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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of McHenry County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 13-CF-790
)	
CESAR ROJAS-FIGUEROA,)	Honorable
)	Sharon L. Prather,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Schostok and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of possessing drugs and a firearm: from the evidence that defendant not only lived at the residence where the contraband was found but also controlled the specific areas where it was found, the trial court could infer that he knew of and constructively possessed the contraband.

¶ 2 Defendant, Cesar Rojas-Figueroa, appeals from the judgment of the circuit court of McHenry County finding him guilty of possession with the intent to deliver cocaine and cannabis and of being an armed habitual criminal. He contends that he was not proved guilty beyond a reasonable doubt of possessing the cocaine, the cannabis, or the firearm. Because the evidence

established that defendant constructively possessed the cocaine, cannabis, and firearm, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was indicted on one count of unlawful possession with the intent to deliver 100 grams or more but less than 400 grams of cocaine (720 ILCS 570/401(a)(2)(B) (West 2012)) (count I), one count of unlawful possession of 100 grams or more but less than 400 grams of cocaine (720 ILCS 570/402(a)(2)(B) (West 2012)) (count II), one count of unlawful possession with the intent to deliver more than 30 grams but not more than 500 grams of cannabis (720 ILCS 550/5(d) (West 2012)) (count III), one count of unlawful possession of more than 30 grams but not more than 500 grams of cannabis (720 ILCS 550/4(d) (West 2012)) (count IV), one count of unlawful possession of less than 15 grams of psilocybin mushrooms (720 ILCS 570/402(c) (West 2012)) (count V), one count of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)) (count VI), one count of defacing the identification mark on a firearm (720 ILCS 5/24-5(b) (West 2012)) (count VII), one count of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)) (count VIII), and one count of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2012)) (count IX). The State nol-prossed counts V and VII, and a bench trial was conducted on the remaining counts.

¶ 5 The following facts were developed at trial. On September 8, 2013, at approximately 4:20 a.m., Officer Ed Kohn and Sergeant Andrew Spielman of the Harvard police department were dispatched to a residence at 409 Prairie Street in Harvard to investigate a report of a domestic disturbance. Upon their arrival, they were greeted by Brenda Valles.

¶ 6 Valles told the officers that she had been in an altercation with defendant. She stated that defendant was her boyfriend and that he lived with her at 409 Prairie Street. Valles reported that defendant had left the house.

¶ 7 Valles gave Sergeant Spielman two notebooks, one of which contained \$685. Detective Kyle Mandernack of the McHenry County sheriff's office, testifying as an expert on drug trafficking, described the notebooks as drug ledgers.

¶ 8 When Sergeant Spielman met with Valles later at the police station, she told him that there was at least one weapon at the house. Later, Sergeant Spielman met with Valles at the house, and she directed him to a metal case on the top shelf of a closet in the master bedroom. The case contained a "TEK-9" gun¹ and two magazines loaded with 9-millimeter ammunition. While in the master bedroom, Sergeant Spielman observed a glass jar containing what appeared to be marijuana. Valles confirmed that it was marijuana.

¶ 9 Valles then escorted Sergeant Spielman to a room in the basement. There he observed baggies containing what appeared to be marijuana and cocaine, some mushrooms, and numerous other drug-related items. Sergeant Spielman then left to obtain a search warrant. While he was gone, Officer Oczus of the Harvard police department secured the house. According to Officer Oczus, no one entered or left the house until 9 a.m. when Sergeant Spielman returned with a search warrant. Valles and her children were present, but sleeping in one of the children's bedrooms, during that time.

¶ 10 After Sergeant Spielman returned with the search warrant, Officer Oczus, an evidence technician, took control of the scene and performed a "systematic search." He began the search

¹ The TEC-9 is a semi-automatic handgun chambered in 9 millimeter. See <http://www.guns.com/reviews/intratec-tec-9> (last visited on May 26, 2015).

in the master bedroom where he found on top of a dresser a mason jar, a green plastic bottle, and a plastic bag, all of which contained what he believed was cannabis. He also found, in a small plastic shelving unit on top of the dresser, a plastic bag that contained a substance he believed was cocaine and near a television stand a plastic bag containing a white powdery residue. He also found in the plastic shelving unit defendant's checkbook, containing checks with an address of 204 South Park Avenue. After searching the master bedroom, he searched the other upper-level rooms but found no additional evidence.

¶ 11 During the search of the kitchen on the main level, Officer Oczus found a piece of mail from Charter Communications addressed to defendant at 409 Prairie Street. He located a notice of driver's license suspension from the Secretary of State addressed to defendant at 204 South Park Avenue. He found a "money counter" in a room off of the living room and a pair of size-10 Nike running shoes in the main entryway.

¶ 12 Officer Oczus then searched the lower level of the house. In the main room off of the stairs, he found a bag containing a white powdery residue.

