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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CF-2046
)	
MELVIN N. BOYD,)	Honorable
)	Robert G. Kleeman,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence was sufficient to sustain defendant's conviction for possession of cannabis with intent to deliver.

¶ 2 I. INTRODUCTION

¶ 3 Defendant, Melvin N. Boyd, was indicted and charged with one count of possessing more than 10 grams but less than 30 grams of cannabis with intent to deliver, a Class 4 felony (720 ILCS 550/5(c) (West 2010)). Following a bench trial, defendant was found guilty and placed on 24-month "first offender" probation. Defendant filed a motion to reconsider sentence, and the trial court denied his motion. Defendant now appeals, arguing that because the State failed to

prove beyond a reasonable doubt that he intended to deliver the 27 grams of cannabis, the trial court should have acquitted him of the charged felony offense and found him guilty only of the lesser-included misdemeanor of possession of cannabis. We disagree, and for the reasons that follow, we affirm.

¶ 4

II. BACKGROUND

¶ 5 On September 20, 2011, the grand jury indicted defendant with one count of possessing more than 10 grams but less than 30 grams of cannabis with intent to deliver. The offense was alleged to have occurred on September 1, 2011. Defendant pleaded not guilty to the charge, and a bench trial was held on October 2, 2012. At trial, the three witnesses that testified were all called by the State.

¶ 6 The first witness to testify was Corporal Dan Cummings, an officer for the Carol Stream Police Department. Cummings testified that on September 1, 2011, shortly before 6:30 a.m., he and a team of officers executed a search warrant at defendant's apartment. It was necessary to breach the front door of the apartment using a bridge because Cummings' repeated knocks and announcement of "state police search warrant" went unanswered. Upon entry into the apartment, he found defendant sleeping on the living room floor. Cummings searched the apartment with Detective Spizzirri and another officer from the team. During the search, a plastic bag containing a green leafy substance resembling cannabis was found in one of the upper kitchen cabinets. Additionally, Cummings seized a box of sandwich baggies, a scale, and a glass smoking pipe with a smell of burnt cannabis from the top shelf of a closet located in the master bedroom. He further testified that a Comcast bill was found on the kitchen table with the name "Melvin Boyd" printed on it and bearing an address to that apartment number.

¶ 7 Subsequent to the search, defendant was arrested and taken to the Carol Stream police department where Cummings spoke with him after reading him his *Miranda* rights. Defendant told Cummings that he was unemployed, but was presently a self-employed painter with “little to no clients.” Cummings further testified that defendant advised him that he suffered from problems with his back and that he smokes cannabis to manage his pain. Defendant went on to tell Cummings that he travels to Chicago every other week to purchase approximately one ounce of cannabis. Additionally, defendant related that he smokes the cannabis he purchases with five other people. These five people are also who he normally gives cannabis to. He continued that he “sometimes” receives approximately \$20 from these individuals when he gives them cannabis.

¶ 8 On cross-examination, Cummings acknowledged that defendant told him that he was not a drug dealer, that he did not sell cannabis, but that he occasionally helped out five of his friends by giving them cannabis. Defendant told Cummings that he “may or may not” receive money from his friends to whom he infrequently gave cannabis. Defendant did not say how regularly he received any money from these people.

¶ 9 Spizzirri, a detective who assisted Cummings with the search of defendant’s apartment, was the State’s next witness. He testified that he and Cummings collected the bag with the green leafy substance that was found in the kitchen along with the sandwich bags, a digital scale, a glass pipe used for smoking cannabis, and a package of rolling papers that were found in the master bedroom closet.

¶ 10 The State’s final witness was Jillian Baker, a forensic chemist. She testified that her job duties include analyzing evidence for the presence of controlled substances and cannabis, writing reports of her findings, and testifying in court. She further testified that she weighed and tested

the green leafy substance found in defendant's apartment. She confirmed the substance weighed 27.07 grams and tested positive for cannabis.

