

NOTICE
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2013 IL App (4th) 120488-U

NO. 4-12-0488

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 1, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
RICHARD CHARLES WILLINGHAM,)	No. 11CF158
Defendant-Appellant.)	
)	Honorable
)	James E. Souk,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Where a reasonable jury could find defendant guilty beyond a reasonable doubt of unlawful possession with the intent to deliver, the trial court did not err in denying his motion for a directed verdict.

¶ 2 In October 2011, a jury found defendant, Richard Charles Willingham, guilty of possession of cannabis and possession of cannabis with the intent to deliver. In November 2011, the trial court sentenced him to 15 years in prison.

¶ 3 On appeal, defendant argues his conviction for possession of cannabis with the intent to deliver must be reduced to a conviction for possession of cannabis. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2011, a grand jury indicted defendant on one count of unlawful possession of cannabis with intent to deliver (count I) (720 ILCS 550/5(e) (West 2010)), alleging

he knowingly and unlawfully possessed with the intent to deliver more than 500 grams but less than 2,000 grams of a substance containing cannabis. The grand jury also indicted defendant on one count of unlawful possession of cannabis (count II) (720 ILCS 550/4(e) (West 2010)).

Defendant pleaded not guilty.

¶ 6 In October 2011, defendant's jury trial commenced. Illinois State Police Trooper Tim Sweeney testified he was patrolling Interstate 55 between Bloomington and Pontiac on February 24, 2011, when he stopped defendant's truck for speeding and an improperly displayed front license plate at approximately 8:46 a.m. Sweeney's canine partner indicated to the presence of cannabis in the vehicle. Sweeney searched the vehicle and observed what he believed to be cannabis residue throughout the front passenger compartment. Upon questioning, defendant stated he was heading to Chicago to pick up his nephew. Defendant also stated he had \$3,400 in "tax return money" in the vehicle. In looking at three envelopes found in the glove box, Sweeney estimated the cash therein amounted to between \$3,000 and \$4,000. Sweeney did not seize the money because he had no reason to do so. He gave defendant a written warning. Sweeney later contacted the Bloomington police department and provided information about the encounter. On cross-examination, Sweeney stated he did not find any weapons or drug scales during his search.

¶ 7 Bloomington police officer Bryce Stanfield testified he received a call from Trooper Sweeney regarding the stop of defendant earlier that day. An investigation involving Stanfield and members of the department's street-crimes unit ensued. Later that afternoon, a truck matching the description of defendant's vehicle was spotted traveling south on Interstate 55 as it neared Bloomington. Stanfield stated he observed defendant's vehicle pull into the Sam's Club parking lot at approximately 4:15 p.m. Officers eventually found drugs inside the truck.

Stanfield arrested defendant and transported him to the police department. A search of defendant's pocket revealed \$235 in cash. Stanfield stated defendant had two cellular phones on him as well. Stanfield did not ascertain whether the phones were activated.

¶ 8 Bloomington police officer Sara Mayer testified she was present in the Sam's Club parking lot and observed a large crack in the front windshield of defendant's truck. She conveyed the information to Officer Stanfield.

¶ 9 Bloomington police officer John Heinlen testified he and his canine partner, Archie, arrived at the Sam Club's parking lot. While Officer Stanfield wrote defendant a violation for the cracked windshield, Heinlen conducted a free-air sniff of the vehicle with his canine partner. Archie indicated to the presence of the odor of narcotics in the vehicle. Upon searching the truck, Heinlen found "a cardboard box with two one-gallon Ziploc bags full of cannabis in it." He identified the cannabis found in the box as exhibit No. 1. He stated each bag contained a pound of cannabis. Based on his training and experience, Heinlen testified a pound of cannabis would cost at least \$1,000. Heinlen also found three plastic bags of cannabis in the center console of the truck. Identified as exhibit No. 2, Heinlen stated this cannabis was packaged into smaller units. On cross-examination, Officer Heinlen testified he did not find any weapons or scales in the vehicle.

