2019 IL App (1st) 163137-U

No. 1-16-3137

Order filed February 25, 2019

First 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. 14 CR 16318
	)	
MIGUEL BAILEY,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: We affirm defendant's conviction for unlawful use or possession of a weapon by a felon over his contention that the evidence was insufficient to show that he constructively possessed firearm ammunition.

¶ 2 Following a bench trial, defendant Miguel Bailey was convicted of unlawful use or possession of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2014)) and sentenced to three years' imprisonment. On appeal, defendant argues the State failed to prove beyond a

reasonable doubt that he constructively possessed the firearm ammunition. For the following reasons, we affirm.

¶ 3 Defendant was charged with possession of a controlled substance with intent to deliver, and two counts of UUWF. At trial, Federal Bureau of Investigation (FBI) Special Agent Christopher Weismantel testified that on August 13, 2014, at approximately 8:03 p.m., he was part of a team executing a search warrant at an apartment on the 3500 block of West Grenshaw Street. The search team included Weismantel, his partner, Special Agent Dennaris Coleman, and several Chicago police officers. Defendant's name was listed on the warrant, and Weismantel identified defendant in court as the subject of the warrant.

¶ 4 Weismantel described the apartment as having an open kitchen, a living room and a hallway leading to two bedrooms, closets, and a bathroom. One bedroom was the master and the other bedroom was a children's room with bunk beds. Upon entry into the apartment, defendant was detained. Several young children and an adult woman were present. There were no adult men at the apartment other than defendant. Weismantel was involved in the search of the master bedroom. Under the mattress in that room, the officers recovered a partially full box of "American Eagle" firearm ammunition. Weismantel identified photographs of the master bedroom, the box of ammunition, and the bunk beds from the second bedroom.

¶ 5 On cross-examination, Weismantel testified defendant had been seated on a couch in the living room when the officers entered the apartment. Weismantel did not see defendant in the kitchen or the master bedroom. He acknowledged that he did not see mail in the bedroom addressed to defendant and did not recover any state identification from defendant that listed the Grenshaw apartment as his residence. The officers recovered a Cook County circuit court bond

slip with defendant's name on it in the apartment. However, Weismantel acknowledged that the bond slip listed an address on West 50th Avenue, rather than that of the Grenshaw apartment. The bond slip was not recovered from defendant's person. Weismantel did not know whether the woman present was the leaseholder of the apartment.

¶ 6 Chicago police officer Scott Bittner testified that he was part of the search team. He detained defendant after making entry into the apartment. Bittner recovered $37 and a set of keys from defendant's pockets and $1409 from the dining room table. One of the keys from the set unlocked the door of the apartment. He identified photographs of a set of keys, a piece of the door and locking mechanism, one key unlocking the door, and the money recovered from the table.

¶ 7 On cross-examination, Bittner acknowledged he did not see defendant in the kitchen or bedrooms. He further acknowledged that three prescription pill bottles were recovered and listed the names of two different men. Defendant's name was not on any of the pill bottles.

¶ 8 Chicago police officer Ciocci photographed the apartment during the search.[1] Ciocci testified he photographed the master bedroom and closet. He identified photographs showing men's clothing in the closet and a pile of men's shoes on the floor at the foot of the bed. He also photographed the refrigerator and freezer in the kitchen. He identified a photograph of narcotics in the freezer and inventoried the narcotics. Ciocci identified a photograph of a Cook County bond receipt issued to defendant and had inventoried the document. The bond receipt was recovered from behind the television in the living room.

[1] Officer Ciocci's first name does not appear in the record.

¶ 9 On cross-examination, Ciocci acknowledged he did not see defendant in the kitchen or bedrooms. Defendant had asked for clothing and clothes were retrieved for him from the bedroom closet. Ciocci did not personally have defendant try on clothes from the closet and did not know if the shoes in the bedroom were the same size as the shoes defendant was wearing.

