2015 IL App (2d) 130588-U
No. 2-13-0588
Order filed January 9, 2015

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 11-CF-1369
JACK DAVIS,	)	Honorable John A. Barsanti,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved beyond a reasonable doubt that defendant's possession of cocaine was with the intent to deliver: in addition to a significant amount of cocaine, defendant possessed a large amount of cash, he did not possess drug paraphernalia related to personal use, and he had recently possessed paraphernalia related to distribution.

¶ 2 Defendant, Jack Davis, was indicted in the circuit court of Kane County on, among other charges, one count of unlawful possession of a controlled substance (cocaine) with the intent to deliver (720 ILCS 570/401(c)(2) (West 2010)). He appeals from his conviction, after a bench trial, of that offense, contending that he was not proved guilty beyond a reasonable doubt.

Because the evidence was sufficient for a rational trier of fact to have found him guilty, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The following evidence was established at defendant's bench trial. On June 29, 2011, while on routine patrol, Officer Theodore Grommes of the Aurora police department stopped a car in which defendant was a passenger. After running a computer check on the driver and defendant, Officer Grommes learned that defendant did not possess a valid driver's license.

¶ 5 On July 1, 2011, at approximately 7:53 p.m., Officer Grommes was on routine patrol in his squad car. He observed defendant driving a car. Knowing that defendant did not have a valid driver's license, he followed defendant. As he did so, he observed defendant commit several traffic offenses.

¶ 6 Officer Grommes activated his emergency lights and siren. In response, defendant quickly stopped the vehicle, exited, and ran. Officer Grommes exited his squad car and chased defendant through a residential neighborhood, including the backyard of a house at 202 North Buell. After an extended chase, he caught defendant and, with the help of other officers, arrested and handcuffed him.

¶ 7 Officer David Brian of the Aurora police department searched defendant at the arrest scene. In doing so, he found in defendant's left front pants pocket $2,100 in cash. The cash was in 14 separate stacks of various denominations, including $100 and $20 bills. Ten of the stacks totaled $100 each, one stack was $800, one stack was $200, one stack was $60, and one stack was $40. He described the stacks as "neatly folded in half and stacked one on top of the other." Officer Brian found $57 in cash in defendant's right front pants pocket, in "one big lump like most people carry their normal money around."

¶ 8 A resident of 209 North Buell, Stephen Reed, was outside his house smoking a cigarette at about 8 p.m. that evening. He saw a squad car stop a vehicle in front of his house. The driver of the stopped vehicle, whom he described as defendant, exited and ran, with a police officer chasing him. As defendant ran past the corner of Reed's house, Reed saw him throw a white object over the neighbor's fence at 202 North Buell. After other officers showed up, Reed directed them to the area where defendant had thrown the object.

¶ 9 Officer Daniel Woods of the Aurora police department found the object that defendant had thrown over the fence. It was lying on top of the mowed grass near the fence. The object was a plastic bag, which contained an "off-white rock-like substance." The substance was later determined to be 4.9 grams of crack cocaine.

¶ 10 Previously, on June 23, 2011, the Aurora police conducted a search of defendant's room at the Fox River Motel. In doing so, they seized a coffee blender, a digital scale, several plastic bags, and a piece of paper with several names and dollar amounts written on it.

¶ 11 According to Muhammad Imamdad, the husband of the motel manager, he had refunded $1,500 of the prepaid rent to defendant's mother a day or two after June 23. He did so because defendant was no longer residing at the motel.

¶ 12 Officer Cottrell Webster of the Aurora police department, who had worked for the previous six years as a narcotics investigator, testified as an expert in narcotics packaging, use, sales, and distribution. According to Officer Webster, sometimes powder cocaine was cooked into a hard form called crack cocaine. The crack cocaine was typically the consistency of "rock crystal."

¶ 13 A typical crack cocaine user bought the drug in amounts of 0.3 grams to 0.5 grams. They generally did not buy bulk amounts unless they came into a large amount of money. If they did

happen to obtain a large amount of money, they commonly bought as much crack cocaine as they could and used it quickly. That would usually result in some sort of medical issue. Nonetheless, it was not common for a crack cocaine user to have large amounts of money.

