

No. 1-11-2587

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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. 06 CR 16352
	)	
JAMIAN ELLIS,	)	Honorable
	)	Thomas V. Gainer,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Hyman and Justice Mason concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant's convictions of possession of cocaine with intent to deliver and possession of cannabis affirmed over his contentions that the trial court erred in admitting irrelevant and prejudicial evidence, the evidence was insufficient to convict him of possession of cocaine with intent to deliver, and the trial court violated Supreme Court Rule 431(b); defendant's mittimus was corrected to reflect his proper convictions.
- ¶ 2 Following a jury trial, defendant Jamian Ellis was found guilty of possession of a controlled substance (cocaine) with intent to deliver and possession of cannabis, and sentenced to respective, concurrent terms of eight and three years' imprisonment. On appeal, defendant

contends that the trial court erred in admitting a letter recovered at the scene because it was irrelevant and highly prejudicial. He also contends that his conviction for possession with intent to deliver cocaine should be reduced to simple possession. Defendant further maintains that he should receive a new trial because the trial court violated Illinois Supreme Court Rule 431(b) (eff. May 1, 2007) during jury selection. Alternatively, defendant asserts that the mittimus must be corrected to reflect his conviction of possession of a controlled substance with intent to deliver. We affirm as modified.

¶ 3 Defendant was charged with possession of cocaine with intent to deliver, possession of cannabis with intent to deliver, and unlawful use of a weapon by a felon. The charges stemmed from an incident on June 28, 2006, in front of an apartment building at 510 South California Avenue in Chicago where police saw defendant carrying a gun. Police chased defendant into an apartment at the subject address and recovered the gun in the stairwell of the building. Police also recovered \$600 and eight baggies of cocaine from defendant's pocket. After receiving consent to search the premises, police further recovered a letter from a law firm that was inside of an envelope addressed to defendant at 510 South California Avenue, a bag of cannabis, notes indicating narcotics transactions, and \$3,575. These items were found underneath the mattress in the back bedroom where defendant was arrested. The jury ultimately acquitted defendant of unlawful use of a weapon by a felon, but convicted him of possession of cocaine with intent to deliver and simple possession of cannabis, as a lesser-included offense of possession of cannabis with intent to deliver.

¶ 4 Jury selection began on January 11, 2010. The trial court admonished the jurors that:

"I spoke about the fact that the defendant is presumed to be innocent of the charges against him and that this presumption stays with the defendant throughout the trial and is not overcome unless

and until the jury determines the defendant is guilty beyond a reasonable doubt. Is there anyone in the jury box who disagrees with this fundamental principle of law? If so please raise your hand.

No hand[s] are raised.

\* \* \*

I also spoke about the fact that the State bears the burden of proving the defendant guilty beyond a reasonable doubt. Is there anyone in the jury box who disagrees with this fundamental principle of law? If so raise your hand.

No hands are raised.

\* \* \*

Because the defendant is presumed to be innocent, he does not have to present any evidence at all in this case. He can simply rely on the presumption of innocence. Is there anyone in the jury box that disagrees with that fundamental principle of law? If so raise your hand.

No hand[s] are raised.

\* \* \*

And, finally, as I've indicated the defendant need not testify in this case and if he chooses not to testify you may not consider his decision not to testify as evidence against him. Is there anyone in the jury box who disagrees with this fundamental principle of law? If so raise your hand.

No hands are raised."

¶ 5 During a hearing on a motion *in limine* prior to trial, defense counsel sought to exclude from evidence the letter from a law firm that was addressed to him at 510 South California Avenue. Specifically, the letter was a solicitation from a law firm, stating that the firm had learned that defendant had been arrested for battery and offered the firm's services as criminal defense attorneys. The letter also included a paragraph from a former client who indicated that the firm saved his life because he was found not guilty despite being charged with drug trafficking and facing 18 years' imprisonment. Defense counsel argued that the outside of the envelope, which was addressed to defendant at 510 South California Avenue was sufficient to achieve the State's purpose of demonstrating defendant's residency. The court agreed and excluded the contents of the letter from evidence. The court also stated it would allow a stipulation between the parties that when police were at the scene, they recovered a letter in a sealed envelope that was addressed to defendant at 510 South California Avenue and dated May 25, 2006.

