2015 IL App (1st) 131601 U

No. 1-13-1601

Fourth Division
April 23, 2015

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. STERLING VEAL, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County. No. 10 C6 60405 Honorable Frank Zelezinksi, Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

O R D E R

¶ 1 *Held:* Evidence was sufficient to sustain defendant's conviction for possession of cannabis with intent to deliver more than 10 grams but not more than 30 grams; mittimus is corrected to properly state the name of the offense for which defendant was convicted.

¶ 2 Following a bench trial, defendant Sterling Veal was convicted of possession of cannabis with intent to deliver more than 10 grams but not more than 30 grams and subsequently sentenced to one year in prison. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he intended to deliver more than 10 of the 13.3 grams of cannabis found in his possession as necessary for a felony conviction, and therefore, the court should

reduce his felony conviction to a misdemeanor. Alternatively, defendant contends that his mittimus must be corrected to properly state the name of the offense for which he was convicted. For the following reasons, we affirm his conviction and correct the mittimus.

¶ 3 BACKGROUND

¶ 4 Defendant was charged by information with one count of possession of cannabis with intent to deliver within 1000 feet of a school pursuant to section 5.2(c) of the Cannabis Control Act (the Act) (720 ILCS 550/5.2(c) (West 2010)) and one count of possession of cannabis with intent to deliver more than 10 grams but not more than 30 grams pursuant to section 5(c) of the Act (720 ILCS 550/5(c) (West 2010)). The following facts were adduced at trial.

¶ 5 Sergeant Thomas Johnson of the Matteson police department testified that, on February 12, 2010, at about 11:45 a.m. he and other officers executed a search warrant at 160 Central in Matteson, Illinois. Prior to his arrival, Deputy Chief Michael Jones and Sergeant David Gryczewski had been conducting surveillance of the residence. Once defendant exited the front door, Deputy Chief Jones placed defendant into custody and recovered three bags of suspect cannabis from his pocket. Upon his arrival, Sergeant Johnson informed defendant that he had a search warrant for him and his home and showed him a copy of the warrant. He, along with several other officers, then went up to the front door of the residence, knocked and announced their office, and entered.

¶ 6 Once inside the home, an officer informed Sergeant Johnson that his dog had alerted to defendant's bedroom in the northwest corner of the residence. Inside of defendant's bedroom, the officers found several items. Near the bed, the officers found a closed plastic water bottle, containing stems and seeds from cannabis. Underneath the bed, officers found a black shoebox which contained 12 small clear plastic Ziploc bags, each of which contained "a green leafy substance." On the computer table, officers found a small plastic bag which held a smaller Ziploc

plastic bag which contained "a green plant-like substance," and a small plastic bag which contained nine white tablets. On a television stand, behind the television the officers found another bag containing a "green leafy substance." On the floor next to a computer desk, the officers found a plastic bin which contained a red, black, and white glass smoking pipe and a digital scale that an officer later found to be in working order. Also, inside the bin officers found two small packages with a "Red Apple" insignia on the cover with numbers on the front of the packages. Inside of each "Red Apple" package were "numerous" small empty clear plastic bags. Sergeant Johnson described the "Red Apple" packages as "maybe an inch by inch small clear plastic bag with a Ziploc top *** used for the packaging of narcotics." The officers found a "Weed World" magazine in defendant's closet, which featured content on cannabis, distribution, and production. The officers also found defendant's driver's license, mail addressed to defendant, men's clothing in the closet, and $39 in the pocket of a pair of pants.

¶ 7 Each of the items that were recovered from defendant's bedroom were inventoried and placed into evidence. The 14 bags of suspect cannabis were placed into a single plastic bag and sent to the Illinois state police crime lab for chemical analysis. The parties stipulated that the contents of the 14 bags tested positive for cannabis, and the aggregate weight was 13.3 grams.

¶ 8 Deputy Chief Jones testified that on the day of defendant's arrest, at about 1:20 p.m., he and Sergeant Gryczewski interviewed defendant at the Matteson police department. Defendant waived his *Miranda* rights, and Deputy Chief Jones reduced their conversation to a written statement. Relevant portions of his statement are as follows:

> "My name is Sterling Veal. I am 20 years old. *** I have about 10 or 12 bags of marijuana in my bedroom in a shoebox under my bed. I also have 3 bags of marijuana in my pocket that I was on my way to get some blunts to smoke. My mom does not know that I have marijuana in the house. *** I usually buy my marijuana in

> Chicago Heights. I buy half an ounce for $50.00 and that will usually last me a couple of weeks. I don't sell the weed that I have but sometimes if somebody wants to smoke with me, they will pay me for some weed. I am not making any profit from selling weed. The scale is old. It probably doesn't even work. I am not trying to get my mom in trouble because she has nothing to do with this. I will stop this. I cooperated with the detective and told them everything."

