2021 IL App (1st) 181273-U

No. 1-18-1273

Order filed April 15, 2021

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. 17 CR 9023
	)	
JAMIE LLOYD,	)	Honorable
	)	Timothy Joseph Joyce,
Defendant-Appellant,	)	Judge, presiding.

JUSTICE MARTIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for possession of a controlled substance with intent to deliver is affirmed where (1) the evidence was sufficient to prove his intent to deliver heroin, and (2) trial counsel was not ineffective for failing to rehabilitate a witness with prior consistent statements.

¶ 2 Following a jury trial, defendant Jamie Lloyd was found guilty of possession of a controlled substance (PCS) with intent to deliver (720 ILCS 570/401(a)(1)(A) (West 2016)) and sentenced to 12 years' imprisonment in the Illinois Department of Corrections (IDOC). On appeal, Lloyd

contends (1) the State failed to prove him guilty beyond a reasonable doubt where the evidence did not establish his intent to deliver heroin, and (2) trial counsel rendered ineffective assistance by failing to rehabilitate a defense witness using that witness's prior testimony at the suppression hearing. For the reasons that follow, we affirm.[1]

¶ 3 I. JURISDICTION

¶ 4 The trial court sentenced Lloyd on March 12, 2018. Thereafter, on April 10, 2018, Lloyd filed a timely motion to reduce his sentence, which was argued on May 9, 2018. On that same date, Lloyd filed a notice of appeal. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1980, art. VI, §6) and Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013) and Rule 606 (eff. July 1, 2017), governing appeals from a final judgment of conviction in a criminal case.

¶ 5 II. BACKGROUND

¶ 6 Lloyd was charged with one count of PCS with intent to deliver, where he unlawfully and knowingly possessed, with intent to deliver, 15 or more, but fewer than 100, grams of heroin. As Lloyd only challenges the sufficiency of the evidence proving his intent to deliver and trial counsel's decision not to rehabilitate a defense witness, we recite only those facts necessary to decide this appeal.

¶ 7 *Pretrial*

¶ 8 Prior to trial, Lloyd filed a motion to suppress evidence arguing police officers unlawfully stopped, searched, and arrested him on May 22, 2017. At the suppression hearing, arresting police

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

officers John Frano and Ivan Ramos[2] testified. Lloyd and Steven Fox—Llyod's friend and coworker—testified for the defense. Frano, Ramos, and Fox testified consistently with their trial testimony, which is summarized below. Lloyd testified consistently with Fox's testimony detailed below, and additionally provided information on where he had hidden drugs on his person the day in question.[3] The court denied the motion to suppress.

¶ 9 *Trial*

¶ 10 Officer Frano testified that, on May 22, 2017, he and his partner Officer Ramos, were on duty in plainclothes while driving in an unmarked police vehicle. At approximately 8:00 p.m., as they were driving south on Pulaski Road, Officer Frano saw a minivan parked in front of a corner store at Pulaski and Maypole Avenue. He saw—from approximately 200 feet away—a man wearing black clothing make a "hand-to-hand exchange" at the passenger side of the minivan; that man's hand met the hand of a passenger in the van, which came out of the van window. Officer Frano then saw the man in black walk west on Maypole.

¶ 11 The officers stopped their vehicle behind the minivan. From approximately 50 feet away, Officer Frano saw another man, later identified as Fox, walk "around the back of the vehicle from the sidewalk, and he got into the driver's seat of that silver minivan." Officer Frano did not see anyone enter or exit the passenger side of the minivan. Frano approached the driver side of the minivan and looked through the lowered window. He saw Fox in the driver seat, and Lloyd, whom he identified in court, in the front passenger seat. Officers Frano and Ramos did not have their guns drawn as they approached the minivan.

[2] At the time of trial, Officer Ramos had become a Sergeant. However, we refer to Ramos using the title he held at the time of the arrest and investigation.

[3] Lloyd did not testify at trial.

