SECOND DIVISION
September 22, 2015

No. 1-13-2220

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. 11 CR 412
	)	
JUAN FLORES,	)	Honorable
	)	Noreen V. Love,
Defendant-Appellant.	)	Judge Presiding.

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

O R D E R

¶ 1 *Held:* There was sufficient evidence that defendant possessed cannabis; the cannabis was within reach of defendant in a van that smelled of cannabis.

¶ 2 Following a bench trial, Juan Flores, the defendant, was convicted of possession of cannabis (more than 5,000 grams) with intent to deliver and sentenced to 12 years' imprisonment. On appeal, he contends that there was insufficient evidence to convict him as the State failed to prove he constructively possessed cannabis. For the reasons that follow, we affirm.

¶ 3 Defendant and codefendant Carlos Garcia were charged with possession of cannabis with intent to deliver for allegedly knowingly possessing, with intent to deliver, more than 5,000 grams of cannabis on or about October 26, 2010.

¶ 4 At trial, police officer Michael Harrison testified that he made a traffic stop of a gray van near 318 North 6th Avenue in Maywood at about 10:30 p.m. on October 26, 2010. When the van stopped, the driver fled on foot, and Officer Harrison did not see anybody else flee the van. While other officers pursued the driver, Officer Harrison approached the van and saw a single passenger – the defendant – still seated in the front passenger seat. Officer Harrison smelled an "extremely overwhelming smell of fresh cannabis" coming from the van, and he found 11 clear heat-sealed bags of a brown plant substance. Directly behind the center console between the front seats, he found a black garbage bag containing 10 of the aforementioned bags. The garbage bag was between, and within reach of, both the driver and front passenger. In two grocery bags directly behind the garbage bag, he found the 11th of the aforementioned bags and a "brick" of $1,162 in cash. When he searched defendant upon arrest, he found $1,177 cash on his person.

¶ 5 On cross-examination, Officer Harrison testified that the van's front air-bags had deployed, though he could not recall any powder from the deployment. He smelled cannabis coming from the van so he detained defendant and searched the van for a firearm. While sitting in the van, defendant did not make any movements or attempt to conceal anything. Although Officer Harrison found the closed garbage bag on the floor behind the front seats, a police photograph showed the open garbage bag on the front passenger seat. He maintained that the photograph showed the garbage bag in the area, albeit not the position where he found it. His report did not mention smelling an overwhelming odor of cannabis nor did it specify where in

the van he found the garbage bag, and he wrote that he found the cannabis after removing defendant from the van.

¶ 6 On redirect examination, Officer Harrison testified that the center console was intact when he arrived but he moved the console, and it tipped over during his search of the van. He placed the garbage bag on the front passenger seat to be photographed. As to the air-bags, he smelled only cannabis coming from the van.

¶ 7 Officer Glen Czernik testified to pursuing and detaining the codefendant when he fled the van immediately after it stopped. Officer Czernik did not lose sight of the codefendant during the brief pursuit nor did he see anyone else flee the van.

¶ 8 The parties stipulated to the testimony of the forensic chemist that she tested the contents of 6 of the 11 bags and found they contained 5,758.7 grams of a substance containing cannabis. They also stipulated that the van was not registered to either defendant.

¶ 9 Defendant and codefendant[1] unsuccessfully sought directed findings, which the court denied after argument. Defendant chose not to testify following the court's admonishment explaining his rights to testify and remain silent. Following closing argument, the court found defendant guilty as charged.

¶ 10 The court found the police testimony credible. The court opined, had the officer found the cannabis in the rear of the van but wanted it to appear that he found it behind the front seat, he would have put it there to be photographed. Instead, he "moved it because the console had fallen over" and he moved the bags in his weapons search. The court found that defendant's lack of

[1] Codefendant was sentenced to six years' imprisonment with fines and fees. He voluntarily dismissed his separate appeal. *People v. Garcia*, No. 1-13-1961 (2015).

flight does not indicate lack of guilt while his "large sum of money" was "very indicative of being involved in some type of selling of the cannabis."

¶ 11 In his post-trial motion, defendant challenged the sufficiency of the State's evidence in detail. After argument, the court denied the motion without further findings. The court sentenced defendant to 12 years' imprisonment with fines and fees, he unsuccessfully moved to reconsider his sentence, and this appeal timely followed.

