

2011 IL App (1st) 100080-U
No. 1-10-0080

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SECOND DIVISION
August 2, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 9594
)	
GUILLERMO SANCHEZ-ORTIZ,)	Honorable
)	Maura Slattery-Boyle,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Karnezis concurred
in the judgment.

O R D E R

HELD: Judgment entered on defendant's conviction for possession of a controlled substance affirmed over his challenge to the sufficiency of the evidence.

¶ 1 Following a bench trial, defendant Guillermo Sanchez-Ortiz was found guilty of possession of a controlled substance

(cannabis) and sentenced to four years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt where his actions in opening a package containing cannabis that was addressed to another person, and which he left on the front porch of a house, do not indicate his intent to exercise control of the contraband.

¶ 2 The record shows, in relevant part, that defendant was charged with possession of cannabis with intent to deliver following a controlled delivery operation at 3781 West 75th Place, in Chicago, on April 27, 2009. At that time and place, defendant was observed by Chicago police officers opening a package that contained 6,750 grams of cannabis.

¶ 3 Postal inspector Ferdinand Lorenzana testified that on April 23, 2009, he received a phone call from postal inspectors in Texas informing him that a suspicious package with the characteristics of a drug parcel would be arriving in Chicago, and that he received the package the next day at O'Hare Airport. He described it as a brown box approximately 14-inches cubed, with a priority label and tracking number on it. He agreed that it was characteristic of a drug parcel in that it was shipped from Texas, a known source of narcotics, and had a tracking number and handwritten labels.

¶ 4 The box was addressed to Carlos Gutierrez, 3781 West 75th Place, in Chicago, from sender Sergio Trevino of Alamo,

Texas. When Inspector Lorenzana checked those addresses, he found that both properties existed, but that neither of the respective names on the box were associated with them. He then had customs and border patrol conduct a "canine sniff" where the box was placed with 20 others. The dog sniffed, then bit and scratched at the box which indicated that it contained a controlled substance, and Inspector Lorenzana obtained a federal opening warrant thereafter.

¶ 5 When Inspector Lorenzana opened the box, he discovered a second, smaller box inside which contained two bundles wrapped with a black garbage bag, each about one-foot wide, four-inches thick, and weighing about eight pounds. He cut into the bundles and found a green leafy substance which was confirmed to be marijuana in a subsequent field test, and then informed the Chicago Police that a controlled delivery of the box would likely be performed.

¶ 6 On April 27, 2009, Inspector Lorenzana transported the package to the headquarters of the Chicago Police parcel team in Homan Square, and handed custody of it to Officer Nick Lymperis. Officer Lymperis prepared the package for delivery by inserting an electronic transmitter into it which would give notification if the package was opened. Once a delivery search warrant had been obtained, Inspector Lorenzana dressed as a mail carrier and

drove the package to the delivery address in a white van disguised as a United States mail vehicle.

¶ 7 Upon arriving at that address, Inspector Lorenzana parked across the street and noticed a Hispanic male in the driver's seat of a gray Dodge truck parked behind him. He proceeded to the front door of the house and knocked, and an older Hispanic female answered. He informed her that he had a package for Carlos Gutierrez. She responded that he was not there, but that she would sign for it, and once she had done so, he handed her the package and she went back inside. As he walked back to his truck, Inspector Lorenzana noticed that the man in the Dodge truck was watching him, and he recorded the license plate number of that vehicle. At trial, he identified defendant as the man he saw in the truck.

¶ 8 After driving a few blocks away, Inspector Lorenzana radioed surveillance and notified them of defendant and his license plate number, then awaited further instructions from the task force leader. About 10 minutes after delivery had been made, the receiver for the electronic transmitter in the box indicated that the box had been opened, and Inspector Lorenzana returned to the delivery location and entered the house to find that defendant had been taken into custody. When identifying a photograph of the package that he had delivered, Inspector

Lorenzana noted that the cuts in the black bundle were not made by him, as he usually makes a "v" cut.

