2018 IL App (4th) 160638-U

NOS. 4-16-0638, 4-16-0639 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 3, 2018
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v. (No. 4-16-0638)	)	Livingston County
TYLER J. MOSS,	)	No. 15CF215
Defendant-Appellant.	)	
	)	
----------	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	No. 15CF387
Plaintiff-Appellee,	)	
v. (No. 4-16-0639)	)	Honorable
TYLER J. MOSS,	)	Jennifer H. Bauknecht,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices DeArmond and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) the trial court properly denied defendant's motion to suppress and (2) the evidence was sufficient to prove beyond a reasonable doubt defendant knowingly possessed a controlled substance.

¶ 2 In August 2015, the State charged defendant, Tyler J. Moss, with one count of aggravated possession of a stolen firearm (between two and five firearms), a Class 1 felony (720 ILCS 5/24-3.9(a)(1), (c)(1) (West 2014)), and two counts of unlawful possession of a firearm, a Class 4 felony (720 ILCS 5/24-3.1(a)(2) (West 2014)) (Livingston County case No. 15-CF-215). In April 2016, a jury found defendant guilty of aggravated possession of a stolen firearm. In December 2015, in Livingston County case No. 15-CF-387, the State charged defendant with one count of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2014)),

and two counts of aggravated assault (720 ILCS 5/12-2(c)(1) (West 2014)). In May 2016, the State dismissed the assault charges and a jury found defendant guilty of unlawful possession of a controlled substance. In August 2016, the trial court sentenced defendant to a term of 36 months' "Treatment Alternatives for Safe Communities" (TASC) probation on the aggravated possession of a stolen firearm conviction and a term of 30 months' TASC probation on the unlawful possession of a controlled substance conviction.

¶ 3 Defendant appeals, arguing (1) the trial court erred by denying his motion to suppress statements he made during a custodial interview, (2) the State failed to prove beyond a reasonable doubt that he knowingly possessed a controlled substance, and (3) two fines imposed by the circuit clerk should be vacated as void. For the following reasons, we affirm the judgment of the trial court.

¶ 4 I. BACKGROUND

¶ 5 A. Livingston County Case No. 15-CF-215

¶ 6 In August 2015, in Livingston County case No. 15-CF-215, the State charged defendant with one count of aggravated possession of a stolen firearm and two counts of unlawful possession of a firearm. 720 ILCS 5/24-3.9(a)(1), 24-3.1(a)(2) (West 2014). Defendant challenges only the denial of his motion to suppress in this case. Accordingly, we summarize the background necessary to resolve this claim on appeal. At the hearing on defendant's motion to suppress, the trial court heard the following evidence.

¶ 7 1. *Robert Coleman*

¶ 8 Robert Coleman, a detective sergeant with the Grundy County Sheriff's Department, testified that, in June 2015, he was investigating a residential burglary that occurred in Morris, Illinois. At approximately 10:20 a.m., a woman was coming home from church and

saw her brother running out of the house carrying a large, boxy item, which he threw into the back of a Jeep and took off. The suspect was ultimately identified as Isaac Ordonez and, among other items, he had stolen guns from his parents. Later that evening, authorities received an anonymous Crime Stoppers call reporting the guns were at defendant's residence in Dwight, Illinois. Based on this call, Coleman and two other officers (one from the Dwight Police Department) went to defendant's residence.

¶ 9 When they arrived, Coleman spoke with defendant's mother, who said defendant was in Peoria and she agreed to call him on the telephone. Coleman briefly shared some information with defendant and returned the telephone to defendant's mother. After defendant spoke with his mother, she went back outside and directed the officers to the basement of the house. In the basement, the officers found an assault rifle and a shotgun.

¶ 10 Coleman testified he neither directed defendant to return to Dwight, nor did he go to Peoria to arrest defendant. Instead, Coleman left his telephone number with defendant's mother and instructed her to have defendant call him in the morning "to figure out what was going on with all of this." According to Coleman, defendant called him at 8:30 a.m. the next day and Coleman asked if he could come down to defendant's house to talk. Defendant agreed and they arranged to meet at his house around 10 a.m.

