

No. _____

18-9612

IN THE
SUPREME COURT OF THE UNITED STATES

Gregory Bayford
(Your Name)

— PETITIONER

vs.

People of the State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

APPELLATE COURT OF ILLINOIS FIRST DISTRICT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

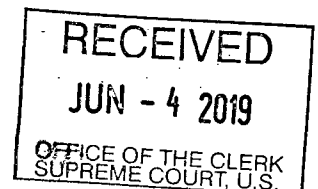
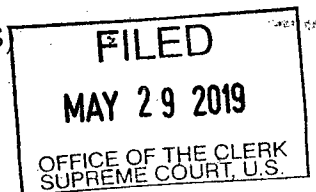
Gregory Bayford
(Your Name)

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Robinson, IL 62454
(City, State, Zip Code)

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ORIGINAL



QUESTION(S) PRESENTED

- 1.) The State failed to prove defendant Bayford guilty beyond a reasonable doubt because it did not show that defendant constructively possessed the narcotics.
- 2.) Defendant's sentence of 11 years' imprisonment is excessive.

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OPINION BELOW

The order of the Appellate Court of Illinois, First Judicial District, which was not published pursuant to Illinois Supreme Court Rule 23, is included herein in Appendix A. The order of the Illinois Supreme Court denying the petitioner's request for review is attached hereto as Appendix B.

JURISDICTION

The order of the Appellate Court of Illinois, First Judicial District, was entered on November 13, 2018.

The petition is timely filed within (90) days of the denial of the petitioner's request for review by the Illinois Supreme Court on March 20, 2019.

This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

- 1) Sixth Amendment and Fourteenth Amendment ineffective assistance of Counsel of trial and appellate Counsel led to a Fourteenth Amendment violation of due process of law.
- 2) Fourteenth Amendment in violation of due process of law of trial judge base his decision for conviction on evidence that did not exist.
- 3) Eighth Amendment in excessive punishment of eleven years.

STATEMENT OF CASE

Following a bench trial, defendant Bayford was found guilty of one count of possession of a controlled substance with intent to deliver (cocaine), one count of possession of a controlled substance with intent to deliver (heroin), and one count of possession of cannabis. He was sentenced, respectively, to concurrent terms of 11 and 4 years' imprisonment on the cocaine and heroin charges, and 30 days in the Cook County Jail with time considered served on the cannabis charge. On appeal, Bayford contends that: (1) the evidence presented was insufficient to sustain his conviction because the State failed to prove beyond a reasonable doubt that he constructively possessed the narcotics recovered during the execution of a search warrant; (2) his 11-year sentence was excessive.

The charges against Bayford were based on his knowing possession with intent to deliver: 100 grams or more but less than 400 grams of cocaine (720 ILCS 570/401 (a)(2)(B) (West 2014)); one gram or more but less than 15 grams of heroin (720 ILCS 570/401 (c)(1) (West 2014)); and more than 10 grams but not more than 30 grams of cannabis (720 ILCS 550/5 (c) (West 2014)). Bayford waived his right to a jury trial and the case proceeded to a bench trial.

In order to sustain Bayford's conviction, the State was required to prove beyond a reasonable doubt that (1) he had knowledge of the presence of narcotics, (2) the narcotics were in his immediate possession or control, and (3) he intended to deliver the narcotics. 720 ILCS 570/401 (West 2014); *People v. Robinson*, 167 Ill.2d 397, 407 (1995). To sustain a conviction for possession the State had to prove beyond a reasonable doubt that Bayford knowingly possessed the narcotics found by police;

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People v. Evans, 2015 IL App. (1st) 130991, #26. (opn. 14).

Rayford argues that the State failed to prove he possessed the narcotics recovered during the execution of the search warrant. Specifically, he argues that the State failed to establish that he constructively possessed the narcotics because it did not show that he had dominion and control over the bedroom where the narcotics were said recovered. (opn. 13)

Possession is a question of fact to be resolved by the trier of fact. People v. Carodine, 374 IL App. 3d 16, 25 (2007). Possession may be actual or constructive.

People v. Hannah, 2013 IL App (1st) 111660, #28. Here, Rayford did not physically possess the narcotics recovered when the officers executed the search warrant so the State proceeded on the theory that he constructively possessed them. In order to prove beyond a reasonable doubt that Rayford was in constructive possession of the contraband, the State was required to show that he had knowledge of the presence of the contraband and exercised immediate and exclusive control over the area where the narcotics were said found.

People v. Nesbit, 398 IL App. 3d 200, 2011 (2010). (opn. 16).

