

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

BILDAD RITHER,

Appellant,

v.

CASE NO. 1D09-2429

STATE OF FLORIDA,

Appellee.

/

Opinion filed July 13, 2010.

An appeal from the Circuit Court for Gadsden County.

Kathleen F. Dekker, Judge.

Edward T. Bauer of Brooks, LeBoeuf, Bennett, Foster & Gwartney, P.A., Tallahassee, for Appellant.

Bill McCollum, Attorney General and Ian M. Cotner, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

ON MOTION FOR REHEARING AND/OR CLARIFICATION

We grant the State's Motion for Rehearing and/or Clarification, withdraw our previous opinion, and substitute the following opinion in its place.

Appellant seeks review of his conviction and sentence for trafficking in cocaine. He alleges that the trial court erred in denying his motion for judgment of acquittal in light of the State's failure to prove that he was in constructive possession of the drugs. In order to prove constructive possession, the State was required to prove that Appellant knew of the presence of the contraband and was able to exercise dominion and control over it. Taylor v. State, 13 So. 3d 77, 80 (Fla. 1st DCA 2009) (citing § 893.101(1)-(2), Fla. Stat. (2006)); Links v. State, 927 So. 2d 241, 243 (Fla. 2d DCA 2006) (citing Diaz v. State, 884 So. 2d 387 (Fla. 2d DCA 2004)). We agree that the State failed to meet its burden of proof in regards to Appellant's knowledge of the presence of the cocaine. Accordingly, the trial court erred in denying Appellant's motion for judgment of acquittal. The conviction is REVERSED and the case is REMANDED to the trial court with directions to discharge Appellant.

DAVIS, CLARK and WETHERELL, JJ., CONCUR.