

No. 1-10-3012

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 10968
	)	
MICHAEL PERKINS,	)	Honorable
	)	Rosemary Grant-Higgins,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE McBRIDE delivered the judgment of the court.  
Presiding Justice Epstein and Justice Howse concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where defendant was in constructive possession of cocaine found in a pill bottle, the judgment was affirmed.
- ¶ 2 Following a bench trial, defendant Michael Perkins was convicted of possession of a controlled substance and sentenced to an extended term of four years' imprisonment. On appeal, defendant asserts that the evidence was insufficient to establish that he had constructive possession of the recovered cocaine. He also contends that his mittimus should be corrected to reflect the actual offense. We affirm.

¶ 3 Police recovered a pill bottle containing 10 plastic bags of cocaine when they executed a search warrant at 1708 East 84th Place in Chicago on May 22, 2009. Defendant, who was inside the residence when police arrived, was arrested and subsequently charged with possession of 1 gram or more but less than 15 grams of cocaine with intent to deliver.

¶ 4 At trial, Officer Tamara Matthews testified that at 12:52 p.m. on May 22, 2009, she and several other police officers executed a search warrant at a single family residence at 1708 East 84th Place. The officers forced their way into the residence through the rear door and Matthews saw two people inside, including defendant and a woman. Matthews indicated that she saw defendant almost immediately after entering the residence. Defendant fled from the south bedroom and ran towards the north bedroom, while the woman was near the front of the residence. Defendant went into the north bedroom and then up a staircase, which led to the attic. Matthews, as well as other officers, pursued defendant up the staircase and detained him. Matthews then searched the bedroom from which defendant fled, and saw a pill bottle in the doorway of the bedroom. The bottle contained 10 clear plastic bags with suspect crack cocaine.

¶ 5 Officer Jorge Martinez testified similarly to Officer Matthews. Martinez also testified that after he followed defendant upstairs, he observed defendant attempting to hide in a storage closet in the attic. After detaining defendant, police conducted a pat-down search of him and recovered a set of keys. The keys opened the front and rear doors of the residence in question. Matthews gave Martinez the pill bottle that contained crack cocaine, and Martinez held it in his possession until he returned to the police station and inventoried the items.

¶ 6 It was stipulated that Gwendolyn Brister, a forensic chemist, would testify that she performed tests on 4 of the 10 recovered items, and the contents of the tested items were positive for the presence of cocaine. The weight of the tested items was 1.1 grams, and the total estimated weight of the 10 items recovered was 2.8 grams.

¶ 7 Theatrice Patterson testified for the defense that he is defendant's uncle, and the residence in question belonged to defendant's mother, who was deceased at the time of the incident. On direct examination, Patterson testified that he would occasionally stop by 1708 East 84th Place to see "Michael" and defendant's sister, Bernastine Smith. However, Patterson indicated that Bernastine and Melvin Perkins, defendant's brother, lived at the address in question, and defendant lived at 9020 South Woodlawn Avenue with Banessa Ford. On cross-examination, Patterson further testified that he would stop by 1708 East 84th Place to see Bernastine and Melvin, and then admitted that he was not sure who was living at 1708 East 84th Place in May 2009.

¶ 8 Banessa Ford Pugh, defendant's fiancé, testified that defendant lived with her at 9020 South Woodlawn Avenue and Bernastine and Melvin lived at 1708 East 84th Place. Defendant and Pugh shared a key to the residence on 84th Place. At about 11 a.m. on May 22, 2009, defendant went to 1708 East 84th Place to show the house to potential buyers.

¶ 9 Defendant testified that Bernastine and Melvin lived at 1708 East 84th Place, but he did not. Defendant noted that he loaned Bernastine his television set, which was located in her bedroom. He went to the 84th Place residence on May 22, 2009 to notify Bernastine and Melvin that someone was coming to see the house, which was up for sale. Defendant arrived at the residence at about 10:45 a.m., and Bernastine let him inside because he did not have the keys to the house with him. About 10 minutes after defendant arrived, the police entered the residence. At the time the police arrived, defendant was in the attic, heard a bump downstairs, and hid in a closet for about 25 to 35 minutes. Initially, he did not know the police were inside the residence, nor did he see them enter. While he was hiding, however, defendant saw an officer searching the attic. He subsequently stepped out of the closet and was arrested. The police recovered keys from him, but defendant maintained that his keys could not have opened the doors at 1708 East

84th Place because they only opened the doors at his residence, 9020 South Woodlawn Avenue. Defendant further testified that, upon entering the residence from the rear entrance, it was not possible to see down the hallway into the south bedroom.

