FIRST DIVISION
July 20, 2015

No. 1-14-0513

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 C4 40644
	)	
MIGUEL CHACON,	)	Honorable
	)	Noreen Love,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 ***Held:*** We affirm the judgment entered on defendant's convictions of possession of a controlled substance and cannabis, with intent to deliver over his challenge to the sufficiency of the evidence.

¶ 2 Following a bench trial, defendant Miguel Chacon was found guilty of possession of a controlled substance with intent to deliver and possession of cannabis with intent to deliver. He was sentenced to consecutive terms of nine and five years in prison, respectively. On appeal, he contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt.

¶ 3 The charges filed against defendant arose from an incident that occurred on the evening of May 22, 2011, in Elmwood Park, Illinois. Defendant's wife, Melissa Calderon, was

separately charged in connection with the same incident. The court granted the State's motion to consolidate their trials, but then severed them relative to certain issues.

¶ 4 At trial, Illinois Department of Corrections Parole Agent James Dunbar testified that he was assigned to monitor defendant, who was paroled in October 2010 and who had an address of 2023 North Harlem Street in Elmwood Park. Agent Dunbar's responsibilities included making residency compliance checks on parolees, checking whether parolees are associating with other felons, or possessing or using unauthorized narcotics. In April 2011, he received an anonymous phone call that defendant was no longer staying at the designated address and did not have the necessary written permission to move.

¶ 5 About 6 p.m. on the day in question, Agent Dunbar and his colleague, Agent Ortiz, attempted to conduct a compliance check on defendant at his residence, and requested Cook County Sheriff's officers to be on standby. As they drove through defendant's neighborhood, the agents observed defendant outside a three-flat building at 2214 North Harlem Street, walking towards a parked car on the side of the street.

¶ 6 The officers exited their car, approached defendant, and Agent Dunbar asked him what he was doing at that address. Defendant, who immediately recognized Officer Dunbar, said that he was visiting a friend. Agent Dunbar twice asked him who his friend was, and defendant did not respond either time. Officer Dunbar then put handcuffs on him for failure to respond to a question, which violated a condition of his parole. Following a search of defendant's person, Agent Dunbar retrieved a key ring with about six keys on it, including car keys and house or padlock keys.

¶ 7 Agent Dunbar opened the car with one of the keys, and searched it, as Cook County Sheriff's police investigator Roger Valdez arrived on the scene. Evidence presented at trial showed that the car was registered in defendant's name, and that the officers did not retrieve any

contraband from inside the car. Agent Dunbar then used a key from defendant's key ring to enter the 2214 building, and checked the door of the first apartment upstairs, which was locked. He used another key from the same key ring to open the door and entered the apartment, and Agent Ortiz and Investigator Valdez followed him inside. Agent Dunbar smelled a strong odor of marijuana in the living room, and found Melissa Calderon, a person he knew was a parolee, and an unidentified woman and child on the sofa. At that point, Agent Dunbar, having a reasonable suspicion that illegal substances were in the apartment, turned the investigation over to Investigator Valdez.

¶ 8 On cross-examination, Agent Dunbar testified that he did not see defendant inside the building, or try to check the keys against any other doors in the building, nor did he find any utility bills, photos, or clothes belonging to defendant in the residence. However, he saw defendant's Illinois State identification card in an open drawer in the front bedroom.

¶ 9 Cook County Sheriff's police investigator Jeff Ramos testified that he was the K-9 dog handler called to conduct a search of the apartment in question. He and his dog conducted a search of the bathroom, kitchen and rear bedroom of the apartment, and his dog alerted him to a suspect substance in a black bag in the closet of the rear bedroom. Investigator Ramos relayed the information to Investigator Valdez and did not open the backpack. Investigator Ramos and his dog did not search the front bedroom, because Investigator Valdez had alerted him to the presence of some kind of loose powder sprinkled around the room that could be narcotics.

