2015 IL App (1st) 130838-U

FIFTH DIVISION
MARCH 31, 2015

No. 1-13-0838

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. 11 CR 1026
	)	
CHARLES AARON,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Defendant was proven guilty of possession with intent to deliver beyond a reasonable doubt when the testimony at trial established that defendant was holding a bag containing cannabis, possessed keys to the apartment where the cannabis was located, and stated that the "weed" was his.

¶ 2 Following a bench trial, defendant Charles Aaron a/k/a Aaron Charles was found guilty of armed violence and possession of cannabis with intent to deliver.[1] He was sentenced to natural life in prison, as a habitual criminal offender, pursuant to section 5-4.5-95 of the Unified Code of

[1] Defendant is also referred to as Anthony Marshfield and Anthony Griffin in the record.

Corrections (the Code) (730 ILCS 5/5-4.5-95 (West 2010)). He was also sentenced to a concurrent six-year prison term for possession of cannabis with intent to deliver.

¶ 3 On appeal, defendant contends that his conviction for possession with intent to deliver more than 2,000 but less than 5,000 grams of cannabis must be reduced when the evidence at trial and the trial court's findings of fact only support a conviction for possession of 1,052.5 grams of cannabis. In the alternative, defendant contends that his mittimus must be corrected to conform to the trial court's oral pronouncement finding him guilty of a Class 1 offense rather than a Class X offense, and to reflect the proper amount of presentence custody credit. We affirm and correct the mittimus.

¶ 4 Defendant and codefendant Dell Davis were arrested in December 2010, and charged by indictment with possession of cannabis with intent to deliver and possession of a controlled substance with intent to deliver. Defendant was also charged with, *inter alia*, armed violence. The matter proceeded to a joint bench trial.

¶ 5 Officer Timothy Moran testified that he was part of a team executing a search warrant on the second floor of a building at 5240 South King Drive on December 15, 2010. After hearing a male voice say "go, go, go" and people running, officers "breached" the door. Moran then observed defendant and codefendant. Defendant was holding a green duffle or laundry-style bag over his shoulder trying to exit through the back door. Codefendant was holding a red bag. Once defendant opened the door, he left the apartment, dropping the green bag as he did so. Moran pursued defendant outside and down the stairs. After defendant was detained, Moran performed

a custodial search. He recovered $300 and a set of keys. The keys operated the locks on the front and back door of the second-floor apartment.

¶ 6 During a subsequent search, 103 freezer bags containing suspect cannabis and one large freezer bag containing suspect cannabis were recovered from the green bag and 57 freezer bags containing suspect cannabis were recovered from the red bag. A search of the kitchen recovered an approximately 25-pound brick of suspect cannabis from the kitchen island, and 102 freezer bags of suspect cannabis and one sandwich bag of suspect crack cocaine from the refrigerator. Three scales and a black plastic bag containing "plastic baggies used in narcotic packaging" were also recovered. Moran subsequently inventoried the suspect narcotics. The green bag was assigned inventory number 12200650, the red bag was assigned inventory number 12200642, the suspect cannabis from the refrigerator was assigned inventory number 12200645, the suspect cannabis from the kitchen island was assigned inventory number 12200654, and the bag of suspect crack cocaine was assigned inventory number 12200629.

¶ 7 Officers Michael O'Connor and Bernard McDevitt testified that they observed defendant holding a gun. McDevitt also testified, consistently with Moran, that defendant had a green laundry bag. Sergeant William Hardy testified that after defendant was advised of the *Miranda* warnings, he said "f*** it," admitted that the "weed" and the gun were his, and that "postman" had nothing to do with it.

¶ 8 The parties finally stipulated that forensic scientist Thomas Halloran, would testify, if called to testify, that item 12200642 weighed 1,536 grams of which 512 grams tested positive for the presence of cannabis, item 12200645 weighed 5,604.5 grams of which 596 grams tested

positive for cannabis, item 12200650 weighed 3,005 grams of which 540.5 grams tested positive for the presence of cannabis, and item 12200654 weighed 4,794.5 of which 4,794.5 grams tested positive of the presence of cannabis. The parties further stipulated that Halloran would testify, if called to testify, that item 12200629 weighed 73.3 grams and 73.3 grams tested positive for the presence of cocaine.

