[Cite as *State v. Myers*, 2009-Ohio-5629.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

JILL MYERS

Defendant-Appellant

Appellate Case No. 22959

Trial Court Case No. 08-CR-1574

(Criminal Appeal from
Common Pleas Court)

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O P I N I O N

Rendered on the 23 day of October, 2009.

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WOLFF, J.

{¶ 1} Jill Myers was found guilty after a bench trial of possession of crack cocaine in an amount exceeding 25 grams but less than 100 grams, a first degree

felony. The trial court sentenced Myers to 3 years mandatory imprisonment, imposed a fine of $10,000 and costs, and suspended Myers' driving privileges for five years.

{¶ 2} On appeal, Myers asserts three assignments of error.

"I. THE TRIAL COURT ERRED WHEN IT FOUND THE DEFENDANT GUILTY OF VIOLATING O.R.C. 2925.11 (A),(C)(4)(e), BECAUSE THE EVIDENCE SUBMITTED AT TRIAL WAS INSUFFICIENT TO SUPPORT THAT CONVICTION."

{¶ 3} The issue under this assignment is whether the evidence was sufficient to establish that Myers, *at one time*, possessed crack cocaine in an amount greater than 25 grams.

{¶ 4} During the afternoon of April 20, 2008, Myers was booked into the Montgomery County Jail. During the booking procedure, crack cocaine weighing 23.77 grams was removed from Myers' clothing during a "clothed" search of her person. Several hours later, a phone call was made to the jail by a family member of Myers who was concerned about Myers' health because "she had contraband stuck up inside herself." After Sgt. Milburn of the Sheriff's office informed Myers that a search warrant would be sought for a body cavity search, Myers extracted a baggie of cocaine from her vaginal cavity that weighed 23.95 grams.

{¶ 5} Myers' argument that the evidence was insufficient to prove she possessed both quantities of crack cocaine when she was arrested and taken to the county jail implies that Myers somehow acquired and secreted in her vagina the second quantity of crack cocaine during the approximately six hour period she was in the county jail. The trial court rejected this possibility:

{¶ 6} "The fact that the drugs were hidden in the defendant's body and found at different times, the fact they were found at different times, does not negate the fact that more than 25 grams of crack cocaine was found on her person. The fact that it was found at different times is not relevant to whether she possessed those drugs at one time. It's unrealistic to believe that somehow in the course of the five hours, that Ms. Myers was in the jail that she somehow found and took possession of more than 23 grams of crack cocaine.

{¶ 7} "Looking at that, that's a lot of drugs in the sense that it's a large quantity. So it's unrealistic that she, or to even believe that she obtained these drugs in the jail. Therefore, it's a reasonable conclusion and reasonable minds could conclude, or could reach different conclusions such that a Rule 29 Motion on that count is in appropriate [sic]."

{¶ 8} We agree that the trial court properly overruled Myers' Crim.R. 29 motion made at the close of the State's evidence - Myers presented no evidence - and that the State's evidence was sufficient to prove beyond a reasonable doubt that Myers - *at one time* - possessed both quantities of crack cocaine which together weighed more than 25 grams.

{¶ 9} The finder of fact may draw reasonable inferences from the evidence and the evidence certainly supported a reasonable inference that the crack cocaine secreted in Myers' vagina was there when she was arrested and booked into the county jail.

{¶ 10} The first assignment is overruled.

"II. THE APPELLANT WAS DENIED HER RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AND

FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION."

{¶ 11} Myers claims that her trial counsel was constitutionally ineffective for failing to move to suppress the crack cocaine that Myers personally removed from her vaginal cavity, claiming that she only did so as a result of coercion by Sgt. Milburn.

{¶ 12} Myers recognizes that she can only succeed on this assignment if the trial record demonstrates that the motion, had it been made, would have been sustained. *State v. Harris*, 2008-Ohio-1753. She claims that the record does so demonstrate because the facts here are virtually identical to those in *State v. Porter*, 178 Ohio App.3d 304, 2008-Ohio-4627 wherein we determined that a motion to suppress should have been sustained. The State claims that *Porter* is distinguishable and does not support Myers' contention.

{¶ 13} The relevant facts pertaining to this assignment are as follows. After receiving the call from the concerned family member, Sgt. Milburn instructed two female corrections officers to re-search Myers for contraband. Both officers, as well as other female officers, felt a hard object in Myers' vaginal area when they performed "clothed" searches. Notwithstanding what they felt, Myers denied possessing any drugs. The female officers also had Myers perform a "squat and cough" that produced no contraband. It was at this point that Sgt. Milburn talked to Myers about getting a search warrant for a body cavity search:

"Q. What occurred after that? What's the next thing that happened?

