

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES THOMAS,¹)
) No. 438, 2001
 Defendant Below,)
 Appellant,) Court Below: Family Court
 v.) of the State of Delaware in
) and for New Castle County
)
 STATE OF DELAWARE,) C.A. No. 0105016911
)
 Plaintiff Below,)
 Appellee.)

Submitted: February 12, 2002
Decided: April 9, 2002

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

ORDER

This 9th day of April 2002, upon consideration of the briefs of the parties, it appears to the Court that:

1) In July 2001 Charles Thomas appeared in the Family Court on charges of Trafficking in Cocaine, Possession with Intent to Deliver a Narcotic Schedule II Controlled Substance, Maintaining a Vehicle for Keeping Controlled Substances and Conspiracy in the Second Degree. A Family Court judge found Thomas delinquent after trial on all charges except the single count of Maintaining a Vehicle for Keeping Controlled Substances. This is Thomas' direct appeal.

¹ A pseudonym assigned by this Court pursuant to SUPR. CT R. 7(d).

2) On May 21, 2001, officers of the Wilmington Police Department, acting on a tip from a “past proven and reliable informant,” arrested Appellant Thomas as he and Alberto Vargas stepped out of an automobile registered to Vargas. The officers observed a clear plastic bag containing approximately 28 grams of crack cocaine resting in plain view on the center console between the two front seats of Vargas’ car. Underneath that bag, they found a second plastic bag containing approximately 14 grams of powder cocaine. In addition, the officers found several small bags of cocaine and more than \$1,700 in small denominations of cash on Vargas. They did not find drugs or cash on Thomas’ person.

3) Thomas argues in this appeal that the record contains insufficient evidence to support a finding that he was delinquent of the trafficking, possession, and conspiracy charges. He did not so move at trial. A motion for judgment of acquittal on the basis that the evidence is insufficient to sustain a conviction must be presented to the Family Court after the evidence on either side is closed.² We may review an insufficiency of the evidence claim only if the defendant has first presented it to the trial court under Rule 29.³ Absent a Rule 29 motion, the claim is waived unless the trial court committed plain error requiring review in the interest

² Fam. Ct. Crim. R. 29

³ *Monroe v. State*, 652, A.2d 560, 563 (Del. 1995).

of justice.⁴ After careful review, we find that the facts before us do not give rise to plain error.

4) Moreover, we find that the record clearly contains sufficient evidence to sustain Thomas' convictions. Evidence is sufficient to support a conviction when "any rational trier of fact, viewing the evidence in the light most favorable to the State, could find [a] defendant guilty beyond a reasonable doubt."⁵ The trial judge found that Thomas had constructive possession of the cocaine in Vargas' car when it found him delinquent on the Possession with Intent to Distribute and Trafficking charges. We have held that the constructive possession of a drug by a passenger in a car requires more than simple proximity to or knowledge of the drugs in the vehicle.⁶ The State must prove that the passenger-defendant had the conscious "dominion, control, and authority" over the drugs.⁷ However, we have also held that the State may establish a prima facie case of constructive possession by demonstrating knowledge of and proximity to the drugs if there is also evidence linking the accused to an ongoing criminal operation of which possession is a part.⁸

5) The record contains sufficient evidence for the trial judge to infer that that Thomas was in constructive possession of the cocaine in question. Based on the testimony of both the State's witnesses and Thomas, a reasonable trier of fact

⁴ *Id.*

⁵ *Robertson v. State*, 695 A.2d 1345, 1355 (Del. 1991).

⁶ Holden at 321.

could conclude that Thomas was not only aware of the drugs immediately beside him in plain view on the console separating him from the driver Vargas, but that he was also linked to the ongoing criminal operation of distribution of cocaine. The trial judge noted evidence that Thomas accompanied Vargas to retrieve the cocaine, that Vargas showed Thomas the drugs and placed them on the console, and that they then traveled to the location where, according to the police informant, a drug transaction would take place. Once there, Vargas and Thomas left the car together. In addition, Officer Michael Rodriguez of the Wilmington Police testified that, in his expert opinion, using a juvenile characterized drug transactions of this nature. We find these facts to be sufficient evidence for the trial judge to conclude that Thomas was linked to an ongoing criminal operation. For similar reasons, we also find it sufficient to satisfy the delinquency finding on the conspiracy charge.

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

⁷ Holden at 321.

⁸ McNulty at 1217.