No. 2—09—1282
Order filed June 29, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08—CF—4642
	)	
ARMANDO HERNANDEZ-LIMON,	)	Honorable
	)	Victoria A. Rossetti,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

Held: Evidence of defendant's constructive possession of contraband found inside a locked safe in his bedroom was proved beyond a reasonable doubt. Defendant's sentence of 24 years' incarceration was not excessive.

Defendant, Armando Hernandez-Limon, appeals from his conviction of unlawful possession of a controlled substance with intent to deliver following a bench trial in the circuit court of Lake County. Defendant also appeals from the sentence imposed. We affirm.

On November 19, 2008, defendant was indicted for unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(D) (West 2008)) and possession of a firearm without a requisite firearm owner's I.D. card (430 ILCS 65/2(a)(1) (West 2008)). Defendant

waived a jury trial and proceeded to a bench trial on May 19, 2009. The evidence showed the following. In the early morning hours of October 30, 2008, Waukegan, Illinois, police officers executed a search warrant at 1237 South Jackson in North Chicago, Illinois, a two-story single-family residence. The search warrant allowed the police to search the first floor. After police entered the outer door, they faced wooden French doors with glass panes. Two men, one of them defendant and the other his roommate, Javier Zavala, were visible to police who then entered through the French doors. Defendant ran into the bedroom he occupied in the house and locked the door. When police forced their way into the bedroom, defendant was lying on the bed. Police took defendant into custody. Zavala was also arrested but was not tried with defendant.

The police found two safes in the bedroom where defendant was arrested. One was on a nightstand and the other was on the floor. The safe on the floor was closed and locked. Officers pried it open and found cellophane wrappings around a compressed white powder substance; large Ziploc bags containing a white powdery substance, some of it compressed; smaller baggies containing a white powdery substance, some broken off in chunks; a clear plastic bag containing a green leafy substance; a box cutter with an extra blade; a black permanent marker; and a packet of material to keep out moisture. The parties stipulated that this safe contained over 5,000 grams of cocaine.

Also found in defendant's bedroom was a garbage can against a wall. Inside the garbage can was cellophane wrapping containing a white powder residue. Next to the garbage can was a gas torch. In addition to these items, police recovered a box of clear plastic baggies, a digital scale, .38 caliber ammunition on the nightstand, a black revolver inside the nightstand drawer, a cell phone, paperwork belonging to defendant, and two $20 bills.

In the living room, besides a TV on a table and a recliner, police found what were described as fabricated metal horses, a heavy duty jack, plastic bags containing two bottles of Inositol dietary supplement, plastic wrappings, and a can of acetone. A white powdery substance was on the TV table. In the kitchen, the police found no food items, dishes, or utensils, but located packaging, tape, a digital scale, Inositol, plastic wrap, metal plates with bolts and screws, rubber bands, and large plastic baggies in the cabinets. A mixing bowl and spoon with a white powdery substance were also found in the cabinets. The second bedroom contained a mattress and box springs, a white plastic Walmart shopping bag stuffed with numerous clear plastic baggies and wrappings. The wrappings contained a white powder residue.

At the scene, defendant stated that the bedroom where the safes were found was his but anything found in the bedroom where he was arrested was not his. Defendant also told the police that he had been living in the house for two months.

The parties stipulated to the chain of custody of all items recovered by the police from the house and stipulated that the white powdery substances found throughout the house contained cocaine.

Police Sergeant Scott Chastain testified as an expert in the field of narcotics and narcotics trafficking. He testified that the amount of cocaine found inside 1237 S. Jackson Street in North Chicago was for distribution and re-manufacturing. He also opined that the amount of cocaine was possessed with the intent to deliver it. Chastain testified that the price of cocaine at the time the search warrant was executed was around $30,000 per kilogram. The amount of cocaine found in the house was approximately five and a half kilograms worth "well over" $150,000 purchased wholesale. According to Chastain, "That amount to have on a user is just not normal at all." If the

