2013 IL App (2d) 111100-U
No. 2-11-1100
Order filed February 7, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Ogle County.
Plaintiff-Appellee,	)	
v.	)	No. 11-CF-16
CRAWFORD K. WEATHERS,	)	Honorable Stephen C. Pemberton,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Jorgensen and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of unlawful possession of a controlled substance: in light of all the evidence, the jury was entitled to credit testimony, from a passenger in defendant's car, that defendant placed the cocaine into the passenger's purse without her knowledge or to find that defendant and the passenger had joint possession of the cocaine.

¶ 2 Defendant, Crawford K. Weathers, was convicted of unlawful possession of a controlled substance (720 ILCS 570/402(a)(2)(A) (West 2010)) and sentenced to 12 years' imprisonment. He appeals this judgment, arguing that the State failed to prove his guilt beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 27, 2011, defendant was charged with one count of possession with the intent to deliver a controlled substance (720 ILCS 570/401(a)(2)(A) (West 2010)) for knowingly possessing with intent to deliver 15 grams or more but less than 100 grams of cocaine, one count of possession of a controlled substance (720 ILCS 570/402(a)(2)(A) (West 2010)) for knowingly possessing 15 grams or more but less than 100 grams of cocaine, and one count of unlawful possession of cannabis (720 ILCS 550/4(b) (West 2010)) for knowingly possessing 2.5 grams but not more than 10 grams of cannabis. The State dismissed the cannabis charge before trial.

¶ 5 At trial, Illinois State Trooper John Hand testified that on January 20, 2011, he was patrolling Interstate 88. He stopped an Oldsmobile for speeding at the De Kalb oasis. Defendant was driving and Shaquita Alston was in the passenger seat. Trooper Hand learned that there was an outstanding warrant against defendant in Whiteside County that could be enforced only in Whiteside and the immediate surrounding counties. Trooper Hand allowed defendant to leave, and he followed defendant into Ogle County, where he stopped defendant a second time. He asked defendant to step out of the car and placed him under arrest for the outstanding warrant. Trooper Hand did not notice any kind of unusual movement by either defendant or Alston when he approached the vehicle. Defendant was very cooperative during the arrest. Trooper Hand searched defendant's person, but he found nothing. Another trooper, Kyle Fletcher, arrived to assist as Trooper Hand approached Alston to offer that she sit in a squad car to stay warm while they searched the vehicle. Trooper Hand noticed the odor of burnt cannabis emanating from the vehicle. No cannabis was recovered from the vehicle. While in Trooper Fletcher's squad car, Alston turned over some cannabis to him. Alston was then arrested as well. The vehicle search produced an open bottle of Hennessy and

Alston's purse. Defendant and Alston were then transported to the Ogle County jail. Trooper Hand maintained possession of Alston's purse during the transport to the jail. Defendant was searched at the jail as part of the booking procedure. No contraband was found on him. Alston and her purse were also searched at the jail. The search of Alston's purse produced an ecstasy pill and a fast food bag that contained 86 grams of crack cocaine, which had a street value of approximately $8,500. Defendant and Alston were placed in separate jail cells, approximately 40 feet apart. While Trooper Hand was speaking with Alston in her cell, defendant yelled to Alston not to say anything and that he would get her out.

¶ 6 On cross-examination, Trooper Hand explained that, after Alston got out of the car after he detected the smell of cannabis, she asked to retrieve her purse from the car. She did so and was then told that a female trooper would come out and search her. Trooper Hand testified that Alston's clothing was disheveled. Alston then turned over the cannabis to Trooper Fletcher. Trooper Hand admitted that his cursory search of the purse at the scene did not produce any narcotics. He saw the fast food bag but did not open it because he was searching only for weapons at the scene. He admitted that Alston was sitting alone in the vehicle for a short time while he was dealing with defendant. Trooper Hand did not notice any furtive movements by Alston in the car. However, he admitted that the DVD of the stop shows that, when Alston returned to the vehicle to retrieve her purse, she fumbled around in the backseat without being watched by either trooper.

¶ 7 The DVD of the stop was played for the jury. The recording depicts a state trooper asking defendant to get out of the vehicle and placing him under arrest. Defendant informs the trooper that Alston does not have a driver's license. The trooper informs defendant that he smells cannabis. Defendant gets into the squad car. Another trooper arrives and both troopers ask Alston, who is in

the passenger seat, for identification and to get out of the vehicle. Alston exits the vehicle. She admits she smoked pot but denies having cannabis on her. The troopers begin searching the vehicle while defendant is in the squad car and Alston is standing to the side of the squad car, partly out of the camera's view. A trooper retrieves a large coat from the car and gives it to Alston. It appears that a trooper retrieves a bottle from a purse and empties the bottle. A trooper tells Alston that he will give her a ride, and she asks to retrieve her purse from the car. The trooper allows her, and Alston enters the backseat of the car and stays there for awhile, moving around the backseat. She exits the car, but she is now carrying the large coat and her purse. She walks out of the camera's view with a trooper. The other trooper returns to the squad car with defendant. Trooper Hand admitted that he could have continued videotaping but police policy was to stop taping once a person was under custodial arrest.

