2015 IL App (1st) 1132882 U

No. 1-13-2882

Fourth Division
December 17, 2015

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RENARD JACKSON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County. No. 12 CR828 Honorable Vincent M. Gaughan, Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice McBride and Justice Ellis concurred in the judgment.

O R D E R

Held: Evidence was insufficient to sustain convictions for unlawful use of a weapon by a felon and being an armed habitual criminal where no evidence, other than defendant's admission, indicated that defendant possessed the firearm in question.

¶ 1 Following a bench trial, defendant Renard Jackson was convicted of unlawful use of a weapon by a felon (UUWF) pursuant to section 24-1.1(a) of the Criminal Code of 2012 (Code) (720 ILCS 5/24-1.1(a) (West 2012)) and being an armed habitual criminal under section 24-1.7(a) of the Code (720 ILCS 5/24-1.7(a) (West 2012)) and sentenced to seven years in prison. On appeal, defendant asserts: (1) the State failed to prove beyond a reasonable doubt that he

possessed the firearm in question; (2) the State failed to prove the *corpus delecti* of either UUWF and being an armed habitual criminal; (3) the trial court failed to conduct a *Krankel* inquiry into defense counsel's posttrial allegations that he was ineffective for failing to challenge the search warrant prior to trial; (4) he was denied the effective assistance of counsel where his counsel failed to file a motion to quash the warrant and suppress evidence; and (5) his fines, fees, and costs order should be corrected. For the foregoing reasons, we vacate defendant's convictions for UUWF and being an armed habitual criminal.

¶ 2 BACKGROUND

¶ 3 Defendant was charged by information with two counts of UUWF and one count of being an armed habitual criminal. The information also alleged that defendant had two prior felony convictions. Prior to trial, the State *nol-prossed* one count of UUWF, and the matter proceeded to trial on the remaining two counts. The following evidence was adduced at trial.

¶ 4 Detective Michael Andruzzi testified that on December 21, 2011, at about 6:30 p.m. he was part of a team that executed a search warrant on the first floor of a two-flat building located at 7347 South Perry Avenue. Upon entering, he observed defendant, a woman, and a younger male. Detective Andruzzi performed a systematic search of the apartment, which had two bedrooms, and in the back bedroom he recovered a fully-loaded Romar assault rifle. The bedroom where the rifle was recovered had only one bed.

¶ 5 Officer Mendoza testified that on December 21, 2011, at about 6:30 p.m. he conducted a search warrant at 7347 South Perry Avenue. As he entered the apartment, he observed defendant. He learned that other members of the team recovered an assault rifle in the back bedroom. Officer Mendoza read defendant his *Miranda* rights, and defendant agreed to speak with the officer. Defendant told Officer Mendoza that he had found the rifle and that he was going to sell it for some extra money for Christmas. During the search, officers also recovered defendant's ID

card and mail bearing defendant's name, but with a different address than 7347 South Perry Avenue. When Officer Mendoza asked defendant about the mail, defendant told the officer that he had recently moved into the apartment with his girlfriend. On cross-examination, Officer Mendoza acknowledged that defendant did not physically sign a written waiver of his *Miranda* rights nor did defendant memorialize his statement in writing. Officer Mendoza never observed defendant with the rifle and police did not examine the rifle for fingerprints, but the officer concluded the rifle must have been in defendant's possession "at some point" because defendant told him that he had "found it." Officer Mendoza also acknowledged that he "filled out" the complaint for the search warrant, and pursuant to the warrant, the officers were looking for a handgun that had been seen in defendant's possession within five days prior to when the search warrant was served. However, the rifle that the officers recovered was different from the weapon that was specified in the search warrant.

¶ 6 Officer Juan Perez testified that on December 21, 2011, at about 6:30 p.m. he acted as a search officer during the execution of a search warrant at 7347 South Perry Avenue. When he entered the first floor apartment, he observed defendant. Officer Perez conducted a systematic search of the apartment, and recovered child support documents from the television console in the back bedroom. The documents were addressed to defendant at a different address. He only saw one bed in the bedroom.

