

No. 13-1941

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 10 CR 3381
)	
TERRELL ANDERSON,)	
)	Honorable Thomas Davy
Defendant-Appellant.)	Judge Presiding

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Neville and Liu concurred in the judgment.

ORDER

¶ 1 *Held:* There was evidence from which a jury could find beyond a reasonable doubt that the defendant constructively possessed weapons found during the execution of a search warrant. The armed habitual criminal and unlawful use of a weapon by a felon statutes as applied to defendant did not violate his Second Amendment rights even though the weapons were found in a private residence. The sentence imposed by the trial court was not excessive.

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¶ 2 Defendant Terrell Anderson was convicted of being an armed habitual criminal and of unlawful use of a weapon by a felon. The trial court sentenced him to 22 years in prison.

Defendant appeals his convictions and his sentence. We affirm.

¶ 3

BACKGROUND

¶ 4 On January 23, 2010, officers of the Chicago Police Department executed a search warrant of the residence located at 11814 South Princeton Avenue in Chicago. The officers forced entry into the residence and they observed an elderly man sitting at a dining room table eating. They then observed Defendant Terrell Anderson sitting on a couch in the living room. The officers also came to learn that defendant's mother and defendant's two daughters were located upstairs in an attic area that had been converted to a bedroom. The officers assembled all of the people that were present in the living room and then began to conduct a search.

¶ 5 One of the officers present, Sergeant Blanks, testified that a first floor bedroom drew his attention because it was secured with a padlock. Defendant told the officers that the first floor bedroom with the padlock was his daughters' room, and that he slept on the couch. After defendant denied having a key to the padlock, the officers forced entry into the room.

¶ 6 Another of the officers, Officer Gadlen, testified that he entered the formerly padlocked room and became suspicious because the room's floor was covered by linoleum, but the closet floor was covered by unsecured carpeting. Gadlen had participated in executing approximately 200 search warrants. After lifting up the carpeting in the closet, Gadlen observed what he believed to be a trapdoor. Gadlen testified that he obtained a crowbar and opened the trapdoor where he observed and recovered two bags of money containing more than \$13,000, six handguns, two assault rifles, and a shotgun. Both of the assault rifles and five of the six handguns were

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loaded and one handgun had a laser sight. The shotgun was not loaded but there were shotgun shells nearby inside the hidden compartment. During the search, the officers also recovered narcotics and materials used to package narcotics for distribution. Gadlen testified that he also observed a large amount of money on the dresser along with designer men's clothing, men's shoes, and male toiletries throughout the room and in the closet. Gadlen did not see any clothing or other items that would have led him to believe that the first floor bedroom was occupied by young girls, an older woman, or an older man. Sergeant Blanks affirmed that the bedroom contained male clothing and toiletries. The officers searched defendant's person and found a key to the residence and a key that opened the padlock.

¶ 7 Defendant was arrested and charged with 21 crimes: one count of being an armed habitual criminal, seventeen counts of unlawful use of a weapon by a felon, and three narcotics-related counts. The State proceeded to trial on the armed habitual criminal count and unlawful use of a weapon by a felon counts. At the close of the State's case in chief, the parties stipulated that defendant had two prior felony convictions that qualified as the requisite underlying convictions for purposes of the armed habitual criminal and unlawful use of a weapon by a felon statutes.

¶ 8 Defendant introduced evidence on his behalf. Defendant's girlfriend, Erika Robinson, testified that she was dating defendant at the time of his arrest and that she lived with him. She stated that she and defendant did not live at the address searched, but at 13030 South King Drive. Robinson testified that defendant's clothes were at the South King residence and that defendant dropped her off at work prior to his arrest that day. Robinson testified that defendant spent every night with her and she did not believe that defendant had any family members that lived at the

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South Princeton residence. Robinson acknowledged that defendant's name was not on the lease for the South King Drive apartment and that she did not have any bills or other documents tying defendant to the apartment.

¶ 9 Defendant's mother, Novelda Stanley, testified that she lived at the South Princeton residence with her father, defendant's daughters, and the daughters' mother. Stanley testified that she has four sons, all of whom occasionally visit her and stay overnight. Stanley testified that the first floor room with the padlock was used by defendant's daughters' mother, but that she had seen male clothing in the room because sometimes her sons leave clothes lying around. Stanley also testified that defendant did not live at the South Princeton residence, but that he came by sometimes to see his daughters. She also claimed that the officers were tearing up the bedroom for three hours and that they used saws, drills, and hammers trying to find something.

¶ 10 The jury found defendant guilty of being an armed habitual criminal and of the unlawful use of a weapon by a felon. The case proceeded to sentencing and, after the trial judge heard arguments in aggravation and mitigation, the trial court sentenced defendant to 22 years in prison on the armed habitual criminal count. Defendant now appeals arguing: (1) that he was not proved guilty of being an armed habitual criminal or of unlawful use of a weapon by a felon beyond a reasonable doubt; (2) that the armed habitual criminal and the unlawful use of a weapon by a felon statutes are unconstitutional as applied to him; and (3) that the sentence imposed by the trial court is excessive.

¶ 11

ANALYSIS

¶ 12 The standard of review on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could

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have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). It is not the reviewing court's function to retry the defendant. *People v. Betance-Lopez*, 2015 IL App (2d) 130521, ¶ 40. The trier of fact assesses the credibility of the witnesses, determines the appropriate weight of the testimony and resolves conflicts or inconsistencies in the evidence. *People v. Johnson*, 2015 IL App (1st) 123249, ¶ 21. A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *Betance-Lopez*, 2015 IL App (2d) 130521, ¶ 40. To sustain a conviction on criminal charges, the State must prove every element of an offense beyond a reasonable doubt. *People v. Steele*, 2014 IL App (1st) 121452, ¶ 20.

