

NOTICE
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NO. 4-09-0808

Order Filed 4/19/11

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
SIDNEY C. WILLIAMS,)	No. 09CF363
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Turner and McCullough concurred in the judgment.

ORDER

Held: If narcotics are found in a motor vehicle under the defendant's control, that fact alone will support an inference that the defendant knew of the narcotics and constructively possessed them, absent other facts or circumstances creating reasonable doubt.

Defendant, Sidney C. Williams, appeals from his conviction of unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(a)(2)(A) (West 2008)). He contends that the evidence is insufficient to support his conviction, and he also contends that his trial counsel rendered ineffective assistance by (1) failing to object to a proposed instruction on the joint possession of narcotics and (2) failing to prevent the police from testifying that defendant was on mandatory supervised release at the time of the incident and that he had consumed ecstasy.

Looking at the evidence in a light most favorable to the prosecution, we

conclude that a rational trier of fact could find the elements of the charged offense to be proved beyond a reasonable doubt. Consequently, we decline to reverse the conviction on the theory that the evidence was insufficient.

We also decline to reverse the conviction on the basis of the claimed ineffective assistance. Given the evidence at trial, the trial court was legally obliged to accept the State's proposed instruction on joint possession of narcotics, and any objection to the instruction would have been futile. Defense counsel could have had a reason for refraining from objecting to testimony that defendant had taken ecstasy: to put in doubt defendant's awareness of the presence of cocaine in the Jeep he was driving. Even if defense counsel should have objected to the testimony that defendant was on mandatory supervised release, or even if defense counsel should have filed a motion *in limine*, we find no reasonable probability that this omission made a difference in the outcome of the case. Therefore, we affirm the trial court's judgment.

I. BACKGROUND

In the early morning of March 1, 2009, two Champaign police officers, Justin Prosser and David Butler, were sitting in their patrol car, parked in the parking lot of a convenience store. They saw a Jeep go by on East Green Street, stop, back up on the street, and pull into the parking lot. Because it was illegal to drive in reverse on a highway, the two officers got out of their patrol car and walked over to the Jeep. As they approached, the driver of the Jeep, defendant, got out and began walking toward an International House of Pancakes (I-HOP), next door.

The officers stopped defendant and spoke with him about his driving. He explained he had intended to park in the parking lot of the I-HOP but upon finding that the

I-HOP parking lot was blocked, he had backed up and parked by the convenience store instead. During this conversation, one of the officers requested to see defendant's driver's license. Defendant admitted his driver's license was suspended, and he added that he was on mandatory supervised release. After confirming from a database that defendant's driver's license was indeed suspended, the officers placed him under arrest for driving without a valid driver's license.

In searching defendant's person, the officers found \$238 in cash as well as six plastic sandwich bags. This cash included a hundred-dollar bill and 5 twenty-dollar bills. Butler observed, from his training and experience as a police officer, that sandwich bags commonly were used to package narcotics. As for the twenty-dollar bills, he testified: "Most people buy crack, it's usually in a \$20.00 rock. It's 2/10's of a gram."

While speaking with defendant, the officers noticed there was a passenger in the Jeep. As it turned out, his name was Mario Motley. When Prosser approached the Jeep, in what he described as the "very well lit" parking lot, he could see that Motley had his hands inside the center console of the Jeep, between the driver's seat and the passenger's seat. Prosser testified: "I was standing, probably, it was the driver's side, rear of the vehicle, where I could see into the vehicle. I saw the passenger, what appeared to be looking through the center console of the Jeep. After Mr. Williams was secured in handcuffs, I then went around to speak with the passenger of the vehicle." Prosser further testified: "When I was looking--I'm looking through--on a Jeep, they have that big glass window in the back. I'm looking through that. I could see the center console armrest up, and Mr. Motley positioned towards the center console, with his hands. It appeared to me like they were inside the center console."