¶ 14 People who sold drugs usually packaged them in smaller amounts. Sometimes they would have a larger amount in a single package, which they would break down later for sale.

¶ 15 For packaging crack cocaine, some dealers used the corners of sandwich bags. Others used Ziploc bags or used no packaging. In that latter situation, the dealer just broke off a piece and handed it to the buyer. Officer Webster identified the plastic bags seized from defendant's motel room as the type used to package narcotics.

¶ 16 According to Officer Webster, it is very common for a dealer to use a cutting agent, such as baking soda. The absence of baking soda, however, did not mean that a person was not selling drugs. Possession of a scale also indicated drug dealing. A drug dealer would use a scale to be exact in the amounts being sold and thus to ensure a profit.

¶ 17 Officer Webster identified the coffee blender as a device that a drug dealer would use to combine cocaine with a cutting agent to increase volume. He identified the paper with the names and dollar amounts as an obvious drug ledger. Such a ledger was used to keep track of customers and the amounts owed and paid.

¶ 18 According to Officer Webster, a user of crack cocaine commonly had a pipe-like device for smoking crack cocaine. No pipes or similar items were found in this case.

¶ 19 Officer Webster explained that the cash found on defendant was consistent with someone who was selling drugs. The average person did not organize his money in that fashion. A drug dealer, however, would do so to keep track of his profit and to know how much he had available for purchasing more drugs.

¶ 20 Sometimes an experienced drug dealer would not take packaging materials with him if he was selling on the street. Instead, he would weigh the drugs at home and leave the packaging materials there to minimize detection. The amount of crack cocaine in this case, 4.9 grams, was an amount generally not possessed by mere users. Finally, the area in which defendant was arrested was popular for buying and selling drugs.

¶ 21 The trial court found defendant guilty of possessing a controlled substance with intent to deliver. In so finding, the court relied on the fashion in which defendant had his money organized, the plastic bags, the coffee blender, the scale, the ledger, and Officer Webster's testimony. Following the denial of defendant's posttrial motions, the court sentenced defendant to 6 years' imprisonment on the drug conviction to run consecutively to a sentence of 12 years' imprisonment in a separate case. Defendant timely appealed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt of possession of a controlled substance with intent to deliver. In that regard, he argues that the evidence, although sufficient to show that he possessed crack cocaine, failed to establish that he intended to deliver crack cocaine.

¶ 24 Evidence is sufficient to sustain a conviction if, viewing it in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Perez*, 189 Ill. 2d 254, 265-66 (2000). In assessing the sufficiency of the evidence, we do not retry the case. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, we defer to the trial court's assessment of witness credibility, the weight it gave the evidence, and the reasonable inferences it drew from the evidence. *People v. Steidl*, 142 Ill. 2d 204, 226 (1991).

¶ 25 To establish possession of a controlled substance with the intent to deliver, the State must prove beyond a reasonable doubt that: (1) the defendant knew that the controlled substance was present; (2) the defendant was in immediate possession or control of the drugs; and (3) the defendant intended to deliver the drugs. *People v. Jennings*, 364 Ill. App. 3d 473, 478 (2005). Here, defendant challenges the sufficiency of the evidence only as to his intent.

¶ 26 Direct evidence of intent to deliver is rare. *People v. Robinson*, 167 Ill. 2d 397, 408 (1995). Therefore, circumstantial evidence is commonly used to prove intent. *Robinson*, 167 Ill. 2d at 408. There are various factors from which one may infer intent. *Robinson*, 167 Ill. 2d at 408. Those include: (1) the quantity of the controlled substance when it is too large to be viewed as being for personal consumption; (2) the high degree of purity of the drugs; (3) the possession of weapons; (4) the possession of large amounts of cash; (5) the possession of police scanners, beepers, or cellular telephones; (6) the possession of drug paraphernalia; and (7) the manner in which the drugs were packaged. *Robinson*, 167 Ill. 2d at 408. We are not limited to those factors, however, as they are merely examples of the many factors that a court may consider as indicative of intent. *People v. Bush*, 214 Ill. 2d 318, 327 (2005). Further, the issue is resolved on a case-by-case basis, and the fact that evidence in one case is not as strong as that in other cases is not controlling. *People v. Blan*, 392 Ill. App. 3d 453, 457 (2009).

