2014 IL App (3d) 120344-U

Order filed November 5, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois.
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-12-0344 Circuit No. 09-CF-429
ALTON STENNIS,	)	
Defendant-Appellant.	)	Honorable Timothy M. Lucas, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in finding the good-faith exception to the exclusionary rule applied to the search warrant for defendant's residence. The trial court did err, however, by allowing the State to present evidence of defendant's prior conviction for the purpose of proving defendant's intent.

¶ 2 Following a jury trial in the Peoria County circuit court, defendant, Alton Stennis, was found guilty of unlawful possession of cannabis with intent to deliver.

¶ 3 Defendant subsequently filed a motion for new trial, alleging, *inter alia*, that the court erred in denying defendant's motion to suppress, that the search warrant lacked probable cause,

that the application for the search warrant contained material misrepresentations, and that the good-faith exception did not apply. Defendant later filed a *pro se* letter with the court, alleging ineffective assistance of counsel.

¶ 4 Following a hearing on defendant's posttrial motions, the trial court denied said motions in their entirety. The trial court sentenced defendant to 19 years in the Illinois Department of Corrections. Defendant filed a motion to reconsider sentence, which was also denied.

¶ 5 Defendant appeals, claiming, *inter alia*, that: (1) the trial court erred in finding the good-faith exception to the exclusionary rule applied to the search warrant, where the officer could not have reasonably believed that the information he provided to the issuing judge was sufficient to establish probable cause; and (2) that the trial court erred by allowing the State to present evidence of defendant's prior conviction to show intent.

¶ 6 We reverse and remand for a new trial.

¶ 7 BACKGROUND

¶ 8 The State charged defendant with the offenses of unlawful possession (720 ILCS 550/4(f) (West 2018)) and unlawful possession with intent to deliver more than 2,000, but not more than 5,000 grams of cannabis (720 ILCS 550/5(f) (West 2008)). These charges stemmed from the application for, and subsequent execution of, a search warrant for defendant's residence at 3207 West Willow Knolls Road, Apartment 58C. The complaint for search warrant included the affidavit of a confidential informant (CI) identified as John Doe. John Doe averred that within the last 72 hours he had seen "purported" cannabis in defendant's apartment. The search conducted by the Peoria police department yielded a black duffel bag containing 10 bags of cannabis, a digital scale, a food saver sealer, and gallon-sized Ziploc bags.

¶ 9 Defendant first filed a motion to quash the search warrant and suppress evidence on July 23, 2009, alleging the warrant was facially insufficient to establish probable cause. Defendant argued that the warrant failed to indicate that the CI knew what cannabis looked like. The trial court, Judge Brandt presiding, denied the motion, noting that the CI personally appeared before the issuing judge.

¶ 10 Defendant, now represented by substituted counsel, filed a motion to reconsider the denial of his motion to quash. Defendant alleged the CI did not indicate how he had known that the substance was actually cannabis. Defendant also filed a supplemental addendum to the motion to reconsider, alleging that Officer Lawrence, who applied for and executed the warrant, included false information when he averred that "a check of Alton Stennis through the Secretary of State (SOS) showed Alton Stennis with an address of 3207 W. Willow Knolls Road, Apt. 58C, Peoria, IL," when in fact, the Secretary of State's office showed defendant's address as 1228 East Seneca Place, Peoria, Illinois.

¶ 11 The trial court, again Judge Brandt presiding, granted the motion to reconsider in part and quashed the warrant, noting that the motion implicated the necessity to have a supplemental hearing in regard to good faith. The court went on to state that, in its opinion, the warrant was not so lacking in probable cause that no officer could reasonably rely upon it, and that the State had made a *prima facie* showing of good faith. The court ordered a subsequent hearing on the issue.