¶ 11 At the conclusion of the State's case, defendant moved for a directed finding, which was denied. After closing arguments, the trial court concluded that the State had proven the required elements for possession of more than 10 grams but less than 30 grams of cannabis with intent to deliver and found defendant guilty. On October 4, 2012, defendant filed a motion for a new trial that was argued on November 1, 2012. The trial court denied the motions, noting that it had previously found that defendant did possess 27.07 grams of cannabis with intent to deliver. The court additionally referred to the Illinois Pattern Jury Instructions and stated that the "State must prove the defendant knowingly possessed with the intent to deliver a substance containing cannabis." The court continued, "I find that has been proven." The trial court sentenced defendant to a 24-month period of probation. See 720 ILCS 550/10 (West 2010). This appeal followed.

¶ 12

III. ANALYSIS

¶ 13 On appeal, defendant argues the State failed to prove beyond a reasonable doubt that he intended to deliver the 27 grams of cannabis because there was no direct evidence that he intended to deliver the cannabis found in his apartment. Defendant asserts that the trial court should have acquitted him of the charged felony offense and found him guilty only of the lesser-included misdemeanor of possession of cannabis. We disagree.

¶ 14 Whether the State has presented sufficient evidence to sustain a conviction is reviewed by determining whether the evidence presented at trial, when viewed in the light most favorable to the State, would allow any rational trier of fact to find that the State had proved every element of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). In a

bench trial, the judge, sitting as the trier of fact, is responsible for assessing the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). “A reviewing court may not substitute its judgment for that of the fact finder” with regards to issues of credibility or weight of testimony. *People v. Duskus*, 282 Ill. App. 3d 912, 918 (1996).

¶ 15 If the trier of fact convicted defendant based on evidence it reasonably believed, then the reviewing court should not disturb the verdict. *People v. Weathersby*, 383 Ill. App. 3d 226, 229 (2008). When a defendant contests the sufficiency of the evidence, it is not the role of the reviewing court to retry the defendant. *People v. Ward*, 215 Ill. 2d 317, 322 (2005). However, a reviewing court is not absolutely bound by a trier of fact’s findings, and its ultimate duty is to evaluate for itself the reasonableness of the guilty verdict. *People v. Cunningham*, 212 Ill. 2d 274, 278-80 (2004). A criminal conviction must be supported by proof establishing guilt beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 361-62 (1970).

¶ 16 Possession of more than 10 grams but less than 30 grams of cannabis with intent to deliver is a Class 4 felony (720 ILCS 550/5(c) (West 2010)). To convict the defendant of possession of cannabis with intent to deliver, the State had to prove that defendant knew the cannabis was present, that the substance was in his immediate possession or control, and that he intended to deliver the cannabis. *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). Defendant did not contest the first two elements. He acknowledged to Cummings following his arrest that the cannabis belonged to him, and that he travels to Chicago every other week to purchase cannabis that he smokes and gives to others. Even if these factors were contested by defendant, knowledge and possession may be inferred where the cannabis is found on the premises that are under his control. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007).

¶ 17 The third element, intent, is usually proved by circumstantial evidence after consideration of a multitude of factors including, but not limited to: whether the quantity of the substance is too large for personal use, the high purity of the substance, the possession of a large amount of cash, the possession of drug paraphernalia (such as a scale), the possession of weapons, and the manner in which the substance is packaged or stored. *People v. Robinson*, 167 Ill. 2d 397, 408 (1995). The Illinois Supreme Court has explained that the factors mentioned in *Robinson* are not exclusive; rather, they are purely examples of factors courts have considered when determining intent to deliver and are meant to be merely illustrative. *People v. Bush*, 214 Ill. 2d 318, 327 (2005). The *Bush* court went on to say that when other factors are present that indicate a defendant's intent to deliver, "the absence of *Robinson* factors is of no consequence." *Id* at 328.

¶ 18 Defendant asserts that four of the factors detailed in *Robinson* are absent in the instant case and thus the State did not prove that he intended to deliver the cannabis recovered during the search of his apartment. However, the absence of these factors bears little or no weight in overturning the trier of fact's finding that defendant possessed cannabis with the intent to deliver. See *Bush*, 214 Ill. 2d at 328. Defendant contends that there is some significance with regards to where the cannabis was found (in a plastic bag in an unlocked kitchen cabinet). However, the Comcast bill with defendant's name and the address of the apartment printed on it was enough for the trier of fact to reason that defendant controlled the apartment and thus anything within the apartment was further under his control. As for defendant's intent, it is true that that fact that it was not stored with the paraphernalia supports an inference that it was not intended to be used with the paraphernalia. However, we cannot say that this inference is so compelling, in light of defendant's control over the entire domicile and all the items at issue, that the trial court was required to draw it.

