

No. 1- 13-1643

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. 12 CR 1477
)	
CHARLES VAUGHAN,)	Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge Presiding.

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

O R D E R

¶ 1 **Held:** Judgment entered on conviction of felony possession of a weapon (firearm ammunition) reversed where the evidence was insufficient to establish defendant's constructive possession of the firearm ammunition found in the apartment.

¶ 2 Following a jury trial, defendant Charles Vaughan was convicted of felony possession of a weapon and sentenced to 33 months' imprisonment. On appeal, he challenges the sufficiency of the evidence to sustain his conviction. He also contends that he was denied his sixth amendment right to present a defense when the trial court refused to allow him to raise the issue of whether he was named in the search warrant, and that the court relied on improper factors in sentencing.

¶ 3 The record shows that defendant was charged, in relevant part, with two counts of possession of a firearm by a felon. Count one was based on defendant's possession of a firearm and count two on his possession of "any firearm ammunition."

¶ 4 At trial, Chicago police officer Jason Bala, who was assigned to the Organized Crime, Gang Enforcement Division, testified that shortly after 10 p.m. on December 12, 2011, he and a team of officers executed a search warrant at the first floor apartment of 1114 North Keystone Avenue in Chicago. Upon arrival, the officers knocked on the door, announced their office and stated their purpose. When no one responded, they entered by force.

¶ 5 At that point, Officer Bala noticed several people playing cards in the kitchen, and defendant and another person, Lamar Cunningham, in the rear bedroom. Officer Bala then saw defendant throw a three-foot long rifle or shotgun wrapped in a white towel out the rear door onto an enclosed porch. He immediately approached defendant, told him to put his hands up, and handcuffed him. Officer Bala's partner, Officer William O'Brien, took control of defendant, while he recovered the shotgun wrapped in the towel from the back porch. The shotgun was loaded with one live round in the chamber and an additional four live rounds. In the custodial

search of defendant, a key was recovered from his pocket which opened the front door of the residence, but defendant claimed that he did not reside there.

¶ 6 Officer William O'Brien testified that when he entered the residence, he also saw defendant and Cunningham in the rear bedroom. He focused on Cunningham, while Officer Bala, who was behind him, went toward defendant, and recovered a large shotgun wrapped in a towel from the rear enclosed porch.

¶ 7 Officer O'Brien further testified that he searched the apartment, and found firearm ammunition between the living and dining rooms, and additional firearm ammunition under a pile of dirty clothes in the rear bedroom where defendant and Cunningham were observed.

The parties then stipulated that defendant had a "prior qualifying felony conviction."

¶ 8 Morris Warren testified for the defense that he had known defendant for years, and that at 10 p.m. on the date in question he was in the Keystone Avenue apartment with defendant and others playing cards in the kitchen. While they were so engaged, police entered, told them not to move, and then strip-searched them. Warren testified that no one fled to the back of the apartment, that he did not see defendant throw a shotgun, and that defendant was not in the rear bedroom when police arrived.

¶ 9 Warren further testified that defendant did not have keys to the apartment, that it was "Derrick Galley" who had the keys, but that he was now deceased. Warren saw police come out of the rear bedroom with a four-foot long shotgun, but never saw defendant with this gun.

¶ 10 Valerie Britton acknowledged her prior conviction for delivery of a controlled substance and two separate convictions for possession of a controlled substance. She then testified that she

had known defendant for 15 years, and had come to court with defendant and Warren this day. On the night in question, she was at the Keystone Avenue apartment playing cards with several people, including defendant and her best friend, the late "Richard Galley." When police arrived at 10 p.m., defendant had just left the table and was walking towards the front of the apartment talking on the phone. "TY" and Cunningham fled to the back door, but it was padlocked from the outside. She never saw defendant with a shotgun, but did see police force the back door open and return with a long shotgun.

¶ 11 Defendant testified that he resides at 951 North Harding Avenue in Chicago. At the time in question, he was playing cards at the Keystone Avenue apartment with several people, and at 10 p.m., he got up and was standing by the kitchen table when police came running inside. "TY" and Cunningham fled to the rear of the apartment, and the police handcuffed everyone present and told them that if they cooperated, they could leave. The police searched the apartment, and, two hours later, returned from the back of the apartment with a rifle. The officers told them that whoever had a felony, would be charged with having the gun, and then strip-searched them. Defendant also testified that he did not have a shotgun in his hand or throw one, that he never had a key to the apartment, that he did not touch ammunition or a gun in the apartment or wrap a gun in a towel, and claimed that Officer Bala told him at the police station that he did not "need the right person. I need a person."

