2018 IL App (1st) 152619-U

No. 1-15-2619

Order filed January 24, 2018

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 14328
	)	
FRANK POLK,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for possession of a controlled substance is affirmed over his contention that the evidence at trial was insufficient to prove his guilt beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant was found guilty of possession of less than 15 grams of a controlled substance (heroin) (720 ILCS 570/402(c) (West 2014)) and sentenced to two years' imprisonment. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he knowingly possessed a controlled substance. We affirm.

¶ 3 Defendant was arrested on July 10, 2014, at 8101 South Rhodes Avenue, following a report that somebody driving a vehicle, matching a description of the vehicle defendant was driving, was selling narcotics in the area of 81st Street and Rhodes. Defendant was subsequently charged with possession of less than 15 grams of a controlled substance. 720 ILCS 570/402(c) (West 2014).

¶ 4 The following evidence was adduced at trial. Officer Anthony Cereceres testified that he and his partner, Officer Hickey, were on patrol in a marked vehicle on July 10, 2014, and were dispatched to the vicinity of 81st Street and Rhodes to investigate a report that narcotics were being sold from a green Dodge Stratus. Upon arriving in the area, Cereceres saw a parked vehicle matching the description relayed to him. Cereceres parked next to the left side of the Dodge and exited his vehicle. As he did so, he saw, from a distance of about three feet, defendant sitting in the driver seat of the Dodge. Defendant had a cellular phone in his hand and was "tugging" at the phone. Cerceres testified that he also saw a mini ziplock bag. When defendant looked in Cereceres direction, he immediately placed the cell phone into the center console of the car. Hickey ordered defendant and a female passenger to exit the Dodge. Cereceres then recovered the cell phone, which had a case on it. A mini zip-top bag was protruding from the cell phone case. After Cereceres removed the case from the phone, he recovered a total of seven mini zip-top bags. Cereceres inventoried the cell phone and the bags he recovered.

¶ 5 On cross-examination, Cereceres acknowledged that defendant did not own the parked vehicle, and that the cell phone "was found between the two occupants of the vehicle."

¶ 6 The parties stipulated that, if called, Penny Weinstein, a forensic chemist, would testify that the seven mini zip-top bags Cereceres recovered contained 1.7 grams of heroin. The State rested, and the court denied defendant's motion for a directed verdict.

¶ 7 Defendant testified that, on the date in question, he was working as a mechanic and was test-driving a green Dodge Stratus that he had repaired. While taking the car on a test drive with his wife, he pulled over at 81st Street and Rhodes because he received a cell phone call. Defendant pulled over "maybe three blocks" away from his garage at 419 East 83rd Street. Defendant testified that, when the officers pulled up next to his car, he was typing a text message on his "flip cell phone" that did not have a case. The officers informed defendant that they were responding to a call of "shots fired" and asked him and his wife if they were alright and whether they had heard anything. After defendant said he was alright, and that he had not heard anything, he and his wife complied with the officers' request to exit the vehicle. The officers searched defendant's person and the Dodge as they waited for a female officer to arrive on the scene and search defendant's wife. After defendant's wife was searched, another officer arrived on the scene and claimed he found drugs, and that defendant's wife said the drugs belonged to defendant. Defendant did not know from where these drugs were recovered. Defendant conceded that he was convicted of felony burglary in 2003.

¶ 8 On cross-examination, defendant testified that he did not know the name of the owner of the Dodge Stratus. Defendant stated that he pulled his vehicle over in the area of 81st and Rhodes to respond to a text message. He also acknowledged that he did not see the drugs nor did he ask to see them.

¶ 9 The trial court found defendant guilty as charged. In announcing its decision, the court stated it did not believe defendant's testimony and that his story was "totally implausible" where he claimed that he was test driving a vehicle with his wife while the vehicle's owner, whose identity defendant could not recall, was "standing back at the garage." In addition, the court noted that defendant's testimony was unbelievable because defendant was "not driving down major highways, but through side streets in the city of Chicago," and that he first testified that he pulled over to receive a phone call before later testifying, on cross-examination, that he received a text message. The court also mentioned that "defendant's story is totally implausible that the police officers pull him over for no apparent reason and planted some dope on him." The court further noted that defendant's "contrived story" showed that he had knowledge of the heroin.

¶ 10 The trial court denied defendant's *pro se* motions, alleging ineffective assistance of counsel, and his motion for a new trial. The court then sentenced defendant to two years' imprisonment, and denied his motion to reconsider sentence.

¶ 11 On appeal, defendant's only contention is that the State failed to prove that he knowingly possessed a controlled substance beyond a reasonable doubt. Defendant argues that Officer Cereceres's testimony was insufficient to prove his guilt, and that his testimony was not implausible.