¶ 12 As Officer Frano approached, he saw a plastic bag with numerous green, tinted Ziploc bags with white powder inside, which were "mostly in [Lloyd's] right hand." Frano yelled, "Hey," and Lloyd looked at him, yelled, "[O]h, s***," and "began shoving the plastic bag and the Ziploc bags into his front waistline area." Officer Ramos went to the passenger side of the minivan, "got [Lloyd] out," and handcuffed him. Lloyd was "combative" as Officer Frano attempted to conduct a pat-down search of him. Despite Lloyd's attempts to defeat the pat down, Officer Frano felt bags in his "waistline area." The officers then transported Lloyd to a police station.

¶ 13 Officer Frano testified he had made thousands of narcotics arrests, 80 to 90 percent of which involved heroin. Officer Frano described the most common packaging for heroin as a flat Ziploc bag approximately the size of a quarter. Nearly ninety percent of his narcotics arrests involved individuals dealing heroin. The bags in Lloyd's possession were "consistent with how heroin is packaged."[4] Frano did not recover any needles, pipes, straws, or anything commonly used to ingest heroin.

¶ 14 On cross-examination, Officer Frano testified he did not hear any conversation between the man in black and anyone in the minivan. He had never seen the man in black before and did not stop him to question him. Officer Frano further testified that Lloyd was holding a plastic bag containing small green bags, as well as "some" loose green bags. Officer Frano did not see any bags on the passenger seat or floor of the minivan.

¶ 15 Officer Ramos testified that, on May 22, 2017, he and Officer Frano were on duty, in plainclothes, while driving an unmarked police vehicle. At approximately 8:00 p.m., when it was "still light, maybe turning to dusk," Officer Ramos saw a minivan parked at Pulaski and Maypole.

[4] Officer Frano identified these bags in court and the State later moved them into evidence.

Officer Ramos stopped his vehicle behind the minivan and approached it. He saw two individuals in the minivan. Lloyd, whom Officer Ramos identified in court, was in the front passenger seat.

¶ 16 As he approached the minivan, Officer Ramos saw Lloyd make furtive movements with his hands toward his waistband area. Officer Ramos "exited out [Lloyd] from that van," "conducted a quick protective pat down," and handcuffed him. During the pat down, Lloyd would not let Officer Ramos search his waistband area and started to back away from him. The officers put Lloyd and Fox in their unmarked vehicle and transported them to the police station.

¶ 17 While Officer Ramos walked Lloyd to a processing room at the police station, he saw small green Ziploc bags falling from the bottom of Lloyd's pants. Officer Ramos recovered the bags, which were approximately the size of a quarter and contained a "white powder substance, suspect heroin." Once inside the processing room, Officer Ramos searched Lloyd by grabbing the waistband of Lloyd's pants and shaking. Additional small green Ziploc bags fell out from the bottom of Lloyd's pants. Officer Ramos recovered those bags, as well as a "plastic knotted bag" he "believe[d] contained those bags of heroin." Subsequently, Officer Ramos inventoried the bags and $29 that was also recovered from Lloyd's person. In court, Officer Ramos identified the bags he recovered from Lloyd.

¶ 18 Officer Ramos had made "hundreds" of heroin arrests and testified that heroin is "typically packaged for sale" in a "jab," which is "anywhere between 12 to 14 small Ziploc bags." These "jabs" are then generally placed in a knotted plastic bag. The items Officer Ramos recovered from Lloyd were consistent with heroin "packaged for sale."

¶ 19 On cross-examination, Officer Ramos testified he did not see a drug transaction occur at the minivan. He did not see Lloyd with drugs on his lap and did not see Lloyd put anything into

his waistband. Nothing fell out of Lloyd's pants until he was walking up the stairs to the second floor of the police station. Officer Ramos testified small bags, like those recovered from Lloyd, are packaged both for consumption and for sale. Officer Ramos recovered "one bag that contained 36 bags of suspect heroin."

¶ 20 Jorge Gomez, a forensic scientist employed by the Illinois State Police, testified he weighed the contents of the bags recovered from Lloyd. The total weight was 15.1 grams. The substance in the bags tested positive for heroin.

¶ 21 Prior to Fox's testimony, the State moved to exclude Fox from testifying because he was in the courtroom for all or part of Officer Ramos's testimony. The court denied the State's motion to exclude Fox, finding his presence was not intentional and that it would "be a hardship to not permit him to testify."

