

**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  
SECOND DISTRICT

---

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 13-CF-508
	)	
CARLOS GARCIA-PEREZ,	)	Honorable
	)	Linda Abrahamson,
Defendant-Appellant.	)	Judge, Presiding.

---

JUSTICE ZENOFF delivered the judgment of the court.  
Presiding Justice Birkett and Justice Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed the defendant's conviction of unlawful possession of cocaine with intent to deliver where direct and circumstantial evidence linked him to the contraband.

¶ 2 Defendant, Carlos Garcia-Perez, appeals his conviction of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(D) (West 2012)) following a bench trial. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The following evidence was adduced at defendant's trial. Alejandro Corral agreed to be a police informant in exchange for probation on a pending charge. He successfully served that probation. He also cooperated with and assisted the police in establishing a case against defendant.

¶ 5 In approximately the second week of March 2013, Corral asked defendant to get drugs for a "friend" of Corral's. Defendant said that he would talk to his "guys." Defendant and Corral discussed the transaction again in telephone calls and in person. They agreed that on March 23, 2013, defendant would deliver a kilo of cocaine to Corral's home and Corral would pay him \$27,000. According to Corral, he was going to wait for "them" with the door to his detached garage open, and "they" were going to pull inside and close the door. Corral testified that he expected more people than just defendant. Corral kept the police informed of all of these conversations.

¶ 6 On March 23, 2013, at about 12:05 p.m., defendant advised Corral that he was with two other people and that they were traveling through Elgin in a white Saturn SUV. Defendant said that they would arrive at Corral's house within 20 or 30 minutes. Corral informed the police that defendant would arrive about 12:30 p.m.

¶ 7 Pursuant to Corral's information, Carpentersville police Sergeant Kevin Stankowitz and Officer Joe DeFranco were conducting surveillance near Corral's home when, shortly after 12:30 p.m., the officers saw a white Saturn SUV. They recognized defendant in the front passenger seat and stopped the Saturn. The driver and backseat passenger were removed from the vehicle. The driver, Martin Hernandez, was in possession of latex gloves that were turned inside-out. Mail addressed to a Martin Hernandez was located in the glove box. The Saturn was registered to a

different Hernandez. Defendant was arrested on a warrant for a previous traffic violation having nothing to do with the present stop. Defendant was in possession of multiple cell phones.

¶ 8 The State introduced recordings of phone conversations between defendant and Corral that occurred on the morning of March 23. In the first conversation, defendant stated: “We’re gonna pick that up, with my friend.” Corral said, “Are you 100% sure that is going to happen today?” Defendant replied, “Yes, sir.” Corral asked: “What time do you want to do it?” Defendant answered: “Like earlier the better I’m saying, no?” Defendant then said that he was going “to the house and we’ll be over there.” Corral asked: “You’re going to bring it or who’s going to bring it? \*\*\* I think it’s better with you.” Defendant replied: “Yes, I think (inaudible) like that it doesn’t matter.” In the second call, Corral asked: “What happened, Carlitos?” Defendant said, “We are waiting for this, brother. \*\*\* He’s on his way. I’m calling this buddy. He is on his way, on his way.”

¶ 9 The police towed the Saturn to the Carpentersville Police Department. During a search of the vehicle, the police discovered a welded-on “secret compartment” inside the trunk area. Inside the compartment was a plastic bag containing more than 900 grams of cocaine. An unidentified handprint was on the drugs. Officer Matt Ostren, an expert in narcotics possession, opined that the cocaine was possessed with intent to deliver based on the volume of drugs recovered. Ostren also testified that the amount recovered qualified in drug parlance as a “kilo.” According to Ostren, drug dealers use latex gloves to handle narcotics. He testified that the inside-out latex gloves recovered from Hernandez indicated that Hernandez had recently used them. Ostren also opined that dealers often possess multiple cell phones and transactions involve the presence of security persons in addition to the dealer.

¶ 10 The court found that the cocaine was possessed with intent to deliver based on the amount. Defendant does not challenge that finding. The court also found that, while Hernandez might have been guilty of possession with intent to deliver, it did not negate defendant's guilt. The court found Corral to be credible despite his bias and interest in working off his probation for the police. The court noted that the phone calls between defendant and Corral on the morning of March 23 did not mention money or drugs, but defendant spoke about making arrangements with others, that something was going to be picked up, and that "it" would happen "today." The court found defendant guilty and sentenced him to 15 years' incarceration. Defendant filed a timely appeal.

