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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. 12 CR 199
)	
DERRICK LYLES,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm defendant’s conviction of possession of a controlled substance with intent to deliver over his contentions that the evidence was insufficient to find him guilty and that he was denied a fair trial because the trial court considered improper evidence.

¶ 2 Following simultaneous but severed bench trials, defendant Derrick Lyles was found guilty of possession of 15 or more but less than 100 grams of a controlled substance (cocaine) with intent to deliver and sentenced to six years' imprisonment. Codefendant Jatara Harris, who is not a party to this appeal, was acquitted of all charges. On appeal, Lyles contests the sufficiency of the evidence, asserting that the State failed to prove that he had constructive possession of the cocaine found in the apartment where the search was executed. Lyles also

contends that he was denied his right to a fair trial where the trial court considered improper evidence in making its ruling. We affirm. Ample evidence establishes that Lyles had control over cocaine and resided in the apartment. In addition, Lyles received a fair trial, and record shows that the trial court only considered proper and admissible evidence in arriving at its decision.

Background

¶ 3 Officer Douglas Nichols testified that at about 9 p.m. on December 1, 2011, he and several other officers were executing a search warrant at 233 North Kolmar Avenue, Chicago, an apartment. They made a forced entry through the back door and were looking for Lyles. When Nichols entered the apartment, he saw Jatara Harris running out of the front door. Nichols detained her and conducted a search of the kitchen and living room, which revealed several bags of suspect cocaine, a bowl with a spoon containing white powder, a plate with residue on it, empty packaging baggies, scales, a cutting agent used to mix narcotics, and money.

¶ 4 Jatara was arrested and Nichols asked her the whereabouts of Lyles. When the State questioned Nichols regarding Jatara's response, defense counsel objected. The court overruled the objection stating that it would only consider Jatara's response against her and not against Lyles because the trials had been severed. Nichols then testified that Jatara indicated she would call Lyles on the phone, which she did. Jatara gave Nichols the phone, Nichols identified himself, and the individual he was talking to identified himself as "Derrick." Nichols told Derrick that the police executed a search on his residence, and requested he return there. Derrick responded negatively, and stated, "I can't take this one, my background is too bad, she can take this one." Nichols returned the phone to Jatara.

¶ 5 Officers Carlos and Robert Gonzalez testified that they were part of the team executing the search warrant. Carlos searched the back bedroom and recovered ammunition and a rifle. Gonzalez searched the bedroom near the rear entrance and recovered a 2010 credit card bureau report entitled "Merchants Credit Card Company" in Lyles's name listing the 233 North Kolmar Avenue address, and a wallet containing a state ID belonging to Lyles that expired in 2004. The address on the ID was 824 North Laramie Avenue, Chicago.

¶ 6 Officer Roger Webster testified that on December 2, 2011, Lyles was arrested and brought to the second district for processing. At the second district, Lyles asked, "[A]re y'all here about that BB gun?"

¶ 7 The State presented certified copies of Lyles's two prior convictions for possession of a controlled substance with intent to deliver (92 CR 2248501 and 98 CR 56501) and one prior conviction for armed robbery (92 CR 2144901).

¶ 8 The parties stipulated that Pierre Anzalone would testify that he received the suspect cocaine and that those items were inventoried and tested. The items tested positive for cocaine and weighed more than 59 grams.

¶ 9 After the State rested, Lyles rested his case without presenting any evidence.

¶ 10 Latanya Harris, Jatara's sister who lived in the apartment across from the one that was searched, testified on behalf of Jatara. Latanya did not know if Lyles lived in the apartment across from her and never saw him there. She acknowledged that she knew Lyles as the father of Jatara's son. Before leaving her apartment at about 9 p.m. on December 1, 2011, Latanya saw Jatara in her apartment with Jatara's three-year-old son, as well as Latanya's 17-year-old daughter. Latanya was not present when the search warrant was executed. After being cross-

examined by the State, the trial court asked Lyles's attorney if he had questions for Latanya. Defense counsel reminded the court that Lyles had already rested its case, and the court acknowledged that counsel was correct and that the trials had been severed.