¶ 6 At trial, Officer Ryan testified that at about 7 p.m. on June 28, 2006, he saw defendant get out of a car in front of 510 South California Avenue and place a gun in his right pants pocket. Defendant ran into the building at the subject address, and Ryan, along with several other officers on the scene, pursued him. Ryan saw defendant drop the gun down the stairwell as he ran upstairs. Defendant entered the back bedroom of the upstairs apartment where he was arrested. Ryan searched defendant and recovered eight separate baggies of cocaine and \$600 from his pocket. Besides defendant and the police, codefendant Richard Wonsey, who is not a party to this appeal, and Michelle Hall were also inside of the apartment. Hall stated that she was the leaseholder of the apartment and signed a consent to search form to allow police to search the premises. Police went over the form line by line with her, and she indicated that she understood the form. Police then searched the bedroom in which defendant was arrested. Officer

McDonald, who recovered the gun, Officer Connolly, and Sergeant Bechina testified similarly to Ryan.

¶ 7 Officer Brenden Corcoran testified that he searched the bedroom where defendant was arrested because Hall stated that was where defendant resided. Corcoran searched under the mattress in the aforesaid bedroom, and recovered \$3,575, notes indicating narcotics transactions, a large plastic bag containing cannabis, and a piece of mail containing defendant's name and the address 510 South California Avenue. On cross-examination, defense counsel asked Corcoran if the mail he recovered was "junk mail," and Corcoran responded that he was unsure.

¶ 8 Following defense counsel's cross-examination of defendant, the State, outside of the presence of the jury during a sidebar, stated that defense counsel opened the door to the admission of the contents of the letter by attempting to show that it was junk mail. The court agreed and an edited version of the letter, which omitted any mention of the firm's former client and indicated that defendant was charged with a misdemeanor without identifying the offense, was admitted into evidence. When admitting the letter, the trial court instructed the jurors that it was up to them to decide whether defendant lived at the subject address.

¶ 9 Arthur Weathers, a forensic scientist, testified that the substance recovered from defendant's pocket weighed 1.4 grams and tested positive for cocaine. The plant material recovered from underneath the bed was cannabis and weighed 163.5 grams.

¶ 10 Michelle Hall, defendant's mother, testified for the defense that she lived in the apartment in question, and that she was in her apartment on June 28, 2006, with several family members, including defendant, who lived with his girlfriend at a different location. According to Hall, defendant arrived at the apartment at about 4:30 p.m. on the date in question. At about 4:50 p.m., there was a knock on the door, which defendant answered. When defendant returned, he was handcuffed and accompanied by four police officers. Hall stated that she rented the back

bedroom to her nephew, but had evicted him about three months before the incident. Her nephew had locked the door and no one had been inside of the room after his eviction. Hall further testified that police presented her with a form to sign, but she was unable to read it because she was not wearing her glasses. Hall maintained that she signed the form without knowing its contents. Hall never saw any narcotics during the incident.

¶ 11 Fonda Jefferson, defendant's sister, testified similarly to Hall. She also testified that the back bedroom was a guest room that was locked, and that police used a butter knife to open the door to the room. According to Jefferson, defendant lived with his uncle.

¶ 12 Following trial, the jury acquitted defendant of unlawful use of a weapon by a felon. However, the jury found him guilty of possession of cocaine with intent to deliver and possession of cannabis, as a lesser-included offense of possession of cannabis with intent to deliver.

¶ 13 On appeal, defendant first contends that the trial court erred in admitting the letter police recovered under the mattress because its contents were more prejudicial than probative. Defendant specifically maintains that the letter prejudiced him because it contained evidence of other crimes.

¶ 14 During a pretrial motion *in limine*, defendant argued that the contents of the letter should not be admitted at trial because it would be unduly prejudicial. The trial court agreed, ruling that the letter would not be admitted at trial because it showed that defendant may have been charged with another crime. At trial, the pertinent part of defense counsel's cross-examination of Officer Corcoran regarding the letter was as follows:

"Q. And there's something else on the envelope, correct?

A. Yes, sir.

Q. And that says on the top of it auto 3 digits 606, correct?

A. Yes.

Q. Is it fair to say that's commonly referred to as junk mail?

MR. COOK [assistant State's Attorney]: Objection.

MR. KUSATZKY [defense counsel]: If he knows.

THE COURT: Overruled.

A. I don't know if that's what they refer to as junk mail, sir. I am not sure.

Q. You have seen mail in your lifetime that says auto on the top of it, right?

A. I've honestly never paid attention to that. I just paid attention to the name, and the address and the return address, sir.

Q. In your personal life you've never gotten mail and paid—

A. I've gotten junk mail, yes, but I've honestly never paid attention to the auto on there. Honestly.

Q. You did not find in that systematic search of that room any personal letters addressed to [defendant] at that location, did you?

A. No, I did not.

Q. Did you find any bills addressed to [defendant] at that location?

A. No, sir.

Q. Any other handwritten envelopes for [defendant]?

A. No, sir."

¶ 15 Following defense counsel's cross-examination of defendant, the State, outside of the presence of the jury during a sidebar, stated that defense counsel opened the door to the admission of the contents of the letter by attempting to show that it was junk mail. The court agreed, and admitted an edited version of the letter, omitting any mention of the firm's former

client and indicating that defendant was charged with a misdemeanor without identifying the offense. In so ruling, the court specifically stated:

"When I initially ruled, I said that I found the contents of the letter were so prejudicial that the probative value of the letter was outweighed by the contents, and so I said the prosecution couldn't use it. At the time I said that though, I didn't know that there would be an attempt to suggest that this letter was something that was in the nature of junk mail.

And so I believe that the jury, now they have been given this impression, has a right to see that the contents of the letter are something that [defendant] would construe to be something more than just junk mail and may very well retain.

\* \* \*

But evidence of other crimes is admissible if it's offered to prove -- if it's relevant to the case and offered to prove something other than a propensity to commit a crime. And in this case I believe that the contents of this letter is relevant to prove that the letter is in fact something that this defendant would retain for future use and it's not simply junk mail."

In admitting the letter into evidence, the court instructed the jurors that it was for them to decide whether defendant lived at the subject address.

¶ 16 The doctrine of curative admissibility allows that if the defendant on cross-examination opens the door to a particular subject, the State on redirect examination may question the witness to clarify or explain the subject brought out during cross-examination, or remove or correct any

unfavorable inferences left by the defendant's cross-examination. *People v. Manning*, 182 Ill. 2d 193, 216-217 (1988); *People v. Liner*, 356 Ill. App. 3d 284, 292-93 (2005). Although the doctrine is not unlimited, it is properly intended to help shield a party from adverse inferences. *Manning*, 182 Ill. 2d at 216-17. As with the admission of other evidence, the decision to allow curative evidence lies within the sound discretion of the trial court. *Manning*, 182 Ill. 2d at 216-17.

¶ 17 Even if the trial court abused its discretion by admitting the disputed contents of the letter at trial, we find unpersuasive defendant's assertion that the letter prejudiced him because it exhibited evidence of other crimes. The purpose of the letter was to show residence. Here, the letter read to the jury showed that defendant was charged with a misdemeanor. However, the trial court made it clear that the letter was admitted to establish the question of defendant's residency at 510 South California Avenue. At least a portion of the letter's contents were necessary to show that it was specifically directed to Ellis based on information the sender had uncovered about him and to refute the impression defense counsel sought to create on cross-examination that although the envelope was addressed to Ellis, its contents really had nothing to do with him. Further, evidence of the letter's contents explained why Ellis would keep the letter and not discard it as "junk."

¶ 18 Any prejudice that may have resulted from the jury hearing of an unidentified misdemeanor with which defendant was charged was cured by the trial court's instruction to the jury concerning how they should consider the letter. The trial court specifically instructed the jury that, "[a]ny evidence that was received for a limited purpose should not be considered by you for any other purpose," and "[the letter] has been received on the issue of the defendant's residence at 510 South California Avenue in Chicago, Illinois 60612." In addition to the limiting instruction by the court, prejudice to defendant also cannot be shown because the jury did not

accept the testimony of defendant's family that the bedroom was locked but, rather, believed the testimony of the police officers that they had consent to enter the back bedroom where they found defendant and recovered money, notes about narcotics transactions and cannabis. In light of the limiting instruction and the evidence, any error in the admission of the disputed contents of the letter was harmless.

¶ 19 Defendant next contends that his conviction for possession of cocaine with intent to deliver should be reduced to simple possession because the evidence was insufficient to prove he had the intent to deliver. In particular, defendant asserts that the State failed to prove that the amount of cocaine was inconsistent with personal use, or that other indicia indicated an intent to deliver.

¶ 20 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). This standard recognizes the responsibility of the trier of fact to resolve conflicts in testimony, weigh the evidence, and draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A reviewing court will not set aside a criminal conviction unless the evidence is so unreasonable or improbable as to raise a reasonable doubt of defendant's guilt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000).

¶ 21 In order to prove defendant guilty of possession of a controlled substance with intent to deliver, the State must prove the defendant had knowledge that the controlled substance was present, the controlled substance was in the defendant's immediate control or possession, and the defendant intended to deliver the controlled substance. *People v. Robinson*, 167 Ill. 2d 397, 407

(1995). On appeal, defendant does not challenge the knowledge or possession elements, but contends that the State failed to meet its burden to prove that he intended to deliver the cocaine.

¶ 22 Intent to deliver must usually be established by circumstantial evidence because direct evidence of intent to deliver is rare. *Robinson*, 167 Ill. 2d at 408. In *Robinson*, the Illinois Supreme Court listed several factors as probative of a defendant's intent to deliver. These factors include the quantity, purity, and packaging of the controlled substance, as well as the defendant's possession of weapons, police scanners, beepers, drug paraphernalia and large amounts of cash. *Robinson*, 167 Ill. 2d at 408. The *Robinson* factors are not exclusive. *Bush*, 214 Ill. 2d at 327. No one rule may be applied to each case because the number of potential fact scenarios in controlled substance cases is infinite. *Bush*, 214 Ill. 2d at 327. The court must determine on a case-by-case basis whether evidence of the defendant's intent to deliver is sufficient. *Robinson*, 167 Ill. 2d at 412-13.

¶ 23 Viewed in the light most favorable to the State, we find that the evidence was sufficient to establish the intent to deliver element. Most notably, the police recovered eight separate baggies of cocaine and \$600 from defendant's pocket, as well as notes indicating narcotics transactions, \$3,575, a bag of cannabis, and a letter addressed to defendant at 510 South California Avenue from underneath the mattress in the bedroom where defendant was arrested. Defendant maintains on appeal that the amount of cocaine found on him (1.4 grams) was indicative of personal consumption, and not for sale. Defendant's position does not withstand scrutiny because several of the *Robinson* factors were present here, showing that defendant did in fact have an intent to deliver.

¶ 24 Nevertheless, defendant argues that because the jury found defendant guilty of possession of cannabis, instead of possession of cannabis with intent to deliver, the jury must have concluded that the items recovered near the cannabis under the mattress were insufficient to

establish an intent to deliver. He thus maintains that those same recovered items could not be deemed sufficient to prove intent to deliver the cocaine found in defendant's pocket. We disagree. The jury was free to determine whether the evidence established that defendant intended to deliver or merely possess any of the controlled substances recovered from the scene. The jury found defendant guilty of intent to deliver the cocaine found on his person, and we see no reason to upset that decision. This is particularly true where the cannabis and cocaine were packaged differently, *i.e.*, the cocaine was divided into eight separate bags whereas the cannabis was inside of one bag only. The jury's verdict on the two possession with intent to deliver charges reflects a discerning examination of the evidence. With respect to the cocaine found on defendant's person, in addition to the fact that it was packaged for sale, the amount of currency recovered from defendant's possession (\$600) as well as that he constructively possessed (\$3750) coupled with the narcotics ledger found in the room he occupied, amply support a verdict on the possession of cocaine with intent to deliver. In contrast, the marijuana located in defendant's room under the mattress was in a single plastic bag, a circumstance that tends to support a finding that it was for personal use. Given that the jury in this case was instructed that it could find defendant guilty of the lesser included offense of possession of cocaine, and so had the option to conclude that the cocaine was for defendant's personal use, there is no basis to disturb the jury's verdict.

