

No. 1-11-0027

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 22578
	)	
TAVERIS ANDERSON,	)	Honorable
	)	John T. Doody, Jr.,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Justices Fitzgerald Smith and Sterba concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's presence in a barricaded "drug house" while in possession of 5.7 grams of cocaine packaged in 26 baggies as well as six tablets of the controlled substance ecstasy established beyond a reasonable doubt that he unlawfully possessed the drugs with intent to deliver.

¶ 2 Following a bench trial, defendant Taveris Anderson was convicted of two counts of possession of a controlled substance with intent to deliver and sentenced to two concurrent terms of five years in prison. On appeal, defendant contends that his convictions should be reduced to simple possession because there was insufficient evidence of intent to deliver the controlled

substances in his possession. Defendant also challenges the imposition of a \$200 DNA analysis fee and requests that we correct the mittimus to reflect the appropriate offense of possession with intent to deliver in Count 1. We affirm defendant's convictions, vacate the DNA analysis fee, and order correction of the mittimus.

¶ 3 Defendant was charged with one count each of possession with intent to deliver (1) between 1 and 15 grams of cocaine, (2) less than 5 grams of the controlled substance known as ecstasy, and (3) more than 30 but less than 500 grams of cannabis. Before trial, the court granted the State's motion for an order of *nolle prosequi* on the cannabis charge.

¶ 4 At trial, Officer Roumbos testified that on November 20, 2009, he and other members of his narcotics section team executed a search warrant at 5422 South Laflin in Chicago. The officers went to the rear door of an apartment at that address, announced their office, and after receiving no response, made forced entry with a battering ram into the apartment. Roumbos observed that the door was locked and barricaded with a series of two-by-four and two-by-six pieces of wood that held the door securely shut. There was also a side door into the apartment that was similarly locked and barricaded with wooden braces holding the door shut.

¶ 5 As Roumbos entered, he saw defendant run out of the bathroom and into the living room. Roumbos ran into the bathroom where he observed that the floor was soaked with water and the toilet had just been flushed. Roumbos observed several items swirling in the toilet bowl and he recovered them. Two of the items were knotted clear plastic bags. Inside of each bag were 13 smaller knotted clear plastic bags, a total of 26 smaller bags containing suspected crack cocaine. Two other items were zip-lock baggies containing a green leafy substance which Roumbos recognized as cannabis. One more bag recovered from the toilet contained six red ecstasy tablets. Roumbos observed two 5-gallon buckets with about 1½ gallons of water in one bucket.

The officers subsequently learned that the water supply to the unit had been shut off, but Roumbos testified that the toilet could be flushed if water were poured into the bowl.

¶ 6 Roumbos joined other police officers in the front room where defendant and a second individual were detained. Roumbos handcuffed defendant and observed that his hands were soaked and his tee shirt was very damp. Defendant was searched, \$175 was recovered from his person, and an additional \$20 was also recovered. Defendant did not possess a key to the Laflin apartment and the police found no identification or mail addressed to defendant in the apartment. Defendant's residence was determined to be 5438 South Loomis. Roumbos searched the Laflin apartment thoroughly. He found no pipes or other paraphernalia for ingesting narcotics and found no food and no clothing in the apartment. Photographic exhibits received in evidence included photos of the apartment's barricaded side and back doors, empty kitchen cupboards and cabinets, and the bags retrieved from the toilet.

¶ 7 The parties stipulated to the chain of evidence with respect to the recovered narcotics and to the analysis and quantity of the contents of the baggies by a forensic chemist. It was stipulated that the 26 baggies contained a total of 5.7 grams of a substance containing cocaine and the 6 tablets contained 0.4 gram of methylenedioxymethamphetamine (MDMA). We note that MDMA is also known as ecstasy, a controlled substance. See *People v. Nash*, 409 Ill. App. 3d 342, 344 (2011).