¶ 8 Trooper Fletcher testified that he reported to the scene to assist Trooper Hand. When he arrived, defendant was in the driver's seat of the vehicle and Alston was in the front passenger's seat. He smelled a strong odor of cannabis emanating from the vehicle. Defendant went with Trooper Hand, and Trooper Fletcher observed Alston to be "incredibly nervous." He described defendant as "calm." Trooper Fletcher had Alston sit in his squad car while he searched the vehicle. He retrieved Alston's purse and looked through the purse quickly to ensure that no weapons were in there. He did not open the fast food bag because he was not doing a thorough search. Trooper Fletcher knew that Trooper Hand would do a more thorough search later. While in his squad car, Alston retrieved some cannabis by reaching up from the bottom of her shirt.

¶ 9 Alston testified that she was in court to prove her innocence and stated that she was not promised anything in exchange for her testimony. She testified that she knew defendant from the

neighborhood. On the date of the arrest, Alston and defendant had been in a "dating relationship" for approximately two weeks. They were going to "run some errands" on January 20. Defendant drove Alston to get her hair done in Chicago. They left Whiteside County around 1 or 2 p.m. They first drove to Peoria and then to Chicago. Defendant dropped Alston off at a beauty salon. She called him when she was finishing up, and defendant came about 20 minutes later. Defendant paid for her hair appointment. They stopped at a restaurant, and defendant paid for food. Defendant then stopped at a barber shop to get his hair cut. Alston testified that they left the barber shop around 10 p.m. They stopped at a gas station to get gas, stopped for food at J & J's, and then left Chicago to return to Whiteside County. Defendant paid for the gas and the food. Everything defendant paid for that day was paid for in cash. Alston did not know how much cash defendant had with him that day but she saw a "large quantity." She testified that the wad of cash defendant had was about two inches thick (demonstrating the thickness with her hands). The food was packaged in two individual boxes plus a small third box containing cheesecake. The box of cheesecake, which defendant had wanted, was in a small paper bag. Alston testified that she was originally from the west side of Chicago but that defendant had taken her to the south side of Chicago to do these errands. She was unfamiliar with the area that they were in.

¶ 10 Before getting on the tollway, Alston last went into her purse to retrieve some Carmex, which was in the side pocket of her purse. She then placed the purse on the backseat. The food was also on the backseat. Once on the tollway, Alston fell asleep. When defendant was pulled over, Alston woke up. After the initial stop, defendant got back on the tollway. Alston started rolling a blunt to calm their nerves. While she was rolling the blunt, defendant was pulled over again. Alston hid the cannabis in her pants. She also put the Hennessy bottle in her purse. She denied putting the fast

food bag from J & J's in her purse and denied seeing it in her purse when she shoved the Hennessy bottle in it. She denied seeing defendant place the food bag in her purse. Alston admitted that she eventually pulled up her shirt, put her hand in her pants, retrieved the cannabis, and turned it over to a trooper. At the police station, Alston saw the police find the drugs in the food bag contained in her purse. Alston testified that she said the drugs did not belong to her. She admitted that the ecstasy pill did belong to her. She admitted that she told Trooper Hand that the ecstasy pill was not hers, but she said she did so only because she was angry with defendant for what he put her through. The cocaine did not belong to her and she did not believe she should "go down for that."

¶ 11 Alston acknowledged that she had been convicted of a previous crime, mob action, in 2009. She also admitted that she was facing the same charges as defendant and that those charges were still pending. She admitted that she did not make any statements at the time of her arrest because defendant was yelling at her not to say anything. Alston admitted that she did not see defendant put anything in her purse and never saw him with cocaine earlier in the day. She assumed the cocaine was defendant's because she knew it did not belong to her and no one else was with them in the car. Despite the video, Alston recalled that the police brought her purse and food to her in the squad car she was sitting in. She denied asking the police for permission to retrieve her purse from defendant's car.

¶ 12 The parties stipulated to forensic evidence that People's Exhibit No. 1 contained 84 grams of cocaine; People's Exhibit No. 2 contained 5 grams of cocaine; and People's Exhibit No. 3 contained one tablet of ecstasy. After the State rested, a juror requested to see Alston's purse. The court allowed the State to recall Alston to identify her purse and admitted it into evidence.

