2019 IL App (1st) 170796-U

No. 1-17-0796

Order filed March 15, 2019

Fifth 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 138335
	)	
ALEJANDRO OVIEDO,	)	Honorable
	)	Timothy Chambers,
Defendant-Appellant.	)	Judge, Presiding.
	)	
	)	

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

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of possession of cocaine with intent to deliver; defendant waived review of his claims that the trial court abused its discretion or prejudiced defendant by considering evidence of the search warrant as presumptive of his guilt; defendant failed to satisfy plain error to afford this court review of his claims.

¶ 2 Following a bench trial, defendant Alejandro Oviedo was convicted of possession of cocaine with intent to deliver and sentenced to nine years' imprisonment. On appeal, defendant

contends he was not proven guilty beyond a reasonable doubt because there was insufficient evidence that he had knowledge of the cocaine or dominion and control over the area where it was found. He further contends that the trial court abused its discretion and prejudiced him when it stated that his name on the search warrant was evidence of his guilt. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Defendant was charged with three counts of unlawful use of a weapon (UUW) by a felon and possession of a controlled substance with intent to deliver.

¶ 5 The following facts adduced at trial are not in dispute.

¶ 6 Defendant waived a jury and elected to have a bench trial. At trial, Chicago Police Officers Pacocha, Accardo and Streff testified that on August 3, 2015, at approximately 11:35 p.m., they were part of a team executing search warrant number 2015 SW 6841 for defendant at 2642 West Summerdale Avenue, Unit 1W. Prior to executing the warrant, Officer Pacocha viewed a picture of the "target," whom he and the other officers identified in court as defendant.

¶ 7 Upon arrival at that address, which was a four-unit apartment building, the officers went around to the rear, which had an external porch in the center of the building with rear entry doors to each unit on either side of the porch. The team went to the rear door of Unit 1W, opened a storm door and Officer Streff, the first officer in the stack, knocked on the back door. A "stack" is formed during execution of a search warrant when the officers are in single file line and each officer has a different role. They waited for a short time and announced that they were Chicago police officers. There was no answer and the door was forced open. Once the door was opened, the officers entered a long hallway that had several doors on the right.

¶ 8 Officer Streff was the first officer through the door after the forced entry carrying a shield and proceeded straight through to the front while other officers broke off into different rooms as they encountered people in the apartment. A total of seven people were found inside the apartment: defendant, his girlfriend Elizabeth Mercado, defendant's parents, defendant's brother and two small children. It was later determined that everyone encountered in the apartment lived there.

¶ 9 The first door to the right was closed but unlocked and Officer Pacocha entered the room while the other officers continued down the hallway. Officer Pacocha described the room as a dark bedroom and a man, whom he identified at trial as defendant, and a woman were in a bed watching television. The room was identified as defendant's bedroom in his family's residence where he lived.

¶ 10 Defendant and the woman complied with an order to show their hands and defendant was subsequently handcuffed, taken into the hallway and searched. Defendant was then escorted to the back porch by another officer. There was a second door inside defendant's bedroom which Officer Pacocha forced open and found it was another bedroom that was empty. He then searched defendant's bedroom.

¶ 11 Officer Accardo identified People's Group Exhibit Number 3 as photographs of the rear entry door of defendant's apartment, the door frame after the forced entry was made, defendant's bedroom, another view of that bedroom showing the bed and dresser, the dresser with an ID on it belonging to someone that did not live at the residence, the box of sandwich bags, a doorway inside defendant's bedroom that led to another bedroom, money recovered from the dresser in

defendant's bedroom, the paystub located on that dresser, the magazine removed from underneath the radiator in defendant's bedroom, the bathroom and the hallway.

¶ 12 Officer Accardo and another officer detained defendant's father in the bathroom and also detained defendant's brother, who was lying on the couch in the front of the apartment. Defendant's brother initially resisted the officer who was trying to detain him and was ultimately charged with resisting and taken into custody. A clear, knotted baggy containing a white powdery substance, suspected to be cocaine, was recovered from defendant's father in his right pants pocket.

