

No. 1-11-3489

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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. 11 CR 2893
)	
JOHN HICKEY,)	Honorable
)	John T. Doody,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Fitzgerald Smith and Epstein concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State established sufficient *corpus delicti* to prove possession of cannabis where defendant's oral confession was corroborated by ample evidence of cannabis plants growing in an apartment and evidence of a checkbook left in the apartment tended to connect defendant to the crime.
- ¶ 2 Following a bench trial, defendant John Hickey was found guilty of possession of cannabis and sentenced to 30 months' probation. On appeal, defendant contends that the trial court erred when it found him guilty because the only evidence linking him to the cannabis

recovered by the police was an alleged oral statement that had never been documented in a police report. We affirm.

¶ 3 According to the State's theory of the case, defendant and two codefendants were using an indoor "grow lab" to produce cannabis in a warehouse apartment in Chicago, and defendant confessed to police officers when confronted about the cannabis. Defendant argued that he was merely a visitor in the apartment, that it was his first visit to the apartment, and that he never made an incriminating statement to police.

¶ 4 At trial, Officer Mueller testified that on January 22, 2011, at approximately 2:30 a.m., he was conducting surveillance of a warehouse building on South Kedzie Avenue. He saw codefendant Jansky open the door to the building holding a clear jar of suspect cannabis. Mueller approached Jansky and he began fleeing toward the apartment in the back of the warehouse. As he ran, Jansky put the jar of cannabis down in the hallway. Jansky entered the apartment and Mueller and other officers made a "forced entry" acting on the belief that Jansky was destroying evidence. Inside, they placed Jansky under arrest and conducted a search for officer safety. While conducting the search, they discovered several more jars of cannabis and several cannabis plants in a grow lab. In addition, they discovered a checkbook bearing defendant's name on top of a nightstand in the room that contained the grow lab.

¶ 5 While the officers were conducting their investigation, defendant and a second codefendant arrived at the apartment. Defendant identified himself, and based on the name on the checkbook, Mueller placed defendant under arrest. A sergeant gave defendant the *Miranda* warnings and defendant acknowledged that he understood. Defendant said that he was shocked and asked why the police were in his room. Defendant stated that the cannabis was only for personal use and suggested that the police should go "catch the real bad guys."

¶ 6 On cross-examination, Mueller admitted that he never saw defendant touch any of the cannabis. Mueller also admitted that no fingerprint analysis was conducted. Mueller testified that he recovered proof of residency for the two codefendants, and that the only proof of residency he recovered for defendant was the checkbook. The parties stipulated that the address on the checks was in Western Springs on Prospect Avenue. Mueller admitted that he did not memorialize defendant's statement in the original or any supplemental police report.

¶ 7 Officer Tim Finley testified that he also spoke with defendant during the early morning hours following his arrest. Defendant stated that "they" had a sophisticated operation going on there. He stated that they went to Amsterdam to research different kinds of cannabis plants and ordered seeds. Defendant also talked about brewing beer and offered to let the officers sample his homemade beer.

¶ 8 On cross-examination, Finley admitted that he did not prepare a written report memorializing his conversation with defendant.

¶ 9 The parties stipulated that a forensic chemist examined the suspected cannabis recovered from the apartment and determined that it was, in fact, cannabis with a total weight of approximately 95 grams.

¶ 10 Defendant testified that on January 22, 2011, he accompanied a friend to the friend's apartment. He had never been there before. He was carrying a backpack and his checkbook was in the backpack. He denied making any statements about growing cannabis, brewing beer, or visiting Amsterdam.

¶ 11 On cross-examination, defendant admitted that he had been at a bar prior to arriving at the apartment and had had two or three drinks.

¶ 12 Following argument by the parties, the trial court found that the police officers had testified credibly and defendant had not. The trial court found defendant guilty of possession of

cannabis, and subsequently sentenced defendant to 30 months' probation. Defendant moved the trial court to reconsider arguing that the *corpus delicti* of the offense had not been adequately proven. The trial court denied defendant's motion to reconsider, and defendant timely appealed.

¶ 13 On appeal, defendant contends that his conviction must be reversed because the State failed to prove the *corpus delicti* of the offense. He argues that "outside the very suspect and undocumented alleged oral statement of [defendant] there is no corroborative evidence that he ever possessed any cannabis."

¶ 14 Our supreme court recently reexamined the *corpus delicti* rule at length in *People v. Lara*, 2012 IL 112370. The State must prove two propositions beyond a reasonable doubt in order to obtain a valid conviction: 1) that a crime has been committed, in other words, the *corpus delicti*; and 2) the identity of the person who committed the offense. *Id.* at ¶ 17. Generally, the *corpus delicti* cannot be proven solely by a defendant's admission, confession or out-of-court statement. *Id.* When the State uses a confession to prove, in part, the *corpus delicti*, it must also provide independent corroborating evidence. *Id.*, citing *People v. Sargent*, 239 Ill. 2d 166, 183 (2010). "To avoid running afoul of the *corpus delicti* rule, the independent evidence need only *tend to show* the commission of a crime." (Emphasis in original.) *Id.* at ¶ 18.

¶ 15 In the case before us, the essential question was whether the State proved defendant possessed the cannabis. Possession can be either actual or constructive and it is not necessary to prove actual possession if constructive possession can be inferred. *People v. Besz*, 345 Ill. App. 3d 50, 59 (2003). "Evidence that a defendant knew drugs were present and exercised control over them establishes constructive possession." *Id.* Where contraband is found on the premises rather than on a defendant's person, the State must prove that the defendant had sufficient control of the premises to permit the inference that the defendant had knowledge and control over the contraband. *People v. Neylon*, 327 Ill. App. 3d 300, 306 (2002).

¶ 16 Here, the State had ample evidence of knowledge and control in the form of defendant's statements. The question raised on appeal is whether these statements were sufficiently corroborated to allow their use to establish the *corpus delicti* of the offense. We find that they were. The police recovered a checkbook bearing defendant's name from the bedroom where the cannabis was located. Admittedly, this checkbook did not bear the address of the apartment where the cannabis was located. However, its presence in the room does suggest that defendant used that room to store valuable personal property, and thereby exercised some control over the premises. We need not determine whether this evidence alone would be sufficient to convict defendant. As the supreme court observed in *Lara*, the corroborating evidence "need not be so strong that it alone proves the commission of the charged offense beyond a reasonable doubt." *Lara*, 2012 IL 112370, ¶ 18. The statements defendant made to the police officers provided more than sufficient evidence of knowledge and control. The checkbook corroborated these statements. Together they were admissible as "stick[s] in the evidentiary bundle" the State could muster against defendant. *Id.* at ¶ 47. Therefore, we find that the evidence presented against defendant did not fail to convict for violation of the *corpus delicti* rule.

¶ 17 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 18 Affirmed.