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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. 10 CR 2743
)	
JEREMY JOHNSON,)	Honorable
)	Neil J. Linehan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Quinn and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for possession of a controlled substance with intent to deliver is affirmed as modified, and his mittimus and fee order are amended where (1) the evidence proved defendant's intent to deliver cocaine beyond a reasonable doubt, (2) the \$200 DNA ID System fee is vacated because it was improperly assessed, (3) the mittimus reflects the incorrect number of days' credit for time served, and (4) the total fee assessment is incorrect.

¶ 2 Following a jury trial, defendant Jeremy Johnson was convicted of possession of a controlled substance with intent to deliver and sentenced to nine years' imprisonment. On appeal, defendant contends the State failed to prove him guilty beyond a reasonable doubt because the quantity of cocaine found in his possession alone was not sufficient to establish he intended to deliver those drugs. In addition, defendant contends, and the State agrees, he was

erroneously assessed a \$200 DNA ID System fee, his mittimus needs to be amended to reflect the correct number of days' served in presentencing custody, and his total assessment must be corrected. We vacate the DNA fee, correct the mittimus and fee order, and affirm defendant's conviction and sentence in all other respects.

¶ 3 At trial, Chicago police officer Baader testified that about 8 a.m. on January 1, 2010, he responded to a call regarding a domestic battery. When he arrived at the home, a woman came outside, signed a complaint, and said the offender was sleeping in a bedroom. Officers Baader and Bratton entered the bedroom and saw defendant sleeping on the bed wearing sweatpants. The officers turned on the bedroom light, and defendant got up, turned off the light, and returned to bed. Officer Baader then identified himself as a police officer and nudged defendant. When defendant stood up, Officer Baader handcuffed him, arresting him for domestic battery.

¶ 4 Officer Baader then performed a custodial search of defendant and found \$2,643 in cash in the right pocket of defendant's sweatpants. The money was comprised of three \$100 bills, with the rest in smaller denominations, mostly consisting of \$5 and \$1 bills.

¶ 5 From defendant's left pocket, Officer Baader recovered a knotted plastic bag containing suspect crack cocaine consisting of 1 large white rock, 4 small white rocks and 10 smaller white rocks. The large rock was slightly larger than a golf ball, the 4 small rocks were each about the size of a penny, and the 10 smaller rocks were about half that size. Based on his experience, Officer Baader testified crack cocaine is usually contained in a knotted plastic bag made with Saran Wrap that the rock is pushed into, and the plastic is twisted and tied. The drugs may also be packaged in small Ziploc envelopes called jewelry envelopes. Officer Baader placed the bag of suspect drugs in his pocket and returned the money to defendant's pocket. He subsequently weighed the recovered drugs and found they weighed 46.4 grams. Officer Baader testified the small rock of crack cocaine would cost \$10 to \$20 on the street, and the estimated value of the

cocaine recovered in this case was \$5,719. The officer acknowledged that when he arrested defendant, he did not recover any packaging bags, scales, cutting agents, guns, ammunition, beepers, safes, lock boxes, business logs or lists of sellers.

¶ 6 Illinois State Police forensic chemist Daniel Beerman identified in court the suspect narcotics recovered in this case, which he analyzed at the crime laboratory. Beerman described the inventory as a knotted plastic bag that contained a large knotted plastic bag containing a chunky substance, 4 additional knotted plastic bags which each contained a chunky substance, and 10 smaller knotted plastic bags which each contained a chunky substance. Beerman tested the substance contained in the one large bag and found it positive for 38.1 grams of cocaine. He then tested each of the substances in the four additional bags and found them positive for 2.4 grams of cocaine. Beerman did not test the contents of the 10 smaller bags because he was already within the weight range for the offense of 15 to 100 grams of cocaine.

¶ 7 In closing argument, defense counsel argued that the quantity of cocaine and large amount of money recovered from defendant did not prove he had the intent to deliver those drugs. The jury found defendant guilty beyond a reasonable doubt of possession of a controlled substance with intent to deliver. The trial court subsequently sentenced defendant to a term of nine years' imprisonment.

¶ 8 On appeal, defendant first contends the State failed to prove him guilty beyond a reasonable doubt because the quantity of cocaine found in his possession alone was not sufficient to establish he intended to deliver those drugs. Defendant argues that most of the indicia of intent to deliver, such as packaging materials, scales, cell phones, police scanners, beepers, cutting agents and drug paraphernalia, were not present in this case, and no other evidence proved an intent to deliver. Defendant asserts he was not engaged in any behavior that suggested

an intent to deliver, the money could have been from his construction job, and he could have bought the drugs packaged as they were for his own personal consumption over the holidays.

