2017 IL App (1st) 143414-U

No. 1-14-3414

Order filed April 13, 2017

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 8442
	)	
MARQUIS WATTS,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Ellis and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for possession of a controlled substance where the evidence was sufficient to show he had knowledge and constructive possession over all of the narcotics.

¶ 2 Following a bench trial, defendant Marquis Watts was convicted of one count of possession of a controlled substance (between 15 and 100 grams of heroin) (720 ILCS 570/402(a)(1)(A) (West 2012)) and sentenced to six years' imprisonment. On appeal, he argues

the evidence was insufficient to prove he had knowledge and possession of the narcotics to sustain his conviction for possession of between 15 and 100 grams of heroin. We affirm.

¶ 3 Defendant was charged by information with two counts of possession of a controlled substance (heroin) with intent to deliver. Defendant filed a motion to quash arrest and suppress evidence, which the court heard contemporaneously with the bench trial. The State proceeded at trial only on the possession of a controlled substance (between 15 and 100 grams of heroin) with intent to deliver charge (720 ILCS 570/401(a)(1)(A) (West 2012)). The following evidence was adduced at trial.

¶ 4 Chicago police officer Berka testified that, on March 29, 2014, around 12:20 p.m., he was working as a surveillance officer on a team conducting controlled narcotics purchases in the area of Kilpatrick and Adams streets in Chicago. Berka's team included enforcement officers Bracamontes, Pellerano, and Jones and Sergeant Roman. From a distance of 50 to 60 feet away, Berka observed a red, four-door Cadillac approach a woman who was standing on the corner of Kilpatrick and Adams. The woman and the driver of the Cadillac conversed and the Cadillac then drove into an alley. The woman followed. Berka was now 60 to 70 feet away. He noticed the driver of the Cadillac, identified in court as defendant, open the vehicle door. Defendant was the only occupant of the car.

¶ 5 Defendant reached underneath the undercarriage of the Cadillac on the driver's side and retrieved a black box. Defendant opened the black box, removed an item, and placed the box back underneath the Cadillac. Defendant then exchanged the item with the woman for money. The woman walked away, and Berka provided a description of her and what he had seen to the

enforcement officers on his team. While Berka maintained surveillance of defendant, he received a radio communication that the woman had been detained.

¶ 6 Berka then observed defendant reverse out of the alley and proceed southbound on Kilpatrick towards Jackson. Berka provided a description of defendant's vehicle and the direction it was heading to his team and began to follow it. Berka never lost sight of defendant's vehicle and observed an enforcement officer stop and detain defendant less than a block from the narcotics transaction. Berka was informed Officer Bracamontes recovered three black magnetic key holders from underneath the car where Berka had observed defendant reach. Two of the key holders contained 30 Ziplock bags of suspect heroin, while the third key holder contained 23 Ziplock bags of suspect heroin. Berka inspected the key holders. They appeared to be the same color and size as the box he observed defendant retrieving earlier, and they were in the same location where he had observed defendant reaching.

¶ 7 The three key holders and their contents were inventoried by Sergeant Roman and given unique inventory numbers. A search of defendant recovered $342. Berka testified that he believed the Cadillac belonged to defendant's wife.

¶ 8 Chicago police officer Bracamontes testified that, on March 29, 2014, he was working as an enforcement officer on a team that included Sergeant Roman and Officers Jones, Berka, and Pellerano. Bracamontes received a radio communication description of a woman involved in a suspect narcotics transaction. The woman was stopped but subsequently let go. She was in possession of an empty Ziplock bag containing residue. Bracamontes then proceeded to the area where he learned a red Cadillac described by Berka was proceeding. There, Bracamontes observed a red, four-door Cadillac pulled-over and a man, identified in court as defendant,

standing next to it. Defendant had previously been removed from the car by Officer Pellerano and Sergeant Roman before Bracamontes arrived.

