No. 2—09—1156
Order filed June 1, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09—CF—610
	)	
JAMES M. PETERSON,	)	Honorable
	)	Richard A. Lucas,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

Held: Defendant was proved guilty beyond a reasonable doubt of all counts of the indictment; the evidence was sufficient to prove that defendant knew counterfeit bills in a safe in his apartment were counterfeit; trial court did not err in refusing to give defendant's nonpattern jury instructions; trial court did not err in granting the State's motion *in limine* to impeach defendant with a prior juvenile adjudication if he testified; and the State's closing argument did not deprive defendant of a fair trial.

Defendant, James M. Peterson, nickname "Shorty," appeals from his convictions on two counts of unlawful possession of a controlled substance with intent to deliver, one count of possession of a controlled substance, unlawful possession of cannabis with intent to deliver, and forgery following a jury trial. We affirm.

BACKGROUND

On March 25, 2009, a grand jury indicted defendant for the following offenses that occurred on February 27, 2009. Count I alleged that defendant knowingly and unlawfully possessed with the intent to deliver 15 grams or more but less than 100 grams of a substance containing cocaine (720 ILCS 570/401(a)(2)(A) (West 2008)); count II alleged that defendant knowingly and unlawfully possessed 15 grams or more but less than 100 grams of a substance containing cocaine (720 ILCS 570/402(a)(2)(A) (West 2008)); count III alleged that defendant knowingly and unlawfully possessed with the intent to deliver less than 50 grams of a substance containing psilocybin, a controlled substance (720 ILCS 570/401(e) (West 2008)); count IV alleged that defendant, with the intent to defraud, knowingly possessed counterfeit $50 bills (720 ILCS 17—3(a)(3) (West 2008)); count V alleged that defendant, a convicted felon, knowingly possessed a loaded Smith and Wesson .38 caliber revolver (720 ILCS 5/24—1.1(a) (West 2008)); count VI (as amended) alleged that defendant knowingly and unlawfully possessed with the intent to deliver more than 10 grams but not more than 30 grams of a substance containing cannabis (720 ILCS 550/5(c) (West 2008)); and count VII alleged that defendant knowingly and unlawfully possessed more than 30 grams but not more than 500 grams of a substance containing cannabis (720 ILCS 550/4(d) (West 2008)). On defendant's motion, the trial court severed count V, the charge of unlawful possession of a weapon by a felon, for trial.

Prior to trial, the State moved *in limine* to admit defendant's prior cannabis conviction and his prior adjudication as a delinquent minor for the offense of aggravated criminal sexual assault. Over defendant's objection, the trial court allowed the motion. The State also successfully moved

in limine to admit evidence of other crimes, specifically evidence that defendant had previously sold cannabis to an undercover narcotics agent.

The jury trial commenced on June 9, 2009. Special Agent Scott Britnell of the State Line Area Narcotics Team (SLANT) testified as the State's first witness. He testified that on February 27, 2009, at approximately 5:30 a.m., he was surveilling a residence at 527 N. Second Street in Rockford, Illinois. At approximately 11:10 a.m., he observed a blue Buick four-door sedan pull up to the north side of the residence. Britnell saw defendant, who was dressed in long pants and a shirt, exit the Buick and walk to the south side of the residence. Five or ten minutes later, Britnell saw defendant come from the south side of the residence wearing shorts, an unbuttoned short-sleeved shirt over a T-shirt, and he was carrying a duffel bag. According to Britnell, he followed defendant to Bally's health club on East State Street in Rockford.

Britnell testified that 527 N. Second St. is a two-story apartment building with an apartment on top and an apartment on the main floor. There was a porch at the west side of the building. There was a door on the west side of the building and another door at the southeast corner. Britnell did not see defendant enter the residence, but it appeared that he changed clothes inside the residence. Britnell testified that between the hours of 5:30 a.m. and 11:10 a.m. defendant was not at that residence.

SLANT Inspector Lori DePauw testified next for the State. She testified that on March 20, 2007, she was acting in an undercover capacity when she went with an informant to a Holmes Street address in Rockford where she purchased cannabis from defendant.