¶ 11 When Coleman met defendant, he and another detective wore plain clothes, firearms, and badges. Coleman testified he never displayed or drew his gun. Defendant led the detectives to the garage next to his house. On a work bench inside the garage, Coleman found the safe that was stolen from the Ordonez family. According to Coleman, the safe door was open and inside he saw some guns, jewelry, and other items reported stolen. Defendant told

Coleman he retrieved the safe from a hiding spot in a park near his house prior to their meeting. Coleman testified that defendant told him he got the guns from Isaac Ordonez.

¶ 12 Coleman testified he spoke with an assistant State's Attorney and advised him of the situation. Coleman stated, "And as long as we had [defendant's] cooperation, he was on the same page that he was not going to charge [defendant] in Grundy County with anything pertaining to this residential burglary; and I advised [defendant] of that." At the time, Coleman's investigation was focused on Isaac Ordonez and two others who were with him during the time of the residential burglary, neither of whom was defendant. Coleman advised defendant he was not under arrest and was not being charged with anything in Grundy County.

¶ 13 Coleman received permission to use an interview room at the Dwight police station and asked defendant to give an audio and video recorded interview. Defendant voluntarily agreed to go with the officers for a recorded interview. Coleman transported defendant to the Dwight police station.

¶ 14 According to Coleman, defendant was never searched, physically touched, handcuffed, photographed, fingerprinted, arrested, or taken into custody. Coleman testified he was not familiar with the Dwight interview rooms and he seated defendant near the microphone at another detective's suggestion. According to Coleman, the room was small but defendant was free to move about. Coleman never specifically told defendant he was free to leave and never advised defendant of his *Miranda* rights. After the interview, Coleman testified, "I know I offered [defendant] a ride back to his house. I can't remember if, I believe his girlfriend came because we were waiting for a sweatshirt that Isaac [Ordonez] had reportedly been wearing that day that [defendant] told me he had left at his house. So I believe that his girlfriend came. We

took some photographs of that sweatshirt, and I believe his girlfriend took him to wherever they were going."

¶ 15 2. *Defendant*

¶ 16 Defendant testified he was born February 1, 1997. On June 8, 2015, at approximately 10 a.m., two plainclothes police officers drove defendant to the Dwight police station in an unmarked vehicle. Although the officers did not wear uniforms, defendant noticed they had firearms. The detectives identified themselves as police officers, and defendant agreed to accompany them to the police station to talk. At the station, the officers took defendant through a back door that someone inside unlocked. Defendant testified he was wearing ordinary clothing and was not handcuffed.

¶ 17 Once inside the police station, the detectives took defendant to a questioning room. Defendant identified the questioning room depicted in a video of the interview and noted his cellular telephone was on the desk in front of him. Defendant estimated the interview lasted approximately 25 minutes. According to defendant, there was always someone between him and the door to the room. Defendant testified one of the detectives stood next to the only door in the windowless room. During the interview, the detective sat in a chair he positioned in front of the door.

¶ 18 Defendant was not informed of his right to remain silent, that what he said could be used in court, or his right to counsel. During the interview, defendant never believed he was free to leave. Defendant was never told he was free to go, but he was not arrested that day and ultimately left the police station.

¶ 19 The day before the police-station interview, detectives went to defendant's home in Dwight. Detectives spoke with Defendant's mother, who then called defendant. Defendant

spoke with the detectives on the telephone, then spoke to his mother and told her where two long guns were. According to defendant, the officers told him they had to meet the following day. The next day, the officers met defendant at his mother's house at approximately 10 a.m. Defendant took the officers to the garage, where an open safe held the other three guns defendant got from Ordonez. Defendant told the officers that he suggested Ordonez hide the guns under some trees at a park.

