2014 IL App (1st) 123042-U

SECOND DIVISION
March 4, 2014

No. 1-12-3042



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 11 CR 6434 |
| | ) | |
| ROBERT EVRARD, | ) | Honorable |
| | ) | Thomas M. Davy, |
| Defendant-Appellant. | ) | Judge Presiding. |

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JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Harris and Justice Simon concurred in the judgment.

**O R D E R**

¶ 1 ***Held:*** Defendant's conviction for possession of cannabis with intent to deliver is affirmed where the evidence established defendant had knowledge and constructive possession of the cannabis found in the kitchen cabinet of his apartment, and that he intended to deliver the drugs.

¶ 2 Following a bench trial, defendant Robert Evrard was convicted of possession of cannabis with intent to deliver and sentenced to 30 months' probation. On appeal, defendant contends the State failed to prove him guilty beyond a reasonable doubt because it failed to show

that he had knowledge of the cannabis found in a kitchen cabinet, that he had control of the apartment for constructive possession, and that he intended to deliver the drugs. We affirm.

¶ 3 At trial, Chicago police officer Dennis Lanning testified that on February 16, 2011, he was part of a team of officers who executed a search warrant at 9513 South Ridgeland Avenue, apartment 3E, in Oak Lawn, Illinois. No one was home at the time, and the officers forced their way into the apartment. The apartment had two bedrooms, one of which had no bed in it and appeared to be used as a storage room containing baskets of laundry, shoes and empty luggage. The laundry included a mixture of men's and women's clothing. Defendant was subsequently arrested on March 24, 2011, while at the Bridgeview courthouse.

¶ 4 Chicago police officer Lopez testified that he searched the bedroom that had a bed in it and recovered several items from the dresser. Officer Lopez found a six-page rental application in defendant's name for the apartment being searched. Multiple entries on the application listed defendant as the sole tenant for the apartment, and no one else was listed as a potential tenant. The application included an authorization for release of employment information signed by defendant and dated October 30, 2010. A rider attached to the lease, dated October 31, 2010, was also in defendant's name and was signed by the lessor, Piotr Rafacz. Officer Lopez acknowledged the rental application itself was not signed by defendant, and that he did not see defendant inside the apartment.

¶ 5 Officer Lopez also found a piece of paper listing names and nicknames with numbers that appeared to represent large denominations of money. One entry on the list was Blue 2200, and another was Sadapbro 1600. Officer Lopez testified that in his eight years as a police officer, he worked over 200 narcotics investigations, including execution of 25 narcotics search warrants, and based on his experience and training, he believed the list was a money ledger for narcotics.

¶ 6 Additional items recovered from the dresser included an internet printout of a bank statement in defendant's name dated February 8, 2011, a season's pass for Six Flags Great America with defendant's picture on it, and two photographs of defendant with a woman. Officer Lopez also recovered 12 pieces of mail all addressed to defendant at 8359 South Keating. No mail in anyone else's name was found in the apartment. Officer Lopez found men's clothing on the bed and inside the bedroom closet, and men's cologne in the master bathroom.

¶ 7 The parties stipulated that Chicago police officer Hasenfang would testify that during the search of the apartment, he recovered six clear plastic bags containing suspect cannabis and two digital scales from a kitchen cabinet. The parties further stipulated that forensic chemist Monica Kinslow would testify that the contents of three of the six bags tested positive for 52.1 grams of cannabis. The total weight of the six bags was 120.5 grams.

¶ 8 In announcing its ruling on defendant's motion for a directed finding, the trial court thoroughly reviewed the testimony of the two police officers and the evidence presented. The court noted that the rental application had a lease term from November 1, 2010, to November 1, 2011, and indicated that defendant was the sole occupant of the apartment. Defendant's signature was on two pages of the application – the authorization to release employment information, and the credit reference page. Based on the evidence, the court denied defendant's motion for a directed finding. Thereafter, the defense rested and the parties adopted and incorporated their earlier arguments. The trial court stated that it considered the testimony presented and found that the mail addressed to defendant at the Keating address predated October 31, 2010, the date of the rental application for the searched apartment. Consequently, the court found the State proved defendant guilty beyond a reasonable doubt.

¶ 9 On appeal, defendant first contends the State failed to prove him guilty beyond a reasonable doubt because it failed to show that he had knowledge of the cannabis found in the kitchen cabinet and that he had control of the apartment for constructive possession. Defendant argues that there was no evidence that the clothing, photographs or cologne found in the apartment belonged to him. He further argues that the mail with his name on it had a different address. Defendant also claims that the rental application was not approved.

¶ 10 When defendant argues the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). This standard applies whether the evidence is direct or circumstantial. *Jackson*, 232 Ill. 2d at 281. A criminal conviction will not be reversed based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). In a bench trial, the trial court, sitting as the trier of fact, is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). In weighing the evidence, the fact finder is not required to disregard the inferences that naturally flow from that evidence. *Jackson*, 232 Ill. 2d at 281. This court is prohibited from substituting its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *Jackson*, 232 Ill. 2d at 280-81.

