FOURTH DIVISION
July 30, 2015

No. 1-14-0449

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. 12 CR 22589
	)	
ALEJANDRO GARCIA,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence is sufficient to sustain defendant's conviction for unlawful possession of a firearm by a felon where defendant confessed to owning the firearm at issue and the firearm was found in the house where defendant resided. Further, the trial court did not err when it denied defendant's motion to suppress the search that yielded the firearm where defendant was on mandatory supervised release at the time of the search, where the police officers testified that the house had an odor of cannabis, and where defendant admitted to the officers that he would not pass a

> drug test. The clerk of the circuit court is directed to vacate the $200 fee that was assessed against defendant for collecting his DNA in connection with his November 17, 2012 arrest where defendant's DNA was already in the State's database at the time of that arrest.

¶ 2 Following a bench trial, defendant Alejandro Garcia was found guilty of unlawful possession of a firearm by a felon and was sentenced to 42 months in prison. Defendant now challenges his conviction arguing that: (1) the State failed to prove *corpus delicti*, and (2) the trial court erred when it denied his motion to suppress the search that yielded the firearm at issue. For the reasons that follow, we affirm defendant's conviction.

¶ 3 BACKGROUND

¶ 4 Defendant Alejandro Garcia was charged by information with several counts of unlawful use or possession of a weapon by a felon. Following a bench trial, defendant was found guilty of unlawful possession of a firearm by a felon and was sentenced to 42 months in prison.

¶ 5 At trial, Chicago police officer McDermott testified that on November 17, 2012, he along with five other Chicago police officers and two agents from the Illinois Department of Corrections (IDOC) went to 9225 South Marquette in Chicago to conduct a parole compliance check for the purpose of ensuring that defendant was in fact living in that single-family residence. Defendant indicated that he was living at this address when he was released from prison on mandatory supervised release (MSR). After the officers knocked on the door, defendant answered and let the officers in. Upon entering the residence, there was a strong odor of unburned cannabis. IDOC agent Jack Tweedle then asked defendant if he would pass a drug test if one was administered. After admitting that he would not, defendant was placed into custody.

¶ 6 Officer McDermott testified that the officers then conducted a systematic search of the residence. Because the smell of cannabis seemed stronger in the basement, the officers went into

the basement. Defendant told the officers that there were dogs in the basement, but none were found. While in the basement, agent Tweedle lifted the mattress of a bed that was at the bottom of the stairwell and found a Glock firearm. Officer McDermott recovered the firearm, which was a 40 caliber with an extended 29-round magazine that contained 25 rounds.

¶ 7 Defendant was transported back to the police station where Officer McHale gave him his *Miranda* rights. Defendant stated that he understood his rights and agreed to speak with the officers. Defendant then stated that he purchased the firearm about a month before it was recovered for $400. He stated that he bought the firearm because he had been a victim of a shooting at his house. Officer McDermott testified that he was independently aware of that incident.

¶ 8 Officer McDermott further testified that defendant's bedroom was on the first floor of the house near the kitchen. Defendant's mother and two brothers were in the house while the officers were there. Defendant denied knowing about the firearm when confronted at the house; no cannabis was recovered from the house.

¶ 9 The State introduced a certified copy of defendant's prior felony conviction for aggravated unlawful use of a weapon under case 11 CR 8851, and then rested.

¶ 10 As part of defendant's case, IDOC agent Tweedle testified that he knocked on the door of defendant's house on November 17, 2012 and had to wait three to four minutes before defendant answered the door. During that time, agent Tweedle could hear footsteps inside of the house. When the five Chicago police officers and two parole agents went into the house, agent Tweedle testified that they were overwhelmed by the smell of fresh cannabis and asked where the cannabis was. When defendant did not respond, agent Tweedle asked if defendant would pass a drug test and defendant responded that he would not. Defendant was then placed in restraints

and the officers began to look around. One officer went to defendant's bedroom on the first floor while agent Tweedle noticed a staircase and went downstairs. Defendant's mother was home at this time, one of defendant's brothers was upstairs, and another brother had a living area in the basement next to a common area that agent Tweedle searched. Agent Tweedle lifted the mattress of a bed in the common area in the basement, and found a firearm that Officer McDermott recovered. Chicago police officers then took defendant and the firearm to the police station. Agent Tweedle testified that no cannabis was found in the house.

