THIRD DIVISION
January 26, 2011

Nos. 1-10-0167 and 1-10-0183
(Consolidated)

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 JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MIGUEL RODRIGUEZ, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County, Illinois. No. 07 CR 6509 Honorable Arthur F. Hill, Jr., Judge Presiding.

JUSTICE MURPHY delivered the judgment of the court.
Presiding Justice Quinn and Justice Steele concurred in the judgment.

O R D E R

HELD: (1) Where defendant failed to properly preserve an issue for review and did not argue for plain error review, that issue was forfeited, and (2) where the facts showed that narcotics and money were found at a residence controlled by defendant, there was sufficient evidence to prove defendant guilty of possession of a controlled substance.

In these consolidated appeals, defendant Miguel Rodriguez appeals two separate convictions. Following a bench trial in April 2009, defendant was convicted of the 2007 offense of possession of a controlled substance (cocaine) with intent to deliver and was sentenced to nine years in prison (07 CR 06509). On appeal, defendant contends that the trial court erred in denying his motion to quash the search warrant and suppress the evidence (1-10-0167). For the reasons that follow, we find defendant forfeited this issue and we affirm the judgment of the trial court.

1-10-0167 and 1-10-0183 cons.

Following a bench trial in October 2009, defendant was convicted of the 2008 offense of possession of a controlled substance (cocaine) and was sentenced to one year in prison, to be served consecutively to his sentence for the 2007 offense (08 CR 18343). On appeal, defendant challenges the sufficiency of the evidence (1-10-0183). We affirm.

On March 1, 2007, Officer Felix Batista and a "John Doe" informant appeared before a judge to initiate a complaint for a search warrant targeting defendant and the premises at 3036 North Kilbourn. John Doe stated that on February 27, 2007, he went to 3036 North Kilbourn and told defendant he wanted to buy cocaine. Defendant went into a bedroom by the kitchen and reemerged with a large plastic bag containing several clear plastic baggies that each contained a white powder substance. John Doe purchased two grams of cocaine from defendant in exchange for $80. After the transaction, defendant said he would supply larger amounts of cocaine if John Doe ever wanted more. John Doe then told the judge he had been buying cocaine from defendant on a weekly basis for the past two years. John Doe confirmed that the powder in the baggie was cocaine, because when he snorted some, he got the same "exhilarating affect [sic]" that he usually gets when he uses cocaine. Batista and John Doe drove past 3036 North Kilbourn and John Doe confirmed it as the residence where he had purchased cocaine from defendant. The search warrant was granted, and the complaint for the search warrant was signed by John Doe, Officer Batista, and the judge.

The warrant was executed on March 2, 2007. The executing officers recovered the following from the rear master bedroom of 3036 North Kilbourn: from the closet, a bag containing a Ziploc bag, inside of which were two knotted, clear, plastic baggies holding what was later proven to be cocaine, a small black scale, and a box of sandwich bags; from the top of the dresser, proof of defendant's residency at 3036 North Kilbourn in the form of a driver's license, an insurance letter, and a mortgage insurance application; and from inside a dresser drawer, $3,478 in cash. Defendant was arrested and charged with possession of a controlled substance (cocaine) with intent to deliver.

1-10-0167 and 1-10-0183 cons.

On March 24, 2008, defendant argued his motion to quash the search warrant and suppress the evidence, arguing that the reliability of the information given by John Doe was not sufficiently established. Defendant then detailed what should have been done to increase reliability, such as the police staging a controlled buy, or having John Doe draw out a floor plan of defendant's home. The State argued that because John Doe appeared before the issuing judge, the judge had the ability to assess John Doe's credibility in person, and the information given was enough to support the probability of criminal activity. The judge found the search warrant to be adequate on its face and denied the motion.

After a bench trial, the trial court found defendant guilty of possession of a controlled substance with intent to deliver.

At trial, Officer Bala testified that around 6:13 p.m. on September 6, 2008, he was part of a team executing a search warrant for 3036 North Kilbourn. After Officer Olacker knocked on the door and received no answer, the police forced entry into the residence. The officers did not see anyone in the immediate vicinity, but Bala heard a door slam, walked toward the sound, and noticed that the bathroom door was shut. Olacker approached the bathroom door and both officers heard a toilet flush. Olacker yelled for the door to be opened, and inside was a young man in his late teens or early 20s, who later identified himself as defendant's son, standing next to the refilling toilet. On top of the toilet's water box was a small plastic cap that contained white powder substance (suspect cocaine). About 30 minutes later, defendant entered, stated he lived there and asked what was going on. He was immediately placed in custody. A search of the residence revealed no other suspect narcotics, and no one else was found there. Defendant's son was not arrested.

Officer Rafael Magallon testified that he searched the kitchen during the execution of the search warrant. On top of the kitchen table, he found a bank statement and a direct deposit check stub, listing defendant's name and his address as 3036 North Kilbourn.

Officer William O'Brien testified that he searched the rear bedroom where he found $860 in cash in a dresser drawer.

The parties then stipulated that the white powder found in the plastic cap was cocaine.

After the State rested, defendant made a motion for a directed finding, which the court granted as to the intent to deliver charge, but not as to the possession charge.

