[Cite as *State v. Lynch*, 2010-Ohio-4517.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 09AP-1154
v.	:	(C.P.C. No. 08CR09-7193)
Rudolph V. Lynch,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 23, 2010

Ron O'Brien, Prosecuting Attorney, and *Kimberly Bond*, for appellee.

W. Joseph Edwards, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, Rudolph V. Lynch, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. Because appellant's conviction is supported by sufficient evidence and is not against the manifest weight of the evidence, we affirm that judgment.

{¶2} On June 20, 2008, an employee of Old Dominion Freight Lines, a trucking company that transports freight around the country, contacted Columbus Police Officer Jerry Peters. Peters is part of the Ohio Attorney General's Package Interdiction Task

Force, a task force designed to intercept drugs deliveries. The employee told Peters that he had a suspicious package en route from California to be delivered to a motorcycle club in Columbus. The employee was suspicious of the package because it was scheduled for a Saturday delivery.

{¶3} The package (a wood crate) arrived in Columbus early the next day. Peters brought a canine officer with him to inspect the crate. Peters placed the crate among other packages and had the canine officer run his dog through the packages. The dog alerted to the crate. Peters brought the crate back to police headquarters and obtained a search warrant to open the crate. Inside the crate were four boxes that each contained a large amount of marijuana. Peters repackaged the crate and prepared it for a controlled delivery to the intended address. He placed a GPS unit inside the crate, as well as an electronic device that would alert the police when the crate was opened.

{¶4} Around 11:00 a.m. the same day, Columbus Police Officer Robert Locke arrived at the motorcycle club to set up before the controlled delivery so that he could observe the target location and all suspects. At that time, he observed two men sitting in separate trucks in the club's parking lot. Locke thought the men appeared to be waiting for something. Almost an hour later, a third man drove up to the location and parked his car. This man, later identified as appellant, got out of his car and talked with the other two men outside their trucks. All three then went into the motorcycle club, only to come back outside after a few minutes. They stood outside the club talking. Again, Locke thought the men appeared to be waiting for something.

{¶5} Peters, dressed as an Old Dominion employee, and an Old Dominion driver arrived at the club minutes later to deliver the crate. One of the men standing outside the

club waved the truck over to the club. Peters got out of the truck and talked to the men. After refusing to put the crate into one of the men's truck, the men asked Peters to put the crate into the club's garage. The truck driver backed the truck up to an apron and unloaded the crate. The men, including appellant, helped Peters guide the crate from the truck to the garage. One of the men, identified later as Darryl Wood, signed for the delivery with a fake name. After delivering the crate, Peters heard appellant say that "he was going to leave this locked up in the garage for the weekend." (Tr. 176.) Peters left the area in the Old Dominion truck. Locke then observed the three men go inside the club and close the garage door.

{¶6} Within minutes, a signal from the crate indicated that it had been opened. Officers entered the building and found two men inside. They also found two digital scales. Appellant attempted to exit the building out a back door but was apprehended by police officers waiting outside that door. Appellant, who is not a member of the motorcycle club, told the police that he was at the club to get paid for some painting he did for Wood.

{¶7} A Franklin County Grand Jury indicted appellant with one count of trafficking in marijuana, in violation of R.C. 2925.03, and one count of possession of marijuana, in violation of R.C. 2925.11. Appellant entered not guilty pleas to the charges and proceeded to a jury trial. The jury found appellant guilty of the possession count but not guilty of the trafficking count. The trial court sentenced appellant accordingly.

{¶8} Appellant now appeals and assigns the following error:

> THE TRIAL COURT ERRED WHEN IT ENTERED JUDGMENT AGAINST THE APPELLANT WHEN THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN A

> CONVICTION AND WAS NOT SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶9} Appellant contends in this assignment of error that his conviction is not supported by sufficient evidence and is against the manifest weight of the evidence. We disagree.

{¶10} The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different. *State v. Thompkins* (1997), 78 Ohio St.3d 380, paragraph two of the syllabus. Therefore, we will separately discuss appellant's sufficiency of the evidence and weight of the evidence arguments.

{¶11} The Supreme Court of Ohio delineated the role of an appellate court presented with a sufficiency of the evidence argument in *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus:

> An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. 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. * * *

{¶12} Whether the evidence is legally sufficient is a question of law, not fact. *Thompkins* at 386. Indeed, in determining the sufficiency of the evidence, an appellate court must give "full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 2789. Consequently, the weight of the evidence and the credibility of the witnesses are issues primarily determined by the trier of fact. *State v. Yarbrough,* 95 Ohio St.3d 227, 2002-

Ohio-2126, ¶79; *State v. Thomas* (1982), 70 Ohio St.2d 79, 80. A verdict will not be disturbed unless, after viewing the evidence in the light most favorable to the prosecution, it is apparent that reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh* (2001), 90 Ohio St.3d 460, 484; *Jenks* at 273.

{¶13} In order to convict appellant in the present case, the state had to prove beyond a reasonable doubt that appellant knowingly possessed marijuana. R.C. 2925.11. Appellant contends the state failed to prove that he possessed marijuana because the state's evidence only indicated that appellant was present at the location where marijuana was found. He also claims that the state failed to prove that he knew there was marijuana in the crate. We disagree.

