2019 IL App (1st) 172646-U

No. 1-17-2646

Order filed December 10, 2019.

Second 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. 2017 CR 583
	)	
SHUNTIA HOLLAND,	)	The Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Coghlan concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for possession of cannabis with intent to deliver is affirmed over his contention that the State failed to prove beyond a reasonable doubt that he constructively possessed the cannabis recovered from a house during the execution of a search warrant.

¶ 2 Following a bench trial, defendant Shuntia Holland was found guilty of one count of possession of cannabis with intent to deliver (720 ILCS 550/5(d) (West 2016)) and sentenced to 26 months in prison. Defendant appeals, contending that the State failed to prove beyond a

reasonable doubt that he constructively possessed the cannabis recovered from a house during the execution of a search warrant. For the following reasons, we affirm.

¶ 3 Defendant was charged by indictment with one count of armed habitual criminal (AHC), three counts of unlawful use or possession of a weapon by a felon (UUWF), and one count of possession of cannabis with intent to deliver. Prior to trial, the AHC charge was severed and the State nol-prossed the UUWF charges.[1]

¶ 4 The evidence adduced at trial showed that on December 3, 2016, about 11:40 a.m., members of the Chicago police department executed a search warrant at a house on the 8500 block of South Oglesby Avenue. Officer Marco DiFranco, a 19-year veteran police officer, testified that on the date and time in question, he and other officers went to the address provided in the search warrant. DiFranco acted as an evidence recovery officer. Upon reaching the location, the officers announced their office. After no one responded to their announcement, the officers used force to enter the house.

¶ 5 Upon entering the house, DiFranco saw a living room to the left and an open kitchen straight ahead of him. Two men were seated on a sofa in the living room. Another man was coming out of the "front bedroom" into the kitchen. In court, DiFranco identified defendant as the man who came out of the bedroom. The officers detained all three individuals and, from defendant, recovered an Illinois State Identification card, listing the Oglesby address as his residence. DiFranco identified the card in court.

¶ 6 The officers then searched the residence. From a table located inside a closet in the bedroom that defendant came out of, the officers recovered a coffee container filled with 17 clear

[1]Defendant's AHC and UUWF charges are not at issue in this appeal.

bags of cannabis. In the closet, the officers also found a scale, narcotics packaging, and a safe, containing $1,000 in cash. On the floor of the bedroom, the officers found a slipper with $459 in cash inside of it. The officers also recovered three pieces of mail—a bill from the Illinois Department of Healthcare and Family Services dated November 18, 2016, a bill from advocate Medical Group dated November 21, 2016, and a final notice of annual fee from Kane County Circuit Court dated November 21, 2016—addressed to defendant at the Oglesby residence. DiFranco identified each piece of mail in court.

¶ 7 On cross-examination, DiFranco testified that he was not the first person to enter the house. He acknowledged that none of the officers' reports reflected that he saw defendant exit the front bedroom. The search warrant provided the officers with the suspect's nickname and description, including that he was 25 years old, 5'10" in height, 170 pounds, and had black hair, brown eyes, and medium skin complexion. During the search, DiFranco did not ask defendant if he had a nickname or his age. DiFranco stated that although defendant was bald at trial, he had "grub hair" in a photograph taken of him on the day of the search. Regarding other mail the officers found in the residence, DiFranco stated that he "was only given what was pertinent for the investigation" as determined by the affiant or sergeant at the scene. The officers did not dust the coffee container for fingerprints. In the "back bedroom" of the house the officers found $810 in cash.

¶ 8 Officer Peter Fleming testified that during the execution of the warrant he acted as an entry officer. Prior to transporting defendant to the police station, defendant told Fleming "that he wanted a sweatshirt or jacket from his room and that the guns were his nephew's." Defendant indicated to Fleming that the front bedroom was his. Fleming retrieved a garment from the room and gave it to defendant, who wore the garment when he left the house.

¶ 9 On cross-examination, Fleming clarified that defendant directed him to the front bedroom by saying "that's my bedroom there." Defendant was handcuffed at the time. Pertaining to the outer garment he selected, Fleming explained, "I might have actually carried it to the car with him. I don't recall exactly how he had it or when he was given [it]." When asked what defendant did with the garment, Fleming said that garments often stay outside of the processing room and that officers remove all outer garments prior to photographing suspects. The garment was not inventoried.

¶ 10 Officer Michael Roman testified that at the police station, defendant requested to use the washroom. As Roman escorted defendant there, defendant said, "not verbatim," "my nephew brought them to my house today. I just sell the weed." Roman denied prompting defendant to make this statement.

¶ 11 On cross-examination, Roman said that he believed that defendant made the statement after he had already been questioned by officers. Roman did not ask defendant if he wanted to put the statement into writing or record it, nor did he document the statement in a separate incident report.

¶ 12 The parties stipulated that if called, Martin Palomo, a forensic chemist, would testify that he performed tests on eight of the 17 items recovered and found within a reasonable degree of scientific certainty that they tested positive for the presence of cannabis. The actual weight of the eight items was 31 grams. The estimated weight of the 17 items was 65.8 grams.

