

2012 IL App (2d) 110999-U
No. 2-11-0999
Order filed December 24, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08-CF-3371
)	
TYWAN M. STARNES,)	Honorable
)	Ronald J. White,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The State proved defendant guilty beyond a reasonable doubt of constructively possessing firearms, as the State proved defendant's control of the premises, especially the specific areas where the weapons were found; (2) we vacated defendant's successive DNA analysis fee.
- ¶ 2 After a jury trial, defendant, Tywan M. Starnes, was convicted of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2008)) and was sentenced to 22 years' imprisonment. On appeal, defendant contends that (1) he was not proved guilty beyond a reasonable doubt; and (2) the

trial court erred when it imposed a \$200 DNA analysis fee (see 730 ILCS 5/5-4-3(j) (West 2008)).

The State confesses error on the second issue. We affirm the judgment as modified.

¶ 3 Defendant was charged with being an armed habitual criminal in that, on or about August 22, 2008, he possessed a firearm and had previous convictions of unlawful use of a weapon by a felon and possession of cannabis with the intent to deliver. We summarize the trial evidence.

¶ 4 Rockford police officer Robert Hatfield testified that, on August 21, 2008, at approximately 12:35 a.m., he was dispatched to Church and Whitman Streets, in response to a call of shots fired. Other squad cars were there. Officers informed Hatfield that they had found spent shotgun shells behind the house at 922 North Church. Hatfield observed that the house had been struck by gunfire. He knocked on the south door to check on the well-being of the people inside. Defendant answered the door, identified himself, and indicated that the house was his residence. Standing next to him was his brother, Fernell Starnes (Fernell).

¶ 5 Rockford police officer Christopher Jones testified that he and Officer Jesse Geiken found several spent shells between 920 and 922 North Church. Jones spoke briefly with defendant outside 922 North Church. Defendant told Jones, “Y’all just want to help them. They shoot at ‘my house’ [sic] and y’all just want to help them.” Defendant then walked away. Geiken testified that, after finding shell casings in the alley, he saw a silver Cadillac parked in front of the house. The State introduced a document from the Secretary of the State’s office certifying that the car was registered to defendant.

¶ 6 Rockford police officer Robert Veruchi testified that, on August 22, 2008, he helped to execute a search warrant for the first floor of the house at 922 North Church. Upon entering through the front door into a foyer, he saw a door to the left and a door straight ahead. He went through the

second door and ascended the stairs. On the second floor, he saw some empty rooms, a kitchen, and a room in which Fernell and Katrina Runas were lying on a mattress. Veruchi obtained a warrant to search the second floor and returned to the house.

¶ 7 Rockford police detective Bruce Voyles testified as follows. On August 22, 2008, he went to 922 North Church to create two crime-scene diagrams, one each of the first floor and the second floor. Voyles explained that a vestibule led into the living room, from where there was access to the dining room, kitchen, and sun room. A small hallway led to two bedrooms and a bathroom. Stairs led to the second floor. The second floor had a bedroom that had been converted into a living room; that room had a doorway leading to a bedroom followed by a second bedroom. There were also a kitchen and stairs “leading out to the back of the house.”

¶ 8 Rockford police detective Simon Solis, Jr., testified that he helped to execute the first search warrant. Entering the house, he went to a bedroom in the northwest part of the first floor. Three people were there: Prince Williams, on the bed; Ebony Perry, in a closet; and Sandra Starnes, on the floor. They were handcuffed and escorted into the living room. Solis then searched the room. Underneath the bed were two rifles, both loaded, which were later collected by detective Robert Reffett and admitted into evidence at trial.

¶ 9 Solis testified that on top of the dresser was a ComEd bill made out to defendant at 922 North Church Street and an auto repair receipt made out to Fernell. Inside a bag in a dresser drawer were a Social Security card bearing defendant’s name; a check made payable to him; and a “ComEd letter” in his name, with a service location of 922 North Church Street. Solis found no documents in the name of Williams, Perry, or Sandra Starnes. He also found a cell phone that he later gave to Reffett.

¶ 10 Reffett testified that he helped execute the first search warrant and collected evidence obtained on the first floor. Reffett identified a State exhibit as a photograph of a Glock Model 21 45-caliber semiautomatic handgun that another detective had found on top of a refrigerator in the first-floor kitchen and two more exhibits as photographs that he took of the two rifles where Solis had found them. The rifles had been lying “pretty much right at the end of the bed,” more or less parallel to each other.

¶ 11 At trial, Reffett identified the documents and the cell phone that Solis had found in the bedroom. He also identified a State exhibit with two letters that were recovered from a coffee table in the first-floor living room. One letter was addressed to defendant at 1449 Andrews Street; the other was from AT&T and gave his mailing address as 1403 Andrews. The police did not recover any documents in the name of Williams, Perry, or Sandra Starnes.