{¶14} Possess, or possession, is defined 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." R.C. 2925.01(K). Possession of a controlled substance may be actual or constructive. *State v. Burnett,* 10th Dist. No. 02AP-863, 2003-Ohio-1787, ¶19 (citing *State v. Mann* (1993), 93 Ohio App.3d 301, 308). A person has actual possession of an item when it is within his immediate physical control. Id. (citing *State v. Messer* (1995), 107 Ohio App.3d 51, 56). In the instant case, because the marijuana was not found on appellant's person, the state was required to establish that appellant constructively possessed it. *Burnett* at ¶19.

{¶15} Constructive possession exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within his immediate physical possession. *State v. Pilgrim,* 184 Ohio App.3d 675, 2009-Ohio-5357,

¶27 (citing *State v. Hankerson* (1982), 70 Ohio St.2d 87, syllabus). Although the mere presence of an individual in the vicinity of illegal drugs is insufficient to establish constructive possession, if the evidence demonstrates that the individual was able to exercise dominion or control over the drugs, he or she can be convicted of possession. *State v. Wyche,* 10th Dist. No. 05AP-649, 2006-Ohio-1531, ¶18; *Burnett* at ¶20. " 'All that is required for constructive possession is some measure of dominion or control over the drugs in question, beyond mere access to them.' " *Burnett* (quoting *In re Farr* (Nov. 9, 1993), 10th Dist. No. 93AP-201).

{¶16} Circumstantial evidence alone may be sufficient to support the element of constructive possession. *Jenks* at 272-73; *State v. Alexander,* 8th Dist. No. 90509, 2009-Ohio-597, ¶25. Absent a defendant's admission, the surrounding facts and circumstances, including the defendant's actions, are evidence that the trier of fact can consider in determining whether the defendant had constructive possession over the subject drugs. *State v. Norman,* 10th Dist. No. 03AP-298, 2003-Ohio-7038, ¶31; *State v. Baker,* 10th Dist. No. 02AP-627, 2003-Ohio-633, ¶23. Inherent in a finding of constructive possession is the determination that the defendant had knowledge of the drugs. *Alexander* at ¶23.

{¶17} While appellant focuses on certain evidence that could indicate he was not involved with the marijuana shipment, other evidence demonstrates appellant's involvement and knowledge. Specifically, appellant arrived at the motorcycle club and talked to the two other men waiting there. One of those men was Wood, from whom appellant alleged he was collecting a debt. All three men entered the building and then came back out again. Officer Locke concluded that they appeared to be waiting for

something. Officer Peters testified that when he delivered the crate to the motorcycle club, appellant helped guide the crate from the truck to the garage. Appellant then said that "he was going to leave this locked up in the garage for the weekend." This evidence indicates that appellant had some level of control over the crate. After the delivery, the three men entered the building and, within minutes, opened the crate. Appellant's subsequent attempt to exit the building when the police entered also suggests his knowledge of the marijuana in the crate. *Alexander* at ¶26. All of this evidence casts doubt on appellant's assertion that he was present only to collect a debt from Wood.

{¶18} This circumstantial evidence, when viewed in the light most favorable to the state, is sufficient to prove that appellant constructively possessed the marijuana in the crate. Accordingly, appellant's conviction is supported by sufficient evidence.

{¶19} A manifest weight of the evidence claim requires a different review. The weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *State v. Brindley,* 10th Dist. No. 01AP-926, 2002-Ohio-2425, ¶16. When presented with a challenge to the manifest weight of the evidence, an appellate court, 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 [trier of fact] 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 (quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175). An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " Id.

{¶20} A defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial. *State v. Raver,* 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶21. Neither is a conviction against the manifest weight of the evidence because the trier of fact believed the state's version of events over the appellant's version. *State v. Gale,* 10th Dist. No. 05AP-708, 2006-Ohio-1523, ¶19; *State v. Williams,* 10th Dist. No. 08AP-719, 2009-Ohio-3237, ¶17. The trier of fact is free to believe or disbelieve all or any of the testimony. *State v. Jackson* (Mar. 19, 2002), 10th Dist. No. 01AP-973; *State v. Sheppard* (Oct. 12, 2001), 1st Dist. No. C-000553. The trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimony is credible. *State v. Williams,* 10th Dist. No. 02AP-35, 2002-Ohio-4503, ¶58; *State v. Clarke* (Sept. 25, 2001), 10th Dist. No. 01AP-194. Consequently, an appellate court must ordinarily give great deference to the fact finder's determination of the witnesses' credibility. *State v. Covington,* 10th Dist. No. 02AP-245, 2002-Ohio-7037, ¶28; *State v. Hairston,* 10th Dist. No. 01AP-1393, 2002-Ohio-4491, ¶74.

{¶21} Appellant does not present additional arguments in support of his manifest weight claim. As noted, there was credible evidence that appellant constructively possessed the marijuana found inside the crate. Although appellant denied being at the club to assist with the delivery of the marijuana, in light of the circumstantial evidence presented by the state, the jury did not clearly lose its way when it rejected appellant's denial and convicted him of drug possession. *State v. White*, 10th Dist. No. 09AP-1168, 2010-Ohio-3033, ¶16 (noting that a conviction is not against the manifest weight of the

evidence simply because the jury believed the prosecution's witnesses). This is not the exceptional case in which the evidence weighs heavily against the conviction.

{¶22} In conclusion, appellant's conviction is supported by sufficient evidence and is not against the manifest weight of the evidence. Accordingly, appellant's assignment of error is overruled and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and SADLER, JJ., concur.