2014 IL App (1st) 123142-U

FOURTH DIVISION
June 30, 2014

No. 1-12-3142

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. 11 CR 12474
	)	
ANTHONY TAYLOR,	)	The Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Howse and Justice Epstein concurred in the judgment.

O R D E R

¶ 1 *Held*: Evidence was sufficient to support defendant's conviction for possession of drug with intent to deliver where officer observed three hand-to-hand transactions and packaged cocaine was recovered from defendant's sock; in addition, defendant's sentence did not constitute an abuse of the trial court's discretion.

¶ 2 Following a jury trial, defendant Anthony Taylor was convicted of possession of between 1 and 15 grams of a controlled substance (cocaine) with intent to deliver while within 1,000 feet of a school (a Class X felony) (720 ILCS 570/401(c)(2) (West 2010); 720 ILCS 570/407(b)(1)

(West 2010)). Defendant was sentenced to 18 years in prison. On appeal, defendant contends the State failed to present sufficient evidence that he intended to deliver the drugs found in his possession. Specifically, defendant asserts that: (1) the amount and packaging of the cocaine recovered from him were consistent with personal use; (2) when arrested, he did not possess any items associated with selling drugs, and (3) the police officer who conducted surveillance detained him in a different location from where defendant was seen selling drugs. Based on those factors, defendant contends his conviction should be reduced to simple possession of cocaine (a Class 4 felony). Defendant further contends his 18-year sentence is excessive in light of his drug addiction, his rehabilitative potential and the non-violent nature of the offense, as well as the small amount of narcotics involved. We affirm defendant's conviction and sentence.

¶ 3 The following testimony is relevant to the issues raised on appeal. At trial, Chicago police officer Lloyd Mock testified that at about 10 a.m. on July 7, 2011, he was working as a surveillance officer in the vicinity of 4402 West Monroe in Chicago, at the corner of Monroe and Kostner. Mock was working from an elevated location using binoculars and was in radio communication with an enforcement officer.

¶ 4 Mock said defendant was 50 to 100 feet away from his surveillance location. Mock heard defendant shout "rocks, blows, park" at passing vehicles. Mock explained "rocks" referred to crack cocaine, "blows" referred to heroin, and "park" meant that interested buyers should park their vehicles nearby. Mock watched as an individual approached defendant. After a brief conversation, defendant retrieved a small object from his sock and handed it to the person in exchange for money. Mock could not see the denomination of the single bill that defendant accepted. Within the next 10 minutes, Mock observed two similar transactions.

¶ 5 After the third transaction, Mock radioed his partner and described defendant. Mock left his surveillance location and approached defendant, who was walking across the street. When Mock asked defendant what was in his sock, defendant responded, "I got some rocks." Mock told him to remove the items from his sock, and defendant retrieved 11 small zip-top plastic bags, each containing a single white rock of suspect cocaine, and handed the bags to Mock. A search revealed that defendant had $60 in cash in his possession.

¶ 6 On cross-examination, Mock acknowledged that from his vantage point, he could not hear the conversations between defendant and the buyers or describe the objects that were exchanged. Mock said he did not recall what defendant wore that day. Mock also could not describe the buyers' race, gender or physical characteristics, and he said those individuals were not stopped after they spoke to defendant. Mock said the cash recovered from defendant was not inventoried because the amount was less than $500.

¶ 7 A forensic chemist testified the 11 white rocks recovered from defendant contained 1.1 grams of cocaine. The parties stipulated that the distance from the site of the transactions to a nearby elementary school was 549 feet. The defense presented no witnesses. The jury found defendant guilty of possession of a controlled substance within 1,000 feet of a school.

¶ 8 At sentencing, the State presented evidence that the instant offense represented defendant's sixth felony conviction. Defendant was convicted of possession of a controlled substance with intent to deliver in 2000 and 2001. In 2002, defendant was convicted of possession of a controlled substance with intent to deliver within 1,000 feet of a school. In 2004, defendant was convicted of possession of a controlled substance. In 2007, defendant was convicted of possession of a controlled substance with intent to deliver within 1,000 feet of a school. Defendant received prison sentences for the latter three offenses. Based on that record,

the State pointed out to the court that defendant was extendable and non-probationable in regard to sentencing.

