2015 IL App (1st) 133208-U

THIRD DIVISION
March 11, 2015

No. 1-13-3208

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 11649
	)	
LADONTA LEWIS,	)	Honorable
	)	Diane Gordon Cannon,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Mason concurred in the judgment.

O R D E R

¶ 1 ***Held****:* Judgment affirmed over defendant's challenge to the sufficiency of the evidence; defendant's contentions regarding alleged errors by the trial court forfeited; mittimus corrected.

¶ 2 Following a bench trial, defendant Ladonta Lewis was found guilty of violating section 401(a)(1)(B) of the Illinois Controlled Substances Act (720 ILCS 570/401(a)(1)(B) (West 2010)) and sentenced to 10 years' imprisonment. On appeal, defendant challenges the sufficiency of the evidence to sustain his conviction. He also contends that the court erred in eliciting and relying upon irrelevant evidence, and speculative, personal knowledge, and relied on an incorrect recollection of the evidence to reach a finding of guilt.

¶ 3 At trial, Chicago police officer Vasselli testified that at 6:30 p.m. on June 21, 2011, he and 12 other officers executed a search warrant at 25 West 110th Street in Chicago, and that he was the photograph and evidence recovery officer. When he arrived at the address in question, he noticed defendant and another man sitting on the front porch of the residence. Several officers detained defendant, and Officer Vasselli went to the rear of the residence. He entered through the open rear door, while the other officers forced an entry through the front door.

¶ 4 Inside, Officer Vasselli found cocaine and heroin, two ledgers, two notebooks, a box of bullets, $7,060, and a scale in the dresser drawer in the bedroom. He also found a Mercedes Benz auto repair invoice with defendant's full name on it and the 110th Street address. In addition, Officer Vasselli recovered a residential rental agreement with the names, Mr. and Mrs. Lewis on it and stating that the tenants had three children. There was no first name on the lease which was signed only by the landlord, Stillman Crawford, nor an indication of the year it related to or was executed. Officer Vasselli further testified that he found a receipt for the rental agreement in the bedroom, which contained the address in question and the name, Mr. Lewis. Copies of the car repair invoice, the residential lease, and the rental receipt were admitted into evidence, but only the repair invoice and residential lease, without exhibit numbers, are in the common law record filed on appeal.

¶ 5 Officer Vasselli further testified that he found suspect heroin and cannabis in the kitchen, then searched the basement where he found two large zip lock bags containing suspect heroin in a freezer chest. He also found sifters and blenders, which are used to cut and manufacture cocaine or heroin, in the basement.

¶ 6 Officer Vasselli also testified that the search warrant for the 110th Street address described two individuals. The first was a black male, known as "Nephew," who was between 28

to 32 years of age, dark complected, 5'8" to 5'11" inches tall, weighing between 220 to 240 pounds with short black hair and a goatee. The other individual was described as a black male, known as "Uncle," who had a medium complexion, was approximately 50 to 55 years old, 5'10" to 6'1" inches tall, weighing between 160 to 180 pounds with short gray hair. Officer Vasselli noted that defendant was not between 220 to 240 pounds, or 5'8" and 5'11" tall, nor did he have gray hair, or appear to be close to six feet tall or in his 50's.

¶ 7 Chicago police officer Treacy testified that he was the affiant on the search warrant for the 110th Street address. When he arrived at those premises, he saw defendant sitting on the porch with another man. Officer Treacy brought defendant inside the house and spoke with him in the living room. Defendant told Officer Treacy that the drugs in the house belonged to him, and that he would show him where more of the drugs were located in the basement. Defendant then showed Officer Treacy the freezer which contained suspect heroin and another corner of the basement where all the supplies for manufacturing and delivering the drugs were located. The supplies included compressors, sifters, blenders, bags, scales and more.

¶ 8 Officer Treacy asked defendant about the lease found in the house, and defendant indicated that his grandmother owned the home, and that he was renting it. At the police station, defendant told him that he resided at the 110th Street address. Officer Treacy noted that defendant had a goatee the date he was arrested, that he was a black male, 5'5" tall, weighed 160 pounds, had brown eyes, black, short hair, and a medium brown complexion, and was 34 years of age.

¶ 9 The parties stipulated that the suspect narcotics recovered from the kitchen weighed more than 94.7 grams and tested positive for heroin, and that the suspect narcotics recovered from the bedroom weighed 175.3 grams and tested positive for heroin. They also stipulated that the

suspect cocaine recovered from the bedroom tested positive for cocaine and weighed 2.4 grams, and that the suspect heroin recovered from the basement weighed 146.9 grams and tested positive for heroin.