¶ 8 In closing argument, the prosecutor referred to the Laflin apartment as a "drug stash house." In announcing its findings, the circuit court concluded that defendant was attempting to dispose of the narcotics in the apartment. The court also found:

"Looking at the entire picture and making the reasonable inferences and looking at a home that was both barricaded, no food, no clothing, no indicia that this was someone's home, the

water not being turned on, this is what some would call a stash house or appears to be and accordingly on Counts I and II, there will be a finding of guilty."

¶ 9 Defendant was sentenced to two concurrent terms of five years in prison.

¶ 10 On appeal, defendant does not dispute having possession of the 5.7 grams of cocaine or the six tablets of ecstasy. He contends, however, that his convictions for possession of a controlled substance with intent to deliver must be reduced to simple possession because the State failed to prove beyond a reasonable doubt the element of intent to deliver.

¶ 11 When presented with a claim of insufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Leonard*, 377 Ill. App. 3d 399, 403 (2007). This means that we must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). On appeal, a conviction will not be set aside on grounds of insufficient evidence unless the proof is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *People v. Clark*, 349 Ill. App. 3d 701, 704 (2004).

¶ 12 To sustain a charge of possession of a controlled substance with intent to deliver, the State must prove that: (1) the defendant had knowledge of the presence of the narcotics; (2) the narcotics were in the immediate possession or control of the defendant; and (3) the defendant intended to deliver the narcotics. *People v. Sherrod*, 394 Ill. App. 3d 863, 865 (2009). Whether the evidence is sufficient to prove intent to deliver must be determined on a case-by-case basis. *People v. Robinson*, 167 Ill. 2d 397, 412-13 (1995). Intent to deliver a controlled substance is seldom amenable to direct proof, and generally must be inferred circumstantially. *People v. Reynolds*, 358 Ill. App. 3d 286, 298 (2005).

¶ 13 In considering circumstantial evidence necessary to support an inference of intent to deliver, many different factors are probative of intent to deliver. In *Robinson*, our supreme court noted several of those factors: whether the amount of drugs is too large to be viewed as being for personal consumption, the purity of the confiscated drug, the possession of drug paraphernalia, weapons, large amounts of cash, police scanners, beepers or cell phones, and the manner in which the substance is packaged. *Robinson*, 167 Ill. 2d at 408. Defendant asserts that none of the factors enumerated in *Robinson* was present here. He contends there was no evidence that Roubos viewed defendant actually engaging in a narcotics transaction; no large amounts of cash, weapons, scanners, or paraphernalia were found; and no evidence was introduced concerning the purity of the cocaine.

¶ 14 We find that two of the factors listed in *Robinson* as probative of intent to deliver were present here, namely, the amount of the narcotics being too large for personal consumption and the manner in which the substance was packaged. In *People v. Clark*, 406 Ill. App. 3d 622, 631 (2010), this court refused to reduce defendant's conviction for possession of heroin with intent to deliver to simple possession, finding that his possession of 24 packets of heroin was "highly indicative of one's intent to deliver rather than to personally consume." In *People v. Tolliver*, 347 Ill. App. 3d 203, 220 (2004), we affirmed defendant's conviction for possession with intent to deliver based upon the separate packaging of 30 bags and a quantity of 7.6 grams of cocaine. In addition, the lack of drug paraphernalia for personal consumption, such as pipes or other smoking devices, could lead to the inference that defendant's intent was to deliver the 26 baggies of cocaine. *People v. Johnson*, 334 Ill. App. 3d 666, 678 (2002).

¶ 15 Another critical factor present in the case at bar was that defendant was arrested in a fortified drug house while in possession of the narcotics. When that circumstance is combined

with the quantity and packaging of the cocaine, we conclude that the evidence was sufficient to prove defendant possessed the drugs with intent to deliver and not for his own personal use.

