

No. 1-11-3540

**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. 11 CR 91
	)	
BONNIE BOOKER,	)	Honorable
	)	Thomas J. Hennelly,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where police, in the execution of a search warrant, found cocaine in defendant's kitchen, evidence was sufficient to sustain defendant's conviction for possession of a controlled substance, but a fine and certain fees were imposed in error and a mandatory fine was listed in error as discretionary. Additionally, defendant's fines should have been offset by days spent in presentence custody.
- ¶ 2 Following a bench trial, defendant, Bonnie Booker was convicted of possession of cocaine and sentenced to 18 months' probation. On appeal, defendant argues the evidence was insufficient to prove she possessed or had knowledge of the cocaine. Additionally, defendant argues the trial court erred in imposing a \$100 Methamphetamine Law Enforcement Fund fine, \$5 Court System Fee, and \$5 Electronic Citation Fee, and by failing to offset \$30 from her fines to reflect the six days she spent in custody prior to sentencing. The State argues the trial court failed to impose a

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mandatory Controlled Substance Fine. We affirm defendant's conviction and modify the order assessing fees, fines, and costs.

¶ 3 At trial, Chicago police officer Gary Olson testified that on October 27, 2010, he and other police officers executed a search warrant at an apartment located at 5455 South Laflin Street in Chicago (apartment). When Officer Olson arrived at the location, he observed defendant leaning out of the first-floor, south apartment window and ordered her to remain there. After Officer Olson entered the apartment, he detained defendant. There was no other person in the one-bedroom apartment. Officer Olson observed three pieces of mail on a table in the kitchen. The three pieces of mail all bore the name of defendant and the address of the apartment. Two pieces also had the name of "Philip Mitchell." While at the apartment, another officer recovered a plastic coffee creamer container (container) from defendant's kitchen cabinet. Inside of the container was a plastic sandwich bag which contained eight, smaller, knotted plastic bags, each containing suspect cocaine. The plastic sandwich bag, initially, was not visible because there was a lid on the container.

¶ 4 The parties stipulated as to testimony which would show that a key to the apartment was recovered during a search of defendant. Additionally, the parties stipulated to testimony which would establish a proper chain of custody for the substance in the knotted plastic bags contained within the container, and that the substance in the bags tested positive for 1.3 grams of cocaine.

¶ 5 Defendant testified that she had lived at the apartment for three years. On October 27, 2010, she had been home alone. Two days before the search and her arrest, defendant had returned from a three-week trip to Minnesota. Defendant's brother and nephew lived in the apartment while she had been away, and they remained there for about one week after she had returned from her trip. Defendant said she did not drink coffee, had not been aware of the presence of a container in the kitchen cabinet, and had not been aware that the container contained bags of cocaine. Defendant said she used the kitchen, the cabinets, and the dishes which were stored there. Defendant testified that Philip Mitchell had lived at the apartment, but was deceased at the time of the search.

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¶ 6 The trial court found defendant guilty of possession of a controlled substance and sentenced defendant to 18 months' probation.

¶ 7 On appeal, defendant first contends the State failed to prove her guilty of possession of a controlled substance because she was not aware of the container which was hidden in a kitchen cabinet; did not drink coffee; and her brother and nephew—prior to the search—lived in the apartment while she had been out of town. Defendant further argues that no additional narcotics or drug paraphernalia had been found during the search and her arrest and, when the police arrived, she did not exhibit suspicious behavior.

¶ 8 When a defendant challenges the sufficiency of the evidence, the inquiry 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 offense beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. It is not the reviewing court's function to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). The weight to be given to the witnesses' testimony, the credibility of the witnesses, the resolution of inconsistencies and conflicts in the evidence, and the reasonable inferences to be drawn from the testimony, are the responsibility of the trier of fact. *Id.* The reviewing court may not substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of witnesses. *People v. Sutherland*, 155 Ill. 2d 1, 17 (1992). A verdict will be overturned only where it is so unreasonable, improbable, and unsatisfactory, as to leave a reasonable doubt as to defendant's guilt. *People v. Brown*, 169 Ill. 2d 132, 152 (1996).

¶ 9 To sustain a conviction for possession of a controlled substance, the State must prove the defendant had been aware of the presence of the controlled substance, and that the substance had been in the defendant's immediate and exclusive control. *People v. Trask*, 167 Ill. App. 3d 694, 707 (1988). Possession may be constructive, and exists without actual personal present dominion over the controlled substance if there is an intent and capability to maintain control and dominion over

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the substance. *People v. McCoy*, 295 Ill. App. 3d 988, 995 (1998). A defendant's control over the premises where the substance has been found gives rise to an inference of knowledge and control of the drugs sufficient to sustain a conviction for unlawful possession. *People v. Brown*, 277 Ill. App. 3d 989, 997-98 (1996). This inference can be overcome by facts and circumstances which might leave a reasonable doubt as to defendant's guilt. *People v. Nettles*, 23 Ill. 2d 306, 308-09 (1961). Mere access to the premises by others is insufficient to defeat a charge of constructive possession. *People v. Maiden*, 210 Ill. App. 3d 390, 398 (1991).

¶ 10 Here, the evidence was sufficient to show defendant had constructive possession of the cocaine. In addition to admitting she lived in the apartment, defendant had on her person a key to the apartment; three pieces of mail addressed to her at that address were found in the kitchen; and she admitted to accessing the kitchen cabinets and using the dishes stored therein. This evidence is sufficient to show defendant controlled the apartment, the kitchen, and its contents. See *Trask*, 167 Ill. App. 3d at 707 (defendant's control of premises shown through admission that he rented the premises and bills addressed to defendant had been found on the premises). A rational trier of fact, therefore, could find she possessed the cocaine.

