

2012 IL App (1st) 112006-U

THIRD DIVISION
December 21, 2012

No. 1-11-2006

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

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 3266
)	
NICK BULSKI,)	Honorable
)	Diane Gordon Cannon,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Steele and Sterba concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment entered on bench conviction of possession of a controlled substance with intent to deliver affirmed over defendant's claim that there was insufficient evidence to show that he had constructive possession of the drugs found inside the apartment he rented.
- ¶ 2 Following a bench trial, the defendant, Nick Bulski, was found guilty of possession of a controlled substance with intent to deliver and sentenced to 10 years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt.

1-11-2006

¶ 3 The evidence adduced at trial showed that on January 9, 2009, police obtained search warrants for defendant at two different locations: 6559 West George Street, Unit 413, in Chicago, Illinois, and 2643 North 73rd Avenue, Apartment GW, in Elmwood Park, Illinois. That afternoon, Chicago police officer Joseph Mirus, who was conducting a surveillance of the condominium building located at the George Street address, saw defendant leave in a gray Ford Explorer, and followed him to the 73rd Avenue address. Defendant entered the apartment building, emerged 20 minutes later and drove away. No one else entered or left the apartment building during that time. Enforcement officers stopped defendant in his gray Ford Explorer and returned him to the 73rd Avenue address where Mirus and other officers forcibly entered Apartment GW. Meanwhile, Irene Baran appeared on the scene, identified herself as the landlord of the building and gave Mirus a lease agreement for Apartment GW signed by defendant. Mirus identified People's Exhibit One as a copy of that lease agreement.

¶ 4 On cross-examination, Mirus added that defendant did not have anything in his hands when he stepped out of the Ford Explorer or when he emerged from the apartment building. He identified Defense Exhibits One, Two, and Three, as photographs depicting the front door of Apartment GW after it was forced open, the living room, and the bedroom, and stated that mail found in the bedroom was not addressed to defendant.

¶ 5 Chicago police officer John Elstner identified defendant in court as the person he and his partner stopped in a gray Ford Explorer. Defendant identified himself as Nick Bulski, and a protective pat-down revealed \$550, but no drugs.

¶ 6 Chicago police officer Orlando Rodriguez was the evidence technician who photographed Apartment GW. He identified People's Exhibit Two as a photograph of the kitchen and pointed out the cabinets where a digital scale and several clear sandwich bags were recovered. He identified Defense Exhibit Three as a photograph of the bedroom and noted there was mail on a dresser and

1-11-2006

the bed was made. He identified People's Exhibit Three as a photograph of the bedroom after it was searched, noting the absence of clothes in the open dresser drawers, on the bed or the floor. People's Exhibit Four was identified by Rodriguez as a photograph of two clear plastic bags containing a white chunky substance found inside the box spring of the bed, and People's Exhibit Five as a photograph of the empty bedroom closet. He identified People's Exhibits Six and Seven as photographs of the kitchen cabinets which contained very little food. Lastly, he identified People's Exhibit Eight as a photograph of a bucket in the kitchen containing clear plastic bags which he suspected were used for packaging drugs.

¶ 7 On cross-examination, Rodriguez acknowledged that he did not inventory the mail on the bedroom dresser or remember the addressee, but maintained that he would have inventoried the mail had it been addressed to defendant. He also acknowledged that the apartment and the evidence recovered therein were not tested for fingerprints.

¶ 8 Testimony from the landlords of the apartment building at the 73rd Avenue address established that the defendant signed a one-year lease agreement for Apartment GW on June 1, 2008. Irene Baran identified defendant in court as the person who signed the lease agreement for that apartment, and to whom she gave a key to Apartment GW and watched as he checked to see that it worked properly. Because defendant wanted to carefully read the lease agreement before signing it, Irene had him give it to her husband Stanley, who was always in the apartment building, after he signed it. Irene identified People's Exhibit One as a copy of the lease agreement bearing defendant's signature and dated June 1, 2008. On cross-examination, Irene added that defendant previously rented an apartment on the second floor.

¶ 9 Stanley Baran testified through an interpreter and identified defendant in court as the person who handed him a signed lease agreement for Apartment GW and \$600 rent on June 1, 2008. Stanley also identified People's Exhibit One as a copy of that lease agreement and stated that he

1-11-2006

collected rent from defendant each month, "sometimes downstairs, sometimes upstairs at his apartment," but "always at 2643 North 73rd Avenue."

