

2012 IL App (2d) 110614-U
No. 2-11-0614
Order filed November 28, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-1955
)	
DANIEL JAMES,)	Honorable
)	Patricia Piper Golden,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of possession of a controlled substance, specifically that he knew of the cocaine in the vehicle in which he was a passenger: defendant had admitted using cocaine in the vehicle, and the cocaine was found on the passenger's floorboard, next to drug paraphernalia used to smoke cocaine.

¶ 2 Defendant, Daniel James, appeals his conviction of possession of a controlled substance (720 ILCS 570/402(c) (West 2008)). He contends that the evidence was insufficient to show beyond a reasonable doubt that he knew about the presence of cocaine in a cigarette pack on the floor of a vehicle in which he was a passenger. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Evidence at defendant's bench trial showed that, on July 6, 2009, police received a dispatch that a witness saw the occupants of a vehicle possibly smoking drugs while they were driving. Shortly after, officers spotted the vehicle and stopped it. The vehicle was driven by Robert Jeffries, and defendant was a passenger.

¶ 5 The vehicle was registered to Roberta Fuse, who was not present. Jeffries did not have a valid driver's license, and the car was searched in preparation for towing. During the search, officer Albert Cansino found a package of Newport cigarettes on the passenger-side floorboard, where a person would put his feet. Inside of the lid of the package were three baggies of a rock-like substance that later tested positive for less than .01 grams of cocaine.

¶ 6 Also on the passenger-side floorboard was a rolled-up napkin containing a small glass pipe with a burned Brillo pad stuck in the end. Cansino testified that he had seen similar pipes hundreds of times and knew them to be used for smoking illegal substances such as crack cocaine.

¶ 7 In addition to the cocaine, Cansino found 0.02 grams of heroin in the center console armrest, 0.01 grams of heroin in the center console cup holder, and 0.01 grams of heroin in a small cylinder attached to the key chain used for the vehicle ignition key.

¶ 8 Defendant was arrested and transported to the police station, where another officer, Jeff Parrish, interviewed him. Defendant told Parrish that he had consumed cocaine in the vehicle and that he had some in a baggie when the vehicle was stopped. He said that he later snorted that cocaine while in the police van on the way to the police station. He would not say where he got the cocaine that he consumed, but said that he did not have it when he left his house. Defendant denied knowledge of the drugs found in the car.

¶ 9 Parrish also talked to Jeffries, who said that the heroin in the key chain cylinder was his, but that he thought it was cocaine. Jeffries told Parrish that the other drugs in the vehicle were not his and must have belonged to defendant.

¶ 10 Jeffries testified that he had no personal knowledge of any of the drugs in the vehicle other than those in the key chain cylinder. Jeffries testified that, on the day of the arrest, he picked defendant up in Aurora and they drove to Chicago, where they got out of the car and separated. Jeffries met with a “business person,” and defendant went somewhere else and returned to the vehicle shortly after Jeffries. Jeffries did not know where defendant went and did not see him return with anything. Jeffries said that he smoked Newport cigarettes.

¶ 11 Defendant testified that the drugs were not his. He said that he had quit smoking about six months before the arrest, because he had cancer.

¶ 12 The court found defendant not guilty of possession of heroin but found him guilty of possession of cocaine. The court noted that defendant had been in the vehicle for a lengthy amount of time and that he had used cocaine in the vehicle. Thus, the court found the assertion that defendant did not know of the cocaine under his feet to be “very unbelievable.” Defendant moved for a new trial, contending that there was insufficient evidence to convict him beyond a reasonable doubt. That motion was denied, and defendant was sentenced to two years’ probation and various fines, fees, and costs. He appeals.

¶ 13

II. ANALYSIS

¶ 14 Defendant contends that the evidence was insufficient because there was a lack of proof that he knew of the presence of the cocaine inside the pack of cigarettes.

¶ 15 “A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt.” *People v. Collins*, 106 Ill. 2d 237, 261 (1985). On a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. *Id.* Rather, “ ‘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.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Under this standard, a court of review must view in the State’s favor all reasonable inferences drawn from the record. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). The trier of fact is responsible for determining the witnesses’ credibility, weighing their testimony, and deciding on the reasonable inferences to be drawn from the evidence. *People v. Lamon*, 346 Ill. App. 3d 1082, 1089 (2004).

