2016 IL App (1st) 141610-U

FIFTH DIVISION
August 19, 2016

No. 1-14-1610

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 17092
	)	
LAWRENCE WILFORD,	)	Honorable
	)	Jorge Alonso,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for possession of a controlled substance with intent to deliver affirmed over his contention the State failed to present sufficient evidence of his constructive possession. Mittimus corrected to reflect the actual offense of which he was convicted.

¶ 2 Following a jury trial, defendant Lawrence Wilford was convicted of possession of a controlled substance with intent to deliver and sentenced to eight years' imprisonment. On appeal, defendant contends that: (1) the State failed to present sufficient evidence that he constructively possessed the controlled substance to support his conviction and (2) if his conviction is not reversed, his mittimus must be corrected to reflect the actual offense of which he was convicted. We affirm and order a correction of defendant's mittimus.

¶ 3 At approximately 7:30 a.m. on August 18, 2012, Chicago police searched a house at 324 North Homan Avenue subject to a search warrant identifying the residence and a man named Antonio Jenkins. During the search, the police found defendant and his fiancée, Shawanna Clark, asleep in a second-floor bedroom that contained approximately 34 grams of heroin and other contraband. As a result, the State charged defendant with one count of possession of a controlled substance with intent to deliver and two counts of unlawful use or possession of a weapon by a felon.

¶ 4 At trial, Chicago Police Officer Paul Parks testified that on August 18, 2012, he and several other officers executed a search warrant at a two-story, single-family residence located at 324 North Homan Avenue in Chicago. When he arrived at the residence, officers attempted to "contact the people inside" but were unsuccessful. As a result, they forcibly entered the residence. Upon entering, the officers' first priority was to "clear" the residence to account for all of its occupants and any possible weapons. Parks observed two individuals on the first floor, including Jenkins, and they were subsequently detained. Parks continued to the second floor

where, immediately beyond a doorway, he observed a bedroom with a dresser, crib and defendant and a female asleep in a bed.

¶ 5 Defendant and the female woke up and were startled by the officers' presence. They were detained while the officers "clear[ed]" the rest of the second floor. The officers found no one else upstairs. Afterward, Parks informed defendant and the female that he had a warrant authorizing the search of the residence. Defendant responded, stating he had "some blows on the dresser," which Parks explained is a street term for heroin. Parks proceeded to open one of the dresser drawers and observed money and multiple bags containing suspect narcotics. Parks gave defendant his *Miranda* warnings and asked him if he had any weapons upstairs. Defendant responded that he did not have a firearm anymore, but "had some bullets in his dresser." Defendant and the female were transported downstairs, so the police could finish the search of the residence.

¶ 6 Parks continued to search the dresser in the second-floor bedroom, and he found more plastic bags containing suspect narcotics and empty "little ziplock baggies," which he explained are often used to package narcotics. In the dresser, he also found 10 .38-caliber rounds and a .22-caliber round inside a black sock. On the floor underneath the bed, Parks found multiple plastic baggies, a plate, a spoon, a playing card, all of which contained narcotics residue, a scale and a box. The scale, which Parks believed was for weighing the narcotics based on his experience, also had residue of suspect heroin. Inside the box, Parks observed more suspect heroin, more empty plastic bags and a bottle labeled "Dormin," which he explained is a "filler" used to "cut the narcotics" and to make the narcotics "more profitable." Some of the bags Parks observed

were tinted black and contained gold skull imprints, which he explained is a "signature" identifying an area where the narcotics are sold. On top of the dresser, Parks recovered a photograph of defendant and the female, and a bill addressed to defendant at 324 North Homan from Assurity Life Insurance Company with the postage date stamped August 8, 2012.

¶ 7 Parks acknowledged he had never seen defendant at the residence prior to that day. He did not check if defendant's name was on the mailbox, the doorbell, any utility bills or a deed to the residence, and agreed defendant's name was not on the search warrant. Parks looked up the residence on the Cook County Assessor's Office website, but defendant's name did not appear on the record. He later explained that he searched the residence on the Assessor's website only to see what the residence looked like and no information about the property's owners appeared on the record. Parks did not request DNA or fingerprint testing on any of the evidence recovered from the second-floor bedroom, but explained he had never requested either test on a narcotics case. He searched defendant, but did not recover anything from his person, including keys. Parks also did not find an identification card from defendant. Parks testified he took notes when talking to defendant to record any statements, but stated the notes "may have been disposed of." He, however, copied the statement into his case report, which he stated was a summary of the events that occurred.

