2019 IL App (1st) 170257-U

FIFTH DIVISION
Order filed: March 15, 2019

No. 1-17-0257

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 9911
	)	
	)	
MICHAEL HOY,	)	Honorable
	)	Joan Margaret O'Brien,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to prove beyond a reasonable doubt that the defendant possessed cannabis where he was the sole occupant of a vehicle in which a large quantity of cannabis was within his reach.

¶ 2 Following a jury trial, the defendant, Michael Hoy, was convicted of possession of cannabis (more than 5,000 grams) with intent to deliver. (720 ILCS 550/5(g) (West 2012)). He was sentenced to 7 years' imprisonment with a 3-year term of mandatory supervised release

(MSR). On appeal, the defendant contends that the State failed to prove, beyond a reasonable doubt, that he "knowingly and voluntarily" possessed cannabis. For the reasons that follow, we affirm.

¶ 3 The defendant was charged by indictment with one count of possession of cannabis with intent to deliver, alleging that he "unlawfully and knowingly possessed with intent to deliver" more than 5,000 grams of cannabis "on or about April 24, 2013." The following evidence was adduced at trial.

¶ 4 Officer Vincent Martinez testified that he and Officer Mike Harris were patrolling the area of the "Bishop Ford Expressway, 94 northbound around 111th Street" in Chicago, Illinois, on the morning of April 24, 2013, when, at approximately 10:50 a.m., he initiated a traffic stop of a white minivan which had a cracked windshield. Officer Martinez stated that he approached the minivan on foot and noticed a blanket completely covering the entire rear compartment of the vehicle. He asked the defendant, who was the sole occupant and driver, for his driver's license. The defendant was unable to present a driver's license, and Officer Martinez ascertained that he had "surrendered" driver's licenses from both Illinois and Georgia. Officer Martinez then arrested the defendant for driving without a valid license. According to Officer Martinez, after searching the defendant's person and finding no contraband, he then searched the minivan incident to the arrest and found numerous large, green bundles in the back compartment. Officer Martinez called for a tow truck, and he and Officer Harris followed the tow truck as it towed the minivan to an Illinois Department of Transportation (IDOT) garage. Officers Martinez, Harris, John Rytina, and Joseph Martorano searched the minivan which contained 61 large, green bundles. Officer Martinez cut open one of the bundles, finding a green leafy substance that he suspected was cannabis. Officer Martinez admitted that he did not see any drug paraphernalia,

large sums of money, scales, baggies, or items used for packaging cannabis inside the minivan and that, at first sight of the bundles, he did not know what they were. He also admitted that he did not smell an odor of cannabis when he approached the minivan.

¶ 5 On cross-examination, Officer Martinez testified that he smelled cannabis at the IDOT garage, but not prior to arriving at the garage. According to Officer Martinez, the defendant was not the registered owner of the minivan and did not attempt to flee the scene during the traffic stop. He stated that he did not "believe" that the crime lab report revealed that the defendant's fingerprints were on any of the bundles, and that he did not receive a report of the defendant's DNA being present on any items found in the van.

¶ 6 Officer Martorano testified that he received a call on April 24, 2013, that there had been a cannabis seizure, and he traveled to the IDOT garage in response to the call. According to Officer Martorano, there were 61 green bundles inside the minivan, filling it up from the floor to the ceiling and from the rear to "right up against the back of the seats" in the front, as well as an iPad and three cellular phones recovered from the passenger seat. According to Officer Martorano, he and Officer Rytina delivered the green bundles to the Chicago Police Department evidence vault and, the next morning, met with the vault custodian and processed and inventoried the bundles. On cross-examination, Officer Martorano stated that he smelled an "overwhelming smell of raw cannabis" when he opened the "rear tailgate" of the minivan in the IDOT garage, but did not include this information in his report.

¶ 7 Melissa McCann, a forensic chemist employed with the "Forensic Science Center at Chicago," testified that she received one of the green bundles recovered from the minivan, that the contents of that bundle weighed 10,009 grams, and that the contents tested positive for cannabis.

¶ 8 After introducing exhibits into evidence, the State rested. The defendant then moved for a directed verdict, which was denied.

¶ 9 In his case-in-chief, the defendant called Officer Rytina as a witness. Officer Rytina testified that he was close to the minivan when it was inside the IDOT garage, but he could not recall if he smelled cannabis. The defense rested with the defendant waiving his right to testify.

¶ 10 Following deliberations, the jury found the defendant guilty of one count of possession of cannabis with intent to deliver. The defendant filed a motion for a new trial, which was denied. Thereafter, the trial court sentenced the defendant to 7 years' imprisonment with a 3-year term of MSR. The defendant filed a motion seeking reconsideration of his sentence. That motion was denied, and this appeal followed.

¶ 11 In urging reversal of his conviction, the defendant's sole argument is that the State failed to prove, beyond a reasonable doubt, that he knowingly and voluntarily possessed the cannabis recovered from the back of the minivan he was driving. We disagree.

