2019 IL App (1st) 161521-U

No. 1-16-1521

Order filed May 10, 2019

Fifth Division

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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. 14 CR 19396
	)	
TERRENCE BANKS,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for unlawful use or possession of a weapon by a felon affirmed over his contention that the evidence was insufficient to show he constructively possessed firearms and firearm ammunition.

¶ 2 Following a bench trial, defendant Terrence Banks was convicted of eight counts of unlawful use or possession of a weapon by a felon (UUWF) and sentenced to eight concurrent three-year terms of imprisonment. On appeal, defendant contends the evidence was insufficient

to prove him guilty beyond a reasonable doubt of constructively possessing firearms and firearm ammunition. For the following reasons, we affirm.

¶ 3 Defendant was charged with 10 counts of UUWF and 2 counts of possession of a controlled substance after police recovered various firearms, ammunition, and narcotics from his home and vehicle while executing a search warrant. At trial, Chicago police officer William Hronopoulos testified that, at around 10:38 a.m. on October 5, 2014, he was part of a team executing a search warrant at a residence on the 5400 block of West Race Avenue. He was dressed in plain clothes. When Hronopoulos approached the residence and knocked on the door, he observed defendant looking out the window. Defendant, however, did not open the door and instead stepped away from the window.

¶ 4 The officers made forced entry into the residence, and defendant ran towards a bathroom and locked himself inside. Hronopoulos made forced entry into the bathroom and observed defendant flushing the toilet. Hronopoulos detained defendant and the team conducted a systematic search of the residence. Defendant's grandmother was also present. In a bedroom, which defendant later claimed was his own, the officers recovered suspected heroin, cutting agents, "proof of residency," car keys, and $2,000 in U.S. currency. Following the search, defendant was placed into custody and given *Miranda* warnings.

¶ 5 Hronopoulos asked defendant who owned the vehicles parked in the back of the residence and defendant stated that they were his. When Hronopoulos asked whether defendant would consent to a search of the vehicles, defendant assented. When asked to sign a "consent to search" form, however, defendant said the vehicles belonged to his grandmother and that the officers would have to get her consent. Defendant stated, " 'I drive them sometimes, but I didn't

buy them.' " Defendant grandmother subsequently signed the consent form and the officers searched the vehicles.

¶ 6 One of the vehicles was a Chevy Caprice. Hronopoulos did not search the Caprice; the other officers on his team conducted that search. They had recovered keys from defendant's bedroom; defendant directed the officers to the keys for the Caprice. Inside the Caprice, the officers recovered four handguns and some ammunition. Hronopoulos later learned defendant had a previous conviction for possession of a controlled substance. He also ran a VIN search on the Caprice and learned it belonged to defendant. Hronopoulos identified and described various pictures of defendant's bedroom, the items recovered in the search of the bedroom, and the firearms and ammunition recovered from the Caprice.

¶ 7 On cross-examination, Hronopoulos testified that he did not recover anything from defendant's person after he was detained. He acknowledged there were multiple bedrooms in the residence, and he did not see defendant touch or handle any of the items recovered from the bedroom or the weapons and ammunition recovered from the Caprice. There were two vehicles, including the Caprice, near the house in a "rear car port" separated from the house by a yard. Hronopoulos "guessed" that the vehicles were "probably" 50 feet from the house. He did not recall whether the Caprice was locked prior to the search. Defendant had indicated that there "should be nothing illegal inside the vehicle." Hronopoulos acknowledged that he did not know the last time that defendant operated the vehicle.

¶ 8 Sergeant Marty Chatys testified he was also part of the search team at the residence on West Race Avenue on October 5, 2014. When he arrived at the residence, he observed Hronopoulos knocking on the door and defendant peering through the window. The officers

made a forced entry into the residence and Hronopoulos detained defendant. The team then conducted a search of the premises. Defendant told Chatys which bedroom was his. Inside that bedroom, Chatys recovered $2,000 in cash, four bottles of a cutting agent, “proof of residence,” a state identification card with defendant’s name and address, a bag containing two sifters, narcotics packaging, and two spoons containing residue of suspected heroin.

¶ 9 Chatys identified in court proof of residency documents, including a vehicle seizure notice, a notice to appear for court, and a collection notice for parking violations. All of the notices were recovered from the nightstand next to defendant’s bed and addressed to defendant at the West Race address. Chatys also recovered from the nightstand suspected Xanax and a knotted bag of suspected heroin.

¶ 10 Hronopoulos placed defendant into custody and gave him *Miranda* warnings following the search of his bedroom. When asked about the vehicles in the back of the residence, defendant claimed he owned them and gave the officers permission to search them. When presented with the search form, defendant told the officers the vehicles were actually his grandmother’s and he just drove them. Defendant’s grandmother signed the search form.

¶ 11 Chatys had recovered a “large bundle” of keys from defendant’s bedroom, and defendant pointed out the keys that belonged to the Caprice so that Chatys could get into the vehicle. Upon opening the Caprice, Chatys found boxes on the backseat. Officer Grandville opened one box and Chatys observed four guns inside: a Cobra Tech 9 semi-automatic gun, a Taurus Magnum chrome revolver, a Bryco 9-millimeter semi-automatic handgun, and a Smith and Wesson 9-millimeter automatic handgun. Chatys opened the second box, which contained boxes of ammunition and used ammunition that matched the various recovered firearms. He identified in

court the recovered firearms and boxes of ammunition. The search team subsequently ran the VIN number of the Caprice and learned it was registered to defendant at the residence on West Race. They also learned defendant had a prior felony conviction for possession of a controlled substance.

