

2012 IL App (1st) 111726-U

FIFTH DIVISION  
August 10, 2012

No. 1-11-1726

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

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. 10 CR 19435
	)	
CARLOS VILLAREAL,	)	The Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Epstein and Justice McBride concurred in the judgment.

**ORDER**

¶ 1 *Held:* The evidence was sufficient to convict defendant of delivery of a controlled substance where the State proved that defendant had knowledge of the cocaine and delivered it to an undercover police officer; affirmed.

¶ 2 Following a bench trial, defendant Carlos Villareal was convicted of delivery of a controlled substance (more than 900 grams of cocaine) and sentenced, as a Class X offender, to

15 years' imprisonment. On appeal, defendant contests the sufficiency of the evidence supporting his conviction, arguing that the evidence failed to show that he had knowledge of the cocaine, or that a delivery occurred. We affirm.

¶ 3 At trial, Officer Gonzalez testified that at about 10 a.m. on October 7, 2010, while he was dressed in civilian clothes, he was introduced to defendant in a Dunkin' Donuts parking lot located at 4649 South Cicero Avenue in Chicago. Gonzalez asked defendant if he could buy "three kilos" for \$28,000 each, and defendant responded that he could only do it for \$28,500 for each kilo. Gonzalez agreed to pay defendant \$28,500 for each kilo, defendant told him that "it was 99 percent pure," and both men agreed to meet at the same location the following day to make the transaction. At about 6 p.m. on October 7, defendant called Gonzalez and told him that he could get him six kilos, two at a time, and Gonzalez agreed to those terms. Gonzalez called defendant about two hours later and asked him if he could get him three kilos at two different intervals in order to save time, but defendant refused.

¶ 4 On October 8, at about 9:45 a.m., Gonzalez returned to the same Dunkin' Donuts with the intention of conducting a controlled buy with defendant. Gonzalez was working with a team of police officers and he was acting as the undercover officer. After parking his undercover vehicle in the parking lot, Gonzalez entered the Dunkin' Donuts, met with defendant, and then both men walked outside. Defendant moved his vehicle out of street view into a corner of the lot. Gonzalez told defendant that he had the money inside of his vehicle, and defendant opened the trunk of his vehicle, tapped on a cat litter box, and told him to take the box. Gonzalez grabbed the box, walked over to his vehicle, opened the trunk, and placed the box inside. Gonzalez opened the box and saw two rectangular objects wrapped in black tape. Gonzalez then took a

backpack from his vehicle and walked over to defendant. At that time, enforcement officers apprehended defendant.

¶ 5 The parties stipulated that Laneen Blount, a forensic chemist, would testify that the two recovered items tested positive for cocaine and weighed 1,776 grams.

¶ 6 Following closing argument, the trial court found defendant guilty of delivery of a controlled substance. In doing so, the court held that Officer Gonzalez testified credibly, the transaction took place over two days during which kilos were discussed, and that when defendant instructed Gonzalez to take the box, Gonzalez found cocaine inside.

¶ 7 On appeal, defendant contends that the State failed to prove him guilty of delivery of a controlled substance beyond a reasonable doubt. Specifically, defendant maintains that the evidence failed to show that he knew the box contained cocaine, and that the evidence was insufficient to show that a delivery of a controlled substance occurred.

¶ 8 In reviewing a sufficiency of the evidence claim, the relevant inquiry is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the defendant guilty of the essential elements of the crime beyond a reasonable doubt. *People v. Davison*, 233 Ill. 2d 30, 43 (2009). A reviewing court will not retry the defendant. *People v. Cox*, 195 Ill. 2d 378, 387 (2001). Rather, it is the responsibility of the trier of fact to assess witness credibility, weigh the evidence and draw reasonable inferences therefrom, and resolve any conflicts in the testimony. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A defendant's criminal conviction will not be reversed on appeal unless the reviewing court finds that "the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt." *People v. Brown*, 185 Ill. 2d 229, 247 (1998).

¶ 9 To sustain a conviction for delivery of a controlled substance, the State must show that the defendant knowingly delivered a controlled substance. *People v. Brown*, 388 Ill. App. 3d 104, 108 (2009); 720 ILCS 570/401 (West 2010). Thus, the State must prove the elements of knowledge and delivery. The knowledge requirement "is rarely susceptible of direct proof," but can be inferred by looking to the defendant's conduct. *People v. Loferski*, 235 Ill. App. 3d 675, 682 (1992). Delivery, on the other hand, is defined as "the actual, constructive or attempted transfer of possession of a controlled substance, with or without consideration, whether or not there is an agency relationship." 720 ILCS 570/102(h) (West 2010).