¶ 9 In finding defendant guilty, the trial court stated that there was "no question" that the apartment was a "drug house." The court highlighted the circumstantial evidence linking defendant to the apartment, *i.e.*, the keys to the front and back doors. The court concluded that defendant was caught "literally red-handed" with the cannabis in the green bag, and that defendant and codefendant were each accountable for the cannabis in the other man's possession. The court did not, however, find that the men possessed the cocaine found in the refrigerator as it was secreted in a different location. The trial court also found defendant guilty of armed violence and aggravated unlawful use of a weapon. The court then returned to the possession with intent to deliver charge and asked whether "there was more than 5[,]000 grams of a substance containing cannabis that was in fact proven by *** stipulation." Specifically, the court asked whether "any 5[,]000 grams or more that was actually tested." The State responded that "as to the aggregate" it was 5,000 grams. The court then stated that it "was not going to aggregate the amounts" and found defendant guilty of the Class 1 felony of possession with intent to deliver more than 2,000 but less than 5,000 grams of cannabis.

¶ 10 Defendant was subsequently sentenced to natural life in prison for the armed violence conviction pursuant to section 5-4.5-95 of the Code (730 ILCS 5/5-4.5-95 (West 2010)). He was

also sentenced to a concurrent six-year prison term for the Class 1 conviction of possession with intent to deliver more than 2,000 but less than 5,000 grams of cannabis. Defendant's mittimus, however, reflects that he was convicted of a Class X offense.

¶ 11 On appeal, defendant does not challenge his armed violence conviction or his natural life sentence. Instead, defendant contends that his conviction for possession with intent to deliver more than 2,000 but less than 5,000 grams of cannabis must be reduced when the trial court based its finding of guilt only upon the cannabis contained in bags held by defendant and codefendant, *i.e.*, 1,052.5 grams. He argues that the court stated that defendant was caught "red-handed" with the cannabis in the green bag and was accountable for the cannabis possessed by codefendant, but did not mention the cannabis recovered from the refrigerator or the kitchen island. Defendant therefore concludes that because the court only catalogued 1,052.5 grams of cannabis, the court actually found him guilty of the lesser included offense of possession with intent to deliver more 500 but less than 2,000 grams of cannabis.

¶ 12 The State responds that the evidence established that defendant possessed, either actually or constructively, all the cannabis recovered from the second-floor apartment, but that because no individual "item" recovered contained more than 5,000 grams of cannabis, the court declined to aggregate all the items against defendant, merely finding him guilty of possession with intent to deliver more than 2,000 but less than 5,000 grams of cannabis. We agree with the State. Although defendant argues he was found guilty of a lesser offense because the trial court declined to "aggregate" the total amount of cannabis recovered from the second-floor apartment against him, his argument must fail as it has no support in the record.

¶ 13 A review of the record reveals that the court inquired whether any of the items recovered testified positive for more than 5,000 grams of cannabis, and, after the State answered in the negative, the court stated that it was not going to aggregate the amounts. However, the record reveals that immediately after that statement, the court explicitly stated that it found defendant guilty of the Class 1 offense of possession with intent to deliver more than 2,000 but less than 5,000 grams of cannabis. Although there is some room for interpretation as to what the trial court meant when it said that it was not going to aggregate the amounts, the trial court's actual findings were unambiguous, that is, the court stated that it found defendant guilty of the Class 1 offense of possession with intent to deliver more than 2,000 but less than 5,000 grams of cannabis.

¶ 14 To the extent that defendant argues that the evidence at trial was insufficient to find, beyond a reasonable doubt, that he possessed more than 2,000 grams of cannabis, we disagree.

