

No. 1-14-3122

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 09 CR 149
)	
TRACEY MITCHELL,)	Honorable
)	Luciano Panici,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

O R D E R

- ¶ 1 **Held:** Defendant's conviction for possession of cocaine and cannabis with intent to deliver affirmed, where evidence showed that defendant's DNA was found in latex gloves recovered from bag of drug refuse and defendant received mail at address where drugs were found.
- ¶ 2 Following a bench trial, defendant Tracey Mitchell was convicted of possession of a controlled substance with intent to deliver and sentenced to 18 years in prison. On appeal, defendant contends that the State failed to prove he had constructive possession of the controlled substances found in a locked bedroom in his house. We affirm.

¶ 3 At trial, Sergeant Kevin Urbanek testified that, on April 28, 2008, he executed a search warrant at a home located at 587 Paxton in Calumet City, a few hours after arresting defendant's stepfather, James Horton, on drug charges. Horton resided at the house with defendant's ill mother, but the police never saw defendant on the premises during their surveillance. In a locked bedroom with one bed, officers found bags of cocaine and cannabis; hydrocodone pills; empty capsules; a chemical cutting agent; micro seal baggies; a scale and a playing card; a mixing bowl, a sifter, spoons, a blender, and beater bars; a safe underneath the bed containing bundles of money totaling \$5,900; and a garbage bag containing latex gloves and drug manufacturing refuse. Many of the items, including the gloves, were covered in residue that Urbanek said "testified positive for cocaine." In the same room, officers found mail sent to defendant at the Calumet City address, including a telephone bill dated April 10, 2008, a credit card bill due April 28, 2008, and a debt collection letter, along with defendant's pay stub and photograph. The Calumet City address also appeared on defendant's driver's license and on an expired identification card. Defendant was arrested on May 7, 2008 and admitted that the Calumet City house "was in his name" and that he had belongings in the room that was searched.

¶ 4 Laboratory testing on substances found in the room identified 434.4 grams of cocaine and 269.5 grams of marijuana. DNA analysis showed that defendant was the sole source of DNA found in six of the latex gloves recovered from the garbage bag. Eight other gloves contained a mixture of DNA, some of which belonged to defendant.

¶ 5 Defendant produced mail addressed to him at a different residence, 2714 Canyon Drive in Plainfield, including a bill for appliances dated February 16, 2008 and bills for natural gas dated

around the time of the search. Defendant also proffered a title report for the Plainfield residence, generated on October 13, 2011.

¶ 6 At the close of trial, the court stated that "proof of [defendant's] residence is the key to this case." The court observed that police "never saw the defendant" at the Calumet City residence and "never put him in the house during the period of time of the investigation." The court compared the mail sent to defendant at the Plainfield and Calumet City addresses but described the latex gloves as the "linchpin." The court stated:

"[T]he police in fact did a DNA test on this glove. There was cocaine on the outside and then there was defendant's DNA inside the glove. And this glove was not found in any receptacle, it was found in that bedroom with other indicia of refuse that dealt with the manufacture and bagging and packaging of drugs. Now, had that glove been found in the kitchen area, it wouldn't have much significance. To me that has a lot of significance."

The court found defendant guilty of possession with intent to deliver between 400 grams and 900 grams of cocaine and between 30 grams and 500 grams of marijuana and sentenced defendant to 18 years in prison.

¶ 7 On appeal, defendant contends that the evidence failed to establish that he had constructive possession of the drugs found in the Calumet City house. Defendant observes that the house was occupied by his mother and stepfather, the latter of whom was arrested on drug charges just prior to the search; that no clothes attributed to defendant were recovered from the house; that he did not carry keys to the house; and that he was never seen at the house. Defendant

also argues that the police failed to investigate whether bills sent to him at the house actually established whether he controlled the premises.

¶ 8 The standard of review on a challenge to the sufficiency of the evidence is whether, after reviewing 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. Brown*, 2013 IL 114196, ¶ 48. The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of witnesses. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Rather, a defendant's conviction will be reversed only if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009). This standard of review applies whether the evidence is direct or circumstantial. *Jackson*, 232 Ill. 2d at 281. The trier of fact is not required to disregard inferences which flow normally from the evidence, and a conviction based on circumstantial evidence may be sustained without excluding every reasonable hypothesis of innocence. *Id.*; *People v. Pintos*, 133 Ill. 2d 286, 291 (1989); *People v. Butler*, 242 Ill. App. 3d 731, 734 (1993).

