

No. 1-17-0768

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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. 16 CR 1784
)
 EQUNNE KING,) Honorable
) William H. Hooks,
 Defendant-Appellant.) Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to establish that defendant constructively possessed firearms and ammunition in a bedroom he controlled.

¶ 2 Following a bench trial, defendant Equenne King was convicted of four counts of unlawful use or possession of a weapon by a felon (UUWF) and sentenced to concurrent terms of four years in prison. He appeals, arguing that the State failed to prove his constructive possession of the firearms and ammunition beyond a reasonable doubt. We affirm.

¶ 3 Defendant was charged by indictment with four counts of UUWF (720 ILCS 5/24-1.1(a) (West 2016)) based on his alleged possession of three firearms and ammunition. On each count, the State sought to sentence defendant as a Class 2 offender for having been previously convicted of aggravated unlawful use of a weapon.

¶ 4 At trial, Chicago police officer Michael Callahan testified that, at approximately 9:45 a.m. on January 11, 2016, he and other officers executed a search warrant for the first floor and basement of a two-flat apartment building located in the 2600 block of West Warren Boulevard. Inside, Callahan found a man, baby, and woman on the first floor. Defendant was sleeping in a bedroom in the back of the basement. He was the only person in the basement. Callahan detained defendant, who “immediately” asked him to retrieve a medical boot from a closet that was within five feet of the foot of the bed. Callahan gave the boot to defendant and took him upstairs.

¶ 5 Callahan then searched the basement, which contained multiple bedrooms. In the room where defendant had been sleeping, Callahan found three pieces of mail addressed to defendant at the Warren address. The mail is included in the record on appeal.

¶ 6 One piece of mail, postmarked November 4, 2015, was from the Illinois Department of Healthcare and Family Services. It is a letter notifying defendant that his request to rent a wheelchair from September 2015 to March 2016 was approved. A second envelope, marked “PERSONAL AND CONFIDENTIAL,” contained an employment background check for defendant that was requested and completed on January 6, 2016. The final envelope, postmarked January 7, 2016, contained a handwritten letter sent from prison by Tyrell Harshawn, who was later identified as defendant’s cousin. Based on the content, it is apparently part of continued

correspondence between defendant and Harshawn during the latter's incarceration. Among other topics, the letter discussed defendant's perception that Harshawn was interested in his girlfriend, as well as Harshawn's plans upon his release.

¶ 7 Inside the nightstand, which was a "few feet" from the bed where defendant was sleeping, Callahan found a gun box containing a semiautomatic .45 caliber handgun loaded with 11 live rounds. The box also contained two .40 caliber magazines with a total of 18 live rounds, and a blue plastic bag of 26 live .40 caliber rounds.

¶ 8 Callahan also recovered an AK-47 that was "sticking out" of a book bag in the closet. He described the firearm as a rifle with a pistol grip that was "cut down" and missing "the back shoulder part." Two magazines containing 49 rounds of 7.62 millimeter rifle ammunition were in the same compartment of the book bag as the AK-47. The front pocket of the bag contained a .40 caliber semiautomatic Glock handgun and an extended magazine with 20 additional .40 caliber rounds.

¶ 9 Callahan took photographs of the bedroom and the weapons, which are included in the record on appeal. Notably, one photograph shows the proximity of the nightstand and bed, and another shows the handle and back of the AK-47 protruding from the book bag.

¶ 10 Callahan then took defendant to a police station, where he read him the *Miranda* rights. Afterwards, defendant admitted that he "knew about" the .45 caliber handgun in the nightstand, but denied knowledge of the two firearms in the closet.

¶ 11 On cross-examination, Callahan stated that the book bag was recovered from the top shelf of the same closet where he retrieved defendant's medical boot. He acknowledged that the search

warrant for the apartment was obtained based on an informant's tip that Romel Green¹ had a .40 caliber semiautomatic handgun in the residence. Romel was not present when the warrant was executed, but police found "proof of residence" for him inside the apartment. On redirect examination, Callahan testified that the evidence of Romel's proof of residency was recovered from the kitchen counter on the first floor.

