

No. 1-14-0895

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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. 11 CR 6823
	)	
FELIPE MOFFETT,	)	Honorable
	)	Carol M. Howard,
Defendant-Appellant.	)	Judge Presiding.

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

**ORDER**

- ¶ 1 *Held:* Defendant's conviction for possession of a controlled substance affirmed where the evidence established that he had constructive possession of the heroin found inside a dresser; fines and fees order amended to vacate improper fees; records automation fees properly assessed.
- ¶ 2 Following a bench trial, defendant Felipe Moffett was convicted of possession of a controlled substance and sentenced to two years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because the evidence did not establish that he had control of the area where the heroin was found, nor did it show that he had

constructive possession of the heroin. Defendant also contends that he was improperly assessed various fees. We affirm and amend the fee assessment.

¶ 3 Defendant was charged with one count of possession of a controlled substance with intent to deliver, and one count of committing that offense within 1,000 feet of a school. At trial, Chicago police officer Francisco Iza testified that about 9 p.m. on April 7, 2011, he was part of a team of officers that executed a search warrant at 1350 North Monticello Avenue, which was a two-story, single-family home. Upon entering the home, the officers conducted a systematic search of the residence. When the police entered the home, they found no occupants on the first floor. The officers then proceeded to the second floor where they found defendant and a woman sitting on a bed in one of the two bedrooms. Officer Iza searched a dresser that was very close to the bed where defendant was sitting. From inside that dresser, Officer Iza recovered a plastic pill bottle that contained six Ziploc baggies that were taped together. Each baggie contained a white powdery substance that he suspected was heroin. Based on his training and experience, Officer Iza believed that the baggies were packaged for narcotics sales. Officer Iza acknowledged that he did not see any narcotics on defendant, and did not observe him selling drugs.

¶ 4 Chicago police officer Mark Debose testified that he searched the hallway closet on the second floor and recovered two coffee grinders which both contained a white powdery residue that he suspected was narcotics. He also recovered a box of plastic sandwich bags, smaller one-inch Ziploc baggies, and a bottle of Dormin, which is a nonprescription powdered caplet sleep aid. Officer Debose testified that the plastic bags are commonly used to package narcotics for sale and distribution, the grinders are commonly used for mixing narcotics, and the Dormin is

known as an agent that is mixed with heroin. At the police station, Officer Debose inventoried all of the items recovered during the search of the residence in accordance with police procedures.

¶ 5 Chicago police officer William O'Brien testified that he entered a bedroom on the second floor and found defendant and a woman standing by the bed. After detaining defendant, Officer O'Brien searched the bedroom, and on top of a dresser, he recovered two pieces of mail addressed to defendant at 1350 North Monticello. The first piece of mail was a document from the Illinois Department of Revenue dated March 29, 2011. The document indicated that it was for the reporting period of December 2008. The second piece of mail was an envelope from the organization Put Illinois to Work that was postmarked March 23, 2011. Officer O'Brien did not find any other forms of proof of residency for any other individual, nor did he see any evidence that more than one person lived in the house. The only proof of residency he found in the house was the mail addressed to defendant. Officer O'Brien acknowledged that the mail was not recovered from the same dresser where the narcotics were found, and that he did not find any narcotics in the dresser he searched.

¶ 6 At the police station, Officer O'Brien was present when his partner, Officer Bala, advised defendant of his *Miranda* rights. Officer O'Brien testified that defendant then told the officers that "the work in [*sic*] paraphernalia in his bedroom was given to him by Jesse Lane who was incarcerated and that he was supposed to hang on to them." The officer further testified that based on his training and experience, including hundreds of narcotics arrests, he was familiar with the unique language used in the drug trade, and the word "work" refers to narcotics.

¶ 7 The State presented a stipulation that a forensic chemist tested the six items that were inside the plastic pill bottle recovered from the dresser and found them positive for 0.6 gram of

heroin. The State presented a second stipulation that an investigator from the State's Attorney's Office measured the distance from 1350 North Monticello Avenue to the Cameron Elementary School and found it to be 585 feet.

