2015 IL App (1st) 132529-U

FIFTH DIVISION
JUNE 30, 2015

No. 1-13-2529

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 18114
	)	
BILAL ABU NADA,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Palmer and Justice Gordon concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant was proven guilty of possession of cannabis beyond a reasonable doubt where the evidence established that he knew cannabis was inside the package delivered by police. We vacate defendant's $250 DNA analysis fee where his DNA profile was already in the State's database when this case arose.

¶ 2 Following a bench trial, defendant Bilal Abu-Nada was convicted of possession of more than 2,000 but less than 5,000 grams of cannabis and sentenced to three years and six months imprisonment. On appeal, defendant asserts that the evidence was insufficient to establish that he knew cannabis was in the package at issue. He also contends that the $250 DNA analysis fee

imposed on him should be vacated. We affirm defendant's conviction and vacate the $250 DNA fee.

¶ 3 This case involves police officers who were inspecting packages at a FedEx facility in Bedford Park, Illinois. After the officers noticed a suspicious package sent from Mark Strause in Cedar Park, Texas to Joe Strarks at 9807 Washington Avenue in Oak Lawn, a canine sniff of the package was performed. The results indicated that the package contained the odor of narcotics, and a subsequent search of the package revealed cannabis. The officers inserted a monitoring device into the package and delivered it to the designated address. When no one answered the door they left the package on the porch of the building. A few hours afterwards a woman brought the package into the residence, defendant entered the residence and the package was opened. The police entered the residence and found defendant in the garage with the open package. Defendant was arrested and charged with possession of cannabis with intent to deliver.

¶ 4 At trial, Officer Sterling Terry testified that he was part of the package interdiction team assigned to investigate a FedEx package addressed to "Joe Straks" [*sic*][1] that was to be delivered to 9807 Washington Avenue in Oak Lawn on October 4, 2011. Terry obtained a search warrant for the package, opened it, and placed a monitoring device inside. When he opened the package, Terry observed five duct-taped bundles of a green plant substance inside of the package. Officer Terry repackaged the parcel and proceeded to the address in question, along with other police officers, to execute a delivery search warrant and make a controlled delivery. Officer Terry, who was posing as the delivery courier, arrived at the address in question at about 1:50 p.m. and knocked on the door. When no one answered he left the package in front of the door. A short time later, a woman at the residence moved the package to the far end of the porch. At about

[1] It is clear from the record on appeal that the package was addressed to "Joe Strarks". In the transcript of the direct examination of Officer Sterling Terry and throughout the appellate briefs, however, the name is often incorrectly written as "Joe Starks" and "Joe Straks".

4:20 p.m., a second woman picked up the package and moved it inside of the residence. The monitor indicated that the package remained still for a few hours. At about 7:25 p.m., defendant entered the residence, and, shortly thereafter, the monitor indicated that the package had been moved and opened. Officer Terry and members of his team executed the search warrant and entered the residence. The woman who had taken the package inside the house indicated defendant was in the garage. Officer Terry entered the unlocked garage and observed defendant standing near the open package with a knife, which were both on a nearby table. Four of the five duct-taped bundles which were inside the package had been removed and placed onto the table. The bundles were wrapped in such a manner that it concealed their contents. After defendant was arrested, he told Officer Terry that the package did not belong to him and the only thing he did was open it.

¶ 5 The parties stipulated that forensic chemist Monica Kinslow would testify that she received the evidence in a heat sealed condition, and that the chain of custody remained intact from the time she received the evidence until the time she re-sealed it. She would also testify that she performed tests on the five items that were recovered. The items weighed 2,258.8 grams and tested positive for cannabis.

¶ 6 The State rested and defendant made a motion for a directed finding, which the trial court denied. In doing so, the court rejected defendant's argument that the package did not belong to him because it did not bear his name. The court found it was common sense that defendant would not want his name on a package containing cannabis for fear it could be traced to him. Defendant rested without presenting any witnesses.

¶ 7 Following closing argument, the court found defendant guilty of possession of cannabis. The court specifically found it significant that although another individual had access to the package, only defendant opened it. If the package did not belong to him, the court reasoned then

defendant would not have opened it, and that the appropriate action would have been to contact the delivery service and explain there was a mistake. The court also found that defendant's decision to open the package inside the garage where no one else was present demonstrated knowledge of its contents.

¶ 8 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt. He specifically argues that the State failed to prove he knew the FedEx package contained cannabis where it was not addressed to him, the contents of the individual bundles were still not visible when police entered the garage, and the police failed to recover any other suspicious items or drug paraphernalia from the scene.

¶ 9 In resolving a challenge to the sufficiency of the evidence, we must determine whether, when viewing the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). On review, we will not retry defendant, and the trier of fact remains responsible for determining the credibility of witnesses and the weight to be given to their testimony. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). A defendant's conviction will be reversed only "where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48.

¶ 10 In order to sustain a conviction for possession of more than 2,000 grams but less than 5,000 grams of cannabis, the State must prove beyond a reasonable doubt that defendant knowingly possessed cannabis. 720 ILCS 550/4(f) (West 2010). In this case, the issue of possession is not in dispute. Instead, defendant argues that he did not know the package contained cannabis.

