2017 IL App (1st) 152258-U

No. 1-15-2258

Order filed December 29, 2017

First Division

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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. 14 CR 20671
	)	
MARCUS HILL,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Simon and Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's challenge to the chain of custody is forfeited because he failed to preserve the issue in the trial court. Defendant's conviction is affirmed over his contention that the State did not prove him guilty beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Marcus Hill was convicted of one count of unlawful use or possession of a weapon by a felon (UUWF) based on his possession of firearm ammunition (720 ILCS 5/24-1.1(a) (West 2014)). He was sentenced to three and one-half years in prison. On appeal, defendant contends that the State did not prove him guilty because it did

not prove beyond a reasonable doubt that he possessed firearm ammunition at a time when he was a convicted felon. He also argues that there was a "complete breakdown" in the chain of custody between the recovered box of ammunition and the plastic tray inside the box of ammunition in which his fingerprint was found. For the reasons below, we affirm defendant's conviction.

¶ 3 At trial, Chicago police officer Terrance Looney testified that, at about 7:31 p.m., on October 23, 2014, he and his partners, including Officer Saud Haidari, executed a search warrant at the single-family residence located on South Vernon, in Chicago. The officers knocked on the door, announced their office, and forced entry into the residence. When Looney first entered, he saw defendant exit the rear bedroom and run towards the front. Looney's team detained defendant. There were two other men in the residence, including one man who was in a wheelchair. The officers secured the residence and searched it.

¶ 4 On top of the dresser located in the front bedroom on the second floor, Looney "found a proof of residency." He recovered letters addressed to defendant, including a "Vehicle Impoundment/Seizure Report," a City of Chicago Department of Administration notice for hearing addressed to defendant at the residence on South Vernon, an attorney law group letter addressed to defendant at that same address, and defendant's driver's license also listing that address. About 5 to 10 minutes after the officers entered, defendant told Looney and two other officers that "he knew where two *** handguns were located within the house," and "the handguns were not his." Defendant told them that "the handguns were in the second floor, front bedroom underneath the floor near the radiator."

¶ 5 When the officers were in the second floor front bedroom, defendant "indicated" where the handguns were hidden by "nodding towards" the radiator where the carpet was "disheveled." Underneath the carpeting, a section of the wood floor had been cut open. The officers removed the wood and discovered a "trap" underneath the floor, where they recovered two .9-millimeter handguns and a box of ammunition. Looney identified photographs of the recovered handguns and box of ammunition. These items were recovered from the same room where Looney recovered defendant's mail. Officers recovered narcotics in the rear bedroom located on the first floor. Looney authored the narcotics supplementary report for the case, but he did not include defendant's statements in this report.

¶ 6 On cross-examination, Looney testified that the person who was in the wheelchair also came out of the rear first floor bedroom when the officers first entered. When the weapons were recovered from the front bedroom on the second floor, defendant was standing about four feet away. Looney acknowledged that, at a preliminary hearing on the case, he testified that he never saw defendant "in the vicinity" of the weapons. Defendant's statements were not included in the narcotics investigation section supplemental report or the arrest report. After defendant received his *Miranda* rights, he did not give a statement. Looney never saw defendant place the weapons in the location where they were recovered and did not know how long the weapons had been there.

¶ 7 Chicago police officer Saud Haidari testified that, on October 23, 2014, he executed the search warrant at the residence on South Vernon with Looney and other officers. As the designated evidence officer, Haidari recovered, took photographs of, and inventoried the evidence. In the rear bedroom on the first floor, on top of the nightstand, Haidari recovered

knotted plastic bags containing suspect cocaine, dietary supplements, cannabis, narcotics packaging, and a cannabis grinder. In the drawer of the nightstand, he recovered $425 in United State's currency and a bag of cannabis.

