

No. 1-13-0868

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 CR 12843
)	
JURO KONSTANTINOV,)	Honorable
)	Lauren Gottainer Edidin,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Justices Harris and Liu concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm the trial court's judgment because defendant failed to present a complete record on appeal and we therefore presume the trial court acted in conformity with the law when it (1) found defendant guilty of possession of cannabis and possession of cannabis with intent to deliver and (2) denied defendant's motion to suppress physical evidence. In addition, even in reviewing the record before us, defendant has failed to demonstrate the evidence was insufficient to sustain his conviction or that he had a legitimate expectation of privacy in the residence.

¶ 2 Following a bench trial, defendant, Juro Konstantinov, was convicted of possession of cannabis and possession of cannabis with intent to deliver. Thereafter, the trial court sentenced

him to concurrent four-year prison terms. Defendant appeals, asserting (1) he was not proven guilty beyond a reasonable doubt and (2) his rights as a resident of his home were violated when police entered without giving proper notice that they were there to serve an eviction order. For the following reasons, we affirm.

¶ 3 The charges in this case arose after police forcibly entered defendant's home to execute an eviction order and discovered cannabis plants inside on July 13, 2011. Prior to trial, defendant filed a motion to suppress physical evidence, asserting the officers violated both the United States and Illinois constitutions by entering his home without a search warrant or probable cause. Later, defendant filed an additional motion to suppress physical evidence, contending the Order for Possession, which he believed the State would use to assert the officers' entry was justified, was invalid because it was not properly served on defendant.

¶ 4 The trial court held a hearing on defendant's pretrial motion in June 2012. The transcript from that date states that it is an "excerpt" of the report of proceedings and contains only the testimony of Deputy Timothy Wilson of the Cook County sheriff's department. He testified that he and three other officers went to 1427 Evergreen Terrace on July 13, 2011, to execute an eviction order. When they reached the residence, the officers knocked and said "Sheriff's Department[,] open the door." They then knocked and announced office a second time. They did not state that they had an eviction order. Nobody answered the door, so the officers opened it by striking it with a ram. Two minutes elapsed between when the officers first knocked and when they forced open the door. Wilson did not have a search warrant or anybody's consent to enter the residence. The State moved to admit the eviction order into evidence. The transcript does not indicate whether the trial court admitted the order.

¶ 5 Following Wilson's testimony, defense counsel indicated he had "no other questions of anybody else." According to the transcript, "additional proceedings" then took place, but those proceedings were not transcribed. The half-sheets indicate the court denied defendant's motion to suppress, although the record does not contain the parties' arguments or the court's findings or reasons for denying the motion on June 11, 2012.

¶ 6 Defendant's trial commenced on September 7, 2012; however, the record does not contain a transcript of the proceedings from that date. In the transcript from October 3, 2012, the trial court noted that trial began on September 7 and "was commenced and continued."

¶ 7 At the October 3, 2012, proceedings, Carlton Coleman, an employee of NICOR Gas, Incorporated, testified that the State's Attorney's office faxed him a copy of a bill for 1427 Evergreen Terrace in Glenview, Illinois. The account for that address was in defendant's name. The bill covered service from March 23, 2011, through April 1, 2011, and was paid on May 21, 2011. The trial court admitted the bill into evidence. From May 21, 2011, through July 13, 2011, NICOR continued to send bills to defendant at 1427 Evergreen Terrace, but it did not receive any more payments.

¶ 8 Timothy Leahy, a billing manager at Commonwealth Edison (ComEd), testified that People's Exhibit No. 30 was a bill covering service at 1427 Evergreen Terrace from March 21, 2011, to April 20, 2011. The account at 1427 Evergreen Terrace was in defendant's name and remained in his name through July 13, 2011. The bill was paid around May 21, 2011. The trial court admitted the bill into evidence. ComEd sent additional bills to 1427 Evergreen Terrace, but it did not receive payment.