¶ 11 Defendant's brother, Ricardo Garcia, testified that he has a prior misdemeanor conviction for cannabis possession. He testified that he was home on November 17, 2012, when the Chicago police officers came to the house. At the time, defendant's disabled older brother, Juan Garcia, and his wife were also in the house; they lived in the basement. While the police officers were in the house, defendant's mother arrived home. Defendant's room was near the kitchen.

¶ 12 Ricardo further testified that defendant let the police officers into the house. Defendant admitted to the officers that he would test positive if he took a drug test. The officers searched Ricardo's room and defendant's room, but their mother's room was locked. One of the officers asked if there was a dog downstairs and Ricardo stated that there was. Two officers then went downstairs and returned with a firearm. They confronted defendant with the firearm while everyone was at the kitchen table. Defendant denied that the firearm was his and stated that he did not know who it belonged to.

¶ 13 Defendant then took the stand. He testified that on November 17, 2012, he opened the door for four or five police officers and two parole agents. He testified that the officers placed him in handcuffs and sat him down at the kitchen table while they searched both his and Ricardo's rooms. The officers then went into the basement and returned with a firearm. Officer

McHale approached defendant and asked about the firearm in the presence of defendant's family. Defendant told Officer McHale that he did not know who the firearm belonged to and that he does not stay in the basement. The officers asked defendant three to four times who the firearm belonged to. Defendant was then taken to the police station where Officer McHale asked him about what was going on in the streets. Defendant replied that he did not know. Defendant denied ever telling Officer McHale that the firearm belonged to him. Defendant testified that he did not tell the officers that he had the firearm for protection, but admitted that he had been shot on his front porch previously. Defendant testified that the police officers were mad at him because he would not identify someone who shot him. Following defendant's testimony, the defense rested.

¶ 14 In rebuttal, the State called Officer McHale who testified that there was a very strong odor of cannabis when the officers entered the apartment. Agent Tweedle asked defendant if he had a "urine drop," would defendant be "hot," and defendant replied that he would. Defendant was then taken into custody and a systematic search of the house was performed. Officer McHale saw the firearm after Officer McDermott recovered it. Officer McHale testified that he did not ask defendant about the firearm at the house and no cannabis was found in the house.

¶ 15 Defendant was taken back to the station where Officer McHale read him his *Miranda* rights. Defendant stated that he understood his rights, and stated that he had bought the firearm about a month ago for $400. He bought the firearm for protection after he was shot on his front porch in August of 2012.

¶ 16 At the conclusion of the evidence, defendant's counsel presented an oral motion to suppress the search that yielded the firearm because that search was not authorized. The trial court heard defendant's oral motion to suppress, despite the fact that it was presented after both

sides had rested their case, and denied the motion. Thereafter, the trial court found defendant guilty of unlawful possession of a firearm by a felon, and sentenced him to 42 months in prison for that conviction. Defendant now appeals his conviction arguing that the State failed to prove *corpus delicti* and that the trial court erred when it denied his motion to suppress the search that yielded the firearm at issue. Defendant also argues the trial court erred in imposing a $200 fee for the taking of his DNA because his DNA was already in the State's database. For the reasons that follow, we affirm the trial court's unlawful possession of a firearm by a felon conviction and ruling denying defendant's motion to suppress the search that yielded the firearm at issue. We also find that defendant is entitled to a $200 reduction in the fee assessed against him and, accordingly, direct the clerk of the circuit court to vacate that $200 fee.

