2018 IL App (1st) 160716-U

No. 1-16-0716

Order filed April 17, 2018

Second Division

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. 15 CR 3417
	)	
JOSHUA ROCQUEMORE,	)	Honorable
	)	Raymond Myles,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Neville and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction affirmed where the State established defendant's possession of cannabis with intent to deliver beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Joshua Rocquemore was convicted of possession of cannabis with intent to deliver (720 ILCS 550/5(d) (West 2014)) and was sentenced to 24 months' intensive probation. Defendant appeals, arguing the State failed to prove beyond a

reasonable doubt that he possessed the cannabis where there was no evidence he had knowledge of or control over the cannabis. We affirm.

¶ 3 Defendant was charged with one count of possession of cannabis with intent to deliver. He waived his right to a jury trial and the case proceeded to a bench trial.

¶ 4 Chicago police officer Nick Zarbock testified that he was on patrol with his partner, Officer Chatys, around 7:30 p.m. on February 2, 2015, when they curbed a vehicle for an ordinance violation. The vehicle had two occupants. Zarbock identified defendant in court as the front seat passenger. The officers exited their unmarked car and approached the vehicle, Zarbock to the passenger side and Chatys to the driver side. As he approached the vehicle, Zarbock observed defendant making "furtive movements" by putting his hands down to the floor one or two times. While speaking with the driver, Chatys related to Zarbock that he smelled the odor of cannabis coming from inside the vehicle. Chatys asked both the driver and defendant to exit the vehicle. As defendant stepped out of the vehicle, Zarbock detected the odor of cannabis from inside the vehicle.

¶ 5 The officers walked defendant and the driver to the back of the vehicle. Zarbock then reapproached the passenger side and went to where he had seen defendant making movements with his arms. As Zarbock got closer to that area, the cannabis odor grew stronger. Zarbock saw a plastic bag protruding from underneath the seat. Inside the bag were 6 sandwich bags which each contained 12 smaller Ziploc bags, for a total of 72 bags of suspect cannabis. Zarbock testified that he had recovered cannabis packaged for sale hundreds and maybe thousands of times, and it was usually packaged in Ziploc and sandwich bags. He stated that a person possessing cannabis for personal use would usually have two or three bags. Zarbock took

possession of the cannabis and inventoried it at the police station. Defendant was searched at the police station, where officers recovered over $600 from him.

¶ 6 On cross-examination, Zarbock stated that he was 10 to 15 feet away from the suspect vehicle when he first observed defendant's furtive movements and that he could not see defendant's hands. Defendant was initially reclined in the passenger seat but "eventually" sat up as the officers approached the car. Zarbock did not know if the furtive movements were defendant adjusting his seat, but stated that they were not contemporaneous with defendant sitting up. Zarbock did not see the cannabis as he approached the car, during the officers' conversations with the vehicle occupants, or in defendant's hands.

¶ 7 Officer Chatys identified defendant in court as the front seat passenger of the vehicle he and Zarbock curbed for a traffic violation on February 2, 2015. Defendant was in a reclined position with his seat almost all the way back. As Chatys exited his unmarked vehicle, he saw defendant sit up and lean forward as Chatys got closer. He noticed defendant's shoulders making furtive movements, moving up and down, and defendant's arms were between his legs. Chatys believed defendant was concealing something under the seat.

¶ 8 Chatys approached the driver's side of the vehicle and noticed a "very strong odor of unburnt cannabis" emanating from the rolled-down window. He had smelled burnt and unburnt cannabis thousands of times in his career and could easily differentiate between the two. Chatys instructed the driver and passenger to exit the vehicle. The officers walked the two men to the back of the suspect vehicle and Zarbock then returned to its passenger side. Chatys saw him lean down and come back up with a plastic shopping bag. The bag contained 72 smaller bags of suspect cannabis.

¶ 9 On cross-examination, Chatys stated that the officers had followed the vehicle for less than two minutes. Defendant sat up the minute Chatys opened his door. As Chatys approached on foot, he saw defendant reaching with his hands between his legs, but could not see anything in his hands. No cannabis was recovered from defendant's person, only from under his seat.

¶ 10 The parties stipulated that, if called, Illinois State Police forensic chemist Doris Binkowski would testify that she tested 57 of the 72 bags of leafy green substance and, in her expert opinion, the contents tested positive for the presence of cannabis. The weight of the 57 bags was 30.5 grams and the total weight of the 72 bags was 38.5 grams.

¶ 11 The court found defendant guilty of possession of cannabis with intent to deliver. It found the State proved "the defendant had knowledge that he had possession of the vehicle and possession of the cannabis was found under his seat." The court found defendant was making furtive movements as the officers approached "as if to conceal what he knew to be under the seat *** the 72 bags of cannabis." It found there was circumstantial evidence of defendant's constructive possession of the drugs, and the "large amount" of money found on defendant was indicative of the intent to sell drugs. The court denied defendant's motion to reconsider and sentenced him to 24 months' intensive probation.

¶ 12 On appeal, defendant argues the State failed to prove that he possessed the cannabis found underneath the passenger seat because there was no evidence he had knowledge of or control over the cannabis.

¶ 13 Where a criminal conviction is challenged based on sufficiency of the evidence, a reviewing court, considering all the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the

essential elements of the crime. *People v. Brown*, 2013 IL 114196, ¶ 48. This standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *People v. Howery*, 178 Ill. 2d 1, 38 (1997). Accordingly, a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *People v. Cooper*, 194 Ill. 2d 419, 430-31 (2000).

