2018 IL App (2d) 160759-U
No. 2-16-0759
Order filed October 30, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CORDTRELL SANDERS, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 12-CF-3753 Honorable George D. Strickland, Judge, Presiding.

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

ORDER

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of constructive possession of heroin with intent to deliver, as the jury could infer, especially in light of defendant's reported admissions of heroin-dealing, that he possessed the heroin recovered from his house.

¶ 2 After a jury trial, defendant, Cordtrell Sanders, was convicted of possessing heroin with the intent to deliver (720 ILCS 570/401(a)(1)(A) (West 2012)) and sentenced to 20 years in prison. On appeal, he contends that he was not proved guilty beyond a reasonable doubt. We affirm.

¶ 3 At trial, the State first called William Guenther, who testified as follows. He was a Mundelein police officer. On December 18, 2012, as a member of the Lake County Metropolitan Enforcement Group (LCMEG), he helped an Illinois State Police SWAT team execute a warrant to search a two-floor home in Lake Villa. He was assigned to search the master bedroom on the second floor. While still on the first floor, he saw several children. A man later identified as Quincy Ray was in custody. In the master bedroom, defendant and Latanya Nichols were present. On a nightstand next to the bed were two cell phones, a wallet with an identification card, and a small amount of cash. Inside a drawer in the nightstand was currency wrapped in a rubber band. Inside a dresser were four cell phones. Guenther did not try to ascertain who owned any of the phones. He did not find any narcotics, drug ledgers, or items with drug residues.

¶ 4 James Vepley, a Winthrop Harbor police officer who participated in the search as a member of LCMEG, testified as follows. In the kitchen, he found a container of inositol, which drug sellers often use as a cutting agent. There were also two scales in a cabinet drawer, one large and one small. Vepley did not recall whether he saw any drug residue on either scale. There was, however, a small amount of cannabis in the drawer, along with rolling papers and plastic bags that had cannabis residues. He did not collect the cannabis-related items. Vepley found a box of sandwich bags, which are routinely used to package drugs for delivery.

¶ 5 Vepley testified that he did not find any drug ledgers in the kitchen or any tin foil or duct tape, both of which are sometimes used to wrap or seal packages of drugs. He found no spoons with heroin residues, but these would indicate a consumer of heroin and not a seller. Vepley found no other paraphernalia that would have been consistent with heroin use.

¶ 6 Matt Goze, a Libertyville police officer who participated in the search as a member of LCMEG, testified as follows. He and special agent Sean Lewakowski were assigned to search the home's attached garage. They found a residential air-conditioning unit. Goze shined his flashlight on the vent and saw a gray plastic bag behind it. He opened the unit, took out the bag, and saw that it contained two plastic bags that each held a white substance. The substances in the bags field-tested positive for heroin. Goze notified Matt Nietfeldt, a Gurnee police officer who was supervising the search, and Nietfeldt took the bags.

¶ 7 Goze testified that neither he nor Lewakowski tested the air conditioner or any of the bags for latent fingerprints. The bags were not conducive to leaving identifiable fingerprints, and neither were the air conditioner's contoured surfaces. The unit was left in the garage.

¶ 8 Goze testified that he had to go through a doorway to enter the garage. He did not recall whether the door had been locked. He had not been involved in the arrest of Ray.

¶ 9 Lewakowski testified as follows. The SWAT team forced its way in at about 5:30 a.m. and he entered about 10 or 15 minutes later. He did not recall seeing Ray or defendant during the search. At about 8:30 a.m., after defendant had been arrested, Lewakowski and Nietfeldt interviewed him at the Gurnee police station. Defendant declined to provide a written statement. The interview was not recorded, as that was not required. The officers asked him whether he knew why he was there. Defendant said that he did not. The officers persisted in asking him, and he became animated and said at least six times that a woman he named had "snitched" on him. Defendant also said that he was presently unemployed. He denied having known of the heroin that had been found in the garage.

¶ 10 Robert Nakanishi, a Lake County sheriff's deputy who had been assigned to LCMEG from 2012 to 2016, testified as follows. On September 20, 2013, he, Nietfeldt, and another agent

interviewed defendant at the sheriff's office. The interview was not recorded. Defendant said that currently he purchased about 10 grams of heroin a month. He did not sell as much as he used to and, since his arrest on December 18, 2012, he did not keep large amounts in his house. Defendant said that he sold heroin to support his family.