¶ 11 A defendant is deemed to have acted knowingly, or with knowledge, if he is proven to be

aware of the existence of facts which make his conduct unlawful. *People v. Hodogbey*, 306 Ill. App. 3d 555, 559 (1999) (citing *People v. Gean*, 143 Ill. 2d 281, 288 (1991)). The element of knowledge is rarely susceptible to direct proof, and can be established by circumstantial evidence of acts, statements or conduct of the defendant, as well as the surrounding circumstances, which support the inference that he knew of the existence of narcotics at the place they were found. *People v. Bui*, 381 Ill. App. 3d 397, 419 (2008); *Hodogbey*, 306 Ill. App. 3d at 559-60 (citing *People v. Pintos*, 133 Ill. 2d 286, 292-293 (1989)). In a bench trial, the determination of whether the defendant had knowledge is a question of fact for the court. *People v. Williams*, 267 Ill. App. 3d 870, 877 (1994). The fact finder's determinations will not be disturbed on review unless the evidence is so palpably contrary to the verdict or judgment that it is unreasonable, improbable or unsatisfactory and thus creates a reasonable doubt of guilt. *Id*.

¶ 12 It is well settled that "the mere presence of illegal drugs on premises which are under the control of the defendant gives rise to an inference of knowledge and possession sufficient to sustain a conviction absent other factors which might create a reasonable doubt as to defendant's guilt." *People v. Smith*, 191 Ill. 2d 408, 413 (2000). In the instant case, the evidence presented established that although the package did not contain defendant's name, it was shipped to an individual with a man's name where defendant resided. Shortly after police delivered the package to the address in question, one woman moved the package to the far end of the porch, and a few hours later, a second woman took the package inside the residence. Neither woman opened the package. When defendant arrived later in the evening, he immediately seized the package and took it to the garage. Viewed in the light most favorable to the State, the evidence established that, after defendant was alone in the garage, he used a knife to open the package. When the officers found defendant minutes later in the garage, four of the five bundles of cannabis had been removed from the package and were on a table near the knife. Although Officer Terry

testified that the contents of the bundles remained concealed when police entered the garage, defendant's actions demonstrated beyond a reasonable doubt that he knew cannabis was contained therein. *Bui*, 381 Ill. App. 3d at 420-21.

¶ 13 In reaching this conclusion, we find *People v. Hodogbey*, 306 Ill. App. 3d 555 (1999), relied on by defendant, distinguishable from the case at bar. In *Hodogbey*, 306 Ill. App. 3d at 557, the defendant accepted a package addressed to him, but did not open it and was not seen carrying the package prior to his arrest. In fact, the defendant left the package in the living room as he went to a study group. *Id*. at 558. Defendant also questioned the undercover officer as to where the package was from, and, following his arrest, he stated that he was not expecting a package. *Id*. at 557-59. In this case, however, defendant immediately took the package to the garage where police found him next to the open package, and four of the five bundles of cannabis were on a nearby table.

¶ 14 In his brief, defendant finds it significant that his name was not on the package. However, we agree with the trial court that:

> "If a person was going to obtain contraband by using [FedEx] it would just seem common sense to me that he would not want to put [his] name on it so that in the event it is intercepted anywhere along the line that you are going to be subject to *** being placed under investigation for why contraband is being sent to you. So it's common sense to me that he wouldn't put his name on it."

The trial court's findings accord with the reality that possession of contraband "is an inherently surreptitious affair, and common sense must illuminate the dark." *People v. Cruz*, 129 Ill. App. 3d 278, 286 (1984). Moreover, the use of an alias name as the addressee on the package does not protect defendant here where the evidence also reveals that neither of the two women who handled the package before he arrived home made any attempt to disclaim it or open it. Instead,

the women acted to keep it, suggesting they were familiar with the names (sender and/or addressee) on the package or, at a minimum, with their belief that defendant was the intended recipient.

¶ 15 We further acknowledge that defendant correctly points out that the State did not present evidence that the police recovered other suspicious items or drug paraphernalia such as plastic bags, ammunition, or scales during their search of the residence. As listed by defendant, many courts have inferred a defendant's knowledge of contraband through the presence of additional items found nearby the recovered narcotics. See *e.g.*, *People v. Denton*, 264 Ill. App. 3d 793, 799 (1994) (finding knowing possession where cocaine, cash, a revolver, ammunition, and proof of residency were found in the defendant's bedroom, and equipment used for preparing cocaine was found in the kitchen). However, evidence of drug paraphernalia is not required to prove knowing possession, and the lack of such evidence in this case is no cause for reversal, particularly where defendant ensured he was alone in the garage to open the package. See *People v. Nwosu*, 289 Ill. App. 3d 487, 494 (1997) (finding that the defendant knowingly possessed cocaine found in a suitcase even though no drug paraphernalia was found in his apartment).

¶ 16 Defendant next contends, and the State concedes, that the $250 DNA analysis fee (730 ILCS 5/5-4-3(j) (West 2012)), should be vacated. We agree that the $250 DNA analysis fee cannot be imposed because defendant was assessed the fee upon a prior conviction. *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). We thus vacate that fee.

¶ 17 For the foregoing reasons, we vacate the $250 DNA analysis fee; correct defendant's mittimus to accurately reflect a total assessment of $1,519; and affirm his conviction in all other respects.

¶ 18 Affirmed as modified.