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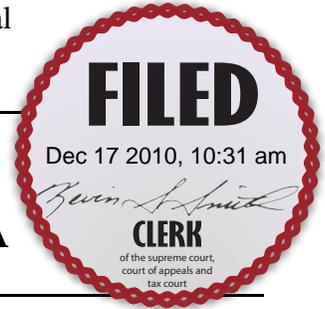
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**IN THE  
COURT OF APPEALS OF INDIANA**

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MICHAEL GILBERT,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 49A02-1005-CR-564

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Steven Eichholtz, Judge  
Cause No. 49G20-1002-FC-8922

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December 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

## Case Summary

Michael Gilbert appeals his conviction of dealing marijuana in an amount in excess of ten pounds, a class C felony.<sup>1</sup> Gilbert argues that there was insufficient evidence supporting his conviction. However, given the large quantity of drugs and packaging materials, Gilbert's flight, and the evidence that contradicted his explanation for his behavior, we conclude that the evidence was sufficient, and we affirm his conviction.

## Facts and Procedural History

On February 4, 2010, the Lawrence Post Office contacted Postal Inspector Carol Harris about two suspicious packages. The packages were addressed to "Bronco Johnson" at an apartment on San Clemente Drive in Indianapolis. State's Ex. 3 and 4. The sender was listed as "Kevin Johnson," with an address of 3072 North Orchard in Indianapolis. *Id.* However, the packages were post marked in Las Vegas, Nevada. Inspector Harris determined that the North Orchard address did not exist. A drug-detecting dog alerted to the presence of narcotics, and Inspector Harris obtained a search warrant to open the packages. Inside each package was a large plastic bag containing a hard plastic container, which in turn contained marijuana.

Inspector Harris repackaged the marijuana and set up a controlled delivery with the assistance of the Indianapolis Metropolitan Drug Task Force. Inspector Harris put on a postal uniform and drove a postal truck to the San Clemente address. When he arrived, Gilbert was outside the apartment. Gilbert greeted Inspector Harris, and Inspector Harris

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<sup>1</sup> Ind. Code § 35-48-4-10.

asked him if he was “Mr. Johnson.” Tr. at 38. Gilbert said that he was, and he signed the name “Kevin Johnson” on the receipt. *Id.* at 39.

Meanwhile, Officer Travis Cline had obtained an anticipatory search warrant for the apartment and was observing Inspector Harris as he made the delivery. After the delivery, Officer Cline and Inspector Harris went to the apartment together to execute the warrant. Gilbert attempted to flee out the back door, but was apprehended by an officer who was covering that side of the building. Gilbert told Officer Cline that “someone had some clothes shipped to him,” but he would not give a name. *Id.* at 74.

The packages were found, unopened, in the closet in Gilbert’s bedroom. They contained 13,366.5 grams (approximately 29.5 pounds) of marijuana. The police found an additional 1.1 grams of marijuana on a dresser and in a pill bottle. They also found five or six boxes of large Ziploc-type bags.

Gilbert was charged with dealing marijuana in an amount in excess of ten pounds, a class C felony, and possession of marijuana in an amount in excess of thirty grams, a class D felony. Gilbert’s jury trial took place on April 20, 2010.

Inspector Harris and Officer Cline testified concerning their involvement in the case. Officer Scott Brimer testified regarding his experience with investigating drug dealers and users. He testified that a heavy user would smoke five to ten grams a day, and that users typically do not have a large quantity of drugs in their possession at any given time. He believed that someone in possession of over 13,000 grams would be a “high end” dealer. Tr. at 134. He testified that it is common for someone who is dealing by the ounce or by the

pound to package the drugs in large Ziploc-type bags. Officer Brimer gave several reasons why a drug dealers might not be found with a large amount of money; for example, they may have just purchased drugs to resell, or they may hide their money in a separate place so that, in the event of a robbery or police raid, they do not lose both their drugs and their money. Officer Brimer testified that dealers sometimes mail drugs using fictitious names because the post office does not check ID or verify whether the name matches the address.

Gilbert testified in his own behalf. He claimed that Kevin Johnson was someone he would see hanging around his apartment complex. Gilbert claimed that Johnson asked him if he could have some clothing mailed to Gilbert's apartment because Johnson did not have his own address where he could receive mail. Gilbert testified that he signed Johnson's name because he was intoxicated and he just signed the name that he saw on the package. He admitted to possessing the marijuana found on the dresser and in the pill bottle, but claimed to have no knowledge that the packages contained marijuana. He claimed that he fled out the back door because he had been drinking in violation of his terms of probation. He stated that there were a lot of Ziploc bags in the apartment because his father would buy food in bulk.