¶ 11 Barry Adams, a forensic scientist with the Northeast Illinois Police Crime Laboratory who specialized in latent-fingerprint examination, testified as follows. In February 2013, he tested the plastic bags that had been recovered from the air conditioner. He found no latent fingerprints suitable for analysis. The air conditioner was never submitted for analysis. Shown a photograph of the unit, Adams testified that it had some smooth metal surfaces, which are often conducive to recovering usable fingerprints.

¶ 12 Gina Romano, a forensic scientist with the same crime laboratory, testified that, on January 15, 2016, she tested the substances recovered from the two smaller bags in the air conditioner. Both tested positive for heroin and weighed a total of approximately 75.62 grams.

¶ 13 Nietfeldt testified on direct examination as follows. He was the main agent for the investigation. When he entered the home, defendant and Nichols were in the master bedroom upstairs and several children were in the other bedrooms upstairs. Ray was downstairs. Guenther reported that, in the master bedroom, he had found six cell phones, two on the nightstand and four in a dresser drawer. On the nightstand was a wallet with $64 inside. Guenther reported that inside a dresser drawer was a stack of bills totaling $2900 and wrapped in a rubber band.

¶ 14 Qualified as an expert, Nietfeldt testified that several of the items found in the search indicated drug selling but not personal drug use. Inositol powder, which is odorless and white, is used as a cutting agent. The large scale would be needed to weigh large amounts of heroin, such

as that found in the garage, and the small scale would be used for small sales. The sandwich bags would be used to package the drugs; in his experience with controlled buys, sandwich bags were almost always used for packaging. Also, cell phones are generally used to set up transactions. The presence of two phones on the nightstand was consistent with Nietfeldt's knowledge that dealers often have separate phones for personal business and for drug dealing, so that they can dispose of the latter quickly ahead of the authorities.

¶ 15 Shown a photograph of the air conditioner, Nietfeldt testified that, in order to take the bags of heroin, a person would first have to remove the front part of the unit, then put his hand inside the vent. The amount of heroin in the bags was very large and, at normal 2012 prices, was worth about $8000. It would be very unusual for a mere user to possess this amount, since most users have little money. A user would not likely package the heroin in two large chunks, but a dealer would.

¶ 16 Nietfeldt testified about the interview of defendant on September 20, 2013. His testimony was consistent with that of Nakanishi.

¶ 17 Nietfeldt testified on cross-examination as follows. When the agents originally applied for the warrant, they asked specifically for permission to search for cannabis. The agents found some baggies in a garbage can in the kitchen. The baggies were photographed but not collected, and Nietfeldt could not remember whether they had any residues on them. He did not remember whether the agents sought a search warrant to obtain any messages on the cell phones, and they were unable to determine whether the four phones found in the dresser were children's phones. The agents found no drug ledgers. They found a list of names and phone numbers but did not know who wrote it and did not call or trace any of the numbers. There were cigars that could be used with cannabis. Nietfeldt testified that, when he entered the house, Ray had been detained in

the living room, where other agents had found him. Nietfeldt did not know whether the living-room door led directly to the garage. Usually, after knocking and announcing their office, teams will wait 20 or 30 seconds before entering forcibly. Nietfeldt did not ask to have the air conditioner tested for fingerprints. It was dirty, dusty, and old, so there was little or no chance of finding usable fingerprints on it.

¶ 18 Nietfeldt testified on redirect examination that the amount of heroin recovered was in the middle of the range for dealers, which went from multiple kilograms down to 0.1 gram. Heroin sales are always for cash. Defendant and Nichols had both said that they were unemployed.

¶ 19 The State rested. Defendant called Nichols. On direct examination, she testified as follows. She and defendant had been partners since 1998 and had seven children between them (six as of December 18, 2012). She and defendant had moved to Lake Villa in late October 2012. They rented the house at $1850 per month. The previous residents had left some possessions behind in the house and the garage. The house had central air conditioning, so defendant and Nichols never used the air conditioner that was found in the garage.

¶ 20 Asked what defendant's job had been before December 18, 2012, Nichols testified, "[Defendant] was doing landscape. Well, actually, it was cold in the wintertime, so he would do snowplowing." "To [her] knowledge," he had started snowplowing by December 18. Defendant made approximately $650 per week landscaping and was paid in cash. Nichols was working through a temporary-employment service for LTD Commodities, a catalog company, making close to $700 a week. She also sold healthcare insurance from home and babysat for a cousin. Her other sources of income were SSI disability payments for three of her children and $1000 per month under her late father's life insurance policy. In 2012, Nichols was in "pre-nursing" and had completed two semesters; at the time of trial, she was in nursing school.

