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2012 IL App (3d) 110206-U

Order filed September 12, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court
	) of the 13th Judicial Circuit,
Plaintiff-Appellee,	) Grundy County, Illinois,
	)
v.	) Appeal No. 3-11-0206
	) Circuit No. 09-CF-227
AARON RIDGE,	)
	) Honorable
Defendant-Appellant.	) Lance R. Peterson,
	) Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Presiding Justice Schmidt and Justice McDade concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* (1) There was sufficient evidence for a rational trier of fact to find defendant guilty of unlawful possession of a controlled substance and unlawful possession of cannabis, based on constructive possession or a theory of accountability. (2) The order requiring defendant to submit a DNA sample and pay a \$200 DNA analysis fee should be vacated because he had already submitted a sample in connection with a prior conviction.
- ¶ 2 Following a jury trial, defendant, Aaron Ridge, was found guilty of unlawful possession of a controlled substance (720 ILCS 570/402(a)(2)(A) (West 2008)) and unlawful possession of

cannabis (720 ILCS 550/4(d) (West 2008)). Defendant appeals, arguing that: (1) the State failed to prove beyond a reasonable doubt that he possessed the drugs found in the trunk of a rental vehicle that he was a passenger in; and (2) the sentencing order requiring him to submit a deoxyribonucleic acid (DNA) sample and pay a \$200 DNA analysis fee should be vacated because he submitted a sample for a previous conviction. We affirm in part and vacate in part.

¶ 3

### FACTS

¶ 4 Defendant was charged by indictment with unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2008)), unlawful possession of a controlled substance (720 ILCS 570/402(a)(2)(A) (West 2008)), unlawful possession of cannabis with intent to deliver (720 ILCS 550/5(d) (West 2008)), and unlawful possession of cannabis (720 ILCS 550/4(d) (West 2008)).

¶ 5 The evidence at the jury trial showed that on September 28, 2009, Illinois State Police Trooper Christopher Wilkes observed a black Nissan Altima speeding and effectuated a traffic stop. The vehicle's driver was defendant's cousin, David Moore. Defendant's girlfriend, Mattie Williams, was sitting in the front seat, and defendant was sitting in the backseat.

¶ 6 Wilkes testified that Moore provided him with an Illinois identification card and a rental agreement for the vehicle. The vehicle had been rented in Springfield by an individual who was not in the vehicle. Moore subsequently gave Wilkes verbal consent to search the vehicle. At that time, Trooper Jim Powell arrived and assisted with the search.

¶ 7 When Wilkes searched the trunk of the vehicle, he located an orange bag. Upon opening the bag, Wilkes found men's clothing, a pair of men's tennis shoes, and a blue bag. Upon grabbing the blue bag, Wilkes felt what he thought to be a handgun. Wilkes opened the blue bag

and found a handgun, a scale, and plastic bags containing what turned out to be 28 grams of cocaine and 35.1 grams of cannabis. All three occupants of the vehicle denied ownership of the items at that time.

¶ 8 Wilkes further testified that Moore subsequently admitted that the blue bag and the contraband belonged to him. Wilkes told Moore that the shoes in the bag could not be Moore's because they did not look like they would fit him. Moore was 5 foot 6 inches tall and 170 pounds, and defendant was 5 foot 9 inches tall and 150 pounds. Moore did not respond to Wilkes' observation. Thereafter, defendant and Moore were arrested, and Williams was released.

¶ 9 Grundy County Deputy Sheriff Tanya Paquette testified that she was assigned to interview defendant and Moore. Moore refused to give her a statement. Defendant agreed to an interview, and he subsequently provided a written statement, which was admitted into evidence. In the information section of the written statement, defendant indicated that he had just moved to Springfield. Defendant's written statement revealed that Moore had been calling him the last couple of days prior to the incident, stating that he needed money. Defendant knew Moore was referring to selling drugs to make money. Defendant told Moore he "don't normally mess like that."

¶ 10 On the morning of the offense, Moore called defendant and asked when he would be making a trip to Galesburg. Defendant indicated that he was going that day, and Moore stated that he wanted to go with him to "make some money." Defendant and Williams then went to Moore's house to pick him up. Defendant gave Moore his bag so Moore could put his clothes into it for the trip. Defendant stated that Moore had a black bag with a broken zipper and a blue bag. Defendant knew that Moore's blue bag contained a gun, cocaine, and cannabis that Moore

was going to "sell to make his money." Moore put his bags into the trunk of the vehicle.

