

IN THE SUPREME COURT OF THE STATE OF DELAWARE

OLIVER CARTER,)
) No. 265, 2003
 Respondent Below,)
 Appellant,) Court Below: Family Court
 v.) of the State of Delaware in
) and for New Castle County
)
 STATE OF DELAWARE,) File No. 0301015075
)
 Plaintiff Below,)
 Appellee.)

Submitted: October 22, 2003
Decided: November 12, 2003

Before **VEASEY**, Chief Justice, **STEELE** and **JACOBS**, Justices.

ORDER

This 12th day of November, 2003, upon consideration of the parties' briefs, it appears to this Court that:

1. On January 10, 2003 at 6:00 a.m., the Wilmington Police SWAT team executed a search warrant and entered the Carter residence to locate a stolen gun. The warrant authorized police to search Oliver Carter's room. When the SWAT team entered his bedroom, Carter was wearing only a pair of boxer shorts. Detective Ciritella reached for a pair of pants located immediately next to the bed. He checked the pants pockets before giving them to Carter to wear during the execution of the warrant and discovered seven small glassine bags containing cocaine and one bag of marijuana. The State later charged Carter with one count

of possession with intent to deliver crack cocaine, one count of possession of drug paraphernalia, and one count of possession of marijuana.

2. At trial, Carter's father, Ernest Muhammad, testified that his twenty-one year old son and twenty-two year old nephew, who also lived at the house, often shared clothes with Carter because they were similar in size. In addition, Muhammad testified that although it was Carter's bedroom, the two other men often used the room to watch television.

3. After a bench trial, the judge found Carter delinquent of possession of marijuana and the lesser-included offense of misdemeanor possession of crack cocaine. The judge sentenced him to Level III probation for twelve months. Carter's appeal alleges that the record contains insufficient evidence to support the finding that he was delinquent of Possession of Crack Cocaine¹ and Possession of Marijuana.²

4. We review the evidence *de novo* in the light most favorable to the State to determine whether any rational fact finder could have found the essential elements of unlawful possession of marijuana and cocaine beyond a reasonable doubt.³ In addition to its ordinary meaning, "possession" also includes the location in or about the defendant's premises, belonging to, or otherwise within the

¹ 16 Del. C. § 4753

² 16 Del. C. § 4754 (a).

³ See *McKnight v. State*, 753 A.2d 436, 437 (Del. 2000) (Bench trial).

defendant's reasonable control.⁴ Constructive possession may be proved exclusively through circumstantial evidence.⁵

5. In the matter *sub judice* there was sufficient evidence for the trial judge, as the sole trier of fact, to find Carter guilty of unlawful possession of marijuana and cocaine beyond a reasonable doubt. Carter's father testified that only Carter slept in the bedroom and that Carter's older brother and cousin generally slept in the basement. The father also testified that the men often shared clothes and shared the television in the bedroom. When the police executed the search warrant at 6:00 a.m., Carter's brother and cousin were asleep in the basement, and the police found Carter alone and asleep in the bedroom.

6. While alternative explanations may exist about the drugs' ownership, mere possibilities do not undermine the trial judge's determination that Carter possessed the drugs. The location of the drugs in Carter's upstairs bedroom created a reasonable inference of possession,⁶ and the fact that the pants were found directly next to his bed at that hour is sufficient evidence from which a rational fact finder could conclude that the pants belonged to Carter. Accordingly, the record contained sufficient evidence to support the adjudication.

⁴ 16 *Del. C.* § 4701(30).

⁵ *Skinner v. State*, 575 A.2d 1108, 1121 (Del. 1990).

⁶ 16 *Del. C.* §4701 (30).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court be, and hereby is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Justice