THIRD DIVISION
October 31, 2012

No. 1-11-2496

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. 07 CR 20659
	)	
MARILYN CORTES,	)	Honorable
	)	Catherine M. Haberkorn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Salone and Justice Neville concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment revoking defendant's probation affirmed over defendant's challenge to the sufficiency of the State's evidence proving her knowledge of the presence of cocaine in the car she was driving.

¶ 2 Defendant Marilyn Cortes appeals from the revocation of her probation and sentence of four and a half years' imprisonment for the underlying drug offense, following the trial court's determination that she violated the terms of her probation by being in constructive possession of a controlled substance. On appeal, defendant contends that the State failed to prove that she violated the conditions of her probation by a preponderance of the evidence.

¶ 3 The record shows, in relevant part, that on January 9, 2009, defendant pleaded guilty to possession of a controlled substance in exchange for an 18-month term of probation subject to the condition that she, *inter alia*, "[n]ot violate the criminal statute of any jurisdiction."

¶ 4 On May 10, 2010, the State filed a petition to revoke defendant's probation, alleging that she had been arrested on May 7, 2010, on a charge of possession of a controlled substance and thereby violated her probation. At the hearing on that petition, Norridge police officer Anthony Beckman testified that about 9:45 p.m. on May 7, 2010, he and his partner, Officer Radames Rodriguez, were on duty near the 4700 block of Cumberland when they observed someone driving a silver Toyota Corolla make a turn without signaling. Officer Beckman activated his emergency lights and conducted a traffic stop. He approached the driver's side of the car while Officer Rodriguez approached the passenger side front door. Officer Beckman spoke with the driver, who was the only person in the car, and identified that person in court as defendant.

¶ 5 Officer Beckman further testified that while he was speaking with defendant, Officer Rodriguez informed him that he observed a dollar bill with a white powdery substance inside of it in the cup holder in the center console area of the car. Officer Rodriguez retrieved the dollar bill from the car and showed it to Officer Beckman. Officer Beckman testified that the dollar bill was folded in a way that resembled a ship and was difficult for him to replicate. Officer Beckman further testified that a white powdery substance was inside of the dollar bill, which was "cupped enough where you could see the powder on top." Because he was focused entirely on defendant, Officer Beckman had not noticed anything in the cup holder before Officer Rodriguez removed the dollar bill from it, and he described the progression of events as "pretty quick." Officer Beckman further testified that he never saw defendant look at or move towards the cup holder. The two cup holders were laid out vertically in the center console of the car; one in front of the other one.

¶ 6 Officer Beckman checked the license plate of the car and learned that it was registered to Alexander Vasquez Jr., who, he later learned, was a convicted cocaine trafficker. Defendant informed them that the car belonged to her husband. Officer Beckman viewed photographs submitted by the defense and stated that the layout of the cup holders in the photographs looked the same as the ones in the car defendant was driving on the night of her arrest. He further testified that, although he could not recall whether any lights were on in the vehicle at the time of the stop, the street was well lit.

¶ 7 Officer Beckman testified that he and Officer Rodriguez took the dollar bill and its contents to the police department, where they conducted a field test on the powdery substance, which proved positive for cocaine. The substance was then inventoried and sent to the crime lab for further testing. Officer Beckman further testified that they also sent the dollar bill to the crime lab, but that there was no mention of the dollar bill in the lab report. Although the dollar bill is not mentioned in his inventory sheet, he included it in the body of the report. At the time of the stop, defendant did not act as though she was under the influence of a controlled substance or alcohol.

¶ 8 The parties stipulated that the car defendant was driving on the night of the incident was registered to Alexander Vasquez. The parties further stipulated that forensic scientist Angela Nealand tested the evidence submitted by Officer Beckman in this case and that the white powder tested positive for .8 gram of cocaine. The parties also stipulated that a proper chain of custody was maintained at all times.

¶ 9 Mayra Vasquez testified for the defense that she lives with defendant, who is her mother, at 7550 West Forest Preserve, and that she lived there at the time of the incident. In May 2010, defendant drove a pearl white Cadillac, and Vasquez's father, Alexander Vasquez, who went to prison in August 2008 for selling cocaine, had his car, a silver Toyota Corolla, parked at

defendant's home. The Corolla had initially been kept at her father's girlfriend's house, but was moved to defendant's house for safekeeping approximately two weeks prior to her arrest. Although defendant had a set of keys to the Corolla, she did not drive that car regularly, and a friend of Vasquez's father, whom she did not know, also had a set of keys to the Corolla and drove it regularly.

¶ 10 Vasquez further testified that two days before defendant's arrest, she and defendant used the Corolla to run an errand. Defendant drove the Corolla that day because her own car was in need of repair. Because she did not look in the cup holder, Vasquez did not notice whether it contained a folded dollar bill at that time. Her father's friend drove the Corolla after that day and before defendant's arrest. Vasquez further testified that she loves defendant and does not want to see her get into trouble.

¶ 11 The trial court found that the State proved defendant's constructive possession of the cocaine by a preponderance of the evidence, thereby showing that she was in violation of her probation. In doing so, the trial court stated that Officer Beckman "testified clearly and convincingly." The trial court found that defendant was the caretaker of the vehicle and, given that he was in prison at the time, did not believe that defendant's husband had anything to do with the drugs in question. The trial court further found that, contrary to defense counsel's argument during closing argument, based on the photographs defendant submitted, one "can see clearly into these cup holders," and it is "very easy to see the cup holders and the contents of the cup holders," because they are large and "quite open." Defendant did not include a transcript from the subsequent sentencing hearing in the record on appeal, but the record reflects that on July 28, 2011, the trial court sentenced defendant to four and a half years' imprisonment.