¶ 12 When a defendant challenges his conviction based upon the sufficiency of the evidence presented against him, we must ask whether, after viewing the evidence 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. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). All reasonable inferences from the record must be

allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. "It is the trier of fact's responsibility to determine the witnesses' credibility and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence; we will not substitute our judgment for that of the trier of fact on these matters." *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). We will not reverse a conviction unless the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 13 As charged here, in order to sustain defendant's conviction for possession of a controlled substance, the State had to prove beyond a reasonable doubt that defendant knowingly possessed less than 15 grams of heroin. See 720 ILCS 570/402(c) (West 2014).

¶ 14 Defendant does not challenge the evidence that he possessed heroin. Rather he argues that the evidence was insufficient to show that he knew he possessed heroin.

¶ 15 In reviewing a conviction for possession of a controlled substance, the deciding question is whether defendant had knowledge and possession of the drugs. *People v. Givens*, 237 Ill. 2d 311, 334-35 (2010). The element of knowledge is rarely established by direct proof, and is usually shown through circumstantial evidence. *People v. Fleming*, 2013 IL App (1st) 120386, ¶ 74. "Knowledge may be established by evidence of acts, statements, or conduct of the defendant, as well as the surrounding circumstances, which supports the inference that he knew of the existence of narcotics at the place they were found." *People v. Bui*, 381 Ill. App. 3d 397, 419 (2008). Our supreme court has found that "the mere presence of illegal drugs on premises which are under the control of the defendant gives rise to an inference of knowledge and possession sufficient to sustain a conviction absent other factors which might create a reasonable doubt as to

defendant's guilt." *People v. Smith*, 191 Ill. 2d 408, 413 (2000). In a bench trial, whether a defendant had knowledge of the narcotics is a question of fact for the court. *People v. Williams*, 267 Ill. App. 3d 870, 877-77 (1994).

¶ 16 After viewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could find beyond a reasonable doubt that defendant knowingly possessed the heroin. Stated differently, the circumstances in this case support the inference that defendant had knowledge of the heroin. The record shows that, Officer Cereceres was dispatched to the area of 81st and Rhodes to investigate a report that narcotics were being sold from a green Dodge Stratus. There, Cereceres saw, from a distance of three feet, defendant sitting in the driver seat of a Dodge. See *People v. Givens*, 237 Ill. 2d 311, 335 (2010) (proof that a defendant has control over the premises the drugs were located gives rise to an inference of knowledge and possession). Cerceres testified that defendant had a cellular phone in his hand and was "tugging" at the phone. Cerceres also testified that he saw a mini ziplock bag and, after defendant looked in the officer's direction, defendant threw the cell phone into the vehicle's center console. This evidence and the reasonable inferences therefrom, was sufficient to establish that defendant knew of the existence of the narcotics in his cell phone case. As such, the evidence presented was sufficient to sustain defendant's conviction for possession of a controlled substance.

¶ 17 Defendant nevertheless argues that Cereceres testimony was insufficient to sustain a conviction because Cereceres did not testify to seeing a substance resembling heroin prior to recovering the cell phone. Defendant also argues that his testimony was plausible. Specifically, he argues that his testimony was believable because he testified truthfully that he did not own the Dodge Stratus, and there was no evidence the vehicle was stolen. Defendant further argues that

the trial court's assertion that he was not test driving the Dodge Stratus because he was driving on side streets is "absurd," as a mechanic would know better than to drive a potentially defective vehicle on a major road. Finally, defendant argues that not knowing his customer's name is not indicative of him knowing about the heroin, and that the court misconstrued his testimony to be an accusation that police planted drugs on him.

¶ 18 We initially note that the "mandate to consider all the evidence on review does not necessitate a point-by-point discussion of every piece of evidence as well as every possible inference that could be drawn therefrom. To engage in such an activity would effectively amount to a retrial on appeal, an improper task expressly inconsistent with past precedent." *People v. Wheeler*, 226 Ill. 2d 92, 117-18 (2007) (citing *People v. Smith*, 185 Ill. 2d 532, 541 (1999)).

¶ 19 That aside, defendant's arguments are, essentially, asking us to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact. This we cannot do. See *People v. Abdullah*, 220 Ill. App. 3d 687, 693 (1991) ("A reviewing court has neither the duty nor the privilege to substitute its judgment for that of the trier of fact"). As mentioned, the trier of fact is responsible for determining the witnesses' credibility and the weight to be given to their testimony, resolving conflicts in evidence, and drawing reasonable inferences from the evidence. *Ortiz*, 196 Ill. 2d at 259. Here, based on its decision and oral pronouncements, it is clear that the trial court found Cereceres to be credible. Although the court did not find defendant to be credible, it was free to accept or reject as much of his testimony as it pleased. *People v. White*, 2015 IL App (1st) 131111, ¶19. In doing so, the trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. Hall*, 194 Ill.

2d 305, 332 (2000). Furthermore, the trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. *Id.* at 330. Rather, evidence is sufficient to convict a defendant if all of the evidence, taken together, satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Id.* Ultimately, a defendant's conviction will not be overturned unless the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *Brown*, 2013 IL 114196, ¶ 48. This is not one of those cases.

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.