¶ 7 Following the close of the State's case-in-chief, it entered certified copies of defendant's prior convictions for the manufacture and delivery of cannabis and the manufacturing and delivery of narcotics on school grounds. The parties also stipulated that the rifle was recovered and inventoried.

¶ 8 Latoya Clinton testified for the defense. She stated that in December of 2011, she was living in a first-floor apartment at 7347 South Perry Avenue with her 13-year-old son, Darrion,

and her younger brother, Everett. Latoya and Darrion moved into the apartment in October 2011, but Everett lived there before they moved in. Before moving to the apartment, she lived at 6952 South Wabash Avenue with defendant, her boyfriend of five years. On December 17, 2011, Everett "jumped on" Latoya and she called the police. She also called defendant, who had never been to the apartment because he and Everett did not get along. Defendant and the police arrived at about the same time. Defendant "had words" with Everett, and the police arrested Everett. Everett never returned to the apartment. The following day, Latoya went to defendant's apartment at 6952 South Wabash Avenue to pick up some child support papers and brought them back to her apartment. She thought she had placed the papers on the kitchen table, but was unsure.

¶ 9 On December 21, 2011, Latoya was coming out of the bathroom when police arrived at her apartment. Defendant was on the couch when they arrived. Police entered the apartment and found a rifle in the back bedroom. Latoya said that the bedroom contained two beds, which were used by Everett and Darrion. Latoya identified a picture of the bed under which the rifle was found as Everett's bed. Latoya was in the front room when police were in the kitchen with defendant, but she could hear the conversation between defendant and the officers. She stated that she never heard defendant make a statement to the police and did not hear defendant admit ownership of the rifle.

¶ 10 Darrion Clinton testified that he and his mother Latoya lived with his uncle Everett from October 2011 to December 2011 at 7347 South Perry Avenue. He shared the back bedroom with his uncle, which contained two beds. Darrion stated that he recognized the rifle recovered by police because he had seen Everett take it from underneath his bed. Darrion did not tell his mother about the rifle because Everett told him it was a B.B. gun. On December 17, 2011,

Everett was arrested and never came back to the apartment. Darrion had never seen defendant at the apartment before December 17th.

¶ 11 Natasha Campbell testified that she had known defendant for about three years through her friend Latoya. She managed an apartment located at 6952 South Wabash Avenue, which she rented to defendant. Defendant moved into the apartment in February 2010, and was still living there in December 2011. Campbell saw defendant every time she went to the apartment to visit Latoya. Defendant's belongings were in the apartment in December 2011. Campbell did not have a signed lease for the apartment.

¶ 12 Following closing arguments, the trial court weighed the evidence and found that Darrion testified credibly that he had seen Everett put the rifle underneath the bed before December 17, 2011, and according to Latoya's testimony, Everett was not allowed back into the home after that date. The court further found that defendant "was known to have said [he] found the weapon" and "[t]here is nothing inconsistent with [defendant] finding the weapon and the weapon being underneath the bed." The court entered findings of guilt on both UUWF and being an armed habitual criminal.

¶ 13 At a posttrial hearing, defense counsel indicated that he was preparing a posttrial motion, but was not ready to file it. He explained:

> "What I believe occurred here is that I may have screwed up by not prior to trial challenging the validity of the search warrant. I was under the belief that the affiant was a particular individual. We went into that during trial, and I now have information that may conflict with some of the testimony that was given at trial. I certainly think in hindsight I should have filed a motion to compel the affiant to produce himself in camera to the court so that you could judge the validity of his assertions against [defendant] because the information doesn't add up."

¶ 14 After several continuances, the court held a hearing on counsel's third amended posttrial motion, which alleged, *inter alia*, that: (1) the trial court erred in finding that the warrant was not at issue at trial; (2) the court erred by failing to quash the search warrant *sua sponte* where the warrant was facially defective; (3) the warrant was invalid where the confidential informant who supplied the information to secure it was not placed under oath by the judge who issued the warrant; (4) the State failed to prove beyond a reasonable doubt the offenses of UUWF and being an armed habitual criminal; and (5) two convictions for one act of gun possession was improper. Defendant's posttrial motion was denied.