¶ 13 Officer Accardo was also assigned to recover evidence. As part of that duty, he retrieved evidence from the dresser in the bedroom where defendant was found, including a clear bag containing a white powdery substance suspected to be cocaine. The dresser was located within arm's reach of the bed where defendant was found. Officer Accardo also recovered an empty magazine for a handgun underneath the floorboard radiator in the bedroom, while other officers recovered $980 from the dresser, as well as a box of sandwich bags which, in his experience, were used for the packaging and sale of narcotics. Officer Accardo also recovered evidence of defendant's residency from the dresser; a paystub with defendant's name and address dated two weeks prior to the execution of the search warrant.

¶ 14 As part of the investigation, Officer Streff spoke with Mercado in English and with defendant's parents in Spanish. During the course of the investigation, he learned that there was a basement with storage units, and he got verbal and written consent from defendant's father to search the storage unit for Unit 1W. Defendant's father signed a consent to search document, People's Exhibit Number 5, dated August 4, 2015, because it was after midnight when

defendant's father gave consent. Keys to the storage unit were eventually found in the apartment, although Officer Streff could not remember where they were located.

¶ 15 Officer Pacocha used the back stairwell to the basement and entered the common area through an unlocked door. There were storage units on the right side of the basement and laundry facilities and a furnace were located on the other side. None of the storage units were numbered, but Officer Pacocha and other officers went to the first storage unit on the right, which defendant's father indicated was the family's storage unit. He opened a padlock on the unit with a key from a keyring that had multiple keys on it. He did not retrieve the key ring, but received the key from another officer while he was standing at the storage unit. The storage unit was full of items and boxes. The top box was open and he saw two loaded firearms, which he seized. Also retrieved from that box were three digital scales. Officer Pacocha found 12 bags of a white powdery substance and a bag of a chunky, white, rock-like substance in another box. Several documents belonging to defendant were also retrieved from the storage unit: a 2007 restraining order for defendant and a 2008 pawnshop receipt with defendant's name on it. Officer Pacocha testified that there were no photographs taken of the items retrieved from the storage unit because they were part of the consent to search and not the original search warrant.

¶ 16 All of the items taken from the apartment and storage unit were transported back to the police station and inventoried. The bag found in defendant's bedroom that was believed to contain cocaine was assigned inventory number 13498685 and the 13 bags of suspected drugs found in the basement storage unit were assigned inventory number 13498662. Both of those inventory bags were heat sealed and sent to the Illinois State Police Crime Lab (Crime Lab) for

testing and analysis. Other than the small bag of cocaine recovered from defendant's father, there was no other contraband in the apartment.

¶ 17 On cross-examination, defense counsel elicited the following testimony from the officers: there was no contraband in the bed with defendant or on his person when he was searched and no keys were found in the bedroom with defendant that opened any storage units in the basement. Additionally, Officer Pacocha indicated that there were four storage units in the basement, and all of them appeared to be closed when he first entered the basement. He was also shown Defense Group Exhibit Number 1, and testified to what he "believe[d] to see" in the photographs, which was the storage unit door, although he stated that he did not break the door off the hinges or break open the lock. Officer Pacocha stated that there was no forced entry into the storage unit by him or his team, and the photos did not show the storage unit as it appeared after they entered it.

¶ 18 The parties stipulated that, if called to testify, forensic scientist Catherine Klimek would testify that she did the following: received inventory envelope number 13498662 in a heat-sealed condition from the Chicago Police Department, opened the envelope which contained 13 items of a white substance, performed tests on those items that are commonly accepted in the area of forensic chemistry for determining the presence of a controlled substance. She further testified that the equipment she used was tested, calibrated and functioning properly when she performed her test; five of the items tested positive for cocaine in the amount of 138.4 grams, the total weight of the 13 items was 279.8 grams, and a proper chain of custody of the items was maintained at all times. Defense counsel attempted to add to the stipulation that the items were

recovered from the storage unit, but the State noted that the scientist would not be able to testify where the items were recovered from, and the trial court agreed.

¶ 19 The parties also stipulated that, if called to testify, forensic scientist Gail Gutierrez would testify as follows: that she received inventory envelope number 13498685 in a heat-sealed condition from the Chicago Police Department, opened the envelope which contained a powder residue, performed tests on that item that are commonly accepted in the area of forensic chemistry for determining the presence of a controlled substance, and the equipment she used was tested, calibrated and functioning properly when she performed her test. It was further stipulated that Gutierrez tested the residue and found it positive for the presence of cocaine, and a proper chain of custody of the items was maintained at all times.