cocaine were mixed with "cut" to stretch it, it could be worth "upwards to a million dollars." Chastain testified that the fabricated metal horses found in the living room were kilo presses. The jack discovered in the living room would be used in conjunction with the kilo presses to re-manufacture cocaine. The process of re-manufacture involved mixing cocaine with acetone into a batter, pouring the batter into a mold called a kilo press box like that found in one of the kitchen cabinets, and putting the mold onto a kilo press. The mold would be pressed into shape with pressure on the jack. To help the process along, heat from a torch such as that found in defendant's bedroom would be applied. The wooden bowl and spoon found in the kitchen of the house were likely used for mixing the batter. Chastain testified that the Inositol found in the house can be used as a cutting agent for cocaine. Based upon the drugs and amount of drug paraphernalia found in the house, the sparse furnishings, and the lack of foodstuffs, normal dishes and utensils, it was Chastain's opinion that the house was a stash house and also a re-manufacturing house. He testified that a stash house is a location used to store drugs for later distribution. It is not used primarily for habitation. According to Chastain, stash houses for drugs typically do not have much money in them, as in this case, but do have firearms present to protect the drugs. His opinion that the house was also a re-manufacture house was based on the presence of the kilo presses and the ingredients to break down cocaine and stretch it into two or three bricks of cocaine. On cross-examination, Chastain testified that the name on the search warrant was Juan Ramos. He also testified that Erik Limon was the target of a different investigation.

The trial court denied defendant's motion for a directed finding on the charge of unlawful possession of a controlled substance with intent to deliver, but found defendant not guilty of possession of a firearm without a firearm owner's identification card. Defendant then presented a

defense. Pasquel Limon, defendant's uncle, testified that defendant was employed cleaning ducts in kitchens and helping Pasquel install drywall and paint for the past five or six years. Defendant made little money, and Pasquel took him home to eat with Pasquel's family. On cross-examination, Pasquel testified that Erik Limon is his son and defendant's cousin.

Defendant testified that he moved to 1237 South Jackson in North Chicago in the fall of 2008. Javier Zavala was his roommate. Defendant paid rent in cash, and had lived there almost one month at the time he was arrested. He testified that he brought furniture to the house when he moved in. He denied that he owned any safes. He did not have dishware or utensils because he ate at his uncle's house, or he bought fast food. On October 30, 2008, he got home around 10 p.m. from work. He watched TV, then went to his bedroom and lay down. He heard some noise. He testified that three or four policemen came into his bedroom. He denied being in the living room when they entered the house. He did not know where Javier Zavala was. Defendant testified that the safes were in his bedroom, but he never saw them. He did not have a key to either safe or know the combinations. He denied knowing what was inside the safes. On cross-examination, defendant denied ever seeing a kilo press in the house. He testified that the police officers did not bring one in. According to defendant, only he and Zavala had keys to the house, although he did not know if prior occupants still might have had keys.

The trial court found defendant guilty of the charge of unlawful possession of a controlled substance with intent to deliver. The trial court denied defendant's posttrial motion and sentenced defendant to 24 years' incarceration in the Illinois Department of Corrections. On November 3, 2009, defendant filed a timely motion to reconsider sentence, which the trial court denied on

December 2, 2009. Defendant filed a notice of appeal on December 2, 2009, and an amended notice of appeal on December 16, 2009.

Defendant first argues that the State failed to prove him guilty beyond a reasonable doubt of unlawful possession of a controlled substance with intent to deliver. Specifically, defendant disputes that the State proved that he was in constructive possession of the cocaine in the bedroom safe. He argues that the State failed to prove beyond a reasonable doubt that he had the capacity or capability to maintain control over the drugs inside the safe because the State did not prove that he had a key to the safe, and his testimony that he had never opened the safe was unrebutted. To obtain a conviction for the unlawful possession of a controlled substance, the State must prove that the defendant knew 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 may 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. Where possession is proved, the element of knowledge may be inferred from the surrounding facts and circumstances, and both knowledge and possession may be proved by circumstantial evidence. *Eiland*, 217 Ill. App. 3d at 260. It is no defense that another had knowledge of the drugs and control of them, because the defendant's possession may be joint with that of another. *Eiland*, 217 Ill. App. 3d at 260. Whether the defendant had knowledge and possession are questions of fact. *Eiland*, 217 Ill. App. 3d at 260. Defendant argues that our standard of review is *de novo* since he does not dispute any of the relevant facts. However, by now it is well settled that when a reasonable doubt argument is raised, 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)*; People v. Collins*, 106 Ill. 2d 237, 261 (1985).

