[Cite as *In re Jones*, 2007-Ohio-5973.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: NATHANIEL JONES	:	APPEAL NO. C-060873 TRIAL NO. 06-7956
	:	*D E C I S I O N.*
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	:	
	:	

Criminal Appeal From: Hamilton County Juvenile Court

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: November 9, 2007

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Paula E. Adams*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Michael S. Buschbacher, for Defendant-Appellant.

Please note: This case has been removed from the accelerated calendar.

SYLVIA S. HENDON, Judge.

{¶1} Defendant-appellant Nathaniel Jones was adjudicated delinquent for possession of cocaine following a trial before a juvenile court magistrate. Jones received a suspended sentence to the Ohio Department of Youth Services and was continued on probation. The magistrate's decision was adopted by the trial court. Jones now appeals, arguing in his sole assignment of error that his adjudication was not supported by sufficient evidence.

{¶2} The evidence presented at trial demonstrated that Jones was the passenger in a van driven by Roger Dickey. Cincinnati Police Officer Bryan Scott testified that he had stopped Dickey after observing him drive into a curb and nearly strike a telephone pole. Dickey and an adult female were seated in the front row of the van. The middle bench was empty, and Jones was seated in the third row. Cincinnati Police Officer Kevin Kroger testified that he had searched the van and found a small bag of crack cocaine in an armrest on the right passenger seat in the third row of the van, near where Jones had been seated. Jones testified that he had never opened the compartment where the crack cocaine was found, and that he had never placed anything inside that compartment. According to Jones, Dickey had been taking him to a fast-food restaurant and had taken a lengthy detour, during which time Jones had climbed into the third row of the van and fallen asleep. Officer Kroger testified that Jones had told him that somebody must have placed the drugs in the compartment when he had been sleeping.

{¶3} Jones was adjudicated delinquent for violating R.C. 2925.11, which provides that "[n]o person shall knowingly obtain, possess, or use a controlled substance." Possession is defined by R.C. 2925.01(K) as "[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." Possession may be actual or constructive.[1] Constructive possession occurs when "an individual exercises dominion and control over an object, even though that object may not be within his immediate physical possession."[2] The individual must be "conscious of the presence of the object."[3]

{¶4} In this case, Jones was the only person in the third row of the van, and the only person within arm's reach of the cocaine. Jones had been seated in such proximity to the cocaine that he could easily have rested his arm on the compartment in which it was found, and he could have easily placed the cocaine in the compartment. Moreover, the magistrate was in the best position to judge the credibility of the witnesses and was entitled to reject Jones' testimony that he had been unaware of the cocaine.

{¶5} Following our review of the record, we conclude that Jones had constructive possession of the crack cocaine and that his adjudication was supported by sufficient evidence.[4] Jones' assignment of error is overruled, and the judgment of the trial court is affirmed.

Judgment affirmed.

HILDEBRANDT, J. concurs.
PAINTER, P.J., dissents.

PAINTER, P.J., dissenting.

{¶6} Propinquity is not proof.

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[1] See *State v. Thomas*, 1st Dist. No. C-020282, 2003-Ohio-1185, ¶9.
[2] Id.
[3] *State v. Hankerson* (1982), 70 Ohio St.2d 87, 91, 434 N.E.2d 1362.
[4] See *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

{¶7} There was no proof.

{¶8} The trial court convicted Jones on the pure possibility that he knew the cocaine was in a closed compartment in a vehicle he did not own and had been a passenger in for only a short time.

{¶9} Neither Officer Scott nor Officer Kroger viewed Jones make any furtive movements or attempts to hide the cocaine. Other than being seated near the cocaine, Jones was not connected to it in any way. He had not acted suspiciously, and neither officer had seen Jones have contact with the compartment containing the drug.

{¶10} According to the majority's own quotation, the legislature has specifically forbidden conviction on these facts. " '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."[5] (Emphasis added.)

{¶11} The majority justifies its affirmance of this travesty by stating that Jones possessed the cocaine because he "could easily have rested his arm on the compartment in which it was found, and he could have easily placed the cocaine in the compartment." *Could have* is not consistent with beyond a reasonable doubt. He *could have* put it there?

{¶12} The magistrate, in inexplicably finding Jones delinquent, even opined, "And it might be a case of, let's say, being in the wrong place at the wrong time, but from a technical point of view, the prosecutor has proven his case."

{¶13} I have heard of being acquitted on a technicality, but this is the first time I have seen someone convicted on a technicality. The magistrate then went on

[5] R.C. 2925.01(K)

to tell Jones that he "would not have found [himself] in the situation if [he] had been home." True, or on Mars.

{¶14} The case comes down to the fact that Jones was near a closed compartment containing drugs. From there, the majority speculates that he knew that the cocaine was in the closed compartment, then conjectures that he had "control" over what he might or might not have known was there. And because he was out too late, that seems to be an additional incriminating factor. These are not even reasonable inferences, and even if they were, they are built on each other, another line of reasoning specifically prohibited, both in logic and in law.[6]

{¶15} The whole case is simply speculation, followed by conjecture, followed by inference of guilt. Has "beyond a reasonable doubt" left the county?

{¶16} We should reverse Jones's adjudication.

Please Note:

The court has recorded its own entry on the date of the release of this decision.

[6] *Hurt v. Charles J. Rogers Transp. Co.* (1955), 164 Ohio St. 329, 130 N.E.2d 820, paragraph one of the syllabus.