¶ 20 As to the UUW counts 2, 3, 4, and 5, the State introduced a certified copy of defendant's prior conviction for possession of a firearm by a street gang member under 13 CR 17675.

¶ 21 After the State rested, defendant made a motion for a directed finding, contending that there was no evidence that he had any dominion and control over the storage unit where most of the contraband was recovered, citing *People v. Scott*, 367 Ill. App. 3d 283 (2006), as support. The trial court denied the motion.

¶ 22 Mercado testified that she took the pictures in the basement that comprised Defense Group Exhibit Number 1 approximately an hour after the police went to the storage unit. On cross-examination, Mercado testified that she was defendant's girlfriend of six years and was present when the search warrant was executed. She stated that the apartment belonged to defendant's family and that she stayed there with defendant in the first rear bedroom. No one slept in that bedroom but she and defendant and her kids' slept in the connected bedroom. She

testified that defendant's family had two storage units in the basement and both were padlocked. Mercado did not have a key and did not know who accessed the storage units. She did not take any photos of the apartment after it was searched but only of the downstairs storage unit.

¶ 23 After closing arguments by both sides, the trial court noted that the police went to the apartment with a search warrant for defendant and no one else. The court also noted that defendant was in the room closest to the rear door but did not respond when police pounded on the door, nor did anyone else answer the door. The trial court also found that Mercado did not live there and that was why she did not know who had access to the storage unit, and noted that the money, a gun magazine and the sandwich bags, including one with traces of cocaine, were all recovered from defendant's room. The trial court took judicial notice that defendant's father entered an alternative program drug school rather than to go to trial. The court also found that defendant's father would not have signed a consent to search to have police rip a door off and that the officers truthfully testified about the presence of a key for the storage unit which contained 279 grams of cocaine and guns. The court also found that defendant had indicia of drug sales with the bags, money and gun magazine in his room, and that nothing else was found on any other person or in any other room that would indicate drug sales. Based on the trial evidence, the trial court found that the State proved constructive possession of the weapons and drugs. The court found defendant guilty of all counts.

¶ 24 Defendant filed a motion for new trial. Defendant included a copy of *People v. Virgin*, 302 Ill. App. 3d 438 (1998), with his motion. He argued that it was improper for the State to imply that he was connected to the storage unit because he was the target of the search warrant, and that it was reversible error for the court to base its ruling on that. Defendant asserted that

looking at the "totality of all the circumstances, and the totality of all the evidence, and more importantly, the lack, * * * the extreme lack of any evidence," that there was nothing to connect him to the storage unit. The trial court granted defendant's motion as to the UUW counts because "it was pointed out to [it] during closing argument that he had a prior gun charge and a propensity," but denied it as to the possession count. After hearing evidence in aggravation and mitigation, defendant was sentenced to the minimum term of nine years' imprisonment for possession of a controlled substance with intent to deliver. This timely appeal followed.

¶ 25 ANALYSIS

¶ 26 1. Sufficiency of the Evidence

¶ 27 Defendant first contends that the evidence was insufficient to prove him guilty of possession of cocaine with intent to deliver because there was no evidence of knowledge or dominion and control over the area where the drugs were found. He argues that the State did not present any evidence that he had access to the storage unit. Defendant also contends that the State did not prove he had knowledge of the cocaine because he was not found near the storage unit and did not make any declarations or acts that would imply he knew of the presence of the cocaine.

¶ 28 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. We will reverse only if no rational trier of fact could have found defendant committed each element of the charged offense. *People v. Burks*, 343 Ill. App. 3d 765, 767-68 (2003). 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. *Bradford*, 2016 IL 118674, ¶ 12. This court reverses a defendant's conviction only where the evidence is so unreasonable, improbable or unsatisfactory that a reasonable doubt of his guilt remains. *Bradford*, 2016 IL 118674, ¶ 12. The same standard of review applies regardless of whether defendant received a bench or jury trial. *People v. Siguenza-Brito*, 235 Ill. 2d 2123, 224 (2009).