¶ 10 Investigator Roger Valdez testified that on the day in question, he was assisting Agent Dunbar with the parole compliance check, and followed Agents Dunbar and Ortiz in his own vehicle to the location. When the agents exited their vehicle and approached defendant, he joined them, then observed Agent Dunbar place defendant in custody and use the keys recovered from defendant to enter a vehicle next to defendant.

¶ 11 Investigator Valdez testified that Agent Dunbar then led him and Agent Ortiz into the residence at 2214 North Harlem, opened the front door of the building with a key from the key ring recovered from defendant, walked up some steps, and used another key to open the front door of an apartment. When they entered the unit, Investigator Valdez saw two adult females and a female child, and noticed "an overwhelming cannabis smell." He conducted a protective sweep of the apartment, and noticed that the odor of cannabis was stronger towards the back of the apartment. He then asked Calderon if there were any narcotics or contraband in the apartment, and she replied that he could "go ahead and search but if [he found] anything it's not [hers]."

¶ 12 Investigator Valdez called for a K-9 unit, and after a sniff search, Officer Ramos informed him that his dog alerted him to a suspect substance in the rear bedroom. When he entered the bedroom, Investigator Valdez observed an open black and red backpack in the closet, which smelled strongly of cannabis and contained money in 5-, 10-, 20-, and 50-dollar denominations, cannabis, and an off-white substance suspected to be cocaine. He also saw a box of plastic bags on the floor inside the closet used for packaging materials.

¶ 13 In the front bedroom, Investigator Valdez observed a mirror on a counter at the foot of the bed with some white powdery residue on it, two scales, and plastic baggies used for packaging. In the area next to the bed, inside a drawer, there was more money, defendant's Illinois State identification card, suspect white powdery substance in a knotted plastic bag, and a razor blade. On the bed, there was a purse containing an envelope of money.

¶ 14 In the kitchen, Investigator Valdez found another scale, five cell phones, and a Comcast bill addressed to Calderon at that address. Based on his experience, Officer Valdez testified that these items were used in the packaging and sale of narcotics. The items, including over $5,000

in cash, were removed from the residence, properly inventoried, and the suspect narcotics were sent to the crime lab for analysis.

¶ 15 The parties stipulated that forensic chemist Jason George would testify that he tested the suspected narcotics retrieved from the apartment using proper protocols, and that it was his opinion within a reasonable degree of scientific certainty, that the contents of the items tested positive for 186.8 grams of cocaine, and 66.3 grams of marijuana. He further testified that the powdery substance found inside the knotted plastic bag was not a controlled substance. The defendant did not testify

¶ 16 The court denied defendant's motion for a directed finding, and following argument, found him guilty of possession of a controlled substance with intent to deliver and possession of cannabis with intent to deliver, and merged all remaining counts into those offenses. The court found that Agent Dunbar saw defendant outside the building in question, arrested him, and retrieved a key ring from him, containing keys to a car which was registered to him, and two keys which unlocked the building and apartment doors respectively. The court stated that it was "not sure who puts their [*sic*] key to their [*sic*] vehicle on somebody else's key ring," and that this was an indication that defendant was staying in that building and that apartment. The court further noted that defendant's identification card was found inside the apartment in the same bedroom as the drugs and packaging materials.

¶ 17 On appeal, defendant contends that the evidence was insufficient to sustain his convictions. In particular, he maintains that the State failed to prove that he lived in the residence where the narcotics were found, or that he constructively possessed the narcotics.

¶ 18 Where, as here, defendant challenges the sufficiency of the evidence to sustain his convictions, the relevant question for the reviewing court 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. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). This standard recognizes the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In applying this standard, we allow all reasonable inferences from the record in favor of the prosecution (*People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)), and will not overturn a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt (*People v. Wheeler*, 226 Ill. 2d 92, 115 (2007)).

