

FIRST DIVISION
JANUARY 25, 2016

No. 1-14-0618

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 12063
)	
MICHAEL MURPHY,)	Honorable
)	Rosemary Grant Higgins,
Defendant-Appellant.)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The evidence was sufficient to convict defendant of being an armed habitual criminal and unlawful possession of a weapon by a felon where he had constructive possession of a handgun.

¶ 2 Following a jury trial, defendant Michael Murphy was found guilty of being an armed habitual criminal and unlawful possession of a weapon by a felon. The trial court sentenced him to 10 years in prison for being an armed habitual criminal and merged his conviction for unlawful possession of a weapon by a felon. On appeal, defendant contends that: (1) the State failed to convict him beyond a reasonable doubt of either offense where there was insufficient

evidence that he possessed the firearm found in one of the apartment's bedrooms; and (2) alternatively, his mittimus should be corrected to reflect a conviction only for being an armed habitual criminal because his simultaneous conviction for unlawful possession of a weapon by a felon violates the one-act, one-crime doctrine. For the reasons that follow, we affirm the trial court's judgment and order a correction of defendant's mittimus.

¶ 3 At trial, the evidence showed that on June 16, 2012, defendant's mother owned a three-bedroom apartment located in the 4600 block of South Drexel Boulevard in Chicago, but she actually resided in a nursing home during that time. On the day in question, Cheyenne Murphy, one of defendant's sisters, said she lived in the apartment with her son, her stepfather and defendant, who had been living there for the past four months. While Murphy was visiting their mother at the nursing home, defendant and their mother had a telephone conversation which turned into a dispute concerning their mother's desire to have defendant move out of the apartment. Because of the dispute, Murphy called the police from the nursing home before returning home. Later, Murphy again called the police, this time from outside the apartment building, which is where she eventually met the police. Murphy let the police into the apartment and told them where to locate defendant inside the apartment. Murphy denied that her boyfriend lived at the apartment during this time.

¶ 4 At approximately 10 p.m. on the day in question, Officer Andrew Jones of the Chicago police department responded to a domestic incident call involving a firearm at the apartment. Outside the apartment building, Jones encountered Murphy and had a conversation with her. She opened the door to the apartment, and allowed Jones and other officers to enter. When Jones entered the apartment, which he admitted was small, he observed defendant's girlfriend and two

children in the living room. Another officer escorted them outside. Jones and other officers proceeded down a hallway, and Jones eventually saw defendant standing in a bedroom by himself. After defendant was handcuffed, Jones observed a black handgun in plain view on the top shelf of the bedroom's closet about six feet off the ground. The shelf was within arm's reach of defendant from where Jones initially observed him. After Jones noticed the handgun, defendant stated, "it's my room, I guess it's my gun." Jones took defendant's statement as being "smart" and "sarcastic." Jones also saw what appeared to be male clothing in the bedroom.

¶ 5 Jones and other officers escorted defendant out of the apartment and onto the front porch where defendant told them, "it was stupid for me to have a gun." Jones conceded this statement was not included in the original police report. Jones also admitted that he did not know how many people lived inside the apartment, he never recovered physical evidence that defendant lived there, he was unsure if the male clothing belonged to defendant, and the police did not take fingerprints or DNA samples from the handgun.

¶ 6 Officer Jonathan Stephens also responded to the domestic incident call at the apartment. He was the first officer to enter the bedroom and encounter defendant. Because the call involved a firearm, the officers handcuffed defendant. Stephens then noticed a black, semi-automatic handgun on a shelf in the bedroom's closet. Stephens asked defendant to whom the gun belonged, and defendant responded, "it's in my room, it must be mine." The police then transported defendant to the police station. There, Stephens asked defendant where he lived, and defendant admitted he lived at the apartment.

¶ 7 The parties stipulated that defendant had been convicted of two prior qualifying felony offenses for the armed habitual criminal charge. According to the charging instrument, the offenses were aggravated battery and unlawful use of a weapon by a felon. The State rested.

¶ 8 Defendant made a motion for a directed verdict, which the trial court denied.