¶ 22 Fox testified he had known Lloyd, whom he identified in court, socially for 15 to 16 years. Additionally, they had worked together for the previous four years. Between 6:00 and 6:30 p.m. on May 22, 2017, Fox picked Lloyd up in his minivan. Lloyd sat in the front passenger seat. Fox drove to a candy store at Pulaski and Maypole to buy soda and cookies, and parked facing south on Pulaski. He and Lloyd went into the store for approximately 10 minutes. He did not lose sight of Lloyd and they left the store together. Fox did not see Lloyd with any drugs and did not see him or anyone else engage in a drug transaction.

¶ 23 Lloyd and Fox returned to the minivan; Lloyd entered the passenger side. As Fox tried to start the minivan, he saw an officer with his gun drawn at the driver side; the officer told Fox not to start the vehicle. Fox saw a second officer in front of the minivan pointing his gun at the vehicle. The officer on the driver side ordered Fox to exit the minivan, which Fox did. The officers searched

both Fox and Lloyd, but found nothing. The officers put Fox and Lloyd in a police vehicle and transported them to a police station.

¶ 24 At the police station, Fox saw Lloyd walking up the stairs to the second floor but did not see anything fall out of his pants. He did not see anything fall from Lloyd's pants as Lloyd was being led into a room. He did not see a police officer recover green Ziploc bags filled with white powder from the floor of the police station. Fox was later released from the police station.

¶ 25 On cross-examination, Fox testified, that upon entry to the courtroom, he heard Officer Ramos testifying but "didn't know he was doing that," and "immediately [defense counsel] said you got to get out."

¶ 26 On redirect examination, Fox testified he did not know he was not allowed to be in the courtroom until defense counsel told him to leave.

¶ 27 In closing, the State argued it had proven Lloyd's intent to deliver by establishing that: (1) the packaging of the heroin was consistent with heroin packaged for sale; (2) the "sheer volume" of the 36 bags recovered indicated it was not for personal consumption; and (3) no needles or straws used for personal consumption of heroin were recovered from Lloyd. In response, Lloyd argued his lack of paraphernalia did not prove his intent to deliver because heroin is snorted, not smoked or injected. He also argued Officer Ramos did not see the "drug transaction" which Officer Frano claimed to have seen, despite the fact that both officers were "looking at the same thing."

¶ 28 The trial court instructed the jury on both PCS with intent to deliver and PCS. Following deliberations, the jury found Lloyd guilty of PCS with intent to deliver.

¶ 29 Lloyd filed a posttrial motion arguing, *inter alia*, the State failed to prove he intended to deliver a controlled substance. The court denied this motion.

¶ 30 The court sentenced Lloyd to 12 years' imprisonment in IDOC. Lloyd filed a motion to reduce sentence, which the court denied.

¶ 31 III. ANALYSIS

¶ 32 On appeal, Lloyd first contends the State failed to prove him guilty beyond a reasonable doubt where the evidence did not establish his intent to deliver. He therefore requests that we reduce his conviction to simple PCS.

¶ 33 When a defendant challenges the sufficiency of the evidence, we review whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Pizarro*, 2020 IL App (1st) 170651, ¶ 29. We do not retry the defendant. *People v. Sutherland,* 223 Ill. 2d 187, 242 (2006). Rather, we "carefully examine the evidence while bearing in mind that the trier of fact is in the best position to judge the credibility of witnesses, and due consideration must be given to the fact that the fact finder saw and heard the witnesses." *People v. Herman*, 407 Ill. App. 3d 688, 704 (2011). We will only reverse a conviction if the evidence is so improbable, unreasonable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Rowell*, 229 Ill. 2d 82, 98 (2008).

¶ 34 To prove Lloyd guilty of PCS with intent to deliver, the State had to establish "(1) defendant had knowledge of the presence of a controlled substance, (2) the substance was in defendant's immediate possession or control and (3) defendant intended to deliver narcotics." *People v. Pittman*, 2014 IL App (1st) 123499, ¶ 15. Only the third element is at issue in this appeal.

