SIXTH DIVISION
March 4, 2016

No. 1-13-3652

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. 10 CR 17608
	)	
MELVIN RHAMES,	)	Honorable
	)	Lawrence E. Flood,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 ***Held:*** Defendant's conviction for possession of a controlled substance with intent to manufacture or deliver is affirmed over his claims that the evidence was insufficient to prove him guilty of that offense beyond a reasonable doubt and that the trial court erred in refusing to admit a hearsay statement of a third party.

¶ 2 Following a bench trial, defendant Melvin Rhames was found guilty of possession of a controlled substance with intent to manufacture or deliver, then sentenced to two concurrent terms of nine years' imprisonment. On appeal, he contests the sufficiency of the evidence to

prove his possession of the narcotics beyond a reasonable doubt, and contends that the trial court erred by refusing to admit a hearsay statement of a third party.

¶ 3 At trial, Chicago police sergeant Brian Hawkins testified that at 9 a.m. on September 10, 2010, he was with a team of officers who were executing a search warrant at 5931 South Marshfield Avenue in Chicago, Illinois. Sergeant Hawkins waited outside the residence until the "SWAT team" detained all the occupants. He then entered the home and saw defendant and others being detained in the living room. Sergeant Hawkins went into the basement where he saw two bedrooms and a table in a common area. On the table, Sergeant Hawkins observed zip-top bags, a scale, a bottle of Relacore, mail, and clothing. Sergeant Hawkins testified that based on his experience recovering narcotics, that the bags, scale, and Relacore were commonly used in the cutting and packaging of narcotics.

¶ 4 Sergeant Hawkins also inspected the mail on the table and found an envelope addressed to defendant at the warrant address. The envelope contained a passport for defendant with an issue date of May 18, 2010, two Sprint telephone cards with defendant's name, an additional passport photograph of defendant, a MasterCard credit card in defendant's name, a vehicle title in defendant's name, and a birth certificate for defendant. Sergeant Hawkins also discovered a vehicle title for Robert Rhames, a resume for Al Brown, and tickets for a cruise. Finally, Sergeant Hawkins recovered a Sprint wireless bill addressed to defendant at the warrant address with a bill period of August 4, 2010, through September 3, 2010, and a bill date of September 7, 2010.

¶ 5 Sergeant Hawkins searched one of the bedrooms and discovered a wooden device at the top of the bedroom window sill. He removed it from the window and discovered that the device was made of three two-by-fours, and when he removed the top two-by-four, he discovered six

individual compartments each containing narcotics, which were recovered and later inventoried by Officer Thomas. Two of the compartments contained heroin, two contained cocaine, and two contained cannabis. Sergeant Hawkins returned upstairs where he spoke with defendant, who admitted that the narcotics were his, but stated that he did not possess a gun.

¶ 6 On cross-examination, Sergeant Hawkins stated that four other people were detained in the living room with defendant, but he only entered the house after everyone was detained. He also stated that he could not see any of the narcotics until he removed the wooden device from the windowsill and moved the top two-by-four, and that all the mail addressed to defendant was in the same envelope with the car title for Robert Rhames and the resume for Al Brown.

¶ 7 Sergeant Hawkins further stated that each floor of the house had two bedrooms, including the basement, and that there was a gun recovered from under the back porch of the house, along with a box of ammunition. Steven Smith, one of the occupants of the house who was detained by the SWAT team, was arrested for possession of the gun. Sergeant Hawkins stated that Smith admitted the gun was his, but did not say anything about the narcotics, and did not say that he was living in the basement bedroom. Sergeant Hawkins finally stated that defendant admitted that "the drugs are mine, but I didn't have no gun," and Sergeant Hawkins joked with him about the location of the drugs, telling him "you almost got me," which caused defendant to laugh.

¶ 8 The parties then stipulated that, if called, Officer Thomas would testify that on September 10, 2010, he received two plastic bags containing smaller individual plastic bags containing suspect cocaine and a plastic bag containing smaller individual plastic bags of suspect heroin. He inventoried the bags and sent them to the Illinois State Police Crime Lab for testing. The parties further stipulated that, if called, Julia Edwards would testify that she is a forensic chemist at the Illinois State Police Crime Lab, and she received the inventoried items as described in

Officer Thomas's stipulation. She found that the items tested positive for the presence of cocaine and heroin, respectively, with a total estimated weight of 42 grams of cocaine and 27.7 grams of heroin.

