

Circuit Court for Allegany County  
Case No. 01-K-17-18297

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2297

September Term, 2017

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NANCY KOSINSKI

v.

STATE OF MARYLAND

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Woodward, C.J.,  
Leahy,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: November 15, 2018

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a jury trial, in the Circuit Court for Allegany County, Nancy Kosinski, appellant, was convicted of illegal possession of Alprazolam. Kosinski’s sole claim on appeal is that there was insufficient evidence to sustain her conviction. For the reasons that follow, we affirm.

“The standard for our review of the sufficiency of the evidence is ‘whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Neal v. State*, 191 Md. App. 297, 314 (2010) (citation omitted). “The test is ‘not whether the evidence *should have or probably would have* persuaded the majority of the fact-finders but only whether it *possibly could have* persuaded *any* rational fact-finder.’” *Painter v. State*, 157 Md. App. 1, 11 (2004) (citations omitted) (emphasis in original). In applying the test, “[w]e defer to the fact finder’s ‘opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence.’” *Neal*, 191 Md. App. at 314 (citation omitted). We “consider circumstantial evidence as well as direct evidence” and note that “circumstantial evidence alone is ‘sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused.’” *Painter*, 157 Md. App. at 11 (citation omitted).

On appeal, Kosinski specifically asserts that there was insufficient evidence to support her conviction because the State failed to prove that she possessed the Alprazolam. For purposes of drug offenses, “possess” is defined by statute as the “exercise [of] actual or constructive dominion or control over a thing by one or more persons.” Md. Code Ann.,

Criminal Law § 5-101(v). “Control” is defined as “the exercise of a restraining or directing influence over the thing allegedly possessed.” *Handy v. State*, 175 Md. App. 538, 563 (2007) (quotation marks and citations omitted). Control may be actual or constructive, joint or individual. *Id.* “[K]nowledge of the presence of an object is generally a prerequisite to the exercise of dominion and control.” *Id.* (citation omitted). Although “possession is determined by examining the facts and circumstances of each case,” the Court of Appeals has found several factors to be relevant in the determination of whether an individual was in possession of the CDS, including the defendant’s proximity to the drugs, whether the drugs were in plain view of and/or accessible to the defendant, whether there was indicia of mutual use and enjoyment of the drugs, and whether the defendant has an ownership or possessory interest in the location where the police discovered the drugs. *Smith v. State*, 415 Md. 174, 198-99 (2010) (citations omitted).

Viewed in a light most favorable to the State, the evidence at trial established that (1) the police executed a search warrant at a home owned by Kosinski; (2) when the police entered the residence, Kosinski was lying on a couch in the living room and two other people were in an upstairs bedroom; (3) the police found a hollow ceramic figurine on the shelf in the kitchen; (4) hidden inside the ceramic figurine were four Alprazolam pills, a razor blade, and a short straw inside a plastic bag; and (5) Kosinski admitted that the figurine belonged to her. Based on this evidence, we are persuaded that the jury could find that Kosinski exercised dominion and control over the Alprazolam pills.

In arguing that there was insufficient evidence of possession, appellant relies on *Moye v. State*, 369 Md. 2 (2002) and *Taylor v. State*, 346 Md. 452 (1997). Both cases are

distinguishable. In *Moye*, the police observed the appellant inside the home where the contraband was seized, but there was no evidence that he had a possessory interest in the home, nor any evidence indicating how long he had been there. *Moye*, 369 Md. at 6. Similarly, in *Taylor*, the appellant and several other people were inside a hotel room that smelled like marijuana smoke. But, there was no evidence that the appellant had smoked marijuana and all of the drugs that were recovered were concealed in a container belonging to another person in the room. *Taylor*, 436 Md. at 455-56, 59.

Here, however, Kosinski was not merely a joint occupant of the residence. Rather, she owned the home. And, although two people were also inside the residence when the search warrant was executed, they did not own the home and there was no evidence that they were connected to the drugs. In fact, the only evidence that they, or anyone else, had any possessory interest in the home was Kosinski's testimony to that effect, which the jury was free to disbelieve. More importantly, the drugs were not only found in the home, but inside of a ceramic figurine that belonged solely to Kosinski.

Kosinski nevertheless asserts that it is possible that the drugs were placed in the figurine by someone else. But it was up to the jury to “choose among differing inferences that might possibly be made from a factual situation and [a reviewing court] must give deference to all reasonable inferences the fact-finder draws, regardless of whether we would have chosen a different reasonable inference.” *Suddith v. State*, 379 Md. 425, 430 (2004) (quotation marks and citations omitted); *see also Smith, supra*, 374 at 549 n.10 (noting that if the finder-of-fact were not permitted to choose between conflicting inferences “possession of contraband could be immunized merely by placing it where

conflicting inferences of control or knowledge might exist”). Consequently, the State presented sufficient evidence to sustain Kosinski’s conviction.

**JUDGMENT OF THE CIRCUIT  
COURT FOR ALLEGANY COUNTY  
AFFIRMED. COSTS TO BE PAID  
BY APPELLANT.**