

NOTICE

Decision filed 03/03/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-09-0366

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Monroe County.
)	
v.)	No. 08-CF-27
)	
DAVID C. STUMPF,)	Honorable
)	Dennis B. Doyle,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Welch and Donovan concurred in the judgment.

R U L E 2 3 O R D E R

Held: The evidence that the defendant knowingly possessed cocaine found in his bedroom, where there was drug paraphernalia that he had tried to hide, was sufficient to convict him.

A Monroe County jury found the defendant guilty on a charge of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2008)), and the circuit court sentenced the defendant to two years' imprisonment. On appeal, the defendant argues that the evidence at the trial was insufficient to find him guilty beyond a reasonable doubt. We affirm.

BACKGROUND

On March 3, 2008, the defendant was charged by information with unlawful possession of less than 15 grams of a substance containing cocaine (720 ILCS 570/402(c) (West 2008)). The trial evidence, viewed in the light most favorable to the State, revealed the following.

On October 22, 2007, Monroe County sheriff's deputy Christian Unser went to Michael Mohl's home in Monroe County in an effort to locate Stephen Fry on an arrest

warrant. Fry lived in Mohl's home with Mohl and the defendant, and all three were present in the home. Deputy Unser arrested Fry, along with Jessica Ratcliff, who was also present in the residence and was taken into custody on an outstanding arrest warrant. Fry and Ratcliff were under the influence of narcotics.

While searching the residence for additional fugitives, Deputy Unser observed drug paraphernalia throughout the home. Christopher Lutz, a special agent assigned to the Metropolitan Enforcement Group of Southwestern Illinois, was thereafter contacted and directed the narcotics canine unit to inspect the home. Upon conducting a search, the canine unit indicated the presence of narcotics in numerous places throughout the home. In Fry's bedroom, the officers found what forensic tests later determined to be 5.7 grams of cocaine. In Ratcliff's purse, officers located a spoon, which tested positive for heroin residue.

While searching Mohl's residence, Deputy Unser and Agent Lutz observed a syringe on the defendant's bed. Agent Lutz also recovered from the nightstand next to the defendant's bed a small wooden box, which included a bended spoon, a small metal container, two pocket knives, and a small cap opener. Agent Lutz explained that a small amount of residue, which field-tested positive for cocaine, was found on one of the small pocket knives and that the bended spoon could have been used to cook heroin or cocaine. Agent Lutz found an additional syringe, wrapped in a cloth, in a drawer in the defendant's bedroom closet. Near that syringe, Agent Lutz found a small tin that contained a Brillo Pad, commonly used as a narcotics filter, that had been wrapped in a cloth.

In the defendant's bedroom, Agent Lutz found a plastic black case with four glass vials. Agent Lutz observed that one of the small glass vials contained a white residue, and he sent it to the Illinois State Police crime lab for testing. Marla Spangler, a forensic scientist with the Illinois State Police crime lab, analyzed the small amount of substance in the glass vial, and it tested positive for cocaine.

In an interview with Agent Lutz on October 23, 2007, the defendant asserted that no drug activity occurred in the home and that he did not use drugs. The defendant stated that he was inside the Mohl residence when the officers arrived the night before but that the paraphernalia found in his room was old because he did not use drugs anymore, and he stated that he had tried to dispose of the paraphernalia because of the officers' presence.

In his defense, the defendant presented Fry's testimony. Fry testified that although he and Ratcliff used narcotics in the home, neither Mohl nor the defendant engaged in narcotic use during the seven months that he had resided in the home. Fry testified that Ratcliff mainly injected heroin, and he smoked and snorted cocaine.

Fry testified that on October 22, 2007, he and Ratcliff had been in the defendant's room to provide Ratcliff a couple of lines of cocaine. Fry testified that when Ratcliff produced a needle to use, he left the defendant's room. Fry testified that once he was arrested, he had told Agent Lutz and other officers that he was a heavy cocaine user and that the cocaine in the house was his. On cross-examination, Fry acknowledged that the defendant could have had paraphernalia in his room from past usage.

Fry testified that the black case with four vials, which had been found in the defendant's room, was actually his. Fry testified that approximately three weeks before the night of arrest, he took the glass vial that was in the defendant's room, put cocaine in it, emptied it, and returned it to the defendant's room.

On June 9, 2009, the jury found the defendant guilty of unlawful possession of a controlled substance. On June 29, 2009, the defendant filed a motion for a new trial. On July 16, 2009, the circuit court denied the defendant's motion for a new trial and sentenced the defendant to two years in prison. The defendant filed a notice of appeal on the same date.

