2012 IL App (1st) 120278-U

FIFTH DIVISION
February 1, 2013

No. 1-12-0278

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. 09 CR 11306
	)	
HECTOR ROJAS,	)	Honorable
	)	John T. Doody,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Taylor concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's conviction for possession with intent to deliver cannabis is affirmed where the testimony of the arresting officer, although impeached, was credible, and it could be reasonably inferred from the evidence that defendant had knowledge of the bundles of cannabis in the trunk of the car he was driving.

¶ 2 Following a bench trial, defendant Hector Rojas was convicted of possession with intent to deliver more than 5,000 grams of cannabis, and was sentenced to six years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because the testimony of the arresting officer was substantially impeached where his testimony

differed from his prior account of the incident as written in his police report. Defendant also contends that the State failed to prove that he had knowledge of the cannabis in the trunk of the car he was driving. We affirm.

¶ 3 At trial, Chicago police officer Jose Castaneda testified that on the morning of May 27, 2009, he was standing in an alley conducting a narcotics surveillance of the residence at 5825 West 64th Place. About 11:15 a.m., the officer saw defendant driving a gray Suburban on 65th Street with codefendant Juan Esparza as a passenger. Twenty minutes later, Esparza walked into the gangway of the subject residence, and the overhead garage door opened. At the same time, a blue minivan drove through another alley and stopped two houses away from the residence. A woman exited the minivan, and Esparza approached her and briefly conversed with her. Esparza then drove the minivan into the garage. About 11:40 a.m., Esparza drove the minivan out of the garage, down Menard Avenue and out of sight. Five minutes later, Officer Castaneda received a radio message from another officer on his narcotics team, and Officer Castaneda then walked towards the garage at the residence.

¶ 4 As Officer Castaneda approached the garage, the overhead garage door opened, and Esparza, who was standing at the door, entered the garage. Inside the garage was a white panel van and a maroon Subaru. As Officer Castaneda stood at the threshold of the garage door, defendant began backing the Subaru out of the garage. The side door of the white van was open, and inside the van were numerous bundles wrapped in red tinted plastic, which Officer Castaneda suspected were packaged narcotics. The bundles were packaged as 20 to 24-inch cubes, each weighing approximately 15 to 20 pounds. Inside the garage, Officer Castaneda smelled coffee grounds and other chemicals commonly used to mask the smell of narcotics. Officer Castaneda ordered Esparza to lie on the ground, and ordered defendant to exit the Subaru and lie on the ground. Defendant and Esparza were then taken into custody.

¶ 5 Police searched the Subaru and, from the trunk, recovered seven bundles wrapped in plastic which each contained a green plant-like substance of suspect cannabis. Police also recovered 120 bundles from inside the white van, some wrapped in a red tinted plastic and the others wrapped in a silver or white tinted plastic. The packages recovered from the trunk of the Subaru were identical to the red tinted packages recovered from the white van. When the trunk of the Subaru was opened, Officer Castaneda smelled cannabis, a strong odor of coffee and coffee grounds, and other unknown chemicals. Based on his nine and a half years of police experience, Officer Castaneda believed he was smelling masking agents used to conceal the smell of the narcotics. Inside the garage, police also recovered two smaller bags of cannabis and $7,000 in cash. During a custodial search of defendant, Officer Castaneda recovered $800 and various identification cards.

¶ 6 On cross-examination, Officer Castaneda acknowledged that in the police reports he wrote shortly after the arrest he stated that when he approached the garage, he saw defendant transferring the bundles from the van into the maroon Subaru. The officer acknowledged that his trial testimony differed from the account he wrote in his police report. The officer further acknowledged that in his three-page report he did not mention smelling cannabis when he entered the garage. Officer Castaneda testified that not everything that occurred on the day of the arrest was contained in his police report.

¶ 7 Chicago police officer Orlando Rodriguez testified that he was working on the narcotics team with Officer Castaneda, and about 11:40 a.m., he saw defendant driving the maroon Subaru on Menard Avenue towards 64th Street, with codefendant Esparza sitting in the passenger seat. The parties stipulated that Officer Castaneda recovered two wrapped bundles from the Subaru parked inside the garage and inventoried those items in accordance with police procedure. The

parties further stipulated that a forensic chemist weighed and tested those two items and found them positive for 14,058 grams of cannabis.

¶ 8 The trial court noted that there was "some impeachment" of Officer Castaneda's testimony. The court expressly found, however, that from the officer's testimony of defendant's involvement, it could reasonably infer that defendant had knowledge of the cannabis recovered from the trunk of the Subaru. Consequently, the trial court found defendant guilty of possession with intent to deliver more than 5,000 grams of cannabis.

¶ 9 At the hearing on defendant's motion for a new trial, defense counsel argued that Officer Castaneda's testimony was substantially impeached, and that there was no evidence defendant knew there was cannabis in the car. Counsel argued defendant was merely present at the scene. The trial court noted that everyone agreed there was impeachment of Officer Castaneda's testimony. The court further noted that it had read the trial transcript a couple of times and carefully reviewed the arguments. The court then stated "[i]f the officer was going to lie on the stand he should have stuck to the original story that he saw Mr. Rojas transferring. He didn't. I think the officer was credible. I believe both of those officers were credible." The court found that, based on the testimony and reasonable inferences drawn therefrom, defendant was proven guilty beyond a reasonable doubt, and it denied his motion for a new trial. The trial court subsequently sentenced defendant to a term of six years' imprisonment.