Defendant, Moore, and Williams left Chicago and headed for Galesburg.

¶ 11 The jury found defendant guilty of unlawful possession of a controlled substance and unlawful possession of cannabis, but not guilty of the possession with intent to deliver charges. The trial court denied defendant's motion to dismiss the indictment and for judgment notwithstanding the verdict. Defendant was subsequently sentenced to concurrent terms of eight and three years' imprisonment. Defendant was also ordered to submit a DNA sample and pay a \$200 analysis fee, unless it had been previously done in another case. Defendant appeals.

¶ 12 ANALYSIS

¶ 13 I. Sufficiency of the Evidence

¶ 14 On appeal, defendant first argues that the State failed to prove beyond a reasonable doubt that he had possession of the drugs found in the trunk of the rental vehicle. Specifically, defendant argues that the State failed to prove his possession, either constructively or by an accountability theory. Defendant does not dispute that he knew the drugs were in the trunk of the vehicle; therefore, the issue before the court is whether the State proved that defendant had possession of the drugs. We find the evidence was sufficient to prove defendant's possession under both theories presented.

¶ 15 A. Standard of Review

¶ 16 When defendant challenges the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246 (2009); *People v. Collins*, 106 Ill. 2d 237 (1985). It is not this court's function to

retry a defendant who challenges the sufficiency of the evidence. *People v. Ross*, 229 Ill. 2d 255 (2008).

¶ 17

#### B. Constructive Possession

¶ 18 To prove a defendant guilty of possession of a controlled substance or cannabis, the State must prove that defendant had knowledge of the presence of the drugs and that defendant had the drugs in his immediate and exclusive possession or control. *People v. Schmalz*, 194 Ill. 2d 75 (2000); *People v. Gallagher*, 193 Ill. App. 3d 566 (1990). Possession may be actual or constructive. *People v. Givens*, 237 Ill. 2d 311 (2010). Constructive possession exists where there is no actual personal present dominion over the contraband, but there is an intent and a capability to maintain control and dominion over them. *Gallagher*, 193 Ill. App. 3d 566. Constructive possession may be established by showing defendant had control over the premises where the contraband was found, which in turn gives rise to an inference of knowledge and possession. *People v. Scott*, 152 Ill. App. 3d 868 (1987); *People v. Williams*, 98 Ill. App. 3d 844 (1981).

¶ 19 Although possession must be exclusive, possession may be joint. *Id.* Whether a defendant had knowledge and possession are questions of fact to be resolved by the jury, and its findings will not be disturbed on review unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt as to defendant's guilt. *Givens*, 237 Ill. 2d 311; *Scott*, 152 Ill. App. 3d 868.

¶ 20 Here, we find the evidence was sufficient for a rational trier of fact to find the essential elements of the possession offenses under a theory of constructive possession. The evidence showed that defendant recently moved to Springfield. On September 28, 2009, after numerous

phone calls from Moore, defendant went to pick up Moore so that Moore could sell drugs. Moore exited his house with only a black bag and a blue bag. Defendant claimed that he gave Moore his bag so that Moore could put his clothes into it. When the vehicle was eventually pulled over, Moore happened to be driving. The drugs were found in a blue bag that was inside another bag. Additionally, none of the occupants were named on the rental agreement, and the vehicle was rented in Springfield.

¶ 21 It was the jury's responsibility to weigh this evidence and draw reasonable inferences from it. See *Scott*, 152 Ill. App. 3d 868. Although the drugs were in the trunk of the vehicle and defendant was a passenger when the vehicle was pulled over, the jury could reasonably infer defendant's control over the vehicle, or at the very least, the orange bag. Based on circumstantial evidence of defendant's control over the area that the drugs were located, the jury could find defendant's constructive possession of the drugs, and any joint possession held by Moore does not defeat this claim. See *Williams*, 98 Ill. App. 3d 844.

¶ 22 As defendant points out, knowledge of the location of the contraband and merely being a passenger in a vehicle is not enough, by itself, to prove possession. *Schmalz*, 194 Ill. 2d 75; *People v. Mosley*, 131 Ill. App. 2d 722 (1971). However, in this case, in addition to defendant's knowledge of the drugs and being a passenger at the time of the traffic stop, there was also circumstantial evidence of defendant's control over the area that the contraband was located.