DePauw testified that she obtained a search warrant for the lower apartment at 527 N. Second Street in Rockford on February 26, 2009. On February 27, 2009, she and other SLANT agents and

members of the Illinois State Police tactical response team executed the search warrant. At the time of the search, Thomas Hammons, a resident of the apartment, was present. The search began in the kitchen. Officers found what appeared to be powder cocaine in the freezer compartment of the refrigerator. In the kitchen cabinets, they located another bag of cocaine, two scales, clear plastic bags, and a Scooby Doo fruit snack box containing psilocybin mushrooms. According to DePauw, the mushrooms were hallucinogens. The agents also found a large quantity of plastic baggies in the kitchen, which DePauw testified indicated narcotics trafficking. In a cabinet next to the mushrooms, officers found three bottles of Inostitol[1] powder, described as a cutting agent for cocaine. Inspector DePauw found a knife among the mushrooms and bottles of Inostitol powder. The knife had a tag with the name "James" taped to it. The name "Shorty" was engraved on the knife with the date "6-17-06."

In what was described as an L-cove, a dining area with exercise equipment, agents recovered a large box of ammunition, a holster, a gun magazine that holds bullets, and a bullet-proof vest. There was also an "Abercrombie" bag that contained a syringe, mail and medical records belonging to defendant, and pictures of defendant and others taken inside the 527 N. Second Street apartment. Some of the mail was addressed to defendant at the 527 N. Second Street address. An Oliphant Lock & Safe receipt issued to defendant at the Second Street address was also in the Abercrombie bag.

The agents also searched the basement area of the apartment. The basement consisted of two bedrooms and a storage area with a washing machine and exercise equipment. In one of the bedrooms, there was an open duffel bag on the floor. Inside the duffel bag were prescription bottles

[1]This appears to be a misspelling throughout the record. The product likely was Inositol powder.

of Hydrocodone pills with defendant's name on them and prescription bottles without labels but with cannabis inside them. Also inside the duffel bag was a piece of mail addressed to defendant postmarked February 13, 2008, as well as numerous items of men's clothing and two sets of keys. One was a safe-deposit key and the other was a key that fit the lock to the south door at the residence at 527 N. Second Street. Under a chair in the bedroom where the duffel bag was found was a box containing cannabis. A box containing ammunition was located three to five feet away from the duffel bag.

In what Inspector DePauw described as the "north" bedroom, agents found a safe with a broken lock that contained $2850 in currency. Among the currency were nine counterfeit $50 bills.

Inspector DePauw testified that the amounts of cocaine, mushrooms, and cannabis found in the raid indicated that the drugs were not for personal consumption but for distribution. DePauw also testified that on a previous visit to the 527 N. Second Street apartment, defendant opened the door at her knock.

The State's next witness was Bill Kahle, who worked for Oliphant Lock & Safe. He testified that on September 26, 2008, he dispatched a technician to open the locks on a 1996 Buick LeSabre. Defendant was the customer, and Oliphant invoiced him for the service at 527 N. Second St., Rockford.

The State next called LeRoy E. Johnson, the owner and landlord of 527 N. Second St. When Johnson purchased the building, Thomas Hammons was the downstairs tenant. Hammons had someone else living with him, whom he introduced to Johnson as his brother. The "brother" was defendant. The exercise equipment in the apartment belonged to defendant, as did a pit bull, for

which Johnson charged extra rent. Johnson testified that defendant was there regularly in 2008 and 2009.

SLANT Special Agent Jeffrey Mannix next testified as an expert witness for the State. According to Mannix, the amounts of drugs recovered from the 527 N. Second Street apartment indicated they were for distribution rather than personal use. Mannix opined that the inhabitants of the apartment possessed the drugs with the intent to deliver.

The parties stipulated before the jury to the chain of evidence testimony, the crime laboratory analyses, and the weights of the various substances recovered during the search. The State rested, and the trial court denied defendant's motion for a directed verdict.

Defendant's first witness was Edward G. Rottman, a latent fingerprint examiner employed by the Illinois State Police. Rottman testified that the latent fingerprints suitable for comparison that were found during the search of the apartment at 527 N. Second Street did not match defendant's.

Chasta Kasaboski was defendant's second and last witness. She testified that she was defendant's girlfriend. They had been dating for a year, and defendant lived with her in Freeport, Illinois. She testified that defendant's dog, Deuce, also lived with them. Kasaboski identified photos she took of Deuce and defendant's belongings at her home. Defendant then rested.

Defendant tendered two non-IPI jury instructions, which the trial court refused.

