

No. 1-09-3203

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FIFTH DIVISION
May 6, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 CR 16329
)	
MAURICE PERSON,)	Honorable
)	Evelyn B. Clay,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Joseph Gordon and Epstein concurred in the
judgment.

O R D E R

HELD: Defendant was proven guilty beyond a reasonable doubt of the unauthorized possession of a weapon by a felon when the State established his constructive possession of the handgun recovered from his apartment and defendant acknowledged that the gun belonged to him.

After a bench trial, defendant Maurice Person was found guilty of the unauthorized possession of a weapon by a felon and

sentenced to six years in prison. On appeal, he contends he was not proven guilty beyond a reasonable doubt when the State failed to establish that he possessed the gun and his statement purporting to acknowledge ownership of the gun was not supported by independent evidence. We affirm.

At trial, Officer Alex Gallegos testified that he executed a search warrant at 4051 West Adams in Chicago on the evening on July 21, 2007. The search warrant specifically identified defendant and the second floor apartment. Defendant was not at home, so Gallegos presented the search warrant to defendant's wife, Kelly Person. The apartment was then searched.

A loaded semiautomatic handgun was recovered from a shoe box located in the back room of the apartment. The handgun contained seven rounds. A People's Energy Gas bill (People's Gas bill), dated July 2007, and addressed to defendant at that address, was recovered from the front hall table. The handgun was taken to a police station and inventoried. A subsequent check on the gun revealed that it was unregistered.

Defendant was subsequently taken into custody. Gallegos testified that during processing, defendant told him, "I appreciate you not tearing up my place and locking up my wife for my s***, my gun." When Gallegos asked what defendant meant by that statement, defendant indicated he had nothing more to say.

During cross-examination, Gallegos acknowledged that he had previously indicated that defendant said, "I appreciate you not locking up my wife for all my s*** and that gun." However, he clarified that he had memorialized defendant's exact words, "That was all my s***, I appreciate you not locking up my wife for my gun and s***" in the arrest report.

The parties stipulated that Kelly had a valid Firearm Owners Identification card (FOID card). The parties also stipulated that defendant had two previous convictions for the delivery of a controlled substance.

In finding defendant guilty of the unauthorized possession of a weapon by a felon, the trial court determined that the People's Gas bill established defendant's residency in the apartment from which the gun was recovered, and defendant's statement to Gallegos established that the gun recovered from the apartment belonged to defendant. The court found it irrelevant that Kelly had a valid FOID card. Defendant was subsequently sentenced to six years in prison.

On appeal, defendant contends he was not proven guilty beyond a reasonable doubt when the State failed to prove that he constructively possessed the gun that the police recovered. He also contends that his statement purporting to acknowledge ownership of the gun was not sufficiently corroborated by "independent evidence."

In assessing the sufficiency of the evidence, the relevant inquiry is whether, considering 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. Ross*, 229 Ill. 2d 255, 272 (2008). This court does not retry the defendant or substitute its judgment for that of the trier of fact with regard to the credibility of witnesses, the weight to be given to each witness's testimony, and the reasonable inferences to be drawn from the evidence. *Ross*, 229 Ill. 2d at 272. A conviction will be reversed only when the evidence was so unreasonable or unsatisfactory that reasonable doubt remains as to whether the defendant was guilty. *Ross*, 229 Ill. 2d at 272.

In this case, defendant was convicted of the unlawful possession of a weapon by a felon. As the parties stipulated that defendant had previously been convicted of two felonies, the State was required to establish that defendant knowingly possessed a firearm on his land or in his abode. 720 ILCS 5/24-1.1(a) (West 2006).

A defendant's "knowing possession" of a firearm may be actual or constructive. *People v. Brown*, 327 Ill. App. 3d 816, 824 (2002). Here, defendant was not present at the apartment when the gun was recovered, thus, the State was required to establish defendant's constructive possession of the firearm.

Constructive possession is established when the defendant had knowledge of the presence of the weapon and exercised immediate and exclusive control over the area where the weapon was found. *Brown*, 327 Ill. App. 3d at 824. A defendant's control over a location where a weapon was found creates an inference that the defendant possessed the weapon. *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). Evidence of constructive possession is often established by circumstantial evidence. *McCarter*, 339 Ill. App. 3d at 879.