Motley, who lacked a driver's license, volunteered to be searched, even though neither Prosser nor Butler had requested to search him. Prosser accepted the invitation, and Motley exited the Jeep. Although Motley appeared to be intoxicated and his speech was a little slurred, he needed no assistance in getting out of the Jeep. A search of his person yielded no contraband.

While Prosser spoke with Motley, Butler searched the Jeep. The center console was closed, and Butler opened it, swinging the lip upward. Inside the console, he found what appeared to be crack cocaine: a big piece and five smaller pieces. All six pieces were in a sandwich bag, and the five smaller pieces, weighing about three grams apiece, were individually wrapped, as if for sale. The sixth piece, the bigger piece, evidently had not been broken up yet.

The parties stipulated that the total weight of the cocaine was 35.4 grams and that whoever possessed it did so with the intent to deliver it. According to Butler, the little pieces were worth about \$300 apiece, and the big piece was worth about \$2,500. He testified that "[A]ll together, they probably could have been broken down into approximately 150 to 30 pieces of crack, depending on how they broke it up."

The prosecutor asked Butler:

"Q. When you looked inside the center console, were [the pieces of cocaine] underneath anything or where [sic] they on top. Tell us what you saw?

A. They were on top of, I think other items were, like CD's, and the crack was sitting on top of that."

This cocaine, of course, was another reason to take defendant into custody,

in addition to his driving with a suspended driver's license. But before Prosser transported defendant to the jail, Butler read defendant his rights and asked him some questions, there in the parking lot of the convenience store. Butler testified:

"A. I read him Miranda rights at approximately 2:30 in the morning. He said he understood his rights and would be willing to speak with me. He said that he had just come from TK Wendell's, which is a bar in Urbana, and he knew he didn't have a valid driver's license but he drove anyway because he said the rest of his friends were intoxicated. I asked him about the drugs in the vehicle. He said it wasn't his vehicle, that it was his cousin's vehicle. And that he didn't know about the drugs in the car.

Q. And did you have an opportunity to ask him any further questions?

A. I did not.

Q. Did you have an opportunity to ask him about the other occupant of the car?

A. I did.

Q. And could you tell us about that conversation.

A. The last question I asked him was if the narcotics were the other person's in the vehicle. He didn't answer that question and stopped answering other questions."

See *People v. King*, 384 Ill. App. 3d 601, 610 (2008) ("[T]he State's eliciting testimony

regarding defendant's silence in response to some of the questions asked during the interview, after defendant expressly waived his right to remain silent, cannot equate to a *** violation [of *Doyle v. Ohio*, 426 U.S. 610 (1976)].")

Because he had seen Motley reaching into the center console, where Butler subsequently found the cocaine, Prosser placed Motley under arrest, read him his rights, and asked him for a statement. It is unclear, from Prosser's testimony, whether Motley gave a statement, but he testified that Motley was crying and that he was upset about being arrested.

The police took defendant and Motley to jail. In the sally port of the jail, defendant requested to be taken to the hospital because he had consumed ecstasy (methylenedioxymethamphetamine (MDMA)) that night and his heart was beating very fast. Prosser took defendant to the hospital, where the medical staff examined him and found him to be fit for commitment to the jail.

At this point, the prosecutor questioned Prosser briefly on the drug ecstasy. He asked him:

"Q. Are you professionally familiar with a street drug that's known as ecstasy?

A. Yes.

Q. And could you explain what that is to the ladies and gentlemen of the jury.

A. It's--it can come in a tablet form that you take. People take it at clubs. It gives them--they say you can--your heightened feelings, you can feel, they say you can feel colors

and see sounds. And I've never taken it, so I don't know, but that's what we were taught at the police academy at the U of I.

Q. And you had the opportunity to observe Mr. Williams throughout the time you dealt with him?

A. Um, hm (yes).

Q. Did he appear to be under the influence of anything?

A. Not to my knowledge. No.

Q. He was, however, cleared for return to the jail?

A. Yes, he was."

According to Prosser, defendant did not appear to be intoxicated that night, but Motley "possibly" was intoxicated--not to the point of stumbling around and sounding unintelligible, but he smelled of alcohol, and his speech was slurred. When the State called him as a witness, Motley admitted having a conviction of aggravated driving under the influence as well as convictions of aggravated battery and possession with the intent to deliver cannabis. And like defendant, he was on mandatory supervised release at the time of the incident.

