

2015 IL App (2d) 140685-U
No. 2-14-0685
Order filed March 12, 2015

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kendall County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 13-CF-280
)	
ALBERTO AVILES,)	Honorable
)	Timothy J. McCann,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The State proved defendant guilty beyond a reasonable doubt of knowingly possessing cannabis: among other factors, his use of a false name to accept delivery of the boxes of cannabis supported the inference of his knowledge of the boxes' contents; (2) as defendant's convictions of possession of cannabis and possession with the intent to deliver cannabis violated the one-act, one-crime rule, we vacated the former.

¶ 2 Defendant, Alberto Aviles, appeals from the judgment of the circuit court of Kendall County finding him guilty of knowingly possessing cannabis. Because the evidence, when viewed in the light most favorable to the State, was sufficient to prove that defendant knowingly possessed the cannabis, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was indicted on one count of possession of cannabis (720 ILCS 550/4(f) (West 2012)) and one count of possession of cannabis with the intent to deliver (720 ILCS 550/5(f) (West 2012)).

¶ 5 The following evidence was established at defendant's bench trial. On September 11, 2013, Federal Express (Fed Ex) contacted Officer Michael Coppolillo, who was assigned to the Illinois State Police Narcotics and Currency Interdiction Task Force. Fed Ex advised Officer Coppolillo that two suspicious packages had been received at its distribution center in Bedford Park. The two boxes, which had been opened by Fed Ex, contained large amounts of cannabis.

¶ 6 The boxes were addressed to Jeff Young at 17045 North Ridge Road, Minooka. There was a telephone contact number on the shipping labels. Before Fed Ex contacted Officer Coppolillo, they had received one or two calls from that number asking where the boxes were. Officer Coppolillo called the number twice and both times reached a voicemail. Although he requested that an analyst determine the telephone subscriber for that number, he was unable to obtain that information.

¶ 7 Officer Coppolillo organized a controlled delivery of the two boxes. At approximately 2:50 p.m. on September 11, 2013, he and another agent arrived in an undercover vehicle at the North Ridge Road location. Upon arrival, Officer Coppolillo saw two men working in the back of the house. He approached them and asked if either one of them was Jeff Young. They answered no. One of the men then made a phone call and told Officer Coppolillo that he would go to the house and get Becky. The man returned a few minutes later and said that Becky would be right out.

¶ 8 Shortly thereafter, a vehicle arrived that contained an elderly man and woman. The vehicle parked on the west side of the house, and the two occupants remained inside. They told Officer Coppolillo that they owned the house and rented it to Robert Cobran.

¶ 9 Although Becky never appeared, a man, later identified as defendant, approached Officer Coppolillo from the south side of the house. Officer Coppolillo said hello and asked the man whether he was Jeff Young. Defendant answered “yes, I am.” Officer Coppolillo explained to defendant that he was there to deliver two boxes and that it had been hard to find the house.

¶ 10 When Officer Coppolillo walked to the delivery vehicle, defendant followed him. Officer Coppolillo removed both boxes and handed them to defendant. As soon as defendant took both boxes, he was arrested.

¶ 11 After advising defendant of his *Miranda* rights, Officer Coppolillo spoke to him at the Kendall County jail. Defendant explained that he was a friend of Cobran, who had asked him earlier that day to watch the house and dogs while he attended court in Joliet. After defendant arrived at the house, Cobran told him that he was expecting a package to be delivered and that defendant should sign for it and put it on the back porch. Defendant told Officer Coppolillo that he had no idea what was being delivered and that he was just doing a favor for his friend.

¶ 12 When Officer Coppolillo arrested defendant, he discovered that defendant had a cell phone. The phone number on the shipping labels was not defendant’s cell phone number. No calls had been made from defendant’s phone to that number, nor had defendant’s phone received any calls from that number.

¶ 13 Upon the delivery, the boxes were not opened prior to defendant’s arrest, and the contents were not visible to defendant. Officer Coppolillo never told defendant, nor did he ask defendant whether he knew, what was in the boxes.

¶ 14 According to his driver's license, defendant did not reside at the North Ridge Road address. Defendant never entered the house and did not appear nervous when he accepted the boxes. He did not have any cannabis, large amounts of currency, or drug paraphernalia on his person when he was arrested.

¶ 15 The trial court found defendant guilty of possession of cannabis and possession with intent to deliver cannabis. Following the denial of his posttrial motion, the court sentenced defendant to 24 months' probation. Defendant filed a timely notice of appeal.

¶ 16

II. ANALYSIS

¶ 17 On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt of having knowingly possessed the cannabis. In that regard, he argues that there was no evidence, "other than his statement that he was the addressee," to prove that he knew the boxes contained cannabis.

¶ 18 When reviewing whether the State presented sufficient evidence to sustain a conviction, we must decide whether, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). A reviewing court will not retry a defendant (*Cunningham*, 212 Ill. 2d at 279), and it will greatly defer to the credibility determinations of the trier of fact (*People v. Ortiz*, 196 Ill. 2d 236, 259 (2001)). A guilty finding may be supported not only by the evidence, but also by any reasonable inferences that may be drawn from the evidence. *Cunningham*, 212 Ill. 2d at 279-80.

