2015 IL App (1st) 131954-U
No. 1-13-1954
July 28, 2015

SECOND DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	Of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12 CR 20517
	)	
DAMON CHATMAN,	)	The Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

ORDER

¶ 1 ***Held***: A police officer's testimony that the defendant referred to a room as his bedroom sufficiently supports convictions for possession of a gun and cocaine found in the room. Discovery of a scale near both the gun and 91 small packets of cocaine supported conviction for possession of cocaine with intent to deliver.

¶ 2 The trial court found Damon Chatman guilty of possessing cocaine with intent to deliver, violating the armed habitual criminal statute (720 ILCS 5/24-1.7(a) (West 2012)), and violating the unlawful use of a weapon by a felon statute (UUWF) (720 ILCS 5/24-1.1(a) (West 2012)). Damon contends that the evidence does not support the convictions. We find

that a police officer's testimony that Damon led police to the gun and cocaine, and said the room where police found the gun and cocaine was his bedroom, sufficiently supported findings that Damon possessed the gun and cocaine. The State did not need to prove that Damon possessed the gun in his abode. The packaging of the cocaine in many separate baggies, and its proximity to a gun and a scale, sufficiently supported an inference that Damon intended to sell the cocaine. The State concedes that we must vacate one UUWF conviction as a lesser-included offense of the violation of the armed habitual criminal statute. In all other respects, we affirm the trial court's judgment.

¶ 3 BACKGROUND

¶ 4 After 8 p.m. on October 14, 2012, Officer Paul Parks of the Chicago Police Department went to a house in Chicago to execute a search warrant. Outside the house he saw Damon Chatman. Parks told Damon about the warrant. Damon did not have a key to the house. Parks knocked on the door. When he did not hear any answer, he forced the door open. Inside he met three persons: Damon's mother, Laronda Palmer, Laronda's mother, Vernia Palmer, and Vernia's brother, Royce Banner. Vernia leased the property. Parks found a .9 millimeter semiautomatic gun, some ammunition, and a plastic bag containing 91 baggies, each of which held white rocks of cocaine. The bag's contents weighed, in total, 5.1 grams. After finding the contraband, police arrested Damon.

¶ 5 At the bench trial, Parks testified that after he forced open the door, Damon said he did not want police to tear up his grandmother's house, so he would show them the gun. According to Parks, Damon led police to a small room on the first floor, and told Parks the

room was his bedroom. Damon pointed to a ledge above the door to the room. Parks testified that he found the gun, the ammunition, and the plastic bag full of baggies of cocaine on that ledge. Parks took photographs of the room and the ledge and presented them to the court. The photographs showed a bed, a table, and, on the table, men's deodorant, a man's wristwatch, some photographs of Damon with others, and three letters from Damon's sister, addressed to Damon and LaPorsha Robinson at the address of Vernia's house. Parks testified that he also found in the room a scale with some white powder. On cross-examination, Parks admitted that he did not write a report of the arrest, and none of the police reports of the arrest mentioned that Damon said the bedroom was his bedroom. The reports identified the bedroom as Damon's bedroom without specifying the basis for referring to the room as Damon's.

¶ 6 The parties stipulated that Damon had at least two prior felony convictions for possession of narcotics.

¶ 7 Robinson testified that Damon lived with her at an address several miles from Vernia's home. Robinson and Damon went over to Vernia's home to visit with Damon's family on October 14, 2012. Robinson and Damon went outside with Damon's brother, Keena Chatman, and a friend, around 7 p.m., and they were still outside watching videos when Parks arrived.

¶ 8 Keena corroborated Robinson's testimony that Damon lived with Robinson, and that Keena was outside watching videos with a friend when police arrived. Keena accepted a

description of the room where police found the gun as a "makeshift bedroom," but he said no one used it.

¶ 9 Vernia, Laronda and Banner described the room where police found the gun as a storage room. Vernia, Laronda and Banner all testified that Damon did not live in Vernia's housse.

