

FIFTH DIVISION
MARCH 6, 2015

No. 1-13-1222

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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 3721
)	
JABAR WALTER,)	Honorable
)	Lawrence E. Flood,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's admission that he owned the gun found in the apartment where he slept constituted sufficient evidence that he had constructive possession of the weapon, thus supporting his conviction for the unlawful use of a weapon by a felon.

¶ 2 Following a jury trial in 2013, defendant Jabar Walter was convicted of two counts of unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)) and was sentenced to concurrent terms of five years in prison. On appeal, defendant contends the State did not establish his constructive possession of the weapon because the gun was recovered in an

apartment with other adults present. Defendant also points to his trial testimony denying that he told police the gun belonged to him. We affirm.

¶ 3 At trial, Chicago police officer Fred Hasenfang testified that at about 6 a.m. on January 25, 2012, he and Illinois Department of Corrections parole agent Tim Blair knocked on the door of an apartment on South Sangamon in Chicago to perform a parole check on a Calvin Smith. Defendant answered the door and allowed Hasenfang and Blair to enter, together with Chicago police officer Dennis Lanning. Defendant also allowed three officers into the apartment from a rear door.

¶ 4 Hasenfang testified that upon entering the apartment, they stood in a combined living room and kitchen that was between 15 and 18 feet long. A mattress was on the living room floor. Hasenfang observed a handgun on top of a kitchen cabinet. After reaching up and retrieving the gun, Hasenfang alerted the other officers that he found a weapon. Hasenfang removed the ammunition from the gun. The other people present in the apartment were "several small children and a female."

¶ 5 Hasenfang testified that after securing the gun, he asked defendant who it belonged to, and defendant responded it was not his. Hasenfang then testified as follows:

"Q. And when you had a second conversation with the defendant, what did you say to him, and what did he say to you?

A. I said – I revisited the topic of whose gun it was.

Q. Why did you do that?

A. Because it really didn't look like Calvin Smith, to me, lived there.

Q. Okay.

A. So I went back to the defendant, and I asked him again about the gun.

Q. All right. And what did you say to him, and what did he say to you?

A. I said, straight to him, I mean, c'mon, whose gun is this? This gun didn't just walk in here by itself. Somebody had to bring it in here.

Q. And, at that time, what did he say to you?

A. He said, in essence, you have to understand, it's tough out there. You – a man's got to be protected on the street. You gotta have it."

¶ 6 An AT&T bill in defendant's name was recovered from the kitchen counter of the apartment. The bill was addressed to defendant at 5801 South Sangamon, at the particular apartment, in Chicago.

¶ 7 Defendant was arrested and taken to the police station. After advising defendant of his *Miranda* rights, Hasenfang asked defendant "once again why he had the gun, and he said, in essence, the same thing about, it's real tough out – on the street. He's got to be protected."

¶ 8 Hasenfang's testimony continued:

"Q. Did you ask him anything else?

A. I did.

Q. And what was that?

A. I asked him how long he had the gun.

Q. And what did he say to you?

A. He said, I don't know. A while."

¶ 9 On cross-examination, Hasenfang stated that defendant was the only adult male present in the apartment. Defendant's statements were not written or memorialized on video. On redirect examination, Hasenfang said he documented defendant's statement in the arrest report.

¶ 10 Blair testified that the apartment building contained six units. He testified consistently with Hasenfang's account of how the gun was found and secured. Blair recalled Hasenfang having "one, maybe two short conversations" with defendant. Blair overheard defendant deny any knowledge of the weapon in the first exchange. A few minutes later, when Hasenfang asked defendant about the weapon again, Blair heard defendant, who was the only male present other than the officers, respond that "it's dangerous out here" and "you can't blame a man for wanting to protect himself."

¶ 11 The State entered a copy of the AT&T bill into evidence, along with the weapon recovered from the apartment. The parties stipulated that defendant had a qualifying predicate felony conviction to support that element of the charged offense.

¶ 12 In the defense case, Asiana Walter, defendant's sister, testified she was in the bedroom of the apartment with her boyfriend, Karrieth Shaw, and her three children at 6 a.m. on the morning in question. The police entered the bedroom and told her to leave that room. She went to the living room, where about four police officers were present. Defendant was sitting on the mattress in handcuffs. She was told to sit on the mattress on the living room floor with defendant. She testified that she and defendant were sitting between three and five feet apart because the living room was "not that big."

