2015 IL App (1st) 140126-U

FOURTH DIVISION
June 11, 2015

No. 1-14-0126

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. 12 CR 4771
	)	
KIMBERLY BOYD,	)	Honorable
	)	Michael McHale,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Defendant's conviction of possession of controlled substance with intent to deliver affirmed over her contention that evidence was insufficient and that trial court erred in failing to grant her motion to quash arrest and suppress evidence.

¶ 2 Following a bench trial, defendant Kimberly Boyd was found guilty of possession of a controlled substance (heroin) with intent to deliver and sentenced to 30 months' probation. On appeal, defendant contends that the evidence was insufficient to prove her guilty of the offense beyond a reasonable doubt and that the trial court erred in failing to grant her motion to quash

arrest and suppress evidence. She thus requests that her conviction be reversed, or in the alternative, that the trial court's ruling on her motion to quash arrest and suppress evidence be reversed and the case be remanded for a new trial. We affirm.

¶ 3 The charges filed against defendant arose from an incident that occurred on February 11, 2012, on the south side of Chicago. Prior to trial, defendant filed a motion to quash her arrest and suppress evidence, alleging that the police lacked probable cause for her arrest. By agreement of the parties, the motion was heard simultaneously with her bench trial.

¶ 4 In that proceeding, Chicago police officer Patrick Felker testified that, at about 10 a.m. on the day in question, he and a team of officers executed a warrant authorizing the search of the Garden West apartment at 2959 West 73rd Street. They made a forced entry after no one responded to their knock at the door. They then entered a bedroom, where Yvonne Allen was seated in a Lazy Boy chair, and Asia Boyd (later determined to be defendant's daughter) was lying on the bed. As the women complied with the officers' request to stand up, Allen dropped two clear plastic baggies of suspect heroin to the floor.

¶ 5 Officer Felker and his partner continued to search the bedroom. In the top right drawer of the dresser, they found U.S. mail marked "Premium Billing Notice" from Globe Life and Accident Insurance Company addressed to defendant at the apartment in question, and postmarked February 3, 2012—eight days prior to the search. They also found three purple Ziploc bags, the contents of which later tested positive for 0.2 grams of heroin—packaging which, according to Officer Felker, was different than the packets of heroin that Yvonne Allen had in her lap when confronted by police. In the middle drawer of that dresser, the officers found

a clear plastic baggie containing an additional four clear Ziploc bags, the contents of which later tested positive for 0.3 grams of heroin. Hanging on the wall in that bedroom was a framed "Certificate of Appreciation: Outstanding Child and Family Support Staff" made out to defendant. In the kitchen, the officers found a medicine bottle, the contents of which later tested positive for 10.8 grams of heroin; empty plastic baggies commonly used to package narcotics; a digital scale; powder commonly used to dilute narcotics for sale; and a box of ammunition and a magazine on the windowsill.

¶ 6 During the execution of the search warrant, the landline telephone in the apartment rang, and when Officer Felker answered it, Asia yelled, "[D]on't talk to those motherf---ers. Those are the police. Hang up the phone." Asia was subsequently arrested for obstruction, and Allen was arrested for possession of a controlled substance for the heroin she dropped when the officers entered the bedroom.

¶ 7 Officer Felker further testified that he then went to the University of Chicago Hospital emergency room, where he believed defendant to be, and arrested her there for the contraband found in her apartment. He advised her of her *Miranda* rights and transported her to the police station. While he was walking her to a holding cell, defendant saw her daughter Asia in another cell and yelled out, "[L]eave my daughter out of this. That stuff you found at the apartment was all mine." The parties stipulated that a proper chain of custody was maintained over the items found in the apartment at all times, and that the forensic testimony proved these items to be contraband in the amounts stated above.

¶ 8 At the close of evidence, the trial court found that the officers had probable cause to

arrest defendant and, accordingly, denied the motion to quash and suppress. The court also found defendant guilty of possession of a controlled substance with intent to deliver. Relying on *People v. Denton*, 264 Ill. App. 3d 793 (1994), the court noted that defendant was in constructive possession of the narcotics found in her bedroom dresser and kitchen, and the fact that other individuals had access to the drugs might, at most, indicate joint possession but would not change the fact of defendant's possession. The court sentenced defendant to 30 months' probation and assessed her $2759 in fines and costs.

¶ 9 On appeal, defendant challenges both the trial court's ruling on her motion to quash arrest and its ultimate finding of guilty on the underlying charge of possession of a controlled substance with intent to deliver. Defendant first attacks the guilty finding itself, arguing that the State did not prove her guilty beyond a reasonable doubt, so we will likewise take up that issue first.

¶ 10 In contesting whether the evidence was sufficient to convict her beyond a reasonable doubt, defendant does not deny that the drugs recovered from the apartment were heroin or that the quantity of heroin recovered was sufficient to support a finding of intent to deliver. Rather, she argues that the evidence was insufficient to prove her guilty beyond a reasonable doubt because the State did not prove possession, given that two other people had what she describes as a superior possessory interest over the narcotics. In support of this claim, she cites evidence showing that one of the persons was in actual possession of narcotics, and the other had control over the apartment when they was discovered.

