2015 IL App (1st) 132523-U

FIRST DIVISION
August 10, 2015

No. 1-13-2523

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 9254
	)	
DIMITRIUS HARRIS,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

Held: We reverse defendant's conviction for possession of cocaine with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2010)) where the State failed to present sufficient evidence showing that defendant knowingly possessed the cocaine.

¶ 1 On May 28, 2011, the police executed a search warrant for defendant, Dimitrius Harris, at his girlfriend's house in Chicago, Illinois. Chicago police officers testified that they found 19.1 grams of cocaine, over $1,000 in currency, and a scale in an upstairs bedroom where they found

defendant sleeping with his girlfriend. The police further testified that they found the cocaine, in plain view, on top of a dresser that had been placed in a closet in the bedroom. The doors to the closet, however, were open. While speaking to one of the police officers during the search, defendant referred to the room he was found sleeping in as his bedroom. Defendant maintains that, at most, he was an overnight guest at the home.

¶ 2 After a trial, a jury found defendant guilty of possession of a controlled substance with intent to deliver. 720 ILCS 570/401(a)(2)(A) (West 2010). The circuit court sentenced him to eight years' imprisonment. Before this court, defendant challenges the sufficiency of the evidence and argues that the State failed to prove beyond a reasonable doubt that he knew about, or had control over, the cocaine found by the police. We hold that the State failed to present sufficient evidence showing that defendant knowingly possessed the cocaine seized by the police. Therefore, defendant's conviction must be reversed.

¶ 3 JURISDICTION

¶ 4 The circuit court sentenced defendant on July 19, 2013. Defendant timely filed his notice of appeal on that same day. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013).

¶ 5 BACKGROUND

¶ 6 The State charged defendant by information with one count of possession with intent to deliver in connection with his May 28, 2011, arrest where the police found 19.1 grams of cocaine in a bedroom where he had been sleeping. 720 ILCS 570/401(a)(2)(A) (West 2010).

¶ 7 At trial, Chicago police officer Larry Rattler testified he was part of a law enforcement team that executed a search warrant that named defendant as its target. The police executed the warrant a little before 8 a.m. at a single family home located at 6612 South University Avenue in Chicago, Illinois. The police found defendant asleep, with his girlfriend, in an upstairs bedroom. Besides defendant and his girlfriend, the police found three other people in the house. Officer Rattler searched the room where defendant was found, and testified that the room had a mattress on the floor, clothes were "scattered around a little bit," there was a television, and pieces of furniture. He proceeded to search the bedroom and found, "on top of a dresser *** in a basket," one plastic bag containing cocaine. Officer Rattler testified that both the dresser and the basket on top of it were visible in his plain view. He further testified that he was able to see the plastic bag of cocaine immediately upon looking into the basket. The cocaine was broken up into multiple pieces. Officer Rattler also found $1,046 in U.S. currency "on the side of the bed next to the mattress," and $201 on the nightstand. Rattler testified that, based on his years of experience, that the cocaine found "appeared to be ready to be sold at street level." Later, on redirect examination, Officer Rattler stressed that the dresser from which he recovered the drugs was not behind any sort of closed door and it was in plain view.

¶ 8 On cross-examination, Officer Rattler testified that defendant was not combative, and he described defendant's mood as "compliant." Barbara Conway owned the home, and Officer Rattler did not find any mail addressed to defendant or any other documents indicating defendant resided at the home. When asked whether he found any men's clothing in the bedroom, Officer Rattler could only state that one pair of men's boots were found. Officer Rattler offered the following description of the bedroom: "it wasn't a big room, it was a room with open space and a closet, that was it." He could not recall if the closet in the bedroom was a walk-in closet, but

noted that it was large enough to fit a dresser. He agreed that the dresser was in the closet and that the suspect cocaine was enclosed in one plastic bag as opposed to individual packages. Officer Rattler testified that the basket, which contained the cocaine, was not within reaching distance of where defendant slept. He did not find any razor blades in the bedroom. Officer Rattler admitted that the bundle of currency totaling $201 found in the bedroom nightstand was contained in a tube labeled " ' Property of B.' " Officer Rattler testified that there was another individual in the bedroom, but he did not know if it was her room.

