2014 IL App (2d) 121157-U
No. 2-12-1157
Order filed May 9, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DEAUANTE BROCK, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 11-CF-1116 Honorable Timothy Q. Sheldon, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State produced sufficient proof of the *corpus delicti* of possession of a controlled substance with intent to deliver (specifically the intent element), as the State corroborated defendant's confession with evidence that defendant possessed an amount sufficient for three to four typical sales and did not possess typical paraphernalia for personal consumption; (2) defendant was entitled to a $270 credit against his fines, to reflect the 54 days he spent in presentencing custody.

¶ 2 Following a jury trial in the circuit court of Kane County, defendant Deaunte Brock, was found guilty of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(c) (West 2010)) within 1,000 feet of property operated by a public housing agency (720 ILCS 570/407(b)(1) (West 2010)). Defendant was sentenced to an eight-year prison term and

was ordered to pay various fines and fees. On appeal, defendant contends that the State failed to prove the *corpus delicti* of the offense of unlawful possession of a controlled substance with intent to deliver and that he is guilty only of simple possession. Defendant also argues that he is entitled to monetary credit toward his fines for time spent in custody prior to sentencing. We affirm as modified.

¶ 3 At trial, the State presented evidence that, on June 1, 2011, several Aurora police officers executed a warrant to search an apartment located on South Fourth Street. (The warrant had been secured based on information from a confidential source who claimed to have purchased drugs at the apartment from an individual named Isaiah Anderson.) The officers knocked on the door and announced their presence. There was no response, so the officers forced the door open. Defendant was present in the apartment along with Nicole Smith and several children (who were sleeping).

¶ 4 Two of the officers who entered the apartment—Cottrell Webster and Michael Corrigan—testified at trial. Webster testified that he located a rock-like substance on a side table next to the couch in the living room. Subsequent laboratory analysis established that the substance weighed 1.3 grams and tested positive for the presence of cocaine. Webster did not indicate whether the substance was packaged in any manner when he first observed it. Corrigan testified that the substance was packaged in a plastic bag. It is not entirely clear from Corrigan's testimony, however, whether the substance was found in a plastic bag or placed in a bag when it was collected as evidence. Mail addressed to Smith was found at the apartment. There was no evidence to suggest that defendant resided there. The apartment was located 332 feet from property owned by the Aurora Housing Authority.

¶ 5 The officers who searched the apartment did not find scales, baggies, cutting agents, or anything else to suggest that a drug-dealing operation was based in the apartment. However, Corrigan testified that drug dealers typically do not keep those sorts of items at the same location as the drugs themselves. The officers also did not find any pipes or other paraphernalia for smoking crack cocaine.

¶ 6 Corrigan testified that, following the discovery of the suspected crack cocaine, he advised defendant of his *Miranda* rights. Defendant indicated that the crack cocaine found on the side table belonged to him, not Smith (who was defendant's girlfriend). Defendant was arrested and about $50 was discovered on his person. Webster and Corrigan interviewed defendant at the police station and defendant provided a tape-recorded statement. Asked by Corrigan how often he was at the apartment on South Fourth Street, defendant responded "maybe twice a week." Defendant indicated that during those visits "maybe two" people would come to the apartment to purchase $15 to $20 worth of crack cocaine from him. Defendant sold the crack cocaine to support his own crack cocaine and marijuana habits. Defendant indicated that Smith lived in the apartment with her children but had no involvement whatsoever in the drug sales. Corrigan testified that he never promised defendant anything in exchange for his statement. Corrigan also denied threatening defendant prior to the interview.

¶ 7 Webster testified that, during his career as a police officer, he had been involved in at least 200 narcotics cases. In his experience a crack cocaine user would typically buy between 0.3 and 0.45 grams of that drug for a price of $15 to $20. It was not uncommon for more than one dealer to sell crack cocaine at the same location. Webster testified that smoking crack produces a 15-to-20 minute high, and when the user comes down he or she will smoke more crack, if it is available. However, the amount of crack found in the South Fourth Street

apartment was too much to smoke all at once; indeed, a rock that size would not fit into the crack pipes that Webster had encountered. Webster also testified that individual pieces of crack were not always packaged for sale; it was fairly common for a seller to break a piece off of a rock of crack and simply hand the piece to the buyer. Asked on cross-examination whether it was possible to smoke crack in a cigarette, Webster responded, "Technically, yes."