¶ 9 The pre-sentence investigation (PSI) report prepared for the court indicates that defendant took but failed a test to obtain a general equivalency degree (GED). The PSI report also stated that defendant was raised on the west side of Chicago in an area rife with gangs and drugs.

¶ 10 In mitigation of defendant's sentence, defense counsel asserted that defendant, who was 30 years old, has a substance abuse problem. Defendant attended trade school for computer training and customer service and took classes in building management and carpentry. Defendant worked at a Caterpillar plant in 2009 and worked as a janitor for nine months in 2010. Counsel asserted that defendant was a non-violent offender with rehabilitative potential. Defendant addressed the court, stating he was a "good person" with a "drug problem." Defendant said his family was supportive of him.

¶ 11 In sentencing defendant to 18 years in prison, the court noted his five previous felony convictions. The court found that a prison sentence was necessary for defendant's rehabilitation and "for the protection of the public," stating the non-violent nature of defendant's crime did not negate the serious consequences of the offense and also did not negate defendant's repeated commission of drug offenses. The court noted several factors in mitigation, including the "relatively small" amount of narcotics involved in the instant offense. The court also noted in mitigation defendant's "minimal" job experience and his childhood spent in a challenging community environment. Defendant filed a motion for reconsideration of the sentence, which the trial court denied.

¶ 12 On appeal, defendant contends the State failed to prove that he intended to deliver the cocaine recovered from him, and thus, his conviction should be reduced to simple possession. In

turn, he argues his sentence should be reduced accordingly or this case should be remanded for resentencing.

¶ 13 Evidence is sufficient to sustain a conviction if, when viewed 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 considering the sufficiency of the evidence in a criminal case, it is not the task of this court to retry the defendant. *People v. Wheeler, 2*26 Ill. 2d 92, 114 (2006). Due consideration must be given to the fact that the jury saw and heard the testimony against the defendant, and the trier of fact is best equipped to judge the credibility of witnesses and draw reasonable inferences from the evidence. *Id*. at 114-15; see also *People v. Milka*, 211 Ill. 2d 150, 178 (2004). A reviewing court "must allow all reasonable inferences from the record in favor of the prosecution" (*People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)), and this court will reverse a conviction only if the evidence is so improbable, unsatisfactory or inconclusive that it creates a reasonable doubt of the defendant's guilt. *People v. Austin M.*, 2012 IL 111194, ¶ 107.

¶ 14 To establish narcotics possession with intent to deliver, the State must prove three elements: the defendant knew of the narcotics, the narcotics were in the defendant's immediate possession or control, and that the defendant intended to deliver them. 720 ILCS 570/401 (West 2010); *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). Defendant's contentions on appeal center on the third element, *i.e.*, whether the State presented sufficient evidence to show that defendant intended to deliver the drugs that were found on his person.

¶ 15 Intent to deliver is usually proven by circumstantial evidence because direct evidence of such intent rarely exists. *Id*. at 408. Accordingly, in 1995, the supreme court in *Robinson* articulated certain factors for the court to consider to determine an intent to deliver. Factors

relevant in this inquiry include: whether the quantity of narcotics found in the defendant's possession is too large to be reasonably viewed as consistent with personal consumption, the degree of drug purity, the possession of weapons, the possession of large amounts of cash, the possession of police scanners, beepers or cellular telephones, the possession of drug paraphernalia, and the manner in which the drug is packaged. *Id*. at 408 (commonly referred to as the *Robinson* factors).

¶ 16 Defendant relies on the *Robinson* factors to argue that no intent to deliver was established because the amount of cocaine (1.1 grams) was consistent with personal use; the packaging (11 small zip-top bags) could indicate a drug purchase by defendant rather than his intent to sell the cocaine; the chemist did not provide evidence of the cocaine's purity; he did not have a large amount of cash ($60); and he did not have any distribution-related equipment or weapons.

