

2017 IL App (1st) 151144-U
No. 1-15-1144
Order filed September 1, 2017

Fifth Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 14 CR 11042
)	
EMMANUEL RIVERS,)	Honorable
)	Arthur F. Hill, Jr.,
Defendant-Appellant.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm defendant's conviction for armed habitual criminal.

¶ 2 Following a bench trial, defendant Emmanuel Rivers was found guilty of three counts of armed habitual criminal (AHC) (720 ILCS 5/24-1.7(a) (West 2014)) and eight counts of unlawful use or possession of a weapon by a felon (UUWF) (720 ILCS 24-1.1(a) (West 2014)). The trial court merged the counts and sentenced defendant to eight and one-half years in prison

on one count of AHC. On appeal, defendant contends that the State did not prove beyond a reasonable doubt that he committed the offense of AHC. We affirm.

¶ 3 At trial, Officer Phillip Miller of the Chicago police department testified that, at about 12 a.m., on June 14, 2014, he and Officer Franklin, his partner, received a call regarding criminal trespass to a “vacant residence with narcotics being sold.” They were dispatched to 31 East 100th Street, in Chicago, a single family residence with a basement, main floor, and attic. When the officers arrived, they surveyed the building by checking the doors and windows. The lights were on in the attic and basement and Miller heard footsteps in the house. Miller knocked on the doors, but no one responded or opened a door.

¶ 4 Five to ten minutes later, Sergeant Simon arrived. Miller observed a male figure in the attic. He and Simon entered the property through a window in the living room. In the living room, Miller saw an empty box of ammunition, empty bottles, and ashes. The tables were turned upside down and some of the couches were in “disarray.” Miller announced his office and heard footsteps running away from him towards the rear of the residence. Miller and Simon walked to the rear and saw four “subjects,” whom they then detained.

¶ 5 Miller and another officer then proceeded upstairs to the attic. There, he saw “some feet jump out the window” and defendant sitting with his back against the wall next to the same window. Miller saw a shotgun and ammunition, which were uncovered, on the floor “within arm’s length” of defendant. Miller placed defendant into custody and recovered the shotgun and ammunition. Miller did not see any furniture and did not recall seeing any belongings or clothing in the attic. At the police station, Miller gave the shotgun and ammunition to Franklin, who inventoried the items in accordance with proper police protocol.

¶ 6 On cross-examination, Miller testified that he never saw defendant with the gun in his hand, the box of ammunition on his lap, or his fingers on these items. Miller later discovered that the building was abandoned and defendant did not own it.

¶ 7 The State introduced into evidence certified copies of defendant's prior convictions for armed robbery, UUWF, and possession of a controlled substance with intent to deliver.

¶ 8 Following argument, the trial court found defendant guilty on all counts. In doing so, it stated, "as the shotgun and the ammunition was [sic] within such close proximity and open in plain view next to the defendant that it is sufficient for constructive possession." At sentencing, it merged all counts into the AHC offense alleged in Count I and sentenced defendant to eight and one-half years in prison.

¶ 9 On appeal, defendant contends that the State did not prove beyond a reasonable doubt that he committed the offense of AHC. He argues that the State did not present sufficient evidence to prove that he possessed the shotgun or ammunition found in the attic.

¶ 10 When we review the sufficiency of the evidence, the question is whether, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). It is the fact finder's responsibility to determine the "credibility of the witnesses, to weigh the evidence and draw reasonable inferences from it, and to resolve any conflicts in the evidence." *People v. Johnson*, 2014 IL App (1st) 120701, ¶ 21. We must give due consideration to the fact that the fact finder observed and heard the witnesses. *People v. Scott*, 367 Ill. App. 3d 283, 285 (2006). As a reviewing court, we will not retry a defendant or substitute our judgment for that of the fact finder on questions regarding the credibility of the

witnesses. *People v. Ross*, 407 Ill. App. 3d 931, 935 (2011). We will only reverse a conviction if the evidence is “so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant’s guilt.” *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 11 To convict defendant of AHC as charged, the State had to prove that he possessed the shotgun and that he had at least two prior convictions for a qualifying offense. 720 ILCS 5/24-1.7(a) (West 2014). Defendant concedes he had two qualifying prior convictions but argues that the State did not prove that he possessed the shotgun or ammunition found in the attic.

¶ 12 The element of possession may be established by either actual or constructive possession. *People v. Tate*, 2016 IL App (1st) 140619, ¶ 19. Here, Miller found the shotgun and ammunition near defendant but not on his person. The State was, therefore, required to demonstrate that defendant had constructive possession of the shotgun. See *People v. Brown*, 327 Ill. App. 3d 816, 824 (2002).

¶ 13 To establish constructive possession, the State was required to prove that defendant (1) had knowledge that the shotgun was present and (2) “exercised immediate and exclusive control over the area” where it was found. *Ross*, 407 Ill. App. 3d at 935. A defendant’s knowledge can be inferred from various factors, such as the visibility of the weapon, the amount of time that a defendant had to observe the weapon, the size of the weapon, or whether a defendant made gestures or movements suggesting he attempted to retrieve or conceal the weapon. See *People v. Nesbit*, 398 Ill. App. 3d 200, 209 (2010).

¶ 14 Control is established by showing that a defendant had “the ‘intent and capability to maintain control and dominion’ over an item.” *Spencer*, 2012 IL App (1st) 102094, ¶ 17 (quoting *People v. Frieberg*, 147 Ill. 3d 326, 261 (1992)). A defendant’s control over the location where a

weapon is found gives rise to the inference that he or she possessed the weapon. *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). But “[a] defendant’s lack of control of the premises will not preclude a finding of guilt if the circumstantial evidence supports an inference that the defendant intended to control the contraband inside.” *Tates*, 2016 IL App (1st) 140619, ¶ 20.