¶ 13 Defendant was convicted of being an armed habitual criminal. A person commits the offense of being an armed habitual criminal if he or she receives, sells, possesses, or transfers any firearm after having been convicted two or more times of certain delineated offenses. 720 ILCS 5/24-1.7. The parties stipulated that defendant had been convicted of the qualifying underlying felonies. Defendant, however, contends that the State failed to prove beyond a reasonable doubt that he was in possession of any of the firearms. Defendant was also convicted of unlawful use of a weapon. A person commits the offense of unlawful use of a weapon by a felon if he knowingly possesses a firearm on or about his person after having been convicted of a felony. 720 ILCS 5/24-1.1(a). Defendant does not contest that he was previously convicted of a requisite felony, but contends that the State failed to prove that he possessed a firearm beyond a reasonable doubt.

¶ 14 Possession, for purposes of the statutes at issue, may be actual or constructive. *People v. Hannah*, 2013 IL App (1st) 111660, ¶ 28; *People v. Nesbit*, 398 Ill. App. 3d 200, 211 (2010). In this case, defendant did not physically possess the weapons so he could only have committed the

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offenses if the jury found that he constructively possessed the weapons. The State can prove constructive possession by proving that the defendant had knowledge of the presence of the weapon, and had immediate and exclusive control over the area where the weapon was found. *Nesbit*, 398 Ill. App. 3d at 209.

¶ 15 The trial judge instructed the jury on constructive possession. Before deliberations, the trial judge told the jury that "a person has constructive possession when he lacks actual possession of a thing, but he has both the power and the intention to exercise control over a thing either directly or through another person." Whether a defendant possessed an item is a question of fact for the jury. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007). The jury considered the evidence and found defendant guilty.

¶ 16 The State introduced evidence that when the officers entered the residence, defendant was lying on a couch near the bedroom where the weapons were found. The first floor bedroom was the only room that was padlocked, and defendant had the key. There was no evidence presented that anyone else had a key to the room. Defendant was also in possession of a key to the residence. Having keys to a residence constitutes evidence of constructive possession. *People v. Chicos*, 205 Ill. App. 3d 928, 935 (1990). And the evidence is stronger when an individual has keys to an individually padlocked room. In the bedroom, the officers observed men's clothing and men's toiletries that, in their experience, they believed belonged to a younger man, in particular, to defendant. Despite defendant's statement that the room belonged to his daughters, the officers did not observe any items that would have indicated that the room belonged to young girls. The officers also did not observe any items that indicated that the room belonged to defendant's mother or the elderly man that was present. There is evidence of constructive

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possession when personal items in close proximity to the contraband belong to one occupant and not the other occupants. *People v. McCoy*, 295 Ill. App. 3d 988, 994-95 (1998). Along with fabricating who occupied the room, defendant also misrepresented his identity to the police, both untruths may have been considered by the jury to be consciousness of guilt. *People v. Mister*, 2015 IL App (4th) 130180, ¶ 107. Defendant has a history with firearms including an arrest for possession of a firearm without a Firearm Owner Identification card. Defendant presented evidence to the jury that he did not live at the residence and that his clothing was at the other residence, and he urged the jury to find that there was a reasonable doubt on the question of possession. But the jury rejected defendant's position. Evidence of constructive possession is often entirely circumstantial. *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). A reviewing court will not disturb the jury's verdict merely because it could have determined the credibility of the witnesses differently or could have drawn different inferences from the facts. *People v. Jackson*, 231 Ill. App. 3d 801, 806 (1992). Considering all of the evidence, it is reasonable that a person could have come to the conclusion that the jury did.

¶ 17 Defendant also argues that the armed habitual criminal and unlawful use of a weapon by a felon statutes are unconstitutional as applied to him in this case because the weapons were found in a private residence. Defendant contends that the statutes violate his Second Amendment right to possess a firearm in his home. However, the Second Amendment does not prohibit laws barring felons from possessing firearms. *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). It does not matter if the gun is inside one's home. *People v. Robinson*, 2011 IL App (1st) 100078, ¶ 26 (leave to appeal denied at *People v. Robinson*, 979 N.E.2d 886 (Ill. Sep 26, 2012) (Table, No. 114190)). The jury in this case found that defendant was in possession of six handguns, two

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assault rifles, and a shotgun, seven of the weapons being loaded. There was no Second Amendment violation.

¶ 18 Defendant's final argument is that his sentence should be reduced because it is excessive. Defendant was sentenced to 22 years in prison. The sentencing range for the offense of being an armed habitual criminal is anywhere from six to thirty years. 720 ILCS 5/24-1.7(b); 730 ILCS 5/5-4.5-25(a). A sentence that falls within the statutory range is presumptively proper and does not constitute an abuse of discretion unless it is manifestly disproportionate to the nature of the offense. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007). Here, defendant had been convicted of five prior felonies and had two other pending felony cases at the time this case went to trial. Defendant was found to have possessed seven loaded guns, nine guns total, \$13,000 in cash, as well as narcotics. All of these items were recovered from the home in which defendant's two young daughters lived. The trial court also expressed doubt about defendant's rehabilitative potential. Considering the totality of the circumstances, we cannot say that the trial court abused its discretion when fashioning defendant's sentence.

¶ 19 CONCLUSION

¶ 20 Accordingly, we affirm the judgment of the trial court.

¶ 21 Affirmed.