2017 IL App (4th) 150100-U

NO. 4-15-0100

FILED
May 15, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from |
| Plaintiff-Appellee, | ) | Circuit Court of |
| v. | ) | Vermilion County |
| JEFFREY BARFELL, | ) | No. 14CF178 |
| Defendant-Appellant. | ) | |
| | ) | Honorable |
| | ) | Nancy S. Fahey, |
| | ) | Judge Presiding. |

JUSTICE APPLETON delivered the judgment of the court.
Justices Holder White and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held*: (1) The State presented sufficient evidence to prove defendant guilty of methamphetamine possession beyond a reasonable doubt.

(2) The trial court did not err in denying defendant's motion *in limine* seeking to prohibit the State from eliciting testimony regarding the fact defendant was driving while his driver's license was suspended.

(3) Defendant is entitled to a monetary credit of $5 *per diem* against his eligible fines for each day spent in pretrial custody.

¶ 2 Defendant, Jeffrey Barfell, appeals from the jury's verdict finding him guilty of possession of methamphetamine. Defendant contends the State failed to prove he knowingly possessed the drug when only a trace amount was found within coffee filters found in defendant's pants pocket. He also contends the trial court erred by denying his motion *in limine* and allowing the State to introduce irrelevant other-crimes evidence which indicated he was driving on a suspended license. Finally, he claimed entitlement to a $5 *per diem* credit against his

eligible fines. We affirm defendant's conviction but remand with directions to award appropriate credit against his eligible fines.

¶ 3 I. BACKGROUND

¶ 4 In April 2014, the State charged defendant with methamphetamine possession (720 ILCS 646/60(b)(1) (West 2012)), a Class 3 felony. In the information, the State alleged defendant knowingly possessed less than five grams of methamphetamine or a substance containing methamphetamine.

¶ 5 On October 30, 2014, defendant's jury trial began. Westville police sergeant Justin Varvel testified that, on February 28, 2014, at approximately 5 p.m., he was on regular patrol in his marked squad car. He saw a gold minivan stopped at an intersection with a flat, or nearly flat, left front tire. He assumed the vehicle would stop in the roadway, so he turned around to assist. However, the van kept going. Varvel followed the van until it pulled into a driveway behind a school. Varvel made contact with defendant, who was sitting in the driver's seat. Defendant exited the vehicle, thanked Varvel, and inspected the tire. Varvel saw a female, Christy Haskins, approach the vehicle from a residence and get inside. Varvel left.

¶ 6 After Varvel left, he ran a driver's license check of defendant and Haskins. Varvel discovered defendant's driver's license was suspended. By this time, he had lost sight of the van. Varvel said he was going to "[l]eave it at that" because he did not know who was driving and he "had no other evidence, other than seeing [defendant] sitting in the driver's seat in the driveway."

¶ 7 Approximately 10 to 15 minutes later, Varvel said he saw the same van pass him, with defendant driving. He said he "effected a traffic stop" by activating his overhead emergency

lights. Upon approaching the vehicle, he informed defendant his driver's license was suspended. Defendant exited the vehicle; Varvel placed him under arrest and searched him incident to the arrest. In defendant's pockets, Varvel found two "metal pipe-type device[s]," one with residue on it, and a small metal container with a cannabis leaf and the saying "keep off my grass" printed on the lid. Varvel said the pipe with residue had an odor of burned cannabis. Inside the container was a small plastic bag with "what appeared to be some type of rolled paper or filter-type material inside of the plastic bag. There was also a residue coming off of and out of the bag." Varvel said it appeared to be a coffee filter with a white or transparent, crystalline-type residue. Based on Varvel's experience, he opined the residue was methamphetamine.

¶ 8 Varvel said he took all of the paraphernalia to the police station. He "field tested the residue that was coming from the bag, a small amount of it. It did field test positive in our NIK field test kits. [He] then weighed it on the scale that [they] have in [their] evidence room." He placed the tin and the two pipes in a brown paper bag, labeled it, sealed it with red tape, and placed in an evidence locker. Varvel explained that the part of the drug used during the field test, generally less than 0.10 grams, is not available for testing at the crime lab. He also testified that, based on his training and experience, coffee filters are generally used during the production of methamphetamine, and the pipes found in defendant's pocket are the kind generally used to smoke methamphetamine.

