[Cite as *State v. Guildoo*, 2017-Ohio-2971.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
Plaintiff - Appellee	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
STEVEN A. GUILDOO	:	Case No. 2016CA00161
	:	
Defendant - Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas, Case No. 2016-CR-0732(B)
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	May 22, 2017

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
JOHN D. FERRERO Prosecuting Attorney	BERNARD L. HUNT 2395 McGinty Road N.W. North Canton, Ohio 44720
By: KRISTINE W. BEARD Assistant Prosecuting Attorney 110 Central Plaza South, Suite 510 Canton, Ohio 44702	

Baldwin, J.

{¶1} Appellant Steven A. Guildoo appeals a judgment of the Stark County Common Pleas Court convicting him of possession of heroin (R.C. 2925.11(A)(C)(6)(a)) and sentencing him to six months incarceration. Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} During a two month period in early 2016, Alliance police investigated appellant and a group of people for manufacturing methamphetamine. Police were concerned that appellant was manufacturing methamphetamine at his residence in Mahoning County. Police suspected he made frequent trips to Alliance to purchase manufacturing equipment and chemicals, to engage others in the purchase of chemicals used to manufacture methamphetamine, and to sell methamphetamine.

{¶3} On March 31, 2016, officers conducted surveillance of appellant's vehicle. He had two people in his vehicle: Celeina Robinson and Tanya Sudimak. Robinson had previously been investigated for manufacturing methamphetamine, and Sudimak had a warrant for her arrest.

{¶4} Officers observed Robinson go into the Walmart in Salem, where she purchased pseudoephedrine, a drug used in the manufacture of methamphetamine. The officers could electronically track the purchase of pseudoephedrine as the purchases were being made. The group then drove to a nearby Giant Eagle, where Sudimak went inside. Although officers did not see a purchase of pseudoephedrine made in her name while electronically tracking purchases, they saw her exit the store carrying a pharmacy bag. The group then traveled to Marc's, where appellant purchased pseudoephedrine.

{¶5} Appellant dropped off Robinson, who did not take anything with her from the vehicle. Officers then stopped the vehicle for two reasons: they believed the group's cumulative purchases of pseudoephedrine were for the purpose of manufacturing methamphetamine, and they intended to arrest Sudimak on the warrant.

{¶6} After the vehicle was stopped, officers placed Sudimak under arrest and searched her purse. In the purse they found an identification card for Cassie Wervey, which had been used to purchase pseudoephedrine at Giant Eagle. Officers observed pseudoephedrine on the floor of the vehicle, and detected a distinct chemical odor on appellant's body which is present on a person who either abuses methamphetamine over a period of time, or who has recently manufactured methamphetamine.

{¶7} The officers proceeded to search the vehicle for the presence of equipment or chemicals used in the manufacturing of methamphetamine. In a package of Marlboro cigarettes found in the vehicle, officers found a bindle of heroin, later found by the crime lab to weigh .6 grams. In a zippered container in the vehicle, officers found a needle, a syringe, a spoon, and a lighter.

{¶8} Captain James Hilles of the Alliance Police Department checked appellant's arms, and noted fresh track marks consistent with the use of a recent drug injection. Sudimak admitted that the items in the zippered pouch were hers, but denied ownership of the heroin in the cigarette package. While she was detained, she asked officers for a cigarette, specifically one of the Marlboro cigarettes, which she referred to as belonging to appellant. She told officers she rolled her own cigarettes because she could not afford Marlboros.

{¶9} Appellant was indicted by the Stark County Grand Jury with one count of possession of heroin. Appellant filed a motion to suppress evidence recovered from the search of the vehicle, which was overruled by the trial court. The case proceeded to jury trial. Prior to the presentation of evidence, appellant moved to prevent the State from presenting any evidence pertaining to the criminal investigation for the manufacturing of methamphetamine or the illegal purchase of pseudoephedrine. The court sustained the motion. Appellant was convicted as charged and sentenced to six months incarceration.

{¶10} Appellant assigns two errors on appeal:

{¶11} "I. THE TRIAL COURT ERRED WHEN IT OVERRULED THE DEFENDANT'S MOTION TO SUPPRESS.