Defendant called Trooper Hand to testify that he did not find a large quantity of cash on defendant when he was arrested.

¶ 13 The jury found defendant guilty of possession of a controlled substance and not guilty of possession with the intent to deliver a controlled substance. On November 1, 2011, defendant moved for a judgment notwithstanding the verdict and for a new trial, arguing the insufficiency of the evidence to sustain the conviction and inconsistent verdicts. The trial court denied both motions. It then sentenced defendant to 12 years' imprisonment. Defendant timely appealed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant argues that the State failed to prove that he possessed the cocaine beyond a reasonable doubt. When reviewing a challenge to the sufficiency of the evidence, this court must determine whether, after reviewing 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. Washington*, 2012 IL 107993, ¶ 33. This court's function is not to retry the defendant. *Id.* It is the function of the jury to make determinations regarding the credibility of the witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence. *Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Id.* This standard of review applies whether the evidence is direct or circumstantial. *People v. Pintos*, 133 Ill. 2d 286, 291 (1989).

¶ 16 Section 402 of the Criminal Code of 1961 (720 ILCS 570/402 (West 2010)) provides that "it is unlawful for any person knowingly to possess" a controlled substance. Possession can be actual or constructive. *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002). Constructive

possession exists where there is an intent and capability to maintain control and dominion over the controlled substance. *Id.* Constructive possession is often proved by circumstantial evidence and may be inferred from facts showing that a defendant once had physical control with intent to exercise control in his own behalf, he has not abandoned the drugs, and no other person has obtained possession. *Id.* However, constructive possession may not be defeated merely because others may also have access to the drugs. *People v. Milam*, 224 Ill. App. 3d 642, 647 (1992). For instance, "the driver of a car is not deprived of immediate and exclusive control of the interior simply because he also has a passenger." *Id.*; see also *People v. McNeely*, 99 Ill. App. 3d 1021, 1024 (1981) (evidence sufficient to prove constructive possession where drugs were found in the defendant's car, despite a lone passenger's presence in car). Knowledge, too, is rarely proved by direct evidence and is more often proved by inferences drawn from surrounding circumstances, including the defendant's actions, statements, and conduct. *McLaurin*, 331 Ill. App. 3d at 502.

¶ 17 Defendant argues that evidence that Alston, a passenger in defendant's car, actually possessed cocaine was insufficient to establish that defendant possessed the same cocaine. He argues that the State failed to prove that defendant had any knowledge of the cocaine in Alston's purse, much less that he constructively possessed the drugs. Defendant relies on *People v. Hampton*, 358 Ill. App. 3d 1029, 1032-33 (2005), which reversed the defendant's conviction of unlawful possession of a weapon because the State failed to prove that the defendant knew that a gun was hidden in the glove compartment of his deceased brother's car. The *Hampton* court noted a non-exclusive, four-factor test for knowledge of the presence of a weapon: (1) the visibility of the weapon from the defendant's location in the vehicle; (2) the amount of time in which the defendant had an opportunity to observe the weapon; (3) gestures or movements by the defendant that would suggest an effort to retrieve or

conceal the weapon; and (4) the size of the weapon. *Id.* at 1033. The court looked to this four-factor test after having concluded that the State could not rely on the inference that the defendant knew that the gun was in the glove compartment where the car was not owned by the defendant and no evidence was presented that the defendant had used the car regularly or otherwise showed ongoing control over it. *Id.* at 1032-33. The evidence in *Hampton* showed that the defendant began driving the car shortly before the traffic stop, he had not used the car any other time, the weapon was hidden in a sock in the glove compartment, and the defendant made no furtive movements indicating that he tried to hide the weapon. *Id.* at 1033.

¶ 18 Defendant argues that, like in *Hampton*, the cocaine was not visible since it was hidden in Alston's purse, and he had no control of Alston's purse. Defendant made no gestures or movements suggesting he was trying to conceal the drugs, unlike Alston who had been fumbling around in the car while retrieving her purse. He was calm while Alston was nervous. Alston's clothing was disheveled whereas defendant's was not. Finally, the drugs were found on Alston, not on defendant. Defendant also quotes *People v. McIntyre*, 2011 IL App (2d) 100889, ¶ 17 (quoting *People v. Day*, 51 Ill. App. 3d 916, 918 (1977)), in support of his position: "a defendant's 'status as owner-driver of the vehicle does not put him into possession of everything within the passenger area when there are passengers present who may, in fact, be the ones in possession of the contraband.' "

¶ 19 We find defendant's reliance on *Hampton* and the language in *McIntyre* misplaced as the facts of this case are distinguishable. In *Hampton*, unlike in this case, the defendant did not own the car and had only recently taken the car out before being stopped by police. *Hampton*, 358 Ill. App. 3d at 1033. Defendant here not only owned the vehicle but had been driving it for several hours before the stop. Further, Alston testified that defendant dropped her off to get her hair done and

therefore defendant had exclusive control of the vehicle for some time. In addition, unlike in *Hampton*, we have Alston's testimony implicating defendant, stating that the cocaine did not belong to her but presumably belonged to defendant and that he must have placed it in her purse while she was asleep. Even if the jury did not believe Alston, it could have believed that both she and defendant had joint possession of the narcotics.

