

2019 IL App (1st) 170951-U

No. 1-17-0951

Order filed March 22, 2019

Fifth 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).

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 3709
)	
DARREN MCCLINE,)	Honorable
)	Lawrence E. Flood,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence presented at trial was sufficient to prove that defendant constructively possessed a firearm.

¶ 2 Following a bench trial, defendant, Darren McCline, was convicted of being an armed habitual criminal (AHC) (720 ILCS 5/24-1/7(a) (West 2016)) and possession of heroin with intent to deliver (720 ILCS 570/401(a)(1)(A) (West 2016)) and sentenced to eight years' imprisonment on each charge, to be served concurrently. On appeal, defendant argues that the

State did not prove beyond a reasonable doubt that he constructively possessed the firearm recovered from a search of an apartment. We affirm.¹

¶ 3 Defendant was arrested following the execution of a search warrant at an apartment in the 4300 block of West Wilcox Street. Based on the contraband recovered during the search, defendant was charged with AHC, two counts of unlawful use or possession of a firearm by a felon (UUWF), one count of possession of heroin with intent to deliver, and one count of possession of cannabis with intent to deliver. Defendant waived his right to a jury trial, and the case proceeded to a bench trial.

¶ 4 Sergeant Antonio Valentin with the Chicago Police Department testified that on January 23, 2014, about 3:30 p.m., several Chicago police officers executed a search warrant on the second floor apartment of a building located on the 4300 block of West Wilcox Street (“apartment”). The officers, which included Chicago police officers Carlos Rojas, Abdul Jones, Noel Esquivel, and Kopacz,² knocked on the apartment door, announced their office, and entered the apartment. When Sergeant Valentin entered the apartment, he observed defendant in the front living room moving towards a front bedroom. Defendant was holding a blue vest-like jacket, and Sergeant Valentin observed him toss it into the front bedroom. Also in the apartment were Keyshawn Eli, Montinease Clark, Tonya McCline, and two small children. All of the occupants of the apartment were detained in the living room in order to effectuate a safe search.

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

² The first name of Officer Kopacz does not appear in the record.

¶ 5 After defendant was seen tossing the jacket into the front bedroom, Sergeant Valentin observed Officer Esquivel enter that bedroom and return with the jacket. A search of that jacket revealed suspect heroin, which was tendered to Sergeant Valentin.

¶ 6 Sergeant Valentin, who remained in the living room, testified as to the evidence each officer recovered and tendered to him during the search. Officer Jones tendered a plastic bag containing five Ziploc baggies each with a Batman logo, containing a white powdered substance. Officer Kopacz tendered a cotton bag containing five .45 caliber rounds of ammunition. Officer Esquivel tendered suspect cannabis. The officers recovered these items in the second bedroom. Sergeant Valentin testified that Officer Rojas tendered to him a loaded .45 caliber weapon that was recovered from the front bedroom. Sergeant Valentin conducted a custodial search of defendant and recovered \$214. Sergeant Valentin placed all recovered evidence in a bag to be inventoried at the police station. Defendant was then arrested and transported to the police station. No other occupants of the apartment were arrested.

¶ 7 During processing, defendant stated to Sergeant Valentin that he sells heroin to support his family and that he does not sell to women or children. Sergeant Valentin also testified that defendant told him that his mother uses heroin, but he does not sell to her and instead “sends her down the block.” When Sergeant Valentin asked for his address, defendant provided the address where the search took place.

¶ 8 On cross-examination, Sergeant Valentin testified that defendant stated that he lived at that address with the mother of his children, but he confirmed that information was not included in any written reports. Sergeant Valentin acknowledged that the officers did not recover bills, a lease, or keys to the apartment to show that defendant resided there.

¶ 9 Officer Noel Esquivel testified that he too observed defendant toss a blue jacket into the front bedroom. He recovered the jacket and found several Ziploc bags, some with a Batman logo, containing a white powder substance, suspected to be heroin. From the second bedroom, Officer Esquivel recovered a shoebox inside of which were Ziploc bags containing a green, leafy substance, suspected to be cannabis.