¶ 10 On cross-examination, Stanley stated that George Martinez and Johnny Ortuz paid rent on Apartment GW before defendant rented it. Between December 2008 and January 2009, he did not observe the prior tenants entering or leaving Apartment GW. However, between June 2008 and January 2009, he occasionally observed Martinez and Ortuz inside Apartment GW with defendant.

¶ 11 After the parties stipulated to the chain of custody and forensic analysis of the suspected cocaine, the State rested and the trial court denied defendant's motion for a directed finding. Defendant testified in his own defense after learning that his witness, George Martinez, would invoke his fifth amendment right against self-incrimination if questioned about Apartment GW.

¶ 12 According to defendant, he never resided in Apartment GW even though he signed a one-year lease agreement for that unit. He lived with his family at the George Street address and signed the lease agreement at issue on behalf of a friend who was supposed to rent the unit but never showed up. He gave Irene \$600 for rent, half of which came from his absent friend. Irene gave him a key to the apartment which he held for two weeks until Johnny Ortuz, a prior tenant, moved into the unit. George Martinez, another prior tenant, moved in with Ortuz in early January 2009.

¶ 13 Defendant stated that he remained responsible for making sure the rent was paid on Apartment GW and he went there "once, maybe every two weeks, or once when I had to collect the rent." He went to the apartment on January 9, 2009, for that purpose but no one answered the door or answered his phone calls. As he was driving away, he was stopped by police, asked about Apartment GW and drugs, then searched for contraband. The officers drove him back to the apartment building and tried to unlock the apartment using his house key.

¶ 14 On cross-examination, defendant acknowledged that he signed the lease agreement for Apartment GW and remained the tenant of record on the date in question. He also identified

1-11-2006

People's Exhibit One as a copy of the lease agreement bearing his name and signature. He read the lease agreement before signing it, but not "all the fine print" because Irene was a friend. His friends, Martinez and Ortuz, were obligated to pay rent because they lived in the apartment, but he was responsible for the rent if they did not pay it. Irene only issued rent receipts when Martinez and Ortuz paid rent, never when he did so. Although on January 9, 2009, he had \$550 on his person when he went to the apartment building to collect rent from his friends, he did not give that money to Irene because "[t]hat's my money I worked for, why would I pay the money for my friend's apartment?" He stated that he could have kicked them out and, in fact, tried to do so several times.

¶ 15 In finding defendant guilty, the trial court noted the unequivocal testimony of the landlords that defendant was the only renter of Apartment GW, that police followed defendant from the George Street address to the 73rd Avenue address, where a large amount of cocaine, a scale, and related paraphernalia were discovered inside an apartment under his name, with no sign of habitation. The trial court also denied defendant's motion to reconsider, stating, "that is based on the amount of narcotics, condition of the residence which had no clothing in it, no food, no evidence of inhabitation whatsoever. It was, and for all practical purposes a stash house for drugs. And it is well beyond any personal use for anyone."

¶ 16 In this court, defendant contends that the State failed to establish beyond a reasonable doubt that he constructively possessed the cocaine found in Apartment GW. As grounds, he primarily notes that police saw him enter the apartment building but not the apartment unit itself, that he did not have a key when he was stopped, that no mail or utility bills in his name were found in the apartment, and no fingerprints were recovered from the apartment or the contraband.

¶ 17 When defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question on review is whether, after considering 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); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). Under this standard, a court of review must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cardamone*, 232 Ill. 2d 504, 511 (2009).

¶ 18 To sustain a conviction for possession of a controlled substance with intent to deliver, the State must establish that defendant (1) had knowledge of the presence of the drugs, (2) had possession or control of the drugs, and (3) intended to deliver the drugs. *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). Knowledge may be proved by showing that defendant knew drugs existed in the place where it was recovered, and evidence that defendant was aware of, and exercised control over, the drugs can establish his constructive possession. *People v. Harden*, 2011 IL App (1st) 092309, ¶ 27.

