

NOTICE
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2012 IL App (4th) 100653-U

Filed 2/17/12

NO. 4-10-0653

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
WILLIAM JONES,)	No. 09CF1652
Defendant-Appellant.)	
)	Honorable
)	Timothy J. Steadman,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Steigmann and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was proved guilty beyond a reasonable doubt of unlawful possession of a controlled substance.

¶ 2 In June 2010, following a jury trial, defendant, William Jones, was convicted of unlawful possession of a controlled substance (720 ILCS 570/402(a)(2)(A) (West 2008)). In August 2010, the trial court sentenced defendant to 12 years' imprisonment, followed by mandatory supervised release of two years. Defendant appeals, arguing the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 During defendant's June 2010 jury trial, Officer Emily Depauw of the Decatur police department testified on October 13, 2009, she responded to a domestic violence call at 1411 East Wellington Way, Apartment B, Decatur, Illinois. The police were forced to break

down the door to gain entry to the apartment after the occupants failed to respond to the officers' request to open the door. Upon entry, the officers found nine people in the apartment—one in the living room and eight in the bedroom. Defendant was one of the eight people present in the bedroom.

¶ 5 Joytesha Davis, the tenant of the apartment, testified the police asked for permission to search the apartment, and she allowed them to do so. Officer Depauw testified during the search the police found a handgun and cocaine (powder and crack) in the closet of the bedroom where defendant and the others were hiding. The gun was on the shelf of the closet, wrapped in a shirt. The powder cocaine was found in a shoe, and the crack cocaine was found in a piece of clothing.

¶ 6 Joytesha testified during a police interrogation on the evening of the incident she told the police she saw defendant with a "large quantity" of cocaine. Joytesha told police defendant had cocaine in his pocket, which he took out and handed to Shaundaris Reed, another man present in the bedroom prior to the search. She told police Shaundaris placed the cocaine in her shoe in her closet. However, during the trial, Joytesha testified she did not see defendant with cocaine or see defendant hand any cocaine to Shaundaris. She admitted, however, telling the police otherwise during her interrogation.

¶ 7 Defendant was arrested and later charged with armed robbery (720 ILCS 5/18-2(a)(2) (West 2008)) (count I), unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)) (count II), unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2008)) (count IV), and unlawful possession of a controlled substance (720 ILCS 570/402(a)(2)(A) (West 2008)) (count V). The State dropped the

armed-robbery charge (count I), and the case proceeded to a jury trial on the remaining charges (counts II, IV, and V). (Count III related solely to a co-defendant.) The jury found defendant not guilty of unlawful possession of a weapon by a felon (count II). As to the drug charges, the jury was instructed:

"The defendant is charged with the offense of Unlawful Possession of Controlled Substance with Intent to Deliver (15 grams or more). Under the law, a person charged with Unlawful Possession of Controlled Substance with Intent to Deliver (15 grams or more) may be found (1) not guilty of Unlawful Possession of Controlled Substance with Intent to Deliver (15 grams or more) and not guilty of Unlawful Possession of Controlled Substance (15 grams or more); or (2) guilty of Unlawful Possession of Controlled Substance with Intent to Deliver (15 grams or more); (3) or guilty of Unlawful Possession of Controlled Substance (15 grams or more)."

The trial court provided the jury with three verdict forms reflecting the three possible verdicts listed above. The jury returned a guilty verdict for unlawful possession of a controlled substance. Defense counsel asked the trial court to clarify whether defendant was convicted of simple possession or possession with intent to deliver. The court reaffirmed the jury found defendant guilty of simple possession.

¶ 8 This appeal followed.

¶ 9

II. ANALYSIS

¶ 10 On appeal, defendant argues he was not proved guilty beyond a reasonable doubt of unlawful possession of a controlled substance because he was circumstantially tied to the cocaine and the only substantive evidence the State presented was the statements Joytesha made to the police the night defendant was arrested. We conclude the State presented sufficient evidence to permit the trier of fact to find defendant guilty beyond a reasonable doubt and affirm the trial court's judgment.

¶ 11

A. Standard of Review

¶ 12 When a defendant appeals based on the sufficiency of the evidence, the standard of review is "whether, after viewing 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." (Emphasis in original.) *People v. Cox*, 195 Ill. 2d 378, 387, 748 N.E.2d 166, 172 (2001) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). A conviction will only be reversed if "the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217, 824 N.E.2d 262, 267-68 (2005).