¶ 9 To sustain a conviction for possession of a controlled substance with intent to deliver, the State must prove that (1) the defendant had knowledge of the presence of the drugs, (2) the drugs were in the immediate control or possession of the defendant, and (3) the defendant intended to deliver the drugs. 720 ILCS 570/401 (West 2008); *People v. Alexander*, 2014 IL App (2nd)

120810, ¶ 36. On appeal, defendant does not contest the element of intent to deliver; he challenges only his knowledge and possession of the narcotics.

¶ 10 Possession may be actual or constructive. *People v. Givens*, 237 Ill. 2d 311, 335 (2010). Constructive possession exists where the defendant did not physically possess contraband but had knowledge of the presence of contraband and control over the area where the contraband was found. *People v. Hunter*, 2013 IL 114100, ¶ 19. The element of knowledge is rarely susceptible of direct proof and may be established by evidence of acts, declarations, or conduct which support the inference that the defendant knew of the existence of drugs. *People v. Jones*, 2014 IL App (3d) 121016, ¶ 28. Where drugs are found on premises under the defendant's control, it may also be inferred that he had the requisite knowledge and possession, absent other facts and circumstances which might leave a reasonable doubt as to guilt. *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992). Proof of residency in the form of utility bills, rent receipts, and clothing is relevant to show the defendant lived on the premises and therefore controlled them. *People v. Cunningham*, 309 Ill. App. 3d 824, 828 (1999). Because the evidence establishing constructive possession is often circumstantial, the trial court must weigh those facts which tend to support a defendant's control against those facts which demonstrate lack of control. *People v. Newman*, 211 Ill. App. 3d 1087, 1093 (1991). Constructive possession may be joint and exists even where multiple parties have access to contraband or the premises where contraband is found. *People v. Nettles*, 23 Ill. 2d 306, 308 (1961); *People v. Williams*, 98 Ill. App. 3d 844, 849 (1981).

¶ 11 We find that the evidence was sufficient to establish that defendant had constructive possession of the cocaine and cannabis. To show that defendant controlled the premises where the drugs and paraphernalia were found, the State presented three bills sent to defendant at the Calumet City address, dated near the time of the search; a pay stub and photograph of defendant found near the drugs; defendant's driver's license and expired identification card listing the Calumet City address; and defendant's admission that the house was in his name and that he had belongings in the room that was searched. This evidence, viewed in the light most favorable to the State, established defendant's control of the bedroom where the narcotics were found.

¶ 12 While defendant produced bills sent to him in Plainfield around the time of the search, along with a title search for the Plainfield residence, this evidence does not prove that defendant did not control the bedroom in Calumet City. The trial court was not required to accept defendant's evidence that he lived in Plainfield rather than Calumet City, especially in light of the substantial evidence that defendant lived at the Calumet City address. See *People v. Thomann*, 197 Ill. App. 3d 488, 499 (1990) (trial court in bench trial is not required to accept defendant's evidence; trial court has responsibility to determine weight of evidence). The fact that defendant lived in Plainfield, even had the court accepted that fact as true, still would not exclude the possibility that defendant could have maintained multiple residences, nor would it negate the fact that defendant left his DNA and kept belongings in the Calumet City bedroom. The trial court weighed the evidence and reasonably concluded that defendant controlled the bedroom in Calumet City.

¶ 13 Defendant's control of the Calumet City bedroom supports the inference that he had knowledge of the drugs found in it. *Friberg*, 147 Ill. 2d at 361. This inference is buttressed by strong circumstantial evidence: defendant's DNA was present in latex gloves; those gloves were recovered from a bag of drug manufacturing refuse; that bag was located near drug paraphernalia and substances that tested positive for cocaine and cannabis; and all these items were found in a locked room within a residence kept in defendant's name, along with a photograph of defendant and mail connecting defendant to that address. See, e.g., *Butler*, 242 Ill. App. 3d at 732-34 (finding constructive possession where defendant's fingerprint was on package of cocaine in locked room at his former residence, alongside photographs of defendant and mail addressed to defendant at residence). The trial court described the gloves as the "linchpin" of the case, and we will not substitute our judgment on the weight of the evidence for that of the trial court. *Jackson*, 232 Ill. 2d at 280-81. This conclusion is not diminished by the fact that defendant's stepfather lived at the Calumet City residence and was arrested on drug charges, as defendant's constructive possession of the drugs is not precluded by evidence that another individual may also have had access to the drugs or the premises where the drugs were found. *Nettles*, 23 Ill. 2d at 308; *Williams*, 98 Ill. App. 3d at 849.

¶ 14 The State presented sufficient evidence of defendant's knowledge of the drugs and control over the area where the drugs were found to supports a conviction based on constructive possession. We affirm the judgment of the trial court.

¶ 15 Affirmed.