¶ 20 According to defendant, after he told the officers about the safe and the guns, the officers said he was going to have to go with them so they could record his statement. When asked if the officers ordered him to do anything, defendant responded, "I wouldn't say they specifically told me, oh, you have to do this; but they were not giving me room to be like, to make a decision for myself." Defendant acknowledged he was not searched, handcuffed, or fingerprinted and his mug shot was not taken. Defendant agreed the officers did not approach him in an aggressive manner. Defendant testified the officers threatened to arrest him if he did not comply with them. According to defendant, the officers made that threat on the phone the day before the interview and at his house before he was taken to the police station.

¶ 21 3. *Michael Nolan*

¶ 22 Michael Nolan, a Dwight County police officer, testified Detective Coleman with the Grundy County Sheriff's Department requested information on locating defendant's house. According to Nolan, he met the Grundy County officers at defendant's house, secured the outside perimeter, and made introductions. Nolan testified that Detective Coleman conducted the entire conversation with defendant. Nolan did not return to defendant's residence the following day, and he did not go to the Dwight police station on June 8, 2015.

¶ 23 4. *The Trial Court's Ruling*

¶ 24 After hearing testimony and argument at the hearing on the motion to suppress and reviewing a recording of the interview, the trial court denied the motion to suppress. In so doing, the court made the following factual findings:

> "The interview took place at approximately 10:15 a.m. It did take place at the Dwight police station but was conducted by Grundy County police officers. The [d]efendant called the Grundy County officers that morning and arranged to have contact with Grundy County. They were following up on an investigation into a residential burglary, I think it was residential burglary up in Grundy County. So [d]efendant initiated the contact. The officers came to his house. He was cooperative. Talked to the officers at his house, and the [d]efendant voluntarily agreed to accompany the officers to the station house."

The court further noted there was no evidence to suggest a show of force or any physical contact with defendant. The officers were not wearing uniforms and, although they had their firearms, they never displayed or used their weapons.

¶ 25 The trial court observed the interview room was rather small, but did not find that necessarily indicated defendant was in custody. The interview was conversational and defendant appeared to want to cooperate with law enforcement to make sure they knew he was not involved in the residential burglary. The court emphasized its observation that defendant appeared comfortable and relaxed. The court also noted the interview was not coercive or forceful. Defendant had his telephone the entire time and was allowed to use it to provide more information.

¶ 26 Based on its factual findings, the trial court concluded that a reasonable person innocent of any crime would have felt free to leave under the circumstances. Accordingly, the court found defendant was not in custody for purposes of *Miranda* and denied the motion to suppress.

¶ 27 B. Livingston County Case No. 15-CF-387

¶ 28 In December 2015, in Livingston County case No. 15-CF-387, the State charged defendant with one count of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2014)), and two counts of aggravated assault (720 ILCS 5/12-1(a) (West 2014)). The two counts of aggravated assault were dismissed before trial. In May 2016, the matter proceeded to trial, where the jury heard the following evidence.

¶ 29 1. *Mark Scott*

¶ 30 Mark Scott, an officer with the Dwight Police Department, testified that, on December 21, 2015, he was investigating a separate incident that ultimately led him to a blue GMC Jimmy. According to Scott it was 7:22 p.m. and it was dark outside. Scott stated, "I was told by two subjects at the scene from the beginning of the incident until the end of the incident the only one driving the vehicle or in the vehicle was [defendant]." The passenger side window of the vehicle was approximately one-third of the way down. Scott used his flashlight to look inside the vehicle and observed a tied-off corner of a sandwich Baggie sitting in the middle of the passenger seat. The Baggie contained six white pills or bars and one green pill or bar. According to Scott, the pills "were in the same shape and looked the same as Xanax."

