2018 IL App (1st) 153159-U

No. 1-15-3159

Order filed June 28, 2018

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 3
	)	
RUBIN STADEMAYER,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Burke and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence sufficient to convict defendant of possession of unlawful weapon by a felon. Trial counsel not ineffective for not objecting to hearsay falling under statute allowing certain prior inconsistent statements as substantive evidence.

¶ 2 Following a 2015 bench trial, defendant Rubin Stademayer (or Ruben Stademeyer)[1] was convicted of use or possession of an unlawful weapon by a felon (UUWF) and sentenced to 4 ½ years' imprisonment. On appeal, he contends that the evidence was insufficient to convict him.

[1] Defendant signed the jury waiver and the notice of appeal as "Ruben Stademeyer."

He also contends that trial counsel was ineffective for not objecting to hearsay testimony and for eliciting further hearsay testimony on cross-examination. For the reasons stated below, we affirm.

¶ 3 Defendant was charged with armed habitual criminal and UUWF allegedly committed on or about December 1, 2014, by possessing a firearm and ammunition after being convicted of murder in case no. 78 I 3996 and possession of a weapon in a penal institution in case no. 91 CF 3344.[2]

¶ 4 At trial, Kelly Connor testified that defendant was her fiancé. She lived in an apartment that she shared with her husband up to his mid-2014 death and thereafter shared "sometimes" with defendant and nobody else. Defendant had a key to the apartment, and he was there on December 1, 2014, when Connor came home from work in the late evening. Connor and defendant argued, and she called the police. By the time the police arrived, defendant was no longer in the apartment. Connor admitted the police to her apartment when they rang the bell, and she signed a search consent form. The consent form, entered into evidence without objection, stated that the area to be searched was a "closet containing personal belongings of Ruben Stademeyer." Connor acknowledged the consent form and admitted that it mentioned only defendant. After she signed the form, the police searched "my husband's closet" in which "some of [defendant's] things were in there, but most of my husband's things are in there." She had no belongings in the closet, and she did not use or examine the closet after her husband died because it "brought back bad memories." She told the police that the closet was partially defendant's and partially her late husband's, and that defendant had belongings in the closet. The

[2] The latter was a Class 1 felony conviction from Will County.

police later told her they found a gun in the closet. Connor testified that it was not her gun, she did not know whose gun it was, and she did not tell the police that it was defendant's. When asked if she had told the responding officers that night that the gun was defendant's, she testified that she said only that there was a gun in the closet. When asked if she had told an assistant State's Attorney (ASA) that the closet was defendant's, she testified that she told the ASA that it was her husband's closet as well as defendant's.

¶ 5 ASA Denise Loiterstein testified that, when she interviewed Connor at the courthouse, Connor told her that the closet where the gun was found was defendant's and did not indicate that anyone else used the closet.

¶ 6 Police officer David Koch testified that he and another officer went to Connor's apartment on the night in question. They met with Connor inside the apartment, and nobody else was present. When the officers asked if there was any weapon in the apartment, Connor said there was. (Trial counsel objected to "improper impeachment," but the court overruled on the basis that "he is testifying to [an] event" and both Connor and Officer Koch were subject to cross-examination.) In particular, Connor said there was a weapon in the closet that belonged to defendant. The officers then presented Connor with a search consent form and explained the form, which she signed. Connor directed the officers to a closet, stating that "if there was a gun in the house, it was in this closet" because "all of [defendant's] belongings were inside of the closet." Officer Koch opened the closet, picked up a heavy duffle bag from the closet floor "in plain view near the front of the closet," and opened it to find a rifle and ammunition. The closet otherwise contained men's clothing. Officer Koch later inventoried the rifle and ammunition at the police station.

¶ 7 On cross-examination, Officer Koch clarified that Connor pointed to the closet and said that if there was a gun in the apartment it would be there because everything in the closet was defendant's. (Counsel asked Officer Koch if Connor led the officers to a closet, and whether she accompanied them to the closet, and Officer Koch gave the aforesaid reply.) The closet was closed but not locked, and the duffle bag was closed. The duffle bag contained only the rifle and ammunition, not any identification or the like.

¶ 8 The State introduced into evidence, without objection, certified copies of defendant's convictions in case nos. 78 C 3996 and 91 CF 3344.

¶ 9 The court denied a motion for a directed finding after extensive arguments, the defense rested, and the parties waived closing arguments. The court found defendant not guilty of armed habitual criminal[3] and guilty of UUWF, finding that the testimony regarding Connor's statements was admissible as substantive evidence under section 115-10.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10.1 (West 2014)).

