2018 IL App (1st)162796-U

No. 1-16-2796

SIXTH DIVISION
DECEMBER 14, 2018

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. 16 CR 00165
	)	
CARLOS NAVA,	)	Honorable
	)	Vincent Gaughan,
Defendant-Appellant.	)	Judge, 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 weighing 100 grams or more but less than 400 grams is affirmed when the contraband at issue was recovered from a cabinet in the dining room of the single family home to which defendant had keys and which was listed as defendant's address on his state-issued identification card.

¶ 2 Following a jury trial, defendant Carlos Nava was found guilty of possession of a controlled substance weighing 100 grams or more but less than 400 grams, and sentenced to 73 months in prison. On appeal, defendant contends that he was not proven guilty beyond a

reasonable doubt because the evidence at trial failed to establish his control of the residence from which the narcotics were recovered or, even assuming that his control was established, his knowledge of the narcotics was not established. We affirm the judgment of the circuit court of Cook County.

¶ 3 Defendant was charged by indictment with possession of a controlled substance with intent to deliver more than 100 grams and less than 400 grams of cocaine following a search of 1748 N. Tripp Avenue in Chicago where cocaine filled baggies, a scale and empty baggies were found.

¶ 4 At trial, Chicago police officer Sergio Corona testified that on the evening of December 4, 2015, he was part of a team executing a search warrant at a single family home located at 1748 N. Tripp Avenue, Chicago. When he arrived at the location, he conducted surveillance. Corona explained that rather than break down a door, he "like[d]" to see people come outside, so that officers could obtain keys and enter a building safely. While on surveillance, he looked for defendant. At one point, Corona observed defendant exit a vehicle parked "on the lot just north of his house." Defendant was accompanied by his wife and children. Corona approached defendant, announced his office and showed defendant a copy of the search warrant. Defendant then handed Corona keys to the house and showed him which keys would allow entry into the house.

¶ 5 Officers, accompanied by a canine, then entered the house and conducted a search. The canine "alerted" to a cabinet in the dining room, and one plastic bag containing suspect cocaine was recovered. Corona then began a conversation with defendant. During their conversation, a plastic bag containing four baggies was recovered from the same cabinet. The four baggies also

contained suspect cocaine. Corona recovered plastic baggies used for narcotics packaging and a digital scale from a closet in the foyer. He then conducted a search of defendant's person and recovered $1,180 and a state-issued identification card listing 1748 N. Tripp Avenue as defendant's address. Corona placed defendant in custody.

¶ 6 At trial, Corona indentified an Illinois state identification card with defendant's name that listed 1748 N. Tripp Avenue as defendant's address. The identification card was issued on March 11, 2014, and expired on September 19, 2016.

¶ 7 During cross-examination, Corona testified that no suspect cocaine was recovered from outside the house. The house was not searched before the canine arrived, and he did not see any cocaine inside the house until the canine alerted.

¶ 8 Chicago police officer Sean Houlihan, another member of the team, testified that he searched the living and dining rooms. He recovered one small knotted baggie containing suspect cocaine from the top of a metal rack in the dining room. He also recovered four Ziploc baggies containing suspect cocaine from the bottom of the same rack.

¶ 9 Forensic scientist Kimberly Blood testified that the contents of the four baggies weighed 112 grams and tested positive for the presence of cocaine. The contents of the small knotted baggie weighed .5 gram and tested positive for the presence of cocaine.

¶ 10 The jury found defendant guilty of the lesser-included offense of possession of a controlled substance weighing 100 grams or more but less than 400 grams. The defense then filed a motion for a judgment notwithstanding the verdict, or, in the alternative, a motion for a new trial. The trial court denied the motion and sentenced defendant to 73 months in prison. Defendant filed a motion to reconsider sentence, which the trial court denied.

¶ 11 On appeal, defendant contends that evidence at trial was insufficient to prove his constructive possession of the cocaine, beyond a reasonable doubt, when the State failed to establish that he resided at, or controlled, the premises where it was recovered. He further contends that even if the State established his control of the premises, there was insufficient evidence to prove his knowledge of the presence of the narcotics.

¶ 12 When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after 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 the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *People v. Bradford*, 2016 IL 118674, ¶ 12. A reviewing court will not substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses. *Id.* This court will reverse a defendant's conviction only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of defendant's guilt remains. *Id.*

¶ 13 The elements required to establish a defendant's guilt of the offense of possession of a controlled substance are: (1) the identity of the substance at issue, *i.e.*, that it is a controlled substance in the proper amount; and (2) that the defendant knowingly possessed that substance. 720 ILCS 570/402 (West 2014); see also *People v. Tates*, 2016 IL App (1st) 140619, ¶ 19 (the State must prove that defendant had knowledge of the presence of the narcotics and that the narcotics were in his immediate and exclusive control). Possession may be actual or constructive. *Tates*, 2016 IL App (1st) 140619, ¶ 19. Here, it is undisputed that defendant did not have actual possession of the cocaine, thus his guilt could only rest on a constructive possession theory.

