2018 IL App (2d) 160462-U
No. 2-16-0462
Order filed November 1, 2018



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court of Du Page County. |
| Plaintiff-Appellee, | ) | |
| v. | ) | No. 15-CF-596 |
| ARISTEO S. MIRELES, | ) | Honorable John J. Kinsella, |
| Defendant-Appellant. | ) | Judge, Presiding. |

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JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

**ORDER**

¶ 1 *Held*: (1) The State proved defendant guilty beyond a reasonable doubt of possession of cocaine with intent to deliver, as the trial court could infer his intent from not only the amount but the packaging of the cocaine, defendant's presence for a substantial period at a gas station, his possession of a large amount of cash and a ledger, and his admission that he dealt drugs on other occasions; (2) we corrected the mittimus to properly reflect that defendant was convicted of possession with intent to deliver, not manufacture or delivery.

¶ 2 Defendant, Aristeo S. Mireles, appeals his conviction of possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2014)). He contends that the evidence was insufficient to prove him guilty of intent to deliver beyond a reasonable doubt. In

the alternative, he contends that the mittimus must be corrected to properly show his conviction of possession with intent to deliver instead of manufacture or delivery of a controlled substance. We affirm the conviction, but we amend the mittimus to show the correct conviction.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged in April 2015. In an agreement with the State, defendant proceeded to a stipulated bench trial consisting of evidence presented at a hearing on an unsuccessful motion to suppress. The parties also agreed that, if defendant were found guilty, the State would recommend a sentence of 12 years' incarceration.

¶ 5 At the hearing on the motion to suppress, police officer Brian Mitera testified that he was dispatched to a gas station after the assistant manager of the station called police to report that a man in a silver car had been parked for 30 minutes in front of the entrance, making her feel uncomfortable. When Mitera arrived at the gas station, he saw a silver car parked in front of the entrance with defendant inside and he approached and knocked on the driver's window. Defendant lowered the window a few inches. Mitera asked defendant for his driver's license, and defendant handed Mitera his state identification card. Mitera contacted the dispatcher to run defendant's name and identification number. While waiting to hear back from the dispatcher, Mitera asked defendant why he was at the gas station. Defendant said that he had met a woman earlier for dinner and had stopped to use the bathroom and use his phone. He also said that the car was registered to his cousin, which Mitera found suspicious. The dispatcher informed Mitera that defendant's driver's license was suspended, he was on parole, and there was a warrant for his arrest in Will County. Mitera arrested defendant.

¶ 6 Mitera testified that, through his training and experience, he knew that gas stations, particularly gas station bathrooms, were common places for people to conduct drug transactions

and use drugs. Surveillance video from inside the gas station showed defendant arriving at the gas station and parking. He then walked into the gas station and shopped. Defendant then walked out to his car, put his purchases inside, and walked away. A bit later, defendant went inside the gas station again, and he walked out and got into his car. For the next 30 minutes, the car remained parked outside of the gas station. No one approached, entered, or exited the car.

¶ 7 After arresting defendant, Mitera searched him and found $1417 in cash, consisting of twenties, hundreds, one fifty, and seven singles, bundled together with a rubber band. Mitera also found a plastic baggie containing a brown substance. Defendant told Mitera that the substance was an herbal medication from a "Mexican Witch Doctor." That substance was sent to a laboratory but not analyzed. Mitera also found an index card containing names and numbers that Mitera believed was a ledger, which drug dealers commonly use to keep track of people who owe them money. Also found was a cell phone. Five sealed bags containing liquid-filled vials and a sealed bag containing a smoking device were also found but not analyzed.

¶ 8 While being transported to the police station, defendant told Mitera that he had known about the warrant from Will County and was saving the money to turn himself in on the warrant later in the week. Mitera asked what defendant was on parole for, and defendant said multiple charges of possession of cocaine. Defendant said that he had "used and sold a significant amount of cocaine, and that his nose has always been his problem since he started using."

