

NOTICE
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NO. 4-09-0455

Filed 1/26/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
CORNELIUS GORDON,)	No. 07CF74
Defendant-Appellant.)	
)	Honorable
)	Lisa Holder White,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court. Justices McCullough and Myerscough concurred in the judgment.

ORDER

Held: (1) The trial court did not err in denying defendant's motion to suppress evidence where defendant's consent to search was voluntary; and (2) the State presented sufficient evidence from which the trier of fact could conclude beyond a reasonable doubt (a) defendant possessed the drugs with the intent to deliver where testimony regarding the quantity and packaging established they were not for personal use and (b) defendant was within 1,000 feet of a place used primarily for religious worship at the time he was arrested where the State was not required to show worship services were in session or the church was occupied at the time of defendant's arrest.

Following a February 2009, bench trial, defendant, Cornelius Gordon, was convicted of (1) unlawful possession of a controlled substance with intent to deliver (cocaine) while within 1,000 feet of church property (720 ILCS 570/407(b)(1) (West 2006)), and (2) unlawful possession with intent to deliver (cannabis) (720 ILCS 550/5(d) (West 2006)). In June 2009, the

trial court sentenced defendant to concurrent 5- and 10-year terms in prison.

Defendant appeals, arguing (1) the trial court erred in denying his motion to suppress evidence and (2) the State failed to prove him guilty beyond a reasonable doubt by failing to establish he (a) possessed the drugs with the intent to deliver, and (b) was within 1,000 feet of a place used primarily for religious worship at the time he was arrested. We affirm.

I. BACKGROUND

In January 2007, Decatur police officer Chad Larner was on patrol when he observed a vehicle parked in the roadway in front of a house known to be associated with drug activity. Larner observed a man, later identified as the passenger of the vehicle, exit the house and get into the van. The van drove away and Larner followed. Officer Mike Donaker answered Larner's call for assistance, and the two initiated a traffic stop. Larner testified they intended to ticket the driver for parking in the roadway.

Larner asked defendant, who was driving the vehicle, to provide his driver's license and insurance card. While defendant provided his insurance card, he handed Larner an Illinois identification card instead of his driver's license. According to Larner's testimony, defendant was breathing heavily and appeared nervous.

Larner explained he would have to issue defendant a notice to appear because defendant did not have his driver's license. Larner told defendant he needed to complete a field booking form for the notice to appear. Larner asked defendant if he would accompany him back to his squad car to fill out the information because it was cold out. Defendant told Larner he had "no problem at all" coming back to the squad car.

Because defendant would be sitting in the back of the squad car, behind Larner, without handcuffs on, Larner asked defendant if he would consent to a pat-down search. Defendant consented. After the pat-down but prior to shutting the door of the squad car, Larner asked defendant if there was anything in the van Larner needed to know about. Defendant replied, "No, there shouldn't be. You can check the van."

Based upon defendant's response, Larner searched the van. Larner found 27 clear plastic Baggies containing a green leafy substance and 8 clear plastic Baggies containing a yellowish rock-like substance in the vehicle's center console. As a result, Larner arrested defendant.

Officer Donaker testified after defendant was arrested, Larner asked him to measure the distance between the traffic stop and a building with a sign indicating the building was a church. Donaker testified the distance was 456 feet.

On January 12, 2007, the State charged defendant by

information with (1) unlawful possession of a controlled substance with intent to deliver 1 gram or more but less than 15 grams of a substance containing cocaine while within 1,000 feet of church property (count I), (2) unlawful possession of a controlled substance (count II), (3) unlawful possession with intent to deliver more than 30 grams but not more than 500 grams of a substance containing cannabis, and (4) unlawful possession of cannabis.

The parties stipulated 7 of the bags recovered were tested and found to contain 1.03 grams of cocaine and 27 Baggies were tested and found to contain 46.9 grams of a substance containing cannabis.

