

2019 IL App (1st) 160901-U
No. 1-16-0901
Order filed January 18, 2019

Sixth 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. 15 CR 4166
)	
MICHAEL WILSON,)	Honorable
)	Raymond Miles,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 *Held:* We reverse defendant's conviction for possession of a controlled substance where the State failed to prove defendant constructively possessed narcotics recovered during the execution of a search warrant.

¶ 2 Following a bench trial, defendant Michael Wilson was convicted of possession of a controlled substance (720 ILCS 570/402(c) (West 2014)), and sentenced to four years' imprisonment. On appeal, defendant contends the evidence was insufficient to show he

constructively possessed a controlled substance. He also challenges various fines and fees. For the following reasons, we reverse defendant's conviction.

¶ 3 Defendant was charged with possession of a controlled substance with intent to deliver. At trial, Chicago police officer Saud Haidari testified that, on February 20, 2015, he was part of a narcotics team executing a search warrant on a residence on the 8200 block of South Saginaw Avenue. The residence consisted of a first floor with two or three bedrooms and a basement level with two bedrooms. When Haidari entered the residence, the officers found three people on the first floor. After clearing that floor, Haidari proceeded with the team to the basement.

¶ 4 The officers announced their office and said they had a search warrant. Two women and two men, including a man Haidari identified as defendant, emerged from the front bedroom in the basement. After detaining the four individuals, Haidari and several officers searched the basement. In the bedroom defendant had exited, Haidari observed men's clothing. Additionally, in that bedroom, Officer Michael Roman alerted Haidari to several items. Haidari observed a magnetic box attached underneath the bed frame. The box contained "one chu[n]k of white rock and an additional nine smaller baggies containing [a] white rock-like substance." Haidari also recovered "several tinfoils empty plastic baggies" from on top of the bed, and a social security card with defendant's name.

¶ 5 In an adjacent room, the officers recovered narcotics paraphernalia, including a cutting agent, steel wool, plastic baggies, and a glass tube. Haidari kept the recovered items in his custody and later inventoried them at the police station.

¶ 6 Officer Roman testified that, during the execution of the search warrant, he searched a bedroom in the basement. When he entered the room, other officers were the only individuals

inside. Roman found the magnetic box attached to the bed frame under the mattress and box spring. The box contained suspected crack cocaine. He notified Haidari about the box and the social security card, which he found on the nightstand next to the bed. Roman acknowledged that, in a photograph of the room where the narcotics were recovered, two women's shoes were depicted.

¶ 7 The parties stipulated that, if called, forensic scientist Michelle L. Etheridge would testify that she received the inventories in this case containing 10 items of suspected cocaine. Etheridge performed tests commonly accepted in the field of forensic chemistry for ascertaining the presence of controlled substance. In her expert opinion, to within a reasonable degree of scientific certainty, one item tested positive for 3.2 grams of cocaine and the remaining untested nine items were of a "chunky substance" having a gross weight of 1.6 grams.

¶ 8 The court found the defendant guilty of the lesser offense of possession of a controlled substance. In finding defendant guilty, the court noted the "nexus" between defendant, his social security card, and the male clothing found in the room, as well as a recovered "male drug pipe." After denying defendant's motion for a new trial, the court sentenced defendant to four years' imprisonment.

¶ 9 On appeal, defendant asserts that the State failed to prove him guilty beyond a reasonable doubt of possession of a controlled substance. Specifically, defendant argues that the evidence was insufficient to show he constructively possessed the cocaine hidden in a bed frame because multiple people resided in the home and the State did not show it was defendant's residence.

¶ 10 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)). In so doing, 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 is required to 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).

¶ 11 Section 402 of the Illinois Controlled Substances Act provides, in pertinent part, that “it is unlawful for any person knowingly to possess a controlled or counterfeit substance or controlled substance analog.” 720 ILCS 570/402 (West 2014). Defendant challenges only the element of possession on appeal. Therefore, we confine our analysis to that particular element.

¶ 12 Possession may be actual or constructive and is often proved with circumstantial evidence. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Circumstantial evidence does not require each link in the chain of circumstances be proven beyond a reasonable doubt; rather, it is sufficient if all the evidence, taken together, satisfies the trier of fact beyond a reasonable doubt that a defendant is guilty. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). It is undisputed in this case that defendant was not found in actual possession of the narcotics. Thus, the State was required to prove he constructively possessed the cocaine.

¶ 13 To prove constructive possession, the State must show that defendant had the intent and capability to maintain control and dominion over the contraband. *Love*, 404 Ill. App. 3d at 788. Such intent and capability may be proved with evidence that defendant had “knowledge of the

presence of the contraband and had immediate and exclusive control over the area where the contraband was found.” *Id.* Knowledge may be inferred from surrounding circumstances, including the defendant’s actions, declarations, or other conduct, which indicate that the defendant knew of the contraband’s presence in the place it was found. *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002); *People v. Smith*, 288 Ill. App. 3d 820, 824 (1997).

¶ 14 Defendant argues that the State failed to meet its burden of proof by failing to present bills or receipts linking defendant to living in that residence and because other people and women’s clothing were also present in the room where the narcotics were recovered. We agree. Although defendant was present in the room at the time of the search and his social security card was also found in the room, we find these facts alone insufficient to demonstrate that he constructively possessed the recovered narcotics. Indeed, this court has previously found the State failed to prove constructive possession in cases based on much stronger evidence linking the defendant to the residence where contraband was recovered. See *e.g.*, *People v. Fernandez*, 2016 IL App (1st) 141667, ¶¶ 20-22 (finding the evidence insufficient to prove constructive possession of contraband recovered in a residence, despite keys to the residence being found on the defendant and the presence of male clothing, the defendant’s passport in a dresser, the defendant’s insurance cards on a dresser, and framed photographs of defendant throughout the residence).

¶ 15 In this case, aside from defendant, there were three other individuals in the room at the time police arrived to execute the search: one man and two women. Additionally, there were three other individuals upstairs. The narcotics were recovered from under the bed frame. Officer Roman testified that when he searched the room, only police officers were present. Thus, there

was no testimony that defendant was near the narcotics at all. Aside from defendant's social security card, nothing else presented at trial connected defendant to the room or residence, such that would prove defendant had control and dominion over the contraband. Based on the little evidence before us, defendant was no more connected to the room or narcotics than the other three individuals also present on the day in question. Both men's clothing and women's shoes were present in the room, yet none of the items were specifically linked to defendant. While the evidence suggests that someone at the residence was in possession of cocaine, there was nothing to demonstrate that defendant had control over the premises or possessed the narcotics.

¶ 16 Moreover, the officers testified that the narcotics were hidden under the bed, which, without additional information, undermines any inference that defendant knew of its presence. There was no testimony that defendant was observed near the narcotics, hiding them, or reaching for them, which would indicate his knowledge of their presence. Without more, the evidence in this case failed to establish that defendant constructively possessed the narcotics and was, therefore, "so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Givens*, 237 Ill. 2d at 334.

¶ 17 Accordingly, we reverse defendant's conviction for possession of a controlled substance. In light of this finding, we need not address defendant's remaining challenges to various fines and fees imposed by the trial court.

¶ 18 Reversed.