2017 IL App (1st) 150147-U

FIRST DIVISION
July 17, 2017

No. 1-15-0147

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 23326
	)	
ANTWAUN WALKER,	)	Honorable
	)	William H. Hooks,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Connors and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for unlawful possession of ammunition by a felon is reversed where the evidence, viewed in the light most favorable to the State, was insufficient to infer defendant's knowledge of or control over the ammunition.

¶ 2 Following a bench trial, defendant Antwaun Walker was convicted of unlawful possession of firearm ammunition by a felon (720 ILCS 5/24-1.1(a) (West 2012)) and sentenced

to three years' imprisonment.[1] On appeal, Mr. Walker contends that the evidence was insufficient to prove beyond a reasonable doubt that he constructively possessed firearm ammunition and that the trial court erroneously sentenced him to a Class 2, rather than a Class 3, felony. For the following reasons, we reverse the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 At trial, Chicago police officer Huml testified that at approximately 9:15 p.m. on November 27, 2013, he was on patrol in the area of 179 North Laporte Avenue. Officer Huml observed a vehicle approach the intersection of Laporte and Maypole. The vehicle did not come to a complete stop at the stop sign, so Officer Huml pulled it over. Mr. Walker was driving the vehicle and could not produce a driver's license. A name check revealed that Mr. Walker's license was suspended, and he was arrested.

¶ 5 During processing, Mr. Walker asked Officer Huml to retrieve some blue jeans from the vehicle before it was impounded because the jeans were expensive. When Officer Huml retrieved the jeans, he discovered a white sock containing .22 caliber rounds of ammunition. Both the jeans and the ammunition were on the floor under the third row of seats of the vehicle. The ammunition was located under the jeans. Officer Huml recovered the ammunition and *Mirandized* Mr. Walker. When asked if Mr. Walker said anything to him after being *Mirandized*, Officer Huml stated: "He said he knew whose amo [*sic*] it belonged to."

¶ 6 On cross-examination, Officer Huml reiterated that Mr. Walker claimed to know who the ammunition belonged to, and clarified that Mr. Walker did not say that he knew the ammunition was in the car.

¶ 7 The State introduced into evidence a certified copy of Mr. Walker's April 19, 2012,

[1] We note that Mr. Walker's name appears in the record both as "Antwaun" and "Antwuan."

conviction for aggravated battery to a police officer in case number 11 CR 20356.

¶ 8 At the close of the State's case, defense counsel moved for a directed verdict, arguing that, just because Mr. Walker knew who the ammunition belonged to did not mean that he knew it was in the car or that he constructively possessed it. In response, the State argued that it could be inferred from Mr. Walker's statement that he "knew that the ammunition was there and he should *** not have that ammunition in a vehicle that he [a convicted felon] was driving." The circuit court denied the motion.

¶ 9 Deon Lockhart testified for the defense. On the evening of November 27, 2013, Mr. Lockhart went to the mall with Mr. Walker and another man, Dantrell Gibson, where Mr. Walker purchased jeans. At around 8:30 p.m., the men got into a van that belonged to their friend, "D." D had asked Mr. Walker to bring the van to D's girlfriend's house. The men drove the van to Maypole and were pulled over "[w]ithin like one minute."

¶ 10 The officer that pulled them over asked for Mr. Walker's license and registration. However, Mr. Walker's license was suspended, so the officer made the men exit the van. Mr. Gibson was sitting in the front passenger seat and Mr. Lockart was in the backseat. Officers searched Mr. Lockhart and Mr. Gibson and then let them go. Mr. Walker had placed his jeans in the trunk. Mr. Lockhart did not remember seeing a sock, but he did not look at anything in the back seat or trunk area. He remembered the van being "pretty clean."

¶ 11 Dantrell Gibson, on behalf of the defense, testified that he met Mr. Walker and Mr. Lockhart on Laporte on November 27, 2013, and they took the bus to the North Riverside mall. The three men later took a bus from the mall to Cicero and walked back to Laporte, where they stood around talking for 15 minutes before approaching a parked van that Mr. Walker was going to drop off to a friend. Mr. Walker did not own the van; it belonged to someone called "DD."

