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No. 1-09-1821

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County, Illinois
)	
v.)	09 CR 15727
)	
KIM TATES,)	Honorable
)	John T. Doody, Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROBERT E. GORDON delivered the judgment of the Court.
JUSTICES CAHILL and MCBRIDE concurred in the judgment.

ORDER

Held: A defendant is deemed in constructive possession of a controlled substance when the defendant is found as the only person in close proximity to the drugs in a residence and when a utility bill and an estimate to repair the residence are found at the residence in the defendant's name.

After a bench trial, Defendant, Kim Tates, was convicted of two counts of possession of a controlled substance with intent to deliver and then sentenced to 6 and 1/2 years in the Illinois Department of Corrections. Defendant argues on appeal that the

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evidence was insufficient to establish her constructive possession of the narcotics because the documentary evidence presented by the State was insufficient to show Defendant's control over the premises on which the drugs were found.

I. BACKGROUND

On July 10, 2007, a team of Chicago Police officers executed a search warrant at a residence on West 62nd Street in Chicago. The officers approached the residence, knocked on the door and announced their presence, then forced entry into the residence when their presence was not acknowledged. The residence appeared to be under rehabilitation.

Once inside, the officers proceeded upstairs and encountered Defendant, who was the target of the search warrant, as she exited the front bedroom. Other than the team of officers, Defendant was the only person at the residence.

In the bedroom from which Defendant had exited, four bags of suspect narcotics were found, visibly located at the foot of an unmade bed. One bag contained a large bulk of cannabis. A second bag contained numerous smaller bags of cannabis. A third bag contained crack cocaine. A fourth bag contained multiple smaller bags of crack cocaine. The parties later stipulated to the contents of the bags, agreeing that 1 of the 17 bags of cannabis contained 13 grams and that 1 of the 89 bags of cocaine

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contained 27.4 grams.

The officers next discovered a bundle of U.S. paper currency tucked under the mattress as well as bags of both men's and woman's clothing. The officers also found a ComEd bill dated March 13, 2006, sixteen months prior to the search, listing Defendant's name and indicating service for the West 62nd Street residence. It was, however, addressed to Defendant at an address on South Normal Boulevard in Chicago. In addition, the officers located a general contractor's estimate, for replacing the roof and gutters at the West 62nd Street residence, dated June 1, 2007, one month prior to the search, which showed Defendant's name located directly above the West 62nd Street address.

Also, on the first floor of the residence, the officers found two small digital scales and two bags containing additional zip lock bags. Defendant was arrested and placed into custody.

As noted, Defendant was convicted of two counts of possession of a control substance with intent to deliver. Defendant now appeals her conviction. We affirm.

II. ANALYSIS

Defendant only argues that the State provided insufficient evidence to establish her constructive possession of the narcotics. She does not challenge the issue of intent to deliver, which was substantiated by the officers' finding of

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digital scales and zip lock bags at the residence.

In a successful prosecution for possession of a controlled substance, the State must establish that the accused had knowledge of the presence of narcotics and that the narcotics were under the accused's immediate and exclusive control. People v. Nettles, 23 Ill. 2d 306 (1961); People v. Griffin, 194 Ill. App. 3d 286 (1990); People v. Valentin, 135 Ill. App. 3d 22 (1985). This Court recognizes that the elements of knowledge and control are rarely evidenced by direct proof. People v. Bell, 53 Ill. 2d 122 (1972). Therefore, if constructive possession can be inferred from the facts, actual possession need not be shown for a conviction to be upheld. People v. Frieberg, 147 Ill. 2d 326 (1992); People v. Ray, 232 Ill. App. 3d 459, 462, *citing* People v. Stamps, 108 Ill. App. 3d 280 (1982).

When the contraband is found on the premises rather than on the defendant, in order to establish constructive possession, the State must first prove that the defendant had control of the premises in order to infer that defendant had knowledge of and control over the contraband. Nettles, 23 Ill. 2d at 308; People v. Green, 54 Ill. App. 3d 252 (1977). Constructive possession is a question of fact to be resolved by the trier of fact, whose findings should not be disturbed upon review unless the evidence is so unbelievable, improbable, or palpably contrary to the

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verdict that it creates a reasonable doubt of guilt. See People v. Collins, 106 Ill. 2d 237 (1985); Ray, 232 Ill. App. 3d at 462, *citing People v. Valentin*, 135 Ill. App. 3d 22 (1985). Evidence of constructive possession is often entirely circumstantial. Frieberg, 147 Ill. 2d at 361; People v. Minniweather, 301 Ill. App. 3d 574, 580 (1998) (stating that "the circumstantial evidence supporting an inference of possession was sufficient to sustain a finding of possession"); People v. Newman, 211 Ill. App. 3d 1087, 1093 (1991) (stating that the "evidence establishing constructive possession is often wholly circumstantial").