¶ 9 In defendant's case in chief, Evelyn Murphy, another sister of defendant's, testified that on the day in question, defendant did not live at their mother's apartment. Rather, he lived with his girlfriend, Lesley Faulkner, at a different apartment.

¶ 10 Faulkner testified that on the day in question, defendant lived with her on the 1800 block of North Fremont Street, along with her two children and her mother. She and defendant had lived there approximately two years. That day, Faulkner visited defendant's mother's apartment to do laundry and met defendant there.

¶ 11 After argument, the jury found defendant guilty of being an armed habitual criminal and unlawful possession of a weapon by a felon. The trial court denied defendant's posttrial motion for a judgment notwithstanding the verdict. The court subsequently sentenced him to 10 years in prison for being an armed habitual criminal and merged his conviction for unlawful possession of a weapon by a felon. This appeal followed.

¶ 12 On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he possessed the handgun found in the bedroom to support his convictions for being an armed habitual criminal and unlawful possession of a weapon by a felon.

¶ 13 When a defendant challenges his conviction based upon the sufficiency of the evidence presented against him, we must ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find all the elements of the crime proven

beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). All reasonable inferences must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. We will not overturn a conviction unless the evidence is "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48. While we must carefully examine the evidence before us, we must give proper deference to the trier of fact who observed the witnesses testify (*id.*), because it was in the "superior position to assess the credibility of witnesses, resolve inconsistencies, determine the weight to assign the testimony, and draw reasonable inferences therefrom." *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24.

¶ 14 To sustain a conviction for being an armed habitual criminal, a defendant must receive, sell, possess, or transfer a firearm after previously being convicted of two prior qualifying felonies. 720 ILCS 5/24-1.7(a) (West 2012); see *People v. Ross*, 407 Ill. App. 3d 931, 935 (2011). To sustain a conviction for unlawful possession of a weapon by a felon, a defendant must knowingly possess a firearm and have a prior felony conviction. 720 ILCS 5/24-1.1(a) (West 2012); see *People v. Allen*, 382 Ill. App. 3d 594, 600 (2008). The parties do not dispute that defendant has the requisite triggering felonies for either offense. Rather, the issue on appeal is whether the State presented sufficient evidence that defendant possessed the firearm found in the bedroom to support either conviction.

¶ 15 Possession may be either actual or constructive. *People v. Hannah*, 2013 IL App (1st) 111660, ¶ 28. Here, the parties agree defendant did not have actual possession of the handgun when the police observed him. Therefore, the State was required to prove that defendant constructively possessed the firearm. To establish guilt based on constructive possession, the

State must prove that defendant had knowledge of the firearm, and he exercised exclusive and immediate control over the area where it was located. *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 23. Proof of constructive possession is often entirely circumstantial. *Id.* Knowledge may be shown by evidence of a defendant's acts, declarations or conduct from which it can be inferred that the defendant knew the firearm existed in the place where it was found. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. Control may be established from habitation in the residence where the firearm was discovered. *Id.*

¶ 16 In the instant case, the evidence showed that when the police entered the bedroom where defendant was standing, Officer Jones observed him within arm's reach of a firearm. When Officer Stephens asked defendant to whom the gun belonged, defendant conceded the gun belonged to him. On the apartment's front porch, defendant further admitted the same. He also admitted to both officers that he lived in the apartment's bedroom where the gun was found. Moreover, Cheyenne Murphy testified that he lived in the residence on the day in question and had been living there for the past four months. See *People v. Givens*, 237 Ill. 2d 311, 335-36 (2010) (sufficient evidence of constructive possession of contraband existed where officers observed narcotics in a bedroom on top of a night stand "within arms reach of [the] defendant" and her fiancé who were sleeping, and the defendant admitted to being an overnight guest in the bedroom); *People v. Hill*, 2012 IL App (1st) 102028, ¶¶ 6, 41 (sufficient evidence of constructive possession of a firearm where the defendant admitted ownership of a shotgun and that he lived at the apartment where the shotgun was found despite no proof of residency being recovered and the defendant not being present when the police found the firearm). Additionally, male clothing was found in the bedroom. From this evidence, the jury could infer that defendant had

knowledge of the firearm, and he exercised exclusive and immediate control over the area where it was found. See *Spencer*, 2012 IL App (1st) 102094, ¶ 17. The crux of defendant's guilt in this case rests on the principle of reasonable doubt. Therefore, viewing the evidence in the light most favorable to the State, we cannot say that the evidence is so unreasonable, improbable and unsatisfactory as to create reasonable doubt as to defendant's guilt. On the contrary the circumstantial evidence that defendant met the criteria for constructive possession of the firearm is quite strong.