Mr. Gibson overheard Mr. Walker talking to DD on the telephone and was "pretty sure" that DD's mother brought Mr. Walker the keys to the van but couldn't be sure because "[t]here w[ere] too many people out there." The three men entered the van and started driving, but were pulled over within "like 15, 20 seconds." Police "carded" Mr. Walker, searched the van and its occupants, and detained Mr. Walker. Mr. Gibson and Mr. Lockhart were released. Mr. Gibson had been sitting in the passenger seat and had never been in the van before. Mr. Walker had placed his jeans in the trunk of the van.

¶ 12 In rebuttal, Officer Huml testified for the State that the van had three rows of seating and a trunk space, which was not separate from the passenger compartment of the van. He recovered the jeans and ammunition from the floor under the third row of seating.

¶ 13 In his closing argument, defense counsel again argued that the State had failed to "connect[ ] [Mr. Walker] in any way to the ammunition whether directly or constructively." In response, the State argued that Mr. Walker's belongings were found with the ammunition and Mr. Walker "knew that the ammunition was there when he was questioned by officers."

¶ 14 The court recessed to deliberate but then asked the parties for clarification on Officer Huml's testimony. The following colloquy ensued.

> "THE COURT: State, your witness indicated under oath that [Mr. Walker] indicated to law enforcement that he knew where the bullets came from?
>
> [THE STATE]: Whose bullets they were, whose ammunition they were.
>
> THE COURT: That's fine. I just wanted to make sure I heard the testimony correctly. And, [defense counsel], you understand that's the testimony that was attributed to the police witness that testified this afternoon.
>
> [DEFENSE COUNSEL]: That he knew -- right, not that they were his.

THE COURT: That's what my notes suggested -- not suggested. That's what my note says. I wanted to make sure that's what I heard.

[DEFENSE COUNSEL]: Who they belonged to."

¶ 15 The court then found Mr. Walker guilty of unlawful possession of firearm ammunition by a felon. The court explained:

"One of the critical points in this case is the statement that was attributed to [Mr. Walker] by the officer who testified in this matter, and that statement was a statement where [Mr. Walker] told the law enforcement officer he knew where the bullets or the rounds came from or words to that effect. This is, of course, unlawful use or possession of firearms ammunition by a felon. And in this Court's assessment, [Mr. Walker] knew he had bullets in the vehicle in question. He was driving said vehicle at the time that the bullets were recovered from the vehicle.

Accordingly, there was testimony from the officer that the rounds were recovered from [Mr. Walker], from the vehicle which [Mr. Walker] had control."

The court further clarified that the basis for its finding of guilt was the credibility of Officer Huml's testimony.

¶ 16 Mr. Walker moved for a new trial, alleging that his statement to Officer Huml that he knew who the ammunition belonged to was insufficient to show that Mr. Walker knew the ammunition was in the vehicle when he was driving it. Rather, Mr. Walker's counsel argued, Mr. Walker's statement was based on "a presumption of who the car belonged to," not on his knowledge that ammunition was present in the vehicle. The trial court denied the motion, reasoning,

"[Mr. Walker] indicated the testimony was credited that he knew who the bullets

> belonged to. He was the [*sic*] driving the vehicle. The bullets were assessed by this Court based on the testimony [this Court] heard that he knew who the bullets belonged to. He was driving the vehicle in which the bullets were. Those are his bullets. The Court's ruling [is] defense motion for new trial is respectfully denied."

¶ 17 The trial court subsequently sentenced Mr. Walker on a Class 2 felony to three years' imprisonment and two years of mandatory supervised release (MSR). At the sentencing hearing, the trial judge noted that he could not sentence Mr. Walker to probation but would do "the next best thing" by sentencing him to three years, which he understood to be the minimum sentence. This appeal followed.

¶ 18 JURISDICTION

¶ 19 Mr. Walker was sentenced on November 17, 2014, and timely filed a notice of appeal on December 15, 2014. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 20 ANALYSIS

¶ 21 On appeal, Mr. Walker first asserts that the State failed to prove beyond a reasonable doubt that he constructively possessed the bullets. Specifically, Mr. Walker argues that the evidence was insufficient to show that he knew the ammunition was inside the vehicle and, even if he knew about the bullets, the State failed to show that he had the intent or capability to control them. The State responds that Mr. Walker's statement to police that he knew who owned the bullets established his knowledge of the bullets, and his control of the van and act of placing his jeans over the bullets in the van were sufficient to establish that he exercised dominion and

control over the ammunition.