¶ 15 At sentencing, the court merged the convictions, and sentenced defendant to seven years in prison on the armed habitual criminal count.

¶ 16 ANALYSIS

¶ 17 *Corpus Delicti*

¶ 18 Defendant first contends that the State failed to prove him guilty beyond a reasonable doubt of UUWF and being an armed habitual criminal; however, because we find defendant's second contention regarding the State's failure to prove the *corpus delicti* of either offense dispositive in this case, we begin our analysis there. Specifically, defendant argues that the only evidence tending to prove knowing possession of the firearm was his uncorroborated statement to the police that he found the rifle and intended to sell it, and his statement alone was insufficient to prove that a crime had occurred. The State responds that the recovery of the rifle and defendant’s personal effects, testimony establishing defendant's access to the rifle, and the search warrant which named both defendant and the residence coupled with the discovery of defendant in the home independently corroborated his statement to police.

¶ 19 Defendant's contention is a challenge to the sufficiency of the evidence. *People v. Hurry*, 2013 IL App (3d) 100150-B, ¶ 11 (citing *People v. Sargent*, 239 Ill. 2d 166 (2010)). When

presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant; rather, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id.* (citing *People v. Collins*, 106 Ill. 2d 237 (1985)).

¶ 20 Under Illinois law, in obtaining a valid conviction, the State must also prove two distinct propositions beyond a reasonable doubt: (1) that a crime occurred, *i.e.*, the *corpus delicti*; and (2) that the crime was committed by the person charged. *Sargent*, 239 Ill. 2d at 183. Although a defendant's confession may be integral to proving the *corpus delicti*, it is well established that proof of the *corpus delicti* may not rest exclusively on the defendant's extrajudicial confession, admission, or other statement. *Id.* "Where a defendant's confession is part of the proof of the *corpus delicti*, the prosecution must also adduce corroborating evidence independent of the defendant's own statement." *Id.* "To avoid running afoul of the *corpus delicti* rule, the independent corroborating evidence need only *tend to show* the commission of a crime." (Emphasis in original.) *People v. Lara*, 2012 IL 112370, ¶ 18. However, the evidence need not be so strong that it alone proves the commission of the charged offense beyond a reasonable doubt. *People v. Hannah*, 2013 IL App (1st) 111660, ¶ 26. If a confession is not sufficiently corroborated, a conviction based on the confession cannot be sustained. *Sargent*, 239 Ill. 2d at 183.

¶ 21 To sustain defendant's conviction of UUWF, the State was required to prove that defendant knowingly possessed "on or about his person or on his land or in his own abode" a firearm after having been previously convicted of a felony. 720 ILCS 5/24-1.1(a)(West 2012). A person may be convicted of being an armed habitual criminal if he possesses any firearm after being convicted twice of, *inter alia*, UUWF or any violation of the Illinois Controlled Substances

Act or the Cannabis Control Act that is punishable as a Class 3 felony or higher. 720 ILCS 5/24-1.7(a)(2),(3) (West 2012). Defendant does not dispute his prior drug-related felony conviction, thus the relevant inquiry before us is whether the State proved that he knowingly possessed a firearm.

¶ 22 Because defendant was not found in actual possession of the firearm, the State had to present corroborating evidence that the defendant constructively possessed it. See *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). To establish constructive possession, the State must prove that the defendant had knowledge of the presence of the weapon and exercised immediate and exclusive control over the area where the weapon was found. *Id.* Habitation in the residence in which the firearm is found is sufficient evidence of control to establish constructive possession. *People v. Sams*, 2013 IL App (1st) 121431, ¶ 10.

