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2011 IL App (4th) 100239-U

Filed 11/15/11

NO. 4-10-0239

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Adams County
WILLIAM E. HANLEY,)	No. 09CF332
Defendant-Appellant.)	
)	Honorable
)	Scott H. Walden,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Steigmann and Appleton concur in the judgment.

ORDER

¶ 1 *Held:* We affirm the trial court's judgment finding defendant guilty of unlawful possession of a controlled substance where (1) nothing in the record indicates the court improperly shifted the burden to defendant on the element of knowledge, and (2) the State introduced sufficient evidence to prove defendant guilty beyond a reasonable doubt.

¶ 2 In January 2010, following a bench trial, the trial court found defendant, William E. Hanley, guilty of unlawful possession of a controlled substance (hydrocodone) (720 ILCS 570/402(c) (West Supp. 2009)). In March 2010, the court sentenced to 24 months' probation and 120 days' periodic imprisonment. On appeal, defendant argues the court violated his due-process rights by improperly shifting the burden to defendant on the essential element of knowledge. We disagree and affirm.

¶ 3

I. BACKGROUND

¶ 4 In June 2009, the State charged defendant by information with one count of unlawful possession of a controlled substance (hydrocodone) (720 ILCS 570/402(c) (West Supp. 2009)). Defendant pleaded not guilty and requested a bench trial. The bench trial consisted of exhibits and testimony offered over the course of two days (December 14, 2009, and January 10, 2010). The evidence at trial showed the following.

¶ 5 In June 2009, Adams County sheriff's deputy Tom Pickett was involved in executing a search warrant on defendant's residence. Pickett was the officer in charge of the search team. The original target of the search warrant was marijuana, but during the course of the investigation officers found two white pills. When officers entered defendant's residence, he was just getting out of the shower. The pills were found on a shelf in the bathroom where defendant was showering. At no time did defendant make any furtive movements in the vicinity of the pills or try to retrieve the pills from the shelf. On the side of the pills were the markings "M358."

¶ 6 After reading defendant his *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)), Pickett spoke with him about the pills. Defendant told Pickett the pills were given to him by a friend, and he had forgotten he even had them. While Pickett was speaking to defendant, another officer called a pharmacy and was able to identify the pills as containing hydrocodone based on the markings. Pickett then confronted defendant with this information and confirmed he did not have a prescription for hydrocodone. Defendant stated he had no idea the pills contained hydrocodone and reiterated the pills had been given to him by a friend. Defendant refused to tell Pickett the name of the person who gave him the pills. Upon

questioning by the trial court, Pickett stated defendant did not refuse to tell him the name of the friend who had given him the pills until after Pickett had told him they contained hydrocodone. At no time did defendant deny possessing the pills. Later testing confirmed the presence of hydrocodone in the pills.

¶ 7 During closing arguments, the State argued the circumstances surrounding the seizure of the pills clearly showed defendant possessed the pills with the knowledge they contained an illegal substance. The State argued defendant's knowledge could be inferred from his actions and through common sense, stating "it's certainly unbelievable that somebody would just take from a friend two pills with markings on them *** keep them and, yet, have no idea why you would have them." Defendant argued the State failed to introduce any evidence he knew the pills contained hydrocodone. In support of his argument, defendant cited testimony by Pickett which showed he denied knowing what was in the pills when he was arrested.

¶ 8 After hearing arguments from both parties, the trial court stated:

"Well, first of all, the Court is of a mind that the People's witnesses testified truthfully. There doesn't seem to be any basis for the Court not to accept what the officers and the scientist have said.

My recollection is that the search warrant is executed, they find the pills, the defendant acknowledges having received the pills from a friend. He refuses to identify the friend but not until after he's been told that it's a controlled substance. *** The defendant did not have a prescription.

The question of guilty knowledge: The fact that he refused to identify the person from whom he got them is some indication of guilty knowledge, but that doesn't come until after he's told that it's a controlled substance. Whether he would have answered the question differently before he was told it was a controlled substance I don't know, because that's not the sequence in which it took place. So the date, the place, the identification, the possession, the fact it's hydrocodone, all of that is established. The question is whether it's knowingly possessed. *** I think it is required that he know that it's a controlled substance, that it's illegal for him to have the stuff, and I think it just comes down to the Court, as we instruct jurors, can use commonsense [sic]. And why would you accept something from a friend? You have no idea what it is and you keep it. Why would you do that? That just doesn't seem to make sense to me unless you know that it's a controlled substance and the fact that he then won't give up the friend. He's completely cooperative throughout except for giving up the friend, and, again, I think that's clearly guilty knowledge. The timing is not as clean as the State would like, and I believe it would be even clearer that he knowingly possessed a controlled substance had he been: 'Here are pills. I got them from a friend; I'm not telling you who the friend is.' That would be clearer.