¶ 9 Kristin Stiefvater, a drug chemist for the Illinois State Police crime lab, testified as the State's expert witness. She attempted to remove the substance on two coffee filters sent to her by the Westville police department. She was unable to remove any substance to get a weight, so she "just called it a residue substance." She performed two different tests on the residue after she rinsed the coffee filters with methanol and collected the residue in a vial. First, she

performed a gas chromatography test, indicating the presence of methamphetamine within the coffee filters. Second, she performed a mass spectrometry test, where she injected the residue into an instrument to obtain "a graph readout" showing the molecular structure of the substance. She again confirmed methamphetamine was present.

¶ 10 The State rested and defendant presented no evidence. After deliberations, the jury found defendant guilty of possession of methamphetamine. After the trial court denied defendant's motion for a new trial, the court sentenced him to six years in prison and ordered him to pay various fines and fees.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues (1) the State failed to prove him guilty of methamphetamine possession; (2) the trial court erred in denying his motion *in limine*; and (3) he is entitled to additional *per diem* credit against his fines.

¶ 14 A. Sufficiency of the Evidence

¶ 15 Defendant contends the State failed to prove beyond a reasonable doubt he knowingly possessed methamphetamine. He claims the amount of methamphetamine found on the coffee filters that were in a plastic bag in a metal container in his pocket was so miniscule he could not have been aware the filters contained the drug.

¶ 16 The elements required to establish defendant's guilt of the offense of methamphetamine possession are: (1) the identification of a substance as methamphetamine or a substance containing methamphetamine; and (2) that defendant knowingly possessed that

substance. 720 ILCS 646/60 (West 2012). The State must prove each element of the crime charged beyond a reasonable doubt. *People v. Tilley*, 2011 IL App (4th) 100105, ¶ 13.

¶ 17 When a defendant challenges the sufficiency of the evidence, it is our task to determine 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); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). "The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence." *People v. Ngo*, 388 Ill. App. 3d 1048, 1052 (2008). "A court of review will not overturn the verdict of the fact finder 'unless the evidence is so unreasonable, improbable[,] or unsatisfactory that it raises a reasonable doubt of defendant's guilt.' " *People v. Singleton*, 367 Ill. App. 3d 182, 187-88 (2006) (quoting *People v. Evans*, 209 Ill. 2d 194, 209 (2004)).

¶ 18 Under section 60(a) of the Methamphetamine Control and Community Protection Act (720 ILCS 646/60(a) (West 2012)), the prosecution is not required to establish a precise amount, but only that some quantity of methamphetamine is present. Section 60(b) addresses the felony classification based upon the quantity of methamphetamine found. See 720 ILCS 646/60(b) (West 2012). Defendant's conviction and sentence were based upon subsection (b)(1), which provides: "A person who possesses less than 5 grams of methamphetamine or a substance containing methamphetamine is guilty of a Class 3 felony." 720 ILCS 646/60(b)(1) (West 2012). Pursuant to the statute, the State is *not* required to prove a minimum quantity to sustain a conviction.

¶ 19 Our supreme court has found "by-product that contains traces of methamphetamine qualifies as a 'substance containing methamphetamine .' " *People v. McCarty*, 223 Ill. 2d 109, 125 (2006); see also *People v. Stoffel*, 239 Ill. 2d 314, 331 (2010) (applying *McCarty*); *People v. Haycraft*, 349 Ill. App. 3d 416, 428 (2004) ("Methamphetamine is its ingredients; *i.e.*, anhydrous ammonia, pseudoephedrine, and lithium, combined in a mixture, whether cooked to its final, marketable form or not. The defendant combined the methamphetamine ingredients into the container; thus, the mixture in the container constituted a 'substance containing methamphetamine.' ").