¶ 9 Following Deputy Jones' testimony, the parties stipulated that the distance between the southwest corner parking lot of Woodgate Elementary School to the front door of 160 Central was 244 feet, and the distance from the front door of 160 Central to the southwest door of Woodgate Elementary School was 667 feet. The parties also stipulated to the calibration of the instrument used by the Matteson police department to measure the distance between the front door of defendant's residence and Woodgate Elementary School.

¶ 10 The defense rested without calling any witnesses and both parties waived closing arguments. The court found defendant not guilty of possession of cannabis with intent to deliver within 1000 feet of a school and guilty of possession of cannabis with intent to deliver more than 10 grams but not more than 30 grams. The trial court stated the following:

> "The amount of the substance was 13 and some grams. It fits within the amount necessary here but that's not the only element to be considered. The Court must consider whether or not there is an intent to deliver. The Court looks at the entire recovery of all items here; everything from the scales to packaging materials, the little packages, etc. and also defendant's statement. Certainly by the packaging material, the amount of packages, the scale, even the book regarding cannabis for that matter, it certainly does speak of intent to deliver. However, the defendant's statement goes from back and forth regarding

> that. Number one, I don't sell it but then if my friends are here, I will sell it and I don't make any profit from it. A definition under the Cannabis Control Act of delivery is simply to transfer possession of cannabis from one person to another. It need not be sale. Simply giving some of the substance to somebody else, transferring it to them, is in fact delivery. You need not be selling it: simply transferring it. [Defendant] indicates he shares it with the others, they might give him money for it but it shows there is intent at various stages to transfer it to others and by the fact that he doesn't make a profit on it is very well and good but looking at all the other factors here, I do believe the State has proven with intent to deliver and there's a finding of guilty on Count 2."

¶ 11 The trial court denied defendant's motion for a new trial and sentenced defendant to one year in prison.

¶ 12 ANALYSIS

¶ 13 On appeal, defendant argues that the State's evidence failed to distinguish the cannabis defendant intended to deliver from the cannabis that he intended for his personal use; therefore, it failed to prove beyond a reasonable doubt that defendant intended to deliver more than 10 of the 13.3 grams, a requisite for a felony conviction. The State responds that the evidence presented at trial overwhelmingly proved defendant's guilt of possession of cannabis with intent to deliver beyond a reasonable doubt.

¶ 14 Whether the State has presented sufficient evidence to sustain a conviction is reviewed by determining whether the evidence presented at trial, when viewed in the light most favorable to the State, would allow any rational trier of fact to find that the State had proved every element of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). In a bench trial, the judge, sitting as the trier of fact, is responsible for assessing the credibility of the

witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). If the trier of fact convicted defendant based on evidence it reasonably believed, then the reviewing court should not disturb the verdict. *People v. Weathersby*, 383 Ill. App. 3d 226, 229 (2008). When a defendant contests the sufficiency of the evidence, it is not the role of the reviewing court to retry the defendant. *People v. Ward*, 215 Ill. 2d 317, 322 (2005). "A reviewing court may not substitute its judgment for that of the fact finder" with regards to issues of credibility or weight of testimony. *People v. Dunskus*, 282 Ill. App. 3d 912, 918 (1996).

¶ 15 Possession of more than 10 grams but not more than 30 grams of cannabis with intent to deliver is a Class 4 felony (720 ILCS 550/5(c) (West 2010)). To prove the offense of possession of a controlled substance with intent to deliver, the State must prove the defendant: (1) had knowledge of the presence of narcotics; (2) had possession or control of the narcotics; and (3) intended to deliver them. *People v. Robinson*, 197 Ill. 2d 397 (1995); *People v. Ellison*, 2013 IL App (1st) 101261, ¶ 13 (citing 720 ILCS 570/401 (West 2010)). Defendant does not contest the first two elements. He provided a statement to police that the cannabis belonged to him, and that he travels to Chicago Heights to purchase cannabis that he smokes and shares with friends. Even if these factors were contested by defendant, knowledge and possession may be inferred where the cannabis is found on the premises that are under his control. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007). Here, defendant only challenges whether the State proved beyond a reasonable doubt that the portion that he intended to deliver exceeded the 10-gram cut-off for a felony conviction.

