

No. 1-11-1271

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. 10 CR 5160
)	
MARCELUS BRITT,)	Honorable
)	John T. Doody,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Justices Howse and Taylor concurred in the judgment.

ORDER

¶ 1 **Held:** Evidence was sufficient to convict defendant of possession of cocaine with intent to deliver; defendant was entitled to have his mittimus corrected to accurately reflect his convictions and credit for days served during stay of mittimus.

¶ 2 Following a bench trial, defendant Marcelus Britt was found guilty of possession with intent to deliver of between 1 and 15 grams of cocaine and possession with intent to deliver of between 1 and 15 grams of heroin and sentenced to two concurrent 5 and 1/2 year terms in prison. On appeal, defendant contends the State failed to prove he intended to deliver the cocaine. He also correctly contends his mittimus should be corrected to properly reflect the

crimes of which he was convicted and the additional days of credit to which he is entitled. We correct defendant's mittimus and affirm in all other respects.

¶ 3 The following evidence was adduced at trial. Chicago police officers executed a search warrant at a two-flat building located at 3916 West Arthington on February 18, 2010, around 8 p.m. Officer John O'Keefe testified that before entering the building, he heard loud rap music emanating from the second floor. After knocking and receiving no reply, he and other officers gained entry to the building by using a metal ram and breaking through an outside door. The door had been fortified from the inside with cinder blocks and planks. The officers then climbed a staircase to the second floor of the property where they breached a second door that had been fortified by "two by fours" nailed together. The officers finally opened another unlocked door and went beyond a sheet that "hung down." There, in a front room, O'Keefe observed defendant seated at a table, placing on a car battery what in O'Keefe's experience appeared to be clear bags of heroin. O'Keefe stated that he observed a total of 16 of these bags. Music coming from an adjacent room was "extremely loud," and defendant initially had his back to the officers as he worked.

¶ 4 O'Keefe saw the following items on the table: a grinder with white residue of suspected heroin, narcotics packaging, a small digital scale, spoons that O'Keefe testified could be used for measuring, six Ziplock baggies, each containing suspected cannabis, and a Dormin bottle that contained a chunk of suspected crack cocaine in a plastic baggie. O'Keefe noted Dormin is an agent used to "cut" heroin before packaging it for sale.

¶ 5 Defendant turned around and, upon seeing the officers, fled downstairs to the first-floor apartment of the building where he was detained, along with several other individuals who were not ultimately charged. Police recovered a total of \$2,530 from defendant's pockets.

¶ 6 The parties stipulated an Illinois State Police forensic chemist would testify that 6 of the 16 bags recovered were found to contain an actual weight of 1.4 grams of heroin, and that all 16

bags together contained an estimated total weight of 3.7 grams of heroin. The stipulation also showed the rock of crack cocaine had a total weight of 3.3 grams.

¶ 7 Willie Anderson testified for the defense that he was one of the other people on the first floor of the residence, defendant was never on the second floor of the building, there was no music playing at the time police entered and the money police claimed was recovered from defendant was actually recovered from Anderson.

¶ 8 The court found Officer O'Keefe's testimony "very clear" and that there was "no question" a cutting agent for the heroin, a small digital scale and other "indicia of intent to deliver" were found on the table near defendant. It found credibility to be in the favor of the police officers and found defendant guilty of intending to deliver between 1 and 15 grams of cocaine and between 1 and 15 grams of heroin.

¶ 9 Defendant first contends the State failed to prove he intended to distribute the 3.3 grams of crack cocaine found on the table. Specifically, defendant argues, while the paraphernalia also found on the table may be probative of his intent to distribute *heroin*, it is not similarly probative of his intent to distribute the *crack cocaine*, especially in light of the amount of crack cocaine recovered and the lack of other supporting indicia of distribution. We disagree.

¶ 10 When presented with a challenge to the sufficiency of evidence, our inquiry 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. Givens*, 237 Ill. 2d 311, 334 (2010). We will not reverse a conviction unless the evidence is so improbable, unsatisfactory or inconclusive that it creates a reasonable doubt of the defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011).

¶ 11 Defendant was convicted of possession of between 1 and 15 grams of cocaine with the intent to deliver but only challenges the sufficiency of evidence related to his intent to deliver. See 720 ILCS 570/401(c)(2)(West 2010).

