

No. 1-10-3062

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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. 10 CR 6729
	)	
	)	The Honorable
	)	Neil J. Linehan,
GORDON McCALL,	)	Judge Presiding.
	)	
Defendant-Appellant.	)	
	)	
	)	

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JUSTICE SALONE delivered the judgment of the court.  
Presiding Justice Steele and Justice Murphy concurred in the judgment.

**ORDER**

¶ 1 *Held:* Viewing the evidence as a whole and in a light most favorable to the State, the

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court held that the evidence was sufficient to prove beyond a reasonable doubt that defendant knew of and possessed heroin hidden by the rear left wheel of an all terrain vehicle, even though the police observed only one suspicious transaction, the purchaser was not stopped and therefore the item he received from defendant was not identified, there was no fingerprint evidence from the bag of heroin, and no drugs were recovered from defendant's person.

¶ 2 Following a bench trial, defendant Gordon McCall was convicted of possession of a controlled substance, and was sentenced to a two-year prison term with a recommendation for drug treatment. On appeal, defendant challenges the sufficiency of the evidence. We affirm.

¶ 3 The State's evidence established that at approximately 11 a.m. on March 6, 2010, Chicago police conducted a narcotics surveillance in the area of 428 West 58th Street in Chicago.

Officers Lopez, Gorman, and Patterson were the enforcement officers. The surveillance officer, John Sanders, saw defendant standing near 420 West 58th Street. Sanders saw a man approach defendant and engage in a brief conversation with him which Sanders could not hear. The man then tendered paper to defendant. Sanders made his observations from approximately 15 feet away and could not tell if it was money or a piece of paper, but it looked like cash. The day was sunny and nothing obstructed Sanders' view. Defendant then walked to 428 West 58th Street, went to the rear of that location, and bent or knelt down next to an all terrain vehicle (ATV) that was parked in the back. Sanders saw defendant's arms extend down near the tire. Defendant retrieved an item Sanders could not see from behind the left rear wheel of the ATV, walked back toward the unknown man, and tendered a small item to him. Sanders saw defendant's arm extend to the unknown individual and he saw a "hand-to-hand." Sanders had been an officer for eight

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years, had made more than 100 similar observations, and had received narcotics training. He radioed to his enforcement officers a description of defendant and his location while maintaining constant surveillance. The enforcement officers then detained defendant. Sanders directed an enforcement officer, Gorman, to the ATV in the back of 428 West 58th Street. Sanders did not lose sight of the ATV after he observed that transaction or when he directed the officers to that location. Gorman went to the ATV, bent down by the left rear tire, and retrieved one plastic bag containing 15 items of suspected heroin. There was no debris in the area. The officers recovered \$69 from defendant during a custodial search.

¶ 4 The parties stipulated to the laboratory evidence and the chain of custody foundation. The chemist tested five of the items, which proved positive for 1.1 gram of heroin. The total estimated weight of the 15 items would be 3.3 grams.

¶ 5 The trial court found defendant guilty of the lesser included offense, possession of a controlled substance, instead of possession of a controlled substance with intent to deliver, because the police broke the surveillance after one transaction and did not wait to see similar exchanges, and also because the police did not stop the buyer and did not know what was given to the buyer. The trial court found that there was classic circumstantial evidence that defendant actually or constructively possessed, and was hiding, the heroin.

¶ 6 On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt because the evidence did not show that he was in constructive possession of the heroin. For example, he argues that no drugs were recovered from his person and that Sanders did not see money, could not see what was transferred, could not hear the conversation, and did not hear

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defendant soliciting any type of a sale. He argues that there was only one transaction, that the alleged buyer was not apprehended, and that there was no fingerprint evidence for the plastic bag found behind the rear left wheel of the ATV. He speculates that the area where the ATV was parked was accessible to the public, so that other individuals would have had access to the location where the heroin was found.

