2017 IL App (4th) 141046-U

NO. 4-14-1046

FILED
April 5, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
MARQUIS V. MILES,	)	No. 12CF1353
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State presented sufficient evidence to sustain defendant's conviction for unlawful possession with intent to deliver a controlled substance.

(2) Defendant forfeited the precise sentencing issue raised on appeal and the plain-error doctrine did not apply to excuse his forfeiture.

¶ 2 A jury found defendant, Marquis V. Miles, guilty of unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(a)(2)(A) (West 2010)) and the trial court sentenced him to 15 years in prison. Defendant appeals, arguing (1) the State's evidence was insufficient to prove him guilty of the charged offense beyond a reasonable doubt and (2) the court failed to "take a number of statutory mitigating factors into account" when imposing his sentence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In August 2012, the State charged defendant with unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(a)(2)(A) (West 2010)), alleging he knowingly and unlawfully possessed, with the intent to deliver, "15 grams or more but less than 100 grams of a substance containing cocaine."

¶ 5 In November 2012, defendant's jury trial was conducted. Sergeant Tom Walker testified he ran the narcotics unit for the Champaign police department. On August 21 and 22, 2012, his unit assisted the Illinois State Police with a search warrant for an apartment located at 958 Pomona Drive in Champaign. The federal Drug Enforcement Administration (DEA) also assisted with the warrant. Walker testified, prior to the warrant's execution, his unit conducted surveillance on the apartment to identify its occupants. He was personally involved in the surveillance and "familiar with the potential suspects in the case," Mykeshia Lipscomb and defendant. Specifically, he knew Lipscomb through previous investigations and had viewed pictures of defendant.

¶ 6 Walker described the apartment at 958 Pomona Drive as being part of an apartment complex. On August 21, 2012, surveillance was conducted on the apartment from 7 a.m. to approximately 11 a.m. During that four-hour time period, Walker observed a black male exit the apartment and have a "quick meeting" with a vehicle in the complex's parking lot. He stated the black male was in the passenger seat of the vehicle for less than 30 seconds and then returned to the apartment. The vehicle left the apartment complex. Walker recalled two occasions on August 21, 2012, when the black male exited the apartment and made a brief contact with a vehicle in the complex's parking lot.

¶ 7 Walker testified the black male he observed at the apartment "appeared to be" de-

fendant, stating as follows:

> "The distance, you know, was two hundred *** yards. I was looking through binoculars, and based on information that I had and the photos that I had seen of [defendant], it appeared to be the same person, same stature, same hair."

Walker further testified that over the course of conducting surveillance on the apartment, he observed only one adult male going in and out of the apartment.

¶ 8 On August 22, 2012, Walker conducted further surveillance on the apartment and observed a black male and a black female leave the apartment in a vehicle. The vehicle drove around the apartment complex's parking lot and "made a brief stop," meeting with someone from another apartment. Specifically, Walker testified he observed the following:

> "[The black male] gets out, the person that they met with goes by the door. My view was obstructed a little bit by a car. And within [15] seconds, the person that they met with was walking off and [the black male] was getting back in the car."

Shortly thereafter, the vehicle was stopped by the police so that its occupants could be detained for the search warrant. Walker identified the vehicle's occupants as Lipscomb, who was driving, and defendant, who was a passenger. He agreed defendant was "the same individual or at least consistent with the individual" he observed at the apartment the previous day.

¶ 9 Walker testified he assisted with the vehicle stop. Lipscomb was taken into custody for distribution of a controlled substance and a search of the vehicle was conducted. As Walker was standing near the trunk of the vehicle searching Lipscomb's purse, he noticed a substance that appeared to be two rocks of crack cocaine "packaged in a little tied-off plastic bag" in the back window area on the driver's side of the vehicle. Evidence presented through a stipula-

tion of the parties showed "four-tenths of a gram of cocaine base, a substance containing cocaine" was recovered from the vehicle.

¶ 10 Illinois State Police Trooper Kevin Caskey testified he was involved with the execution of the search warrant at 958 Pomona Drive. His role involved clearing the apartment, collecting evidence, taking photographs, and transporting the offenders. Caskey testified no one was inside the apartment when the police entered. He stated evidence found in connection with the execution of the warrant included two small plastic bags containing substances that appeared to be crack cocaine inside a nightstand in the apartment's basement-level master bedroom, as well as "a larger bag" with "a larger amount" inside "a large blue tote" in the bedroom closet. Additionally, United States currency in the amount of $1,096 was found in the nightstand. Currency totaling $2,439 was recovered from defendant's person. Caskey testified personal items located in the bedroom included male clothing consistent with defendant's build and athletic shoes that were the same size as defendant would wear.

