2016 IL App (1st) 142097-U
No. 1-14-2097

THIRD DIVISION
December 28, 2016

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 13 CR 21947
	)	
CLINTON WALKER,	)	
	)	The Honorable
Defendant-Appellant.	)	Vincent M. Gaughan,
	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's convictions of unlawful use or possession of a weapon by a felon reversed where the State failed to prove beyond a reasonable doubt that the defendant had knowledge of the shotgun and ammunition found in his home.

¶ 2 Following a jury trial, the defendant, Clinton Walker, was convicted of two counts of unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)) and sentenced to six years' imprisonment. On appeal, the defendant argues that (1) the State failed to prove him guilty beyond a reasonable doubt; (2) the trial court erred in admitting the defendant's

out-of-court statement to his girlfriend; (3) he was denied a fair trial where the State submitted an improper jury instruction on other crimes evidence and repeatedly referred to the defendant as a "two-time convicted felon" in closing arguments; and (4) the trial court improperly imposed a $500 public defender fee and failed to credit the defendant with $150 against his fines for his time spent in pre-trial custody. For the reasons that follow, we conclude that the State failed to prove the defendant guilty beyond a reasonable doubt and, therefore, we reverse the defendant's conviction. As a result, we need not address the defendant's other contentions on appeal.

¶ 3 BACKGROUND

¶ 4 In November 2013, the defendant was charged with one count of armed habitual criminal (count 1) (720 ILCS 5/24-1.7(a) (West 2012)), one count of possession of a controlled substance with the intent to deliver (count 2) (720 ILCS 570/401(c)(1) (West 2012)), and two counts of unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a)) (counts 3 and 4). Count 3 was based on the defendant's alleged possession of .9 millimeter ammunition, and count 4 was based on the defendant's alleged possession of a 12-gauge shotgun. The State eventually *nolle prosequied* count 1, and count 2 was severed from counts 3 and 4 prior to trial.

¶ 5 At the jury trial on counts 3 and 4, Officer Jason Edwards of the Chicago Police Department testified that on August 25, 2013, he was a member of a team of officers who executed a search warrant at the second-floor apartment of 4230 West Wilcox Street. Upon arrival at that location, the officers knocked on the door to the apartment. Receiving no response, the officers rammed the door open and entered the apartment.

¶ 6 When Edwards entered the apartment, he observed a combined front living and dining area, with one bedroom to the right and two bedrooms to the left. There was also a kitchen, which contained a doorway that lead into an enclosed rear porch. Edwards observed two small

children and an older woman in the front part of the apartment and found the defendant and a female sitting on the bed of the third bedroom from the front. After all of the people in the apartment were secured, the officers proceeded to conduct a search of the premises.

¶ 7 During the search, Edwards was called to the rear porch of the residence by Sergeant Holler. While there, Edwards observed Holler recover a 12-gauge Mossberg sawed-off shotgun from the drop ceiling of the rear porch. Holler also directed Edwards' attention to a ledge of the doorframe above the doorway leading to the rear porch. There Edwards observed a magazine to a .9 millimeter semiautomatic handgun. Officer Dedo then called Edwards to the second bedroom from the front, where Edwards observed a box of .9 millimeter ammunition sitting on a window ledge. Finally, Edwards observed Officer Sletcher recover a piece of mail addressed to the defendant from a table in the living/dining area of the apartment. The piece of mail was a T-Mobile bill addressed to the defendant at 4230 West Wilcox Street and dated September 1, 2011. At no point did Edwards see the defendant handle the shotgun, magazine, ammunition, or piece of mail, nor did he see the defendant in the areas where the shotgun, magazine, and ammunition were recovered.

¶ 8 After the search was completed, the defendant was placed into custody and taken to the police station for processing. While at the police station, Edwards asked the defendant where he lived, in response to which the defendant gave the address of 4230 West Wilcox Street. Edwards included this information in the residence portion of his report, but did not include it in the narrative section of the report. Edwards never recovered any identification of the defendant listing 4230 West Wilcox as the defendant's address.

¶ 9 Sergeant Bryon S. Uding of the Chicago Police Department testified as follows. On August 25, 2013, he was the tactical team supervisor of the team that executed the search warrant

at 4230 West Wilcox Street. After the defendant was taken into custody, he was placed in the back seat of a marked squad car.

¶ 10 While standing on the front porch of the apartment building, Uding had a conversation with the defendant's girlfriend, after which he and the defendant's girlfriend went to the squad car where the defendant was located. Uding instructed the officer operating the squad car to roll down the window so that the defendant and his girlfriend could speak to each other. During this conversation, Uding heard the defendant tell his girlfriend "not to worry about it, that he would beat this case exactly the same way he beat the last one because they didn't have shit that could prove he lived there in the past 20 years."