¶ 10 The trial court read an agreed stipulation which, in part, noted the State's exhibit No. 1 contained 893.2 grams of cannabis and exhibit No. 2 contained 249.5 grams of cannabis.

¶ 11 At the close of the State's case, defense counsel moved for a directed verdict, arguing the State had not presented any evidence of defendant's intent to deliver cannabis. In response, the State contended the circumstantial evidence regarding the weight and cash was

enough to send the case to the jury. The trial court denied the motion. Defense counsel did not present any evidence, and defendant did not testify.

¶ 12 Following closing arguments, the jury found defendant guilty on both counts. Thereafter, defense counsel filed a motion for a new trial, arguing, *inter alia*, the trial court erred in denying the motion for a directed verdict. In November 2011, the court denied the motion and sentenced defendant to 15 years in prison on count I. Defense counsel filed a motion to reconsider sentence, which the court denied. This court granted defendant's late notice of appeal.

¶ 13 II. ANALYSIS

¶ 14 Defendant argues his conviction for possession of cannabis with the intent to deliver must be reduced to a conviction for possession of cannabis. We disagree.

¶ 15 A. Standard of Review

¶ 16 Section 115-4(k) of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-4(k) (West 2010)) provides as follows:

"When, at the close of the State's evidence or at the close of all of the evidence, the evidence is insufficient to support a finding or verdict of guilty the court may and on motion of the defendant shall make a finding or direct the jury to return a verdict of not guilty, enter a judgment of acquittal and discharge the defendant."

¶ 17 A motion for a directed verdict at the close of the State's case asserts, as a matter of law, the evidence is insufficient to support a verdict of guilty. The trial court need only consider whether reasonable minds could fairly conclude beyond a reasonable doubt the defendant is guilty, considering the evidence most strongly in the State's favor. *People v.*

Withers, 87 Ill. 2d 224, 230, 429 N.E.2d 853, 856 (1981). "In moving for a directed verdict, the defendant admits the truth of the facts stated in the State's evidence for purposes of the motion." *People v. Kelley*, 338 Ill. App. 3d 273, 277, 788 N.E.2d 775, 779 (2003). As a motion for a directed verdict presents a question of law, our review is *de novo*. *People v. Johnson*, 334 Ill. App. 3d 666, 676, 778 N.E.2d 772, 781 (2002).

¶ 18 B. Evidence of Intent To Deliver

¶ 19 Defendant argues the State failed to introduce sufficient evidence to establish he intended to deliver the cannabis he possessed. He contends his possession of nearly 1,143 grams of cannabis and two cellular telephones at the time of his arrest, along with his possession of \$3,400 when he was stopped earlier in the day, are inconsequential.

"Direct evidence establishing an intent to deliver is rare, as such circumstantial evidence is often used to prove an intent to deliver. *People v. Robinson*, 167 Ill. 2d 397, 408[, 657 N.E.2d 1020, 1026] (1995). Illinois courts have used several factors to show an intent to deliver. These factors include: (1) a quantity of a controlled substance that is too much for personal consumption; (2) the high purity of the drug confiscated; (3) possession of weapons; (4) possession of large amounts of cash; (5) possession of police scanners, beepers or cell phones; (6) possession of drug paraphernalia; and (7) the manner in which the confiscated drugs are packaged." *People v. Clinton*, 397 Ill. App. 3d 215, 225, 922 N.E.2d 1118, 1128 (2009).

The list of factors is not exhaustive but contains examples to consider as probative of intent to deliver. *People v. Bush*, 214 Ill. 2d 318, 327, 827 N.E.2d 455, 461 (2005).

¶ 20 Our supreme court has stated "the quantity of controlled substance alone can be sufficient evidence to prove an intent to deliver beyond a reasonable doubt. However, such 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 410-11, 657 N.E.2d at 1028. "Where the amount of a substance seized may be considered consistent with personal use, an additional factor indicative of delivery is required." *People v. Williams*, 358 Ill. App. 3d 1098, 1102, 833 N.E.2d 10, 13-14 (2005). Whether a defendant had the intent to deliver the contraband must be determined on a case-by-case basis. *Clinton*, 397 Ill. App. 3d at 225, 922 N.E.2d at 1128.