¶ 27 We begin our analysis with the amount of crack cocaine possessed by defendant in this case. We do so because the quantity of a controlled substance alone can be sufficient to prove intent to deliver. See *Robinson*, 167 Ill. 2d at 410-11. That is the case, however, only where the amount of the drugs could not reasonably be viewed as being only for personal consumption. *Robinson*, 167 Ill. 2d at 411. As the quantity of the controlled substance decreases, the need for additional circumstantial evidence of intent to deliver increases. *Robinson*, 167 Ill. 2d at 413.

¶ 28 In this case, defendant possessed 4.9 grams of crack cocaine. Although significant, we cannot say that that amount precluded the trial court from finding that it was only for defendant's consumption. Thus, the amount was not sufficient alone to prove intent to deliver. *Cf. People v. Birge*, 137 Ill. App. 3d 781, 791 (1985) (51 pounds of cannabis was sufficient alone to prove intent).

¶ 29 Having said that, the question then is whether there was sufficient circumstantial evidence, combined with the amount of crack cocaine, to prove that defendant possessed it with the intent to deliver. We believe that there was.

¶ 30 Not only did defendant possess a significant amount of crack cocaine, but he did so in an area known for drug dealing. He also had a large amount of cash on his person when arrested. Moreover, the cash was organized in a fashion atypical for most people and consistent with a drug dealer who was trying to keep tabs on exactly how much money he had.

¶ 31 Defendant attempts to explain the large amount of cash by referring to the $1,500 refunded to his mother nearly a week before his arrest. That argument fails, however, as there was no evidence that defendant's mother ever gave him the refund. Not only that, but defendant does not explain how he was in possession of a large amount of crack cocaine as well as a large amount of cash. Had he used the refund to purchase the crack cocaine, he likely would have had little left. Instead, he had $600 more.

¶ 32 About a week before his arrest, defendant possessed a digital scale, packaging materials, a coffee blender, and a drug ledger. Those items evinced an intent to deliver drugs and were not so far removed from the incident in question as to be considered irrelevant. Although he did not have any of those items with him when arrested, Officer Webster testified that some drug dealers were careful not to have packaging materials with them, to minimize detection.

¶ 33 Defendant argues that, because he possessed the crack cocaine in bulk form, he was merely a user. That flies in the face of Officer Webster's testimony that such a large amount would not likely be possessed by a user. Indeed, defendant had no user paraphernalia with him, which reasonably implies that he did not possess the crack cocaine for personal use.

¶ 34 Defendant relies heavily on *People v. Hodge*, 250 Ill. App. 3d 736 (1993). As noted, evidence of the intent to deliver must be evaluated on a case-by-case basis, and the evidence in one case should not be compared to that in another. See *Blan*, 392 Ill. App. 3d at 457. Even *Hodge* recognizes that proposition. *Hodge*, 250 Ill. App. 3d at 746 (intent to deliver must be decided on a case-by-case basis). Even if we were to compare the facts in *Hodge* to those in this case, the facts in *Hodge* are distinguishable. The presence here of the scale, the coffee blender, the packaging materials, and the drug ledger and the fashion in which defendant organized his money are incriminating facts not present in *Hodge*. See *Hodge*, 250 Ill. App. 3d at 747 (no evidence of drug-dealer paraphernalia or other indicia of drug dealing).

¶ 35 When viewed in its totality, the evidence here was more than sufficient to prove defendant guilty beyond a reasonable doubt of possessing the crack cocaine with the intent to deliver. Thus, we affirm defendant's conviction of that offense.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the judgment of the circuit court of Kane County finding defendant guilty of possession with the intent to deliver a controlled substance.

¶ 41 Affirmed.