¶ 20 "In addition to having the intent and capability to maintain the control and possession of the contraband, the accused must know of the presence of the contraband [citation], but the knowledge may be proved by inferences from circumstantial evidence. [Citation.] For constructive possession to be proved, the accused must, at least, be shown to have exclusive control of the area of the premises where the items illegally possessed were situated. [Citation.]" *People v. McNeely*, 99 Ill. App. 3d 1021, 1023-24 (1981). That is,

> "[I]t is not necessary for the State to prove actual possession if constructive possession can be inferred. [Citation.] Evidence that a defendant knew drugs were present and exercised control over them establishes constructive possession. [Citation.] Knowledge may be shown by the evidence of conduct from which it may be inferred that the defendant knew the contraband existed in the place where it was found. [Citation.] This evidence, establishing constructive possession, is often entirely circumstantial. [Citation.]" *People v. Besz*, 345 Ill. App. 3d 50, 59 (2003).

¶ 21 As the above demonstrates, in Illinois, no minimum quantity is required to support a conviction for methamphetamine possession. The question then becomes whether defendant knew the coffee filters in his pants pocket contained methamphetamine. A reasonable jury could have drawn the inference that defendant had the requisite knowledge given the testimony that coffee filters are commonly used in the production of methamphetamine and that the search of defendant also revealed pipes commonly used to smoke methamphetamine. There was no evidence to suggest the pants defendant was wearing were not his or that someone placed the items in his pants without his knowledge. Thus, we conclude, after considering the evidence presented, a reasonable jury could have determined the State sufficiently proved the essential elements of the crime and found defendant guilty of methamphetamine possession beyond a reasonable doubt.

¶ 22 B. Motion *in Limine*

¶ 23 Defendant next contends the trial court erred in denying his motion *in limine* wherein he sought to exclude evidence of the fact he was driving while his license was suspended. He claims this evidence was irrelevant and improper "other-crimes evidence."

¶ 24 The State insists the testimony related to Varvel's discovery that defendant was driving while his license was suspended was necessary to explain the events as they occurred on the evening in question. According to the State, Varvel's testimony was necessary to explain to the jury why defendant was confronted by Varvel and was the subject of a search. Although the trial court did not explain its decision, the court denied defendant's motion *in limine*, presumably agreeing with the State's rationale.

¶ 25 "In general, evidence of other crimes is not admissible if it is relevant merely to establish defendant's propensity to commit crimes." *People v. Nieves*, 193 Ill. 2d 513, 529 (2000). Evidence that suggest or implies the defendant has engaged in prior criminal activity should not be admitted unless it is relevant. *Nieves*, 193 Ill. 2d at 529.

¶ 26 The State maintains that Varvel's testimony that defendant was driving while his driver's license was suspended was not purposely elicited by the State to show other-crimes evidence, but rather, it was relevant to explain the circumstances of defendant's arrest and why Varvel searched defendant's person. The trial court presumably agreed with the State when it denied defendant's motion, which had asked the court to prohibit testimony regarding this fact. We agree with the State as well. We find Varvel's testimony was not offered to show defendant's propensity to commit crimes, but rather to explain the sequence of events leading to defendant's arrest and the search incident thereto. See *People v. Carter*, 362 Ill. App. 3d 1180, 1189 (2005) (other-crimes evidence is admissible where it relates to events leading to the charged offense; it is part of a continuing narrative concerning the circumstances of the entire transaction). Accordingly, we find the trial court did not commit reversible error in denying defendant's motion *in limine* or allowing Varvel's testimony into evidence.

¶ 27 C. *Per Diem* Credit

¶ 28 Finally, defendant contends he is entitled to a $5 *per diem* credit against his eligible fines. He requests this credit be applied to the following imposed fines: (1) the $50 court finance fee, (2) the $2 anti-crime fund fine, (3) the $4 youth diversion fine, (4) the $3.80 drug court program fine, (5) the $0.20 clerk operations deduction, and (6) the $15 state police operations fine.

¶ 29 The State concedes error but contends defendant failed to specify the amount to which he claims entitlement. The State contends it is "inclined to agree that defendant should be given credit for his pre-sentence credit and that credit should be applied to his fines, and once defendant meets his burden of demonstrating on which days his argument relies."

¶ 30 We accept the State's concession and note defendant claimed entitlement to $700 in presentence credit at $5 per day for the 140 days he spent in pretrial custody. We remand the case to the trial court for the imposition of the appropriate credit.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the trial court's judgment and remand with directions to apply defendant's presentence custody credit against the eligible fines. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 33 Affirmed; cause remanded with directions.