¶ 11 Where, as here, defendant challenges the sufficiency of the evidence to sustain her conviction, the relevant question for the reviewing court 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. Jackson*, 232 Ill. 2d 246, 280 (2009). 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 inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In applying this standard, we allow all reasonable inferences from the record in favor of the prosecution (*People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)) and will not overturn a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 12 To convict defendant of possession of a controlled substance with intent to deliver, the State was required to prove that defendant had knowledge of the presence of narcotics, that the narcotics were in the immediate possession or control of defendant, and that defendant intended to deliver the narcotics. *People v. Robinson*, 167 Ill. 2d 397, 407 (1995); *People v. Branch*, 2014 IL App (1st) 120932, ¶ 10. To prove the element of possession, the State may prove actual or constructive possession. *Denton*, 264 Ill. App. 3d at 798. Actual possession is found when the defendant exercises present, personal dominion over the drugs. *People v. Schmalz*, 194 Ill. 2d 75, 82 (2000).

¶ 13 Constructive possession, on the other hand, is found where actual possession is not present, but the defendant had the intent and capacity to maintain control and dominion over the controlled substance. *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992); *People v. Gumila*, 2012 IL App (2d) 110761, ¶ 41. Evidence of constructive possession is " 'often entirely circumstantial.' " *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003) (quoting *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002)). Where narcotics are found on premises under the defendant's control, it may be inferred that the defendant had the requisite possession, absent other facts and circumstances which might leave a reasonable doubt as to that element in the minds of the fact finder. *Frieberg*, 147 Ill. 2d at 361. This remains true even if other individuals besides the defendant had access to the controlled substances, because possession may be joint; "if two or more persons share immediate and exclusive control or share the intention and power to exercise control, then each has possession." *Schmalz*, 194 Ill. 2d at 82.

¶ 14 We find that the State sufficiently proved constructive possession. Officer Felker found an eight-day-old insurance bill addressed to defendant at the subject address inside a bedroom dresser. He also found a framed certificate of appreciation bearing defendant's name in the bedroom where some of the drugs were found. Finally, but not insignificantly, defendant admitted to police officers, while being taken to a holding cell, that the contraband found in that house belonged to her and her alone. Viewing this evidence in the light most favorable to the prosecution, we find that a rational trier of fact could have found proof of defendant's possession beyond a reasonable doubt. *Jackson*, 232 Ill. 2d at 284.

¶ 15 In reaching this conclusion, we are not persuaded by defendant's reliance on *People v. Alicea*, 2013 IL App (1st) 112602, ¶ 28, where this court found that facts showing that defendant resided in the apartment were insufficient "in the face of other evidence" to sustain the State's burden to prove beyond a reasonable doubt that defendant had any possession or control of the bedroom where contraband was found. This "other evidence" in *Alicea* included testimony by two witnesses that several adults and children lived in that apartment, but that defendant was not one of them; he had permanently moved out six months prior to the date of the raid. *Id.* ¶¶ 14-15. The piece of mail found at the residence, addressed to defendant at that residence, was explained away by defendant's daughter, who said that defendant continued to receive his Veteran's Administration checks at that apartment, whereupon she would have her father endorse the checks and would deposit the checks for him. *Id*. ¶¶ 14, 31. And defendant's fiancée (as well as his daughter) testified that defendant had been living with the fiancée, on a permanent basis, for about six months before the day of the raid that discovered the contraband. *Id.* ¶¶ 14, 15. Moreover, the trial court there indicated that one of the primary bases for its discounting of defense witness testimony—and thus its belief that defendant alone lived in that residence—was that, based on photographs of the residence showing substandard conditions, it was implausible to believe that several adults and sometimes children lived in that apartment. *Id*. ¶¶ 16, 30. The appellate court found that the trial court's characterization was "not borne out" by the record and that, in fact, there was clear, competent, and largely uncontradicted testimony that multiple individuals lived in that residence. *Id*. ¶ 30.

¶ 16 Notwithstanding the evidence of the letter addressed to defendant only eight days earlier at the address in question, the framed certificate bearing her name on the bedroom wall, and her own admission that she, and she alone, possessed the drugs in question, defendant attempts to fit the facts of this case within *Alicea* by claiming that "other evidence" existed to negate a finding of constructive possession. But in this case, that "other evidence" solely consists of the fact that two other women (one of whom was defendant's daughter) were found in the bedroom where some of the drugs were found. As we have already explained, even if, as defendant asserts, either of those individuals, or even both, had a possessory interest in the recovered drugs, the result would be "not vindication of the defendant, but rather a situation of joint possession." *Denton*, 264 Ill. App. 3d at 798; see also *Schmalz*, 194 Ill. 2d at 82. That aside, defendant put on no evidence to counter the State's proof. Defendant did not present any evidence that she resided elsewhere or that cast doubt on the proposition that she lived at the apartment in question. This case is thus readily distinguishable from *Alicea*. We find that constructive possession was proven beyond a reasonable doubt. That being the only challenge to the sufficiency of the evidence, we find that the State proved its case beyond a reasonable doubt.