¶ 12 Judge Collier presided over the *Leon* hearing on November 4, 2010. Officer Brett Lawrence of the Peoria police department testified that he applied for a search warrant on April 14, 2009, for the residence at 3207 West Willow Knolls Road, Apartment 58C. Lawrence met the issuing judge in his vehicle in a parking lot outside a movie theater at approximately 10:40

p.m. on April 14. The CI and another officer were also present. The judge administered oaths to Lawrence and the CI, and signed the warrant. Lawrence testified that the judge did not ask any additional questions of the CI, and that the information the judge had was limited to what was in the CI's affidavit.

¶ 13 Lawrence testified that he took the CI to the judge because he was an untested informant whom Lawrence had never met. The CI was working for police on behalf of someone already in custody to lessen their charges. Lawrence did not inquire into the CI's background, nor did he inform the judge of his relationship (or lack thereof) with the CI.

¶ 14 Lawrence confirmed that his complaint for search warrant stated a check of defendant through the Secretary of State showed defendant's address as 3207 West Willow Knolls Road, Apartment 58C, Peoria, Illinois. Lawrence checked the address through dispatch or his mobile data computer. The complaint stated that Lawrence saw defendant's name on the mailbox and doorbell, but at the hearing Lawrence could only recall checking the mailbox.

¶ 15 The State presented a Law Enforcement Agencies Data System (LEADS) document showing that the Peoria police department's mobile unit was used on April 14, 2009, to run a reference check on defendant. The LEADS document listed defendant's address as 3207 West Willow Knolls Road, Apartment 58C. That address was entered into the system on November 23, 2006, by the Illinois Department of Corrections. Lawrence could not recall if he ran the LEADS check.

¶ 16 Scott Hulz of the Secretary of State's office testified that his office would have shown defendant's address as 1228 East Seneca Place, Peoria, Illinois, on April 14, 2009, and that 3207 West Willow Knolls Road, Apartment 58C was not listed as an address for defendant.

¶ 17 James Perry, a criminal intelligence analyst for the Illinois State Police, testified that a LEADS document was generated on April 16, 2009, showing all agencies that had requested information on defendant. The LEADS document, People's exhibit No. 1, showed that the Peoria police department had requested information on the defendant on April 14, 2009. Perry further testified that the caution alert on the LEADS document is to ensure that when an officer in the field runs the information through their laptop, that officer contacts the telecommunicator at the office to verify the information before an arrest is made. This procedure confirms that the information has been updated and no clerical mistakes have been made. According to Perry, the information on the LEADS document for defendant indicated an address of 3207 West Willow Knolls Drive, Apartment 58C. Again, that address was entered by the Illinois Department of Corrections in 2006.

¶ 18 The trial court found that suppression was not warranted because Officer Lawrence had acted in good faith. The court also specifically addressed defendant's argument that Officer Lawrence did not disclose to the issuing judge that the CI was working to lessen someone else's charges. The court noted that in its experience, when a CI comes forward as John Doe, he is generally trying to cut a deal. The court opined that "that question doesn't even need to be asked."

¶ 19 On March 10, 2011, the trial court held a joint hearing on defendant's motion to disclose the identity of the CI and the State's motion *in limine* to introduce defendant's prior conviction for possession of a controlled substance with intent to deliver. Lawrence testified that the CI told him that defendant was at the apartment, in the bedroom, when the CI saw the suspected cannabis in a black bag in the closet. The CI did not say whether defendant had let him into the apartment, if anyone else was present at the time, or how many times he had been at defendant's

apartment. Defendant did not identify cannabis to the CI, nor could Lawrence recall if the CI had seen defendant with cannabis. There was testimony that Lawrence should have used the word "suspected" in the warrant rather than the word "purported" because no one told the CI that the substance was actually cannabis. The court denied defendant's motion to disclose the identity of the CI.

¶ 20 As for the State's motion *in limine*, the State argued that the prior conviction should be admitted to show defendant's intent in this instance. Defendant argued that the prior conviction was inadmissible, as it was only being offered to show defendant's propensity to deal drugs. The court granted the State's motion.

