2020 IL App (1st) 181470-U

No. 1-18-1470

November 4, 2020

Third 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. 17 CR 9795
	)	
JOHNNIE WILLIAMS,	)	Honorable
	)	Timothy J. Joyce,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices McBride and Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for possession of more than 15 grams of heroin affirmed where the evidence established that he constructively possessed the heroin found in a van parked near his grandmother's house.

¶ 2 Following a bench trial, defendant Johnnie Williams was found guilty of possession of a controlled substance (15 grams or more but less than 100 grams of a substance containing heroin) (720 ILCS 402(a)(1)(A) (West 2016)) and possession of a controlled substance (between 1 and 15 grams of cocaine) (720 ILCS 402(c) (West 2016)) and sentenced to concurrent terms of six

months' in the Cook County jail. On appeal, defendant argues his conviction for possession of more than 15 grams of heroin should be reduced to possession of less than 15 grams of heroin because the State failed to prove beyond a reasonable doubt that he constructively possessed the 15.2 grams of heroin found under the passenger seat of an unlocked minivan which formed the basis for the conviction. We affirm.

¶ 3 Defendant was charged with possession with intent to deliver heroin (15 grams or more but less than 100 grams) as well as possession with intent to deliver heroin (1 gram or more but less than 15 grams) and cocaine (1 gram or more but less than 15 grams; and, less than 1 gram) within 1000 feet of any school. At a pretrial motion to suppress hearing, Chicago police officer Jason Bala testified that on June 7, 2017, he went to a single-family residence on North Francisco Avenue in Chicago in order to execute a search warrant related to narcotic sales from that address. The front door was ajar and Bala saw defendant sitting in a chair through the wrought iron security door. Bala informed defendant that the police had a search warrant for the house, opened the door, and detained him. Defendant's grandmother and her sister were also in the house. Bala stayed with defendant while the house was secured.

¶ 4 Bala then had "a brief conversation" with defendant, who informed him "he had some work on his person." Bala reached into defendant's front right pocket and recovered a Ziploc bag containing suspected crack cocaine, another containing suspected heroin, and a metal key. Defendant told Bala he did not want the police to destroy his grandmother's house, so he directed Bala to a bedroom in the basement. Inside the bedroom, Bala found a box containing "numerous baggies that were empty, two bottles of domen, which is a cutting agent for heroin, a digital scale and a strainer." After Bala returned upstairs with the items, defendant informed him "there was

also work" in a white GMC minivan parked "adjacent" to the residence. Bala understood the term "work" was street terminology for narcotics. Defendant informed Bala "[t]he work is in the van underneath the passenger seat." When defense counsel asked whether defendant said it was his work, Bala stated "I believe he said, 'It was my' – he said, 'My work'—if I'm not mistaken, I think he said 'the work is in the van.' "

¶ 5 Bala did not have a warrant for the van and did not attempt to get a warrant at that time. Nobody gave Bala permission to search the van. The van was parked in a vacant lot to the south of the building. Officer Travalos searched the van and recovered narcotics in "the same package" that was also found on defendant, which Bala described as a "distinctive type of packaging." Bala indicated he "would have to look at the case report to look at the exact logos in the baggies," but they were the "same size Ziploc bags with the same logos or the same colors on them."

¶ 6 Defense counsel showed Bala a copy of the case report, which Bala had created. After reviewing it, Bala stated the case report identified "the said bags were identical to the ones that [defendant] had on his person," but did not identify what the identical features were. From the van, the officers recovered "a Ziploc bag containing numerous smaller Ziploc bags of heroin and another plastic bag containing smaller Ziploc bags of crack cocaine."

¶ 7 On cross-examination, Bala stated the key he recovered from defendant's pocket fit the front door of the residence in the search warrant. Defendant pointed to the white van in the vacant lot next to the house, and Bala directed Travolos to search it. Bala ran the registration of the van and discovered the owner of the van was a person named "Womacx," not defendant, and the van had been impounded. The door to the van was closed but unlocked when Travalos searched it.

¶ 8 On redirect examination, Bala testified that defendant did not say what quantity of drugs was in the van or what kind of drugs they were, and did not tell Bala he put the drugs in the van or that they belonged to him. Bala was unable to contact the owner of the van to discover how it came to be parked in the vacant lot adjacent to the Francisco residence.

¶ 9 The court itself questioned Bala regarding what specifically he discovered in defendant's pocket when he first entered the house. Bala stated he found "one plastic bag containing * * * nine bags of crack cocaine and also one plastic bag containing six individuals of black bags of suspect heroin." The "work" in the van was crack cocaine and heroin, with the packaging of the narcotics similar to what was found on defendant. Defendant volunteered to Bala that he should search the basement of the Francisco home, and volunteered information regarding the narcotics in the van.