¶ 29 To prove defendant guilty of possession of cocaine with intent to deliver, the State must establish that defendant had knowledge of the presence of the narcotics, the narcotics were in the immediate possession or control of defendant, and that defendant intended to deliver the narcotics. 720 ILCS 570/401 (West 2014); *People v. Robinson*, 167 Ill. 2d 397, 407 (1995).

¶ 30 The elements of intent to deliver are generally proved by circumstantial evidence. *People v. Blakney*, 375 Ill. App. 3d 554, 557-58 (2007). Accordingly, "this issue involves the examination of the nature and quantity of circumstantial evidence necessary to support an inference of intent to deliver." *Robinson*, 167 Ill. 2d at 408. Several factors have been considered by Illinois courts as probative of a defendant's intent to deliver in controlled substance prosecutions. *Blakney*, 375 Ill. App. 3d at 558. These factors include whether the quantity of the controlled substance in a defendant's possession is too large to be viewed as being for personal consumption, the high purity of the drug confiscated, the possession of weapons, the possession of a large quantity of cash, the possession of police scanners, beepers or cellular telephones, the possession of drug paraphernalia and the manner in which the substance is

packaged. *Robinson*, 167 Ill. 2d at 408. *Robinson* provides examples of these factors and allows courts to utilize other factors. *Blakney*, 375 Ill. App. 3d at 558.

¶ 31 Here, taking the evidence in the light most favorable to the State as we must (*Brown*, 2013 IL 114196, ¶ 48), we find that the evidence is sufficient to sustain defendant's conviction. The police officers, pursuant to a search warrant for defendant at that address, entered the residence and recovered several items. From defendant's bedroom, the officers recovered a gun magazine, a box of sandwich bags, a large amount of cash and a plastic bag which contained a residue of white powder that tested positive for cocaine. There was evidence that defendant resided at that address from his paystub that was found in his bedroom. Moreover, defendant's girlfriend testified that defendant lived there and that it was his room where she and defendant were found when the search warrant was executed. A much larger quantity of drugs (279 grams), two weapons and three digital scales were recovered from defendant's family's storage unit in the basement, along with paperwork belonging to defendant. The bag containing drug residue and the box of sandwich bags recovered from defendant's bedroom support an inference that the bags were used and would be used to package drugs. Additionally, the scales recovered by police are consistent with drug packaging and distribution. It is the responsibility of the trier of fact to weigh the evidence and to draw reasonable inferences from the facts, and this court will not substitute its judgment for that of the factfinder on questions involving the weight of the evidence. *Bradford*, 2016 IL 118674, ¶ 12. We conclude that the evidence supports defendant's conviction for possession of drugs with intent to deliver.

¶ 32 Defendant contends, however, that there was no evidence connecting him to the storage unit and thus no evidence connecting him to the drugs recovered from the storage unit.

¶ 33 The State need not demonstrate actual possession by defendant if constructive possession can be inferred from the facts. *People v. Beverly*, 278 Ill. App. 3d 794, 798 (1996). To support a finding of constructive possession, the State must prove the contraband was in defendant's immediate and exclusive control, and the defendant knew the contraband was present. *Beverly*, 278 Ill. App. 3d at 798. Possession of drugs may be constructive, without actual personal present dominion over a controlled substance, but an intent and capability to maintain control and dominion is present. See *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992). Knowledge may be proved by evidence of defendant's acts, declarations, or conduct from which it can be inferred he knew the contraband existed in the place where it was found. *Beverly*, 278 Ill. App. 3d at 798. The elements of possession and knowledge are rarely susceptible of direct proof and these are questions for the trier of fact. *Beverly*, 278 Ill. App. 3d at 798. A criminal conviction can be based solely on circumstantial evidence and it is sufficient if it satisfies proof beyond a reasonable doubt of the elements of the crime charged. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). The factfinder does not need to be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; it is sufficient if all of 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).