¶ 21 In the case *sub judice*, Trooper Sweeney stopped defendant in the morning and discovered he had \$3,000 to \$4,000 in cash in his vehicle. Defendant stated he was going to Chicago to pick up his nephew. Later that afternoon, defendant returned to Bloomington alone. The police discovered approximately 1,143 grams of cannabis in defendant's truck, including two plastic bags containing one pound of cannabis each and three other plastic bags containing cannabis. The police also found two cell phones and \$235 in cash.

¶ 22 The totality of the evidence presented in this case was such that the jury could find defendant possessed the cannabis with the intent to deliver. A reasonable jury, considering the evidence in the light most favorable to the State, could conclude defendant was traveling to Chicago with a large sum of money to purchase cannabis and returned to Bloomington later that day with a large amount of contraband, less several thousand dollars in cash, with the intent to deliver the entire amount to someone or sell it himself.

¶ 23 Defendant argues the State failed to offer evidence that the amount of cannabis recovered was for delivery rather than personal use. We note defendant has cited no authority where cannabis in excess of 1,100 grams has been held to be an amount consistent with personal consumption. While the State is permitted to question a police witness regarding a defendant's intent (*People v. Outlaw*, 388 Ill. App. 3d 1072, 1090-91, 904 N.E.2d 1208, 1224-25 (2009)), such expert testimony is not required to find a defendant guilty. See *People v. Contreras*, 327 Ill. App. 3d 405, 409, 411, 763 N.E.2d 801, 804-06 (2002) (finding one plastic bag of 458.9 grams of cocaine, with no expert testimony that the amount was in excess of an amount to be used for personal consumption, was sufficient to find the defendant guilty of intent to deliver). Moreover, jurors are free to use their common sense in deliberations, and they could conclude the 1,143 grams of cannabis were meant for delivery. Officer Heinlen testified a pound of cannabis costs at least \$1,000, and one of the stipulations noted 1 pound equals 454 grams. A rational trier of fact could conclude individuals intent on using cannabis for personal use would be making purchases of much smaller amounts for far less money.

¶ 24 Defendant contends that, given his criminal background, 1,143 grams of cannabis for personal use "is not out of the question" as "[i]t makes senses that a felon who uses cannabis may want to make one purchase of a large supply of cannabis, rather than making dozens of smaller cannabis purchases, risking arrest during each, when his supply ran low." Defendant would have us believe that his desire to buy cannabis in bulk, a shopping practice not out of the realm of imagination given his stop at Sam's Club, could have been a mechanism that would enable him to run afoul of the law on a less frequent basis. While buying in bulk can be important for those looking to save time and money, a rational jury could find defendant was not

looking to stock up on cannabis while the price was right. Moreover, considering defendant's criminal history, it makes as much sense that a drug user would much rather risk buying small amounts and face the lesser penalties associated with simple possession rather than possess larger amounts and subject oneself to sentencing as a Class X offender if found guilty.

¶ 25 Defendant also argues he was not found in possession of weapons, police scanners, beepers, or drug paraphernalia. During closing arguments, defense counsel noted defendant did not have any scales in his possession either. However, paraphernalia such as scales "would not be expected to be found in a moving vehicle in broad daylight." *Johnson*, 334 Ill. App. 3d at 678, 778 N.E.2d at 782. Further, the lack of drug paraphernalia, such as pipes or smoking devices used for personal consumption leads to the inference that defendant was intent on delivering the cannabis. *Johnson*, 334 Ill. App. 3d at 678, 778 N.E.2d at 782.

¶ 26 Here, a rational jury could find the State's circumstantial evidence sufficient to find defendant guilty beyond a reasonable doubt of unlawful possession of the cannabis with the intent to deliver. Accordingly, we find the trial court did not err in denying defendant's motion for a directed verdict.

¶ 27 III. CONCLUSION

¶ 28 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.

¶ 29 Affirmed.