2018 IL App (1st) 161840-U

No. 1-16-1840

Order filed June 21, 2018

Fourth 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. 14 CR 16418
	)	
MARCEL GANT,	)	Honorable
	)	William G. Lacy,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Burke and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for unlawful possession of cannabis is affirmed, as State proved that he possessed cannabis beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Marcel Gant was convicted of unlawful possession of cannabis (720 ILCS 550/4(c) (West 2014)) and sentenced to two years' probation. On appeal, defendant contends that his conviction should be reversed because the State did not prove beyond a reasonable doubt that he possessed the cannabis. We disagree and affirm.

¶ 3 Defendant was arrested on the afternoon of July 25, 2014 and charged by information with a single count of unlawful possession of 10 to 30 grams of cannabis. Defendant waived his right to a jury, and the case proceeded to a bench trial.

¶ 4 Officer Balesteri testified that at approximately 1:00 p.m., on the date in question, he and his partner, Sergeant Poppish, were on patrol near the area of 357 West 42nd. Balesteri drove into an alley, where he noticed defendant running from the front passenger side of a parked vehicle. Balesteri parked behind the vehicle and exited for a field interview with the driver of the car. Balesteri stated that, as he approached the passenger side of the vehicle, there was a strong odor of cannabis—a smell that he was familiar with in his experience as an officer.

¶ 5 Defendant's mother, who was in the driver's seat, appeared "very nervous and jittery." Balesteri did not notice any "furtive movements or movement" by defendant's mother. Balesteri saw "the knot" of a plastic bag protruding from where the top and bottom of the front passenger seat met. He testified that the protrusion contained what he believed to be cannabis. Balesteri recovered the bag, which contained eight additional bags inside it. Four of those eight bags contained suspect cannabis.

¶ 6 About two minutes after he had fled the vehicle, defendant returned and inquired as to what was happening. After Balesteri informed him of the suspect cannabis, defendant responded that the vehicle belonged to him, and that his mother was “moving” it. Defendant also told Balasteri that "the weed in there is mine. I smoke weed. There is only a dub in there." According to Balasteri, based on his police experience, a dub is "[a] portion of remaining cannabis that was smoked." Following defendant's statements, he was arrested. Balasteri kept the recovered bags in his custody until they were inventoried.

¶ 7 Poppish testified to substantially the same sequence of events as Balasteri. On the date and time in question, Poppish saw defendant leave the front passenger seat of a vehicle parked in an alley and run northbound. Within less than a minute, Poppish ordered Balasteri to “back up,” pull into the alley, and approach the parked vehicle. Poppish went to the driver's side and spoke with a woman, whom he described as “nervous.” He did not see the woman make any movements to the passenger side of the vehicle. After Balasteri recovered a "sandwich bag" from the passenger area of the vehicle, defendant returned to the scene and said the car belonged to him.

¶ 8 The parties stipulated that defendant was previously convicted of manufacture and delivery of a controlled substance. The parties also stipulated that, if called, Sara Reeder, a drug chemist, would testify that she received the eight inventoried items in this case and that, two of the items tested positive for 15.7 grams of cannabis. The remaining items weighed 11.5 grams.

¶ 9 Based on this evidence, the trial court found defendant guilty of possession of cannabis. In announcing its decision, the court noted that the officers testified “in a very credible fashion” and that they were not impeached in any significant manner. The court recounted the evidence presented, including defendant’s admission that the car and the “marijuana” belonged to him. The case then proceeded to posttrial motions and sentencing.

¶ 10 The court denied defendant's motion for a new trial and sentenced him to 24 months’ felony probation.

¶ 11 On appeal, defendant contends that the State failed to prove that he possessed the cannabis beyond a reasonable doubt.