¶ 13 Finally, he searched a room off of the area where the furnace was located. In that room, he found a bag containing suspected cannabis, a "white powdered substance in solid form," a silver-colored spoon with a white powdery residue, two scales, containers of inositol, butane, and acetone, plastic bags with white powdery residue, and an open box of plastic sandwich bags. Detective Mandernack opined that those items were used for drug trafficking.

¶ 14 Officer Oczus admitted that he never opened the closet in the master bedroom and did not recover any men's clothing from the house, other than some "scattered across the [master bedroom]." He never submitted any of the evidence for fingerprint analysis, including the gun or the metal case. Nor did he obtain fingerprints from anywhere in the house. He explained that he

did not do so because he was told that Valles and defendant were the only ones living there and he therefore assumed that their fingerprints would have been everywhere.

¶ 15 Neither vehicle at the house was registered to defendant. Officer Oczus never asked Valles or the children to try on the Nike running shoes.

¶ 16 Valles testified that she and defendant had lived in the house at 409 Prairie Street “since July or something like that.” Defendant had not lived anywhere else during that time. No one lived at the house other than defendant, Valles, and her three children, ages 12, 5, and 3. According to Valles, she and defendant split the bills. Although defendant was on the lease, she had signed his name. No lease was admitted into evidence. Valles was not working at the time of the incident, and defendant paid the rent.

¶ 17 Before the incident, Valles, defendant, and his cousin had gone to Chicago to celebrate defendant’s birthday. The three children stayed at defendant’s parents’ house for the night. During the evening, Valles and defendant consumed alcoholic beverages, and, when they returned to the house, they had a fight.

¶ 18 Following the fight, Valles called defendant’s father to come and pick him up. Defendant’s father arrived with only two of the children, and he removed defendant from the house. After defendant’s father left with defendant, Valles called the police, because defendant’s father had not returned one of the children.

¶ 19 Valles testified that she had seen defendant with the two notebooks that she had given to Sergeant Spielman. Although she did not know what the notebooks contained, she gave them to the police because she “thought they were important.” Even though she had never seen defendant writing in the notebooks, he would send her out of the room whenever he had the notebooks.

¶ 20 According to Valles, she did not know if the gun was defendant's, but she denied that it was hers. She had seen defendant with the metal box but had never seen him handle the gun. Because she had been curious about what the metal box contained, she had opened it once. She denied bringing the gun into the house.

¶ 21 Valles described taking the police to the room in the basement "that [she] wasn't allowed to go in." Defendant had told her that he did not want her or the children to go into that room. She went in the room once to grab something but did not see anything that concerned her. Valles denied keeping anything illegal in the room. Although she denied that any of the drugs found there were hers or her children's, she did not know if they were defendant's. According to her, no one else was allowed to store anything at the house. She admitted that various family members occasionally came to the house. She denied knowing who owned the money counter. She never saw defendant dealing drugs or touching any of the drugs found in the house, even though she knew he had previously sold drugs.

¶ 22 Defendant was later arrested at his parents' home at 204 South Park Avenue in Harvard. When Officer Kohn spoke to defendant at the police station, defendant told him that once he was released from custody he wanted Valles "to move from the house."

¶ 23 The trial court found that defendant constructively possessed the drug evidence and the firearm, because he had "knowledge and control over" the residence. The court denied defendant's posttrial motion.

¶ 24 The trial court sentenced defendant to concurrent terms of 16 years' imprisonment on count I, 4 years' imprisonment on count III, 16 years' imprisonment on count VI, and 364 days

in jail on count IX.² After the court denied defendant's motion to reconsider the sentence, defendant filed a timely notice of appeal.

¶ 25

II. ANALYSIS

¶ 26 On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt of constructively possessing either the gun or the drug evidence. Defendant does not challenge his domestic-battery conviction.

¶ 27 Where a conviction is challenged based on insufficient evidence, a reviewing court must determine whether, considering all of the evidence in the light most favorable to the prosecution, any rational trier of fact could have found beyond a reasonable doubt the essential elements of the offense. *People v. Brown*, 2013 IL 114196, ¶ 48. That standard recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences therefrom. *Brown*, 2013 IL 114196, ¶ 48. Therefore, a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *Brown*, 2013 IL 114196, ¶ 48. A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt as to the defendant's guilt. *Brown*, 2013 IL 114196, ¶ 48.

¶ 28 To sustain a conviction of illegal possession, the State must prove that the defendant knew the contraband was present and that he actually or constructively possessed it. *People v. Dismuke*, 2013 IL App (2d) 120925, ¶ 16. A defendant constructively possesses contraband when he has the intent and capability to maintain control and dominion over the contraband. *Dismuke*, 2013 IL App (2d) 120925, ¶ 16. The elements of constructive possession may be

² The following counts merged: count II with count I, count IV with count III, and count VII with count VI.

proved circumstantially. *People v. Young*, 2013 IL App (2d) 120167, ¶ 30. Knowledge may be established by evidence of the defendant's conduct or statements from which it may be inferred that he knew of the existence of the contraband. *Young*, 2013 IL App (2d) 120167, ¶ 30. The mere presence of an item on the premises, which are under control of the defendant, gives rise to an inference of knowledge and possession sufficient to sustain a conviction, absent other facts that might create a reasonable doubt as to the defendant's guilt. *Young*, 2013 IL App (2d) 120167, ¶ 30.