¶ 12 When we review a challenge to the sufficiency of the evidence, our function is not to retry the defendant. *People v. Nere*, 2018 IL 122566, ¶ 69 (citing *People v. Smith*, 185 Ill. 2d 532, 541 (1999)). The appropriate question for a reviewing court is whether, considering all of the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. The trier of fact is responsible for weighing the evidence, resolving conflicts in that evidence, and drawing reasonable inferences from the testimony and other evidence. *Brown*, 2013 IL 114196, ¶ 48. The trier of fact is not required to disregard inferences which flow normally from the evidence, seek explanations that are consistent with innocence and elevate them to the level of reasonable doubt, or find that a witness is not credible simply based on the

defendant's word. *Jonathon C .B.*, 2011 IL 107750, ¶ 60. A reviewing court will reverse a conviction only where the evidence is so unreasonable, improbable, or unsatisfactory that there is a reasonable doubt of the defendant's guilt. *Brown*, 2013 IL 114196, ¶ 48.

¶ 13 The defendant was charged with violating section 5(g) of the Cannabis Control Act in that he knowingly possessed cannabis with the intent to deliver, a Class X felony when more than 5,000 grams of cannabis is possessed. 720 ILCS 550/5(g) (West 2012). "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). Knowledge may be established by circumstantial evidence and inferences drawn from the surrounding circumstances, including the defendant's actions. *People v. Bui*, 381 Ill. App. 3d 397, 419 (2008). When a case is based on circumstantial evidence, a trier of fact need not be satisfied beyond a reasonable doubt of each link in the chain of circumstances; rather, it is sufficient if all of the evidence taken together satisfies the trier of fact, beyond a reasonable doubt, of the defendant's guilt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Knowledge and possession are issues of fact and again, this court will not disturb the trier of fact's findings unless the evidence is so unbelievable, improbable, or contrary to the verdict that it creates a reasonable doubt of the defendant's guilt. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007).

¶ 14 Possession of contraband may be either actual or constructive. *People v. Givens*, 237 Ill. 2d 311, 335 (2010). The State does not argue that the defendant had actual possession of the cannabis; rather, it argues that there was sufficient evidence to prove that the defendant had constructive possession of the cannabis found in the minivan. The defendant contends that the State's evidence proved only that cannabis was found in the vehicle he was driving, not that he

actually knew of its presence. He concludes, therefore, that the State's evidence was insufficient to prove that he had constructive possession of the cannabis. We agree with the State.

¶ 15 In order to establish constructive possession, the State must prove that the defendant: (1) knew that the contraband was present, and (2) exercised immediate and exclusive control over the area where the contraband was found. *People v. Sams*, 2013 IL App (1st) 121431, ¶ 10. Although proximity to contraband alone 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). Knowledge may be inferred from several factors, including the size of the contraband. *Love*, 404 Ill. App. 3d at 788. "The discovery of drugs in a vehicle under defendant's control and in a place where he 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). Here, viewing the evidence in the light most favorable to the State, we find that a reasonable trier of fact could infer that the defendant knew of the presence of cannabis found in the minivan based on evidence of his proximity to (within arm's reach of) a large amount of cannabis (61 bundles) in a vehicle in which he was the driver and the sole occupant. See *Brown*, 277 Ill. App. 3d at 998; *Love*, 404 Ill. App. 3d at 788; *Wells*, 241 Ill. App. 3d at 146.

¶ 16 The defendant, nevertheless, argues that a blanket concealed the view of the cannabis, making it impossible for the jury to infer that he knew what was hidden inside the minivan. He also argues that there was no testimony that the officers smelled cannabis during the traffic stop.

¶ 17 The defendant's arguments invite this court to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact. Again, it was the jury's responsibility to weigh the evidence, resolve any conflicts in that evidence, and draw reasonable inferences from the testimony and other evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). We will not substitute our judgment for that of the trier of fact on such issues. *Id*. Based upon the evidence introduced by the State, we find that a reasonable trier of fact could infer that the defendant, as the driver and sole occupant of the minivan, loaded, from ceiling to floor, with 61 bundles of cannabis located directly behind him, knew of the presence of the cannabis.

¶ 18 Finally, the defendant argues that not attempting to flee from the police demonstrated a lack of personal dominion over the cannabis. While "consciousness of guilt can be inferred from flight, the converse, that failure to flee is indicative of innocence, is not a necessary corollary." *People v. Zarate*, 264 Ill. App. 3d 667, 675 (1994). Accordingly, we reject the defendant's contention that his failure to flee infers a lack of dominion and control over the cannabis.

¶ 19 We find that the State presented sufficient evidence to allow the jury to reasonably infer that the defendant knew that cannabis was present in the minivan he was driving and that he exercised immediate and exclusive control over the area where the cannabis was found; thereby satisfying the State's burden to prove that the defendant constructively possessed, with intent to deliver, more than 5,000 grams of cannabis.

¶ 20 For the foregoing reasons, we affirm the defendant's conviction and sentence.

¶ 21 Affirmed.