¶ 35 The State may prove a defendant's intent to deliver through circumstantial evidence. *Id.* at ¶ 16. "The Illinois Supreme Court has set forth seven factors probative of intent to deliver: (1) possession of a quantity too large to be for personal consumption; (2) purity of the drug; (3)

possession of weapons; (4) possession of large amounts of cash; (5) possession of police scanners, beepers, or cellular phones; (6) possession of drug paraphernalia; and (7) packaging." *Id.* (citing *People v. Robinson*, 167 Ill. 2d 397, 407 (1995)). The *Robinson* factors are not exhaustive (*People v. Bush*, 214 Ill. 2d 318, 328 (2005)), and there is no hard and fast rule to be applied in every case (*People v. Ellison*, 2013 IL App (1st) 101261, ¶ 16).

¶ 36 The quantity of a controlled substance alone can be sufficient to prove an intent to deliver. *People v. Starks*, 2019 IL App (2d) 160871, ¶ 39. However, "[i]n cases where the amount seized 'may be considered consistent with personal use, our courts have properly required additional evidence of intent to deliver to support a conviction.' " *Ellison*, 2013 IL App (1st) 101261, ¶ 16 (quoting *Robinson*, 167 Ill. 2d at 411). "[W]hen a defendant possesses narcotics within the range of personal use, 'the minimum evidence a reviewing court needs to affirm a conviction is that the drugs were packaged for sale, and at least one additional factor tending to show intent to deliver.' " *Id.* (quoting *People v. Blakney*, 375 Ill. App. 3d 554, 559 (2007)).

¶ 37 Viewed in the light most favorable to the State, the evidence was sufficient to establish Lloyd's intent to deliver. Officer Ramos testified the items he recovered from Lloyd were consistent with heroin packaged for sale. The record shows Lloyd possessed 15.1 grams of heroin, packaged in 36 separate bags inside a larger bag. See *Pittman*, 2014 IL App (1st) 123499, ¶ 17 (4.9 grams of heroin in 21 separate packages supported a finding of intent to deliver). Additionally, Officer Frano observed a hand-to-hand transaction at the minivan shortly before approaching and discovering Lloyd with heroin packaged for sale. The officers found Lloyd sitting on the passenger side of the minivan, which is where the hand-to-hand transaction with the man in black occurred, and Lloyd was holding several small bags of heroin loose in his hands. A reasonable jury could

have inferred that what Officer Frano observed was Lloyd handing heroin to the man in black in exchange for cash, *i.e.*, a heroin sale. Altogether, this evidence, and the reasonable inferences drawn therefrom, were sufficient for the jury to conclude Lloyd intended to sell the heroin.

¶ 38 The case of *People v. Bush* provides support to our analysis. 214 Ill. 2d 318. In *Bush*, the defendant was twice seen handing an unknown item he retrieved from a brown paper bag to another person in exchange for money. *Id*. at 321. Police found the bag to contain less than one gram of cocaine and recovered two $10 bills from the defendant's person. *Id.* at 321-22. Our supreme court acknowledged that "none of the factors enumerated in *Robinson* [were] present." *Id.* at 328. However, the court found that defendant's conduct in "standing alone behind a fence at 2 a.m. selling small items from a brown paper bag," which were later found to be cocaine, sufficient to be "indicative of an intent to deliver a controlled substance" and affirmed the defendant's conviction. *Id.* at 328, 337. Here, the evidence of intent to deliver is stronger than it was in *Bush* because at least one *Robinson* factor—packaging for sale—is present, in addition to the *Bush* factor of Officer Frano observing Lloyd engaging in what Officer Frano testified was a hand-to-hand transaction. Thus, we must conclude the evidence was sufficient to support the jury's finding of guilt.

¶ 39 Nevertheless, Lloyd argues "the State did not provide any evidence *** that the recovered heroin was inconsistent with personal consumption." However, the State did not have to prove the amount of heroin recovered from Lloyd was inconsistent with personal consumption. Whether the amount of heroin is consistent with personal consumption is but one factor that may establish intent to deliver. See *Robinson*, 167 Ill. 2d at 407-408; *Bush*, 214 Ill. 2d at 328. As explained above, the State established Lloyd's intent to deliver through the packaging of the heroin for sale and Officer

Frano's observation of a hand-to-hand transaction, which the jury could reasonably infer to be Lloyd selling heroin to the man in black.