¶ 15 In assessing the sufficiency of the evidence, 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. Baskerville*, 2012 IL 111056, ¶ 31. A criminal conviction will not be reversed based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 16 To prove a defendant guilty of possession of a controlled substance with intent to deliver, the State must establish that he (1) had knowledge of the presence of narcotics; (2) had possession or control of the narcotics; and (3) intended to deliver those narcotics. *People v. Harden*, 2011 IL App (1st) 092309, ¶ 27. When a defendant is charged with the possession of a

specific amount of a controlled substance with intent to deliver and there is a lesser included offense, that is, the possession of a smaller amount, " 'the weight of the seized drug is an essential element of the crime and must be proved beyond a reasonable doubt.' " *Harden*, 2011 IL App (1st) 092309, ¶ 40 (quoting *People v. Jones*, 174 Ill. 2d 427, 428-29 (1996)).

¶ 17 A defendant's possession of a controlled substance may be actual or constructive. *People v. Macias*, 299 Ill. App. 3d 480, 484 (1998). "Constructive possession exists without actual personal present dominion over a controlled substance, but with an intent and capability to maintain control and dominion." *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992). Controlled substances discovered in a premises under the defendant's control and in a place where he could have been, or should have been, aware of them give rise to an inference of knowledge and possession which may be sufficient to sustain a conviction for unlawful possession of a controlled substances. *People v. Eiland*, 217 Ill. App. 3d 250, 261 (1991).

¶ 18 Here, taking the evidence in the light most favorable to the State, as we must, the evidence at trial established that defendant was holding the green bag, which was later determined to contain 540.5 grams of cannabis, when officers entered the second-floor apartment. Defendant's constructive possession of all the cannabis found in the second-floor apartment was established by showing that defendant exercised control over the premises, *i.e.*, Moran's testimony that keys recovered from defendant operated the front and back door locks, and defendant's inculpatory statement to Hardy claiming the "weed" as his. *People v. Brown*, 277 Ill. App. 3d 989, 997-98 (1996) (a defendant's control over the premises where controlled substances are located gives rise to an inference of knowledge and control of those substances).

Accordingly, this court cannot say that no rational trier of fact could have found defendant guilty of possessing all the cannabis in the apartment when he had keys to the apartment and admitted that the "weed" was his. See *Baskerville,* 2012 IL 111056, ¶ 31.

¶ 19 Defendant next contends, and the State agrees, that his mittimus must be corrected to reflect the trial court's finding that he was guilty of the Class 1 offense of possession with intent to deliver more than 2,000 but less than 5,000 grams of cannabis. See *People v. Jones,* 376 Ill. App. 3d 372, 395 (2007) (when the oral pronouncement of the court and the written order of commitment are in conflict, the oral pronouncement controls). We agree, and pursuant to our power to correct a mittimus without remand (*People v. Rivera,* 378 Ill. App. 3d 896, 900 (2008)), we order the clerk of the circuit court to correct defendant's mittimus to reflect that he was convicted of the Class 1 offense of possession with intent to deliver more than 2,000 but less than 5,000 grams of cannabis.

¶ 20 Defendant finally contends that his mittimus must be corrected to reflect 729 days of presentence custody credit. The State agrees that defendant's mittimus must be corrected, but contends that defendant is entitled to 730 days of presentence custody credit. Here, defendant was arrested on December 15, 2010 and sentenced on December 14, 2012; therefore, he is entitled to 730 days of presentence custody credit. See *People v. Williams,* 239 Ill. 2d 503, 507, 509-10 (2011). Thus, we order the clerk of the circuit court to correct defendant's mittimus to reflect 730 days of presentence custody credit. See *Rivera,* 378 Ill. App. 3d at 900.

¶ 21 Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the circuit court to correct the mittimus to reflect that defendant was convicted of the

Class 1 offense of possession with intent to deliver more than 2,000 but less than 5,000 grams of cannabis, and 730 days of presentence custody credit. We affirm the judgment of the circuit court of Cook County in all other aspects.

¶ 22 Affirmed; mittimus corrected.