¶ 23 In this case, we do not find that the State presented sufficient corroborating evidence, independent of defendant's statement, tending to prove the commission of UUWF and armed habitual criminal. First, the State, citing *Spencer*, 2012 IL App (1st) 102094, and *Hannah*, 2013 IL App (1st) 111660, contends that the recovery of the firearm alone was sufficient to corroborate defendant's incriminating statement; however, we find the State's reliance misplaced.

¶ 24 In *Spencer*, defendant was convicted of unlawful use of a weapon (UUW) after officers executed a search warrant naming both the defendant and a single-family home located in Maywood, Illinois. *Spencer*, 2012 IL App (1st) 102094, ¶ 2. In one of the three bedrooms of the home, officers recovered three live rounds of ammunition on the dresser along with about $9,000 in cash. *Id.* ¶ 4. In the closet area of that same room, the police also recovered men's clothes and "several other items indicating that the defendant lived in the house," including "(1) a December 29, 2008, letter from the circuit court of Cook County probation department, which was addressed to defendant at that house, (2) the defendant’s Illinois identification card bearing the

same address, (3) two photographs depicting the defendant and other men, and (4) a set of keys that opened the outer door of the house." *Id.* After the items were recovered, the officer placed the defendant into custody and read him his *Miranda* rights. *Id.* The defendant then made the statement, "if you had my kind of money, you'd have a gun, too." *Id.* As the police proceeded to search the kitchen, an officer knelt on top of the kitchen counter, and reached above the kitchen cabinet, and retrieved a loaded handgun. *Id.* ¶ 5. The defendant contended that consideration of his statement regarding the need for a gun violated the *corpus delicti* rule. *Id.* ¶ 22. However, after reviewing the evidence which established that defendant resided at the home, the court concluded that a rational trier of fact could have found that the defendant constructively possessed the contraband recovered from the home, and further held that "the recovery of the revolver from above the kitchen cabinet constituted sufficient evidence to corroborate his incriminating statement." *Id.*

¶ 25 In *Hannah*, the defendant was convicted of UUWF following a search pursuant to a warrant. *Hannah*, 2013 IL App (1st) 111660, ¶ 1. The warrant was issued after a confidential informant told the police that he had purchased crack cocaine from a woman named "Angela" who lived at the apartment. *Id.* ¶ 3. Although the defendant was not named in the warrant, the police found the defendant, a woman named Angelica, and a young child sitting on the bed in the sole bedroom in the apartment. *Id.* at ¶ 11. After the defendant and Angelica were detained and handcuffed, the officers searched the bedroom and recovered a handgun hidden between two mattresses on the bed. *Id.* The defendant told one of the officers that he owned the handgun. *Id.* The court found that "the fact that defendant was seated on the bed where the handgun was hidden made it immediately accessible to the defendant at the time the police executed the warrant," and "suggest[ed] that the defendant had immediate control over the area where the handgun was found." *Id.* ¶ 29. This court concluded that "the recovery of the handgun by the

police *** when considered in conjunction with the location in which it was concealed and the defendant's corroborating statement, was sufficient to establish the *corpus delicti* of the offense." *Id.* ¶ 31.

¶ 26 In both *Spencer* and *Hannah*, the court concluded that the recovery of the firearm itself was sufficient independent evidence to corroborate defendant's incriminating statement. However, we observe that in both cases, this conclusion came following a finding by the court that the evidence suggested that the defendants exercised control over the area in which the firearms were found. In fact, our research has not revealed a case where the court has held that the recovery of a firearm is sufficient to corroborate the defendant's incriminating statement absent a finding of control. Such a finding is absent in the instant case. Here, unlike the items recovered in *Spencer*, none of defendant's personal items recovered from the apartment connected defendant to the residence. Although the State points out that defendant's mail was recovered from the room where the firearm was recovered, the State fails to acknowledge that the mail did not bear the 7347 South Perry Avenue address. The mail in question consisted of a bundle of documents from the Child Support Enforcement Division of the Cook County State's Attorney's Office which were addressed to defendant at 6952 South Wabash Avenue, the address that both Latoya and Campbell testified as defendant's place of residence. During oral argument, the State conceded that it had not come across any case law holding that the presence of a defendant's mail near a recovered firearm supports a finding of possession when the mail in question actually evidences that the defendant lives at a different address. We similarly fail to find a case which supports this proposition. Additionally, although officers also recovered defendant's ID card from the apartment, it was not admitted into evidence and the State did not present testimony regarding the address on the ID card; therefore, it is not clear whether defendant’s identification indicated that he resided at 7347 South Perry Avenue. Moreover,