¶ 10 In his posttrial motion, defendant challenged the sufficiency of the evidence but did not assert that the court admitted improper hearsay testimony. Following arguments, the court denied the posttrial motion. It then sentenced defendant to a prison term of four years and six months.

¶ 11 On appeal, defendant first contends that the evidence was insufficient to convict him. In particular, he contends that the State failed to prove that he knew of, or exercised control over, a firearm in a duffel bag in a closet containing another's possessions.

¶ 12 A person commits the offense of UUWF when he "knowingly possess[es] on or about his person or on his land or in his own abode or fixed place of business *** any firearm or any

[3] Noting the discrepancy between the charged case no. 78 I 3996 and the proven case no. 78 C 3996, the court found that one of the predicate felonies for armed habitual criminal was not proven.

firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction." 720 ILCS 5/24-1.1(a) (West 2014). Knowing possession for purposes of UUWF can be either actual or constructive. *People v. Davis*, 2017 IL App (1st) 142263, ¶ 39. Constructive possession exists when a defendant (1) has knowledge of the presence of a weapon and (2) exercises immediate and exclusive control over the area where the weapon was found. *Davis*, 2017 IL App (1st) 142263, ¶ 39. Control exists, in turn, when a defendant has the intent and capability to maintain control and dominion over an item, even if he presently lacks personal dominion over it. *Davis*, 2017 IL App (1st) 142263, ¶ 39. Evidence of constructive possession is often entirely circumstantial, and knowledge may be shown by a defendant's acts, declarations or conduct from which it may be inferred he knew the weapon was in the location where it was found. *Davis*, 2017 IL App (1st) 142263, ¶ 39.

¶ 13 On a claim of insufficient 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. *People v. Bradford*, 2016 IL 118674, ¶ 12. 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. *Bradford*, 2016 IL 118674, ¶ 12; *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. We will not substitute our judgment for that of the trier of fact regarding witness credibility or the weight of evidence. *Bradford*, 2016 IL 118674, ¶ 12. 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.*, 2011 IL 107750, ¶ 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 not credible merely because a defendant says so. *Jonathon C.B.*, 2011 IL 107750, ¶ 60. 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. *Bradford*, 2016 IL 118674, ¶ 12.

¶ 14 Here, taking the evidence in the light most favorable to the State as we must, we find that a rational trier of fact could convict defendant of UUWF. It was undisputed at trial that defendant lived at least part-time in Connor's apartment and had a key for the apartment, and that only he and Connor lived there since her husband's death. It was undisputed that he kept belongings in a closet in the apartment but Connor did not. It was undisputed that Connor was aware of a gun in the closet and mentioned it to police. Lastly, it was undisputed that police found a rifle and ammunition in that closet. What was disputed at trial was whether Connor told police and an ASA that the closet also contained her late husband's belongings, as Connor testified, or she told Officer Koch and ASA Loiterstein that the closet contained only defendant's possessions and did not mention her late husband's goods, as they testified. The court chose to believe Officer Koch and ASA Loiterstein rather than Connor on this key point, and we see no reason to substitute our judgment for the court's. Moreover, the court admitted their testimony on this point as substantive evidence rather than mere impeachment, a matter we shall address more fully below regarding defendant's other contention.

¶ 15 Taking the testimony of Officer Koch and ASA Loiterstein substantively rather than as mere impeachment, and accepting Connor's denial that she used the closet where the firearm was found, a rational trier of fact could find that only defendant had possessions in the closet and

conclude that the firearm was one of his possessions. Stated another way, in light of Connor's prior inconsistent statements as substantive evidence, we need not elevate to reasonable doubt the possibility that the rifle and ammunition had been her late husband's possessions. A trier of fact could conclude that defendant immediately and exclusively controlled the closet and thus the firearm: he had access to it whenever he chose with his apartment key, and the only other person with such access denied using the closet. That conclusion is not changed by defendant's emphasis that he did not live in Connor's apartment full-time. As to knowledge, a rational trier of fact finding that only defendant kept possessions in the closet, and thus inferring that he placed and kept the firearm in the closet, could also properly infer that he knew he did so. We conclude that the evidence was sufficient to convict defendant beyond a reasonable doubt.

¶ 16 Defendant also contends that trial counsel was ineffective for not objecting to Officer Koch's hearsay testimony, and for eliciting further hearsay testimony on cross-examination, which he asserts to be the only evidence directly linking him to the firearm.

¶ 17 A defendant's claim that counsel failed to render effective assistance is governed by a two-pronged test: the defendant must establish that (1) counsel's performance fell below an objective standard of reasonableness and (2) the defendant was prejudiced by that performance. *People v. Brown*, 2017 IL 121681, ¶ 25. Counsel is not ineffective for not objecting to the admission of properly admitted evidence. *People v. Temple*, 2014 IL App (1st) 111653, ¶ 54.