¶ 11 Evidence presented through a stipulation of the parties showed the small bags recovered from the nightstand in the apartment contained "three-tenths of a gram of cocaine base, a substance containing cocaine," and "15.4 grams of cocaine base, a substance containing cocaine." It further showed "27.2 grams of powder cocaine" was recovered from the "large blue tote" in the bedroom closet.

¶ 12 On cross-examination, Caskey identified a photograph of a piece of mail addressed to Lipscomb found inside the nightstand in the master bedroom. He agreed "that item was recovered in the search *** as an indicia of ownership or occupancy." Caskey also described the male clothing found in the master bedroom of the apartment, stating he observed un-

derwear, socks, pants, T-shirts, and colored shirts.

¶ 13 Chris Owens testified he was a sergeant with the Illinois State Police and had been assigned to the DEA task force. He described his training and experience as it related to illegal drug activity. Ultimately, he was qualified as an expert witness on the subject. Owens testified he investigated drug activity at 958 Pomona Drive in Champaign and enlisted other agencies to assist in his investigation. He was personally involved in the execution of the search warrant of the apartment at that location. Owens agreed that the apartment was the known residence of Lipscomb. Further, he testified the police gained access to the apartment by obtaining a key from Lipscomb.

¶ 14 Owens described the apartment's basement bedroom as "messy," with a variety of male and female clothing "strewn about." In the bedroom, he also observed a photograph of defendant and Lipscomb hugging. Like Caskey, Owens testified regarding items recovered from the bedroom, stating two bags containing crack cocaine and $1,096 were located in the nightstand next to the bed and approximately 28 grams of powder cocaine was discovered in a "tote" inside the bedroom closet. Owens testified currency in the amount of $2,849 was retrieved from Lipscomb's purse, while $2,439 was found in defendant's pants pockets.

¶ 15 Owens further identified and described various photographs taken during the search. He stated one photograph depicted small sandwich bags located on a leather couch in the basement. Owens described the significance of the sandwich bags, stating: "[N]umber one, that's the same packaging that was—contained the drugs, and number two, I mean typically sandwich bags are located in the kitchen. This was indicative of somebody utilizing that space to package narcotics." Another photograph depicted a container with small, black rubber bands.

Owens testified similar rubber bands were found in defendant's hair and in his pocket. Additionally, Owens identified a photograph depicting "one of the drawers in the apartment in the basement with male clothing inside it, underwear and socks and *** a belt."

¶ 16 Owens stated defendant was returned to the apartment at 958 Pomona Drive approximately 10 to 15 minutes after the police executed the traffic stop of the vehicle in which he and Lipscomb were traveling. At the time of defendant's arrival, no illegal controlled substances had been recovered from the apartment. Owens testified he made contact with defendant and spoke with him in the apartment's basement bedroom. He verbally provided *Miranda* warnings (see *Miranda v. Arizona*, 384 U.S. 436 (1966)) to defendant, and defendant agreed to speak with him. According to Owens, defendant reported that Lipscomb was his girlfriend and he "stayed at the apartment from time to time." Owens testified defendant asserted that "he did not get into [Lipscomb's] business of dealing crack cocaine." The following colloquy occurred between Owens and the State:

> "Q. Did [defendant] indicate that he knew that it was [Lipscomb's] business?
>
> A. Yes.
>
> Q. Please describe for us what was actually said.
>
> A. That was a response to, you know, my questioning of, you know, the crack cocaine and cocaine in the *** apartment, and his response to me was like well, that's her business. I don't get into that business.
>
> Q. Did you ask him any specifics? Did he give you any specifics about her business?

A. Yeah. He did state that he knew that—he did not know her supplier, who supplied her with the crack cocaine. [Defendant] stated that she did buy the crack cocaine in crack form, not powder form typically. That was another statement that he made."

¶ 17 Owens testified he also spoke with defendant about the $2,439 found in defendant's pants pockets. In seizing the money, he noted it included a $100 bill, 5 $50 bills, 100 $20 bills, 7 $10 bills, 3 $5 bills, and 4 $1 bills. According to Owens, defendant stated the money was his, although he also reported that he was unemployed. Further, Owens testified that the total lab weight of the drugs seized in the case included 28 grams of powder cocaine and around 19 grams of crack cocaine. He stated the street value of both powder cocaine and crack cocaine was typically $100 per gram. Owens testified the seizure of cash in the case was important to his investigation. Specifically, he noted that, with "street level dealing," cocaine and crack cocaine were usually dealt in small quantities to users. Owens stated users would buy a $20 crack rock of cocaine, which weighed around two-tenths of a gram.