unlike in *Hannah*, the firearm was not immediately accessible to defendant as the evidence reveals that defendant was sitting on the couch in the living room when officers arrived. Therefore, we reject the State's contention that the recovery of the firearm alone is sufficient to corroborate defendant's statement absent any evidence which tends to show that defendant possessed the recovered firearm.

¶ 27 The State also contends, citing *People v. Smith*, 2015 IL App (1st) 132176, that Darrion's testimony further corroborated defendant's statement, by establishing defendant's access to the firearm after his uncle Everett was arrested and never returned to the apartment. In *Smith*, the defendant was arrested at a bus station and convicted of aggravated unlawful use of a weapon (AUUW). At trial, the bus driver testified that he observed the defendant board the bus and sit in the last row. *Id.* ¶ 4. After all passengers exited the bus, the driver noticed a backpack that was unzipped and saw what appeared to be the butt of a handgun inside the backpack. *Id.* ¶ 5. The driver exited the bus, and as he began walking to give the backpack to his supervisor, the defendant approached the driver and told the driver that the backpack belonged to him. *Id.* The defendant informed the driver that he had a BB gun in the backpack, but the driver turned the bag over to his supervisor because the gun looked real. *Id.* After a Greyhound security officer determined that the gun was real, the defendant was arrested and charged with AUUW. *Id.* at ¶ 7. The court found that the testimonies of the bus driver and arresting officer provided sufficient corroborating evidence, independent of the defendant's statement, "tending to inspire belief in [the defendant's] admission that he owned the bag containing the gun that was found on the bus." *Id.* ¶ 19. The court specifically noted that the driver's testimony "demonstrated [the defendant's] connection to the offense because he observed [the defendant] sit in the last seat of the bus, which was the same area where he personally found the bag with the gun." *Id.* ¶ 19. In the instant case, although Darrion's testimony may have established defendant's "access" to the firearm,

unlike the testimony in *Smith*, his testimony provides no evidence whatsoever that connects defendant to the offense. Darrion did not observe defendant in actual possession of the firearm, and nothing in his testimony tended to show that defendant constructively possessed the firearm, as Darrion stated that he and his uncle had shared the bedroom where the rifle was found and never indicated that defendant lived at the residence. Thus, we do not find that Darrion's testimony sufficiently corroborated defendant's statement.

¶ 28 Lastly, the State contends that the search warrant which named both defendant and the apartment on 7347 South Perry Avenue coupled with the fact that defendant was found in the apartment provides further evidence to corroborate defendant's statement. However, although Officer Mendoza briefly testified about the contents of the warrant and acknowledged that the recovered rifle was different from the handgun that was specified in the warrant, assuming *arguendo* that the warrant was even admissible, it was never entered into evidence. Therefore, we reject the State's contention that the search warrant amounted to independent evidence corroborating defendant's statement.

¶ 29 Accordingly, because the only evidence in this case that defendant possessed the firearm is defendant's own statement that he found the rifle and intended to sell it, we find that the State failed to present sufficient evidence to establish the *corpus delicit* of UUWF and being an armed habitual criminal, and therefore, defendant's convictions cannot stand. As a result, we need not reach defendant's additional contentions that the State did not prove the element of possession beyond a reasonable doubt, the trial court was required to conduct a *Krankel* inquiry, and he was denied effective assistance of counsel. Additionally, having vacated defendant's conviction, his request to correct the fines and fee order is now moot, and we need not discuss the issue further.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, we vacate the judgment of the circuit court of Cook County.

¶ 32 Circuit court judgment vacated.