¶ 9 Bracamontes recovered three magnetic boxes from the undercarriage of the Cadillac, pursuant to radio directions from Officer Berka, "right by the driver's door." Two of the magnetic boxes contained 30 individual Ziplock bags containing white powder and the third contained 23 individual Ziplock bags containing white powder. The Ziplock bags were about one inch by one inch in size. Bracamontes then gave these items to Sergeant Roman, who inventoried them.

¶ 10 The parties stipulated that Danielle Adair, a forensic analyst at the Illinois Police Crime Lab, would testify that she received an inventory containing 23 items and testing of the items revealed the presence of 7.9 grams of heroin. She would further testify that she received another inventory containing 30 items and testing of them revealed the presence of 4.2 grams of heroin. She would also testify that she received a third inventory containing 30 items, which tested positive for 3.4 grams of heroin.

¶ 11 The parties further stipulated that Chicago police officer Pellerano would testify that he was an enforcement officer on the same team and was involved in the stop and arrest of defendant. Pellerano would testify that defendant complied with requests to step out of the car and nothing was recovered from a protective pat down of defendant. Pellerano would testify that he did not observe defendant commit any moving or traffic violations at the time of the stop.

¶ 12 The trial court denied defendant's motion to quash arrest and suppress evidence. It then found defendant guilty of possession of a controlled substance (between 15 and 100 grams of heroin), the lesser-included offense of possession of a controlled substance with intent to deliver.

The trial court denied defendant's written motion for a new trial and sentenced defendant to six years' imprisonment in the Illinois Department of Corrections as a Class X offender based on his background. Defendant filed a timely notice of appeal.

¶ 13 On appeal, defendant argues the evidence was insufficient to show he had knowledge and constructive possession of two of the three magnetic boxes. Because the total weight of the contents of all three magnetic boxes are necessary to sustain a Class 1 conviction of possession of between 15 and 100 grams of heroin, he asks us to reduce his Class 1 conviction to a Class 4 conviction for possession of a controlled substance of less than 15 grams of heroin and remand for resentencing.

¶ 14 The standard of review when challenging the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. "A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). A conviction will not be reversed unless "the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt." *In re Q.P.*, 2015 IL 118569, ¶ 24.

¶ 15 As charged here, in order to sustain the conviction for possession of a controlled substance, the State had to prove beyond a reasonable doubt defendant knowingly possessed more than 15 but less than 100 grams of heroin. See 720 ILCS 570/402(a)(1)(A) (West 2012). The State does not have to prove actual possession, but may instead show constructive possession. *People v. Burks*, 343 Ill. App. 3d 765, 769 (2003). Constructive possession is

established "where there is no actual control of the drugs but where defendant intends to and has a capacity to maintain control over them." *People v. Jones*, 295 Ill. App. 3d 444, 453 (1998). "Therefore, proof that defendant knew the drugs were present and exercised control over them establishes constructive possession." *Id.*

¶ 16 A defendant acts with knowledge when it is proven he is aware of the existence of facts that make his conduct unlawful. *People v. Gean*, 143 Ill. 2d 281, 288 (1991). The element of knowledge is rarely established by direct proof, and is usually shown through circumstantial evidence. *People v. Fleming*, 2013 IL App (1st) 120386, ¶ 74. "Knowledge may be established by evidence of acts, statements, or conduct of the defendant, as well as the surrounding circumstances, which supports 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). Our supreme court has noted 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 a bench trial, whether a defendant acted with knowledge is a question of fact for the court. *People v. Williams*, 267 Ill. App. 3d 870, 877 (1994).

¶ 17 Defendant does not challenge that he had knowledge and possession of one of the three magnetic boxes. Rather, he argues the State failed to prove beyond a reasonable doubt that he had knowledge of the remaining two magnetic boxes, which are necessary to sustain his Class 1 conviction of possession of between 15 to 100 grams of heroin. Defendant notes that Berka never testified to the position of the two remaining magnetic boxes relative to the box defendant

handled or to seeing defendant possess either of them. Further, he argues there was no evidence that he admitted to having knowledge of the two other magnetic boxes. We find the circumstances indicate defendant had knowledge and possession of the two remaining boxes.