¶ 11 Following closing arguments, the trial court acquitted Jatara of all charges and found Lyles guilty of possession of a controlled substance with intent to deliver, stating that "all the drugs in the house, they are [defendant's] drugs." The court reiterated that the bench trials were severed, and found that, according to the conversation Lyles had with Officer Nichols, Lyles refused to return to the scene of the search due to his criminal background. Furthermore, the court noted that Lyles's property was found at the searched apartment, he was stashing his drugs at Jatara's residence, Lyles and Jatara had a relationship with each other that resulted in a child, and Lyles attempted to mitigate his involvement by making a post-arrest statement when he asked if a BB gun was found in the apartment.

¶ 12 In his posttrial motion, defense counsel argued that the trial court relied on inadmissible evidence in finding Lyles guilty. In particular, counsel noted that the court relied on the phone call with Officer Nichols and Lyles's relationship with Jatara as indicated in Latanya's testimony. After reviewing the transcript, the trial court denied the motion. In doing so, the court found that it did not consider Latanya's testimony against Lyles in making its findings.

Analysis

¶ 13 On appeal, Lyles contends that he was not proven guilty of possession of a controlled substance with intent to deliver beyond a reasonable doubt. He maintains that the State failed to show that he had constructive possession of the cocaine found in the searched apartment. In particular, Lyles insists that the State failed to show that he had knowledge of the drugs or

control over the area where they were found because he was not present during the search, and no evidence was recovered indicating that he lived at the apartment.

¶ 14 Where, as here, Lyles challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court is whether, after viewing 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. Davison*, 233 Ill. 2d 30, 43 (2009). To sustain a conviction for possession of a controlled substance, the State must prove beyond a reasonable doubt that defendant knowingly possessed a controlled substance. *People v. Burks*, 324 Ill. App. 3d 765, 768 (2003); 720 ILCS 570/402 (West 2010). In a possession of a controlled substance case, it is unnecessary for the State to prove actual possession. Instead, the State may show constructive possession. *Burks*, 343 Ill. App. 3d at 769. Possession can be constructive where defendant knew of the presence of the substance and exercised control over it. *Id.* It is well settled that "the mere presence of illegal drugs on premises which are under the control of the defendant gives rise to an inference of knowledge and possession sufficient to sustain a conviction absent other factors which might create a reasonable doubt as to defendant's guilt." *People v. Smith*, 191 Ill. 2d 408, 413 (2000).

¶ 15 Viewed in the light most favorable to the prosecution, the evidence showed that during the execution of a search warrant, the police recovered several bags of cocaine, kitchen appliances containing cocaine, scales, packaging, a cutting agent used to mix narcotics, money, a rifle, and ammunition. The police also recovered a credit card bureau report entitled "Merchants Credit Card Company" in Lyles's name listing the North Kolmar Avenue address. In addition, they recovered a wallet that belonged to Lyles, containing Lyles's state ID which provided a

different address but had expired seven years earlier in 2004. Following the arrest of Jatara Harris, Officer Nichols spoke to Lyles on the phone. Lyles introduced himself as "Derrick," refused to return to the apartment, and stated "I can't take this one, my background is too bad, [Jatara] can take this one." Lyles had two prior convictions for possession of a controlled substance with intent to deliver and one prior conviction for armed robbery. Following Lyles's arrest, he asked police "[A]re y'all here about that BB gun?"

¶ 16 Based on the this evidence, Lyles's knowledge of the presence of cocaine inside the apartment can be inferred by his comments to police, as well as the documentation found in the apartment bearing his name and the address. See *People v. Denton*, 264 Ill. App. 3d 793, 799 (1994) (constructive possession established where large quantity of cocaine, \$1,800 in cash, revolver, cache of ammunition, and proof of Lyles's residency were found in his bedroom).

