

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

TIMOTHY R. BAUGH,

Appellant.

No. 42015-5-II

UNPUBLISHED OPINION

Armstrong, J. — Timothy Baugh appeals his conviction of one count of unlawful possession of a controlled substance. He contends that the State failed to present sufficient evidence to prove actual or constructive possession of the controlled substance, cocaine. Because sufficient evidence supported the conviction, we affirm.

FACTS

On April 21, 2010, Fife Police Department officers responded to a report of domestic violence at the Sherwood Apartments complex in Fife, Washington. The caller reported that a man involved in the dispute was associated with a red Cadillac. When the officers arrived, they approached a man standing next to a red Cadillac. When the man saw the officers approaching, he immediately turned and walked away. The officers identified themselves and directed the man to stop, but he continued walking across the parking lot. According to the officers' testimony, the man walked between two parked cars, stopped, looked around and down, then turned and walked back toward the officers. The officers then placed the man, Baugh, into custody.

When the officers went to the area between the cars where Baugh had stopped, they found a wadded up napkin lying on the ground. Inside the napkin was a small amount of cocaine.

Neither officer saw Baugh drop the napkin on the ground or could state how the napkin or drugs got there.

During a search incident to arrest, the officers found several “wadded up” napkins in Baugh’s pockets similar to the napkin containing the cocaine. Report of Proceedings at 108, 152-53. The officers did not find any other drugs or contraband when they searched Baugh incident to arrest.

The State charged Baugh with one count of unlawful possession of a controlled substance.¹ Baugh moved to dismiss the charges after the State rested its case-in-chief, arguing that the State failed to prove that he possessed drugs. The trial court denied the motion.

The jury found Baugh guilty as charged. Baugh appeals.

ANALYSIS

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the State’s evidence and all reasonable inferences that a trier of fact can draw from that evidence. *Salinas*, 119 Wn.2d at 201. Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Under RCW 69.50.4013(1),² to prove that Baugh committed the crime of unlawful

¹ Contrary to RCW 69.50.4013(1).

² RCW 69.50.4013(1) states:

It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

possession of a controlled substance, the State was required to prove that Baugh possessed a controlled substance³ without a valid prescription or other authorization.

Possession may be actual or constructive. Actual possession of contraband means that the goods are in the personal custody of the person charged with possession; whereas, constructive possession⁴ means that the person charged with possession has dominion and control over the goods. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969).

Here, viewing the evidence in the light most favorable to the State and drawing all reasonable inferences therefrom, the State produced sufficient evidence from which a rational trier of fact could find actual possession of the cocaine. Baugh walked to the location where the cocaine was found, away from the location of his car. He ignored police commands to stop and return to their location. The type of napkin in which the cocaine was contained matched the napkins found in his pocket during the search incident to arrest. The circumstantial evidence is sufficient to allow a juror to infer that Baugh actually possessed the cocaine at the time the officers arrived.

³ Cocaine is a controlled substance. RCW 69.50.101(d) (“Controlled substance” means “a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.”); RCW 69.50.206(b)(4) (cocaine found under Schedule II).

⁴ To determine whether there is constructive possession, courts examine the “totality of the situation” to ascertain if substantial evidence exists that tends to establish circumstances from which the trier of fact can reasonably infer the defendant had dominion and control over the contraband. *State v. Partin*, 88 Wn.2d 899, 906, 567 P.2d 1136 (1977) (emphasis omitted). Constructive possession may be proved by circumstantial evidence. *State v. Sanders*, 7 Wn. App. 891, 893, 503 P.2d 467 (1972). Proof of the defendant’s exclusive control is not necessary to establish constructive possession; the defendant’s mere proximity to the contraband is insufficient. *State v. Davis*, 117 Wn. App. 702, 708-09, 72 P.3d 1134 (2003).

No. 42015-5-II

Because there was sufficient evidence to show actual possession, we do not address whether the State presented sufficient evidence to show constructive possession.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Van Deren, J.

Penoyar, C.J.