¶ 21 Nichols testified that, on the morning of December 18, 2012, she and defendant were in bed when the SWAT team entered. Officers entered and ordered them onto the floor. The previous evening, they had let Ray sleep over because he was having trouble with his girlfriend.

¶ 22 Nichols testified that she and defendant did "not really" use banks and kept their money in cash. The stack of currency that was found in the bedroom was "a payment settlement due to [her] son's disability." The four cell phones in her bedroom's dresser belonged to the children; she and defendant would confiscate the phones each evening so that the children would not go on the Internet at night. The sandwich bags in the kitchen were used for the children's school lunches. The inositol was purchased to help treat her son's ADHD.

¶ 23 Nichols testified on cross-examination as follows. After the search, she spoke to two police officers at the Gurnee station. She told them that defendant was working in landscaping at the time; she did not say that he was unemployed. However, she admitted, she did tell the officers that she did not know what defendant did for income. She also told them that she and defendant had been in a relationship for 12 years.

¶ 24 Defendant testified on direct examination as follows. On the evening of December 17, 2012, Ray came to his house and asked to stay for the night. Defendant let him do so. The four cell phones found in the dresser belonged to his children. Defendant and Nichols took the phones from the children each night before bed. Defendant had never seen the list of names and phone numbers that the police found; he did not know who wrote it or whose numbers were listed. Defendant had not known about the heroin recovered from the garage. He spoke to Nakanishi and Nietfeldt on September 20, 2013, but he never told them that he purchased 10 grams of heroin once a month, that he did not sell as much as he used to, or that he did not keep as much heroin in his home as he had before December 18, 2012.

¶ 25 Defendant testified on cross-examination as follows. On September 20, 2013, he told Nakanishi and Nietfeldt that Lakesha Nelson had "snitched" on him. However, he never told them how he was employed at the time, because the subject never came up. In December 2012, he was not employed, because there was no snow on the ground. He did not take in any money in December 2012, because he had received no snowplowing bids. He did not take in any money in November 2012. The last time before the search that he had worked was October 2012, picking up leaves.

¶ 26 The prosecutor asked defendant how Nichols had been employed at the time. He responded, "LTD I guess." Asked whether he knew, he responded, "I mean she—she—she—her field of training she do [*sic*], she jumps [*sic*] around in jobs at that time. She was—she has a job there, had a job here." Asked again whether he knew "how she was working or bringing home income at the time," defendant responded, "I knew how she was working. I just didn't know where she was working at." Asked whether he knew how much Nichols was taking home every week, defendant responded, "I don't ask them type [*sic*] of questions." Asked how much income his household was bringing in as of December 2012, defendant responded, "I can't speak about my household. I can only speak about myself."

¶ 27 Defendant rested. In rebuttal, Rodney Chesser testified as follows. He helped execute the search warrant but did not participate in the search. After the search, he and Nakanishi interviewed Nichols at the police station. Chesser asked her about her employment status. She said that she had not been employed for a long time. Chesser asked her about defendant's employment status. She said that he had not been employed for at least 12 years. She did not know how he earned his income.

¶ 28 Nietfeldt testified that, before entering the house on December 18, 2012, he and the other officers had no reason to believe that Ray was inside.

¶ 29 The jury found defendant guilty. The trial court denied his posttrial motion and sentenced him as noted. Defendant timely appealed.

¶ 30 On appeal, defendant contends that the evidence did not prove him guilty beyond a reasonable doubt of possession of heroin with the intent to deliver. Defendant argues that the evidence was insufficient because it did not prove actual possession and failed to establish the knowledge required for constructive possession. For the following reasons, we disagree.

¶ 31 In assessing a challenge to the sufficiency of the evidence, we ask only whether, after viewing all of the evidence in the light most favorable to the State, any rational fact finder could have found the elements of the offense beyond a reasonable doubt. *People v. Ward*, 154 Ill. 2d 272, 326 (1992). The fact finder is responsible for determining the witnesses' credibility, weighing their testimony, and deciding on the reasonable inferences to be drawn from the evidence. *People v. Hill*, 272 Ill. App. 3d 597, 603-04 (1995). It is not our function to retry the defendant. *People v. Lamon*, 346 Ill. App. 1082, 1089 (2004).