¶ 12 In this appeal from that judgment, defendant contends that the State failed to prove that she was in constructive possession of a controlled substance by a preponderance of the evidence.

She claims that the State failed to present evidence that she had knowledge of the presence of the cocaine in the car she was driving.

¶ 13 To prove defendant's violation of probation based on her possession of a controlled substance, the State was required to prove the violation by a preponderance of the evidence. 730 ILCS 5/5-6-4(c) (West 2008). Where, as here, the trial court found the State had sustained that burden, defendant's challenge to the sufficiency of the evidence will succeed only if that finding was against the manifest weight of the evidence. *People v. Conlon*, 225 Ill. 2d 125, 158 (2007). A ruling is against the manifest weight of the evidence only if a contrary result is clearly evident. *People v. Keller*, 399 Ill. App. 3d 654, 662 (2010).

¶ 14 When establishing the element of possession, constructive possession is sufficient and the State need not prove that defendant had actual physical possession of the controlled substance. *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002). To establish constructive possession, the State must show that defendant had knowledge of the controlled substance, and exercised immediate and exclusive control over the area where it was found. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Constructive possession is often proved entirely by circumstantial evidence (*People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003)), and exclusive possession can be established even where possession is joint or others have access to the area where they are located (*People v. Griffin*, 194 Ill. App. 3d 286, 292 (1990)).

¶ 15 We observe that defendant's mere presence in a car where drugs are found is insufficient to establish knowledge thereof. *People v. Ingram*, 389 Ill. App. 3d 897, 900 (2009). However, knowledge may be inferred from other factors, such as (1) the visibility of the drugs from defendant's location within a car, (2) the amount of time that defendant had to observe the drugs, (3) any gestures or movements that would suggest defendant was attempting to retrieve or conceal the drugs, and (4) the size of the drugs. *Love*, 404 Ill. App. 3d at 788.

¶ 16 Here, the record shows that the dollar bill containing .8 gram of cocaine was in plain view, as it was located in a cup holder next to where defendant was seated. Based on the photographs submitted by the defense, the trial court described the cup holders as large and open and stated that one "can see clearly into [them]" and it is "easy" to see their contents. Officer Beckman testified that the dollar bill was folded in the shape of a ship and was cupped in such a way that one could see the powder on top. He also testified that the events unfolded "pretty quick[ly]," thereby implying that Officer Rodriguez was able to see the cocaine shortly after reaching, and looking into, the front passenger area of the car. Vasquez testified that defendant lives at 7550 West Forest Preserve and Officer Beckman testified that the stop occurred at the 4700 block of Cumberland. Thus, defendant was in the car, and had the opportunity to observe the cocaine, for at least the amount of time it took to drive from her home to that location.

¶ 17 The record also reflects that defendant was the only passenger in the car at the time of the stop, that she had keys to the car, that she was in custody of the car, and that she had access to the car for a period of two weeks prior to her arrest. In addition, Vasquez testified that her mother was having trouble with her own car and had used the Corolla to run errands two days prior to her arrest. From this evidence, the trial court could reasonably infer that defendant had knowledge of the presence of the cocaine in the car she was driving, over which she exercised immediate and exclusive control. See *Ingram*, 389 Ill. App. 3d at 900. Consequently, the trial court's finding that defendant violated her probation by constructively possessing the cocaine was not against the manifest weight of the evidence. *Conlon*, 225 Ill. 2d at 158.

¶ 18 Defendant, nonetheless, takes issue with this conclusion, claiming that the State failed to establish knowledge on her part because (1) Officer Beckman did not testify as to how the dollar bill and cocaine appeared from the driver's side of the car and how apparent it would have been to defendant, (2) Officer Beckman testified that defendant did not make any motion toward or

acknowledge the cocaine in any way, and (3) it is likely that another person with access to the car placed the cocaine in the car.

¶ 19 We observe that the positive and credible testimony of a single witness is sufficient to convict a defendant (*People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009)), and with respect to defendant's first two arguments, it was the responsibility of the trial court, as the trier of fact, to draw reasonable inferences from Officer Beckman's testimony (*People v. Sutherland*, 223 Ill. 2d 187, 242 (2006)). We note that defendant failed to include the photographs that were introduced at the hearing, which reportedly depicted the placement of the cup holders from various angles, in the record on appeal. We thus resolve any doubts arising out of this incompleteness against defendant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 20 Defendant's third argument, that someone else with access to the car may have been the one to place the cocaine in the car, is mere speculation, and the trial court was not obliged to accept any proffered explanation compatible with defendant's innocence. *People v. Evans*, 209 Ill. 2d 194, 212 (2004). Having determined that the trial court's findings were not against the manifest weight of the evidence, we have no basis for questioning them here.

¶ 21 Further, as pointed out by the State, defendant's arguments relate to alleged weaknesses in the sufficiency of the evidence, which were presented to and rejected by the trial court, and are thus unpersuasive. *People v. Baugh*, 358 Ill. App. 3d 718, 737 (2005). Defendant attempts to distinguish *Baugh*, maintaining that rather than arguing witness credibility or the weight to be assigned to the evidence presented, her argument is that there was a complete absence of evidence to prove knowledge of the cocaine on her part. We disagree. A review of the record and defendant's briefs reveals that the crux of her argument goes to the credibility and weight attributed to the evidence presented by the State through the testimony of Officer Beckman.

¶ 22 Accordingly, we conclude that the State proved defendant's violation of probation by a preponderance of the evidence, and we affirm the trial court's judgment to that effect.

¶ 23 Affirmed.