¶ 16 Defendant advances several arguments in opposition to consideration of his presence in a "drug stash house" as a factor indicating intent to deliver. He asserts that because no evidence was introduced at trial that the apartment was a drug house or stash house, it was error both for the State to assert in closing argument that the apartment was a drug stash house and for the circuit court to use the term stash house in its findings. Defendant contends that because he was given no notice of the State's intent to argue the apartment was a drug house, he was denied his due process right to confront and address this evidence. Defendant has forfeited this assignment of error. To preserve this claim for review, defendant was required to object both at trial and in a written posttrial motion. *People v. Thompson*, 238 Ill. 2d 598, 611 (2010). His failure to object at trial to the State's "drug stash house" reference in closing argument or the court's use of the term "stash house" constitutes forfeiture of the issue on appeal. Defendant has not requested that we consider his claim under the plain error doctrine.

¶ 17 Moreover, defendant is mistaken in claiming that there was no testimony indicating that the Laflin apartment was a drug house. It was a reasonable inference from the testimonial and photographic evidence that the apartment, which had no water supply, no food or clothing, whose kitchen cupboards and cabinets were bare and whose doors were locked and barricaded, was not someone's residence, but a drug house used for the unlawful distribution of drugs. The law has long recognized the knowledge by police of the existence of "drug houses" or "stash houses" where drugs are packaged or sold. See *People v. Baugh*, 358 Ill. App. 3d 718, 723 (2005); *People v. Juarbe*, 318 Ill. App. 3d 1040, 1052 (2001). We have defined a drug house as a dwelling not used primarily as a residence but instead as a center for the packaging and distribution of drugs, one typically containing very little or no furniture, appliances, pots or pans,

food or clothing. *In re K.A.*, 291 Ill. App. 3d 1, 6 (1997); *People v. Bond*, 205 Ill. App. 3d 515, 517 (1990). Consequently, defense counsel did not require prior notice from the State to glean that the evidence would show defendant was arrested in a drug house.

¶ 18 Defendant also contends that in *Robinson* the supreme court never specified an accused's location as one of the factors relevant to a finding of intent to deliver. Defendant is mistaken. In *Robinson*, the defendant was in possession of 2.8 grams of cocaine divided into 36 bags as well as four tinfoil packets containing 2.2 grams of phencyclidine (PCP). The total of 5 grams of cocaine and PCP in *Robinson* was less than the 5.7 grams of cocaine defendant was found to possess here. The supreme court noted that while the amount and packaging of the narcotics, standing alone, might be viewed as designed for personal consumption, there were other circumstances indicating an intent to deliver, namely, that police officers had received anonymous tips complaining of drug sales at a specific address and had observed about a dozen people going in and out of that address late at night. As police officers knocked on the apartment door, the defendant was observed throwing the narcotics from a window of the apartment. The apartment clearly was a drug distribution point. It was the defendant's presence at that apartment which, when combined with the quantity and packaging of the narcotics, established an intent to distribute in *Robinson*. Similarly, in the case at bar, the quantity and packaging of the cocaine and ecstasy, combined with defendant being arrested within the confines of a heavily fortified drug house while in possession of those narcotics, was ample evidence of his intent to deliver the narcotics.

¶ 19 In contending that the drugs in his possession were merely for his own personal use, defendant notes that he was in possession of only \$195 when arrested, an insufficient amount to prove intent to deliver. Roubos testified that \$175 was recovered from defendant and another \$20 was recovered from an unspecified location within the apartment. Defendant argues that it

was plausible the amount and packaging of the drugs were as they were when he received them. A similar argument was offered by the defendant and rejected by this court in *People v. Greenleaf*, 254 Ill. App. 3d 585 (1993), where the defendant's conviction for possession of cocaine with intent to deliver was affirmed. There, the trial evidence showed that, after receiving information drugs were being sold at an apartment, an undercover police officer knocked on the door and identified himself as a buyer. The door was opened by codefendant Patton, who gave the officer a packet containing what was later determined to be 0.17 gram of cocaine in return for \$25. Shortly thereafter, other officers went to the apartment, knocked down the door, and found Patton and defendant Greenleaf within. The defendant was found in possession of 4.36 grams of cocaine while Patton possessed only 0.01 gram cocaine and 0.02 gram heroin. The defendant contended he was a customer, not a seller of the narcotics. However, "the considerable sum of money required to purchase 4.36 grams of cocaine was found neither on Patton nor elsewhere in the apartment." *Id.* at 590-91. In the case *sub judice*, defendant was in possession of \$175 and only another \$20 was found in the apartment after a thorough search of the premises by the police, making it unlikely that defendant had gone to the apartment as a buyer and purchased the 5.7 grams of cocaine in 26 separately packaged baggies and six ecstasy tablets for such a small amount of cash found there.

