

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
GENERAL DIVISION

STATE OF OHIO,
Plaintiff

vs.

RONALD BEARD,
Defendant

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) JUDGE ROBERT T. GLICKMAN
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) CR 419377
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) **VERDICT & ORDER**
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This case was tried to the court in a one-day bench trial on March 28, 2002. This indictment arose out of an arrest made on January 18, 2002 at approximately 12:10am in the area of E. 55th Street and Broadway Ave., in the city of Cleveland. Detectives Koprowski and Santiago of the Cleveland Police Department's Third District Vice Unit were on duty in that area and patrolling due to numerous complaints of drug activity. They observed three men who appeared to be engaging in some sort of transaction and proceeded to investigate. While the Detectives were checking the other two men, Det. Koprowski observed the defendant attempting to conceal himself behind a pillar and

reach into his pocket. Det. Koprowski immediately warned his partner. Det. Santiago then observed the defendant drop what appeared to be a plastic bag to the ground. When Det. Santiago investigated, he found what he believed to be a bag of suspected crack cocaine. He placed the defendant under arrest, and proceeded to pat him down. During this pat down, Det. Santiago found a ceramic pipe (State's Exh. #1) that he recognized as being commonly used to smoke crack cocaine. The pipe was cold to the touch and neither officer observed any of the three individuals smoking anything. Nor was any actual cocaine found on or near any of the three males. The defendant was placed under arrest.

The ceramic pipe was placed into an evidence bag by Det. Koprowski. It was entered into the Third District Vice Unit's evidence book and placed in a locked locker. It remained secured until it was transported to the Cleveland Police Department's Narcotics Unit some time later. The pipe was then transported by a member of the Narcotics Unit to the Cleveland Police Department's Scientific Investigations Unit ("SIU"). At SIU, an amount of residue from the pipe was tested by laboratory employee Crystal Sills, and found to test positive for cocaine. There was an insufficient amount of residue to determine if the cocaine was "crack" cocaine or "powder" cocaine. The defendant was indicted by the Cuyahoga County Grand Jury for Possession of Drugs, in violation of R.C. 2925.11. The controlled substance specified in the indictment was cocaine, and not crack cocaine.

The defendant is charged with possession of cocaine, in violation of R.C. 2925.11. R.C. 2925.11 requires that the defendant "knowingly possess" a controlled substance. The quantity of the controlled substance is not a factor, even if that quantity is

mere residue. State v. Teamer (1998), 82 Ohio St. 3d 490, syllabus. To prove the underlying charge, the State must prove by proof beyond a reasonable doubt that the defendant was knowingly in possession of the cocaine residue in question. R.C. 2901.21(C)(1) states “[p]ossession is a voluntary act if the possessor...was aware of his control.” Possession means having control over a particular thing or substance, but may not be inferred by mere access to the thing or substance. R.C. 2925.01(K).

A person has “knowledge” of circumstances when he or she is aware that such circumstances probably exist. R.C. 2901.22(B). Whether or not the defendant had the requisite knowledge must be determined from all of the facts and circumstances in evidence. Teamer, 82 Ohio St. 3d at 492; citing, 4 Ohio Jury Instructions (1997), Section 409.11(3). Proof of intention can only be shown by objective facts and circumstances. State v. Lott (1990), 51 Ohio St. 3d 160, 169.

The defendant has raised the issue that he cannot be convicted of possession of cocaine because it cannot be shown that the residue in question was cocaine as opposed to crack cocaine. This argument is disingenuous, as both “powder” and “crack” cocaine will test positive for cocaine. The law imposes harsher sentences for the possession of “crack” cocaine in certain instances because “crack” cocaine is a purer, more addictive, and more dangerous form of the drug. However, if the State chose to do so, it could charge every defendant with mere possession of “cocaine”, even if the substance in question was “crack” cocaine. The State absolutely proved beyond a reasonable doubt that the defendant was in possession of a crack pipe and that residue found within the pipe was cocaine. The sole remaining issue is whether the defendant was knowingly in possession of the cocaine.

To find that a person in possession of a crack pipe with cocaine residue is automatically proof beyond a reasonable doubt of a knowing possession of cocaine conflicts with the requirements of the law and imposes a strict liability standard. In order to meet its burden, the State must present additional facts and circumstances that constitute proof of a knowing possession of the substance.

If the State had been able to produce any evidence of actual recent use of the pipe to smoke cocaine, the Court's job would be an easy one. However, in this case, the State was only able to produce evidence that the defendant dropped a bag filled with what appeared to a twenty-one year veteran of the Cleveland Police Department to be crack cocaine. The only reason the defendant would drop such an object is to prevent the police from finding it on him. Further, both the Detective and Ms. Sills indicated that you could see residue in the pipe in question. However, a reasonable trier of fact could also infer that the defendant's failure to drop the pipe when he dropped the plastic bag was evidence that the defendant was not aware of the presence of cocaine residue in the pipe.

The Court is aware that what probably happened here is that the defendant had used that pipe in the past to smoke crack cocaine and was aware that there was residue within it. However, the Court's feelings about what probably happened are not relevant. The presence of the cold crack pipe in the defendant's pocket is not sufficient to prove that the defendant was in possession of cocaine by proof beyond a reasonable doubt. Even coupled with the defendant's actions at the time of the police officers arrival, the State was unable to present sufficient facts to prove possession of cocaine by proof beyond a reasonable doubt.

Mere possession of a crack pipe that contains cocaine residue, absent any other relevant facts and circumstances, is insufficient to prove possession of cocaine pursuant to R.C. 2925.11 by proof beyond a reasonable doubt.

The Court finds the defendant not guilty of the indictment against him. The defendant is ordered released immediately.

IT IS SO ORDERED.

Date

Robert T. Glickman, Judge