¶ 17 Defendant next contends that the trial court erred in denying her motion to quash arrest and suppress evidence. In reviewing a ruling on a motion to quash arrest and suppress evidence, this court applies a two-part standard of review. *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009). The trial court's factual findings will be adopted unless they are against the manifest weight of the evidence. *Id*. The court's ultimate ruling on the motion to suppress involving probable cause, however, is reviewed *de novo*. *Id.* Moreover, we may affirm a ruling on a motion to suppress on

any basis supported by the record, including any evidence presented at trial. *Id.* at 458, 473.

¶ 18 Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime. *People v. Love*, 199 Ill. 2d 269, 279 (2002). Whether probable cause exists in a given case depends on the totality of the circumstances at the time of the arrest, including the officer's factual knowledge and his prior law enforcement expertise, and requires a case-specific analysis, governed by common-sense, practical considerations and not technical legal rules. *Id.*; *Hopkins*, 235 Ill. 2d at 472. The standard for determining whether probable cause is present is the probability of criminal activity, rather than proof beyond a reasonable doubt. *People v. Garvin*, 219 Ill. 2d 104, 115 (2006). Indeed, probable cause need not meet even a preponderance standard; our supreme court has repeatedly noted that " 'probable cause does not even demand a showing that the belief that the suspect has committed a crime be more likely true than false.' " *Hopkins*, 235 Ill. 2d at 472 (quoting *People v. Wear*, 229 Ill. 2d 545, 564 (2008)).

¶ 19 Defendant does not dispute that the officer had probable cause to believe that a crime had been committed. Nor could she. As established above, the record shows that while executing a search warrant at the apartment in question, more than 11 grams of heroin were found in defendant's bedroom dresser and kitchen, along with paraphernalia used in the packaging and distribution of narcotics. There was ample evidence to support probable cause that the crime of possession of heroin with the intent to deliver had been committed. *Love*, 199 Ill. 2d at 279.

¶ 20 Defendant argues that the officer lacked probable cause to believe that *defendant* had committed that crime. We disagree. The officer had before him two items of information: the

eight-day-old letter addressed to defendant at the subject address, found within the bedroom dresser, and a framed certificate bearing defendant's name on the wall of that bedroom. We believe that this information would allow a reasonably cautious person to believe that defendant had committed the crime, giving rise to probable cause for her arrest. *Love*, 199 Ill. 2d at 279. Indeed, even defendant concedes that the envelope addressed to defendant and the certificate on the wall "might, by itself, establish probable cause."

¶ 21 Defendant's argument is based on the fact that there was more information before Officer Felker than just those two items. He once again points to the other two women in the room, Ms. Allen and defendant's daughter Asia, whose presence, according to defendant, extinguishes probable cause as to defendant. The problem with this argument is two-fold. First, as we have explained, the fact that other individuals had access to, or even control over the drugs does not exonerate defendant of culpability but only suggests the possibility of joint possession. *Schmalz*, 194 Ill. 2d at 82; *Denton*, 264 Ill. App. 3d at 798. Second, even if we accepted the proposition that the presence of the other women cast some doubt on defendant's culpability, probable cause does not require that the officer rule out all other candidates for criminal activity; in fact, it does not even require that the officer believes it to be " 'more likely true than false' " that defendant committed the crime. *Hopkins*, 235 Ill. 2d at 472 (quoting *Wear*, 229 Ill. 2d at 564). Thus, even if the presence of these women put some dent in the officer's belief that defendant was culpable, it certainly would not lower it so far as to fall below probable cause.

¶ 22 In reaching this conclusion, we find defendant's reliance on *People v. Drake*, 288 Ill. App. 3d 963 (1997), misplaced. First and foremost, the trial court in that case found a lack of

probable cause and thereby quashed the arrest and suppressed the evidence. The appellate court first noted, properly, that it would not reverse the lower court's factual findings unless they were against the manifest weight of the evidence, a highly deferential standard whereby the trial court's finding are upheld "unless the opposite conclusion is clearly evident." *Id*. at 967. The court ultimately upheld the trial court's findings because they were "neither manifestly erroneous nor against the manifest weight of the evidence." *Id*. at 972. The procedural posture of this case, of course, is the opposite—the trial court's findings that probable cause *existed* are accorded the same substantial deference. *Hopkins*, 235 Ill. 2d at 471. Thus, here it is defendant, not the State, who must clear a high hurdle to overturn the trial court's factual findings.

¶ 23 In any event, we also find the facts in *Drake* readily distinguishable. The defendant in that case was a passenger in a vehicle stopped and searched by police officers. The car was not registered in the defendant's name. The police recovered a backpack containing contraband in the trunk and arrested defendant, but there was no evidence that defendant knew of the contraband, had immediate possession of it, or exercised any control over it. *Id.* at 969. Here, by contrast, the letter addressed to defendant and the certificate on the wall of the bedroom specifically connected defendant to the apartment and thus to the narcotics found in her bedroom dresser and kitchen. We find *Drake* inapposite. We affirm the trial court's finding of probable cause to arrest.

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

¶ 25 Affirmed.