Knowledge may be shown by evidence of a defendant's acts, declarations, or conduct from which it can be inferred that he knew the contraband was in the place where it was found. People v. Sams, 2013 IL App (1st) 121431, #10.

Evidence of constructive possession is often circumstantial. People v. McHaurin, 331 IL App. 3d 498, 502 (2002). 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 other factors that might create a reasonable doubt as to the defendant's guilt.'" People v. Alicea, 2013

IL App (1st) 112602, #24 (quoting *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003)), (opn. 17).

After reviewing the evidence in the light most favorable to the State, the Court conclude the evidence was sufficient to support the trial court's determination that Bayford constructively possessed the recovered narcotics. The said officers found Bayford in the rear bedroom. Inside the closet of that bedroom, the said officers found men's clothing and recovered the black plastic bag containing narcotics. See *People v. McCarter*, 339 Ill. 3d 876, 879 (2003) (Control over the area where the contraband was found gives rise to an inference that defendant possessed the contraband). In addition, the officers recovered several pieces of mail directed to Bayford at the South Emerald address where Bayford was said later admitted he lived. See *People v. Cunningham*, 309 Ill. App. 3d 824, 828 (1999) (habitation in a premises where narcotics are discovered has been found relevant to establishing control over them). Moreover, upon his arrest, Bayford was said told the said officers that "I'm going to be honest with you everything in my room is mine." See *Sams*, 2013 IL App (1st) 121431, #10 (the defendant's knowledge of the presence of contraband may be inferred from his declarations). The Court find unpersuasive Bayford's argument that by referring to "my room," he was possibly referring to a room in the residence other than the bedroom where he was arrested and in which the narcotics were located. This evidence presented at trial supports the Court's conclusion that Bayford was in constructive possession of the narcotics recovered and was, thus, sufficient to sustain his convictions. *McCarter*, 339 Ill. App. 3d at 879; *People v. Bui* 381 Ill. App. 3d 379, 420-21 (2008). (opn. 18).

The court found officers Martinez and Echols credible and resolved the complained of inconsistencies in the evidence in favor of the State. (opn. 19).

Bayford's 11-year sentence was not an abuse of trial court's discretion.

Bayford's conviction for possession of a controlled substance with intent to deliver 100 grams or more but less than 400 grams of cocaine carried a sentencing range of 9 to 40 years' imprisonment. (720 ILCS 570/401 (2)(B) (West 2014)). Bayford's 11-year sentence - only two years over the minimum is presumed proper. *Gauseda*, 2016 IL App (1st) 140134, #19. (opn. 24).

Bayford argues that his sentence (1) is disproportionate to the non-violent nature of his offenses, (2) reflects the trial court's consideration of an improper factor in mitigation - the unsupported inference that he was selling drugs from his grandmother's house, and (3) failed to take into account his non-violent background, his involvement with his family, his work history, and his rehabilitative potential. (opn. 25).

The Court specifically pointed out that Bayford's conduct made him a danger to the community, that he did not have a substance abuse problem, and that the only reason he possessed the drugs was to profit from their sale. (opn. 27).

The Court decline Bayford's invitation to focus on a single statement made by the trial court i.e. the reference that he was selling drugs from his grandmother's house, in order to find his sentence improper. See *People v. Myles*, 257 Ill. App. 3d 872, 887 (1994) ("a reviewing court must not focus on a few words or statements made by the trial court. The determination

of whether or not a sentence was improper must be made by considering the record as a whole."'). Whether or not Bayford actually engaged in narcotics sales from his grandmother's home, he certainly exposed his grandmother - who was in the early stages of dementia - to the risks of his conduct in keeping large quantities of narcotics in her home that he intended to sell. Accordingly, the trial court's statement provides no basis upon which to overturn Bayford's sentence. (opn. 28).

REASON FOR GRANTING THE PETITION

The State's evidence consisted of evidence found during a search of a home at 5629 South Emerald. There is no evidence that the closet, rear bedroom, or even the home belong to Bayford. Additionally, there is no evidence that Bayford had any knowledge of the narcotics existence in the closet. Under these circumstances, the State failed to prove beyond a reasonable doubt that Bayford constructively possessed any of the narcotics found during the search.

The appellate court is required to determine whether a reasonable trier of fact could have found the essential elements beyond a reasonable doubt.

Sams, 2013 IL App (1st) 121431, at (9). After reviewing evidence presented and the record, this court will set aside the defendant's conviction if the evidence is

"so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The State's theory at trial was that Bayford constructively possessed the narcotics.