¶ 12 Defendant further testified that he did not live at the Keystone Avenue address, and was never in the back bedroom on December 12, 2011, except when police strip-searched him. Defendant stated that "Derrick" lived in the Keystone apartment.

¶ 13 Chicago police officer Francisco Iza testified in rebuttal that he and his team of officers did not strip-search anyone. He also testified that he saw Officer Bala with a shotgun and shells on the floor in the rear bedroom, and that they did not have to force the back door open. Officer Iza finally testified that at no point did any of the officers hold up the shotgun and ask the individuals in the apartment who had a felony.

¶ 14 At the close of evidence, the jury found defendant not guilty of felony possession of a firearm, but guilty of felony possession of firearm ammunition. Defendant filed a motion to set aside this verdict, alleging that the jury clearly did not find him guilty of possession of the firearm ammunition in the gun because they acquitted him of possessing the shotgun, and there was no evidence presented that he obtained control over the ammunition found in the house. He thus claimed that the verdicts returned by the jury were logically inconsistent, and should not be allowed to stand.

¶ 15 Defendant also filed a motion for a new trial, contesting the sufficiency of the evidence. He further alleged that the court erred in sustaining the State's objections to his attempts to elicit testimony that he was not named in the search warrant.

¶ 16 At the proceeding on these motions, defense counsel argued that it was inconsistent for the jury to find defendant not guilty of possession of the firearm, but guilty of possession of ammunition which was on the floor of the rear bedroom. Counsel also noted that there was no proof of defendant's residency presented at trial.

¶ 17 The State, relying on *People v. McCoy*, 207 Ill. 2d 352 (2003), argued in response that consistent verdicts were not required as a matter of constitutional law, and that they can often be

explained as a product of juror lenity. The State also asserted that inconsistent verdicts were legal and valid.

¶ 18 The court denied defendant's motions. In doing so, the court noted that in *People v. Jones*, 207 Ill. 2d 122 (2003), the supreme court held that consistency of verdicts was not required as a matter of constitutional law. The court stated that the verdicts in this case could be the product of juror lenity and did not show that they were not convinced of defendant's guilt. The court then sentenced defendant to 33 months' imprisonment.

¶ 19 In this appeal, defendant first contends that the evidence was insufficient to sustain his conviction for felony possession of firearm ammunition. He contends that there was insufficient proof that he had constructive possession of the ammunition that formed the predicate for the offense.

¶ 20 When defendant challenges the sufficiency of the evidence to sustain his conviction, the proper standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). This 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. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of guilt. *Campbell*, 146 Ill. 2d at 375.

¶ 21 To sustain defendant's conviction for felony possession of firearm ammunition, the State was required to prove that defendant, a felon, unlawfully possessed firearm ammunition. 720

ILCS 5/24-1.1(a) (West 2012). Defendant stipulated to his prior felony conviction at trial, and does not contest that element on appeal, focusing solely on the element of possession. He claims that since the jury found him not guilty of possession of the shotgun, it could not have found him guilty of possession of the shells therein, and that there was insufficient proof to show that he was in constructive possession of the ammunition found in the apartment.

¶ 22 The State responds that the eyewitness evidence showed that defendant had actual possession of the firearm ammunition found in the shotgun that Officer Bala saw in defendant's hands when he threw it onto the back porch wrapped in a white towel, and that the jury's apparent inconsistent verdict regarding the shotgun may be attributed to juror lenity. In making this argument, the State relies on *Jones*, 207 Ill. 2d at 129-136, where the supreme court held that inconsistent verdicts are permissible and the appropriate remedy to challenge an inconsistent verdict is to challenge the sufficiency of the evidence supporting the guilty verdict.

¶ 23 Defendant replies that there was no inconsistent verdict here given the other ammunition found elsewhere in the apartment which was a distinct act of possession. He also renews his challenge to the sufficiency of the evidence to sustain his conviction for possession of that ammunition. We agree that there were no inconsistent verdicts in this case. Verdicts “are legally inconsistent when they *necessarily* involve the conclusion that the same essential element or elements of each crime were found both to exist and not to exist.” (Emphasis added.) *People v. Murray*, 34 Ill. App. 3d 521, 531 (1976). Here, to explain the verdicts it is not necessary to conclude that the jury found both that defendant possessed the shotgun for purposes of possession of the ammunition therein and defendant did not possess the shotgun for purposes of

possession of a firearm. That conclusion is not necessary because in this case the jury could have concluded defendant possessed the ammunition found in the apartment. Because the verdicts do not necessarily involve the conclusion that the same essential element (possession of the shotgun) both exists and does not exist, the verdicts are not legally inconsistent. The verdicts are also not logically inconsistent. "Verdicts are logically inconsistent when they can be construed to involve both the acceptance and the rejection of the same theory of the case for the State."