¶ 21 Defendant's first trial resulted in a hung jury, and the trial court declared a mistrial. Prior to the second trial, defendant renewed his objection to the introduction of his prior conviction. The court denied the motion.

¶ 22 At trial, Officer Lawrence testified that he was the case agent and executed the warrant at the Willow Knolls apartment around 11 p.m. on April 15, 2009. When his knock went unanswered, officers knocked down the door. Defendant was on the couch in the living room. A small bag of cannabis, as well as defendant's driver's license, was found on the table in front of the couch. The address listed on his license was 1228 East Seneca Place.

¶ 23 The door of the northwest bedroom of the apartment was padlocked. Officers forcibly opened it. In the closet, the police found a black bag containing 10 bags of cannabis, a black bag with a digital scale, and a black bag with a food-saver sealer, food-saver bags and one-gallon sized Ziploc freezer bags. The police did not find any paraphernalia for consuming cannabis. There were two pieces of mail addressed to defendant at the Willow Knolls apartment found in

the bedroom. Prior to the arrest, there had been no surveillance of the apartment, nor had defendant been under investigation.

¶ 24 Officer Loren Marion III testified as an expert witness. He opined that the amount of cannabis recovered, coupled with the other evidence recovered and the lack of smoking paraphernalia found indicated that the cannabis was possessed with intent to deliver.

¶ 25 The court then admitted a certified copy of defendant's prior conviction. Defendant objected, arguing that his intent was a foregone conclusion. The court instructed the jury that the prior conviction could only be used to show defendant's intent.

¶ 26 Defendant testified that he moved to the Willow Knolls apartment in February 2007. From that time up until the date of his arrest, he often stayed with girlfriends at their residences. He testified that he maintained the Willow Knolls apartment because it was close to his work. According to defendant, a number of people had access to the apartment. Heidi Belles lived in the northeast bedroom at the time of the search. Bobby Anderson stayed at the apartment prior to Belles moving in. When defendant first moved to the Willow Knolls apartment, he moved in with his girlfriend, Aliea Booker. While Booker had not been in the apartment since July 2008, her furniture was still in the residence. Belles, Anderson, and Booker all had keys to the apartment. Defendant testified that he had nothing to do with the cannabis in the closet and that he did not know who did.

¶ 27 In closing, the State argued that the question of whether the cannabis was possessed with intent to distribute was an "easy one" given the amount, the packaging paraphernalia and Marion's testimony. Defendant argued that the issue was whether defendant possessed the cannabis. The jury found defendant guilty of unlawful possession with intent to deliver cannabis.

¶ 28 Defendant, by his trial counsel, filed a motion for new trial on July 28, 2011. Shortly thereafter, defendant sent a *pro se* letter, alleging ineffective assistance of counsel. At the hearing on the posttrial motion before Judge Kouri, the trial court decided that it could not proceed in light of defendant's allegation of ineffective assistance and set the matter for reassignment. Following a number of continuances and reassignments, the public defender's office was eventually allowed to withdraw from the case, and private counsel entered his appearance on defendant's behalf. Defendant's new counsel filed a motion for new trial addendum on February 9, 2012, incorporating the original motion for a new trial filed on July 28, 2011. Also during this time, the case was reassigned to Judge Lucas's docket.

¶ 29 On March 21, 2012, the trial court held a hearing on defendant's motions. Defendant, again, argued that the search warrant was deficient and lacked probable cause, that Officer Lawrence essentially relied on an anonymous tip with the use of an untested informant, that the warrant failed to indicate the CI knew what cannabis was, and that the search warrant contained a material misrepresentation. Defendant also argued that Officer Lawrence did not act in good faith in relying upon the warrant, that the identity of the CI should have been disclosed, that the court erred in allowing the State to present other crimes evidence, that the prosecution's closing arguments were inflammatory and prejudicial, and that defendant's trial counsel was ineffective. Following the State's response, the trial court took the matter under advisement.