¶ 29 In this case, there was ample evidence to support the trial court's finding that defendant constructively possessed both the gun and the drug evidence. We begin with the evidence that defendant resided at 409 Prairie Street. In that regard, Valles told Sergeant Spielman that defendant lived there. She also testified that she and defendant had lived there for several months before the incident and that during that time defendant had not lived elsewhere. Defendant told Sergeant Spielman that after he was released from custody he wanted Valles to move out. Defendant's statement certainly implied that he was living at 409 Prairie Street. All of the foregoing evidence was sufficient for the court to have found that defendant resided at 409 Prairie Street.³

¶ 30 But there was additional evidence that defendant resided at 409 Prairie Street. There was the letter from Charter Communications addressed to defendant at 409 Prairie Street. Additionally, defendant's checkbook was found in the plastic drawer on top of the dresser in the master bedroom. Although the address on the checks was 204 South Park Avenue, the presence of such a personal item is evidence that defendant lived there. Finally, there was the notice from

³ Although the parties disagree as to whether Valles could properly testify regarding the lease, we need not decide that issue, as we do not rely on that evidence.

the Secretary of State that defendant's driver's license had been suspended. Even though it too was addressed to defendant at 204 South Park Avenue, it was an important communication that defendant was likely to keep where he resided. That additional evidence bolstered the court's finding that defendant resided at 409 Prairie Street. Having found that defendant lived there, the court could reasonably infer that defendant both knew of the gun and the drug evidence and constructively possessed them. See *Young*, 2013 IL App (2d) 120167, ¶ 30.

¶ 31 Not only was there evidence that defendant resided at the house, there was other evidence that defendant knew of, and exercised control over, the gun. Valles testified that she did not bring the gun into the house and that only she, defendant, and the children lived there. She also saw defendant handling the case that held the gun. It was reasonable to infer that defendant knew of the contents of the case and that he maintained control over it. That was additional evidence to support a finding that he constructively possessed the gun.

¶ 32 Similarly, there was other evidence that defendant knew of and controlled the drug evidence. In that regard, Valles testified that defendant instructed her and the children not to enter the lower-level room. It was clear that defendant knew what was in that room and that he maintained control over its contents. The same can be said for the notebooks. Whenever he had them, he would tell Valles to leave the room. That evidence further supported a reasonable inference that defendant constructively possessed the drug evidence found in the lower-level room as well as the notebooks.

¶ 33 Defendant relies heavily on three cases to contend that the evidence was insufficient to prove that he constructively possessed either the gun or the drug evidence. See *People v. Macias*, 299 Ill. App. 3d 480 (1998); *People v. Ray*, 232 Ill. App. 3d 459 (1992); *People v. Jones*, 105 Ill. App. 3d 1143 (1982). Each of those cases is distinguishable from this case.

¶ 34 In *Macias*, the defendant testified that he had never been in the apartment where the drugs and guns were found, that he resided elsewhere, and that he did not own anything in the apartment. *Macias*, 299 Ill. App. 3d at 486. There was also uncontradicted corroborating evidence that someone other than the defendant resided at the apartment. *Macias*, 299 Ill. App. 3d at 486. Therefore, unlike in our case, there was convincing evidence that the defendant neither resided at the premises nor otherwise had knowledge of, or control over, the guns and drugs.

¶ 35 In *Ray*, unlike here, the State failed to present any evidence that tended to show that the defendant owned, rented, or lived in the apartment other than a “lone cable television bill” that was six months old. *Ray*, 232 Ill. App. 3d at 463. Here, on the other hand, there was other evidence, beyond the letter addressed to defendant at 409 Prairie Street, that showed that he resided there. As discussed, that evidence included Valles’ testimony, his own statement, his checkbook, and the notice regarding his suspended license.

¶ 36 Finally, in *Jones*, the only evidence showing that the defendant resided at his mother’s apartment was his statement to the police that he had been living there for two weeks and an unopened letter to the defendant at that address. *Jones*, 105 Ill. App. 3d at 1148-49. As discussed, in this case there was significant additional evidence that defendant resided at 409 Prairie Street.

¶ 37

III. CONCLUSION

¶ 38 For the reasons stated, we affirm defendant’s convictions of possession with the intent to deliver cocaine and cannabis and his conviction of being an armed habitual criminal. As part of our judgment, we grant the State’s request that defendant be assessed \$50 costs for this appeal. See 55 ILCS 5/4-2002(a) (West 2012); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 39 Affirmed.