Motley claimed he was drunk the night of March 1, 2009. He testified in substance as follows. He had spent the evening in question drinking at a bar and then at the residence of his cousin, Robert Robinson, where he and others also played home video games. Motley recounted the particular drinks he had that night. Defendant, nicknamed "Solo," was at Robinson's house; Motley was acquainted with him "from the streets," although they had no social relationship. Motley asked defendant to give him a ride to the I-HOP so he could get something to eat. Defendant agreed to do so. Motley had \$40 in

cash, enough to buy the food. The next thing Motley knew, he was in the Jeep--he did not know whose Jeep it was; he had never been in that Jeep before--and he fell asleep. Motley testified: "After that, I was so drunk I had blanked out in the car, so I don't remember. Only thing I remember is went to I-HOP, and after he--I mean, he shut the door, I just seen the police. So I just woke up after the police. He was talking to the police." Thus, Motley slept during the car ride from Robinson's house to the I-HOP, and he did not awaken until defendant shut the door of the Jeep after getting out at the I-HOP. That is when Motley saw the police officers.

The prosecutor asked Motley:

"Q. What happened next?

A. The officer came to my door, asked me if I had license or ID. I gave him my ID. Then after that, he gave me my--gave my ID back, told me to step out the car. And I said--

Q. Did you step out?

A. Yes, ma'am.

Q. What happened next?

A. He had searched me. And then he came back, after that, he said he found drugs. Then that's all I remember. I never knew any drugs, never saw any drugs, anything was in the car."

Motley did not remember anything after he was placed in the police car. He remembered only that when the police put him in handcuffs, he began yelling that the drugs were not his and that they were defendant's. Or he assumed the drugs belonged to defendant, because

they did not belong to him. He denied ever using or selling crack cocaine.

On cross-examination, defense counsel asked Motley if he remembered what was in between the seats of the Jeep where he and defendant had been sitting. Motley answered:

"A. It was, like a arm rest.

Q. A console?

A. Yeah, if that's what you call it, I guess. I mean, it's a arm rest, where I was putting--I laid my head and stuff on, like, where I was sleeping at.

Q. All right. And speaking of this arm rest, or specifically the area in between the two seats, did you ever open that console and look around in that area?

A. I don't remember. I mean, I don't remember nothing but him talking to the police, walking up. That's all I remember.

Q. So you don't remember?

A. No."

Motley remembered volunteering to be searched, but he did not remember going into the console. He was extremely drunk during the incident, the drunkest he had ever been, with the possible exception of his DUI.

At first, in her closing argument to the jury, the prosecutor took the position that Motley was telling the truth and that defendant was solely responsible for the cocaine in the Jeep. In her rebuttal argument, however, the prosecutor took the position that this

case was not a "zero sum game" and that the jury did not have to choose between defendant and Motley; instead, the jury could find that the two men had joint possession of the cocaine.

Without objection by defense counsel, the State tendered the following pattern instruction on "possession," which the trial court subsequently gave to the jury:

"Possession may be actual or constructive. A person has actual possession when he had immediate and exclusive control over a thing. A person has constructive possession when he lacks actual possession of a thing but he has both the power and the intention to exercise control over a thing either directly or through another person.

If two or more persons share the immediate and exclusive control or share the intention and the power to exercise control over a thing, then each person has possession." Illinois Pattern Jury Instruction, Criminal, No. 4.16 (4th ed. 2000) (IPI, Criminal, No. 4.16).

The jury found defendant guilty of unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(a)(2)(A) (West 2008)). The trial court sentenced him to 32 years' imprisonment and denied his posttrial motion and his motion to reduce the sentence.