¶ 30 On March 28, 2012, the trial court denied defendant's posttrial motions in their entirety. The court specifically noted that it simply could not conclude that there was a fraud or a misdeed perpetrated by the police under the circumstances. The court also found that at the good-faith hearing, Officer Lawrence provided ample explanation as to how he gathered identifying

information on defendant. Defendant's attack on the warrant and subsequent finding of good faith by Judge Collier were therefore denied.

¶ 31 The court proceeded to a sentencing hearing, and sentenced defendant to an extended term of 19 years. The court imposed a $2,000 drug assessment, subject to a $5-per-day presentence incarceration credit. It also found defendant's deoxyribonucleic acid (DNA) had already been registered. On April 30, 2012, the court denied defendant's motion to reconsider sentence.

¶ 32 Defendant appeals.

¶ 33 ANALYSIS

¶ 34 I. Good-Faith Exception to the Warrant Requirement

¶ 35 Defendant contends that the trial court erred in finding that the good faith exception to the exclusionary rule applied to the search warrant. Defendant's argument is threefold. Defendant's primary contention is that Officer Lawrence could not have reasonably relied upon the warrant in good faith where he knew or should have known that the information he provided to the issuing judge was insufficient to establish probable cause. Part and parcel to that argument, defendant contends that the information provided by the CI was essentially an anonymous tip, given that Lawrence failed to establish the CI's reliability or corroborate the information. Finally, defendant contends that Lawrence included false information in his initial complaint for a warrant, thus he could not have reasonably relied on the information he included that he knew to be false.

¶ 36 Here, the trial court quashed the warrant following the hearing on defendant's motion to reconsider, finding that the information in the complaint and affidavit was insufficient to establish probable cause and that the issue was ripe for a good faith determination. Thus, the

remaining issue for the trial court was whether the good-faith exception delineated in *United States v. Leon*, 468 U.S. 897 (1984), applied. See also *People v. Stewart*, 104 Ill. 2d 463 (1984).

¶ 37 Under the good-faith exception to the exclusionary rule, evidence obtained in violation of the Fourth Amendment will not be excluded if an officer, acting in good faith, relied on a search warrant later to be found unsupported by probable cause. See *Leon*, 468 U.S. at 919-22. The Illinois Legislature codified the exception at section 114-12 of the Illinois Code of Civil Procedure of 1963 (the Code), which provides, in pertinent part:

> "(1) *** The court shall not suppress evidence which is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer who acted in good faith.
>
> (2) 'Good faith' means whenever a peace officer obtains evidence:
>
> (i) pursuant to a search or an arrest warrant obtained from a neutral and detached judge, which warrant is free from obvious defects other than non-deliberate errors in preparation and contains no material misrepresentation by any agent of the State, and the officer reasonably believed the warrant to be valid[.]" 725 ILCS 5/114-12(b)(1), (b)(2) (West 2010).

¶ 38 An officer's decision to obtain a warrant, and his subsequent reliance thereon, is usually sufficient to show that an officer acted in good faith. *Leon*, 468 U.S. at 921, n. 21. See also *United States v. Peck*, 317 F.3d 754, 757 (2003). However, the officer's reliance on the warrant must be objectively reasonable. *Leon*, 468 U.S. at 922. An officer's reliance on a warrant is objectively unreasonable—and therefore the good-faith exception does not apply—in four situations, one of which is at issue here: where the affidavit was " 'so lacking in indicia of

probable cause as to render official belief in its existence entirely unreasonable.' " *Leon*, 468 U.S. at 923; *People v. Beck*, 306 Ill. App. 3d 172, 180 (1999). "That is, if the officer who provided the affidavit in support of a search warrant did not possess an objectively reasonable belief in the existence of probable cause, then suppression is the appropriate remedy." *People v. Rojas*, 2013 IL App (1st) 113780, ¶ 21. While we accept the trial court's factual findings relevant to an officer's good faith unless they are against the manifest weight of the evidence, the purely legal question of whether the good-faith exception applies under those facts is a question of law which we review *de novo*. See *People v. Turnage*, 162 Ill. 2d 299, 305 (1994); see also *United States v. Robinson*, 724 F.3d 878, 885 (7th Cir. 2013).

