

2018 IL App (1st) 161423-U

No. 1-16-1423

Order filed August 24, 2018

Sixth Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County,
)	
v.)	No. 15 CR 15409
)	
CALVIN GREEN,)	Honorable
)	Vincent M. Gaughan,
Defendant-Appellant.)	Judge, presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to convict defendant of possession of a controlled substance with intent to deliver.

¶ 2 Following a jury trial, defendant Calvin Green was convicted of possession of a controlled substance with intent to deliver for knowingly possessing 1 gram or more, but less than 15 grams, of a substance containing heroin with the intent to deliver. On appeal, he contends that the evident was insufficient to convict him. We affirm.

¶ 3 At trial, Chicago police officer Kevin Clarke testified that on the night in question, he was patrolling in a vehicle with Officer Nick Beckman and two other officers. As he was driving, Clarke saw two men standing in a vacant lot about 40 feet ahead. One of them was defendant. Though it was night, the area was well-lit. Clarke saw the man with defendant extend his left hand, containing currency, towards defendant. Clarke heard “something” but could not “hear who said it” except that it was not defendant or the other man. Defendant then looked in Clarke’s direction and dropped small green items to the ground from his left hand. The other man turned around and walked away. The officers approached defendant and the other man, announcing that they were police officers. As another officer detained defendant, Clarke saw Beckman pick up the small green items and show them to Clarke, who confirmed that they were the items he saw defendant drop. They were four small green-tinted plastic bags containing a white powder that Clarke suspected to be heroin. Defendant was then arrested. Clarke spoke with but did not arrest the other man, as Clarke had not seen him receive any drugs in exchange for his money.

¶ 4 Officer Nick Beckman testified that he also saw defendant and another man standing together in the vacant lot with nobody else in the lot, saw the other man extend a hand with money in it towards defendant, saw defendant looking towards Beckman, and saw defendant drop small green objects. Beckman could see that the other man’s hand contained cash, based on its size, shape, and color, but could not see its denomination. Beckman heard a “very loud” sound as the man was extending the money towards defendant, before defendant turned towards the officers and dropped the objects, but Beckman could not tell if defendant or the man made the sound. When Clarke stopped the vehicle, Beckman went to where he saw the green objects being dropped and found four small green-tinted bags containing a white substance he suspected

to be heroin. No other green objects were on the ground nearby. While one officer detained defendant, Clarke approached the other man. Defendant was searched at the police station after his arrest, and \$200 in cash was found on his person.

¶ 5 A forensic chemist testified that she received the recovered four objects, found them to contain a total of 1.3 grams of powder, and after separately testing the powder from each item concluded that they all contained heroin.

¶ 6 Following closing arguments, instructions, and deliberations, the jury found defendant guilty of possession with intent to deliver.

¶ 7 In his posttrial motion, defendant challenged the sufficiency of the evidence. He argued that the court should set aside the verdict regarding intent to deliver because the “supposed transaction” did not include any “salesmanship” by defendant and no drugs were recovered from the alleged buyer. The court denied the motion and, following a sentencing hearing, sentenced defendant to 48 months’ imprisonment.

¶ 8 On appeal, defendant contends that the evidence was insufficient to convict him beyond a reasonable doubt of possession of a controlled substance with intent to deliver. In particular, he contends that the State failed to prove his intent to deliver beyond a reasonable doubt.

¶ 9 On a claim of insufficient evidence, we must determine whether, taking 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. Gray*, 2017 IL 120958, ¶ 35. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and it is better equipped than this court to do so as it heard the evidence. *Id.*; *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. We do not substitute our

judgment for that of the trier of fact on witness credibility or the weight of evidence. *Gray*, 2017 IL 120958, ¶ 35. The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Jonathon C.B.*, 2011 IL 107750, ¶ 60. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt, nor to find a witness not credible merely because a defendant says so. *Id.* We will reverse a conviction only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Gray*, 2017 IL 120958, ¶ 35.

