

2018 IL App (1st) 153465-U

No. 1-15-3465

Order filed December 21, 2018

SIXTH 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. 15 CR 11829
)	
DEVON JACKSON,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's conviction for two counts of unlawful use or possession of a weapon by a felon is affirmed where the evidence established that he had constructive possession of the loaded firearm recovered from underneath a mattress.
- ¶ 2 Following a bench trial, defendant Devon Jackson was convicted of two counts of unlawful use or possession of a weapon by a felon (UUWF) and sentenced to concurrent terms of five years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty

beyond a reasonable doubt because it failed to show that he had constructive possession of the loaded firearm where the evidence did not establish that he lived in the apartment, or that he had immediate and exclusive control over the mattress where the firearm was found. We affirm.

¶ 3 Defendant was charged with one count of UUWF for possessing a firearm, and a second count for possessing the ammunition inside. At trial, Chicago police officer Roberto Garcia testified that at 7:29 a.m. on June 5, 2015, he and other officers executed a search warrant at a residential apartment on South Princeton Avenue. The only adult resident present during the search was Deidre Jackson. Defendant was not present. Garcia and Special Agent Robert Malone from Homeland Security searched the second bedroom. Inside the bedroom closet, they found a laundry basket full of dirty clothes and a replica firearm.

¶ 4 The officers lifted the mattress. Between the mattress and box spring they found a Colt .45-caliber pistol and three items lying next to it. The firearm was loaded with one round of ammunition. Garcia cleared the weapon and removed the magazine. Garcia found three items next to the firearm under the mattress: a birth certificate, an employment identification card, and a photograph. The official Cook County birth certificate was in the name of “Devon Jordan Jackson-Shaw” with a date of birth of March 11, 1994. The certificate indicated that it had been issued on October 25, 2013. The employment identification card included a photograph of defendant’s face and the name Devon Shaw. The card indicated that it was for employment with the “Bucket Boys” for the Chicago Bulls at the United Center. The separate photograph depicted defendant standing in the center, with a group of five young men standing behind him.

¶ 5 Garcia identified defendant in the photograph of the group of men found under the mattress, in the photograph on the “Bucket Boys” employment identification card, and in court.

Garcia also identified a photograph of the mattress in the bedroom, and a photograph of the recovered Colt handgun with the ammunition removed.

¶ 6 On cross-examination, Garcia stated that it was “startling” to find the firearm and birth certificate next to each other “because that never happens.” When Garcia entered the bedroom, there was a blanket and pillow on the mattress. Garcia identified a photograph he took of the firearm lying on the mattress by itself, and testified that was the exact location where the firearm was found. Garcia explained that the birth certificate and other items were not in the photograph because he had already secured those items inside an evidence bag. Garcia did not photograph the three documents where he found them lying next to the gun.

¶ 7 Chicago police officer Rishi Desai testified that he assisted with the execution of the search warrant, and confirmed that defendant was not present in the residence at that time. At 7:12 p.m. on July 5, 2015, Desai assisted with defendant’s arrest, which occurred on Princeton Avenue, two blocks south of the address where the search warrant was executed. Later that night, defendant waived his *Miranda* rights and spoke with Desai and Officer Nick Kakos. Desai asked defendant if he knew why he was arrested. Defendant replied “because you all found a gun in my house.” Desai then asked defendant if he knew about the handgun located under a mattress in his room. Defendant replied “yeah.” Desai confirmed that his question to defendant specifically referenced “in his bedroom under the mattress.” Desai identified defendant in court.

¶ 8 The State presented a certified record of defendant’s prior felony convictions for aggravated robbery and resisting a police officer in case number 11 CR 9205. Defendant presented three photographs used during his cross-examination of Garcia and rested.

¶ 9 The trial court found that the testimony from the officers was “credible and compelling.” The court stated that it appeared defendant was keeping “his most precious items,” including his birth certificate and work identification, together in one place “under his mattress.” The court found that there was “no other explanation” but that defendant had “control and possession of the matters that were all commingled under his mattress.” The trial court found defendant guilty of both counts of UUWF, and sentenced him to concurrent terms of five years’ imprisonment.

¶ 10 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because it failed to show that he had constructive possession of the loaded firearm where the three recovered documents did not establish that he lived in the apartment, or that he had immediate and exclusive control over the mattress where the firearm was found. Defendant argues that none of the documents contain an address, and that the State failed to present a lease, bill or rent receipt showing that he lived there. He claims that it is unknown who placed the documents there or when, and that he could have left them there in the past. Defendant further argues that his statement to police did not prove that he lived in the apartment, that the firearm was his, or that he knew about the firearm before it was found. He asserts that when he referred to the gun found in “my house,” he could have been referring to his family’s home, and that his sister could have told him that the police found a gun.