¶ 9 The State rested, and the trial court denied defendant's motion for a directed finding.

¶ 10 Rashad Underwood acknowledged his 2009 conviction for possession of a controlled substance and "a gun charge," then testified that he owned a two-unit building at 6337 South Langley Avenue in Chicago. He further testified that on August 21, 2010, he rented out the first floor of that building to defendant. He and defendant signed a lease agreement for a one-year term from August 1, 2010, through July 31, 2011. Underwood identified the monthly rental receipts for defendant's unit from August 2010 through June 2011, and testified that defendant was present in the unit each time Underwood came to collect rent and issue him a rent receipt. On cross-examination, Underwood stated that the only times he saw defendant or would visit the building was when he collected the rent.

¶ 11 Alvoro Hamilton testified that on September 10, 2010, he lived across the street from 5931 South Marshfield, and was cleaning the backyard of that house when the warrant was executed. He further testified that at the time, defendant did not live at the house, but Steven Smith was living there with defendant's grandmother. Hamilton testified that in the beginning of August 2010, he met Smith in the basement bedroom and Smith asked him to build something for him. Smith told him the details, and Hamilton built a device made of three two-by-fours, and put six holes in the middle one. On August 1 or August 2, he attached the completed wooden device to the window in the basement bedroom at Smith's request.

¶ 12 Hamilton further testified that he cleaned the basement at 5931 South Marshfield and never saw defendant in Smith's bedroom while he was there. He testified that he was present

when the warrant was executed and heard Smith make a statement to the officers. The following colloquy then took place:

> "DEFENSE ATTORNEY: What, if anything, did Steven Smith say in your presence to the police?
>
> ASSISTANT STATE'S ATTORNEY: Objection.
>
> THE COURT: Sustained.
>
> DEFENSE ATTORNEY: Well, Judge, I would just offer it because it is an admission against interest.
>
> THE COURT: Whose interest?
>
> DEFENSE ATTORNEY: Steven Smith's interest.
>
> THE COURT: He is not a party.
>
> DEFENSE ATTORNEY: If Your Honor would just as an offer of proof?
>
> THE COURT: Okay.
>
> Q. [DEFENSE ATTORNEY] Sir—
>
> THE COURT: He is arrested, he is in custody, and he makes a statement—
>
> DEFENSE ATTORNEY: Yes.
>
> THE COURT: —that may not necessarily be a statement against interest. Against penal interest?
>
> DEFENSE ATTORNEY: Yes.
>
> THE COURT: He is already in custody.

DEFENSE ATTORNEY: Judge, I think it's still an admission that he committed the crime.

THE COURT: It could be an admission that he committed the crime, but it doesn't necessarily mean it is a statement against penal interest. It could subject him to criminal prosecution. He's already arrested. It could be self serving.

DEFENSE ATTORNEY: This is certainly not a self serving statement, Your Honor.

THE COURT: No, I understand, but I am saying the concept behind it.

DEFENSE ATTORNEY: I never thought of it quite in the way you presented it, Your Honor. But if I could just offer it as an offer of proof.

THE COURT: You can make an offer of proof.

Q. [DEFENSE ATTORNEY]: Sir, what, if anything, did Mr. Steven Smith say to the police officers while he was in your presence?

A. He told them everything was his. He told the police officer four times that it was his. Four times.

THE COURT: Okay, just so the record is clear, I am just considering it as an offer of proof. The objection is sustained.

DEFENSE ATTORNEY: Thank you, Judge."

¶ 13 On cross-examination, Hamilton stated that he had known defendant since 1992, and had helped him move from 5931 South Marshfield on August 1, 2010. He further stated that he did not put anything in the six holes in the wooden two-by-four device before he gave it to Smith and he did not know what it was intended for.

