

2018 IL App (1st) 160794-U

No. 1-16-0794

Order filed December 19, 2018

Third Division

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS<sup>c</sup> v  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 3696
	)	
MELVIN BRIMAGE,	)	Honorable
	)	Michael B. McHale,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE COBBS delivered the judgment of the court.  
Justices Howse and Ellis concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm defendant's convictions for being an armed habitual criminal, possession of a controlled substance with intent to deliver, and unlawful possession of a firearm and ammunition by a felon over his contention that the State failed to prove beyond a reasonable doubt that he constructively possessed the contraband.

¶ 2 Following a bench trial, defendant Melvin Brimage was convicted of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)), six counts of possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(7.5)(A)(i), (a)(7.5)(A)(i)(ii), (a)(2)(A), (d)

(West 2012)), and two counts of unlawful possession of a firearm and ammunition by a felon (720 ILCS 5/24-1.1(a) (West 2012)). He was sentenced to concurrent terms of 12 years' imprisonment on all counts. Defendant appeals, arguing that the evidence presented was insufficient to sustain his convictions because the State failed to prove beyond a reasonable doubt that he constructively possessed the contraband recovered during the execution of a search warrant. We affirm.

¶ 3 Defendant was arrested, along with co-defendant Kimberly McFee, following the execution of a search warrant at an apartment in the 6100 block of North Francisco Avenue. Based on the contraband recovered during the search, defendant was charged by indictment with one count of being an armed habitual criminal (AHC), six counts of possession of a controlled substance with the intent to deliver, and two counts of unlawful use of a weapon by a felon. Defendant filed a motion to sever his trial from McFee's and asked that any statement made by McFee that would implicate him not be considered by the court. The State did not object and the court granted defendant's motion. Defendant waived his right to a jury trial and the case proceeded to simultaneous but severed bench trials.

¶ 4 The evidence adduced at trial showed that, about 7:00 a.m., on January 20, 2013, Chicago police officers executed a search warrant for an apartment in the 6100 block of North Francisco Avenue. At trial, the State presented the testimony of three Chicago police officers who executed the search warrant: Terrence Fowler, Nestor De Jesus, and Nicholas Duckhorn. De Jesus was the assigned shield officer and Duckhorn was the assigned evidence recovery officer.

¶ 5 When the team arrived at the address, they knocked on the front door and announced their office. Because there was no response, the officers made a forced entry into the apartment.

De Jesus estimated that it took 30 to 45 seconds for the breach officer to open the door with a battering ram. De Jesus, as the shield officer, was the first to enter. The apartment had two bedrooms and two bathrooms. The apartment's living room, dining room, and kitchen had "kind of an open layout." As the officers entered, they found McFee on the living room couch. Duckhorn detained McFee while the other officers continued to search the apartment. De Jesus moved to the back of the apartment toward a room with a closed door. He heard movement inside the room and called for the breach officer. After the room was breached, De Jesus entered and saw defendant standing next to the bed. Defendant was detained and transported to the living room.

¶ 6 The officers searched the bedroom and De Jesus recovered a prescription pill bottle, containing suspect Diazepam, from inside a purse that was hanging from the bedroom door knob. Two black socks from underneath a pillow were recovered on the bed. The socks were not in plain view. One sock contained multiple plastic bags with suspect crack cocaine. The other sock contained multiple plastic bags with suspect ecstasy. On the bedroom floor, De Jesus saw a cardboard box with an invoice on top from Sunnyside Toyota. The invoice, dated October 19, 2011, was in defendant's name and addressed to the same location as the search warrant. De Jesus stated that he believed the box contained the car part in question. On the desk in the room, De Jesus found defendant's state identification (ID) card that lists a different address than the location of the search warrant. Duckhorn recovered a wallet containing bank cards and "miscellaneous other cards" with defendant's name on them. Both the wallet and ID were in plain view. De Jesus also recovered a ComEd utility bill for the address listed in McFee's name,

as well as a copy of McFee's criminal history report from the Chicago Police Department dated December 19, 2012.

¶ 7 Inside the bedroom where defendant was found, Fowler discovered an unlocked safe. Fowler searched the safe and recovered United States currency. De Jesus recovered additional currency in the purse. The total amount of currency recovered from the apartment was approximately \$13,000.

¶ 8 In the dining room, Duckhorn recovered the following: a photograph that depicted both defendant and McFee and a plastic bag containing suspect crack cocaine. On the kitchen table, Duckhorn recovered an undated order of continuance filled out in defendant's name, regarding his motion for abatement in a matter in domestic relations court. The order of continuance only makes reference to two future dates, both of which are in 2013. In the kitchen drawers, Duckhorn recovered ziplock bags.

