

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
JAY HENDERSON	:	
	:	
Appellant	:	No. 1021 EDA 2023

Appeal from the Judgment of Sentence Entered April 11, 2023  
In the Court of Common Pleas of Philadelphia County Criminal Division at  
No(s): CP-51-CR-0000059-2021

BEFORE: STABILE, J., KUNSELMAN, J., and STEVENS, P.J.E.\*

MEMORANDUM BY STEVENS, P.J.E.:

**FILED JANUARY 22, 2024**

Jay Henderson appeals from the April 11, 2023 judgment of sentence of 2 years' probation imposed after he was found guilty in a bench trial of possession of a controlled substance.<sup>1</sup> After careful review, we affirm the judgment of sentence.

The trial court summarized the relevant facts and procedural history of this case as follows:

On July 23, 20[20] at 4:15 p.m., Officer Hagins [] responded to the area of 1800 E. Madison Street in Philadelphia to conduct a narcotics operation on the street. After receiving information from Officer Campbell []. Officer Hagins stopped Appellant in a vehicle. Officer Hagins testified that upon stopping Appellant's vehicle, he instructed Appellant to step out

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\* Former Justice specially assigned to the Superior Court.

<sup>1</sup> 35 P.S. §§ 780-113(a)(16).

of the car. In the seat where Appellant sat was a clear plastic bag. Officer Hagins recovered the bag, which contained twenty-three blue tinted containers and five clear plastic containers. All containers held a chunky white substance, alleged crack cocaine. After Officer Hagins recovered the drugs, Officer Campbell conducted a NIK Test G on all the containers, which tested positive for cocaine base. Also recovered from Appellant's person was \$ 905.

Appellant was arrested and charged with intentional possession of a controlled substance by person not registered, along with other charges. On January 12, 2023, the Commonwealth **nolle prossed** all but intentional possession of a controlled substance. The Honorable Tamika N. Washington of the Philadelphia Court of Common Pleas presided over the present case in the form of a bench trial and found Appellant guilty of the sole charge. Appellant was sentenced to a maximum period of 2 years of probation to be supervised by the Adult Parole and Probation Department. On April 12, 2023, Appellant filed an appeal to the Superior Court. On May 2, 2023, this court ordered Appellant [to] file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). On June 20, 2023, this court informed the Superior Court of Appellant's outstanding Statement due to the unavailability of Appellant's attorney based on a severe car accident injury. On June 28, 2023, Appellant filed a concise statement of matters complained of on appeal pursuant to Pa. R.A.P. 1925(b). On July 19, 2023, the Superior Court notified this court that no action would be taken in reference to Appellant's late-filed statement, and this court similarly is not pursuing the issue.

Trial court opinion, 8/2/23 at 1-2 (citations, extraneous capitalization and some parentheticals omitted). On August 2, 2023, the trial court filed its Rule 1925(a) opinion.

Appellant raises the following issue for our review:

- I . Whether the evidence introduced at trial and all reasonable inferences derived from the evidentiary record, viewed in the light most favorable to the Commonwealth as verdict winner, is insufficient to establish all elements of [possession of a controlled substance] beyond a reasonable doubt?

Appellant's brief at 6.

Our standard of review in evaluating a challenge to the sufficiency of the evidence is as follows:

In reviewing the sufficiency of the evidence, we must determine whether the evidence admitted at trial and all reasonable inferences drawn therefrom, viewed in the light most favorable to the Commonwealth as verdict winner, is sufficient to prove every element of the offense beyond a reasonable doubt. As an appellate court, we may not re-weigh the evidence and substitute our judgment for that of the fact-finder. Any question of doubt is for the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact can be drawn from the combined circumstances.

***Commonwealth v. Thomas***, 988 A.2d 669, 670 (Pa.Super. 2009) (citations omitted), ***appeal denied***, 4 A.3d 1054 (Pa. 2010).

To sustain a conviction for the crime of possession of a controlled substance, the Commonwealth must prove that Appellant knowingly or intentionally possessed a controlled or counterfeit substance while not registered under this act. 35 P.S. § 780–113(a)(16).

Here, the crux of Appellant's claim is that the Commonwealth failed to prove that he was the individual in possession or control of the narcotics found in the vehicle because "[t]he ownership of the vehicle-in-question was never

established[;]" he "was not seen touching or manipulating the drugs[;]" and there were other individuals in the vehicle as well. Appellant's brief at 14. We disagree.

In situations where it cannot be proven that a suspect had the narcotics on his person, the Commonwealth is required to prove constructive possession. **Commonwealth v. Hopkins**, 67 A.3d 817, 820 (Pa.Super. 2013), **appeal denied**, 78 A.3d 1090 (Pa. 2013).

Constructive possession is a legal fiction, a pragmatic construct to deal with the realities of criminal law enforcement. Constructive possession is an inference arising from a set of facts that possession of the contraband was more likely than not. We have defined constructive possession as conscious dominion. We subsequently defined conscious dominion as the power to control the contraband and the intent to exercise that control.

**Commonwealth v. Brown**, 48 A.3d 426, 430 (Pa.Super. 2012) (citations and internal quotation marks omitted), **appeal denied**, 63 A.3d 1243 (Pa. 2013). As with any other element of a crime, the Commonwealth may sustain its burden of proving constructive possession by means of wholly circumstantial evidence. **Hopkins**, 67 A.3d at 820.

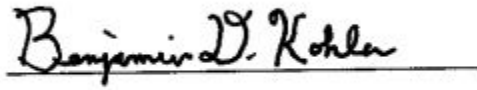
Viewing the evidence in the light most favorable to the Commonwealth as the verdict winner, we conclude that there was ample evidence to establish that Appellant had "the power to control the [narcotics] and the intent to exercise that control." **Brown**, 48 A.3d at 430. The record establishes that on the afternoon of July 23, 2020, Officer Hagins stopped a vehicle Appellant

was driving in the area of 1800 E. Madison Street in Philadelphia. Notes of testimony, 1/12/23 at 10-11. Officer Hagins testified that after instructing Appellant to step out of the vehicle, he observed him directly sitting on a clear plastic bag holding 28 separate containers of a substance that later tested positive for cocaine. ***Id.*** Appellant's contention that he cannot be found in constructive possession of these narcotics because they could have belonged to the "[t]hree or four other individuals [who were also] apprehended from the vehicle" is equally without merit. ***See*** Appellant's brief at 14. Courts in this Commonwealth have long recognized that two persons may constructively possess narcotics at the same time. ***Commonwealth v. Katona***, 191 A.3d 8, 12 (Pa.Super. 2018), ***affirmed***, 240 A.3d 463 (Pa. 2020); ***see also Commonwealth v. Johnson***, 26 A.3d 1078, 1094 (Pa. 2011) ("constructive possession may be found in one or more actors where the item [at] issue is in an area of joint control and equal access." (citation and internal quotation marks omitted)).

Based on the foregoing, we find that the Commonwealth presented sufficient evidence for the trial court, sitting as factfinder, to conclude that Appellant was guilty of possession of a controlled substance. Accordingly, Appellant's sufficiency claim must fail.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.  
Prothonotary

Date: 1/22/2024