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WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 30490-6-III**
Respondent and Cross-Appellant,	)	**Division Three**
v.	)	**UNPUBLISHED OPINION**
ALONZO LAMAR BRADLEY, SR.,	)	
Appellant.	)	

Korsmo, C.J. — Alonzo Bradley challenges the sufficiency of the evidence to support the jury's verdicts finding him guilty of harassment and possession of a controlled substance. We affirm.

FACTS

This case had its genesis in a stop of a bicyclist for traffic infractions. Fife Police Officer Robert Eugley was patrolling the city at 10:45 p.m. on October 18, 2009. He saw Mr. Bradley ride by on a bicycle that did not have a head lamp or reflectors. Mr. Bradley then crossed the street against a red light. The officer attempted to stop and contact him.

Mr. Bradley did not respond to a public address system announcement to pull

over. He looked at the officer and continued riding. The officer turned on his overhead lights and again directed him to stop. Mr. Bradley continued riding and the officer kept ordering him to stop. Eventually, Mr. Bradley put his left hand into his pocket. Fearing he may have a weapon, the officer dropped back and called for assistance.

When a siren announced the arrival of another officer, Mr. Bradley stopped and got off his bike, which he placed on the ground. His left hand remained clenched. A verbal confrontation ensued; the officer drew his stun gun and threatened to use it. Eventually, Mr. Bradley got on the ground behind his bike and thrust his still-clenched left hand into some bushes. He pulled the hand out of the bushes and opened it.

With the assistance of the backup officer, Officer Eugley arrested Mr. Bradley and placed him in the patrol car. The officer then went back to the bushes and found a plastic bag of crack cocaine in the location where Mr. Bradley had placed his hand. Mr. Bradley saw the retrieval and called out, "that is your cocaine. I saw you. You can't put that on me." Report of Proceedings (RP) at 236.

During the ensuing drive to the Pierce County Jail, Mr. Bradley kept yelling at the officer from the back seat of the patrol car. Using various epithets, he also told the officer he would "get a 12-gauge shotgun shoved in [his] mouth and [his] head is going to be blown off." RP at 241. The threats caused the officer concern since he was aware that his name was visible on his uniform. Due to Mr. Bradley's agitated state, Officer

Eugley called ahead to have corrections officers help remove Mr. Bradley from the patrol car. The officer consulted with a superior about the incident due to his concern about the threats.

Charges of felony harassment, possession of a controlled substance, and obstructing a public servant were filed. The case proceeded to jury trial before the Pierce County Superior Court. During jury selection, the trial court ruled that Officer Eugley could not testify that he had been told that Mr. Bradley was a "violent offender." The jury returned guilty verdicts on all three counts, and also found as an aggravating factor that the defendant knew the victim was a law enforcement officer performing his duties at the time of the crime.

The trial court imposed an exceptional sentence of 72 months by requiring the two felony sentences to be served consecutively. Mr. Bradley timely appealed. The State then cross-appealed the exclusion of the testimony that Mr. Bradley was a known "violent offender."

ANALYSIS

Mr. Bradley's appeal challenges the sufficiency of the evidence to support the convictions on the felony counts of harassment and possession of a controlled substance. Applying well-settled standards of review, we conclude that the evidence supported each verdict. We decline to address the State's cross-appeal due to mootness.[1]

Evidence is sufficient to support a conviction if the trier of fact has a factual basis for finding each element of the offense proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). The evidence is viewed in the light most favorable to the prosecution. *Green*, 94 Wn.2d at 221. Appellate courts defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Possession of a Controlled Substance. A person is guilty of possession of a controlled substance when he or she possesses a controlled substance. RCW 69.50.4013(1). This means the State is required to prove the nature of the controlled substance and the fact of possession. *State v. Staley*, 123 Wn.2d 794, 798, 872 P.2d 502 (1994). Possession, in turn, is either actual or constructive. *State v. Hathaway*, 161 Wn. App. 634, 646, 251 P.3d 253, *review denied*, 172 Wn.2d 1021 (2011). Actual possession occurs where the defendant has physical custody of the substance;

[1] The State strenuously argues the mootness question, contending that the trial courts would benefit from guidance on the question presented. An appeal is moot where the court cannot grant effective relief. *In re Det. of LaBelle*, 107 Wn.2d 196, 200, 728 P.2d 138 (1986). Nonetheless, an appellate court will consider a moot case when it is in the public interest to do so. *Id.* Factors to be considered include whether or not the matter is of a private or public nature, the need for guidance to public officials, and whether the problem is likely to recur. *In re Cross*, 99 Wn.2d 373, 377, 662 P.2d 828 (1983). We do not think that this case is the best vehicle for deciding this issue.

constructive possession occurs where the defendant exercises dominion and control. *Id.* Dominion and control are determined by examining the totality of the circumstances. *State v. Collins*, 76 Wn. App. 496, 501, 886 P.2d 243 (1995). Mere proximity alone is insufficient to establish constructive possession. *State v. Echeverria*, 85 Wn. App. 777, 784, 934 P.2d 1214 (1997).

Mr. Bradley does not dispute that the substance involved was cocaine, a controlled substance. He does dispute whether he possessed the cocaine. He argues that he was only in mere proximity to the cocaine and did not exercise dominion and control over it. We disagree for two reasons.

First, the evidence was sufficient to support conviction on a theory of actual possession. He withdrew a closed fist from his pocket and placed that fist in the location where the cocaine was found. He also knew what the substance was long before it was tested. The trier of fact was entitled to determine that Mr. Bradley actually possessed the cocaine throughout the encounter up to the point where he placed it in the bushes.

Second, even if this is treated as a constructive possession case, the evidence was still sufficient. Evidence was presented to the jury putting Mr. Bradley at the location where the cocaine was found. In addition to proximity, his hand was seen in the very spot in the bushes where the drugs were found, a fact that showed his control over the cocaine. His statement also indicated his knowledge of the identity of the substance. The

jury could conclude that Mr. Bradley exercised dominion and control over the cocaine by placing it in the bushes. On these facts, the evidence is very similar to *State v. Nyegaard*, 154 Wn. App. 641, 647-48, 226 P.3d 783 (2010), *superseded on recons.*, 164 Wn. App. 625, 267 P.3d 382 (2011) (holding movement of hands and dropping of pipe in location where controlled substance recovered was sufficient to demonstrate constructive possession when taken in conjunction with proximity).

The evidence permitted the jury to find either actual or constructive possession of the cocaine. It was sufficient.

Harassment. As charged here, felony harassment requires proof that the offender without lawful authority threatened to kill another and by words or conduct placed the person threatened in reasonable fear that the threat would be carried out. RCW 9A.46.020(1)(a)(i); (2)(b)(ii). In order to punish speech under the First Amendment to the United States Constitution, there must be a "true threat" involved. Consistent with the statute, a "true threat" is one that a reasonable person would understand to be "'a serious expression of an intention to . . . take the life'" of the victim. *State v. Johnston*, 156 Wn.2d 355, 360-61, 127 P.3d 707 (2006) (quoting *United States v. Khorrami*, 895 F.2d 1186, 1192 (7th Cir. 1990)).

Mr. Bradley contends that his conduct did not constitute a "true threat." He relies primarily on *State v. C.G.*, 150 Wn.2d 604, 80 P.3d 594 (2003). There a high school

student, C.G., became disruptive and had to be removed from the classroom by the school's vice-principal, Tim Haney. *Id.* at 606. As she was being removed, she twice told Mr. Haney that she would kill him. *Id.* at 607. He testified that he believed she might try to harm him or someone else in the future. C.G. was found guilty of harassment for threatening Mr. Haney. *Id.* The Supreme Court reversed, holding the evidence insufficient because Mr. Haney testified that he was concerned, not that C.G. would kill him as she said, but that she would cause harm to him or someone else. *Id.* at 609-10. The court reasoned that the threatened individual must be placed in reasonable fear of the actual threat expressed. *Id.* at 610. Mr. Bradley argues that here, as in *C.G.*, there was no evidence that Officer Eugley was actually placed in reasonable fear that he would be killed.

C.G. is easily distinguishable. The holding in *C.G.* turned upon the fact that the target of the threat did not fear that he would be killed, resulting in the conclusion that the evidence was insufficient. *Id.* at 609-10. Here, Officer Eugley testified that he was concerned that the death threat would be carried out at some point in the future and even discussed the incident with his supervisor. Viewing this evidence in the light most favorable to the State, the evidence allowed the jury to conclude that Officer Eugley was reasonably afraid that Mr. Bradley would try to kill him in the future.

As with the possession count, the evidence was sufficient to support the

harassment conviction. The convictions are affirmed.[2]

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Korsmo, C.J.

WE CONCUR:

Sweeney, J.

Siddoway, J.

[2] Mr. Bradley also filed a lengthy statement of additional grounds (SAG). His arguments are difficult to discern. He does challenge the credibility of the State's evidence, an issue that we do not reconsider on review. *Camarillo*, 115 Wn.2d at 71. His remaining issues, to the extent they can be identified, either have no support in the record or insufficient argument to be addressed. RAP 10.10(c).