

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |   |                                 |
|--------------------|---|---------------------------------|
| DWAYNE E. WRIGHT,  | § |                                 |
|                    | § | No. 487, 2013                   |
| Defendant Below-   | § |                                 |
| Appellant,         | § | Court Below: Superior Court     |
|                    | § | of the State of Delaware in and |
| v.                 | § | for New Castle County           |
|                    | § |                                 |
| STATE OF DELAWARE, | § | No. 1206005342                  |
|                    | § |                                 |
| Plaintiff Below-   | § |                                 |
| Appellee.          | § |                                 |

Submitted: January 9, 2014

Decided: March 7, 2014

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

***ORDER***

On this 7<sup>th</sup> day of March 2014, it appears to the Court that:

(1) Defendant-Below/Appellant Dwayne Wright appeals from a jury conviction in the Superior Court of two counts of Drug Dealing. Wright raises one claim on appeal. Wright contends that that the trial court erred when it denied his Motion for Judgment of Acquittal. We find no merit to Wright's appeal and affirm.

(2) In 2012 and in response to a complaint about drug sales in the neighborhood, Officer Erin Metzner conducted surveillance using binoculars from a second-story classroom in the Bancroft Elementary School in Wilmington. Officer Metzner saw Wright, who was standing near the school, conducting hand-

to-hand drug transactions. According to Officer Metzner, Wright “was approached by several different subjects,” who would hand him what appeared to be currency in exchange for a small, imperceptible object.<sup>1</sup> Officer Metzner then saw Wright walk about thirty feet to a trashcan, lean over at the waist and place an object inside the trashcan and walk back. He later testified that the object was small and dark, but he could not tell what it was.

(3) Officer Metzner then had two other officers detain Wright. The officers conducted a pat-down search of Wright and two other individuals who were with him. But they did not find any weapons or other contraband. Officer Metzner also advised the other officers to search the trashcan. Officers discovered a common black garbage bag containing six sandwich bags of marijuana and eleven small bags of heroin in the trash can. The State did not provide any DNA, fingerprint, or other physical evidence linking the bag in the trashcan to Wright. The officers then arrested Wright, conducted a search incident to an arrest, and found \$293 in cash in Wright’s pockets but no weapons, drugs, paraphernalia, or other contraband.

(4) Wright was indicted on two counts of drug dealing and one count of loitering. The State entered a *nolle prosequi* on the loitering charge and the case went to a jury trial in the Superior Court. After an initial mistrial, Wright moved

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<sup>1</sup> Appellant’s Op. Br. Appendix at A19.

for a judgment of acquittal at the end of the second jury trial. The trial court denied Wright's motion. Thereafter, the jury convicted Wright on both counts. The court declared Wright a Habitual Offender and sentenced him to five years in prison. This appeal followed.

(5) Wright contends that the Superior Court erred when it denied his Motion for Acquittal because the State failed to prove that Wright had constructive possession of the drugs found on the scene. "We review *de novo* a trial judge's denial of a criminal defendant's Motion for Judgment of Acquittal to determine whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could have found the essential elements of the crimes charged *beyond a reasonable doubt*."<sup>2</sup>

(6) "In order to establish constructive possession, the State must present evidence that the defendant: (1) knew the location of the drugs; (2) had the ability to exercise dominion and control over the drugs; and (3) intended to guide the destiny of the drugs."<sup>3</sup> Evidence of a defendant's constructive possession may consist of direct or circumstantial evidence.<sup>4</sup> We have found that "a prima facie case of constructive possession may be established if there is 'evidence linking the

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<sup>2</sup> *White v. State*, 906 A.2d 82, 85 (Del. 2006) (citing *Priest v. State*, 879 A.2d 575, 577 (Del. 2005)).

<sup>3</sup> *Hoey v. State*, 689 A.2d 1177, 1181 (Del. 1997) (citing *McNulty v. State*, 655 A.2d 1214, 1217 (Del. 1995)).

<sup>4</sup> *White*, 906 A.2d at 86 (quoting *Hoey*, 689 A.2d at 1181).

accused to an ongoing criminal operation of which possession is a part.”<sup>5</sup> But “mere proximity to, or awareness of drugs is not sufficient to establish constructive possession.”<sup>6</sup> Nor is a mere suspicion sufficient.<sup>7</sup>

(7) Wright argues that the circumstantial evidence presented by the State was insufficient for a reasonable jury to find constructive possession beyond a reasonable doubt because the State did not provide any physical evidence, such as fingerprints, DNA, or drugs or paraphernalia on his person, linking Wright to the drugs in the bag. In support of his argument, Wright cites cases from other jurisdictions that overturned jury convictions based on insufficient evidence. In *Lindsey v. State*, the Florida District Court of Appeal overturned a conviction for failure to prove constructive possession of a passenger-defendant where drugs were found along the highway following a high-speed chase with the driver.<sup>8</sup> The court explained that because “the contraband is found in a public place, more than mere proximity to the defendant must be shown to sustain a conviction.”<sup>9</sup> It also held that the State failed to establish “dominion and control over the bag of contraband.”<sup>10</sup> And in *State v. Brunori*, the Connecticut Appellate Court held that police testimony that witnessed the defendant bend down in public place with his

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<sup>5</sup> *Hoey*, 689 A.2d at 1181 (quoting *McNulty*, 655 A.2d at 1217).

<sup>6</sup> *White*, 906 A.2d at 86.

<sup>7</sup> *Id.* at 89.

<sup>8</sup> *Lindsey v. State*, 793 So. 2d 1165, 1167 (Fla. Dist. Ct. App. 2001).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

arm stretched in proximate area in which police subsequently discovered cocaine and a hypodermic needle was insufficient to support constructive possession.<sup>11</sup> The court explained that the State failed to meet its burden because the officer did not testify that he actually witnessed the defendant discarding anything as he bent over.<sup>12</sup> Rather, the testimony could establish at best that the defendant bent down as if he were dropping something.<sup>13</sup>

(8) Essentially, Wright is arguing that his conviction must be overturned because it is only supported by circumstantial evidence. But “this Court no longer distinguishes between direct and circumstantial evidence in a conviction context.”<sup>14</sup> And unlike the defendants in *Lindsey* and *Brunori*, the record demonstrates more than a suspicion or possibility that Wright had constructive possession of the drugs. Officer Metzner watched Wright lean into the trashcan and place a dark object inside. He also monitored Wright conducting hand-to-hand transactions. Therefore, Wright’s argument that the State failed to prove constructive possession is without merit.

(9) In this case, the trial court did not err when it denied Wright’s Motion for Judgment of Acquittal. Viewing the facts in the light most favorable to the State, a reasonable juror could find beyond a reasonable doubt that Wright had

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<sup>11</sup> *State v. Brunori*, 578 A.2d 139, 142–43 (Conn. App. Ct. 1990).

<sup>12</sup> *Id.* at 143.

<sup>13</sup> *Id.*

<sup>14</sup> *Hoey*, 689 A.2d at 1181.

constructive possession of the bag of heroin and marijuana. Officer Metzner observed Wright reach into the trashcan that contained the drugs. That permitted a reasonable inference that Wright knew of the location of the drugs. Further, Wright bent over into the trashcan and placed a dark object inside. The State demonstrated that by bending over Wright could touch and control anything inside the trashcan, which included the drugs. Finally, it is not unreasonable to infer that Wright's hand-to-hand transactions observed by Officer Metzner showed that he was controlling the destiny of the drugs in the trashcan. Therefore, the State established that Wright's possession of the drugs was more than a mere suspicion.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice