2013 IL App (3d) 120638-U

Order filed November 20, 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 13th Judicial Circuit,) La Salle County, Illinois,
Plaintiff-Appellee,	)
	) Appeal No. 3-12-0638
v.	) Circuit No. 10-CF-276
	)
GABRIEL G. MORA,	) Honorable) Chris H. Ryan, Jr.
Defendant-Appellant.	) Judge, Presiding.

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

ORDER

¶ 1 *Held:* Evidence was sufficient to support defendant's conviction for possession of a controlled substance with intent to deliver where a shoe box containing cocaine and drug paraphernalia was found in the back of the truck defendant was driving.

¶ 2 Defendant, Gabriel Mora, was convicted of possession with intent to deliver more than 15 grams but less than 100 grams of a substance containing cocaine. 720 ILCS 570/401(a)(2)(A) (West 2010). The trial court sentenced defendant to 10 years in prison. Defendant appeals, arguing that

the evidence did not prove that he knowingly possessed the cocaine. We affirm.

¶ 3 Defendant was charged by indictment with unlawful possession of a controlled substance with intent to deliver. 720 ILCS 570/401 (West 2010). The indictment alleged that defendant knowingly possessed more than 15 grams but less than 100 grams of a substance containing cocaine.

¶ 4 At defendant's jury trial, the evidence established that defendant was driving a pick-up truck on Jefferson Street in Ottawa at approximately 12:32 p.m. on October 6, 2011. A city of Ottawa police officer, Matthew Fischer, drove next to defendant in his police car. When defendant looked over and saw Fischer's car, he had "a real surprised look on his face" and then quickly turned his head back toward the road. Fischer ran the license plate of defendant's vehicle and learned that it might be in the possession of defendant, who had a warrant out for his arrest.

¶ 5 Fischer activated his overhead lights and made a traffic stop of defendant's vehicle. After defendant pulled over, he exited the vehicle, put up his hands to chest level, and then "took off running." Fischer followed defendant in his squad car and then followed him on foot. During the foot chase, Fischer was injured and unable to apprehend defendant. He radioed for help from other police officers. Fischer returned to his squad car and drove to defendant's vehicle to secure it. When detectives from the Ottawa police department arrived, Fischer turned the investigation over to them.

¶ 6 Several city of Ottawa police officers heard over the radio that a suspect was fleeing on foot and reported to the scene. One of those officers was David Hallowell. Hallowell initially pursued defendant by car. When Hallowell had almost reached defendant by car, he exited his car, ordered defendant to stop, and pursued him on foot. Defendant did not stop but slowed down after Hallowell "pepper sprayed him." Hallowell and another officer then took defendant "to the ground and handcuffed him." Hallowell checked defendant for weapons and found none, but he found a wallet

and some change in defendant's pockets.

¶ 7 Another officer, Brian Lee Sember, also arrived on the scene. He helped place defendant in his squad car. Sember transported defendant to the police department, where he was placed in a booking room. Sember thoroughly searched defendant and found cash and a "folded-up five dollar bill that contained a white powdery substance" in defendant's pocket. Sember also examined the contents of defendant's wallet. He found a total of $1,847.00 in cash in defendant's wallet and pockets.

¶ 8 Detective Mark Hoster, a narcotics detective with the city of Ottawa police department, arrived on the scene and performed an inventory of the vehicle defendant was driving. In the bed of the truck, Hoster found several blankets. When he lifted the blankets, he found a shoe box for "a pair of gray Nike Flight 45 size ten shoes." Inside the shoe box, he found a large plastic bag of what appeared to be cocaine, a digital scale, a bottle of inositol powder, a bottle of acetone, and a "Livestrong" bracelet. In the truck bed, Hoster also found garbage, food wrappers and garbage bags containing clothes. He did not attempt to determine if the clothes in the garbage bags belonged to defendant. Hoster testified that there was "some confusion" regarding who owned the truck because it was not registered to defendant.

¶ 9 After searching the truck bed, Hoster searched the passenger compartment of the vehicle. He found a receipt dated September 28, 2011, from Finish Line in Peru, showing that a "Livestrong" bracelet and a pair of Nike Flight 45 shoes had been purchased. Defendant was wearing gray Nike Flight 45 shoes when he was arrested.

¶ 10 In Hoster's experience as a narcotics officer, cocaine is typically sold in plastic bags containing between four-tenths and one-half of a gram of cocaine each. Based on his training and

experience, the amount of cocaine found in the shoe box was too much for personal use. Such a large amount suggests it was going to be sold. According to Hoster, cutting agents are commonly used by drug dealers to dilute narcotics. Inositol powder is a cutting agent used to dilute cocaine. In his experience, acetone is used to clean cocaine. Only someone who is cutting cocaine and repackaging it for sale would need inositol powder and acetone. The scale in the shoe box also led him to believe that defendant was selling cocaine because digital scales are often used to weigh cocaine for resale.

¶ 11 Fingerprints were lifted from the shoe box found in the truck. Copies of the fingerprints were sent to the Illinois State Police. An employee of the Illinois State police testified that the prints from the shoe box matched defendant's. The parties stipulated that the plastic bag inside the shoe box contained 56.7 grams of cocaine. The parties also stipulated that 1.06 grams of cocaine was found on the five dollar bill in defendant's pocket.

¶ 12 After the State presented its evidence, defendant moved for a directed finding in his favor, arguing that the State failed to prove that he knew that cocaine was present in the truck he was driving. The trial court denied defendant's motion.

¶ 13 The jury found defendant guilty of unlawful possession of a controlled substance with intent to deliver. Defendant moved for a judgment notwithstanding the verdict or, alternatively, a new trial. The trial court denied defendant's motions. The trial court sentenced defendant to 10 years' imprisonment.

¶ 14 Defendant argues that the State did not prove beyond a reasonable doubt that he knew that the shoe box recovered from the vehicle he was driving contained cocaine.

¶ 15 When a defendant challenges the sufficiency of the evidence, our standard of review is

whether, when 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. Davison*, 233 Ill. 2d 30, 43 (2009). As an appellate court, it is not our function to retry the defendant. *People v. Hall*, 194 Ill. 2d 305, 329-30 (2000). We will only disturb the jury's verdict if the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *Id.* at 330.

¶ 16 In order to be found guilty of possession of cocaine with intent to deliver, the State must prove three elements beyond a reasonable doubt: (1) defendant either actually or constructively possessed cocaine, (2) defendant had knowledge that the cocaine was present, and (3) defendant intended to deliver the cocaine. *People v. Robinson*, 167 Ill. 2d 397, 407 (1995); 720 ILCS 570/401 (West 2010). Possession may be actual or constructive. See *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 14.

¶ 17 Constructive possession is often entirely circumstantial. *Id*. at ¶ 15. If the controlled substance is found on the premises, rather than the defendant, the State can establish constructive possession if it can prove the defendant had knowledge and control over the premises by virtue of his connection to the premises. *Id*. at ¶ 14. Constructive possession of contraband is often found where it is located on premises over which the defendant had control. *Id*.

¶ 18 Knowledge is also usually proven by circumstantial evidence because it can rarely be shown by direct proof. *People v. Sanchez*, 375 Ill. App. 3d 299, 301 (2007). Knowledge may be proven by presenting sufficient evidence from which a jury may reasonably infer that the defendant knew of the controlled substance's existence at the place officers found it, including acts, conducts or statements of the defendant, and the surrounding facts and circumstances. *Id*. When drugs are found on premises that are under the defendant's control, the fact finder is free to assume that the defendant

knew they were there, so long as there are not other circumstances that create a reasonable doubt as to guilt. *People v. Fleming*, 2013 IL App (1st) 120386, ¶ 75. A jury can infer from a defendant's attempt to flee from police that the defendant had knowledge of the presence of drugs. See *People v. Williams*, 267 Ill. App. 3d 870, 878 (1994); *People v. Valentin*, 135 Ill. App. 3d 22, 31 (1985).

¶ 19 Because direct evidence of intent to deliver is rare, such intent must usually be proven by circumstantial evidence. *Robinson*, 167 Ill. 2d at 408. Many factors are probative of intent to deliver, including the quantity of the controlled substance, the defendant's possession of large amounts of cash, and the defendant's possession of drug paraphernalia, including a scale and inositol powder. *Id.*; *People v. Adams*, 388 Ill. App. 3d 762, 766 (2009).

¶ 20 Here, the State presented evidence sufficient to establish beyond a reasonable doubt all of the essential elements of possession of a controlled substance with the intent to deliver. With respect to possession, the cocaine was found in a truck driven and exclusively controlled by defendant. Additionally, the shoe box in which the drugs were found was connected to defendant in several ways. First, the shoes that originally came in the shoe box were on defendant's feet. Second, a receipt for those shoes was in the passenger compartment of the truck. Finally, defendant's fingerprints were on the shoe box. All of these facts and circumstances support the conclusion that defendant possessed the cocaine.

¶ 21 There was also sufficient evidence to establish that defendant had knowledge of the presence of the cocaine since it was found inside a shoe box containing his fingerprints located in the vehicle he was driving. Additionally, defendant's attempt to flee from police suggests that defendant knew that the vehicle he was driving contained drugs. See *Williams*, 267 Ill. App. 3d at 878; *Valentin*, 135 Ill. App. 3d at 31.

¶ 22 Finally, there was sufficient evidence to establish that defendant intended to deliver the cocaine. Hoster, a narcotics detective, testified that the amount of cocaine found in the shoe box was much more than would be used for personal consumption. He also explained that inositol powder, acetone and scales are often used by drug dealers. Based on defendant's possession of a large amount of cash, a large quantity of cocaine, and drug paraphernalia, there was ample evidence to support defendant's conviction for possession of cocaine with intent to deliver. See *Robinson*, 167 Ill. 2d at 408; *Adams*, 388 Ill. App. 3d at 766.

¶ 23 The judgment of the circuit court of La Salle County is affirmed.

¶ 24 Affirmed.