

[Cite as *State v. Copeland*, 2010-Ohio-4916.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO

:

Plaintiff-Appellee

:
C.A. CASE NO.
23718

v.

: T.C. NO.
2008CR03572

JIMMY L. COPELAND

:

(Criminal appeal from
Common Pleas Court)

Defendant-Appellant

:

:

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OPINION

Rendered on the 8th day of October, 2010.

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DONOVAN, P.J.

{¶ 1} Defendant-appellant Jimmy L. Copeland appeals from his conviction and sentence for one count of possession of cocaine, in violation of R.C. 2925.11(A), a felony of

the first degree, and one count of possession of drug paraphernalia, in violation of R.C. 2925.14(C)(1), a misdemeanor of the fourth degree. After a bench trial, Copeland was found guilty of the charged offenses and sentenced to a mandatory term of three years in prison for possession of crack cocaine and nine days in the county jail for possession of drug paraphernalia. The court also imposed a one-year driver's license suspension. Copeland filed a timely notice of appeal on October 30, 2009.

I

{¶ 2} On Thursday, September 4, 2008, Dayton Police Officers Creigee Coleman and Jason Barnes were patrolling the area in the 1600 block of West 3rd Street in Dayton, Ohio, in a marked police cruiser when they observed a white Ford Expedition with no front license plate and dark tinted windows. The Expedition was traveling eastbound on West Third Street at the time. Based on these observations, Officer Barnes turned on the overhead lights and initiated a traffic stop of the Expedition. The driver of the vehicle turned off of the street and pulled into the parking lot of the Check Exchange check cashing store located at 1616 West Third Street.

{¶ 3} The two occupants of the Expedition, the driver and the front-seat passenger, immediately exited the vehicle and began walking towards the check cashing store. Officer Barnes spoke with the driver of the vehicle, Lawrence Bradley, while Officer Coleman approached the passenger, later identified as Copeland, and ordered him to return to the vehicle. Copeland did not initially comply with Officer Coleman's order, but after some hesitation, Copeland returned to the vehicle. Officer Coleman then ordered Copeland to open the passenger door and get back in the vehicle. Officer Coleman testified that Copeland opened the passenger door but did not get in the vehicle. Instead, Copeland turned his back

to Officer Coleman, leaned into the vehicle, and began to reach under the front passenger seat. Officer Coleman pulled out his taser and ordered Copeland to turn around and show his hands.

{¶ 4} At this point, Officer Barnes came around to the passenger side of the vehicle to assist Officer Coleman. Officer Barnes placed Copeland in handcuffs, and Officer Coleman holstered his taser. After he had been handcuffed, Copeland told the officers, “I got this shit on me.” Officer Barnes performed a patdown of Copeland and discovered a plastic grocery bag in his right front pocket which contained a large amount of crack cocaine and a digital scale. Officer Barnes also found approximately \$620.00 in cash in Copeland’s left front pocket. A K-9 unit was called, and the dog alerted to the presence of narcotics on the money. Officer Barnes placed Copeland under arrest and transported him to the Montgomery County Jail.

{¶ 5} At the jail, Officer Barnes advised Copeland of his *Miranda* rights. Copeland waived his rights and agreed to speak with Officer Barnes. During the interview, Copeland stated that the drugs and scale were not his, and that he was merely holding the items for a customer from his barbershop. Copeland further stated that he was aware of the nature of the contraband when he initially agreed to take possession of them. Copeland stated that he did not sell drugs. Copeland claimed that the large amount of money found in his pocket was from his business as a barber. Copeland indicated that he was not willing to identify the person who gave him the drugs because he feared for his own safety.

{¶ 6} Copeland was indicted for possession of cocaine (more than 25 grams but less than 100 grams) and drug paraphernalia on September 11, 2008. At his arraignment on September 18, 2008, Copeland stood mute, and the trial court entered a plea of not guilty on his behalf. Copeland filed a motion to suppress on September 29, 2008. A hearing was held

on the motion, and the court issued a written decision on March 10, 2009, sustaining in part and overruling in part the motion to suppress.

