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2015 IL App (3d) 130366-U

Order filed October 5, 2015
Modified upon denial of rehearing November 13, 2015

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 14th Judicial Circuit,
)	Henry County, Illinois.
Plaintiff-Appellee,)	
)	Appeal No. 3-13-0366
v.)	Circuit No. 10-CF-442
)	
JASON T. LEHMAN,)	Honorable
)	Ted J. Hamer
Defendant-Appellant.)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justice Carter concurred in the judgment.
Justice Schmidt dissented.

ORDER

¶ 1 *Held:* State failed to present sufficient evidence to sustain defendant's conviction for cannabis trafficking where it did not establish that defendant brought the cannabis into Illinois.

¶ 2 Defendant Jason Lehman was found guilty of cannabis trafficking following a stipulated bench trial and sentenced to a 12-year term of imprisonment. He appeals his conviction. We reverse and remand.

¶ 3 **FACTS**

¶ 4 Defendant Jason Lehman was charged by information with cannabis trafficking, unlawful possession of more than 5,000 grams of cannabis with intent to deliver, and unlawful possession

of more than 5,000 grams of cannabis. 720 ILCS 550/5.1, 5(g), 4(g) (West 2012). Lehman moved to suppress the evidence, and following a hearing, the trial court denied his motion. A stipulated bench trial took place. The following evidence, in pertinent part, was presented by stipulation.

¶ 5 Sergeant Clint Thulen was an Illinois State trooper for over 19 years and had been involved in more than 100 narcotics-related arrests. He had received specialized training related to the interdiction of narcotics being transported intra- and interstate. He qualified as an expert witness. Thulen would testify that on December 12, 2013, he stopped Lehman's vehicle on Interstate 80 in Henry County. Lehman had a valid Nevada license and the vehicle was registered in California to Lehman's father. In Thulen's experience, people engaged in transporting narcotics drive third-party vehicles and depart from California. Lehman was headed to Michigan and did not tell Thulen if he had stopped anywhere in Illinois prior to the traffic stop.

¶ 6 Thulen found Lehman's behavior suspicious. Lehman appeared nervous and carried only a small travel bag. He remained nervous even after Thulen informed him he would only issue a warning citation. In Thulen's training and experience, this behavior was consistent with individuals engaged in the illegal transportation of narcotics. Lehman's suspicious behavior continued and his answers to Thulen's questions about cannabis seemed disingenuous to Thulen. Lehman refused Thulen's request to search the vehicle, stating his father would not approve. Lehman said he did not have anything illegal in the vehicle. After Trooper Matt McFall arrived with his canine to assist in the stop, Lehman's nervousness became more pronounced, in Thulen's opinion, consistent with an individual engaged in the illegal transportation of narcotics.

¶ 7 McFall would testify that Rocco was a trained and certified narcotics dog. Thulen and McFall would both testify that Rocco alerted on the rear of the vehicle. Thulen and McFall

could not access the trunk and Lehman stated the trunk would not open. Thulen eventually accessed the trunk, where 104-1/2 pounds of cannabis and 12 pounds of hashish were found. Thulen would testify the amount was excessive for personal use and that its street value was \$522,000 for the cannabis and \$96,000 for the hashish. Thulen also discovered a piece of foam under the rear seat of the vehicle which did not appear original. The foam had been hollowed out and had a yellowed, weathered appearance. Thulen would testify that based on his training and experience, the hollowed-out condition of the foam was consistent with use to conceal contraband.

¶ 8 Thulen's in-squad video camera recorded the stop. The seized drugs were kept in evidence and analyzed at the crime lab. The forensic scientist who tested the drugs would testify that she tested the contents of each of 12 separate packages of plant material and determined that each package contained cannabis and that the cannabis weighed 5,303 grams without packaging.

¶ 9 The trial court found Lehman guilty on all counts. Lehman waived a presentence investigation and a sentencing hearing. The trial court merged the possession counts with the trafficking count and sentenced Lehman to a 12-year term of imprisonment. Lehman filed a postsentencing motion to reconsider and for a new trial. His motion was denied and Lehman appealed.

¶ 10 ANALYSIS

¶ 11 The sole issue on appeal is whether the evidence was sufficient to sustain Lehman's conviction for cannabis trafficking. Lehman argues that the evidence was insufficient to find him guilty of cannabis trafficking. He asserts that the State failed to prove that he brought the cannabis into Illinois, an essential element of the offense.