¶ 11 On cross-examination, Uding testified that he never observed the defendant handle the shotgun or ammunition that was recovered during the search, nor did he observe the defendant in the rear of the apartment.

¶ 12 Officer Matthew J. Savage of the Mobile Crime Lab of the Chicago Police Department testified next as an expert in latent fingerprint recovery. He testified that he was unable to recover any usable latent fingerprints from either the shotgun or magazine recovered during the search.

¶ 13 The parties stipulated to the defendant's prior conviction of possession of a controlled substance under case number 05 CR 2670701. The State then rested.

¶ 14 After an unsuccessful motion for a directed verdict, the defendant took the stand and testified as follows. Although he did not live there at the time of trial, the defendant had lived at 4230 West Wilcox in Chicago from the time he was born until he was 18. His mother continued to reside there. Despite not having lived there since he was 18, he still had mail delivered there. In June 2013, a couple months before the search, the defendant moved to Clinton, Iowa, with his

girlfriend, Evelyn Washington, his son, and his daughter. At the end of June, he returned to Illinois with his sister and their children to visit for the summer, although he maintained an apartment in Iowa. While in Illinois, the defendant stayed in various places, including Calumet City, Riverdale, and Dolton.

¶ 15 On August 25, 2013, he was at his mother's house at 4230 West Wilcox in Chicago. The defendant's sister and two of his brothers also lived at that location, and his aunt lived in the first floor apartment of the building. He had arrived the day before and intended to leave later the day of the search. At the time that the police entered his mother's apartment, he and Evelyn were asleep in a bedroom. His aunt, sister, and brothers were not present at the time of the search, although a male friend of his mother's was. The defendant denied that he ever owned or possessed a shotgun or .9 millimeter bullets on the date of the search. He also denied ever having seen the shotgun before.

¶ 16 In rebuttal, the State entered into evidence the defendant's 2005 conviction for possession of a controlled substance in Cook County case number 05 CR 13136-01.

¶ 17 Following closing arguments by counsel, the case was submitted to the jury. After deliberating, the jury returned a verdict of guilty on counts 3 and 4. The defendant made a motion for judgment notwithstanding the verdict, which the trial court denied. The trial court then sentenced the defendant to six years' imprisonment on count 4, declining to enter judgment on count 3. The defendant made a motion to reconsider the sentence, which the trial court denied, and the defendant brought this timely appeal.

¶ 18 ANALYSIS

¶ 19 The first—and dispositive—issue on appeal is the sufficiency of the evidence against the defendant. The defendant argues that the State failed to carry its burden of proving him guilty

beyond a reasonable doubt when it failed to prove that he knowingly possessed the shotgun and ammunition. Given the dearth of evidence as to the defendant's knowledge of the shotgun and ammunition, we must agree.

¶ 20 In a challenge to the sufficiency of the evidence, we will not reverse a criminal conviction unless the evidence "is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt." *People v. Moore*, 2015 IL App (1st) 140051, ¶ 19. The question we are charged with answering is whether, when viewing 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. *People v. Brown*, 2013 IL 114196, ¶ 48. It is not our function to retry the defendant and we must remember that it is the trier of fact's province to assess credibility and assign the appropriate weight to the testimony. *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 18. Nevertheless, where we are of the opinion that the evidence was insufficient, we must reverse. *People v. Tates*, 2016 IL App (1st) 140619, ¶ 18.

¶ 21 Section 24-1.1(a) of the Criminal Code of 2012 (720 ILCS 5/24-1.1(a)) makes it unlawful for a person to "knowingly possess on or about his person or on his land or in his abode or fixed place of business *** any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction." Where, as here, the defendant was not seen in the presence of the contraband, the state must prove that the defendant constructively possessed it. *Moore*, 2015 IL App (1st) 140051, ¶ 23. To prove the defendant's constructive possession, the State was required to demonstrate that the defendant (1) had knowledge of the contraband, and (2) exercised immediate and exclusive control over the area where the contraband was found. *Maldonado*, 2015 IL App (1st) 131874, ¶ 23; *People v. Alicea*, 2013 IL App (1st) 112602, ¶ 24.

¶ 22 The defendant argues that the State failed to prove both that he had knowledge of the shotgun and ammunition and that he had immediate and exclusive control over the area where the shotgun and ammunition was found. Although we conclude that the State presented sufficient evidence of the defendant's control of the area where the contraband was found, we agree that the evidence of the defendant's knowledge of the contraband was lacking.