¶ 9 After defendant was moved to the living room, Fowler asked the other officers present if they had recovered a firearm. Defendant responded, without prompt, that he had purchased a firearm for McFee and it belonged to her. Officer Batzer then recovered a .9 mm firearm and a magazine containing 15 live rounds on a shelf in the living room closet. From the living room, the officers also recovered two items, a bank letter and an insurance statement, bearing McFee's name and the address of the apartment. Fowler also testified that defendant later denied having any knowledge of the firearm recovered in the apartment.

¶ 10 The State introduced a photograph of the living room closet where the firearm was recovered. Fowler testified that the photograph depicted both male and female clothing hanging in the closet. Fowler stated that he identified some items of clothing as being male based on the

“masculine” style of collars. Fowler did not recover the clothing in the closet, nor did he include details regarding the male clothing in his report.

¶ 11 The State also introduced certified copies of defendant’s two prior convictions for manufacture and delivery of a controlled substance.

¶ 12 The parties stipulated that Duckhorn recovered the following items from the bedroom: 824 bags of suspect cocaine; four bags containing multiple pills of suspect ecstasy; one pill bottle containing 40 pills; and one bag containing suspect cocaine from the dining room. All recovered items were inventoried according to Chicago Police Department procedures and sent to the Illinois State Police Crime Lab. The parties also stipulated that, if called, forensic chemist Arthur Weathers, an expert in the area of forensic chemistry, would testify that he performed tests on the items. The contents of 406 out of the 824 items tested positive for the presence of cocaine, and the weight of those items was 98 grams. Of the 261 tablets recovered from the bedroom, 200 were tested. Of those 200 tested tablets, 100 tested positive for the presence of MDMA, and the weight of those items was 28.9 grams. The other 100 tablets tested positive for the presence of BZP and had an actual weight of 28.5 grams. The 40 tablets from the purse tested positive for the presence of Clonazepam, with an actual weight of 6.8 grams. The bag found in the kitchen contained three items of a “chunky substance.” One item was tested and was positive for cocaine. The actual weight of the cocaine was .2 grams.

¶ 13 The court found defendant guilty on all counts. In concluding that defendant possessed the contraband, the court noted that defendant resided at the address because there was proof of his residency “scattered throughout the apartment.” The court also noted that Officer De Jesus testified that defendant was alone in the bedroom where most of the contraband was recovered

and that the door was locked. The court further noted that Fowler testified to both of defendant's statements regarding the firearm, including the exculpatory statement, which added to his credibility. Finally, the court highlighted the packaging materials located in the kitchen drawers and the large quantity of drugs recovered as evidence of defendant's intent to deliver.

¶ 14 Defendant moved for a new trial arguing, *inter alia*, that the State failed to prove beyond a reasonable doubt that he possessed the firearm and narcotics because there was insufficient evidence that he resided at the address. The court denied defendant's motion for a new trial and the matter proceeded to sentencing. After hearing arguments in aggravation and mitigation, the court sentenced defendant to concurrent terms of 12 years' imprisonment on all counts.

¶ 15 On appeal, defendant challenges the sufficiency of the evidence to sustain his convictions.

¶ 16 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 have found the essential elements of the crime 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 from the record must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. It is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Brown*, 2013 IL 114196, ¶ 48. We will not substitute our judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *Brown*, 2013 IL 114196, ¶ 48. A defendant's conviction will not be overturned unless

the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Id.*

¶ 17 In this case, defendant was convicted of AHC, multiple counts of possession of a controlled substance with intent to deliver, and multiple counts unlawful possession of a weapon by a felon. Defendant does not dispute that contraband was recovered from the apartment or that his prior convictions are qualifying offenses for the purposes of the AHC statute. Rather, he contends that the State failed to prove beyond a reasonable doubt that he had constructive possession of the gun, ammunition, and drugs. Specifically, he argues that the State did not present sufficient evidence to establish that he resided at the address and thus did not prove that he possessed any of the illicit items.

¶ 18 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 contraband, the State must prove that he had constructive possession. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. 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). Constructive possession exists where defendant had knowledge of the presence of the contraband and had immediate and exclusive control over the location where the items 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. *Spencer*, 2012 IL App (1st) 102094, ¶ 17. Control is established when defendant has the capability and intent to maintain dominion and control over the contraband, even if he lacks personal present dominion over it. *Id.* (citing *People v. Frieberg*, 147 Ill. 2d 326,

361 (1992)). We first review whether the State presented sufficient evidence to establish that defendant had “immediate and exclusive control” over the premises where the contraband was found.