Defense counsel argued to the jury in closing argument that the State was attempting to convict defendant on guilt by association. During the State's rebuttal closing argument, the prosecutor argued as follows:

> "Let's start with what [defendant] argued regarding guilt by association, that that's not the law. Isn't it?

> I put up for you again the constructive possession jury instruction. If two or more persons share the immediate and exclusive control or share the intention and the power to exercise control over a thing, then each person has possession.
>
> There is guilt by association in this case."

Defendant objected to this argument, and the court overruled the objection.

Following its deliberations, the jury found defendant guilty on all counts of the indictment. The trial court denied defendant's posttrial motion and sentenced defendant to six years' imprisonment on each count, to be served concurrently. This timely appeal followed.

ANALYSIS

Defendant's first issue is that the State failed to prove that he knew that the nine $50 bills found in the bedroom safe were counterfeit. He was charged with the offense of forgery under section 17—3(a)(3) of the Criminal Code of 1961. Section 17—3(a)(1) provides that a person commits forgery when, with intent to defraud, he knowingly makes or alters any document apparently capable of defrauding another in such manner that it purports to have been made by another or at another time, or with different provisions, or by authority of one who did not give such authority. Subsection (3)(a)(3) provides that a person is guilty of forgery if he or she possesses, with intent to issue or deliver, any such document [described in subsection (1)] knowing it to have been thus made or altered. 720 ILCS 5/17—3(a)(3) (West 2008).

The drafters of the Criminal Code of 1961 omitted all reference to the offense of counterfeiting, which is not now a crime in Illinois except insofar as it constitutes a violation of the analogous offense of forgery. *Bruni v. Department of Registration and Education*, 59 Ill. 2d 6, 9 (1974). While acknowledging this, defendant nevertheless analyzes this issue under the federal

counterfeiting statute (18 U.S.C. § 472) and concludes that the State did not prove all of the elements of the federal crime, specifically that defendant knew the money was counterfeit. However, while the federal statute and the cases interpreting it that defendant cites are inapplicable, the Illinois forgery statute under which defendant was indicted contains knowledge as an element of the offense: he had to possess the counterfeit money with the intent to issue or deliver it, knowing it was counterfeit. "Clearly, it must be proved beyond a reasonable doubt that the defendant knew that the instrument was forged for a conviction to stand." *People v. Mager*, 35 Ill. App. 3d 306, 309 (1976). Thus, while defendant ignores the relevant statute, his argument is nonetheless appropriate.

The parties dispute the standard of review. For purposes of this argument, defendant admits that the State proved he possessed the currency and that some of it was counterfeit. He contends that a challenge to the sufficiency of the evidence that does not present credibility questions, but which relies solely upon the legal significance of uncontested facts calls for *de novo* review. The State maintains that there are credibility issues. We agree with the State. Defendant denies that the State proved that he knew the bills were counterfeit. The State's evidence at trial on this issue was circumstantial. Inspector DePauw testified to the circumstances surrounding finding the counterfeit money, and to that extent the proof depended on her credibility. When presented with a challenge to the sufficiency of the evidence, it is not the function of the reviewing court to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The relevant 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); *Collins*, 106 Ill. 2d at 261.

The State contends that defendant forfeited this issue by not including the counterfeit money in the record on appeal. The State relies on *People v. Pertz*, 242 Ill. App. 3d 864 (1993). In *Pertz*, this court held that the defendant's failure to include photographs in the record, the gruesome nature of which he contended was prejudicial, precluded our review of that issue. *Pertz*, 242 Ill. App. 3d at 906. Unlike in *Pertz* where the photographs were necessary to our review, we do not need to examine the counterfeit money in order to review whether the State proved that defendant knew it was counterfeit. Our examination at most could lead us to the conclusion that the bills were counterfeit. Defendant admits that the money was counterfeit. We cannot see how our examination of the bills would help to resolve the issue of defendant's knowledge. Consequently, defendant has not forfeited this issue.

DePauw testified that nine counterfeit $50 bills were found in the open safe in the north bedroom, which appeared to be occupied by Thomas Hammons. She testified that she knew "immediately" that they were counterfeit because they did not feel like real paper money. She used a special pen to try to mark the bills, which would have worked on real currency, but failed to work on the subject bills. She testified that all of the suspect bills bore the same serial number, which could not happen if they were real. According to DePauw, it is not unusual for drug dealers to keep money in a safe. She testified that one can assume that such money has been accumulated from selling drugs. She further assumed, based on her experience, that the counterfeit bills were going to be given as change to some unsuspecting drug purchaser who would be too high to notice.

