

[Cite as *State v. Jackson*, 2009-Ohio-5479.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 92153**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**JENE JACKSON**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-491992

**BEFORE:** McMonagle, J., Gallagher, P.J., and Celebrezze, J.

**RELEASED:** October 15, 2009

**JOURNALIZED:**

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendant-appellant, Jene Jackson, appeals his drug possession, carrying a concealed weapon, having a weapon while under disability, and possession of criminal tools convictions, rendered after a bench trial. We affirm.

{¶ 2} Jackson was charged in a five-count indictment as follows: Count 1, drug trafficking, with a one-year firearm specification; Count 2, drug possession, with a one-year firearm specification; Count 3, carrying a concealed weapon; Count 4, having a weapon while under disability; and Count 5, possessing criminal tools, to-wit: money and/or a cell phone, and/or a handgun.

{¶ 3} The State presented three law enforcement officials at trial who gave the following testimony. On the evening in question, several Cleveland police officers were patrolling the area around East 78<sup>th</sup> Street and Kinsman Avenue because there had been a string of robberies. The area encompasses the Garden Valley Estates.

{¶ 4} As officers turned into the Garden Valley parking lot, they observed a white vehicle with several males inside. Jackson was in the driver's seat; Cortez Blair was in the front passenger seat; and Travis Hicks was the rear-seat passenger. An unidentified male was standing at the

passenger side of the vehicle; he had money in his hand and fled upon seeing the police. Believing that the unidentified male had been involved in a hand-to-hand drug transaction, the officers approached the vehicle.

{¶ 5} As the police approached, the passengers (Blair and Hicks) leaned down to the floorboard of the vehicle. The officers first ordered Blair out of the vehicle and observed a bag of crack cocaine on the front floor where Blair had been seated. Jackson and Hicks were then also ordered out of the vehicle. During a search of the car, the police recovered a loaded handgun in the center console, and upon its recovery, Jackson stated, "I have the gun, it's my mom's." More crack cocaine was recovered from the locked glove compartment. Found on Jackson's person was some \$200 in cash, but no drugs.

{¶ 6} The vehicle was registered to Jackson. In a statement to the police, Jackson said that his mother, Jean Jackson, had borrowed his car earlier in the day and had an accident with it. After getting the car back from his mother, Jackson drove a friend downtown and then returned home to watch television. Later, Jackson drove to Garden Valley to speak with his brother. While at Garden Valley, he ran into Blair and Hicks. Hicks asked Jackson if Jackson could give him and Blair a ride to Hicks's house. Jackson agreed and gave the car keys to Hicks, who got into the vehicle; Jackson did

not get into the car at that time because he had to speak to his brother about a personal matter.

{¶ 7} After talking with his brother, Jackson got into the car and drove into the Garden Valley parking lot because he had to give a friend some money. Moments later, he and his friends were apprehended by the police. Jackson denied knowing that the gun was in the car, but stated that he was sure it was his mother's gun because she had borrowed his car earlier in the day, and "[s]he always carries a gun in her car." He denied knowledge of the drugs in the glove compartment, which he stated he always kept locked; the key to unlock it was on the key chain he had given to Hicks.

{¶ 8} At the conclusion of the State's case, the defense made a Crim.R. 29 motion for acquittal. The court granted the motion as to Count 1, drug trafficking, and granted it in part as to Count 5, possession of criminal tools, as related to the cash and cell phone; thus, Count 5 remained only as it related to the handgun. The court also amended Count 4, having a weapon while under disability, to reflect that Jackson was previously charged with, but not convicted of, a drug possession charge.

{¶ 9} The defense presented a case. Jackson's mother testified that her son lived with her. Ms. Jackson explained that she did not own a car, and on the day in question, her son allowed her to borrow his car. At some point while using the car, she had a friend in it with her. She also testified

that she was the owner of the weapon in question. Ms. Jackson explained that she kept the gun in a locked safe in her bedroom, and she was the only person who knew the combination to the safe.