¶ 23 With respect to the requirement that the defendant exercise immediate and exclusive control over the area where the contraband was found, the State presented evidence that a cell phone bill addressed to the defendant was found in the apartment and the defendant told Edwards that he lived at 4230 West Wilcox. Although we agree with the defendant that the cell phone bill has minimal relevance to establishing his residence at the time of the search because it was dated two years prior to the search, it does not matter because the defendant himself admitted to the police that he lived in the apartment.

¶ 24 The defendant contends that Edwards' testimony that the defendant gave 4230 West Wilcox as his address is contradicted by Edwards' testimony that "a case report is generated with the same details of the search warrant" and the fact that Edwards did not include in the narrative of his report that the defendant told him that the defendant lived at 4230 West Wilcox. Neither of these facts is impeaching to Edwards' testimony that the defendant admitted he lived at the apartment. First, although Edwards did testify that the details of the search warrant are used to generate a case report, there was no elaboration on what those "details" included, much less that they included any conclusion that the defendant resided at 4230 West Wilcox. Moreover, Edwards' testimony that the case report was generated using details of the search warrant does not preclude the defendant from having independently told Edwards that he lived at 4230 West Wilcox. Finally, Edwards' failure to include the defendant's statement of his address in the

narrative portion of the report does not affect the veracity of Edwards' testimony, as Edwards explained that he did not include the information in the narrative section of his report, because he included it in the residency portion of the report.

¶ 25 The defendant also contends that Edwards' testimony regarding the defendant's statement of residency should not be credited because the defendant testified that he lived in Iowa at the time of the search and was only temporarily visiting his mother's home. It was for the trier of fact to determine the respective weight to give to the defendant's and Edwards' testimony, and because there is nothing inherently incredible about Edwards' testimony and in the absence of any additional evidence supporting the defendant's claimed Iowa residency, the jury was left to choose between the defendant's and Edwards' account of events, and we see no reason to disturb the jury's apparent credibility determination in favor of Edwards. See *Alicea*, 2013 IL App (1st) 112602, ¶ 22 ("This court may not substitute its judgment for that of the trier of fact as to the weight of the evidence or the credibility of the witnesses ***."). Based on Edwards' testimony, we conclude that a rational trier of fact could have found that the defendant lived at the address and, thus, exerted control over the premises for purposes of constructive possession. See *Moore*, 2015 IL App (1st) 140051, ¶ 27 (proof of residence is sufficient to raise an inference of control for purposes of constructive possession); *Maldonado*, 2015 IL App (1st) 131874, ¶ 29 (same).

¶ 26 Turning now to the knowledge requirement of constructive possession, we note that although knowledge can be inferred based on control, it nevertheless remains a separate element of constructive possession that the State must prove beyond a reasonable doubt. *Maldonado*, 2015 IL App (1st) 131874, ¶ 40. Knowledge is rarely susceptible to direct proof and is, instead, proven through "evidence of the defendant's acts, declarations or conduct from which the inference may be fairly drawn that he knew of the existence of the contraband where it was

found." *Id.* The defendant contends that the State failed to present any evidence demonstrating his knowledge of the shotgun and ammunition.

¶ 27 In its brief, the State does not substantively address the knowledge requirement, choosing instead to focus primarily on the control element by arguing the various ways in which the evidence established that the defendant resided at 4230 West Wilcox. The only real reference to the knowledge element is a single sentence in the State's brief that "[the defendant's] statement that the police 'don't have sh*t' to prove he lived there for the 'last 20 years' proves knowledge and control."

¶ 28 We do not see, and the State does not explain, the relevance of this statement to the knowledge element of constructive possession. Nowhere in his statement does the defendant refer to the shotgun or ammunition, and the State did not present any evidence regarding the context of the statement. Rather, the evidence surrounding the defendant's statement was simply that the officers executed the warrant, at some point during which the defendant was taken into custody and placed in a police car. The defendant was permitted to speak to his girlfriend and, during that conversation, he made the statement at issue. The State did not present any evidence regarding whether the defendant was aware at the time he made the statement that the shotgun and ammunition had been found or whether the defendant and his girlfriend were discussing the shotgun and ammunition at the time that the defendant made the statement. Without additional evidence connecting the defendant's statement to the contraband, we cannot agree that the defendant's statement evidences knowledge of the shotgun and ammunition, rather than evidencing the defendant's knowledge—based simply on the fact that he was placed under arrest—that the police had found some unknown contraband in the house that they attributed to him.

