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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1881**

State of Minnesota,
Respondent,

vs.

Yusuf M. Ali,
Appellant.

**Filed September 22, 2009
Affirmed
Hudson, Judge**

Olmsted County District Court
File No. 55-CR-07-7521

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2134; and

Mark A. Ostrem, Olmsted County Attorney, Ross L. Leuning, Assistant County Attorney, 151 Southeast Fourth Street, Rochester, Minnesota 55904 (for respondent)

Marie Wolf, Interim Chief Public Defender, Theodora Gaitas, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, Minnesota 55104 (for appellant)

Considered and decided by Lansing, Presiding Judge; Peterson, Judge; and
Hudson, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant challenges the sufficiency of the evidence supporting his conviction for fifth-degree controlled substance crime. Because the evidence was sufficient for the jury to conclude that appellant knowingly possessed cocaine, we affirm.

FACTS

Dina Baumann was the resident manager at the Trail Ridge Estate Apartments in Rochester. On August 7, 2007, Baumann called the police after hearing a television playing in an apartment that was supposed to be vacant. Rochester police officers John Swenson and Brent Peterson responded to Baumann's call. Baumann and the officers entered the apartment and found four men "lounging" inside. One of the men—appellant Yusuf Ali—was sitting in a chair next to a window with his hands in his lap.

After identifying the four men and securing the apartment, the officers told the men to leave. When appellant stood up from his chair, a small baggie containing a white substance fell from his lap onto the floor in front of him. Swenson immediately stopped appellant and picked up the baggie. Swenson believed that the baggie—a torn corner from a sandwich bag—was a typical "packaging tool for narcotics." The white substance was subsequently identified as cocaine.

Appellant was arrested and charged with fifth-degree controlled substance crime in violation of Minn. Stat. § 152.025, subd. 2(1) (2006). After a jury trial, appellant was convicted and sentenced to 13 months of imprisonment. The district court stayed the

execution of appellant's sentence, placing appellant on probation and ordering appellant to serve six months in jail. This appeal follows.

D E C I S I O N

Appellant challenges the sufficiency of the evidence supporting his conviction. “When reviewing a claim for sufficiency of the evidence, we are limited to ascertaining whether, given the facts in the record and any legitimate inferences that can be drawn from those facts, a jury could reasonably find that the defendant was guilty of the charged offense.” *State v. Asfeld*, 662 N.W.2d 534, 544 (Minn. 2003) (quotation omitted). The determination must be made under the assumption that the jury believed the state's witnesses and disbelieved any contrary evidence, and we must view the evidence in the light most favorable to conviction. *State v. Bias*, 419 N.W.2d 480, 484 (Minn. 1988).

A person commits fifth-degree controlled substance crime if the person “unlawfully possesses one or more mixtures containing a controlled substance.” Minn. Stat. § 152.025, subd. 2(1). Possession of a controlled substance may be proved either by actual physical possession of the drug or by constructive possession. *State v. Denison*, 607 N.W.2d 796, 799 (Minn. App. 2000), *review denied* (Minn. June 13, 2000). To establish actual physical possession of a controlled substance, the state is required to show that the defendant knowingly possessed the substance. *See State v. Papadakis*, 643 N.W.2d 349, 354 (Minn. App. 2002) (articulating the elements of possession).

Appellant argues that the evidence was insufficient for the jury to conclude that he knowingly possessed the cocaine. We disagree. At trial, Baumann and Swenson both testified that appellant was sitting in a chair with his hands in his lap and that when

appellant stood up, the baggie fell from his lap. Swenson further testified that he and Officer Peterson were in the apartment for approximately 20 minutes, during which time Swenson was scanning the area looking for signs of drug paraphernalia. Swenson did not observe anything at appellant's feet until appellant stood up and the baggie fell from his lap. From this evidence, the jury could legitimately infer that appellant was sitting in the chair with the baggie of cocaine under his hands and that when appellant stood up, either he purposefully discarded the cocaine or the cocaine inadvertently slipped from his control. Accordingly, when the evidence is viewed in the light most favorable to the conviction, there was sufficient evidence for the jury to conclude that appellant knowingly possessed the cocaine.

Affirmed.