¶ 9 The parties entered into the following stipulation. Investigator Cagle of the Cook County Sheriff's Department would testify he was one of several people summoned by the eviction unit to 1427 Evergreen Terrace. When he arrived, Cagle "discovered the condition of the house being as shown in the various photos *** that were previously identified by the eviction officer who testified, Officer Jones." Officers found five large weapons and a large amount of ammunition in the living room along with three plastic containers of a green leafy substance, suspect cannabis. At the bottom of the stairs in the lower level of the home, they discovered a large, black canvas tent, approximately 8 by 10 feet, with a zipper-controlled front. The tent contained 14 mature cannabis plants, approximately 4 feet tall, planted in large plastic pots, as depicted in People's Exhibit No. 13. Each pot had an irrigation hose linked to a garbage can that was filled with water and chemicals to supply the plant. An electric fan attached to poles inside the tent filtered out air through a large filter that was vented through a silver-colored flexible pipe, approximately 14 inches in diameter, out the masonry chimney. Cagle would explain this was done to mask the odor of the cannabis plants. Near the tent were chemicals to feed the plants, about a dozen PVC pipes of various sizes, and a drill and bits used to make holes in the pipes. These were depicted in People's Exhibit Nos. 16 and 17.

¶ 10 Cannabis plants were planted in three long PVC tube-type pipes in a small room on the north side of the home, which was shown in People's Exhibit No. 19. Each tube had 10 plant pot holes and was sealed on both ends so water could flow under the pots and provide nutrients to the plants. Above the plants stood a large, reflective light, approximately four feet in diameter, wired into a timer and plugged into wall outlets. The light was shown in Exhibit Nos. 21, 22, and 23. A large plastic garbage can was connected to a water source and the PVC pipes to provide

automatic irrigation. A third room contained a small plastic container, and an overhead light used to start cannabis seedlings. This was depicted in People's Exhibit No. 25.

¶ 11 Defendant, his wife, and two minor children were at the home when the officers discovered the cannabis. Before the officers removed any items, an evidence technician photographed the inside of the residence. The cannabis and all of the equipment were then collected, secured, and transported to the Illinois State Police Crime Lab. Cheryl Burger would testify the plants tested positive for cannabis. Specifically, item group "4-A" contained 2,190 grams of 10 cannabis plants. Another group consisted of 495 grams of loose cannabis plants. Finally, a third group contained 0.1 gram of a small cannabis plant. During the course of the investigation, officers also recovered from inside the residence three large flat-screen televisions, grow lamps, plastic containers, planters, air filters, growing materials, a calendar, and a growth chart. Proof of residency was established by way of ComEd and NICOR bills that were recovered from inside the home, as well as defendant's Illinois driver's license and an expired Firearm Owners Identification (FOID) card.

¶ 12 Andrew Douvris, a sergeant with the Cook County Sheriff's Police Department, testified he reviewed the photographs and helped inventory the physical items taken at 1427 Evergreen Terrace. According to Douvris, the pictures depicted a system in which a marijuana plant could mature in a 10 or 12-week period rather than the normal 25-week cycle. Specifically, he explained the tent, vitamins and supplements, grow lights, and pipes running under the plants all stimulated growth. Pictures taken at the residence showed cannabis plants in various stages of growth, from seedlings to mature plants. The calendar and growth chart recovered from the

basement depicted "a cycle of maturing and how the plants were supposed to be evolving and maturing." The jars holding fertilizer were not tested for fingerprints.

¶ 13 Thirty-four exhibits were admitted into evidence. None of those exhibits are contained in the record.

¶ 14 The trial court found defendant guilty of possession of cannabis and possession of cannabis with intent to deliver. The court noted that the evidence established when officers entered the home, they saw small children and firearms, weapons, and ammunition. Defendant then entered the room. The court found defendant had constructive possession of the marijuana, reasoning the photographs showed the basement did not "really" have a door, thus making the growing area of plants visible as soon as a person walked into the basement. Further, the court reasoned, the sophisticated nature of the growing operation—with chemicals, piping, tents, and growing materials—belied the notion that an adult living in the home could be unaware of the marijuana. The court also found the bills proved defendant resided in the home.

