

2019 IL App (1st) 162581-U

No. 1-16-2581

Order filed March 11, 2019

First Division

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

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 MC6 004388
)	
TYRONE MUHAMMAD,)	Honorable
)	Thomas J. O’Hara,
Defendant-Appellant.)	Judge, presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Mikva and Justice Griffin concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court’s guilty findings affirmed over defendant’s contention that the evidence was insufficient and incredible.

¶ 2 Following a bench trial, defendant Tyrone Muhammad was found guilty of possession of firearm ammunition without a firearm owner’s identification (FOID) card (430 ILCS 65/2(a)(2) (West 2012)) and possession of a firearm without a FOID card (430 ILCS 65/2(a)(1) (West 2012)). The trial court sentenced defendant to one year of supervision. On appeal, defendant

contends that there was insufficient evidence to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 At trial, Hazel Crest police sergeant Ed Beard testified that, on May 7, 2013, he obtained and executed a search warrant for a single family residence on the 3400 block of Montmartre Avenue. Beard waited outside while a team of officers “cleared” the house. Beard learned that there were eight people in the house and that they had all been detained in the living room. Beard identified defendant in court as one of those individuals. Sergeant Bush, the supervisor of the “search team,” relayed that defendant had been found in the bedroom in the northeast corner of the house on the second floor.¹ A woman was also found in the bedroom. She was about five feet six inches tall and weighed 160 pounds.

¶ 4 Beard searched the northeast bedroom. Next to a table or television stand, he located a pair of red and black “gym shoes.” Inside the right shoe, Beard found a .38 caliber loaded handgun. Beard identified photographs of the shoes and the firearm, as well as the actual size 13 right shoe and .38 caliber handgun.² Besides a bed and some clothes hanging in a closet, Beard found nothing else of note in the room.

¶ 5 Beard further testified that, on May 8, 2013, he and Detective Brucato had a conversation with defendant.³ Beard read defendant a statement of his rights from a preprinted sheet. Defendant was shown a photograph of the shoe, and Beard asked him whether the firearm found in the shoe was his. Defendant replied that the firearm was not his but the gym shoe was. Beard

¹ Sergeant Bush’s first name does not appear in the record.

² The exhibits were admitted into evidence but were not made part of the record on appeal.

³ Detective Brucato’s first name does not appear in the record.

also asked defendant whether “he resided there,” and defendant responded that “he stays in that room from time to time.”

¶ 6 On cross-examination, Beard acknowledged that his police report reflected defendant resided on the 11700 block of Ridgewood Drive, not where the search was conducted. Beard also testified that, of the eight people in the house, seven were arrested. Defendant was not taken out of the house barefoot; he was wearing shoes. During the search of the home, Beard did not recover any mail or utility bills addressed to defendant or anything connecting defendant to the searched address. Beard never saw defendant with a handgun and defendant never stated that he knew about or possessed the gun.

¶ 7 On redirect-examination, Beard testified that the address listed as defendant’s residence on the arrest report came from a state identification or driver’s license. On recross-examination, Beard admitted that, although he found clothes in the bedroom, he had no way of linking those clothes to defendant.

¶ 8 The parties stipulated that, if called to testify, Sergeant Bush would testify that he entered the home on May 7, 2013, and found defendant and a woman sleeping in the northeast bedroom. The parties also stipulated to the foundation for a certification indicating that defendant had never been issued a FOID card or a concealed carry license.

¶ 9 Defendant moved for a directed finding, arguing that there was insufficient evidence of constructive possession of the firearm. The State responded that it had met its burden because the firearm was found in defendant’s shoe in a bedroom where he was sleeping. The trial court denied defendant’s motion.

¶ 10 Defendant testified that he wears a size 12 shoe. He took off one of the shoes he was wearing in court and the trial court admitted it as an exhibit. Defendant further testified that his foot was the same size on May 7, 2013. Defendant testified that the shoe admitted during the State's case-in-chief was not his shoe and that he does not wear a size 13.

¶ 11 On cross-examination, defendant admitted that, on May 7, 2013, he was sleeping in the northeast bedroom with a woman who was five feet six inches tall. Defendant admitted that the recovered shoe and the shoe he wore at trial were different brands. Defendant denied that different brands can vary in size; that "you can be a 12 in one and a 13 in another." Defendant acknowledged that Beard read him his *Miranda* rights and questioned him, but denied telling Beard that the shoe was his. He stated the recovered gun was not his, and he told Beard this.

¶ 12 Following closing arguments, the trial court found defendant guilty of possession of a firearm without a FOID card and possession of ammunition without a FOID card. The court found, in part:

"There is [*sic*] no ties as far as residency of that premises, but there has been testimony that he was in [the] room itself where the gun was recovered from. So that does put him in proximate relationship to the recovery of that gun. It was in a shoe that he had admitted to the officer was his shoe. I weigh the credibility of the statement, and find the officer credible on that statement and the defendant incredible in his testimony that he did not give that statement."