¶ 9 On cross-examination, Inspector Lorenzana acknowledged that he never observed defendant handle the box or the bundle inside. He also stated that the woman who signed for the package did so under the name Deanna DeLeon, that she was later identified as Elena Guerro, and that he observed her take the package inside the house.

¶ 10 Chicago police officer Nick Lympersis testified that on April 24, 2009, he was assigned to the Postal Interdiction Team in the Narcotics Section of the Organized Crime Division. His duties were to inspect suspicious packages at different facilities, and that day, he received a phone call from Inspector Lorenzana regarding a suspicious package arriving at O'Hare Airport from Alamo, Texas. The two arranged to make a controlled delivery on April 27, 2009, and, in the meantime, Inspector Lorenzana obtained an opening warrant for the package.

¶ 11 On the scheduled date, Inspector Lorenzana arrived at the Homan Square office with the package which was addressed to Carlos Gutierrez, 3781 West 75th Place, in Chicago. Officer Lympersis described it as a 14-inch cube with a United States Postal Service tracking number, inside of which was another box containing two large bundles in black plastic wrap that were about 12" X 12" and 6" thick. He inserted an electronic

monitoring device into the inner box, and eventually obtained a delivery warrant.

¶ 12 Thereafter, Officer Lymperis set up surveillance with binoculars two houses east of the delivery address, on the north side of the street, where he had an unobstructed view of the location. From there, he observed Inspector Lorenzana, who was posing as a mail carrier, arrive at the delivery address in an undercover vehicle disguised as a United States Postal Service vehicle, and then bring the package onto the porch and ring the doorbell. Elena Guerro answered, and the two spoke momentarily before Inspector Lorenzana handed her the signature label on which she made a signature motion. Guerro then took the box, brought it inside the house, and closed the door. Inspector Lorenzana returned to his vehicle and drove away.

¶ 13 Moments later, Inspector Lorenzana radioed that a Hispanic male in a Dodge Ram pickup truck across the street had watched him make the delivery. Although Officer Lymperis could not see the truck from his position a few cars back on the same side of the street, he saw defendant exit the truck about 10 minutes later, then approach the house, knock on the front door, and enter when the door opened.

¶ 14 After a few seconds, the signal receiver indicated that the box was moving, and Officer Lymperis observed defendant carry it out of the house, set it down on the porch, pick it up again

and examine its sides, and set it back down. Defendant used his cell phone for about a minute, and then removed a utility knife from his right pants pocket and made a slicing motion on top of the box. He opened the flaps and looked inside, and used his cell phone again for another minute before going back down and making a slicing motion on the inner box, at which point the signal receiver indicated that it had been opened. After opening the inner flaps, defendant made additional slashing marks, and then put his knife away and went back inside the house, leaving the box on the porch. At trial, Officer Lymperis identified a photograph showing the location on the porch where the box was opened and left. That photograph, which was admitted into evidence, shows the box placed in the corner behind the front and side walls of the porch, such that it would not be readily seen from the street. He also identified a photograph showing the exposed cannabis inside the sliced-open black plastic bundles.

¶ 15 While defendant was still inside the house, the acting sergeant decided to execute the search warrant. Defendant was detained as he was coming out of a bedroom in back of the house. Officer Lymperis searched him and recovered the utility knife from his pants pocket, and defendant was placed under arrest.

¶ 16 On cross-examination, Officer Lymperis stated that Guerro resided at the house, and that a total of five individuals were secured inside. During their search of the premises, police

discovered hollowed-out books, and also recovered baggies and a digital scale, as well as cannabis and a 12-gauge, pump-action shotgun from the basement. However, no weapons or cannabis were recovered from defendant, there was no proof that he resided at the house, and his identification did not indicate that he was Carlos Gutierrez. Officer Lympersis further stated that Guerro was not arrested, but that her purse was recovered with money inside of it. On redirect, Officer Lympersis testified that 4.4 grams of cannabis was recovered from the house.