¶ 10 The evidence in this case sufficiently established that defendant knowingly delivered cocaine to Officer Gonzalez. On October 7, 2010, during three separate conversations, defendant and Officer Gonzalez, who was undercover, discussed the details of a narcotics transaction that was to occur the following day. The conversations, which took place in person and on the phone, detailed the number of kilos and the price. On October 8, Gonzalez arrived at the pre-arranged meeting place, a Dunkin' Donuts located at 4649 South Cicero Avenue. Defendant moved his vehicle out of street view, and Gonzalez told him that he had the money inside of his vehicle. Defendant opened his trunk, tapped on a box, and told him to take the box. Gonzalez complied, and when he opened the box, he saw two rectangular objects that were later determined to contain 1,776 grams of cocaine. Gonzalez then took a backpack from his vehicle, which was supposed to appear to contain money, and walked over to defendant. At that time, enforcement officers arrested defendant. Based on this evidence, the trial court found defendant guilty of delivery of a controlled substance.

¶ 11 Despite this overwhelming evidence, defendant argues on appeal that the evidence was

insufficient to show that he knew the box contained cocaine because the phone conversations between defendant and Officer Gonzalez failed to reveal that they were discussing a controlled substance or that it would be delivered in a litter box. Moreover, defendant argues that the State failed to offer any direct evidence that he knew the litter box contained cocaine. As stated above, however, the State is not required to put forth direct evidence to establish defendant's knowledge that the box contained cocaine. *Loferski*, 235 Ill. App. 3d at 682. Furthermore, although defendant argues that possession of an item does not necessarily infer knowledge on the part of the possessor as to the nature of that item, it is well settled that "the mere presence of illegal drugs on premises which are under the control of the defendant gives rise to an inference of knowledge and possession sufficient to sustain a conviction absent other factors which might create a reasonable doubt as to defendant's guilt." *People v. Smith*, 191 Ill. 2d 408, 413 (2000).

¶ 12 Here, the State presented sufficient evidence through defendant's acts, statements, and conduct that showed he knew cocaine was inside the box. At their first meeting, defendant and Officer Gonzalez agreed on a price for the kilos and defendant indicated that they were "99 percent pure." During the phone conversations, defendant and Gonzalez discussed the amount and price of the kilos. Also, when the two men met on October 8, and Gonzalez indicated that he had the money in his vehicle, defendant tapped the box in his trunk and indicated that Gonzalez should take it. This circumstantial evidence shows that any reasonable trier of fact could find that defendant had knowledge that cocaine was inside the box.

¶ 13 In reaching this conclusion, we find *People v. Ortiz*, 196 Ill. 2d 236 (2001) and *People v. Hodogbey*, 306 Ill. App. 3d 555 (1999), relied on by defendant, distinguishable from the case at bar. In *Ortiz*, 196 Ill. 2d at 267, the supreme court found that the evidence was insufficient to

prove that the defendant knowingly possessed cocaine found in a secret compartment in a truck. In *Hodogbey*, 306 Ill. App. 3d at 561-62, this court found the evidence insufficient to prove that the defendant knowingly possessed heroin found in a mail package addressed to him. In contrast to *Ortiz* and *Hodogbey*, the case at bar involves defendant delivering a controlled substance to an undercover officer. When there is a sale of narcotics, as is the case here, there is "an intentional affirmative act, which, by its very nature, creates a reasonable inference that the seller knows the nature of the thing he is selling." *People v. Castro*, 10 Ill. App. 3d 1078, 1086 (1973).

¶ 14 Defendant next argues that there was insufficient evidence to show that he delivered the cocaine to Officer Gonzalez because Gonzalez effectuated the transfer of the cocaine by taking the box from defendant's car to his undercover vehicle. Defendant further notes that the fact that there was no exchange of money or final discussion of price on October 8 is evidence that there was no delivery.

¶ 15 Here, although defendant never handed the cocaine to Officer Gonzalez, the evidence shows that defendant transferred the cocaine to him by his conduct and his statements. After Gonzalez told defendant that he had money inside of his vehicle, defendant tapped the litter box inside the trunk of his car and instructed Gonzalez to take the box. When Gonzalez took the box back to his car and opened it, he found the cocaine. Gonzalez' action in taking the box to his vehicle was not a unilateral move, but was in response to defendant's tapping motion on top of the box, his express instructions to take the box, and their earlier conversations setting up the sale. Therefore, the State presented sufficient evidence to show that defendant delivered the cocaine to Gonzalez. See *People v. Stupka*, 226 Ill. App. 3d 567, 572 (1992) (finding that a delivery occurred where the defendant's "verbal directions to the heretofore concealed drug were

the 'key' to the transfer"). We further note that, as defendant acknowledges in his brief, whether or not money was exchanged in a drug transaction is not a legally material fact. The important factor is whether the transfer of possession of narcotics occurred, and we find that such transfer occurred in this case. See *People v. Jordan*, 5 Ill. App. 3d 7, 13 (1972) (holding that in an unlawful sale of narcotics case, the important fact was the transfer of possession of a packet of heroin, and whether or not money was actually passed during the transaction was not a legally important fact).

¶ 16 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 17 Affirmed.