¶ 14 Following closing argument, the trial court reviewed the evidence of the search of the home and the recovery of the narcotics, packaging materials, mail, and gun. The court stated that there was another person who acknowledged ownership of the weapon, and that defendant admitted that the drugs were his, but not the weapon. The court then reviewed the evidence presented by the defense witnesses and found that the State met its burden of proof beyond a reasonable doubt. The court stated that it based its determination on the drugs that were recovered, the mail in the basement common area, the fact that defendant was present, and the fact that defendant acknowledged the drugs were his.

¶ 15 Defendant moved for a new trial contending that not all of the mail that was found belonged to him, that Hamilton testified that he built the wooden storage device for Smith, and that Smith was in the house when the officers executed the search warrant. Defendant further contended that Hamilton testified that Smith lived in the bedroom where the narcotics were found, that the testimony showed that defendant no longer lived at the house, and that defendant's statement that the drugs were his should not be given any credibility in terms of its probative value. Defendant contended that constructive possession was not proven because he did not have control over the area where the drugs were found. Finally, defendant contended that Smith made a statement that the drugs were his, which was an admission against interest and it was error for the court to not allow that statement into evidence, that Smith was the person who

asked Hamilton to build the wooden device, and that Smith was actually guilty of the crime, which created a reasonable doubt of defendant's guilt.

¶ 16 In denying defendant's motion, the court stated that it heard the evidence in the case, reviewed the transcripts, and weighed the credibility of the witnesses. The court further stated that it found Sergeant Hawkins's testimony of defendant's statement credible, and found that the circumstantial evidence was sufficient to find that defendant constructively possessed the narcotics. The court noted that there was a credibility issue, and it made a determination regarding credibility. At a subsequent sentencing hearing, the trial court sentenced defendant to two concurrent terms of nine years' imprisonment.

¶ 17 In this appeal from that judgment, defendant contends that the evidence was insufficient to prove him guilty of possession of a controlled substance with intent to manufacture or deliver beyond a reasonable doubt. He also contends that the trial court erred in refusing to admit evidence of Smith's statement that the narcotics belonged to him.

¶ 18 Where a defendant challenges the sufficiency of the evidence to sustain his conviction, the reviewing court must consider whether, after viewing the evidence in a 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. Cunningham*, 212 Ill. 2d 274, 278 (2004). This standard recognizes the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any conflicts and inconsistencies in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court must allow all reasonable inferences from the record in favor of the prosecution, and will not overturn the decision of the trier of fact unless the evidence is so

unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 19 To sustain defendant's conviction for possession of a controlled substance with intent to manufacture or deliver, the State was required to prove beyond a reasonable doubt that defendant had knowledge of the presence of narcotics, that the narcotics were in his immediate possession or control, and that he intended to deliver the narcotics. 720 ILCS 570/401 (West 2012); *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). Here, defendant contends that the State failed to prove beyond a reasonable doubt that the narcotics were in his immediate possession or control because he was not found in actual possession of the narcotics and did not constructively possess them.

¶ 20 Defendant had constructive possession of the narcotics if he had knowledge of their presence, and the intent and capability to control them. See *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992). Evidence establishing constructive possession is often entirely circumstantial. *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002). Where narcotics are found on premises rather than on a defendant, constructive possession may be inferred from facts showing that he once had physical control with intent to exercise control, and has not abandoned the narcotics. *Id.* (citing *People v. Adams*, 161 Ill. 2d 333 (1994)).

¶ 21 When viewed in a light most favorable to the State, the evidence in this case shows that Sergeant Hawkins and a team of officers executed a search warrant and detained defendant and several others in the living room. Sergeant Hawkins searched the basement where he discovered drug packaging materials and a scale next to mail addressed to defendant at the warrant address, including a passport and a Sprint wireless bill, and defendant's birth certificate and vehicle title on a table in the basement common area. Sergeant Hawkins searched one of the basement bedrooms and discovered a wooden device on the windowsill that he removed and opened to

discover packaged heroin and cocaine. He returned to the upstairs living room where he spoke with defendant who told him that the drugs were his, but that he did not have a gun. This evidence, and the reasonable inferences therefrom, were sufficient so that a reasonable trier of fact could find that defendant had been proved guilty of possession of a controlled substance with intent to manufacture or deliver beyond a reasonable doubt. *McLaurin*, 331 Ill. App. 3d at 503.