¶ 11 II. ANALYSIS

¶ 12 Defendant contends that the State failed to prove beyond a reasonable doubt that he had either actual or constructive possession of the cocaine. When presented with a challenge to the sufficiency of the evidence, this court does not retry the defendant. *People v. Price*, 2011 IL App (4th) 100311, ¶ 16. Rather, we consider whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Price*, 2011 IL App (4th) 100311, ¶ 16. Here, defendant argues that evidence of his possession was lacking where (1) the cocaine was found in a "well-hidden" compartment of the Saturn, (2) the Saturn did not belong to defendant, and (3) an unidentified handprint was found on the drugs.

¶ 13 To support a finding of possession of a controlled substance, the State must prove beyond a reasonable doubt that the defendant knew of the presence of the narcotics and that the narcotics were in his immediate and exclusive control. *People v. Scott*, 367 Ill. App. 3d 283, 285 (2006). Possession can be either actual or constructive. *People v. Neylon*, 327 Ill. App. 3d 300, 306

(2002). As defendant points out, the State never put him in actual possession of the cocaine. Therefore, the question is whether he was in constructive possession. Constructive possession exists where the defendant has an intent and capability to maintain control and dominion over the controlled substance. *Neylon*, 327 Ill. App. 3d at 306. Defendant emphasizes that the Saturn belonged to Hernandez's family, the cocaine was concealed in a hidden compartment of the Saturn, and someone else's handprint was on the cocaine. Defendant concludes that he did not have control over the location where the drugs were found. However, control of the premises is not an absolute requirement for constructive possession. *People v. Minniweather*, 301 Ill. App. 3d 574, 578 (1998). Where narcotics are found on premises that are not under the defendant's control, it is the defendant's *relationship to the contraband* that must be examined. *Minniweather*, 301 Ill. App. 3d at 578. That relationship was supplied by Corral.

¶ 14 Defendant argues that Corral's testimony was not credible because it was uncorroborated and he had a motive to lie. The court found Corral credible despite his bias and interest. This court will not disturb the trial court's determinations regarding the credibility of witnesses or the weight to be given their testimony. *People v. Diaz*, 247 Ill. App. 3d 625, 627 (1993). Corral testified that he and defendant prearranged the delivery of a kilo of cocaine to Corral's home on a certain date. Corral also expected that defendant would not be alone. On the appointed date, defendant was arrested while riding in the front passenger seat in a vehicle carrying a kilo of cocaine on its route to Corral's house. Defendant was in the company of Hernandez and one other person. Hernandez was in possession of inside-out latex gloves. According to Ostren, drug dealers wear latex gloves to handle narcotics, and the condition of Hernandez's gloves indicated that they had been recently used. Ostren also established that dealers may be accompanied by other persons who act as security for the contraband. As the trial court noted, Hernandez's guilt

does not preclude defendant's guilt. "Possession of contraband can be, and often is, joint." *People v. Garcia*, 2012 IL App (2d) 100656, ¶ 18.

¶ 15 Defendant relies on *People v. Tate*s, 2016 IL App (1st) 140619. In *Tate*s, the appellate court reversed the defendant's conviction of possession with intent to deliver heroin, cocaine, and cannabis where the State's evidence merely proved the defendant's presence in the dining room where some of the contraband was found. A co-defendant claimed ownership of all of the drugs, and no forensic evidence linked the defendant to any of the drugs. *Tate*s, 2016 IL App (1st) 140619, ¶¶ 24-28. Here, Corral testified that defendant agreed to supply him with a kilo of cocaine in exchange for \$27,000. Corral testified to the arrangements for the delivery, and defendant was arrested under circumstances matching those arrangements. Also, when placed in context, the two phone calls between defendant and Corral on the morning of March 23 are inculpatory. They referenced bringing something to Corral that day that involved other people.

¶ 16 Defendant also relies on *People v. Blue*, 343 Ill. App. 3d 927 (2003). In *Blue*, the defendant broke into an apartment where narcotics were present. *Blue*, 343 Ill. App. 3d at 939. The apartment's lessee was a woman with whom the defendant had a relationship. *Blue*, 343 Ill. App. 3d at 939. However, other than his fingerprint on a pickle jar and his mere presence after he broke in, nothing established that defendant controlled the apartment such that he had constructive possession of the narcotics therein. *Blue*, 343 Ill. App. 3d at 939-40. *Blue* is distinguishable from our case, where, as noted, defendant was tied to the cocaine through Corral's testimony, the phone calls, and the corroborating circumstances of his arrest inside the Saturn. Accordingly, we hold that the evidence is sufficient to meet the *Jackson* standard.

¶ 17

### III. CONCLUSION

¶ 18 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 19 Affirmed.