People v. Jones, 174 Ill. App. 3d 737, 743 (1988). "If they cannot be construed *in any other way*, then their logical inconsistency is a factor which contributes to the existence of a reasonable doubt as to the conviction." (Emphasis added.) *Id.* Here, the verdicts can be construed in such a way that the jury did not both accept and reject the State's theory of the case that defendant possessed the shotgun. The verdicts can be construed as the jury rejecting the State's theory defendant possessed the shotgun and accepting the State's theory defendant constructively possessed the ammunition found in the apartment. Because the verdicts can be so construed they are not logically inconsistent.

¶ 24 As noted, defendant was charged with possession of a shotgun and possession of firearm ammunition. The evidence presented by the State at trial showed that upon entering the apartment to execute the search warrant, Officer Bala observed defendant in possession of a shotgun which he threw out the back door onto an enclosed porch. The gun was recovered and found to contain ammunition. Additional ammunition was found in other parts of the apartment.

¶ 25 Defendant was then charged, in relevant part, with possession of "any firearm ammunition," and both the jury instruction and verdict forms relating to the offense did not

further specify that term. The jury found him not guilty of possession of the firearm, and guilty of possession of firearm ammunition. Defendant challenged that verdict in a post-trial motion, but the trial court found that consistent verdicts were not required and that the jury's verdicts were the product of juror lenity, and did not show that the jurors were not convinced of defendant's guilt. Although we do not disagree with the principle stated by the court, we do not find this a proper case for its application given the additional ammunition found in the apartment and upon which the jury could rely in finding defendant in possession of "any firearm ammunition."

¶ 26 In *Jones*, 207 Ill. 2d at 131, 133-34, the supreme court held that defendants in Illinois can no longer challenge convictions on the sole basis that they are legally inconsistent with acquittals on other charges, but that they may challenge them on sufficiency of the evidence grounds. Here, there were no inconsistent verdicts, where the two possession counts (firearm and firearm ammunition) did not arise from the same set of facts, and the jury could have rendered its guilty verdict on defendant's constructive possession of the other ammunition found in the apartment. However, the evidence was not sufficient to sustain defendant's conviction for possession of the ammunition.

¶ 27 Constructive possession exists where there is no actual personal present dominion over the contraband, but may be proved if defendant controlled the premises where the contraband was found. *People v. Macias*, 299 Ill. App. 3d 480, 484 (1998). Evidence of constructive possession is often established by circumstantial evidence. *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002). The State must show that defendant had knowledge of the contraband and

immediate and exclusive control over the area where they were found. *Macias*, 299 Ill. App. 3d at 484. Habitation in a premises where contraband is discovered has been found relevant to establishing control (*People v. Cunningham*, 309 Ill. App. 3d 824, 828 (1999)), and control over the area where the contraband was found gives rise to an inference that defendant possessed the contraband (*People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003)).

¶ 28 Here, a number of persons were present in the apartment when police arrived, and ammunition was found under a pile of dirty clothes in the rear bedroom in which defendant and Cunningham were standing. Additional ammunition was found between two other rooms, but not in the vicinity of defendant. Police found no documentation in the apartment connecting defendant to it, such as mail, or utility bills or a driver's license, and defendant immediately told police that he did not reside there. Although the key found on defendant's person opened the front door of the apartment, that, alone, is insufficient to establish his control over the premises. *Macias*, 299 Ill. App. 3d at 484-85.

¶ 29 The record also shows that defendant and a number of other people were inside the apartment when police arrived, and defendant denied residing there. The defense witnesses testified that they were there to play cards and it was the deceased Galley who had the keys to the apartment. Thus, as in *Macias*, other than the key found in defendant's pants pocket, there was nothing else connecting him to the apartment.

¶ 30 In addition, the situation presented is not one where defendant's knowledge and awareness may be inferred from the location of the other ammunition found in the apartment. *Macias*, 299 Ill. App. 3d at 487. The fact that the ammunition was not in plain view, that others

had access to and were in the apartment, and no documentation was found connecting defendant to the apartment casts doubt on defendant's knowledge of the contraband and his immediate and exclusive control over it. *Macias*, 299 Ill. App. 3d at 488. In light of these factors, we conclude that the State failed to prove beyond a reasonable doubt that defendant was in constructive possession of the ammunition found in the apartment, and therefore reverse his conviction for possession of a weapon (firearm ammunition).

¶ 31 Based on our holding, we need not address defendant's remaining issues. *Macias*, 299 Ill. App. 3d at 488.

¶ 32 Reversed.