2012 IL App (1st) 101231-U

FIFTH DIVISION
May 11, 2012

No. 1-10-1231

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. 09 CR 2269
	)	
LEONARD HUFF,	)	Honorable
	)	Arthur F. Hill, Jr.,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices J. Gordon and Howse concurred in the judgment.

O R D E R

¶ 1 *Held*: The evidence presented by the State was sufficient to establish that defendant had constructive possession of the controlled substance recovered by the police; the trial court did not abuse its discretion in allowing a non-hearsay statement that explained the course of the police investigation in defendant's case.

¶ 2 Following a bench trial, defendant Leonard Huff was convicted of possession of a controlled substance with intent to deliver and sentenced to 12 years in prison. On appeal, defendant contends that the State did not prove him guilty beyond a reasonable doubt because it produced no evidence connecting him to the drugs that were recovered by the police or to the

apartment where they were found. Defendant further contends that the trial court erred in admitting improper hearsay evidence to establish his residency in the apartment. For the reasons that follow, we affirm.

¶ 3 Defendant's conviction arose from the discovery of drugs at a one-bedroom apartment leased to his mother, Joann Huff, and sister, Yolanda Diggs. The police searched the apartment on December 6, 2008, and recovered narcotics. Defendant was not present at the time of the search, but was arrested at the apartment 11 days later.

¶ 4 At trial, Chicago police officer Francisco Gomez testified that on December 6, 2008, he and a team of officers went to the apartment in question, armed with a search warrant. When Joann Huff answered the door, the officers announced their office and the sergeant gave her a copy of the warrant. The prosecutor asked Officer Gomez what was the next thing he observed, to which he responded, "Give her a copy of the search warrant, he asked her if Leonard Huff was home, she said he wasn't home, she let us in." Defense counsel objected, but the trial court overruled the objection.

¶ 5 Officer Gomez testified that he and six or seven other officers entered the apartment. He went to the bedroom first. When asked to describe the room, Officer Gomez noted two mattresses and "men's clothing all over the room," specifically, on the floor, on the bed, in the closet, and in laundry bags. In the closet, he found two men's triple-x sized jackets with money hanging out of the pockets. Officer Gomez took the jackets out of the closet and laid them on a chair so his partner could take photographs. His partner opened up the side of a cushion of an arm chair and recovered a clear plastic bag containing a white powder substance. Continuing to search the closet, Officer Gomez found a portable digital scale and a piece of mail, which was recovered by his partner. Following the search, the officers left the apartment.

¶ 6 Officer Gomez testified that he performed surveillance of the apartment a couple of times over the next 11 days. On December 17, 2008, he and his partner knocked on the apartment's back door. Defendant came to the door in his underwear and identified himself to the officers. When Officer Gomez asked him if he had an identification card, he said, "Yes, it's in my bedroom," at which point the officers followed him to the bedroom. Officer Gomez agreed that the bedroom looked the same or substantially the same as it had looked 11 days before. Defendant began looking through a pile of men's clothing on the floor. He found his identification card and handed it to Officer Gomez. At that point, Officer Gomez placed him under arrest. When defendant got dressed, he got most of his clothing from a pile on the bedroom floor, but retrieved a jacket from the closet. Officer Gomez testified that while they were at the apartment, he asked defendant if he would consent to a search of his bedroom. Defendant agreed and signed a consent to search form. Officer Gomez looked around, but did not recover any items.

¶ 7 Chicago police officer Saud Haidari testified that on December 6, 2008, he was part of the narcotics team that executed a search warrant at the apartment in question. He explained that he was assigned as the evidence officer, which meant he would collect any evidence found during the search. Officer Haidari testified that he was one of the officers who searched the bedroom. When asked whether he saw any type of clothing in the room, Officer Haidari stated that there was men's clothing in the closet. From that closet he recovered two men's jackets with a "considerable amount" of money in the pockets, a digital scale, and a letter addressed to defendant at the apartment's address. The money was later determined to total $3,098; the scale was the type used for narcotics transactions; and the letter, postmarked October 14, 2008, was from "American School." Officer Haidari also noticed and recovered a knotted plastic bag

protruding from the handle side of a one-seat couch, by the cushion. He did not open the bag, but to the best of his ability, felt and counted 12 smaller knotted plastic bags inside the large bag.