The court sentenced defendant to one year of supervision. Defendant timely appealed.

¶ 13 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt.

¶ 14 The due process clause of the fourteenth amendment to the United States Constitution safeguards an accused from conviction in a state court except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime charged. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 433 U.S. 307, 315-16 (1979)); see also *People v. Johnson*, 2018 IL App (1st) 150209, ¶ 18. The relevant inquiry under the *Jackson* standard is 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. *Johnson*, 2018 IL App (1st) 150209, ¶ 18. This standard is the same whether we are reviewing a bench trial or a jury trial. *People v. Howery*, 178 Ill. 2d 1, 38 (1997). In applying this standard, we draw all reasonable inferences in favor of the State (*People v. Little*, 2018 IL App (1st) 151954, ¶ 36) and we do not retry the defendant (*People v. Jamison*, 2018 IL App (1st) 160409, ¶ 26). It is the trier of fact's function to assess witness credibility, weigh and resolve conflicts in the evidence, and draw reasonable inferences from the evidence. *Jamison*, 2018 IL App (1st) 160409, ¶ 26.

¶ 15 To prove defendant guilty of the firearm offenses, the State was required to prove that defendant possessed a firearm and ammunition without having a FOID card in his possession. 430 ILCS 65/2(a)(1), (a)(2) (West 2012). Defendant does not argue that the FOID card element of either offense was not proven. Therefore, the only question before us is whether the State proved defendant possessed the loaded firearm.

¶ 16 As the trial court noted, defendant was not in actual possession of the firearm or ammunition. "Where possession is an element of a charged offense, and a defendant is not found in actual possession, the State must instead prove constructive possession." *People v. Bogan*, 2017 IL App (3d) 150156, ¶ 27. Constructive possession does not require actual, personal,

present dominion over contraband. *Id.* (citing *People v. Hunter*, 2013 IL 114100, ¶ 19). Rather, constructive possession requires proof that a defendant had knowledge of the presence of the contraband and control over the area where the contraband was found. *Id.* Frequently, circumstantial evidence alone is sufficient to prove constructive possession. *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 23.

¶ 17 In this case, the State presented sufficient evidence of defendant's control over the shoe to create the inference that defendant had knowledge and control of the loaded firearm located within. See *Bogan*, 2017 IL App (3d) 150156, ¶ 29 (noting that knowledge can be inferred from control). Defendant was found sleeping in the bedroom, and defendant admitted staying there "from time to time." The shoe was located in the bedroom, and defendant admitted owning the shoe. The only other occupant of the bedroom was a five-foot-six-inch woman who was unlikely to wear a men's size 13 shoe. When this evidence is taken in the light most favorable to the State, we cannot conclude that no rational trier of fact would find defendant guilty of possession of the firearm and the ammunition it contained.

¶ 18 Defendant argues that the evidence does not support the conclusion that the shoe was his. Defendant notes that the shoe recovered by the police was a size 13 while the shoe he wore to court was a size 12. Defendant also notes that, although the police seized the shoe found in the bedroom, he was still wearing shoes when arrested. Finally, defendant argues Officer Beard's account of his statement, in which he admitted owning the shoe but denied possessing the gun, was unreasonable, improbable, and defies common sense. See *In Re Nasie M.*, 2015 IL App (1st) 151678, ¶ 34 (discussing the limits of a reviewing court's deference to a trial court's witness credibility determinations). We do not find the alleged discrepancy regarding the size of

defendant's shoes or the fact that defendant was not barefoot after his shoe was seized are so significant that they make the trial court's finding unreasonable. More importantly, these alleged deficiencies in the evidence were raised at trial, and it is the role of the trial court to weigh the evidence and draw reasonable inferences from the evidence. See *Jamison*, 2018 IL App (1st) 160409, ¶ 26. Similarly, we do not find that Beard's account of defendant's statement was inherently incredible, and therefore defer to the trial court's determination that Beard was "credible on that statement" and defendant incredible.

¶ 19 Finally, defendant suggests that, even if he owned the shoe, the evidence was insufficient to prove he possessed the loaded firearm therein because it did not eliminate the possibility that one of the other occupants of the house placed the gun in his shoe while he was sleeping. However, the trial court, as trier of fact, was not obligated take every possible hypothesis inconsistent with guilt and elevate it to reasonable doubt. See *People v. Walker*, 2016 IL App (2d) 140566, ¶ 12. Therefore, we cannot find that no rational trier of fact would find the State had proven defendant guilty beyond a reasonable doubt. See *Johnson*, 2018 IL App (1st) 150209, ¶ 18.

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

¶ 21 Affirmed.