¶ 16 Direct evidence of intent to deliver is rare, and intent is most often proven by circumstantial evidence. *Robinson*, 167 Ill. 2d 397 at 407. Factors relevant to this inquiry

include, but are not limited to: whether the quantity of the substance is too large for personal use, the high purity of the substance, the possession of a large amount of cash, the possession of drug paraphernalia commonly associated with drug transactions (such as a scale), the possession of weapons, and the manner in which the substance is packaged. *Id.* at 408. Our supreme court has made clear that these factors are merely examples of the "many different factors that have been considered by Illinois courts as probative of intent to deliver," *Robinson*, 167 Ill. 2d at 408, but this list is not "exhaustive" or "inflexible." *People v. Bush*, 214 Ill. 2d 318, 327 (2005).

¶ 17 In this case, we find that the evidence was sufficient to find defendant guilty of possession with the intent to deliver the cannabis found in his bedroom. At trial, Sergeant Johnson testified that while he and other officers were executing a search warrant at defendant's residence, they recovered a number of items from his bedroom, including 12 individual bags of suspect cannabis in a shoebox underneath defendant's bed, one bag of suspect cannabis on a computer desk, and another bag of suspect cannabis on a television stand. The parties stipulated that the content of the 14 bags found in defendant's bedroom tested positive for cannabis, and the aggregate weight was 13.3 grams. Additionally, officers recovered a "Weed World" magazine, an operating digital scale, a glass pipe, and two "Red Apple" packaging bags, containing "numerous" small empty clear plastic bags, which Sergeant Johnson indicated was "used for the packaging of narcotics." We find that defendant's possession of 13.3 grams of cannabis, the digital scale and numerous plastic bags, typically used in the packaging of narcotics, found in defendant's bedroom, and the fact that the cannabis was individually packaged were all factors probative of defendant's intent to deliver the cannabis found in his bedroom. See *Robinson*, 167 Ill. 2d 397 at 408.

¶ 18 Additionally, Deputy Chief Jones testified that he interviewed defendant and reduced their conversation to a written statement in which defendant professed "I don't sell the weed that I have but sometimes if somebody wants to smoke with me, they will pay me for some weed. I am not making any profit from selling weed." The trial court correctly noted that for the purposes of the Act, "delivery" simply means the transfer of possession of cannabis. 720 ILCS 550/3(c) (West 2010). Thus, although defendant does not admit to selling weed, the statement clearly indicates his intention to transfer the cannabis to his friends. Therefore, we find that the credible testimony of Sergeant Thomas and Deputy Chief Jones coupled with defendant's own admission to transferring the cannabis to his friends, supported the trial court's reasonable inference that defendant intended to deliver the bags of cannabis found in his bedroom.

¶ 19 Defendant concedes that the State's evidence was sufficient to show that defendant intended to deliver *some* of the cannabis. However, he maintains that the State's evidence was insufficient to prove that he intended to deliver all of the cannabis. Specifically, defendant contends that "[1] the small amount of cannabis, [2] the different locations where the cannabis was found, [3] paraphernalia found with the cannabis, [4] [his] own statement that most of the cannabis was for his personal use, and [5] [his] actions at the time he was stopped by police" indicate that he intended "at least some portion of the cannabis for his personal use." The State rejects all of defendant's contentions and argues that the trier of fact drew appropriate inferences and conclusions from the evidence sufficient to sustain defendant's conviction, and that defendant's entire argument on appeal asks this court to substitute its own judgment for that of the trial court.

¶ 20 Initially, we note that section 5(c) of the Act (720 ILCS 550/5(c) (West 2010)) only provides that the State is required to prove that defendant intended to deliver cannabis found in

his possession. There is no indication from the statute that the State is required to prove, as an element of the offense, which portion of the recovered cannabis a defendant intended solely for his personal use and which was intended for delivery, and we decline defendant's invitation to read into the statute such a requirement. Nonetheless, we will review defendant's contention to determine whether the evidence reasonably supports that he intended some of the cannabis for personal use.

¶ 21 Defendant's first contention is that the "small" amount of cannabis recovered from his bedroom is evidence that he intended at least a portion of the cannabis for his personal use. Specifically, he relies on *People v. Clinton*, 397 Ill. App. 3d 215 (2009) and *People v. Sherrod*, 394 Ill. App. 3d 863 (2009) for the proposition that the amount of cannabis that he possessed was not "so high as to be incompatible with personal use." The State responds that defendant's reliance on these cases is misplaced, and we agree.

