2012 IL App (1st) 103632-U

SIXTH DIVISION
May 17, 2012

No. 1-10-3632

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. 10 CR 3354
	)	
TERRENCE TATE,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Garcia and Palmer concurred in the judgment.

O R D E R

¶ 1 *Held*: Evidence sufficient to sustain defendant's conviction for possession of cannabis with intent to deliver; mittimus amended to reflect proper conviction.

¶ 2 Following a bench trial, defendant Terrence Tate was found guilty of unlawful use of a weapon by a felon and possession of cannabis with intent to deliver, then sentenced to concurrent, respective terms of four years and one year in prison. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he intended to deliver the recovered substance, and that his conviction must be reduced to the lesser included offense of possession. In the alternative, defendant contends that his mittimus must be amended to reflect the proper offense of which he was convicted.

¶ 3 Defendant's conviction arose from the January 19, 2010, execution of a search warrant by a team of Chicago police officers at a second floor apartment in the building at 4912 West Erie Street. During the search, the officers recovered a plastic bag containing 25 smaller plastic bags of cannabis, along with a loaded handgun, holster and a loaded, spare magazine.

¶ 4 At trial, the State introduced testimony from several of the police officers who executed the search warrant. Officer Mingari testified that, as the officers approached the rear of the apartment building, a black male standing on the second floor porch saw them and ran into the apartment. The officers announced their office and entered the apartment through the open rear door to the kitchen, which led into the dining room, followed by the living room. Officer Mingari was the first to enter, and as he walked through the dining room, he passed a woman and saw defendant standing in the living room with a black object in his right hand. Defendant then stepped to the side and tossed the item between two mattresses that were leaning against a wall. Due to the positioning of the mattresses, half of defendant's body was concealed from view.

Defendant complied with Officer Mingari's order to step away from the mattresses and was handcuffed by another officer. Officer Mingari then looked between the two mattresses and saw a handgun and holster in the location where defendant had tossed an item.

¶ 5 Sergeant Struke testified that he took photos of the stainless steel handgun in a black holster which was located behind the mattress before he recovered it along with a spare magazine attached to the holster. The handgun and spare magazine were both loaded. When Sergeant Struke first saw defendant, he was in the living room being handcuffed. He further testified that the person on the porch of the apartment was not defendant, and that he never saw defendant with a black object in his hand.

¶ 6 Officer Sweeney testified that he entered the apartment immediately after Officer Mingari. When he first saw defendant, he was concealing the right side of his body behind a mattress and there was a black object on the floor below defendant. He placed defendant in handcuffs and conducted a pat down search. When Officer Sweeney asked defendant if he had anything on him, defendant responded that he had some "weed." Officer Sweeney then felt a large bulge in defendant's front, right pants pocket, from which he recovered one plastic bag containing 25 small zip locked plastic bags filled with suspect cannabis. Officer Sweeney testified that he has made numerous cannabis arrests and that the packets recovered from defendant were consistent with packaging cannabis as "nickel bags of weed," *i.e.*, an individual bag that could be purchased for five dollars.

¶ 7 The parties then stipulated to defendant's previous felony conviction for aggravated unlawful use of a weapon and the inventory of the loaded firearm, gun holster and a spare loaded magazine. The parties also stipulated that one plastic bag containing 25 smaller plastic zip locked bags containing a green leafy substance were inventoried, and that 18 of those bags were tested and proved positive for cannabis. The total weight of the 18 bags was 11.3 grams, and the estimated weight of the remaining seven bags was 4.4 grams. The parties also stipulated that the proper chain of custody was maintained at all times.

¶ 8 Rashonda Phillips testified for the defense that she and defendant were in the dining room of the apartment preparing to leave when everyone, except for the two of them, ran out the front door in the dining room. She never saw defendant near the mattresses in the living room, or enter the living room prior to being instructed to do so by the officers. Phillips further testified that defendant told the officer he had "weed," and she saw him recover a bag of cannabis from defendant's pants.