¶ 8 Defendant testified that he and Smith were watching a movie and talking when the police entered the apartment. Defendant spoke with Corrigan and with an "Officer Converse" in the hallway. Defendant testified, "They kept saying they know it was mine and that if I—if I don't say it's mine, they are going to take my girlfriend to jail, take my kids to DCFS, so I felt that at that time the best for my family was for me to say it was mine." Defendant admitted that he was a drug user, but denied that he sold drugs at the South Fourth Street apartment. He testified that when he bought crack he would obtain about $50 worth—about one gram.

¶ 9 Defendant first argues that the State failed to prove the *corpus delicti* of the offense of possession of a controlled substance with intent to deliver. In order sustain a criminal conviction, the prosecution must prove beyond a reasonable doubt (1) that a criminal offense was committed and (2) the identity of the person who committed the offense. *People v. Lara*, 2012 IL 112370, ¶ 17. "*Corpus delicti*" refers to the commission of the offense (*id.*), which, generally speaking, "cannot be proven by a defendant's admission, confession, or out-of-court statement alone" (*id*). As noted in *Lara*, "[w]hen a defendant's confession is part of the *corpus delicti* proof, the State must also provide independent corroborating evidence." *Id.*

¶ 10 In support of his argument that his conviction violates these principles, defendant contends that: (1) intent to deliver a controlled substance is part of the *corpus delicti*; (2) the State relied on defendant's statement to police about his drug dealing as proof of intent to

deliver; and (3) the State failed to introduce independent corroborating evidence. There appears to be no controversy about the first two propositions. Thus, the salient question is whether the State's evidence satisfied the corroboration requirement. In arguing that it did not, defendant correctly notes that the element of intent to deliver a controlled substance is typically proved with circumstantial evidence. See *People v. Robinson*, 167 Ill. 2d 397, 408 (1995). As defendant observes, the proof may consist of evidence of possession of a quantity of drugs inconsistent with personal use or, when that is not the case, other circumstances, such as the manner in which the drugs are packaged and the possession of weapons, large amounts of cash, and paraphernalia or equipment associated with the drug trade. *Id.*

¶ 11 At this point, however, defendant's argument appears to go astray. He contends that without his statement to police,[1] the State's evidence "proved only that [defendant] possessed drugs in an amount consistent with personal use." But that is beside the point. The relevant question, as previously indicated, is not whether there was evidence other than defendant's statement that *proved* intent to deliver. Rather, the question is whether there was evidence that *corroborated defendant's statement* so that the statement may be used to establish the *corpus delicti*. Our supreme court has made it clear that, in this setting, the corroborative evidence need

[1] According to defendant, his statement was "made under threats to [his] family." The only evidence of such threats was defendant's self-serving testimony, which the jury was not obliged to accept. See generally *People v. Luckett*, 339 Ill. App. 3d 93, 103 (2003) ("The credibility of the defendant, like that of any witness, is a fact question for the jury to decide, and the jury may reject or accept all or part of the defendant's testimony."). Moreover, defendant indicated that Corrigan was one of the officers who made the threats. However, Corrigan specifically testified that he did not threaten defendant prior to interviewing him.

not be sufficient in itself to sustain a conviction. *Lara*, 2012 IL 112370, ¶ 31. The *Lara* court stated:

> "[O]ur case law has consistently required far less independent evidence to corroborate a defendant's confession under the *corpus delicti* rule than to show guilt beyond a reasonable doubt. [Citations.] Viewed together, these precedents also establish that corroboration is sufficient to satisfy the *corpus delicti* rule if the evidence, or reasonable inferences based on it, tends to support the commission of a crime that is at least closely related to the charged offense. Even if a defendant's confession involves an element of the charged offense, the independent evidence need not affirmatively verify those circumstances; rather, the evidence must simply 'correspond' with the confession. [Citation.] Corroboration of only some of the circumstances related in a defendant's confession is sufficient." *Id.* ¶ 45.

¶ 12 In this case, there is a sufficient correspondence between defendant's incriminating statement to police and the independent evidence admitted at trial. A search of the apartment at which defendant was arrested uncovered evidence that defendant's girlfriend resided there. Asked by police how often he visited the apartment, defendant responded "maybe twice a week." Defendant also told police that, when he visited the apartment, "maybe two" people would come by to purchase $15 to $20 worth of crack cocaine from him. The State presented evidence that it was typical for a crack user to purchase between 0.3 and 0.45 grams, which would sell for about $15 to $20. Defendant was in possession of a rock of cocaine that weighed 1.3 grams—enough for three to four sales.

¶ 13 Additionally, the failure of the police who searched the apartment to find any paraphernalia for smoking crack is probative of defendant's intent. See *People v. White*, 221 Ill.