¶ 25 Defendant next contends that his convictions should be reversed because the trial court did not comply with Supreme Court Rule 431(b) (eff. May 1, 2007). Specifically, defendant argues that the trial court failed to inquire as to whether the jurors understood all of the principles set forth in Rule 431(b) as derived from *People v. Zehr*, 103 Ill. 2d 472 (1984).

¶ 26 Defendant has forfeited this issue by failing to object during jury selection and to raise the issue in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant, however,

seeks review under the plain error doctrine. The plain error doctrine allows us to review an issue affecting substantial rights despite forfeiture in either of two circumstances, *i.e.*, (1) when the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence. *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005). Defendant only contends that he is entitled to a new trial under the first prong of plain error, arguing that the evidence supporting the jury's verdict was closely balanced. The burden is on the defendant to establish plain error. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 27 Our supreme court has recently addressed this issue in *People v. Wilmington*, 2013 IL 112938, holding that the trial court did not comply with Rule 431(b) by asking prospective jurors whether any of them disagreed with the principles of law. In doing so, the court explained that "[w]hile it may be arguable that the court's asking for disagreement, and getting none, is equivalent to juror *acceptance* of the principles, the trial court's failure to ask jurors if they *understood* the four Rule 431(b) principles is error in and of itself." (Emphasis in original.) *Wilmington* at ¶32. As such, the trial court did not comply with Rule 431(b) in this case.

¶ 28 Nevertheless, the error does not rise to the level of plain error as the evidence was not closely balanced and defendant has not established that the trial court's violation of Rule 431(b) resulted in a biased jury. *Wilmington* at ¶¶33-34. This is particularly true where the evidence here showed that police observed defendant with a gun, followed him into his residence, and recovered cocaine and money from his person, as well as cannabis, money, a drug transaction log, and a letter with his personal information on it from underneath his mattress. The fact that the testimony of defendant's mother and sister contradicted the testimony of the police officers does not make the evidence close where their version of the events was not worthy of belief and was, in important respects, inconsistent. See *People v. Deloney*, 341 Ill. App. 3d 621, 635 (2003) (stating that testimony of family members carry little weight); *People v. Pickens*, 274 Ill. App. 3d

226, 229-30 (1995) (finding an alleged error did not amount to plain error despite the fact that defendant presented opposing evidence, where that evidence was not credible).

¶ 29 Defendant finally contends, and the State concedes, that his mittimus must be corrected to properly reflect his conviction for possession of cocaine with intent to deliver. The record shows that defendant was charged with one count of possession with intent to deliver 1 or more grams, but less than 15 grams of a controlled substance (cocaine). According to the report of proceedings, defendant was convicted of this offense. The mittimus, however, misidentifies the offense as "MFG/DEL 01-15 GR COCAINE/ANLG."

¶ 30 It is well settled that where the common law record conflicts with the report of proceedings, the report of proceedings controls. *People v. Peeples*, 155 Ill. 2d 422, 496 (1993). Pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we correct the mittimus to accurately reflect defendant's conviction of possession with intent to deliver 1 or more grams, but less than 15 grams of cocaine. *People v. Blakney*, 375 Ill. App. 3d 554, 560 (2007).

¶ 31 For the foregoing reasons, we correct defendant's mittimus to accurately reflect that he was convicted of possession of cocaine with intent to deliver, and affirm the judgment of the circuit court in all other respects.

¶ 32 Affirmed; mittimus corrected.