

No. 1-15-1956

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 13 CR 04453
)	
KENNETH WILLIS,)	Honorable
)	Brian Flaherty,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Connors and Delort concurred in the judgment.

ORDER

- ¶ 1 *Held:* The evidence adduced by the State was sufficient to prove the defendant, Kenneth Willis, guilty of possession of cannabis beyond a reasonable doubt.
- ¶ 2 Following a bench trial, the defendant, Kenneth Willis, was found guilty of possession of more than 30 grams, but less than 500 grams, of cannabis and sentenced to two years and six months' imprisonment. The defendant appeals, contending that the State failed to prove him guilty beyond a reasonable doubt as the evidence was insufficient to show that he had exclusive control over the apartment where the cannabis was recovered. For the reasons which follow, we affirm.

¶ 3 According to the evidence adduced at the defendant's trial, Chicago Heights police detective Anthony Bruno obtained a search warrant on January 29, 2013, for the second floor north apartment at 151 S. Halsted Street, Chicago Heights, Illinois (apartment). The warrant was supported by a complaint stating that, on January 22, 2013, Detective Bruno met with a confidential informant who related that he had purchased cannabis at the apartment. On that same day, Detective Bruno and other police officers accompanied the informant to the apartment and observed him purchase cannabis from an individual named Kamryn A. Hardy. Detective Bruno and the other officers observed the informant make two additional purchases of cannabis from Hardy on January 27 and 28.

¶ 4 On January 29, 2013, at approximately 11 a.m., Detective Bruno and other members of the Chicago Heights police department arrived at 151 S. Halsted Street. Detective Bruno positioned himself on the west side of the building and Detective Hahn was positioned on the east side. Detectives Gibson and Meder remained in their police vehicle, waiting to execute the search warrant.

¶ 5 During their surveillance, Detectives Bruno and Hahn observed the defendant arrive at the rear of the building driving a green Pontiac automobile. Detective Hahn saw the defendant exit the vehicle, walk up the stairs, use a set of keys to open the door to the second floor north apartment, and enter the apartment alone. The defendant remained in the apartment for about 30 minutes and then exited the apartment in the company of another person who was later identified as Thomas Bell. The defendant and Bell got into the green Pontiac vehicle and drove out of the building's parking lot.

¶ 6 Detective Hahn relayed the information concerning the vehicle in which the defendant was riding to Detectives Gibson and Meder who then stopped the vehicle in the 700 block of

Halsted Street and detained its occupants, the defendant and Bell. A custodial search of the defendant revealed a set of keys.

¶ 7 Approximately 20 or 30 minutes after the defendant was taken into custody, Detective Bruno and other officers executed the search warrant on the apartment. Detective Bruno knocked on the front door, and when no one answered, the officers forcibly entered the apartment. Upon entering the apartment, Detective Bruno searched the kitchen where he found a clear plastic sandwich bag containing suspected cannabis and a digital scale on the countertop. He recovered an additional plastic bag that contained six knotted plastic bags containing suspected cannabis from a kitchen drawer. On the kitchen counter, Detective Bruno also found a prescription bottle, a traffic citation, a bond slip, a Chicago Heights water bill, and two pieces of mail, each of which contained the name of the defendant. The traffic citation and bond slip contained issue dates of February 21, 2011, and listed the defendant's address as 1630 5th Avenue, Chicago Heights, Illinois. The water bill was for service from December 5, 2012, to January 7, 2013, at "155 S. Halsted, South A." The two pieces of mail were addressed to the defendant at 151 S. Halsted. Also recovered from the apartment was a 9-millimeter handgun with 39 rounds of ammunition in an extended magazine.

¶ 8 After Detective Bruno had completed his search of the kitchen, Detective Hahn brought him 16 red Ziploc bags containing suspected cannabis and a duffel bag containing gun magazines and ammunition which he found while searching the apartment. When Detective Bruno searched the living room of the apartment, he recovered a gun magazine from an entertainment center.

¶ 9 On the day following the defendant's arrest, Detective Naylor returned to the apartment with the keys that had been recovered from the defendant. Using those keys, Detective Naylor was able to unlock both the front and back doors to the apartment.

¶ 10 The defendant was charged by indictment with two counts of unlawful use or possession of a weapon by a felon, one count of possession of more than 30 grams but less than 500 grams of cannabis with intent to deliver, and one count of possession of more than 30 grams but less than 500 grams of cannabis. The defendant waived his right to a jury trial and elected a bench trial.

¶ 11 At trial, Detectives Bruno, Hahn, and Gibson testified to the circumstances of the defendant's arrest and the search of the apartment. Detective Naylor testified to his ability to unlock the doors of the apartment with the keys recovered from the defendant. The parties stipulated that, if Cynthia Koulis, a forensic chemist with the Illinois State Police Crime Laboratory and an expert forensic chemist, were called to testify, she would state that she received a heat sealed inventory envelope from the Chicago Heights Police Department containing a white plastic bag within which were 6 bags of suspected cannabis, 1 bag of suspected cannabis, and 10 Ziplock bags containing suspected cannabis. They stipulated that Koulis would testify that, in her expert opinion, the contents of two of the six bags tested positive for the presence of cannabis with a total weight of 54.5 grams, that the other four bags tested positive for the presence of cannabis with a total weight of 13.8 grams, and that the contents of one of the other bags tested positive for the presence of cannabis with a total weight of 7.3 grams.

