

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAFAEL L. SAVINON,	§	
	§	No. 330, 2006
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
STATE OF DELAWARE,	§	ID # 0510012847
	§	
Plaintiff Below,	§	
Appellee.	§	
	§	

Submitted: January 2, 2007

Decided: March 15, 2007

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

ORDER

This 15th day of March 2007, it appears to the Court that:

(1) Appellant Rafael L. Savinon appeals his convictions in the Superior Court of drug trafficking and related offenses.¹ Savinon contends that the State failed to produce sufficient evidence to prove that he had dominion and control over the drugs found in a vehicle which Savinon was a

¹ Savinon appeals his conviction of the following charges: Trafficking in Cocaine over 100 grams, Use of a Vehicle for Keeping Controlled Substances, Possession with Intent to Deliver; Conspiracy Second Degree, Possession, and Possession of Drug Paraphernalia. He does not appeal the remainder of his convictions.

passenger. He claims that the Superior Court erred in denying his motion for a judgment of acquittal. We find no merit to his argument and affirm.

(2) In October 2005, the Delaware State Police began investigating Savinon regarding suspected drug activities. On October 7, 2005, Detective Allison Meadows, posing as a drug purchaser, called Savinon and arranged to purchase one ounce of cocaine. Savinon instructed Meadows to go to Building 82 of the Abbey Walk Apartments. Meadows went to that location, met with Savinon and Francisco Amparo-Benites,² and purchased from Savinon 27 grams of cocaine for \$1,200. Meadows set up another purchase from Savinon on October 10. On that date, Savinon sold to Meadows almost one ounce of cocaine as well as some percocet pills, marijuana, and crack cocaine. Savinon was not arrested for either transaction.

(3) On October 17, 2005, Meadows contacted Savinon and asked if he could sell her four ounces of cocaine. He answered affirmatively. Meadows told Savinon that she would get the money together for the sale and then get back to him. Savinon then contacted Meadows again and

² Amparo-Benites was apparently Savinon's supplier.

confirmed that he would be able to supply her with four ounces, but told Meadows that he may have to go to New York to get it.

(4) At approximately 8:00 p.m. that same night, police observed Savinon leave his building, go to his car, remove a package and enter the passenger side of another car. Police ran the license plate number and discovered that the car belonged to Aligia Hughes, who was also the driver at that time.

(5) The police followed the vehicle through New Jersey up to the George Washington Bridge, where the car entered into New York at approximately 12:30 a.m. The police waited at the toll for the car to cross back over the bridge. At least one hour later, as he approached the Delaware Memorial Bridge, Hughes was stopped while traveling 77 m.p.h.³ Officer Ritchie, who made the stop, questioned Hughes and Savinon separately. Hughes told Ritchie that they were returning from Cherry Hill, N.J. Savinon, however, told Ritchie that they were returning from visiting his children in New York. A consent search of the vehicle was performed and over four ounces of cocaine were found in the center console.

³ The defendant argues that it takes 2.5 hours to get from New York to the Delaware Memorial Bridge and therefore, Savinon could not have been coming from New York. The times that the officers testified to, however, were approximated. Moreover, the vehicle was stopped for traveling 27 m.p.h. over the speed limit. Thus, it was not impossible under these facts to find that Savinon was returning from New York.

(6) Savinon argues that the trial court erred by denying his motion for judgment of acquittal on the drug trafficking and related offenses. We review a trial court’s denial of a motion for judgment of acquittal *de novo* “to determine ‘whether 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 of all the elements of the crime.’”⁴ In doing so, we do not distinguish between direct and circumstantial evidence.⁵

(7) Savinon argues that the evidence produced by the State shows, at most, that he was present in Hughes’ vehicle and that, unbeknownst to him, cocaine was stored in the vehicle’s center console. The State presented no evidence, according to Savinon, that connected him to the drugs found.

(8) Possession is a necessary element of trafficking in illegal drugs. Possession can be actual or constructive.⁶ If the State proceeds under a constructive possession theory, “it must produce evidence of a defendant’s ‘dominion and control’ over the substance.”⁷ Where the defendant is the passenger of an automobile belonging to someone else, simply being near

⁴ *Hardin v. State*, 844 A.2d 982, 989 (Del. 2004) (citing *Cline v. State*, 720 A.2d 891, 892 (Del. 1998)).

⁵ *Id.*

⁶ See 16 *Del. C.* §4753A; *State v. Hefton*, 586 A.2d 1195, 1198 (Del. 1988).

⁷ *McNulty v. State*, 655 A.2d 1214, 1217 (Del. 1995).

the drugs is insufficient to show dominion and control.⁸ But, proximity to the drugs combined with “evidence linking the accused to an ongoing criminal operation which possession in part” is sufficient to establish a prima facie case of constructive possession.⁹ In *McNulty v. State*, we held that the State met the evidentiary burden required to prove constructive possession where the defendant was in close proximity to the drugs, the defendant was the only person who could have positively identified the prospective buyer of the drugs, and the defendant was acting suspiciously upon realizing a police unit was in pursuit.¹⁰

(9) *McNulty* is directly on point. Here, the drugs were found in the center console of the vehicle. Savinon, who was seated in the front passenger seat, had direct access to the center console. In addition to Savinon being physically close to the drugs, there was evidence that he was part of an ongoing criminal operation involving illegal drugs. Meadows had requested that Savinon supply her with four ounces of cocaine. Savinon told Meadows that he may have to go to New York to get that amount of cocaine. The police found just over four ounces of cocaine in the vehicle after they

⁸ *Id.* (“The ‘possession’ of a drug by a passenger in an automobile [requires, however,] . . . more than proximity to, or awareness of, the drug in the car.”)

⁹ *Id.* (citing *Earle v. United States*, 612 A.2d 1258, 1265-66 (D.C. Cir. 1992)).

¹⁰ *Id.* at 1218.

saw Savinon and his companion enter and return from New York. A rational trier of fact, viewing the evidence in the light most favorable to the State, could find Savinon guilty of the offenses charged beyond a reasonable doubt. Therefore, the Superior Court did not err in denying Savinon's motion for judgment of acquittal.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice