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contraband.

The incident giving rise to the charges filed against defendant took place on June 8, 2007. On that date, cocaine, a handgun, and ammunition were seized from the basement apartment at 229 West 153rd Place in Calumet City. Prior to trial, defendant filed a motion to suppress this evidence alleging police entered and seized these items without lawful authority, consent or exigent circumstances.

At the suppression hearing, defendant's father, Mayolo Lazaro and his wife, Juana Chavez, testified that they lived with defendant in the first-floor apartment at 229 West 153rd Place. Mr. Lazaro stated that his nephews, Rodrigo, Eduardo, and Dagoberto Lazaro, and Eduardo's girlfriend, Julia Gallardo, lived in the basement apartment. Mr. Lazaro acknowledged he has keys to this apartment, but testified that he only enters it for emergency purposes.

Mr. Lazaro further testified that, at 4 p.m. on June 8, 2007, police entered his first-floor apartment and searched it for over 30 minutes without his consent. He did not tell police defendant lived in the basement apartment.

Calumet City Officer Roderick Janiga testified that, at 3:30 p.m. on June 8, 2007, he received a call reporting gunshots were heard near the firehouse at 204 Pulaski Road in Calumet City. Officer Janiga went there and spoke with firefighter Radkovich, who is now deceased. Firefighter Radkovich told him that, shortly

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after hearing gunshots, he saw two men and a woman who were Hispanic, run into the yard at 229 West 153rd Place. One of the men was holding a gun and wearing a gray sweatshirt.

As Officer Janiga headed to 229 West 153rd Place, he was informed that an officer had been flagged down by a person who claimed defendant shot at him. He was also informed defendant lived at 229 West 153rd Place, and there was an active warrant for defendant's arrest. Police searched and knocked on doors in the area around 229 West 153rd Place for the three individuals. Mr. Lazaro opened the door to the first-floor apartment and told police he owned the home and that defendant lived in the basement. Mr. Lazaro allowed police to enter the first-floor apartment which they searched for five minutes, then went outside to the yard. There, they saw defendant standing in the basement apartment with the door open, and took him into custody. No weapon was found on defendant, but the officer did "a sweep" of the basement apartment to look for any other offenders. While there, Officer Janiga saw a scale with a white, powdery residue on it, a gun holster, narcotics packaging that smelled of marijuana, and a safe in the northwest bedroom. Officer Janiga notified investigative personnel of what he had seen, and the need for a warrant to seize these items.

Calumet City Officer Michael Serrano testified that he spoke with Officer Janiga on the day in question at 229 West 153rd Place. Based on Officer Janiga's observations in these premises, Officer Serrano obtained a search warrant.

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Based on this evidence, the trial court denied the motion to suppress evidence. In doing so, the court found, in relevant part, that the officers had authority to seize defendant based on the arrest warrant, and that their seizure of him in the threshold of the apartment fell within that scope. The court further found that, based on the totality of the circumstances, police "were within their rights due to [the] exigency here to go in [the basement apartment] and look for the other two individuals" involved in the recent shooting. The court noted that, once inside, police observed contraband in plain view, which they did not seize. Instead, the officers used that information to obtain a search warrant to recover the contraband.

At the bench trial that followed, the parties stipulated that the testimony presented at the motion to suppress hearing would be considered for purposes of the trial. The State also submitted into evidence a certified copy of defendant's prior conviction for aggravated unlawful use of a weapon.

Officer Serrano was then called as a witness. He testified that, after a search warrant was issued, police searched the basement apartment, which had two bedrooms, a bathroom, a kitchen, and a living room. From the kitchen cabinet, they recovered photo albums depicting defendant with his family, his school yearbook, and letters addressed to him at 229 West 153rd Place. They also searched the northwest bedroom which contained a safe along with its combination, which Officer Serrano used to open it. Inside, he

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found suspect crack cocaine, a gun, and money. In the dresser located in the northwest bedroom, he found ammunition, letters from his attorney addressed to defendant at 229 West 153rd Place, other documents belonging to defendant, a holster, and a bullet-proof vest. In that same bedroom, he also found two counterfeit driver's licenses bearing defendant's name and listing his address as 229 West 153rd Place. Inside a closet, which was shared and accessible to both bedrooms, he found a gun in a gray sweatshirt. He did not find any female clothing in the basement apartment.

Defense counsel then showed Officer Serrano three postcards from the Calumet City Clerk Collector. The officer noted that these cards referenced stickers for vehicles registered at 229 West 153rd Place in the names of Julia, Eduardo and Dagoberto. They were postmarked November 29, 2007, and did not specify a specific apartment at 229 West 153rd Place.

Calumet City Sergeant Urbanek testified that he searched the basement apartment on June 8, 2007. He did not recover any mail there addressed to defendant's cousins.

The parties then stipulated that Rodrigo Lazaro used 229 West 153rd Place as his home address in his employment records. The parties further stipulated that the suspect crack cocaine found in the safe tested positive for cocaine, that a gunshot residue test revealed defendant "may not" have discharged a firearm, and, as defendant was placed in custody, he stated the gun was in the coat in the closet.