¶ 8 Officer Haidari testified that he and his team returned to the apartment on December 17, 2008. Defendant met the officers at the door in his underwear. After defendant consented to a search, the officers followed him to the bedroom. According to Officer Haidari, the bedroom was in the same or substantially the same condition as it was 11 days earlier. The officers searched the room but did not recover any items. Defendant got dressed in clothes that were in the bedroom and was arrested. On cross-examination, Officer Haidari acknowledged that he did not know exactly where defendant got the clothes he dressed in, as he did not follow him into the bedroom at that time.

¶ 9 Maureen Bommarito, a forensic chemist with the Illinois State Police Crime Laboratory, testified that she received the evidence bag in defendant's case and discovered that it contained 13 smaller knotted plastic bags, each containing a chunky substance. The total weight of the 13 bags was 34.478 grams. Bommarito tested the contents of six of the bags and determined they contained 17.988 grams of cocaine.

¶ 10 Blanca Gonzalez, the owner and landlady of the apartment in question, testified on defendant's behalf. Gonzalez stated that she did not remember who was living in the apartment in December 2008. However, she identified a lease for that time period indicating that the apartment's tenants were Joann Huff and Yolanda Diggs.

¶ 11 Following closing arguments, the trial court found defendant guilty of possession of a controlled substance with intent to deliver. In finding that defendant had constructive possession of the cocaine, the trial court noted that defendant was found at the apartment, went to the bedroom where the drugs had been located to get dressed, and chose clothing from that room.

The court found that the narcotics, as discovered by the officers, were not so hidden that a person who exercised care, custody, and control of the room would not know they were there.

¶ 12 The trial court subsequently sentenced defendant to 12 years in prison.

¶ 13 On appeal, defendant challenges the sufficiency of the evidence. He argues that the State failed to prove that he possessed, actually or constructively, the cocaine that the police found in his mother's apartment. Defendant maintains that there was no evidence he ever had physical control of the drugs. He asserts that the State did not prove he knew about the presence of the drugs, that he lived at the apartment, that he was staying at the apartment on the date of the search, or that he had been seen at the apartment prior to the drugs being discovered. Absent such evidence, defendant argues, the State failed to show he had either the capability or the intent to exercise control over the drugs.

¶ 14 When reviewing the sufficiency of the evidence, the relevant inquiry 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. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 132 (1999). Reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 15 Constructive possession of a controlled substance exists when a person has the intent and capability to maintain control and dominion over the substance but does not have immediate

personal control of it. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007). To establish constructive possession, the State must make a showing that the defendant had some control over the area where the drugs were found. *People v. Brown*, 277 Ill. App. 3d 989, 997 (1996). Such a showing gives rise to an inference of control of the drugs that is sufficient to sustain a conviction. *Brown*, 277 Ill. App. 3d at 997-98. On appeal, we will not disturb the trier of fact's findings regarding knowledge and possession unless the evidence is so unbelievable, improbable, or palpably contrary to the verdict that it creates a reasonable doubt of the defendant's guilt. *Brown*, 277 Ill. App. 3d at 998.

¶ 16 In the instant case, the State presented sufficient evidence to establish constructive possession. According to both officers who testified, the bedroom looked substantially the same on the day the drugs were recovered and the day defendant was arrested. A two-month-old letter was found in the bedroom closet, addressed to defendant at the apartment. On the day of his arrest, defendant answered the door to the apartment in his underwear and signed a form consenting to a search. He told the officers that his identification was in "my bedroom" and proceeded to lead the officers to the room where the drugs had been recovered. Defendant retrieved his identification from clothing located in that room, got dressed in clothing from the floor, and took a jacket from the closet where the scale and letter had been discovered. In these ways, defendant behaved like a resident of the apartment. Viewing the evidence in the light most favorable to the State, we conclude that a reasonable trier of fact could have found defendant lived at the apartment both at the time of the search and at the time of his arrest, and therefore had control over the area where the drugs were found.