¶ 10 Officer Carlos Rojas testified that after the suspect heroin was recovered from the blue jacket, he advised defendant of his *Miranda* rights and defendant indicated that he understood those rights. Officer Rojas then asked defendant if there was anything else in the apartment. Defendant informed Officer Rojas that there was a gun in the front room. Officer Rojas pointed to the front bedroom and asked if that was the room defendant was referring to and defendant responded in the affirmative. Officer Rojas acknowledged that defendant did not say the gun belonged to him. In the front bedroom, Officer Rojas recovered a loaded .45 caliber firearm underneath the bed. The firearm was tendered to Sergeant Valentin. Later, at the station, Officer Rojas asked defendant if he had a firearm owner's identification (FOID) card, to which defendant responded in the negative.

¶ 11 On cross-examination, Officer Rojas stated that he did not ask defendant whether it was his gun. Officer Rojas never saw defendant with the gun and there was no evidence recovered that would indicate that defendant lived in the apartment. The officer acknowledged that he "made out a report that indicated that [defendant] said, the gun's mine, but none of the other stuff is mine," and testified that it was correct that defendant said that. He was then asked, "[d]id [defendant] say to you, all I have is a gun in the front room; the rest of the stuff is not mine." Again, Officer Rojas responded that was correct. Officer Rojas never had defendant memorialize

in a signed writing the statement that “the gun is mine.” Later, still during cross-examination, Officer Rojas was again asked if it was correct that defendant told the officer that the gun in the front room was his. He responded that defendant said “[t]hat there was a gun located in the front room” and it was correct that defendant never stated that the gun was his.

¶ 12 On re-direct, Officer Rojas was asked if defendant’s answer to his question as to whether there was anything else in the apartment was quoted in his report, he responded that was correct. He was then asked if defendant’s response was “all I have is a gun in the front room; the rest of that stuff is not mine[.]” Officer Rojas responded that was correct.

¶ 13 On re-cross-examination, Officer Rojas again stated he did not ask defendant if he had a gun in the house. The court then asked Officer Rojas if the quote from the report was correct, and Officer Rojas stated that it was.

¶ 14 The parties stipulated that the white powder substance tested positive for heroin and the green, leafy substance tested positive for cannabis. The State then entered into evidence certified copies of defendant’s convictions for possession of a controlled substance with intent to deliver and aggravated battery. At the close of the State’s case, defendant moved for a directed verdict, which the court denied. After the matter was continued for defendant to present his case, the defense rested without presenting any evidence. The trial court delayed ruling to review the evidence. Defendant later moved to reopen his case to present the testimony of Montinease Clark.

¶ 15 Ms. Clark testified that she lived in the apartment with her two children, Keyshawn Eli, Kierra Jones, and Quantrell Clark (her brother). Defendant, who was the father of her two children, had never lived there. On the day of the search, Ms. Clark was in the apartment with

her children, defendant, Mr. Eli, Tonya McCline (defendant's mother), and Ms. Jones. While Ms. Clark was in a back room folding laundry with defendant, around fifteen police officers forced entry into the apartment from both the front door and the back door. The officers immediately threw Ms. McCline against a wall and handcuffed her. She stated that Mr. Eli then ran out the back door before police officers brought him back into the apartment. Ms. Clark saw the officers place defendant in handcuffs and all occupants were then detained in the front living room. A police officer broke into the locked front bedroom and returned with a gun. Police also found drugs in a box in another bedroom and in the pocket of a blue jacket that was on the couch. She testified that her brother lived in the front bedroom and that the blue jacket belonged to Mr. Eli. On cross-examination, Ms. Clark testified that in January 2014 she was injured and defendant and his mother had been helping her care for the children at the apartment. She admitted that she heard but did not see the officers throw Ms. McCline against the wall.

¶ 16 The trial court found defendant guilty of AHC, two counts of UUWF, and possession of heroin with intent to deliver. The court found defendant not guilty of possession of cannabis with intent to deliver. In announcing its ruling, the court noted, in pertinent part, that it found defendant constructively possessed the gun based on his statements to police that there was a gun in the front bedroom and that he lived at the apartment. Defendant subsequently filed a motion for a new trial, which the court denied. The court merged the two counts of UUWF into the AHC count and sentenced defendant to eight years' imprisonment for both AHC and possession of heroin with intent to deliver, to be served concurrently.

