2016 IL App (1st) 141069-U

FIFTH DIVISION
February 5, 2016

No. 1-14-1069

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 C6 60266
	)	
DEWAYNE RAINE,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm defendant's conviction for possession of cannabis with intent to deliver where defendant admitted possessing drugs hidden near his seat in a minivan. Mittimus corrected.

¶ 2 Following a bench trial, defendant Dewayne Raine[1] was convicted of possession of more than 30 grams but not more than 500 grams of cannabis, and possession of more than 30 grams but not more than 500 grams of cannabis with intent to deliver, and sentenced to four years' imprisonment. On appeal, defendant contends the State failed to prove beyond a reasonable

[1] Throughout the record, defendant's name is also spelled "Dwaine."

doubt that he possessed or intended to deliver the cannabis. Alternatively, defendant contends that his conviction for possession of cannabis must be vacated and his mittimus corrected to reflect a single conviction of possession of cannabis with intent to deliver. We affirm in part, vacate in part, and order the mittimus corrected.

¶ 3 At trial, Officer DeVries testified that he was dispatched to South Irving Avenue in Dolton at 4:54 p.m. on January 28, 2011, after an anonymous caller reported possible narcotics activity originating from a green minivan which was parked in the driveway at that address. DeVries spoke with the driver, Darius Raine, and observed defendant in the middle row of the minivan and another man, later identified as Dejuan Raine, in the front passenger seat. Darius's window was open approximately six inches and DeVries smelled a strong odor of burnt cannabis. Other officers arrived and ordered the men to exit the minivan. The officers found drugs in a compartment in the rear passenger side door, next to where defendant had been sitting. DeVries did not see defendant make any fervent movement or move toward the compartment, and no weapons were recovered.

¶ 4 Officer Griffin testified that he arrived as DeVries was asking Darius for his driver's license. Darius left the minivan and began "fidgeting" with DeVries. Griffin then observed Dejuan grab a dark object and move to the back of the minivan, but could not see what Dejuan did with the object. Griffin opened the passenger side sliding door and ordered Dejuan to exit. When he refused, Griffin pulled him outside. Defendant exited the minivan last. Griffin did not see defendant grab any objects or move toward the panel where the drugs were discovered. At the police station, defendant told Griffin "It's mine. I will take the hit for it." Defendant spoke without prompting, but Griffin did not recall defendant's exact words nor did the other officers then present. Afterwards, Griffin gave defendant a paper listing the *Miranda* rights, which

defendant read and initialed. Defendant refused to provide a written statement, and Griffin did not write down defendant's admission.

¶ 5 Officer Rempson testified that defendant sat in the second seat on the driver's side of the minivan and complied when officers ordered him to exit. Another officer arrived with a dog that sniffed the minivan and alerted to a smell on the passenger side sliding door. The officers opened a panel and found a black baggy containing 10 small baggies holding a leafy green substance, which Rempson did not believe was packaged for personal use. The dog then alerted to a smell on the console, where officers found more than $3,000. The officers also recovered $792 from defendant's person, but did not find a weapon, scanner, beeper, or cell phone. Rempson did not observe defendant grab anything, place anything in the back of the vehicle, or move toward the hidden compartment.

¶ 6 The parties stipulated that Officer Burrow would testify that the minivan smelled strongly of air freshener and laundry products when he arrived with the dog. The parties further stipulated that Allen Greep, a forensic chemist at the Illinois State Police crime lab, received the 10 bags recovered from the minivan, five of which were tested and found to contain 34.2 grams of cannabis.

¶ 7 The State rested and the court denied defendant's motion for a directed finding. The defense then rested and the court found defendant guilty of possession of cannabis and possession of cannabis with intent to deliver. In its findings, the court stated:

> "All right. I have heard the evidence in this case. As to constructive possession, knowingly possessed immediate and exclusive control, the fact that he was not the driver of the vehicle. Those are all very good points, however, there is also one important point Counsel tries to cross over, and that is he admits that he owned the drugs.

> This is a situation where three, they all have the same last name, so I am assuming that they were all related. They might have all been selling drugs together. However, he decided to take the hit. What he did say, it is very important the way he used it. I mean, "I will take the hit for it", meaning that he was selling drugs.
>
> So he knew exactly where those drugs were. He put them there. He had $792 in his pocket. He is a drug dealer."

¶ 8 The court denied defendant's posttrial motion for a new trial and sentenced him to four years' imprisonment.

¶ 9 On appeal, defendant first contends the State failed to prove beyond a reasonable doubt that he possessed or intended to deliver the cannabis recovered from the minivan. According to defendant, the only evidence linking him to the cannabis is the inculpatory statement described by Officer Griffin, which is too unlikely, ambiguous, and unreliable to sustain a conviction. Defendant submits that any admission was only to protect his brothers, and notes that, unlike them, he did not act furtively, resist arrest, or handle the object that may have been the bag of cannabis found in the door panel. Additionally, defendant argues the quantity and packaging of the cannabis was appropriate for use by three people and no evidence was presented regarding its purity. Defendant observes that he did not have a weapon, cell phone, police scanner, or beeper, and claims that the money found on his person demonstrates he did not participate in drug sales involving the larger amount of money in the minivan's console.