{¶ 10} According to Ms. Jackson, the gun was for home protection and she never took it out of the safe; she did not have a permit for the gun because she had no intention of carrying it on a daily basis. On the day in question, however, she took the gun out of the safe and brought it, in the box it came in when she purchased it, along with a box of bullets, into her son's car to show her friend, who was familiar with guns. Her friend loaded the gun to show her how to properly do so. The two were in her driveway at the time, and after they talked about the gun, Ms. Jackson put it in the center console and they got out of the car because she wanted to show her friend her yard. The two had "a couple of beers" in the yard and "time got away from them."

{¶ 11} Ms. Jackson explained that it was getting close to the time she had to be at work and she still had to get gas in the car. Thus, her friend caught the bus home and she left in her son's car again to get gas and then go to work. In a rush, she hit a pole at the gas station. Distraught about the accident, she called off work, took the car back home, and told her son what had happened. In all the excitement, the gun in the car "[c]ompletely slipped [her] mind." Shortly after she told her son what had happened, he

left in the car. Ms. Jackson testified that she did not believe her son ever came back home that evening.

{¶ 12} Ms. Jackson also testified that, after the incident, she kept the box that the gun came in (the same box that she testified she took out to the car) in her safe and had brought it to court on the day of trial. She was unable to explain, however, how it was that the box got back into the safe, but not the gun.

{¶ 13} Hicks (the backseat passenger) also testified for the defense. He explained that on the day in question, he and Blair were walking around Garden Valley when they saw Jackson talking to his brother. They approached Jackson and asked him for ride to McDonald's. Jackson agreed, but told them it would be a few minutes because he had to finish talking to his brother. Hicks asked Jackson for the keys to his car and Jackson gave them to him. Hicks then unlocked the car, put crack cocaine in the glove compartment, locked the compartment, and waited outside of the car for Jackson. Hicks explained that he intended to sell the crack, but did not want it on his person when he was riding in the car in case they were pulled over. He never told Jackson about the drugs. Hicks denied that any person ever came up the car to talk to and/or buy drugs from them.

{¶ 14} Hicks further testified that when the police found the gun in the car, he heard Jackson say that it belonged to his mother. Hicks also testified that he told the police that the drugs in the glove compartment were his.

{¶ 15} The defense renewed its Crim.R. 29 motion for acquittal at the conclusion of its case; it was denied. The court found Jackson guilty of the remaining charges. Jackson challenges the sufficiency and weight of the evidence.

{¶ 16} A challenge to the sufficiency of the evidence supporting a conviction requires a court to determine whether the State has met its burden of production at trial. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541. On review for sufficiency, courts are to assess not whether the State's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. *Id.* 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. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492 paragraph two of the syllabus.

{¶ 17} A challenge to the manifest weight of the evidence, on the other hand, attacks the credibility of the evidence presented. *Thompkins* at 387. In determining whether a conviction is against the manifest weight of the



evidence, the court of appeals functions as a “thirteenth juror,” and, after “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 jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *Thompkins* at 387, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E. 2d 717. Reversing a conviction as being against the manifest weight of the evidence and ordering a new trial should be reserved for only the “exceptional case in which the evidence weighs heavily against the conviction.” *Id.*

{¶ 18} Finally, although sufficiency and manifest weight are different legal concepts, manifest weight may subsume sufficiency in conducting the analysis; that is, a finding that a conviction was supported by the manifest weight of the evidence necessarily includes a finding of sufficiency. *Thompkins* at 388. In the present case, manifest weight is dispositive.

{¶ 19} The drug possession, carrying a concealed weapon, and having a weapon while under disability convictions required the State to prove that Jackson knowingly had or possessed the drugs and gun. See R.C. 2925.11, 2923.12, and 2923.13. Jackson contends in his first, second, and fourth assignments of error that the evidence was insufficient and against the manifest weight because he did not have knowledge that the drugs and gun

were in the car and, therefore did not knowingly have or possess them. We disagree.