¶ 12 When "a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all of 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. The trier of fact is "entitled to draw all reasonable inferences from both circumstantial and direct evidence[…and]even where the evidence presented is capable of producing conflicting inferences, the matter is best left to the trier of fact for proper resolution." *People v. Herring*, 324 Ill. App. 3d 458, 465 (2001). This court will not substitute its judgment for that of the trial court on questions involving such evidentiary inferences. *Id.* However, we will reverse a conviction if "the evidence is so unreasonable, improbable, or unsatisfactory that it justified a reasonable doubt of defendant's guilt." *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 13 To sustain a conviction for possession of cannabis, " 'the State must prove that the defendant had knowledge of the substance and that it was under his immediate and exclusive control.' " *People v.* Moreno, 334 Ill. App. 3d 329, 343 (2002) (quoting *People v. Wells*, 241 Ill. App. 3d 141, 145-46 (1993)). Possession can be either actual or constructive. *People v. Tates*, 2016 IL App (1st) 140619, ¶19. Actual possession exists when testimony shows the "defendant exercised some form of dominion over the unlawful substance, such as trying to conceal it or throwing it away." *People v. Scott*, 152 Ill. App. 3d 868, 871 (1987). Constructive possession is when "there is no actual, personal, present dominion over contraband, but defendant had knowledge of the presence of the contraband, and had control over the area where the contraband was found." *People v. Hunter*, 2013 IL 114100, ¶ 19.

¶ 14 After reviewing the evidence in the light most favorable to the State, we find that a rational juror could conclude that defendant possessed the cannabis in the car beyond a reasonable doubt. Defendant's constructive possession of the cannabis found in the car was established by showing that he exercised control over the premises where the cannabis was found—*i.e.*, defendant admitted that the car belonged to him. See *People v. Brown*, 277 Ill. App 3d 989, 997-98 (1996) (defendant's control over premises where controlled substances are located gives rise to inference of knowledge and control of substances); see also *People* v. *Tates*, 2016 IL App (1st) 140619, ¶¶ 20, 29.

¶ 15 The record shows that Balasteri recovered the cannabis that was concealed in the front passenger seat of the vehicle, and Poppish saw defendant exit the car from that seat. In addition, defendant admitted that the car and the "weed" belonged to him. Moreover, Balesteri did not see any furtive movements by defendant's mother, and Poppish did not see her move towards the passenger area of the car. The reasonable inferences from this evidence support the conclusion that defendant possessed the cannabis. Accordingly, we cannot say that no rational trier of fact could have found defendant guilty of unlawful possession of cannabis.

¶ 16 Defendant argues that his conviction should be reversed because, in finding him guilty of unlawful possession of cannabis, the trial court "misconstrued and misapprehended" his comment about "weed" as an "outcome-determinative" admission. He claims that because he admitted to possessing "weed" and not cannabis, and no expert testimony or other evidence established that "weed" means "cannabis," the evidence did not prove that he possessed the cannabis beyond a reasonable doubt. In support of his nomenclature argument, defendant relies on the Cannabis Control Act (Act) (720 ILCS 550/3 (West 2014)) and Black's Law Dictionary,

neither of which specifically define "cannabis" as "weed." He also points out that there is no "Illinois decision, holding that the word 'weed' is to be legally construed as the legal equivalent" of "cannabis" for purposes of the Act.

¶ 17 As mentioned, however, the trier of fact is entitled to draw all reasonable inferences from the evidence, and this court will not substitute its judgment for that of the trier of fact on these matters. *Herring*, 324 Ill. App. 3d at 465. Here, the officer testified that, based on his experience, he understood the word "weed" to refer to cannabis, and he understood the word "dub" to refer to a remnant of cannabis. Add to that the fact that the officer detected a strong smell of cannabis upon approaching the vehicle. And defendant not only admitted that the "weed" belonged to him but admitted to "*smok[ing]* weed," which would cement further still the idea that defendant was referring to cannabis and not some other definition of "weed" as he suggests on appeal.

¶ 18 It was thus entirely reasonable for the trier of fact to infer that defendant was referring to cannabis when he said "weed." That, along with his admission that the vehicle belonged to him, plus the fact that his mother's actions suggested no knowledge whatsoever of the suspect cannabis, was more than enough to sustain this conviction.

¶ 19 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.