FIRST DIVISION
JULY 18, 2016

No. 1-14-0733

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. 13 CR 11677
	)	
JESSE CREAMER,	)	Honorable
	)	Jorge Luis Alonso,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence sufficient to convict defendant of unlawful use of a weapon by a felon. Six-year prison sentence not excessive.

¶ 2 Following a 2013 bench trial, defendant Jesse Creamer was convicted of two counts of unlawful use of a weapon by a felon (UUWF) and sentenced to concurrent prison terms of six years. On appeal, defendant contends that there was insufficient evidence that he possessed a firearm or ammunition, and also contends that his sentence is excessive. We affirm.

¶ 3 Defendant was charged with two counts of UUWF for possessing a firearm and ammunition in his abode on or about May 5, 2013, when he had a prior conviction for UUWF in case 10 CR 15502. The State sought a Class 2 felony sentence based on the same prior conviction.

¶ 4 At trial, police officer Daniel Kasper testified that he and several other officers executed a search warrant at a certain house (the House) on May 5. The officers found three men and a woman – "the lessee of the residence" – inside the House and two women in the backyard; none of them was defendant. In the rear or southern first-floor bedroom was found two bags of a substance suspected to be cannabis, a loaded pistol in a shoebox on a closet shelf, a box of ammunition under the bed, documents bearing defendant's name and the address of the House, a bundle of men's clothing in the closet, and three photographs of defendant. Two documents were letters from defendant at an East St. Louis address to Vannasia Warren at the House address sent in 2012 while he was a prison inmate. The other documents were a May 2013 letter to defendant at the House address, and defendant's GED transcript with an East St. Louis address for defendant. Defendant was arrested on June 4 and interviewed by Officer Kasper after being informed of and waiving his *Miranda* rights. Defendant told Officer Kasper that he had the gun for protection as "people are out to kill him" and was holding the box of ammunition for "Tip." On cross-examination, Officer Kasper admitted that he did not ask defendant where in the House he kept the gun, who was trying to kill him, who Tip was, or why defendant would store Tip's ammunition.

¶ 5 The State entered a certified copy of defendant's 2011 conviction for UUWF in case 10 CR 15502 without objection.

¶ 6 The court denied defendant's motion for a directed finding. Following closing arguments, the court found defendant guilty of two counts of UUWF, finding that Officer Kasper's testimony was credible and that the State proved that the firearm and ammunition found in the bedroom were defendant's based on "the circumstantial evidence regarding the other items found and his statement."

¶ 7 In his post-trial motion, defendant challenged the sufficiency of the evidence. The court denied the motion following arguments, reiterating that the circumstantial evidence and defendant's statement were sufficient evidence to convict, and proceeded to sentencing.

¶ 8 The pre-sentencing investigation report (PSI) reflected that defendant had three prior convictions: in 2010 for possession of a firearm with a defaced serial number with two years' probation, in 2011 for UUWF with five years' imprisonment, and in 2013 for manufacture or delivery of cannabis with two days' jail. He was born in 1992 and had a "rough" childhood without "stable living arrangements" and with emotional abuse (though he denied physical or sexual abuse), and he ran away from home in 2008. He was raised by his mother and has a good relationship with her, has a "fair" relationship with his father who was incarcerated through most of defendant's life, and has a close relationship with his two sisters and two brothers. He has never been married and has no children. He completed elementary school, did not complete high school, received his GED in 2012 while in prison, and described himself as an "average student" who was not placed in special-education classes. He was previously employed as a temporary employee from October 2012 to April 2013, was generally unemployed and supported by his long-time girlfriend Dannasia Warren, and intends to be trained in welding and work as a welder. He stated his intention to "continue to reside at" the House upon release. Defendant described his

physical and mental health as good, denied abusing alcohol, admitted experimenting with marijuana and "ecstasy" but denied using them regularly, and stated that he "participated in AA classes" while in prison. He admitted affiliation with a gang "comprised of guys on his residential block" called the Looney Tunes from when he was 15 until his release from prison in 2012. He denied being in community organizations but claimed church membership.

¶ 9 At sentencing, the State argued that defendant admitted gang membership and his statement that he had the gun because people were trying to kill him corroborated that, and noted that defendant was on parole for his 2011 weapons offense when he committed the instant offenses. The State at first sought a six-year prison term, then an eight-year term. The defense argued that defendant was 22 years old as of sentencing, had a rough childhood, and lacked a father-figure in his life due to his father's incarceration. He has a long-time girlfriend, earned his GED, wants to work as a welder, and his gang affiliation arose out of his youthful acquaintance with neighboring youths. His weapons offenses did not involve using a gun, and he had explained that he had a gun to protect himself. The defense also argued from the presence of other people in the House when it was searched that it is "reasonable to assume that he may not be the only person possessing that weapon or may not have possessed it at all." The defense asked for the minimum sentence.

