2013 IL App (1st) 091954-U

FIRST DIVISION
OCTOBER 21, 2013

No. 1-09-1954

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 06 CR 27174
	)	
ROBERT HASTINGS,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Connors and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied the defendant's pretrial motion to quash search warrant and suppress evidence; evidence was sufficient to establish the defendant's guilt beyond a reasonable doubt.

¶ 2 Following a bench trial in the circuit court of Cook County, defendant Robert Hastings was convicted of possession of a controlled substance with intent to deliver and unlawful use of a weapon by a felon (UUWF). Subsequently, the defendant was sentenced to concurrent terms of 18 years and 7 years of imprisonment. On appeal, the defendant argues that: (1) the trial court erred in denying his motion to quash search warrant and suppress evidence; and (2) the State failed to establish

beyond a reasonable doubt that he committed the offenses. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 On November 11, 2006, Chicago police officers executed a search warrant at a residence located at 5407 South Paulina Street in Chicago, Illinois, where they recovered suspect cocaine and a .45-caliber handgun from the premises. Thereafter, the defendant was arrested and charged with one count of possession of a controlled substance with intent to deliver (count I), and two counts of UUWF (counts II and III). The search warrant was prepared as a result of information received from a confidential informant to the police that an individual named Robert Hastings was in possession of a black semiautomatic pistol at the subject residence. The search warrant specified the location to be searched as "5407 South Paulina, a single family residence, Chicago, Cook County IL" and allowed for the seizure of any "[i]llegal firearms, any ammunition, any proof of residency for Robert Hastings."

¶ 5 On January 10, 2008, the defendant filed a pretrial motion to quash search warrant and suppress evidence (motion to quash and suppress), arguing that the search warrant's description of the premises as a "single family residence" failed to describe the place to be searched with particularity, because the premises at issue was actually a three-unit apartment building and not a single-family home. The motion to quash and suppress alleged that the police officers "should have ceased from proceeding with the execution of the search warrant" when they were confronted with the fact that the search warrant erroneously described the premises as a single-family residence. The motion to quash and suppress asked the trial court to quash the search warrant and suppress all

evidence recovered as a result of the execution of the search warrant.

¶ 6 On March 21, 2008, at a hearing on the motion to quash and suppress, Sergeant Michael Poppish (Sergeant Poppish) testified that on November 10, 2006, he prepared a search warrant for the residence at 5407 South Paulina Street, and drove by the front and back of the residence with the confidential informant in order to confirm the location of the premises and to determine the best way to gain entry into the residence. Sergeant Poppish observed that the exterior of the residence appeared to be a "cape cod" styled home "with an upstairs, a main floor and *** a basement." Sergeant Poppish further conducted an investigation on the Cook County assessor's website, where he viewed a photograph of the subject property. The Cook County assessor's website listed the building at 5407 South Paulina Street as a single-family residence. Sergeant Poppish testified that he relied on the information gathered from the Cook County assessor's website and the confidential informant, as well as his own observations of the exterior of the home, in preparing the search warrant. Sergeant Poppish testified that, at approximately 1:30 p.m. on November 11, 2006, he and other police officers executed the search warrant at the property at issue. Sergeant Poppish and the other police officers walked through the backyard of the property and approached the side rear door, which was locked. Sergeant Poppish then knocked on the side rear door, announced his presence, received no response, and directed an officer to open the door by force with a battering ram. Sergeant Poppish described the space just inside the side rear door as an "enclosed porch" or an "enclosed back addition on the back of the house" with wooden stairs leading into the building. Sergeant Poppish did not recall seeing an entrance to a basement in that area. Once the door was forced open, Sergeant Poppish and the other police officers ascended the wooden stairs to the main

level of the house, where they encountered another locked door at the top of the stairs. The police officers again used force to open the locked door at the top of the stairs, which opened into a kitchen in the home. Upon entry, Sergeant Poppish observed the defendant emerge from the front bedroom, where the police recovered drugs and a firearm. Sergeant Poppish recalled seeing a staircase "going to the upstairs," but could not recall where that upstairs staircase was located. At the hearing, defense counsel introduced several photographs, including photographs of the back of the residence which depicted three utility meters on the building structure. When asked about the photographs depicting the back of the residence, Sergeant Poppish testified that he did not remember all of the details about the back of the house.

¶ 7 On cross-examination, Sergeant Poppish testified that, while driving by the property with the confidential informant on November 10, 2006, he did not see the door at the front of the property that led to the basement level of the residence. Sergeant Poppish testified that it was only after the defendant had filed the motion to quash and suppress, that he first learned that the subject property was not a single-family house.

¶ 8 Edgar De La Rosa (Edgar) testified at the hearing that he was the owner of the property at 5407 South Paulina Street in Chicago. He purchased the property as a single-family house, which he converted into three separate apartments for rent–a unit on the main floor, a unit in the attic and a unit in the basement level. Each of the apartment units had two bedrooms, a living room, kitchen and a bathroom, and there was no way to access an apartment unit from the inside of another apartment unit. Edgar testified that each of the three units could be accessed by entering the enclosed porch in the rear portion of the house, that stairwells from the enclosed porch area led to

each unit, and that the main floor unit and the basement unit also had entrances in the front of the house. Edgar testified that the property had three electric meters on the rear of the building, that there was only one gas meter in the building, and that the gas bill remained in Edgar's name. Edgar did not notify either the city or county that he had converted the property into a three-unit dwelling for rent because he would have had to pay more taxes.

¶ 9 In denying the motion to quash and suppress, the trial court found that visually, there was nothing about the front of the building that would indicate that it was a multi-family dwelling. The trial court further found that there was only one side rear door that provided access to the enclosed porch. The trial court then made the following findings:

> "So, I would note that when the officers got the search warrant, they could reasonably be expected to believe it was a single family residence. The only contradictory information with the 3 meters on the back and that would be belied by what was on the assessor's site and the gas bill had they checked. I don't think they acted unreasonably here. When they entered into the porch area, even if he, and I say if, they had reason to think that there was another apartment there on the top, I would note that the officers searched the correct apartment."

The trial court further found the police officers' actions to be "entirely reasonable," and noted the similarity of the instant case to *People v. Luckett*, 273 Ill. App. 3d 1023 (1995). The trial court further stated that, by the time the police officers entered the premises, "it was then too late, they

couldn't just leave."

¶ 10 On March 3, 2009 and May 14, 2009, a two-day bench trial was held. Sergeant Poppish's trial testimony for the State was similar to his testimony at the hearing on the motion to quash and suppress. He testified that at approximately 1:30 p.m. on November 11, 2006, he and a team of police officers executed a search warrant for a single-family residence at 5407 South Paulina Street in Chicago, Illinois. Sergeant Poppish and his team knocked on a side rear door on the south side of the property, announced his presence, waited about 15 seconds, received no response, and another police officer opened the door by force with a battering ram. After gaining entry into the premises, Sergeant Poppish again announced his presence and ascended a small flight of stairs with his team onto the main level of the house. The police officers then encountered another locked door at the top of the stairs, which they again opened by force. Upon entry through the doorway at the top of the stairs, the police officers entered into a kitchen and again announced their presence, and Sergeant Poppish observed the defendant emerge from the front bedroom of the residence. Sergeant Poppish testified that he had seen a photograph of the defendant on a prior occasion, that the defendant did not attempt to flee, and that he did not see any other individuals in the home at that time. Sergeant Poppish then handcuffed the defendant, presented him with a copy of the search warrant, and began to search the front bedroom. In the front bedroom, Sergeant Poppish found a closet with a padlock and asked the defendant if he had a key to it. When the defendant made no response, Sergeant Poppish pried the closet open with tools. Sergeant Poppish then searched the closet, observed that there was both men's and women's clothing, and recovered two small safes or "fireboxes." The police pried open the first firebox, where Sergeant Poppish recovered multiple bags of suspect

cocaine. The second firebox contained three digital scales, an empty firearm magazine for a .45-caliber handgun, and numerous small plastic baggies. Sergeant Poppish then continued to search the closet and recovered a loaded .45-caliber handgun inside a men's sports coat. Officer Wilkosb also recovered two pieces of mail from the top of a dresser in the front bedroom. One of the pieces of mail was an energy bill addressed to the defendant at "5407 South Paulina in Chicago" for services that was provided at a different location, while the second piece of mail was a social security statement which was also addressed to the defendant at the subject property. Sergeant Poppish then finished his search of the residence. Sergeant Poppish testified that, prior to leaving the residence, a female was seen descending the stairs that led to the "upstairs" of the house, and other police officers spoke with her. Subsequently, the defendant was arrested and transported to a police station, where he was advised of his *Miranda* rights. The defendant then waived his *Miranda* rights and made incriminating statements to the police. The defendant informed both Sergeant Poppish and Officer Soraghen that he owned the handgun that was recovered by the police, and that he obtained the handgun from a "crackhead" in exchange for a "big dime bag of rock." The defendant explained that the "crackhead" who gave him the handgun was a regular customer. The defendant further informed them that he obtained the recovered cocaine from "a connection" he had. At no time did the defendant indicate that he lived in the attic apartment unit, rather than the main floor apartment unit. Thereafter, Sergeant Poppish inventoried the recovered items, which were later sent to the police crime laboratory.

¶ 11 On cross-examination, Sergeant Poppish testified that he did not see the three electric meters on the back of the building. He stated that no key to the padlocked closet or the residence was ever

found on the defendant nor anywhere in the front bedroom. No driver's license belonging to the defendant or photographs of the defendant were ever found in the front bedroom. Sergeant Poppish testified that he was in the front bedroom on the main floor of the residence during the entirety of the search, but that he was "pretty sure" other police officers on his team searched the upstairs area of the home as well. No other contraband was found by the police anywhere else on the main floor of the residence. He testified that the defendant did not provide the police with a written or videotaped statement of his confession to Sergeant Poppish and Officer Soraghen regarding the recovered handgun and cocaine. On redirect examination, Sergeant Poppish testified that once he recovered the handgun, which was the subject of the search warrant, he terminated his search and transported the defendant to a police station.

¶ 12 Following Sergeant Poppish's trial testimony, the parties stipulated that, if called to testify, forensic chemist Gail Rodek would testify to a reasonable degree of scientific certainty that the suspect cocaine recovered by the police from the property at issue tested positive for 485.9 grams of cocaine. The parties stipulated that the defendant had a prior conviction for murder (case No. 88 CR 12986).

¶ 13 Veronica Foster (Foster) testified for the defense that on November 11, 2006, she lived in a three-flat apartment building at 5407 South Paulina Street in Chicago, Illinois. She testified that she, her son and the defendant lived in the attic unit of the building, while her mom, her sister and another man lived in the main floor unit. Foster did not know the identity of the man who lived in the main floor unit with her mother and sister, but testified that the unidentified man occupied the front bedroom of the main floor unit. On November 11, 2006, Foster and the defendant were in the attic

unit when police officers arrived with their guns drawn and told everyone to "freeze," after which officers grabbed the defendant and took him downstairs. On cross-examination, Foster stated that the defendant was the boyfriend of Foster's mother, and that they had dated for three years at the time the search warrant was executed. Despite the fact that the defendant and Foster's mother were in a dating relationship, the defendant lived in the attic unit with Foster while Foster's mother shared the main floor unit with the unidentified man, who rented the front bedroom from Foster's mother. Foster was unsure if her mother kept any clothing in the front bedroom of the main floor unit.

¶ 14 Following Foster's testimony, the parties further stipulated that, if called to testify, forensic scientist Lisa Gilbert would testify that she examined the items recovered by the police from the subject property–including a safe, cartridges, one magazine, three scales, plastic bags–and that none of the items revealed any latent impressions suitable for comparison.

¶ 15 Following closing arguments, the trial court found the defendant guilty of possession of a controlled substance with intent to deliver (count I) and UUWF (count II).[1] On June 12, 2009, the defendant filed a motion for a new trial. On July 9, 2009, the trial court denied the motion for a new trial, and sentenced the defendant to concurrent prison terms of 18 years for the offense of possession of a controlled substance with intent to deliver and 7 years for the offense of UUWF.

¶ 16 On July 10, 2009, the defendant filed a notice of appeal.

¶ 17 ANALYSIS

¶ 18 We determine the following issues on appeal: (1) whether the trial court erred in denying the

[1]Count II (UUWF) merged with Count III (UUWF).

defendant's motion to quash and suppress; and (2) whether the State proved beyond a reasonable doubt that the defendant committed the offenses of which he was convicted.

¶ 19 We first determine whether the trial court erred in denying the defendant's motion to quash and suppress. In reviewing the trial court's denial of the motion to quash and suppress, the trial court's factual findings will be reversed only if they are against the manifest weight of the evidence. *People v. Caro*, 381 Ill. App. 3d 1056, 1066 (2008). The trial court's ultimate ruling in denying the motion is a question of law that we review *de novo*. *Id.*

¶ 20 The defendant argues that the trial court erred in denying his motion to quash and suppress, because the police officers violated his fourth amendment rights by executing a search warrant that allowed for the search of a "single family residence" when in fact the property at issue was a three-unit apartment building. Specifically, he contends that, during the execution of the search warrant, the police officers were uncertain about which of the three apartment units to search and impermissibly used their discretion to choose to search the main floor unit. He further argues that the search warrant failed to particularly describe the premises, and that, upon entry into the enclosed porch, the police officers would have seen separate locked entrances and staircases leading to the three units–at which point they should have terminated the search.

¶ 21 The State counters that the trial court properly denied the motion to quash and suppress because Sergeant Poppish acted reasonably when he surveyed the property in advance and relied on the information provided by the Cook County assessor's website. The State contends that the search warrant met the particularity requirement in describing the premises, and that it was reasonable for Sergeant Poppish to believe that the residence was a single-family home. The State argues that the

police officers did not impermissibly use their discretion to search the main floor unit.

¶ 22 The fourth amendment of the United States Constitution provides in pertinent part that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const., amend. IV; see Ill. Const. 1970, art. I, § 6 ("[n]o warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized"); see also 725 ILCS 5/108-7 (West 2010) ("[t]he search warrant shall command the person directed to execute the same to search the place or person particularly described in the warrant and to seize the instruments, articles or things particularly described in the warrant"). The purpose of limiting the issuance of warrants to only those that particularly describe the place to be searched is to prevent the use of general warrants and "to minimize the risk that those executing the warrant will mistakenly search a place other than the place authorized by the magistrate." *Luckett*, 273 Ill. App. 3d at 1028. "A search warrant's description is sufficient if it enables the officer executing the warrant, with reasonable effort, to identify the place to be searched." *People v. McCarty*, 223 Ill. 2d 109, 149 (2006). "The test for the sufficiency of the description is whether the place or person is so described as to leave the officers no doubt and no discretion as to the premises or persons to be searched." *People v. Economy*, 259 Ill. App. 3d 504, 512 (1994). Whether a warrant satisfies the requirements of particularity is determined on a case-by-case basis. *Id.* "The degree of particularity required varies with the nature of the case and the material or items to be seized." *Id.* Further, "[w]hether a particular search is reasonable depends on the facts and circumstances giving rise to the search as well as the nature of the search itself." *Id.* "The proper approach for evaluating compliance with the

fourth amendment is to objectively assess the officer's actions in light of the facts and circumstances before him at the time without regard to his underlying intent or motivation." *Id.*

¶ 23 We find that the trial court properly denied the defendant's motion to quash and suppress. In *Luckett*, a confidential informant told the police that drugs were being sold from the first floor apartment at 3604 West Monroe Street in Bellwood, Illinois. *Luckett*, 273 Ill. App. 3d at 1025. The confidential informant had been in the apartment earlier that day and had been allowed to sample some of the cocaine that was being sold. *Id.* The confidential informant named the defendant as one of the people present in the apartment. *Id.* Officer Brown and her partner then went to 3604 West Monroe Street at night and inspected the building from their car. *Id.* They saw a front and a rear door, and concluded that the building contained one apartment on the first floor and one on the second floor. *Id.* Although Officer Brown saw a side door, she could not see "that well" due to the darkness. *Id.* Officer Brown also called two utility companies and was informed that the utilities of the first floor apartment were billed to an alias for the defendant. *Id.* Based on these facts, Officer Brown obtained a warrant to search the defendant and the premises at "3604 West Monroe St., *1st Floor Apartment*." (Emphasis in original.) *Id.* at 1025-26. While executing the search warrant, the police officers learned that there were actually two first-floor apartments. *Id.* at 1026. The police officers had first forcibly gained entry into the front vacant apartment, but then recovered cocaine, drug-selling paraphernalia and a handgun in the rear first-floor apartment. *Id.* Thereafter, the defendant was arrested and charged with possession of a controlled substance with the intent to deliver. *Id.* at 1025. The trial court denied the defendant's motion to quash the search warrant and suppress the evidence. *Id.* at 1026. On appeal, the defendant argued that the search warrant lacked

particularity and was "facially vague" because it described the premises as a first-floor apartment, when, in actuality, the building at the address contained two first-floor apartments. *Id.* at 1027-28. The reviewing court rejected the defendant's argument, finding that the warrant did not lack particularity at the time it was issued. *Id.* at 1029. The *Luckett* court specifically stated that, based on the information gathered by the police from the drive-by inspection and the local utility companies, the police officers had no reason to believe the first floor at 3604 West Monroe Street contained more than one apartment. *Id.*

¶ 24 Likewise in *Maryland v. Garrison*, a case upon which the *Luckett* court relied, police obtained a warrant to search Lawrence McWebb and the premises at "2036 Park Ave., third floor apartment." *Maryland v. Garrison*, 480 U.S. 79, 80 (1987). At the time the police applied for the warrant, they believed that there was only one apartment on the premises described in the warrant. *Id.* In actuality, the third floor of the building was divided into two apartments–one occupied by McWebb and one by Garrison. *Id.* While executing the warrant, the police encountered McWebb and used his key to gain entrance to the first floor hallway as well as to a locked door on the third floor. *Id.* at 81. As they entered the vestibule on the third floor, they encountered Garrison standing in the hallway. *Id.* Both third-floor apartment doors were open. *Id.* Only after entering Garrison's apartment and finding contraband, did the police realize that the third floor contained two distinct apartments. *Id.* The police then discontinued the search of Garrison's apartment as soon as they became aware of the dual nature of the third floor. *Id.* Up until that point, however, all of the police officers reasonably believed that they were searching McWebb's apartment. *Id.* The trial court denied Garrison's motion to suppress the evidence that was seized from his apartment, but the

appellate court reversed and remanded for a new trial. *Id.* On appeal, the United States Supreme Court, after reviewing the police officers' pre-warrant investigation, held that the warrant had been validly issued because the objective facts available to the police prior to obtaining the warrant–such as information obtained from a reliable informant, an exterior inspection of the building, and an inquiry of the utility company–indicated that only McWebb's apartment was on the third floor. *Id.* at 81-85.

¶ 25 In the case at bar, a warrant was issued to search the premises at "5407 South Paulina Street, a single family residence, Chicago, Cook County IL" and allowed for the seizure of any illegal firearms, ammunition and proof of residency for the defendant. Like *Luckett* and *Garrison*, Sergeant Poppish, in obtaining a search warrant, relied on information provided by a confidential informant, a drive-by inspection of the property, and other pre-warrant investigations. The record reveals that, in the complaint for a search warrant prepared by Sergeant Poppish, he received information from a confidential informant that the informant had been inside the residence at 5407 South Paulina Street, where the defendant showed the informant a black semiautomatic pistol belonging to the defendant. The complaint further alleged that, during numerous previous visits to the subject property, the informant observed the defendant in possession of the black pistol. The complaint, as well as Sergeant Poppish's testimony at the hearing on the motion to quash and suppress, established that he and the informant drove to 5407 South Paulina Street and that the informant identified the residence as the place where he had observed the defendant in possession of the black pistol. Sergeant Poppish observed that the exterior of the residence appeared to be a "cape cod" styled home "with an upstairs, a main floor and *** a basement." Sergeant Poppish then conducted an

investigation on the Cook County assessor's website, where he viewed a photograph of the subject property. He testified that the Cook County assessor's website listed the property at 5407 South Paulina Street as a single-family residence, and that he did not learn that the property was actually a multi-unit residence until after the defendant had filed the motion to quash and suppress. Edgar's testimony also established that he purchased the property at issue as a single-family house, which he converted into three separate apartment units, and that he did not notify either the city or county of the conversion in order to avoid paying higher taxes. Like *Luckett* and *Garrison*, the objective facts which were available to Sergeant Poppish prior to obtaining the warrant–such as information from the informant, Sergeant Poppish's drive-by inspection of the property, the photograph of the property and the characterization of the residence on the Cook County assessor's website–indicated that the property was a single-family residence. Neither Sergeant Poppish nor other police officers had reason to believe the residence at 5407 South Paulina Street was anything but a single-family home. The record supports the trial court's findings that there was nothing visual about the front of the property that would indicate that it was a multi-family dwelling, and that the police officers "could reasonably be expected to believe it was a single-family residence" at the time they obtained the warrant. Indeed, photographs of the exterior of the property, which were presented at the hearing on the motion, revealed that there was only one mailbox affixed to the front of the home, that the house number above the front door of the residence merely stated "5407," and that none of the doors contained unit numbers to differentiate the three separate apartments. Had the police officers checked, as noted by the trial court, they would have discovered that the gas utility was only billed to Edgar. Therefore, we hold that the search warrant did not lack particularity at the time it was

issued.

¶ 26 The defendant further challenges the validity of the police officers' execution of the search warrant. The defendant argues that while the police officers may have believed the property to be a single-family residence *prior* to entering the premises by force, upon entry into the enclosed porch, the police officers would have seen separate locked entrances and staircases leading to the three units and would have known that the search warrant's description of the property as a single-family residence was erroneous–at which point they should have retreated and terminated the search until further guidance from the judge who issued the warrant. Instead, he contends, the police officers were uncertain about which of the three apartment units to search and impermissibly used their discretion to choose to search the main floor unit. In support of his arguments, the defendant cites *People v. Urbina*, 393 Ill. App. 3d 1074 (2009), *People v. Bass*, 220 Ill. App. 3d 230 (1991), and *Jones v. Wilhelm*, 425 F. 3d 455 (7th Cir. 2005).

¶ 27 The State counters that, contrary to the defendant's assertions, the testimony at the hearing on the motion to quash and suppress established that, upon entry into the residence, the police officers believed that they were entering into a single-family residence. The State argues that the defendant's cited cases are factually distinguishable from the instant case.

¶ 28 In the case at bar, at the hearing on the motion to quash and suppress, Sergeant Poppish testified that, in executing the search warrant, he and other police officers approached the side rear door of the property, announced their presence, and opened the door by force when they received no response. Sergeant Poppish described the space just inside the side rear door as an "enclosed porch" or an "enclosed back addition on the back of the house" with wooden stairs leading into the building.

Sergeant Poppish and the other police officers then ascended the wooden stairs to the main floor of the residence, where they forcibly gained entry into a kitchen through a locked door. At no time did Sergeant Poppish testify that he or other officers knew that there were three separate apartment units, or that they had seen any unit numbers on the doors designating the separate apartments, during the execution of the search warrant. Sergeant Poppish testified that he did not recall seeing an entrance to the basement in the enclosed porch area, nor did he see the door in the front of the property that led to the basement level of the residence. Further, Sergeant Poppish testified that he did not remember all of the details about the back of the house and that he was not aware that the subject property was not a single-family house until the defendant's filing of the motion to quash and suppress.

¶ 29 The trial court, in denying the motion to quash and suppress, found the police offices' actions in executing the search warrant to be "entirely reasonable," and noted the similarity of the instant case to the facts of *Luckett*. The trial court stated that, upon entry into the enclosed porch area, even if the police officers "had reason to think that there was another apartment there on top," the officers searched the correct apartment. The trial court further found that, by the time the police officers entered the premises, "it was then too late, they couldn't just leave."

¶ 30 On appeal in *Luckett*, the defendant, aside from challenging the validity of the warrant itself, also challenged the validity of the execution of the warrant. *Luckett*, 273 Ill. App. 3d at 1030. The defendant challenged the propriety of the search on the basis that the officers should have retreated after they realized that the warrant's description of the premises was erroneous. The *Luckett* court rejected this contention, noting that the reasonableness of the officers' conduct was the touchstone

of the analysis. *Id.* at 1030. The *Luckett* court found that the officers could not have known nor could reasonably have discovered that two apartments existed on the first floor, and that, by the time they discovered this fact, it was too late to have retreated and obtained a new warrant. *Id.* at 1032. Specifically, the *Luckett* court found that the actions of the officers in entering through the front door of the building "doubtless alerted occupants to the presence of authority," that the nature of the contraband sought was "not so large or immobile that it could not be moved while police were attempting to secure another warrant," and that posting a police officer outside the residence would have been futile given that the drugs could have been destroyed. *Id.* at 1032. The *Luckett* court further noted that once the officers realized they were in the wrong apartment, "they immediately directed their search to the only other apartment on the first floor, thus, precluding any possibility of a fishing expedition." *Id.* at 1032-33. Therefore, the *Luckett* court held that the officers made reasonable efforts to determine which apartment was most likely connected with the criminal activity under investigation and confined the search accordingly. *Id.* at 1033.

¶ 31 Similar to *Luckett*, we find the trial court's findings to be supported by the evidence. As noted, upon entry into the side rear door, Sergeant Poppish believed that he was standing in an "enclosed porch" or an "enclosed back addition on the back of the house." Sergeant Poppish and his team then ascended the wooden stairs that they thought led to the interior of the house, and thereafter gained entry into the kitchen of what they believed to be the main floor of the single-family residence. Like the police officers in *Luckett*, Sergeant Poppish and his team could not have known nor could reasonably have discovered that the property was in fact a three-unit apartment building, and that it was not until the defendant filed the instant motion to quash and suppress that Sergeant

Poppish realized that the property was not a single-family residence. We find that, even assuming that Sergeant Poppish and his team had discovered the property to be a multi-unit structure upon entry into the enclosed porch area, as the trial court correctly noted, it would have been "too late to leave" the premises because the police officers' forced entry through the side rear door with a battering ram would have alerted the occupants to the presence of the police, and the nature of the contraband was not so large or immobile that it could not have been moved or destroyed while the police attempted to secure another warrant. Moreover, we find that the police officers had in fact searched the correct apartment, in which they observed the defendant emerge from a bedroom where cocaine and a handgun were ultimately recovered.

¶ 32 We further find the defendant's cited cases to be factually distinguishable. In those cases, police officers clearly knew of an ambiguity in the search warrant's description of the premises *prior* to executing the search warrant, and impermissibly resolved the ambiguities by using their own discretion to determine what specific apartment unit to search. See *Urbina*, 393 Ill. App. 3d at 1079 (search warrant indicated apartment "D" was to the left at the top of the stairs, when in actuality apartment "C" was to the left at the top of the stairs, officer impermissibly used his discretion as a matter of law in directing a search of apartment "C" since the police knew of the ambiguity in the warrant prior to executing it); *Bass*, 220 Ill. App. 3d at 240-41 (police officers should have realized the infirmity of the search warrant before they executed it where the warrant authorized the search of the "first floor" of an apartment building, and the officers knew that there were two apartments on the first floor of the apartment building prior to execution of the warrant); see also *Jones*, 425 F. 3d at 466 (police officer who knew of an ambiguity in the search warrant's description of the

premises to be searched, yet made his own determination to resolve ambiguity rather than seek clarification or amendment to the warrant, violated the fourth amendment rights of the residents of the apartment where warrant was executed). Unlike *Urbina*, *Bass* and *Jones*, nothing in the record in the instant case supports the defendant's speculative claims that Sergeant Poppish and the other officers knew that the property at issue was not a single-family residence *prior* to the execution of the warrant, yet impermissibly used their discretion and made a conscious decision to search the main floor unit. Rather, the record shows that the search warrant specifically authorized the search of the "single-family residence" at 5407 South Paulina Street, and that at all times prior to and during the execution of the warrant, Sergeant Poppish believed that they were conducting a search of a single-family residence. While the defendant asserts that the police officers "would have seen" separate locked entrances and staircases leading to the three different units upon entry into the enclosed porch area, thus realizing the warrant was ambiguous, we find nothing in the record to support such speculation. On the contrary, Sergeant Poppish testified that he did not recall seeing an entrance to the basement in the enclosed porch area, that he did not see the door in the front of the property that led to the basement level of the residence, that he did not remember details about the back of the house, and that he could not recall where the "upstairs" staircase was located. There is nothing in the record to indicate that the locked doors bore any visual markers showing that they led to separate individual apartments. See generally *Economy*, 259 Ill. App. 3d at 512 (denying defendant's motion to suppress evidence seized during a warrant-authorized search of his residence, which also housed defendant's law office, where a reasonable reading of the warrant indicated that it encompassed the entire building located at the address and defendant admitted there was no

separate designation to indicate that part of the first floor of the building was his law office). Thus, we find that the evidence supports the trial court's findings that Sergeant Poppish and the other officers acted reasonably in executing the search warrant. See *Luckett*, 273 Ill. App. 3d at 1027 (circuit court's determinations regarding witness credibility, weight accorded to tesitmony, and the inferences to be drawn from that testimony are given deference upon review). Therefore, we hold that the trial court did not err in denying the defendant's motion to quash and suppress.

¶ 33 We next determine whether the State proved beyond a reasonable doubt that the defendant committed the offenses of which he was convicted.

¶ 34 The defendant argues that his convictions for possession of a controlled substance with intent to deliver and UUWF should be reversed because the State failed to establish his guilt beyond a reasonable doubt. Specifically, he argues that the State failed to prove that he constructively possessed the cocaine and handgun that were recovered from the padlocked closet in the front bedroom of the main floor apartment.

¶ 35 The State counters that the defendant was proven guilty beyond a reasonable doubt of the charged offenses. The State maintains that the evidence established that the defendant had constructive possession over the recovered cocaine and handgun.

¶ 36 When the sufficiency of the evidence is challenged on appeal, we must determine "' whether, after viewing 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. '" (Emphasis in original.) *People v. Graham*, 392 Ill. App. 3d 1001, 1008-09 (2009), quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). A reviewing court affords great deference to the trier of fact and does not retry the

defendant on appeal. *People v. Smith*, 318 Ill. App. 3d 64, 73 (2000). It is within the province of the trier of fact "to assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence." *Graham*, 392 Ill. App. 3d at 1009. A reviewing court will not substitute its judgment for that of the trier of fact. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A criminal conviction will not be reversed "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt." *Graham*, 392 Ill. App. 3d at 1009.

¶ 37 To sustain a charge of possession of a controlled substance with intent to deliver, the State must prove that: (1) the defendant had knowledge of the presence of the controlled substance; (2) the controlled substance was in the immediate possession or control of the defendant; and (3) the defendant intended to deliver the controlled substance. *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). To sustain a charge of UUWF, the State must prove that: (1) the defendant knowingly possessed a weapon; and (2) the defendant had a prior felony conviction. 720 ILCS 5/24-1.1 (West 2010); *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). The defendant does not dispute that he had a prior felony conviction.

¶ 38 "Knowing possession" can be either actual or constructive. *People v. Brown*, 327 Ill. App. 3d 816, 824 (2002). Because the defendant was not found in actual possession of the cocaine and handgun, the State had to prove that the defendant constructively possessed them. See *McCarter*, 339 Ill. App. 3d at 879. To establish constructive possession, the State must prove that the defendant: (1) had knowledge of the presence of the cocaine and handgun; and (2) exercised immediate and exclusive control over the area where the cocaine and handgun were found. See *id.*

"Evidence of constructive possession is often entirely circumstantial." (Internal quotation marks omitted.) *Id.* "Control is established when a person has the 'intent and capability to maintain control and dominion over an item, even if he lacks personal present dominion over it.' " *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17 (quoting *People v. Frieberg*, 147 Ill. 2d 326, 361, 589 N.E.2d 508 (1992)). Control over the location where the contraband was found gives rise to an inference that the defendant possessed the contraband. See *McCarter*, 339 Ill. App. 3d at 879. "Knowledge and possession are questions of fact to be resolved by the trier of fact, whose findings should not be disturbed upon review unless the evidence is so unbelievable, improbable, or palpably contrary to the verdict that it creates a reasonable doubt of guilt." *Luckett*, 273 Ill. App. 3d at 1033.

¶ 39 Viewing the evidence in the light most favorable to the State, we find that the State proved the defendant's guilt beyond a reasonable doubt. The evidence shows that in executing the search warrant, Sergeant Poppish observed the defendant exiting the bedroom where the police eventually recovered cocaine and a handgun, and Sergeant Poppish did not see any other individuals in the residence at that time. Sergeant Poppish testified that he had seen a photograph of the defendant on a prior occasion, and the complaint for search warrant stated that the confidential informant positively identified a computerized photograph of the defendant as the individual he had seen in possession of a firearm at the property. In the bedroom, police officers recovered two "fireboxes" which contained multiple bags of cocaine, small plastic baggies, digital scales, and an empty firearm magazine from a padlocked closet. Sergeant Poppish saw both men's and women's clothing in the closet, and recovered a loaded .45-caliber handgun inside a men's sports coat. Police officers also recovered two pieces of mail addressed to the defendant at 5407 South Paulina Street–an energy bill

and a social security statement–on the dresser in the same bedroom where the cocaine and handgun were found. Following his arrest, the defendant waived his *Miranda* rights and made incriminating statements to Sergeant Poppish and Officer Soraghen regarding his ownership of the recovered handgun and cocaine. Given this evidence, we find that a trier of fact could have reasonably concluded that the defendant had knowledge of the presence of the recovered cocaine and handgun, and maintained control over the area where the items were found.

¶ 40 Nonetheless, the defendant makes several arguments in an attempt to demonstrate that he lacked constructive possession of the cocaine and handgun. He first asserts that no evidence was presented at trial that he lived in the main floor unit, by arguing that there was no evidence that he leased the main floor unit, that no evidence linked him as a resident to the main floor unit, and that Foster testified at trial that she lived with him in the attic unit of the building. We reject this contention. The trial court, as the trier of fact, heard testimony by Foster that she lived in the attic unit with the defendant, while her mother, who was the defendant's girlfriend, lived in the main floor apartment with an unidentified man. The trial court, as noted, also heard testimony that the police found the defendant exiting the front bedroom of the main floor unit, where the cocaine and handgun were found, and that mail addressed to the defendant were found on the dresser in that bedroom. It was within the province of the trial court, as the fact finder, to find Foster's testimony to be incredible and give little weight to her testimony, while finding Sergeant Poppish's testimony credible. See *Graham*, 392 Ill. App. 3d at 1009 (trier of fact assesses the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence). We will not disturb the trial court's credibility findings on appeal. Based on the circumstantial

evidence and the defendant's incriminating statements to the police, the trial court could reasonably conclude that the defendant resided in the main floor unit with his girlfriend, that he owned the men's clothing in the closet, that he had knowledge of the illegal items, and that he exercised control over the area where the cocaine and handgun were found.

¶ 41 The defendant next argues that no evidence established that he had control over the main floor apartment, by arguing that the two pieces of mail addressed to the defendant did not specify what unit he lived in, that no items of clothing in the closet were ever identified as belonging to him, and that there was no evidence that he requested any personal items–such as a jacket or a wallet–to be retrieved from the bedroom upon his arrest. We find this argument to be without merit. While the two pieces of mail bore the general address "5407 South Paulina Street," without any designation to any specific unit number, testimonial evidence was presented at trial that the mail was found on a dresser in the bedroom from which the defendant emerged and where the cocaine and handgun were recovered. See *McCarter*, 339 Ill. App. 3d at 879 (pieces of mail found in a dresser drawer helped establish control of the bedroom where weapon was found); see also *Luckett*, 273 Ill. App. 3d at 1034 (parking tickets and bills helped establish defendant's control over the apartment where drugs were found). It was within the province of the trial court to determine that the location of the defendant's mail on the dresser, the defendant's exit from the bedroom, the existence of men's clothing in the bedroom closet, along with the defendant's incriminating statements to the police, sufficiently supported a finding that the defendant knew about the confiscated items and exercised control over the main floor unit. Moreover, a trier of fact could reasonably conclude that the fact that the defendant was found to be alone in the apartment gave rise to an inference that he had access to,

and control over, the main floor unit. We decline to substitute our judgment for that of the trier of fact. Thus, the defendant's argument on this basis fails.

¶ 42 We further reject the defendant's argument that he lacked constructive possession over the cocaine and handgun merely by virtue of the fact that he lived in another part of the building. As discussed, based on the circumstantial evidence and the defendant's incriminating statements to the police, the trial court could reasonably conclude that the defendant resided in the main floor unit with his girlfriend, that he owned the men's clothing in the closet, that he had knowledge of the illegal items, and that he exercised control over the area where the cocaine and handgun were found. Further, we find the instant case to be factually distinguishable from the defendant's cited case, *People v. Wolski*, 27 Ill. App. 3d 526 (1975). In *Wolski*, the reviewing court reversed the defendant's conviction for drug possession where no other corroborating evidence linked the defendant to the drugs, other than the bare fact that the drugs were found in an apartment that he shared with his brother. *Id.* at 528-29. Here, other than the defendant's presence in the front bedroom of the main floor unit, corroborating evidence–such as the defendant's incriminating statements to the police, the mail addressed to him, and men's clothing–was presented at trial.

¶ 43 Nor do we find persuasive the defendant's argument that the fact that he was seen leaving the bedroom where the illegal items were found was insufficient to establish constructive possession of the cocaine and handgun. Contrary to the defendant's assertion, the defendant's convictions did not rest solely upon the fact that the police observed his exiting the bedroom in question. But *cf. People v. Adams*, 242 Ill. App. 3d 830 (1993) (defendant's mere presence in the vicinity of the cocaine that was found in a cabinet under the bathroom sink was insufficient to sustain his conviction for

possession of narcotics, where it was undisputed that defendant was a visitor in the apartment, that he had no control over the premises, that there was no evidence connecting him with the cocaine in the cabinet, and there was nothing to show he had ever been in the cabinet). Rather, in this case, the defendant's incriminating statements, the physical items confiscated by the police from the bedroom, and other circumstantial evidence, were sufficient for a fact finder to reasonably conclude that the defendant constructively possessed the cocaine and handgun.

¶ 44 The defendant further argues that constructive possession was not established because the State failed to show that he had control over the padlocked closet where the cocaine and handgun were recovered. We reject this contention on the same basis that we rejected the defendant's argument that the evidence did not establish his control over the main floor apartment unit. We find that, it was within the province of the trial court to determine that the location of the defendant's mail on the dresser, the defendant's exit from the bedroom, the existence of men's clothing in the bedroom closet, along with the defendant's incriminating statements to the police regarding his ownership of the cocaine and handgun, sufficiently supported a finding that the defendant knew about the confiscated items and exercised control over the padlocked closet. Notwithstanding, the defendant points out that no key to the padlock on the closet door was ever found by the police; thus, he lacked the capability to maintain control over the illegal items. We reject this contention. The fact that the police never recovered a well-hidden key to the padlock on the closet did not conclusively mean that the key was inaccessible to the defendant. We need not engage in such a tortured interpretation of the evidence; instead, on appeal, we must view the evidence in a light most favorable to the State. See *People v. Jackson*, 232 Ill. 2d 246, 281 (2009) (trier of fact need not be satisfied beyond a

reasonable doubt as to each link in the chain of circumstances, and in weighing evidence, "is not required to disregard inferences which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt"). Further, we find *People v. Scott*, 367 Ill. App. 3d 283 (2006), the defendant's cited authority, to be factually distinguishable from the instant case. Moreover, the defendant takes issue with the fact that his incriminating statements to the police were not memorialized in writing, and that this undermined whether he actually made these statements. We find this argument to be unpersuasive. The fact that an incriminating statement was made orally and not memorialized in writing only affected the weight of the evidence, not the admissibility of the evidence, and it was within the province of the fact finder to determine the appropriate weight of this evidence. We decline to substitute our judgment for that of the trier of fact.

¶ 45 The defendant further contends that there was no evidence that he ever handled the cocaine, handgun or other items discovered in the fireboxes, because his fingerprints were not found on these items. We find this argument to be misleading and without merit. At trial, the parties stipulated that none of the items recovered by the police from the premises revealed any latent fingerprints suitable for comparison. This is wholly different from a situation in which fingerprints which are suitable for comparison do not match the defendant's fingerprints. Further, the fact that the defendant's fingerprints were not found on the recovered items, did not conclusively prove that he had no knowledge of the cocaine and handgun or that he did not exercise immediate control over the area where they were recovered. Therefore, viewing the evidence in a light most favorable to the State, we find that the evidence established that the defendant constructively possessed the cocaine and

handgun. Accordingly, the State proved beyond a reasonable doubt that the defendant committed the offenses of UUWF and possession of a controlled substance with intent to deliver.

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

¶ 47 Affirmed.