¶ 9 Defendant testified that he did not live in the apartment, that it belonged to a friend and that he and Phillips had agreed to meet there before going out to eat. After he arrived, he stood in the dining room at the threshold to the living room speaking with the men who were there, and remained in the dining room after Phillips arrived. About 15 minutes later, as he and Phillips prepared to leave, one of the men yelled "police" and everyone except for he and Phillips ran out of the apartment. Defendant testified that he never entered the living room, that he was never near the mattresses where the handgun was recovered, that he did not have a gun that day and

that he was in the dining room when he was handcuffed and searched. He admitted, however, to possessing the cannabis.

¶ 10 The court found defendant guilty of unlawful use of a weapon by a felon and possession of cannabis with intent to deliver. The court subsequently denied his post-trial motion and sentenced him to the concurrent terms stated above. On this appeal from that judgment, defendant challenges the sufficiency of the evidence to prove beyond a reasonable doubt that he possessed the cannabis with intent to deliver, and requests this court to reduce his conviction to simple possession.

¶ 11 The standard of review on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies to all criminal cases, whether the evidence is direct or circumstantial, and acknowledges the responsibility of the trier of fact to determine the credibility of witnesses, to weigh the evidence, and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). A reviewing court will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 12 In this case, defendant was found guilty of possession of cannabis with intent to deliver. 720 ILCS 550/5(c) (West 2010). Defendant raises no argument regarding his knowing

possession of the cannabis, but challenges the sufficiency of the evidence to prove his intent to deliver that substance. The supreme court has held that intent must generally be proved by circumstantial evidence, as direct evidence is rare. *People v. Robinson*, 167 Ill. 2d 397, 408 (1995). In the same case, the supreme court noted that many different factors have been considered as probative of intent to deliver, including whether the quantity of the controlled substance is too large for personal consumption; the purity of the drug confiscated; possession of weapons; possession of large amounts of cash; possession of police scanners, beepers or cellular telephones; possession of drug paraphernalia; and the manner in which the drugs are packaged. *Robinson*, 167 Ill. 2d at 408. Subsequently, the supreme court clarified that these enumerated factors are not exhaustive, but rather, examples of the many factors that have been considered; and that *Robinson* expressly allows consideration of other unspecified factors where it was stated, " ['i]n light of the numerous types of controlled substances and the infinite number of potential factual scenarios in these cases, there is no hard and fast rule to be applied in every case.' " *People v. Bush*, 214 Ill. 2d 318, 327 (2005) (quoting *Robinson*, 167 Ill. 2d at 414). The question of whether the evidence was sufficient to prove intent to deliver must be decided on a case-by-case basis. *Robinson*, 167 Ill. 2d at 412-13.

¶ 13 Here, the evidence showed that the officers recovered a total of 15.7 grams of cannabis that had been divided into 25 individual plastic bags. Although there was no testimony regarding whether the amount of cannabis recovered from defendant was inconsistent with personal consumption, when a small amount of drugs is found, "the minimum evidence a reviewing court

needs to affirm a conviction is that the drugs were packaged for sale, and at least one additional factor tending to show intent to deliver." *People v. Blakney*, 375 Ill. App. 3d 554, 559 (2007) (citing *People v. Beverly*, 278 Ill. App. 3d 794, 802 (1996)). Officer Sweeney testified that the cannabis he recovered from defendant's pocket was packaged in a manner consistent with sale as "nickel bags." In addition, the State's evidence showed that defendant was in constructive possession of the loaded handgun and holster, which he attempted to discard when the officers arrived on the scene. Although defendant testified that he did not have a gun and was never in the living room where the gun was found, the officers testified that they saw defendant in the living room and Officer Mingari specifically testified that he saw defendant holding a black object in his hand, which he then tossed behind a mattress, where the loaded gun, holster and magazine were found. In finding defendant guilty, the court necessarily found the testimony of the officers more credible than that presented by the defendant's witnesses, and we have no basis for interfering with that determination. *Campbell*, 146 Ill. 2d at 389. Taken as a whole, and viewed in the light most favorable to the State, the evidence was sufficient to permit the court to reasonably infer that defendant possessed the cannabis with the intent to deliver. *Bush*, 214 Ill. 2d at 329.