On rebuttal, Officer Cline testified that he was around Gilbert for approximately one hour the day of his arrest and he did not smell of alcohol, his eyes were not bloodshot, and he did not exhibit any other signs of intoxication. Officer Cline stated that he did not see any alcohol in the apartment when he conducted his search.

The jury found Gilbert guilty of both counts, and the trial court merged the possession conviction with the dealing conviction. Gilbert now appeals.

## Discussion and Decision

Gilbert argues that there is insufficient evidence that he knowingly possessed the marijuana with intent to deliver. *See* Ind. Code § 35-48-4-10 (defining the offense of dealing in marijuana). When reviewing the sufficiency of evidence, we do not reweigh the evidence or judge the credibility of the witnesses. *Kail v. State*, 528 N.E.2d 799, 809 (Ind. Ct. App. 1988), *trans. denied, superseded by rule on other grounds*. Instead, we consider only the evidence most favorable to the State and the reasonable inferences to be drawn therefrom. *Id.* We will affirm if there is substantial evidence of probative value to support the conviction. *Id.* It is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Stokes v. State*, 922 N.E.2d 758, 763 (Ind. Ct. App. 2010), *trans. denied*.

Our supreme court has held that illegal possession of a large quantity of drugs is sufficient to sustain a conviction based on possession with intent to deliver. *Montego v. State* (1987), Ind., 517 N.E.2d 74, 76; *Young v. State* (1985), Ind., 478 N.E.2d 50, 51. A quantity permitting an inference of predisposition to sell is one which could not be personally consumed or used and therefore of necessity available for delivery or sale. *Montego*, 517 N.E.2d at 76; *Voirol v. State* (1980), Ind. App., 412 N.E.2d 861, 864, *trans. denied*. Furthermore, because intent is a mental state, the trier of fact must usually resort to reasonable inferences based on examination of surrounding circumstances to determine whether the requisite intent exists. *Montego*, 517 N.E.2d at 75. Circumstantial evidence of intent to deliver such as scales, plastic bags, and other paraphernalia is sufficient to support a conviction. *Id.* at 76.

*Kail*, 528 N.E.2d at 809.

The circumstances surrounding Gilbert's receipt of the packages are highly suspicious. Gilbert denied that he was waiting for the packages to be delivered because "Kevin Johnson" did not tell him when to expect the package. However, Inspector Harris testified that Gilbert was standing outside and greeted him. When Inspector Harris asked him if he

was “Mr. Johnson,” Gilbert said that he was and signed the name “Kevin Johnson.” Gilbert then fled out the back door when Inspector Harris returned with the police to execute the search warrant. *See Brown v. State*, 563 N.E.2d 103, 107 (Ind. 1990) (“Evidence of flight may be considered circumstantial evidence of consciousness of guilt.”). Gilbert attempted to explain this behavior by testifying that he had been drinking while on probation, but Officer Cline testified that he was around Gilbert for approximately one hour the day of his arrest and he did not smell of alcohol, his eyes were not bloodshot, and he did not exhibit any other signs of intoxication. Officer Cline stated that he did not see any alcohol in the apartment when he conducted his search. Thus, the jury could reasonably discredit Gilbert’s testimony.

Gilbert admitted that he used marijuana and the marijuana on the dresser and in the pill box was his. However, the marijuana in the packages far exceeded the amount that even a heavy smoker would use. The police also found several boxes of large plastic bags, which Officer Brimer testified were used by high end dealers to package drugs by the ounce or pound. Gilbert claimed that his father used the bags to store food that he bought in bulk, but the testimony established that Gilbert’s father was not living in the apartment at that time. Officer Brimer confirmed that drug dealers sometimes use the ploy of mailing drugs using a fictitious address. Given the large quantity of drugs and packaging materials, Gilbert’s flight, and the evidence that contradicted his explanation for his behavior, we conclude that there is sufficient evidence from which the jury could infer that Gilbert knowingly possessed marijuana with intent to deliver. Gilbert’s arguments are merely a request that we reweigh the evidence, which we will not do.

Affirmed.

KIRSCH, J., and BRADFORD, J., concur.