

No. 1-10-1826

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
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 7382
)	
CHATIQUA MELTON,)	Honorable
)	Rosemary Higgins-Grant,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GARCIA delivered the judgment of the court.
Justices Lampkin and Palmer concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment entered on defendant's conviction of possession of a controlled substance with intent to deliver affirmed over her challenge to the sufficiency of the evidence; mittimus modified.
- ¶ 2 Following a jury trial, defendant Chatiqua Melton was found guilty of possession of a controlled substance with intent to deliver, and sentenced to eight years' imprisonment. On appeal, defendant contends that her conviction should be reduced to the lesser offense of possession of a controlled substance because the State failed to prove beyond a reasonable doubt

that she intended to deliver the cocaine in her possession. She also requests that her mittimus be corrected to reflect the proper offense of which she was convicted.

¶ 3 The record shows, in relevant part, that about 2 p.m. on March 26, 2009, Chicago police officers executed a search warrant at 6204 South Martin Luther King Drive, Apartment 13, in Chicago. During their search, they found a bag containing several individual packets of cocaine on top of the sofa cushion defendant had been sitting on when they arrived, a bag containing cocaine and packaging paraphernalia in the back cushion of that sofa, \$125 under the sofa cushion next to where she had been sitting, and additional money on her person and under the mattress in her bedroom. Defendant was then charged with possession of a controlled substance with intent to deliver.

¶ 4 At trial, Marius Sandu testified that he manages the property at 6204 South Martin Luther King Drive, and that he leased apartment number 13 to defendant. On February 3 and March 2, 2009, Sandu received rent payments for that apartment, but he could not say whether he received the February and March payments directly from her, since he did not always receive the rent money from defendant personally. On cross-examination, Sandu acknowledged that defendant's apartment application listed Lamar Crenshaw as a tenant. He also stated that he knew that other adults lived with her in March 2009.

¶ 5 Chicago police officer Ronald Coleman testified that about 2 p.m. on March 26, 2009, he and his narcotics team arrived at the subject premises to execute a search warrant, and as he approached the residence, he saw through the slightly-open blinds to the apartment that defendant was sitting on the living room couch facing the television. He shared this observation with his team, then knocked on the door and announced "police, search warrant." When there was no response, the team breached the door with a battering ram, entered the apartment yelling "police, search warrant, don't move," and defendant "threw her hands up" while still seated on the

couch. Officer Coleman then searched the apartment for other individuals and detained a black female named "Mrs. Henry" in the second bedroom, about 10 to 15 feet away from defendant.

¶ 6 Thereafter, Officer Coleman presented defendant with the search warrant and asked her to stand up so the officers could examine the sofa. When she did so, he saw that she had been sitting on a clear plastic bag filled with several "purple or pinkish" ziploc baggies containing a white rock-like substance suspected to be cocaine. At that point, Officer Coleman placed her under arrest, walked her outside the apartment, and informed her of her *Miranda* rights. Defendant told him that "she lived there and all the things recovered inside the apartment were hers."

¶ 7 Officer Coleman eventually left defendant outside with two officers and reentered the apartment to conduct a search of the premises. When he lifted the mattress off the bed in the first bedroom on the right, he found paper money "sprawled" across the box spring. On the television stand, he found defendant's state identification card, a Horseshoe casino gaming card bearing her name, and a receipt for money that she had won there. On cross-examination, Officer Coleman stated that there was \$150 on the box spring, and that the casino receipt indicated defendant had won \$2,000 in late 2008.

¶ 8 Chicago police officer James Echols testified that he also participated in the execution of the search warrant at the subject premises, and when Officer Coleman ordered defendant to get up from the sofa, he observed that she had been sitting on a clear plastic bag filled with purple plastic bags that contained "small white rock objects" suspected to be narcotics. He alerted Officer Del Pilar, the inventory officer, who photographed and recovered the objects.

¶ 9 Officer Echols was eventually assigned to search the living room, and he further examined the couch defendant had been sitting on. Under the "pillow back" against which defendant had been seated, he found a black plastic bag filled with clear, knotted plastic bags

containing "white chunks" of suspect narcotics, along with "quite a few" small, empty purple ziploc bags which, in his experience, are used for packaging narcotics. He also found United States currency under the sofa cushion next to where defendant had been sitting.