¶ 20 Similarly, in *McIntyre*, the gun that the State alleged the defendant had constructive possession of was found in the plastic base of the front passenger seat and the leather portion of the seat, on the side closest to the passenger door. *McIntyre*, 2011 IL App (2d) 100889, ¶ 18. Moreover, the shooter testified that he had the gun concealed in his pants, that he never showed the gun to the defendant, and that after the shooting he shoved the gun under the passenger side car seat. *Id.*, ¶¶ 2, 5. Thus, there was no evidence in *McIntyre* that the defendant ever had control or the ability to exercise control over the gun. *Id.* ¶ 18. Here, defendant's argument that he did not have control over Alston's purse belies the evidence that Alston placed the purse in the backseat, she fell asleep for a portion of the trip, and all the while defendant was in the car and within reach of the purse. Even if Alston was not asleep, the purse was within defendant's reach. Additionally, Alston testified that she saw defendant with a two-inch wad of cash with him that day and that he drove her to the south side of Chicago to do errands, including getting Alston's hair done although she haled from the west side of Chicago and was unfamiliar with the area he took her to. After the arrest, he yelled at her not to talk to police and that he would get her out of the situation. Police did not find a large amount of money on defendant. With the circumstantial facts of this case, we cannot find that the evidence was so improbable that there remains reasonable doubt of defendant's guilt. The jury could have inferred that defendant and Alston traveled so far from home to purchase cocaine and that they had joint

possession of the cocaine in the car. See *People v. Adams*, 161 Ill. 2d 333, 345 (1994) (constructive possession may exist even though the defendant is no longer in control of the drugs, provided that he once had control, he has not abandoned them, and no other person has obtained possession).

¶ 21 We liken this case to *Milam*, 224 Ill. App. 3d at 644, where the defendant was driving his car, with two passengers, to Aurora where one passenger could get money from his uncle. During a traffic stop based upon an informant's tip that drugs were being sold to one of the passengers, police found drugs in plastic bags in plain view on the floor of the right rear passenger seat. *Id.* The passenger denied the drugs were his and implicated the defendant. *Id.* at 645. The defendant testified that he gave the passenger a ride to his uncle's house to get money and was unaware of the drugs in the car but assumed his passenger put the drugs in his car. *Id.* The appellate court upheld the defendant's conviction where he owned the car and the drugs were in plain view on the floor of the backseat. *Id.* at 647. It also noted that the jury, even if it did not believe the passenger's testimony that he did not own or know about the drugs, could have believed that both he and the defendant had joint possession. *Id.*; see also *People v. Ingram*, 389 Ill. App. 3d 897, 900-01 (2009) (finding evidence sufficient to sustain conviction of possession of unlawful weapon where the defendant was passenger in car, there was evidence the gun was in plain view, and the defendant tried to walk away from police).

¶ 22 Here, defendant owned the car, he took Alston out in the car to do errands in Chicago, and the drugs were found in a paper food bag in Alston's purse. Alston testified that defendant had purchased the food and had eaten the cheesecake that was in the paper food bag. She also testified that she was asleep for part of the trip, and she assumed defendant put the drugs in the paper bag in her purse. The jury was free to believe all or part of Alston's testimony, and we will not substitute

its credibility determination with our own. *People v. Borges*, 127 Ill. App. 3d 597, 605 (1984) (it is the function of the trier of fact to judge the credibility of witnesses and it may believe part of a witness's testimony without believing all of it). Even if the jury did not believe Alston's story, it could have inferred through the evidence that she and defendant had traveled to Chicago to obtain the drugs, they had joint possession of the drugs, and defendant never abandoned the drugs as he never left the car until his arrest. The jury could have believed that both possessed the drugs regardless of whether defendant or Alston placed the drugs in Alston's purse. Since it is not this court's function to retry defendant, we need not reweigh the evidence or determine the credibility of the witnesses. We therefore find the evidence sufficient to sustain defendant's conviction.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the judgment of the Ogle County circuit court.

¶ 25 Affirmed.