The State called Detective Chad Ramey and the trial court accepted him as an expert in the area of narcotics distribution. According to Ramey's testimony, defendant's possession of 27 individual bags of cannabis and the 8 individual bags of crack cocaine was consistent with the intent to deliver the drugs. Ramey also testified the lack of paraphernalia for personal use and the drugs' packaging indicated the drugs were intended for sale as opposed to personal use.

Defendant testified he did not consent to a search of his vehicle. During trial, the following colloquy took place:

"Q. [MS. MICHELLE SANDERS (defendant's attorney):] You heard the officers testify

that you consented to a search of your vehicle. Did you consent to a search of your vehicle?

A. [DEFENDANT:] No, ma'am.

Q. Did they ask you whether you would consent to them searching the vehicle?

A. No, ma'am.

Q. Did they ask you at any time?

A. No, ma'am."

On February 9, 2009, defendant was convicted of possession of a controlled substance with intent to deliver within 1,000 feet of church property and possession with intent to deliver cannabis.

On February 27, 2009, defendant filed a motion for judgment notwithstanding the verdict, or, in the alternative, a new trial, which the trial court denied.

On June 12, 2009, the trial court sentenced defendant as stated.

This appeal followed.

II. ANALYSIS

A. Motion To Suppress

In July 2008, defendant filed a motion to suppress the evidence found during the search of the van, arguing, *inter alia*, the traffic stop took an unreasonable amount of time and he never

gave police permission to search the van.

At the August 2008 hearing on defendant's motion, Larner testified defendant voluntarily consented to a search of the van. Defendant, on the other hand, testified he did not consent to a search of his vehicle.

After hearing arguments, the trial court found the following:

"[T]here is nothing in the evidence to indicate that it was an unreasonable length of [a] stop. The officer was attempting to get documentation, [defendant] did not have a driver's license. That requires different types of documentation, specifically a photo I.D. for several purposes, insurance purposes, driving license purposes, bonding purposes.

And then the question arises whether the defendant gave consent to search and that boils down to a credibility of the witnesses, and the [c]ourt has, indeed, balanced the credibility of the witnesses and finds that the officer did, in fact, have consent to search the vehicle.

The [c]ourt finds no basis to suppress

the evidence and denies the motion in that regard."

Defendant argues the trial court erred in denying his motion to suppress evidence obtained during the traffic stop. Specifically, defendant contends his fourth-amendment rights were violated because (1) his consent to search was not voluntary and (2) the traffic stop was impermissibly prolonged. We disagree.

1. *Standard of Review*

In reviewing a motion to suppress on appeal, we are presented with mixed questions of law and fact. *People v. Terry*, 379 Ill. App. 3d 288, 292, 883 N.E.2d 716, 720 (2008). "[The] trial court's findings of historical fact are reviewed for clear error, giving due weight to any inferences drawn from those facts by the [court]." *People v. Harris*, 228 Ill. 2d 222, 230, 886 N.E.2d 947, 953 (2008). Great deference is accorded a trial court's factual findings, and those findings will be reversed only if against the manifest weight of the evidence. *People v. Cosby*, 231 Ill. 2d 262, 271, 898 N.E.2d 603, 609 (2008) (quoting *People v. Luedemann*, 222 Ill. 2d 530, 542, 857 N.E.2d 187, 195 (2006)). "A reviewing court, however, remains free to undertake its own assessment of the facts in relation to the issues and may draw its own conclusions when deciding what relief should be granted." *Luedemann*, 222 Ill. 2d at 542, 857 N.E.2d at 195. Thus, we review the trial court's ultimate ruling as to whether

suppression was warranted *de novo*. *Harris*, 228 Ill. 2d at 230, 886 N.E.2d at 954.

