

NOTICE

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2016 IL App (4th) 140491-U

NO. 4-14-0491

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 21, 2016

Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
ROBERT REINBRECHT,)	No. 13CF765
Defendant-Appellant.)	
)	Honorable
)	Paul G. Lawrence,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the State presented sufficient evidence for the jury to find defendant unlawfully possessed a firearm.

¶ 2 In June 2013, a McLean County grand jury returned a bill of indictment against defendant, Robert Reinbrecht, alleging he committed the offense of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1 (West 2010)). The charge arose after defendant, a convicted felon, called the police in July 2012 to report firearms were missing from his home. After searching defendant's home, officers found the missing firearms in an attic.

¶ 3 In February 2014, a jury found defendant guilty. In May 2014, the court sentenced him to two years' imprisonment. Defendant appeals, arguing the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On June 12, 2013, defendant was charged, by indictment, with unlawful possession of a weapon by a felon. The State alleged that on July 23, 2012, defendant knowingly possessed, in his abode, a firearm, a Browning 12-gauge shotgun, 720 ILCS 5/24-1.1 (West 2010) and he was previously convicted of the felony offense of unlawful possession of cannabis sativa plants in McLean County case No. 08-CF-665.

¶ 6 The facts presented at trial are undisputed for purposes of this appeal. Jamie Toungett, a 9-1-1 operator, testified he received a 9-1-1 call from defendant on July 23, 2012. A tape recording of the call and a transcript of the tape recording were published to the jury. The transcript provided, in relevant part, as follows:

"[JAMIE TOUNGETT]: Bloomington 9-1-1.

[DEFENDANT]: Yes[,] I need an officer at 35 Chiswick Circle. I have items including firearms missing from my home.

[JAMIE TOUNGETT]: Ok, what do you have missing from your residence?

[DEFENDANT]: I have many items, including collectible hand, or collectible firearms.

[JAMIE TOUNGETT]: And you think you know who took them?

[DEFENDANT]: [My wife], they were there this morning, and then I came back from running errands, and they're gone.

* * *

[JAMIE TOUNGETT]: And *** is she saying she took them?

[DEFENDANT]: No, she's denying it, there's [sic] four guns missing at least ***."

¶ 7 Officer Paul Jones testified that on July 23, 2012, he received a call from dispatch regarding a domestic dispute. Apparently, defendant reported that his wife had stolen some firearms from the residence earlier in the day. When Officer Jones arrived at defendant's residence, he observed a male, later identified as defendant, standing in the driveway and a female, later identified as defendant's wife, standing in the garage. Defendant identified himself and informed Officer Jones he was a convicted felon.

¶ 8 According to Officer Jones, defendant stated he and his wife were in the process of getting a divorce and had been arguing about their finances. Defendant believed that his wife had stolen his firearms. Officer Jones asked defendant how he came into possession of firearms given he was a convicted felon. Defendant stated the guns had been seized but were later turned over to his wife and two sons, who had valid firearm owner's identification (FOID) cards. Officer Jones testified defendant referred to the firearms as "his" and that defendant stated he received them from his father.

¶ 9 Officer Jones testified defendant then led him and Officer David Quinn into the residence. Defendant stated his wife and two sons also lived in the residence. Defendant led the officers to the master bedroom, where the firearms had been stored. Officer Jones observed empty cardboard boxes, which defendant claimed were used to store firearms. Defendant also showed the officers a gun safe where he stored other firearms. Officer Quinn testified defendant opened the safe for the officers and it was empty. According to Officer Jones, defendant claimed

he did not store the firearms anywhere else in the house and invited the officers to look around. Officer Jones searched in the basement while defendant led Officer Quinn through the rest of the house.

¶ 10 Officer Jones testified that while searching a spare bedroom, apparently occupied by one of defendant's sons, Officer Quinn noticed particles of insulation on the floor. He searched an attic that was accessed through the bedroom closet. Officer Quinn located 12 firearms and ammunition directly inside the opening of the attic. The officers removed the firearms from the attic. Defendant told the officers he wanted the Browning 12-gauge shotgun to be fingerprinted to determine who stole his firearms. Defendant stated he specifically wanted the shotgun to be fingerprinted because he cleaned it earlier that day and only his fingerprints should be on the gun. At trial, both officers identified the Browning shotgun they recovered from defendant's house on July 23, 2012.

¶ 11 The trial court took judicial notice of defendant's February 2009 conviction for the offense of unlawful possession of cannabis sativa plants (720 ILCS 550/8(d) (West 2008)), a Class 2 felony, in McLean County case No. 08-CF-665.