¶ 22 Defendant, nonetheless, contends that the only evidence the State presented that he constructively possessed the narcotics came from Sergeant Hawkins' testimony, while defendant presented the "uncontroverted" evidence that he was living at a different address at the time the warrant was executed, and that Smith was living in the basement bedroom where the drugs were found. He maintains that Hamilton's testimony that he built the wooden device at Smith's request contradicts Sergeant Hawkins's testimony, and that Sergeant Hawkins' testimony that defendant admitted the drugs were his is "unworthy of belief" because it was uncorroborated, not memorialized in a written form by defendant, and not included in Sergeant Hawkins' written report.

¶ 23 Defendant's arguments challenge the credibility determination made by the trial court. Credibility, however, is within the province of the trial court (*Sutherland*, 223 Ill. 2d at 242), and we will not substitute our judgment for that of the trial court unless the proof is so unsatisfactory that a reasonable doubt of guilt appears (*People v. Berland*, 74 Ill. 2d 286, 305-06 (1978)). We do not find this to be such a case.

¶ 24 The record shows that the trial court found Sergeant Hawkins credible, a fact it emphasized in denying defendant's motion for new trial. In finding defendant guilty, the court reviewed the evidence, including that defendant's mail and important documents were found

outside the room next to the packaging and cutting material, that defendant was present when the warrant was executed, and that defendant admitted the drugs were his. From this evidence, the court determined that the State had met its burden of proof. Although defendant presented the conflicting testimony of Underwood and Hamilton, whether this evidence created a reasonable doubt of guilty was a question primarily for the trial court. See *Berland*, 74 Ill. 2d at 307.

¶ 25 Defendant, nonetheless, compares this case to *People v. Wolski*, 27 Ill. App. 3d 526, 528 (1975), where the court held that the State failed to prove defendant constructively possessed narcotics where the only evidence it presented regarding his possession was that he lived in the apartment where the narcotics were found, even though defendant was not present when the narcotics were recovered. The reviewing court also noted that defendant's brother also lived in the apartment and that many other people had access to the premises. *Id.*

¶ 26 In this case, although there was evidence presented that defendant had moved to a different address, he was present in the residence when the officers recovered the narcotics and he admitted to police that the narcotics were his. Moreover, there was corroborating evidence not present in *Wolski*, such as the fact that defendant's mail and personal documents were found on a table next to narcotics packaging and cutting materials. Although there was evidence that other people were in the house when the warrant was executed, where the State has presented sufficient evidence that defendant controlled the location where the narcotics were found, the presence of others in the vicinity will not undermine the inference that defendant constructively possessed the narcotics. *People v. Rangel*, 163 Ill. App. 3d 730, 739 (1987). Thus, a rational trier of fact could find that defendant constructively possessed the narcotics with the intent to manufacture or deliver and was therefore proved guilty of that offense beyond a reasonable doubt. *McLaurin*, 331 Ill. App. 3d at 502-03.

¶ 27 Defendant next contends that the trial court erred by not admitting Hamilton's testimony of Smith's statement that the drugs belonged to him. He maintains that the court should have admitted Smith's statement because it was against his penal interest, which is an exception to the rule against hearsay, and was corroborated by Hamilton's testimony that he built the wooden device for Smith. The State responds that the trial court correctly exercised its discretion to exclude the statement because it was inadmissible hearsay.

¶ 28 "In general, a declarant's unsworn, out-of-court statement that he committed the crime for which defendant is charged is inadmissible hearsay, even though the statement is against the declarant's penal interest." *People v. McCallister*, 193 Ill. 2d 93, 100 (2000). Such a statement may be admitted, however, under the statement-against-penal-interest exception to the hearsay rule if the statement is sufficiently reliable and justice so requires. *Id.* (citing *People v. Bowel*, 111 Ill. 2d 58, 66 (1986)). A statement against interest is a statement which was "at the time of its making *** so far tended to subject the declarant to civil or criminal liability *** that a reasonable person in the declarant's position would not have made the statement unless believing it to be true." Ill. R. Evid. 804(b)(3) (eff. Jan. 1, 2011). A statement offered in a criminal case that exposes the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. *Id.*