2d 1, 20 (2006) (absence of paraphernalia for smoking crack cocaine was among factors—including the manner in which the crack cocaine was packaged—supporting conviction of possession with intent to deliver, notwithstanding evidence that the amount in the defendant's possession was not inconsistent with personal use). Even though one of the officers who participated in the search testified that it was "technically" possible to smoke crack cocaine in a cigarette, the jury could reasonably infer that the absence of paraphernalia was more consistent with the drug dealing that defendant described to police than with personal use.

¶ 14 It bears repeating at this point that, although proof of the *corpus delicti* requires evidence that is independent of the defendant's statements, the defendant's statements and the other evidence must be viewed as a whole. To illustrate, in *People v. Perfecto*, 26 Ill. 2d 228 (1962), the defendant challenged his conviction of forcible rape, arguing that the proof of the *corpus delicti* consisted merely of his uncorroborated inculpatory statements. The *Perfecto* court disagreed:

> "Here we have an abundance of evidence corroborating the *** defendant's statements and confessions in which he related visiting the room of his 75-year-old victim twice on the evening in question, beating her into insensibility when she resisted his advances and having intercourse with her. Independent confirmation of these facts is found in the testimony of the witness Quintella, an acquaintance of defendant who stopped in defendant's hotel room for a drink about the time the offense was committed. Quintella testified defendant left the room and returned later holding a handkerchief to his face. Subsequently the witness left the room and returned to find defendant again gone. Quintella then went to the washroom and noticed the lights in the victim's room go on and off and the door shake. He stood in the hallway watching the door and saw

> defendant come out a short time later. This witness saw scratches on defendant's left shoulder, and a bite on his right shoulder. There was a red smear on the wall of the room where the offense occurred, papers all over the floor and blood was flowing from the victim when she was removed on a stretcher. She was bruised and had a broken collar-bone.
>
> The evidence here, taken as a whole, leaves no doubt that a rape was committed and that defendant committed it." *Id.* at 229-30.

¶ 15 It may be observed that in *Perfecto*, although the evidence *aliunde* the defendant's confession showed that the defendant had physically attacked the victim, that evidence, standing alone, could support nothing more than speculation that the victim had been raped. By analogy, in this case it is unnecessary that the evidence *aliunde* defendant's statement yield an inference that defendant possessed the crack cocaine with intent to deliver. In this regard, we note defendant's argument that this case is "quite similar" to *People v. Ellison*, 2013 IL App (1st) 101261. In *Ellison* the defendant was arrested following a street encounter with police during which he spontaneously alerted the officers that he was in possession of drugs. The officers recovered crack cocaine and heroin from the defendant's person. The crack cocaine was packaged in 17 small bags. There was no testimony that the quantity recovered was inconsistent with personal use (although no paraphernalia for use of the drugs was found on the defendant's person). The *Ellison* court held that the manner in which the crack cocaine was packaged and the absence of paraphernalia was insufficient to prove intent to deliver beyond a reasonable doubt. The difference between *Ellison* and the case at hand is glaringly obvious. In this case, after being discovered to be in possession of crack cocaine in his girlfriend's apartment,

defendant admitted to police that he had previously sold crack cocaine once or twice a week at the same apartment. There was no comparable admission in *Ellison*.

¶ 16 We therefore conclude that defendant's statement to police and the circumstances surrounding the discovery of the crack cocaine were sufficient proof of possession with intent to deliver. Accordingly defendant's conviction must be affirmed.

¶ 17 Defendant next argues that he is entitled to monetary credit toward his fines based on the time he spent in custody prior to sentencing. Section 110-14(a) of the Code of Criminal Procedure of 1963 provides:

> "Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $5 for each day so incarcerated upon application of the defendant. However, in no case shall the amount so allowed or credited exceed the amount of the fine." 725 ILCS 5/110-14(a) (West 2010).

A defendant may apply for the credit for the first time on appeal. *People v. Caballero*, 228 Ill. 2d 79, 88 (2010).

¶ 18 Defendant was ordered to pay a $30 Children's Advocacy Center "fee" and a $3,000 drug assessment. Both those items are considered fines for purposes of section 110-14(a). See *People v. Jones*, 223 Ill. 2d 569, 587-92 (2006); *People v. Jones*, 397 Ill. App. 3d 651, 660 (2009). The trial court also imposed a $130 "drug fine." It is undisputed that defendant was in custody for 54 days. He therefore accumulated a credit of $270 toward these fines. The State concedes that defendant is entitled to this credit.

¶ 19 For the foregoing reasons, we affirm defendant's conviction and sentence, but modify the mittimus to reflect a $270 credit against defendant's fines.

¶ 20 Affirmed as modified.