¶ 12 The jury found defendant guilty of unlawful possession of a weapon by a felon. Defendant filed a motion for a judgment of acquittal or, in the alternative, a new trial. The trial court denied defendant's motion and sentenced him to two years' imprisonment.

¶ 13 This appeal followed.

¶ 14 **II. ANALYSIS**

¶ 15 On appeal, defendant contends the State failed to prove beyond a reasonable doubt that he possessed the Browning shotgun found in the attic of his home and therefore failed to prove him guilty of possession of a weapon by a felon.

¶ 16 "Where a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48, 1 N.E.3d 888. This standard of review gives the trier of fact the responsibility to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from the facts. *People v. Howery*, 178 Ill. 2d 1, 38, 687 N.E.2d 836, 854 (1997) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "A conviction will be reversed when the evidence is so unreasonable, improbable, or unsatisfactory" as to justify a reasonable doubt of the defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 115, 871 N.E.2d 728, 740 (2007).

¶ 17 A person commits the offense of unlawful possession of a weapon by a felon when he (1) knowingly possesses a firearm and (2) has been previously convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2010). Defendant does not dispute he was previously convicted of a felony. Instead, he argues the State failed to prove he knowingly possessed the Browning shotgun found in the attic. "Possession may be actual or constructive." *People v. Neylon*, 327 Ill. App. 3d 300, 306, 762 N.E.2d 1127, 1133 (2002). The State argues it proved defendant had both actual and constructive possession of the firearm.

¶ 18 Actual possession is proved by direct evidence, such as eyewitness testimony, demonstrating the defendant actually possessed the contraband. *People v. Rasmussen*, 233 Ill. App. 3d 352, 370, 598 N.E.2d 1368, 1380 (1992). To establish constructive possession, the State must prove (1) the defendant had knowledge of the contraband and (2) he exercised exclusive and immediate control over the area where it was located. *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 23, 35 N.E.3d 1218. If constructive possession can be inferred, actual possession

need not be demonstrated. *Neylon*, 327 Ill. App. 3d at 306, 762 N.E.2d at 1133. Proof of constructive possession is often entirely circumstantial. *People v. Minniweather*, 301 Ill. App. 3d 574, 580, 703 N.E.2d 912, 916 (1998). "Knowledge may be shown by evidence of [the] defendant's acts, declarations, or conduct from which it can be inferred that [the defendant] knew the contraband existed in the place where it was found." *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17, 965 N.E.2d 1135. Control may be established from habitation in the residence where the contraband was found. *Id.*

¶ 19 When a defendant, as a convicted felon, admits possessing a firearm, the State must also adduce corroborating evidence independent of defendant's statement. See *People v. Cloutier*, 156 Ill. 2d 483, 503, 622 N.E.2d 774, 784 (1993). Such corroborating evidence "need not rise to the level of proof beyond a reasonable doubt, but must only *tend* to confirm a defendant's confession." (Emphasis in original.) *Id.* at 503, 622 N.E.2d at 785.

¶ 20 Defendant asserts the State failed to prove he constructively possessed the Browning shotgun. We disagree. Defendant called 9-1-1 to report firearms were missing from his home. Defendant told Officer Jones he was a convicted felon but that he was able to have the firearms in his home because his two sons and wife had FOID cards. Defendant then led the officers to his bedroom and showed them empty cardboard boxes and a gun safe where the guns were stored earlier that morning. When the officers retrieved the guns from the spare bedroom attic, defendant told the officers to fingerprint the Browning shotgun because he had cleaned it that morning. Defendant believed the fingerprints of the person who moved the guns would be on the shotgun.

¶ 21 Clearly, defendant admitted to handling the Browning shotgun earlier in the day. We find his admission was sufficiently corroborated by the above evidence. See *Cloutier*, 156

Ill. 2d at 503, 622 N.E.2d at 784. Although defendant may not have exerted exclusive and immediate control over the attic area where the firearms were recovered, sufficient evidence existed which allowed for the inference he exerted exclusive and immediate control of the area in his bedroom where the firearms had been stored earlier in the day. The fact that defendant's sons and wife were FOID cardholders and residents of the same household does not warrant a different conclusion, as "[t]he requirement that control of a premises be exclusive does not mean possession may not be joint." *Neylon*, 327 Ill. App. 3d at 306, 762 N.E.2d at 1133.

¶ 22 Here, the evidence was not so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt that defendant constructively possessed the Browning shotgun. Given our finding, we need not address defendant's alternative argument he did not actually possess the shotgun. See *Neylon*, 327 Ill. App. 3d at 306, 762 N.E.2d at 1133 ("Actual possession need not be demonstrated if constructive possession can be inferred.").

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm defendant's conviction. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 25 Affirmed.