¶ 8 In the front bedroom on the second floor, Haidari observed the officers recover a box of ammunition and two firearms from a cavity underneath the floor by the radiator. The 9-millimeter firearms were loaded and the box of ammunition was "380[-caliber]." Haidari gave a unique inventory number to all the recovered items and took photographs of the items, which were admitted into evidence. The State showed Haidari People's Exhibits No. 3A through 3G, and he identified the recovered items, including the box of ammunition, in this series of photographs. He testified the photographs accurately depicted the two firearms and "the ammunition" that were recovered. Haidari did not document the two firearms or box of ammunition in his evidence recovery log.

¶ 9 On cross-examination, Haidari testified that he inventoried the handguns and sent them to the forensics lab to determine if they had been used in another crime. He testified that the ammunition box "would not go to forensics."

¶ 10 On re-direct, Haidari testified that he did not include the recovery of the weapons in the evidence recovery log but included the information in other reports and communicated it to the officers. The information was included in Looney's supplemental report and included inventory numbers Haidari gave to Looney.

¶ 11 Chicago police officer Michael Savage, an evidence technician from the forensic sciences division, received "multiple inventories" "in this case," including weapons, magazines, and a box of ammunition, which he was to examine for "latent prints." When he received this evidence, it

was in a sealed condition and he had to break the seal to perform his analysis. With respect to the box of ammunition, in response to the question "what particular item did you find something on and what did you find?" he testified that "[it] was a box of ammunition, 380 caliber ammunition. It's a small cardboard box. Inside of the box was a plastic tray. There was, I believe, six bullets inside the tray." He testified that the unique inventory number on the box of ammunition was 1328609.

¶ 12 Savage testified about the steps he took in his examination and that he "found a partial fingerprint on the plastic insert tray of the ammunition." He took photographs and "dropped" them in the Authenticated Digital Assets Management (ADAMS) system. The ADAMS system certifies that the photographs "in there have not been altered or changed."

¶ 13 On cross-examination, Savage testified that "there's no real way to tell" the lifespan of a fingerprint or scientific method to tell how old it is.

¶ 14 Chicago police officer Thurston Daniels, a latent fingerprint examiner, testified he completed a latent fingerprint examination report for this case. He compared the latent impression from Savage's photograph obtained from the ADAMS system to defendant's fingerprint card. He concluded that the latent impression from the photograph matched defendant's left index finger on defendant's fingerprint card.

¶ 15 On cross-examination, he testified that he did not have a "complete fingerprint" but had about 35% of it. He testified that there would be no variation in the other 65% and "as long as [he had] enough in the latent impression that [he was] looking at that's sufficient in the quality and quantity of those details ***." He cannot tell by looking at a fingerprint when a fingerprint was made.

¶ 16 On re-direct, Daniels testified that a partial print does not inhibit his analysis or comparison. A second person had reviewed his analysis and did not reject it.

¶ 17 The State entered into evidence certified copies of defendant's prior convictions for delivery of a controlled substance in 2002, a Class 2 felony, and delivery of between 1 and 15 grams of cocaine in 2003, a Class 1 felony.

¶ 18 The trial court granted defendant's motion for directed verdict with respect to possession of a controlled substance with intent to deliver and possession of cannabis with intent to deliver. Following closing argument, it found defendant not guilty of one count of armed habitual criminal, two counts of UUWF based on possession of firearms, and one count of UUWF based on possession of .9-millimeter ammunition.

¶ 19 The court found defendant guilty of one count of UUWF based on possession of .380-caliber ammunition. It was convinced that defendant "was in possession of the bullets based upon the numerous items testified in court including the fact that the fingerprint is on the tray inside of the box, which contains the ammunition." The court denied defendant's motion for a new trial and sentenced him to three and one-half years in prison.

¶ 20 Defendant contends on appeal that the State did not prove him guilty beyond a reasonable doubt because it did not prove that he possessed the ammunition at the time he was a convicted felon. He first argues that there was a "complete breakdown in the chain of custody," and the State did not establish that the plastic tray with defendant's fingerprint was inside the same box of ammunition recovered during the search, as there was no testimony about the inventory number assigned to the recovered box of ammunition or about the chain of custody. The State

asserts that defendant's challenge to chain of custody is forfeited because he did not object at trial to the chain of custody or include the claim in his posttrial motion.