¶ 10 On appeal, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt because Officer Castaneda's testimony was substantially impeached where that testimony differed from his prior account of the incident as written in his police report. Defendant notes that Officer Castaneda acknowledged the conflicts, but offered no explanation for why he stated in his police report that he saw defendant transferring the bundles from the van into the Subaru, but testified at trial that defendant was backing the Subaru out of the garage

when he saw him. Defendant further notes that Officer Castaneda's testimony that he smelled cannabis in the garage was not reflected in the police report. Defendant argues that, based on this impeachment, his conviction should be reversed.

¶ 11 The State argues that the impeachment was not substantial, and not enough to render Officer Castaneda's testimony incredible. The State further argues that the trial court was aware of the differences, yet still found Officer Castaneda's testimony credible.

¶ 12 When defendant argues the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). This standard applies whether the evidence is direct or circumstantial. *Id.* at 281. A criminal conviction will not be reversed based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). In a bench trial, the trial court, sitting as the trier of fact, is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences therefrom. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). In weighing the evidence, the fact finder is not required to disregard the inferences that naturally flow from that evidence. *Jackson*, 232 Ill. 2d at 281. This court is prohibited from substituting its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *Id.* at 280-81. Defendant's conviction will not be reversed on review simply because he claims a witness was not credible or the evidence was contradictory. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 13 Here, we find that, although Officer Castaneda's trial testimony was impeached, that impeachment was not so substantial that it rendered his testimony incredible. Officer

Castaneda's testimony was impeached on two points. First, the officer testified at trial that when he reached the garage door, defendant began backing the Subaru out of the garage. However, in his police report, he stated that he saw defendant transferring bundles from the van into the Subaru. Officer Castaneda acknowledged the inconsistency in court, but he was not asked to explain the reason for it, which remains unknown. Second, Officer Castaneda testified that he smelled cannabis and odors from masking agents inside the garage, but this information was not contained in his police report. Officer Castaneda subsequently testified that not every detail of what occurred on the day of the arrest was contained in his police report. The record shows that the trial court acknowledged that there was "some impeachment" when it rendered its ruling at trial, and when it denied defendant's motion for a new trial. Nevertheless, the court expressly found that Officer Castaneda did not lie on the stand and that "the officer was credible." Sitting as the trier of fact, the trial court was in the superior position to determine the credibility of Officer Castaneda's testimony and to resolve any conflicts therein. We find no reason to disturb the trial court's finding.

¶ 14 Defendant next contends that the State failed to prove him guilty beyond a reasonable doubt because it failed to establish that he had knowledge of the cannabis in the trunk of the Subaru he was driving. Defendant argues that there is no indication he could see or access the bundles in the trunk, and no evidence he owned or leased the car, or owned or rented the residence or garage.

¶ 15 To convict defendant of possession of cannabis with intent to deliver, the State must prove defendant knew the cannabis was present, the substance was in his immediate possession or control, and he intended to deliver the cannabis. *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). Possession may be established by constructive possession where defendant did not have actual control of the narcotics, but knew they were present and exercised control over them.

People v. Burks, 343 Ill. App. 3d 765, 769 (2003). Constructive possession is often demonstrated entirely by circumstantial evidence. *People v. Besz*, 345 Ill. App. 3d 50, 59 (2003). Defendant's knowledge that the narcotics were in the location where they were found may be inferred from his conduct. *Burks*, 343 Ill. App. 3d at 769. Where drugs are found in a vehicle under defendant's control it gives rise to an inference of knowledge and possession by defendant that is sufficient to sustain a conviction. *People v. Chavez*, 327 Ill. App. 3d 18, 26 (2001). It is defendant's control of the vehicle, not ownership, which is significant to proving he had control of the place where the drugs were found. *Chavez*, 327 Ill. App. 3d at 26.

¶ 16 Here, we find that the evidence was sufficient for the trial court to infer that defendant had knowledge of the bundles of cannabis that were in the trunk of the Subaru he was driving. Officer Castaneda stopped defendant as he was backing the Subaru out of the garage. Also inside that garage was a white van with its side door open, which exposed 120 bundles inside the van that were identical to the bundles of cannabis recovered from the trunk of the Subaru. Officer Castaneda further testified that inside the garage he smelled cannabis, coffee grounds and other chemicals commonly used to mask the smell of narcotics. Officer Rodriguez testified that he saw defendant driving the Subaru near the residence earlier that day. Whether or not defendant owned the car or the residence is of no significance. The trial court specifically found that from Officer Castaneda's testimony regarding defendant's conduct that day, it could reasonably infer that defendant had knowledge of the cannabis in the trunk of the Subaru. It was the trial court's responsibility to draw reasonable inferences from the evidence, and again, we find no basis to disturb the court's finding. Accordingly, we find that the State presented sufficient evidence to allow the trial court to find defendant guilty beyond a reasonable doubt.

¶ 17 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.