¶ 14 Notwithstanding, defendant argues that the manner of packaging is not an indicia of intent in this case because one could infer that he purchased the cannabis in this manner for his personal use. We observe that reasonable inferences must be viewed in the light most favorable to the prosecution (*Siguenza-Brito*, 235 Ill. 2d at 224), and here we find defendant's argument

unconvincing where it is equally reasonable to infer that defendant possessed the cannabis in 25 individual bags for the purpose of delivering it, particularly where he was in possession of a loaded handgun.

¶ 15 Defendant further argues that, according to *Robinson*, more than one weapon must be recovered in order to support a finding of intent. We disagree. In enumerating factors which included "weapons" in its plural form, *Robinson* did not dictate that there could be no instance where a single weapon, or where any factors that it did not specifically list, could support a finding of intent. To the contrary, as noted above, the supreme court recognized that due to the "infinite number of potential factual scenarios in these cases, there is no hard and fast rule to be applied in every case." *Robinson*, 167 Ill. 2d at 414. Here, where the cannabis possessed by defendant was packaged in 25 nickel bags commonly used for sale and defendant was found in constructive possession of a loaded handgun which he attempted to discard upon seeing the officers, we conclude that a rational trier of fact could have found defendant guilty beyond a reasonable doubt of possession of cannabis with intent to deliver. Accordingly, defendant's challenge to the sufficiency of the evidence fails.

¶ 16 In reaching that conclusion, we have considered the cases cited by defendant in support of his arguments, and find them distinguishable. In two of the cases, the court focused on the lack of supporting factors aside from the manner of packaging, *i.e., People v. Sherrod*, 394 Ill. App. 3d 863, 866 (2009) (noting the defendant only had $35 and did not possess weapons or other drug-trafficking paraphernalia); *People v. Clinton*, 397 Ill. App. 3d 215, 226 (2009) (pointing out

that defendant only had $40 and did not possess a weapon or drug paraphernalia). In *People v. Rivera*, 293 Ill. App. 3d 574, 576-77 (1997), defendant was observed *receiving* cocaine from another person and the cocaine was contained in a single, plastic bag, facts clearly distinguishable from the case at bar. *People v. Hodge*, 250 Ill. App. 3d 736, 747 (1993) (where the drugs were not packaged for sale and the money found on defendant was deemed to be income from a cleaning business that he ran) and *People v. Crenshaw*, 202 Ill. App. 3d 432, 436 (1990) (where the court reasoned that because the jury acquitted the defendant of unlawful use of a weapon, the gun at issue could not serve as evidence of intent to deliver) are not only factually distinguishable, but both decisions, which predate *Robinson*, have been called into question by this court and thought to be repudiated by *Robinson*. *Blakney*, 375 Ill. App. 3d at 558. As such, they do not indicate a contrary result.

¶ 17 Defendant alternatively contends that his mittimus should be amended to reflect his conviction of possession of cannabis with intent to deliver. The mittimus shows that defendant was convicted of "MFG/DEL CANNABIS/ 10-30 GRAMS" pursuant to 720 ILCS 550/5(c). The State responds that the mittimus need not be amended because the offenses of manufacture/delivery of cannabis and possession of cannabis with intent to deliver have the same statutory classifications and penalties. Because defendant was convicted of possession of cannabis with intent to deliver, and not of manufacture or delivery of cannabis, we agree with defendant that his mittimus should be corrected to reflect the proper judgment entered by the circuit court. *People v. Hill*, 408 Ill. App. 3d 23, 32 (2011); *Blakney*, 375 Ill. App. 3d at 560.

We thus direct the clerk of the circuit court to amend the mittimus to reflect defendant's conviction of possession of cannabis with intent to deliver. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 18 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County and amend the mittimus.

¶ 19 Affirmed; mittimus amended.