¶ 14 " 'Constructive possession does not require actual present dominion over the substance, but can be inferred through an 'intent and capability to maintain control and dominion.' " *Id.* (quoting *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992)). Constructive possession is often proven exclusively through circumstantial evidence. *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 23. "Knowledge is rarely proven by direct evidence and may be established by 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.* ¶ 40. A defendant's control over the area where contraband was found gives rise to an inference he possessed the contraband. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. Proof of residency is relevant to show a defendant lived at the premises in question, and therefore controlled it. *People v. Cunningham*, 309 Ill. App. 3d 824, 828 (1999). Knowledge and possession are factual issues, and we will not disturb the trier of fact's findings on these questions unless the evidence is so unbelievable or improbable that it creates a reasonable doubt as to the defendant's guilt. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007).

¶ 15 In the instant case, taking the evidence in the light most favorable to the State (*Brown*, 2013 IL 114196, ¶ 48), there was sufficient evidence that defendant constructively possessed the cocaine to support his conviction for possession of a controlled substance. Here, police waited for defendant outside the single family home until defendant parked and approached the home with his wife and children. Defendant gave keys to the house to Officer Corona and told Corona which keys unlocked the door. Defendant's state-issued identification card listed 1748 N. Tripp Avenue as his address. The keys and the state-issued identification card, lead to the reasonable inference that defendant resided at 1748 N. Tripp Avenue. This evidence of habitation

demonstrates that defendant had control over the single family home at that location and, thus, gives rise to the inference that he possessed the cocaine. See *Spencer*, 2012 IL App (1st) 102094, ¶ 17. In other words, defendant's control of the house gave rise to the inference that he knew of the narcotics recovered from inside a dining room cabinet located in his locked single family home. See *Tates*, 2016 IL App (1st) 140619, ¶ 20 (constructive possession can be inferred through the intent and capability to maintain control over the contraband).

¶ 16 Defendant, however, relies upon *People v. Maldonado*, 2015 IL App (1st) 131874, to argue that even if the State established his control of the house at 1748 N. Tripp Avenue, the hidden nature of the cocaine established his lack of knowledge.

¶ 17 In *Maldonado*, police officers executed a search warrant in a residence where heroin was found concealed in a statue. Several boxes of ammunition and a box containing a scale and $1500 cash were also recovered. No one was present inside the residence when the police executed the search warrant. The evidence of the defendant's " 'proof of residency'" was a retail delivery receipt with his wife's signature and two pieces of unopened mail. *Id*. ¶ 7. In reversing the defendant's convictions for unlawful use or possession of ammunition by a felon and possession of a controlled substance with intent to deliver, the court concluded that there was no evidence, direct or circumstantial, that the defendant had knowledge of the contraband found inside the residence. *Id*. ¶¶ 41-42. The court noted, in pertinent part, that the narcotics were "secreted" in a statute and that there was no "reasonable inference that flow[ed] from the evidence in the record" that the defendant would have known the contents of an "enclosed statue." *Id*. ¶ 41.

¶ 18 We are unpersuaded by defendant's reliance on *Maldonado.* Although defendant is correct that the cocaine was not recovered until after a canine alerted to the dining room cabinet, unlike *Maldonado,* this is not a case where the contraband was hidden in a statue. Rather, in the case at bar, the contraband was recovered from a rack located inside a cabinet. Moreover, as Officer Houlihan did not testify that he had to break open the cabinet, so we can infer that it was unlocked. Additionally, unlike *Maldonado,* here, defendant was linked to the residence by his state-issued identification card which listed 1748 N. Tripp Avenue as his home address.

¶ 19 Ultimately, although defendant essentially argues that the State should have presented more evidence of his relationship to both the 1748 N. Tripp Avenue residence and the cocaine, it was for the jury, as the trier of fact, to weigh the evidence, and draw reasonable inferences from the facts presented at trial. *Bradford,* 2016 IL 118674, ¶ 12. Moreover, a trier of fact is not required to disregard the inferences that normally flow from the evidence or to seek out all possible explanations consistent with a defendant's innocence and elevate them to reasonable doubt. *In re Jonathan C.B.*, 2011 IL 107750, ¶ 60. Despite defendant's arguments, we may not usurp the jury's credibility determinations and guilty verdict unless we find the evidence as a whole "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown,* 2013 IL 114196, ¶ 48. This is not one of those cases. Accordingly, we affirm defendant's conviction.

¶ 20 Defendant next contends that he is entitled to 294 days of presentence custody credit. The State concedes and asks this court to correct defendant's mittimus to reflect one additional day of presentence custody credit. Whether a mittimus should be corrected is a question of law we review *de novo*. *People v. Anderson,* 2012 IL App (1st) 103288, ¶ 35. A defendant is entitled to

credit for any part of a day he spends in presentence custody, excluding the day of sentencing. *People v. Williams*, 239 Ill. 2d 503, 509 (2011).

¶ 21 Here, defendant was taken into custody on December 4, 2015, and sentenced on September 23, 2016. He is therefore entitled to 294 days of presentence custody credit. Pursuant to Illinois Supreme Court Rule 615(b) (eff. Jan. 1, 1967), we order the mittimus corrected to reflect 294 days of presentence custody credit.

¶ 22 For the forgoing reasons, we affirm the judgment of the circuit court of Cook County and order that the mittimus be corrected.

¶ 23 Affirmed; mittimus corrected.