¶ 21 A challenge to the chain of custody is "considered an attack on the admissibility of the evidence" and not to the sufficiency of the evidence, and is therefore, "subject to the ordinary rules of forfeiture." *People v. Alsup*, 241 Ill. 2d 266, 275 (2011). To preserve a claim for review, a defendant must generally object to the issue at trial and raise it in a posttrial motion. *People v. Woods*, 214 Ill. 2d 455, 470 (2005). Defendant did not object to the State's fingerprint evidence at trial or raise the issue in a posttrial motion and, thus, "deprived the State of any reasonable opportunity to correct the alleged errors in the chain of custody evidence it presented at trial." *People v. Wilson*, 2017 IL App (1st) 143183, ¶ 22. "Forfeiture is important not only because a timely objection allows a trial court to promptly correct error, but also to prevent a party from strategically obtaining a reversal by their failure to act." *Wilson*, 2017 IL App (1st) 143183, ¶ 22. Because defendant did not preserve his challenge to the chain of custody in the trial court, he forfeited it.

¶ 22 Defendant contends that, even though he did not preserve the issue in the trial court, we may nevertheless review his challenge under the plain error doctrine. "[U]nder limited circumstances," a defendant may raise a challenge to the chain of custody "for the first time on appeal if the alleged error rises to the level of plain error." *Woods,* 214 Ill. 2d at 471. "The plain-error doctrine allows a reviewing court to address defects affecting substantial rights if the evidence is closely balanced or if fundamental fairness requires." *People v. Echavarria*, 362 Ill. App. 3d 599, 607 (2005). The first step in the plain error analysis is to determine whether error

occurred because, if there is no error, there can be no plain error. *Wilson*, 2017 IL App (1st) 143183, ¶ 25.

¶ 23 To establish chain of custody "[f]or items that are fungible or susceptible to tampering, contamination or exchange, the State must establish a chain of custody that is sufficiently complete to make it improbable that the evidence has been subject to tampering or accidental substitution." *People v. Trice*, 2017 IL App (1st) 152090, ¶ 61. "When the State makes a *prima facie* case, the defendant then bears the burden of showing actual evidence of tampering, alteration or substitution." *Trice*, 2017 IL App (1st) 152090, ¶ 61. To establish error in the context of plain-error, a defendant must demonstrate that there was a "complete breakdown" in the chain of custody. *Wilson*, 2017 IL App (1st) 143183, ¶ 32. In *People v. Woods,* 214 Ill. 2d 455, 471 (2005), our Supreme Court described a "complete breakdown" in the chain of custody as occurring in "those rare instances" where "the inventory number or description of the recovered and tested items do not match—raising the probability that the evidence sought to be introduced at trial was not the same substance recovered from defendant." *Woods,* 214 Ill. 2d at 471.

¶ 24 As previously noted, defendant argues that there was no link between the recovered box of ammunition and the plastic tray inside the box of ammunition tested by Officer Savage. We conclude that the chain of custody was sufficiently complete and this case does not involve a "complete breakdown" in the chain of custody such that we may review defendant's forfeited challenge under the plain-error doctrine.

¶ 25 Haidari saw the officers remove the box of ammunition from underneath the wood floor and testified that it was .380-caliber ammunition. He took a photograph of the recovered box of

ammunition after it was recovered, identified it in People's Group Exhibit No. 3, and testified that the photographs accurately depicted the box of ammunition that was recovered. The series of photographs in People's Exhibit No. 3 shows the box is a small cardboard box labeled "Critical Defense" and "25 Cartridges." Savage, the evidence technician, received "multiple inventories" "in this case," including handguns, magazines, and a box of ammunition, which had an inventory number of 1328609. When Savage received the evidence, it was "sealed" and he had to break the seal before he performed his analysis. He described the evidence as "a box of ammunition, 380 caliber ammunition. It's a small cardboard box," which is an accurate reflection of the box depicted in the photographs identified by Haidari at trial. Savage testified about the steps he took to perform his examination and that he placed the photographs of his fingerprint findings into the ADAMS system, a system that certifies that the photographs "have not been changed or altered." Daniels, the latent fingerprint examiner, subsequently obtained the photographs from the ADAMS system to perform his analysis.