¶ 18 Owens further described, based on his training and experience, what a "street level" drug transaction generally looked like. He stated such transactions were conducted in plain sight in public areas like parking lots, fuel stations, and malls. Owens testified it was "a very brief meeting between a drug distributor and a drug user," lasting "[t]ypically under [30] seconds, probably under [20] seconds."

¶ 19 On cross-examination, Owens agreed that, before a search warrant was obtained in the case, two controlled drug buys were conducted, wherein drugs were purchased from Lipscomb. The first controlled buy took place in early August 2012, and the second on August 15,

2012. Owns further acknowledged that the controlled buys from Lipscomb were on video surveillance and that defendant was not on any of the surveillance footage from those controlled buys. Further, he agreed that he also spoke with Lipscomb at the apartment, and she claimed ownership of the currency found in her purse and in the nightstand; reported that she lived in "the downstairs area" of the apartment; and told Owens the location of the crack cocaine, powder cocaine, and the currency that was found in the nightstand. Owens also testified that defendant provided an Indianapolis, Indiana, address as his residence. Further, inside the apartment at 958 Pomona Drive, he did not find "any indicia with [defendant's] address."

¶ 20 Owens acknowledged that he did not seize or make note of the size of the male clothing in the basement bedroom. He also did not ask defendant if the clothing was his. However, Owens determined the clothes belonged to defendant based on statements from Lipscomb that defendant was "her boyfriend, he stays [in the apartment], he resides at the residence." Owens also stated defendant reported that "he stays there, he resides there, he sleeps with [Lipscomb] in those areas."

¶ 21 Joe Green testified he was a special agent with the DEA and his duties involved enforcing federal drug laws. On August 22, 2012, he assisted in searching the apartment at 958 Pomona Drive. He also interviewed defendant in the basement bedroom of the apartment while the search warrant was being executed. Green described defendant as cooperative and friendly. He provided defendant with the *Miranda* warnings and defendant agreed to speak with him. According to Green, defendant reported that he was from Indianapolis, Indiana, but Lipscomb was his girlfriend and he "off-and-on stay[ed]" in the apartment. Defendant stated he had been dating Lipscomb for approximately a year. Green testified defendant claimed that all of the drugs found

by the police belonged to Lipscomb. However, he also stated that "he helped [Lipscomb] sell [crack cocaine] every once in awhile." Green stated it was clear from his conversation with defendant that defendant was talking about the crack cocaine that was being seized from the apartment.

¶ 22 Green further testified that defendant initially reported that the money found on his person was his and was from work he performed at a church in Indianapolis. Later, defendant changed his story and claimed that some of the money belonged to Lipscomb, some of the money he received from his mother, and some of the money he earned through his work at the church.

¶ 23 At trial, defendant testified on his own behalf, stating he was 24 years old and, prior to August 21, 2012, he lived in Indiana with his mother. He stated he had relatives who "stay[ed]" in Champaign and, on or about August 20, 2012, he came to Champaign in response to an emergency call that his uncle had been shot. Defendant testified he travelled to Champaign with his mother and sisters.

¶ 24 Defendant asserted he first saw Lipscomb on the night of August 21, 2012, stating she picked him up from his grandmother's house. He denied that they had "an occasion to go anywhere" and asserted they were "just going home." The following morning he and Lipscomb were stopped by the police. Defendant testified he was returned to the apartment and interrogated. He agreed that he spoke with Owens and Green but denied that Owens read him the *Miranda* warnings. Further, defendant testified that Green "threw a lot of questions at [him], just like tongue twister questions." Specifically, when defendant answered one of Green's questions, Green would "make it seem like something else."

¶ 25 Defendant agreed that he used rubber bands in his hair. However, he denied that he ever used rubber bands to package cocaine. Defendant further denied that he put any currency or cocaine in the apartment's bedroom nightstand. He testified the money found in the nightstand was not his and Lipscomb never told him where the money came from. Defendant agreed that he had some underwear and a couple pairs of socks in the downstairs bedroom but denied keeping any other clothing in the apartment. Additionally, he testified that the money found on his person came from his work, his mother, and his aunt.

¶ 26 Defendant recalled Walker's testimony about observing a black male engage in 30-second "exchanges with vehicles" outside the apartment on August 21, 2012. However defendant denied that the black male was him.

¶ 27 On cross-examination, defendant agreed that when speaking with the police during the incident, it was his intention to be cooperative and tell the truth. He acknowledged that he initially told Green that all of the money found on his person came from his work at the church. However, he also stated that when Green first asked him the question, he told him the money came from "the church and from [his] mother." Defendant denied stating he received money from Lipscomb.

¶ 28 Defendant further testified that he told Owens "there may have been" drugs in the apartment, but he denied knowing for a fact that the drugs were there. He also denied "knowing what [Lipscomb] did for a business," stating he told the police only that he was "aware of what she does," meaning defendant thought Lipscomb used drugs. Defendant asserted he "[d]idn't know that [Lipscomb] was a dealer" and that he did not tell Green that selling drugs was Lipscomb's "business enterprise." Rather, defendant testified he "just said whatever is [Lip-

scomb's] business is her business" and "I don't get into her business, she doesn't get into mine."

¶ 29 Defendant agreed that he assisted Owens in locating drugs in the apartment, stating as follows: "I told him that where he was at, that's where [Lipscomb] usually be at all the time when I do come [to the apartment]. This is where she plays at." Defendant agreed he nodded at the nightstand and said "that's hot." Defendant denied telling Green that he helped Lipscomb sell drugs, stating: "I didn't tell him that I helped her deliver it. He asked me like what do I do with [Lipscomb], and I said I do help her as far as bills, things like that. That's where he tongue twisted the questions ***."

¶ 30 Defendant testified he had been dating Lipscomb for a year and had been at the apartment "on and off." Specifically, he asserted he was at Lipscomb's apartment once every two or three months. Defendant agreed, however, that he had been at the apartment the week before the search warrant was executed. Defendant also agreed that he would sleep at the apartment "some time," but he stated he had a lot of girlfriends and would "sleep wherever [he] was at." He testified his "clothes may be there, may be here." Although defendant denied having a key to the apartment, he agreed that he would come and go from the apartment as he pleased and that he could "control things that [were] there."

¶ 31 At the conclusion of defendant's trial, the jury found him guilty of the charged offense. In December 2012, defendant filed a motion for a new trial. In January 2013, the trial court denied defendant's motion and proceeded with his sentencing hearing.

¶ 32 Defendant's presentence investigation report (PSI) showed he had a previous criminal history that included a juvenile conviction for fleeing law enforcement, adult convictions for various traffic-related offenses, and an adult conviction from Indiana for "Dealing in

Cocaine or Narcotic." His previous drug-related conviction occurred in January 2012, and it resulted in a sentence of two years' probation, with an eight-year suspended sentence. The PSI further demonstrated that defendant was unmarried and the father of two children, ages four and two. Further, he graduated high school in 2007, and he last worked as a part-time church custodian—a position he held from March to August 2012. Finally, with respect to drug use, defendant reported he began using cannabis on a daily basis at the age of fourteen. His daily use continued until February 2012, when he was placed on probation and required to submit to weekly drug tests. Defendant also reported that he first used cocaine at age 17. At age 21, he began using cocaine on a daily basis, and his last use of the drug was in August 2012.

¶ 33 At the sentencing hearing, defendant presented the testimony of three witnesses, as well as letters written by various individuals on his behalf. Christina Cunningham testified she was the mother of defendant's two-year-old child. She stated defendant provided financial support for their child, in that he had "been coming and buying [the child] shoes and stuff like that." Cunningham testified defendant regularly visited the child and had never denied that he was the child's father. Elysia Monroe testified she was a friend of defendant's mother and defendant was "like a nephew to [her]." Monroe asserted that, in August 2012, she gave defendant approximately $2,000 to give to his mother. Finally, Cloressa Owens testified that she was defendant's mother. Owens asserted she never had any problems with defendant when he was a child and she had relied on him to be responsible for his siblings while she worked. Owens testified defendant's juvenile adjudication for fleeing law enforcement stemmed from a curfew violation. Further, she stated, in 2008, defendant's father died. Prior to his death, defendant's father was "[i]n and out" of defendant's life.

¶ 34 At the conclusion of the evidence, the State noted the applicable sentencing range for defendant was 6 to 30 years and recommended the trial court impose a 15-year prison sentence. Defense counsel asked that the court sentence defendant closer to the six-year minimum. Defendant exercised his right of allocution, stating he was "fully responsible for [his] actions" and acknowledging he "made a mistake which led [him] to be in the wrong place at the wrong time." Defendant further asked the court to take into account his "minimal encounters with the judicial system." Additionally, he apologized to the court and stated his intention was to learn from his experience and have no further involvement with the judicial system.