Controlled substances discovered on premises under the 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 the defendant that may be sufficient to sustain a conviction for unlawful possession of a controlled substance. *Eiland*, 217 Ill. App. 3d at 261. Here, defendant told police that he had lived in the house for two months at the time the search warrant was executed. He testified that he paid rent on the premises, and he slept in the bedroom with the safes. Approximately 30 pieces of paper, all identifying defendant, and a pill bottle belonging to him were found in the bedroom. The trial court could reasonably have inferred that defendant could not have failed to be aware of two safes and a torch in his bedroom, two kilo presses and a jack in the living room, numerous wrappings containing cocaine residue in the house, and drug paraphernalia throughout the house. His immediate statement to police upon being arrested, to the effect that whatever they found in his bedroom was not his, indicated his knowledge of the drugs inside the safe.

Relying on *People v. Scott*, 367 Ill. App. 3d 283 (2006), defendant maintains that the evidence was insufficient to prove that he had the capability to exercise immediate and exclusive control over the drugs inside the safe. In *Scott*, Chicago police officers observed the defendant and his codefendant standing near mailboxes located between apartment buildings. *Scott*, 367 Ill. App. 3d at 283-84. The codefendant opened a mailbox with a key and retrieved a bag of cocaine, and handed the bag to the defendant. *Scott*, 367 Ill. App. 3d at 284. The defendant and the codefendant

then entered one of the apartment buildings. *Scott*, 367 Ill. App. 3d at 284. Ten or 15 minutes later, they exited the apartment building and returned to the same mailbox where the codefendant again opened it with a key, retrieved a bag of cocaine, and handed it to the defendant. *Scott*, 367 Ill. App. 3d at 284. The codefendant remained in possession of the mailbox key. *Scott*, 367 Ill. App. 3d at 284. While the defendant and codefendant were inside the apartment building again, the police began to approach the mailbox. *Scott*, 367 Ill. App. 3d at 284. At that time, the defendant and codefendant returned to the mailboxes, and when the defendant saw a police officer approaching, he handed a bag of cocaine to the codefendant and walked away. *Scott*, 367 Ill. App. 3d at 284. The codefendant then opened the mailbox with the key, placed the bag of cocaine into the mailbox, and left the area, leaving the key inserted in the mailbox. *Scott*, 367 Ill. App. 3d at 284. The police opened the mailbox and confiscated two bags of cocaine, the one recently placed there by the codefendant and another, larger one. *Scott*, 367 Ill. App. 3d at 284.

The defendant in *Scott* was convicted of possession of a controlled substance, the larger bag found in the mailbox. *Scott*, 367 Ill. App. 3d at 283. The appellate court reversed his conviction, holding that the State failed to establish that the defendant had the capability to maintain control and dominion over the larger bag of cocaine retrieved from the mailbox. *Scott*, 367 Ill. App. 3d at 286. The court said:

> "The evidence at trial revealed that defendant never possessed or had access to the key needed to open the mailbox where the larger bag of cocaine was later found. Each time defendant and [co-defendant] approached the mailbox, [co-defendant] opened the mailbox with the key and [co-defendant] retained possession of the key. Without the key, the mailbox

containing the larger bag of cocaine was not accessible to defendant. Defendant could not control that which he could not access." *Scott*, 367 Ill. App. 3d at 286.

Here, defendant argues that *Scott* mandates a reversal because the State did not prove that he had the means to access the contents of the safe. Moreover, defendant argues, nothing inside the safe bore any connection to defendant, his cousin Erik Limon's fingerprints having been identified on the contents of the safe. We disagree that *Scott* is dispositive, because it is factually distinguishable. The court in *Scott* acknowledged the general proposition that habitation in the premises where narcotics are discovered raises the inference that the defendant had control over them. *Scott*, 367 Ill. App. 3d at 286. However, the court held that the inference did not fit the facts in *Scott* because the State did not prove that defendant resided in the apartment with the codefendant, and because the mailbox in which the cocaine was found was not on the premises. *Scott*, 367 Ill. App. 3d at 286. In contrast, in our case, the safe was on the premises inhabited by defendant, in his very bedroom. Consequently, the inference of control applies in the instant case.