¶ 20 Defendant refers us to only one authority where cocaine in excess of 5 grams has been held to be an amount consistent with personal consumption. In *People v. Crenshaw*, 202 Ill. App. 3d 432 (1990), the court reduced defendant's conviction from possession with intent to deliver to simple possession. The court noted that "the division of 11.2 grams of cocaine into 22 packets could just as well have been the form in which the substance was purchased by defendant rather than the form in which it was to be sold." *Id.* at 435. However, in *Crenshaw*, defendant was not in a drug distribution location when arrested; he was stopped by police while driving his

vehicle and was seen throwing a packet containing the narcotics onto the ground. Here, defendant was within a fortified apartment when the police entered and found both entrances to the apartment locked and barricaded. Defendant asserts that the 26 baggies of cocaine and the ecstasy tablets in his possession were for his own consumption, but he resided at another address, and the highly fortified Laflin apartment where he was arrested was not his dwelling but an apparent drug house. In *Greenleaf, Robinson*, and the instant case, unlike *Crenshaw*, the factors evidencing intent to deliver included defendant's unlawful possession of narcotics while present in an apartment used as a narcotics distribution location.

¶ 21 Defendant also contends the State improperly referenced defendant's possession of cannabis during the trial despite the fact that Count III of the information, possession of cannabis with intent to deliver, was dismissed before trial. Defendant's failure to raise a timely objection at trial has resulted in the forfeiture of this issue on review. We need not reach the merits of this issue as defendant has not requested that we consider his claim as plain error. *People v. Hillier*, 237 Ill. 2d 539, 549-50 (2010).

¶ 22 We conclude that the evidence seen in a light most favorable to the prosecution was sufficient to establish that defendant knew of the presence of the narcotics, that the narcotics were in his immediate and exclusive control, and that defendant intended to deliver the narcotics.

¶ 23 Next, defendant asserts, and the State agrees, that the imposition of a \$200 DNA analysis fee pursuant to section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2010)) must be vacated. Defendant previously had been convicted of a felony and we may presume that at that time he was required to submit a DNA sample and pay an analysis fee of \$200. *People v. Leach*, 2011 IL App (1<sup>st</sup>) 090339, ¶ 37. Consequently, defendant was not required to submit another sample or pay another fee. *People v. Marshall*, 242 Ill. 2d 285, 303

(2011). Under our authority pursuant to Illinois Supreme Court Rule 615(b) (eff. Aug. 27, 1999), we vacate that portion of its order requiring defendant to pay the \$200 DNA analysis fee.

¶ 24 Finally, both defendant and the State agree the mittimus incorrectly reflects his conviction on Count 1 for manufacture or delivery of a controlled substance when, in fact, he was convicted of possession of a controlled substance with intent to deliver. This court has the authority to directly order the clerk of the circuit court to make the necessary corrections to the mittimus pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999); see *People v. Williams*, 368 Ill. App. 3d 616, 626 (2006). Accordingly, this court directs the circuit court clerk to amend the mittimus to reflect that defendant was convicted on Count 1 of possession with intent to deliver 1-15 grams of cocaine.

¶ 25 For the reasons stated above, we affirm defendant's convictions for possession of a controlled substance with intent to deliver. We vacate the portion of the circuit court's sentencing order that imposed a \$200 DNA fee. Finally, we order correction of the mittimus.

¶ 26 Affirmed in part, vacated in part; mittimus corrected.