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publication in the New York Reports.

No. 21
The People &c.,
Respondent,
v.
Mujahid Muhammad,
Appellant.

Peter Theis, for appellant.
Gina Mignola, for respondent.

PIGOTT, J.:

Defendant was driving a borrowed car when he was stopped by a police officer for a nonoperational headlight. He could not produce a driver's license and gave inconsistent responses when asked his itinerary. The officer frisked defendant and found a wallet containing a North Carolina ID card,

which he used to check defendant's driving history. Upon learning that defendant's New York driver's license had been suspended, the officer arrested defendant for driving with a suspended license, and took him to the police precinct.

At the precinct, the same police officer searched defendant and vouchered the belongings he was carrying. In the course of inventorying the automobile, the officer discovered two fake credit cards, as well as a number of documents belonging to the defendant "spread out all over the car." One credit card was found in a jacket on the backseat of the car, the other was found in the side pocket of the driver's door of the vehicle. Defendant was charged with two counts of criminal possession of a forged instrument in the second degree (Penal Law § 170.25).

At trial, representatives of the credit card companies testified that the bank cards were forgeries. At the end of the People's case, defendant moved for a trial order of dismissal on legal insufficiency grounds, arguing, in essence, that the People had failed to prove beyond a reasonable doubt that defendant had knowing possession of the bank cards. Supreme Court denied defendant's motion.

At the conclusion of the trial, Supreme Court charged the jury with the statutory definition of second-degree criminal possession of a forged instrument, and also instructed the jury that to possess means "to have actual physical possession or to exert a knowing dominion or control over," explaining that "a

person has tangible property in his constructive possession when that person exercises a level of control over the area in which the property is found . . . sufficient to give him the ability to use or dispose of the property."

Supreme Court further instructed the jury, in accordance with Penal Law § 170.27, that "if the People have proven beyond a reasonable doubt that the defendant possessed two or more forged instruments that purport to be credit cards, you may infer but are not required to infer from that fact that the defendant possessed them with knowledge that they were forged and with intent to defraud, deceive or injure another."

Defense counsel challenged the jury charge on the ground that it did not adequately convey to the jury that the People must prove knowing possession. Supreme Court declined to modify the jury charge, and the case was submitted to the jury.

The jury found defendant guilty of both counts. Defendant moved to set aside the verdict, arguing that the evidence was legally insufficient to establish that his possession was knowing and that Supreme Court's jury charge on possession amounted to reversible error. Supreme Court denied the motion.

The Appellate Division affirmed Supreme Court's judgment, holding that "the circumstances, including the proximity of the cards that can reasonably be inferred to be defendant's property, supported the conclusion that defendant was

aware he possessed the cards" (66 AD3d 424), and that "[t]aken as a whole, the court's charge properly conveyed to the jury that the People were required to prove defendant knew he possessed the credit cards" (id.). A Judge of this Court granted defendant leave to appeal, and we now affirm.

"A person is guilty of criminal possession of a forged instrument in the second degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses [a] forged instrument ..." (Penal Law § 170.25). Possession within the meaning of the second-degree criminal possession of a forged instrument statute, must, like possession in the criminal possession of a weapon context, involve awareness of the possession (see People v Saunders, 85 NY2d 339, 341-342 [1995]). In short, "the mental culpability required for a crime of possession is, at the very least, awareness of the possession" (People v Sanchez, 110 AD2d 665 [2d Dept 1985]).

Knowing possession of tangible property may in the appropriate circumstances be inferred from evidence showing that the defendant had the property in his physical possession, or that he "exercised 'dominion or control' over the property by a sufficient level of control over the area in which the [property] is found or over the person from whom the [property] is seized" (People v Manini, 79 NY2d 561, 573 [1992]). Dominion or control is necessarily knowing, and such "constructive possession" may

qualify as knowing possession (see Saunders, 85 NY2d at 344).

With respect to defendant's sufficiency challenge, we view the evidence adduced at trial in the light most favorable to the People. A rational trier of fact could have inferred beyond a reasonable doubt from the evidence -- including the fact that defendant had strewn his belongings through the car he was driving -- that defendant must have known the cards were in the car.

Defendant also challenges the jury charge as failing to convey that knowing possession of the cards was required. In fact, however, Supreme Court, when defining "to possess" -- as that term is used in the definition of second-degree criminal possession of a forged instrument -- accurately instructed the jury that "to possess" means to have physical possession of or "to exert a knowing dominion or control over [the forged instrument]" (emphasis added).¹ Supreme Court's jury charge, which in this manner expressly conveyed the requirement that possession be knowing, was not in error merely because it failed to append the word "knowing" each time the word "possession" was used, for example in the explanation of the Penal Law § 170.27

¹ In adding the word "knowing" before "dominion or control over," Supreme Court went further, by way of clarification, than the Criminal Jury Instructions recommend. The CJI charge merely states that "POSSESS means to have physical possession or otherwise to exercise dominion [or] control over tangible property" (CJI 2d [NY] Penal Law § 170.25), echoing the statutory definition (see Penal Law 10.00 [8]).

presumption. Indeed, such a charge might in this case have run the risk of confusing the jury, by suggesting that it could not infer the requisite knowing possession from constructive possession. A reasonable juror, hearing the whole charge, would have understood that the Penal Law § 170.27 presumption -- that a person who possesses two or more forged instruments purporting to be credit or debit cards knows that they are forged and intends to defraud, deceive or injure another -- only applies if the person knowingly possesses the cards.

Accordingly, the order of the Appellate Division should be affirmed.

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Order affirmed. Opinion by Judge Pigott. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith and Jones concur.

Decided February 17, 2011