¶ 22 In *Clinton*, this court found insufficient evidence of intent to deliver where defendant possessed 13 tin foil packets of heroin with a combined weight of 2.8 grams. The court noted that there was very little evidence probative of intent to deliver, stating that "all that was presented by the State to show intent to deliver was defendant's possession of 13 tin foil packets of suspected heroin and $40." *Clinton*, 397 Ill. App. 3d at 226. Similarly, in *Sherrod*, this court found insufficient evidence of intent to deliver when defendant possessed 17 individual baggies containing a total of 1.8 grams of cocaine and no other evidence indicated intent to deliver. In the instant case, defendant was found in possession of 13.3 grams of cannabis, a much larger quantity of narcotics than the defendants in *Clinton* and *Sherrod*, and as noted above, there was substantial evidence probative of defendant's intent including the presence of a digital scale in

defendant's bedroom and the manner in which the cannabis was packaged. Thus, we find *Clinton* and *Sherrod* unavailing.

¶ 23 Furthermore, we note that there is no hard and fast rule regarding what amount is enough to support a finding of intent. See *Robinson*, 167 Ill. 2d at 414. This court has held that even in cases where only a small amount of narcotics is found, "the minimum evidence" required to establish intent to deliver is that "the drugs were packaged for sale, and at least one additional factor tending to show intent to deliver." See *People v. Blakney*, 375 Ill. App. 3d 554, 559 (2007). Thus, we reject defendant's argument that the amount of cannabis found in his bedroom indicates that he intended a portion of the cannabis solely for personal use.

¶ 24 Next, defendant maintains that because the cannabis was found in two groupings: a shoe box containing 12 plastic bags of cannabis found underneath defendant's bed, and two other plastic bags found in another area of defendant's bedroom, the State failed to prove whether defendant intended to deliver all of the contraband. In other words, even if a trier of fact could reasonably conclude that the 12 bags of cannabis found underneath defendant's bed supported an inference that he intended to deliver that cannabis, that same intent cannot be automatically imputed to the two other bags found in other areas of the bedroom. Defendant further avers that because each of the 14 bags of cannabis recovered from defendant's room were not individually weighed, the State failed to prove whether defendant intended to deliver 13.3 grams cannabis. The State responds that the crime charged does not require that all of the cannabis be bundled together, therefore, the fact that the cannabis was found in different locations is irrelevant, and the total amount recovered was consistent with intent to deliver more than 10 grams of cannabis.

¶ 25 Defendant is essentially inviting this court to treat the two bags of cannabis found in one area of defendant's bedroom differently than the 12 bags of cannabis found together underneath

his bed; however, we find no basis treating these items differently. In this case, defendant admitted to buying cannabis both for personal use and also to share with his friends, who occasionally give him money in exchange for cannabis. After defendant was arrested, he told officers that he had cannabis in his pocket as well as some in his bedroom. Although he specifically informed police that he intended to smoke the three bags of cannabis found on his person, there is no similar testimony or any other indication from the record that supports a finding that defendant intended any of the cannabis found in his room solely for his personal use. Additionally, the 14 bags of cannabis were found in a room which also contained numerous plastic bags typically used in narcotics transactions and a digital scale. Thus, we reject defendant's contention that the different locations in which the cannabis was found supports an inference that he intended a portion of the cannabis for personal use.

¶ 26 Moreover, because we find that there was no reason to treat the contents of the 14 bags differently solely based on where they were located in defendant's room, contrary to defendant's contention, we find that the State was not required to "disaggregate" the amount of cannabis found in other parts of defendant's room from the amount found underneath the bed, especially in this case where both parties stipulated to the amount of cannabis found in defendant's bedroom.

¶ 27 Next, defendant contends that the other items found in his bedroom corroborate his claim that he intended some of the cannabis for his personal consumption. Defendant specifically cites two items, a copy of "Weed World" magazine found in his closet and a glass smoking pipe found on the bedroom floor. The State responds that the trial court heard this evidence, and concluded the opposite of what defendant argues, and thus this court should not substitute its judgment on matters the trial court considered and rejected.