¶ 35 Ultimately, the trial court sentenced defendant to 15 years in prison. In imposing defendant's sentence the court stated as follows:

> "I've considered the [PSI] prepared by court services. I've considered the comments of counsel, the comments of defendant. I've considered the information presented in mitigation on behalf of the defendant. I've considered the statutory factors in aggravation, the statutory factors in mitigation.
>
> There aren't any statutory mitigating factors that apply to this defendant to this type of an offense. There is mitigation in this record. It may not necessarily be statutory mitigation."

Specifically, the court determined mitigating factors included defendant's young age, receipt of a high school diploma, and employment history. It expressly rejected the idea that defendant's absence from his children's lives would be a mitigating factor, stating as follows:

> "He's brought two children into the world. And, you know, I know he buys things for them, but buying a pair of shoes off and on or some diapers or whatever

> doesn't equate with support of the children. You bring children into this world, you need to support them, not only monetarily, but you need to be there for them as a parent. So the fact that he has two children and any sentence is going to take him out of their life for a period of time is not a mitigating factor as far as this court is concerned."

Finally, the court found statutory factors in aggravation included defendant's prior drug-related conviction and the "deterrent factor."

¶ 36 In January 2013, defendant filed a motion to reconsider his sentence, arguing he "presented considerable evidence in mitigation that should have resulted in a lesser sentence." Defendant also maintained the trial court failed to consider testimony that the cash recovered on his person had been from a legitimate source rather than the sale of a controlled substance. The record reflects the same day defendant filed his motion to reconsider he also filed a notice of appeal. Ultimately, defendant's appeal was dismissed on his own motion. Thereafter, defendant filed a *pro se* postconviction petition. In November 2014, defendant, with the aid of counsel, filed a motion to withdraw his postconviction petition and a new motion to reconsider his sentence. In connection with his motion to reconsider, he argued his sentence was excessive and the court gave too much weight in aggravation to his prior criminal record and the factor of deterrence. With respect to mitigating factors, defendant claimed as follows:

> "15. [The court] erred in giving too little weight in mitigation to Defendant's remorse and taking responsibility, his youth, his education, his lack of a serious and lengthy criminal history, his employment, the hardship on his dependents, and the community support he had ***.

> 16. [The court] also gave too little weight in mitigation to Defendant not being the target of the investigation and the Defendant's innocent explanation for the cash legitimately being in his possession."

In December 2014, the court denied defendant's motion to reconsider, stating it believed "the sentence imposed was appropriate."

¶ 37 This appeal followed.

¶ 38 II. ANALYSIS

¶ 39 A. Sufficiency of the Evidence

¶ 40 On appeal, defendant first challenges the sufficiency of the evidence against him. He argues the State failed to prove his guilt beyond a reasonable doubt because no evidence showed he had constructive possession of the cocaine found in either the apartment or vehicle.

¶ 41 "When considering a challenge to the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the required elements of the crime beyond a reasonable doubt." *People v. Bradford*, 2016 IL 118674, ¶ 12, 50 N.E.3d 1112. "It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts." *Id*. It is not the reviewing court's function to retry the defendant. *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010). "A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." *People v. Belknap*, 2014 IL 117094, ¶ 67, 23 N.E.3d 325.

¶ 42 To prove a defendant guilty of unlawful possession with intent to deliver a con-

trolled substance, the State must present evidence to establish that (1) the defendant had knowledge of the presence of the controlled substance, (2) the controlled substance was in the immediate possession or control of the defendant, and (3) the defendant intended to deliver the controlled substance. *People v. Robinson*, 167 Ill. 2d 397, 407, 657 N.E.2d 1020, 1026 (1995). "In drug-related cases in general, the element of possession requires '[the] defendant's knowledge of the presence of the narcotics and his immediate and exclusive control over them.' " *People v. Scott*, 2012 IL App (4th) 100304, ¶ 19, 966 N.E.2d 340 (quoting *People v. Morrison*, 178 Ill. App. 3d 76, 90, 532 N.E.2d 1077, 1086 (1988)). "[P]ossession may be actual or constructive." *Givens*, 237 Ill. 2d at 335, 934 N.E.2d at 484.

¶ 43 "Constructive possession exists where an intent and capability to maintain control and dominion over the substance exists." *People v. Neylon*, 327 Ill. App. 3d 300, 306, 762 N.E.2d 1127, 1133 (2002). "If the controlled substance is found on the premises rather than on the defendant, the State can establish constructive possession if it can prove the defendant had knowledge and control over the premises by virtue of his connection to the premises." *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 14, 979 N.E.2d 1014. Possession of a controlled substance may be joint. *Givens*, 237 Ill. 2d at 335, 934 N.E.2d at 484-85. Additionally, "evidence establishing constructive possession is often entirely circumstantial." *Neylon*, 327 Ill. App. 3d at 306, 762 N.E.2d at 1133.