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Dagoberto Lazaro testified that defendant did not live in the basement apartment or keep his belongings in the kitchen cabinet, but sometimes visited him and his brothers who resided there. Dagoberto stated that his brother Rodrigo, who now lives in Mexico, slept in the northwest bedroom and kept a safe in that room. Dagoberto also testified that his uncle's family used the laundry room in the basement, and anyone in the laundry room could walk into the basement apartment.

At the close of evidence, the court found defendant guilty of possession of a controlled substance with intent to deliver, and two counts of unlawful use of a weapon by a felon. In doing so, the court noted, although defendant's cousins might have lived in the basement apartment, this fact did not preclude it from finding defendant possessed the contraband as it could be possessed jointly. The court observed that defendant had access to the basement apartment where he was seen leaving, and that he kept his personal items there, including letters from his attorney. The court noted these items showed defendant had much greater contact with the basement apartment than was testified to, since one does not throw such items around haphazardly. The court found defendant possessed the cocaine and gun stored in the safe based on the "great nexus" between him and the area around it, defendant possessed the other weapon (ammunition), and there was intent to deliver based on the packaging material and large amount of narcotics. The court, however, found defendant not guilty of

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possession of the gun found in the coat in the closet because it was unclear as to who owned the coat.

On appeal, defendant challenges the court's ruling on his motion to suppress and the sufficiency of the evidence to support his convictions. As to the former, defendant claims there were no exigent circumstances to justify the warrantless entry into the basement apartment, and the court erred in denying his motion.

On review of a trial court's ruling on a motion to suppress, great deference is accorded to the trial court's factual findings and credibility determinations, and the reviewing court will reverse those findings only if they are against the manifest weight of the evidence. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). However, we review *de novo* the legal challenge to the denial of the motion to suppress. *Sorenson*, 196 Ill. 2d at 431.

Defendant claims the hot-pursuit exception to the warrant requirement does not apply because police were not in pursuit of anyone when they entered the basement apartment. We observe Officer Janiga testified that he did a "sweep" of the apartment to search for the other offenders, and, although the court referred to the "exigency" rule when announcing its decision, the court did not indicate its ruling was based on the hot-pursuit doctrine. Given the factual scenario revealed in the record, we will address the propriety of the entry under the protective-sweep exception to the warrant requirement.

Under the basic principle of the Fourth Amendment of the

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United States Constitution, warrantless searches and seizures that occur inside a home are presumptively unreasonable. *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006). However, since the touchstone of the Fourth Amendment is reasonableness, the warrant requirement is subject to exceptions (*Brigham City*, 547 U.S. at 403), including the protective-sweep exception (*Maryland v. Buie*, 494 U.S. 325, 334-35 (1990)). Under that exception, an officer, after lawfully arresting a suspect in his home, may check for dangerous individuals there if he possesses specific articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer to believe the home harbors persons dangerous to those on the arrest scene. *Maryland*, 494 U.S. at 337. In some cases, where the arrest is achieved just outside the home and defendant was armed and traveling with another, or there is an unaccounted-for weapon, the potential for danger is so high that entry to make the protective sweep is permissible. *People v. Free*, 94 Ill. 2d 378, 396-97 (1983).

In this case, Officer Janiga testified that he acted on information from a Calumet City firefighter who heard gunshots, then saw three people, one of whom had a gun, run into the yard at 229 West 153rd Place. The officer then learned the person who had fired the gun was defendant, who resided at that same address, and had an active arrest warrant out for him. From his vantage point in the yard of that residence, Officer Janiga observed defendant in

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the open doorway of the basement apartment, and arrested him. Although no gun was found on defendant's person, Officer Janiga conducted a "sweep" of the basement apartment to search for any other offenders based on the information available to him.

These articulated specific facts were sufficient to allow a reasonable police officer to believe the others who were with defendant shortly after the shooting were in the basement apartment, and obliged them to enter to determine whether there were persons present who were in potential danger or posing same to police. *Free*, 94 Ill. 2d at 396-97. In addition, the officers entered the apartment solely for the limited purpose indicated, and did not seize any of the items observed in plain view or conduct a full search of the premises until they obtained a warrant. *People v. Carmack*, 103 Ill. App. 3d 1027, 1034-35 (1982). Accordingly, we find the officers' entry was justified under the protective-sweep exception (*Free*, 94 Ill. 2d at 397), and that the trial court did not err in denying defendant's motion to suppress evidence.

Defendant next contends the evidence was insufficient to prove beyond a reasonable doubt that he had possession of the narcotics and weapons found in the locked safe and dresser in the northwest bedroom of the basement apartment. He maintains there was insufficient evidence that he was in actual or constructive possession of the contraband.

When a defendant challenges the sufficiency of the evidence to sustain his conviction, the proper standard of review is whether,

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after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). This standard recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill 2d. 363, 375 (1992). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of a defendant's guilt. *Campbell*, 146 Ill 2d. at 375. For the reasons that follow, we do not find this to be such a case.