¶ 17 On appeal, defendant argues that the State failed to prove beyond a reasonable doubt that he was in constructive possession of the firearm. When faced with a challenge to the sufficiency

of the evidence, we must determine whether, “after viewing the evidence in a light most favorable to the State, any rational trier of fact could find all the elements of the crime proven beyond a reasonable doubt.” *People v. White*, 2017 IL App (1st) 142358, ¶ 14. “All reasonable inferences from the evidence must be drawn in favor of the prosecution.” *People v. Hardman*, 2017 IL 121453, ¶ 37. It is the fact finder’s role “to determine the credibility of witnesses, to weigh their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence.” *People v. Williams*, 193 Ill. 2d 306, 338 (2000). For that reason, upon review, we will not reweigh the evidence or substitute our judgment for that of the fact finder. *White*, 2017 IL App (1st) 142358, ¶ 21. However, the great deference given to the trier of fact’s determinations is not without limits; the reviewing court may reverse a conviction where the evidence “is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant’s guilt.” *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 18 Defendant was found guilty of AHC and UUWF. 720 ILCS 5/24-1.7(a), 1.1(a) (West 2016). Pursuant to AHC, the State was required to prove beyond a reasonable doubt that defendant (1) possessed a firearm and (2) had been convicted two or more times of certain selected offenses. 720 ILCS 5/24-1.7(a) (West 2016). The elements of UUWF require that defendant (1) knowingly possessed on or about his person or in his residence a firearm or firearm ammunition and (2) had been convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2016). Defendant does not dispute that his prior criminal convictions satisfy the relevant elements of AHC and UUWF. Rather, his sole argument on appeal is that the State failed to establish that he constructively possessed the firearm.

¶ 19 Where, as here, a defendant is not found in actual possession of the firearm, the State must prove constructive possession. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. To establish constructive possession, the State must prove beyond a reasonable doubt that the defendant: (1) had knowledge of the presence of the firearm and (2) exercised immediate and exclusive control over the area where the weapon was found. *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). 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 'intent and capability to maintain control and dominion' over an item, even if he lacks personal present dominion over it." *Id.* (quoting *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992)). "Circumstantial evidence may be used to prove possession and knowledge." *People v. Wright*, 2013 IL App (1st) 111803, ¶ 25. "Knowledge and possession are factual issues, and the trier of fact's findings on these questions will not be disturbed unless the evidence is so unreasonable, improbable, or palpably contrary to the verdict that it creates a reasonable doubt as to defendant's guilt." *People v. Wilkerson*, 2016 IL App (1st) 151913, ¶ 65 (quoting *People v. Brown*, 277 Ill. App. 3d 989, 998 (1996)).

¶ 20 Defendant does not dispute that he knew of the presence of the firearm in the apartment where the record shows he informed police of its presence in the front bedroom. Instead, he argues that the State failed to prove beyond a reasonable doubt that he exercised immediate and exclusive control over the area where the firearm was found.

¶ 21 After viewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could find beyond a reasonable doubt that defendant resided in the apartment

where the firearm was recovered and thus exercised control over the area where the firearm was found. See *People v. Moore*, 2015 IL App (1st) 140051, ¶ 27 (stating that a defendant's residency at the location where the contraband is recovered has been held to be sufficient evidence of control). The record shows that when the officers executed the search warrant defendant was inside the apartment with Ms. Clark, their two children, defendant's mother, and Mr. Eli. When Sergeant Valentin entered the apartment, he observed defendant in the front living room moving towards a bedroom. Defendant was holding a blue vest-like jacket, and Sergeant Valentin saw him toss it into the front bedroom where the gun was subsequently recovered. This testimony was corroborated by Officers Esquivel and Rojas. After being arrested, defendant told Sergeant Valentin that he sells drugs to support his family and lived in the apartment with Ms. Clark. During processing, when asked for his address, defendant provided the address where the search took place and stated that he lived there with the mother of his children.