¶ 31 Scott entered the vehicle, retrieved the Baggie, and secured the Baggie in his squad car. Scott later took the Baggie and its contents to the Dwight police station, signed it into evidence, and secured it in his evidence locker. In April 2016, Scott removed the Baggie and its

contents from his locker to be transported to the lab for testing. People's exhibit No. 1 was an evidence bag containing the pills Scott recovered in December 2015. The parties stipulated to the chain of custody, the qualifications of the forensic scientist who tested the pills, and the contents of the scientist's report. The report showed the pills contained alprazolam (Xanax).

¶ 32 2. *Defendant*

¶ 33 Defendant testified he had been driving the GMC Jimmy that was parked in the driveway of his house. Defendant did not see the Baggie with the pills on the passenger seat of his car. Defendant testified the pills did not belong to him, he did not place them on the seat, and he did not intend to take them, use them, sell them, or give them to anybody. On December 21, 2015, defendant drove around Dwight and picked up some friends. He then made a trip to Essex, picked someone up, gave them a ride to Coal City, and returned to their house in Essex. Defendant and his friends "hung out for awhile" before returning to Dwight. Defendant testified he dropped his friends off right before he went home.

¶ 34 According to defendant, a female friend was sitting in the front passenger seat right before he went home and parked in his driveway. Before his friend got in the vehicle, it was still light out when defendant looked across his front seat as he got in and did not see anything. Defendant did not notice his friend holding anything that looked like the pills. Defendant testified he never knew the pills were in his vehicle.

¶ 35 C. Verdicts and Sentencing

¶ 36 In April 2016, a jury found defendant guilty of aggravated possession of stolen firearms in Livingston County case No. 15-CF-215. In May 2016, a jury found defendant guilty of possession of a controlled substance in Livingston County case No. 15-CF-387.

¶ 37 In August 2016, the trial court held a combined sentencing hearing for both cases. The court sentenced defendant to a term of 36 months' TASC probation on the aggravated possession of a stolen firearm conviction and a term of 30 months' TASC probation on the unlawful possession of a controlled substance conviction.

¶ 38 This appeal followed. We have docketed the appeal in case No. 15-CF-215 as No. 4-16-0638 and the appeal in case No. 15-CF-387 as No. 4-16-0639. We have consolidated the cases for review.

¶ 39 II. ANALYSIS

¶ 40 On appeal, defendant argues (1) the trial court erred by denying his motion to suppress statements he made during an interview at the police station, (2) the State failed to prove beyond a reasonable doubt that he knowingly possessed a controlled substance, and (3) two fines imposed by the circuit clerk should be vacated as void. For the following reasons, we affirm.

¶ 41 A. Motion to Suppress

¶ 42 Defendant contends the trial court erred by denying his motion to suppress statements he made to police. Specifically, defendant challenges the trial court's finding that he was not in custody for purposes of *Miranda*. Defendant does not argue the court's factual findings were manifestly erroneous. Rather, defendant argues the court's factual findings were incomplete and improperly weighed. The State contends the court was properly apprised of all the relevant facts and circumstances, applied the proper legal standard, found defendant's statements were made voluntarily, and found defendant was not in custody as that term is defined by *Miranda*.

¶ 43 1. *Standard of Review*

¶ 44 Typically, we review a trial court's denial of a motion to suppress under a two-part standard. We uphold a trial court's factual findings unless they are against the manifest weight of the evidence. *People v. Pitman*, 211 Ill. 2d 502, 512, 813 N.E.2d 93, 100 (2004). However, the ultimate legal question of whether suppression is warranted we review *de novo*. *People v. Hughes*, 2015 IL 117242, ¶ 32, 69 N.E.3d 791.