¶ 10 Vanessa Lewis testified that defendant was her son, and had resided with her at 13613 South Eggleston Avenue in Riverdale, Illinois, for 24 years. She further testified that Stillman Crawford, Sr., is her brother-in-law, and owns the 110th Street property, but that defendant has never resided at that address. She also testified that Crawford, Sr., and his son, Stillman Crawford, Jr., did not rent the property to anyone.

¶ 11 Percy Menifield then testified. Percy's testimony revealed that Percy resides at 35 West 110th Street, three doors away from 25 West 110th Street where the Crawfords lived and resided in 2011. Percy knew defendant, and on June 21, 2011, as Percy was pulling up to 35 West 110th Street, Percy saw defendant in front of the home talking to Percy's sister. A large number of police officers showed up and went to the 25 West 110th Street address, where they gained entry by using a battering ram. While the police were breaking down the front door, defendant was standing on the right-hand side of the fence by the driveway of the home. After the police handcuffed defendant's cousin, Jason Lewis, they asked defendant to come over, and when he did so, they handcuffed him and placed him on the porch, before bringing him inside the home.

¶ 12 Percy's family had lived at 35 West 110th Street for 42 years, and knew the Crawfords. Percy went to school with defendant's mother, and they were friends. Percy was positive that defendant did not reside at 25 West 110th Street because the Crawfords were getting the place ready to rent. Percy further testified that defendant is married, and, although Percy has met his wife, Percy does not know her.

¶ 13 Jason Lewis testified that on June 21, 2011, his cousin, Crawford, resided at 25 West 110th Street, and that defendant did not. Lewis testified that he was there on the date in question to pick up some mail and check out a television Crawford was selling. Lewis then corrected himself and testified that he was there to pick up a receipt for his car, not mail, and that he had Crawford bring his car to the Mercedes Benz shop to be serviced. He asked defendant, his cousin, to pick up the car. The invoice had defendant's name on it because he picked up the car, and the 25 West 110th Street address was also listed on it. The car, however, was registered to Lewis at his home address of 10852 South Indiana Avenue. Lewis further testified that defendant lived in Riverdale, Illinois, and is married to Denetria Carmichael, but at the time in question they were living apart. When police arrived at the house, he was on the porch of 25 West 110th Street with defendant, and was brought inside by police. Lewis testified that he did not see any narcotics or narcotics paraphernalia inside the home, and pursuant to an inquiry by the court, testified that he was not arrested.

¶ 14 Defense counsel then inquired if he was handcuffed and detained. Lewis indicated that he was, but was never read his rights, nor formally charged with anything.

¶ 15 Defendant's wife, Denetria Carmichael, testified that in June 2011, defendant resided with his mother at 13613 South Eggleston Avenue, and never resided with her. Carmichael testified that she posted bond for defendant, and acknowledged that the bond slip was signed by defendant and indicated his address as 25 West 110th Street. However, she testified that when she posted bond, and informed the individual servicing the bond that the address listed was not defendant's address, this person said that the address on it was "in the system." Carmichael finally testified that she and defendant never lived at 25 West 110th Street.

¶ 16 At the close of evidence, the court found defendant guilty of possession of a controlled substance with intent to deliver. In announcing its decision, the court stated that it had judged the credibility of the witnesses, noted there was a rental receipt recovered from the home for $1,200 paid in cash to Mr. and Mrs. Lewis, and that not everyone was arrested on the scene. The court stated that it "[doesn't] believe unless [defendant] had admitted the drugs were his that Jason Lewis would have been let go," and he was let go. The court further stated that Jason Lewis attempted to testify that the Mercedes belonged to him, but the evidence showed that defendant dropped off and picked up the car and it belonged to him. The court further found that defendant more than met the description of one of the persons set out in the search warrant. The court also noted that defendant was on the porch when police arrived, and there was proof of residency for defendant at the address in question.

¶ 17 Defendant subsequently filed a motion for a new trial, which the trial court denied. In doing so, the court noted that it found defendant guilty based on the totality of the circumstances of his arrest. The court explained that defendant was on the porch when police arrived, there was a car repair receipt in the bedroom listing defendant's name, and that his cousin attempted to say it was his receipt, but he did not reside at the 25 West 110th Street address. The court concluded that the State met its burden beyond a reasonable doubt based on the credibility of the witnesses and the evidence presented.

¶ 18 On appeal, defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt because the State failed to present any basic indicia that he had exclusive control over the narcotics at the residence and Officer Treacy's testimony that defendant admitted the drugs belonged to him and resided there was highly incredible.

