

No. 1-13-0027

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 6508
)	
MICHAEL TAYLOR,)	Honorable
)	Matthew E. Coghlan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's conviction for possession of a controlled substance with intent to deliver is affirmed where the evidence established beyond a reasonable doubt that he had constructive possession of the heroin recovered from a dumpster.
- ¶ 2 Following a jury trial, defendant, Michael Taylor, was convicted of possession of a controlled substance with intent to deliver and sentenced to five years in prison. He appeals, asserting the evidence was insufficient to sustain his conviction because the State failed to show

he had constructive possession of the heroin recovered from a dumpster. For the following reasons, we affirm.

¶ 3 At trial, Chicago Police Officer Wayne Frano testified he was conducting surveillance with four other officers near 746 North Christiana Avenue at approximately 7:50 p.m. on March 6, 2012. The area was "well lit" by street lights off the alley on the corner. The officers had received information that two men were selling suspect narcotics in the area. Upon setting up surveillance, Frano saw two men matching the physical description that had been provided of the suspects. One of the men was defendant. Frano was located about 80 to 100 feet from defendant and was equipped with binoculars.

¶ 4 An unknown man approached defendant, engaged in a short conversation that Frano could not hear, and handed defendant an unknown amount of money. Defendant then walked to an alley where a green dumpster was located, bent down, and started "manipulating that area and retrieving an object" from the left rear wheel of the dumpster. Frano could not see the item but could see it was small. Defendant then returned to the man who had given him money and gave him the item.

¶ 5 A minute or so later, another man approached defendant, engaged in a short conversation that Frano could not hear, and gave an unknown amount of money to defendant. Defendant again walked to the dumpster in the alley, "manipulated the area" around the same wheel of the dumpster, walked back to the man who had given him money, and handed him an item that Frano could not see. During these transactions, Frano did not see anyone else go into the alley, bend down by the wheel, or go near the dumpster. However, he acknowledged the dumpster was

located around the corner from Chicago Avenue, a heavily traveled street. Frano did not radio his partners to tell them to stop either the first or second man he saw interacting with defendant.

¶ 6 After the second transaction, defendant walked northbound on Christiana and eastbound on Chicago. Believing he had witnessed two narcotics transactions, Frano radioed officers Vince Celio and Angelo Monico to retrieve him from his surveillance point. Frano also radioed two other surveillance officers, John Frano (John) and Myron Bondsetter, to report the direction in which defendant was walking. The officers got into their vehicles, drove eastbound on Chicago, and observed defendant walking into a Popeye's Chicken on the corner of Chicago and Kedzie. They detained defendant, and Celio and Frano returned to the green dumpster while the other three officers remained with defendant.

¶ 7 Officer Vincent Celio testified that he and Frano were at Popeye's for "[a] couple minutes" before returning to the dumpster area. When they returned, Celio did not see anybody around the dumpster. From an empty space in the bracket of the left rear wheel of the dumpster, Celio recovered five small clear Ziploc bags with black spades decals, each containing a white powder substance suspected to be heroin. He brought the bags to the police station, where Monico inventoried them. The parties stipulated that a proper chain of custody was maintained at all times and that Rosa Lopez, an Illinois State Police Crime Lab forensic scientist, would testify the substance in one of the five recovered bags tested positive for heroin and weighed 0.2 gram, and the substance contained in the five bags weighed a total of 0.9 gram.

¶ 8 After Celio recovered the Ziploc bags, Frano radioed John, who placed defendant into custody. John testified that he conducted a custodial search of defendant, during which he recovered \$191 but did not recover any narcotics.

¶ 9 The jury found defendant guilty of possession of a controlled substance with intent to deliver. At a later hearing, the court sentenced defendant to five years in prison. This appeal followed.

¶ 10 On appeal, defendant argues the evidence was insufficient to sustain his conviction because the State failed to establish he had actual or constructive possession of the heroin recovered from the dumpster. In his reply brief, defendant clarifies the specific contention he is raising is that the State failed to show he intended to control the heroin after the second transaction, as he abandoned it by walking to Popeye's Chicken.

¶ 11 When presented with a challenge to the sufficiency of the evidence, this court must determine whether, 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). We will not substitute our judgment for that of the trier of fact on issues relating to the weight of the evidence or witness credibility, and we will reverse 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.

¶ 12 To sustain a conviction for possession of a controlled substance with intent to deliver, the State must show (1) defendant had knowledge of the presence of the controlled substance, (2) the controlled substance was in defendant's immediate possession or control, and (3) defendant intended to deliver the controlled substance. *People v. Robinson*, 167 Ill. 2d 397, 407 (1995); 720 ILCS 570/401(d)(i) (West 2012). Possession may be actual or constructive, and the rule that

possession must be exclusive does not mean it may not be joint. *People v. Givens*, 237 Ill. 2d 311, 335 (2010). Constructive possession is shown where a defendant has both the intent and capability to maintain control over a controlled substance. *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992). If two or more individuals share the intention and power to exercise control, then each has possession. *Givens*, 237 Ill. 2d at 335. "Constructive possession may exist even where an individual is no longer in physical control of the drugs, provided that he once had physical control of the drugs with intent to exercise control in his own behalf, and he has not abandoned them and no other person has obtained possession." *People v. Adams*, 161 Ill. 2d 333, 345 (1994). Evidence establishing constructive possession is often entirely circumstantial. *People v. Besz*, 345 Ill. App. 3d 50, 59 (2003).

¶ 13 Here, a reasonable trier of fact could have found defendant had constructive possession of the heroin recovered from the dumpster. Officer Wayne Frano observed defendant engage in two nearly identical transactions within minutes of each other. During each transaction, a man approached defendant and handed him money. Defendant then walked to the dumpster, retrieved a small item from the left rear wheel, walked back to the man, and gave him the item. Although Frano could not see the items that were exchanged and neither of the two alleged buyers were stopped or questioned, Officer Celio later recovered heroin from an empty space in the bracket of the left rear wheel of the dumpster. Based on all of the foregoing, the jury could reasonably infer defendant had both the intent and ability to control the heroin. See *People v. Smith*, 288 Ill. App. 3d 820, 824 (1997) (the evidence established the defendant had constructive possession of cocaine where the defendant twice walked a short distance, retrieved something from the ground

in an area where an officer later found cocaine, returned to the individual, and handed him an item).

¶ 14 Defendant has provided no authority to support his argument that his act of walking to Popeye's Chicken after the second transaction constituted abandonment of the heroin. Notably, following the second transaction, defendant left the heroin concealed in the empty spot in the dumpster wheel bracket. A defendant's decision to hide contraband does not constitute abandonment. *People v. Minniweather*, 301 Ill. App. 3d 574, 579 (1998). To the contrary, "[h]iding drugs to avoid detection indicates an intent to exercise control over them." *People v. McLaurin*, 331 Ill. App. 3d 498, 503 (2002). In addition, defendant was detained shortly after he left the dumpster and walked to Popeye's. Based on the foregoing, the jury could reasonably infer defendant intended to maintain control over the heroin despite having walked away from it.

¶ 15 Moreover, although the dumpster was located in a public alley and Frano initially observed defendant with another suspect, Frano testified he did not see anyone else go into the alley or near the dumpster during the first two transactions, and Celio did not see anybody near the dumpster when they returned from Popeye's. In addition, Officers Celio and Frano remained at Popeye's Chicken for only a few minutes before returning to the dumpster area. In any event, the possibility that the other suspect or somebody else may have accessed the heroin during the time the officers discontinued their surveillance 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.

¶ 16 In sum, the evidence was sufficient to establish defendant had constructive possession of the recovered heroin. Accordingly, we affirm defendant's conviction.

¶ 17 Affirmed.