¶ 12 The State entered a certified copy of defendant's 2013 conviction for aggravated unlawful use of weapon, and rested. The court denied defendant's motion for a directed finding.

¶ 13 Defendant testified that he did not live at the Warren address at the time of his arrest, but had been "paroled there" when he was released from prison in 2014. He explained that his grandmother, Emma Green, lived in the residence with two of his cousins, Romel and Devin Green. Defendant stated that he still received mail there at the time of trial because he "never got a chance to switch [his] address." About 20 or 30 minutes before his arrest, he received a letter that Harshawn sent him from prison.

¶ 14 On the morning of the search, defendant went to visit his grandmother, but decided to take a nap in Romel's room upon finding that she was not home. A police officer woke him, gave him his medical boot, and escorted him upstairs before searching the basement. Five to ten minutes later, the officer returned and told him that he "was going in for questioning." At the police station, defendant told Callahan that he did not live in the apartment and "wasn't aware of any weapons being there."

¶ 15 On cross-examination, defendant explained that he visits his grandmother's house "[e]very two or three days," but never stays there. He testified that he put Harshawn's letter on a

¹ Because Romel Green has the same surname as others mentioned in this order, we will refer to him by his first name.

table in the living room, but “was told” that the police recovered his mail from the basement bedroom. Defendant was “not sure” if he saw the letter before the police arrived because he was asleep. He slept for approximately 30 minutes before he was awakened by a police officer.

¶ 16 In rebuttal, Chicago police detective Timothy Adams testified that he and another detective interviewed defendant at a police station on January 11, 2016. After being advised of the *Miranda* rights, defendant told Adams that he sometimes “stay[ed]” at the Warren address in “the bedroom [i]n which they found him.”

¶ 17 On cross-examination, Adams testified that, when he asked defendant if he “lived” in the apartment, defendant responded that he “stay[ed]” there “off and on.” Defendant explained to Adams that “stays” means “[s]leeping there.” Adams acknowledged that his report mentioned that defendant “stay[ed]” at the Warren address, but did not say that he “sleeps” there. He did not ask defendant how long he had been there before the police arrived.

¶ 18 The trial court found defendant guilty on all four counts of UUWF. In so finding, the court opined that the State proved that defendant lived in the apartment beyond a reasonable doubt because he was found sleeping there next to mail bearing his name and the address. The court also found that, based on the “extremely personal” and important nature of the mail, it was unlikely that it would not have been sent to his current address. With respect to defendant’s knowledge of the firearms, the court found it “significant” that he was “sleeping virtually in the middle of the weapons” and admitted knowledge of the .45 caliber handgun found in the nightstand.

¶ 19 The court denied defendant’s motion to reconsider and, following a hearing, sentenced him to concurrent terms of four years in prison for each count of UUWF.

¶ 20 Defendant now appeals, arguing that the State failed to prove him guilty beyond a reasonable doubt because it did not prove that he constructively possessed the firearms and ammunition. More specifically, he contends that the State did not prove that he had either (1) immediate and exclusive control over the weapons, or (2) knowledge of their presence.

¶ 21 When, as here, a defendant challenges the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *People v. Bradford*, 2016 IL 118674, ¶ 12. It is not the function of the reviewing court to retry the defendant or to substitute its judgment for that of the trier of fact. *Id.* Instead, the trier of fact's decisions regarding witness credibility, the resolution of conflicting testimony, and which of competing inferences to draw from the evidence are afforded great deference. *People v. Gray*, 2017 IL 120958, ¶ 35. Additionally, all reasonable inferences must be drawn in the State's favor, regardless of whether the evidence was direct or circumstantial. *People v. McLaurin*, 2018 IL App (1st) 170258, ¶ 18. Accordingly, a conviction will not be reversed unless the evidence was "so unsatisfactory, improbable, or unreasonable" that it leaves a reasonable doubt of the defendant's guilt. *Id.* ¶ 19.