After defendant rested without presenting evidence, the trial court found defendant guilty of possession of a controlled substance.

On December 9, 2009, the trial court held a sentencing hearing for both convictions (Nos. 07 CR 06509 and 08 CR 18343). Defendant asked for leave to file a posttrial motion for each case, waived argument, and simply stated that the State did not prove defendant guilty of either crime beyond a reasonable doubt. The trial court denied the motions, then imposed a nine-year prison sentence for the 2007 case and a one-year sentence for the 2008 case, to be served consecutively.

On appeal from the 2007 crime, defendant asserts that the trial court erred in denying his motion to quash the search warrant and suppress the evidence. The State requests that defendant's brief be stricken for failure to comply with Supreme Court Rule 341(h). In the alternative, the State contends that defendant has forfeited this issue.

Supreme Court Rule 341 (eff. Sept. 1, 2006) governs the formatting and content of appellate briefs. Rule 341 is made applicable to criminal appeals by Supreme Court Rule 612 (eff. Sep. 1, 2006). *People v. Ortiz*, 91 Ill. App. 3d 466, 474 (1980). These rules are mandatory, and parties who deviate from them risk having their brief stricken. *People v. Hatchett*, 397 Ill. App. 3d 495, 511-12 (2009). However, striking an appellate brief is a harsh sanction, and is only appropriate if the deviations from the procedural rules interfere with review. *In re Powell*, 217 Ill. 2d 123, 132 (2005). Although defendant's brief does not fully comply with Rule 341, we decline to strike the brief because the legal issue presented is clearly forfeited.

It is well settled that a contemporaneous objection and a written posttrial motion are both required to preserve an error for review. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010); *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Here, defendant filed a posttrial motion but only argued that there was insufficient evidence to convict him, and did not challenge the denial of his motion to quash the search warrant.

To overcome forfeiture, the defendant bears the burden of persuasion to establish plain error. *Hillier*, 237 Ill. 2d at 545. To demonstrate plain error, the defendant must first show that a clear and obvious error occurred. *People v. Walker*, 232 Ill. 2d 113, 124 (2009). It is axiomatic that a defendant cannot satisfy his burden of persuasion if he fails to argue for plain error review, and in such an instance, we cannot reach the merits of any forfeited issues. *Hillier*, 237 Ill. 2d at 550 (held that the issues raised were forfeited and the appellate court should not have reached the merits of the forfeited issues).

Defendant makes no mention of plain error in his brief, and did not file any reply brief in response to the State's contention that he forfeited this issue. Under these circumstances, the Illinois Supreme Court directs us to honor the forfeiture of defendant's claim and thus, we cannot reach the merits of the forfeited claim. *Hillier*, 237 Ill. 2d at 550.

On appeal from the 2008 crime, defendant contends the evidence was insufficient to prove him guilty of possession of a controlled substance. Specifically, defendant argues that he could not have been guilty of possession of cocaine because defendant's son was the person found in proximity to the cocaine, defendant was not home at the time the warrant was executed, and no additional drugs were found on the premises.

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, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). When considering a challenge to the sufficiency of the evidence, it is not the function of the reviewing court to retry the defendant; it is for the trier

of fact to determine the credibility of witnesses, weigh the evidence, draw reasonable inferences and resolve any conflicts in the evidence. *Siguenza-Brito*, 235 Ill. 2d at 228.

To sustain a conviction for possession of a controlled substance, the State must prove that defendant had knowledge and possession of the drugs. *People v. Givens*, 237 Ill. 2d 311, 334-35 (2010). Possession may be actual or constructive. *Givens*, 237 Ill. 2d at 335. To prove constructive possession, the State must show that defendant had the "'intent and capability to maintain control'" over the drugs. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007), quoting *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992). Knowledge and possession are both questions of fact, and the trier of fact's findings will not be disturbed unless the evidence is so unbelievable and improbable that it creates a reasonable doubt of defendant's guilt. *Carodine*, 374 Ill. App. 3d at 25. "Proof of residency in the form of rent receipts, utility bills and clothing in closets is relevant to show defendant lived on the premises where narcotics are found and, therefore, controlled them for purposes of establishing constructive possession." *People v. Scott*, 367 Ill. App. 3d 283, 286 (2006).

Here, we find that the evidence was sufficient to prove defendant guilty of possession of a controlled substance. Cocaine was found in the bathroom of 3036 North Kilbourn. Both a bank statement and a direct deposit check stub were found listing defendant's name and his address as 3036 North Kilbourn, and defendant told the police he lived there when he arrived at the residence. The trial court could reasonably infer from this evidence that defendant had control over the premises where the narcotics were found. Combined with the $860 recovered from a dresser on defendant's premises, it is not so improbable or unbelievable for the trial court to find that defendant also had knowledge of the narcotics. Viewing the evidence in the light most favorable to the prosecution and accepting all reasonable inferences, we find that the evidence was sufficient to prove defendant guilty of possession of a controlled substance.

For the foregoing reasons, we affirm both judgments of the trial court (07 CR 06509 and 08 CR 18343).

Affirmed.