¶ 15 At a subsequent hearing, the trial court sentenced defendant to four years in prison on each count, ordering the sentences to run concurrently. This appeal followed.

¶ 16 On appeal, defendant first contends he was not proven guilty beyond a reasonable doubt. Specifically, he asserts the evidence failed to establish he had actual or constructive possession of the marijuana. In support of his contention, he relies on the fact that he was not seen in the rooms or in contact with the marijuana and that his fingerprints were not found on any of the containers officers seized. The State responds that (1) defendant has waived his right to challenge his possession-with-intent-to-deliver conviction by failing to address it in his brief, (2)

the record is insufficient to review defendant's convictions, and (3) even the partial record shows the evidence was sufficient to sustain defendant's convictions. We agree with the State.

¶ 17 In reviewing a challenge to the sufficiency of the evidence, this court must determine whether, when viewing the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime."

People v. Brown, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). We will not substitute our judgment for that of the trier of fact on issues relating to the weight of the evidence or witness credibility, and we will reverse only "where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48.

¶ 18 A person commits possession of cannabis when he knowingly possesses between 2,000 and 5,000 grams of any substance containing cannabis. 720 ILCS 550/4(f) (West 2010). A person commits possession of cannabis with intent to deliver when he knowingly possesses, with the intent to deliver, between 2,000 and 5,000 grams of a substance containing cannabis. 720 ILCS 550/5(f) (West 2010). Possession of drugs may be constructive or actual. *People v. Givens*, 237 Ill. 2d 311, 335 (2010). Actual possession exists when a defendant "exercises immediate and exclusive dominion or control over the illicit material." *People v. Schmalz*, 194 Ill. 2d 75, 82 (2000). Constructive possession is shown where a defendant has the "intent and capability to maintain control and dominion" over a controlled substance. *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992). Where drugs are found on premises under a defendant's control, it may be inferred that the defendant had the requisite knowledge and possession, absent other facts and circumstances that might leave a reasonable doubt of defendant's guilt. *Id.* In addition, if two or

more people share the intention and power to exercise control, then each has possession. *Givens*, 237 Ill. 2d at 337-38.

¶ 19 The record in this case hinders our ability to review the sufficiency of the evidence. The appellant bears the burden of presenting an adequate record to support his claim of error. *People v. Hunt*, 234 Ill. 2d 49, 58 (2009). In the absence of a complete record, we will presume that the trial court's order was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Any doubts that may arise from the partial record are resolved against the appellant. *Id.* at 392.

¶ 20 The record contains a transcript only from October 3, 2012, although the trial court expressly indicated that trial commenced on September 7, 2012. Without the September 7, 2012, transcript, we are unable to review any of the evidence presented on that date. In addition, the October 3, 2012, transcript indicates that numerous exhibits were admitted into evidence, including photographs that apparently depicted the home when officers entered it. In finding defendant guilty, the trial court referred to the photographs as well as testimony apparently presented on the September trial date. For example, the court stated that when officers came in to defendant's home, "they saw that there were small children and that the defendant came into the room." The court also noted that the photographs showed the basement did not "really" have a door.

¶ 21 Without the September 7, 2012, transcript and the photographs, we cannot review all of the evidence the trial court relied upon in finding defendant guilty. Thus, we must presume that the court acted in conformity with the law in finding defendant guilty of possession of cannabis and possession of cannabis with intent to deliver. See *Foutch*, 99 Ill. 2d at 391-92.