264 Ill. App. 3d at 798. (R.D41). This case is similar to *People v. Moore*, 2015 IL App (1st) 140051. In *Moore*, the State charged the defendant with possession of a weapon by a felon and possession of cocaine with intent to deliver. 2015 IL App (1st) 140051 at (3). The State argued a theory of constructive possession by relying on mail addressed to the defendant found at the home searched and the presence of men's clothing in the closet near where the narcotics were found. *Id.* at (7-8). This court found that viewing the evidence in light most favorable to the State, that the State had failed to prove beyond a reasonable doubt that the defendant lived in that home. *Id.* at (28). This court reasoned that the mail was six months old, the men's clothing, though for the same gender, could not be specifically linked to the defendant, and the lack of any other evidence connecting the defendant to the home searched failed to establish that the

defendant had control of the premises. *Id.*

Here, the State relied on similar evidence to the State in Moore. The State entered three pieces of mail addressed to Rayford that were found on the kitchen table. (R. P24-25; Ex. 2A, B, C). The mailing list magazine Subscriptions and Secretary of State letter do not establish that Rayford lives at that home. At best, those pieces of mail establish that he uses the home as his mailing address. It cannot serve as adequate proof that Rayford lived at that home at the time of the search. Additionally, the clothing found in the closet in Moore is similar to the clothing found in the closet here. In Moore, this Court found that the clothing could not be specifically linked to the defendant, even when it was for the same gender as the defendant was. Here, the police officer testified that he couldn't remember if there was women's clothing in the closet with the narcotics. If the clothing in Moore could not be specifically linked to the defendant of the same gender, then there is certainly not enough evidence here to link the possible random assortment of clothing in the closet with the narcotics to Rayford.

Finally, this Court in Moore, relied on the fact that there was no other evidence connecting the defendant to the home. *Id.* The same can be said for Rayford. Aside from the above listed evidence, there was no evidence presented connecting Rayford to the home. The State argued that his subsequent statement to police connected him to the narcotics found in the closet, however that is not the case. (R. P41).

"I'm going to be honest with you, everything that's in my room is mine." (R. P14).

This statement does not establish that the rear bedroom belonged to Rayford.

There are two problems with this statement. The first problem is that nowhere in this statement does Rayford tell the police the rear bedroom is his.

This statement was not written down by the police. It was not recorded in any way.

The Court find unpersuasive Bayford's argument that by referring to "my room," he was possibly referring to a room in the residence other than the bedroom where he was arrested and in which the narcotics were located. This evidence presented at trial said supports the Court's conclusion that Bayford was in constructive possession of the narcotics recovered and was, thus, sufficient to sustain his convictions. *McCarter*, 339 Ill. App. 3d at 879; *People v. Bui*, 381 Ill. App. 3d 379, 420-21 (2008), (A. Ct. 7-8).

Leaving aside that intent is an element of possession with the intent to distribute, Bayford relies on *Walker* for the proposition of law that the State's burden cannot be relieved by conditional and vague statements of admission. (Def. Br. at 13). As indicated above, Bayford's statement "I'm going to be honest with you, everything that's in my room is mine" is vague because there is no mention of which room is his. Bayford does not state that the room he is in is his or that anything in the closet was his or that everything in the room he was in at the time was his or that anything in the closet was his. The State argues that the statement said made by Bayford to the police establishes more than the mere presence deemed insufficient in *People v. Bay*, 232 Ill. App. 3d 459, 462-3 (1st Dist. 1992); (St. Br. 16-17). Again, Bayford's statement does not indicate any specific bedroom. There is no evidence indicating which room was his and which room he was referring to in this statement. Without such evidence, Bayford was merely present in the room where the narcotics were found. As stated in *Bay*, this is insufficient to establish constructive possession. 232 Ill. App. 3d at 462.

There is no admission that the rear bedroom was in fact his bedroom. There is no admission to the narcotics being his. Therefore, like the statements made by the defendant in *Walker*, Bayford's statement is not indicative of any sort of intent

or possession of the narcotics.

