2019 IL App (1st) 162199-U

No. 1-16-2199

February 13, 2019

Third Division

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 17812
	)	
WILLIAM WILSON,	)	Honorable
	)	Carol M. Howard,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence was sufficient to convict defendant of unlawful use of a weapon by a felon and possession of a controlled substance. Fines and fees order is corrected.

¶ 2 Following a 2016 bench trial, defendant William Wilson (also known as William McLemore) was convicted of possession of a controlled substance (PCS) and two counts of unlawful use of a weapon by a felon (UUWF) and sentenced to concurrent prison terms of three,

seven, and seven years respectively, with fines and fees.[1] On appeal, he contends that the evidence was insufficient to convict him beyond a reasonable doubt. He also contends that one of his fees must be vacated and that he must receive presentencing custody credit against his one of his charges that is actually a fine. As explained below, we vacate the erroneous fee, correct the order assessing fines and fees, and otherwise affirm.

¶ 3 Defendant was charged with possession of a controlled substance with intent to deliver (PCSI) for knowingly possessing more than 3 grams, but less than 15 grams, of a substance containing heroin with the intent to deliver. 720 ILCS 570/401(c)(1) (West 2014). He was charged with counts of UUWF for knowingly possessing "in his abode" a handgun loaded with 9 live rounds and a handgun loaded with 16 live rounds, after being convicted of burglary in case 06 CR 24489. 720 ILCS 5/24-1.1(a) (West 2014). He was also charged with additional offenses not at issue here.

¶ 4 At trial, Chicago police officer Oscar Torres testified that, on October 6, 2015, he and other officers executed a search warrant for a two-story house at 1813 South Kildare Avenue. Upon arriving, Torres saw "the target of the search warrant on his front lawn of his residence," and identified defendant at trial as that man. Defendant was with five or six other people on the lawn. He was handcuffed and placed in a police car, and the officers entered the house.

¶ 5 Torres went to the rear first-floor bedroom "which is the bedroom of the defendant." He did not have to open a door to enter the room, and he could not recall if the room had a door. Men's clothing and shoes were inside the room. The room did not contain a bed, but did contain blankets and a couch that converted into a bed. Torres saw a blue-steel 9-millimeter pistol "on

[1] Defendant testified at trial that his last name is McLemore but he used Wilson in the past.

the couch." He directed Officer Gerardo Vega to photograph and examine the pistol, which contained nine live rounds. Torres also saw another officer find another 9-millimeter pistol in a cabinet in the bedroom, and this pistol contained 16 live rounds. Torres saw a cigarette pack "open on the nightstand in the bedroom." The pack was found to contain 49 packets of a substance suspected to be heroin. Vega photographed and inventoried the pack and its contents. Torres saw defendant's driver's license on a stand in the bedroom, and saw a letter addressed to defendant on the couch in the bedroom. The license was issued in 2013 and valid until 2017.

¶ 6 The record includes the letter and a photograph of defendant's license, both admitted into evidence. The license bears the name William McLemore, the aforesaid issuance and expiration dates, and an address of 1813 South Kildare. The letter is dated in April 2015 and addressed to William McLemore at 1813 South Kildare.

¶ 7 Defendant's mother was in her upstairs bedroom when officers entered the house. Her bedroom contained women's clothing and her medication, documents and photographs. The entire house was searched, including the basement, and defendant's mother was the only person inside when the police entered. The belongings of defendant's mother were found in various upstairs rooms other than her bedroom. The recovered pistols were not tested for fingerprints or DNA. The police found no lease or utility bill for the house bearing defendant's name. Torres did not know if the men's clothing found in the first-floor bedroom was defendant's clothing, and no photograph of defendant was found in that room. Torres did not check if any keys found on defendant's person opened any doors in the house.

¶ 8 Officer Gerardo Vega testified that he also executed the search warrant at 1813 South Kildare. He saw defendant "at that location" that morning, and he identified defendant at trial.

He went to the first-floor bedroom where he photographed and examined the two pistols, the cigarette pack containing 49 packets, defendant's driver's license, and a letter addressed to defendant. He clarified that he did not find the pistols but was directed to them by other officers. He believed the first-floor bedroom had a door. He also went to the basement, where he saw and photographed a coffee grinder, a substance he described as "a narcotic cutting agent," various empty bags or packets, and a scale. The basement contained "a whole lot of things," including clothing, beyond what he photographed. Vega brought all the items he photographed to the police station where he and another officer inventoried them. None of the recovered items were tested for fingerprints or DNA.

¶ 9 The parties stipulated that a forensic scientist would testify to receiving the 49 packets and finding that the content of 21 of the packets tested positive for heroin and weighed 3.2 grams, while the content of all 49 packets weighed 7.4 grams. The State entered into evidence, without objection, a State Police document that defendant was never issued a firearm owner's identification card or concealed-carry card as of November 2015. The parties stipulated that defendant had a 2007 conviction for burglary in case 06 CR 24489.

