

1-10-1761

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 4798
	)	
WILLIE LOFTON,	)	Honorable
	)	John A. Wasilewski,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.  
Justices Connors and Harris concurred in the judgment.

**ORDER**

*Held:* There was insufficient evidence to prove that defendant constructively possessed cannabis, where there was insufficient evidence that he knew of its presence, and thus, his conviction for possession of cannabis with intent to deliver must be reversed.

¶ 1 Following a 2010 bench trial, defendant Willie Lofton was convicted of possession of cannabis (more than 30 grams, but not more than 500 grams) with intent to deliver, and sentenced to five years' imprisonment. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he constructively possessed cannabis. Defendant also contends that the trial court erred by not granting his motion to disclose the identity of the confidential informant who provided the police the evidence with probable cause evidence for the search warrant, which resulted in the seizure of the cannabis.

¶ 2 On February 6, 2009, the trial court issued a search warrant for Orivell Chester (Chester) and a particular apartment upon suspicion of violating section 4 of the Cannabis Control Act. 720 ILCS 550/4 (West 2008). The complaint seeking the search warrant was signed by police officer Salvador Lara (Officer Lara), attesting that, on that day, February 6, 2009, an unnamed informant told Officer Lara that Chester sold the informant \$100 worth of cannabis in a bedroom at the apartment in question, that the informant smoked the cannabis in that bedroom, and that Chester told the informant to "tell everyone that he \*\*\* always has cannabis for sale." The informant had identified Chester from a police photograph, had led Officer Lara to the apartment building, and police records showed Chester's address as the apartment in question.

¶ 3 Defendant was arrested on the morning of February 8, 2009, at the apartment in question during the execution of the search warrant. He was charged with possession of cannabis with intent to deliver in an information also charging Chester with possession of a controlled substance (less than five grams of MDMA) with intent to deliver, and charging James Killebrew (Killebrew) with possession of cannabis and possession of a controlled substance (15 to 200 pills of MDMA).

¶ 4 Defendant filed a motion to disclose the identity of the search warrant informant. He alleged that he did not reside in the searched apartment and that the informant could attribute that the cannabis found in the bedroom where defendant was arrested belonged to Chester. Defendant also filed a motion *in limine* to admit Chester's post-arrest statement to the police that the cannabis and MDMA pills attributed to defendant and Killebrew, respectively, belonged instead to Chester. The trial court denied disclosure of the informant, but granted the motion *in limine* to admit Chester's post-arrest statement to the police.

¶ 5 At trial, Officer Anthony Bruno (Officer Bruno) testified that he and other officers executed the search warrant on the morning of February 8, 2009, at the apartment in question. In one of the two bedrooms, Officer Bruno found defendant and a woman in bed. Hanging from the bedroom window, concealed by a blanket, was a bag that contained 12 smaller bags of a substance Officer

Bruno suspected to be cannabis. The bag was not visible until Officer Bruno moved the window blinds. Two pieces of mail addressed to defendant for a different address were on the windowsill, and one letter was postmarked February 4, 2009. The bedroom closet contained men's clothing, including an orange leather jacket and a gray jacket with \$3,900 in currency inside. In the living room, Officer Bruno saw a photograph depicting three persons, including defendant wearing the orange leather jacket. At the time of the search, there were six people in the apartment, including defendant and the woman in the bedroom in question, and Killebrew in the other bedroom.

¶ 6 Officer Vincent Paredes (Officer Paredes) testified that he also participated in the execution of the search warrant. In one of the bedrooms, Officer Paredes found Killebrew in bed. In a pair of jeans hanging in the bedroom closet, Officer Paredes found a bag of 180 pills that he suspected to be "ecstasy" or MDMA. A leather jacket also in the closet contained a small amount of cannabis and currency. Cigarette cartons containing currency were found in the bedroom.

¶ 7 Officer Lara testified that he also participated in the execution of the search warrant. Upon entering the apartment, he saw several people, including Chester, sleeping on the living room couches. No contraband was found on Chester's person, nor was any proof of Chester's residency found in either of the bedrooms in the apartment. However, the living room contained three documents showing that Chester resided in the apartment. In the apartment hallway, Officer Lara found jeans containing \$217 and Chester's identification card with the address of the apartment. Officer Lara recalled that ecstasy pills were found in the apartment hallway, as well as in the bedroom where Killebrew was found. He admitted that the report he prepared regarding the bedroom in which Killebrew was found did not include ecstasy pills and that his reports attributed ownership of the cannabis and ecstasy to Chester. After Chester was arrested, he told Officer Lara that the apartment was his, as was the cannabis and ecstasy, but denied that there was anything illegal in the apartment. Killebrew also told Officer Lara that the apartment was his and denied the presence of contraband.

¶ 8 The parties stipulated that forensic chemist Linda Rayford would testify that she (1) weighed the contents of the bag found by Officer Bruno and tested the contents of two of the smaller bags therein, finding 318.2 grams total and 53 grams of cannabis, and (2) tested 17 of the pills found by Officer Paredes and found them to contain MDMA.

¶ 9 Defendant made a motion for a directed finding, arguing that the cannabis was concealed in the bedroom so that he was unaware that it was there and that the evidence did not show that he resided in the apartment. The State responded that defendant could reside at the apartment, as indicated by sleeping there, but receiving mail elsewhere, and noted that contraband could be possessed jointly as well as individually. The trial court denied the motion without findings.