¶ 12 The State has the burden to prove every element of an offense beyond a reasonable doubt. *People v. Lucas*, 231 Ill. 2d 169, 178 (2008). The burden of proof never shifts to the defendant. *People v. Phillips*, 127 Ill. 2d 499, 527 (1989). A defendant is also not required to rebut the State's *prima facie* case in order to be acquitted but may rely on the presumption of innocence. *People v. Weinstein*, 35 Ill. 2d 467, 470 (1966). To sustain a conviction for cannabis trafficking, the State must prove the defendant knowingly brought or caused to be brought into Illinois 2,500 or more grams of cannabis for the purpose of manufacture or delivery, or with the intent to manufacture or deliver in this state or any other state or country. 720 ILCS 550/5.1(a)(1) (West 2010). An essential element of the offense is that the cannabis was brought or caused to be brought into Illinois. *People v. Izquierdo*, 262 Ill. App. 3d 558, 561 (1994). The element cannot be satisfied based on an inference regarding the point of origin of the cannabis. *People v. Caballero*, 237 Ill. App. 3d 797, 803-04 (1992) (finding former element of venue could not be established through inferences from facts establishing defendant's intent to deliver). In considering a challenging to the sufficiency of the evidence, our standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 13 The State presented evidence that Lehman was stopped in Henry County for speeding, and after a canine search and alert on his vehicle, 104 1/2 pounds of cannabis and 12 pounds of hashish were discovered in the trunk. The arresting officers were unable to open the trunk on the scene. The State surmises that fact forms a basis to satisfy the element that Lehman brought the cannabis into Illinois. According to the State, the officers' inability to open the trunk demonstrates that the car trunk had not been open since Lehman left for the road trip,

presumably from another state. The stipulated facts state that Lehman said “that the trunk would not open.” The facts do not include a reason the trunk did not open. The evidence does not establish that the trunk’s failure to open was permanent or that it had remained stuck during the entirety of Lehman’s travel in Illinois. There was no evidence presented from which the trial court could reasonably infer that Lehman brought the cannabis into the state.

¶ 14 In addition, the stipulated evidence does not include any facts regarding the location from where Lehman departed. Lehman had a Nevada driver’s license, was driving a car registered to his father in California, and was bringing the car to his father in Michigan. The facts also failed to establish that Lehman did not make any stops in Illinois, where he could have picked up the drugs. Although the stipulated facts include the statement: “Defendant did not indicate to Sgt. Thulen that he had stopped anywhere in the State of Illinois that day prior to the traffic stop,” it was not Lehman’s burden to prove that he had not stopped anywhere. The State did not offer any facts indicating Lehman made no stops in Illinois prior to being pulled over. The State failed to present evidence that Lehman brought the cannabis into Illinois.

¶ 15 We find that State did not present evidence sufficient to convict Lehman of cannabis trafficking. His sentence and conviction for the offense of cannabis trafficking are hereby vacated and the cause remanded for entry of a judgment of conviction on the charges of possession of cannabis with intent to deliver and for possession of cannabis and resentencing.

¶ 16 The judgment of the circuit court of Henry County is reversed and remanded.

¶ 17 Reversed and remanded.

¶ 18 JUSTICE SCHMIDT, dissenting.

¶ 19 The majority acknowledges that the *Collins* standard, when reviewing the sufficiency of the evidence, our task is to determine, after viewing the evidence in the light most favorable to

the prosecution, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Supra* ¶ 12. A fact can be proven by circumstantial evidence, notwithstanding the majority's assertion to the contrary (see *supra* ¶ 12). *People v. Caballero*, 237 Ill. App. 3d at 803. *Caballero* did not cast doubt on the ability to prove elements of a crime with circumstantial evidence; it simply found insufficient evidence (in fact, none) of the element at issue in that case. *Id.* at 804.

¶ 20 Here, the evidence established that defendant, carrying a Nevada driver's license and driving a car registered to his father in California, was taking the car to his father in Michigan. It is reasonable to assume that defendant was traveling generally east on Interstate 80 when traveling between either California or Nevada and Michigan. Vehicles traveling east on Interstate 80 would first enter into Rock Island County after crossing the Mississippi River before entering into Henry County. A rational trier of fact could easily determine that defendant, who had no apparent ties to the state of Illinois, had the drugs in the car when he crossed the Mississippi River. This reasonable inference is bolstered by the fact that the trunk of the vehicle would not open normally. The possibility that defendant could have acquired the drugs after crossing the Mississippi River and before being stopped by the police seems, from a commonsense standpoint, quite remote as opposed to the reasonable probability that defendant brought the drugs into the state. A possible "innocent" explanation does not cast reasonable doubt on the probability that defendant did, indeed, enter the state carrying the drugs.

¶ 21 As I would affirm defendant's conviction for cannabis trafficking, I respectfully dissent.