# United States Court of Appeals
## For the First Circuit

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No. 00-2500

UNITED STATES OF AMERICA,

Appellee,

v.

TYRONE DICKERSON,

Defendant, Appellant.

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APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW HAMPSHIRE

[Hon. Steven J. McAuliffe, U.S. District Judge]

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Before

Selya, Lynch and Lipez,

Circuit Judges.

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Brian T. Tucker and Rath, Young and Pignatelli Professional Association on brief for appellant.

Paul M. Gagnon, United States Attorney, and Jean B. Weld, Assistant United States Attorney, on brief for appellee.

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June 21, 2001

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**Per Curiam**. A jury found defendant-appellant Tyrone Dickerson guilty of possession of a controlled substance (crack cocaine) with intent to distribute. See 21 U.S.C. § 841(a)(1). Dickerson appeals the denial of his motion for judgment of acquittal. We affirm.

On this record, a rational jury could have found the following facts, which we recount in the light most conducive to the government's theory of the case. United States v. Barnes, 244 F.3d 172, 175 (1st Cir. 2001).

A New Hampshire drug task force, composed of law enforcement officers from various agencies, enlisted the services of a confidential informant (CI). The CI, a known drug buyer, agreed to call his source of supply and arrange a purchase of crack cocaine. To that end, the CI placed a long-distance call to a Massachusetts number that proved to be the appellant's home telephone number. The CI made the final arrangements for the transaction in a second call to a cellular phone, also bearing a Massachusetts number. The CI then received a page emanating from an apartment at 32 Elm Court, Portsmouth, New Hampshire, advising him that the drugs had arrived.

On November 12, 1999, the authorities staked out both the Elm Court apartment and the location where the transaction

was to be consummated. In due season, the surveilling officers stopped a vehicle approaching that locus. The car was operated by Scott Weeks, a resident of 32 Elm Court. The appellant was a passenger in it. A search of the vehicle revealed no contraband. Nevertheless, the officers transported the appellant — who had been seen leaving the Elm Court premises earlier in the day — to the police station. They advised him of his rights under Miranda v. Arizona, 384 U.S. 436 (1966), but they did not immediately place him under arrest.

Task force members then searched the Elm Court apartment pursuant to a warrant. They found a plastic bag containing 8.92 grams of crack cocaine in twenty "chunks," together with an assortment of drug paraphernalia. When the interrogating officers informed the appellant that the Elm Court apartment was being searched, he immediately volunteered that he had traveled from his home in Dorchester, Massachusetts, to New Hampshire to purvey an ounce of crack cocaine in the form of five "large rocks." He claimed that he had sold two "rocks" to Weeks shortly after his arrival in New Hampshire. He also claimed that he had left the remaining three "rocks" at the Elm Court apartment for safekeeping.

When the interrogating officers then told the appellant that crack had been found at the apartment, the appellant

acknowledged that it belonged to him and that he intended to sell it to the CI (to whom, by his own admission, he had sold drugs in the past). The appellant explained that he had left the contraband at the apartment because he did not like to carry drugs around needlessly, and, moreover, he wanted to be sure that the CI (who owed him money from a past deal) had enough funds to consummate the transaction.

At that point, the officers placed the appellant under arrest. They then showed him the crack cocaine that had been seized from the Elm Court apartment. He identified it as "the stuff he brought up to Portsmouth," although he noted that it was in twenty small pieces as opposed to three large "rocks."

A federal grand jury subsequently returned an indictment charging the appellant with one count of possessing crack cocaine with intent to distribute. 21 U.S.C. § 841(a)(1). For reasons that need not concern us, the first trial resulted in a mistrial. The second time around, the appellant argued that his confession was both untrustworthy and uncorroborated by independent evidence, and that the record therefore did not support a finding of guilt. The district court denied his motion for judgment of acquittal, Fed. R. Crim. P. 29(a), and the jury returned a guilty verdict. The court sentenced the

appellant to a ten-year incarcerative term. This appeal followed.

We review the denial of a motion for judgment of acquittal de novo. United States v. Staula, 80 F.3d 596, 604 (1st Cir. 1996). When, as now, a criminal defendant undertakes a sufficiency challenge, all the evidence, direct and circumstantial, must be perused from the government's perspective and the reviewing court — like the presider — must draw all reasonable inferences from it favorably to the verdict. United States v. Singh, 222 F.3d 6, 9 (1st Cir. 2000); United States v. Taylor, 54 F.3d 967, 974 (1st Cir. 1995). In that process, the court must "scrutinize the evidence in the light most compatible with the verdict, resolve all credibility disputes in the verdict's favor, and then reach a judgment about whether a rational jury could find guilt beyond a reasonable doubt." Taylor, 54 F.3d at 974.