This appeal followed.

II. ANALYSIS

A. The Sufficiency of the Evidence

Defendant contends that the evidence is insufficient to support his conviction of unlawful possession of cocaine with the intent to deliver it. In evaluating a challenge to the sufficiency of the evidence, we regard the evidence in a light most favorable to the prosecution, asking whether any rational trier of fact could have found the essential elements of the offense to be proved beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The crime of unlawful possession of cocaine with the intent to deliver it has three elements: (1) defendant had knowledge of the presence of the cocaine, (2) the cocaine was in the immediate possession or control of defendant, and (3) defendant intended to deliver the cocaine. See *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). Defendant calls into question the first two elements of this offense.

Defendant maintains that there would be sufficient evidence of his own knowledge and possession of the cocaine *but for* the evidence pointing to Motley's knowledge and possession. Defendant reasons as follows in his brief:

"Here, the police found crack cocaine in the center console of the vehicle that Mr. Williams had just been driving. [Citation to record.] Some of the cocaine was individually packaged, and there was testimony that cocaine dealers use the corners of sandwich bags to package cocaine for sale. [Citation to record.] Mr. Williams had six sandwich bags and \$238.00 in his pockets when he was arrested. [Citation to record.] When viewed in a light most favorable to the prosecution, this evidence, *standing alone*, could convince a rational trier of fact that the drugs in the vehicle belonged to Mr. Williams. That was not the whole

story, however. The remaining evidence created a reasonable doubt as to Mr. Williams'[s] guilty." (Emphasis in original.)

By the structure of this argument--raising an inference of knowledge and possession, which is then supposedly dissipated by other evidence--defendant implicitly alludes to *People v. Nettles*, 23 Ill. 2d 306, 308-09 (1961), in which the supreme court held that if narcotics were found in premises under the defendant's control, that fact, in and of itself, gave rise to an inference of knowledge and possession on defendant's part sufficient to support a conviction of unlawful possession of narcotics--absent other facts or circumstances creating reasonable doubt as to the defendant's guilt. For purposes of this holding in *Nettles*, a motor vehicle under the defendant's control qualifies as "premises." *People v. Whalen*, 145 Ill. App. 3d 125, 131 (1986); *People v. McNeely*, 99 Ill. App. 3d 1021, 1024 (1981); *People v. Chavez*, 327 Ill. App. 3d 18, 26 (2001). If the defendant is driving a motor vehicle, one may infer that he controls the vehicle and everything in it (*McNeely*, 99 Ill. App. 3d at 1025), and if narcotics are found in the vehicle, that fact alone will support a further inference that the defendant knew of the narcotics and constructively possessed them (*People v. Milam*, 224 Ill. App. 3d 642, 647 (1992)), absent other facts or circumstances creating reasonable doubt (*Whalen*, 145 Ill. App. 3d at 129; *Chavez*, 327 Ill. App. 3d at 26).

Defendant insists that in the present case, other facts or circumstances create reasonable doubt as a matter of law because the evidence raises a strong possibility that Motley alone possessed the cocaine. According to defendant, no rational trier of fact could consider Motley, with his self-serving blackouts, to be a credible witness, and no rational trier of fact could believe him when he testified he was ignorant of the cocaine. Motley

never explained what he was doing in the center console-- his purported alcoholic blackout, highly selective in its operation, allowed him to sidestep that awkward topic. In defendant's view, it would be impossible for a reasonable mind to set aside the suspicion that Motley, unbeknownst to defendant, had a bag of cocaine secreted on his person and that while the police were preoccupied with defendant, Motley opened the center console of the Jeep and put the cocaine in it so that, divested of the incriminating evidence, he could boldly volunteer to be searched in an ostentatious demonstration of his innocence (which, significantly, had not even been called into question). See *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004) ("Testimony may be found insufficient under the *Jackson* standard, but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.").