¶ 17 Guerro testified that on April 27, 2009, the post office delivered a package to her house at 3781 West 75th Place, in Chicago, and that she does not know defendant by name. When the State asked Guerro if someone had come inside her house that day and taken the package, Guerro responded that she was brushing her teeth in the bathroom when the doorbell rang, and that a friend of her granddaughter answered the door. The State asked her if a man other than the deliveryman had come to her house, and Guerro responded that the deliveryman and police officers had been to her house. Following this exchange, the court reminded Guerro that she was under oath, and that she could be charged with perjury if she was dishonest.

¶ 18 Guerro then identified defendant from a photograph taken in her kitchen on April 27, 2009, as a car mechanic by the nickname of "GeeGee" or "GeeJoe." She testified that police

officers entered her house after the package had been delivered, but denied telling a female officer that defendant had given her \$50 to receive the package. She stated that a police officer came up behind her and touched her back when she was outside with the garbage, and made her nervous by asking if she had money for the box.

¶ 19 On cross-examination, Guerro stated that two to three minutes after the doorbell rang, she had finished brushing her teeth and saw a person outside the front door looking at the box. When the deliveryman asked if she was Ms. Gutierrez and if Carlos Gutierrez was there, she answered no to both questions. She also stated that she does not know a Carlos Gutierrez. The deliveryman nonetheless told her that she had to sign for and accept the box, so she did with her daughter's name, giving as her reason, "I work in the afternoons and my daughter works in the mornings." Guerro also stated that the deliveryman brought the box inside the house for her, and that she never put her hands on the box or brought it inside herself, and that she did not accept it because she knew that it contained cannabis. She finally testified that the house belonged to her daughter, but acknowledged having complete access to it.

¶ 20 Chicago police officer Judy Hildebrant testified that about 1:10 p.m., on April 27, 2009, she was conducting surveillance for the package interdiction team on 3781 West 75th

Place, in Chicago, from about one block west of that location. After the decision had been made to execute the search warrant, she went to that location and stood watch over the box for a time until she was instructed to go inside. She then went into the kitchen and spoke with Guerro in the presence of half the team. She asked Guerro what she knew about the box, and Guerro responded that defendant had given her \$50 to accept it.

¶ 21 On cross-examination, Officer Hildebrant stated that she never observed defendant handle the package, and that he was already in custody when she entered the house to speak with Guerro. She also stated that Guerro had been in close proximity to defendant prior to telling her about the \$50.

¶ 22 The parties then stipulated, in relevant part, that Officer O'Shea would testify that he inventoried the subject package under number 11653724 pursuant to Chicago Police Department inventory procedures, and that Catherine Frost, a forensic chemist for the Illinois State Police crime lab, would testify that she tested the plant material inside the two bundles, and that it weighed 6,750 grams and tested positive for cannabis. The parties also stipulated to a proper chain of custody, and the State entered four photos into evidence.

¶ 23 The court ultimately found defendant guilty of the lesser-offense of possession of a controlled substance. In doing so, the court noted, *inter alia*, that Guerro was "the most

untruthful person the Court has ever witnessed in her whole entire life, and she doesn't help anybody here, not the State, not the defense. She is absolutely incredible, [sic] nothing that comes out of her mouth is believable, not a thing." The court also noted that it was "struck by" the fact that defendant did not live at the address where the package was delivered and was not the addressee, yet he observed and opened the box, and the one inside, and then slashed into the bundles containing cannabis. The court questioned why defendant would have opened a package addressed to someone else, and noted, "Clearly there is more going on here."

¶ 24 In this appeal from that judgment, defendant contends that the State failed to prove him guilty of possession of a controlled substance beyond a reasonable doubt. He maintains that the State failed to prove the element of possession where he opened a box containing cannabis that was addressed to another person, and left it on the front porch of a house.

¶ 25 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court is 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. *People v. Jordan*, 218 Ill. 2d 255, 269 (2006). It is the responsibility of the trier of fact to

determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 26 To sustain a conviction of possession of a controlled substance, the State must show that defendant had knowledge of the cannabis and the immediate and exclusive control of it. *People v. Blue*, 343 Ill. App. 3d 927, 939 (2003). His knowledge can be proved with evidence of conduct allowing an inference that he knew drugs existed in the place where they were found. *People v. Smith*, 288 Ill. App. 3d 820, 824 (1997). The element of possession can be established by either actual or constructive possession. *People v. Givens*, 237 Ill. 2d 311, 335 (2010). As pertinent here, constructive possession exists if defendant had physical control over the cannabis at one time with the intent to exercise control, that he did not abandon it, and no one else took possession of it. *People v. Adams*, 388 Ill. App. 3d 762, 766 (2009).