¶ 17 Nevertheless, Lyles contends that the State failed to prove that he lived in the searched apartment where he was not present during the search, and police found no evidence that he lived there, *i.e.*, no men's clothing, fingerprints, leases, or other documents connecting Lyles to the premises. The record, however, establishes that the police did obtain evidence that Lyles resided there—they recovered a credit card bureau report in Lyles's name listing 233 North Kolmar Avenue as his address, as well as his wallet. The trial court noted the significance of the proof of residency evidence, "[t]here was evidence about him, property of his that was present at the house as well." In addition, Lyles essentially admitted to Officer Nichols on the phone that he had knowledge of the narcotics found at the apartment when he told Nichols that he did not want to return because his "background is too bad." Lyles's claim that the State did not establish the identity of the person on the phone with Nichols is unpersuasive where the individual identified

himself as "Derrick," and the trial court made a specific finding of fact that Lyles was talking to Nichols. See *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007) (trier of fact's findings entitled to great weight given that it is in best position to judge credibility and demeanor of witnesses).

¶ 18 As there was ample evidence that Lyles had control over the narcotics and resided in the apartment, this case is distinguishable from *People v. Macias*, 299 Ill. App. 3d 480 (1998), and *In re K.A.*, 291 Ill. App. 3d 1 (1997), on which Lyles relies. See *Macias*, 299 Ill. App. 3d at 486, 488 (reversing defendant's conviction where only evidence connecting him to drugs was fact he had a key to apartment, given him by apartment tenant who was hospitalized); *K.A.*, 291 Ill. App. 3d at 6-8 (reversing respondent's adjudication of guilt where he did not reside in apartment in which cocaine found, drugs were concealed, no paraphernalia found, and no evidence that anyone stayed in the apartment regularly or that the respondent had ever previously been to apartment). We further note that Lyles's argument that Jatara "appeared to exercise control over the premises," is irrelevant to establish Lyles's constructive possession. See *People v. Schmalz*, 194 Ill. 2d 75, 82 (2000) (holding that "if two or more persons share immediate and exclusive control or share the intention and power to exercise control, then each has possession").

¶ 19 Lyles next contends that he was denied his right to a fair trial where the trial court considered improper evidence in making its ruling. In particular, Lyles contends that the trial court improperly considered evidence of the phone call Jatara made to Lyles at Nichols' request. Lyles also contends that the trial court improperly considered the testimony of Latanya, who only testified in Jatara's defense.

¶ 20 Illinois law presumes that in a severed but simultaneous bench trial, the trial court has assessed the case against each defendant separately based on evidence properly admitted against that defendant. *People v. Schmitt*, 131 Ill. 2d 128, 138-39 (1989). Thus, the court of review should presume the trial court knew the law and only considered competent evidence unless the contrary affirmatively appears of record. *Id.*

¶ 21 No improper evidence was considered by the trial court in finding Lyles guilty. We initially note that the court emphasized, on multiple occasions, that the trials were severed. For instance, just before the court delivered its findings, it stated, "I will note that this is a severed trial and the evidence against each defendant must be considered separately and statements by one defendant must surely not [be] considered as evidence against the codefendant as any admissions." Moreover, in denying Lyles's posttrial motion, the court reiterated its awareness of the severance and was "mindful of the fact we were not to use statements of one co-defendant against another." The court then denied Lyles's counsel's assertion that the trial court worked Latanya's testimony into its findings regarding Lyles. Therefore, based on the trial court's repeated statements recognizing that the trial was severed and that it would not use one codefendant's statements against the other, we cannot find that Lyles was denied a fair trial. See *People v. Williams*, 246 Ill. App. 3d 1025, 1033 (1993) (stating "where a trial court explicitly states in a joint trial that it will not consider inadmissible evidence and the record supports the judge's admonition, a defendant cannot claim that he has been denied a fair trial").