This argument by defendant would be compelling but for the six sandwich bags and the \$238 in cash that the police found in his pockets. The sandwich bags were especially damaging to the defense. People do not normally carry six sandwich bags in their pockets. The sandwich bags greatly strengthened the inference that defendant was a drug-dealer. Under the circumstances, there appeared to be no other reasonable explanation for them, considering that the vehicle defendant had been driving contained a sandwich bag of cocaine, several pieces of which were individually wrapped. Given that evidence against defendant, Motley's rummaging around in the center console did not create reasonable doubt as a matter of law. The evidence against Motley did not necessarily neutralize the evidence against defendant. The jury could have had just as low an opinion of Motley's credibility as defendant has, but the jury could have concluded that he and defendant were in business together and that they jointly possessed the cocaine. Consequently, looking at

all the evidence in a light most favorable to the prosecution, we find the evidence to be sufficient to support defendant's conviction of unlawful possession of cocaine with the intent to deliver it.

B. The Claims of Ineffective Assistance of Counsel

1. *Not Objecting to the Instruction on Joint Possession of Narcotics*

Defendant claims that defense counsel rendered ineffective assistance at trial by failing to object to IPI, Criminal, No. 4.16, and to reiterate the objection in a posttrial motion. Of course, by not taking these two steps, defense counsel caused defendant to forfeit any objection to the instruction. See *People v. Herron*, 215 Ill. 2d 167, 175 (2005).

Nevertheless, because the trial court would have been correct to overrule an objection to IPI, Criminal, No. 4.16, defendant has forfeited a futile objection. Defense counsel does not render ineffective assistance by refraining from making a useless objection, an objection that, under a correct view of the law, ought to be overruled. *People v. Nieves*, 193 Ill. 2d 513, 527 (2000). An objection to IPI, Criminal, No. 4.16, would have been unmeritorious because (1) "very slight evidence upon a given theory justifies giving an instruction" (*People v. Barnard*, 208 Ill. App. 3d 342, 351 (1991)) and (2) as defendant himself admits in his brief, "[t]he evidence at trial showed a circumstantial connection between both men and the cocaine." We have reviewed this evidence in the preceding section of our analysis, and the evidence consisted of more than physical proximity to the cocaine (see *People v. Calhoun*, 46 Ill. App. 3d 691, 694 (1977) ("Mere physical proximity to the narcotics is insufficient to establish actual possession ***.")).

2. *Failing To Prevent the State From Presenting Evidence That Defendant Was on Mandatory Supervised Release and That He Had Taken Ecstasy*

Defendant argues his trial counsel rendered ineffective assistance by failing to prevent the police from testifying that he was on mandatory supervised release and that he had taken ecstasy. As for defendant's consumption of ecstasy, trial counsel could have had a strategic reason for failing to object. If the jury thought that defendant was diverted by "heightened feelings" and by colors experienced as sound, perhaps the jury would have wondered whether he was fully aware of objective reality--including objects inside the Jeep.

As for defendant's being on mandatory supervised release, we see no reasonable probability that it changed the outcome of the case. To obtain the reversal of a conviction on the ground of ineffective assistance of counsel, "a defendant must prove that defense counsel's performance fell below an objective standard of reasonableness and that this substandard performance caused prejudice by creating a reasonable probability that, but for counsel's errors, the trial result would have been different." *People v. Lawton*, 212 Ill. 2d 285, 302 (2004). "[A]n ineffectiveness claim can often be disposed upon a showing that a defendant suffered no prejudice from the claimed errors without deciding whether the errors constituted constitutionality ineffective assistance of counsel." *People v. Odle*, 151 Ill. 2d 168, 172-73 (1992). As we have remarked, the sandwich bags in defendant's pocket were very damaging. Under the circumstances, it was not reasonably possible to put an innocent construction on them. Because we are unconvinced that this was a close case, we find no reasonable probability that the evidence of mandatory supervised release made any difference.

III. CONCLUSION

For the foregoing reasons, we affirm the trial court's judgment. We award the State \$50 in costs.

Affirmed.