¶ 27 Viewed in the light most favorable to the prosecution, the evidence shows that when Inspector Lorenzana arrived at 3781

West 75th Place to deliver a package containing cannabis to a Carlos Gutierrez at that address, defendant was already waiting in a truck across the street from which he observed the delivery. Ten minutes later, he approached the house, knocked, and entered, then carried the box out of the house and onto the porch where police observed him cut open the inner and outer boxes, and then slice into the black plastic bundles within which revealed the cannabis. He then left the box behind the wall of the porch and went inside the house where he was arrested.

¶ 28 Under these circumstances, defendant's knowledge of the cannabis can clearly be inferred by the evidence of his conduct showing that he was waiting outside the delivery address for the box and observing as it was delivered, and then, shortly thereafter, taking the box out of the house and cutting into it in such a way that the cannabis inside was revealed. *Smith*, 288 Ill. App. 3d at 824. Moreover, defendant's actions show that he had constructive possession of the box where he physically removed it from the delivery address, cut into it, and left it concealed behind the wall of the front porch. *Adams*, 388 Ill. App. 3d at 766. This evidence, and the reasonable inferences therefrom, was sufficient to allow the trial court to find beyond a reasonable doubt that defendant was proved guilty of possession of a controlled substance beyond a reasonable doubt. *Blue*, 343 Ill. App. 3d at 939.

¶ 29 Defendant nonetheless claims that the circumstances do not suggest that he intended to exercise control and dominion over the box, but rather, that he abandoned the box when he realized that it contained cannabis. In making this claim, defendant attempts to distinguish *People v. Adams*, 161 Ill. 2d 333 (1994) and *People v. Hesse*, 18 Ill. App. 3d 669 (1974) from his situation.

¶ 30 In *Adams*, 161 Ill. 2d at 340, defendant was convicted of possession of a controlled substance with intent to deliver under an accountability theory. The supreme court found that the State had established constructive possession of cocaine where the evidence showed that defendant's associates had boarded a plane with it and concealed it in the bathroom of the plane, that no one else took possession of it, and that no serious claim of abandonment could be made. *Adams*, 161 Ill. 2d at 345.

¶ 31 In *Hesse*, 18 Ill. App. 3d at 670-71, a package addressed to defendant had been opened by a customs agent and found to contain hashish, and there was witness testimony that the hashish was clearly exposed and easily observable. When defendant attempted to pick up the package from the post office, a postal employee advised him to check its contents. *Hesse*, 18 Ill. App. 3d at 670. He did so, and was then arrested by police as he was leaving the building with it. *Hesse*, 18 Ill. App. 3d at 670. This court affirmed defendant's convictions of unlawful

possession of cannabis, finding that his acts and the witnesses' testimony were sufficient to establish his knowledge that the package contained hashish. *Hesse*, 18 Ill. App. 3d at 671.

¶ 32 Defendant claims that unlike *Adams* and *Hesse*, he did not accept delivery or remove the box from the delivery address, and the circumstances show that he abandoned it on Guerro's porch after he opened it. We disagree.

¶ 33 This court's holding in *Hesse* makes clear that where, as here, defendant opens a package in which cannabis is clearly exposed, there is sufficient proof of his knowledge that the package contains cannabis. Moreover, similar to *Adams*, the evidence shows that defendant exerted physical control over the box of cannabis by carrying it out of the house and onto the porch where he cut it open, and that he concealed it behind the wall of the front porch while he remained on the premises; and, consequently, he cannot make a serious claim that he abandoned it. *Adams*, 161 Ill. 2d at 345. We thus find defendant's attempt to distinguish his situation from *Adams* and *Hesse* fails.

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

¶ 35 Affirmed.