But the fact that he took these pills from a friend, they're loose, they're prescription is the look about them. And, you know, why do you do that? And, you know, somebody just hands you a couple of pills: Why would you take them and why would you keep them, if there was not some sense that they were something that would make you feel good, if you took them.

I'll admit that—Well, let me just put it this way: Mr. Larson has made an excellent argument. I understand the theory of this case. *** I just think, when you put it all together, *** Why would you take this pill; why would you keep it, if you didn't know what they were?

So the court finds Mr. Hanley guilty of possession of a controlled substance *beyond a reasonable doubt.*" (Emphasis added.)

At the March 2010, sentencing hearing, the court sentenced defendant as stated. This appeal followed.

¶ 9

II. ANALYSIS

¶ 10 On appeal, defendant argues the trial court violated his constitutional due-process rights by improperly shifting the burden to him on the issue of knowledge of the illegality of the pills he possessed. Defendant points to statements made by the trial court and claims it effectively required defendant to show he did not have knowledge of the illegal substance contained in the pills. The State argues defendant is really challenging the sufficiency of the

evidence introduced at trial. For the following reasons, we agree with the State and affirm the trial court's judgment.

¶ 11 The burden is on the State to prove all elements of a crime beyond a reasonable doubt, and defendant is not required to offer any evidence at all. *People v. Phillips*, 127 Ill. 2d 499, 527, 538 N.E.2d 500, 511 (1989). As defendant states in his brief, if a trial court shifts the burden of proof to the defendant or applies the wrong standard of proof, it violates his due-process rights to a presumption of innocence and proof of his guilt beyond a reasonable doubt. See *People v. Devine*, 295 Ill. App. 3d 537, 544, 692 N.E.2d 785, 790 (1998) (court's assertion the defendant failed to rebut the State's *prima facie* case showed the court applied the wrong standard); *People v. Kluxdal*, 225 Ill. App. 3d 217, 223, 586 N.E.2d 701, 706 (1991) (court's repeated reference to clear and convincing evidence affirmatively showed the court applied the wrong standard of proof).

¶ 12 Defendant asserts when the trial court asked: "Why would you take this pill, why would you keep it, if you didn't know what they were?", and made other similar statements, it effectively shifted the burden to defendant to show why he possessed the pills without knowledge of their contents, thus shifting the burden to defendant to show he did not have knowledge of the presence of hydrocodone in the pills. We conclude this is inaccurate. The record does not affirmatively show the trial court shifted the burden to defendant on the element of knowledge or applied an erroneous standard of proof. In fact, the court stated the standard of proof was beyond a reasonable doubt. Further, the court discussed the knowledge defendant must have and correctly determined he must have knowledge of the presence of the illegal substance to be convicted of unlawful possession of a controlled substance. The statements by

the court merely explained its reasoning on the knowledge element, and the questions were rhetorical in nature. We conclude the court did not violate defendant's constitutional due-process rights and turn our attention to the sufficiency of the evidence.

¶ 13 When presented with a challenge to the sufficiency of the evidence, the question on review 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. Smith*, 185 Ill. 2d 532, 541, 708 N.E.2d 365, 369 (1999). The reviewing court's role is not to retry a defendant. *Id.* Issues of witness credibility are to be resolved by the trier of fact, and accorded great weight by the reviewing court. *Id.* at 542, 708 N.E.2d at 370. To prove defendant guilty of unlawful possession of a controlled substance beyond a reasonable doubt, the State must show "that the defendant had knowledge of the presence of the controlled substance and that the defendant had immediate and exclusive possession of it." *People v. Turner*, 373 Ill. App. 3d 121, 134, 866 N.E.2d 1215, 1227 (2007); 720 ILCS 570/402(c) (West Supp. 2009).

¶ 14 The record clearly shows the trial court was aware of the question before it, as well as the burden of proof on the State. Though the evidence regarding the element of knowledge was circumstantial, it sufficed to permit the court to conclude defendant was aware the pills contained an illegal substance absent any question regarding possession. *People v. Denton*, 264 Ill. App. 3d 793, 798, 637 N.E.2d 1066, 1070 (1994) ("Once possession is proved, the element of knowledge may be inferred from the surrounding facts and circumstances, and both possession and knowledge may be proved by circumstantial evidence."). Further, once it was proved defendant was the sole occupant of the residence in which the pills were found, an

