2013 IL App (3d) 110639-U

Order filed June 11, 2013

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
	)	Henry County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-11-0639
v.	)	Circuit No. 08-CF-94
	)	
MARK A. CROUCH,	)	Honorable
	)	Charles H. Stengel,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Wright and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to prove beyond a reasonable doubt that defendant knowingly brought into the State of Illinois with intent to deliver more than 900 grams of cocaine, in violation of section 401.1 of the Illinois Controlled Substances Act (720 ILCS 570/401.1(a) (West 2008)).

¶ 2 Following our remand (*People v. Crouch*, No. 3-08-0983 (2010) (unpublished order under Supreme Court Rule 23)), a jury found defendant, Mark A. Crouch, guilty of controlled substance trafficking (720 ILCS 570/401.1(a) (West 2008)), unlawful possession of a controlled

substance with intent to deliver (720 ILCS 570/401(a)(2)(D) (West 2008)), and unlawful possession of a controlled substance (720 ILCS 570/402(a)(2)(D) (West 2008)). Defendant was sentenced to 39 years' imprisonment. Defendant appeals, arguing that the evidence was insufficient to prove beyond a reasonable doubt an essential element of his conviction for controlled substance trafficking: that defendant had knowledge that the controlled substance was present in the vehicle he was driving. We affirm.

¶ 3 FACTS

¶ 4 At defendant's jury trial, the following facts were adduced. On March 12, 2008, defendant was driving a silver Honda Accord on Interstate 80 in Henry County when he was stopped by Illinois State Police Trooper Clint Thulen. Thulen testified that he initiated the traffic stop after observing defendant commit two traffic violations: improper lane usage and violation of the minimum speed limit. The vehicle was registered to a woman named Loren Armour. During the stop, Thulen noticed several "indicators" suggesting that defendant was involved in drug activity: (1) defendant was unusually nervous; (2) the vehicle's owner, Armour, was not in the vehicle; (3) the car's key ring contained only one key; (4) defendant made statements about how he was a good person who would not break the law; (5) an empty fast food bag was in the car; and (6) two pairs of gloves in their original unopened packaging were in the car. Defendant told Thulen that the car belonged to his "auntie" and he was in the process of moving from Los Angeles to Columbus, Ohio. After completing the traffic stop, Thulen asked defendant for consent to search the vehicle and defendant agreed. During the search, Thulen discovered a secret compartment behind the vehicle's dashboard that contained seven kilograms of cocaine. Defendant was arrested.

¶ 5 Other items found in the car included: a backpack; a traffic citation from March 7, 2008, in Iron County, Utah, issued to defendant while driving the same silver Accord; and a passenger receipt in defendant's name for an airplane flight from Los Angeles to Omaha on March 11, 2008.

¶ 6 After defendant's arrest, Illinois State Police Special Agent Mike Kuehl interviewed defendant at the station house. Kuehl testified that defendant waived his *Miranda* rights but initially refused to talk. Kuehl explained to defendant that in a narcotics transaction, the narcotics must be delivered within a certain time frame. Kuehl attempted to convince defendant to work with the police to deliver the narcotics to Columbus. By completing delivery of the narcotics, Kuehl hoped to arrest the members of the organization that accepted delivery. Kuehl testified that defendant expressed interest in cooperating with the police. However, defendant and Kuehl did not reach a cooperation agreement. Kuehl did not testify to why he and defendant did not reach an agreement. The interview continued on.

¶ 7 Defendant recounted to Kuehl an explanation for why he was traveling that day, different from the explanation he gave Thulen during the traffic stop. Defendant explained that he was living in California when he received a phone call from Armour, who lived in Columbus, Ohio. At the time, defendant and Armour had a sexual relationship. Armour asked defendant to do her a favor by picking up her car, which was broken down in Lincoln, Nebraska, and driving it to Columbus, Ohio, to have it repaired. She told defendant to go to the local Western Union in California where he would receive a wire transfer of $400 to pay for a plane ticket from California to Omaha, Nebraska. From the Omaha airport, defendant was to take a taxi to a hotel in Lincoln. Armour would arrange for the hotel clerk in Lincoln to have money available to pay

for the taxi ride. Armour's Honda Accord would be located, unlocked, in the hotel parking lot. The keys would be inside the car. Defendant was then to drive the car approximately 800 miles to Columbus. Once in Columbus, defendant would park the car at a local hotel and contact a person named Sir Reginald Jackson. Then either Jackson or someone named Quan would come pick up the car and take it to be repaired.

¶ 8 Defendant told Kuehl that he was following Armour's instructions when he was pulled over and arrested in Henry County. On cross-examination, Kuehl testified that defendant never admitted to having knowledge that cocaine was in the car or that he was a participant in a drug transaction; defendant denied to Kuehl that he was involved in any criminal activity.