People v. Little 2016 IL App. 3d 140124 at 44, 47, 725 ILCS 5/103-2.1 (a), 725 ILCS 5/103-2.1 (b) (West 2010). Section 103-2.1 (a) of the Code mirrors and codifies "the common-law definition of custodial interrogation developed in *Miranda* and (its) progeny." *People v. Clayton*, 2014 IL App (1st) 130743 at 26, 386 Ill. Dec. 61, 19 N.E. 3d 1214 (quoting *People v. Harris*, 2012 IL App (1st) 100678, at 52, 364 Ill. Dec. 902, 977 N.E. 2d 811). When considering the State's argument, we revisit the precise language of the Statute, which States: "An oral, written, or sign language statement of an accused made as a result of a custodial interrogation conducted at a police station or other place of detention shall be presumed to be inadmissible as evidence against the accused in any criminal proceeding brought under section 9-1. The State may argue that Bayford was found by the officers in the rear bedroom, and therefore that bedroom, and its contents, belonged to him. However, in *People v. Ray*, this Court held that the mere presence in the vicinity of contraband cannot establish constructive possession. 232 Ill. App. 3d 469, 462 (1st Dist. 1992). Bayford's mere presence near the location where the narcotics were found is not sufficient to establish constructive possession. The lack of evidence connecting Bayford to the home searched, the rear bedroom within the home, and the narcotics found in the closet is "so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." that reasonable doubt remains. *Collins*, 106 Ill. 2d at 261. (Def. Br. 14-15).

In announcing Sentence, the Court ultimately determined that the Seriousness of the offense outweighed the mitigating factors and warranted an 11 year sentence. The court specifically pointed out that Bayford's Conduct made him a danger to the Community, that he did not have a Substance Abuse problem, and that the only reason he possessed the drugs was to profit from their sale.

The State maintains that Bayford's sentence is proper because it falls within the statutorily mandated guidelines and will only be overturned if there is an affirmative showing that the sentence varies greatly from the purpose and spirit of law. (St. Br. 21). Citing People v. Bocclair, 225 Ill. App. 3d 331, 335 (1st Dist. 1992). However, as the State correctly explains, the spirit and purpose of the law are promoted "when a sentence reflects the seriousness of the offense and gives adequate consideration to the rehabilitative potential of the defendant." Bocclair, 225 Ill. App. 3d at 335; (St. Br. at 21).

Here, Bayford's sentence does not reflect the seriousness of the offense.

The only legitimate factor that the Sentencing Court could cite in aggravation was the amount of narcotics found. However, the amount of narcotics found had already been taken into consideration by the statutorily mandated Sentencing guidelines. The only other factor considered in aggravation was a wholly unsupported inference that Bayford was dealing narcotics outside his grandmother's house, which was no evidence presented at trial that indicated this fact, the Sentencing Court then used as an aggravating factor. There was no evidence presented at trial that indicated this fact, and thus, it was improperly considered in determining the seriousness of this offense. This offense was also non-violent offense. There were no weapons found in Bayford's possession or near the narcotics.

Therefore, there was no indication that Rayford should receive any sentence greater than the required minimum of 9 years based on the (legislatively accounted for) seriousness of the underlying charge. Appellate Court decline Rayford's invitation to focus on a single statement made by the trial Court the reference that he was selling drugs from his grandmother's house, in order to find his sentence improper. See *People v. Myles*, 257 Ill. App. 3d 872, 887 (1994) ("a reviewing court must not focus on a few words or statements made by the trial Court. The determination of whether or not a sentence was improper must be made by considering the record as a whole."). See *Owens v. Duncan*, 781 F.3d 360, 362 (7th Cir. 2015) ("In it he argues that the State trial judge who convicted him based his decision on evidence that did not exist, thus denying him due process of law in violation of the Fourteenth Amendment. *Dolbrook v. Flynn*, 475 U.S. 560, 567, 106 S.Ct. 1340, 89 L.Ed. 2d 525 (1986) ("one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial," quoting *Taylor v. Kentucky*, 436 U.S. 478, 485, 98 S.Ct. 1930, 56 L.Ed. 2d 468 (1978); *Estelle v. Williams*, 425 U.S. 501, 503, 96 S.Ct. 1691, 48 L.Ed. 2d 126 (1976) ("The right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment. See also *United States v. Moore*, 572 F.3d 334, 341 (7th Cir. 2009) ("Guilt beyond a reasonable doubt cannot be premised on pure conjecture"); *United States v. Garcia*, 439 F.3d 363, 366-68 (7th Cir. 2006) ("The presumption [of innocence] is violated when the jury is encouraged (or allowed) to consider facts which have not been received in evidence"). This directly impacts Rayford's substantial right to a fair sentencing hearing. *People v. Owens*, 377 Ill. App. 3d 302, 304 (1st Dist. 2007) ("Sentencing issues are regarded as matters affecting a defendant's substantial rights and are thus excepted from the doctrine of waiver").

This Court should therefore review Bayford's excessive sentence claim despite the lack of a written motion to reconsider sentence.

When the Court considers incompetent evidence in determining a sentence, the sentence must be vacated. *People v. Gant*, 18 Ill. App. 3d 61, 66 (1st Dist. 1974).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Gregory Rayford

Date: May 29, 2019

APPENDIX