¶ 23 Defendant also relies on *People v. Jackson*, 23 Ill. 2d 360 (1961), to claim that constructive possession cannot be shown where there is no evidence that defendant ever possessed the contraband at some point. *Jackson*, however, is distinguishable. In *Jackson*, the court did not find constructive possession because there was not only no evidence that defendant

ever possessed the contraband, but there was also no evidence that defendant had control over the area where the contraband was located. See *Jackson*, 23 Ill. 2d 360. Here, there was circumstantial evidence that defendant controlled the area; therefore, lack of evidence showing defendant possessed the contraband at some point does not defeat constructive possession. See *Scott*, 152 Ill. App. 3d 868.

¶ 24 Accordingly, viewing the evidence in the light most favorable to the State, we cannot say that the evidence was so improbable or unsatisfactory that it created a reasonable doubt of defendant's guilt. See *Givens*, 237 Ill. 2d 311.

¶ 25 C. Accountability

¶ 26 Alternatively, we also find that the jury could have found defendant's guilt based on an accountability theory.

¶ 27 A defendant is criminally accountable for the conduct of another when "[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2008). To be found guilty on an accountability theory, active participation is not required, as long as defendant shared the criminal intent of the principal, or if there was a common criminal plan or purpose. *People v. Taylor*, 164 Ill. 2d 131 (1995). A defendant's accountability may be proven by circumstantial evidence. *People v. Bolar*, 229 Ill. App. 3d 560 (1992). Accountability for another's crime only attaches before or during the commission of the crime; therefore, once the elements of the crime have ceased, no guilt by accountability may occur. *People v. Dennis*, 181 Ill. 2d 87 (1998).

¶ 28 Here, defendant knew Moore had drugs that he wanted to sell. Defendant then went to

pick him up, and they drove to Galesburg so that Moore could sell the drugs. Defendant provided a vehicle for Moore and assisted him on the trip, knowing Moore had the drugs in the trunk of the vehicle. This evidence was sufficient for the jury to find defendant's intent to facilitate possession of the drugs, and that defendant aided Moore in the commission of the offense. See 720 ILCS 5/5-2(c) (West 2008).

¶ 29 Defendant cites *Dennis*, 181 Ill. 2d 87, to contend that he could not be liable as an accomplice during the commission of the offense, because the elements of the crime were complete when Moore first acquired the drugs. However, the elements that constitute the offense of unlawful possession of a controlled substance or cannabis, namely possession or control, had not ceased when Moore first acquired the drugs, because Moore was still in possession at the time of the stop. See 720 ILCS 570/402(a)(2)(A); 720 ILCS 550/4(d) (West 2008); compare *Dennis*, 181 Ill. 2d 87 (holding that armed robbery was complete when force or threat of force caused the victim to part with possession of property). Therefore, viewing the evidence in the light most favorable to the State, we hold that the evidence was sufficient to find that defendant intentionally aided Moore's commission of the offense of possession beyond a reasonable doubt.

¶ 30 II. DNA Analysis

¶ 31 Defendant next argues that the sentencing order requiring him to submit a DNA sample and pay a \$200 DNA analysis fee should be vacated because he had submitted a sample for a previous conviction.

¶ 32 Any individual convicted of an offense that is classified as a felony under Illinois law after January 1, 1998, is required to submit to the taking, analysis, and indexing of the offender's DNA, and the payment of an analysis fee. 730 ILCS 5/5-4-3(a), (j) (West 2008). However, a

defendant is only required to submit and pay for a DNA assessment when he is not currently registered in the DNA database. *People v. Marshall*, 242 Ill. 2d 285 (2011).

¶ 33 Here, the presentence investigation report indicated that defendant had been convicted of several felonies since 1998, and defendant submitted documentation indicating that his DNA had been on file since 2005. Accordingly, we vacate the portion of the trial court's sentencing order that directed defendant to undergo and pay for a second DNA analysis. See *Marshall*, 242 Ill. 2d 285.

¶ 34 **CONCLUSION**

¶ 35 For the foregoing reasons we vacate the order requiring defendant to undergo and pay for DNA analysis, and we otherwise affirm the judgment of the circuit court of Grundy County.

¶ 36 Affirmed in part and vacated in part.