¶ 10 The trial court found Damon guilty of possessing cocaine with intent to deliver, violating the armed habitual criminal statute, UUWF by possessing the gun, and UUWF by possessing the ammunition. The court denied Damon's posttrial motion and sentenced him to 8 years in prison on the armed habitual criminal charge, to 8 years for possession of cocaine, and to 6 years for each UUWF charge, with all four sentences to run concurrently. Damon now appeals.

¶ 11 ANALYSIS

¶ 12 Damon contends that the prosecution failed to prove the charges, because the prosecution did not prove (1) that he possessed the gun and ammunition, (2) that he possessed them in his abode, (3) that he possessed the cocaine, or (4) that he intended to deliver the cocaine. When we consider a challenge to the sufficiency of the evidence, we must affirm the conviction if any rational trier of fact could have found the elements of the offenses beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31.

¶ 13 Abode

¶ 14 We address Damon's statutory construction argument first. The UUWF statute, section 24-1.1 of the Criminal Code provides:

> "(a) It is unlawful for a person to knowingly possess on or about his person or on his land or in his own abode *** any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State." 720 ILCS 5/24-1.1(a) (West 2012).

¶ 15 Damon argues that the prosecution did not prove that he possessed the gun on his person or "in his own abode." The appellate court, in *People v. Hester*, 271 Ill. App. 3d 954, 956 (1995), held that the statute required the prosecution to prove only that the defendant possessed a gun and that he had a prior felony conviction. The *Hester* court held that the statute did not require the prosecution to prove that the felon had the gun in any particular place. *Hester*, 271 Ill. App. 3d at 956. Damon argues that the *Hester* court misinterpreted the statute.

¶ 16 The *Hester* court relied on our supreme court's decision in *People v. Gonzalez*, 151 Ill. 2d 79, 87 (1992), where the court said, "The elements of [UUWF] are: (1) the knowing possession or use of a firearm and (2) a prior felony conviction. [Citation.] There is no requirement in section 24-1.1 that the offender be using or possessing any particular type of firearm or that he be doing so in any particular place or manner." Damon argues that the *Gonzalez* court did not need to decide whether the defendant's location counted as an element of the offense. However, even if we regard the statement in *Gonzalez* as dicta, we find it binding. *People v. Williams*, 204 Ill. 2d 191, 206-07 (2003). Accordingly, we hold that the prosecution did not need to prove that Damon lived in Vernia's home to prove him guilty of UUWF.

¶ 17 Possession of Gun and Ammunition

¶ 18 The State contends that it proved constructive possession of the gun and ammunition. To show constructive possession, the State needed to prove that Damon knew of the gun's presence, and he "exercised immediate and exclusive control over the area" where police found the gun. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. Parks testified that Damon said he would show police where the gun was, and they found the gun in the location Damon indicated. The testimony supports a finding that Damon knew of the gun's presence.

¶ 19 Parks also testified that Damon referred to the room where police found the gun as his bedroom. Parks found three letters addressed to Damon, using Vernia's address, in the room. Damon relies on the testimony of his relatives and Robinson, who all testified that Damon did not live in Vernia's house. Vernia, Laronda, Keena and Banner testified that the room in which police found the gun, ammunition and cocaine belonged to no one. Two of Damon's relatives called the room a storage room; another called it a makeshift bedroom. But the court saw the photographs, which depicted a room large enough to hold a bed and other furniture. The bed looked like someone had slept in it. The court could find the witnesses who referred to the room as a storage room not entirely credible. See *In re Marriage of Miller*, 2015 IL App (2d) 140530, ¶ 27; *Fronabarger v. Burns*, 385 Ill. App. 3d 560, 566 (2008). No witness named any other occupant of the apparently occupied bedroom.