¶ 10 Following closing argument, the court found defendant not guilty of possession with intent to deliver, but did find him guilty of the lesser-included offense of possession of a controlled substance where defendant had constructive possession of the recovered narcotics. In doing so, the court stated that it did not find the defense witnesses credible. It also held that defendant exercised control over the premises because the evidence revealed that he showed the property to potential buyers, had keys on his person that fit the locks at 1708 East 84th Place, owned a television set located at the 84th Place residence, and defendant's uncle stated that he would go to the 84th Place residence to visit defendant and Bernastine. Furthermore, the court indicated that defendant fled the room where the narcotics were recovered.

¶ 11 On appeal, defendant contends that the State failed to meet its burden of proving that he knew the pill bottle contained cocaine. He thus maintains that the State did not prove that he constructively possessed the cocaine.

¶ 12 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Davison*, 233 Ill. 2d 30, 43 (2009). In order to sustain a conviction for possession of a controlled substance, the State must prove beyond a reasonable doubt that defendant knowingly possessed a controlled substance. 720 ILCS 570/402 (West 2008). In a possession of a controlled substance case, it is not necessary for the State to prove actual possession. Instead, it may show constructive possession. *People v. Burks*, 343 Ill. App. 3d 765, 769 (2003). Possession can be constructive where it is established that defendant

knew of the presence of the substance and that it was in his exclusive and immediate control.

*People v. Jones*, 295 Ill. App. 3d 444, 453 (1998).

¶ 13 A defendant is deemed to have acted knowingly if he is proven to be aware of the existence of facts which make his conduct unlawful. *People v. Hodogbey*, 306 Ill. App. 3d 555, 559 (1999). The element of knowledge is rarely susceptible to direct proof, and can be established by circumstantial evidence of acts, statements or conduct of the defendant, as well as the surrounding circumstances, which support the inference that he knew of the existence of narcotics at the place they were found. *People v. Bui*, 381 Ill. App. 3d 397, 419 (2008). In a bench trial, the determination of whether the defendant had knowledge is a question of fact for the court. *People v. Williams*, 267 Ill. App. 3d 870, 877 (1994). The court's determinations will not be disturbed on review unless the evidence is so palpably contrary to the verdict or judgment that it creates a reasonable doubt of guilt. *Williams*, 267 Ill. App. 3d at 877.

¶ 14 It is well settled that "the mere presence of illegal drugs on premises which are under the control of the defendant gives rise to an inference of knowledge and possession sufficient to sustain a conviction absent other factors which might create a reasonable doubt as to defendant's guilt." *People v. Smith*, 191 Ill. 2d 408, 413 (2000). In the instant case, the evidence showed that defendant was arrested inside 1708 East 84th Place, was in possession of keys that opened the doors of said residence, and was the only person who would show the house to potential buyers. Defendant also admitted that his television was inside his sister's bedroom. Therefore, defendant had access to and control over the premises where the contraband was found. Furthermore, defendant's conduct demonstrated that he knew illegal narcotics were inside the south bedroom. Police saw defendant fleeing the bedroom where the cocaine was found, and then found him attempting to hide inside of a closet in the attic. Viewed in the light most favorable to the prosecution, this evidence shows that defendant was in constructive possession of the

contraband. See *People v. Minniweather*, 301 Ill. App. 3d 574, 580 (1998) (affirming defendant's conviction for possession of a controlled substance with intent to deliver where defendant fled from police, was out of sight for a short period of time, no one else was in the area, and he hid from police).

¶ 15 Nevertheless, defendant maintains that his failure to take any steps to hide the pill bottle containing the cocaine demonstrates that he did not know what was in the bottle. However, the evidence shows that, even if defendant wanted to hide the pill bottle from police, he did not have time. Officer Matthews specifically testified that she saw defendant only seconds after entering the residence, and defendant's immediate reaction was to flee the south bedroom. Moreover, all reasonable inferences from the record must be made in favor of the prosecution on appeal.

*Davison*, 233 Ill. 2d at 43. Here, the fact that defendant was seen fleeing from the room that contained the cocaine and attempted to hide from the police leads to the reasonable inference that defendant had knowledge of the cocaine in the bedroom.

¶ 16 Defendant also contends that the evidence showed that the bedroom where the cocaine was found belonged to his sister and that, even if he had access to the room, it does not follow that he knew the entire contents of that room, or that he had any reason to believe that the pill bottle contained anything other than aspirin. However, "[m]ere access by other persons to the area where drugs are found is insufficient to defeat a charge of constructive possession." *People v. Rentsch*, 167 Ill. App. 3d 368, 371 (1988), citing *People v. Ortiz*, 91 Ill. App. 3d 466, 472 (1980). Here, whether defendant's sister had access to the bedroom, or even if it was her room, is not dispositive in light of the evidence indicating that defendant intended to exercise control over it.

¶ 17 Defendant recently moved to withdraw the issue regarding correction of his mittimus. We granted that motion on May 16, 2012, because the mittimus has already been corrected.

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¶ 18 For the foregoing reasons, we affirm defendant's conviction.

¶ 19 Affirmed.