¶ 44 As stated, defendant argues the State's evidence was not sufficient to demonstrate that he constructively possessed the cocaine found in the apartment because no evidence showed he lived in the apartment. He complains the evidence failed to show mail was addressed to him at that location or that clothing in the apartment was "matched to [him]." Additionally, defend-

ant points out that he reported his home address as being in Indiana, there was no indication he had a key to the apartment, and there was no indication that he had ever been in the apartment without Lipscomb.

¶ 45 Here, we disagree with defendant's argument and find, when viewed in a light most favorable to the State, the evidence presented was sufficient to demonstrate his constructive possession of the cocaine found in the apartment. While no evidence established that defendant possessed a key to the apartment or that he received mail at that location, it did show defendant had connections to the apartment that were sufficient to establish his knowledge and control over both the apartment and the cocaine found within.

¶ 46 The evidence showed defendant and Lipscomb were in a relationship, and defendant acknowledged that he stayed at the apartment "on and off." A framed photograph of defendant and Lipscomb was found in the master bedroom, along with a container of hair bands that matched hair bands found on defendant's person. Both male and female clothing was found in the master bedroom. Evidence indicated the male clothing was found in drawers and "strewn" about and was consistent with defendant's build. Athletic shoes were found that matched defendant's shoe size. While testifying on his own behalf, defendant acknowledged that underwear and socks found in the master bedroom belonged to him. Defendant also admitted that he would come and go from the apartment as he pleased and that he had the ability to exercise control of items within the apartment. Notably, defendant was seen leaving the apartment immediately prior to the search warrant's execution.

¶ 47 Other circumstantial evidence in the case further supports an inference of possession. Specifically, Walker testified he conducted surveillance on the apartment the day before

the search warrant was executed. He observed a black male who "appeared to be defendant" engage in brief contacts with vehicles in the apartment complex's parking lot on two occasions. The State presented evidence that such brief contacts were indicative of drug-related transactions. The following day, Walker observed a black male, who was later identified as defendant and was "the same individual or at least consistent with the individual" Walker observed the day before, leave the apartment with Lipscomb. Before leaving the apartment complex, defendant and Lipscomb made brief contact with another individual. When police officers stopped the vehicle occupied by defendant and Lipscomb, Walker observed crack cocaine inside the vehicle in plain view. Further, when defendant was questioned by police at the apartment, he directed them to the nightstand where some of the drugs and money were found, stating the nightstand was "hot." According to the police, defendant acknowledged that Lipscomb sold drugs and asserted he sometimes helped her. Finally, defendant was found with a large sum of money and provided varying explanations as to its source.

¶ 48 Contrary to defendant's assertions on appeal, the evidence presented suggests more than his mere presence at a location where a controlled substance was found. Rather, it indicates defendant had both the intent and capability to maintain control and dominion over the cocaine found in the apartment. Thus, we find the evidence presented supports the jury's guilty verdict.

¶ 49 In so holding, we find the cases cited by defendant in support of his challenge to the sufficiency of the evidence are distinguishable. In *People v. Scott*, 367 Ill. App. 3d 283, 286, 854 N.E.2d 795, 798-99 (2006), the First District determined the defendant did not have constructive possession of drugs found in a locked mailbox which the defendant was never observed

opening and to which he did not have a key. Unlike the defendant in *Scott*, who was never shown to have access to the mailbox, defendant in this case was shown to have access to the apartment where the cocaine was discovered. In particular, evidence indicated he was observed coming and going from the apartment several times on August 21 and 22, 2012.

¶ 50 Defendant also cites *People v. Fernandez*, 2016 IL App (1st) 141667, ¶¶ 20-24, 69 N.E.3d 887, wherein the First District determined evidence that the defendant possessed keys to a residence and had numerous personal effects inside a bedroom of the residence failed to demonstrate his control over the premises. Specifically, the court noted no evidence ever placed the defendant at the residence; an unidentified person was on the premises at the time the search warrant was executed; and no evidence suggested the defendant had knowledge of the contraband. *Id.* Again, the present case is distinguishable. Here, evidence indicated defendant was present at the apartment immediately prior to the search warrant's execution, as well as the day before. Additionally, no other male was linked to the apartment, and defendant's comments to the police established his knowledge of the presence of cocaine in the apartment.

