

NOTICE
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2011 IL App (4th) 100180-U

Filed 11/9/11

NO. 4-10-0180

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Adams County
JAMIE R. SPINDLER,)	No. 09CF602
Defendant-Appellant.)	
)	Honorable
)	Scott H. Walden,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concur in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to prove defendant guilty of unlawful possession of a controlled substance beyond a reasonable doubt.

¶ 2 Following a January 2010 trial, a jury convicted defendant, Jamie R. Spindler, of unlawful possession of a controlled substance, a Class IV felony. 720 ILCS 570/402(c) (West 2008). In March 2010, the trial court sentenced defendant to 30 months of probation, with 300 days in jail as a condition thereof, stayed pending review, and with credit for 138 days as time served. Defendant appeals his conviction, challenging the sufficiency of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 16, 2009, defendant was a passenger of a Ford Probe, which became the subject of a traffic stop and search by officers in Adams County, Illinois. Defendant was a

passenger in the backseat for approximately one hour before the car was stopped. The basis for the stop was a nonoperative taillight. Officer Mike Tyler, who conducted the traffic stop, testified he had information in his capacity as a Street Crimes officer that the Ford Probe had previously been parked outside of a house where people were known to sell drugs. This information caused him to request, over radio, that a drug-detecting canine be sent to the scene. Deputy Scott Saalborn and canine Brix arrived on the scene shortly thereafter. Directly following, Officer Jeff Baird and his canine also arrived on the scene. Officer Baird's canine remained in his vehicle.

¶ 5 Canine Brix performed a "free air drug sniff" of the vehicle. He alerted to the passenger side of the vehicle. Officer Tyler then removed, one at a time, the driver, Rylie Wagy, the front seat passenger, Jerrica Jones, and defendant, from the vehicle. They were each searched in turn and no drugs were found on any of the individuals.

¶ 6 Officer Tyler and Officer Baird searched the vehicle once the driver and passengers were removed. Conflicting testimony was presented as to the cleanliness of the vehicle at the time of the search. No drugs were found in the front seat of the vehicle. However, Officer Tyler discovered a plastic Baggie in the shape of a ball in the middle of the rear passenger floorboard. Officer Tyler testified the Baggie was located where defendant's feet would have been when defendant was sitting in the vehicle. The Baggie contained three smaller Baggies, suspected by Officer Tyler to contain cocaine. The driver and front seat passenger both denied the Baggie was theirs. Defendant also denied the Baggie was his. Defendant was subsequently placed under arrest.

¶ 7 The Baggie was taken to the Quincy police department where a field test was

performed. The field test yielded positive results for cocaine. The Baggie was then sent to the Illinois State Police Crime Lab and tested by Hope Erwin, forensic scientist. Hope Erwin testified as an expert in drug chemistry at the trial. She testified the substance in the Baggie was cocaine, approximately 1.6 grams. Rylie Wagy and Jerrica Jones both testified the cocaine found in the vehicle was not theirs, nor did they have any knowledge of the presence of cocaine in the vehicle. Defendant did not testify.

¶ 8 After hearing the evidence, the jury found defendant guilty of unlawful possession of a controlled substance. Defendant challenges his conviction, alleging insufficiency of the evidence.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues his conviction should be vacated because he was not proved guilty beyond a reasonable doubt. More specifically, he argues that his mere presence in the vehicle and his proximity to the Baggie of cocaine is not enough on its own to prove he had knowledge or the constructive possession of the Baggie.

¶ 11 Defendant initially contends that a *de novo* standard of review should be applied to his challenge on the sufficiency of the evidence. This assertion rests on the premise that *de novo* review is applied when the facts are not in dispute and the defendant's guilt is a question of law. See *In re Ryan B.*, 212 Ill. 2d 226, 231, 817 N.E.2d 495, 497-98 (2004); *People v. Smith*, 191 Ill 2d. 408, 411, 732 N.E.2d 513, 514 (2000). The State cites the following standard: "[w]hen reviewing the sufficiency of the evidence, 'the relevant question is 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.'" (Emphasis in

original.) *People v. Bishop*, 218 Ill. 2d 232, 249, 843 N.E.2d 365, 375 (2006) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). As later discussed, conflicting testimony as to the cleanliness of the car was presented. This evidence sheds light on whether defendant had knowledge of the presence of cocaine in the vehicle. For this reason, we agree with the State.

¶ 12 The weight given to the credibility and the testimony of the witnesses, and all reasonable inferences that are to be drawn, are the responsibility of the trier of fact and the reviewing court is not at liberty to substitute its judgment for that of the trier of fact. *People v. Owens*, 386 Ill. App. 3d 765, 770, 899 N.E.2d 625, 630 (2008). Therefore, this court will not reverse defendant's conviction "unless the evidence is so improbable as to justify a reasonable doubt of defendant's guilt." *People v. Frieberg*, 147 Ill. 2d 326, 359-60, 589 N.E.2d 508, 524 (1992).

¶ 13 To sustain a charge of unlawful possession of a controlled substance, the State must prove that (1) the defendant had knowledge of the presence of the drugs and (2) the drugs were in the immediate and exclusive control of the defendant. *Frieberg*, 147 Ill. 2d at 360, 589 N.E.2d at 524. Actual possession need not be proved when constructive possession can be inferred from the facts. *People v. Minniweather*, 301 Ill. App. 3d 574, 578, 703 N.E.2d 912, 914 (1998). Most often, evidence of constructive possession is circumstantial and it is for the jury to weigh the facts that support defendant's control, or lack of control, over the substance. *Minniweather*, 301 Ill. App. 3d at 580, 703 N.E.2d at 916. Knowledge is also frequently established through circumstantial evidence. *People v. Ingram*, 389 Ill. App. 3d 897, 900, 907 N.E.2d 110, 114 (2009).