¶ 12 On cross-examination, Chatys acknowledged that the dates on the vehicle seizure notice, notice to appear in court, and the collection notice were August 15, 2013, March 20, 2013, and June 14, 2013, respectively, over a year prior to the date of the search. He further acknowledged he did not observe defendant touch the items recovered in the bedroom or vehicles, and he did not see defendant operate the vehicles. He did not know the last time defendant operated the vehicles. Chatys did not recall the residence having a fence or garage, so the vehicles were "literally in the backyard."

¶ 13 The State then introduced into evidence a certified copy of the vehicle record for the Caprice, which showed defendant as the owner and the address on West Race as the residence. The State also introduced into evidence a certified copy of defendant's prior felony conviction for possession of a controlled substance.

¶ 14 The parties stipulated that, if called, Sergeant Marty Chatys would testify that he recovered in the residence and inventoried "7.5 tablets of suspect Xanax" and one gram of suspect heroin during the search. Further, the parties stipulated that, if called, forensic chemist Laneen Blount would testify she received inventories containing 7.5 tablets and a spoon with residue. Blount concluded the tablets tested positive for 1.6 grams of Alprazalom, also known as Xanax. She also concluded the residue of the spoon tested positive for the presence of heroin.

¶ 15 Following the State's evidence, defense counsel moved for a directed finding. The court granted the motion with respect to the two counts of possession of a controlled substance. After closing arguments, the court took a recess to consider the case. The court thereafter found defendant guilty of all counts of UUWF. In finding defendant guilty, the court stated, "There was testimony that the defendant inferred that the car was locked. And it's really defendant's car. So I think that established the case of constructive possession based upon this evidence." The court merged two of the counts and sentenced defendant to eight, concurrent three-year terms of imprisonment.

¶ 16 On appeal, defendant contends his convictions should be reverse because the State failed to prove beyond a reasonable doubt that he constructively possessed the firearms and firearm ammunition.

¶ 17 As an initial matter, defendant claims that the facts are undisputed and therefore *de novo* review applies to determine whether sufficient evidence supports his conviction. See *In re Ryan B.*, 212 Ill. 2d 226, 231 (2004). We disagree. Although the facts are undisputed, defendant contests the inferences drawn from the evidence, thereby creating questions of fact. See *People v. Lattimore*, 2011 IL App (1st) 093238, ¶35 ("If divergent inferences could be drawn from undisputed facts, a question of fact remains.").

¶ 18 When reviewing a challenge to the sufficiency of the evidence, we inquire " '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 omitted.) *People v. Davison,* 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We draw all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at

43), and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). We will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens,* 237 Ill. 2d 311, 334 (2010).

¶ 19 To prove UUWF, the State must show the defendant knowingly possessed any firearm or firearm ammunition after being convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2014)). Defendant disputes only the element of possession. Possession may be either actual or constructive. *People v. Terrell*, 2017 IL App (1st) 142726, ¶ 18. In this case, it is undisputed that defendant did not actually possess the firearms and ammunition. We therefore confine our analysis to whether the evidence was sufficient to show he constructively possessed the contraband.

¶ 20 Defendant argues the State failed to prove he constructively possessed the firearms and ammunition because the contraband was not in plain view, the police did not see him use the vehicle or handle the contraband, there was no evidence to show the last time he used the vehicle or that he knew the contraband was in the vehicle, the evidence failed to show no one else had access to the contraband, and there were no fingerprints on the contraband. To prove constructive possession, the State must prove that the defendant had knowledge of the presence of the contraband and exercised "immediate and exclusive" control over the area where the contraband was found. *People v. Tates*, 2016 IL App (1st) 140619, ¶ 19.

¶ 21 Here, we find the evidence is sufficient to show that defendant constructively possessed the contraband. The evidence overwhelmingly established that defendant resided at the residence

where the Caprice was parked approximately 50 feet away in a car port in the back of the property. Defendant was home at the time the Caprice was parked and actually pointed out his room to the officers. Inside that room, the officers recovered keys, and defendant pointed out the keys associated with the Caprice. Further, the officers testified that defendant admitted both that he owned the Caprice and later that he "just drove it." The vehicle record for the car showed defendant was the owner and listed the address on West Race. This evidence, taken together, supports an inference that defendant, as the admitted owner and operator of the vehicle, had control over the Caprice, which gives rise to the inference that he possessed the firearms and ammunition inside it. *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003) (control over a location where a weapon is found gives rise to an inference that defendant possessed the weapon).

¶ 22 Moreover, the officers' testimony that defendant changed his statement regarding ownership of the Caprice – first that he was the owner and then that his grandmother was the owner and he just drove it – supports an inference that he had knowledge of the presence of the firearms and ammunition inside the vehicle. *People v. Spencer,* 2012 IL App (1st) 102094, ¶ 17 ("Knowledge may be shown by evidence of a defendant's acts, declarations, or conduct from which it can be inferred that he knew the contraband existed in the place where it was found.").

¶ 23 We are unpersuaded by defendant's contention that the State failed to prove constructive possession because the officers did not see him operate the vehicle or handle the contraband, and the evidence failed to show no one else had access to the Caprice or that defendant knew the boxes were in the vehicle, let alone that they contained contraband. "Evidence of constructive possession is 'often entirely circumstantial.' " *McCarter*, 339 Ill. App. 3d at

879 (citing *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002)). Circumstantial evidence does not require each link in the chain of circumstances be proven beyond a reasonable doubt; instead, "[i]t is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *People v. Hall*, 194 Ill. 2d 305, 330 (2000). As the evidence, taken together, supports an inference that defendant had control over the Caprice and knowledge of the boxed contraband on the back seat, we find that a rational trier of fact could have found defendant constructively possessed the firearms and ammunition to support his convictions for UUWF.

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.