2019 IL App (4th) 160644-U

NO. 4-16-0644

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 17, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
HENRY TAYLOR,	)	No. 14CF343
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas M. O'Shaughnessy,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's appeal presents no meritorious issues for review. OSAD's motion to withdraw as appellate counsel is granted and the trial court's judgment is affirmed.

¶ 2 Defendant, Henry Taylor, was convicted of possession of a controlled substance (cocaine) (720 ILCS 570/402 (West 2014)) and unlawful possession of more than 5000 grams of cannabis with intent to deliver (720 ILCS 550/5(g) (West 2014)). The trial court sentenced him to concurrent prison terms of 3 and 10 years, respectively. Defendant appealed and the Office of the State Appellate Defender (OSAD) was appointed to represent him. On appeal, OSAD filed a motion to withdraw as appellate counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), asserting the appeal presents no meritorious issues for review. We grant OSAD's motion and affirm the court's judgment.

¶ 3 I. BACKGROUND

¶ 4 On July 18, 2014, defendant was a front passenger in a Mercury Grand Marquis traveling on Interstate 74 near Danville. The driver was not wearing a seatbelt and was speeding. An Illinois State Police officer, Sergeant John Thomas Lillard, conducted a traffic stop. When he approached the vehicle, he noticed a strong odor of burnt cannabis. He and his canine did a "free-air scan" of the vehicle. The dog alerted on the rear passenger side of the vehicle. Sergeant Lillard, Illinois State Police officer, Lieutenant Chris Owen, and Danville Police officer, Agent Ben Stringer searched the vehicle and found a cardboard box in the trunk. The box had a shipping label addressed to defendant at 1900 South First Street in Champaign from 111 Mason Street in San Francisco, California. Inside the box were five smaller white boxes, each containing two identical vacuum-sealed plastic bags with a green leafy substance.

¶ 5 As defendant sat in a squad car during the traffic stop, and after waiving his *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)), he voluntarily spoke with Lieutenant Owen. Owen testified at trial that he had told defendant that officers "had found illegal drugs inside the box inside the vehicle that he was in that was addressed to him[.]" Owen said he advised defendant he was under arrest. Defendant "acknowledged that he did receive the box that was addressed to him[.]" Owen explained to defendant the role of confidential informants, hoping to convince defendant to identify additional offenders. Defendant "indicated to [Owen] that he understood that people do cooperate with law enforcement." Without Owen telling defendant what types of drugs were found in the vehicle, defendant commented " 'it's only weed, man.' "

¶ 6 Agent Stringer, a member of the Vermilion County Metropolitan Enforcement Group (VMEG), obtained a search warrant for defendant's residence at 211 Cronkhite in Danville. There, the officers found cannabis in the console of a Cadillac in the driveway; a

cardboard box similar to that found in the Mercury with five smaller boxes inside, each containing two vacuum-sealed bags of a green leafy substance; cash; a digital scale; a bill counter; a vacuum-sealer machine with bags; and a plate with a white powdery substance.

¶ 7 The total confirmed weight of cannabis found in the box from the house was 4548 grams. Two bags from the box found in the vehicle weighed approximately 450 grams each.

¶ 8 Defendant claimed he did not reside at 211 Cronkhite in Danville and denied ownership of the Cadillac. He presented witnesses to attest to each claim. Nevertheless, the jury found defendant guilty of possession with intent to deliver more than 5000 grams of cannabis and possession of a controlled substance.

¶ 9 Defendant filed a posttrial motion challenging the sufficiency of the evidence and claiming the trial court erred by precluding evidence of defendant's prescription for medical marijuana issued in the State of Washington. The court denied defendant's motion and sentenced defendant to concurrent terms of 10 years and 3 years in prison. Defendant's motion to reconsider his sentence was also denied.

¶ 10 This appeal followed. OSAD was appointed to represent defendant on appeal and filed a motion to withdraw, alleging there are no meritorious issues for review. OSAD attached a brief to its motion, and the record shows service on defendant. Defendant filed a response on October 30, 2018.

¶ 11 II. ANALYSIS

¶ 12 On appeal, OSAD identifies four potential issues for review: whether (1) the trial court abused its discretion in denying defendant's motion to exclude evidence; (2) the court abused its discretion in denying defendant the opportunity to present evidence of his prescription; (3) the State sufficiently proved the elements of the offenses beyond a reasonable

doubt; and (4) defendant's sentence was excessive. In his response, defendant contends the State failed to prove he knowingly possessed the cocaine.