¶ 11 We disagree with defendant's contention that additional evidence was required to establish possession because defendant had testified that her brother and nephew had been living in the apartment. As a preliminary matter, the trier of fact determines the inferences to be drawn from the evidence, assesses the credibility of the witnesses, and decides the weight to be given to their testimony. *People v. Baugh*, 358 Ill. App. 3d 718, 736 (2005). We will not disturb the trier of fact's determination of the weight to be given to defendant's testimony and the inferences to be drawn from it. Defendant's testimony—that her brother and nephew had been living in the apartment—suggests only that others had access to the apartment, which is insufficient to defeat a charge of constructive possession. *Maiden*, 210 Ill. App. 3d at 398. Defendant's testimony—that she had not been aware of the presence of the cocaine and the container—is also not controlling. The trier of fact

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is not required to accept a defendant's exculpatory statement as true even in the absence of directly contradicting evidence by other witnesses. *People v. Schaefer*, 87 Ill. App. 3d 192, 194 (1980).

¶ 12 Defendant's citation of *People v. Wolski*, 27 Ill. App. 3d 526 (1975) is unpersuasive. In *Wolski*, the defendant, who had not been home for two days when a search of his basement apartment produced contraband, shared that apartment with his brother. Defendant's mother was the only person on the premises at the time of the search. No other evidence linked the defendant to the contraband. Unlike *Wolski*, defendant here was the only person in the apartment during the search, and she had a key on her person. Defendant admitted living there; three pieces of mail addressed to her had been found on a table in the kitchen; and she admitted to using the kitchen cabinets and the contents of those cabinets. The court in *Wolski* cited with approval the holding in *People v. Connie*, 52 Ill. App. 2d 221 (1965). That case held that the lone fact that drugs are found at a place which is under the control of a defendant would be sufficient to sustain a conviction for possession of unlawful drugs " *absent other facts and circumstances which might leave in the mind of . . . the court, where a jury has been waived, a reasonable doubt as to his guilt.* " (Emphasis in original.) *Wolski*, 27 Ill. App. 3d at 528 (quoting *Connie*, 52 Ill. App. 2d at 221). We have concluded that the trial court's finding that defendant possessed the cocaine is not so unreasonable, improbable, and unsatisfactory so as to leave a reasonable doubt of defendant's guilt under all the evidence. We will not disturb the trial court's decision.

¶ 13 Defendant next asserts and the State correctly concedes that we must vacate the \$100 Methamphetamine Law Enforcement Fund Fine (applicable to offenses related to methamphetamine) (730 ILCS 5/5-9-1.1-5(b) (West 2010)), the \$5 Court System Fee (applicable to traffic offenses) (55 ILCS 5/5-1101(a) (West 2010)), and the \$5 Electronic Citation Fee (applicable to traffic, misdemeanor, municipal ordinance, or conservation cases) (705 ILCS 105/27.3e (West 2010)). Defendant's offense does not fall into any of these categories and, thus, we vacate this fine and these fees accordingly.

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¶ 14 Defendant next asserts and the State correctly concedes that the trial court failed to offset \$30 from defendant's fines to reflect the six days she spent in custody prior to sentencing. Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of \$5 for each day incarcerated. 725 ILCS 5/110-14(a) (West 2010). Defendant is entitled to have \$30 reduced from her fines.

¶ 15 Finally, the State maintains defendant must be assessed a \$500 mandatory Controlled Substance Fine under section 411.2(a) of the Illinois Controlled Substance Act (the Act) (720 ILCS 570/411.2(a) (West 2010)). We find that this fee was assessed, however, it was incorrectly noted on the preprinted form order (order) for fines, fees, and costs.

¶ 16 The order for assessing fines, fees, and costs includes two lines—both are labeled "Controlled Substance Fine." One line is designated for the discretionary fine permissible under section 402(c) of the Act (720 ILCS 570/402(c) (West 2010)), and lists no specific amount, but limits the fine to \$25,000. The other line is designated for the mandatory \$500 fine for the instant Class 4 felony under section 411.2(a) of the Act. 720 ILCS 570/411.2(a) (West 2010). The order shows \$500 had been entered on the line designated for the discretionary fine (720 ILCS 570/402(c) (West 2010)), but no amount had been entered on the line designated for the \$500 mandatory fine (720 ILCS 570/411.2(a) (West 2010)). We agree with defendant that a clerical error likely caused the mandatory \$500 fine to be entered on an incorrect line of the order. Nowhere in the record does it show that the court intended to impose an additional discretionary fine. Further, nowhere in the record is it explained how the court would have arrived at that amount entered on the line designated for the discretionary fine. The trial court is presumed to know the law and apply it properly. *People v. Howery*, 178 Ill. 2d 1, 32 (1997). Accordingly, we modify the order by having the \$500 fine removed from the line designated for a discretionary fine under section 402(c) (720 ILCS 570/402(c) (West 2010)), and have it entered on the line designated for the mandatory fine under section 411.2(a) (720 ILCS 570/411.2(a) (West 2010)).

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¶ 17 For the reasons stated above, we affirm defendant's conviction and modify the order for fines, fees, and costs as stated.

¶ 18 Affirmed as modified.