¶ 14 In addressing the element of knowledge, defendant correctly contends that his

mere presence in the vehicle is not enough. See *People v. Love*, 404 Ill. App. 3d 784, 788, 937 N.E.2d 753, 756 (2010) ("A defendant's mere presence in a car where contraband is found is not enough to establish the defendant's knowledge of the contraband."). However, knowledge can be inferred from several factors, such as "(1) visibility of the contraband from the defendant's location within the car; (2) the amount of time that the defendant had to observe the contraband; (3) any gestures or movements made by the defendant that would suggest that the defendant was attempting to retrieve or conceal the contraband; and (4) the size of the contraband." *Love*, 404 Ill. App. 3d at 788, 937 N.E.2d at 756.

¶ 15 Applying these factors, a rational trier of fact could have reasonably inferred defendant had knowledge of the presence of drugs. Conflicting testimony was presented as to the cleanliness of the car. Defendant therefore argues that the cocaine was not visible to him, as it could have "easily been concealed under even one small piece of the clutter, trash, or small items in Wagy's car." Defendant rests his argument on the testimony of (1) Rylie Wagy, who stated her car at the time of the search was "a little messed up" and contained "papers" and "little items" from her recent move; (2) Jerrica Jones, who described Wagy's car as "junky"; (3) and Officer Baird, who stated the car was "filled with trash." However, Officer Tyler testified "there was not a whole lot of trash in the car" except for the "driver's side passenger area." He also testified he searched the "rear passenger side area because there wasn't a whole lot of clutter there" and no clutter was around the area where the Baggie was found. The trier of fact is the proper party to resolve conflicting inferences presented by the evidence. *People v. Moore*, 365 Ill. App. 3d 53, 58, 847 N.E.2d 829, 834 (2006) (quoting *People v. Rizzo*, 362 Ill. App. 3d 444, 449, 842 N.E.2d 727, 732 (2005)). The jury therefore had to decide the cleanliness of the car

and whether defendant's knowledge could be inferred from the evidence presented.

¶ 16 As for the time defendant had to observe the contraband, it is undisputed defendant was in the car for approximately an hour before the search. Both Rylie Wagy and Jerrica Jones testified to this fact. The jury could reasonably infer that an hour was ample time for defendant to gain knowledge of the presence of cocaine in the car.

¶ 17 No evidence was presented that defendant was moving or gesturing in a way to suggest he was attempting to conceal or retrieve the contraband. However, Officer Tyler testified that a period of 20 to 30 seconds elapsed between the time he initially activated his overhead lights and the time the stop was effectuated. The jury had to determine whether defendant had knowledge of the drugs based upon this testimony. The jury could reasonably infer that defendant used the 20 to 30 second delay to conceal the contraband.

¶ 18 Finally, no evidence as to the size of the contraband, other than weight of 1.6 grams, was given. Defendant again argues that an object of such small proportions could have easily been hidden, especially in a car filled with "trash." As stated, the cleanliness of the car was for the jury to determine based upon the testimony. It naturally follows that it was also within the jury's province to decide how overwhelming the "trash" was and whether it would cause the Baggie to be hidden from defendant's view. We find that the jury, after weighing the factors listed above, could reasonably have inferred defendant had knowledge of the presence of cocaine.

¶ 19 Defendant next argues he did not have the ability to maintain control over the Baggie because he was merely a passenger in Wagy's car. However, "[i]n reviewing a conviction for possession of a controlled substance, the dispositive issue is not whether a

defendant had control over the place where the drugs were found, but whether the defendant had possession of the drugs themselves." *People v. Adams*, 161 Ill. 2d 333, 344-45, 641 N.E.2d 514, 519 (1994). Control over the location of where the drugs are found can give rise to an inference of constructive possession (*People v. O'Neal*, 35 Ill. App. 3d 89, 91, 341 N.E.2d 36, 38 (1975)), but it is not a prerequisite for conviction. *Adams*, 161 Ill. 2d at 345, 641 N.E.2d at 519. Further, the drugs are considered sufficiently accessible to defendant when within his easy reach. *O'Neal*, 35 Ill. App. 3d at 91, 341 N.E.2d at 38.

¶ 20 Officer Tyler testified the cocaine was found in the backseat, passenger side of the vehicle where defendant had been sitting. He also testified the cocaine was found where defendant's feet would have been. Defendant was the only passenger in the backseat. Such evidence could have led the jury to infer that defendant was in control of the location where the drugs were found. The drugs were also within defendant's reach. Accessibility of the drugs and defendant's control over the backseat allowed the trier of fact to reasonably infer defendant was in constructive possession of the cocaine.

¶ 21 Last, defendant argues his fifth-amendment right against self-incrimination was violated. He contends the State implied guilt from his refusal to testify the Baggie was not his. We disagree with this assertion. The fact that the other passengers took the stand and testified the Baggie was not theirs does not impede upon defendant's right against self-incrimination. The State is entitled to call witnesses on its behalf. Additionally, the record reflects the jury was instructed that defendant's decision not to testify was not to be considered in any way when arriving at the verdict.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated above, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 24 Affirmed.