

1-10-3168

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 18688
	)	
DARYL JORDAN,	)	Honorable
	)	Raymond Myles,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CUNNINGHAM delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Karnezis concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The State proved beyond a reasonable doubt that defendant violated the armed habitual criminal statute where defendant admitted to possessing a handgun. The State presented corroborating evidence separate from defendant's admission of possession, thus establishing *corpus delicti*. We affirm defendant's conviction.
- ¶ 2 Following a bench trial in the circuit court of Cook County, defendant Daryl Jordan was convicted of committing the offense of being an armed habitual criminal and was sentenced to seven years in prison. On direct appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he constructively possessed a handgun recovered during the execution of a search warrant at a residence.
- ¶ 3 Investigator John Slepski (Investigator Slepski) of the Cook County sheriff's office testified for the State that on September 16, 2009, at approximately 8 a.m., he conducted pre-warrant surveillance of the residence located at 520 North Laramie Avenue in Chicago. At approximately

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9 a.m., he observed defendant exit the front door, get into a tan minivan that was parked in front of the residence, and drive away.

¶4 During cross-examination, Investigator Slepski testified that he conducted surveillance of the property on previous occasions but did not recall the dates, frequency, or whether other people had entered or exited the residence. He also did not observe anyone else enter or exit the 520 North Laramie Avenue residence on the date the search warrant was executed.

¶5 Investigator Michael Gleason (Investigator Gleason) testified that on September 16, 2009, at approximately 9:41 a.m., he executed the search warrant of the residence located at 520 North Laramie Avenue. When he entered the bedroom closest to the front of the house, Investigator Joseph Piersanti (Investigator Piersanti) pointed to a firearm discovered between the mattress and box spring of the bed. The handgun was a silver .45 caliber Ruger loaded with six .45 caliber shells. Investigator Gleason also discovered 35 rounds of .38 caliber ammunition in the bedroom. He also recovered a "notice of final determination" from the Chicago Department of Revenue that was issued to defendant for unpaid parking tickets (the notice). The notice was found on top of a dresser in the bedroom. No one other than the police officers was on the premises at the time the search warrant was executed. Thereafter, police officers arrested defendant, who was traveling in the tan minivan in a nearby area.

¶6 After the investigation, Investigator Gleason returned to police headquarters, where he gave Investigator Slepski the recovered evidence and interviewed defendant with another officer. After Investigator Gleason gave *Miranda* warnings to defendant, who consented to being interviewed, he told defendant that defendant was the target of the search warrant and that the police discovered a handgun in his bedroom. Defendant responded that he was aware of the handgun in his bedroom but that it did not belong to him. Investigator Gleason testified that defendant then stated that his friend, Will, gave him the handgun to "hold onto," but that it did not belong to defendant.

¶7 During cross-examination, Investigator Gleason explained that he conducted surveillance of

the house at least two times prior to executing the search warrant, during which he observed people other than defendant enter and leave the residence. He did not include this information in the police report. Investigator Gleason did not recall whether defendant had identification or keys on his person when he was arrested. The notice, which was recovered from the searched home, indicated the 520 North Laramie Avenue address as the location where defendant was ticketed, and showed 3900 West Chicago Avenue as the address where the notice was sent. Investigator Gleason did not find any other proof of residency aside from the notice. He further testified that the residence had three beds, and contained both men's and women's clothing. The police's interview with defendant was not recorded in any manner.

¶ 8 Investigator Piersanti testified that he searched a bedroom in the residence at 520 North Laramie Avenue wherein he found a handgun between the mattress and box spring of the bed. Investigator Gleason then came into the bedroom and secured the handgun. There were no civilians present in the residence during the search.

¶ 9 Investigator Dimas Hernandez (Investigator Hernandez) testified that he received a radio transmission from Investigator Slepski that Investigator Slepski observed defendant leave the residence and get into a van. Investigator Hernandez then followed defendant and initiated a traffic stop. Defendant was the sole occupant of the van. After defendant informed Investigator Hernandez that his name was "Daryl Jordan," Investigator Hernandez placed defendant into custody in the back seat of his squad car. Investigator Hernandez received a radio transmission that a handgun was recovered in the residence. Investigator Hernandez then advised defendant that he was under arrest for the recovered handgun and advised him of his *Miranda* rights. Defendant then consented to questioning. Investigator Hernandez asked defendant if he was aware that the handgun was located under the mattress. Defendant replied, "[Y]eah. This is all for a gun." Investigator Hernandez then asked if there was anything else in the residence and defendant responded, "there might be some weed in the garage." On cross-examination, Investigator Hernandez admitted that he did not ask

defendant for his driver's license, even though the police report stated that he did.