¶ 10 The defense moved for a directed finding, which the court denied. The court found that "the State has more than met their burden that the items found in the rear first-floor room, including the gun and the drugs and the driver's license and letter [were] enough for the State to meet its burden at this point."

¶ 11 Defendant testified that his name is William McLemore, his mother lived in the house at 1813 South Kildare as of October 2015, and she had since 1967. A man defendant identified only as "Kid" was staying there "sometimes" because "he wanted a spot, so I let him *** stay." The

rear first-floor room was a den or sitting-room, not a bedroom, and had no door. Defendant opined that anything found in that room was Kid's because his elderly mother rarely came downstairs. Defendant lived across the street from his mother's house, at "1820 – 1830 South Kildare," and visited her house daily to tend to her and the home, though "girls" also attended to her. He also had "mail coming to my mother[']s house." He attributed the presence of his license in his mother's home to having "set it down or something while I was there doing something for my mother." On the morning of October 6, defendant had been to his mother's home and was across the street when the police arrived. Kid was in the front yard of his mother's home with some other men, and the police detained Kid along with the others.

¶ 12 On cross-examination, defendant admitted that he keeps some of his belongings in his mother's house, including clothing and shoes, because "I used to live there. I grew up in that house." Defendant maintained that he approached the police when they arrived at his mother's home and an officer detained him when he gave his name. Defendant admitted that the license found in the house was his valid license on the day in question. He denied to the police that the contraband was his. He maintained that he could not recall Kid's name, and reiterated that he gave Kid permission to stay at his mother's house because his mother rarely comes downstairs. He denied being concerned about Kid and the other men being at or in front of his mother's home. He did not ask Kid to come to court to testify.

¶ 13 In rebuttal, Officer Torres testified that defendant was on the front lawn of 1813 South Kildare when he and other officers arrived there, and denied that defendant approached them from across the street. There were other men on the lawn with defendant.

¶ 14 Following closing arguments, the court found defendant guilty of PCS, rather than PCSI, and of UUWF as charged. The court noted that a person may leave some of their belongings in their childhood home upon leaving "but I do not understand how a valid driver's license that one needs on a regular basis could still be found in the room" because a license "is something that people normally keep on their person all the time." The court found that the room in question was a bedroom based on the sofa-bed and men's clothing, and that it was defendant's bedroom based on the license. Being defendant's bedroom, the court found he had exclusive control over the contraband therein. The court expressly found that defendant's testimony regarding Kid was not credible. However, the court found insufficient evidence of defendant's intent to deliver because he did not have exclusive control over the basement as "[m]ore than one person lived in the house, *** though I seriously doubt that his mother went to the basement."

¶ 15 Defendant's posttrial motion as supplemented challenged the sufficiency of the trial evidence and, in particular, the evidence of defendant's actual or constructive possession of the contraband. Following arguments, the court denied the motion. Noting that defendant's mother lived upstairs but was elderly and rarely came downstairs, and that the contraband was found in the same first-floor room as defendant's valid license, the court reiterated its trial finding that defendant had exclusive control over that room.

¶ 16 Following a sentencing hearing, the court sentenced defendant to concurrent prison terms of seven years for the two counts of UUWF based on two firearms, and three years for PCS. It also imposed fines and fees. It awarded 282 days of credit, and $50 credit against fines, for presentencing detention. Defendant's unsuccessful postsentencing motion challenged his prison sentence but not his fines or fees.

¶ 17 On appeal, defendant primarily contends that the evidence was insufficient to convict him beyond a reasonable doubt of UUWF and PCS because the State failed to prove his constructive possession of the contraband.

¶ 18 On a claim of insufficient evidence, we must determine whether, taking 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. Gray*, 2017 IL 120958, ¶ 35. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and it is better equipped than this court to do so as it heard the evidence. *Id.*; *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. We do not retry a defendant; that is, we do not substitute our judgment for that of the trier of fact on witness credibility or the weight of evidence. *Gray*, 2017 IL 120958, ¶ 35.

¶ 19 The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. *Jonathon C.B.*, 2011 IL 107750, ¶ 60. Instead, it suffices if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Id*. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *Id*. A conviction will be reversed only if the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Gray*, 2017 IL 120958, ¶ 35.