¶ 14 The trier of fact is not required to disregard inferences that flow normally from the evidence or to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). Further, a criminal conviction may be based solely on circumstantial evidence, and the same standard of review will apply. *Brown* 2013 IL 114196, ¶ 49. In reviewing a trial court's decision, we must give proper deference to the trier of fact who observed the witnesses testify, because it was in the "superior position to assess the credibility of witnesses, resolve inconsistencies, determine the weight to assign the testimony and draw reasonable inferences therefrom." *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24.

¶ 15 To sustain defendant's conviction, the State was required to prove that defendant unlawfully and knowingly possessed with the intent to deliver more than 30 grams, but less than 500 grams of a substance containing cannabis. 720 ILCS 550/5(d) (West 2014). The parties stipulated that the recovered substance comprised at least 30.5 grams of cannabis, and defendant does not challenge the intent to deliver element of the offense. His sole argument is that the State did not prove beyond a reasonable doubt that he knowingly possessed the cannabis.

¶ 16 Possession of cannabis must be knowing to constitute a criminal offense. 720 ILCS 550/5 (West 2014). Possession may be actual or constructive. *People v. Minniweather*, 301 Ill. App. 3d 574, 578 (1998). The State does not argue that defendant had actual possession of the cannabis recovered here. To sustain a conviction based on constructive possession, the State must prove the drugs were in the defendant's immediate and exclusive control and that he knew the drugs were present. *People v. Beverly*, 278 Ill. App. 3d 794, 798 (1996).

¶ 17 "Because possession is often difficult to prove directly, proving possession frequently rests upon circumstantial evidence." *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Similarly, knowledge generally may be established by circumstantial evidence, as well as by inferences drawn from the surrounding circumstances, which include the defendant's actions and other conduct. *People v. Bui*, 381 Ill. App. 3d 397, 419 (2008); *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002). When a case is based on circumstantial evidence, each link in the chain of circumstances does not have to be proven if all evidence considered in total satisfied the trier of fact of defendant's guilt. *Love*, 404 Ill. App. 3d at 788.

¶ 18 Although mere proximity to contraband is insufficient to prove possession, "where the other circumstantial evidence is sufficiently probative, proof of proximity combined with inferred knowledge of the presence of contraband will support a finding of guilt on charges of possession." *People v. Brown*, 277 Ill. App. 3d 989, 998 (1996). The recovery of drugs found in a vehicle under a defendant's control, and in a place where the defendant could have been or should have been aware of them, "gives rise to an inference of knowledge and possession which may be sufficient to sustain a conviction for unlawful possession." *People v. Wells*, 241 Ill. App. 3d 141, 146 (1993).

¶ 19 Further, "proof beyond a reasonable doubt does not require the exclusion of every possible doubt, and a conviction may be sustained upon wholly circumstantial evidence if it leads to a reasonable certainty that the defendant committed the crime." *People v. Shevock*, 335 Ill. App. 3d 1031, 1037 (2003). Knowledge and possession are factual issues, and we will not disturb the trier of fact's findings on these questions unless the evidence is so unbelievable, improbable or contrary to the verdict that it creates a reasonable doubt of defendant's guilt. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007).

¶ 20 We find that a rational trier of fact could have found that defendant knowingly possessed the cannabis recovered from the vehicle. The evidence shows that, as the officers approached the vehicle, they saw defendant making furtive movements, moving his arms and hands between his legs towards the floor, towards the same area of the vehicle from which the officers recovered the 72 bags of cannabis. As the trial court found, these furtive movements can be seen as an attempt to conceal the drugs, which establishes defendant's knowledge of and immediate and exclusive control over the drugs as he tried to hide them under his seat. Given the strong smell of raw cannabis coming from the vehicle, a smell that became stronger as Zarbock approached where defendant had been making the furtive movements, it is improbable that defendant did not know about the bag of redolent contraband stuffed underneath his seat.

¶ 21 The fact that the bag of cannabis was obscured from Zarbock's view underneath defendant's seat lends additional support to the conclusion that defendant possessed the cannabis. *People v. Love*, 404 Ill. App. 3d 784, 789 (2010) (finding a reasonable inference arose that the defendant knowingly possessed contraband when it was hidden from an officer's view) Additionally, the fact that the cannabis underneath defendant's seat was packaged for sale and

$600 was recovered from him suggests that he actively participated in the intended distribution of the cannabis, leading to the logical inference that he had possession of the cannabis. In sum, based on the evidence, the trial court could reasonably find that defendant had knowing, constructive possession of the cannabis.

¶ 22 Defendant argues that furtive movements could be indicative of innocent conduct such as adjusting his seat, and that his movements were, at most, "equivocal." But it was for the trier of fact, here the trial court, to determine whether his movements were innocent conduct or indicative of his intent to conceal the cannabis and thus circumstantial evidence of his constructive possession thereof. The court's determination that defendant was attempting to conceal the cannabis, rather than innocently moving his chair as defendant argued at trial, was entirely reasonable. Accordingly, taking the evidence as a whole and in the light most favorable to the State, we find a rational trier of fact could have found defendant guilty beyond a reasonable doubt of knowing possession of cannabis with the intent to deliver.

¶ 23 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 24 Affirmed.