¶ 13

As the trier of fact, it is the jury's responsibility to judge the credibility of the witnesses and decide what weight to afford such testimony, to resolve any conflicts in evidence, and to draw reasonable inferences from the evidence. *People v. Moreno*, 334 Ill. App. 3d 329, 342, 778 N.E.2d 180, 190 (2002). Great weight must be given to the jury's findings, and we will not retry defendant when considering the sufficiency of the evidence. *People v. Wheeler*, 226 Ill. 2d 92, 114-15, 871 N.E.2d 728, 740 (2007).

¶ 14

B. Joytesha's Statements

¶ 15 Defendant primarily relies on the repudiated statements of Joytesha at trial in arguing the State failed to prove him guilty beyond a reasonable doubt. Defendant suggests Joytesha likely fabricated her statements to police to cover for herself or for another person in the room, and those statements are therefore unsatisfactory evidence upon which to convict defendant. Joytesha testified she told police during her interrogation (1) the cocaine found in the closet was defendant's and (2) she saw defendant hand the cocaine to Shaundaris. However, when questioned at trial, Joytesha testified the cocaine was not defendant's and she did not see an exchange take place between defendant and Shaundaris. Joytesha's testimony at trial conflicted with her statements made to police prior to trial. However, the jury had the opportunity to observe Joytesha at trial and make determinations about any prejudice, bias, or motive for lying Joytesha may have had. Its verdict suggests it found Joytesha's report to police of defendant's connection to the cocaine on the night of October 13, 2009, more credible than her disavowal at trial.

¶ 16 Joytesha's recanted statement, acknowledged by her under oath, was admitted as substantive evidence for the jury to consider. See 725 ILCS 5/115-10.1 (2010). It was then for the jury to determine which statement to believe. Once admitted as substantive evidence, the prior statement became part of the body of evidence against the defendant, it was not admitted merely to impeach Joytesha. As stated, the jury was free to determine Joytesha's statements to the police were credible. See *People v. Curtis*, 296 Ill. App. 3d 991, 999-1000, 696 N.E.2d 372, 378-79 (1998).

¶ 17

C. Circumstantial Nature of Other Evidence

¶ 18

Defendant also argues he was not proved guilty beyond a reasonable doubt because the only evidence, other than Joytesha's testimony, linking him to the cocaine was his presence in the bedroom. Defendant argues this evidence is weak circumstantial evidence, insufficient to convict defendant, because eight other people were present in the room. The State responds with citation to a case iterating "evidence establishing constructive possession is often wholly circumstantial." *People v. Newman*, 211 Ill. App. 3d 1087, 1093, 569 N.E.2d 1089, 1093 (1991). "Furthermore, the fact other persons are present with the defendant will not negate a finding of constructive possession because possession may be joint." *Newman*, 211 Ill. App. 3d at 1093-94, 569 N.E.2d at 1093.

¶ 19

The State presented to the jury circumstantial evidence connecting defendant to the cocaine. That others were present in the room does not alone nullify the jury's finding defendant possessed the cocaine. Further, although repudiated at trial, the State presented evidence Joytesha told police she saw defendant with cocaine. The jury found defendant guilty based upon the evidence presented. We do not find this determination to be so improbable, inconclusive, or unsatisfactory as to warrant a reversal of defendant's conviction.

¶ 20

D. Direct Evidence Linking Hubbard to Cocaine

¶ 21

Finally, defendant argues direct evidence linked another man in the room, Marvis Hubbard, to the cocaine. Officer Depauw testified Hubbard was also arrested the night defendant was arrested. However, the arrest was on an outstanding warrant, not related to the events that took place on the night of October 13, 2009. Justin Woodrum, a corrections officer for Macon County jail, testified he searched Hubbard after he was arrested and found a clear Baggie full of

white powder in his rectum. Woodrum further testified he found \$29 inside Hubbard's shoes.

¶ 22 The State contends Woodrum's testimony showed Hubbard had a small amount of powder cocaine packaged differently from the cocaine found in the apartment. The State argues Hubbard's possession of cocaine does not undercut the jury's conclusion defendant possessed the drugs in this case. Alternatively, the State also argues this evidence could support a jury finding that defendant and Hubbard jointly possessed the cocaine. See *People v. Schmalz*, 194 Ill. 2d 75, 82, 740 N.E.2d 775, 779 (2000) ("Actual possession does not require present personal touching" of the cocaine, and two or more persons may have possession when they share exclusive control or the intention to exercise control.). We agree with the State. We conclude the State presented sufficient evidence to convict defendant, and the fact Hubbard possessed cocaine does not negate the jury's finding.

¶ 23

III. CONCLUSION

¶ 24 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 25 Affirmed.