¶ 13 Defendant testified that he lived on the 8500 block of South Oglesby Avenue with his mother, father, uncle, niece, and nephew. He described the layout of his residence as consisting of three bedrooms on the first level: one in front, one behind that, and another. His nephew, Keith Boyle, stayed in the front bedroom, while defendant stayed in a basement bedroom. Boyle, who at

the time was 27 years old and went by the nickname "Rah-Rah," was present on the day of the search.

¶ 14 The day before the search, defendant had a conversation with Boyle after he saw a firearm and marijuana in the residence. Defendant told his nephew "to get that stuff up out of mom's house before them people come up in here." Boyle told defendant he was paranoid. When officers entered the residence the next day, defendant recounted that conversation to them.

¶ 15 Defendant denied having any clothing in the front bedroom, stating that he did not ask for a garment from there nor was he given one. He testified that he did not have a conversation with an officer when he went to the bathroom in the police station. Defendant also stated that he did not sell marijuana. On the day of the search, defendant was bald, as he has been for years. Defendant confirmed his prior convictions for driving with a revoked license, aggravated battery to a police officer, and aggravated driving under the influence.

¶ 16 On cross-examination, defendant testified that when the officers found the drugs, they said, "I thought you said there wasn't [any] drugs and guns in the house." Defendant responded, "well, there wasn't supposed to be any." Defendant told the officers the contraband belonged to Boyle, who did not contradict him. The officers did not arrest Boyle. Regarding the mail found in the safe in the front bedroom, defendant explained that his mother keeps all the family members' mail there "because she's scared of identity theft" and of people stealing mail.

¶ 17 In finding defendant guilty of possession of cannabis with intent to deliver, the trial court recognized deficiencies in the evidence, saying, "DiFranco, at times, drift[ed] with tangential answers," and, "This wasn't the best investigation in the world and there were some inconsistencies here." However, the court stated that it still found DiFranco to be credible, and that

cannabis, packaging, and a scale were found in the bedroom from which DiFranco saw defendant exit and Fleming retrieved defendant's garment. The court concluded that this evidence was sufficient for the State to prove defendant constructively possessed the cannabis and he was thus guilty of possession of cannabis with intent to deliver.

¶ 18 Defendant filed motions to reconsider and for a new trial. The trial court denied defendant's motions, and the case proceeded to sentencing.

¶ 19 At sentencing, the trial court distributed a presentence investigation (PSI) report. In aggravation, the State argued that the PSI reflects defendant's 11 prior felony convictions, and that he was on parole at the time of this offense. In mitigation, defense counsel offered that defendant is a working individual who positively contributes to the community, provides for his children, and has a supportive family. Counsel also asked the trial court to take notice of a letter from defendant's employer. In allocution, defendant said, "I apologize about everything, and I hope that you don't hurt me." After hearing these arguments, the court sentenced defendant to 26 months in prison with one year of mandatory supervised release and credit for 130 days served.

¶ 20 On appeal, defendant argues that the State failed to prove beyond a reasonable doubt that he had constructive possession of the cannabis recovered from the house because there was insufficient evidence to establish that he had exclusive control over the cannabis and he did not fit the description of the subject in the search warrant.

¶ 21 In a challenge to the sufficiency of the evidence case, the question on review is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could find all the elements of the crime proven beyond a reasonable doubt. *People v. White*, 2017 IL App (1st) 142358, ¶ 14. It is the trier of fact's responsibility to determine the credibility of witnesses,

weigh testimony, resolve conflicts in evidence, and to draw reasonable inferences therefrom. *People v. Williams*, 193 Ill. 2d 306, 338 (2000). For that reason, we cannot reweigh the evidence and substitute our judgment for that of the trier of fact. *White*, 2017 IL App (1st) 142358, ¶ 21. We will only reverse a conviction where the evidence "is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of [the] defendant's guilt." *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 22 In this case, defendant was found guilty of possession of cannabis with intent to deliver. 720 ILCS 550/5(d) (West 2016). In order to sustain defendant's conviction for this offense, the State was required to prove beyond a reasonable doubt that he had knowledge of the presence of the cannabis, possession or control of it, and intent to deliver. See *id.* Defendant solely contests the sufficiency of the evidence to prove that he possessed the cannabis.

¶ 23 Where, as here, the defendant is not found in actual physical possession of the contraband, the State must prove constructive possession. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. Constructive possession exists where the defendant has: (1) knowledge of the contraband, and (2) immediate and exclusive control over the area where the contraband is found. *Id.* Both knowledge and control are often proved entirely by circumstantial evidence. *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). Knowledge is shown through the 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. *People v. Sams*, 2013 IL App (1st) 121431, ¶ 10. Control is shown where the defendant has the capability and intent to maintain control and dominion over the contraband, even if he lacks personal present dominion over it. *People v. Loggins*, 2019 IL App (1st) 160482, ¶ 47 (quoting

People v. Frieberg, 147 Ill. 2d 326, 361 (1992)). These are both questions of fact and are thus for the trier of fact to resolve. *People v. Schmalz*, 194 Ill. 2d 75, 81 (2000).

