuit Court convicting him of possession of a controlled substance in the first degree (cocaine) (KRS 218A.1415), a felony, and of other misdemeanor drug and traffic-related offenses. Damons admitted to being a second-degree persistent felony offender (KRS 532.080), and his one (1) year sentence for the possession offense was enhanced accordingly to five (5) years in prison. Damons contends on appeal that the trial court erred by denying his motions for a directed verdict of acquittal because the Commonwealth produced insufficient evidence of his having possessed the cocaine

knowingly. Being convinced to the contrary, we affirm the trial court's judgment.

Damons was arrested during the evening of October 30, 1996, on Versailles Road in Lexington, Kentucky, when Lieutenant Qualls of the Fayette County Sheriff's Department observed him driving erratically, pulled him over, and determined that he was likely under the influence of marijuana. Qualls testified that during his search of Damons's vehicle incident to the arrest, he discovered a small amount of what proved to be marijuana, a digital scale suitable for weighing small quantities of drugs, and a portable safe. The safe was empty, but on the scale there was a whitish residue which proved to be cocaine base, the so called "crack" form of cocaine. Qualls stated that he found the scale beneath the moveable arm rest that divided the driver's seat from that of the front passenger. He also testified that upon initially approaching Damons's vehicle he had detected what he believed to be the odor of marijuana, but had also noticed the strong scent of five (5) or six (6) air fresheners which were arrayed on the car's dashboard.

At the time of his arrest, Damons had recently broken up with a girl friend of fairly long standing. This woman testified for the Commonwealth and stated that she had witnessed Damons's purchase of the car he was driving when arrested and that she had seen him in possession of the digital scale. Damons, who did not testify at trial, attempted to establish through cross-examination of this witness that the scale belonged

to this former girl friend and that it was she who either left or placed it in his car.

Damons now argues that he was entitled to a directed verdict on the possession charge because the evidence failed to establish his knowledge of the cocaine. In particular, he contends that the evidence permits only an inference of his possession of the scale, and therefore that it was improper for the fact-finder to infer additionally from that possession that he had been aware of the cocaine residue. This Court reviews the denial of a motion for a directed verdict by asking whether "under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt . . ." Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991) (citation omitted).

KRS 218A.1415 provides in pertinent part that

(1) A person is guilty of possession of a controlled substance in the first degree when he knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is a narcotic drug; . . .¹

"Possession," as contemplated by this statute, includes "constructive possession," which is possession inferred from evidence that the cocaine was discovered in a place under the dominion and control of the alleged possessor. Clay v. Commonwealth, Ky. App., 867 S.W.2d 200 (1993). Furthermore, this statute outlaws the possession of even trace amounts of cocaine, provided that there is sufficient evidence to find that the possession was "knowing." Commonwealth v. Shively, Ky., 814

¹Cocaine is classified as a Schedule II narcotic. KRS 218A.070.

S.W.2d 572 (1991). "Knowing" or "knowingly" is not defined within KRS Chapter 218A, but in the penal code, at KRS 501.020(2), "knowingly" is defined as follows:

[a] person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of that nature or that the circumstance exists.

This definition is appropriately applied to Chapter 218A offenses as well as to penal code offenses (*cf.* Powell v. Commonwealth, Ky. App., 843 S.W.2d 908 (1992) (applying the penal code definition of "possession" to Chapter 218A). We are convinced, therefore, that it was not clearly unreasonable for a jury to conclude that Damons's possession of the cocaine was "knowing" as so defined.

Damons is correct, of course, that the Commonwealth must prove each element of the alleged offense beyond mere speculation, Brian v. General Motors Corp., Ky., 461 S.W.2d 99 (1970). One way this requirement has been expressed is through disapproval of the fact-finder's basing "an inference upon an inference." Pengleton v. Commonwealth, 294 Ky. 484, 172 S.W.2d 52, 53 (1943). We are not persuaded, however, that the evidence here either necessitated or encouraged improper speculation. First, not only would Damons's ownership of the car and his control of it at the time of his arrest allow a finding that he constructively possessed the cocaine-imbued scale, but also there was the testimony of Damons's girl friend, which, if believed, directly established Damons's possession of the scale. Thus, even if a juror inferred Damons's knowledge of the cocaine from

his possession of the scale, that inference would not have been impermissibly attenuated.

There was sufficient additional evidence, moreover, to support a finding that Damons's possession was knowing. Damons's marijuana intoxication at the time of his arrest, his possession of marijuana, and his apparent provisions for disguising the smell of marijuana inside his car together imply more than a casual involvement with illegal drugs. This evidence strongly suggests that the cocaine residue visible on Damons's scale was there with his knowledge. The safe found in Damons's car, too, although innocent by itself, when considered in conjunction with the other evidence of drug involvement, also contributes to the impression that Damons knowingly possessed cocaine.

Because the evidence adequately supported a finding of knowing cocaine possession, the Fayette Circuit Court did not err by denying Damons's motions for a directed verdict. Accordingly, that court's June 11, 1997, judgment is affirmed.

ALL CONCUR.

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