¶ 17 ANALYSIS

¶ 18 *Corpus Delicti*

¶ 19 Defendant first argues that his conviction should be reversed because the State did not prove *corpus delicti*. However, before addressing defendant's *corpus delicti* argument, we must first determine what standard of review applies to our review of whether the State has proven its case of unlawful possession of a firearm by a felon against defendant. Defendant argues that, because the evidence is undisputed thus obviating any concerns about deference, our review of whether the State has proven its case should be *de novo*. Defendant cites to *People v. Smith*, 191 Ill. 2d 408 (2000), in support of this argument. The State, however, argues that sufficiency of the evidence claims are reviewed under a deferential standard in which a criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 20 We find that the proper standard of review in determining whether the State has proven its case, including *corpus delicti*, is the deferential standard. Here, conflicting evidence was presented at trial, including evidence as to who owned the firearm at issue, requiring the trial court to make certain findings of fact. In *People v. Smith*, 191 Ill. 2d 408 (2000), there was no contradictory evidence presented at trial and, thus, no disputed facts for the trial court to resolve, and our supreme court was tasked only with deciding whether those undisputed facts established the crime of an armed offense. See *Smith*, 191 Ill. 2d at 411. Because conflicting evidence was presented at trial in this case, *Smith* is distinguishable. Although defendant argues that these disputed facts are irrelevant because the truth of defendant's confession is assumed when determining whether *corpus delicti* was proven, our review of whether there was proof of *corpus delicti* is separate from our determination as to what standard of review applies to defendant's sufficiency of the evidence claim on appeal.

¶ 21 When reviewing a challenge to the sufficiency of the evidence, the relevant inquiry is whether, when the evidence is viewed in the light most favorable to the prosecution, any rational trier of fact could have found that the essential elements of the offense were proven beyond a reasonable doubt. *People v. Pollock*, 202 Ill. 2d 189, 217 (2002); *People v. Nesbit*, 398 Ill. App. 3d 200, 208 (2010). Decisions regarding the credibility of witnesses and the weight given to their testimony are exclusively within the province of the jury. *Collins*, 106 Ill. 2d at 261-62; *Nesbit*, 398 Ill. App. 3d at 209. When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. *Collins*, 106 Ill. 2d at 261. A defendant's conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007); *Nesbit*, 398 Ill. App. 3d at 209.

¶ 22 To sustain a conviction for unlawful possession of a weapon by a felon, the State must prove: (1) the defendant had a prior felony; and (2) the defendant had knowing possession of the weapon. 720 ILCS 5/24-1.1(a) (West 2010); *People v. Brown,* 327 Ill. App. 3d 816, 824 (2002). Here, there is no contest regarding defendant's prior felony conviction. "Knowing possession" can be either actual or constructive. *Brown,* 327 Ill. App. 3d at 824. To establish constructive possession, the State must prove that the defendant: (1) had knowledge of the presence of the weapon; and (2) exercised immediate and exclusive control over the area where the weapon was found. *Id.* "Control is established when a person has the 'intent and capability to maintain control and dominion' over an item, even if he lacks personal present dominion over it." *People v. Spencer,* 2012 IL App (1st) 102094, ¶ 17 (quoting *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992)). A defendant's control over a location where a weapon was found creates an inference that the defendant possessed the weapon. *People v. McCarter,* 339 Ill. App. 3d 876, 879 (2003). When other people share a relationship to the contraband sufficient to constitute possession, the result is not vindication of the defendant, but rather, a situation of joint possession (*People v. Givens,* 237 Ill. 2d 311, 338 (2010)), as any other outcome would allow a defendant to escape liability by inviting others to participate in a criminal enterprise. *People v. Ingram,* 389 Ill. App. 3d 897, 901 (2009).

¶ 23 Here, defendant argues that the State failed to prove him guilty of unlawful possession of a firearm by a felon because it failed to prove *corpus delicti* where: (1) the only evidence of a crime being committed was an alleged confession by defendant, and (2) a firearm alone is not proof of any crime. Defendant also argues that the State otherwise failed to prove that the firearm was in defendant's possession.

