2018 IL App (1st) 162352-U
No. 1-16-2352
Order filed September 24, 2018

First Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	No. 16 CR 2261
v.	)	
	)	Honorable Marc W. Martin,
JEFF SCHOON,	)	Judge Presiding.
	)	
Defendant-Appellant.	)	

JUSTICE GRIFFIN delivered the judgment of the court.
Presiding Justice Mikva and Justice Walker concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for unlawful possession of a weapon by a felon is affirmed over his contentions that the State failed to prove beyond a reasonable doubt that he possessed a firearm.

¶ 2 Following a bench trial, defendant Jeff Schoon was convicted of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(West 2016)) and sentenced to 30 months' imprisonment. On appeal, defendant argues that the State failed to prove beyond a reasonable doubt that he actually or constructively possessed the weapon at issue, where the evidence showed that he intended to turn it over to police as soon as possible. For the reasons set forth herein, we affirm.

¶ 3 Defendant was charged by indictment with two counts of possession of a stolen motor vehicle, two counts of aggravated unlawful use of a weapon, and two counts of unlawful possession of a weapon by a felon which were predicated on his possession of a firearm and firearm ammunition. Defendant waived his right to a jury trial, and the case proceeded to a bench trial.

¶ 4 Jacqueline Dudek testified that her brother, Robert Sewnig died of a heart attack on November 24, 2015. She learned that Sewnig had passed when she called his cellphone on November 25, 2015, and defendant answered. Defendant told Dudek that Sewnig had died the day before and gave Dudek Sewnig's file number at the coroner's office. Defendant told her that he was going through Sewnig's belongings because he needed money. Dudek told defendant not to go through her brother's belongings, and asked defendant where Sewnig's car was located. Defendant told her that the car had been towed on November 23 because it was in need of repairs.

¶ 5 On November 28, 2015, Dudek went to her brother's lodging, a room at the Lido Motel which he shared with defendant, to collect his belongings. When she arrived at the motel, she observed that Sewnig's car was not in the parking lot, and when she arrived at Sewnig's motel room, defendant would not let her in the front room door. Dudek called the Cook County sheriff's office, and an officer was dispatched to the motel. The officer spoke with defendant and entered Sewnig's motel room. The officer returned outside with "two Rubbermaid totes and a duffle bag" containing Sewnig's belongings. After Dudek brought the belongings home, she noticed that her brother's bank books, wallet, keys, and gun were missing. Dudek called Sewnig's preferred auto repair shop, which was owned by Sewnig's good friend, and learned that

the vehicle had not been towed to the facility on November 23, 2015. She then reported the vehicle as stolen.

¶ 6 On January 9th, 2016, Dudek received a phone call from the police and went to a police station, where she identified her brother's vehicle. She testified that she was Sewnig's next of kin, and that she did not give defendant permission to use, drive, or be in possession of the vehicle.

¶ 7 On cross-examination, Dudek testified that she did not report her brother's vehicle as stolen before she went to the Lido Motel on November 28, 2015. On redirect, she testified that defendant did not appear to be blind when she spoke with him on November 28, 2015.

¶ 8 Officer James Klug of the Village of Shiller Park police department testified that, at 1:30 a.m. on January 9, 2016, he was on patrol in the area of 3939 Mannheim Road when he noticed a silver Chevy Cavalier parked in a parking lot with its windows fogged up. Klug ran the vehicle's license plate number through the LEADS system and learned that the vehicle had been reported as stolen. Klug requested an additional unit be dispatched to his location. Once back-up arrived, Klug approached the vehicle and noticed defendant sleeping in the front passenger seat. Klug attempted to open the vehicle's doors but discovered that they were locked. Klug and the back-up officer began to shine their flashlights in the vehicle and knock on the windows. Defendant woke up and exited the vehicle at Klug's request. The officers then walked him to the back of the vehicle and placed him into handcuffs. Klug read defendant his *Miranda* warnings, and defendant told him that the car belonged to his roommate who had died of a heart attack. Klug asked defendant if he had anything on his person or in the vehicle that he should not have, and defendant told him that there was a gun under the front passenger seat. Defendant told him that

the gun was not loaded and that he did not have a Firearm Owner's Identification (FOID) Card. Klug recovered a soft-sided pistol case from underneath the front passenger seat. Inside of the case he found a .22 caliber semi-automatic handgun, which he identified in open court, with two boxes of ammunition and an extra magazine. Defendant was transported to a police station and searched, and was found to be in possession of keys to the vehicle, which had been towed to the police station.

¶ 9 On cross-examination, Klug testified that he had to pull the pistol case out from under the front passenger seat, because it was not been visible upon his first visual inspection of the interior of the car. Defendant's personal property inventory sheet, which listed the property taken from defendant during booking procedures, listed that defendant had three cigars, three lighters, and pair of glasses on his person at the time of arrest.

¶ 10 The State admitted into evidence a certification from the Illinois State Police stating that defendant had never been issued a FOID card, as well as a certified copy of defendant's 2011 conviction for disorderly conduct. The parties stipulated that, on January 9, 2016, the vehicle in question was registered to Robert Sewnig.