¶ 10 The parties stipulated at trial that no keys were inventoried by the police pursuant to the investigation. Certified copies of defendant's prior convictions for armed robbery and home invasion were admitted into evidence without objection. Defense counsel moved for a directed finding and argued that the State did not prove defendant constructively possessed the handgun. The trial court denied the motion.

¶ 11 The defense recalled Investigator Gleason to the witness stand. Investigator Gleason testified that he authored State's Exhibit No. 2, which was a supplementary police report. In preparing this report, Investigator Gleason spoke to Investigator Hernandez about his investigation on the date of defendant's arrest, who informed Investigator Gleason that he asked defendant for his driver's license and that defendant told Investigator Hernandez that he had a .45 caliber handgun under his mattress in his bedroom.

¶ 12 Following closing arguments, the trial court found that Investigator Hernandez testified in a "very coherent and cogent fashion." The trial court further found that while at the police station, defendant waived his right to an attorney and admitted to the police that he was aware a handgun was hidden under the mattress in his bedroom. Looking at the totality of the circumstances and defendant's statement, the trial court concluded that there was enough evidence to show that defendant knew about the handgun, and that defendant was in constructive possession of the handgun. The trial court then held that the State proved beyond a reasonable doubt that defendant was guilty of the offense of being an armed habitual criminal.

¶ 13 Subsequently, defendant filed a "motion to reconsider the finding of guilty or in the alternative a new trial" (motion to reconsider), in which he argued the State failed to prove his guilt beyond a reasonable doubt. The trial court denied the motion to reconsider and sentenced defendant to seven years of imprisonment, with credit for 381 days served. Defendant then filed a motion to reconsider sentence, which the trial court also denied. This appeal follows.

¶ 14 Defendant contends that the State failed to prove beyond a reasonable doubt that he had constructive possession of the handgun and that, as a result, his conviction must be reversed. "When a defendant challenges the sufficiency of the evidence, the relevant inquiry 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. Ross*, 229 Ill. 2d 255, 272 (2008). The reviewing court must also construe all reasonable inferences in favor of the prosecution. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). The reviewing court does not retry the defendant. *Ross*, 229 Ill. 2d at 272. Rather, the trier of fact determines witness credibility, weighs testimony, and draws reasonable inferences from the evidence. *Id.* "A conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *Id.*; see also *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

¶ 15 A person commits the offense of being an armed habitual criminal if that person possesses any firearm after being convicted two or more times, *inter alia*, of a forcible felony and home invasion. 720 ILCS 5/24-1.7 (West 2008). Defendant does not dispute that he has been convicted of the requisite number of prior qualifying felonies.

¶ 16 Because defendant was not found in actual possession of the handgun, the State had to establish beyond a reasonable doubt that defendant constructively possessed it. *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). To establish constructive possession, the State must prove that the defendant: (1) had knowledge of the presence of the weapon; and (2) exercised immediate and exclusive control over the area where the weapon was found. *Id.*; see also *People v. Grant*, 339 Ill. App. 3d 792, 798 (2003). Defendant concedes that he knew about the handgun that police recovered from under the mattress, but argues that he did not exercise control over the premises, and thus did not constructively possess the handgun.

¶ 17 "Control is established when a person has the 'intent and capability to maintain control and

dominion' over an item, even if he lacks personal present dominion over it." *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17 (2012) (quoting *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992)). Control over the location where the handgun is found gives rise to an inference that the defendant possessed the handgun. *McCarter*, 339 Ill. App. 3d at 879. Habitation, as shown through proof of residency, is sufficient evidence of control to constitute constructive possession. *Spencer*, 2012 IL App (1st) 102094, ¶17. Rent receipts, utility bills, and clothing in the closets are relevant to show proof of residency, and therefore, to show that defendant controlled the premises. *Id.*

¶ 18 Defendant contends that the State failed to prove he had immediate and exclusive control over the area where the weapon was found. First, defendant argues that the notice recovered from the bedroom "is no evidence of [his] control of the premises." However, the notice was found on the dresser in the same bedroom as the handgun. Although we note that the document was mailed to a different address, evidence at trial showed that the notice pertained to unpaid parking tickets that were issued to defendant at the 520 North Laramie Avenue residence. Further, the presence of the notice in the bedroom suggests that defendant had control over the premises and stored his mail there.