¶ 19 Habitation of the location where contraband is found can constitute sufficient evidence of control to establish constructive possession. *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 29. “Proof of residency in the form of rent receipts, utility bills and clothing in closets is relevant to show the defendant lived on the premises and therefore controlled them.” (Internal quotation marks omitted.) *Id.*

¶ 20 Here, when viewed in the light most favorable to the State, we find that the evidence was sufficient for the trial court to conclude that defendant resided in the apartment where the contraband was recovered. The record shows that, about 7:00 a.m., officers executed a search warrant. As the officers proceed through the apartment and announced their office, De Jesus encountered a locked door and heard movement on the other side. When the door was breached, De Jesus saw defendant standing near the bed. A search of the bedroom where defendant was found revealed drugs hidden: in a purse hanging from the doorknob; and in two socks located underneath a pillow on the bed. The bedroom also contained an unlocked safe with a large amount of American currency. After a further search of the bedroom, officers recovered defendant’s wallet and state ID, which were in plain view on top of a desk, as well as an invoice for a car part in defendant’s name addressed to that apartment. According to De Jesus, the invoice was on top of a cardboard box that he believed contained the car part. In the dining room, officers recovered a bag of suspect cocaine and a photograph depicting defendant and McFee. In the kitchen, Duckhorn recovered a form for an order for continuance that was filled out in



defendant's name. Finally, Fowler testified that the photograph depicting the closet where the firearm and ammunition were discovered showed that male jackets were present. When considered together, we find that the cumulative evidence in this case was sufficient for the trial court to infer that defendant had control over the premises where the contraband was found.

¶ 21 Defendant nevertheless argues that the evidence is insufficient to prove he resided at the address, highlighting the following facts: his state ID lists a different address; the car part invoice was 15 months old at the time of the search; and the comparatively stronger evidence connecting McFee to the residence. Essentially, he argues that the evidence was also consistent with his having been a guest of McFee's. However, as the trier of fact, it was the trial court's responsibility to weigh all of the evidence and draw reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2000). The trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt. *Id.* at 229. The trial court heard defendant's theory that he was merely a guest and resolved the issue against him. Based on this record, we find no reason to disturb the trial court's determination in this case.

¶ 22 This is especially so where "[t]he law is clear that the exclusive dominion and control required to establish constructive possession is not diminished by evidence of others' access to the contraband." (Internal quotation marks omitted.) *Givens*, 237 Ill. 2d at 338. Although the officers recovered several items that also connected McFee to the address in question, "[t]he rule that possession must be exclusive does not mean that the possession may not be joint; if two or more persons share immediate and exclusive control or share the intention and power to exercise control, then each has possession." *People v. Schmalz*, 194 Ill. 2d 75, 82 (2000) (internal

citations omitted). “When the relationship of others to the contraband is sufficiently close to constitute possession, the result is not vindication of the defendant, but rather a situation of joint possession.” *Givens*, 237 Ill. 2d at 330 (quoting *People v. Williams*, 98 Ill. App. 3d 844, 849 (1981)). In this case, the State sufficiently proved that defendant resided in the apartment where the contraband was found, and, therefore, evidence that McFee also had access does not diminish his possession.

¶ 23 Having determined that the State sufficiently proved that defendant resided at the apartment, we now examine whether the evidence was sufficient to show that defendant had knowledge of the contraband. Proof that defendant had control over the premises where the contraband was found gives rise to an inference of his knowledge and possession of that contraband. *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992). Knowledge is a distinct element, however, and the State must still prove defendant’s knowledge beyond a reasonable doubt. See *Maldonado*, 2015 IL App (1st) 131874, ¶ 40. 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.*

¶ 24 The record shows that, following the breach of the apartment door, De Jesus heard defendant moving inside of a locked bedroom. When the door to that room was breached, De Jesus saw defendant standing near the bed. A search of that bed revealed drugs hidden in a black sock under a pillow. Drugs were also recovered from a purse hanging from the bedroom door. In addition to defendant’s presence in the bedroom, officers recovered defendant’s wallet, state ID, and an invoice for a car part with his name and the address in question. Furthermore, in response

to Fowler asking the other officers if a gun had been found, defendant stated that he had purchased the gun for McFee. Given this evidence, combined with defendant's residence in the location where the contraband was found, we conclude that a rational trier of fact could have found that defendant had knowledge of the contraband.

¶ 25 In sum, because defendant resided at the address where the search warrant was executed and had knowledge of the contraband, the State proved that he constructively possessed the contraband. Accordingly, the evidence presented was sufficient to sustain his convictions.

¶ 26 For these reasons, we affirm the decision of the circuit court of Cook County.

¶ 27 Affirmed.