¶ 19 Whether a defendant knew that he was in possession of drugs is a question of fact. *People v. Schmalz*, 194 Ill. 2d 75, 81 (2000). Knowledge is usually proved by circumstantial, rather than direct, evidence. *Ortiz*, 196 Ill. 2d at 260. Knowledge may be established by

evidence of the acts, statements, or conduct of a defendant, as well as the surrounding circumstances, all of which support a reasonable inference that he knew that there were drugs in the place in which they were found. *People v. Fleming*, 2013 IL App (1st) 120386, ¶ 75.

¶ 20 In this case, in viewing the evidence in the light most favorable to the State, a rational trier of fact could have found that defendant knew that the boxes contained cannabis. The most persuasive piece of evidence in that regard was defendant falsely identifying himself as Jeff Young. That was particularly incriminating, as most people would not falsely identify themselves to a delivery person. Further, he did so without hesitation. That too was incriminating, as it demonstrated that defendant either commonly used that alias or he knew that the cannabis was to be delivered to that person. Finally, it reasonably could be found to be more than mere coincidence that defendant readily identified himself as Jeff Young, the very name of the addressee on the boxes of cannabis. The evidence that defendant provided that name, combined with the reasonable inferences to be drawn therefrom, was sufficient alone to support the finding that defendant knew that there was cannabis in the boxes.

¶ 21 There was additional evidence, however, that supported that finding. In that regard, defendant's explanation to Officer Coppolillo, that Cobran had asked him to accept delivery of the packages, was suspect. It would appear to be unusual for someone to be asked to watch someone else's house during the middle of the day, particularly when the occupant is gone short-term. In any event, although Cobran's request might have explained defendant's accepting delivery, it did not explain his use of a false name, which, we note, was not even Cobran's.

¶ 22 Further, considering the amount of cannabis involved, it is unlikely that Cobran would entrust that responsibility to an uninformed person. Not only that, but, according to defendant, Cobran did so only after defendant had arrived at the house. That is rather spontaneous for

someone planning on receiving such a large amount of illicit drugs. Defendant's questionable explanation of his actions to Officer Coppolillo constituted additional evidence that he knew that there was cannabis in the boxes.

¶ 23 Defendant, however, relies on several facts to argue that he was not guilty of knowingly possessing the cannabis. In that regard, he points to the fact that the boxes were not open, that he could not see their contents, that Officer Coppolillo neither told him what they contained nor asked him whether he knew, that he had no drugs or drug paraphernalia on his person, that he did not live at the residence or enter the house, that he did not appear nervous, and that there was no evidence that his cell phone had received any calls from the number on the shipping labels or had placed any calls to that number. Those facts, however, must be considered along with the incriminating evidence presented by the State. Indeed, the trial court was free to weigh the evidence, and resolve any conflicts in that evidence, in deciding whether the State's evidence was sufficient to prove defendant guilty. See *People v. Siguenz-Brito*, 235 Ill. 2d 213, 228 (2009) (trier of fact is to determine the credibility of the witnesses, to weigh the evidence and draw any reasonable inferences therefrom, and to resolve any conflicts in the evidence). Moreover, the court was not required to accept defendant's hypothesis of innocence and elevate it to the status of reasonable doubt. See *People v. Milka*, 336 Ill. App. 3d 206, 228 (2003).

¶ 24 Defendant further relies on two cases in which the reviewing court held that there was insufficient evidence to support a finding that the defendant knew that a delivered package contained illegal drugs. See *People v. Hodogbey*, 306 Ill. App. 3d 555 (1999); *People v. Ackerman*, 2 Ill. App. 3d 903 (1971). Defendant's reliance on these cases is misplaced.

¶ 25 In *Ackerman*, the police performed a controlled delivery of a package that was addressed to "Gary Lang, % Jeffery Ackerman." *Ackerman*, 2 Ill. App. 3d at 904. The package contained

a book that held LSD. *Ackerman*, 2 Ill. App. 3d at 904. The package was delivered to the defendant's university dormitory. When the defendant retrieved the package, he placed it under his arm and began to walk to the elevator. He was arrested at that time. *Ackerman*, 2 Ill. App. 3d at 904. In reversing the conviction of knowingly possessing LSD, the appellate court held that the evidence was insufficient to establish beyond a reasonable doubt that the defendant knew that the package contained LSD. *Ackerman*, 2 Ill. App. 3d at 905-06.

¶ 26 The facts of *Ackerman* are distinguishable from those in our case. Here, there was more compelling evidence that defendant knew that there was cannabis in the boxes. That is particularly true of the evidence that defendant falsely identified himself in order to take delivery of the boxes. The defendant in *Ackerman* did not engage in such incriminating conduct.

¶ 27 Likewise, the *Hodogbey* case is distinguishable, as the defendant there did not falsely assert his identity in an effort to obtain the delivered package. Therefore, *Hodogbey* provides no support for defendant.

¶ 28 The evidence in this case, when viewed in the light most favorable to the State, was sufficient to prove beyond a reasonable doubt that defendant knowingly possessed the cannabis. We affirm his conviction of possession with intent to deliver. However, we vacate his conviction of mere possession, because, as acknowledged by the State, it violated the one-act, one-crime rule. See Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967); *People v. Petermon*, 2014 IL App (1st) 113536, ¶ 46.

¶ 29

III. CONCLUSION

¶ 30 For the reasons stated, we affirm defendant's conviction of possession of cannabis with intent to deliver and vacate the conviction of possession of cannabis.

¶ 31 Affirmed in part and vacated in part.