¶ 19 Defendant also argues that the State's attempt to prove he controlled the premises failed because Investigator Gleason's testimony that defendant stated the handgun was "in his bedroom" was embellished and impeached. Based on our review of the record, Investigator Gleason was impeached on fairly minor matters. More importantly, the trial court found that defendant was aware of a handgun in his bedroom and that he received it from his friend, Will, to "hold onto." Defendant also informed Investigator Hernandez, whom the trial court found to have testified in a "very coherent and cogent fashion," that he was aware of the handgun under the mattress. The trial court determined the credibility of the witnesses, and we will not disturb the trial court's findings of credibility here, where we cannot conclude that the trial court's findings are so unreasonable, improbable, or unsatisfactory that a reasonable doubt of defendant's guilt remains.

¶ 20 Finally, defendant argues that the testimony established that others also used the residence. We first note that defendant was observed exiting the residence alone prior to the execution of the search warrant, and that no one else was observed exiting the premises on the morning in question. Moreover, exclusive dominion and control is not diminished by evidence of others' access to the contraband. *People v. Hill*, 226 Ill. App. 3d 670, 672 (1992). Thus, this argument also fails. Construing all reasonable inferences in the State's favor, we cannot say that no trier of fact would find defendant guilty beyond a reasonable doubt.

¶ 21 Defendant argues that the facts of his case are "somewhat analogous" to *People v. Ray*, 232 Ill. App. 3d 459 (1992). However, *Ray* is factually distinguishable because in that case, "no evidence" was presented to link the three defendants to the premises where narcotics and contraband were found except a six-month-old cable television bill in one of the defendants' names. *Id.* at 463. As explained above, sufficient evidence was presented to link defendant to the residence in the instant case, thus distinguishing this case from *Ray* and supporting a finding beyond a reasonable doubt that defendant constructively possessed the handgun.

¶ 22 Next, defendant contends that even if this court accepts Investigator Gleason's testimony that defendant admitted to possessing the handgun, the State presented "no evidence" corroborating that defendant ever exercised physical control over it, and as a result, his statement was not sufficient for a conviction. In order to sustain a conviction, the State must first prove the *corpus delicti*—that a crime occurred. *People v. Lesure*, 271 Ill. App. 3d 679, 682 (1995). "It is well established that a confession alone is not sufficient to sustain a conviction." *Id.* "[W]here a defendant's confession is part of the proof of the *corpus delicti*, the prosecution must also adduce corroborating evidence independent of a defendant's own statement." *People v. Cloutier*, 156 Ill. 2d 483, 503 (1993).

¶ 23 The State urges this court to apply the interpretation of the *corpus delicti* rule set forth in *People v. Sargent*, 239 Ill. 2d 166, 183 (2010), providing that the corroborative evidence simply must tend to confirm the defendant's confession and need not rise to the level of proof beyond a reasonable

doubt. Defendant, however, argues that we should apply the stricter standard of *People v. Lara*, 408 Ill. App. 3d 732, 739 (2011), *pet. for leave to appeal allowed*, No. 112370 (Sept. 28, 2011), which provides that the State must present some evidence corroborating every element of the crime charged to establish the *corpus delicti*. *Lara* is pending before our supreme court. However, we need not attempt to predict the outcome of that case because even applying the stricter "every element" interpretation of the *corpus delicti* rule, the State had proven defendant's guilt.

¶ 24 As outlined above, the offense of being an armed habitual criminal consists of two elements: (1) a person possesses any firearm, (2) after being convicted two or more times, *inter alia*, of a forcible felony and home invasion. 720 ILCS 5/24-1.7 (West 2008). As discussed, the State presented evidence, which defendant does not dispute, that defendant was convicted of the requisite prior felonies. Further, the evidence adduced at trial corroborates defendant's admission that he possessed the handgun. Defendant was the only person that Investigator Slepski observed exiting the premises. No one else was on the premises at the time the search warrant was executed. Defendant's mail was found on the dresser in the bedroom where the handgun was found. Thus, without considering defendant's confession, the State presented evidence corroborating every element of the crime, establishing the *corpus delicti* to support defendant's conviction.

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.