{¶12} "II. THE TRIAL COURT ERRED WHEN IT OVERRULED THE DEFENDANT'S MOTION TO DISMISS UNDER CRIMINAL RULE 29(A)."

I.

{¶13} Appellant argues that the court erred in overruling his motion to suppress. He argues that the reason for the stop of the vehicle was the arrest warrant for Sudimak, and once she had been removed from the vehicle, the search of the vehicle was unreasonable.

{¶14} The United States Supreme Court recognizes an "automobile exception" to the Fourth Amendment's requirement that police officers must generally obtain a warrant before conducting a search. *State v. Ivery*, 11th Dist Lake No.2011–L–081, 2012–Ohio–1270, ¶ 23, *citing California v. Carney*, 471 U.S. 386, 390 S.Ct. 2066, 85 L.Ed.2d 406 (1985). Under the automobile exception, there is no need to demonstrate that a "separate exigency" exists to justify the search. *Id*., *citing Maryland v. Dyson*, 527 U.S. 465, 466,

119 S.Ct. 2013, 144 L.Ed.2d 442 (1999). "If a car is readily mobile and probable cause exists to believe that it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more." *Pennsylvania v. Labron*, 518 U.S. 938, 940, 116 S.Ct. 2485, 135 L.Ed.2d 1031 (1996).

{¶15} In *United States v. Ross*, the United States Supreme Court clarified restrictions which the Fourth Amendment places on vehicle searches, holding that the permissible scope of a vehicle search is "no greater than a magistrate could have authorized by issuing a warrant based on the probable cause that justified the search." 456 U.S. 798, 818, 102 S.Ct. 2157, 72 L.Ed.2d 572(1982). Thus, compartments and packages within a vehicle, which could contain the illicit object for which the police have probable cause to believe exists, may also be searched. *State v. Gonzales*, 6th Dist. Wood No. WD-07-060, 2009-Ohio-168, ¶ 17. After an officer has probable cause to believe that a vehicle contains contraband, a permissible search of the vehicle is "defined by the object of the search and the places in which there is probable cause to believe it may be found." *Ross*, *supra*, at 824.

{¶16} Contra to appellant's argument, the testimony at the suppression hearing did not demonstrate that the arrest warrant for Sudimak was the only reason for the stop of the vehicle. Captain James Hilles testified that the stop of the vehicle was based on the presence of Sudimak, as well as the purchase of pseudoephedrine by the occupants of the vehicle. Although individually none of the occupants of the car purchased an illegal amount of pseudoephedrine, the officer testified that the combined purchases of the occupants exceeded the normal use of the drug, and he believed based on his previous investigation of appellant over a period of several months that they were using the drug

to manufacture methamphetamine. Further, Robinson, who was an occupant of the car, had previously been investigated for manufacturing methamphetamine.

{¶17} After stopping the vehicle, the officers discovered additional evidence to support their belief that the occupants of the vehicle were using the pseudoephedrine in the manufacturing of methamphetamine. During Sudimak's arrest they discovered a false identification card which had been used to purchase pseudoephedrine at the Giant Eagle. They also observed a package of pseudoephedrine in plain view on the passenger floorboard of the front seat, where Sudimak had been sitting. When appellant exited the vehicle, his body put off an odor which Detective Bob Rajan testified was consistent with someone who had either used methamphetamine for a period of time, or had recently manufactured methamphetamine. The trial court did not err in finding that the officers had probable cause to search the car under the automobile exception to the warrant requirement. Further, based on the fact that the nature of the contraband, i.e. methamphetamine and the precursor chemicals used to manufacture methamphetamine, could be located in small compartments in the vehicle, the officers could search the console, the compartments located under the cup holder, and the cigarette package.

{¶18} The first assignment of error is overruled.

II.

{¶19} In the second assignment of error, appellant argues that the evidence was insufficient to demonstrate that he knowingly obtained or possessed the heroin found in his vehicle, and the trial court therefore erred in overruling his Crim. R. 29(A) motion to dismiss.

{¶20} Crim. R. 29(A) provides:

> The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses. The court may not reserve ruling on a motion for judgment of acquittal made at the close of the state's case.