¶ 12 After the State rested, the defendant moved for a directed finding of not guilty which the trial court denied. The defendant then rested without introducing any evidence. Following

closing arguments, the trial court found the defendant guilty of one count of possession of more than 30 grams but less than 500 grams of cannabis. The trial court found that, based upon the defendant's personal items that were found in the apartment and his possession of keys for the apartment doors, the defendant had control over the premises in which the cannabis was recovered. Following the denial of the defendant's post-trial motion, the trial court sentenced the defendant to two years and six months' imprisonment. This appeal followed.

¶ 13 In urging reversal of his conviction, the defendant argues that the State failed to prove him guilty of possession of cannabis beyond a reasonable doubt. In his brief before this court, the defendant has accepted all of the testimony given at his trial as "credible and true," but contends that the evidence introduced by the State failed to prove that he had exclusive control over the apartment where the cannabis was recovered. We disagree.

¶ 14 When, as in this case, a criminal conviction is challenged based upon insufficient evidence, we must determine whether, considering all of 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. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). It is not our function to retry the defendant, and we will not reverse a criminal conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 15 The Cannabis Control Act provides, in relevant part, that "[i]t is unlawful for any person to knowingly possess cannabis." 720 ILCS 550/4 (West 2012). In order to support a conviction for unlawful possession of cannabis, the State must prove, beyond a reasonable doubt, that the defendant had knowledge of the presence of cannabis and that the cannabis was in his immediate and exclusive control. *People v. Scott*, 367 Ill. App. 3d 283, 285 (2006).

¶ 16 Knowledge is rarely susceptible to direct proof and is usually established by circumstantial evidence. *People v. Bui*, 381 Ill. App. 3d 397, 419 (2008). Knowledge may be established by evidence of circumstances which support an inference that the defendant knew of the existence of the cannabis at the place where it was found. *Id.* Where cannabis is found on premises under the defendant's control, it may be inferred that he had knowledge of its existence. *Id.*

¶ 17 Possession may be actual or constructive. *People v. Brown*, 277 Ill. App. 3d 989, 997 (1996). Actual possession is established by proof that the defendant exercised some sort of personal dominion over the substance. *Id.* In this case, there was no such proof. The State was, therefore, required to prove that the defendant had constructive possession of the cannabis which was recovered from the apartment. Constructive possession exists absent the defendant's actual personal dominion over a controlled substance, but in circumstances establishing his intent and capability to maintain control and dominion over it. *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992).

¶ 18 The defendant argues that the State failed to meet its burden of establishing that he was in constructive possession of the cannabis recovered from the apartment. He asserts that there is no direct evidence that he resided at the apartment. As for the prescription bottle, traffic citation, bond slip, and water bill found in the apartment, the defendant contends that they were insufficient to establish his residence at the apartment and, in fact, support an opposite conclusion. He notes that the prescription bottle does not contain a residence address, the traffic citation and bond slip contain a residence address of 1630 5th Avenue, Chicago Heights, and the water bill was for service at 155 S. Halsted, not the apartment where the cannabis was found. According to the defendant, the fact that he was seen using a set of keys to gain access to the

apartment and was in possession of those keys when he was arrested failed to demonstrate that he had exclusive control over the apartment. He notes that Bell was already inside of the apartment when he entered and contends that it is “plausible” that he had borrowed the keys from Bell and used them to enter the apartment.

¶ 19 The State argues that the defendant’s presence in the apartment immediately prior to the execution of the search warrant, his possession of keys that opened the apartment doors, the presence of the prescription bottle, traffic citation, bond slip, and water bill containing his name, and the presence of two pieces of mail addressed to the defendant at the apartment were sufficient circumstantial evidence to establish the defendant’s control over the apartment and constructive possession of the cannabis found therein. We agree.

¶ 20 Constructive possession is generally proven by circumstantial evidence. *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). It was the responsibility of the trial court as the trier of fact to weigh the evidence and draw reasonable inference therefrom. *Siguenza-Brito*, 235 Ill. 2d at 224. Consequently, we will not substitute our judgment for that of the trier of fact on issues involving the weight to be accorded to the evidence. *Id.* at 224-25.

¶ 21 The evidence adduced at trial in this case established that the defendant: possessed keys which he used to gain access to the apartment where the cannabis was found; remained in the apartment on January 29, 2013, for approximately 30 minutes before he exited in the company of Bell; and maintained possession of the keys to the apartment after leaving with Bell. The evidence also established that a portion of the cannabis recovered from the apartment was found on a kitchen countertop and that the prescription bottle, traffic citation, bond slip, water bill, and mail containing the defendant’s name were also found on the kitchen counter. Given this evidence, we conclude that the trial court could reasonably have found that the defendant had

knowledge of the presence of cannabis in the apartment and had control over the area where it was found. The fact that others such as Bell may have had access to the apartment where the cannabis was found is insufficient to defeat a finding that the defendant was in constructive possession of the cannabis recovered in the apartment. *Bui*, 381 Ill. App. 3d at 424.

¶ 22 Based upon the foregoing analysis, we find that the evidence in this case, when viewed in the light most favorable to the prosecution, is sufficient to prove beyond a reasonable doubt that the defendant is guilty of possession of more than 30 grams, but less than 500 grams, of cannabis. We, therefore, affirm the defendant's conviction and sentence.

¶ 23 Affirmed.