¶ 9 Chicago police officer Brian Gunnell testified that he was part of the team executing the search warrant. He was the first person in the door and immediately went upstairs where he saw defendant and a female sleeping in the bed of a bedroom. Officer Gunnell described the room in which he found defendant in as "a bedroom with a flat screen style TV, bed, couple of – a nightstand or two. And if you look directly laying in the bed there was like a closet style door, like an accordion style door that was pushed open." The accordion style door was open and Officer Gunnell was able to see inside of the closet. He observed a large pair of "Timberland style boots" at the foot of the bed. Officer Gunnell testified that defendant was either asleep or acting as if he was asleep when he first entered. When asked if he found anything indicative of narcotics sales, Officer Gunnell testified that he found a digital scale with residue on it behind the television. Officer Gunnell observed Officer Rattler recover a large knotted plastic bag containing crack cocaine. When asked where Officer Rattler found the bundles of currency, Officer Gunnell testified that "[o]ne was on a nightstand and the other one I think was on the floor on the side of the bed." He later saw defendant wearing the Timberland boots.

¶ 10 On cross-examination, Officer Gunnell testified that in addition to the bedroom, in which he found defendant, there was another bedroom upstairs and a room used for storage or office space. Officer Gunnell did not find any mail or paperwork displaying defendant's address.

¶ 11 Cathy Regan, a forensic scientist with the Illinois State Police and an expert in forensic chemistry, testified that the substance recovered from the bedroom was indeed cocaine. She testified that that the cocaine weighed 19.119 grams.

¶ 12 Sergeant Alonzo Harris of the Chicago police department testified he supervised the team who executed the search warrant. When the residence and its occupants were secure, Sergeant Harris spoke to the occupants and explained to them why they were there, as well as who and what they were looking for. After Sergeant Harris told the occupants that they were looking for defendant, defendant asked to speak with Sergeant Harris. Sergeant Harris agreed and took defendant away from the other occupants and into the kitchen area. Sergeant Harris testified that defendant told him that he "picked the wrong day" and that "upstairs in his room there was about an ounce of weed behind the television." Sergeant Harris testified that defendant told him that his room was the room where he was found sleeping. At that time, defendant did not know if the other police officers had found any contraband. On cross-examination, Sergeant Harris clarified that defendant called the bedroom " 'my bedroom.' " Despite defendant's conversation with Sergeant Harris, no cannabis was found in the residence.

¶ 13 The State successfully introduced into evidence several pictures of the room where the police found defendant sleeping. At the close of the State's case-in-chief, defendant motioned for a directed verdict, which the circuit court denied.

¶ 14 Barbara Conway, the owner of the residence, testified on defendant's behalf. Conway testified that her daughter, Belisha, and a friend of hers, Wanda, live in the house with her. She

described the upstairs of the home as having a bathroom, Belisha's bedroom, a small closet to the left of Belisha's bedroom, her own bedroom, and a small office. On the day of the search, Belisha's friend, Christine, and Christine's daughter, were also staying at the house. Belisha and defendant were dating, and Conway testified that defendant stayed "[o]vernight maybe once in awhile." She later estimated that he stayed "[m]aybe once a month." Defendant did not live at the house, and he did not pay any of the bills related to the house, receive mail at the home, keep any of his property at the home, or have a key to the house. Conway thought defendant had an apartment. She agreed that she generally had a good knowledge of what was going on in her house and that she was generally home at night. Conway described her daughter Belisha's bedroom, where defendant stayed, as having a door with a lock. Later, on redirect examination, Conway testified that Belisha "was working at a – she was in between jobs at that time. I believe she was working in the bar, bartender." Conway testified further that Belisha would come home with "tips from the bar."