¶ 24 Proof of *corpus delicti* requires both proof of injury or loss, as well as proof of criminal agency. *People v. Lambert*, 104 Ill. 2d 375, 378 (1984). However, the *corpus delicti* cannot be proved by the defendant's confession alone. *Id*.; *People v. Dalton*, 91 Ill. 2d 22, 29 (1982). There must be either some independent evidence or corroborating evidence outside of the confession which tends to establish that a crime occurred. *Lambert*, 104 Ill. 2d at 379. If there is such evidence, and that evidence tends to prove that the offense occurred, then that evidence, if it corroborates the facts contained in the defendant's confession, may be considered together with the confession to establish the *corpus delicti*. *Id*. To avoid "running afoul" of the *corpus delicti* rule, the independent evidence provided need only "tend to show" the commission of a crime (*People v. Lara*, 2012 IL 112370, ¶ 18); it need not prove the crime beyond a reasonable doubt (*People v. Harris*, 2012 IL App (1st) 100077, ¶ 20). In other words, the independent evidence need only tend to inspire belief in defendant's confession or statement. *People v. Harris*, 389 Ill. App. 3d 107, 129 (2009); *People v. Curry*, 296 Ill. App. 3d 559, 565 (1998).

¶ 25 The State argues that *corpus delicti* was satisfied where two witnesses testified to defendant's confession that he bought the firearm at issue for $400 for self defense purposes and that confession was corroborated by the recovery of the firearm itself and the fact that the officers were aware that defendant had previously been the victim of a shooting.

We find that, viewing the evidence in the light most favorable to the State, the evidence offered in addition to defendant's confession was sufficient proof of *corpus delicti*. In defendant's confession, he admitted that he bought the firearm for $400 to use for self defense purposes since he had previously been the victim of a shooting. The State corroborated defendant's statement that he had previously been the victim of a shooting as Officer McDermott testified that he recalled that incident. Besides this detailed confession, which was observed by two police

officers, the State presented evidence that the firearm was found in the house where defendant, a felon, resided. The State also presented evidence that the gun was found under a bed in a common area in the basement, and that when the police went to search the basement, defendant advised them that there were dogs in the basement, even though none were found. Setting aside defendant's confession, all of this evidence, while it may not be sufficient to convict defendant on its own, "tends to show" that defendant, a felon, was in possession of the firearm that was found in the house where he resided. See *Lara*, 2012 IL 112370, ¶ 18. Accordingly, when reviewing the evidence presented at trial in conjunction with defendant's confession, (*People v. Webb*, 153 Ill. App. 3d 1055, 1058-59 (1987) ("When the test is satisfied, both the independent evidence and the confession may be considered in determining whether the *corpus delicti* is sufficiently proved")), we find defendant's unlawful possession of a firearm by a felon conviction was not so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt as to defendant's guilt. *Wheeler*, 226 Ill. 2d at 115 (A defendant's conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt.).

¶ 26 While defendant argues that this case is analogous to *People v. Lueder*, 3 Ill. 2d 487 (1954), we disagree. In *Lueder*, the defendant was convicted of burning a tool shed on cemetery grounds. *Lueder*, 3 Ill. 2d at 488. Aside from the defendant's confession, the only evidence presented was that the defendant was the president of the cemetery and was employed by the cemetery on the date in question. *Id*. The court in *Lueder* found that the fact that the defendant was the president of the cemetery and was employed by the cemetery neither "suggests [n]or tends to corroborate the element that some person willfully fired the building." *Id*. at 489. Here, besides the confession, there was evidence that a firearm was found under a mattress in a

common room of the basement in the house where defendant, a felon, resided. As such, this case is distinguishable from *Lueder* because the discovery of a firearm from the house where defendant, a felon, resides at a minimum suggests or tends to corroborate defendant's confession that he owned the firearm. *People v. Cloutier,* 156 Ill. 2d 483, 503 (1993) (the State's independent evidence need not rise to the level of proof beyond a reasonable doubt, but must only tend to confirm a defendant's confession.).