¶ 11 To convict defendant of possession of cannabis with intent to deliver, the State must prove defendant knew the cannabis was present, the substance was in his immediate possession or control, and he intended to deliver the cannabis. *People v. Robinson*, 167 Ill. 2d 397, 407

(1995). Possession may be either actual or constructive. *Givens*, 237 Ill. 2d at 335. Possession may be established by constructive possession where defendant did not have actual control of the narcotics, but knew they were present and exercised control over them. *People v. Burks*, 343 Ill. App. 3d 765, 769 (2003). Constructive possession is often demonstrated entirely by circumstantial evidence. *People v. Besz*, 345 Ill. App. 3d 50, 59 (2003). Defendant's knowledge and possession may be inferred where the drugs are found on premises that are under his control. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007).

¶ 12 Here, we find the evidence was sufficient for the trial court to find defendant knowingly had constructive possession of the cannabis recovered from the kitchen cabinet. The State presented numerous documents recovered by Officer Lopez from the bedroom dresser which showed that defendant had control of the apartment. Most significant was the rental application for the apartment which was solely in defendant's name. Multiple entries on the application indicated that defendant was the sole tenant of the apartment, and no other person was listed as a potential tenant. As noted by the trial court, defendant's signature appeared on two pages of the application – the authorization to release employment information and the credit reference page. We reject defendant's argument that the rental application was not approved. The lessor, Piotr Rafacz, signed the "Rider to Lease" and the schedule of charges for cleaning and damaged items. These are the only two places on the six-page application for the lessor's signature. In addition to the rental application, Officer Lopez also recovered defendant's bank statement, defendant's season pass for Six Flags Great America, and 12 pieces of mail addressed to defendant. Although the mail showed defendant's address on Keating, the trial court found that the mail predated the rental application for the searched apartment.

¶ 13 Sitting as the trier of fact, it was the trial court's responsibility to weigh the evidence and draw reasonable inferences from that evidence. Here, the trial court thoroughly reviewed the testimony from the two police officers as well as the documentary evidence presented by the State. The court specifically noted the term of the lease on the rental application, defendant's signature on two pages of the application, and the fact that the application expressly indicated that defendant was the sole occupant of the apartment. The court's findings show that it concluded that the evidence established that defendant had control of the apartment. Based on this conclusion, it was reasonable for the trial court to infer that defendant had knowledge of and control over the six bags of cannabis found in the kitchen cabinet. Accordingly, the court reasonably inferred that defendant had constructive possession of the cannabis.

¶ 14 Defendant next contends the State failed to establish that he intended to deliver the cannabis because the only evidence of such intent was the alleged narcotics ledger. He argues that no packaging supplies, guns, money, pagers, beepers or police scanners were recovered, and the scales found in the kitchen could have been used to weigh food. He further argues that there was no police surveillance of him engaged in any drug transactions.

¶ 15 The trier of fact may infer defendant's intent to deliver drugs from several circumstances. *Robinson*, 167 Ill. 2d at 411. Intent is usually proved by circumstantial evidence after consideration of many factors, including the manner in which the substance is packaged, defendant's possession of a large amount of cash, and the quantity of the substance. *Robinson*, 167 Ill. 2d at 408. Additional factors our supreme court has found "probative of intent to deliver" include possession of weapons, police scanners, beepers, cellular telephones, and drug paraphernalia. *Robinson*, 167 Ill. 2d at 408. The *Robinson* court stated that the quantity of a controlled substance alone may be sufficient evidence to prove intent to deliver where that

amount could not reasonably be viewed as for defendant's personal consumption. *Robinson*, 167 Ill. 2d at 410-11. The court also stated that packaging alone may be sufficient evidence of intent to deliver in appropriate circumstances. *Robinson*, 167 Ill. 2d at 414. The court further explained that "[in] 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." *Robinson*, 167 Ill. 2d at 414.

¶ 16 Our supreme court subsequently clarified that the factors listed in *Robinson* are merely "examples" of factors courts have considered when determining intent to deliver, and they are not required factors, such that their absence precludes a finding of intent to deliver. *People v. Bush*, 214 Ill. 2d 318, 327 (2005). When other factors are present in the case that indicate defendant's intent to deliver, "the absence of '*Robinson* factors' is of no consequence." *Bush*, 214 Ill. 2d at 328.

¶ 17 In this case, we find that it was reasonable for the trial court to infer from the evidence presented that defendant intended to deliver the cannabis recovered from his kitchen cabinet. Contrary to defendant's assertion, the narcotics ledger was not the only evidence of defendant's intent to deliver the drugs. The parties stipulated that three of the six bags of cannabis tested positive for 52.1 grams of cannabis, and the total weight of the six bags was 120.5 grams. The trial court could have reasonably concluded that this large quantity of cannabis was too much for defendant's personal consumption, and found his intent to deliver on that basis alone. In addition to the drugs, however, the police also recovered two digital scales that were inside the kitchen cabinet with the cannabis. Again, it was the trial court's responsibility to assess Officer Lopez's testimony and determine whether the list of names and numbers was a narcotics ledger. We find that the large quantity of cannabis, together with the two digital scales and the narcotics ledger,

provided sufficient evidence for the trial court to infer that defendant intended to deliver the cannabis. Based on this evidence, the absence of other possible factors is of no consequence. It was the trial court's duty to determine whether the evidence proved defendant's intent, and we find no reason to disturb its findings.

¶ 18 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 19 Affirmed.