¶ 13 When asked if she was present when a gun was found, Asiana replied, "No. I think I was in my room at the time." Asiana said an officer questioned defendant for 10 or 15 minutes and

questioned him three or four times. After defendant was questioned, the police questioned Shaw and handcuffed him.

¶ 14 On cross-examination, Asiana stated that when she came out of her bedroom as directed by police, defendant's girlfriend, Adella Hamilton, was also on the mattress in the living room. The children remained in her bedroom. When defendant was escorted from the apartment in handcuffs, the police removed Shaw's handcuffs. Asiana testified she had not observed the gun before. She said she, her mother and her children lived in the apartment and that defendant did not live there. Asiana said she told one of the officers that the gun did not belong to defendant.

¶ 15 Shaw, who lived in Iowa at the time of trial, testified that he was in a bedroom with Asiana when the police entered the apartment. The police entered the bedroom and had him come out of the bedroom. Shaw observed both defendant and defendant's girlfriend in the front room. The police handcuffed Shaw, questioned him and released him. Shaw testified he had never observed a gun in the apartment.

¶ 16 Defendant testified that he lived at 5705 South Peoria. He said he and his girlfriend arrived at the apartment at 1 a.m. on the morning in question and went to sleep. Defendant said he opened the door for the police and parole officer. Defendant observed Hasenfang retrieve the gun from atop the kitchen cabinet; however, defendant testified the gun did not belong to him. Hasenfang asked defendant whose gun it was, and he responded it was not his.

¶ 17 Hasenfang told defendant to sit down and returned five minutes later and questioned him about the gun. Defendant again denied telling the officer that the gun was his. Defendant said police recovered an AT&T cellular telephone bill that was sent to him at 5801 South Sangamon for the billing cycle of December 14, 2011, to January 13, 2012 (12 days before this incident).

¶ 18 In closing argument, the State maintained that defendant had actual possession of the gun when he set it on top of the cabinet. In addition, the State argued that defendant had constructive possession of the gun while it was sitting on the cabinet right across the room from defendant. In response, defense counsel asserted that the outcome would be determined by which witness was telling the truth. Defense counsel especially challenged the testimony that defendant admitted possession of the gun because the police failed to memorialize defendant's admission either in writing or by tape recording.

¶ 19 Following deliberations, the jury found defendant guilty of possession of a firearm and possession of firearm ammunition. The verdicts did not articulate whether the possession was actual or constructive. Subsequently, the court denied defendant's motion for a new trial and sentenced him to two concurrent terms of five years in the Illinois Department of Corrections.

¶ 20 On appeal, defendant contends the State did not establish beyond a reasonable doubt that he possessed the weapon. Defendant argues that the State did not show that he "ever controlled the firearm or claimed to own it," and he asserts the presence of other adults in the apartment, along with inconsistencies in the testimony regarding his admission of ownership, weigh against a finding of possession. The State responds that it established defendant's constructive possession of the gun through the AT&T bill and defendant's presence in the same area of the apartment as the weapon.

¶ 21 When considering a challenge to the sufficiency of the evidence in a criminal case, it is not the task of the reviewing court to retry the defendant. *People v. Lloyd*, 2013 IL 113510, ¶ 42. Instead, our inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found each element of the offense beyond a

reasonable doubt. *Lloyd*, 2013 IL 113510, ¶ 42 (citing *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (noting that all reasonable inferences from the record in favor of the State are allowed)).

"We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *Lloyd*, 2013 IL 113510, ¶ 42 (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)). The trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009).

¶ 22 Defendant was charged with unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)), and therefore, the State was required to show that defendant had possession of the weapon that was recovered from the apartment kitchen. Criminal possession may be actual or constructive. *People v. Hannah*, 2013 IL App (1st) 111660, ¶ 28. Where a defendant is not found to be in actual possession of the weapon, the State must prove that he constructively possessed the weapon. *People v. Wright*, 2013 IL App (1st) 111803, ¶ 25; see also *People v. Billings*, 52 Ill. App. 3d 414, 422 (1977) (actual possession is established by the accessibility of the weapon to the defendant's physical control, as opposed to the defendant's control of the locus or area in which the weapon is found).

¶ 23 Initially, we note that actual possession of the gun was a theory advanced by the State based on defendant's admission of ownership of the gun, which, in turn, would indicate that he actually possessed the gun when he placed it on the cabinet. The jury instructions in this case define both actual and constructive possession. However, the jury verdicts only state that defendant was guilty of unlawful use of a weapon by a felon and do not even reference whether the possession was actual or constructive or both.