¶ 19 Indeed, sandwich bags and a digital scale were found in the closet of the master bedroom inside the apartment. The trier of fact could reasonably infer that both these pieces of evidence indicate defendant's intent to deliver the cannabis. Although a box of sandwich bags is normally a very common household item and would not in and of itself be considered as drug paraphernalia, its location next to a digital scale in the closet could allow a reasonable trier of fact to conclude that the bags were used to package cannabis that the defendant sold. If the sandwich bags were being used for their typical purpose, such as packing a lunch, it stands to reason that the bags would be found in the kitchen instead of on a shelf in the master bedroom closet next to a scale. Defendant further argues the digital scale found during the search could have been used to weigh his own purchases to ensure he was getting the amount he paid for. However, defendant does not explain how the supply of sandwich bags would have been used in the purchase of cannabis. Thus, because the scale was found with the bags, the trier of fact could have concluded that it is more plausible that the scale was used to weigh cannabis that the defendant intended to deliver.

¶ 20 Defendant claims that the 27.07 grams of cannabis could have been for his personal use based on lack of evidence of the frequency of his use. While it may have been possible that defendant could have used this quantity of cannabis, the quantity is sufficient to support an inference that it was not solely for personal use. *See People v. Blan*, 392, Ill. App. 3d 453, 457 (2009) (Where a large bag containing 28.3 grams of a substance containing cannabis was sufficient to allow a rational jury to find beyond a reasonable doubt that defendant intended to deliver.) In addition, defendant contends that the absence of evidence relating to the frequency in which he sold cannabis to others is significant. In the case at bar, Cummings testified that the defendant normally gave cannabis to five other people and that he sometimes received money.

Thus, while the evidence concerning the frequency with which he shared cannabis with his friends may not have been particularly significant, taken in context with other evidence, we conclude that it provides support for defendant's conviction. Moreover, given that defendant had a scale segregated with packaging material, the trial court could have concluded that he intended to deliver cannabis to people other than his friends. In short, this evidence supports the trial court's finding on the intent element.

¶ 21 Defendant contends that the trial court did not properly consider his employment status in the instant case. Although it was not required to, the trial court noted, "Someone who is in need of money, the State argued that that is motive to commit a criminal act in making money. I think it's an appropriate argument that has been made for centuries." This is a reasonable inference. *Cf. People v. Ballard*, 346 Ill. App. 3d 532, 540 (2004) (holding possession of expensive equipment despite lack of employment probative of an intent to distribute narcotics). Thus, we find no error here.

¶ 22 Lastly, defendant cites *People v. Ellison*, 2013 IL App (1st) 101261 (2013). In *Ellison*, evidence at trial showed that the defendant was carrying an amount of cocaine and heroin consistent with personal use and he came to a drug house to purchase a small amount of drugs. The court specifically made mention of the absence of drug paraphernalia consistent with personal use as well as consistent with selling drugs. In that case, the appellate court reduced the conviction from possession of a controlled substance with intent to deliver to simple possession of a controlled substance. However, unlike *Ellison*, defendant in the case at bar possessed both drug paraphernalia consistent with personal use as well as paraphernalia used in drug transactions. In this case, defendant's apartment contained plastic baggies and a digital scale. Moreover, defendant did tell Cummings that he goes to Chicago every other week and gets an

ounce of cannabis and sometimes shares this with his friends. Twenty-seven grams is approximately an ounce. Thus, the amount possessed by defendant was consistent with the amount he would possess, by his own admission, when he distributed cannabis to his friends. We do not find defendant's argument based on the amount of cannabis he possessed well taken. We further point out that, although the cannabis was found in a single bag, the means to divide it (i.e., the sandwich bags and scale) were found in defendant's possession

¶ 23

I. CONCLUSION

¶ 24 In light of the foregoing, the judgment of the circuit court of Du Page County is affirmed.

¶ 25 Affirmed.