¶ 19 Defendant focuses solely on the element of possession. Control of the premises is not required for a finding of constructive possession. *People v. Minniweather*, 301 Ill. App. 3d 574, 578 (1998). However, where drugs are found on the premises rather than on defendant, constructive possession may be inferred from facts showing that he once had physical control with intent to exercise control in his own behalf, he has not abandoned the drugs and no other person has obtained possession. *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002). "[W]here the evidence shows the premises are not being used primarily as a residence but instead as a center for the packaging and distribution of drugs, proof of residency has little if any relevance to the issue of control." *People v. Lawton*, 253 Ill. App. 3d 144, 147-48 (1993).

¶ 20 Contrary to defendant's contention, we find that the State met its burden in establishing his possession of the contraband. The apartment building's landlords identified defendant as the person who signed the lease agreement, and defendant identified the lease bearing his signature. Proof of defendant's rental of the premises in which drugs are found is evidence that defendant had control over the premises. *People v. Lockett*, 273 Ill. App. 3d 1023, 1033-34 (1995). Although Stanley

1-11-2006

occasionally saw Martinez and Ortuz inside the apartment with defendant, mere access to the area by others is insufficient to defeat a charge of constructive possession. *People v. Bui*, 381 Ill. App. 3d 397, 424 (2008). This principle is particularly apt here, where the evidence unequivocally showed that defendant remained the only tenant of record on the date in question, and defendant himself testified that he collected rent from his friends and always paid the landlords personally at the apartment building.

¶ 21 In addition, defendant, alone, was observed entering the apartment building on January 9, 2009, and he, alone, was observed leaving the apartment building shortly before police executed their search warrant for Apartment GW and discovered a large amount of cocaine and related paraphernalia. These circumstances, together with defendant's testimony under oath that he remained responsible for the rent when Martinez and Ortuz did not pay it and that he could have kicked them out of the apartment, tend to show that defendant had immediate and exclusive control of the apartment. *People v. Mack*, 12 Ill. 2d 151, 162 (1957). Moreover, the sufficiency of proof of defendant's control of the premises where the drugs were found is not eroded because the apartment previously had been under the control of another who could have placed them there. *People v. Cunningham*, 309 Ill. App. 3d 824, 828 (1999).

¶ 22 The unsatisfactory nature of the evidence by which defendant attempts to distance himself from Apartment GW on January 9, 2009 does not persuade otherwise. Where, as here, the evidence shows that the apartment was being used as a center for packaging and distribution of drugs, rather than as a residence, it is of little, if any, significance to the issue of control that no one actually saw him inside the apartment on the date in question, that he did not have a key when he was stopped, and that no mail or utility bills were found in his name. *Lawton*, 253 Ill. App. 3d at 147-48. Lastly, the lack of fingerprints was explained by the evidence technician who testified that he did not test the apartment and the evidence recovered therein for that evidence. See *People v. Hunley*, 313 Ill.

1-11-2006

App. 3d 16, 32 (2000) (when the State presents eyewitness testimony, it is not required to provide additional evidence in the form of fingerprints to substantiate that testimony).

¶ 23 After reviewing the totality of the evidence in the light most favorable to the State and the reasonable inferences therefrom, we conclude that a rational trier of fact could have found that defendant constructively possessed the cocaine found inside Apartment GW, and that he was therefore proved guilty of the charged offense beyond a reasonable doubt. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 18.

¶ 24 In reaching this conclusion, we note that the cases relied upon by defendant are factually distinguishable and do not involve a situation, as here, where there was corroborating evidence other than the testimony of the officers that linked defendant to the apartment and the contraband inside. *People v. Moore*, 365 Ill. App. 3d 53, 61 (2006). In *People v. Macias*, 299 Ill. App. 3d 480 (1998), defendant's conviction was reversed where the only connection between defendant and the drugs was the fact that he had a key to the apartment, given to him by the tenant who was hospitalized. In *People v. Wolski*, 27 Ill. App. 3d 526 (1975), the court found that the State did not prove constructive possession of cannabis found in an apartment defendant shared with his brother because there was no corroborating evidence associating defendant with the contraband and others had access to the premises. In *People v. Scott*, 367 Ill. App. 3d 283 (2006), the court found that the State did not prove constructive possession of cocaine inside a locked mailbox for which defendant did not have a key. The facts in this case, as revealed in the evidence presented at trial, are distinguishable from the facts in the other cases relied upon by defendant.

¶ 25 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.