¶ 51 Finally, even if we were to accept defendant's claim that the evidence established only that he was "an occasional overnight guest in the apartment," we would, nevertheless, find it was sufficient to establish his guilt based on an accountability theory. A person is legally accountable for another's conduct when "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2010). "[T]o prove that a defendant possessed the intent to promote or facilitate the crime, the State may present evidence that either (1) the defendant shared the criminal intent of

the principal, or (2) there was a common criminal design." *People v. Fernandez*, 2014 IL 115527, ¶ 13, 6 N.E.3d 145. " 'Evidence that a defendant voluntarily attached himself to a group bent on illegal acts with knowledge of its design supports an inference that he shared the common purpose and will sustain his conviction for an offense committed by another.' " *Id*. (quoting *In re W.C.*, 167 Ill. 2d 307, 338, 657 N.E.2d 908, 924 (1995)).

¶ 52 Here, the State argued an accountability theory at trial and an accountability instruction was submitted to the jury. Viewing the evidence in the light most favorable to the State, a rational trier of fact could have found defendant shared a common purpose with Lipscomb to possess and sell cocaine. As discussed, defendant reported to Green that he helped Lipscomb sell cocaine; knew where the cocaine was located in the apartment; was found to have a large amount of cash on his person for which he provided varying explanations; and, shortly before the drugs were found in the apartment, he was observed engaging in very brief encounters with others individuals that were indicative of drug transactions.

¶ 53 We find the evidence presented was sufficient to sustain defendant's conviction for possession with intent to deliver the cocaine found in the apartment. As stated, the State charged defendant with possession with intent to deliver "15 grams or more but less than 100 grams of a substance containing cocaine." Because the amount of cocaine found in the apartment was sufficient to sustain defendant's conviction, we find it unnecessary to address his arguments with respect to the cocaine found in the vehicle.

¶ 54 B. Sentencing

¶ 55 On appeal, defendant next challenges the 15-year prison sentence imposed by the trial court. He argues the court erred by refusing to take certain statutory mitigating factors into

account, including that his criminal conduct did not cause or threaten serious physical harm to another (730 ILCS 5/5-5-3.1(a)(1) (West 2010)); he did not contemplate that his criminal conduct would cause or threaten serious physical harm to another (730 ILCS 5/5-5-3.1(a)(2) (West 2010)); his criminal conduct was induced or facilitated by someone other than himself (730 ILCS 5/5-5-3.1(a)(5) (West 2010)); and his imprisonment "would entail excessive hardship to his dependents" (730 ILCS 5/5-5-3.1(a)(11) (West 2010)). Defendant maintains that as a result of failing to consider these relevant factors, the court "hand[ed] down an unnecessarily harsh" sentence. He asks this court to vacate his 15-year sentence and remand for a new sentencing hearing.

¶ 56 The State argues defendant forfeited his sentencing claim by failing to raise it in a postsentencing motion. See *People v. Hillier*, 237 Ill. 2d 539, 544, 931 N.E.2d 1184, 1187 (2010) ("[T]o preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising the issue are required."). Initially, defendant contends he preserved his sentencing issue for review because he argued in his motion to reconsider that the trial court erred by applying too little weight to numerous factors in mitigation. Alternatively, defendant contends we may review his claim under the plain-error doctrine.

¶ 57 Here, we agree that defendant forfeited his sentencing claim. Specifically, the issue he raised in his motion to reconsider with respect to evidence in mitigation—that the trial court gave too little weight to mitigating factors—is fundamentally different from the claim he now raises on appeal—that the court improperly found no statutory mitigating factors applied to him. Additionally, defendant's motion to reconsider referenced only one of the four mitigating factors (hardship to dependents) he now argues the court erroneously failed to consider.

¶ 58 Nevertheless, as defendant contends, we may overlook his procedural default and reach the merits of his sentencing claim under the plain-error doctrine if he can "show that a clear or obvious error occurred" and "either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *Id*. at 545, 931 N.E.2d at 1187. "Under both prongs of the plain-error doctrine, the defendant has the burden of persuasion." *Id*. at 545, 931 N.E.2d at 1187. "We begin our plain-error analysis by first determining whether any error occurred at all." *People v. Winchester*, 2016 IL App (4th) 140781, ¶ 69, 66 N.E.3d 601.

¶ 59 With respect to sentencing, "[t]he Illinois Constitution provides penalties are to be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." *People v. Daly*, 2014 IL App (4th) 140624, ¶ 26, 21 N.E.3d 810 (citing Ill. Const. 1970, art. I, § 11). "This constitutional mandate calls for balancing the retributive and rehabilitative purposes of punishment, and the process requires careful consideration of all factors in aggravation and mitigation." *Id*.