¶ 28 First, we agree with the State that the court explicitly found the "Weed World" magazine probative of intent to deliver, and because the magazine in question is not before us on review, we will not substitute our judgment on this matter. *Weathersby*, 383 Ill. App. 3d at 229. Next, defendant cites *People v. Rouser*, 199 Ill. App. 3d 1062 (1990), to argue that where a relatively small quantity of drugs is found in the presence of a smoking pipe, as in the instant case, "a trial court stretch[es] the….evidence beyond a reasonable inference in finding intent to deliver." However, we find defendant's reliance misplaced. In *Rouser*, the trial court convicted defendant of possession with intent to deliver after police officers recovered .3 grams of cocaine and $850 in cash from a bathroom that defendant occupied. This court reduced defendant's conviction to the lesser included charge of possession finding that "no evidence was presented that the defendant had anything to do with the sale of that substance. In fact, the only thing the State directly proved was that the defendant possessed a large amount of cash and a tiny amount of cocaine." The court further noted that the presence of the smoking pipe in the bathroom in which the small amount of cocaine was found "would indicate the drugs were for personal consumption rather than for sale." Thus, the *Rouser* court's finding was based on more than just the presence of a smoking pipe found near the drugs. In the instant case, unlike the "tiny" amount of cocaine found in *Rouser*, defendant was found with 13.3 grams of cannabis and, as detailed above, there was substantial evidence that supported defendant's conviction for intent to deliver. Thus, we reject defendant's contention that the presence of the "Weed World" magazine and smoking pipe in the bedroom indicated that defendant intended a portion of the cannabis for his personal use.

¶ 29 Next, defendant argues that his statement to police "unequivocally shows that he intended most of the cannabis for his personal consumption." The State responds that defendant never made any statement to police that most of the cannabis was for his personal use.

¶ 30 We find that although defendant explicitly admitted in his statement that he intended to smoke the three bags of cannabis found in his pocket, nothing in his statement suggests that he specifically intended any of the cannabis found in his bedroom for personal use. Moreover, in accessing defendant's statement, the trial court commented that it "goes back and forth" regarding whether he intended to deliver the cannabis. The court then noted that defendant admitted to sharing the cannabis with friends, and ultimately concluded that defendant's statement shows "intent at various stages to transfer it to others." Because it is the trial court's responsibility to weigh the evidence, resolve conflicts in the evidence, and draw reasonable inferences, we will not substitute our judgment for that of the trial court. Thus, we defer to the judgment of the trial court that defendant's statement to officers provided sufficient evidence of intent to deliver the cannabis found in his bedroom.

¶ 31 Defendant's last contention is that his admission to officers upon his arrest that he had three bags of marijuana in his pocket as he was on his way out "to get some blunts to smoke" makes it unreasonable to conclude beyond a reasonable doubt that he did not intend to consume any of the cannabis in his bedroom at any point in the future. The State responds that the mere fact that defendant was cooperative with police is not conclusive or even suggestive, that he lacked an intent to deliver.

¶ 32 Based on our review of the record, we find that defendant's admission to officers that he intended to personally consume the cannabis in his pocket had absolutely no bearing on his intention regarding the cannabis found in his bedroom. As noted above, defendant never explicitly stated that he intended to personally consume any of the cannabis found in his bedroom, and we decline to speculate concerning his intentions based on his admission to officers that he intended to smoke the cannabis found in his pocket. Thus, we reject defendant's

claim that his actions at the time of his arrest show that he intended to consume some of the cannabis found in his bedroom.

¶ 33 Finding no evidence that indicates that defendant intended any of the cannabis found in his bedroom for personal use, we believe, viewing the evidence in the light most favorable to the State, that the evidence was sufficient to prove that defendant intended to deliver all of the cannabis found in his bedroom beyond a reasonable doubt.

¶ 34 Finally, defendant argues, and the State agrees, that his mittmus should be corrected to reflect that he was convicted of one count of possession of cannabis with intent to deliver more than 10 grams but not more than 30 grams. The mittimus currently reflects a conviction that indicates the correct statutory citation for possession with intent to deliver more than 10 grams but not more than 30 grams, but incorrectly describes the offense as "MFG/DEL CANNABIS/ 10-30 GR," referring to the manufacturing and delivery of narcotics. We, therefore, order the clerk of the circuit court to correct the mittimus to accurately reflect the offense for which defendant was convicted. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 35 CONCLUSION

¶ 36 Accordingly, we affirm the judgment of the circuit court of Cook County and order the mittimus be corrected to indicate the correct conviction.

¶ 37 Affirmed; mittimus corrected.