¶ 19 When defendant challenges the sufficiency of the evidence to sustain his conviction, our duty is to determine whether all of the evidence, direct and circumstantial, when viewed in the light most favorable to the prosecution, would cause a rational trier of fact to conclude that the essential elements of the offense have been proved beyond a reasonable doubt. *People v. Wiley*, 165 Ill. 2d 259, 297 (1995). A criminal conviction will be reversed only if the evidence is so unsatisfactory or improbable that it leaves a reasonable doubt of defendant's guilt. *Wiley*, 165 Ill. 2d at 297. For the reasons that follow, we do not find this to be such a case.

¶ 20 Defendant was convicted of possession of a controlled substance with intent to deliver. To sustain his conviction, the State was required to prove, in relevant part, that he possessed the narcotics. 720 ILCS 570/401 (West 2012). Possession can be actual or constructive (*People v. Frieberg*, 147 Ill. 2d 326, 360-61 (1992)), and where, as here, defendant was not found in actual possession of the narcotics, we consider whether the evidence shows his constructive possession of the contraband. Constructive possession exists where defendant has the intent and capability to maintain dominion and control over the controlled substance, but not immediate personal control over it. *Frieberg*, 147 Ill. 2d at 361. Proof that defendant knew the narcotics were present and exercised control over them establishes constructive possession (*People v. Moore*, 365 Ill. App. 3d 53, 60 (2006)), and habitation in a premises where narcotics are discovered has been found relevant to establishing control of them (*People v. Cunningham*, 309 Ill. App. 3d 824, 828 (1999)).

¶ 21 The evidence in this case, when viewed in the light most favorable to the prosecution (*People v. Pintos*, 133 Ill. 2d 286, 292 (1989)), contains substantial evidence showing that defendant resided at the 110th Street address, had control of those premises, and possessed the narcotics which were found therein. The bond slip which defendant signed listed the 110th Street

address as his address, there was a car repair receipt found in the bedroom of the home which listed defendant's full name and the 110th Street address, and although the lease agreement for the 110th Street address was not signed or dated, it listed a Mr. and Mrs. Lewis as the tenants. There was also a rental receipt listing Mr. Lewis and the address in question. In addition, Officer Treacy testified that defendant told him that the drugs found in the home belonged to him and that he resided there. The natural inference which flows from the totality of the evidence presented at trial was that defendant, not his cousin, resided at the 110th Street address (*People v. Moore*, 394 Ill. App. 3d 361, 364-65 (2009)), and the composite of these factors support the inference drawn by the trial court that defendant had control of the premises to establish his constructive possession of the contraband found therein (*People v. Birge*, 137 Ill. App. 3d 781, 791 (1985)).

¶ 22 Defendant, however, contends that Officer Treacy was incredible, and that his testimony defies logic, common sense, and human experience. He also contends that his testimony conflicts with that of Officer Vasselli who testified that he found all the narcotics in the residence by himself, while Officer Treacy testified that defendant showed him the location of the narcotics.

¶ 23 In a narcotics case, the testimony of a single law enforcement officer, if found credible, can be sufficient to sustain a conviction. *People v. Borges*, 88 Ill. App. 3d 912, 917 (1980). Here, the trial court found the officers credible, and we do not find any conflict in their testimony where the record shows that Officer Vasselli entered the residence from the rear before the other officers entered with defendant from the front who then showed Officer Treacy the location of the drugs in the basement. From this, the court could reasonably infer that Officer Vasselli began his initial search which was followed by Office Treacy with defendant. Moreover, the trial court was not required to accept the self-serving testimony of defendant's relatives and the friend of his

mother who testified that defendant did not reside at the home in question (*People v. Young*, 269 Ill. App. 3d 120, 123-24 (1994)), over that of both officers, and we will not second-guess the credibility determination made by the court (*People v. Hernandez*, 278 Ill. App. 3d 545, 551 (1996)).

¶ 24 In reaching this conclusion, we have considered *In re K.A.*, 291 Ill. App. 3d 1 (1997), and *People v. Scott*, 367 Ill. App. 3d 283 (2006), cited by defendant, and find them distinguishable. In *In re K.A.*, 291 Ill. App. 3d at 6-9, the juvenile's mere presence near the narcotics and flight from the home was deemed insufficient to prove constructive possession. Here, unlike *In re K.A.*, defendant admitted that he resided at the residence and that the drugs belonged to him, and there was documentation indicating that he resided there.