¶ 15 The state may prove constructive possession entirely by circumstantial evidence. *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 23. Further, “ ‘[k]nowledge and possession are questions of fact to be resolved by the trier of fact, whose findings should not be disturbed upon review unless the evidence is so unbelievable, improbable, or palpably contrary to the verdict that it creates a reasonable doubt of guilt.’ ” *People v. Faulkner*, 2017 IL App (1st) 132884, ¶ 39 (quoting *People v. Lockett*, 273 Ill. App. 3d 1023, 1033 (1995)).

¶ 16 Viewing all the evidence in the light most favorable to the State, we find the evidence was sufficient for any rational trier of fact to find that defendant had constructive possession of the shotgun and ammunition.

¶ 17 Officer Miller found defendant in the attic sitting “within arm’s length” of the shotgun and ammunition, which were not covered or concealed. This evidence supports the reasonable inference that defendant knew the shotgun and ammunition were present in the attic, as it is difficult to conceive that defendant did not notice them. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009) (“the testimony of a single witness, if positive and credible, is sufficient to convict.”)

¶ 18 Although defendant’s knowledge and mere presence is insufficient to establish constructive possession (*Tates*, 2016 IL App (1st) 140619, ¶ 20), “where the other circumstantial evidence is sufficiently probative, proof of proximity combined with inferred knowledge of the

presence of contraband” is sufficient to support possession (*People v. Brown*, 277 Ill. App. 3d 989, 998 (1996)). Here, in addition to establishing defendant’s knowledge of and presence near the shotgun and ammunition, the record sets forth circumstantial evidence supporting the conclusion that defendant had control over the attic and the shotgun and ammunition therein.

¶ 19 When Miller was surveying the building, he heard footsteps inside the residence, but no one responded or opened the door when he knocked. Five to ten minutes later, Miller saw a male figure in the lighted attic. When Miller and Simon entered the building and Miller announced “Chicago Police,” he heard footsteps running to the rear of the building. Having noticed a man in the attic, Miller went upstairs into the attic. There he found defendant sitting next to a window, with a shotgun and ammunition within reach and in plain view. There was no furniture in the attic, and Miller also did not recall seeing any personal items or clothing. Other than the individual Miller saw jump out of the window next to where defendant was sitting, no one else was present in the attic. These facts support the reasonable inferences that defendant knew where the attic was located, knew how to access it, was aware that the police were present, and went to the attic with the shotgun and ammunition to either hide himself and these items or escape from the police. Thus, this evidence supports that defendant exercised control over the attic when the shotgun and ammunition were found and that he had constructive possession of the shotgun and ammunition. See *Brown*, 277 Ill. App. 3d at 998-99.

¶ 20 Defendant claims that there was no evidence that defendant owned or occupied the residence. However, the State was not required to prove that defendant owned the property or had a legal interest in it. *People v. Williams*, 98 Ill. App. 3d 844, 848 (1981).

¶ 21 Defendant cites *People v. Tate*, 2016 IL App (1st) 140619, ¶¶ 28, 31, and *People v. Adams*, 242 Ill. App. 3d 830, 833 (1993), to support his position that we should reverse his conviction. We find these cases distinguishable.

¶ 22 In *Tate*, a jury found the defendant guilty of possession with intent to deliver cannabis where the police found the defendant and co-defendant in an occupied residence, near a dining room that had openly visible suspect cannabis and packaging materials on it. *Tate*, 2016 IL App (1st) 140619, ¶¶ 1, 4, 5. The appellate court reversed, as there was no evidence that the defendant was touching or handling the contraband or linking him to the residence and the co-defendant admitted ownership of all the narcotics and drug paraphernalia. *Id.* ¶¶ 24-26, 28. Here, in contrast, police found defendant sitting alone in the attic of a vacant residence, within arm's reach of the shotgun and ammunition. Unlike in *Tate*, defendant was the only person found within close proximity to the openly visible shotgun and ammunition and no other person admitted to owning these items.

¶ 23 In *Adams*, the jury found the defendant guilty of unlawful possession of a controlled substance where the police found him in a bathroom and found a bucket of water containing packets of cocaine inside the bathroom cabinet. *Id.* at 831-32. The defendant testified that he was at the apartment to meet his friend who lived there. *Id.* at 831. In reversing the defendant's conviction, the appellate court noted that there was no evidence connecting him to the cocaine or to show that he had ever been in the cabinet. *Id.* at 833. Unlike in *Adams*, the shotgun and ammunition here were not hidden in a drawer or cabinet of an occupied residence but, rather, were in plain view, next to defendant, in the attic of a vacant residence.

¶ 24 Finally, defendant claims that, because evidence of flight supports consciousness of guilt (*People v. Harris*, 52 Ill. 2d 558, 561 (1972)), an inference was raised that the shotgun and ammunition belonged to the individual who jumped out of the window when Miller arrived in the attic. However, “[t]he rule that possession must be exclusive does not mean that it may not be joint.” *People v. Schmalz*, 194 Ill.2d 75, 82 (2000). Thus, even if we assume that this individual’s flight does somehow show this individual possessed the shotgun and ammunition, that does not mean defendant could not have also constructively possessed these items. See *Id.* (“if two or more persons share immediate and exclusive control or share the intention and power to exercise control, then each has possession”). Therefore, the fact that Miller saw “some feet jump out the window” when he reached the attic does not change our conclusion that the State presented sufficient evidence to support that defendant constructively possessed the items.

¶ 25 For the reasons explained above, we affirm defendant’s conviction.

¶ 26 Affirmed.