¶ 10 The court denied defendant's motion to suppress evidence. In ruling, the court stated it "believe[d] Officer Bala's testimony," and found it understandable and to defendant's credit that defendant did not want "the police to rip up his grandmother's apartment looking for the contraband that was sought by the police pursuant to the terms of the warrant." The court noted that defendant's "reference to the van, his knowledge regarding its location, his claim that it contained, quote, work, would certainly indicate that he had some type of interest in the van * * * that gave him dominion and control over the van such that [the court] believe[s] that he had an expectation of privacy in the van." Nevertheless, the court found that Bala had probable cause to search the van, because his understanding of the term "work" referred to narcotics, and his fellow officers were able to search the van without a warrant pursuant to the automobile exception to the warrant requirement.

¶ 11 The case proceeded to trial, and the parties continued by way of stipulation. The parties stipulated that the court could consider the testimony of Officer Bala from the motion to suppress hearing. The parties stipulated that the suspect cocaine and heroin recovered from defendant and from the van was inventoried by the Chicago Police Department. An expert in the field of forensic chemistry would testify that testing of the substances showed the items recovered from the van contained 1.1 grams of cocaine and 15.2 grams of heroin, and the items recovered from defendant's pocket contained 0.1 gram of cocaine and 1.1 grams of heroin.

¶ 12 Defendant moved for a directed finding. The court found no evidence regarding the element that the events took place within 1,000 feet of a school, "so those allegations of Counts 2, 3, and 4 are easily dealt with." Otherwise, the court denied defendant's motion.

¶ 13 Defendant testified that on June 7, 2017 he was at the Francisco residence because he was buying cigarettes from his grandmother. Through the front window, he saw his three cousins with Officer Bala. Police officers had called his cousins outside the gate in order to search them. Defendant told his grandmother that police officers were at the house when "the police" came to "knock her door down, fin (*sic*) to raid her house." Defendant did not let the police into the house, but Bala entered 10 to 15 minutes later. The officers detained defendant. The officers asked "if anything in this house," and defendant "kept telling them no it what'n (*sic*) in there."

¶ 14 Defendant did not have a key to the house. His grandmother or uncle would open the door to let him in whenever he visited the house. Defendant denied being responsible for the domen, scale, sifter, and packaging found in the basement. Officers did not find drugs on defendant's person or in the house. Defendant stated the van that the police searched belonged to his uncle and

was "four houses down where they went to." Defendant did not know drugs were in the van, did not tell the police drugs were in the van, and had not been selling drugs.

¶ 15 On cross-examination, defendant stated his uncle was in his room in the basement at the time police arrived at the house. The officers "didn't tear the house up" when they detained defendant. Defendant knew where his uncle's van was parked but did not know it contained drugs. Defendant described the van as "broke down" and "right there for the longest [*sic*]." The court allowed defendant to reopen direct examination for defendant to testify that he had been convicted of aggravated unlawful use of a weapon in 2015.

¶ 16 In closing, defendant argued that the State did not meet its burden because the State had not presented enough evidence that the drugs in the van belonged to him. He argued that, even if Officer Bala was credible, Bala still did not recall the identifying features of the narcotics packaging found in the van, challenging Bala's conclusion they came from the same source as the narcotics on defendant's person. Defendant argued his knowledge of drugs in the van did not necessarily prove they were his drugs, and the State impermissibly attempted to conflate control of the drugs with knowledge about them. Additionally, defendant argued he did not have a key to the van, although the State presented evidence that he did have a key to his grandmother's house.

¶ 17 The court found defendant guilty of possession of a controlled substance on all counts. It found the State did not prove defendant possessed the narcotics with the intent to deliver or that he possessed the drugs within 1,000 feet of a school. The court found Bala testified credibly, and defendant did not testify in a truthful or credible manner. It found defendant directed Bala's attention to the "work" in the van and, while the van was not registered to defendant, "he did have knowledge of the van, knowledge of the work or contraband or narcotics inside the van and he had

dominion and control over it." The court found the door of the van was open, regardless of whether defendant had a key to it. The court believed defendant made the decision to cooperate with the police so that they did not "tear apart" his grandmother's home. The court merged count 2 (1 gram or more but less than 15 grams of heroin) into count 1 (15 grams or more but less than 100 grams of heroin) and count 4 (less than 1 gram of cocaine) into count 3 (1 gram or more but less than 15 grams of cocaine).