¶ 24 Defendant does not dispute his knowledge of the presence of the cannabis. Instead, he argues that the State's evidence failed to establish his control over the cannabis found in the front bedroom.

¶ 25 A defendant's control over the area where the contraband was found gives rise to an inference that he possessed the contraband. *Spencer*, 2012 IL App (1st) 102094, ¶ 17. Control can be established by a defendant's habitation in the premises where contraband is discovered. *People v. Blue*, 343 Ill. App. 3d 927, 939 (2003). "Proof of residency in the form of rent receipts, utility bills and clothing in the closets is relevant to show defendant lived on the premises where narcotics are found and, therefore, controlled them for the purposes of establishing constructive possession of narcotics." *People v. Scott*, 367 Ill. App. 3d 283, 286 (2006).

¶ 26 After viewing the evidence in the light most favorable to the State, we find that a rational trier of fact could conclude that defendant had constructive possession of the cannabis. Stated differently, the evidence presented was sufficient for the trier of fact to infer that defendant had knowledge of the cannabis and controlled the premises where they were discovered. *People v. Alicea*, 2013 IL App (1st) 112602, ¶ 24 (quoting *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003)) (In determining whether constructive possession has been shown, the trier of fact "is entitled to rely on an inference of knowledge and possession sufficient to sustain a conviction 'absent factors that might create a reasonable doubt as to the defendant's guilt.' ")).

¶ 27 In reaching this conclusion, we initially note that defendant's "mere presence in the vicinity of a controlled substance cannot establish constructive possession." *Scott*, 367 Ill. App. 3d at 285.

However, defendant's presence combined with his habitation in the premises allows for the rational inference that defendant exercised requisite control over the premises where the contraband was found. See *Blue*, 343 Ill. App. 3d at 939-40 (finding the State failed to prove constructive possession where there was no evidence that the defendant lived in the premises where the narcotics were found).

¶ 28 Here, during the execution of the search warrant the officers recovered 17 clear bags of cannabis from a coffee container found in a table located inside a closet in the front bedroom of the house. The record shows that: DiFranco testified that defendant came out of that bedroom; defendant's Illinois State Identification card listed the Oglesby address as his residence; three pieces of mail were obtained from that bedroom, dated in November 2016 and addressed to defendant at the Oglesby address; Fleming testified that defendant indicated that the front bedroom was his when asking for an outer garment, and Roman testified that defendant said he sells marijuana. This evidence, and the reasonable inferences therefrom, support the trier of fact's conclusion that defendant was in constructive possession of the cannabis recovered and was thus sufficient to sustain his conviction. See *Spencer*, 2012 IL App (1st) 102094, ¶ 18 (finding the State proved constructive possession of a weapon where the defendant's identification, mail, keys, photographs, and clothing were found in a bedroom containing ammunition and cash and he made two incriminating statements to officers).

¶ 29 Nonetheless, defendant posits that this evidence is insufficient to convict him because there were two other people in the residence at the time of the search and he did not match the description of the suspect provided in the search warrant, nor did the officers attempt to determine if Boyle was that suspect. However, it is a well-settled principle that control can be established even where

others have access to the contraband at issue. *People v. Hill*, 226 Ill. App. 3d 670, 673 (1992) (quoting *People v. Williams*, 98 Ill. App. 3d 844, 849 (1981)) (" 'The law is clear that the exclusive dominion and control required to establish constructive possession is not diminished by evidence of others' access to the contraband.' "). Thus, Boyle's alleged involvement is irrelevant so long as defendant's control is demonstrated, as it was here. See *id.* (finding another's access to the bedroom where contraband was found did not defeat the defendant's constructive possession of it).

¶ 30 Defendant adds that DiFranco's testimony that the contraband was in the front bedroom was "essentially hearsay" because DiFranco was not present when it was discovered, and that defendant's connection to the contraband was not established where his belongings and fingerprints were not recovered from that room. DiFranco testified without challenge that he recovered the contraband from the front bedroom, where it was found and left for him. DiFranco and Fleming testified that they retrieved defendant's mail and outer garment from the front bedroom, both of which evidence his control over the contraband there. See *Spencer*, 2012 IL App (1st) 102094, ¶ 17. Therefore, additional fingerprint evidence was unnecessary. See *People v. Hunley*, 313 Ill. App. 3d 16, 32 (2000) (when the State presents witness testimony, it is not required to provide additional fingerprint evidence to substantiate that testimony).

¶ 31 Finally, defendant argues that Fleming and Roman were "incredible" at trial. He supports his argument by stating that Fleming testified inconsistently regarding whether defendant wore the garment from the front bedroom, and that it would be nonsensical for defendant to make an incriminating statement to Roman when he avoided making one during his police interview. It is the trier of fact's responsibility to determine witness credibility, as it did here. See *Williams*, 193

Ill. 2d at 338. Because we cannot replace our judgment for that of the trial court, defendant's challenges on appeal to the witnesses' credibility are wholly outside of our purview. See *White*, 2017 IL App (1st) 142358, ¶ 21.

¶ 32 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 33 Affirmed.