¶ 17 Nevertheless, defendant maintains that the State failed to prove that he possessed the firearm where there was no evidence that he had keys to the apartment, received any mail there or had any identification listing the apartment as his home address. While it is true that there was no tangible evidence proving defendant lived at the apartment, this fact cannot overcome defendant's own words admitting that he lived there, which was corroborated by Cheyenne Murphy's testimony. Furthermore, although Jones stated that defendant's admissions to living in the bedroom and owning the gun were "sarcastic," the resolution of such an ambiguity in the evidence is reserved for the trier of fact, not a reviewing court. See *People v. Campbell*, 146 Ill. 2d 363, 380 (1992) (stating "where the evidence presented is capable of producing conflicting inferences, the matter is best left to the trier of fact for proper resolution").

¶ 18 Defendant also argues that Evelyn Murphy and Lesley Faulkner testified that he did not live at his mother's apartment. While their testimony directly conflicts with defendant's own admission and the testimony of Cheyenne Murphy, the resolution of conflicting evidence is likewise reserved for the trier of fact. See *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). The jury obviously exercised its right to determine the credibility of the witnesses. It clearly believed

Cheyenne Murphy's testimony and considered that, along with the defendant's own admission to the police that he resided in the apartment, in that particular bedroom.

¶ 19 Finally, defendant notes that the police did not perform fingerprint or DNA testing on the handgun to determine if there was a physical connection between defendant and the firearm. However, the lack of physical evidence connecting defendant to the gun is not fatal. See *People v. Faulkner*, 2015 IL App (1st) 132884, ¶ 29. Furthermore, while evidence of constructive possession is often entirely circumstantial (see *id.*), defendant's own admission to ownership of the gun was direct evidence of his constructive possession. Accordingly, the weaknesses in the State's case, which defendant highlights on appeal, do not rise to the level of reasonable doubt of the defendant's guilt." See generally, *Brown*, 2013 IL 114196, ¶ 48.

¶ 20 Defendant next contends, the State concedes, and we agree, that his convictions for both being an armed habitual criminal and unlawful possession of a weapon by a felon violate the one-act, one-crime doctrine, and therefore, both cannot stand.

¶ 21 In sentencing defendant, the trial court stated:

"On the armed habitual criminal, Count 1, the sentence will be ten years in the Illinois Department of Corrections. And on Count 6 where you are sentenced as a Class X offender, it will be six years in the Illinois Department of Corrections, and that will merge with Count 1. I enter judgment on that sentence."

Based on the foregoing, it appears the trial court recognized that both convictions could not simultaneously stand and merged defendant's conviction for unlawful possession of a weapon by a felon into his conviction for being an armed habitual criminal. Additionally, defendant's

mittimus states: "Count 6 to merge into Count 1," the latter count being the armed habitual criminal charge. The mittimus, nevertheless, still reflects a conviction and sentence for unlawful possession of a weapon by a felon. When an oral pronouncement by a trial court conflicts with a written order, as it does with the mittimus in this case, the oral pronouncement controls. *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 87 (citing cases). Therefore, pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), and our ability to correct a mittimus without remand (*People v. Morales*, 2012 IL App (1st) 101911, ¶ 62), we order the clerk of the circuit court to correct the mittimus to remove defendant's conviction for unlawful possession of a weapon by a felon to reflect its merger into his conviction for being an armed habitual criminal.

¶ 22 For the reasons stated above, we affirm the judgment of the circuit court of Cook County in all other respects.

¶ 23 Affirmed; mittimus corrected.