¶ 22 On a challenge to the sufficiency of the evidence, we inquire " '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.' " (Emphasis omitted.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In so doing, we draw all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at 43), and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). It is within the province of the trier of fact "to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will only overturn a criminal conviction if "the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 23 To sustain a conviction of unlawful possession of firearm ammunition by a felon, the State must prove that the defendant knowingly possessed the ammunition, and that he was previously convicted of a felony. *People v. Rasmussen*, 233 Ill. App. 3d 352, 370 (1992); 720 ILCS 5/24-1.1(a) (West 2012). Mr. Walker disputes only whether the evidence was sufficient to establish his knowing possession of the ammunition.

¶ 24 Knowledge and possession are questions of fact to be resolved by the trier of fact. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007). "Knowing possession" may be actual or constructive. *People v. Brown*, 327 Ill. App. 3d 816, 824 (2002). Where, as here, a defendant was not found in actual possession of an unlawful item or substance, the State must prove constructive possession, *i.e.*, that the defendant had knowledge of the presence of the item, and that he had immediate and exclusive control over the area where the item was found. *People v.*

Hunter, 2013 IL 114100, ¶ 19; *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. A defendant's knowledge of the presence of an item may be inferred from circumstantial evidence (*Brown*, 327 Ill. App. 3d at 824-25), *i.e.*, "evidence of [the] defendant's acts, declarations, or conduct from which it can be inferred that he knew the contraband existed in the place where it was found" (*Spencer*, 2012 IL App (1st) 102094, ¶ 17). Control is established when the defendant has the "intent and capability to maintain control and dominion over an item, even if he lacks personal present dominion over it." (Internal quotation marks omitted.) *Spencer*, 2012 IL App (1st) 102094, ¶ 17.

¶ 25 "Although we must allow all reasonable inferences from the record in favor of the State, we may not allow unreasonable or speculative inferences." *People v. Mpulamasaka*, 2016 IL App (2d) 130703, ¶ 71. Based on the evidence presented at trial, it was unreasonable for the trial court to conclude beyond a reasonable doubt that Mr. Walker had either knowledge of or control over the recovered ammunition.

¶ 26 The trial court relied heavily on Mr. Walker's statement to the police that he knew who the ammunition belonged to, inferring from this statement that Mr. Walker therefore knew the ammunition was in the vehicle when he placed his jeans in the van and drove it. The State argues that this is not only a reasonable inference, but that it is "the only logical inference" to be drawn from the evidence. We disagree. Officer Huml simply stated that Mr. Walker made the statement after being *Mirandized*, The record is silent regarding whether the statement was prompted or unsolicited. If, as the State suggests, Mr. Walker mentioned the ammunition "without ever being asked about it," that would surely demonstrate that he had prior knowledge of its presence in the van. Where absolutely no context was provided for the statement at trial, however, an inference of knowledge is speculative at best. *Consolino v. Thompson*, 127 Ill. App. 3d 31, 34 (1984)

("Where from the proven facts the nonexistence of the fact to be inferred appears to be just as probable as its existence (or more probable than its existence), then the conclusion that it exists is a matter of speculation, surmise, and conjecture, and a [finder of fact] will not be allowed to draw it." (internal quotation marks omitted)). Indeed, the undisputed evidence of Mr. Walker's own actions makes such an inference unreasonable. If he knew the ammunition was in the van, Mr. Walker took a great risk asking Officer Huml to retrieve his jeans from the same location. When assessing the sufficiency of the evidence to support a conviction, common sense requires us to bear in mind which actions are reasonable and which are contrary to human nature. *Cf. People v. Coulson*, 13 Ill. 2d 290, 296 (1958) ("Where testimony is contrary to the laws of nature, or universal human experience, this court is not bound to believe the witness.").

¶ 27 Aside from Mr. Walker's supposedly inculpatory statement, there was no evidence from which it could be inferred that Mr. Walker knew the bullets were in the car. In *People v. Hampton*, 358 Ill. App. 3d 1029, 1032-33 (2005), this court referenced factors "for determining when a defendant's knowledge of a weapon in a car could be inferred" when, as here, the defendant did not have "regular, ongoing control" over the vehicle. Those factors are:

> "(1) the visibility of the weapon from the defendant's location in the vehicle; (2) the amount of time in which the defendant had an opportunity to observe the weapon; (3) gestures or movements by the defendant that would suggest an effort to retrieve or conceal the weapon; (4) the size of the weapon." *Id.* at 1033.