¶ 11 At the close of the State's case-in-chief, defendant made a motion for a directed finding. The trial court granted the motion as it related to the possession of a stolen motor vehicle counts, but denied the motion as it pertained to the remaining counts of aggravated unlawful use of a weapon and unlawful possession of a weapon by a felon.

¶ 12 Defendant testified that, in November of 2015, he was living at the Lido Motel with Bob Sewnig. Defendant repaired Sewnig's car in lieu of paying rent. On November 24, 2015, Sewnig died of a heart attack and defendant found his body on their bathroom floor. Before Sewnig died,

he gave defendant the keys to his car for the purpose of repairing it. On November 28, 2015, Sewnig's sister came to the Lido Hotel to pick up Sewnig's belongings. A police officer came into the room and escorted defendant outside with Sewnig's belongings.

¶ 13 Approximately two weeks after Sewing passed away, defendant began sleeping in Sewnig's car after he could no longer afford to live at the Lido Motel. On January 8, 2016, with his glasses on, defendant drove Sewnig's car to a parking lot near 3939 Mannheim Road. Because of his poor eyesight, he had to drive the car "very slowly." Defendant explained that he walked with a cane because he was legally blind without his glasses. When he wore glasses, he could see a distance of 10 feet in front of him. Without the glasses, he could only see 18 inches in front of him.

¶ 14 Around midnight on January 9, defendant was sitting in the front passenger seat of the car, smoking a cigar, when he dropped his lighter underneath the seat. When he reached underneath the seat to retrieve the lighter, he discovered there was a gun under the seat. He testified that he did not know that the gun was in the car until that moment and had planned to turn the gun in to the police the next morning. He did not attempt to throw the gun away because he was afraid that a child would find it.

¶ 15 On cross-examination, defendant testified that upon reaching under the seat for his lighter, he felt a gun case. He took the gun out of the case, pulled out the magazine, and discovered that the gun was unloaded. He put the magazine back in the gun and placed the gun case underneath the seat. He acknowledged that he could have driven to the police station immediately after he discovered the gun, but failed to do so. When the police asked him if there

was a weapon in the car, he told them about the gun. On redirect, he stated that he did not drive to the police station that night because it was dark out.

¶ 16 The trial court found defendant guilty of two counts of aggravated unlawful use of a weapon and two counts of unlawful possession of a weapon by felon, specifically noting:

> "[defendant] claims that despite being in possession of Mr. Sewnig's possessions, because after all, he lived with him from just before his death and after his death had access to all the belongings in the hotel room until January 8th of 2016, that he doesn't know that one of those belongings was this gun which is fairly large, it's not a small easily concealable item. So, I'm not buying his testimony that he just found out about the gun that so happens to be the same night that the police stop him when he dropped the lighter. That testimony was not credible to me"

¶ 17 The trial court subsequently granted defendant's motion for a new trial as it pertained to the aggravated unlawful use of a weapon convictions, holding that the letter from the Illinois State Police amounted to inadmissible testimonial hearsay, and the State entered a *nolle prosequi* on those counts. See *People v. Diggins*, 2016 IL App (1st) 142088. After a sentencing hearing, the court merged the remaining unlawful possession of a weapon by a felon counts and sentenced defendant to 30 months' imprisonment.

¶ 18 On appeal, defendant argues that the State failed to prove beyond a reasonable doubt that he either exercised or intended to exercise control over the gun and the ammunition that were found in the car.

¶ 19 The parties disagree about the standard of review that we should apply to defendant's claim. The State argues that we should review the claim under the standard set forth in *Jackson*

v. Virginia, 443 U.S. 307, 318 (1979), where a reviewing court determines if, "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." Defendant contends that we should review his claim *de novo* because the facts in the case are not in dispute and the question on appeal is "whether the uncontested facts were sufficient" to support his conviction as a matter of law. See *In re Ryan B.*, 212 Ill. 2d 226, 231 (2004). However, our review of the arguments in this case makes clear that the parties dispute the credibility of defendant's testimony. Thus, there exists a factual dispute, and we will review defendant's claim under the *Jackson v. Virginia* standard. See *People v. Lattimore*, 2011 IL App (1st) 093238, ¶¶ 35-36.

¶ 20 The due process clause of the fourteenth amendment to the United States constitution protects defendants against conviction in state courts except upon proof beyond a reasonable doubt of every fact necessary to constitute the charged crime. *People v. Brown*, 2013 IL 114196, ¶ 48; *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979). When ruling on a challenge to the sufficiency of the evidence, a reviewing court " 'is not required to search out all possible explanations consistent with innocence or be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. On the contrary, we must ask, after considering all of the evidence in the light most favorable to the prosecution, whether the *** evidence [in the record] could reasonably support a finding of guilt beyond a reasonable doubt.' " *People v. Grant*, 2014 IL App (1st) 100174-B, ¶ 24 (quoting *People v. Wheeler*, 226 Ill. 2d 92, 116-17 (2007)). In doing so, we must draw all reasonable inferences from the record in favor of the prosecution, and " '[w]e will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt.' " *People v. Lloyd*, 2013 IL

113510, ¶ 42 (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)). A conviction may be sustained on circumstantial evidence alone. *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 10.