¶ 34 Again, viewing the evidence in the light most favorable to the State (*People v. Ballard*, 346 Ill. App. 3d 532, 540 (2004)), we find that the State proved defendant's constructive possession over the drugs in the storage unit. As noted previously, the police recovered sandwich bags, a baggie with cocaine residue and a large amount of cash from defendant's bedroom that were consistent with drug packaging and distribution and also demonstrated

defendant's knowledge of drugs. Along with the drugs, weapons and scales recovered from the storage unit, the storage unit contained paperwork belonging to defendant in the vicinity of the drugs, scales and weapons that were recovered. Defendant's father told Officer Streff that it was the storage unit for the family's apartment, and defendant's girlfriend testified that in fact there were two storage units. Defendant's father gave consent for the search of the storage unit and a key was used to open it. Although it was not clear where the key was recovered from, the officers testified that the key was recovered from defendant's family apartment. Evidence that defendant stored paperwork in the storage unit, namely the restraining order documents and pawn receipt, established that he had access to it and therefore, he had the ability to maintain control over the storage unit. As noted previously, a criminal conviction may be based solely on circumstantial evidence and is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Hall*, 194 Ill. 2d at 330.

¶ 35 In reaching this conclusion, we find unpersuasive defendant's attempt to liken the facts in this case to those in *People v. Scott*, 367 Ill. App. 3d 283 (2006). In *Scott*, during a direct narcotic surveillance of 3653 South Federal Street, police observed defendant and codefendant standing near a group of mailboxes located between the buildings of 3651 and 3653 South Federal. *Scott*, 367 Ill. App. 3d at 283-84. When the pair approached the mailbox, codefendant opened a mailbox with a key, retrieved a bag of cocaine and handed it to defendant. *Scott*, 367 Ill. App. 3d at 284. Both defendant and codefendant then went to the lobby of the 3653 building. *Scott*, 367 Ill. App. 3d at 284. Approximately 10 to 15 minutes later, the pair exited the lobby and returned to the mailboxes, where codefendant again opened the mailbox with a key, retrieved a bag of cocaine and handed it to defendant. *Scott*, 367 Ill. App. 3d at 284. At all times

codefendant remained in possession of the key. *Scott*, 367 Ill. App. 3d at 284. Codefendant's mother testified at trial that she resided at 3653 South Federal in apartment 306 with codefendant. *Scott*, 367 Ill. App. 3d at 284. Defendant, who was codefendant's boyfriend, stayed with them off and on. *Scott*, 367 Ill. App. 3d at 284.

¶ 36 In finding that the State had not proved that defendant had constructive possession over the drugs in the mailbox, we found that there was no evidence that defendant had access to the mailbox as there was no proof of his habitation in the apartment and no proof that he ever had access to, or maintained possession of, the key at any time. *Scott*, 367 Ill. App. 3d at 286. We concluded that defendant had no capability to maintain control and dominion over the larger bag of cocaine found in the mailbox that was inaccessible to him without the key. *Scott*, 367 Ill. App. 3d at 286. The only evidence submitted at trial was defendant's presence near the mailbox. *Scott*, 367 Ill. App. 3d at 286.

¶ 37 In this case, defendant asserts that because he was not near the storage unit when the drugs were recovered he did not have constructive possession of the drugs. However, defendant's constructive possession was not based on whether he was present in the vicinity of the storage unit. Here, the police were at the premises with a search warrant for the premises and defendant. Proof of defendant's residency was presented, defendant was found in a bedroom on the premises, and defendant's girlfriend testified that they resided on the premises and in the room where they were found. Proof of defendant's residency is relevant to show the defendant lived on the premises and therefore controlled them. *People v.* Cunningham, 309 Ill. App. 3d 824, 828 (1999). Defendant's father told police that there was a storage unit in the basement for the apartment. A key, which was in the apartment, was provided for the storage unit. A search

of the storage unit yielded a large quantity of drugs. When narcotics are found on premises rather than on a defendant, the State must prove that the defendant had control of the premises in order to permit the inference that the defendant had knowledge and control over the narcotics. *People v. Neylon*, 327 Ill. App. 3d 300, 306 (2002). Here, the State proved defendant's habitation at the apartment, that there was a storage unit connected to the apartment, and thus his capability to maintain control over the storage unit. Defendant's constructive possession was based on the inference of knowledge and control of the drugs in the storage unit because he had control of the premises. The documents belonging to defendant found in the storage unit support the inference that defendant had access to and used the storage unit. Although defendant argues that others also had access to the unit, "mere access by others is insufficient to defeat a charge of constructive possession." *People v. Trask*, 167 Ill. App. 3d 695, 707 (1988) (quoting *People v. David*, 141 Ill. App. 3d 243, 258 (1986)). Moreover, exclusive control can include joint possession – if two or more people share immediate and exclusive control, or share the intention and power to exercise control, they each maintain possession. *People v. Tates*, 2016 IL App (1st) 140619, ¶ 25.