¶ 45 2. *Custody for* Miranda *Purposes*

¶ 46 In *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), the United States Supreme Court held that, prior to being subjected to an interrogation by law enforcement officers, a person must first "be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed," so long as the person being questioned was taken into custody or otherwise deprived of his freedom in a significant way. These preinterrogation warnings "are intended to assure that any inculpatory statement made by a defendant is not simply the product of the compulsion inherent in custodial surroundings." (Internal quotation marks omitted.) *People v. Slater*, 228 Ill. 2d 137, 149, 886 N.E.2d 986, 994 (2008). Accordingly, "[t]he finding of custody is essential." *Id.*

¶ 47 To determine whether a person is in custody, thus requiring *Miranda* warnings prior to questioning, courts engage in a two-part inquiry. First, courts consider the circumstances surrounding the interrogation. *People v. Coleman*, 2015 IL App (4th) 140730, ¶ 27, 37 N.E.3d 360. Second, a court should determine whether, given those circumstances, a reasonable person, innocent of any crime, would have felt that he or she could not terminate the interrogation and leave. *Id.* The supreme court has stated:

> "When examining the circumstances of interrogation, this court has found a number of factors to be relevant in determining whether a statement was made in a custodial setting, including: (1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused." *Slater*, 228 Ill. 2d at 150.

¶ 48 Defendant contends the trial court (1) failed to take into account his age, (2) ignored the fact that defendant contacted Detective Coleman at the detective's direction, (3) gave no legal significance to the fact that law enforcement drove defendant to the police station for the interview, and (4) did not acknowledge the legal significance of the location of the interview.

¶ 49 As the State notes, the trial court was aware of the facts and circumstances defendant asserts it ignored or failed to properly weigh. Defendant argues the court improperly ignored the fact that he was just over the age of 18 when the interview took place. However, the record shows defendant testified as to his date of birth at the hearing on the motion to suppress, which took place less than one year after the interview. Defendant does not cite any authority to support his implicit argument that the trial court must explicitly address a defendant's age in making its factual findings. Additionally, although age is a relevant factor, it is not dispositive.

People v. Hannah, 2013 IL App (1st) 111660, ¶ 43, 991 N.E.2d 412 ("No single factor is dispositive and the court should consider all of the circumstances in the case.").

¶ 50 Defendant's remaining arguments relate to the totality of the circumstances in this case. Defendant asserts the trial court, in finding defendant's contact with law enforcement to be voluntary, ignored the fact that defendant contacted Detective Coleman at the detective's direction. While this may be true, the totality of the circumstances does not support defendant's position. Defendant was not home when officers first visited his residence. His mother called him and he spoke on the phone with Detective Coleman. Coleman did not ask or otherwise order defendant to return from Peoria that night. Indeed, he did not ask defendant directly to call the next morning. Instead, Coleman left his phone number with defendant's mother and instructed her to have defendant call him the following day. Moreover, when Coleman called the next day, he asked defendant if he could come to his house to talk to him. Coleman also testified the focus of his investigation was Isaac Ordonez and two other individuals involved in the residential burglary. Defendant knew Ordonez was the focus of the investigation. It appears defendant voluntarily cooperated, in part to ensure law enforcement knew he was not involved in the residential burglary.

¶ 51 Mode of transport is another relevant factor and it is undisputed that Detective Coleman drove defendant to the police station to conduct the interview. The nature of the interview room is also undisputed. The room was small, the door was closed with an officer seated in front of it, and the door into the building had to be unlocked by someone inside. However, the purpose of the police-station interview was not to coerce defendant into talking, but to memorialize in an audio and video recording what he had already told Coleman. Defendant understood this. As the trial court noted, the interview was conversational and

defendant appeared relaxed. Additionally, defendant had his telephone with him at all times and was permitted to use it, presumably to both contact his girlfriend and to show the detectives text messages between himself and Ordonez. Finally, we note no indicia of formal arrest procedure are present in this case. It is undisputed that defendant was never searched, physically touched, handcuffed, or photographed, and the detectives never drew their weapons or made a show of force.

¶ 52 Given the totality of the circumstances in this case, we conclude the trial court properly found defendant's statements were voluntary and he was not in custody for the purposes of *Miranda*. Accordingly, we affirm the judgment of the circuit court.