¶ 10 The court sentenced defendant to six years' imprisonment for each count, to be served concurrently. The court found that the evidence of defendant's guilt was strong despite the defense argument otherwise and specifically noted defendant's intent, stated in the PSI, to return to the House after his sentence. The court stated that it considered the factors in mitigation and aggravation in light of the PSI and arguments. The court found "that it is mitigating that all of

this transpired in the [House]. It would be a very different situation if it were somewhere else." Defendant's motion to reconsider his sentence was denied, and this appeal followed.

¶ 11 On appeal, defendant first contends that there was insufficient evidence to convict him of UUWF as the State failed to prove his constructive possession of the firearm or ammunition, or that he resided in the House where the firearm and ammunition were found, as alleged.

¶ 12 Knowing possession of a firearm or ammunition can be either actual or constructive, with constructive possession shown by the defendant's knowledge of the presence of the contraband *and* his exercise of immediate and exclusive control over the area where the contraband was found. *People v. Moore*, 2015 IL App (1st) 140051, ¶ 23. Constructive possession can be shown if the defendant once had physical control over the contraband with intent to exercise control again, the defendant has not abandoned the contraband, and no other person has obtained possession. *Id*. Constructive possession is typically proven through circumstantial evidence and, in particular, knowledge is rarely proven by direct evidence but may be shown by evidence of the defendant's acts, statements, or conduct from which a trier of fact may infer his knowledge of the presence of the contraband. *Id*., ¶¶ 23, 25. The fact that a defendant resided where contraband is found has been held to constitute sufficient evidence of control to establish constructive possession, and proof of residency is relevant to show that the defendant lived on the premises and thus controlled them. *Id*., ¶ 27.

¶ 13 On a claim of insufficiency of the evidence, we must determine whether, taking the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *In re Q.P.*, 2015 IL 118569, ¶ 24. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable

inferences from the testimony and other evidence, and it is better equipped than this court to do so as it heard the evidence. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. We do not retry the defendant – we do not substitute our judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses – and we accept all reasonable inferences from the record in favor of the State. *Q.P.*, ¶ 24. The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Jonathon C.B.*, ¶ 60. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt, nor to find a witness was not credible merely because the defendant says so. *Id*. A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Q.P.*, ¶ 24.

¶ 14 Here, taking the evidence in the light most favorable to the State as we must, we cannot conclude that a rational trier of fact would not have found that defendant possessed the firearm and ammunition found in the rear first-floor bedroom of the House. Also found in that bedroom were men's clothing, photographs of defendant, and documents bearing defendant's name including his GED transcript and a 2013 letter addressed to him at the House. The court heard evidence that a woman was the lessee of the House and that defendant sent two letters in 2012, when he was still a prison inmate, to Vannasia Warren at the House. A rational trier of fact could conclude that defendant resided in the bedroom at issue, regardless of who else resided in the House, and infer his control over the firearm and ammunition in his bedroom. Moreover, the trier of fact need not have merely inferred defendant's knowledge of the gun and ammunition, because

defendant gave a statement admitting his possession of both the gun and ammunition. While defendant argues that the evidence of his statement is incredible, the trial court found otherwise.

¶ 15 Defendant also contends that his six-year prison sentence is excessive in light of the circumstances of the offense and his background.

¶ 16 UUWF by a person previously convicted of a felony weapons offense is a Class 2 felony punishable by 3 to 14 years' imprisonment. 720 ILCS 5/24-1.1(e) (West 2012). A sentence within statutory limits is reviewed on an abuse of discretion standard, so that we may alter a sentence only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Snyder*, 2011 IL 111382, ¶ 36. The court's broad discretion means that we cannot substitute our judgment simply because we may weigh the sentencing factors differently. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). In imposing a sentence, the trial court balances the relevant factors including the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *People v. Abrams*, 2015 IL App (1st) 133746, ¶¶ 32-33. The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Snyder*, ¶ 36. The court does not need to expressly outline its reasoning for sentencing, and we presume that the court considered all mitigating factors on the record absent an affirmative indication to the contrary other than the sentence itself. *Abrams*, ¶¶ 32-33. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the severity of the offense, nor does the presence of mitigating factors require a minimum sentence. *Alexander*, 239 Ill. 2d at 214; *Abrams*, ¶ 34.

¶ 17 Here, defendant was on mandatory supervised release or parole when he possessed a firearm and ammunition. Defendant was no stranger to the criminal justice system, yet he possessed a firearm knowing that it was illegal to do so. Defendant argues in mitigation that he was not arrested with a gun on his person and there was no evidence he intended to use a gun. However, the trial court already expressly found mitigation in the fact that defendant had the gun and ammunition at home rather than carrying them in public. Defendant also argues that his sentence is excessive because of his youth, limited criminal history with no violent offenses, and his difficult childhood that he overcame insofar as he earned his GED and did not have substance abuse problems. However, the trial court heard these factors, and we see no evidence that it did not give them due consideration. We cannot conclude that the court abused its discretion in sentencing defendant to six years' imprisonment, at the low end of the applicable range.

¶ 18 Accordingly, the judgment of the circuit court is affirmed.

¶ 19 Affirmed.