¶ 18 The court denied defendant's motion for a new trial, and stated it was "not a close case regarding the search of the van because of the probable cause that existed when [defendant] admitted to the police that he had work in the van" which the officers knew to mean narcotics. The court sentenced defendant to concurrent terms of six months in the Cook County jail.

¶ 19 Defendant argues on appeal that his conviction for possession of more than 15 grams of heroin should be reduced to possession of less than 15 grams of heroin because the State failed to prove beyond a reasonable doubt that he constructively possessed the heroin found under the front passenger seat of the unlocked minivan.

¶ 20 The standard of review in challenging the sufficiency of the evidence is "whether, 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. Belknap*, 2014 IL 117094, ¶ 67 (quoting *People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The trier of fact, here the trial judge, has the responsibility to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. *People v. Brown*, 2013 IL 114196, ¶ 48. Therefore, this court will not retry the evidence or substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or credibility of witnesses. *Id*. A reviewing

court will not reverse a criminal conviction unless the evidence is "unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). For the following reasons, we find the evidence sufficient to support defendant's conviction.

¶ 21 To support a conviction for possession of a controlled substance, the State must prove that defendant had knowledge of the presence of the narcotics, here the 15.2 grams of heroin found in the van, and that the narcotics were in defendant's immediate and exclusive control. 720 ILCS 570/402(a)(1)(A) (West 2016); *People v. Tates*, 2016 IL App (1st) 140619, ¶ 19. Possession may be either actual or constructive. *People v. Terrell*, 2017 IL App (1st) 142726, ¶ 18. Defendant was not found in actual physical possession of the contraband at issue in this appeal, so the State must prove that he had constructive possession. See *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. Evidence that a defendant knew narcotics were present and exercised control over them establishes constructive possession. *People v. Besz*, 345 Ill. App. 3d 50, 59 (2003). Constructive possession is often shown entirely by circumstantial evidence. *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 23. "The trier of fact is entitled to rely on an inference of knowledge and possession sufficient to sustain a conviction absent other factors that might create a reasonable doubt as to the defendant's guilt." *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003).

¶ 22 Viewing the evidence in the light most favorable to the State, we find a rational trier of fact could find beyond a reasonable doubt that defendant constructively possessed the heroin found in the van. Officer Bala testified that, when he arrived at the residence, defendant told Bala he had "work" on his person. Bala knew work meant narcotics. When Bala then searched defendant's person, he recovered "one plastic bag containing * * * nine bags of crack cocaine and also one

plastic bag containing six individuals of black bags of suspect heroin," corroborating defendant's statement that he had narcotics on him. Bala also discovered a metal key to defendant's grandmother's house in defendant's pocket. Because defendant did not want police to destroy his grandmother's house in executing the drug search warrant, he directed Bala to a bedroom in the basement. In that bedroom, the police discovered narcotics paraphernalia including "numerous baggies that were empty, two bottles of domen, * * * [and] a digital scale and a strainer."

¶ 23 Defendant then directed Bala to a van parked in an empty lot next to the residence, which he said contained more "work" under the front passenger seat. In the van, officers discovered the heroin at issue in this appeal, as well as crack cocaine. Bala testified both drugs were in the "same size Ziploc bags with the same logos or the same colors on them" as those found on defendant. A rational trier of fact could reasonably infer from defendant's possession of packaged narcotics on his person, which he described as "work," and knowledge of identically packaged "work" in the unlocked "broke[n] down" van next door to the house to which defendant had a key that defendant had constructive possession of the narcotics in the van.

¶ 24 Nevertheless, although defendant concedes the evidence was sufficient to prove he had knowledge of the heroin found in the van, he argues the evidence was insufficient to prove his constructive possession of that heroin. Defendant argues this court should reduce his Class 1 conviction for possession of the 15.2 grams of heroin found in the van to Class 4 possession of less than 15 grams of heroin, because the State failed to prove defendant had immediate and exclusive control of the van. Defendant argues that he did not own the van or have control of car keys to the van, and the State never presented any evidence that defendant had possessions inside the van or was seen entering or exiting the van. He claims that no forensic evidence connects him

to the heroin, and the only evidence connecting him to the heroin was Bala's unclear, uncorroborated testimony that defendant said the drugs belonged to him. Defendant also questions the credibility of Bala's claim that the packaging of the heroin recovered from the van was the same as that of the items recovered from defendant's person. He argues the State presented no other evidence that the packaging of the heroin in the van was distinct or recognizable as the same packaging of the heroin on defendant's person.