¶ 11 The State responds that the evidence was sufficient to prove defendant’s constructive possession of the loaded firearm because the three documents established that he resided in that bedroom, and he placed all of his important items together under the mattress. The State further argues that in his statement, defendant expressly acknowledged that the gun was found “in my house,” and under the mattress in his bedroom.

¶ 12 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 13 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt (*People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011)), nor simply because defendant claims that a witness was not credible or that the evidence was contradictory (*Siguenza-Brito*, 235 Ill. 2d at 228).

¶ 14 To prove defendant guilty of the UUWF charges in this case, the State was required to show that he knowingly possessed a handgun and firearm ammunition in his own abode, and that he had a prior felony conviction for aggravated robbery. 720 ILCS 5/24-1.1(a) (West 2014).

¶ 15 Possession of contraband may be either actual or constructive. *People v. Givens*, 237 Ill. 2d 311, 335 (2010). Where, as here, defendant is not found in actual physical possession of the firearm and ammunition, the State must prove that he had constructive possession. *People v.*

Spencer, 2012 IL App (1st) 102094, ¶ 17. Constructive possession exists where defendant had knowledge of the presence of the firearm and ammunition, and had immediate and exclusive control over the location where the weapons were found. *Id.* Knowledge may be demonstrated by evidence of defendant's declarations, acts, or conduct from which it can be inferred that he knew the contraband existed in the place where it was found. *Id.* Control is established when defendant has the capability and intent to maintain dominion and control over the weapons, even if he lacks personal present dominion over them. *Id.* (citing *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992)). Proof that defendant had control over the location where the weapons were found gives rise to an inference of his knowledge and possession of those weapons. *Id.*; *Givens*, 237 Ill. 2d at 335.

¶ 16 Constructive possession may be inferred from the evidence by the trier of fact and is often established by entirely circumstantial evidence. *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). The fact finder is entitled to rely on reasonable inferences of knowledge and possession, absent other factors that might raise a reasonable doubt of defendant's guilt. *Spencer*, 2012 IL App (1st) 102094, ¶ 17. Defendant's habitation in the premises where contraband is found is sufficient evidence of his control of the location to establish constructive possession. *Id.*

¶ 17 Here, viewed in the light most favorable to the State, we find that the evidence was sufficient for the trial court to find that defendant had constructive possession of the loaded firearm found under the mattress. Garcia testified that when he and Malone lifted the mattress, they found a Colt .45-caliber pistol loaded with one round of ammunition lying between the mattress and box spring. Lying next to the firearm, Garcia found defendant's birth certificate and employment identification card, and a photograph of defendant with several other men. In addition to the documentation, Desai testified that when he asked defendant if he knew why he

had been arrested, defendant expressly replied “because you all found a gun in my house.” Desai specifically asked defendant if he knew about the handgun located “in his bedroom under the mattress,” and defendant replied “yeah.” The trial court found that defendant was keeping the items that were most important to him together under his mattress, and that he had “control and possession of the matters that were all commingled under his mattress.”

¶ 18 The record thus shows that based on the evidence that defendant’s important documents, including his birth certificate and employment identification card, were found lying next to the loaded firearm, the trial court was able to reasonably infer that defendant had control over the mattress. It thereby follows that based on his control of the mattress, the court could infer that defendant had knowledge of the presence of the loaded firearm, and that he intended to maintain control of that weapon. *Spencer*, 2012 IL App (1st) 102094, ¶ 17. The court could further infer defendant’s knowledge from his statements that he knew the police had found a gun inside his house, and that he knew the firearm was found in his bedroom under the mattress. *Id.* We therefore find that the record supports the trial court’s finding that defendant had constructive possession of the loaded firearm.

¶ 19 In reaching this conclusion, we reject defendant’s argument that the evidence was insufficient for the trial court to find that he lived in the apartment. As the trier of fact, it was the trial court’s responsibility to determine the credibility of the officers’ testimony, weigh all of the evidence, and draw reasonable inferences from therein. *Siguenza-Brito*, 235 Ill. 2d at 228. The court expressly stated that it found the testimony from Garcia and Desai “credible and compelling,” and that the evidence led to “no other explanation” but that defendant had control

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and possession of the firearm. Based on this record, we find no reason to disturb the trial court's determination in this case.

¶ 20 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.