¶ 38 Likewise, defendant's reliance on *People v. Maldonado*, 2015 IL App (1st) 131874, and *People v. Fernandez*, 2016 IL App (1st) 141667 is also misplaced.

¶ 39 In *Maldonado*, we found that the State did not produce sufficient evidence of the defendant's control of the premises. *Maldonado*, 2015 IL App (1st) 131874, ¶ 24. We noted that no one was present when police executed the search warrant, the documents recovered bore the defendant's name and the address of the premises searched (although it was unclear whether they were official mail), there was no admission by the defendant regarding his residency, there was

no testimony that the defendant was near the recovered drugs and no testimony that the defendant was ever inside the location. *Maldonado*, 2015 IL App (1st) 131874, ¶ 34. We found that the State offered no credible evidence from which a reasonable inference would flow to establish beyond a reasonable doubt that the defendant maintained sufficient legal control of the premises, let alone had control over the contents within the premises, including the statue where the drugs were hidden, the bedrooms or the common areas. *Maldonado*, 2015 IL App (1st) 131874, ¶ 34.

¶ 40 In *Fernandez*, police executed a search warrant for a residence and garage, from which drugs and weapons were recovered. *Fernandez*, 2016 IL App (1st) 141667, ¶ 3. Documents were recovered from the premises that bore the defendant's name but not an address for him. *Fernandez*, 2016 IL App (1st) 141667, ¶ 11. Police recovered keys from the defendant that opened the door to the premises and garage, but they were not used because the officers forced entry. *Fernandez*, 2016 IL App (1st) 141667, ¶¶ 10, 12. Additionally, the arrest report listed a different address for the defendant than the premises searched. *Fernandez*, 2016 IL App (1st) 141667, ¶ 13. We found that the State did not prove the defendant's constructive possession of the drugs where there was no proof of habitation at the premises, and the evidence of items belonging to the defendant on the premises did not establish his control over the premises, but rather a connection to the premises, and there was no evidence placing the defendant at the premises on the date the search warrant was executed and the contraband recovered. *Fernandez*, 2016 IL App (1st) 141667, ¶¶ 21, 22. As such, the State failed to prove that the defendant had control of the premises, nor did it prove knowledge of any hidden contraband. *Fernandez*, 2016 IL App (1st) 141667, ¶ 24.

¶ 41 Finding defendant's arguments unpersuasive and his proffered case law distinguishable, we thus find that the evidence was sufficient to prove that defendant had access to and the ability to maintain control over the storage unit.

¶ 42 2. Search Warrant as Evidence of Guilt

¶ 43 Defendant next contends that the trial court abused its discretion and prejudiced him when it stated that his name on the search warrant was presumptive evidence of his guilt. We disagree.

¶ 44 Defendant did not object to the complained-of error at trial. To preserve an issue for appeal, a defendant must object at trial and raise the issue in his post-trial motion. *People v. Wilson*, 2017 IL App (1st) 143183, ¶ 22. The failure to do so results in forfeiture. *Wilson*, 2017 IL App (1st) 143183, ¶ 22. Defendant concedes that he did not object to the complained-of error at trial, but contends that it is reviewable under plain error because it affects substantial rights.

¶ 45 The plain error doctrine allows a reviewing court to address defects affecting substantial rights if the evidence is closely balanced or if fundamental fairness so requires rather than finding the claims waived. *People v. Woods*, 214 Ill. 2d 455, 471 (2005). A defendant raising a plain error argument bears the burden of persuasion. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 46 To establish plain error, a defendant must first show that a clear or obvious error occurred (T*hompson*, 238 Ill. 2d at 613), and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error (*People v. Naylor*, 229 Ill. 2d 584, 593 (2008)) or that the error was sufficiently grave that it deprived defendant of a fair trial (*People v. Herron*, 215 Ill. 2d 167, 187 (2005)).

