

No. 1-11-2885

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 C6 60486
	)	
TIMOTHY YOUNG,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE TAYLOR delivered the judgment of the court.  
Presiding Justice McBride and Justice Palmer concurred in the judgment.

**ORDER**

¶ 1 *Held:* The State's evidence was sufficient to establish beyond a reasonable doubt the knowledge element of unlawful possession of firearm ammunition by a felon.

¶ 2 Following a bench trial, defendant Timothy Young was found guilty of unlawful possession of firearm ammunition by a felon (720 ILCS 5/24-1.1(a) (West 2010)) and sentenced to three years' imprisonment. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he had knowledge of the presence of ammunition found during a parole compliance check.

¶ 3 The record shows that on April 30, 2011, the State filed a complaint for preliminary examination charging defendant, who was previously convicted of a felony, with having committed the offense of unlawful possession of weapons by a felon, in that he knowingly possessed firearm ammunition, namely, "14 live 9mm American Eagle rounds and 42 live 9mm Winchester rounds." Following a preliminary hearing, the court entered a finding of probable cause and defendant was then charged by information with two counts of unlawful use or possession of a weapon by a felon.

¶ 4 At trial, Jeffrey Gabor, an investigator for the Illinois Department of Corrections, testified that at 8:30 a.m. on April 30, 2011, he and other officers conducted a parole compliance check at 15639 South Maryland Avenue in Dolton, Illinois, where defendant lived with his parents after he was paroled in September 2010. Defendant answered the door, wearing boxer shorts and a T-shirt; his parents were not at home. When asked where he slept, defendant responded, "in a room," and led the officers to his bedroom on the main floor of the single family home. In the bottom drawer of a dresser, Gabor found, beneath some loose papers, two boxes of nine millimeter handgun ammunition, which he identified in court as People's Exhibit Number One. When asked if there was a firearm for that ammunition, defendant responded that there was not because the police had that weapon previously from a prior case and that the ammunition was left over from it.

¶ 5 On cross-examination, Gabor stated that he had never been to defendant's residence before, that he and the other officers did not look elsewhere in the house for a weapon, and acknowledged that he noticed a breathing machine in the bedroom he searched. When asked, "did [defendant] say he knew that the ammunition was in that room," Gabor answered, "I don't believe he said that. No."

¶ 6 Detective Darryl Hope of the Dolton Police Department testified that he interviewed defendant at the police station at 9:30 that same morning, after advising him of his *Miranda* rights, which he waived. According to Hope, defendant then stated "that the bullets that were found were in his room. They were from a case in 2002, in South Holland, and that they were old. He didn't realize they were still in there."

¶ 7 Following Detective Hope's testimony, the State introduced a certified copy of defendant's 2005 conviction for aggravated battery with a firearm in case number 02CR2484001, which was admitted into evidence without objection, and then rested its case-in-chief. The court denied defendant's motion for a directed finding, and defendant then testified on his own behalf.

¶ 8 Defendant stated that after he was paroled in September 2010, he went to live with his parents, moving into the basement bedroom that his older brother had occupied before getting married. He did not know that the ammunition found in the bedroom on the main floor was there, nor did he make such a statement to police. He also denied being interviewed at the police station by Detective Hope. He stated that the detective simply fingerprinted him and said, "they found bullets in your room." Defendant added that prior to the date in question, parole officers visited him monthly and, every time, he directed them to the basement bedroom.

¶ 9 On cross-examination, defendant acknowledged that he occupied the bedroom on the main floor prior to his incarceration for the 2005 aggravated battery with a firearm conviction. He also identified People's Exhibit Number One as the two boxes of nine millimeter handgun ammunition that belonged to him when he stayed in that bedroom. He stated that the last time he saw those bullets, they were in the bedroom where his father, who suffers from sleep apnea, now sleeps. Defendant stated, on further cross-examination, that he led police to the bedroom on the main floor, even though he was not staying there at the time, and explained on redirect examination, that he did so because his basement bedroom was a "pigpen."

¶ 10 Sherry Young, defendant's mother, similarly testified that her husband, who has sleep apnea, occupied the bedroom in which the ammunition was found, and that she occupied the bedroom next door. She acknowledged showing parole officers the bedroom on the main floor as the one defendant would occupy upon his release from incarceration, but maintained that defendant occupied the basement bedroom. She further identified Defense Exhibits One, Two, and Three as photographs of her husband's bedroom and his personal effects, particularly the breathing machine that he uses to treat his sleep apnea. On cross-examination, Young explained that defendant was to stay in the bedroom on the main floor until his older brother moved out of the basement bedroom, and while the photographs of her husband's bedroom were date-stamped May 23, 2000, two years before defendant was arrested on the prior aggravated battery case, they were actually taken with a digital camera after defendant's arrest on April 30, 2011.