Defendant cites *United States v. Alea*, 433 F. 2d 948 (5th Cir. 1970), and *United States v. Baker*, 650 F. 2d 936 (8th Cir. 1981), in support of his argument that mere possession of counterfeit currency does not establish the element of knowledge. As a general proposition, we agree with

defendant. However, in forgery cases, proof must often be by circumstantial evidence. *People v. Baylor*, 25 Ill. App. 3d 1070, 1074 (1975). Here, defendant's occupancy of what the State characterized as a "stash" house was amply proved, as was defendant's connection to the contraband. A knife with his first name and his nickname on it was found in a kitchen cabinet in proximity to the mushrooms and the bottles of powder used to cut cocaine. A duffel bag with items belonging to defendant, which included vials of cannabis, was found in one of the basement bedrooms. There were receipts and pieces of mail belonging to defendant with the 527 N. Second St. address affixed to them. The landlord testified that defendant was living in the apartment with Hammons. Defendant had a key to the apartment. The evidence showed that the amounts of drugs found in the apartment were not for personal use. During defendant's cross-examination of DePauw, the money in the safe was connected to drug trafficking. She also tied the counterfeit money to drug trafficking by explaining that drug dealers use counterfeit money to make change during drug purchases, thereby cheating customers who are often too high to notice. DePauw testified that defendant had previously dealt drugs, thus establishing his knowledge of drug trafficking. Consequently, the jury was entitled to infer that defendant not only possessed the counterfeit bills but had knowledge they were counterfeit. Viewing the evidence in the light most favorable to the State, a rational trier of fact could find that the knowledge element of forgery was proved beyond a reasonable doubt.

Defendant's second contention is that he was denied a fair trial when the trial court ruled that his juvenile adjudication as a sex offender was admissible to impeach him if he testified. A juvenile adjudication is generally not admissible to impeach a defendant's credibility. *People v. Harris*, 375 Ill. App. 3d 398, 406 (2007). However, when an adult defendant testifies falsely or inconsistently, or presents a false or misleading picture of himself to the jury, a juvenile adjudication may become

admissible for the limited purpose of impeaching that testimony. *Harris*, 375 Ill. App. 3d at 406. Whether to admit a juvenile adjudication under such circumstances is within the trial court's discretion. *Harris*, 375 Ill. App. 3d at 406.

Here, defendant did not testify at trial. He contends that the trial court improperly influenced him not to testify by its ruling that he could be impeached with his juvenile adjudication. He cites *People v. Vaughan*, 354 Ill. App. 3d 917 (2004). *Vaughan* is inapplicable, because it involved a trial judge's improper admonitions changing the defendant's and his counsel's trial strategy and causing the defendant not to testify. That a defendant may elect not to testify due to considerations that he may be impeached presents a different situation. See *People v. Rosenberg*, 213 Ill. 2d 69, 81 (2004) ("Defendants are often faced with difficult decisions when weighing the pros and cons of testifying at trial. ***[A] defendant's testimony may be impeached with his prior convictions in appropriate cases. That a defendant may decide not to testify in a given case due to such considerations does not give rise to a constitutional violation.") Moreover, by not testifying, defendant has failed to preserve this issue for review. *People v. Patrick*, 233 Ill. 2d 62, 77-78 (2009) (any possible harm flowing from the trial court's denial of a motion *in limine* to bar impeachment by a prior conviction is wholly speculative absent the defendant's testimony and the prosecutor's attempt to impeach the defendant through use of the prior convictions.); *People v. Averett*, 237 Ill. 2d 1, 18 (2010) (the effect of the defendant's choice against testifying is to render the issue of whether defendant could be impeached with prior convictions unreviewable).

Defendant next argues that he was denied a fair trial when the prosecutor made an improper closing argument. Defendant contends that the prosecutor argued that mere association with a drug dealer was sufficient evidence to convict when she stated in rebuttal:

"Let's start with what [defendant] argued regarding guilt by association, that that's not the law. Isn't it?