¶ 10 FBI Special Agent Coleman testified that defendant's name and the Grenshaw address were on the search warrant. Coleman spoke with defendant both at the apartment and at the Chicago Police Department lockup. Weismantel was also present. Coleman Mirandized defendant using the FBI's form of rights, which he published for the court. Defendant acknowledged he understood his rights, but refused to sign the form. Defendant said, "You guys got me. I know what my rights are." Defendant stated the ammunition belonged to him, he "purchased it from a Hype for $5," and he stayed at the apartment "from time to time."

¶ 11 Coleman acknowledged that defendant did not indicate when he stayed at the apartment or how often. Because defendant had refused to sign the form of rights, Coleman did not ask defendant to reduce his statements to writing and or sign a statement.

¶ 12 The parties stipulated that the inventory recovered from the freezer contained 108 packages, which tested positive for 15.3 grams of heroin. The State thereafter introduced into evidence a certified copy of defendant's prior felony conviction in case 11 CR 220356.

¶ 13 Following arguments, the court found defendant guilty of all counts. The court found the circumstantial evidence overwhelmingly showed defendant constructively possessed the narcotics and ammunition. It noted the ammunition was recovered from the master bedroom, the key to the door was from a set of keys recovered from defendant, and defendant's statement

"You got me" following the search was akin to an admission that the items recovered belonged to him.

¶ 14 Defendant filed a posttrial motion for a new trial and, following arguments, the court granted his motion on one UUWF count and the possession with intent to deliver count. The court imposed a three-year sentence on the remaining UUWF count.

¶ 15 On appeal, defendant contends the evidence was insufficient to prove beyond a reasonable doubt that he constructively possessed firearm ammunition in his abode.

¶ 16 As an initial matter, we note that defendant argues two differing standards of review for this issue. In his opening brief, defendant cites the standard set forth in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Under that standard, when assessing the sufficiency of the evidence, a reviewing court inquires, " 'whether, 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.' " (Emphasis omitted.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In his reply brief, however, defendant contends that the facts are undisputed so *de novo* review applies to determine whether sufficient evidence supports his conviction. See *In re Ryan B.*, 212 Ill. 2d 226, 231 (2004).

¶ 17 We are unpersuaded by defendant's contention in his reply brief. While the facts are undisputed, defendant contests the inferences drawn from the evidence, thereby creating questions of fact. See *People v. Lattimore*, 2011 IL App (1st) 093238, ¶35 ("If divergent inferences could be drawn from undisputed facts, a question of fact remains."). We therefore proceed under the standard outlined in *Jackson*.

¶ 18 When addressing challenges to the sufficiency of the evidence, we draw all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at 43), and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The State is required to prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). We will not overturn a conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 19 Here, in order to sustain defendant's conviction for UUWF, the State was required to prove that he knowingly possessed a weapon or ammunition, and that he had previously been convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2014); *People v. Gonzalez*, 151 Ill. 2d 79, 87 (1992)).

¶ 20 Defendant does not dispute that he has previously been convicted of a felony. Rather, he contends that the State failed to prove beyond a reasonable doubt that he had constructive possession of the ammunition.

¶ 21 Where, as here, the defendant was not found in actual possession of the ammunition, the State must prove the defendant constructively possessed the ammunition. *People v. Sams*, 2013 IL App (1st) 121431, ¶ 10. Constructive possession is often proved with circumstantial evidence. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Circumstantial evidence does not require each link in the chain of circumstances be proven beyond a reasonable doubt; rather, it is sufficient if all the evidence, taken together, satisfies the trier of fact beyond a reasonable doubt that a defendant is guilty. *People v. Hall*, 194 Ill. 2d 305, 330 (2000).

¶ 22 To prove constructive possession, the State must establish that the defendant had (1) knowledge of the presence of the contraband and (2) immediate and exclusive control over the area where the contraband was found. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. Knowledge may be inferred from surrounding circumstances, including the defendant's actions, declarations, or other conduct, which indicate that the defendant knew the contraband's presence in the place it was found. *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002); *People v. Smith*, 288 Ill. App. 3d 820, 824 (1997). Control is shown by proving the defendant had the " 'intent and capability to maintain control and dominion' " over the contraband, even if he lacks personal present dominion over it. *Spencer*, 2012 IL App (1st) 102094, ¶ 17 (quoting *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992)).