{¶ 7} Copeland waived his right to a jury trial, and the matter was tried to the court on June 8, 2009. At trial, Copeland contradicted the earlier statements he made to Officer Barnes regarding the origin of the crack cocaine and digital scales that were found in his possession. Specifically, Copeland testified that the cocaine and scales belonged to his nephew, Lonzo Bennett, III. Copeland testified that Bennett accidentally dropped the contraband on the floor of his barbershop after getting a hair cut. Aware of what the bag contained, Copeland testified that he picked the drugs up and put them in his pocket. Copeland stated that he intended to speak with Bennett about the drugs after he had attended to another client at the barbershop, but Bennett left the shop before Copeland had an opportunity to speak with him.

{¶ 8} Copeland further testified that he went outside to look for Bennett, but he was gone. Copeland observed his friend, Lawrence Bradley, who pulled up to the shop in a car, a white Ford Expedition. Copeland testified that he asked Bradley if he would drive around the area in order to look for Bennett. Bradley agreed, and the two men began driving around the neighborhood, but they could not locate Bennett. Copeland testified that while they were driving around, Bradley informed Copeland that he had to stop and cash a check at the Check Exchange. Copeland testified that he had been in possession of the cocaine and scale for approximately thirty minutes when he was arrested.

{¶ 9} On August 29, 2009, the trial court filed a written decision finding Copeland guilty of both counts in the indictment. On September 29, 2009, the court sentenced him accordingly. It is from this judgment that Copeland now appeals.

II

{¶ 10} Copeland’s first assignment of error is as follows:

{¶ 11} “THE TRIAL COURT ERRED IN CONVICTING MR. COPELAND FOR POSSESSION OF COCAINE WHEN IT HELD SECTION 2925.11(A) OF THE OHIO REVISED CODE AS BEING A STRICT LIABILITY OFFENSE.”

{¶ 12} In his first assignment, Copeland contends that the trial court mistakenly interpreted R.C. 2925.11(A) to be a strict liability offense based on statements in the court’s written decision, as well as comments made by the court during sentencing. Specifically, Copeland asserts that the court found him guilty of possession of crack cocaine without first finding that he acted with the requisite mental state of knowingly.

{¶ 13} R.C. 2925.11(A) states as follows:

{¶ 14} “(A) No person shall *knowingly* obtain, possess, or use a controlled substance.”

{¶ 15} For the trial court to have found Copeland guilty of possession of crack cocaine pursuant to R.C. 2925.11(A), he had to knowingly possess the crack. Copeland argues that the court did not consider whether he acted knowingly, but rather misinterpreted R.C. 2925.11(A) to be a strict liability offense which did not require a particular mental state. In support of his assertion, Copeland relies on language from the court’s written decision filed on August 29, 2009, that Copeland was in “actual possession of a controlled substance” and that “even if the Court accepts [his] version of how he obtained the drugs or who was the actual owner of the drugs, *** these facts do not negate the fact that Copeland had possession of or control over the drugs, i.e. he had them in his pocket.”

{¶ 16} Copeland also argues that the following statement made by the trial court at his sentencing hearing established that the court mistakenly thought that R.C. 2925.11(A) was a

strict liability offense:

{¶ 17} “The Court: All right. Mr. Copeland, it is unfortunate as to how the facts played out. *The law gives us a strict – it’s a strict liability, a strict requirement, if you had it, even if your intentions are good, you’re still responsible.*”

{¶ 18} The language cited by Copeland fails to establish that the court misunderstood or failed to consider the requisite mental state of “knowingly” required for a conviction pursuant to R.C. 2925.11(A). Rather, the court’s statements established that while the cocaine may have been the property of Copeland’s nephew, that consideration was irrelevant since Copeland was discovered with the drugs in his pocket, and admitted that he knowingly possessed them. In fact, Copeland’s first statement to the police was “I got this shit on me.”

{¶ 19} In its written decision finding Copeland guilty, the trial court specifically discussed and considered the mens rea element of possession in R.C. 2925.11(A), namely, the element of “knowingly.” The court cited R.C. 2901.22(B), which states that “[a] person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.” The trial court also defined the element of “possession” as follows: “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.” In light of the evidence adduced during the bench trial, the court correctly held that Copeland knowingly possessed the crack cocaine found in his pocket by Officer Barnes.