2. *Consent To Search*

We note defendant does not challenge the basis for the initial stop of the vehicle. "[S]topping [a vehicle] and detain- ing its occupants constitute[s] a seizure for fourth amendment purposes." (Internal quotations omitted.) *Harris*, 228 Ill. 2d at 231, 886 N.E.2d at 954 (quoting *Berkemer v. McCarty*, 486 U.S. 420, 436-37 (1984)). However, "[s]topping an automobile for a minor traffic violation does not, by itself, justify a search of the detainee's person or vehicle." *People v. Jones*, 215 Ill. 2d 261, 271, 830 N.E.2d 541, 549 (2005). Both the United States and Illinois Constitutions protect citizens from unreasonable searches and seizures. U.S. Const. amend. IV.; Ill. Const. 1970, art. I, §6 (establishing the people's right to be secure in their "persons, houses, papers[,] and other possessions against unrea- sonable searches [and] seizures"). Our supreme court has inter- preted the search-and-seizure clause of the Illinois Constitution in a manner consistent with the United States Supreme Court's fourth-amendment jurisprudence. See *People v. Caballes*, 221 Ill. 2d 282, 335-36, 851 N.E.2d 26, 57 (2006).

"Generally, reasonableness in the fourth-amendment context requires a warrant supported by probable cause." *Terry*, 379 Ill. App. 3d at 296, 883 N.E.2d at 723. However, an excep-

tion to the fourth amendment's warrant requirement is a search conducted pursuant to consent. *People v. Starnes*, 374 Ill. App. 3d 329, 336, 871 N.E.2d 815, 821 (2007).

In this case, Officer Larner testified he did not request defendant's consent to search the van. Instead, Larner explained he asked defendant if there was anything he needed to know about the van, and defendant responded, "There shouldn't be. You can check." However, defendant testified he never gave Larner consent to search the vehicle. While the trial court heard competing testimony, it found Larner's testimony more credible than defendant's. Witness credibility is a matter within the discretion of the trial court. See *People v. Roberts*, 374 Ill. App. 3d 490, 497-98, 872 N.E.2d 382, 389 (2007). We will not substitute our judgment for the trier of fact's in the area of witness credibility. See *People v. Ortiz*, 196 Ill. 2d 236, 259, 752 N.E.2d 410, 425 (2001).

3. *Voluntariness of Defendant's Consent*

Defendant argues even if he consented to the search, his impermissible detention renders any subsequent consent to search invalid because it was not voluntarily given. We disagree.

To be valid, a defendant's consent must be voluntary, which means it must be "'freely given without duress or coercion (express or implied).'" *People v. Plante*, 371 Ill. App. 3d 264,

269, 862 N.E.2d 1059, 1063 (2007) (quoting *People v. LaPoint*, 353 Ill. App. 3d 328, 332, 818 N.E.2d 865, 868 (2004)); *People v. Prinzing*, 389 Ill. App. 3d 923, 932, 907 N.E.2d 87, 96 (2009) ("consent is not voluntary where it is the result of coercion, intimidation, or deception"). "The voluntariness of the consent is a question of fact determined from the totality of the circumstances, and the State bears the burden of proving the consent was truly voluntary." *People v. Anthony*, 198 Ill. 2d 194, 202, 761 N.E.2d 1188, 1192 (2001). This court reviews the trial court's finding to determine whether it is against the manifest weight of the evidence. *People v. Smith*, 214 Ill. 2d 338, 350, 827 N.E.2d 444, 452 (2005), *abrogated on other grounds in Luedemann*, 222 Ill. 2d at 548, 857 N.E.2d at 199.

Factors for determining whether a defendant's consent was voluntarily given include: (1) the defendant's age, intelligence, and education; (2) whether the defendant was advised of his constitutional rights; (3) the length of detention prior to consent; (4) whether the consent was immediate or prompted by repeated requests by police; (5) whether any physical coercion was used; and (6) whether the defendant was in police custody when he gave consent. See *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973); *United States v. Figueroa-Espana*, 511 F.3d 696, 704-05 (7th Cir. 2007). However, a voluntariness determination does not depend on a single controlling factor. *Figueroa-Espana*,

511 F.3d at 704.

Applying these factors, defendant's consent to search the van was voluntarily given. At the time of his arrest, defendant was 28 years old with a tenth-grade education. The length of his detention prior to his consent was short. According to the evidence, defendant's consent was unsolicited and not prompted by multiple police requests. Larner told defendant why he was asking him to sit in his vehicle. Defendant consented to going back to Larner's vehicle. While two officers were present, the evidence does not show they acted in a threatening manner. Defendant did not testify either officer displayed a weapon. While Larner physically touched defendant, Larner explained first his reasons for conducting a pat-down, and defendant did not object.