¶ 10 When a defendant challenges the sufficiency of the evidence, as defendant does here, the reviewing court must consider all the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown,* 2013 IL 114196, ¶ 48. Circumstantial evidence is

sufficient to sustain a conviction. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances, however, it is sufficient if all the evidence taken together proves the defendant's guilt. *Id*. Additionally, the trier of fact is not required to disregard inferences that flow normally from the evidence or to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on questions involving the credibility of witnesses or the weight of the evidence. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). A conviction will be reversed only if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Siguenza-Brito*, 235 Ill. 2d at 225.

¶ 11 To sustain a conviction for possession of cannabis with intent to deliver, the State must prove the defendant had knowledge of the presence of the cannabis, the cannabis was in the immediate control or possession of the defendant, and the defendant intended to deliver the cannabis. 720 ILCS 550/5 (West 2010); *People v. Alexander*, 2014 IL App (2d) 120810, ¶ 36. On appeal, defendant contests the elements of knowledge, possession, and intent.

¶ 12 Possession may be actual or constructive. *People v. Givens*, 237 Ill. 2d 311, 335 (2010). Constructive possession exists where the defendant did not physically possess contraband, but had knowledge of the presence of contraband and control over the area where it was found. *People v. Hunter*, 2013 IL 114100, ¶ 19. Knowledge is rarely susceptible of direct proof and may be established by acts, declarations, or conduct of the defendant which support the inference that he knew of the existence of drugs. *People v. Jones*, 2014 IL App (3d) 121016, ¶ 28. Constructive

possession may be joint, and exists even where multiple parties have access to contraband or the premises where contraband is found. *People v. Ingram*, 389 Ill. App. 3d 897, 901 (2009).

¶ 13 Because direct evidence of intent to deliver is rare, intent must usually be proven by circumstantial evidence. *People v. Robinson*, 167 Ill. 2d 397, 408 (1995). When only a small amount of drugs is found, the minimum evidence needed to establish intent to deliver is that the drugs were packaged for sale and at least one additional factor tending to show intent. *People v. Blakney*, 375 Ill. App. 3d 554, 559 (2007). These factors include, but are not limited to, the purity of the drugs and the possession of drug paraphernalia, weapons, large amounts of cash, police scanners, beepers, or cellular phones. *Robinson*, 167 Ill. 2d at 408. The absence of these particular factors is not dispositive, as other circumstantial evidence may be equally probative of intent. *People v. Bush*, 214 Ill. 2d 318, 328 (2005). Whether the evidence was sufficient to prove intent to deliver is determined on a case-by-case basis, considering all relevant facts and circumstances. *Robinson*, 167 Ill. 2d at 411-13.

¶ 14 Here, the evidence at trial was sufficient to establish that defendant possessed the cannabis and had the intent to deliver. Initially, we note that Officer Griffin testified that defendant stated "It's mine[,] I will take the hit for it." This testimony alone could be sufficient to sustain defendant's conviction. *People v. Adams*, 265 Ill. App. 3d 181, 184-85 (1994) (deferring to trier of fact regarding credibility of officer who testified that defendant admitted to possessing contraband); *People v. Loferski*, 235 Ill. App. 3d 675, 682 (1992) (testimony of a single officer is sufficient to convict). However, the testimony also demonstrated that officers found defendant and his brothers in a minivan that smelled strongly of burnt cannabis and that Dejuan grabbed a dark object and moved to the back seat, where defendant was sitting. Later, the officers found a black bag containing 10 smaller baggies of cannabis in a panel in the passenger side sliding door,

$3,000 in the console, and $792 on defendant. Taken together, the evidence was sufficient to show that defendant had knowledge of the cannabis, shared control of the space where the cannabis was found, and had the intent to deliver. *People v. Beverly*, 278 Ill. App. 3d 794, 796 (1996) (finding intent to deliver where defendant possessed $427 and six bags of cocaine packaged for sale); *People v. Feazell*, 248 Ill. App. 3d 538, 546 (1993) (where several people had access to area where contraband was found, defendant's admission bolstered evidence of constructive possession). Defendant argues that inferences consistent with innocence may also be drawn from the same evidence, but in this case it is equally reasonable to infer, as did the trier of fact, that defendant possessed and intended to deliver the cannabis. *People v. Martin*, 2011 IL 109102, ¶ 15 (on review, all reasonable inferences must be drawn in favor of the State).

¶ 15 Defendant next contends, and the State correctly concedes, that we must vacate his conviction for possession of cannabis under the one-act, one-crime doctrine because that conviction was carved from the same physical act as his conviction for possession of cannabis with intent to deliver. *People v. Lee*, 213 Ill. 2d 218, 226-27 (2004) (when multiple convictions result from offenses arising from a single act, court should impose sentence on more serious offense and vacate conviction on less serious offense). Defendant further argues, and the State correctly agrees, that the mittimus erroneously lists a conviction for manufacturing or delivery of cannabis, although defendant was not charged or convicted of that crime. Pursuant to our authority under Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the circuit court to amend the mittimus to reflect a single conviction for possession of more than 30 grams but not more than 500 grams of cannabis with intent to deliver. *People v. Burton*, 2015 IL App (1st) 131600, ¶ 40 ("This court has the authority *** to order the clerk to correct the mittimus without remand.").

¶ 16 For the foregoing reasons, we affirm defendant's conviction for possession of cannabis with intent to deliver, vacate his conviction for possession of cannabis, and order the clerk of the circuit court to correct the mittimus in accordance with this order.

¶ 17 Affirmed in part and vacated in part; mittimus corrected.