¶ 17 Contrary to defendant's arguments, the supreme court has held that an officer's testimony of observing drug transactions is sufficient to support a conviction for intent to deliver drugs even in the absence of any factor described in *Robinson*. *People v. Bush*, 214 Ill. 2d 318, 327-29 (2005). In the present case, Officer Mock testified he observed defendant engage in three hand-to-hand transactions in which defendant accepted money for an item retrieved from his sock. Mock also testified he heard defendant shouting "rocks" and "blows" and directing interested buyers to "park." Because a conviction can be based upon the testimony of a single credible witness, Officer Mock's testimony in this case need not be corroborated by any other account. See *People v. Little*, 322 Ill. App. 3d 607, 618 (2001). We find the evidence sufficient to support the jury's finding that defendant intended to deliver narcotics.

¶ 18 Defendant asserts Mock was not able to identify the items he handed to the people who approached him even though the officer viewed the transactions with binoculars. However,

defendant does not challenge the existence or composition of the narcotics found in his sock, only that he intended to sell them as opposed to possess them for his own use. Officer Mock saw defendant remove an item from his sock during each exchange, and when Mock approached defendant, he admitted he had "some rocks" before handing them to the officer. Those "rocks" were later identified to be cocaine. Those facts support an inference that defendant intended to deliver the substance hidden in his sock. See *People v. Branch*, 2014 IL App (1st) 120932, ¶¶ 11-13 (absence of *Robinson* factors not dispositive given officer's observation of narcotics transactions by defendant found in possession of drugs).

¶ 19 Defendant further contends the evidence did not establish he intended to deliver the drugs in his possession because he left the location where Mock observed the transactions and was not heard shouting "rocks," "blows" and "park" after his interactions with those three people. However, defendant had already been seen delivering narcotics and did not need to be observed doing so in more than one location or returning to his original location to sustain a conviction based upon the transactions observed by Mock.

¶ 20 Because we have rejected defendant's contentions that the evidence failed to prove his intent to deliver beyond a reasonable doubt, we find unavailing his assertions that, based on the insufficiency of the evidence, his conviction should be reduced to simple possession and his sentence revised accordingly.

¶ 21 Defendant next challenges the trial court's imposition of an 18-year sentence. Defendant contends that punishment does not reflect his rehabilitative potential or his educational and employment background. He also emphasizes the non-violent nature of his crime, as well as his unaddressed substance abuse problem.

¶ 22 Defendant was convicted of the Class X felony of possessing between 1 and 15 grams of a controlled substance (cocaine) with intent to deliver within 1,000 feet of a school. 720 ILCS 570/407(b)(1) (West 2010). A Class X felony conviction carries a sentencing range of 6 to 30 years' imprisonment and an extended-term sentencing range of 30 to 60 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2010). Based on defendant's prior five felony convictions between 2000 and 2007, defendant was subject to the extended-term sentencing range, and thus the applicable range of punishment for the instant offense was 6 to 60 years in prison.

¶ 23 A trial court has broad discretion in sentencing, and a reviewing court should not disturb a sentence within the applicable range unless the trial court is found to have abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). In imposing a sentence, the trial court must balance the relevant factors, including the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). Because defendant's sentence is within the applicable parameters, we may only disturb the sentence if it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Id*. at 212.

¶ 24 Here, the trial court referred to defendant's educational and work history and his potential for rehabilitation. In finding defendant's repeated commission of drug offenses was not mitigated by the non-violent nature of those crimes, the court noted the damage imposed on a community by narcotics sales. The court also noted defendant's five prior drug-related felony convictions. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factors require a minimum sentence to be imposed or preclude a maximum sentence. *Id*. at 214. The court's imposition of an 18-year sentence, in

light of the applicable range of 6 to 60 years, did not constitute an abuse of the court's considerable sentencing discretion.

¶ 25 Accordingly, the judgment of the trial court is affirmed.

¶ 26 Affirmed.