¶ 9 Recordings of five phone calls made by defendant from the jail to his brother Perry Crouch were played for the jury. During the fifth phone call, defendant tells Perry that "Reggie's girl set us up," and that the police went "right to the thing" and knew "what was up with that car." Defendant warns Perry that the police "knew everything" and that Perry should discard his cellular phone.

¶ 10 Defendant testified on his own behalf. He reiterated the explanation for his travel testified to by Kuehl. In addition, defendant stated that he did not notice anything unusual about the Accord's dashboard and was not aware that it contained a secret compartment or cocaine. He testified that a prior injury to his hand causes it to shake and make him appear nervous. Defendant explained that the main purpose of his jailhouse call to Perry was to instruct Perry to pick up and look after defendant's children. Any warning that defendant gave Perry was a result of information learned only after his arrest. Based on the knowledge that police had found cocaine in the car, defendant concluded that Armour must have set him up.

¶ 11 Defendant maintained that at the time of his arrest, he was in the process of moving from Los Angeles to Columbus. He had made a previous trip to Columbus earlier in March as part of the move. He and Armour then drove her Accord from Columbus to Los Angeles, where she dropped him off. Defendant surmised that the Accord must have broken down as Armour was driving it back from Los Angeles to Columbus.

¶ 12 Defendant claimed that after his arrest, Kuehl proposed the idea that defendant complete delivery of the car. Defendant responded to Kuehl by offering to complete delivery in exchange for full immunity from prosecution, because defendant assumed that the presence of cocaine in the car would be sufficient to prove him guilty of a crime. Defendant insisted that he was unaware of the cocaine's presence until the police uncovered it from the secret compartment.

¶ 13 The jury found defendant guilty on all three counts. The trial court sentenced defendant to 39 years' imprisonment on each count and merged counts II and III with count I. Defendant appeals.

¶ 14 ANALYSIS

¶ 15 On appeal, defendant argues that the State provided insufficient evidence to prove beyond a reasonable doubt an essential element of his conviction for controlled substance trafficking: that defendant had knowledge of the cocaine's presence in the car. 720 ILCS 570/401.1(a) (West 2008) (requiring that defendant "knowingly brings or causes to be brought into this State for the purpose of manufacture or delivery *** a controlled substance").

¶ 16 In reviewing a challenge to the sufficiency of the evidence, the standard is whether, viewing the evidence 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. Wheeler*, 226 Ill.

2d 92 (2007); *People v. Collins*, 106 Ill. 2d 237 (1985). This standard applies regardless of whether the evidence is direct or circumstantial. *Wheeler*, 226 Ill. 2d 92. It is the trier of fact's responsibility to determine the witnesses' credibility and the weight to be given their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence; we will not substitute our judgment for the trier of fact's on these matters. *People v. Ortiz*, 196 Ill. 2d 236 (2001). Rather, we will reverse a conviction only where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *Wheeler*, 226 Ill. 2d 92.

¶ 17 " 'Where narcotics are found on premises under the defendant's control, it may be inferred that he had requisite knowledge and possession, absent other facts and circumstances which might leave a reasonable doubt as to guilt.' " *Ortiz*, 196 Ill. 2d at 258 (quoting *People v. Bell*, 53 Ill. 2d 122, 126 (1972)). Knowledge may be, and ordinarily is, proven circumstantially. *Ortiz*, 196 Ill. 2d 236; see also *People v. Bui*, 381 Ill. App. 3d 397, 419 (2008) ("The element of knowledge is rarely susceptible to direct proof and is usually established by circumstantial evidence."). Knowledge may be proven by evidence of a defendant's statements and conduct, as well as the surrounding circumstances, that supports the inference that the defendant knew of the existence of the narcotics at the place they were found. *Bui*, 381 Ill. App. 3d 397. "[T]he question is not whether there was a drug ring operating; clearly there was. The question is what defendant knew." *Ortiz*, 196 Ill. 2d at 261.

¶ 18 In the present case, viewing the evidence in the light most favorable to State, we find that a rational juror could have found beyond a reasonable doubt that defendant had knowledge of the cocaine's presence in the vehicle. The circumstantial evidence that the jury may have relied on

includes: (1) defendant's improbable story about driving a broken-down car approximately 800 miles and delivering it to a hotel parking lot to be repaired; (2) defendant's unusually nervous behavior; (3) indicators of drug activity including two pairs of gloves and a key ring with only one key; (4) Thulen's testimony that defendant initially claimed that the car belonged to his "auntie;" and (5) defendant's phone call to Perry. A rational juror could have relied on that evidence to find that defendant had knowledge of the cocaine's presence in the car. That finding is not so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of Henry County is affirmed.

¶ 21 Affirmed.