¶ 9 During a search of defendant's car, police located a glass jar in the center console. The jar contained two baggies of a white powdery substance that field-tested positive for cocaine. At the police department, Mitera told defendant that cocaine had been found inside the car, and defendant confirmed that it was his. Defendant said that he "uses a lot of cocaine" and "also moves some to help support his habit." However, he denied being at the gas station that night to

sell cocaine. He admitted that he used the bathroom at the gas station and used a credit card from his wallet to use some cocaine. Mitera located a card in defendant's wallet that had a small amount of cocaine on it.

¶ 10 In front of defendant, another officer stated that a "good amount" of cocaine had been found inside the car, maybe as much as a "quarter brick," meaning 250 grams. Defendant then stated, "cmon man that is not even an onion." An "onion" is street slang for about one ounce. The Illinois State Police Forensic Science Laboratory analyzed the white substance and found it to be 21.2 grams of cocaine.

¶ 11 The trial court found defendant guilty of possession with intent to deliver. In accordance with the parties' agreement, the court sentenced defendant to 12 years in prison. The mittimus mistakenly stated that the conviction was of manufacture or delivery of a controlled substance. Defendant's motion to reconsider was denied, and he appeals.

¶ 12 II. ANALYSIS

¶ 13 Defendant contends that the evidence was insufficient to prove him guilty of intent to deliver beyond a reasonable doubt. He argues that there was no evidence that his possession of the cocaine was inconsistent with personal consumption. We disagree.

¶ 14 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).

¶ 15 To establish possession of a controlled substance with 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).

¶ 16 Direct evidence of intent to deliver is rare, and circumstantial evidence is commonly used to prove intent. *People v. Robinson*, 167 Ill. 2d 397, 408 (1995). There are various factors from which one may infer intent. *Id.* Those include: (1) whether the quantity of the controlled substance 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. *Id.* 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).

¶ 17 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. *Id.* at 411. As the quantity of the controlled substance decreases, the need for additional circumstantial evidence of intent to deliver increases. *Id.* at 413. The minimum required for the affirmance of a conviction of intent to deliver a small amount of drugs is possession of the controlled substance packaged for sale, plus at least one additional factor indicative of delivery, such as a significant

amount of cash recovered from the defendant. See *People v. Beverly*, 278 Ill. App. 3d 794, 802 (1996).

¶ 18 Here, defendant possessed 21.2 grams of cocaine. Officers noted that this was a significant amount. However, defendant argues that, based on the evidence that he personally used large amounts of cocaine, we cannot say that there was sufficient proof that it was not for personal consumption. But, even if we assume that the amount alone was not sufficient to prove intent to deliver, there was other circumstantial evidence that, combined with the amount, was sufficient to prove that defendant possessed it with intent to deliver.

¶ 19 Not only did defendant possess a significant amount of cocaine, but it was in two packages and he possessed it while sitting for a substantial period at a gas station, which Mitera testified was a common location for drug dealing. Defendant also had a large amount of cash on his person when arrested, along with a ledger that Mitera believed was used for drug dealing. Moreover, defendant admitted that he sold drugs, although he denied being at the gas station with the intent to do so. Defendant discounts the additional evidence, arguing that he planned to use the cash when he turned himself in and that the ledger could have been a list of people he would call at that time, but the trial court was free to discount such explanations. When the evidence is considered as a whole, it was sufficient for the court to find that the State proved intent to deliver beyond a reasonable doubt. Accordingly, we affirm defendant's conviction.

¶ 20 Defendant next argues that the mittimus must be corrected to properly show his conviction of possession with intent to deliver instead of manufacture or delivery of a controlled substance. The State agrees. Where a mittimus incorrectly reflects the name of the offense of which the defendant was convicted, it should be corrected to conform to the judgment entered by the court. *People v. Brown*, 255 Ill. App. 3d 425, 438-39 (1993). Accordingly, we correct the

mittimus to reflect defendant's conviction of possession of a controlled substance with intent to deliver.

¶ 21 III. CONCLUSION

The evidence was sufficient to prove defendant guilty beyond a reasonable doubt. However, the mittimus is corrected to reflect that the conviction was of possession of a controlled substance with intent to deliver. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 22 Affirmed; mittimus corrected.