Although defendant was being detained as a result of the traffic stop when he consented to the search, he was not yet under arrest. Defendant was not handcuffed, and the window in the backseat where defendant was seated was rolled down. The testimony does not show any physical coercion prior to defendant's consent. Further, the record shows Larner did not order defendant to do anything or use a commanding tone of voice, *i.e.*, the officer's actions were not coercive in nature. See *People v. Walter*, 374 Ill. App. 3d 763, 772, 872 N.E.2d 104, 113 (2007) (finding no indication the officer's "tone of voice, or any other

quality of his request, indicated to [the] defendant that compliance with his request was compelled").

In sum, defendant voluntarily took a seat in Larner's patrol car. Prior to shutting the door, Larner asked defendant about the vehicle, and defendant told Larner he could search it. Defendant's consent to search was voluntarily given. See *Cosby*, 231 Ill. 2d at 285, 898 N.E.2d at 617 (finding that because the defendant was not unlawfully seized his consent to search was voluntary).

4. *The Traffic Stop Was Not Impermissibly Prolonged*

Defendant also argues his fourth-amendment rights were violated because the traffic stop was impermissibly prolonged. As stated, defendant does not challenge the basis for the initial stop of the vehicle. However, while a stop may be initially lawful, it can violate the fourth amendment where it is prolonged beyond the time reasonably necessary to complete its purpose. *Harris*, 228 Ill. 2d at 235, 886 N.E.2d at 956.

In this case, Officer Larner had not yet begun filling out the notice-to-appear paperwork when defendant gave him consent to search the van. Larner testified he asked defendant if there was anything he needed to know about the van *prior* to filling out any paperwork. Defendant responded, "There shouldn't be. You can check." Although Larner asked defendant to accompany him back to his vehicle to fill out the paperwork and took

the time to pat defendant down, nothing in the record shows the traffic stop was prolonged beyond the time necessary to complete the notice-to-appear forms. See *Cosby*, 231 Ill. 2d at 283, 898 N.E.2d at 616 (finding no unreasonably prolonged traffic stop occurred where the officer asked defendant's consent to search his vehicle directly *after* returning his paperwork). Defendant's detention, considered in light of the scope and purpose of the traffic stop, was not prolonged. The trial court did not err in denying defendant's motion to suppress.

B. Sufficiency of the Evidence

Defendant argues the State failed to prove beyond a reasonable doubt he (1) possessed the cocaine and cannabis with intent to deliver and (2) was within 1,000 feet of a place used primarily for religious worship at the time he was arrested.

When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when 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. Pollock*, 202 Ill. 2d 189, 217, 780 N.E.2d 669, 685 (2002). The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. *Ortiz*, 196 Ill. 2d at

259, 752 N.E.2d at 425. A court of review will not overturn the verdict of the fact finder "unless the evidence is so unreasonable, improbable[,], or unsatisfactory that it raises a reasonable doubt of defendant's guilt." *People v. Evans*, 209 Ill. 2d 194, 209, 808 N.E.2d 939, 947 (2004).

1. *Intent To Deliver*

We note defendant does not dispute he knowingly possessed the cocaine or cannabis. Instead, defendant argues the State did not prove he possessed the drugs with the intent to deliver. Specifically, defendant argues the amount of drugs in his possession was consistent with personal use.

The elements of possession of illegal drugs, with intent to deliver, are as follows: (1) the defendant knew the drugs were present, (2) the drugs were within the defendant's immediate control or possession, and (3) the defendant intended to deliver the drugs. *People v. Robinson*, 167 Ill. 2d 397, 407, 657 N.E.2d 1020, 1026 (1995).