¶ 13 A. Admission of Untested Evidence

¶ 14 OSAD contends no meritorious argument could be made challenging the admission of untested cannabis. Indeed, the State must prove, beyond a reasonable doubt, the weight of the substance containing the drug. *People v. Coleman*, 391 Ill. App. 3d 963, 971 (2009). However, that is true only if the weight of *all* of the drugs combined is necessary to prove an essential element of the charged offense. See *People v. Williams*, 267 Ill. App. 3d 870, 879 (1994).

¶ 15 Here, the forensic lab chemist testified at trial that she weighed and tested each of the 10 bags of suspected cannabis found in the cardboard boxes discovered in the home during the search. The substance in each bag was in fact cannabis and combined, had a total weight of 4548 grams. She further testified she tested and weighed only 2 of 10 bags of cannabis found in the cardboard boxes discovered in the trunk of the vehicle. The substance in each of those bags was in fact cannabis and combined, had a total weight of 909 grams.

¶ 16 Defendant filed a motion *in limine* to exclude evidence of all untested suspected cannabis. In other words, he wanted no reference to the remaining eight plastic bags from the vehicle. The trial court denied defendant's motion, finding the State was allowed to "introduce evidence at trial with respect to the forensic scientist's observations as to the packaging, the homogenous nature of the substances in those packaging, and her opinions with respect to those observations. The issue with respect to failure of the State to test each package goes to the weight of the evidence rather than the admissibility." OSAD agrees.

¶ 17 The State asked the chemist why she did not "complete the testing of the other eight packages[.]" She responded: "At this point, I had over 5000 grams total of cannabis, which is the highest weight limit, so there was no need to test the additional items." In other words, even if she *had* tested and weighed each bag, the time and effort spent doing so would have been for naught since the confirmed weighed evidence had already met the threshold weight requirement for the charged offense. Further, after denying defendant's motion, the trial court agreed to give a limiting jury instruction addressing this issue. This instruction advised the jury it was "not to consider either the nature of the material nor its weight contained in the other eight packages on the issue of whether the defendant knowingly possessed a substance containing cannabis." Thus, we agree with OSAD that no meritorious argument for error can be made on appeal where the identification and weight of the untested substance had no bearing on the evidence against defendant.

¶ 18 B. Exclusion of Prescription

¶ 19 OSAD next considers whether the trial court abused its discretion in granting the State's motion to preclude evidence that defendant had a prescription for medical cannabis from the State of Washington. The court ruled the prescription was not relevant, finding "defendant may have possessed this prescription for medical treatment purposes in the State of Washington [but, it] is not relevant to the charges that he faces here in the State of Illinois. This is not a defense to the charges that he faces."

¶ 20 An analysis of the relevant statute reveals that the gist of the crime of possession with intent to deliver is the *intended disposition* of the cannabis, not the manner in which possession was acquired. See *People v. Hunter*, 124 Ill. App. 3d 516, 523-24 (1984) (explanation of the distinction between a crime of possession versus a crime of possession with intent to

deliver when a defendant legally acquired a drug). Regardless, even if defendant wished to present a defense that he legally possessed the cannabis for his own personal use, not with an intent to deliver, his prescription from the state of Washington could not be used for that purpose for two reasons. One, section 11 of the Cannabis Control Act (720 ILCS 550/11 (West 2014)) requires a written authorization from the Illinois Department of State Police before a person may lawfully possess cannabis for medical purposes in this state. And two, defendant's prescription from the physician licensed in the state of Washington authorizes "up to 24 ounces of usable cannabis and up to 15 cannabis plants." Twenty-four ounces is equivalent to 652 grams. Defendant was charged with the possession with the intent to deliver more than 5000 grams (720 ILCS 550/5(g) (West 2014)), an amount that clearly exceeds the authorized amount.

¶ 21 Based on the above, we agree with OSAD that no meritorious argument can be made suggesting the trial court abused its discretion in granting the State's motion *in limine* to preclude the introduction of defendant's Washington prescription.