¶ 10 A person commits possession of a controlled substance with intent to deliver when he knowingly possesses with intent to deliver a controlled substance including 1 gram or more, but less than 15, grams of heroin. 720 ILCS 570/401(c)(1) (West 2014). The State must prove beyond a reasonable doubt that (1) the defendant had knowledge of the presence of the controlled substance, (2) the controlled substance was in the immediate possession or control of the defendant, and (3) the defendant intended to deliver the controlled substance. *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 64. A defendant's mental state, such as intent, is rarely proven by direct evidence, and may be proven by surrounding facts and circumstances, including the defendant's actions, from which a trier of fact can fairly draw an inference of intent. *People v. Peterson*, 2017 IL 120331, ¶ 43, *petition for cert. pending*, No. 17-9464; *People v. Johnson*, 2018 IL App (1st) 140725, ¶ 68. Factors probative of intent to deliver include possession of a quantity of drugs too large to reasonably be for personal consumption, purity of the drugs,

possession of weapons, possession of large amounts of cash, possession of police scanners, possession of drug paraphernalia, and packaging. *People v. Wilkerson*, 2016 IL App (1st) 151913, ¶ 66; *People v. Pittman*, 2014 IL App (1st) 123499, ¶ 16. “Which factors will be considered depends on the facts of the case.” *Pittman*, 2014 IL App (1st) 123499, ¶ 16. The minimum we have required to affirm a conviction involving small amounts of drugs is possession of the controlled substance packaged for sale plus at least one additional factor indicative of the intent to deliver. *Warren*, 2016 IL App (4th) 120721-B, ¶ 66.

¶ 11 Here, taking the trial evidence in the light most favorable to the State as we must, we cannot conclude that no rational trier of fact would convict defendant of possession of a controlled substance with intent to deliver. In particular, we cannot conclude that the evidence of defendant’s intent to deliver was insufficient. As defendant is challenging only the sufficiency of the evidence of his intent to deliver, not his possession, it is undisputed that he dropped from his hand green objects that police and testing found to be four small plastic bags containing 1.3 grams of heroin. Two officers saw defendant standing with a man who was extending his arm towards defendant with cash in hand when defendant looked towards the approaching officers and dropped the four bags of heroin he was holding in his hand. A trier of fact could reasonably infer from the officers’ testimony that defendant intended to sell – that is, deliver – the heroin to the other man before the officers interrupted the transaction. The inference that defendant possessed the heroin with the intent to deliver is reinforced or corroborated by the evidence that he had a large amount of cash – \$200 – upon his arrest.

¶ 12 Defendant challenges such an inference on various grounds. He places great weight on the relatively small amount of heroin he possessed. However, as stated above, the possession of

an amount of narcotics too large for personal consumption is only one factor to consider in finding intent to deliver. He also emphasizes that he was “an admitted heroin addict,” but no such evidence was presented at trial. Regardless of the amount of heroin defendant possessed, we find it reasonable to infer that the intent of defendant and the other man on the night in question was for defendant to deliver the heroin he possessed to the other man. We need not accept defendant’s characterization of the scene as a “fleeting” glimpse at night, as the officers testified that they saw the well-lit scene from about 40 feet away and still saw it as they drove closer. While Officer Clarke was driving as he observed the events, Officer Beckman was not. Defendant notes that the other man was not arrested and thus not searched for drugs or money. However, the officers explained that the other man was not arrested because they saw that he had not yet received the heroin. Defendant also noted that he did not extend his hand to meet the other man’s extended hand, as would be needed to complete a sale. However, it is reasonable to infer that he dropped the heroin before he could do so. Regardless of whether defendant dropped the heroin because he saw police approaching, or because he heard some noise, that would not alter the evidence that the other man had the cash in his hand, and was extending it towards defendant, while defendant had the heroin. Taking the evidence in the light most favorable to the State, we find no ambiguity that defendant was the seller, and the other man the buyer, in the interrupted transaction. Stated another way, the officers did not “assume” that defendant was the seller and the other man the buyer, as defendant argues in his brief, but inferred it. The jury made the same inference. We find the inference reasonable and thus affirm the judgment.

¶ 13 Accordingly, the judgment of the circuit court is affirmed.

¶ 14 Affirmed.