¶ 12 Detective Brian Skaggs testified that, when he arrived at the house, he saw the silver Cadillac parked in the driveway. He entered the house and accompanied other officers to the second floor and collected evidence. In a bedroom, he saw Fernell and Runas in bed. Nobody else was on the second floor. Fernell and Runas were handcuffed and removed. From a table at the foot of the bed, Skaggs collected a state identification card issued to Fernell and some mail addressed to Runas at 922 North Church Street. Nearby were a court-hearing notice addressed to Fernell and a cell phone. In searching the second floor, no officer found any “documentation” for defendant or anyone else other than Fernell and Runas.

¶ 13 Rockford police detective Jeffrey Houde testified that he examined the three seized firearms for latent fingerprints but found none suitable for comparison. He did not examine the cell phone.

¶ 14 The trial court admitted certified copies of defendant's 1998 conviction of unlawful use of weapons by a felon (720 ILCS 5/24-1.1(a) (West 1998)) and his 2005 conviction of possession of cannabis with the intent to deliver (720 ILCS 550/5(d) (West 2004)).

¶ 15 The jury found defendant guilty. The trial court denied his motion for a new trial and sentenced him to 22 years' imprisonment. The court imposed, among other charges, a \$200 DNA analysis fee. After the court denied his motion to reconsider sentence, defendant timely appealed.

¶ 16 On appeal, defendant contends that (1) he was not proved guilty beyond a reasonable doubt, because the State did not establish that he constructively possessed any of the three firearms that were recovered from the house; and (2) the DNA analysis fee must be vacated, because he had paid the same fee in a prior case. The State confesses error on the second issue. We affirm as modified.

¶ 17 We turn to defendant's claim that he was not proved guilty beyond a reasonable doubt. To obtain the conviction, the State was required to prove that defendant possessed "any firearm" after having been convicted twice or more of any combination of the offenses specified by the statute (720 ILCS 5/24-1.7(a) (West 2008)). Defendant contests the State's proof that he possessed any of the three guns that the police found inside the house. He notes that, because the State did not allege or prove actual possession, the issue on appeal is whether the State proved constructive possession. See *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). To establish constructive possession of any one of the weapons, the State had to prove that defendant both knew of the presence of the weapon and exercised immediate and exclusive control over the area where it was found. See *id.* Defendant contends that the State proved neither. For the following reasons, we disagree.

¶ 18 In considering a challenge to the sufficiency of the evidence, we ask only whether, after viewing all of the evidence in the light most favorable to the State, any rational fact finder could have

found the elements of the offense proved beyond a reasonable doubt. *People v. Ward*, 154 Ill. 2d 272, 326 (1992). The trier of fact is responsible for determining the witnesses' credibility, weighing their testimony, and deciding on the reasonable inferences to be drawn from the evidence. *People v. Hill*, 272 Ill. App. 3d 597, 603-04 (1995).

¶ 19 We hold that the evidence, viewed in the light most favorable to the prosecution, was more than sufficient to prove beyond a reasonable doubt that defendant knew of the presence of all three firearms and that he exercised immediate and exclusive control over the areas where they were found. Proof that a defendant had control over the premises where guns were located allows an inference that he knew of and possessed them, absent other factors that might create a reasonable doubt of guilt. See *People v. Smith*, 191 Ill. 2d 408, 413 (2000). However, control of the premises is not a prerequisite to a conviction (see *People v. Adams*, 161 Ill. 2d 333, 345 (1994)), and neither is actual, personal, present dominion over the firearms themselves (see *id.*).

¶ 20 The State proved that defendant controlled the premises on which the guns were found, thus allowing the jury to infer that he constructively possessed them. The indicia of defendant's control of the house, especially the first floor—where the guns were located—were numerous and strong. First, defendant told two officers that it was his house. Second, defendant's car was parked outside the house. Third, the bedroom in which the two rifles were found contained not only defendant's Social Security card and a check made out to him (more proof that he lived in the house and that the bedroom was his), but also a bill from ComEd and another "ComEd letter" in his name at the service address of 922 North Church. These items were especially strong evidence of defendant's control of the premises, as they showed not only that the bedroom was his but also that he was primarily responsible for paying the house's utility bills. Despite the other letters addressed to defendant at

two Andrews street addresses, the jury could find, in short, that defendant was the “head of the household” at 922 North Church Street and not merely a resident.

