

2017 IL App (1st) 143809-U

No. 1-14-3809

Order filed May 10, 2017

Third Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 CR 22820
)	
ANTWAN MINNIEFIELD,)	Honorable
)	Evelyn B. Clay,
Defendant-Appellant.)	Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant’s conviction for possession of a controlled substance with intent to deliver affirmed over his contention that the State failed to prove him guilty beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Antwan Minniefield¹ was convicted of delivery of a controlled substance and possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(1) (West 2012)) and sentenced to two concurrent seven-year sentences and three

¹ We note that defendant’s name appears in the record both as “Antwon” and “Antwan.”

years of mandatory supervised release (MSR). On appeal, defendant contends that the evidence was insufficient to sustain his conviction for possession of a controlled substance with intent to deliver. For the following reasons, we affirm.

¶ 3 At trial, Chicago police officer Musad Haidari testified that on November 6, 2013 at 12:30 p.m., he was working as an undercover purchasing officer for the narcotics unit. Haidari approached 4018 West Madison on foot. An individual, later identified as defendant, approached him and asked what he was looking for. Haidari responded that he wanted “a five piece of bars,” which is common street terminology for five Xanax pills. Defendant told Haidari to hold on, and he walked to a nearby beige vehicle.

¶ 4 A woman, later identified as Tonika Wright, emerged from the vehicle. Defendant and Wright engaged in a conversation, and Wright gave defendant several yellow pills from a pill bottle. Haidari was approximately five to eight feet away from defendant and Wright and had an unobstructed view of them. After defendant returned, he gave Haidari five pills of suspected Xanax in exchange for a prerecorded \$20 bill. Haidari observed defendant take the prerecorded bill back to Wright.

¶ 5 Haidari thereafter returned to his covert vehicle and radioed his team a description of both defendant and Wright. He described defendant as wearing a black knit hat, gray jacket, and blue jeans. Several minutes later, enforcement officers detained defendant, and Haidari drove by and identified him as the narcotics seller. Shortly after identifying defendant, Haidari identified Wright as the woman in the beige vehicle that participated in the transaction. Haidari maintained custody of the purchased pills and inventoried them.

¶ 6 On cross-examination, Haidari acknowledged that defendant was not soliciting business, but testified that defendant engaged him in conversation. He further acknowledged that defendant handed him loose pills and did not tender anything from his own pocket.

¶ 7 Officer Joseph Watson testified that he was working as an undercover surveillance officer at 12:30 p.m. on November 6, 2013. He was approximately 30 to 50 feet away from Haidari and observed him speak with a man, later identified as defendant. Defendant walked to a beige vehicle, where a woman, later identified as Wright, exited and spoke with defendant. Wright gave defendant an object that Watson could not discern. Watson observed Haidari give defendant money but was unable to determine the denomination. After a brief conversation, Haidari walked away, and defendant again approached Wright.

¶ 8 Defendant thereafter walked to the street and entered a black SUV. Watson observed the SUV until it turned a corner and then focused on Wright in the beige vehicle. A few minutes later, Watson heard by radio that defendant was detained. Watson followed the beige car westbound on Madison before detaining Wright. Both defendant and Wright were brought into the police station.

¶ 9 On cross-examination, Watson acknowledged that he did not observe defendant involved in any suspected narcotics transactions prior to that with Haidari. He further testified that the prerecorded \$20 bill was recovered from Wright, but the officers did not recover drugs from her.

¶ 10 Officer Camarillo testified that he was an enforcement officer with the narcotics unit on November 6, 2013 at 12:30 p.m. He received a radio transmission that Haidari made a controlled narcotics buy and was instructed to detain a black man wearing a black hat, grey jacket, and blue jeans traveling in a black SUV. He observed the SUV approximately 10 seconds later and

watched defendant exit the vehicle. Camarillo detained defendant and alerted his team by radio. He eventually heard that Haidari positively identified defendant as the narcotics seller.

¶ 11 Camarillo's partner recovered 50 pills of suspected Xanax from defendant's right coat pocket. His partner retained the pills until they returned to the police station to inventory them. Camarillo then placed defendant in the back of a police vehicle and left to detain Wright. He stopped the beige vehicle that Wright was in, and a surveillance officer subsequently identified her. Camarillo recovered from Wright the prerecorded \$20 bill used in the controlled buy.

¶ 12 On cross-examination, Camarillo acknowledged that the inventory slip he filled out stated that the prerecorded bill was recovered from defendant, not Wright. He further acknowledged that defendant's arrest report stated that the prerecorded bill was found on defendant. Camarillo did not remember what packaging the 50 pills were contained in when his partner recovered them, but acknowledged that the inventory slip would have noted the packaging, had there been any. Camarillo did not believe that any pills were recovered from Wright and did not recall whether they recovered money on defendant. He acknowledged that defendant was in handcuffs when Haidari identified him.

¶ 13 On re-direct, Camarillo testified that, to the best of his knowledge, there was a discrepancy on the inventory slip and arrest report regarding where the prerecorded bill was found because defendant originally accepted the bill from Haidari.

¶ 14 The parties stipulated that if called, Jaime Hess, a forensic chemist, would testify that she received two inventory envelopes, one containing 50 peach-colored tablets and one containing 5 yellow tablets. The peach-colored tablets tested positive for 22.6 grams of hydrocodone and the

yellow tablets tested positive for 1.2 grams of alprazolam. Further, a proper chain of custody was maintained at all times.