¶ 21 A person commits the offense of unlawful possession of a weapon by a felon when he knowingly possesses any firearm or firearm ammunition after being convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2016)). Possession may be either actual or constructive. *People v. Terrell*, 2017 IL App (1st) 142726, ¶ 18. Constructive possession exists where there is no personal dominion over the contraband, but the defendant has control over the area where the contraband was found. *Id*. To prove constructive possession, the State must prove beyond a reasonable doubt that the defendant had knowledge of the presence of the contraband and exercised "immediate and exclusive" control over the area where the contraband was discovered. *People v. Tates*, 2016 IL App (1st) 140619, ¶ 19. "Evidence of constructive possession is 'often entirely circumstantial.' " *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003) (citing *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002)). Control over a location where a weapon is found gives rise to an inference that defendant possessed the weapon. *McCarter*, 339 Ill. App. 3d at 879.

¶ 22 Here, we find that the evidence was sufficient to support defendant's conviction for unlawful possession of a weapon by felon under a theory of constructive possession. The evidence showed that defendant had knowledge of the firearm and ammunition, as Officer Klug testified that, after he placed defendant under arrest for possession of a stolen motor vehicle, defendant informed him that there was a gun under the front passenger seat of the vehicle. The evidence also showed that defendant had immediate and exclusive control over the area where the firearm and ammunition were found, as defendant was the only person in the locked car

when Klug arrived on the scene and was in possession of the keys to the vehicle. Moreover, there was evidence from which the trial court could infer that defendant had been in possession of the car since Sewnig's death, weeks earlier. This evidence was sufficient to lead a rational trier of fact to conclude that defendant constructively possessed the firearm and ammunition found under the passenger seat.

¶ 23 Defendant argues that discovering the gun on the night of his arrest and intending to turn it in to police in the morning proves that he did not exercise, or intend to exercise, control over the firearm and ammunition found under the seat. However, it was the trial court's prerogative, as the trier of fact, to make credibility determinations and resolve any alleged inconsistencies in the evidence. See *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24 ("As the trier of fact, the trial court is in the superior position to assess the credibility of witnesses, resolve inconsistencies, determine the weight to assign the testimony, and draw reasonable inferences therefrom"); *People v. Simpson*, 2015 IL App (1st) 130303, ¶ 41 (quoting *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007)) ("factual determinations and credibility assessments made by the fact finder -- here, the trial court -- are entitled to 'great weight' because the fact finder, and not the reviewing court, had the opportunity to hear the witnesses and observe their demeanor in court"). Here, the trial court specifically found defendant's version of events to be incredible.

¶ 24 Citing *People v. Tomasello*, 166 Ill. App. 3d 684, 690 (1988), defendant argues that the trial court had no choice but to accept his version of events because it was unrebutted by any evidence submitted by the State. However, a trial court is under no obligation to believe defendant's testimony simply because it was unrebutted. See *People v. Ferguson*, 204 Ill. App. 3d 146, 151 (1990) ("The trier of fact is not required to accept defendant's version of the facts,

but may consider its probability or improbability in light of the surrounding circumstances"); *People v. Schaefer*, 87 Ill. App. 3d 192, 194 (1980) (stating the trier of fact is not required to "accept a defendant's exculpatory statement as true even in the absence of directly contradicting evidence by other witnesses"). Rather, "the trial court is entitled to accept as much or as little of a witness's testimony as it pleases." *People v. White*, 2015 IL App (1st) 131111, ¶ 24.

¶ 25 Defendant further contends that the trial court's credibility determination "merits little deference because it was based on a misrecolletion of [his] testimony," as demonstrated by its comments about defendant having access to Sewnig's belongings until January 8, 2016, and about the gun in question being "fairly large" and "not easily concealable." After reviewing the court's comments and the evidence presented at trial, we do not believe that the court's credibility determination was unreasonable. The evidence showed that defendant had at least three days of unfettered access to Sewning's belongings in the motel room, and had access to his vehicle, and its contents, until he was arrested on January 9, 2016. Moreover, regarding the size of the gun, we note that the gun was brought to court and admitted into evidence. The trial court was in a superior position to make factual determinations, and it was the trial court's prerogative to make reasonable inferences from the evidence admitted at trial. See *Vaughn*, 2011 IL App (1st) 092834, ¶ 24.

¶ 26 Defendant essentially asks us to ignore the trial court's findings of fact and credibility determination, and to retry the case on a cold record. This is not the proper function of a court reviewing a sufficiency of the evidence claim. See *People v. Daheya*, 2013 IL App (1st) 122333, ¶ 61 (quoting *People v. Ross*, 229 Ill. 2d 255, 272 (2008) (" 'Under this standard, the reviewing court does not retry the defendant, and the trier of fact remains responsible for making

determinations regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence' "). Rather, as none of the State's evidence is "so unreasonable, improbable or unsatisfactory" that it creates reasonable doubt of defendant's guilt, we affirm his conviction for unlawful possession of a weapon by a felon. See *Lloyd*, 2013 IL 113510, ¶ 42.

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.