¶ 60 Great deference is granted to the trial court's sentencing determination as the trial court "is generally in a better position than a reviewing court to weigh factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, and habits." *People v. Brunner*, 2012 IL App (4th) 100708, ¶ 40, 976 N.E.2d 27. "This deference provides a trial court the latitude to impose a sentence that falls within the statutory range prescribed for the offense." *Id.* "A sentence that is within statutory limits is excessive and, thus, an abuse of the court's discretion only when it is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Id.*

¶ 61 Further, the Unified Code of Corrections sets forth several factors to be "accorded weight in favor of withholding or minimizing a sentence of imprisonment." 730 ILCS 5/5-5-3.1(a) (West 2010). As noted by defendant, those factors include the following:

> "(1) The defendant's criminal conduct neither caused nor threatened serious physical harm to another.
>
> (2) The defendant did not contemplate that his criminal conduct would cause or threaten serious physical harm to another.
>
> * * *
>
> (5) The defendant's criminal conduct was induced or facilitated by someone other than the defendant.
>
> * * *
>
> (11) The imprisonment of the defendant would entail excessive hardship to his dependents." *Id*.

¶ 62 Here, in imposing defendant's sentence, the trial court expressly stated it had considered defendant's PSI, the comments of counsel and defendant, the evidence presented in mitigation by defendant, and the statutory factors in both aggravation and mitigation. Although the court found "mitigation in th[e] record," it determined there were not any statutory mitigating factors that applied to defendant. As argued by the State, "stating that no statutory factors in mitigation *apply* is different than stating that the trial court did not *consider* a mitigating factor." (Emphases in original.) *People v. Newbill*, 374 Ill. App. 3d 847, 854, 873 N.E.2d 408, 415 (2007).

¶ 63 Defendant argues that a relevant statutory mitigating factor that the court should

have applied was that his conduct was "induced or facilitated by someone other than himself." However, the trial court's comments during sentencing indicate it considered and rejected this factor based on the record before it. Specifically, the court stated as follows:

> "[Defense counsel] pointed out that the individual who was sharing the residence with the defendant was the target of the investigation by the narcotics officers, but this defendant was there and, based upon the testimony presented and the jury's determination, was part and parcel of what was going on in that residence. Given the fact that he had just left Indianapolis tagged with [a similar drug-related] conviction, it's an indication that this defendant knew what was going on and was involved in what was going on."

The court's comments reflect that it determined defendant was a willing participant in the underlying offense. We find no "clear or obvious error" in its determination or its failure to apply this mitigating factor to defendant.

¶ 64 Defendant next argues that the fact that his "imprisonment *** would entail excessive hardship to his dependents" was a relevant statutory mitigating factor that the trial court should have applied during sentencing. With respect to this factor, the record showed defendant had two children, ages four and two. The mother of one of his children testified defendant had "been coming and buying [the child] shoes and stuff like that," regularly visited the child, and never denied that he was the child's father. The court expressly addressed the issue of defendant's children at sentencing, and its comments indicate it rejected the notion that defendant's imprisonment would "entail excessive hardship" to his children. Specifically, it noted that "buying a pair of shoes off and on *** doesn't equate with support of the children." Given that the evi-

dence presented fails to reflect that defendant was a substantial or significant source of support of for his children (financial or otherwise), we can find no clear or obvious error by the trial court.

¶ 65 Finally, defendant contends that two additional statutory mitigating factors which should have been applied were that his conduct neither caused nor threatened serious physical harm to another and that he did not contemplate that his criminal conduct would cause or threaten serious physical harm. As noted, defendant failed to raise these two statutory mitigating factors with the trial court, and the court's comments do not reflect its rationale for finding these factors inapplicable to defendant. However, as the State points out on appeal, case authority exists for the proposition that a trial court may properly find the harm inherently caused by drug-related offenses renders these statutory mitigating factors inapplicable. See *People v. McCain*, 248 Ill. App. 3d 844, 852, 617 N.E.2d 1294, 1301 (1993) ("It is our opinion that the trial court correctly determined that the harm inherently caused by drug-related crimes rendered both of these mitigating factors[—related to whether defendant's conduct caused or threatened serious physical harm—]inapplicable."). Given these circumstances, we, again, can find no clear or obvious error by the trial court.

¶ 66 In this instance, defendant forfeited the specific sentencing issue raised on appeal. Additionally, we decline to find that the plain-error doctrine may be applied to excuse his forfeiture.

¶ 67 III. CONCLUSION

¶ 68 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment as costs of this appeal.

¶ 69 Affirmed.