Direct evidence of the intent to deliver drugs is rare, and the intent must usually be proved by circumstantial evidence. *Robinson*, 167 Ill. 2d at 408, 657 N.E.2d at 1026. Factors Illinois courts have found probative of intent to deliver include (1) the quantity was too large to be viewed as being for personal consumption; (2) the high purity of the drugs; (3) the possession of weapons; (4) the possession of large amounts of cash; (5) the

possession of police scanners, beepers, or cellular telephones; (6) the possession of drug paraphernalia; and (7) the manner in which the substance was packaged. *Robinson*, 167 Ill. 2d at 408, 657 N.E.2d at 1026-27.

"[T]he quantity of controlled substance alone can be sufficient evidence to prove an intent to deliver beyond a reasonable doubt." *Robinson*, 167 Ill. 2d at 410-11, 657 N.E.2d at 1028. However, that is the case "only where the amount of controlled substance could not reasonably be viewed as designed for personal consumption." *Robinson*, 167 Ill. 2d at 411, 657 N.E.2d at 1028. "As the quantity of controlled substance in the defendant's possession decreases, the need for additional circumstantial evidence of intent to deliver to support a conviction increases." *Robinson*, 167 Ill. 2d at 413, 657 N.E.2d at 1029. Where only a small quantity of drugs is found, the minimum evidence required to show intent to deliver is "the drugs were packaged for sale, and at least one additional factor tending to show intent to deliver." *People v. Blakney*, 375 Ill. App. 3d 554, 559, 873 N.E.2d 1007, 1011 (2007).

In this case, Detective Ramey testified defendant's possession of 27 individual bags of cannabis and 8 individual bags of crack cocaine was consistent with the intent to deliver the drugs. Ramey testified the packaging of the drugs in individual bags indicated the drugs were intended for sale as opposed

to personal use. In addition, Ramey testified the absence of any drug paraphernalia for personal use was also consistent with an intent to deliver the drugs. Viewing the above evidence in the light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt defendant had the intent to deliver the drugs.

2. Church Property

Defendant argues the State failed to prove him guilty beyond a reasonable doubt by failing to prove he was within 1,000 feet of a place used primarily for religious worship at the time he was arrested. Specifically, defendant contends the State failed to prove the Ebenezer Church of God was a functioning church used primarily for religious purposes. We disagree.

Section 407(b)(1) of the Illinois Controlled Substances Act (Act) makes it a crime to possess a controlled substance with intent to deliver within 1,000 feet of a "church, synagogue, or other building, structure, or place used primarily for religious worship." 720 ILCS 570/407(b)(1) (West 2006).

In this case, Officer Donaker testified he used a wheel to measure the distance between the traffic stop and a building with a sign indicating the building was a church. According to Donaker's testimony, he observed the building's sign as reading the Ebenezer Church of God. Defendant does not dispute the distance measurement. Instead, defendant argues the State did

not prove the church was a functioning church used primarily for religious purposes.

However, the State was not required to "produce evidence that worship services were in session or that the church in question was otherwise occupied at the time the offense was committed." *People v. Daniels*, 307 Ill. App. 3d 917, 928-29, 718 N.E.2d 1064, 1073 (1999). Further, a structure being labeled as a "church" is "material" in reviewing a challenge to the sufficiency of the State's evidence. *People v. Foster*, 354 Ill. App. 3d 564, 568, 821 N.E.2d 733, 737 (2004) (holding that a "rational trier of fact could have inferred New Hope Church was a church used primarily for religious worship based on its name").

We note the plain language of the Act only requires evidence that the property includes a "church, synagogue, or other building, structure, or place used primarily for religious worship." 720 ILCS 570/407(b)(1) (West 2006). In this case, the building in question was by name a "church." In viewing the evidence in the light most favorable to the prosecution, we find a rational trier of fact could have inferred the Ebenezer Church of God was a church used primarily for religious worship based upon its name. This finding was not so unreasonable, improbable, or unsatisfactory as to cause a reasonable doubt of defendant's guilt.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

Affirmed.