ANALYSIS

The defendant argues that the evidence against him was insufficient to show that he possessed or had knowledge of the trace amount of cocaine found in the glass vial. We disagree.

A criminal conviction will not be overturned unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Schmalz*, 194 Ill. 2d 75, 80 (2000). When the sufficiency of the evidence to support a conviction is challenged on appeal, the relevant question is whether, after viewing all the evidence in a light most favorable to the prosecution, any rational trier of fact could have found all the elements of the offense beyond a reasonable doubt. *Schmalz*, 194 Ill. 2d at 80.

"To support a conviction for the unlawful possession of a controlled substance, the State must prove beyond a reasonable doubt that [the] defendant had knowledge of the controlled substance and that it was in his immediate and exclusive control." *People v. Scott*, 152 Ill. App. 3d 868, 870-71 (1987). "Possession may be established by evidence of actual physical possession or constructive possession." *Scott*, 152 Ill. App. 3d at 871. "Actual possession is proved by testimony which shows [the] defendant exercised some form of dominion over the unlawful substance, such as trying to conceal it or throwing it away." *Scott*, 152 Ill. App. 3d at 871. Constructive possession can exist without actual personal present dominion over the controlled substance but requires a showing that the defendant had the intent and capability to maintain immediate and exclusive control over it. *Schmalz*, 194 Ill. 2d at 80; *Scott*, 152 Ill. App. 3d at 871. The evidence establishing constructive possession is often entirely circumstantial. *People v. Besz*, 345 Ill. App. 3d 50, 59 (2003). The supreme court has explained as follows:

"Constructive possession may exist even where an individual is no longer in physical control of the drugs, provided that he once had physical control of the drugs with intent to exercise control in his own behalf, and he has not abandoned them and no

other person has obtained possession." *People v. Adams*, 161 Ill. 2d 333, 345 (1994).

Narcotics "found on the premises under the control of [the] defendant gives rise to an inference of knowledge and possession by him which alone may be sufficient to sustain a conviction for unlawful possession of controlled substances." *Scott*, 152 Ill. App. 3d at 871. "Mere access by other persons to the area where drugs are found is insufficient to defeat a charge of constructive possession." *Scott*, 152 Ill. App. 3d at 871. The requirement that possession must be exclusive does not mean that possession may not be joint. *Schmalz*, 194 Ill. 2d at 82; *People v. Ingram*, 389 Ill. App. 3d 897, 901 (2009). "If two or more people share immediate and exclusive control or share the intention and power to exercise control, then each has possession." *Scott*, 152 Ill. App. 3d at 871.

The elements of knowledge and possession are questions of fact. *People v. Minniweather*, 301 Ill. App. 3d 574, 580 (1998). The trier of fact must weigh the circumstantial facts that tend to support an inference that the defendant controlled the contraband against those that support an inference that the defendant lacked control. *Minniweather*, 301 Ill. App. 3d at 580. The trier of fact's findings on questions of knowledge and possession should not be disturbed unless the evidence is so unbelievable, improbable, or palpably contrary to the verdict that it creates a reasonable doubt of guilt. *People v. Valentin*, 135 Ill. App. 3d 22, 31 (1985).

Here, it was unnecessary for the State to prove actual possession, because the defendant's constructive possession could reasonably be inferred. See *Besz*, 345 Ill. App. 3d at 59. The defendant's acknowledgment that he had tried to dispose of the paraphernalia upon the officers' unannounced presence, along with the evidence that the cocaine, along with the additional paraphernalia, was found in the bedroom identified as the defendant's, indicates that the defendant had knowledge of, as well as the intent and capability to exercise immediate and exclusive control over, the cocaine. See *Besz*, 345 Ill. App. 3d at 59. It was

reasonable for the jury to reject Fry's testimony that he entered the defendant's room and, unbeknownst to the defendant, planted cocaine in the vial that he returned to the defendant's room. Instead, considering the evidence and the reasonable inferences therefrom in a light most favorable to the prosecution, the jury could have reasonably concluded that the defendant had knowledge of the presence of the contraband discovered in his bedroom and that the defendant had the intent and the capability to maintain immediate and exclusive control over it. Accordingly, the evidence was sufficient to support the jury's guilty verdict.

CONCLUSION

For the foregoing reasons, we affirm the defendant's conviction and sentence.

Affirmed.