¶ 17 We are mindful of defendant's arguments that no one testified as to the address listed on his identification card, that the letter addressed to him was not a utility bill, that the officers did not provide identical descriptions of the bedroom, that the men's clothing in the bedroom may

have belonged to someone else, and that at least two other people -- the leaseholders -- had access to the bedroom. However, the weight to be given evidence is a matter within the province of the trier of fact and we will not substitute our judgment for the trial court's on such matters. *Brooks*, 187 Ill. 2d at 131. Here, the trial court was aware of the circumstances identified by defendant, weighed their probative value, and nevertheless found the evidence sufficient to convict.

¶ 18 Considered in the light most favorable to the prosecution, the evidence presented in this case was sufficient to permit the trial court to infer that defendant was in constructive possession of the narcotics found in the bedroom. We cannot say that the evidence was "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to defendant's guilt. *Slim*, 127 Ill. 2d at 307. Accordingly, defendant's challenge to the sufficiency of the evidence fails.

¶ 19 Defendant's second contention on appeal is that the trial court erred in admitting improper hearsay evidence to establish his residency in the apartment. Specifically, defendant argues that it was improper for the trial court to allow Officer Gomez's testimony that after his sergeant gave defendant's mother a copy of the search warrant, "he asked her if Leonard Huff was home, she said he wasn't home, she let us in." Defendant asserts that this double hearsay served no relevant non-hearsay purpose, but instead, only served to raise a prejudicial inference that defendant lived in the apartment. While acknowledging that the issue was not preserved in a posttrial motion, defendant argues that we should address his argument as plain error.

¶ 20 The plain error doctrine allows us to review a forfeited issue affecting substantial rights in either of two circumstances: (1) where the evidence is so closely balanced that the verdict may have resulted from the error and not the evidence; or (2) where the error is so serious that the defendant was denied a substantial right and thus a fair trial. *People v. Herron*, 215 Ill. 2d 167,

178-79 (2005). However, before reaching either prong of the plain error test, we must first determine whether any error occurred. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009).

¶ 21 Hearsay is a statement made by a declarant at a time when she is not testifying at trial, offered to prove the truth of the matter asserted. *People v. Hammonds*, 409 Ill. App. 3d 838, 852 (2011). A statement that is offered for a reason other than for the truth of the matter asserted is not hearsay and, therefore, is generally admissible. *Hammonds*, 409 Ill. App. 3d at 854. As relevant to the instant case, if a statement is offered to explain the actions or steps taken by a police officer during the course of an investigation, the statement is not hearsay. *Hammonds*, 409 Ill. App. 3d at 854-55. A trial court's decision as to whether a statement is hearsay is reviewed for an abuse of discretion. *Hammonds*, 409 Ill. App. 3d at 852.

¶ 22 Here, Officer Gomez testified that his sergeant gave defendant's mother a copy of a search warrant for the apartment. The prosecutor asked Officer Gomez what was the next thing he observed. In response, Officer Gomez said, "Give her the copy of the search warrant, he asked her if Leonard Huff was home, she said he wasn't home, she let us in." In our view, the prosecutor's question and the officer's response explained the course of the police investigation. The prosecutor was not using the investigative procedure as a means to elicit substantive information about defendant's residency in the apartment. Indeed, the prosecutor specifically asked Officer Gomez what he observed, not what he heard. The purpose of the question was to explain the officers' ensuing actions, that is, how the officers gained entrance to the apartment.

¶ 23 Because the passing statement that defendant "wasn't home" was not admitted for the truth of the matter asserted, it was not hearsay. The trial court did not abuse its discretion in overruling defendant's objection to Officer Gomez's testimony. As no error occurred, we do not need to perform a plain-error analysis. Defendant's argument is forfeited.

¶ 24 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.