The exclusive dominion and control necessary to establish a defendant's constructive possession of contraband is not negated by another person's access to that contraband. *People v. Ingram*, 389 Ill. App. 3d 897, 901 (2009). When other people share a relationship to the contraband sufficient to constitute possession, the result is not vindication of the defendant, but rather, a situation of joint possession (*People v. Givens*, 237 Ill. 2d 311, 338 (2010)), as any other outcome would allow a defendant to escape liability by inviting others to participate in a criminal enterprise (*Ingram*, 389 Ill. App. 3d at 901).

Here, the State established defendant's constructive possession of the handgun when defendant's residency at the apartment was established by a People's Gas bill addressed to defendant at that address, the gun was recovered from the apartment, and defendant later acknowledged ownership of the gun

to a police officer. *Brown*, 327 Ill. App. 3d at 824. The fact that the handgun was recovered from defendant's apartment created the inference that defendant possessed the gun (*McCarter*, 339 Ill. App. 3d at 879), an inference that defendant later confirmed through his statement to Gallegos.

Even were this court to accept defendant's assertion that the gun recovered from the apartment belonged to Kelly, that fact does not vindicate defendant, who was also a resident of the apartment. Rather, it implies defendant and Kelly exercised joint possession of the handgun. See *Givens*, 237 Ill. 2d at 338.

Contrary to defendant's assertion, the evidence when viewed in the light most favorable to the State, was sufficient to establish his constructive possession of the handgun recovered from his apartment. See *McCarter* 339 Ill. App. 3d at 879. Accordingly, this court cannot say that no rational trier of fact could have found defendant guilty beyond a reasonable doubt. *Ross*, 229 Ill. 2d at 272.

Defendant next contends that the State failed to present evidence that satisfies the *corpus delicti* rule. Specifically, he argues that the State failed to present sufficient evidence, independent of his statement to Gallegos, which tended to prove the existence of the crime, *i.e.*, his possession of a gun. We disagree.

Here, the record reveals that defendant's conviction did not rest exclusively on his statement to Gallegos acknowledging ownership of the handgun. The evidence presented at trial established defendant's constructive possession of the gun recovered from his apartment (see *Brown*, 327 Ill. App. 3d at 824), even absent that statement.

Generally, proof of *corpus delicti* may not rest exclusively on a defendant's extrajudicial confession, admission, or other statement; rather, the State must present evidence independent of the defendant's confession which "tends to show the commission of the offense and is corroborative of the circumstances related in the statement." *People v. Furby*, 138 Ill. 2d 434, 446 (1990). In other words, some evidence, which is independent of a defendant's confession, must tend to show that a crime did occur. *People v. Sargent*, 239 Ill. 2d 166, 183 (2010). However, the independent evidence itself is not required to prove the crime beyond a reasonable doubt; rather, it must only tend to confirm the defendant's confession. *People v. Cloutier*, 156 Ill. 2d 483, 503 (1993); see also *People v. Williams*, 317 Ill. App. 3d 945, 954 (2000) (the independent evidence may be circumstantial and does not need to mirror every detail of the confession, so long as it tends to strengthen the confession). Whether there is sufficient independent proof of the *corpus delicti* is determined

based on the particular circumstances of each case. *Furby*, 138 Ill. 2d at 450.

Here, the State established, via a People's Gas bill, that defendant was a resident of the apartment from which the gun was recovered and the parties stipulated that defendant had previously been convicted of two felonies. Testimony at trial also established that while in custody, defendant stated he was grateful that Kelly had not been arrested for his gun. The independent evidence of the handgun recovered from defendant's apartment tended to prove the commission of the charged offense, *i.e.*, defendant's possession of a firearm, and sufficiently corroborated his statement that it was his gun recovered from the apartment so as to permit the use of that statement to establish the *corpus delicti* of the offense. See *Furby*, 138 Ill. 2d at 446.

As defendant's statement was sufficiently supported by independent corroborating evidence it may be used, along with that independent evidence, to prove the elements of the charged offense. See *People v. Phillips*, 215 Ill. 2d 554, 576 (2005). Here, a gun was recovered from defendant's apartment and Gallegos testified that defendant acknowledged ownership of the weapon. Viewing the evidence in the record in the light most favorable to the State, this court cannot say that no rational trier of fact could have found the elements of the crime beyond a reasonable

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doubt. *Ross*, 229 Ill. 2d at 272. Accordingly, we affirm defendant's conviction for the unlawful possession of a weapon by a felon.

For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

Affirmed