¶ 22 Even in reviewing the record before us, defendant has not demonstrated that he was not proven guilty beyond a reasonable doubt. Defendant's contention that he did not have actual or constructive possession of the cannabis is without merit. First, the parties stipulated that defendant's driver's license, defendant's expired FOID card, and the ComEd and NICOR bills all established defendant's proof of residence. Defendant's habitation in the home showed he controlled the home and thus had constructive possession of the cannabis found there. See *People v. Blue*, 343 Ill. App. 3d 927, 939 (2003) ("Habitation in or rental of the premises where narcotics are discovered is sufficient evidence of control to constitute constructive possession."). Moreover, defendant's argument that he lacked knowledge of the cannabis is unpersuasive given that officers discovered cannabis in multiple rooms throughout the home and also found a grow system consisting of extensive equipment, including an 8-foot by 10-foot tent and a filtration system vented out of the home's chimney. Finally, although defendant's wife also lived in the home, we note the rule that possession must be exclusive does not mean it may not be joint. *Givens*, 237 Ill. 2d at 335. Accordingly, even based on the partial record before us, the trial court could have reasonably found defendant had constructive possession of the cannabis officers discovered in his home because the evidence established he had both knowledge and control of the cannabis.

¶ 23 Defendant next asserts the officers violated his fourth amendment rights by forcibly entering his home without giving proper notice that they were there to serve an eviction order. In response, the State contends (1) defendant has waived his argument by failing to cite to sufficient legal authority, (2) defendant has failed to provide an adequate record on appeal, and (3) the trial court properly denied defendant's motion to suppress evidence. As with defendant's first

argument, we find we are unable to review defendant's second contention based on the insufficient record.

¶ 24 When reviewing a ruling on a motion to suppress evidence, we defer to the trial court's findings of fact and will reverse those findings only if they are against the manifest weight of the evidence. *People v. Cregan*, 2014 IL 113600, ¶ 22. However, we review *de novo* the court's legal ruling on whether evidence should be suppressed. *Id.*

¶ 25 Both the fourth amendment of the United States Constitution and article I, section 6 of the Illinois Constitution protect individuals from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6; *People v. Cummings*, 2014 IL 115769, ¶ 14. Warrantless searches are *per se* unreasonable, subject to specific exceptions. *Cregan*, 2014 IL 113600, ¶ 25. However, the protections of the fourth amendment are not invoked where no legitimate expectation of privacy exists. *People v. Pitman*, 211 Ill. 2d 502, 514 (2004).

¶ 26 In this case, the record contains a transcript from the June 11, 2012, hearing on defendant's motion to suppress; however, the transcript is merely an "excerpt" of the proceedings from that date. It contains only the testimony of Wilson, without any introductory statements from the trial court or any of the parties. A note at the end of the transcript states the following: "Whereupon, proceedings were had but not transcribed at this time." Thus, it is unclear whether additional witnesses or evidence were presented either before or after Wilson's testimony. Most notably, the transcript does not contain any of the parties' arguments or the trial court's factual findings. Clearly, without knowing what the court's factual findings were, we cannot review whether those findings were against the manifest weight of the evidence. See *In re J.D.*, 332 Ill. App. 3d 395, 403 (2002) (noting that, without a transcript of the parties' arguments and the trial

court's ruling on the respondent's objection, it did not know the basis of the trial court's ruling, thereby making it impossible to determine whether the court abused its discretion). Accordingly, based on the deficient record, we must presume the court followed the law when it denied defendant's motion to suppress physical evidence. See *Foutch*, 99 Ill. 2d at 391-92.

¶ 27 In addition, despite the deficient record, defendant has not shown that he had a legitimate expectation of privacy in the premises to invoke the fourth amendment because he had been evicted. See, e.g., *U.S. v. Curlin*, 638 F. 3d 562, 565 (7th Cir. 2011) (the defendant had no legitimate expectation of privacy in the residence because he had been evicted over two weeks earlier and had been given notice of his eviction).

¶ 28 For the reasons stated, we affirm the trial court's judgment.

¶ 29 Affirmed.