¶ 11 Following closing arguments, the trial court found defendant guilty of unlawful possession of firearm ammunition by a felon. In doing so, the trial court noted that the issue was whether or not defendant knowingly possessed the firearm ammunition, and that defendant was the person who led the officers to the bedroom that he subsequently claimed belonged to his father. The trial court then sentenced defendant to three years' imprisonment after denying his motion for a new trial.

¶ 12 In this court, defendant contends that the State failed to prove beyond a reasonable doubt that he had knowledge of the presence of the ammunition found in the bedroom. He relies expressly on Detective Hope's testimony that during the custodial interview at the police station, defendant stated that he did not know the bullets were in the bedroom. The State responds that defendant's initial statement to the police, that the ammunition was left over from his prior case, after leading them to the bedroom where it was found, established his knowledge of the presence of that ammunition.

¶ 13 When defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question on review is whether, after considering 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. *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). Under this standard, a court of review must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cardamone*, 232 Ill. 2d 504, 511 (2009).

¶ 14 To sustain a conviction of unlawful possession of firearm ammunition by a felon, the State must prove that defendant had knowledge of the presence of the ammunition, and that he was previously convicted of a felony. *People v. Rasmussen*, 233 Ill. App. 3d 352, 370 (1992); 720 ILCS 5/24-1.1(a) (West 2010). Defendant does not challenge the sufficiency of the evidence to establish his 2005 felony conviction for aggravated battery with a firearm, leaving only the issue of whether the evidence was sufficient to establish his *knowing* possession of the ammunition. *Rasmussen*, 233 Ill. App. 3d at 370.

¶ 15 "Knowing possession" may be actual or constructive. *People v. Brown*, 327 Ill. App. 3d 816, 824 (2002). Where, as here, defendant was not found in actual possession, the State had to prove constructive possession, *i.e.*, that defendant had *knowledge* of the presence of the ammunition, and that he had immediate and exclusive *control* over the area where the ammunition was found. *People v. Hunter*, 2013 IL 114100, ¶ 19; *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. Defendant's knowledge of the presence of ammunition within his possession may be inferred from circumstantial evidence (*Brown*, 327 Ill. App. 3d at 824-25), *i.e.*, evidence of defendant's acts, declarations, or conduct from which it can be inferred that he knew the contraband existed in the place where it was discovered (*Spencer*, 2012 IL App (1st) 102094, ¶ 17).

¶ 16 Here, the evidence established that two boxes of handgun ammunition were found in the bottom drawer of a dresser, in a bedroom that defendant led the officers to during a parole compliance check. When Investigator Gabor asked about the ammunition, defendant responded that the ammunition was left over from his prior case, and during his subsequent interview at the police station, defendant told Detective Hope that the bullets were his, but he did not realize they were still in that bedroom.

¶ 17 Defendant placed his credibility at issue when he testified and denied making these statements. The trial court, however, specifically voiced its skepticism over defendant's account (*People v. Hill*, 2012 IL App (1st) 102028, ¶ 41 (and cases cited therein); *People v. Stewart*, 366 Ill. App. 3d 101, 111 (2006)), and found him in constructive possession of the ammunition. Viewing the totality of the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found that defendant constructively possessed the ammunition recovered during the parole compliance check, and that the State proved beyond a reasonable doubt the essential elements of unlawful possession of firearm ammunition by a felon. *Spencer*, 2012 IL App (1st) 102094, ¶ 18.

¶ 18 In reaching this conclusion, we are unpersuaded by defendant's reliance on *People v. Bailey*, 333 Ill. App. 3d 888, 892 (2002), where the police found a gun, which defendant did not own, underneath the passenger seat in which he was seated and the State failed to establish any connection or relationship between defendant and the owner of the gun or the owner of the car. Unlike *Bailey*, defendant, here, acknowledged that the ammunition was left over from his prior aggravated battery with a firearm case, and that he last saw those bullets in the bedroom where his father now slept. Although defendant now maintains that it defies logic that he would point officers to a bedroom he knew contained contraband, we note defendant's trial testimony that he did so because his basement bedroom was a "pigpen." As noted, it was the prerogative of the

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trier of fact to accept or reject as much of defendant's testimony as it chooses and to draw reasonable inferences therefrom (*People v. Vazquez*, 315 Ill. App. 3d 1131, 1133 (2000)), and here, we find no basis for disturbing the decision made by the trial court.

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

¶ 20 Affirmed.