¶ 25 Initially we note defendant argued these points in his closing argument at trial, in particular that the State was attempting to conflate defendant's knowledge of the narcotics with his control over the narcotics. The trial court observed the testimony of the witnesses, heard the parties' stipulations, and considered these same arguments and rejected them. It specifically found Bala credible, and defendant not credible. We defer to the trial court's judgment regarding Bala's credibility. See *Brown*, 2013 IL 114196, ¶ 48.

¶ 26 To that point, defendant's argument regarding the State's evidence concerning the packaging of the narcotics is not persuasive. Bala testified that he noted in his case report that the packaging of the narcotics found on defendant's person and in the van were "identical." The testimony of a single witness, if positive and credible, is sufficient to convict, even if contradicted by defendant. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). The State is not required to present corroborating physical evidence at trial where a single credible eyewitness can sustain a conviction. *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23. Again, the trial court found Bala credible, and we defer to that determination. *Brown*, 2013 IL 114196, ¶ 48. Thus, Bala's testimony, standing alone, is sufficient support the State's contention that the packaging was identical. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 27 Defendant also argues that Bala did not credibly testify that defendant informed him that the narcotics in the van belonged to him, and never "confronted" defendant with the drugs in the van. Despite defendant's contentions, the court considered Bala's testimony credible despite his words regarding whether defendant specifically stated the heroin in the van was "his work" or "the work." Minor inconsistencies in testimony within one witness's testimony may affect the weight of the evidence but do not automatically create reasonable doubt of guilt. *People v. Corral*, 2019 IL App (1st) 171501, ¶ 85. "[I]t is for the fact finder to judge how flaws in part of the testimony affect the credibility of the whole." *People v. Cunningham*, 212 Ill. 2d 274, 283 (2004). Additionally, even discounting any alleged errors in Bala's testimony or lack of evidence police ever "confronted" defendant with the contraband, sufficient evidence existed to find defendant constructively possessed the heroin in the van.

¶ 28 Proceeding to the crux of defendant's argument, he challenges the evidence establishing his exclusive control of the van, noting his testimony that his uncle owned the van and the State presented no evidence defendant had access to the van. First, in order to prove constructive possession of narcotics, the State was not required to show defendant's control over the location where the narcotics were discovered, but rather that defendant intended to control the narcotics themselves. See *Tates*, 2016 IL App (1st) 140619, ¶ 20 (" 'Where narcotics are found on premises that are *not* under the defendant's control, defendant's control of the premises is not dispositive. Rather, it is defendant's relationship *to the contraband* that must be examined.' ") (emphasis in original) (quoting *People v. Minniweather*, 301 Ill. App. 3d 574, 578 (1998)). Even crediting defendant's testimony that the van belonged to his uncle, defendant also testified that the van was "broke down" in that lot next to his grandmother's house "for the longest" time. Further, the police

found the van to be unlocked when they searched it. These facts support the inference that defendant had access to the van and the contraband inside of it.

¶ 29 Additionally, even if we were to credit defendant's testimony that the van and box of paraphernalia in the bedroom in the basement belonged to his uncle, the State also presented evidence that defendant had heroin on his person that was identically packaged to the heroin found in the van, and he knew exactly where the paraphernalia and narcotics were located. At most, this creates conflicting inferences. While it is possible that defendant's uncle or some third party solely intended to control the narcotics in the van, it is equally arguable that defendant himself intended to control those narcotics. *People v. Newton*, 2018 IL 122958, ¶ 27 (" 'The inference to be drawn [from the evidence] need not be the only conclusion logically to be drawn; it suffices that the suggested inference may be reasonably drawn therefrom' ") (quoting Michael H. Graham, Cleary and Graham's Handbook of Illinois Evidence § 401.1, at 147 (9th ed. 2009)).

¶ 30 Here, defendant had a key to his grandmother's house, which indicated he had access to the house regularly. He also had knowledge of where the narcotics were hidden in the van parked near the house, and had identically packaged narcotics on his person. Even if another inference were possible, the trial court drew the reasonable inference that the narcotics in the van were under the control of defendant. We will not substitute our judgment for that of the trial court regarding this inference. *Brown*, 2013 IL 114196, ¶ 48.

¶ 31 Taking the evidence in a light most favorable to the State, we find a rational trier of fact could have found defendant constructively possessed the 15.2 grams of heroin found in the van. Accordingly, we affirm the trial court's judgment finding defendant guilty of possession of a controlled substance (15 grams or more but less than 100 grams of a substance containing heroin).

¶ 32 Affirmed.