¶ 22 Additionally, there was some evidence in the record that defendant claimed ownership of the gun. At trial, there was conflicting testimony from Officer Rojas as to whether defendant stated there was a gun in the front bedroom or that he had a gun in the front bedroom. The latter of which implies that defendant claimed ownership of the gun. Officer Rojas reiterated during his testimony that he did not ask defendant if he had a weapon or if the gun was his, but only whether there was anything else in the apartment. However, Officer Rojas also confirmed multiple times that the quote contained in the report—"all I have is a gun in the front room, the rest of that stuff is not mine,"—was correct. Viewing the evidence in the light most favorable to the State, there was sufficient evidence that defendant claimed ownership of the gun. Defendant's statement and the inference that the gun was his is corroborated by the evidence

discussed above, *e.g.* that defendant threw his jacket in the same room as the gun and told the officer that he lived at that address with the mother of his children. Nonetheless, even assuming defendant's statement was that there was a gun in the bedroom, not that all he had was a gun in the bedroom, there is sufficient evidence to reasonably infer that defendant resided at the apartment.

¶ 23 As stated previously, it is the trier of fact's role to determine a witness's credibility and the weight to be given to testimony, as well as to draw reasonable inferences from the evidence. *People v. Brown*, 2015 IL App (1st) 130048, ¶ 31. Accordingly, the trier of fact's findings as to credibility are given great weight. *Wheeler*, 226 Ill. 2d at 115. Here, the trial court viewed the evidence, listened to the testimony presented at trial, and ultimately determined that defendant constructively possessed the gun.

¶ 24 Defendant cites to *People v. Terrell*, 2017 IL App (1st) 142766, to support his contention that there was insufficient evidence to prove constructive possession. In that case, defendant was convicted of possession of a controlled substance after police executed a search warrant on an apartment. *Terrell*, 2017 IL App (1st) 142726, ¶¶ 1, 4. The search revealed a hidden compartment in a wall containing cannabis, drug paraphernalia, and multiple firearms. *Id.* ¶¶ 8, 9. Additionally, during the search, the police recovered two prescription bottles and an adult probation card bearing the defendant's name, the defendant's passport, and a framed photograph that included the defendant from the living room. *Id.* ¶¶ 5, 7. In the dining room, police found a duffel bag containing men's large-sized clothing. *Id.* ¶ 6. During the search, an FBI agent spotted the defendant in a truck parked in front of the apartment. *Id.* ¶ 10. Later, the police discovered a hidden compartment in the truck that resembled the one found inside the apartment. *Id.* ¶ 11. The

police brought the defendant into the apartment, where he was later arrested. ¶ 10. This court stated that the trial court had not been “presented with a plethora of evidence tying [the defendant] to either the apartment or the hidden contraband” and concluded that the State had not proved constructive possession and reversed the trial court. ¶¶ 21, 31.

¶ 25 Here, unlike *Terrell*, defendant was present in the apartment at the time of the search and he stated to the police that he lived there. Defendant directed police to the location of the firearm, which was in the same room that he had tossed his jacket upon their arrival. The court in *Terrell* also noted that the evidence presented to show that the defendant resided at that apartment was not uncontroverted. *Id.* ¶ 22. There, some of the evidence recovered listed a different address for the defendant than the one searched and the owner of the apartment testified that he did not know who defendant was. *Id.* That is not the case here. Other than Ms. Clark’s testimony, there is no contradictory evidence of defendant’s residence.

¶ 26 Finally, although defendant points to the lack of physical evidence, such as clothing, mail, or keys connecting him to the apartment (*People v. Lawton*, 253 Ill. App. 3d 144, 147 (1993) (“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.”)), there was nevertheless sufficient evidence in the record for the trier of fact to reasonably infer that he resided there and he exercised control over the firearm (*People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003) (stating that the fact finder can rely on an inference of knowledge and control absent other factors that might create a reasonable doubt)). Stated differently, we cannot say that the court’s factual finding that defendant resided in the apartment was so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt as to defendant’s guilt.

¶ 27 Accordingly, because there was sufficient evidence presented at trial that defendant had knowledge of the gun and resided at the address where the search warrant was executed, we conclude that the trial court did not err in finding that defendant constructively possessed the firearm.

¶ 28 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 29 Affirmed.