Defendant contends that the inference should not be applied for a second reason. He asserts that "every available sign" indicates that Erik Limon possessed the cocaine inside the safe, "notwithstanding [defendant's] short-term habitation of the apartment." Defendant relies on language in *People v. Nettles*, 23 Ill. 2d 306, 309 (1961), that the inference may be sufficient to sustain a conviction "absent other facts and circumstances which might leave in the mind of the jury, or of the court where a jury is waived, a reasonable doubt as to his guilt." Here, defendant argues that only Erik Limon's fingerprints were found on the contraband in the safe and the house. Defendant points to other evidence, such as his possession of a meager amount of money and his lack of expensive personal possessions to argue that he could hardly be considered a drug kingpin.

With regard to the lack of fingerprints, the parties stipulated that Anthony Spadafora, a forensic scientist specializing in the identification of latent fingerprints and fingerprint analysis, would testify that it is not unusual to find no latent fingerprints suitable for comparison because of various factors, such as difficulty of transferring oils and residues onto surfaces, the delicate nature of fingerprints, and the composition of the substance being analyzed. Pertinent to our discussion here, the stipulation included Spadafora's testimony that it is particularly difficult to obtain fingerprints from paraphernalia dealing with cocaine because the cocaine contaminates the surfaces. Sergeant Chastain testified that it is not unusual not to find large amounts of money in a drug stash house because drug dealers keep the money at another location to foil robbery attempts. Defendant also argues that the stash house could not be considered defendant's true residence. The evidence proved otherwise. Defendant testified that he rented the house for $250 per month. He told the police that he had lived there for two months. The evidence did not show that he had any other domicile.

Because we hold that the evidence was sufficient to prove that defendant constructively possessed the safe and its contents, we need not reach defendant's alternative argument, that we should reduce the degree of the offense because he was guilty of possession only of the cocaine residue found outside the safe. Accordingly, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt.

Defendant's second argument is that his sentence was excessive. The trial court sentenced defendant to 24 years' incarceration:

> "And this Court saw the amount of cocaine. This Court saw in over 90 pieces of physical evidence the amount of the drugs, the packaging material, and the number of baggies, and

> ziplock baggies, celophane [*sic*] wrap, razor blades, box cutters, the packaging material, the presses, the scales, the cutting agents, that were found, not only in your bedroom, but scattered throughout the apartment."

Defendant contends that the trial court failed to afford proper consideration to pertinent mitigating factors and the constitutional objective of restoring the offender to useful citizenship. Defendant argues that his lack of significant criminal history (he had traffic violations only), lack of disciplinary action by the Lake County jail while he was in custody, his support of his daughter in Mexico, his participation in every program the jail afforded him, including completion of a GED, and his low-profile role in the drug operation that led to his conviction, merit a reduction in the sentence.

Defendant was convicted of unlawful possession of a controlled substance with intent to deliver, a Class X felony that carries a term of 15 to 60 years' imprisonment. 720 ILCS 570/401(a)(2)(D) (West 2008). Defendant concedes that his sentence was within statutory limits. A sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *People v. Fern*, 189 Ill. 2d 48, 54 (1999); *People v. Romero*, 387 Ill. App. 3d 954, 978 (2009). A reviewing court must afford great deference to the trial court's judgment regarding sentencing because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, and habits. *Romero*, 387 Ill. App. 3d at 978. Thus, in considering the propriety of a sentence, the reviewing court must proceed with great caution and must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently. *Fern*, 189

Ill. 2d at 53. This court may not reduce a defendant's sentence unless the sentence constitutes an abuse of the trial court's discretion. *Romero*, 387 Ill. App. 3d at 978.

Here, defendant was 27 years old at the time of sentencing. He was unmarried but had a daughter in Mexico whom he supported. He had no significant criminal history. The trial court took these and other statutory factors in mitigation into consideration. According to the presentence investigation report, defendant is in the United States illegally, and is subject to an immigration hold and deportation. Therefore, considering the goal of restoring defendant to useful citizenship would seem inapposite. Even considering this goal, "[i]n any event, a defendant's potential for rehabilitation is but one factor for a sentencing court to consider, and it must be weighed against other countervailing factors, including the seriousness of the crime." *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007). Here, defendant was proved to have possessed five and a half kilograms of cocaine worth up to $1million. The trial court noted that its sentence was necessary to deter others from similar behavior. The sentence of 24 years' incarceration was within statutory limits, and was at the lower end of the permissible range. Even though we may have imposed a different sentence, we are required to give the trial court's determination great deference. Consequently, we cannot say that the trial court abused its discretion. Accordingly, we reject defendant's argument that his sentence was excessive.

For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

Affirmed.