¶ 28 None of these factors supports an inference of knowledge in this case. The ammunition was small enough to fit in a sock and was on the floor under the third row of seats, not at all visible from the driver's seat of the van, and there was no testimony to suggest that the bullets were recognizable within the sock. Mr. Walker's companions both testified that the group had

been in the van for less than a minute when officers pulled them over; and there was no testimony that Mr. Walker made any effort to retrieve or conceal the ammunition. Although Mr. Lockhart and Mr. Gibson both testified that Mr. Walker placed his jeans in the trunk of the van, nothing in the record supports an inference that he saw the bullets inside the sock at that time. There is also nothing to suggest that Mr. Walker placed his jeans in the back of the car in order to further conceal the bullets. In fact, such an inference would be completely unreasonable, given that Mr. Walker later asked Officer Huml to retrieve the jeans for him.

¶ 29 The evidence is also insufficient to support the guilty verdict because, even if Mr. Walker knew that the ammunition was in the van, the evidence did not establish that he had the "intent and capability to maintain control and dominion" over it (*People v. Frieberg*, 147 Ill. 2d 326, 361 (1992)). It is well-established that the driver of a vehicle will not automatically be found to constructively possess all items found in the vehicle if other passengers are present. See, *e.g.*, *People v. Gore*, 115 Ill. App. 3d 1054, 1058 (1983) (holding that "[w]here *** there [wa]s a lack of evidence [that] the defendant was in exclusive control of the area under the passenger seat in which the cannabis was concealed and thereafter discovered, evidence [wa]s lacking [that] the defendant was any more in possession of [it] than the passengers in the car or for that matter the owner of the car"). The State's assertion that Mr. Walker "exercised dominion and control over *the van* when he drove it" (emphasis added) is thus irrelevant. The mere fact that he drove the vehicle did not give him exclusive control and dominion over its contents.

¶ 30 We likewise reject the State's argument that Mr. Walker exercised control over the ammunition by placing his jeans over it to hide it from the view of his companions. The testimony at trial was that the ammunition was already quite out of view, in a sock on the floor beneath the third row of seats.

¶ 31 Viewing all of the evidence in the light most favorable to the State, coupled with the reasonable inferences that may be drawn therefrom, we conclude that a rational trier of fact could not have found that Mr. Walker constructively possessed the ammunition recovered from the van and that the State therefore failed to prove unlawful possession of ammunition by a felon beyond a reasonable doubt.

¶ 32 Mr. Walker also contends that the trial court erroneously sentenced him to a Class 2 felony, rather than a Class 3 felony, because his underlying conviction was not a forcible felony. The State concedes the error but notes that, as of the filing of its brief, defendant had already completed his sentence and MSR. We do not need to reach the sentencing issue since we are reversing Mr. Walker's conviction. However, we feel compelled to comment on what appears to be the lack of any timely effort to correct what both parties acknowledge was an error in Mr. Walker's sentence.

¶ 33 The trial judge in this case made clear that it was his intention to sentence Mr. Walker to the minimum sentence allowed, which he thought was three years because the State had erroneously told him that the unlawful possession charge was a Class 2 felony. In fact, unlawful possession in this case would have been a Class 3 felony with a two-year minimum sentence. In addition to other avenues that might have been available to the parties to correct this error, we take this opportunity to remind both the State and the defense bar that we have the authority, under Illinois Supreme Rule 615(b) (eff. Aug. 27, 1999), to correct the mittimus at any time the case is pending before us. *People .v. Harper*, 387 Ill. App. 3d 240, 244 (2008). Where the parties agree that an error in the mittimus requires correction and the timely correction of that error may result in an earlier discharge for a defendant while an appeal is pending, the parties are urged to file an agreed motion seeking such relief, rather than waiting for the court to dispose of the

appeal in its entirety.

¶ 34 CONCLUSION

¶ 35 For the foregoing reasons, we reverse the judgment of the trial court.

¶ 36 Reversed.