¶ 15 Following arguments, the trial court found defendant guilty of delivering a controlled substance and possessing a controlled substance with intent to deliver. The court found the officers' testimony credible, and that Camarillo credibly explained the discrepancy on the inventory sheet and arrest report regarding the prerecorded bill. In finding defendant guilty of delivery, the court noted the parties' stipulation and that defendant walked to Wright's vehicle, indicating that they were in business together and involved in the narcotics transaction. Further, Wright was in possession of the prerecorded bill that Haidari gave to defendant. In finding defendant guilty of possession with intent to deliver, the court found that the circumstances of defendant approaching Haidari to inquire what he was looking for and facilitating the other transaction was sufficient to prove intent.

¶ 16 After denying defendant's motion for a new trial, the court "merged" the two convictions but subsequently sentenced defendant to concurrent terms of seven years' imprisonment in the Illinois Department of Corrections for each count and three years of MSR. This appeal followed.

¶ 17 On appeal, defendant does not challenge either his conviction for delivery of a controlled substance or the imposition of concurrent sentences. Rather, defendant contends that the State failed to prove intent to deliver beyond a reasonable doubt because there was no evidence that the 50 pills recovered from defendant were not for his personal use.

¶ 18 On a challenge to the sufficiency of the evidence, we inquire " '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.' " (Emphasis omitted.)

People v. Davison, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In so doing, we draw all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at 43) and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). It is within the province of the trier of fact “to determine the credibility of witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence.” *Id.* at 228. We will not overturn a criminal conviction “unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt.” *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 19 To prove possession of a controlled substance with intent to deliver, the State was required to prove beyond a reasonable doubt that defendant: (1) had knowledge of the presence of the narcotics; (2) had immediate possession or control of the narcotics; (3) and intended to deliver the narcotics. 720 ILCS 570/401(c)(1) (West 2012). Here, defendant disputes only the third element.

¶ 20 Direct evidence of intent to deliver is rare. *People v. Bush*, 214 Ill. 2d 318, 324 (2005); *People v. Pittman*, 2014 IL App (1st) 123499, ¶ 16. Thus, intent to deliver is frequently proven by circumstantial evidence. *Bush*, 214 Ill. 2d at 324; *People v. Branch*, 2014 IL App (1st) 120932, ¶ 10. Illinois courts have considered several factors to determine whether the circumstantial evidence supports an inference of intent to deliver, including: (1) whether the quantity of drugs possessed is too large to be reasonably viewed as being for personal consumption; (2) the degree of drug purity; (3) the possession of any weapons; (4) possession and amount of cash; (5) possession of police scanners, beepers or cellular telephones; (6)

possession of drug paraphernalia commonly associated with narcotics transactions; and (7) the manner in which the drug is packaged. *People v. Ellison*, 2013 IL App (1st) 101261, ¶ 14. This list of factors is neither exhaustive nor inflexible. *Id.*

¶ 21 Defendant contends that where, as here, there is no evidence that the quantity of narcotics was inconsistent with personal use, the reviewing court must find that the drugs were packaged for sale in addition to at least one additional factor tending to show intent to deliver to affirm the conviction. The State does not concede that the quantity of pills was consistent with personal use, and argues that the evidence, taken together, supports a finding of intent to deliver.

¶ 22 Where the amount seized “may be considered consistent with personal use, our courts have properly required additional evidence of intent to deliver to support a conviction.” *People v. Robinson*, 167 Ill. 2d 397, 411 (1995). While we have previously held that when a defendant possesses narcotics within the range of personal use, “the minimum evidence a reviewing court needs to affirm a conviction is that the drugs were packaged for sale, and at least one additional factor tending to show intent to deliver,” (*People v. Blakney*, 375 Ill. App. 3d 554, 559 (2007) (citing *People v. Beverly*, 278 Ill. App. 3d 794, 802 (1996))) we have also acknowledged that there is “ ‘no hard and fast rule to be applied in every case’ ” (*People v. Sherrod*, 394 Ill. App. 3d 863, 866 (2009) (quoting *Robinson*, 167 Ill. 2d at 414)).

¶ 23 Here, although there was no evidence presented regarding how, or even if, the pills were packaged, we find that the surrounding circumstances were sufficient to prove intent to deliver. Although the transaction with Haidari did not involve the 50 hydrocodone pills that defendant possessed in his pocket, defendant’s actions associated with that transaction are probative of his intent to deliver the hydrocodone pills. Defendant engaged Haidari in conversation and asked

what he was looking for, indicating that he was standing on the street with the intent to deliver narcotics. After Haidari requested Xanax, defendant engaged in a narcotics transaction with Wright's assistance. Based on this circumstantial evidence, we find that a reasonable trier of fact could infer that defendant possessed the hydrocodone pills with the intent to deliver them. See *Siguenza-Brito*, 235 Ill. 2d at 224.

¶ 24 Furthermore, we reject defendant's contention that a medical pocket reference guide outside of the record establishes the amount of pills recovered were consistent with personal use. There was no evidence presented at trial that established whether the amount of pills was consistent with personal use. As such, we decline to look beyond the record and instead focus only on the evidence presented at trial. See *People v. Cleveland*, 2012 IL App (1st) 101631, ¶ 53 ("This court is not the proper forum for finding facts upon which a legal question will turn.") We are likewise unpersuaded by defendant's contention that the police may have recovered the pills in a bottle with defendant's name on it. This amounts to mere speculation and is insufficient to establish reasonable doubt of defendant's guilt. See *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007) (a reviewing court is not required to seek out all possible explanations consistent with innocence in reviewing a challenge to the sufficiency of the evidence).

¶ 25 Based on the foregoing, we affirm the order of the circuit court of Cook County.

¶ 26 Affirmed.