¶ 39 Here, the CI appeared before the issuing judge and averred that:

> "I have been at 3207 W. Willow Knolls Road Apt. 58C, Peoria, IL within the past 72 hrs. On this occasion, I saw a large amount of a green leafy, plant-like substance purported to be cannabis inside the apartment.
>
> S/A Lawrence has informed me that this affidavit is a sworn statement and that if I intentionally lie in this affidavit I can and will be prosecuted for perjury."

¶ 40 Defendant contends that because there is no other indication in the affidavit that the CI could actually identify the substance in the apartment as cannabis, Officer Lawrence could not, in good faith, have reasonably believed he had probable cause to conduct the search. Defendant also asserts that the CI was virtually unknown to Officer Lawrence, his reliability was completely untested, and Officer Lawrence failed to corroborate the CI's information or any

criminal activity. According to defendant, this amounted to an anonymous tip, and Officer Lawrence could not rely upon such a tip in good faith. We disagree.

¶ 41 First, we find the idea that the CI did not know what cannabis looked like to be absurd. In this day, it is difficult to imagine anyone over the age of 12 who does not know what cannabis looks like. This CI was someone who had "hung out" with defendant on at least one previous occasion and was cooperating with police to reduce someone else's charges. The CI is not a naïve kid, and it is not a logic-defying leap to assume that he knew what cannabis looked like. This is bolstered by the fact that during his interview with Officer Lawrence, the CI unequivocally stated that he observed multiple pounds of cannabis inside defendant's apartment, and then identified the photograph of defendant as the person in possession of those multiple pounds of cannabis. The fact that the CI's affidavit said "purported cannabis" as opposed to "suspected cannabis" is a futile exercise in semantics. Officer Lawrence prepared the CI's affidavit utilizing police jargon; it does not show that the CI did not know what cannabis was.

¶ 42 We acknowledge defendant's cite to *People v. Cooke*, 299 Ill. App. 3d 273, 280 (1998), where the Fourth District noted that in regard to the search for cannabis and drug paraphernalia, there was "no indication in the affidavit that the source is a person with a background that would enable that person to identify cannabis or that defendant represented the substance to be cannabis." *Id.* However, that case is distinguishable on two grounds: (1) the confidential source did not appear before the issuing judge; and (2) the *Cooke* court found that even assuming partial invalidity of the search warrant, the good-faith exception applied at least as to the search for weapons. The court did not explicitly state that the warrant was lacking in probable cause as a result of the source's apparent lack of knowledge of cannabis.

¶ 43 Furthermore, defendant's argument relies on an improper standard. Neither the CI nor Officer Lawrence were required to know beyond a reasonable doubt that the alleged contraband was actually marijuana; there need be only sufficient evidence to justify the reasonable belief that the defendant has committed or is committing a crime. See *People v. Jones*, 215 Ill. 2d 261, 273 (2005); see also *People v. Stewart*, 104 Ill. 2d 463, 476-77 (1984). What other "green, leafy, plant-like substance" do people keep in bags in closets? Despite the warrant having been quashed, we cannot say that it was so lacking in any indicia of probable cause as to render official belief in its existence entirely unreasonable.

¶ 44 Second, we find that the CI's affidavit did not amount to an anonymous tip, nor did Officer Lawrence wholly fail to corroborate the information such that his reliance on the warrant was unreasonable.