¶ 40 The cases Lloyd relies upon are distinguishable and do not warrant reduction of Lloyd's conviction to simple PCS. See *Ellison*, 2013 IL App (1st) 101261, ¶¶ 26-27 (evidence established defendant was purchasing, not selling, drugs, and there was no testimony the drugs were packaged for sale); *People v. Sherrod*, 394 Ill. App. 3d 863, 867 (2009) (no evidence defendant engaged in a suspicious transaction). Accordingly, we find the evidence sufficiently established Lloyd's intent to deliver.

¶ 41 Next, Lloyd contends trial counsel rendered ineffective assistance because, after the State questioned Fox about his presence in the courtroom during Officer Ramos's testimony, defense counsel failed to rehabilitate Fox with his prior consistent statements from the hearing on the motion to suppress.

¶ 42 We review ineffective assistance of counsel claims under the two-part test of *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Manning*, 241 Ill. 2d 319, 326 (2011). To establish an ineffective assistance of counsel claim, a defendant must show: (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defendant. *Strickland*, 466 U.S. at 687. To establish deficient performance, a defendant must show "that counsel's performance was objectively unreasonable under prevailing professional norms." *People v. Domagala*, 2013 IL 113688, ¶ 36. Under this prong, a defendant has the burden to "overcome the strong presumption that counsel's action or inaction was the result of sound trial strategy." *People v. Anderson*, 2013 IL App (2d) 111183, ¶ 54.

¶ 43 "To establish prejudice, a defendant must show that but for counsel's deficiency, 'there is a reasonable probability that the result of the proceeding would have been different.' " *People v. Brown*, 2015 IL App (1st) 122940, ¶ 47 (quoting *People v. Houston*, 229 Ill. 2d 1, 11 (2008)). A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. Petitioner must satisfy both prongs of the *Strickland* test to prevail on a claim of ineffective assistance of counsel. *People v. Morgan*, 187 Ill. 2d 500, 530 (1999). If it is easier to resolve an ineffective assistance claim based on a failure to demonstrate prejudice, "that course should be followed." *Strickland*, 466 U.S. at 697.

¶ 44 Lloyd has not established counsel's decision not to rehabilitate Fox prejudiced him such that the outcome of the trial would probably be different. Fox and the officers testified to two different versions of events. Officer Frano testified he saw a hand-to-hand transaction at the minivan, then subsequently saw heroin in Lloyd's hand. Officer Ramos testified he recovered heroin and cash from Lloyd's person at the police station. By contrast, Fox testified Lloyd did not engage in any drug transactions, did not have any drugs on his person, and that the officers did not recover any drugs from Lloyd at the police station. Clearly, the jury accepted the officers' version of events and rejected Fox's, given their finding of guilt. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009) (testimony of a single credible witness is sufficient to convict). We cannot see how an attempt to rehabilitate Fox with his prior consistent testimony from the suppression hearing would have changed that outcome.

¶ 45 Moreover, it is not clear whether or how Fox's credibility was damaged by his presence in the courtroom during Officer Ramos's testimony. There was no suggestion Fox changed his testimony to match Officer Ramos's testimony. As noted above, Officer Ramos and Fox testified

to two conflicting versions of events. Neither party mentioned Fox's presence in the courtroom during closing argument, and the jury asked no questions about it. We analyze claims of ineffective assistance in light of the entire record (*People v. Hommerson*, 399 Ill. App. 3d 405, 415 (2010)), and nothing in the record suggests an attempt to rehabilitate Fox would have changed the outcome of this trial. Thus, Lloyd has not established prejudice under *Strickland*, and his claim of ineffective assistance fails.

¶ 46 Lloyd argues the State's "questioning undoubtedly put into the jury's minds that Fox *** fabricated his testimony based on what he heard during Ramos'[s] testimony." But Lloyd does not explain what part of Fox's testimony the jury might have thought was fabricated. Nor does he explain how Fox being rehabilitated with a prior consistent statement would have convinced the jury that Lloyd did not intend to deliver the drugs found in his possession on May 22, 2017. Thus, Lloyd has failed to carry his burden under the prejudice prong of *Strickland*, and we reject his ineffective assistance claim.

¶ 47 For the foregoing reasons, we affirm Lloyd's conviction.

¶ 48 Affirmed.