¶ 21 In *McCarter*, the appellate court affirmed the defendant’s conviction of unlawful use of a weapon by a felon. In holding that the State had proved beyond a reasonable doubt that the defendant had constructively possessed the weapons and ammunition that the police found in a bedroom while they were executing a search warrant, the court explained that the evidence at trial had shown that one of the officers had known that the defendant lived there; that photographs of the defendant and two pieces of mail addressed to him were found in the same drawer where the ammunition was found; and that, earlier that day, the defendant’s mother had implied to the police that the defendant lived there. *McCarter*, 339 Ill. App. 3d at 879. The court was not swayed by the undisputed facts that the defendant had not been in the house when the warrant was executed and that other people (including the defendant’s mother and stepfather) also resided there or otherwise had access to it (*id.* at 878). To have constructively possessed the weapons, the defendant need not have been seen with them or even have been on the premises at the time. *Id.* at 879. Moreover, that other people had access to the weapons or the area where they were stored did not disprove that the defendant also constructively possessed them. *Id.* at 879-80. That was because, in general, others’ access does not defeat a finding of constructive possession: possession can be exclusive even when it is joint. *Id.*; *see also People v. Hill*, 226 Ill. App. 3d 670, 673 (1992).

¶ 22 Although each case must be decided on its own facts, the evidence of control of the pertinent premises here closely resembles, and is no weaker than, the evidence of such control in *McCarter*. Here, the jury could have found not merely that defendant resided at 922 North Church, but that the bedroom where two of the guns were found was his bedroom; that he resided on the first floor, where

all three of the guns were found; and that he was primarily responsible for paying the house's electrical bills. This evidence established defendant's control of the premises, especially those areas where the guns were found. The indicia of his control were correlated with the presence of the weapons. No guns were found on the second floor, where defendant did not have a bedroom; one weapon was found in the first-floor kitchen, relatively close to his bedroom and to the living room where some papers in his name were recovered; and two weapons were recovered in his bedroom, along with several written or printed items in his name.

¶ 23 Defendant's efforts to negate the inference of constructive possession flowing from proof of control are unconvincing. Defendant asserts that there was no evidence that the police found any of defendant's toiletries or items of clothing at the house. Although the introduction of such evidence could have strengthened the State's proof, the absence of this corroboration falls short of making the proof legally insufficient. Defendant cannot overcome all of the positive indicia of his control of the house and the first floor and the first-floor bedroom, and a reasonable jury could conclude that the police did not seize any clothing simply because they saw little point in doing so. The jury could conclude that defendant knew of and exercised control over the guns that were found hidden under his own bed and lying on top of his refrigerator.

¶ 24 Defendant also contends that, even assuming that he controlled the premises, the access that other people had to those premises, and to the firearms, raised a reasonable doubt of his constructive possession. As noted, and as defendant concedes, mere proof of others' access to the weapons would not defeat a finding of constructive possession, as possession may be both exclusive and joint. See *Hill*, 226 Ill. App. 3d at 673. However, defendant asserts that, because (1) other people were found

in the house, and specifically in the bedroom where the guns were found, and (2) there was no direct evidence of how any of the guns got to their locations, he raised a reasonable doubt. We disagree.

¶ 25 The presence of other people in the house did not negate defendant's constructive possession. First, although Williams, Perry, and Sandra Starnes were in the bedroom, there was no evidence that they resided in the house or even that they were aware that the two rifles were under the bed. The jury could reasonably have concluded that the three people were merely guests who were guilty of nothing more than visiting at a bad time. Even were the jury required to infer that any of the three actually knew of or had any control of a firearm, it need not have concluded that defendant had thereby lost his control; at most, the evidence showed joint possession.

¶ 26 Second, although there was evidence that Fernell and Runas did reside in the house, that did not require the jury to reject the conclusion that defendant controlled the areas where the guns were found. The evidence was compelling that Fernell's and Runas's living quarters were on the *second* floor, which had their bedroom and a separate kitchen. Of course, it was undisputed that the three firearms were all found on the *first* floor. This evidence, viewed most favorably to the prosecution, falls short of raising a reasonable doubt of defendant's constructive possession of the firearms. The jury was not required to conclude that any control of the premises Fernell and Runas might have exerted negated defendant's control of the premises.

¶ 27 Defendant's contention that there was no evidence of how the guns got to their locations is beside the point. The State did not need to introduce such evidence. Having proved that defendant controlled the premises, it raised the inference that he constructively possessed the weapons. Proof of constructive possession is often entirely circumstantial (*McCarter*, 339 Ill. App. 3d at 879), and the circumstances here proved defendant guilty. We reject his first claim of error.

¶ 28 Defendant contends second that the \$200 DNA analysis fee must be vacated because defendant had already paid the fee in a 2005 case. The State confesses error, and we agree that the assessment of the redundant fee was improper. See *People v. Marshall*, 242 Ill. 2d 285, 301-03 (2011). Therefore, we modify the judgment by vacating the DNA analysis fee.

¶ 29 For the foregoing reasons, we affirm as modified the judgment of the circuit court of Winnebago County.

¶ 30 Affirmed as modified.