¶ 19 To sustain a conviction for possession of narcotics with intent to deliver, the State must prove that defendant knew of the narcotics; that the narcotics were in defendant's immediate possession or control; and that defendant intended to deliver them. 720 ILCS 570/401 (West 2010); *People v. Ellison*, 2013 IL App (1st) 101261, ¶ 13. Possession of drugs may be constructive, and exists without actual personal present dominion over a controlled substance, but with an intent and capability to maintain control and dominion. *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992). Where narcotics are found on premises under defendant's control, it may be inferred that he had the requisite knowledge and possession, absent other facts and circumstances which might leave a reasonable doubt as to guilt in the mind of the fact-finder. *Id.*

¶ 20 Although mere presence in the vicinity of contraband is insufficient to establish constructive possession, control over its location gives rise to such an inference, which is not undermined by the presence of others in the vicinity. *People v. Rangel*, 163 Ill. App. 3d 730, 739 (1987). The rule that possession must be exclusive does not mean, however, that possession may not be joint, and if two or more persons share the intention and power to exercise control, then each has possession. *People v. Givens*, 237 Ill. 2d 311, 335 (2010).

¶ 21 Viewed in the light most favorable to the State, the evidence in this case showed that defendant had been paroled to 2023 North Harlem, and his parole agent had received a tip that he was not living at that address. While looking for defendant in the area, the agent saw him outside the building at 2214 North Harlem, walking toward a car parked in front of it. When asked who he was visiting at that address, defendant did not respond and was promptly arrested. Agent Dunbar retrieved a ring of keys from him, one of which opened his car, another opened the front door to the building in question, and a third key opened the door of the apartment, where Calderon, an unidentified woman, and her child were seated in the living room. Calderon told the officers that they could "go ahead and search but if [they found] anything it's not [hers]."

¶ 22 In the search that followed, the officers found money in the area next to the bed in the first bedroom. They also found defendant's Illinois State identification card and suspect white powdery substance in a knotted plastic bag and a razor blade inside the top drawer of a dresser. A K-9 unit was called to investigate a suspect backpack in the second bedroom closet. Following a sniff search, more items were recovered, and stipulated evidence showed that 186.8 grams of cocaine, 66.3 grams of marijuana, over $5,000 in cash, scales, five cell phones and plastic baggies used for packaging were found in the apartment.

¶ 23 This evidence, and the reasonable inferences drawn from it, established that defendant was in constructive possession of the items found in the apartment, and that his control of the premises was not undermined by the presence of others in the vicinity. *Rangel*, 163 Ill. App. 3d at 739. Moreover, the evidence was such that a rational trier of fact could have found the essential elements of the charged offenses were proved beyond a reasonable doubt. *Givens*, 237 Ill. 2d at 339.

¶ 24 Defendant contends, nevertheless, that the evidence was insufficient to establish that he lived in the apartment. In doing so, he speculates about possible reasons why he had keys to the

apartment (*e.g.*, he borrowed them from a friend, he was planning to move into the apartment), or why his identification card was found in one of the bedrooms (the photograph of the card in this location was staged, he dropped it while visiting a friend). None of these assertions, however, are supported by the record, nor properly inferred from the evidence presented. As such, these speculative reasons do not provide a basis for finding the evidence so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt. *Wheeler*, 226 Ill. 2d at 115.

¶ 25 In reaching this conclusion, we find defendant's reliance on *People v. Macias*, 299 Ill. App. 3d 480 (1998), for the proposition that his possession of keys to the apartment alone was insufficient to establish that he controlled the premises misplaced. In *Macias*, the only evidence connecting defendant to the contraband was keys to the apartment given to him by the hospitalized owner to retrieve some items. *Id.* at 482-83. Here, by contrast, the evidence included defendant's presence outside the apartment building, and keys to the building and apartment where his identification card was found in one of the bedrooms next to suspect narcotics. Moreover, unlike *Macias*, no compelling alternative explanation for the keys to the apartment or his presence in the vicinity of the building in question was posited or arose from the evidence presented, and the reasonable inferences flowing from that evidence were sufficient to establish his control.