¶ 26 This testimony sufficiently linked the box of ammunition recovered at the scene to the box tested by Savage and does not show that there was a "complete breakdown" in the chain of custody such that there was a probability that the item recovered was not the same item tested. See *Wilson*, 2017 IL App (1st) 143183, ¶¶ 9, 10, 11, 32-33 (the reviewing court found that the testimony did not show a "complete breakdown" in the chain of custody for a recovered hat that was tested for DNA where the evidence showed that (1) an officer recovered the hat; (2) the hat arrived to the forensic scientist in a sealed bag; and (3) the swabbing and cutting from the hat taken by the forensic scientist was subsequently received and analyzed by another forensic

scientist). Thus, we conclude that the chain of custody was sufficiently complete to make it improbable that the evidence was tampered with or substituted.

¶ 27 Further, defendant did not put forth evidence that the box of ammunition was tampered with or substituted, or that a mistake occurred. See *Echavarria*, 362 Ill. App. 3d at 607 (concluding that the testimony established "a reasonable probability the cocaine was not tampered with or substituted," and thus, the defendant "had to put forth evidence the cocaine *was* tampered with or substituted or a mistake occurred."). He never contested the chain of custody at trial or during closing argument. Rather, at the hearing on the directed verdict, defense counsel argued that the court "heard testimony that there was a partial print on an ammo box" and "[t]he mere fact that an individual touched the ammo box doesn't mean that person knowingly possessed that. It just means that they came into contact with it." Similarly, during closing argument, defense counsel argued that the State had "proven that [defendant] touched [the box of ammunition]," but not that he actually possessed it. Accordingly, defendant did not meet his burden of showing that the evidence was tampered, substituted, or altered because he never attacked the chain of custody or adequacy of the foundation of the evidence at trial.

¶ 28 Moreover, any "deficiencies" in the State's chain of custody evidence went to the weight and not the admissibility of the evidence. See *Echavarria*, 362 Ill. App. 3d at 605 ("Deficiencies in a chain of custody go to the weight and not the admissibility of evidence."). Accordingly, based on the foregoing, we conclude that there was no error and therefore defendant's challenge to the chain of custody remains forfeited.

¶ 29 Defendant also challenges the sufficiency of the evidence. He contends that, even if the evidence was sufficient to prove that the item recovered was the same item tested, the State did

not prove that the box of ammunition contained bullets, he touched the tray after he was a convicted felon, and when he touched it he had actual or constructive possession of the plastic tray. Defendant requests that we reverse his conviction.

¶ 30 When we review the sufficiency of the evidence on appeal, the question 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, 319 (1979). "A reviewing court must allow all reasonable inferences from the record in favor of the State." *People v. Faulkner*, 2017 IL App (1st) 132884, ¶ 35. "The determination of the weight to be given the witnesses testimony, their credibility, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact." *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 16. We will not retry a defendant and will only reverse a conviction if "the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Spencer*, 2012 IL App (1st) 102094, ¶ 16.

¶ 31 To prove defendant guilty of UUWF based on firearm ammunition as charged, the State had to prove that defendant possessed the firearm ammunition when he was a convicted felon. 720 ILCS 5/24-1.1(a) (West 2014); See *Faulkner*, 2017 IL App (1st) 132884, ¶ 38. Defendant challenges the element of possession. Possession may be established by either actual or constructive possession. *People v. Tates,* 2016 IL App (1st) 140619, ¶ 19. Defendant was not in actual possession of the firearm ammunition and, therefore, the State had to prove that he constructively possessed it. See *Faulkner*, 2017 IL App (1st) 132884, ¶ 39.