¶ 22 In order to convict defendant of UUWF as charged, the State was required to prove that, after having been convicted of a felony, he knowingly possessed on his person or in his abode any firearm or ammunition. 720 ILCS 5/24-1.1(a) (West 2016). Here, defendant challenges only the element of possession.

¶ 23 Possession may be actual or constructive. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. To establish constructive possession, the type at issue in the present case, the State must

prove that a defendant (1) exercised immediate and exclusive control over the area where the contraband was found, and (2) had knowledge of the presence of the contraband. *Id.* As direct evidence of constructive possession is rare, it is usually proved through entirely circumstantial evidence. *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 23.

¶ 24 Control is established by a showing of the defendant's intent and capability to exercise dominion over the area where contraband was found. *People v. Jackson*, 2019 IL App (1st) 161745, ¶ 27. Proof that the defendant inhabits the premises is sufficient evidence of control to establish constructive possession. *Spencer*, 2012 IL App (1st) 102094, ¶ 17. The fact that others also have access to the location does not diminish the defendant's constructive possession. *Jackson*, 2019 IL App (1st) 161745, ¶ 27. Instead, multiple people may share immediate and exclusive control of an area so long as they all share the power and intention to exercise control over it. *People v. Schmaltz*, 194 Ill. 2d 75, 82 (2000).

¶ 25 A defendant's knowledge of contraband may be inferred where it is found in an area under his control. *People v. Bogan*, 2017 IL App (3d) 150156, ¶ 29. The knowledge requirement may also be satisfied by any acts, declarations, or other conduct that give rise to an inference that the defendant knew about the presence of the contraband. *Spencer*, 2012 IL App (1st) 102094, ¶ 17.

¶ 26 Here, defendant first argues that the State failed to prove that he had immediate and exclusive control over the basement bedroom because he did not live in the apartment and was asleep when the search warrant was executed. However, the evidence established defendant's habitation in the apartment, which may be sufficient evidence of control. See *Maldonado*, 2015 IL App (1st) 131874, ¶ 29. According to Adams, whom the trial court found credible, defendant

admitted that he stayed in the apartment “off and on” and slept in the bedroom where the weapons were found when he did so. On the morning of the search, defendant was asleep in that very bedroom. Moreover, despite defendant’s claim that Adams’s testimony was the “sole evidence” connecting him to the premises, defendant’s own testimony established that he was paroled to the apartment in 2014, was a frequent visitor of family members who lived there, and still received mail there at the time of his trial. Although defendant testified that he did not live in the apartment at the time of his arrest, the court was free to decide which testimony to credit and which to discredit. *People v. Logan*, 352 Ill. App. 3d 73, 81 (2004).

¶ 27 Additionally, mail bearing defendant’s name and the Warren address was present in the same bedroom as the weapons. Mail may be sufficient to establish residency, especially where defendant is present and the mail is “official business” rather than “a junk mail solicitation.” See *Maldonado*, 2015 IL App (1st) 131874, ¶¶ 28-29. This was the case here. We agree with the trial court that the nature of the mail in question is significant. None of the three pieces were “junk mail,” and two of them were postmarked within a week of the search. The oldest envelope was postmarked slightly more than two months before the incident. One letter concerned defendant’s procurement of medical equipment, and another, marked “PERSONAL AND CONFIDENTIAL,” involved a background check connected to defendant’s search for employment, both of which are clearly important topics. The third letter was part of continued correspondence with a family member concerning, as the trial court put it, “extremely personal” subjects. Viewing the evidence in the light most favorable to the State, it was reasonable for the trial court to infer that defendant would have ensured the recovered mail was sent to his current address. Thus, based on defendant’s habitation of the apartment generally and the basement

bedroom specifically, a rational trier of fact could find that defendant exercised immediate and exclusive control of the area in which the weapons were found.