¶ 29 In *Chambers v. Mississippi*, the Supreme Court identified four factors a court may consider in determining the trustworthiness of a hearsay statement: whether the statement was spontaneously made to a close acquaintance after the crime occurred, whether the statement is corroborated by some other evidence, whether the statement is self-incriminating and against the declarant's interest, and whether there was adequate opportunity for cross-examination of the declarant. *People v. Tenney*, 205 Ill. 2d 411, 435 (2002) (citing *Chambers v. Mississippi*, 410

U.S. 284, 300-01 (1973)). These factors are merely indicia of reliability, and are not required for admissibility (*Bowel*, 111 Ill. 2d at 67); however the statement must be self-incriminating and against penal interest because that is the "bedrock" of this hearsay exception (*Tenney*, 205 Ill. 2d at 436 (quoting *People v. Keene*, 169 Ill. 2d 1, 29 (1995))). This court will not reverse the trial court's decision on the admission of evidence absent a clear showing of abuse of discretion. *Bowel*, 111 Ill. 2d at 68.

¶ 30 Although neither party references the requirements of the Illinois Rule of Evidence in their briefs, defendant contends that the trial court should have admitted Smith's statement because it satisfies three of the four *Chambers* factors. He asserts that Smith made the statement spontaneously after the crime occurred, that his statement was corroborated by Hamilton's testimony that he built the wooden device where the narcotics were found for Smith, and that the statement was against Smith's penal interest. The State concedes that the statement was against Smith's penal interest, but contends that it was not made spontaneously, it was not corroborated, and Smith was not available for cross-examination.

¶ 31 It is unclear from the record whether Smith made the statement spontaneously; however, it is clear that the statement was not made to a close acquaintance. Although Hamilton overheard Smith's statement, the offer of proof purports that Smith was speaking to the police officers when he said that "everything was his." Defendant, citing *People v. Kokoraleis*, 149 Ill. App. 3d 1000, 1020-21 (1986), points out that this court has found statements made to police officers admissible under this exception; however, we observe in that case there were other indicia of reliability not present here. In *Kokoraleis*, this court found that the trial court erred in excluding the hearsay statement of two third parties where the statements were made to an assistant state's attorney and police officers while the declarants were in custody, physical and

testimonial evidence corroborated their statements, and that State's evidence consisted almost exclusively of defendant's confession, which was at variance with the record. *People v. Scherzer*, 179 Ill. App. 3d 624, 643 (1989).

¶ 32 Here, the State presented sufficient corroborating evidence of defendant's guilt, outside of his inculpatory statement. Moreover, Smith's statement was not corroborated by Hamilton's testimony that he built the wooden device at Smith's request as defendant suggests. Although courts have viewed corroboration in this context broadly, there must be some evidence, independent of Hamilton's testimony, that corroborates his testimony of Smith's hearsay statement. See *Tenney*, 205 Ill. 2d at 437. In this case, defendant presented no such corroborating evidence. Moreover, in denying defendant's motion for a new trial, the court stated that in finding defendant guilty, it made a credibility determination indicating that it found Sergeant Hawkins credible, but did not find Hamilton credible. See *People v. Johnson*, 2013 IL App (1st) 103361, ¶ 33. Sergeant Hawkins' testimony that Smith admitted that the gun was his, but not the drugs, directly contradicted Hamilton's testimony that Smith admitted to police that "everything" was his. Thus, the corroboration factor is not satisfied. Finally, as defendant concedes, Smith was not available for cross-examination. We therefore find that the court did not abuse its discretion in refusing Hamilton's testimony where he was not a party to the claimed conversation, and merely overheard Smith's statement, there were insufficient corroborating circumstances indicating the trustworthiness of the statement, and Smith was not available for cross-examination by the State. Ill. R. Evid. 804(b)(3) (eff. Jan. 1, 2011); see also *Bowel*, 111 Ill. 2d at 68.

¶ 33 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 34 Affirmed.