¶ 15 On cross-examination, when asked whether defendant "might have brought something into that house," she answered "[i]t's possible. I don't know what he did." She did not inspect his belongings when he entered. She also did not know what he did when he was in the upstairs bedroom. She thought defendant had been dating her daughter about a year and a half. When defendant came over, he always slept in Belisha's bedroom. She testified that neither she nor her daughter sell drugs.

¶ 16 The circuit court denied defendant's motion for a new trial and for reconsideration of the circuit court's decision to deny his motion for a directed verdict of not guilty. The circuit court subsequently sentenced defendant to eight years' imprisonment. Defendant filed a motion

asking the circuit court to reconsider its sentencing decision, which the circuit court denied. Defendant timely appealed.

¶ 17 ANALYSIS

¶ 18 Defendant argues that his conviction should be reversed because the State failed to prove beyond a reasonable doubt that he knew of, or had control over, the cocaine the police found on the premises. Defendant points out that the State failed to present evidence showing that he was anything more than an occasional visitor to the residence, and that the evidence showed that the money found in the bedroom belonged to Belisha. Accordingly, defendant contends that the State failed to put forth sufficient evidence showing his knowledge or control of the cocaine.

¶ 19 In response, the State maintains that it proved beyond a reasonable doubt that defendant constructively possessed 19.1 grams of cocaine. The State argues that the police recovered, in plain view, cocaine and a substantial amount of money near where defendant slept the night before. The State further points out that defendant referred to the room as his bedroom and that the police found a scale in the room.

¶ 20 The due process clause of the fourteenth amendment to the United States Constitution ensures that an accused defendant is not convicted of a crime "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970); *People v. Carpenter*, 228 Ill. 2d 250, 264 (2008); see also *People v. Ehlert*, 211 Ill. 2d 192, 213 (2004) ("Simply stated, the fact that defendant is 'probably guilty' does not equate with guilt beyond a reasonable doubt."). Although a defendant's guilt must be proven beyond a reasonable doubt, inferences flowing from the evidence should not be disregarded. *People v. Schmalz*, 194 Ill. D 75, 81 (2000). In fact, all reasonable inferences from the record must be allowed in the prosecution's favor. *People v. Givens*, 237 Ill. 2d 311,

334 (2010). Therefore, when reviewing a challenge to the sufficiency of the evidence in a criminal conviction, we consider the evidence in the light most favorable to the State and "determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48.

¶ 21 It is not the role of this court to retry a defendant upon appellate review. *Givens*, 237 Ill. 2d at 334. We must keep in mind that credibility issues, the weighing of the evidence, resolving conflicting or inconsistent evidence, as well as making reasonable inferences from the evidence, are all functions reserved for the trier of fact. *Brown*, 2013 IL 114196, ¶ 48; *People v. Jimerson*, 127 Ill. 2d 12, 43 (1989); *People v. Frieberg*, 147 Ill. 2d 326, 360 (1992). Deference is given to the trier of fact because it saw and heard the witnesses. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). Furthermore, circumstantial evidence alone can support a criminal conviction. *Brown*, 2013 IL 114196, ¶ 49. Although our review is deferential, a trier of fact's determinations are not conclusive. *Id.* ¶ 48. Where the evidence is so unsatisfactory, unreasonable, or improbable to justify a reasonable doubt as to defendant's guilt, a reviewing court will reverse a criminal conviction. *Id.*

¶ 22 In order to convict defendant of unlawful possession of cocaine with intent to deliver, the State must show that the defendant had knowledge of the possession of the unlawful substance and that the substance was in the defendant's immediate and exclusive control. *Frieberg*, 147 Ill. 2d at 360. Although control of the premises is not a prerequisite to a conviction, proof of a defendant's control over premises where illicit substances were found gives rise to an inference of knowledge and possession of the drugs. *Givens*, 237 Ill. 2d at 335. The element of possession can be either actual or constructive. *Givens*, 237 Ill. 2d at 335. Actual possession does not require present personal touching of the illegal substance. *Id.*