¶ 24 Nevertheless, we conclude that a reasonable trier of fact could have found defendant had constructive possession of the weapon so as to support his conviction. For constructive possession, the State is required to show the defendant: (1) had knowledge of the weapon's presence; and (2) exercised immediate and exclusive control over the area where the weapon was found. *Hannah*, 2013 IL App (1st) 111660, ¶ 28. The trier of fact may rely upon reasonable inferences of knowledge and possession, and the facts demonstrating constructive possession may be proved by circumstantial evidence. *People v. Alicea*, 2013 IL App (1st) 112602, ¶ 24; *Wright*, 2013 IL App (1st) 111803, ¶ 25. Indeed, evidence of constructive possession is "often entirely circumstantial." *Alicea*, 2013 IL App (1st) 112602, ¶ 24.

¶ 25 The State may establish knowledge of the weapon's presence through evidence of a defendant's acts, declarations or conduct, from which it may be inferred that he knew of the firearm's presence. *People v. Sams*, 2013 IL App (1st) 121431, ¶ 10. Here, after initially denying ownership of the gun, defendant told Hasenfang the weapon belonged to him because he needed to be "protected on the street." Defendant repeated that statement at the police station, and Hasenfang testified that when he asked defendant how long he had the gun, defendant said, "I don't know. A while." Blair testified that he overheard Hasenfang's first and second conversations with defendant at the apartment and largely corroborated their content. Contrary to defendant's argument that he never indicated that the gun was his, a trier of fact could reasonably believe that defendant's statements, as testified to by Hasenfang and corroborated by Blair, do suggest ownership of the gun. Moreover, defendant's admissions that the loaded gun was his is supported by the testimony of his sister, Asiana, and Shaw, who both testified that they had not seen the gun before. Furthermore, we categorically reject defendant's speculation that the jury

apparently disagreed with the State's assertion that defendant confessed on the basis that the jury sent a note indicating it was deadlocked at one point. Defendant's attempt to frame a reasonable doubt argument from such speculation is unsupported by legal authority and in no way undermines the actual verdicts of guilt.

¶ 26 Defendant contends that the jury should have believed his testimony that he did not admit to owning the gun over Hasenfang's testimony that defendant said at the police station that the gun was his. Defendant's contention is a challenge to the credibility of the State's witnesses. When considering such an argument, we must carefully examine the evidence while also being mindful that the jury observed and heard the witnesses. *Sams*, 2013 IL App (1st) 121431, ¶ 9. The jury, as the trier of fact in this case, was responsible for assessing the witnesses' credibility, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Tuduj*, 2014 IL App (1st) 092536, ¶ 80. Although defendant argues such conflicting testimony establishes reasonable doubt, a reviewing court will not substitute its judgment for that of the trier of fact where the evidence is merely conflicting. See *People v. Beverly*, 55 Ill. App. 3d 872, 874-75 (1977). The State presented testimony that defendant admitted the weapon belonged to him, and our standard of review, viewing the evidence in the light most favorable to the State, is whether any rational trier of fact could have found each element of the offense beyond a reasonable doubt. *Lloyd*, 2013 IL 113510, ¶ 42.

¶ 27 We also find the evidence was sufficient to show defendant's immediate and exclusive control over the area where the weapon was found. "Control is established when a person has the 'intent and capability to maintain control and dominion' over an item, even if he lacks personal present dominion over it." *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17 (quoting *People*

v. Frieberg, 147 Ill. 2d 326, 361 (1992)). Here, the weapon was observed by officers in the same combined living room-kitchen area where defendant had been sleeping. Hasenfang and Blair testified that defendant let them into the apartment and that other people came out of a bedroom. The mere fact that others had access to or used the premises does not defeat a finding of the defendant's exclusive dominion and control so as to establish constructive possession. *People v. Hill*, 2012 IL App (1st) 102028, ¶ 40 (noting the law recognizes the possibility of joint possession); see also *People v. Hammer*, 228 Ill. App. 3d 318, 322-23 (1992) (guns found in closet over which defendant had control was sufficient to establish possession even in light of access of wife and son to that area). In summary, the evidence is not so unreasonable, improbable or unsatisfactory as to create a reasonable doubt of defendant's guilt.

¶ 28 Accordingly, the judgment of the trial court is affirmed.

¶ 29 Affirmed.