¶ 10 Chicago police officer David Del Pilar testified to his participation in the execution of the search warrant at the subject premises as the evidence officer. Officer Echols called him over to the sofa where he observed a clear plastic bag filled with 14 smaller purple bags containing a white, rock-like substance on the cushion. He photographed the bag and placed it inside an evidence bag, and did the same for the black plastic bag and money recovered by Officer Echols, and the receipt and money discovered by Officer Coleman. He placed the money recovered from defendant's person into an inventory bag as well. Officer Del Pilar testified that he recovered \$125 from the couch, \$150 from under the mattress, and \$113 from defendant's person. He also noted that the bag recovered from the couch containing "numerous smaller Ziploc bags" also contained thumb tacks.

¶ 11 Paul Titus, a forensic scientist for the Illinois State Police, tested the material recovered in the couch and determined that the substance in the 10 knotted, plastic bags contained cocaine and weighed 33.1 grams. He also testified that he tested one item at random from the 14 small purple ziploc bags and determined that the substance therein contained cocaine and weighed .1 gram.

¶ 12 For the defense, Corinne Henry testified that on March 26, 2009, she was living with defendant at the subject premises. She had met defendant through her cousin Lamar Crenshaw who was also living there. About 2 p.m. on the day in question, she was sleeping in the bedroom when she heard a boom. Police officers then entered her room, handcuffed her, and brought her outside where she was eventually left alone with defendant, who had also been brought outside in handcuffs. Henry did not recall the officers coming out and asking defendant

any questions, and she did not see them show her any narcotics that day. She further testified that her cousin Sharise Blake and Blake's boyfriend, whose name Henry could not remember, stayed at the apartment around the time of this incident as well. On cross-examination, Henry stated that defendant's bedroom is on the right when entering the apartment from the front door.

¶ 13 The defense subsequently rested, and following deliberations, the jury found defendant guilty of possession of a controlled substance with intent to deliver. In this appeal from that judgment, defendant does not challenge the sufficiency of the State's evidence to establish her possession of the cocaine, but contends that the State failed to prove the element of intent to deliver beyond a reasonable doubt. She claims that there was "no evidence" that she ever delivered or attempted to deliver the cocaine, and that items "commonly indicative" of an intent to deliver were not present in this case. She therefore requests this court to reduce her conviction to the lesser offense of possession of a controlled substance, and remand the matter for re-sentencing.

¶ 14 The State responds that the totality of the evidence presented at trial established defendant's intent to deliver the cocaine beyond a reasonable doubt. The State specifically asserts that the jury could have reasonably inferred that defendant intended to sell the cocaine based on the manner in which she kept it, the presence of empty baggies and thumb tacks, and the amount of cash in her possession.

¶ 15 Where, as here, defendant challenges the sufficiency of the evidence to sustain her conviction, the question for the reviewing court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Campbell*, 146 Ill. 2d 363, 374 (1992). It is the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the

evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *Campbell*, 146 Ill. 2d at 375.

¶ 16 To sustain defendant's conviction of possession of a controlled substance with intent to deliver in this case, the State was required to prove that defendant knowingly possessed between 15 and 100 grams of cocaine with intent to deliver. 720 ILCS 570/401(a)(2)(A) (West 2008). The element of "intent to deliver" is usually proved by circumstantial evidence, and several factors have been considered by Illinois courts as probative of such intent. *People v. Robinson*, 167 Ill. 2d 397, 408 (1995). These factors include: whether the quantity of controlled substance is too large for personal consumption; the high purity of the drug; the possession of weapons; the possession of large amounts of cash; the possession of police scanners, beepers, or cellular phones; the possession of drug paraphernalia; and the manner in which the drugs are packaged. *Robinson*, 167 Ill. 2d at 408.