¶ 20 Damon emphasizes that he had no key to the house at the time of his arrest, and the police reports did not mention that he said to Parks that he used the room as his bedroom. Damon did not introduce the police reports into evidence at the trial, and he could not use

them to impeach Parks because Parks did not write any report. *People v. Lewis*, 75 Ill. App. 3d 259, 284 (1979). The lack of a key at the time of the arrest does not overcome the other evidence (men's deodorant and wristwatch, letters addressed to Damon from his sister, and photographs of Damon with others) that Damon controlled the bedroom and the ledge where police found the gun, ammunition and cocaine. The evidence sufficiently proved possession of the gun and the ammunition, and therefore, the evidence shows that Damon committed the offense of UUWF. See *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). The admitted prior convictions thus prove that Damon violated the armed habitual criminal statute. 720 ILCS 5/24-1.7(a)(3) (West 2012).

¶ 21 Possession of Cocaine

¶ 22 Damon argues that the prosecution had even weaker evidence that he possessed the cocaine found on the ledge, because, according to Parks, Damon only said he would show police the gun. Damon argues that because he did not mention the cocaine, the evidence does not show that he knew about the cocaine. We disagree. Parks testified that the police discovered the bag of cocaine on the ledge over Damon's bedroom, with a gun to which Damon led them. We find the evidence sufficient to support the inference that Damon knew of the cocaine on the ledge. See *McCarter*, 339 Ill. App. 3d at 879.

¶ 23 Intent To Deliver

¶ 24 The prosecution must usually rely on circumstantial evidence to prove intent to deliver narcotics. *People v. Robinson*, 167 Ill. 2d 397, 408 (1995). "Factors considered by Illinois courts as probative of intent to deliver include whether the quantity of controlled substance in

the defendant's possession is too large to be viewed as being for personal consumption; the high purity of the drug confiscated; the possession of weapons; the possession of large amounts of cash; the possession of police scanners, beepers, or cellular telephones; the possession of drug paraphernalia; and the manner in which the substance is packaged." *People v. Sherrod*, 394 Ill. App. 3d 863, 865 (2009).

¶ 25 Police found 5.1 grams of cocaine divided into 91 separate baggies on the ledge over Damon's bedroom. When police find a small amount of narcotics, to show intent to deliver, the prosecution must prove "the drugs were packaged for sale, and at least one additional factor tending to show intent to deliver." *People v. Blakney*, 375 Ill. App. 3d 554, 559 (2007). Here, police found the cocaine, apparently packaged for sale, in close proximity to a gun and a scale on which they found white powder. We find the evidence sufficient to support an inference that Damon intended to sell the cocaine. See *People v. Williams*, 200 Ill. App. 3d 503, 518-19 (1990) (102 packets of cocaine found near a scale enough to show intent to deliver; weapons found near cocaine can further support an inference of intent to deliver); *People v. Warren*, 2014 IL App (4th) 120721, ¶ 68 (17 packages totaling 4.6 grams of cocaine, found near a gun and a scale, enough to prove intent to deliver).

¶ 26 Lesser-Included Offense

¶ 27 Finally, the State agrees with Damon's argument that this court must vacate one of the convictions for UUWF. The armed habitual criminal conviction depended on showing the same facts that proved UUWF. Because we must treat at least one UUWF conviction as a lesser-included offense of the violation of the armed habitual criminal statute, we must vacate

one of the UUWF convictions. *People v. Bailey*, 396 Ill. App. 3d 459, 464-65 (2009). We vacate the conviction for possession of the gun, and leave standing the UUWF conviction for possession of the ammunition.

¶ 28 CONCLUSION

¶ 29 The trial court did not need to find that Damon had the gun in his abode to convict him of UUWF. Parks's testimony that Damon led police to a ledge over a bedroom, where police found the gun, ammunition and cocaine, considered together with Parks's testimony that Damon said the room was his bedroom, adequately supported the convictions for possession of the gun, the ammunition and the cocaine. The discovery of a scale and a gun near the 91 small packets of cocaine adequately supported the conviction for possession of cocaine with intent to deliver. We vacate the conviction on the charge of UUWF for possessing the gun, because the court also found Damon guilty of violating the armed habitual criminal statute, and UUWF is a lesser included offense of the violation of the armed habitual criminal statute. In all other respects, we affirm the trial court's judgment.

¶ 30 Affirmed in part and vacated in part.