I put up for you again the constructive possession jury instruction. If two or more persons share the immediate and exclusive control or share the intention and the power to exercise control over a thing, then each person has possession.

There is guilt by association in this case."

The prosecution is afforded wide latitude in making closing arguments so long as the comments are based on the evidence or reasonable inferences to be drawn from the evidence. *People v. Gonzalez*, 388 Ill. App. 3d 566, 587 (2008). When reviewing a challenge to the prosecution's remarks made during closing arguments, the comments must be considered in context of the entire closing arguments made by both parties. *Gonzalez*, 388 Ill. App. 3d at 587. We will not reverse a jury's verdict based upon improper remarks made during closing arguments unless the comments were of such magnitude that they resulted in substantial prejudice to the defendant and constituted a material factor in his conviction. *Gonzalez*, 388 Ill. App. 3d at 587. If the jury could have reached a contrary verdict had the improper remarks not been made, or if the reviewing court cannot say that the improper remarks did not contribute to the conviction, a new trial should be granted. *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007).

Here, defense counsel argued that defendant was best buddies with a drug dealer, Thomas Hammons. Counsel argued freedom of association and the risk that associating with bad company will make others think "you're like that." Counsel then cautioned the jury that the "law doesn't let us say that everybody who associates with a drug dealer *** shall be labeled as such." In context, the prosecutor's rebuttal argument refuted this "guilt by association" argument by emphasizing the

instruction regarding constructive possession. The prosecutor's statement that if two or more persons share the immediate and exclusive control or share the intention and the power to exercise control over a thing, each person has possession was not a misstatement of the law. The identical language appeared in the instruction the trial court read to the jury. The prosecutor clarified the definition of constructive possession. Problematic is the prosecutor's suggestion that guilt by association may be the law. The rhetorical question, "Isn't it?" and the statement, "There is guilt by association in this case" should have been left unsaid. However, in context, we do not believe the jury could have been misled, particularly where the evidence demonstrated that defendant's guilt was proved by significantly more evidence than mere association and the prosecutor dwelt on the actual evidence at length. Accordingly, we cannot say that but for the improper remarks the jury could have reached a contrary verdict or that the remarks contributed to the conviction.

Defendant complains of a second prosecutorial remark, also made in rebuttal closing argument. The prosecutor argued: "The defense claims that there is no proof that the defendant had the authority to possess these drugs. There is no element requiring the State to prove that the defendant had the authority to possess those drugs." Defendant contends this was a misstatement of the law. However, defendant did not object to the comment when it was made, and the claim is forfeited. *Gonzalez*, 388 Ill. App. 3d at 587.

Defendant next urges that he was denied a fair trial when the trial court refused to give two nonpattern instructions tendered by defendant. Defendant's instruction No. 1 read as follows: "In order to prove constructive possession, the government must prove the Defendant has the recognized authority to possess the drug in question." The instruction references *United States v. Manzella*, 791 F. 2d 1263 (7th Cir. 1986). Defendant's instruction No. 2 read: "Mere proximity to the drug, mere

presence on the property, [*sic*] where it is located , or mere association, without more, with the person who does control the drug or the property on which it is found is insufficient to support a finding of possession." Instruction No. 2 references *United States v. Hunte*, 196 F. 3d 687 (7th Cir. 1999).

A court may, in the exercise of its discretion, give nonpattern instructions. *People v. Pollock*, 202 Ill. 2d 189, 211 (2002). The decision to instruct a jury using nonpattern instructions is reviewed for an abuse of discretion. *Pollock*, 202 Ill. 2d at 211. Whether a court abuses its discretion depends on whether the nonpattern instruction tendered is an accurate, simple, brief, impartial, and nonargumentative statement of the law. *Pollock*, 202 Ill. 2d at 211. Generally, where an appropriate instruction exists on a subject upon which the trial court has determined the jury should be instructed, the IPI pattern instruction should be used. *Pollock*, 202 Ill. 2d at 212.

In the present case, defendant's instruction No. 1 is misleading, confusing, and inaccurate. It leaves the jury to speculate what "recognized authority" must give defendant permission to possess the drugs. The phrase "recognized authority" comes from a statement of Judge Posner in *Manzella*, a prosecution for violation of federal statutes, in which the judge explained constructive possession as follows:

> "[T]he essential point is that the defendant have the ultimate control over the drugs. He need not have them literally in his hands or on premises that he occupies but he must have the right (not the legal right but the *recognized authority* in his criminal milieu) to possess them ***." *(*Emphasis added). *Manzella*, 791 F. 2d at 1266.