{¶ 20} Possession may be proven by evidence of actual physical possession or constructive possession where the contraband is under the defendant's dominion or control. *State v. Palmer* (Feb. 6, 1992), Cuyahoga App. No. 58828. It is not necessary to establish ownership of contraband in order to establish constructive possession. *State v. Mann* (1993), 93 Ohio App.3d 301, 308, 638 N.E.2d 585. Rather, two or more persons may jointly possess an item. *Id.*; *State v. Correa* (May 15, 1997), Cuyahoga App. No. 70744 (defendant found to constructively possess drugs that were discovered on individual with whom he had close contact). 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. *State v. Pruitt* (1984), 18 Ohio App.3d 50, 58, 480 N.E.2d 499; *State v. Scalf* (1998), 126 Ohio App.3d 614, 619-620, 710 N.E.2d 1206. For constructive possession to exist, it must be shown "that the person was conscious of the presence of the object." *State v. Hankerson* (1982), 70 Ohio St.2d 87, 91, 434 N.E.2d 1362.

{¶ 21} Here, drugs were found in the glove compartment and a gun was found in the center console of Jackson's car while it was in his possession. Jackson presented the testimony of his mother and Hicks in an attempt to

demonstrate that he did not have knowledge of the contraband. The court did not find either witness reliable, however. In regard to Hicks, the court viewed his testimony as “a convenient construction of the facts” “with extreme suspicion,” noting that it believed because of Hicks’s friendship with Jackson, he was trying “to exculpate a friend, even at his own expense.”

{¶ 22} Essentially, Hicks testified that he put the drugs in Jackson’s car while Jackson finished his conversation with his brother, so they would not be on his person just in case they got pulled over. Hicks testified that the drugs had been on his person for quite some time that day, but that during that period of time, he had been walking, not driving or riding in a car. According to Hicks, being in a car with the drugs on his person concerned him because he would not have been able to “throw” them as easily as he could if he had been walking. Mindful that witness credibility is best determined by the trier of fact, we find that there was nothing “exceptional” about the court’s finding of unreliability regarding Hicks’s testimony.

{¶ 23} Suspicion was also cast on Ms. Jackson’s testimony vis-a-vis Jackson’s statement. In particular, the court noted that “at least words in [Jackson’s] statement did not indicate any surprise [on Jackson’s part] that the officer’s [had] located a gun at the scene.” In fact, Jackson told the police that the gun belonged to his mother, who had borrowed his car earlier in the day, and always carried a gun in her car.

{¶ 24} In direct contradiction to Jackson’s statement, his mother testified to the following: (1) she did not own a car; (2) the gun was for protection of her home; (3) she kept the gun in a locked safe in her bedroom; and (4) her intention in purchasing the gun was not to carry it around and, thus, she did not have such a permit for it. On this record, there is nothing “exceptional” about the court’s discount of Ms. Jackson’s testimony.

{¶ 25} Because there is nothing “exceptional” about the trial court’s findings that Jackson possessed the gun and the drugs in the center console, the manifest weight of the evidence supported the drug possession, carrying a concealed weapon, and having a weapon while under disability convictions, and as such, the evidence was also sufficient to support those charges. Accordingly, the first, and second assignments are overruled, and the fourth assignment of error is overruled as it relates to those charges.

{¶ 26} Jackson also challenges his possession of criminal tools conviction on sufficiency and manifest weight grounds in his third and fourth assignments of error. In particular, he contends that the State failed to present evidence that he possessed the gun with purpose to use it criminally, as required under R.C. 2923.24.

{¶ 27} As just discussed, the evidence supported the trial court’s finding that Jackson possessed the gun. As to Jackson’s possession of it with purpose to use it criminally, a gun is presumed intended for criminal use

unless the evidence shows otherwise. R.C. 2923.24(B)(1);<sup>1</sup> *State v. Gaines* (June 10, 1993), Cuyahoga App. Nos. 62756, 62757. In this case, the record reflects an absence of circumstances indicating the dangerous ordnance was intended for a legitimate use. On this record, the manifest weight of the evidence supported the possession of criminal tools conviction and, thus, necessarily, the sufficiency of the evidence also supported the conviction. Accordingly, the third and fourth assignments of error are overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE, JUDGE

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<sup>1</sup>“\* \* \* the following constitutes prima-facie evidence of criminal purpose: (1) Possession or control of any dangerous ordnance \* \* \* in the absence of circumstances indicating the dangerous ordnance \* \* \* [is] intended for legitimate use[.]” R.C. 2923.24(B)(1).

SEAN C. GALLAGHER, P.J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR