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2014 IL App (3d) 130297-U

Order filed November 24, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0297
)	Circuit No. 12-CF-652
TORRENCE JU'RELL SMITH,)	
Defendant-Appellant.)	Honorable F. Michael Meersman, Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* The evidence was sufficient to prove beyond a reasonable doubt that defendant possessed a controlled substance.
- ¶ 2 Defendant, Torrence Ju'Rell Smith, was charged with unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(c)(2) (West 2012)) as a result of an incident on August 2, 2012. Following a jury trial, defendant was convicted of the lesser-included offense of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2012)). Defendant was sentenced to a nonextended term of 30 months' imprisonment in the Illinois

Department of Corrections (DOC). Defendant appeals, challenging whether the evidence was sufficient to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3

FACTS

¶ 4

Defendant was charged with unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(c)(2) (West 2012)). On the evening of August 2, 2012, at approximately 11:37 p.m., Rock Island police officers Paul Girskis, Phillip Anderson, and Ron Waddle investigated a vehicle occupied by defendant and two other persons. The officers had been observing the vehicle for approximately two minutes before they approached. They did not know what the occupants of the vehicle had been doing before that time. As they approached, the officers saw some movement in the front seat, as if the occupants were trying to hide something. Defendant was sitting in the backseat of the vehicle behind the driver's seat. The other two persons were sitting in the front driver and front passenger seats.

¶ 5

Defendant was removed from the vehicle by Girskis. Defendant asked Girskis to get his cigarettes for him and stated that they were on the center console in the backseat. Girskis obtained the cigarettes from the armrest of the center console in the backseat and gave them to defendant. A few minutes after defendant had been removed from the vehicle and his cigarettes had been retrieved by Girskis, Anderson photographed the backseat. Anderson observed the following items in the cup holders of the center console in the backseat: two cell phones, keys, a digital scale, and a clear plastic bag that was later determined to contain 10.2 grams of cocaine.

¶ 6

Anderson testified that most drug dealers have several cell phones on them so they can throw them away. Anderson did not know to whom the cell phones recovered from the backseat belonged, and he did not personally verify whether they were "throw-away phones." He did not personally scroll through the missed calls, made calls, and text messages on the cell phones and

did not know if anyone else had. Anderson testified that digital scales are used to weigh drugs. The vehicle was rented, but Anderson did not know who had rented it.

¶ 7 Waddle testified that drug dealers often have multiple cell phones and that digital scales are used to weigh the amount of drugs being purchased to determine how much to charge. Waddle testified that the cost of a standard drug transaction was between \$20 and \$50. Waddle testified that a cell phone, a set of keys, and \$1,320 in cash (four \$100 bills, forty-seven \$20 bills, and two \$10 bills)¹ were recovered from defendant's person. Waddle did not look at the contents of defendant's cell phone. Waddle requested that the cell phones, scale, and bag of cocaine be tested for fingerprints, but they were not because the police department had limited resources.

¶ 8 The officers recovered seven to eight ecstasy pills from a cubby in the driver's door panel. The driver the vehicle claimed ownership of the ecstasy pills.

¶ 9 Following a jury trial, defendant was convicted of the lesser-included offense of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2012)). Defendant was sentenced to a nonextended term of 30 months' imprisonment in the DOC. No posttrial motions were filed. Defendant appeals.

¶ 10 ANALYSIS

¶ 11 On appeal, defendant argues that the evidence at trial was insufficient to prove him guilty beyond a reasonable doubt of unlawful possession of a controlled substance. When presented with a challenge to the sufficiency of the evidence, we ask whether, after viewing the evidence in

¹ We note that the sum of the bill denominations that Waddle testified were recovered from defendant (\$1,360) differs from the total amount that Waddle testified was recovered from defendant (\$1,320).

the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is not the function of this court to retry the defendant. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). When a challenge to the sufficiency of the evidence is presented, all reasonable inferences from the record are drawn in favor of the prosecution. *Id.*

¶ 12 To sustain a conviction for unlawful possession of a substance containing cocaine, the State had to prove that defendant knowingly possessed a substance that contained cocaine. 720 ILCS 570/402(c) (West 2012). To prove knowing possession, "the State must prove that the defendant had knowledge of the presence of the controlled substance and that he or she also had immediate and exclusive possession or control of the narcotics." *People v. Woods*, 214 Ill. 2d 455, 466 (2005). "[W]hether the 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 palpably contrary to the verdict or so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt as to guilt." *People v. Eiland*, 217 Ill. App. 3d 250, 260 (1991).

¶ 13 A. Knowledge

¶ 14 Knowledge of the presence of a controlled substance may be—and ordinarily is—proved by circumstantial evidence. *People v. Ortiz*, 196 Ill. 2d 236, 260 (2001). A defendant's presence in a car where contraband is found is not sufficient to establish the defendant's knowledge of contraband. *People v. Ingram*, 389 Ill. App. 3d 897, 900 (2009). Knowledge may be inferred from several factors, including: "(1) the visibility of the [contraband] from defendant's location in the vehicle, (2) the amount of time in which defendant had an opportunity to observe the [contraband], (3) gestures or movements made by defendant that would suggest an effort to retrieve or conceal the [contraband], and (4) the size of the [contraband]." *Id.*

¶ 15 In this case, the jury could have rationally found that defendant had knowledge of the cocaine in the cup holder of the center console. The cocaine was located inches from where defendant was seated in the vehicle. Defendant had placed his personal property—his cigarettes—on the armrest of the center console. The cocaine was in plain view and large enough to be readily visible to the police officers. There was testimony at trial that the digital scale and two cell phones located in the cup holders, along with the cocaine, were items commonly used in drug transactions. Additionally, defendant had a large amount of cash on his person. The jury could have reasonably inferred that this money was obtained selling drugs, as the prosecution argued.