¶ 47 In this case, defendant argues that the trial court committed reversible error when it used inadmissible hearsay evidence, specifically his description in the search warrant, as the basis of its finding of guilt. He maintains that the evidence was closely balanced, and the error was so "cumulative as to deny him his right to confrontation, his right to a fair trial and a denial of due process."

¶ 48 The first step in a plain error review is to determine whether the trial court committed error, and the burden is on defendant to establish that an error occurred. *Thompson*, 238 Ill. 2d at 613. Accordingly, we begin by considering whether the trial court improperly used the search warrant for defendant as presumptive evidence of his guilt.

¶ 49 Defendant relies on *People v. Virgin*, 302 Ill. App. 3d 438 (1998) as support for his argument, but that case is factually distinguishable from the case at bar. In that case, police executed a search warrant for 7215 South Claremont in Chicago, searching for cocaine, United States currency, drug paraphernalia and proof of residency. *Virgin*, 302 Ill. App. 3d at 441. The warrant also contained a description of a person to search for: a light-complected black male, 18 to 21 years old, approximately 5 feet 6 inches tall, weighing about 135 pounds. *Virgin*, 302 Ill. App. 3d at 441. During the jury trial, the State was allowed to elicit testimony over the defense objection to the actual contents of the warrant, rather than simply the fact the warrant existed. *Virgin*, 302 Ill. App. 3d at 445. On appeal, this court found that the State relied on the alleged hearsay evidence to substantiate the identity issue and that the evidence was closely balanced. *Virgin*, 302 Ill. App. 3d at 445.

¶ 50 Unlike *Virgin*, here, the State did not solely rely on the search warrant to prove defendant's identity. The officers merely testified that they were executing a search warrant at

defendant's address and that defendant was the target. Officer Pacocha identified defendant in court as the target of the search warrant, and defendant stipulated to his identity as the target of the search warrant during direct examination of the other officers. Defendant cannot now complain of evidence he stipulated to during trial. *People v. Polk*, 19 Ill. 2d 310, 315 (1950); *People v. Ortiz*, 197 Ill. App. 3d 250, 257 (1990).

¶ 51 Additionally, the record does not support defendant's argument that the trial court used this "hearsay evidence" as a presumption of his guilt to support his conviction. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. *People v. Jura*, 352 Ill. App. 3d 1080, 1085 (2004). Statements are not inadmissible hearsay when offered for the limited purpose of showing the course of a police investigation where such testimony is necessary to fully explain the State's case to the trier of fact. *Jura*, 352 Ill. App. 3d at 1085.

¶ 52 In the case at bar, the trial court's statement that "the police went there that night with a warrant for [defendant] and no one else" was made during its recitation of the court's summary of the evidence after closing arguments and before making its ruling. The evidence clearly establishes that the officers were there to execute a search warrant and that defendant was the target of the search warrant. Although other people resided at that address, the evidence shows that defendant was the only person named in the warrant. This is not hearsay used as "presumptive evidence of his guilt," but merely one of the facts surrounding the police's presence at defendant's address. Thus we conclude that the trial court committed no error. In the absence of error, plain error review does not apply and defendant's claim of error is forfeited.

¶ 53 With regard to the trial court's grant of defendant's posttrial motion that inadmissible character evidence was presented by the State to support the weapons charge, we find that the

trial court properly granted defendant's motion. To the extent that defendant suggests there was an inconsistency between the trial court granting his motion on the weapons charge but denying it on the drugs charge, we disagree. Such evidence, namely that defendant had a prior gun conviction tied him to the guns recovered, was inadmissible when a party's character is not in issue and may not be presented until the defendant puts his character in issue by presenting evidence of good character. *People v. Lucas*, 151 Ill. 2d 451, 483-84 (1992). As such, it would have been error for the trial court to use such evidence to convict defendant and the trial court properly reversed its initial finding of guilt where such evidence was presented by the State. As to the drugs charge, we have already concluded that the admission of the search warrant evidence was not inadmissible hearsay and thus was properly admitted.

¶ 54 Thus we conclude that this argument is without merit.

¶ 55 CONCLUSION

¶ 56 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 57 Affirmed.