¶ 8 After Parks testified, defendant moved to dismiss the case because of a discovery violation based on Parks' testimony that he may have disposed of his original notes which contained defendant's statements. Alternatively, defendant requested the court give the jury an

instruction to disregard the statements and the State be barred from further testimony about them. The court denied defendant's requested relief.

¶ 9 Officer Karen Rittorno testified to being the evidence collection officer during the execution of the search warrant, which occurred at 7:30 a.m. She went to the bedroom on the second floor after being informed that evidence had been found there. In a dresser drawer, Rittorno recovered a black bag which contained a brown bag with "a black chunky substance," which was suspect heroin, multiple bags containing suspect heroin, $851, a bag with suspect cannabis and a bag with suspect crack cocaine. Underneath the bed, she recovered a spoon, a playing card, a scale with suspect heroin residue and multiple plastic bags containing suspect heroin. Rittorno did not find keys or checks belonging to defendant, and did not know who owned the property, who leased the property or whose names were on the utilities. She did not inventory any male clothing in the case.

¶ 10 Kristine Benak, a forensic scientist with the Illinois State Police, testified she received and tested the evidence from this case. The contents of the relevant items tested weighed approximately 34 grams and tested positive for heroin.

¶ 11 At the conclusion of the State's case, the parties stipulated that defendant had previously been convicted of a felony in case No. 93 CR 12516 as the predicate offense for the two counts of unlawful use or possession of a weapon by a felon.

¶ 12 Defendant moved for a directed finding on all three counts, but the court denied the motion.

¶ 13 Defendant testified that he was a manager with H&M Transportation, overseeing more than 20 employees. He had worked there for 10 years before starting his own business for 18 months. He subsequently returned to H&M Transportation and had been working there for 2 years until this case. Prior to June 30, 2012, defendant lived in an apartment at 1129 South Richmond. However, on that date, he moved to 716 North Trumbull, a single-family residence in Chicago and had been living there ever since. He purchased the property with his fiancée Shawanna Clark, whom he had been engaged to for two years. They had two children together and had known each other since 1997. Although defendant acknowledged only Clark's name appears on the title to the property, he explained this was because his credit was poor but maintained he helped fund the down payment to the property. The utilities to the residence were also in Clark's name, although he helped pay them. Clark, however, was not living with him on the date of the offense. Instead, she was living at 324 North Homan, her grandmother's house, who had passed away in February 2012. Although Clark had bought the property at 716 North Trumbull with defendant, she was "having issues with moving" because she had lived at 324 North Homan her entire life. Defendant and Clark's children lived with Clark at 324 North Homan, and defendant acknowledged the crib pictured in one of the State's exhibits was for one of their children. Defendant considered himself an involved and active parent.

¶ 14 On August 17, 2012, defendant arrived at 324 North Homan around 9:30 p.m. with Chinese food and "to settle an argument" with Clark, which involved her moving into the property at 716 North Trumbull. He had not been to 324 North Homan in three weeks. He went upstairs to Clark's bedroom, and they ate the food. Although defendant had not planned to stay

the night, he fell asleep in the bedroom around 2 a.m., wearing a white t-shirt, blue jean shorts and gym shoes. He fell asleep with his wallet in his back pocket and keys in his front pocket. His driver's license, which was in his wallet that night and depicted in a defense exhibit, identified his address as 1129 South Richmond with an issue date of July 10, 2012. He wanted to change the address to 716 North Trumbull, but he did not have mail at his new address yet. Defendant had six keys, three keys to 716 North Trumbull, two keys to 1129 South Richmond and one car key. He did not have keys for 324 North Homan. Defendant explained he still had keys to 1129 South Richmond because the owner had died, and when he moved out, he "just kept the keys" and "never gave them back."

¶ 15 Defendant woke up the following morning to Officer Parks in the bedroom telling him to "[f]reeze" and "put [his] hands up." Parks patted defendant down and searched him, finding both his wallet, which Parks opened, and keys. He took both items from defendant. Parks asked defendant if anyone else was upstairs, and defendant replied that he did not know. Parks detained him and Clark, and they both were led downstairs. Defendant denied telling Parks that there were some "blows either on or in the dresser," ammunition in the bedroom or that he did not have a firearm anymore. Defendant denied ever owning, leasing, paying utilities, keeping clothes or personal belongings, or regularly visiting the residence at 324 North Homan. He never went in the dresser drawers or underneath the bed, and he specifically denied that anything in the dresser drawers or underneath the bed belonged to him. Defendant stated that all his personal belongings, including important documents and clothes, were at 716 North Trumbull. Defendant maintained he did not possess heroin on either August 17 or 18, 2012, did not have heroin or

drug paraphernalia at 324 North Homan and that none of the items testified to by police officers at his trial were his.