¶ 12 On appeal, defendant contends that there was insufficient evidence to convict him, in that the State failed to prove his actual or constructive possession of the cannabis in the van.

¶ 13 It is a violation of the Criminal Code to knowingly possess cannabis with the intent to deliver, and the violation becomes a Class X felony when more than 5,000 grams of cannabis is possessed. 720 ILCS 550/5(g) (West 2010). "Possession is a voluntary act if the offender knowingly procured or received the thing possessed, or was aware of his control thereof for a sufficient time to have been able to terminate his possession." 720 ILCS 5/4-2 (West 2010). When a defendant is not found in actual possession of contraband, the State must prove constructive possession: that the defendant (1) knew the contraband was present, and (2) exercised immediate and exclusive control over the area where the contraband was found. *People v. Sams*, 2013 IL App (1st) 121431, ¶ 10.

¶ 14 The State may establish knowledge through evidence of a defendant's acts, declarations, or conduct, from which it may be inferred that he knew of the contraband's presence, and a defendant's control over the location where contraband is found gives rise to an inference that he possesses the contraband. *Sams*, 2013 IL App (1st) 121431, ¶ 10. The exclusive-control requirement does not preclude joint constructive possession. *People v. Warren*, 2014 IL App (4th) 120721, ¶ 64. The owner or driver of a vehicle is not *ipso facto* in possession of everything

in the passenger area of the vehicle if there are also passengers who may be in possession of the contraband, so possession may be jointly held by the driver and passengers if the evidence supports a conclusion that the defendant had control, or the ability to exercise control, over the contraband. *People v. McIntyre*, 2011 IL App (2d) 100889, ¶ 17.

¶ 15 On a claim of insufficiency of the evidence, we must determine whether, taking 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. Brown*, 2013 IL 114196, ¶ 48. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from, the testimony and other evidence. *Brown*, 2013 IL 114196, ¶ 48. As witness credibility is a matter for the trier of fact, it may accept or reject as much or little of a witness's testimony as it chooses. *People v. Johnson*, 2014 IL App (1st) 122459-B, ¶ 131. The testimony of a single witness, if positive and credible, is sufficient to convict. *People v. Mister*, 2015 IL App (4th) 130180, ¶ 98, citing *People v. Smith*, 185 Ill. 2d 532, 541 (1999).

¶ 16 A reviewing court does not retry the defendant, and it does not substitute its judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses, and it accepts all reasonable inferences from the record that are favorable to the State. *Brown*, 2013 IL 114196, ¶ 48.

¶ 17 The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor seek explanations consistent with innocence and elevate them to reasonable doubt, nor find a witness was not credible merely because the defendant says so. *Jonathon C.B.*, 2011

IL 107750, ¶ 60. A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that there is a reasonable doubt of the defendant's guilt. *Brown*, 2013 IL 114196, ¶ 48.

¶ 18 Here, considering the evidence in the light most favorable to the State, we find that a reasonable finder of fact could find defendant guilty of possession of cannabis with intent to deliver. Officer Harrison's testimony – that he smelled cannabis in the van, that he found cannabis and a large sum of cash behind the front seats between the driver and passenger seats, and that he moved the contraband in the course of his search of the van and then for photographing – was found credible by the trial court. We find that the trial court's credibility findings were not so improbable or unsatisfactory as to leave us a reasonable doubt of defendant's guilt.

¶ 19 Defendant's constructive possession of the cannabis was established by the following evidence: the defendant's ability to exercise control over the cannabis is shown by its presence in the van within arm's reach of where he was seated, and his knowledge of its presence may be inferred from the odor of cannabis in the van. Defendant notes that he did not flee the van upon the arrival of the police while codefendant did, and argues that codefendant thereby demonstrated knowledge of the cannabis while he did not. However, the trial court was not, and we are not, required to elevate this possible explanation to reasonable doubt. "Although consciousness of guilt can be inferred from flight, the converse, that failure to flee is indicative of innocence, is not a necessary corollary." *People v. Zarate*, 264 Ill. App. 3d 667, 675 (1994).

¶ 20 Accordingly, the judgment of the circuit court is affirmed.

¶ 21 Affirmed.