In evaluating the sufficiency of evidence in a criminal case on review, this Court must assess whether the evidence, when viewed in the light most favorable to the State, allows a rational trier of fact to find the elements of the offense beyond a reasonable doubt. People v. Young, 128 Ill. 2d 1 (1989), *citing Jackson v. Virginia*, 443 U.S. 307 (1979).

The State presented evidence of Defendant's control of the premises by offering two documents into evidence, the ComEd Bill and the general contractor's estimate, both of which linked Defendant to the West 62nd Street residence. The bill showed Defendant's ability to authorize utilities to the residence, which is evidence establishing her control of the premises. See

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Nettles, 23 Ill. 2d at 308; People v. Blue, 343 Ill. App. 3d 927, 939 (2003) ("Proof of residency in the form of rent receipts, utility bills and clothing in closets is relevant to show that defendant lived on the premises and therefore controlled them."). The contractor's estimate shows that Defendant had the ability to authorize major repairs on the residence and is further evidence of Defendant's control.

Defendant argues that the documentary evidence does not establish her control of the premises and cites to People v. Adams, in which the Third District of this Court reversed a conviction for possession of a controlled substance with intent to deliver based on a lack of circumstantial evidence. 242 Ill. App. 3d 830, 832 (1993). In Adams, the police found defendant standing in the bathroom with his hands raised above his head. Adams, 242 Ill. App. 3d at 832. The officers then discovered cocaine hidden in the bathroom cabinet. Adams, 242 Ill. App. 3d at 831. Other than defendant's proximity to the narcotics, there was no other evidence that linked defendant to the cocaine or the residence, as there were other people also present at the residence and there was no evidence that defendant owned or leased the residence. Adams, 242 Ill. App. 3d at 831.

Here, unlike in Adams, the State did more than present evidence of Defendant's proximity to the narcotics. First,

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Defendant was the only person present at the West 62nd Street residence and was observed exiting the room in which the narcotics were visibly laying on a bed, which is evidence of her knowledge of the narcotics. Second, unlike in Adams, the State provided documentary evidence connecting Defendant to the premises on which the narcotics were found, which is evidence of her control over the premises and narcotics. 242 Ill. App. 3d at 833.

Defendant unpersuasively contests the sufficiency of the documentary evidence. As to the ComEd bill, Defendant first argues that since it was addressed to her on South Normal Boulevard and not on West 62nd Street, it is insufficient to establish her control of the premises at West 62nd Street. However, the bill indicated services for West 62nd Street in Defendant's name. The authority to authorize utilities for a residence is evidence of control over the premises. See Nettles, 23 Ill. 2d at 308; Blue, 343 Ill. App. 3d at 93 ("Proof of residency in the form of rent receipts, utility bills and clothing in closets is relevant to show that defendant lived on the premises and therefore controlled them.").

Defendant also contests the sufficiency of the ComEd bill by arguing that since the bill was dated sixteenth months prior to the date of the search, its age affects its relevancy for the

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determination of her control of the premises, relying on People v. Ray. 232 Ill. App. 3d at 459. In Ray, we noted that a cable bill was 6 months old, and that it was the only evidence of control. Ray, 232 Ill. App. 3d at 461. We then reversed because of the lack of circumstantial evidence. Ray, 232 Ill. App. 3d at 461. Here, we have additional documentary evidence of a contractor's estimate, which was dated one month prior to the search, and additional evidence that Defendant was the only person at the residence when the officers discovered the drugs.

Defendant argues that the contractor's estimate is not a form of generally acceptable proof of residency for purposes of attaining a driver's license, *Illinois Secretary of State, Acceptable Identification Documents*, available at http://www.cyberdriveillinois.com/publications/pdf_publications/dsd_x173.pdf, and, therefore, it cannot be relevant to prove control over the premises where narcotics are discovered. However, this is a criminal case, not an application for a driver's license. Where a person has the authority to authorize major home repairs on the premises, we cannot say that a rational trier of fact could not find this to be evidence of control of the premises under the facts of this case. See Nettles, 23 Ill. 2d at 308; Blue, 343 Ill. App. 3d at 939.

As the trial court stated, "the bottom line" was that on

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July 10th, Defendant was the only one present at the residence, was observed exiting the room in which narcotics were found, and her name was on both a utility bill and a contractor's estimate for major repair work found at the residence.

III. CONCLUSION

We cannot say that a rational trier of fact could not find that Defendant was in constructive possession of the controlled substances beyond a reasonable doubt and, therefore, we affirm Defendant's conviction of possession of a controlled substance with intent to deliver on both counts.

Affirmed.