In this case, the statute of conviction provides in pertinent part that "it shall be unlawful for any person knowingly or intentionally to . . . distribute, or possess with intent to . . . distribute . . . a controlled substance." 21 U.S.C. § 841(a)(1). The appellant concedes that crack cocaine is a controlled substance within the purview of this statute, but he argues that the government did not prove that he

"knowingly possessed" the 8.92 grams of crack cocaine seized at 32 Elm Court. Although strenuously advocated by able counsel, this argument lacks force.

Possession of a controlled substance may be either actual or constructive. United States v. Latham, 874 F.2d 852, 861 (1st Cir. 1989). "Actual possession" is self-explanatory; "constructive possession" is not. Under the case law, "constructive possession" requires a showing of dominion or control over the drugs in question. Id. Here, the appellant insists that there is no evidence of actual possession and that the evidence of constructive possession is too thin. We do not agree.

Applying the relevant standard, the jury could have found that the appellant had actual possession of the crack cocaine based on his identification of the contraband as his and his admission that he transported it from Massachusetts to New Hampshire. By the same token, the jury could have found constructive possession. The appellant's admissions, together with the evidence of the telephone calls, his presence at the point of the proposed sale, and the fact that he had been seen leaving the premises where the drugs were found, would support a reasonable inference of constructive possession. See, e.g., United States v. Batista-Polanco, 927 F.2d 14, 18-19 (1st Cir.

1991); United States v. Lochan, 674 F.2d 960, 966 (1st Cir. 1982); United States v. Alvarez, 626 F.2d 208, 210 (1st Cir. 1980).

The appellant attempts to parry this thrust by arguing that his confession was untrustworthy (and, thus, that his admissions cannot be used against him). This is really two arguments wrapped into one. We look at the two components separately.

To the extent that the appellant is arguing that his confession is untrustworthy because the weight and configuration of the crack cocaine recovered by the authorities did not match the weight and configuration of the crack cocaine that he admitted having transported to New Hampshire, his argument is unpersuasive. The existence of such inconsistencies goes to the probative value of a party's statements, not to their admissibility. See United States v. Rosario-Peralta, 199 F.3d 552, 563-64 (1st Cir. 1999); United States v. Young, 248 F.3d 260, 268 (4th Cir. 2001). And within wide limits, questions about the probative value of particular pieces of evidence are for the jury, not for the court. United States v. Singleterry, 29 F.3d 733, 738-39 (1st Cir. 1994). Especially in view of the corroborative evidence outlined above, we cannot say, as a

matter of law, that the jury was duty bound to gloss over the appellant's confession. See id. at 738.

To the extent that the appellant's argument invokes the principle that a jury cannot base a conviction on a voluntary, extrajudicial confession in the absence of substantial independent evidence which would tend to establish the trustworthiness of the statements, see, e.g., id. at 737, it is similarly unavailing. After all, the government linked the telephone call that originated the proposed transaction to the appellant's home telephone; the appellant traveled to New Hampshire shortly thereafter; crack cocaine was found at 32 Elm Court; the appellant was one of only three people observed by the surveilling officers in or near the apartment where the drugs were recovered; and the appellant showed up at the agreed-upon location at approximately the time when the drug sale was to take place. In short, there was enough independent corroborative evidence here to "bolster the confession itself and thereby prove the offense through the statements of the accused." Id. (citation and internal quotation marks omitted).

Other courts have upheld convictions for possession with intent to distribute based largely on a defendant's confession with less corroborating evidence than the prosecution proffered in this case. For example, in United States v. Banks,

78 F.3d 1190 (7th Cir. 1996), the Seventh Circuit affirmed a conviction even though the only direct evidence linking the defendant to the crime was his admission that he threw the drugs (which never were recovered) out of a car window. See id. at 195. The same court upheld a defendant's conviction for conspiracy to distribute marijuana because his confession was corroborated by his own story of having been kidnaped in retaliation for a drug deal turned sour. See United States v. Howard, 179 F.3d 539, 543 (7th Cir. 1999). Finally, in United States v. Clark, 57 F.3d 973 (10th Cir. 1995), the defendant confessed to selling drugs, but recanted. Id. at 975-76. The Tenth Circuit nonetheless affirmed his conviction, holding that the recovery of drugs in a location originally mentioned by the defendant sufficiently established the confession's trustworthiness. Id. at 976.

We summarize succinctly. Not only had the appellant traveled over fifty miles after receiving a call from a man asking for drugs — a man with whom he had previous drug dealings — but the authorities recovered the drugs in an apartment that the appellant left en route to a rendezvous point that had been arranged for the consummation of the drug deal. To cap matters, the appellant identified the seized drugs as those that he had

brought into New Hampshire for the purpose of unlawful sale. No more was exigible.

We need go no further. We conclude, without serious question, that the district court had no principled choice but to deny the appellant's motion for judgment of acquittal. The evidence here was adequate to permit the jury to evaluate the proof, determine its impact, and find the appellant guilty as charged beyond a reasonable doubt. See Singh, 222 F.3d at 10.

**Affirmed**.