¶ 32 Possession may be actual or constructive. Actual possession is proved by evidence that the defendant exercised some form of dominion over the unlawful substance, such as trying to conceal it or throwing it away. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Defendant notes that the State did not prove actual possession here. Constructive possession arises when the defendant has the intent and capability to maintain control and dominion over the contraband. *Id.* Constructive possession may be shown by evidence that the defendant knew of the presence of the contraband and had immediate and exclusive control over the area where it was found. *Id.*

¶ 33 Here, the evidence, when viewed most favorably to the State, was more than sufficient for the jury to infer that defendant knew about and exerted control over the heroin that was found inside the air conditioner in his garage. The location of the contraband was a major consideration. The garage was attached to his residence and only he and his family had routinely had access to it since they moved there two months earlier. The jury could infer that nobody other than defendant and Nichols had placed the heroin there. The alternatives were the prior residents and Ray. The jury could reason that the previous residents would not have abandoned $8000 worth of drugs and that Ray would not drop by during a domestic emergency with large chunks of heroin, enter defendant's garage surreptitiously, and hide the drugs in an air conditioner. Nietfeldt testified that Ray had not been the object of the search, which had been based on a warrant issued for defendant's home before Ray went there. Defendant makes a *pro forma* mention of the former residents and Ray but does not cite any evidence, beyond their presence on the premises at some point, that actually linked them to the heroin. There was none.

¶ 34 But the jury could find a great deal of evidence, in addition to the location of the contraband, to connect *defendant* with it. First, there were his admissions to the police. Although defendant notes that the September 20, 2013, interview was not recorded, that merely raised a credibility issue that the jury could have rightly decided against him. In 2013, defendant admitted that he was currently buying and reselling heroin to support his family and that he did not store as much heroin at his residence as he did before December 18, 2012. These statements were tantamount to admitting that he had been storing heroin in his residence, with the intent to sell it, from sometime in October 2012 through December 18, 2012.

¶ 35 Further, the jury could infer that defendant must have known about the heroin because he had been supporting himself and his family by selling drugs. Defendant's admission in 2013 was

amply corroborated by the evidence that he and Nichols had practically no other source of income from which to pay monthly rent of $1850 and provide for numerous dependents.

¶ 36 Lewakowski and Nietfeldt testified that shortly after his arrest defendant told them that he was unemployed. On the witness stand, he admitted that he had not made any income in November or December 2012 and that his sole income in October came from picking up leaves. Nichols admitted telling two officers that defendant had not been employed for 12 years and that she did not know what he did for income. Her testimony about defendant's income was equivocal at best and did not have to be credited over her statements to the contrary.

¶ 37 The evidence of Nichols' legitimate regular income was equally scant. Although she testified to a variety of income sources, the jury could discredit her vague assertions. She had earlier told Chesser that she had not been employed for a long time. At trial, defendant could not say what Nichols did for income. He was evasive and made the implausible assertion that he did not take any interest in the subject. The jury could infer that the reason that both defendant and Nichols were so reticent about how they made enough money to support their family was that they made the money illegally, by selling drugs such as the heroin found in the garage.

¶ 38 Defendant's remaining challenges to the evidence are, in essence, arguments that he made to the jury and that it rejected. Defendant notes that, on December 18, 2012, he had resided at the house for only about two months. He does not explain why the jury could not have concluded that this was sufficient time to place the heroin into the garage. He also notes that the air conditioner was never examined for fingerprints. At most, this omission means that the State's case was less strong than it might have been; that does not raise a reasonable doubt.

¶ 39 Defendant also observes that some of the items that the State argued showed the intent to traffic in drugs—the stack of currency, multiple cell phones, inositol powder, sandwich bags, and

scales—also had innocent explanations. But once the jury concluded that defendant possessed the heroin, it could infer from the size and cost of the contraband that he did so with the intent to deliver it. Further, the State's witnesses testified that they found no evidence that anyone in the residence had used heroin. The amount and value of the heroin recovered allowed the jury to conclude that defendant had possessed it for sale, not for personal use. Moreover, having found that defendant possessed heroin in an amount consistent only with dealing, the jury could have inferred that the existence of so many indicia of dealing was not an unfortunate coincidence.

¶ 40 We hold that defendant was proved guilty beyond a reasonable doubt of possession of heroin with the intent to deliver. Therefore, the judgment of the circuit court of Lake County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 41 Affirmed.