¶ 12 Direct evidence of an individual's intent to deliver is rare, and thus the intent to deliver usually must be proven by circumstantial evidence. *People v. Robinson*, 167 Ill. 2d 397, 408 (1995). Factors considered probative in this respect include: whether the quantity of the controlled substance is too large for personal consumption; the high purity of the drug confiscated; the possession of weapons, large amounts of cash, police scanners, beepers or cellular telephones, and drug paraphernalia; and the manner in which the substance is packaged. *Id.* Possession of as little as 1.1 grams of crack cocaine, viewed alongside other factors, has been found sufficient to establish intent to deliver. See *People v. White*, 221 Ill. 2d 1, 7 (2006). As the quantity of the drug decreases, the amount of supporting circumstantial evidence required increases. *Id.* at 413. The *Robinson* factors are examples of the factors courts have considered to establish intent and are not exhaustive. *People v. Bush*, 214 Ill. 2d 318, 327 (2005). Moreover, *Robinson* "expressly allows for consideration of other, unspecified factors." *Id.* Given the "infinite" factual scenarios that may arise, intent to deliver must be examined on a case-by-case basis. See *White*, 221 Ill. 2d at 19.

¶ 13 Here, one of the officers executing the warrant at the Arthington building saw defendant sitting at a table and in the process of arranging individual bags of what was later determined to be between 1.4 and 3.7 grams of heroin. A container on the table contained a 3.3 gram rock of crack cocaine. A digital scale and narcotics packaging were nearby, along with a grinder and a cutting agent used to prepare heroin for sale and several individual baggies of suspected cannabis. Testimony showed defendant was carrying \$2,530 on his person. The court found the testimony of the officers to be "very clear" that indicia of intent to deliver were present near defendant when police arrived. Under the express *Robinson* factors, we find the evidence sufficient to support defendant's intent to deliver the cocaine.

¶ 14 Other circumstantial factors support defendant's intent to distribute the cocaine. There was no evidence that would show defendant intended to personally consume the crack cocaine;

the police did not recover, for example, a pipe. See *White*, 221 Ill. 2d at 18-20 (court properly considered the defendant was not in possession of a metal or glass tube pipe commonly used to consume crack cocaine by smoking as a factor to determine intent to deliver). Also, defendant had secreted himself in an upstairs apartment of the building accessible only by breaching two doors fortified from the inside with nailed two-by-fours and cinder blocks and casting aside a sheet that could reasonably be determined to provide additional privacy. We believe that evidence of fortification can properly be considered as evidence that a defendant is engaged in drug sales rather than personal use. See, e.g., *People v. K.A.*, 291 Ill. App. 3d 1, 6 (1997) (noting that a "drug house" is not a residence but instead a dwelling dedicated to the packaging of illegal drugs for sale). In sum, and considering the express factors and additional circumstances as permitted under *Robinson*, we find a rational trier of fact could have found sufficient evidence to support defendant's conviction for possession of cocaine with the intent to distribute beyond a reasonable doubt.

¶ 15 Defendant next contends, and the State rightly agrees, his mittimus should be corrected to reflect he was convicted of possession of between 1 and 15 grams of cocaine with intent to deliver and possession of between 1 and 15 grams heroin with intent to deliver.

¶ 16 Here, defendant's mittimus erroneously reflects respective convictions of manufacture and delivery of cocaine and heroin, where it should instead reflect respective convictions of possession with intent to deliver cocaine and heroin. See *People v. Blakney*, 366 Ill. App. 3d 925, 930 (2007). We order the clerk of the circuit court to correct defendant's mittimus to reflect the accurate convictions described above without remanding to the circuit court. See *People v. Mitchell*, 234 Ill. App. 3d 912, 921 (1992) (holding remand not required to correct mittimus).

¶ 17 Defendant finally contends, and the State rightly agrees, his mittimus should be corrected to reflect 7 additional days of credit for time spent in custody for a total of 419 days' credit. Defendant received credit for only 412 days, although he was entitled to credit for the 419 days

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he spent in custody. See 730 ILCS 5/5-8-7(b)(West 2010). We order the clerk of the circuit court to correct defendant's mittimus to reflect the above credit. See *Mitchell*, 234 Ill. App. 3d at 921.

¶ 18 For the foregoing reasons, we order the clerk of the circuit court to defendant's mittimus and affirm the judgment of the trial court in all other respects.

¶ 19 Affirmed; mittimus corrected.