¶ 28 Defendant nevertheless argues that, although he was present in the bedroom, he lacked control because (1) “[a]ny other adult in the home could have walked in the bedroom while he was asleep,” and (2) the search warrant indicated that Romel, not defendant, was in possession of the .40 caliber handgun that was ultimately found in the book bag. This argument misconstrues the concept of immediate and exclusive control. As this court explained in *Bogan*,

“Though frequently recited in illustrating the control component of constructive possession, the term ‘exclusive’ tends to be misleading. It is well-settled that—perhaps counterintuitively—more than one person may share ‘exclusive’ control over an object or area. [Citation]. Consequently, whether some other person in addition to defendant also had control of or access to the [area where contraband was found] would not undermine the State’s ability to prove control.” *Bogan*, 2017 IL App (3d) 150156, ¶ 31 n.3.

Thus, the fact that there were other adults in the apartment or that an informant believed Romel, who was not present, was the owner of one of the firearms does nothing to diminish defendant’s control over the bedroom and weapons. It is also of no consequence that defendant was asleep, as this court has found constructive possession even where the defendant was not present at all while other adults had access to the contraband. See *People v. McCarter*, 339 Ill. App. 3d 876, 877-78 (2003). Additionally, we note that defendant was the only person present in the entire basement, and claimed to have only slept for 30 minutes before the police arrived. This weakens defendant’s suggestion that someone could have placed the weapons in the bedroom while he was sleeping, and, in any case, the trial court was not required to raise every conceivable

hypothesis of innocence to the level of reasonable doubt. *People v. Campbell*, 146 Ill. 2d 363, 380 (1992).

¶ 29 As a final matter concerning defendant's control, we find his reliance on *People v. Tate*, 2016 IL App (1st) 140619, and *People v. Adams*, 242 Ill. App. 3d 830 (1993), misplaced. In both of those cases, this court found that the defendants' mere presence and knowledge of contraband in a home were insufficient to establish constructive possession because there was no evidence that they had control over the premises. *Tate*, 2016 IL App (1st) 140619, ¶ 24; *Adams*, 242 Ill. App. 3d at 832. This is inapposite to the present case, where there was ample evidence showing defendant's control over the basement bedroom, including his statement that he slept there "off and on." Thus, the State satisfied the control aspect of constructive possession.

¶ 30 Defendant next argues that the State failed to prove that he had knowledge of the recovered weapons and ammunition.

¶ 31 With respect to the .45 caliber handgun found in the nightstand, defendant asserts that his statement to Callahan that he "knew about" the firearm is ambiguous, and contends that it does not mean that he knew it was in the bedroom. However, it is the trier of fact's role to resolve ambiguities in the testimony. *People v. Frazier*, 2016 IL App (1st) 140911, ¶ 16. The trial court construed defendant's statement to mean that he knew the firearm was in the nightstand, and we cannot say that the court's interpretation was unreasonable. We also note that some of the ammunition, on which one UUWF count was based, was in the same gun box in the nightstand. Thus, a rational trier of fact could infer that, if defendant knew about the firearm, he would know about that ammunition as well.

¶ 32 As for the guns and ammunition in the closet, we likewise find that there was sufficient evidence of defendant's knowledge. Where, as here, contraband is found in a room under the defendant's control, the trier of fact may infer that he had knowledge of it. *Bogan*, 2017 IL App (3d) 150156, ¶ 29. Additionally, the closet where the guns were found was just four to five feet from defendant's bed and contained the medical boot that he apparently needed to walk at the time. Callahan testified that the AK-47 was visibly "sticking out" of a book bag in the closet, which was corroborated by a photograph entered into evidence. The same book bag also contained additional ammunition and the .40 caliber handgun. Thus, viewing the evidence in the light most favorable to the State, it was reasonable to infer that defendant had knowledge of all the firearms and ammunition recovered from the bedroom.

¶ 33 In sum, the evidence and reasonable inferences drawn therefrom support the trial court's findings that defendant had control over and knowledge of the firearms and ammunition found in the bedroom in which he slept. Accordingly, the judgment of the trial court is affirmed.

¶ 34 Affirmed.