

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 28, 2004

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 04-0154-CR

Cir. Ct. No. 02CF000087

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DARCUS B. ROBINSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marathon County:
DOROTHY L. BAIN, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Darcus Robinson appeals a judgment convicting him of possessing cocaine with intent to deliver, maintaining a drug trafficking place and possessing a controlled substance without tax stamps, all as a party to a crime. He argues that the State failed to present sufficient evidence that he actually possessed the cocaine found in his residence or that he knowingly

maintained a place used for manufacturing, keeping or delivering drugs. We reject these arguments and affirm the judgment.

¶2 When reviewing the sufficiency of the evidence to support a conviction, this court must view the evidence most favorably to the State and reverse only if the direct and circumstantial evidence is so insufficient in probative value that no reasonable trier of fact could have found guilt beyond a reasonable doubt. See *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). We must also accept any reasonable inference the jury may have drawn from the facts. *Id.* at 506-07.

¶3 The State presented overwhelming evidence that Robinson knowingly possessed the cocaine with intent to deliver. During a search of the residence Robinson shared with his girlfriend, police found in his bedroom closet a shoebox containing cocaine base and powder valued at \$30,000 to \$50,000. A photograph of Robinson and his girlfriend was inside the box and his Illinois photo identification card was on top of the box. Police found \$1,000 cash in Robinson's shoes in the closet and over \$1,000 on his person and in one of his jackets in another room. Police also found a bag of cocaine in a jacket identified as Robinson's, baggies with the corners cut off in a manner that is used for cocaine sales and a digital scale. Police also found a number of receipts that link Robinson to the residence and the bedroom where the drugs were found. Finally, a witness testified that he purchased cocaine from Robinson on ten to fifteen occasions.

¶4 Robinson argues that the State failed to prove his "actual physical control" over the cocaine because no witness saw Robinson place the cocaine in the box or remove it from the box during the sales. Possession of an illicit drug may be inferred when the contraband is found in a place immediately accessible to

the accused and subject to his exclusive or joint dominion and control, provided that the accused has knowledge of the presence of the drug. *See Schmidt v. State*, 77 Wis. 2d 370, 379, 253 N.W.2d 204 (1977). “Possession” includes both actual and constructive possession. *See State v. Peete*, 185 Wis. 2d 4, 14-15, 517 N.W.2d 149 (1994). The evidence of Robinson’s joint dominion and control over the residence and the juxtaposition of the numerous personal items and the drugs is sufficient to establish Robinson’s possession of the drugs found in his home. *See Ritacca v. Kenosha County Court*, 91 Wis. 2d 72, 82, 280 N.W.2d 751 (1979).

¶5 The same evidence supports the finding that Robinson maintained a drug place. WISCONSIN STAT. § 961.42(1)¹ makes it unlawful for any person to keep or maintain a place that is used for manufacturing, keeping or delivering controlled substances. The large quantity of drugs, the scale, baggies and large amounts of cash, together with evidence that Robinson sold drugs to an individual on ten to fifteen occasions, adequately support the inference that he used his home as a base of operations for keeping and delivering drugs.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

