

No. 1-12-3389

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 7322
)	
KENDRELLE CUMMINGS,)	The Honorable
)	Nicholas R. Ford,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Liu concurred in the judgment.

ORDER

- ¶ 1 *Held:* The evidence was sufficient to prove defendant guilty of possession of a controlled substance where an officer saw defendant walk to a light pole, remove a box containing cocaine from a concealed location, and subsequently place the box back in the concealed location.
- ¶ 2 Following a September 2012 bench trial, Kendrelle Cummings, the defendant, was convicted of possession of a controlled substance and subsequently sentenced to two years'

intensive probation, with 10 days of community service in the Sheriff's Work Alternative Program (SWAP). Defendant appeals, arguing the evidence was insufficient to sustain his conviction because the State failed to show he had constructive possession of the cocaine officers recovered. For the following reasons, we affirm.

¶ 3 The State charged defendant with possession of a controlled substance with intent to deliver. 720 ILCS 570/401(c)(2) (West 2012). At trial, Chicago police officer James Sajgak testified he was conducting narcotics surveillance in plain clothes at approximately 7:45 or 8 p.m. on March 10, 2012. Sajgak stood outside, using binoculars to observe a well-lit alley between Gladys and Van Buren, while his partner, Officer Kravitz, sat in an unmarked squad car. The area was known to be a "high narcotics area."

¶ 4 From about 200 to 250 feet away, Sajgak saw defendant standing in the alley with three individuals, two men and one woman. Another man approached and engaged in a conversation with defendant, at which time the man tendered an unknown amount of money to defendant. Defendant then walked in Sajgak's direction down the alley to a light pole near 3934 or 3924 West Van Buren. When he reached the light pole, which was about 150 to 200 feet from Sajgak, defendant "went down to the ground" and picked up a metal pan. He removed from underneath the pan a small black box approximately two inches wide and three inches long. Next, defendant took something that Sajgak could not see from the box, then placed the box underneath the metal pan and placed the pan back on the ground. Thereafter, defendant walked back to the man who had given him money and gave him the item. Afterward, the man walked away. Sajgak never observed any of the three other individuals engage in a transaction or go near the black box underneath the metal pan. He acknowledged he did not actually see the item defendant gave to the man but believed it came from the box.

¶ 5 Believing he had witnessed a narcotics transaction, Sajgak radioed to Officer Kravitz and ran for about 30 seconds to a secluded location. Kravitz picked Sajgak up and the two relocated to the alley in which defendant was standing. During this time, Sajgak lost sight of defendant for about a minute. When they arrived at the alley, Sajgak exited his vehicle, detained defendant, and directed Kravitz to the light pole. Kravitz went to the light pole and recovered from underneath the metal tin a black magnetic key case. Inside the case were 14 clear, Ziploc packets containing a white rock substance Sajgak suspected was crack cocaine.

¶ 6 Sajgak placed defendant in custody and conducted a search during which he found \$37 in defendant's front pants pocket. He also searched the other individuals. He did not recover narcotics on defendant or any of the individuals. At the station, Sajgak inventoried the 14 items. The parties stipulated that Martin Palomo, a forensic scientist for the Illinois State Police Division of Crime Scene Services, would testify he tested 11 of the 14 items, which were positive for the presence of cocaine and weighed 1.1 grams.

¶ 7 The trial court granted defendant's motion for directed finding as to possession with intent to deliver but found defendant guilty of the lesser-included offense of possession of a controlled substance. In October 2012, the court denied defendant's motion for new trial and sentenced him to two years' intensive probation and 10 days' SWAP. Thereafter, the court denied defendant's motion to reconsider sentence. This appeal followed.

¶ 8 Defendant's sole assertion on appeal is that the evidence was insufficient to sustain his conviction for possession of a controlled substance because the State failed to prove he was in constructive possession of the cocaine found in the small box beneath the metal pan. In particular, he relies on Sajgak's testimony that he observed only one transaction, that the cocaine was recovered in a public alley in a high narcotics area in which defendant was standing with

three other individuals, and that the alleged buyer was not searched or detained after the transaction. He also notes the trial court acquitted him of possession of a controlled substance with intent to deliver, positing that if the court was not convinced he engaged in a drug transaction, then it cannot be presumed that he had control over the cocaine in the box.

¶ 9 Where a defendant challenges his conviction based on insufficient evidence, we must determine whether, when viewing the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). In doing so, our function is not to retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). Further, we will not substitute our judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of witnesses. *Brown*, 2013 IL 114196, ¶ 48. Instead, a "reviewing court must carefully examine the record evidence while bearing in mind that it was the fact finder who saw and heard the witness." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). We will reverse a conviction only where "the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48.

¶ 10 To sustain a conviction for possession of a controlled substance, the State must prove the defendant had knowledge and possession of the drugs. *People v. Givens*, 237 Ill. 2d 311, 334-35 (2010); 720 ILCS 570/402 (West 2012). Possession may be actual or constructive. *Givens*, 237 Ill. 2d at 335. Constructive possession is often proved entirely by circumstantial evidence (*People v. Besz*, 345 Ill. App. 3d 50, 59 (2003)) and is shown where a defendant has the "intent and capability to maintain control and dominion" over a controlled substance. *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992). The rule that possession must be exclusive does not mean

possession may not be joint. *Givens*, 237 Ill. 2d at 335. If two or more individuals share the intention and power to exercise control, then each has possession. *Givens*, 237 Ill. 2d at 335.

¶ 11 Here, a rational trier of fact could have found defendant had possession of the cocaine recovered from the box underneath the pan. Although Sajgak observed defendant engage in only one transaction, defendant's actions during that transaction showed he knew of and controlled the cocaine inside the box. Specifically, Sajgak saw a man approach defendant in a well-lit alley, engage in a conversation, and hand defendant money. Defendant then walked to a light pole, picked up a metal pan on the ground, retrieved a small box from inside the pan, took something from the box, put the box back in the metal pan, and returned the pan to the ground. Thus, from the things done by the defendant we can infer that he both knew of the cocaine and controlled it. See *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007) (defendant exercised "present and personal dominion" over drugs when he hid them inside a brown paper bag). Although the drugs were found in a public alley easily accessible to any number of people, especially the three individuals with whom he was seen prior to and after the transaction, the possibility that one of the three individuals or somebody else may have also had access to the cocaine does not negate defendant's guilt, as the rule that possession must be exclusive does not mean it may not be joint. *Givens*, 237 Ill. 2d at 335; see also *People v. Schmalz*, 194 Ill. 2d 75, 82-83 (2000) (the defendant's convictions for possession of cannabis and drug paraphernalia were affirmed where police discovered her and three others in a bedroom in a home with the contraband); *People v. Warren*, 2014 IL App (4th) 120721, ¶ 66 (another individual's unfettered access to the hotel room did not mean the defendant did not have constructive possession of the crack cocaine, as exclusive possession may be joint); *People v. Garcia*, 2012 IL App (2d) 100656, ¶ 17 (the codefendant's guilty plea was irrelevant to the defendant's case because they could have

possessed the drugs jointly); *People v. Bohn*, 362 Ill. App. 3d 485, 489-90 (2005) (whether the defendant's girlfriend and housemate were charged with possession of the drugs did not make the defendant's guilt more or less probable because possession may be joint).

¶ 12 In this case, the evidence, when viewed in the light most favorable to the State, was sufficient to prove defendant possessed the cocaine beyond a reasonable doubt.

¶ 13 For the reasons stated, we affirm the trial court's judgment.

¶ 14 Affirmed.