¶ 22 The record further supports the trial court's admonition that it would not consider inadmissible evidence. When the court delivered its findings, it stated:

"What happened on the case is that the police had a warrant that they wanted to serve for the defendant, Derrick Lyles. They went to execute the warrant. Made forcible entry. [Jatara] happened to be there. Quite a bit of contraband was recovered. This was obviously a drug house. *** [The police] told [Jatara] who they were actually looking for, and that was [defendant]. [Jatara] got [defendant] on the phone. She let the police talk to him on the phone. He says, no, I am not coming back. *** I have too much baggage, too much of a background, she is going to have to take the weight on this one, words to that effect. He was finally arrested the next day. There was evidence about him, property of his that was present at the house as well. I do believe that the evidence also showed that [Jatara] and [defendant] had a relationship with each other. They had parented a child together, albeit not married. They had an out-of-wedlock child, and what it appears to me that [defendant] is stashing his dope at [Jatara's] place. She may have been acquiescing to it, but I am not sure she was involved in any of that activity.*** [A]ll the drugs in the house, they are [defendant's] drugs. *** [M]aking up some business about it is a BB gun, that's the next day trying to mitigate himself out from under the damage and his wallet being there, this is his drugs."

These findings confirm that the trial judge did not rely on improper evidence in ruling on Lyles's guilt.

¶ 23 Nevertheless, Lyles maintains that the trial court improperly relied on the phone call Jatara made to Lyles. Lyles argues that Jatara's out of court confirmation that Officer Nichols was speaking with Lyles should not have been considered against him. As the State's brief points out, however, the trial court properly relied on Officer Nichols' testimony regarding the phone call Jatara made to Lyles. Specifically, Lyles identified himself as "Derrick," and stated that he would not return to the apartment due to his criminal background. These statements were admissible at trial as non-hearsay. See Ill. R. Evid. 801(d) (2) (statement is not hearsay if "offered against a party and is the party's own statement"). Therefore, in finding that Lyles was the individual on the phone, the trial court relied on Lyles's own statements to Nichols, and not on Jatara's statement to Nichols that she would call Lyles.

¶ 24 We further reject Lyles's claim that the trial court improperly considered Latanya Harris' testimony that Jatara and Lyles had a child in common. In so arguing, Lyles points to the fact that the trial court asked his defense counsel if he had any questions for Latanya, even though Lyles had rested his case. Lyles also points to the trial court's findings where it indicated that Lyles and Jatara had a child together.

¶ 25 Despite Lyles's contentions to the contrary, we find that although the trial court asked defense counsel if he had any questions for Latanya, the record shows that the trial court quickly acknowledged that defense counsel was correct that he had already rested his case, and then reiterated that the trials were severed. The court specifically stated, "You are correct. Excuse me. There is a severance. You are correct. You are done. Thank you."

¶ 26 Furthermore, we disagree with Lyles that the court’s findings show that it used Lyles and Jatara’s relationship, as testified to by Latanya, to tie Lyles to the drugs in the searched apartment. Instead, as the State correctly states in its brief, the court was referring to Lyles and Jatara’s relationship, not as evidence of Lyles’s guilt, but for the proposition that although Jatara acquiesced to the “stashing” of the narcotics in her residence because Lyles was her son’s father, she was not otherwise involved in the narcotics activity. The court thus relied on Lyles and Jatara’s relationship in finding Jatara not guilty, not in finding Lyles guilty.

¶ 27 In addition, we note that the trial court, in denying Lyles’s posttrial motion, reiterated that it did not take Latanya’s testimony into consideration when it found Lyles guilty. The following exchange took place between defense counsel and the trial court:

“MR. MURPHY” [defense attorney]: If you recall, immediately after the State rested, we rested. Then [Latanya] took the stand and testified ***.

THE COURT: And I acknowledge that. I saw the timing of it, the sequence. That evidence wasn’t considered against [defendant].

MR. MURPHY: That did work into your finding of fact.

THE COURT: Not necessarily.”

Therefore, we find that Lyles was not denied a fair trial, the trial court explicitly stating that it would not consider the codefendants’ statements against each other, and nothing in the record indicates otherwise.

¶ 28 We affirm the judgment of the circuit court.

¶ 29 Affirmed.