{¶21} A Crim. R. 29(A) motion for acquittal tests the sufficiency of the evidence presented at trial. *State v. Blue*, 5th Dist. Stark No.2001CA00250, 2002–Ohio–351, *citing State v. Williams*, 74 Ohio St.3d 569, 576, 1996–Ohio–91, 660 N.E.2d 724; *State v. Miley,* 114 Ohio App.3d 738, 742, 684 N.E.2d 102 (4th Dist.1996). Crim. R. 29(A) allows a trial court to enter a judgment of acquittal when the state's evidence is insufficient to sustain a conviction. A trial court should not sustain a Crim. R. 29 motion for acquittal unless, after viewing the evidence in a light most favorable to the state, the court finds no rational finder of fact could find the essential elements of the charge proven beyond a reasonable doubt. *State v. Franklin*, 5th Dist. Stark No.2007–CA–00022, 2007–Ohio–4649 at ¶ 12, *citing State v. Dennis*, 79 Ohio St.3d 421, 1997–Ohio–372, 683 N.E.2d 1096.

{¶22} An appellate court's function when reviewing the sufficiency of the evidence is to determine 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*, 61 Ohio St. 3d 259, 574 N.E.2d 492, paragraph two of the syllabus (1991).

{¶23} Appellant was charged with a violation of R.C. 2925.11(A), which provides, “No person shall knowingly obtain, possess, or use a controlled substance or a controlled

substance analog." In the instant case the controlled substance was .6 grams of heroin, which was not in dispute as the parties stipulated to the identity and weight of the seized substance.

{¶24} R.C. 2901.22(B) defines "knowingly" as follows:

> A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

{¶25} Possession is defined by R.C. 2925.01(K), which provides, "'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."

{¶26} Possession may be actual or constructive. *State v. Hankerson*, 70 Ohio St.2d 87, 434 N.E.2d 1362 (1982); syllabus. To establish constructive possession, the evidence must prove that the defendant was able to exercise dominion and control over the contraband. *State v. Wolery*, 46 Ohio St.2d 316, 348 N.E.2d 351 (1976). Dominion and control may be proven by circumstantial evidence alone. *State v. Trembly*, 137 Ohio App.3d 134, 738 N.E.2d 93 (8th Dist.2000). Circumstantial evidence that the defendant was located in very close proximity to readily usable drugs may show constructive

possession. *State v. Barr*, 86 Ohio App.3d 227, 235, 620 N.E.2d 242 (8th Dist.1993); *State v. Morales*, 5th Dist. No. 2004 CA 68, 2005-Ohio-4714, 2005 WL 2175144, ¶ 50; *State v. Moses*, 5th Dist. No. 2003CA00384, 2004-Ohio-4943, 2004 WL 2260571, ¶ 9. Ownership of the drugs need not be established for constructive possession. *State v. Smith*, 9th Dist. No. 20885, 2002-Ohio-3034, 2002 WL 1363704, ¶ 13, citing *State v. Mann*, 93 Ohio App.3d 301, 308, 638 N.E.2d 585 (8th Dist.1993). Furthermore, possession may be individual or joint. *Wolery*, 46 Ohio St.2d at 332, 348 N.E.2d 351.

{¶27} In *Morales, supra,* we found the judgment of conviction for aggravated possession of methamphetamine was not against the manifest weight of the evidence where the defendant was driving the car, and the drugs were found in the console around the gear shift assembly and in the center armrest compartment, which was right at appellant's elbow. *Morales, supra,* ¶51. Similarly, in the instant case, the State presented evidence that appellant was driving the car, and it was a car he regularly drove. Officer Mark Welsh testified that the heroin was found in a Marlboro cigarette package, located in a console between the front seats. The package also contained several cigarettes. Welsh testified that during the traffic stop, Sudimak asked for one of appellant's Marlboro cigarettes, as she cannot afford them and rolls her own. Captain Hilles testified that appellant had track marks on his arms, some of which appeared to be fresh. From this evidence, a rational trier of fact could conclude that appellant had constructive possession of the heroin found in the cigarette package in the car. The trial court did not err in overruling appellant's motion to dismiss pursuant to Crim. R. 29(A).

{¶28} The second assignment of error is overruled. The judgment of the Stark County Common Pleas Court is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Delaney, P.J. and

John Wise, J. concur.