Rather, "[a]ctual possession is the exercise by the defendant of present personal dominion over the illicit material and exists when a person exercises immediate and exclusive dominion or control over the illicit material." *Id.* Constructive possession exists where a defendant, despite the absence of actual personal present dominion, had the intent and capability to maintain control and dominion over the substance. *Frieberg*, 147 Ill. 2d at 361. Exclusive possession, however, does not mean that possession cannot be shared amongst multiple people. *Givens*, 237 Ill. 2d at 335. Two or more people can be found to have joint possession where they either share exclusive and immediate control or share the intention and power to exercise control. *Schmalz*, 194 Ill. 2d at 82. The factual questions of knowledge and possession or control are to be determined by the trier of fact. *Schmalz*, 194 Ill. 2d at 81.

¶ 23 After viewing the evidence in the light most favorable to the State, we hold that the State failed to satisfy its burden of proving defendant guilty beyond a reasonable doubt because it did not prove that defendant knowingly possessed the cocaine and that the cocaine was in his immediate and exclusive control. It is clear that defendant did not actually possess the cocaine at issue, and the State does not argue defendant actually possessed the cocaine. We also cannot, however, say that the State's evidence shows that defendant had the intent or capability to maintain control over the substance to establish constructive possession. *Frieberg*, 147 Ill. 2d at 361. The evidence at trial showed that the police went to defense witness Barbara Conway's house to execute a search warrant naming defendant as its target. Upon entering an upstairs bedroom, the police discovered defendant and his girlfriend in bed together. The mattress was on the floor. The police found the cocaine in a basket on top of a dresser that had been placed in a closet. The doors to the closet had been left open. Notably, Officer Rattler testified that the basket containing the cocaine was not within reaching distance of where defendant slept.

The above evidence does not show that defendant actually or constructively possessed the cocaine found in the bedroom. Rather it shows that defendant was found sleeping on a mattress on the floor while the cocaine was found, outside of his reach, on top of a dresser. The dresser, in turn, was inside of a closet. Accordingly, the State failed to present sufficient evidence showing defendant's possession of the cocaine at issue in this case.

¶ 24 We are also of the opinion that the State failed to present sufficient evidence showing that defendant controlled the room where he was found, which, if shown, would support an inference of knowledge and possession. *Givens*, 237 Ill. 2d at 335. It is clear from the evidence that defendant was an overnight guest of Belisha, Barbara Conway's daughter. The only evidence the State presented showing that defendant controlled the room where the drugs were found was the evidence that defendant's boots were found at the foot of the bed and that defendant told Sergeant Harris that marijuana was in the room where the police found him. We do not think, however, that this evidence is sufficient to support a finding that defendant controlled the room where he was found. It is reasonable for defendant, as an overnight guest, to take his boots off before going to sleep. Officer Gunnell testified that he later saw defendant wearing the boots, which shows that the boots were not an extra pair he stored in the room. Defendant's comments to Sergeant Harris that marijuana was in his room may give rise to an inference that defendant possessed marijuana, but it does not indicate that he possessed the cocaine at issue in this case. Furthermore, it is reasonable for defendant to refer to the room where he slept overnight as his, despite his apparent lack of control over it. Regardless of defendant's comments to Sergeant Harris, the location of the cocaine, *i.e.*, outside of defendant's reach, justifies a reasonable doubt as to defendant's guilt.

¶ 25 Accordingly, the State failed to show that defendant knowingly possessed the cocaine recovered from the bedroom in this case. The State's evidence is not sufficient to sustain defendant's conviction because it justifies a reasonable doubt as to defendant's guilt. Therefore, we must reverse defendant's conviction.

¶ 26 CONCLUSION

¶ 27 The judgment of the circuit court of Cook County is reversed.

¶ 28 Reversed.