¶ 26 We have also considered *People v. Howard*, 29 Ill. App. 3d 387 (1975), *People v. Strong*, 316 Ill. App. 3d 807 (2000), and *People v. Wolski*, 27 Ill. App. 3d 526 (1975), cited by defendant for the proposition that control of a residence is insufficient to prove possession because that control may not be exclusive, but find them unpersuasive. In *Howard*, 29 Ill. App. 3d at 389, the State was required to prove actual possession, and therefore the case is factually inapposite to the case at bar. In *Strong*, 316 Ill. App. 3d at 812, and in *Wolski*, 27 Ill. App. 3d at 528-29, the

evidence was deemed insufficient to establish constructive possession where defendant was merely found in the presence of contraband, and there was no corroborating evidence associating defendant with it. Here, as set forth above, sufficient corroborating evidence showed that defendant had immediate and exclusive control of the premises where the narcotics were kept (*People v. Mack*, 12 Ill. 2d 151, 162 (1957)), to establish his constructive possession of them.

¶ 27 We also find defendant's attempt to analogize his case to *People v. Alicea*, 2013 IL App (1st) 112602, unpersuasive. In *Alicea*, 2013 IL App (1st) 112602 at ¶ 28, this court found that facts showing that defendant could have lived in the apartment were insufficient "in the face of other evidence" to sustain the State's burden to prove beyond a reasonable doubt that defendant had any possession and control of the bedroom where contraband was found. These "other facts" in *Alicea* included testimony by several witnesses that defendant no longer lived in that apartment. *Id.* at ¶¶ 14-15. No such testimony or evidence was presented here to contradict the inference that defendant had control over the apartment.

¶ 28 Finally, defendant contends that by finding Calderon not guilty of the same charges, the court rendered an inconsistent verdict. The record shows that the court initially found Calderon guilty of the same charges as defendant. Before sentencing, however, Calderon informed the court that she was married to defendant, and that her sons, who were 10 and 15 years old respectively, lived with her and were waiting for her at home. She pleaded with the court to allow her to be free on bond so that she could explain the circumstances to her children, and the court granted her request to be released on electronic monitoring pending the outcome of the sentencing hearing. At the next hearing, following a motion to reconsider, the court reversed its finding of guilty and acquitted Calderon of the charges. In doing so, the court noted that the utility bill in Calderon's name found in the apartment was not sufficient to establish constructive possession because such bills were often placed in the name of a person who did not reside at the

unit, and that she was making a disclaimer when she stated to Officer Valdez that any items he found in the apartment did not belong to her.

¶ 29 Although the different evidence presented against Calderon may account for the acquittal, we find the most likely explanation to be that it was an exercise of the court's lenity under the circumstances. In *People v. McCoy*, 207 Ill. 2d 352, 358 (2003), the supreme court acknowledged the reality that trial courts may exercise lenity in what they perceive as the interests of justice without specifically condoning the practice. Here, the record shows that Calderon was defendant's wife, and lived with her two young children, who presumably would be adversely affected by her incarceration. Accordingly, we will not reject the different outcomes rendered in this matter as unreliable and suggestive of confusion. *McCoy*, 207 Ill. 2d at 358.

¶ 30 We also note that defendant cites to *People v. Patterson*, 52 Ill. 2d 421 (1972), *People v. Stock*, 56 Ill. 2d 461 (1974), *People v. Miscichowski*, 143 Ill. App. 3d 646 (1986), and several other cases for the proposition that inconsistent verdicts indicate that the evidence of guilt is insufficient. As the State correctly points out, however, these cases pre-date the supreme court's ruling in *McCoy*, and we find them unpersuasive.

¶ 31 We affirm the judgment of the circuit court of Cook County.

¶ 32 Affirmed.