"A. Next thing, they came out. They couldn't locate any contraband on her. They had her redress, brought out. And I had her relogged down on the

first floor. I was going to contact the detective and go for a body cavity search.

"Q. Okay.

"A. I needed a search warrant for that.

"Q. Did you inform Ms. Myers of this?

"A. Yes.

"Q. Okay, what happened then?

"A. I explained to her the procedure. I was going to get the search warrant and have her brought over to the hospital and they would do a body cavity search on her. She decided to give up contraband and I had CO Rudd and, I believe, Thomas, again brought her back to the dressing area. She went in and got the contraband out.

. . .

"Q. Now do you recall Ms. Myers saying anything to you other than denying that she had any drugs on her. Anything else during this [sic]

"A. She was more worried about giving it to me because she would get more time. Or once she got of [sic] jail, if she did, that the people that owned it would do bodily harm to her. Kill her.

"Q. Okay. And you heard those statements from her?

"A. Yes."

{¶ 14} On cross-examination, Sgt. Milburn further testified:

"Q. And then, it's further my understanding from your testimony, and of others today, that you confronted Ms. Myers yourself with the prospect that she

needed to give up any drugs she had or you're going to have a cavity search done, correct?

"A. Yes, Sir.

"Q. And you need a warrant for a cavity search?

"A. Yes, Sir.

"Q. And you advised her that you would go get a warrant, have a cavity search done, and upon doing so if any additional charges, if anything was found on her, would apply along with any cost and anything else.

"A. Yes.

"Q. And at that point, she says, ok, yes I do have something on me?

"A. Yes, Sir.

"Q. That basically what happened?

"A. Yes."

{¶ 15} There can be no doubt that jail personnel may conduct searches for contraband which may be secreted in the body cavities of jail inmates. *Porter*, at ¶ 25. Furthermore, there can be no doubt that Sgt. Milburn had probable cause to obtain a warrant for a search of Myers' vaginal cavity. Upon booking, the first baggie of crack cocaine was located in Myers' pants; Sgt. Milburn had received a call that Myers had secreted drugs "up inside herself;" after receiving that call, several female officers felt a hard object in Myers' vaginal area through clothed searches. Sgt. Milburn was not bluffing when he told Myers he was obtaining authorization for a body cavity search.

{¶ 16} Explaining the possible consequences of finding additional drugs was not coercion. Myers' expressed concern about doing more time or of being done harm by

confederates were not pressures put on her by Sgt. Milburn. Nothing in this record convincingly suggests that Myers decided to give up the second baggie of crack cocaine because her will to resist was overborne by the agents of the State.

{¶ 17} We find the facts here distinguishable from those in *Porter*. *Porter* involved a number of issues that are not implicated here.

{¶ 18} In *Porter*, this court held that Porter's statements to Sgt. Milburn should have been suppressed because she was not *Mirandized* before she admitted to Sgt. Milburn that she was secreting contraband and the drugs she had secreted should have been suppressed because they were "recovered from defendant's person as a direct result of the incriminating statements defendant made while in custody." *Porter* at ¶ 26.

{¶ 19} Myers makes no mention of her statements in arguing this assignment of error. While the record fails to disclose that the jail personnel *Mirandized* Myers, the record also fails to disclose that Myers' statements, as recounted by Sgt. Milburn, were in response to custodial interrogation or that Myers' surrender of the second baggie of crack cocaine was a result of those statements. Rather, the evidence established that Myers surrendered the drugs because she didn't want to be subjected to a body cavity search.

{¶ 20} The court in *Porter* also was concerned that Porter's decision to surrender the drugs was a product of Sgt. Milburn's coercion.

{¶ 21} "Milburn told defendant that 'if she would give up the contraband that would end it,' but if they found anything at the hospital during a body-cavity search Milburn said he was going to have performed on defendant, he'd 'probably charge her with everything he could think of since she was wasting his time.'" *Porter* at ¶ 33.

{¶ 22} That coercion is not present here.

{¶ 23} In our judgment, the motion to suppress - *if made* - would not have succeeded and counsel was not derelict in failing to so move.

{¶ 24} The second assignment is overruled.

"III. THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT ALLOWED THE ADMISSION OF IMPROPERLY OBTAINED EVIDENCE."

{¶ 25} This assignment pertains to the unobjected to admission of the baggie of crack cocaine Myers extracted from her body. Myers can only succeed on this assignment of error if this evidence was improperly admitted. Because we have determined that, on the record before us, this crack cocaine was properly admitted, there was no error, much less plain error.

{¶ 26} This assignment is overruled.

{¶ 27} The judgment will be affirmed.

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DONOVAN, P.J., and FROELICH, J., concur.

(Hon. William H. Wolff, Jr. retired from the Second District Court of Appeals sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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