{¶ 20} Copeland also argues that he did not “possess” the cocaine because he did not have “control” over the substance. Conversely, Copeland asserts that he had only temporary

custody of the cocaine until he finished working and found his nephew, the true owner of the contraband. Copeland also points out that he had custody of the cocaine for approximately thirty minutes while he was searching for his nephew. Copeland contends that his temporary custody did not constitute “control” of the cocaine, and he could, therefore, not “possess” the cocaine pursuant to R.C. 2925.11(A).

{¶ 21} “‘Control,’ as used in statute making it unlawful for any person to possess or control any narcotic drug, is given its ordinary meaning, namely to exercise restraining or directing influence over.” Black’s Law Dictionary, Fifth Ed., 1979. Copeland’s argument that he did not have “control” of the cocaine which he knowingly possessed is without merit. When the police stopped and searched Copeland, they discovered the bag containing crack cocaine and digital scales in his pocket which he had knowingly possessed for some thirty minutes. Upon review, we find that the presence of the contraband in his pocket clearly established that he “exercise[d] restraining or directing influence” over the cocaine and scales. To find otherwise would be to set aside common sense as it relates to the plain meaning of the concepts of “possession” and “control.”

{¶ 22} Copeland’s first assignment of error is overruled.

III

{¶ 23} Copeland’s second assignment of error is as follows:

{¶ 24} “THE TRIAL COURT ERRED IN CONVICTING MR. COPELAND OF POSSESSION OF COCAINE BECAUSE, EVEN ASSUMING HE HAD POSSESSION OF THE COCAINE, THIS POSSESSION DID NOT MEET THE REQUIREMENTS OF A VOLUNTARY ACT UNDER REVISED CODE 2901.21(A) BECAUSE HE DID NOT POSSESS IT LONG ENOUGH TO HAVE HAD SUFFICIENT TIME TO END

POSSESSION OF THE COCAINE UNDER REVISED CODE 2901.21(D).”

{¶ 25} In his second and final assignment, Copeland argues that pursuant to R.C. 2901.21(A) and (D), his possession of the cocaine was not a voluntary act because he did not receive the cocaine for a sufficient time to have ended possession, and he was not aware of his control of the crack cocaine for a sufficient time to have ended possession.

{¶ 26} R.C. 2901.21(D)(1) states that “[p]ossession is a voluntary act if the possessor knowingly procured or received the thing possessed, *or* was aware of the possessor’s control of the thing possessed for a sufficient time to have ended possession.” Copeland argues that the phrase “for a sufficient time to have ended possession” modifies the language before the comma, as well as the language after the comma. Copeland, however, misinterprets the statute. The language in R.C. 2901.21(D)(1) after the comma specifically applies to a situation in which a person becomes aware he is in possession of a particular item, but does not have time to dispose of the item before being caught with it. That situation, however, was not what occurred in the instant case.

{¶ 27} Moreover, to apply the phrase “for a sufficient time to have ended possession” to the language before the comma in R.C. 2901.21(D)(1) would place an arbitrary time requirement on the knowing possession of an item before an individual could be deemed to have voluntarily possessed the item. That reading of R.C. 2901.21(D)(1) would produce an absurd result.

{¶ 28} The evidence adduced at trial established that Copeland was aware of the illegal nature of the contraband when he initially picked the bag up off of the floor of his barbershop and put it in his pocket. The bag containing the cocaine and the scales remained

in his pocket until he was searched and subsequently arrested by Officers Barnes and Coleman, and Copeland knowingly exercised control over it and retained possession of it. Thus, Copeland's knowing possession of the contraband was a voluntary act under R.C. 2901.21(D)(1).

{¶ 29} Copeland's second assignment of error is overruled.

IV

{¶ 30} All of Copeland's assignments of error having been overruled, the judgment of the trial court is affirmed.

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FAIN, J. and FROELICH, J., concur.

Copies mailed to:

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