¶ 53 B. Sufficiency of the Evidence

¶ 54 When considering whether the evidence was sufficient to support a conviction, our role is not to retry the defendant. *People v. Gray*, 2017 IL 120958, ¶ 35, 91 N.E.3d 876. Instead, we determine " 'whether, after viewing 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.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). A reviewing court "will not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses." *Gray*, 2017 IL 120958, ¶ 35. We reverse a conviction for insufficient evidence only where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *Id.*

¶ 55 To sustain a conviction for unlawful possession of a controlled substance, the State must prove beyond a reasonable doubt that the defendant had knowledge of the presence of

a controlled substance and the controlled substance was in the defendant's immediate possession or control. *People v. Schmalz*, 194 Ill. 2d 75, 81, 740 N.E.2d 775, 779 (2000). Possession can be actual or constructive. *People v. Givens*, 237 Ill. 2d 311, 335, 934 N.E.2d 470, 484 (2010). "Evidence that a defendant knew drugs were present and exercised control over them establishes constructive possession." *People v. Besz*, 345 Ill. App. 3d 50, 59, 802 N.E.2d 841, 849 (2003). Knowledge may be established by circumstantial evidence from which an inference may be drawn that the defendant knew of the existence of the contraband. *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 40, 35 N.E.3d 1218. Control over the area where a controlled substance is found gives rise to an inference that the defendant possessed the contraband. *People v. McCarter*, 339 Ill. App. 3d 876, 879, 791 N.E.2d 1278, 1280 (2003).

¶ 56 The evidence shows defendant was the last person to drive the vehicle in question. As such, defendant was in a position to easily access the vehicle and could exercise control over the vehicle. Defendant asserts his control over the vehicle cannot show his knowledge of the controlled substance because the front passenger window was approximately one-third of the way down and the door might have been unlocked. This argument stretches the bounds of reasonable doubt—to buy this argument one must accept that some unknown person walked up to a stranger's vehicle in a driveway, in the dark, and deposited their contraband on the passenger seat before leaving the area. This theory is not enough to find a *reasonable* doubt as to defendant's guilt.

¶ 57 Defendant's control over the vehicle is not the only evidence as to his knowledge of the contraband. The officer testified the pills were in a Baggie directly in the center of the passenger seat. Knowledge may be inferred from several factors, including the visibility of the contraband. *People v. Love*, 404 Ill. App. 3d 784, 788, 937 N.E.2d 752, 756 (2010). Defendant

argues it was dark both outside and inside the vehicle, but there was no evidence to establish the quality of the light inside the vehicle when defendant exited it. Moreover, counsel made this argument to the jury and the jury rejected it. The trier of fact is not required to accept explanations that are consistent with defendant's innocence. *People v. Sutherland*, 223 Ill. 2d 187, 272, 860 N.E.2d 178, 233 (2006).

¶ 58 We conclude defendant's control over the vehicle and the visibility of the contraband support a reasonable inference that defendant knowingly possessed the pills found on the passenger seat. The evidence, viewed in the light most favorable to the State, is sufficient for a rational trier of fact to find defendant knowingly possessed a controlled substance. Accordingly, we affirm the judgment of the trial court.

¶ 59 C. Fines and Fees

¶ 60 Finally, defendant challenges assessments calculated and recorded by the circuit clerk. The State contends this court lacks jurisdiction to review the circuit court's recording of mandatory fines and fees under the recent Illinois Supreme Court case *People v. Vara*, 2018 IL 121823, ¶ 30. In his reply brief, defendant argues it is premature to dismiss this portion of the appeal for lack of jurisdiction because, at the time, a petition for rehearing had been filed but not ruled upon. However, the supreme court denied the petition for rehearing in *Vara* on September 24, 2018. Accordingly, we conclude we lack jurisdiction to consider defendant's claim regarding an assessment recorded by the circuit clerk. We therefore decline to address this argument.

¶ 61 III. CONCLUSION

¶ 62 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2014).

¶ 63 Affirmed.