¶ 16 Defendant cites *People v. Jones*, 278 Ill. App. 3d 790 (1996) and *People v. Adams*, 242 Ill. App. 3d 830 (1993), for the proposition that a defendant's mere presence in an area containing narcotics does not impute knowledge. However, unlike in *Jones* and *Adams*, the cocaine in this case was not concealed but rather was in plain view in the backseat cup holder. See *Jones*, 278 Ill. App. 3d at 793 (holding there was a lack of evidence connecting the defendant to a baggie containing 2.3 grams of cocaine; cocaine was found in a closet under a pile of clothes where the defendant and another person were hiding, and the other person admitted to hiding the cocaine himself); *Adams*, 242 Ill. App. 3d at 832-33 (holding there was insufficient evidence to link the defendant to cocaine discovered in a cabinet under the bathroom sink at an apartment where defendant was a visitor and was found by police in the bathroom with his hands raised). Thus, the jury could have reasonably inferred that defendant had knowledge of the cocaine which was in plain view inches from where he was seated in the car.

¶ 17 B. Possession

¶ 18 To prove possession, the State must show that defendant had immediate and exclusive

possession or control of a controlled substance. *Woods*, 214 Ill. 2d at 466. Possession may be actual or constructive. *People v. Macias*, 299 Ill. App. 3d 480, 484 (1998). As there was no actual possession in this case, the State was required to prove constructive possession.

"Constructive possession exists without actual personal present dominion over a controlled substance, but with an intent and capability to maintain control and dominion." *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992). Evidence showing a defendant had control over the premises where a controlled substance was found gives rise to an inference of knowledge and possession. *Eiland*, 217 Ill. App. 3d at 261. The rule that possession must be exclusive does not mean that it may not be joint. *People v. Schmalz*, 194 Ill. 2d 75, 82 (2000). "Mere access by other persons to the area where drugs are found is insufficient to defeat a charge of constructive possession." *Eiland*, 217 Ill. App. 3d at 261. "While mere proximity to contraband is insufficient to prove possession [citation], where the other circumstantial evidence is sufficiently probative, proof of proximity combined with inferred knowledge of the presence of contraband will support a finding of guilt on charges of possession." *People v. Brown*, 277 Ill. App. 3d 989, 998 (1996).

¶ 19 In this case, the jury could have rationally found that defendant constructively possessed a controlled substance because the evidence showed more than defendant's mere proximity to the cocaine. As we have noted, the cocaine was in plain view in the center console of the backseat of the vehicle— inches from where defendant had been sitting before a police officer removed him from the vehicle. Defendant had placed his cigarettes on the armrest of the center console. Defendant was the only person sitting in the backseat of the vehicle when the police officers removed the three men from the vehicle. A rational jury could have found that defendant exercised control over the backseat center console where the drugs were located. Such a finding

is not defeated by the mere fact that others were present in the vehicle.

¶ 20 Defendant argues that the State did not establish he had control and dominion over the cocaine found in the vehicle because he was merely a passenger in a vehicle containing drugs. Defendant cites *People v. Huth*, 45 Ill. App. 3d 910 (1977), *People v. Jump*, 56 Ill. App. 3d 871 (1978), and *People v. Mosley*, 131 Ill. App. 2d 722 (1971), as cases where the evidence was insufficient to prove passengers in vehicles guilty of possession of a controlled substance beyond a reasonable doubt. However, those cases are distinguishable. In *Huth*, the court held there was insufficient evidence to convict the defendant of possession of a bag of marijuana found partially concealed under the front seat of a vehicle. *Huth*, 45 Ill. App. 3d at 916. There, the defendant was one of three individuals traveling in the vehicle and was sitting in the front passenger seat at the time of the arrest but had been sitting in the rear seat earlier that evening, and the marijuana could be seen by a police officer only with the use of artificial illumination. *Id.* In *Jump*, the evidence was found to be insufficient to convict the defendant of possession of marijuana. *Jump*, 56 Ill. App. 3d at 871-72. In that case, the defendant was the passenger in a vehicle containing marijuana, and the driver testified that the vehicle belonged to his mother, all the items inside belonged to the driver or members of his family, and the defendant never used the vehicle, had no right to use it, and had nothing to do with the marijuana. *Id.* In *Mosley*, the court held that there was insufficient evidence to convict the defendant of possession of drugs where drugs were found in the trunk of the vehicle in which the defendant was a passenger. *Mosley*, 131 Ill. App. 2d at 724.

¶ 21 Unlike in *Huth*, *Mosley*, and *Jump*, in this case the controlled substance was inches away from defendant in plain view, the other occupants of the vehicle did not testify that defendant had nothing to do with the cocaine, and defendant was the only person sitting in the backseat