¶ 45 We agree with the State, and find that the case law relating to a confidential informant's reliability under circumstances such as those present here is clear: " '[w]hen the informant has appeared before the issuing judge, the informant is under oath, and the judge has had the opportunity to personally observe the demeanor of the informant and assess the informant's credibility, additional evidence relating to informant reliability and corroboration *** is not necessary.' " *People v. Lyons*, 373 Ill. App. 3d 1124, 1128-29 (2007) (quoting *People v. Hancock*, 301 Ill. App. 3d 786, 792 (1998)).

¶ 46 Here, the issuing magistrate met with both the CI and Officer Lawrence in person and under oath, giving the judge the opportunity to assess the CI’s credibility and hear any corroborating information from Officer Lawrence. That there was no evidence that the judge further questioned the CI does not make the CI’s information *ipso facto* unreliable. See *People v. Smith*, 372 Ill. App. 3d 179, 183 (2007) (finding it sufficient that the informant was available

for questioning before the issuance of the warrant, even if no evidence was presented that the informant was actually questioned).

¶ 47 We acknowledge that Officer Lawrence admitted that he did not conduct any further surveillance, and that he had not been targeting defendant or that address. It is not a prerequisite to seeking a warrant that a defendant actively be under investigation, and it does not serve to automatically render Officer Lawrence's reliance on the warrant unreasonable in this instance. Implicit from the record is that the officers were familiar with defendant and his prior convictions. Indeed, the CI identified defendant from a photograph Lawrence showed him. That the CI was attempting to lessen someone else's charges gave the CI motive to provide Officer Lawrence with truthful information. Furthermore, Officer Lawrence did corroborate the informant's information, at least in part, by physically checking defendant's address.

¶ 48 We, therefore, find that the warrant was not so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable, and the trial court correctly found the warrant subject to the good-faith exception.

¶ 49 Finally, defendant argues that the fact the address on the complaint for the search warrant is not his address on file with the Secretary of State's office demonstrates that Officer Lawrence knew the statement was false or was made with a reckless disregard for the truth. This argument, too, is without merit.

¶ 50 Officer Lawrence testified that he physically went to the 3207 West Willow Knolls address approximately 1½ to 2 hours prior to seeking the warrant. In his complaint, Officer Lawrence stated the name Stennis was affixed to both the mailbox and the doorbell of 3207 West Willow Knolls Drive, Apartment 58C. (At the subsequent *Leon* hearing before Judge Collier, he testified that he remembered the name on the mailbox, but could not recall if he saw it on the

doorbell.) Officer Lawrence also stated he believed that he ran a check of defendant, either through dispatch or his laptop. He testified that he did a person search, which would yield the person's driver's license and if that person had any warrants. According to Officer Lawrence, such a search was one of the standard ways to corroborate a person's residence when seeking a search warrant.

¶ 51 James Perry, the criminal intelligence analyst for the Illinois State Police, also testified that the majority of LEADS information is from a collection of databases such as the Secretary of State, FBI, and other state information.

¶ 52 On the record before us, we cannot say that Officer Lawrence made a material misrepresentation to the issuing judge as to defendant's address. LEADS data is clearly pulled from a variety of other databases accessible to law enforcement officers. Based on James Perry's testimony, it was not completely off base for Officer Lawrence to indicate to the issuing judge that he verified defendant's address through the Secretary of State. It certainly did not rise to the level of a false statement, or a statement made with a reckless disregard for the truth.

¶ 53 We would also note that defendant admitted at trial that he maintained the Willow Knolls address because it was conveniently located. Defendant's name was on the lease and on the mailbox. He received bills at that address. "[A] reviewing court may consider evidence at trial to determine whether it was proper to deny a motion to suppress." *People v. Strong*, 316 Ill. App. 3d 807, 813 (2000).

¶ 54 Accordingly, we find the warrant was not so lacking in indicia of probable cause that Officer Lawrence could not have reasonably relied upon it, and that Officer Lawrence did not provide the issuing judge with false information as to defendant's address. The trial court did not err in finding that the good-faith exception to the exclusionary rule applied to the warrant.