¶ 18 Section 115-10.1 of the Code of Criminal Procedure governs the substantive admission of certain prior inconsistent statements. It provides that:

> "In all criminal cases, evidence of a statement made by a witness is not made inadmissible by the hearsay rule if

(a) the statement is inconsistent with his testimony at the hearing or trial, and

(b) the witness is subject to cross-examination concerning the statement, and

(c) the statement –

(1) was made under oath at a trial, hearing, or other proceeding, or

(2) narrates, describes, or explains an event or condition of which the witness had personal knowledge, and

(A) the statement is proved to have been written or signed by the witness, or

(B) the witness acknowledged under oath the making of the statement either in his testimony at the hearing or trial in which the admission into evidence of the prior statement is being sought, or at a trial, hearing, or other proceeding, or

(C) the statement is proved to have been accurately recorded by a tape recorder, videotape recording, or any other similar electronic means of sound recording." 725 ILCS 5/115-10.1 (West 2014).

¶ 19 The proper admission of a witness's prior inconsistent statement either as impeachment or substantively under section 115-10.1 requires the proponent to lay a foundation for the statement whereby the witness has an opportunity to explain the inconsistency before the introduction of extrinsic evidence of the statement, which prevents unfair surprise and allows the opponent to cross-examine the witness regarding the statement. *People v. Evans*, 2016 IL App (3d) 140120, ¶ 32. If the witness unequivocally admits making the prior inconsistent statement, then it has entered into evidence without the need for another witness to testify to it. *Evans*, 2016 IL App (3d) 140120, ¶ 33. Conversely, if the witness denies having made the prior statement,

equivocates, or testifies that he cannot recall making the statement, the examining party must then offer evidence of the statement. *Evans*, 2016 IL App (3d) 140120, ¶ 33. The admission of evidence at trial is a matter for the court's discretion, reversed only for an abuse of discretion. *Evans*, 2016 IL App (3d) 140120, ¶ 28.

¶ 20 Here, the trial court admitted the testimony of Officer Koch and ASA Loiterstein as to Connor's inconsistent statements as substantive evidence under section 115-10.1 (the statute). As a threshold matter, the State correctly notes that defendant contends that trial counsel was ineffective for not objecting to only Officer Koch's hearsay, not ASA Loiterstein's. We also note that we need not and shall not accept defendant's interpretation of the statute: that the person *testifying* to the prior statement–here, Officer Koch–must have the requisite personal knowledge. The statute concerns the admission of "evidence of a statement made by a witness," so that "the witness" in the statute who "narrates, describes, or explains an event or condition of which the witness had personal knowledge" is the person who *gave* the prior inconsistent statement that a party seeks to admit. 725 ILCS 5/115-10.1 (West 2014). Here, that is Connor.

¶ 21 Turning to the elements of the statute, Connor's statements described in the testimony at issue are clearly inconsistent with her trial testimony, and she was subject to cross-examination at trial. Conversely, Connor's statements at issue were not made under oath nor was any recording thereof introduced at trial.

¶ 22 As to Connor's personal knowledge, the event or condition at issue when Connor was asked the questions was who placed and kept possessions in the closet where the firearm was found. Because the apartment was Connor's, shared only with her late husband and then with

defendant as she established, it is reasonable to conclude that she had such knowledge. That conclusion is borne out by her testimony that she told the police of a gun in the closet.

¶ 23 As to acknowledgment of the prior inconsistent statements, Connor testified that she spoke to both Officer Koch and ASA Loiterstein and answered the questions at issue but denied giving the answers to which Officer Koch and ASA Loiterstein later testified. Moreover, Connor acknowledged signing the search consent form that mentions only defendant's property being in the closet, and the signed form was entered into evidence.

¶ 24 Especially in light of the trial court's aforementioned discretion in admitting evidence, we conclude that it properly admitted the prior inconsistent statements at issue under section 115-10.1 as substantive evidence. Thus, we conclude that trial counsel did not act objectively unreasonably by not objecting thereto as defendant contends.

¶ 25 As to trial counsel eliciting hearsay on cross-examination, we find no ineffective asistance for two reasons. First and foremost, Officer Koch and ASA Loiterstein had already testified to Connor's prior inconsistent statements on direct examination, and we found above that the admission of that testimony as substantive evidence was proper. Also, we do not find that counsel acted objectively unreasonably because he did not ask questions that would foreseeably elicit a repetition of Connor's prior inconsistent statements. He asked Officer Koch on cross-examination if she led the officers to a closet and if she accompanied them to the closet. Neither question concerned statements by Connor to Officer Koch.

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

¶ 27 Affirmed.