¶ 20 We will not find a witness not credible merely because a defendant says so. *Id*. ¶ 36. Similarly, a conviction will not be reversed merely because there was contradictory evidence, as the task of the trier of fact is determining if and when a witness testified truthfully, and minor or

collateral discrepancies need not render a witness's entire testimony incredible. *Id.*, ¶¶ 36, 47. When a finding of guilt depends on eyewitness testimony, we must decide whether a trier of fact could reasonably accept the testimony as true beyond a reasonable doubt. *Id*. ¶ 36. We find eyewitness testimony insufficient only when the evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *Id.*

¶ 21 As relevant here, a person commits UUWF and PCS by knowingly possessing certain contraband: two firearms for the two UUWF counts and less than 15 grams of heroin for the PCS count. 720 ILCS 5/24-1.1(a); 720 ILCS 570/402(c) (West 2014). Knowing possession can be either actual or constructive. *People v. Anderson*, 2018 IL App (4th) 160037, ¶ 31. Constructive possession exists when a defendant (1) has knowledge of the presence of contraband, and (2) exercises immediate and exclusive control over the area where it was found. *Id*. ¶ 32. Control exists when a defendant has the intent and capability to maintain control and dominion over an item, even if he presently lacks personal dominion over it. *Id.*

¶ 22 Evidence of constructive possession is often entirely circumstantial, and knowledge may be shown by a defendant's acts, declarations, or conduct from which it may be inferred he knew the contraband was in the location where it was found. *Id.* ¶¶ 32, 36. Because knowledge and possession are issues of fact for the trier of fact, we will not find the evidence insufficient unless it is so unbelievable, improbable, or palpably contrary to the verdict that it creates a reasonable doubt of guilt. *Id.* ¶ 32.

¶ 23 A defendant may have constructive possession of contraband even if that possession is joint or others have access to the area where the contraband was recovered. *People v. Spencer*, 2016 IL App (1st) 151254, ¶ 25. The fact that a defendant resides where contraband was found

has been held to constitute sufficient evidence of control to establish constructive possession, and proof of residency is relevant to show that the defendant lived on the premises and thus controlled them. *People v. Terrell*, 2017 IL App (1st) 142726, ¶ 19.

¶ 24 Here, taking the evidence in the light most favorable to the State as we must, we cannot conclude that no rational trier of fact could find defendant's constructive possession of the firearms and heroin and thereby convict him of UUWF or PCS. Men's clothing and shoes were found in the first-floor room where the contraband was found. Defendant admitted that he was in the house daily and kept some of his possessions there. More importantly, defendant's valid driver's license was found in the room, and it listed the house in question as his address.

¶ 25 The license did not merely establish defendant's presence in the house, it corroborated that the house at issue was his residence in at least 2013 when the license was issued. An April 2015 letter addressed to defendant at the house in question was also found in the room and shows that his residency was even more recent. It is undisputed that his mother lived in the house and the upstairs rooms were filled with her possessions, but it is also undisputed that she was elderly and rarely came downstairs. On such evidence, the court found that defendant had exclusive control over the room at issue and thus the contraband therein. We consider that conclusion to be a reasonable inference from the entirety of the evidence. Stated another way, a reasonable trier of fact could infer that defendant resided in the first-floor room at issue, and thus exclusively controlled the contraband therein, while his mother resided upstairs.

¶ 26 Against that conclusion, defendant posits an alternative account. While he visited his mother's home daily and kept some of his possessions there, he did not live there. His license and letter bore that address because he *had* lived there. Instead, he permitted a man he identified

only as Kid to stay in his elderly mother's home. The court was not obligated to raise defendant's alternative explanation to the level of reasonable doubt. It expressly found defendant's testimony regarding Kid to be incredible. It was also faced with a credibility dispute between Officer Torres testifying that defendant was on the front lawn of the house in question and defendant testifying that he was across the street and approached the police. The court chose to disbelieve the crux or substance of defendant's account, and we see no reason to set aside that decision. We conclude that the evidence of defendant's constructive possession of the contraband is not so unreasonable, improbable, or unsatisfactory that a reasonable doubt of his guilt of UUWF and PCS remains.

¶ 27 Defendant also contends that one of his fees must be vacated and that presentencing custody credit must be applied to one of his charges that is actually a fine. The State agrees.

¶ 28 Defendant acknowledges not raising these claims in the trial court, and the State does not argue that he has forfeited them. The State has thereby forfeited the forfeiture issue and we will consider these claims. *People v. Smith*, 2018 IL App (1st) 151402, ¶ 7.

¶ 29 The parties are correct that defendant's $5 electronic citation fee must be vacated. It applies only in traffic, misdemeanor, ordinance and conservation cases (705 ILCS 105/27.3e (West 2014)), but defendant was convicted of the felonies of UUWF and PCS.

¶ 30 Defendant's 282 days of presentencing custody entitle him to up to $1410 credit against his fines, but not fees, at $5 per day. 725 ILCS 5/110-14(a) (West 2014). The parties correctly agree that his $15 charge for State Police operations (705 ILCS 105/27.3a(1.5) (West 2014)) has been deemed a fine so he is due an additional $15 credit. *Smith*, 2018 IL App (1st) 151402, ¶ 14.

¶ 31 Accordingly, the $5 electronic citation fee is vacated. We direct the clerk of the circuit court to correct the fines and fees order to reflect said vacatur and an additional $15 credit. The judgment of the circuit court is otherwise affirmed.

¶ 32 Affirmed in part, vacated in part, and order corrected.