¶ 25 In *Scott*, 367 Ill. App. 3d at 284, 286, defendant was found not to be in constructive possession of the narcotics found in a mailbox associated with the apartment he stayed at on and off where he did not have a key to the mailbox, and was never seen opening it. Here, by contrast, defendant was on the porch of the residence when police arrived, admitted he resided there and owned the drugs inside the home, and documentation with his name and address at that location were found inside the home.

¶ 26 Defendant next contends that the trial court erred when it elicited and relied on irrelevant evidence and speculative personal knowledge, and an incorrect memory of the evidence to reach a finding of guilty. Defendant specifically contends that the court erred in eliciting, *sua sponte*, testimony from Lewis on whether he was arrested, which was allegedly irrelevant, and then relied upon that evidence along with speculative knowledge regarding the officers' motives to convict defendant. He also contends that the court relied upon an incorrect understanding of the

evidence, namely, whether there was a receipt for rent recovered, to resolve a closely balanced factual matter of whether defendant lived at the residence.

¶ 27 As an initial matter, the State maintains that defendant has forfeited this issue due to his failure to raise it at trial and in his post-trial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant acknowledges his failure to properly preserve the issue, but claims that it may be reviewed because forfeiture is less rigidly applied where the conduct of the court is at issue.

¶ 28 Although judicial misconduct can provide a basis for relaxing the forfeiture rule (*People v. Sprinkle*, 27 Ill. 2d 398 (1963)), the supreme court has clarified that this exception applies only in extraordinary situations such as when the trial judge makes inappropriate comments to the jury or relies on social commentary in sentencing defendant to death (*People v. McLaurin*, 235 Ill. 2d 478, 488 (2010)). The fact that forfeiture is rarely relaxed in noncapital cases underscores the importance of the uniform application of the forfeiture rule except in the most compelling situations. *McLaurin*, 235 Ill. 2d at 488. Here, defendant has not presented any extraordinary or compelling reason to relax the rule under *McLaurin*, and we decline to do so.

¶ 29 In the alternative, defendant maintains that the issue may be reviewed under plain error because the evidence is closely balanced. We may review this claim only if *defendant has established* plain error. (Emphasis added.) *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Here, defendant has merely stated that the evidence is closely balanced, and has not argued how that is so. The mere mention of the plain error doctrine and the general concepts underlying that doctrine are wholly insufficient to satisfy the burden defendant bears to establish reversible error under plain error analysis. *People v. McCoy*, 405 Ill. App. 3d 269, 274 (2010). Since defendant failed to present argument on how either of the two prongs of the plain error doctrine is satisfied, he has forfeited plain error review. *Hillier*, 237 Ill. 2d at 545-46. That said, we further observe

that the evidence presented at trial included a receipt for rent, a copy of which was admitted into evidence below, but was not included in the record filed on appeal. Accordingly, we presume that the trial court's findings regarding this receipt were correct. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 30 Moreover, in rejecting defendant's challenge to the sufficiency of the evidence to sustain his conviction, we note that appellate counsel asserts in defendant's brief that defendant was "found guilty of one count of manufacturing with intent to deliver a controlled substance," and the State asserts in its brief that "defendant was found guilty of manufacturing and delivering heroin." While the mittimus reflects that defendant was found guilty of "MFG/DEL 100<400 GR HERO/ANLG," the half-sheet entry for July 15, 2013, states that defendant was found guilty of counts I and II of the information, which charged him, respectively, with "POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER" and "UNLAWFUL USE OR POSSESSION OF A WEAPON BY A FELON," and the half-sheet entry for August 16, 2013, states that defendant's motion for a new trial, which alleged that the State failed to prove his possession of a controlled substance with intent to deliver beyond a reasonable doubt, was denied and he was sentenced to 10 years' imprisonment on count I. Simply put, defendant was neither charged, nor convicted of "manufacturing with intent to deliver a controlled substance" or "manufacturing and delivering heroin." *People v. Blakney*, 375 Ill. App. 3d 554, 560 (2007). In our view, under these circumstances, the mittimus should reflect the offense as it was set forth in the information, *i.e.*, possession of a controlled substance with intent to deliver, consistent with judgment of the trial court. Accordingly, we correct the mittimus to reflect that defendant was found guilty of possession of a controlled substance with intent to deliver as charged in count I

of the information. See *People v. Harper*, 387 Ill. App. 3d 240, 244 (2008) (appellate court may correct the mittimus at any time without remanding the matter to the trial court).

¶ 30 For the reasons stated, we correct the mittimus as indicated and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 31 Affirmed; mittimus corrected.