¶ 18 Berka testified that he witnessed defendant retrieve a black box from the undercarriage of the car. Defendant then removed an item from the box and returned the box to the undercarriage. He then exchanged the item with a woman for money. Contrary to defendant's argument that the State failed to offer evidence of the boxes' proximity to one another, Officer Bracamontes testified he later recovered three magnetic boxes in the same area where Berka stated defendant had previously retrieved a box: on the undercarriage of the car near the driver's door. Viewing the evidence in the light most favorable to the State, defendant's handling of the one box in the same area where the two others were recovered leads to the inference he had possession and knowledge of all three boxes.

¶ 19 Further, as the defendant was the driver and lone occupant of the vehicle, he was in sufficient control of the car (and its contents) to infer his knowledge of the heroin in all three boxes. See *People v. Chavez*, 327 Ill. App. 3d 18, 26-27 (2001); *Smith*, 191 Ill. 2d at 413. Any insinuation by defendant that, because his wife was the car's owner, reasonable doubt exists as to his knowledge and possession is likewise unpersuasive. *Chavez*, 327 Ill. App. 3d at 26 ("When drugs are found in a car, it is control of the vehicle rather than ownership of the vehicle which is pertinent to proof of control of the area in which drugs are found").

¶ 20 We further reject defendant's contention that, because the State submitted no photographs of where the magnetic boxes were located on the car's underside or fingerprints recovered from the boxes, there is insufficient evidence showing defendant's knowledge and possession of the

magnetic boxes. "Proof of physical evidence connecting a defendant to a crime has never been required to establish guilt." *People v. Williams*, 182 Ill. 2d 171, 192 (1998). Here, Berka testified he saw defendant reach down and retrieve one of the magnetic boxes from underneath the undercarriage of the vehicle on the driver's side. Bracamontes testified he recovered three magnetic boxes from that same area under the car, pursuant to Berka's instructions. All three boxes contained small Ziplock bags, about one inch by one inch in size, containing a white powder substance. Given this testimony, there is sufficient evidence from which the trial court could conclude defendant had knowledge and possession of all three magnetic boxes and their contents.

¶ 21 In reaching this conclusion, we find *People v. Hodogbey*, 306 Ill. App. 3d 555 (1999), relied on by defendant, distinguishable. In *Hodogbey*, the defendant accepted a package that was addressed to him from a sender in Thailand and brought it into his apartment. *Id.* at 557. Shortly after, the defendant walked outside from his apartment and looked both ways down the street before returning inside. *Id.* The defendant then left the apartment with another person but did not take the package. *Id.* Police stopped the defendant and, pursuant to a warrant, searched his apartment. *Id.* The search recovered the package unopened. *Id.* The package was found to contain heroin. *Id.* The defendant was subsequently charged and convicted of possession of a controlled substance (heroin) with intent to deliver. *Id.* at 557, 556.

¶ 22 On appeal, the court found the State failed to prove the defendant knowingly possessed the heroin where he merely accepted a package that was addressed to him. *Id.* at 559, 561. Further, the court noted the defendant did not open or hide the package but left it in the middle of his living room floor. *Id.* at 561. The defendant did not flee and even provided his keys to the

police to allow them to search his apartment. *Id.* Given these facts, the State failed to prove beyond a reasonable doubt that the defendant knowingly possessed the heroin. *Id.* at 562.

¶ 23 Unlike in *Hodogbey*, defendant here did not simply receive a package addressed to him that he left unopened. Rather, Officer Berka saw defendant reach underneath the driver's side undercarriage of his car and retrieve a small black box. Defendant then removed an item from the box, returned the box back to the undercarriage of the car, and exchanged the item with a woman for money. Subsequent police investigation led to the recovery of three small black boxes, which all contained heroin, from the same location as defendant had removed the first box. As discussed above, a rational trier of fact could find defendant had knowledge and possession of all three magnetic boxes containing heroin located in the same area under the car as the one Berka saw him retrieve moments earlier. Accordingly, *Hodogbey* is distinguishable.

¶ 24 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.