¶ 10 Following closing arguments, the trial court found defendant and Killebrew guilty, but found Chester not guilty. The trial court noted that, in the bedroom where the cannabis was found, defendant was in bed with a woman, his jacket was in the closet, and his mail, albeit not addressed to that apartment, was on the windowsill near the cannabis. While there were other persons in the apartment, there was sufficient evidence to assign constructive possession of the contraband to defendant and Killebrew, but insufficient evidence to assign it to Chester.

¶ 11 In his post-trial motion, defendant argued that there was insufficient evidence of constructive possession and intent to deliver, and that the trial court erred in denying his motion to disclose the informant. The trial court denied the post-trial motion, noting that constructive possession can be joint possession, and finding that defendant exercised control over the cannabis. Following evidence and arguments in aggravation and mitigation, the trial court sentenced defendant to five years of imprisonment. Defendant made an unsuccessful post-sentencing motion, and this appeal followed.

¶ 12 On appeal, defendant first contends that the State failed to prove beyond a reasonable doubt that he constructively possessed cannabis.

¶ 13 When presented with a challenge to the sufficiency of the evidence, this court must determine whether, after taking 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. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). On review, we do not retry the defendant and we accept all reasonable inferences from the record in favor of the State. *Id.* at 8. The trier of fact is not required to disregard inferences that flow normally from the evidence nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of defendant's guilt remains. *Beauchamp*, 241 Ill. 2d at 8.

¶ 14 It is an offense to "knowingly \*\*\* manufacture, deliver, or possess with intent to deliver, or manufacture, cannabis." 720 ILCS 550/5 (West 2008). Thus, "the deciding question is whether defendant had knowledge and possession of the" cannabis. *People v. Givens*, 237 Ill. 2d 311, 334-35 (2010). Possession may be actual or constructive. *Id.* at 335. Actual possession is a defendant's exercise of present personal dominion over the contraband by such actions as attempting to conceal or destroy the contraband. *Id.*; *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Constructive possession exists where a defendant had the intent and capability to maintain control and dominion over the contraband, and may be proven by showing that the defendant had knowledge of the presence of the contraband and had immediate and exclusive control over the area where the contraband was found. *Love*, 404 Ill. App. 3d at 788. Possession does not require present personal touching of the contraband. *Givens*, 237 Ill. 2d at 335. While control of the premises where contraband was located is not required for conviction, proof that a defendant had control over the premises may create an inference of knowledge and possession. *Id.* Possession may be joint, so that if two or more persons share the intention and power to exercise control, each has possession. *Id.*

¶ 15 Here, after examining the evidence in detail, we find insufficient evidence to show that defendant knew of the cannabis in the bedroom where he was found by the police. First and foremost, the cannabis was concealed in such a location and manner—hanging from the window and covered by a blanket—that defendant could have been unaware of its presence, even though he had

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placed his mail on the windowsill. In particular, Officer Bruno testified that the cannabis was not visible unless he moved the window blinds. Thus, because there was no direct evidence presented to show that defendant knew of the cannabis in the bedroom, the gist of both the State's case and the trial court's findings was that defendant resided in the apartment in order to show that his knowledge of the presence of the cannabis could be inferred from his control of the premises, albeit a joint or shared control.

¶ 16 However, the State failed to introduce sufficient evidence that defendant resided in the apartment to support that inference. Chester clearly resided in the two-bedroom apartment, pursuant to his post-arrest admission to the police and the corroborating evidence of his identification card and other documentation. Killebrew admitted that he resided in the apartment and was found in one of the bedrooms by the police. While this is not conclusive, it tends to show that defendant did not reside there. The State has presented no evidence to show that defendant resided in the apartment. The fact that defendant was found sleeping in the bedroom in question did not conclusively show that he resided in the apartment. Rather, the fact that defendant was sleeping in the bedroom could readily be explained by the presence of a woman in bed with him; that is, he was in the bedroom for privacy reasons rather than because he lived there. The fact that Chester was sleeping in the living room, though his residency in the apartment is virtually indisputable, tends to corroborate that conclusion. Defendant's mail, including a letter postmarked a mere four days before the execution of the search warrant, was addressed to a different location. While the police found an orange jacket hanging in the closet, and a photograph of defendant wearing that jacket on display in the living room, this at most showed that defendant was acquainted with the occupants of the apartment and had been sleeping in that bedroom on the night in question. Although \$3,900 was found inside a *gray* jacket hanging in the bedroom closet, it is unclear how that necessary proved that it belonged to defendant, particularly when a photograph displayed in the living room showed defendant wearing an *orange* jacket. Notably, there was no evidence connecting the rest of the men's clothing in the

bedroom closet to defendant. In sum, the State presented no fact showing that defendant resided in the apartment; rather, the evidence presented could equally support the proposition that he was a mere guest in the apartment.

¶ 17 Inferring defendant's residence wholly from these ambiguous facts, and then inferring his knowledge of the cannabis wholly from that inferred residence, is an unsatisfactory basis for a conviction. We conclude that the State failed to present sufficient evidence that defendant constructively possessed cannabis so that his conviction must be reversed. We therefore need not address his contention that the court erred by not granting his motion to disclose the identity of the confidential informant behind the probable cause evidence for the search warrant.

¶ 18 Accordingly, the judgment of the circuit court of Cook County is reversed.

¶ 19 Reversed.