¶ 7 A criminal conviction will not be set aside and the trial court's determinations of witness credibility and the sufficiency of the evidence will not be disturbed unless the evidence, viewed in the light most favorable to the State, was so improbable as to create a reasonable doubt of guilt. See *People v. McLaurin*, 184 Ill. 2d 58, 79-80 (1998); see also *People v. Pintos*, 133 Ill. 2d 286, 291 (1989); *People v. Chavez*, 327 Ill. App. 3d 18, 27 (2001). The reasonable doubt standard applies, whether the evidence is direct or circumstantial. *People v. Maggette*, 195 Ill. 2d 336, 353 (2001). The question on appeal is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004); *Maggette*, 195 Ill. 2d at 353. A court of review must not retry the defendant. *Cunningham*, 212 Ill. 2d at 279. When assessing evidence that can produce conflicting inferences, the fact finder is not required to look for all possible explanations consistent with innocence and elevate them to the level of reasonable doubt. *People v. Digirolamo*, 179 Ill. 2d 24, 45 (1997); see also *People v. Slinkard*, 362 Ill. App. 3d 855, 858 (2006) (State's evidence need not exclude every possible doubt).

¶ 8 To prove that the defendant was guilty beyond a reasonable doubt of possession of a controlled substance, the State is required to prove that the defendant knew the substance was

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present, and that the defendant had immediate and exclusive control of the substance. *People v. McCoy*, 295 Ill. App. 3d 988, 995 (1998). The defendant's knowledge of the presence of the controlled substance, and the defendant's immediate possession or control of the controlled substance, are elements that may be proved by means of circumstantial evidence. *People v. Jones*, 295 Ill. App. 3d 444, 453 (1998).

¶ 9 Possession can be either actual or constructive. *Jones*, 295 Ill. App. 3d at 453.

"To support a finding of constructive possession, the State must prove that the defendant knew the contraband was present and that it was in defendant's immediate and exclusive control.

[Citation.] Knowledge may be proved by evidence of defendant's acts, declarations, or conduct from which it can be inferred that he knew the contraband existed in the place where it was found.

[Citation.] Constructive possession may be proved by showing that defendant controlled the premises where the contraband was found.

[Citation.]

The elements of possession or knowledge are questions of fact \*\*\* and are rarely susceptible [of] direct proof." *People v.*

*Feazell*, 248 Ill. App. 3d 538, 545 (1993).

¶ 10 Proof that the defendant did not abandon the drugs and that no one else obtained possession of the drugs establishes the defendant's constructive possession of the drugs (*Jones*, 295 Ill. App. 3d at 453), and the defendant can have exclusive, constructive possession even

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where possession is joint and other persons share access to the premises (*People v. Scott*, 152 Ill. App. 3d 868, 871 (1987)). "[C]ontrol of the premises is not a prerequisite to a conviction." *People v. Givens*, 237 Ill. 2d 311, 335 (2010); *People v. Adams*, 161 Ill. 2d 333, 345 (1994).

¶ 11 Here, any rational trier of fact could reasonably conclude that the unimpeached testimony of Officers Sanders and Gorman established that there was sufficient evidence proving that defendant had knowledge and constructive possession of the heroin in the left rear wheel of the ATV, which was parked in the rear of the property. On a sunny morning, Sanders had an unobstructed view from 15 feet away and watched the hand to hand exchange between defendant and an unknown man. The unknown man approached defendant and they had a conversation. The unknown man then tendered to defendant what Sanders believed to be cash. After defendant received what Sanders believed was cash, defendant walked to the ATV that was parked in the rear of 428 West 58th Street, bent down, extended his arm, reached down to the left rear wheel, and retrieved an item from behind that wheel. Defendant then walked back to the unknown man, again extended his arm, and tendered a small item. Gorman bent down and retrieved a plastic sandwich bag that contained 15 smaller bags of suspected heroin from behind the same left rear wheel of the ATV. There was no debris in the area near that wheel. No one else accessed the left rear wheel of the ATV. The police never lost sight of it. Defendant's knowledge and control of the heroin can be inferred from the foregoing circumstances, which established beyond a reasonable doubt that defendant had control over the left rear wheel of the ATV, the location of the heroin, and deliberately concealed the heroin by tucking it under that wheel. Given these circumstances, any rational trier of fact could reasonably infer that defendant exercised exclusive

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control over the heroin and that defendant had knowledge and constructive possession of the drugs.

