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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 15 CR 6873
)	
TOMMIE SMITH,)	Honorable
)	Thomas M. Davy,
Defendant-Appellant.)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Mason and Justice Walker concurred in the judgment.

ORDER

¶ 1 *Held:* Where the evidence at trial was sufficient to prove beyond a reasonable doubt that defendant constructively possessed heroin, cocaine, and methamphetamine, his conviction is affirmed.

¶ 2 The trial court found defendant Tommie Smith guilty of two counts of possession of a controlled substance (PCS) and one count of possession of methamphetamine. The trial court merged the counts and sentenced Smith to 30 months in prison. On appeal, Smith contends that his conviction must be reversed because the evidence was insufficient to prove he possessed the drugs at issue.

¶ 3 Viewing the evidence most favorably to the prosecution, a rational trier of fact could conclude that Smith constructively possessed the drugs recovered by the police. We affirm.

¶ 4 Background

¶ 5 Smith's conviction arose from the events of March 29, 2015. At trial, Chicago police officer Scaduto testified that at about 10:20 p.m., he and his partner while on routine patrol stopped a sedan without a visible license plate. Scaduto approached the sedan on foot on the passenger side, while his partner approached on foot on the driver's side. Scaduto saw two people in the sedan. Smith, whom Scaduto identified in court, was in the front passenger seat. Codefendant Julius Davis was the driver.

¶ 6 Scaduto testified that for officer safety, he and his partner asked Smith and Davis to get out. Neither man did, and instead, Davis revved the engine. Scaduto looked inside and "saw [Smith] reach to his left side that's next to the middle console of the vehicle as if he was concealing a weapon." Davis shifted the sedan into drive and took off. The officers returned to their car and followed. During the pursuit, which lasted about a minute, Scaduto saw Smith throw a bag out of the sedan's window onto the southwest corner of East 123rd Street and South Michigan Ave. When the sedan came to a stop, the officers got out of their squad car, grabbed Smith and Davis, performed emergency takedowns, and placed them into custody.

¶ 7 Scaduto searched the sedan. From an area "between the passenger's seat and the middle console," inches from where Smith had been sitting, Scaduto recovered one clear Ziploc bag containing some blue pills; one bag with white powder, suspect heroin; and one bag containing numerous rock-like substances, suspect rock cocaine.

¶ 8 Scaduto informed Smith of his *Miranda* rights, after which Smith stated that there was a firearm in his residence, which was nearby. With Smith's permission, Scaduto and the other officers entered the house and performed a systematic search. They recovered a loaded 9 millimeter High Point semiautomatic handgun from underneath a couch cushion on the second floor, as well as a loaded 9 millimeter Smith & Wesson from a downstairs bathroom linen closet.

¶ 9 The parties stipulated that if called as a witness, Officer Dicera would have testified that he recovered a package of suspect cannabis from the southwest corner of a crosswalk at 12300 South Michigan Ave. The parties further stipulated that if called, Kimberly Blood, a forensic chemist at the Illinois State Police Crime Laboratory, would have testified that she tested four inventoried items. The first, which weighed 0.3 grams, tested positive for cocaine. The second, which weighed 1.1 grams, tested positive for heroin. The third, which weighed 0.6 grams, tested positive for methamphetamine. The fourth, which weighed 13 grams, tested positive for cannabis. Finally, the State entered into evidence a certified copy of conviction indicating Smith had been convicted of burglary in 2013.

¶ 10 Smith made a motion for a directed finding, which the trial court denied.

¶ 11 The trial court acquitted Smith of the charges of unlawful use of a weapon by a felon. On the drug charges, the trial court found the State had not proved the element of intent to deliver, but found Smith guilty of the lesser-included charges of PCS (heroin), PCS (cocaine), and possession of methamphetamine. The trial court denied Smith's motion for a new trial. At sentencing, the trial court merged the PCS counts into the count charging possession of methamphetamine, and imposed a sentence of 30 months in prison.

¶ 12 Analysis

¶ 13 Smith challenges the sufficiency of the evidence. He argues that the State failed to prove beyond a reasonable doubt that he actually or constructively possessed the drugs found inside the car, as the drugs were not in plain view and the car's driver, Davis, had "similar access" to them. Smith further asserts that there was no proof he had knowledge of the drugs, that he did not have exclusive or joint control over the car, and that there was no proof that he owned the car or admitted ownership or possession of the drugs. He maintains that his simple proximity to the drugs while sitting inside the car cannot sustain his conviction.

¶ 14 When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence most favorably to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). We reverse where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 15 Section 402 of the Illinois Controlled Substances Act provides, in relevant part, that "it is unlawful for any person knowingly to possess a controlled or counterfeit substance or controlled substance analog." 720 ILCS 570/402 (West 2014). Similarly, section 60(a) of the Methamphetamine Control and Community Protection Act provides that "[i]t is unlawful knowingly to possess methamphetamine or a substance containing methamphetamine." 720 ILCS 646/60(a) (West 2014). Possession may be actual or constructive and is often proved with

circumstantial evidence. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Circumstantial evidence does not require each link in the chain of circumstances be proven beyond a reasonable doubt; it is sufficient if all the evidence, considered collectively, satisfies the trier of fact beyond a reasonable doubt that the defendant is guilty. *People v. Hall*, 194 Ill. 2d 305, 330 (2000).

¶ 16 Constructive possession—which is at issue—exists where a defendant has the intent and capability to maintain control and dominion over the contraband, and may be proved with evidence 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. *Love*, 404 Ill. App. 3d at 788. “Exclusive” control may be sole or joint. *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 65. Knowledge may be inferred from surrounding circumstances, including the defendant’s actions, declarations, or other conduct, which indicate that the defendant knew the contraband’s presence in the place it was found. *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002); *People v. Smith*, 288 Ill. App. 3d 820, 824 (1997). Hiding drugs indicates an intent to exercise control over them. *McLaurin*, 331 Ill. App. 3d at 503.

¶ 17 In our view, the State introduced sufficient evidence of Smith’s constructive possession of the heroin, cocaine, and methamphetamine. When Officer Scaduto first approached the passenger side of the sedan on foot, he saw Smith reach to his left side, next to the middle console, as if he was concealing something. At the time, Scaduto thought it could be a weapon. Then, after a short car chase ending with the police stopping the sedan a second time, Scaduto found heroin, cocaine, and methamphetamine between the passenger’s seat and the middle console. This location, mere inches from where Smith had been sitting, also was where minutes earlier, Scaduto had seen Smith reach as though he was hiding something.

¶ 18 A reasonable finder of fact could infer from Smith's action of reaching toward the area between the passenger seat and the console that he knew the drugs existed in the location where they were found. Moreover, it could reasonably be inferred that Smith hid the drugs when he made the reaching motion, which supports a finding that he intended to exercise control over them. Viewing the evidence in the light most favorable to the prosecution, which we must, we find that a rational trier of fact could conclude that Smith constructively possessed the drugs recovered by the police. Accordingly, the evidence presented at trial was sufficient to support Smith's conviction. Smith's contention fails.

¶ 19 Affirmed.