¶ 8 Defendant testified that he did not live at 1350 North Monticello Avenue, but instead, lived in Flossmoor and used the Monticello address as his mailing address. Roberta Thomas lived in the house with her cousin Tamika, and Tamika's mother and boyfriend, but defendant could not recall their names. Later in his testimony, defendant recalled that Tamika's boyfriend was Jesse Lane.

¶ 9 Defendant testified that Thomas had called him earlier in the month and notified him that he had mail there. Defendant arrived at the house about 15 to 20 minutes before the police arrived and went upstairs to Thomas' bedroom to retrieve his mail. He sorted through a stack of 10 to 20 pieces of mail that was on the dresser and removed the two pieces of mail addressed to him. The other mail in the stack was addressed to other people including Thomas, Tamika and her mother, and Jesse Lane. The first piece of mail was a tax document from the Department of Revenue, which defendant acknowledged was an important financial document. The second piece of mail was from the organization Put Illinois to Work and contained information about a job program to assist people with finding employment. Defendant testified that the program was only available to Chicago residents, and acknowledged that he lied about his address to participate in the program. He also acknowledged that this piece of mail was important to him, but could not recall what he did with the information that was inside the envelope.

¶ 10 Defendant further testified that he and Thomas were sitting on the bed, and his two pieces of mail were sitting on the bed next to him, when the police entered the house and yelled "raid."

1-14-0895

The police entered the bedroom, told defendant and Thomas to stand up, then took them downstairs to the kitchen and handcuffed defendant. He was not present in the bedroom when the search was conducted.

¶ 11 Defendant denied that the drugs recovered in the bedroom belonged to him and testified that he had never before seen or touched those drugs. He also denied that he told the police that he was holding the drugs for Jesse Lane. Defendant testified that he told the officers "come on man don't do this to me. You knows those aren't mine. I have two kids that I'm responsible for. Don't do me like this." Defendant also denied that he had any clothes at the house.

¶ 12 In rebuttal, Officer O'Brien denied that defendant told him and Officer Bala "come on you know those are not mine." He also denied that defendant said "don't do me like that, I've got two kids."

¶ 13 The trial court found that the State failed to prove that defendant intended to deliver the drugs, and therefore, found him not guilty of possession of a controlled substance with intent to deliver. The court then found that the testimony of the police officers, and specifically, the proof of residency testimony, was credible. Accordingly, the court found defendant guilty of the lesser included offense of possession of a controlled substance.

¶ 14 In denying defendant's motion for a new trial, the court noted that Officer O'Brien testified that the proof of residency was found on top of the dresser, and that defendant gave a statement indicating that the "work and paraphernalia in his room was given to him by Jesse Lan[e] and he was supposed to hold on to it." The court found that defendant's oral statement to police admitted his possession of the drugs, and based on that evidence the court found him

guilty of possession of a controlled substance. The court subsequently sentenced defendant to two years' imprisonment and assessed him fines and fees totaling \$529.

¶ 15 On appeal, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt because the evidence did not establish that he had control of the area where the heroin was found, nor did it show that he had constructive possession of the heroin. Defendant contends that the evidence failed to establish proof of residence because the police did not recover any other evidence typically associated with living in a residence, including house keys, clothing, identification, a lease or rent receipts, or utility bills. Defendant argues that there was no evidence to rebut his testimony that he did not live at the Monticello address and only used it as a mailing address. He further argues that there is no evidence that he physically touched the heroin or placed it inside the dresser. Defendant also asserts that even if his statement was true that he was holding the drugs for Jesse Lane, that statement shows Lane's ownership of the heroin, not defendant's.

¶ 16 Initially, defendant asserts that the portion of his argument challenging his control over the area where the heroin was found should be considered under a *de novo* standard of review rather than a deferential standard because the relevant facts are uncontested and he is not challenging the credibility of the witnesses. See *People v. Smith*, 191 Ill. 2d 408, 411 (2000) (where the facts are undisputed, defendant's guilt is a question of law that is reviewed *de novo*). We find that there are factual disputes involved in his argument, including whether there was mail on the dresser addressed to other people, and therefore, *de novo* review is not appropriate. See *People v. Salinas*, 347 Ill. App. 3d 867, 879-80 (2004).