¶ 12 The absence of drugs on defendant's person and the absence of evidence of his fingerprints on the plastic bags is not dispositive of his innocence because other evidence did not negate his exclusive control or the inference of his knowledge and possession of the drugs. See *People v. Davilla*, 236 Ill. App. 3d 367, 378 (1992). It was the trial court's responsibility to evaluate the credibility of the witnesses, and the trial court reasonably could have inferred that defendant had stashed the drugs in the rear left wheel of the ATV. The trial court was not required to elevate defendant's possible explanations consistent with innocence, such as the possibility that the public had access to the area where the drugs were found. See *Digirolamo*, 179 Ill. 2d at 45; see also *Slinkard*, 362 Ill. App. 3d at 858. Defendant retrieved a small object from the left rear wheel of the ATV, where Gorman found a bag of heroin. These circumstances proved that defendant constructively possessed the drugs recovered from the rear left wheel of the ATV. Viewed as it must be in the light most favorable to the State, the evidence was not so improbable or unsatisfactory as to raise a reasonable doubt regarding defendant's guilt. See *Pintos*, 133 Ill. 2d at 291-92. Given the foregoing circumstances, any rational trier of fact could have found that defendant had knowledge and constructive possession of the heroin in the rear left wheel of the ATV.

¶ 13 The cases cited by defendant are factually distinguishable. The particular evidence presented at trial in this case strongly supported the trial court's conclusion that defendant had constructive possession of the heroin in the rear left wheel of the ATV. The cases cited by

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defendant did not involve comparable facts. For example, in *People v. Quintana*, 91 Ill. App. 2d 95, 98 (1968), the police officer had a motive to accuse the defendant falsely. *Cunningham* does not support defendant's position, because the supreme court in *Cunningham* refused to allow doubts as to part of an officer's testimony to taint the entire testimony. *Cunningham*, 212 Ill. 2d at 310-11. In *People v. Jackson*, 318 Ill. App. 3d 321, 322, 324 (2000), a third party, not the defendant, handled the bag of drugs and the possibly "innocuous" item that was handed to the alleged purchaser. Moreover, in *People v. Little*, 322 Ill. App. 3d 607, 617-18 (2001), we disagreed with the suggestion in *Jackson*, 318 Ill. App. 3d at 326, that the court could not infer from the circumstances the nature of an unknown object exchanged during suspected drug activity. The court in *Little* believed instead that the object's identity as contraband could be reasonably inferred from the circumstances as a whole. *Little*, 322 Ill. App. 3d at 617-18. We agree. Although the court in *Jackson* observed that a single, isolated transaction was an insufficient predicate for a conviction because the transaction might have been a debt payment (*Jackson*, 318 Ill. App. 3d at 325), the fact finder was not required to look for all possible explanations consistent with innocence and elevate them to the level of reasonable doubt (*Digirolamo*, 179 Ill. 2d at 45; see also *Slinkard*, 362 Ill. App. 3d at 858). In *People v. Sherrod*, 394 Ill. App. 3d 863, 864, 867 (2009), we found that the defendant was guilty of possession of a controlled substance even though the police had not seen him engage in *any* suspicious transactions. Viewing the evidence here as a whole and in a light most favorable to the State, we find that the evidence was sufficient to prove that defendant possessed the heroin beyond a reasonable doubt. We have considered, and rejected, all of defendant's arguments on appeal.

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¶ 14 The judgment of the circuit court is affirmed.

¶ 15 Affirmed.