¶ 29 We note that the defendant's full statement to his girlfriend, as admitted at trial, included a statement that "he would beat this case exactly the same way he beat the last one." The defendant takes issue with the admission of this statement into evidence. Even assuming that this part of the statement was admitted into evidence, the State again failed to introduce any evidence connecting the statement to the defendant's alleged knowledge of the shotgun and ammunition. The State did not present any evidence that the defendant was referencing a prior charge or conviction for unlawful use or possession of a weapon by a felon, such that the jury could infer that the defendant understood that he was being arrested for the same offense and, thus, that the defendant knew a gun and ammunition had been found. Rather, the only evidence of the defendant's prior convictions were the defendant's previous convictions for possession of a controlled substance.

¶ 30 Furthermore, there was no other evidence connecting the defendant to the shotgun or the ammunition. No one testified that they observed the defendant in the areas of the apartment where the shotgun or the ammunition were found; in fact, the defendant was found by the police in a bedroom in which there was no contraband. There was no evidence presented that any of the defendant's belongings were located anywhere near the shotgun or ammunition, suggesting that he also would have been in those areas. The shotgun was not out in plain view but was instead secreted away in the ceiling of the rear porch, and there was no evidence that would allow us to infer that the defendant would have known what was inside the ceiling of the rear porch. Although the ammunition was recovered from a bedroom window ledge, there was no evidence that the defendant had been in that room. Moreover, a photograph of that room entered into evidence at trial shows a heavily cluttered and messy room, full of random objects. A box of ammunition would not readily stand out to a person entering the room, unless that person was

to pay close attention to each object. Thus, there is no reason to believe that even if the defendant went into that bedroom, he was aware of the ammunition. Finally, there was uncontradicted evidence presented that, at the very least, the defendant's mother, sister, and two brothers lived at that location. Although we recognize that others' access to the shotgun and ammunition does not necessarily defeat the possibility of the defendant possessing them (*People v. Hill*, 226 Ill. App. 3d 670, 673 (1992)), it does provide an explanation for how such items could have made their way into the defendant's home without his knowledge.

¶ 31 We find the cases of *Maldonado* and *People v. Wolski*, 27 Ill. App. 3d 526 (1975), to support our conclusion. In *Maldonado*, upon execution of a search warrant, the police found heroin hidden in a statue on a bedside table and ammunition in a box on a bedroom dresser and in a kitchen drawer. *Maldonado*, 2015 IL App (1st) 131874, ¶¶ 4-6. Although the defendant was not present at the time of the search, the State asserted that he resided at the location. *Id.* at ¶26. As to both the heroin and the ammunition, this Court concluded that even if the State proved that the defendant had control over the premises, it failed to prove that the defendant had knowledge of the contraband. More specifically, with respect to the heroin, this Court observed that the State failed to present any evidence that would suggest or allow the inference that the defendant was aware of the drugs inside an enclosed statue. *Id.* at ¶ 41. Likewise, the State failed to present any evidence that connected the defendant to the bedroom where some of the ammunition was found. *Id.* at ¶42. As for the ammunition found in the kitchen drawer, although the kitchen was a common area for all occupants, the State failed to present any evidence "that the defendant was in proximity to the ammunition at or after it was placed in the kitchen to allow a reasonable inference that he knew of its presence." *Id.*

¶ 32 In *Wolski*, the police executed a search warrant in the apartment where the defendant and his brother resided and where other people had access to the apartment. During the search, the officers discovered marijuana. *Wolski*, 27 Ill. App. 3d at 527. This Court concluded that the State failed to prove that the defendant constructively possessed the contraband, because it did not offer any evidence connecting the marijuana to the defendant, as opposed to the defendant's brother or the other number of people that frequented the apartment. *Id.* at 528-29.

¶ 33 As in *Maldonado* and *Wolski*, the State failed to present any evidence connecting the defendant to the shotgun or the ammunition. There is nothing in the record to suggest that the defendant handled or was in the proximity of the contraband, and there was no other evidence presented from which a rational trier of fact could reasonably infer that the defendant had knowledge of the shotgun or the ammunition. In fact, there is no more evidence suggesting that the defendant knew about the contraband than there was that the defendant's mother, sister, or two brothers knew about it. Even viewing the evidence in the light most favorable to the State, we conclude that the State failed to prove beyond a reasonable doubt that the defendant had knowledge of the shotgun or the ammunition. By failing to carry its burden on this element, the State necessarily failed to prove the defendant guilty of possession of the shotgun or ammunition.

¶ 34 Because we conclude that the State failed to prove the defendant guilty beyond a reasonable doubt, we need not address the defendant's other contentions on appeal.

¶ 35 CONCLUSION

¶ 36 For the foregoing reasons, the judgment of the Circuit Court of Cook County is reversed.

¶ 37 Reversed.