¶ 23 Defendant maintains that the State did not present sufficient evidence to establish that he had knowledge of the ammunition or that he exercised immediate and exclusive control over the Grenshaw apartment such that the trier of fact could infer that he constructively possessed the ammunition. We disagree.

¶ 24 Here, when viewed in the light most favorable to the State, we find the evidence sufficient to prove beyond a reasonable doubt that defendant constructively possessed the ammunition recovered during the execution of the search warrant. Defendant's admission to Special Agent Coleman that "you guys got me," and that the ammunition was his own that he purchased from "a Hype" for $5 established his knowledge of the contraband. *Spencer*, 2012 IL App (1st) 102094, ¶ 17 (knowledge may be shown by evidence of a defendant's declarations).

¶ 25 Additionally, defendant was present in the apartment at the time of the search, he was in possession of a key to the front door of the apartment, and men's clothing and shoes were in the

master bedroom. Defendant requested some items of clothing from the master bedroom at the time of the search, thereby linking himself to the clothes in the closet. Defendant additionally told Coleman that he stayed at the apartment "from time to time." See *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 29 (collecting cases describing evidence that may be used to support an inference of control over a premises where contraband was recovered, including the defendant's presence in addition to clothing, mail, bills, and a key to the residence).

¶ 26 While the bond slip addressed to defendant listed a different address, we note it was recovered from behind the television, indicating he had left it at the apartment at some point prior to the search. These facts, taken together, were sufficient to support a reasonable inference that defendant had control over the area where the ammunition was recovered. *Id*. ("In deciding whether constructive possession has been shown, the trier of fact is entitled to rely on reasonable inferences of knowledge and possession, absent other factors that might create a reasonable doubt as to the defendant's guilt."). Accordingly, we cannot say that the "evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Givens*, 237 Ill. 2d at 334.

¶ 27 In reaching this conclusion, we are not persuaded by defendant's argument that, in order to sustain his conviction for UUWF, the State was also required to prove that he possessed the ammunition "in his abode." See 720 ILCS 5/24-1.1(a) (West 2014) ("It is unlawful for a person to knowingly possess on or about his person or on his land or in his own abode *** any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State."). Defendant argues that possession of the ammunition "in his abode" is an essential element of the crime, and the State failed to prove the Grenshaw apartment was his abode.

¶ 28 This court, relying on *People v. Gonzalez*, 151 Ill. 2d 79, 87 (1992)), previously held that the UUWF statute did not require the State to prove the defendant possessed the firearm in a particular location. *People v. Hester*, 271 Ill. App. 3d 954, 956 (1995); see also *People v. Garcia*, 2015 IL App (1st) 131180, ¶¶ 72-73 (discussing, on appeal from a postconviction dismissal, the sufficiency of the factual basis of a guilty plea for UUWF and noting that possession of a firearm and a prior felony conviction are "the only two essential elements of the offense of UUWF").

¶ 29 In *Gonzalez*, our supreme court stated, "The elements of [UUWF] are: (1) the knowing possession or use of a firearm and (2) a prior felony conviction. There is no requirement in section 24-1.1 that the offender be using or possessing any particular type of firearm or that he be doing so in any particular place or manner." (Internal citations omitted.) *Gonzalez*, 151 Ill. 2d at 87. Accordingly, the State was not required to prove that the Grenshaw apartment was defendant's abode.

¶ 30 Moreover, although the charging document stated that defendant "knowingly possessed in his abode any firearm ammunition," the use of "abode" was mere surplusage. See *People v. Adams*, 46 Ill. 2d 200, 204 (1970) ("[W]here an indictment charges the elements essential to an offense under the statute, other matters unnecessarily appearing in the indictment may be rejected as surplusage."). As previously discussed, the information in this case contained the essential elements of the offense: knowing possession of ammunition and a prior felony for delivery of a controlled substance.

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

¶ 32 Affirmed.