¶ 16 Defendant stated the life insurance bill was a policy paid by Clark since 2004 covering defendant. The policy was Clark's idea because a cousin of hers and a friend had died without having life insurance. Since Clark paid the policy, the bill was sent to her address. Clark had also purchased life insurance for herself, her father and her two children. Defendant explained the photograph of him and Clark recovered by the police belonged to Clark. Although defendant agreed that in a photograph of the second-floor bedroom, men's shoes could be seen, he denied the shoes were his and did not know to whom the shoes belonged. Defendant stated Clark's brothers frequented the house often.

¶ 17 After defendant's business began performing poorly, he attempted to obtain public aid. He presented three letters from the Illinois Department of Human Services addressed to him at 716 North Trumbull and dated August 21, 24 and 29, 2012, respectively. He also presented a bill from ComEd addressed to him at 1129 South Richmond and dated April 27, 2012. Lastly, defendant presented a HUD-1 Settlement Statement for the property located at 716 North Trumbull, which named Clark as the borrower, and was dated June 28, 2012.

¶ 18 Following argument, the jury found defendant guilty of possession of a controlled substance with intent to deliver, but not guilty on both counts of unlawful use or possession of a weapon by a felon. Defendant filed a motion for new trial, arguing, *inter alia*, the evidence was insufficient. The court denied the motion and subsequently sentenced defendant to eight years' imprisonment. This appeal followed.

¶ 19 Defendant first contends that the State failed to present sufficient evidence that he was guilty of possession of a controlled substance with intent to deliver. Specifically, he argues the State failed to prove he had constructive possession of the heroin recovered in the second-floor bedroom where he did not live in the residence, had no personal belongings in the residence and merely was spending the night with Clark, his fiancée, who was having difficulties leaving the residence after her grandmother had passed away.

¶ 20 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. While we must carefully examine the evidence before us, we must give proper deference to the trier of fact who observed the witnesses testify (*Brown*, 2013 IL 114196, ¶ 48), 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. Despite this highly deferential standard, if the evidence is "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt," we will overturn his conviction. *Brown*, 2013 IL 114196, ¶ 48.

¶ 21 To sustain a conviction for possession of a controlled substance with intent to deliver, the State must prove that (1) defendant had knowledge of the presence of the controlled substance,

(2) the substance was in his immediate possession or control and (3) he intended to deliver the controlled substance. *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). Defendant makes no argument concerning his intent to deliver the heroin. Rather, he focuses his argument on appeal as to whether he had knowledge and possession of the heroin.

¶ 22 Possession may be actual or constructive. *People v. Pittman*, 2014 IL App (1st) 123499, ¶ 36. Here, it is undisputed that defendant did not have actual possession of the narcotics, thus his guilt could only rest on a constructive possession theory, which exists when "defendant had knowledge of the presence of the contraband, and had control over the area where the contraband was found." *People v. Hunter*, 2013 IL 114100, ¶ 19. Constructive possession is usually proven exclusively through circumstantial evidence. *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 23. "Knowledge is rarely proven by direct evidence and may be established by evidence of the defendant's acts, declarations or conduct from which the inference may be fairly drawn that he knew of the existence of the contraband where it was found." *Id.* ¶ 40. A defendant's control over the area where narcotics have been found gives rise to an inference he possessed the narcotics. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. Habitation in a residence where narcotics have been discovered demonstrates the requisite level of control. *Id.* Proof of residency is relevant to show a defendant lived at the premises in question. *People v. Cunningham*, 309 Ill. App. 3d 824, 828 (1999).

¶ 23 In the instant case, there was sufficient evidence that defendant constructively possessed the heroin found in the second-floor bedroom to support his conviction for possession of a controlled substance with intent to deliver. When the police entered the second-floor bedroom

around 7:30 a.m., they found defendant asleep in bed with Clark, his fiancée, and a crib. In the dresser and underneath the bed in that room, the police recovered 34 grams of heroin and various drug paraphernalia. Defendant acknowledged that the room belonged to Clark, his two children lived with her in the residence and one of his children used the crib. This evidence, buttressed by the recent life insurance bill addressed to him there, leads to a reasonable inference that defendant lived, at the very least enough to constitute habitation, in the second-floor bedroom. This strong evidence of habitation demonstrates he had control over the bedroom and thus, constructively possessed the heroin found therein. See *People v. Elam*, 197 Ill. App. 3d 8, 12-13 (1990) (finding a defendant possessed contraband found in the apartment of his girlfriend despite denying he resided there where he admitted frequenting the apartment, sometimes sleeping there and two letters addressed to him at the residence were recovered).