¶ 9 When defendant argues that the evidence is insufficient to support his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A criminal conviction will not be reversed based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Schmalz*, 194 Ill. 2d 75, 80 (2000). The jury is responsible for determining the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Evans*, 209 Ill. 2d 194, 211 (2004).

¶ 10 To convict defendant of possession of a controlled substance with intent to deliver, the State must prove defendant knew the drugs were present, they were in his immediate possession or control, and he intended to deliver the drugs. *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). The jury may infer defendant's intent to deliver from numerous circumstances. *Id.* at 411. That intent is usually proved by circumstantial evidence after consideration of many factors, including the manner in which the substance is packaged, defendant's possession of a large amount of cash, and the quantity of the substance. *Id.* at 408. Additional factors our supreme court has found "probative of intent to deliver" include possession of weapons, police scanners, beepers, cellular telephones, and drug paraphernalia. *Id.* The *Robinson* court stated that the quantity of a controlled substance alone may be sufficient evidence to prove an intent to deliver where that amount could not reasonably be viewed as for defendant's personal consumption. *Id.* at 410-11. The court also stated that packaging alone may be sufficient evidence of intent to deliver in appropriate circumstances. *Id.* at 414. The court further explained that "[i]n light of the

numerous types of controlled substances and the infinite number of potential factual scenarios in these cases, there is no hard and fast rule to be applied in every case." *Id.*

¶ 11 Our supreme court subsequently clarified that the factors listed in *Robinson* are merely "examples" of factors courts have considered when determining intent to deliver, and they are not required factors, such that their absence precludes a finding of intent to deliver. *People v. Bush*, 214 Ill. 2d 318, 327 (2005). When other factors are present in the case that indicate defendant's intent to deliver, "the absence of '*Robinson* factors' is of no consequence." *Id.* at 328.

¶ 12 Here, we find that it was reasonable for the jury to infer from the evidence presented that defendant intended to deliver the cocaine recovered from his pants pocket. Defendant was found in possession of 40.5 grams of cocaine, the estimated street value of which was \$5,719. The jury could have reasonably concluded that this large quantity of cocaine was too much for defendant's personal consumption, and found his intent to deliver on that basis alone. However, contrary to defendant's assertion, in this case the jury was presented with additional evidence that supported an inference of his intent to deliver. The evidence showed that the drugs were packaged in a manner for sale in 15 individual knotted plastic bags with varying amounts of cocaine in each bag. In addition, Officer Baader recovered \$2,643 in cash from defendant's pants pocket, mostly consisting of \$5 and \$1 bills. We find that the large quantity of cocaine, together with the individual packaging of the drugs and the large amount of money in small denominations, provided sufficient evidence for the jury to infer that defendant intended to deliver the cocaine. Based on this evidence, the absence of other possible factors is of no consequence. It was the jury's duty to determine whether the evidence proved defendant's intent, and we find no reason to disturb its findings.

¶ 13 Defendant next contends, and the State agrees, that the \$200 DNA ID System fee under section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2010)) was

erroneously assessed to him because he was previously assessed the fee and submitted a DNA sample in August 2007 as the result of a prior conviction. See *People v. Marshall*, 242 Ill. 2d 285 (2001). We therefore vacate the \$200 DNA fee from the Fines, Fees and Costs order.

¶ 14 The parties also agree that defendant's mittimus should be amended to reflect that he is entitled to sentencing credit for 259 days rather than 260, as currently shown on the mittimus. In his opening brief, defendant argued that he was due credit for 260 days. However, in his reply brief, defendant acknowledged that he is not entitled to credit for the day on which he was sentenced. See *People v. Williams*, 239 Ill. 2d 503 (2011). Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)), we direct the clerk of the circuit court to amend the mittimus to reflect that defendant is to receive 259 days of credit for time served.

¶ 15 Finally, the parties agree that defendant's fee assessment was incorrectly calculated when his monetary credit for the days he served in presentence custody was erroneously added to his assessment rather than deducted from it. The parties agree that after vacating the \$200 DNA fee, defendant's assessment is \$2,210, minus \$1,295 for his presentence incarceration credit (725 ILCS 5/110-14 (West 2010)) for a total amount due of \$915. We further direct the clerk of the circuit court to amend the Fines, Fees and Costs order to reflect the correct assessment and credit.

¶ 16 For these reasons, we vacate the \$200 DNA ID System fee from the Fines, Fees and Costs order, direct the clerk of the circuit court to amend that order and the mittimus as instructed above, and affirm defendant's conviction and sentence in all other respects.

¶ 17 Affirmed as modified; mittimus corrected.