¶ 17 Viewed in the light most favorable to the prosecution, the evidence shows that Chicago police officers executed a search warrant at the apartment leased to defendant. When they arrived, defendant was sitting on the living room couch where the officers found a clear plastic bag containing 14 small, purple ziploc bags concealed between her person and the sofa cushion. One of those small bags contained .1 gram of cocaine. Their further search of the sofa revealed \$125 under the cushion to the right of where defendant had been sitting, and a black plastic bag behind the back cushion containing several small, empty ziploc bags and 10 clear, knotted plastic bags filled with 33.1 grams of cocaine. The officers also recovered \$113 from defendant's person, and \$150 from under the mattress in her bedroom.

¶ 18 The record thus shows that some of the cocaine in defendant's possession was packaged inside 14 small ziploc bags, and that the rest was in knotted plastic bags that were being stored with several more empty small ziploc bags. Such packaging and storage is highly indicative of an intent to deliver. *Robinson*, 167 Ill. 2d at 414. The record also shows that defendant had over \$100 concealed near the cocaine in the same manner in which she had concealed the drugs, *i.e.* under a sofa cushion (*People v. Spann*, 332 Ill. App. 3d 425, 446 (2002)), as well as \$113 on her person, and \$150 hidden under a mattress in her bedroom. From this evidence, the jury could have reasonably inferred that defendant was in the process of selling the cocaine found in her home, and thus intended to deliver it.

¶ 19 Defendant nonetheless disputes this conclusion and calls our attention to certain evidence that the State did not present at her trial. In particular, she claims that there was no testimony that the amount of cocaine recovered was inconsistent with personal use, no evidence regarding the purity of the cocaine, and no evidence that the empty ziploc bags were "devoid of cocaine residue" and thus "intended for future packaging." With respect to evidence concerning the amount of cocaine recovered and its purity, defendant is essentially asserting that the State failed to establish each of the *Robinson* factors. This argument overlooks the supreme court's advisement that there is no hard and fast rule to be applied when determining whether there is intent to deliver (*Robinson*, 167 Ill. 2d at 414), and that the factors enumerated in *Robinson* are *examples* of the many factors that have been considered probative of the issue of intent to deliver (*People v. Bush*, 214 Ill. 2d 318, 327 (2005)). Thus, the absence of certain factors does not preclude a finding of intent to deliver as a matter of law, given the factors establishing that element beyond a reasonable doubt. *Bush*, 214 Ill. 2d at 327-29.

¶ 20 We also find, contrary to defendant's claim, that the State was not required to show that the empty ziploc bags in this case were completely "devoid of cocaine residue." The

State is not required to seek out and disprove every possible alternative explanation of the crime in order to prove defendant guilty; and here, where no objection or issue was raised concerning the otherwise "empty" ziploc bags, the jury was free to consider the evidence as presented.

People v. Beacham, 50 Ill. App. 3d 695, 700 (1977). We therefore find defendant's claim does not raise a reasonable doubt of her guilt.

¶ 21 Defendant also claims that *People v. Rivera*, 293 Ill. App. 3d 574 (1997) "provides an authority for reversing [her] conviction." We disagree. In *Rivera*, 293 Ill. App. 3d at 577, defendant was observed receiving a small plastic bag of cocaine from another individual, and this court noted that the only *Robinson* factor which could "arguably" support an inference of intent to deliver was the quantity of cocaine in defendant's possession (26.8 grams). Here, to the contrary, defendant was in possession of at least 33.2 grams of cocaine that was packaged and stored in a manner that suggested it was to be distributed, and was concealed in the couch along with over \$100 in cash. This circumstantial evidence of defendant's intent to deliver was more than sufficient to sustain her conviction for possession of a controlled substance with the requisite intent.

¶ 22 Defendant next requests that her mittimus be modified to reflect her conviction of possession of a controlled substance with intent to deliver, rather than manufacture or delivery of a controlled substance. The State concedes that the correction is warranted. We agree, and pursuant to our authority under Illinois Supreme Court Rule 615(b) (eff. Aug. 27, 1999)), we direct the clerk to modify defendant's mittimus to reflect her conviction of possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2008)).

¶ 23 For the reasons stated, we order the clerk to modify defendant's mittimus as indicated, and affirm the judgment in all other respects.

¶ 24 Affirmed; mittimus modified.