¶ 24 Additionally, after Officer Parks informed defendant that he had a search warrant for the residence, defendant told Parks he had "some blows on the dresser" and "some bullets in his dresser." Taken together, these statements support the finding he had constructive possession of the heroin, especially in light of the significant evidence of his habitation in the bedroom. Therefore, when viewing the evidence in the light most favorable to the State with all reasonable inferences in its favor, a rational trier of fact could have found that defendant constructively possessed the heroin to support his conviction for possession of a controlled substance with intent to deliver.

¶ 25 Nevertheless, defendant argues that the State failed to prove its case because it only presented a single piece of mail addressed to him at the residence, the life insurance bill, and

Parks testified to two incriminating statements made by defendant, the veracity of which he asserts is "highly suspect." Defendant notes the State did not introduce keys, rental receipts, personal belongings or state-issued identifications establishing that he lived at 324 North Homan Avenue, and never presented any evidence "rebutting" his testimony about his living arrangements. Lastly, defendant posits that Parks' testimony concerning his admission to possessing "some blows" should not be believed because it is contradicted by the evidence, namely that, in addition to the heroin in the bedroom, there was crack cocaine, cannabis, black tar heroin and several baggies. Defendant states this evidence is "far from 'just some blows.' " Additionally, he notes that defendant told Parks there were some "blows on the dresser," but the police never found any narcotics on the dresser, only inside of the dresser.

¶ 26 Defendant's arguments essentially boil down to credibility determinations, specifically that his testimony should be believed over the State's evidence. Credibility determinations, however, are within the purview of the trier of fact, here, the jury. See *People v. Daheya*, 2013 IL App (1st) 122333, ¶ 61. Additionally, the jury was under no obligation to believe defendant's testimony merely because parts of it were uncontradicted. See *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 22 ("The trier of fact is free to accept or reject as much or as little of a witness's testimony as it pleases."); *People v. Ferguson*, 204 Ill. App. 3d 146, 151 (1990) ("The trier of fact is not required to accept defendant's version of the facts, but may consider its probability or improbability in light of the surrounding circumstances.") When defendant chose to testify about his living arrangements, he was bound to tell a reasonable story or be judged by its improbabilities. *People v. Williams*, 209 Ill. App. 3d 709, 721 (1991). The jury, in finding

defendant guilty of the instant offense, implicitly rejected his story. Despite defendant's many arguments, we may not usurp the jury's credibility determinations and guilty verdict unless we find the evidence as a whole "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48. Our review of the record does not demonstrate that the evidence against defendant was so unconvincing.

¶ 27 We are likewise not persuaded by defendant's reliance on *People v. Moore*, 2015 IL App (1st) 140051, which he asserts is an "indistinguishable" case. In *Moore*, this court reversed a defendant's convictions for unlawful use of a weapon by a felon and possession of a controlled substance. *Id.* ¶ 35. However, the defendant in *Moore* was not found asleep, let alone found, in the very room contraband was located nor did he make a statement admitting his knowledge and possession of other contraband in the same room, as occurred in the instant case. See *id.* ¶¶ 4-8. Thus, the facts of *Moore* are plainly distinguishable from this case.

¶ 28 Defendant next contends that his mittimus must be corrected to reflect the actual crime for which he was convicted. Currently, defendant's mittimus states that he was convicted of "MFG/DEL 15<100 GR HEROIN/ANLG." Defendant argues that, because he was convicted of possession of between 15 to 100 grams of heroin with intent to deliver, the mittimus is incorrect, as it reflects a conviction for manufacture or delivery of between 15 to 100 grams of heroin. The State maintains the mittimus is correct. We agree with defendant.

¶ 29 Although defendant's mittimus reflects the correct statutory citation for his offense (see 720 ILCS 570/401(a)(1)(A) (West 2012)), it lists the offense as manufacture or delivery of heroin, which are different offenses than possession of heroin with intent to deliver. See *People*

v. Wade, 2013 IL App (1st) 112547, ¶ 40. Accordingly, pursuant to Illinois Supreme Court Rule 615(b)(1), we order the clerk of the circuit court to correct defendant's mittimus to accurately reflect his conviction for possession of between 15 to 100 grams of heroin with intent to deliver. See *id.*

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County in all other respects.

¶ 31 Affirmed as modified.