To sustain defendant's conviction for possession of a controlled substance with intent to deliver, the State was required to prove defendant knowingly possessed the controlled substance with an intent to deliver it. *People v. Frieberg*, 147 Ill. 2d 326, 360 (1992). To sustain defendant's convictions for unlawful use of a weapon by a felon, the State was required to prove defendant was a convicted felon, and knowingly possessed in his abode, a firearm or firearm ammunition. 720 ILCS 5/24-1.1(a) (West 2006). Defendant solely challenges the sufficiency of the State's evidence regarding his possession of the contraband. Possession can be actual or constructive (*Frieberg*, 147 Ill. 2d at 361), and where, as here, defendant was not found in actual possession of the contraband, we consider whether the evidence shows he had constructive possession of it. Constructive possession exists

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where defendant has the intent and capability to maintain dominion and control over the contraband, but not immediate personal control. *Frieberg*, 147 Ill. 2d at 361. Where contraband is found on the premises over which defendant has control, it may be inferred he has both knowledge and possession. *Frieberg*, 147 Ill. 2d at 361. Habitation in the premises is sufficient evidence of control. *People v. Cunningham*, 309 Ill. App. 3d 824, 828 (1999).

The record here shows, shortly after Mr. Lazaro told Officer Jariga that defendant resided in the basement apartment, the officer saw defendant standing in the open doorway of that apartment, which, contrary to defendant's contention, reflects his free access to it. Police then found defendant's personal items in the northwest bedroom of that apartment, including letters addressed to him from his attorney, and counterfeit identification listing this address as his residence.

These facts provided substantial evidence defendant lived in the apartment, and allowed the trial court to conclude defendant knowingly possessed the contraband in that bedroom. *Cunningham*, 309 Ill. App. 3d at 828. Although defendant cites the defense testimony that he resided in the first-floor apartment, the trial court found Officer Janiga's testimony regarding the evidence of defendant's personal effects found in the basement apartment, more compelling. We have no basis for disturbing that determination by the trial court. *Campbell*, 146 Ill 2d. at 375.

The conclusions drawn by the court are not refuted by the fact

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that defendant's cousins also lived in the apartment, as possession may be joint (*People v. Embry*, 20 Ill. 2d 331, 335 (1960)), and mere access by others is insufficient to defeat constructive possession (*People v. Bui*, 381 Ill. App. 3d 397, 424 (2008)). In addition, the lack of fingerprint evidence does not raise a reasonable doubt of defendant's guilt (*People v. Flores*, 231 Ill. App. 3d 813, 820 (1992)), given the significant evidence of his constructive possession of the contraband.

In reaching this determination, we have considered *People v. Ray*, 232 Ill. App. 3d 459 (1992), and *People v. Scott*, 367 Ill. App. 3d 283 (2006), cited by defendant, and find his reliance on them misplaced. In *Ray*, the defendant's conviction for possession was reversed based on the State's failure to prove he owned, lived in or rented the apartment where the drugs were located. *Ray*, 232 Ill. App. 3d at 463. Here, there was ample evidence defendant resided in the basement apartment where his father told police he lived there. Defendant was observed walking out of that apartment, and he kept numerous personal items there. Moreover, the supreme court has since held that, although proof of a defendant's control over the premises where the contraband is found can help resolve the question of his possession of the contraband, it is not a prerequisite for conviction. *People v. Adams*, 161 Ill. 2d 333, 344-45 (1994).

In *People v. Scott*, 367 Ill. App. 3d 283, 286 (2006), which defendant cites for his contention he did not have control over the

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items in the locked safe, this court held the defendant did not have possession over items in a locked mailbox where he did not have a key to it. We find *Scott* distinguishable as it involved a locked mailbox outside the home, and not, as in this case, a locked safe inside the bedroom where defendant's personal items were found along with the combination to the safe.

Notwithstanding, defendant claims his convictions should be reversed because the trial court entered inconsistent verdicts in finding him not guilty of possession of the gun found in the closet, but guilty of possession of the other contraband. The State correctly points out in *People v. McCoy*, 207 Ill. 2d 352, 357 (2003), where the supreme court held a defendant cannot argue his convictions should be reversed based on the court entering inconsistent verdicts. In response, defendant attempts to rephrase his claim as a sufficiency of the evidence argument, maintaining the court had its doubts as to whether he possessed the contraband in the northwest bedroom since it inconsistently found he did not possess the gun in the closet.

In essence, this is the same argument and, also, reflects defendant's failure to consider the court's exercise of judicial lenity. *McCoy*, 207 Ill. 2d at 358. The gun found in the gray sweatshirt was in a shared closet, while the contraband was more readily identified with defendant in the bedroom, thus providing the reasonable doubt as to his possession of the gun. In any event, defendant's argument presents no basis for reversal.

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For the reasons stated, we conclude the evidence was sufficient for the trial court to find defendant knowingly possessed the narcotics, the weapons in the northwest bedroom of the basement apartment beyond a reasonable doubt. We, therefore, affirm the judgment of the circuit court of Cook County to that effect.

Affirmed.