¶ 32 To prove defendant guilty of constructive possession, the State had to prove that defendant had knowledge of the presence of the firearm ammunition and "exercised immediate and exclusive control over the area where [it] was found." *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). Knowledge can be established by evidence "of a 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 over an item is shown when a defendant "has the 'intent and capability to maintain control and dominion' over an item, even if he lacks personal present dominion over it." *Spencer*, 2012 IL App (1st) 102094, ¶ 17 (quoting *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992)). Constructive possession is often proven by circumstantial evidence. *McCarter*, 339 Ill. App. 3d at 879. "Knowledge and possession are questions of fact to be resolved by the trier of fact, whose findings should not be disturbed upon review unless the evidence is so unbelievable, improbable, or palpably contrary to the verdict that it creates a reasonable doubt of guilt." *Faulkner*, 2017 IL App (1st) 132884, ¶ 39 (quoting *People v. Luckett*, 273 Ill. App. 3d 1023, 1033 (1995)).

¶ 33 Viewing the evidence in the light most favorable to the State, we conclude that any rational trier of fact could have found beyond a reasonable doubt that defendant had knowledge of, and constructively possessed, the firearm ammunition at the time he was a convicted felon.

¶ 34 The evidence showed that defendant had two prior felony convictions in 2002 and 2003. On October 23, 2014, the police recovered a .380-caliber box of ammunition found in a "trap" underneath a section of the wood floor in the front bedroom located on the second floor. On top of a dresser in that room, the police recovered mail addressed to defendant at the address of the residence as well as defendant's driver's license listing that same address. Looney testified that

defendant told the officers that two handguns were located in the front bedroom on the second floor, "underneath the floor near the radiator," and indicated where the trap was located by nodding his head in its direction, which shows defendant had knowledge about the location of the box of ammunition found in the trap. Savage obtained a partial fingerprint from the plastic insert tray contained inside the box of ammunition. The fingerprint examiner testified that defendant's left finger matched the latent impression obtained by Savage. Based on this evidence, a rational trier of fact could have reasonably concluded that, at the time defendant was a convicted felon, he had knowledge of the firearm ammunition and exercised immediate and exclusive control over the area where it was found. Thus, the evidence was sufficient to support that defendant had constructive possession of the firearm ammunition recovered at the time of the search.

¶ 35 Defendant argues that there was no evidence that the box of ammunition or plastic tray contained any bullets, as neither Looney nor Haidari testified that he opened the box and the photographs did not show the contents of the box. While Looney and Haidari did not specifically testify that they opened the box, they both testified that the box of ammunition was .380-caliber ammunition. Haidari testified that the ammunition was not .9-millimeter but was .380-caliber, supporting the inference that he examined the bullets. Further, Savage specifically testified that the box contained bullets when he testified that the box of ammunition was "[.]380 caliber ammunition," "[i]nside the box was a plastic tray," and "[t]here was, I believe, six bullets inside." Although defendant takes issue with Savage's testimony that he "believe[d]" the tray contained six bullets, it was reasonable for the trial court to conclude that Savage actually saw bullets inside the box, as opposed to an empty box, and he just could not remember exactly how

many bullets he saw. If the box had been empty with no bullets, this would have been apparent to Savage. Thus, defendant's argument fails.

¶ 36 Defendant also argues there was no evidence regarding when his fingerprint was placed on the plastic tray and claims his print could have been impressed on the tray before he was a convicted felon. Defendant was convicted of a felony in 2002 and the search warrant at defendant's residence was executed 12 years later, on October 23, 2014. We find it is entirely reasonable for the trial court, as fact finder who must draw reasonable inferences from the testimony, to conclude that defendant's fingerprint had not been sitting on the plastic tray for over 12 years but rather that defendant had handled the tray with the bullets sometime after 2002, when he was a felon.

¶ 37 For the reasons explained above, we affirm defendant's conviction.

¶ 38 Affirmed.