The phrase "recognized authority" in this context was the court's flourish. It is not the law in Illinois that a defendant's criminal milieu must recognize his right to possess drugs before a defendant can

be in possession of them. Defendant's instruction No. 2 is argumentative and based upon language from a federal case interpreting federal laws. The trial court in the instant case adequately instructed the jury using the IPI pattern instructions, and the court's decision to refuse defendant's nonpattern instructions was not an abuse of discretion.

Defendant's last contention is that the State's evidence was insufficient to prove that defendant possessed the contraband. Defendant argues that the State failed to prove that he had any control or intent to control the drugs found during the search of the 527 N. Second Street apartment. He relies on the statement in *Manzella* that possession requires that a "recognized authority" had to give him the right to possess the drugs. *Manzella* did not hold that any such "recognized authority" was an element even of the federal offense of possession, but used the phrase illustratively. Therefore, we reject *Manzella* as pertinent, or even persuasive, authority. Defendant also relies on *United States v. Galiffa*, 734 F. 2d 306 (7th Cir. 1984), in which the defendant was convicted of federal offenses not germane to the present case.

Our standard of review 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. *Collins*, 106 Ill. 2d at 261. The jury convicted defendant of possession and possession with intent to deliver. Special Agent Mannix gave expert testimony that the amounts of cannabis and cocaine found in the apartment indicated that they were for distribution and not for personal consumption. Inspector DePauw testified that the presence of the scales, bottles of powder used to cut cocaine, and the quantity of baggies indicated a distribution operation. Defendant does not challenge this evidence. Defendant argues, rather, that the State had to prove more than his mere

presence, or the presence of his possessions, in the apartment in order to prove that he was in constructive possession of the contraband.

To obtain a conviction for the unlawful possession of a controlled substance, the State must prove that the defendant had knowledge of the presence of the drugs and that the drugs were in his immediate possession and control. *People v. Eiland*, 217 Ill. App. 3d 250, 259-60 (1991). Possession can be established by evidence of actual physical possession or constructive possession. *Eiland*, 217 Ill. App. 3d at 260. Constructive possession exists where there is no actual personal present dominion over the drugs, but there is an intent and a capacity to maintain control and dominion over them. *Eiland*, 217 Ill. App. 3d at 260. It is no defense that another had knowledge of the drugs and control of them, as the defendant's possession may be joint with that of another. *Eiland*, 217 Ill. App. 3d at 260.

Here, defendant lived in the lower apartment at 527 N. Second Street in Rockford with Thomas Hammons in 2008 and 2009. He had a key to the apartment's south door where Agent Britnell observed defendant on the morning the search warrant was executed. Defendant arrived at the apartment building, went to the south entrance, and came out wearing different clothes and carrying a duffel bag. Drugs were found throughout the apartment. In the kitchen, a knife with defendant's name and nickname on it was found in a cabinet with contraband mushrooms and bottles of powder used to cut cocaine. Cannabis was discovered inside defendant's duffel bag in one of the lower bedrooms. Numerous pieces of mail addressed to defendant at the apartment were recovered from an "Abercrombie" bag in the L-cove, along with photographs depicting defendant and others inside the apartment. In the second bedroom downstairs, agents found an open safe with over $2,000 in currency, some of which was counterfeit. Approximately five days before the execution of the

search warrant on February 27, 2009, defendant answered the door when Inspector DePauw knocked. Controlled substances discovered on premises under a defendant's control and in a place where he could have been, or should have been, aware of them give rise to an inference of knowledge and possession by defendant that may be sufficient to sustain a conviction for unlawful possession of controlled substances. *Eiland*, 217 Ill. App. 3d at 261. Mere access by other persons to the area where drugs are found is insufficient to defeat a charge of constructive possession because, if two or more people share immediate and exclusive control or share the intention and power to exercise control, then each has possession. *Eiland*, 217 Ill. App. 3d at 261. Here, the evidence is not so palpably contrary to the verdict, or so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of guilt. See *Eiland*, 217 Ill. App. 3d at 260. Accordingly, we affirm the judgment of the circuit court of Winnebago County.

Affirmed.