¶ 22 C. Sufficiency of the Evidence

¶ 23 OSAD next contends that no colorable argument can be made that the State failed to sufficiently prove defendant guilty beyond a reasonable doubt. The jury found defendant guilty of possession with intent to deliver more than 5000 grams of cannabis (720 ILCS 550/5(g) (West 2014)) and possession of a controlled substance (720 ILCS 570/402(c) (West 2014)). Accordingly, for each offense, the State must prove beyond a reasonable doubt defendant possessed the cannabis and the cocaine by proving defendant had knowledge of the drugs and that the drugs were in his immediate and exclusive possession or control. *People v. Schmalz*, 194 Ill. 2d 75, 81 (2000). In addition, the State must prove beyond a reasonable doubt defendant intended to deliver the cannabis.

¶ 24 The evidence presented at trial demonstrated (1) defendant owned the Mercury, as the title in defendant's name was found in his residence, (2) the box containing the cannabis was found in the trunk of defendant's Mercury, (3) the box with the cannabis in the trunk had affixed to it a shipping label addressed to defendant, (4) before defendant was told what types of drugs were found in the trunk, he stated "it's only weed, man;" (5) a search of the address on the shipped box revealed a similar box containing almost identical contents (4548 grams of cannabis) in the bedroom closet, (6) multiple documents with defendant's name and address were found in the bedroom of the residence, (7) various items typically used in the production and sale of drugs were found in the residence, (8) a substantial amount of cash was found in a pocket of a vest in the bedroom closet, and (9) a plate with defendant's business cards and a substance that was later confirmed to be cocaine were found in the top dresser drawer in the bedroom of the residence.

¶ 25 Weighing the totality of this evidence in favor of the prosecution, as we are required to do when determining the sufficiency of the evidence, we find it clear that any rational jury could have found the essential elements of the crimes proved beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). Accordingly, we agree with OSAD that no colorable argument can be made challenging the sufficiency of the evidence against defendant.

¶ 26 D. Sentence

¶ 27 Finally, OSAD contends no meritorious argument can be made challenging the propriety of defendant's sentence. Generally, the trial court is afforded broad discretion in fashioning an appropriate sentence. A reviewing court will not disturb that sentence absent an abuse of discretion. *People v. Price*, 2011 IL App (4th) 100311, ¶ 36. An abuse of discretion will not be found unless the court's sentencing decision is "arbitrary, fanciful, unreasonable, or where

no reasonable person would take the view adopted by the trial court." *People v. Etherton*, 2017 IL App (5th) 140427, ¶ 26. A sentence within the statutory range will not be considered excessive unless it greatly varies with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 28 Defendant was convicted of unlawful possession of more than 5000 grams of cannabis with intent to deliver, a Class X felony (see 720 ILCS 550/5(g) (West 2014)) and unlawful possession of a controlled substance, a Class 4 felony (720 ILCS 570/402(c) (West 2014)). At defendant's sentencing hearing, in June 2016, the trial court had an available range of 6 to 30 years in prison on the Class X conviction (730 ILCS 5/5-4.5-25(a) (West 2016)) and 1 to 3 years in prison on the Class 4 (730 ILCS 5/5-4.5-45 (West 2016)).

¶ 29 After considering "the trial evidence in [this case], the presentence investigation report, the history, character, and attitude of the defendant, the arguments and statements of counsel, *** the statement of allocution, and having considered the statutory matters in aggravation and mitigation, and having due regard for the circumstances of the offense," the trial court found the following applicable aggravating factors:

> "That the defendant received compensation for committing the offenses. That the defendant has a history of prior delinquency and adult criminal activity. That a sentence of imprisonment is necessary to deter others from committing similar offenses, and that the defendant was as to [other cases], that those offenses were committed while he defendant was either on pretrial release or on bond."

The court found the only mitigating factor was that defendant's dependents would suffer a hardship. Thereafter, the court sentenced defendant to concurrent prison terms of 10 years on the Class X conviction and 3 years on the Class 4 felony.

¶ 30 The record before us demonstrates the trial court carefully considered all available factors and imposed a sentence within the applicable sentencing range. Thus, we agree with OSAD that no colorable argument can be made on appeal claiming the trial court abused its discretion in fashioning defendant's sentence.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the trial court's judgment and grant OSAD's motion to withdraw as appellate counsel.

¶ 33 Affirmed.