¶ 55 II. Admissibility of Prior Conviction Evidence

¶ 56 Defendant argues that the trial court erred by allowing the State to present evidence of defendant's prior conviction for unlawful possession of a controlled substance with intent to deliver to show defendant's intent in this instance. Defendant argues that the issue of intent was a foregone conclusion. We agree.

> "Evidence of a crime for which a defendant is not on trial is inadmissible if relevant merely to establish the defendant's propensity to commit crime. [Citation.] Such other-crimes evidence is objectionable because a jury, upon hearing this evidence, might convict the defendant merely because it feels that the defendant is a bad person who deserves punishment. [Citation.] Other-crimes evidence may be admissible, however, when it is relevant to establish any material question other than the defendant's propensity to commit a crime. [Citation.] *** Even where other-crimes evidence is relevant for a permissible purpose, the circuit court must weigh the prejudicial effect of admitting the other-crimes evidence against its probative value. [Citation.] The court should exclude evidence of other crimes where its prejudicial effect substantially outweighs its probative value. [Citation.] The admissibility of other-crimes evidence rests within the sound discretion of the circuit court. [Citation.] As such, the circuit court's decision will not be overturned absent a clear abuse of discretion. [Citation.]" *People v. Placek*, 184 Ill. 2d 370, 385 (1998).

¶ 57 It is readily apparent to any reasonable person that the cannabis in question was possessed with the intent to deliver. Along with the cannabis itself split into 10, 1-pound bags, the police also uncovered scales, a food-saver sealer, food-saver bags and several gallon-sized Ziploc bags. No smoking paraphernalia was found. All of this evidence is indicative of intent to break the cannabis down into smaller quantities for sale; the State presented expert testimony to that effect. The amount of the cannabis alone is inconsistent with intended personal use.

¶ 58 It is equally important to note that defendant did not contest the intent element of the offense in either trial. The State argues that defendant denied the intent to deliver. Our review of the record indicates that is simply not the case. During the course of the second trial, defendant's counsel stated that intent was a foregone conclusion. Even the State argued that the question of whether the cannabis was possessed with intent to deliver was "an easy one."

¶ 59 As the defendant points out, the salient issue is possession. Defendant denied knowing about the drugs or to whom they belonged. Without question, defendant's prior conviction would be inadmissible if the State were introducing such evidence to prove the element of possession. See *People v. Wilson*, 214 Ill. 2d 127, 136 (2005) (other crimes evidence may be admissible when it is relevant to show motive, intent, identity, absence of mistake or accident, *modus operandi*, or the existence of a common plan or design). Possession is conspicuously absent from that list. We find the State's argument that it was introduced to show intent disingenuous. After the State admitted to easily proving the intent element, introducing defendant's prior conviction was a thinly veiled attempt to paint defendant as a drug dealer, and, therefore, one who would possess drugs, in the minds of the jury. The unfair prejudice far outweighed any probative value of this evidence.

¶ 60 The erroneous admission of evidence of other crimes carries a high risk of prejudice and ordinarily calls for reversal. *People v. Lindgren*, 79 Ill. 2d 129, 137 (1980). Accordingly, we find the trial court abused its discretion in allowing the State to submit defendant's prior conviction to the jury. We reverse defendant's conviction and remand for a new trial.

¶ 61 III. Mandatory Drug Assessment Fee and Order Requiring Defendant to Submit a DNA Sample and Corresponding Fee

¶ 62 Given that we reverse defendant's conviction and remand the case for a new trial, we need not address this issue.

¶ 63 IV. Presentence Custody Credit

¶ 64 Finally, defendant argues he is entitled to one more day of presentence custody credit, where the warrant was executed on April 14, but he was given credit from April 15. Again, reversal of defendant's conviction renders this issue moot.

¶ 65 CONCLUSION

¶ 66 For the foregoing reasons, the judgment of the circuit court of Peoria County is reversed and this cause is remanded for a new trial.

¶ 67 Reversed and remanded.