¶ 17 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *Baskerville*, 2012 IL 111056, ¶ 31.

¶ 18 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 19 To prove defendant guilty of possession of a controlled substance, the State was required to show that the substance at issue was a controlled substance, and that defendant knowingly possessed that substance. *People v. Woods*, 214 Ill. 2d 455, 466 (2005). Possession may be either actual or constructive. *Givens*, 237 Ill. 2d at 335. Possession may be established by constructive possession where defendant did not have actual control of the narcotics, but knew they were present and exercised control over them. *People v. Burks*, 343 Ill. App. 3d 765, 769 (2003). Constructive possession is often demonstrated entirely by circumstantial evidence. *People v. Besz*, 345 Ill. App. 3d 50, 59 (2003). Defendant's knowledge and possession may be inferred

where the drugs are found on premises that are under his control. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007).

¶ 20 Viewed in the light most favorable to the State, we find that the evidence was sufficient for the trial court to find that defendant knowingly possessed the heroin recovered from the dresser. Officer Iza testified that he found the plastic pill bottle containing the six baggies of suspect heroin inside a dresser that was very close to the bed where defendant was sitting. Officer O'Brien testified that in that same bedroom, he recovered two pieces of mail addressed to defendant at the Monticello address. The tax document from the Illinois Department of Revenue was dated March 29, 2011, and the envelope from the work program was postmarked March 23, 2011. The postmarks thereby show that both of these mailings were sent to defendant within the two weeks prior to his arrest. Officer O'Brien testified that he did not find any other forms of proof of residency for any other individual, and the only proof of residency he found in the house was the mail addressed to defendant. We find that this evidence was sufficient for the trial court to find that defendant lived at the Monticello address.

¶ 21 Moreover, in addition to the proof of residency, Officer O'Brien testified that defendant told him and Officer Bala that "the work in [*sic*] paraphernalia in his bedroom was given to him by Jesse Lane who was incarcerated and that he was supposed to hang on to them." In denying defendant's posttrial motion, the trial court expressly stated that defendant admitted his possession of the drugs in this statement, and based on that evidence, the court found him guilty of possession of a controlled substance. Sitting as the trier of fact, it was the trial court's duty to weigh the evidence and draw reasonable inferences there from, and we find no reason to disturb the trial court's findings.



¶ 22 Defendant next contends, and the State concedes, that the \$5 Court System fee under section 5-1101(a) of the Counties Code (55 ILCS 5/5-1101(a) (West 2010)) was erroneously assessed to him as that fee applies only to violations of the Illinois Vehicle Code. Here, defendant was not convicted of a violation of the Vehicle Code. Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999)). By vacating the \$5 Court System Fee, we direct the clerk of the circuit court to amend the fines, fees and costs order.

¶ 23 The parties also agree that the that the \$5 Electronic Citation Fee assessed pursuant to section 27.3e of the Clerks of Courts Act (705 ILCS 105/27.3e (West 2014)) must be vacated as that fee only applies to traffic, misdemeanor, municipal ordinance and conservation violations, and does not apply to defendant's felony offense. Accordingly, we further direct the clerk of the circuit court to vacate the \$5 Electronic Citation Fee from the fines, fees and costs order.

¶ 24 Finally, defendant contends that the \$2 Public Defender Records Automation fee pursuant to section 3-4012 of the Counties Code (55 ILCS 5/3-4012 (West 2010)), and the \$2 State's Attorney Records Automation fee pursuant to section 4-2002(a) of the Code (55 ILCS 5/4-2002(a) (West 2010)), are fines rather than fees and should be vacated under the *ex post facto* doctrine because they were enacted after his arrest. This court has previously considered and rejected the same argument defendant presents here, holding that both of these charges constitute fees, not fines. *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65. We decline to depart from our prior holding.

¶ 25 For these reasons, we direct the clerk of the circuit court to amend the fines, fees and costs order by vacating the \$5 Court System fee and the \$5 Electronic Citation Fee. We affirm defendant's conviction and sentence in all other respects.

1-14-0895

¶ 26 Affirmed as modified.