¶ 27 Motion to Suppress

¶ 28 Next defendant argues that the trial court erred in denying his motion to suppress the search that yielded the firearm at issue because the area searched was not under defendant's control and, therefore, not subject to search as an incident to his MSR, and the State had no warrant to justify the search of the house otherwise. The State, in turn, argues that defendant, who was on MSR, had a greatly reduced expectation of privacy such that this search of his premises was permissible.

¶ 29 A motion to suppress involves mixed questions of law and fact. *People v. Pitman,* 211 Ill. 2d 502, 512 (2004). Findings of historical fact made by the circuit court will be upheld unless they are against the manifest weight of the evidence. *Id.* However, the ultimate question of whether suppression is appropriate under a particular set of facts is reviewed *de novo. People v. Moss,* 217 Ill. 2d 511, 518 (2005).

¶ 30 Both the fourth amendment and the Illinois Constitution guarantee the right of individuals to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. The fourth amendment generally requires a warrant supported by probable cause for a search to be considered reasonable but there are a few exceptions to this requirement. *Moss,* 217 Ill. 2d at 518. One such exception involves probationers or parolees. See *id.* at 519; *People v.*

Wilson, 228 Ill. 2d 35, 41 (2008). The United States Supreme Court and our supreme court have held that probationers and parolees enjoy a greatly diminished expectation of privacy due to their status as probationers and parolees, and further recognized that the government has a salient interest in preventing recidivism and protecting society from future crimes. *Id*. at 41. Accordingly, our supreme court has adopted the analysis set forth by the United States Supreme Court in *Samson v. California*, 547 U.S. 843 (2006), that "the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee." *Id*. at 52 (quoting *Samson*, 547 U.S. at 857).

¶ 31 In this case, police officers went to defendant's house to conduct their parole compliance check, where they testified they smelled an odor of cannabis. Defendant then admitted to the officers that he would not be able to pass a drug test. It is uncontested that defendant was on MSR at the time of the search. In Illinois, parole and mandatory supervised release (MSR) are governed by the same conditions. 730 ILCS 5/3-3-7 (West 2010). An individual on MSR shall "consent to a search of his or her person, property, or residence under his or her control." 730 ILCS 5/3-3-7(10) (West 2010). Based upon these facts and defendant's MSR status, we find that the search that yielded the firearm at issue in this case was reasonable and, therefore, the trial court did not err when it denied defendant's motion to suppress. Even if we were to assume that the search was not reasonable, as the State pointed out, the rulings in *Wilson* and *Samson* were applied in cases where there was no reasonable suspicion that prompted the search of the parolee. *Samson*, 547 U.S. at 857 (the Supreme Court held that the fourth amendment does not prohibit a police officer from conducting a search of a parolee in the absence of a reasonable suspicion that the parolee is engaged in criminal activity); *Wilson*, 228 Ill. 2d at 52 (Illinois

supreme court applied the holding of *Samson* and concluded that a search of a parolee's residence without reasonable suspicion is constitutional.).

¶ 32 DNA Fee

¶ 33 Last, defendant argues that the trial court improperly assessed a $200 fee against him for collecting his DNA because his DNA was already in the State's database at the time of his November 17, 2012 arrest. The State concedes this issue. Accordingly, the clerk of the circuit court is directed to vacate the $200 DNA fee that was assessed against defendant in relation to his November 17, 2012 arrest.

¶ 34 CONCLUSION

¶ 35 For the reasons above, we affirm defendant's conviction of unlawful possession of a firearm by a felon. We also direct the clerk of the circuit court to vacate the $200 DNA fee that was assessed against defendant in relation to his November 17, 2012 arrest.

¶ 36 Affirmed.