¶ 16 To establish a possessory offense, the State must present evidence tending to show that the defendant knew of the presence of the contraband and that it was in his immediate and exclusive control. *People v. Denton*, 264 Ill. App. 3d 793, 798 (1994); *People v. Mason*, 213 Ill. App. 3d 163, 167 (1991). “Because possession is often difficult to prove directly, proving possession frequently rests upon circumstantial evidence.” *People v. Love*, 404 Ill. App. 3d 784, 788 (2010).

¶ 17 “Possession falls into two categories, *i.e.*, actual and constructive.” *Id.* “ ‘Actual possession is proved by testimony which shows [that the] defendant exercised some form of dominion over the unlawful substance, such as trying to conceal it or throwing it away.’ ” *Id.* (quoting *People v. Scott*, 152 Ill. App. 3d 868, 871 (1987)). “On the other hand, ‘constructive possession’ arises when the defendant has the intent and capability to maintain control and dominion over the contraband.” *Id.* “Constructive possession may be proved by showing that the defendant had knowledge of the

presence of the contraband and had immediate and exclusive control over the area where the contraband was found.” *Id.*

¶ 18 “A defendant’s mere presence in a car where contraband is found is not enough to establish the defendant’s knowledge of the contraband.” *Id.* “However, knowledge may be inferred from several factors, including (1) the 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.” *Id.* “The fact that drugs and related paraphernalia are located in places where a defendant could or should have been aware of their presence and existence is further evidence of knowledge.” *People v. Herron*, 218 Ill. App. 3d 561, 571 (1991). The mere access by others to the area where drugs are found will not defeat a charge of constructive possession. *People v. Rentsch*, 167 Ill. App. 3d 368, 371 (1988).

¶ 19 Here, considering the evidence collectively, defendant was proved guilty beyond a reasonable doubt of possession of cocaine. At a minimum, defendant had constructive possession of the cocaine. As the trial court noted, defendant was in the vehicle for a lengthy amount of time and admitted to using cocaine in the vehicle. Also, drug paraphernalia used for smoking cocaine was found on the passenger-side floor board next to the cocaine. Jeffries denied that the cocaine belonged to him, and there was no evidence that it belonged instead to the owner of the vehicle. Thus, the trial court reasonably found that defendant’s assertion that he did not know of the existence of the cocaine was “very unbelievable.”

¶ 20 Defendant relies on *People v. Ortiz*, 196 Ill. 2d 236 (2001), to argue that the evidence was insufficient to show constructive possession. In *Ortiz*, the defendant was driving a semi-tractor

trailer and was stopped for driving over the speed limit. The officer noted two pagers in the truck and that the load was only half full. The defendant allowed the officer to search the truck, which revealed a large quantity of cocaine in a secret compartment at the front of the trailer. The defendant also told the police that a companion truck was traveling the same route, which led the police to find drugs in that truck as well. The officer, who was a former truck driver, testified that it was unlikely that the defendant would have inspected the trailer except to assure himself that the load was stable. The defendant was convicted, and the supreme court reversed, holding that the evidence was insufficient to prove that the defendant knew about the drugs. *Id.* at 267-68. The court particularly noted that the defendant was cooperative with the police, the pagers were not drug paraphernalia, and there was a lack of evidence that the defendant knew that the load was half full in order to accommodate drugs. *Id.* at 259-66.

¶ 21 Defendant argues that *Ortiz* supports his position because he did not smoke cigarettes and had no reason to look in a pack of cigarettes that must have belonged to another person. But unlike in *Ortiz*, where there was no evidence that the defendant had knowledge of the drugs, here Jeffries denied that the cocaine belonged to him, defendant admitted to using cocaine in the vehicle before it was stopped, and drug paraphernalia was found under his feet in the same location as the pack of cigarettes containing the cocaine. Thus, there was strong circumstantial evidence that defendant knew of the presence of the cocaine. The court was free to reject defendant's assertion to the contrary. When the evidence is viewed as a whole, it was sufficient to prove defendant guilty beyond a reasonable doubt.

¶ 22

III. CONCLUSION

¶ 23 The evidence was sufficient to prove defendant guilty of possession of a controlled substance.

Accordingly, the judgment of the circuit court of Kane County is affirmed.

¶ 24 Affirmed.