

No. 1-12-1652

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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. 08 C6 61729
	)	
TORRE HUBBARD,	)	Honorable
	)	Michele M. Simmons,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Rochford and Justice Hall concurred in the judgment.

**ORDER**

¶ 1 *Held:* Evidence found sufficient to sustain defendant's conviction for possession of a controlled substance with intent to deliver; mittimus corrected; judgment affirmed.

¶ 2 Following a jury trial, defendant Torre Hubbard was convicted of possession of a controlled substance (heroin) with intent to deliver and sentenced to six years' imprisonment. On appeal, he contends that the evidence was insufficient to prove that he intended to deliver the heroin found in his apartment. He also requests that the mittimus be corrected.

¶ 3 At trial, Calumet City police officer Matthew Mason testified that he was working with his partner Officer Siatta at 12:20 a.m. on August 13, 2008, when they received an assignment regarding a burglar alarm going off at an apartment located at 148 166th Street in Calumet City. When they arrived there, they saw two men loading a large flat screen television into a car. They announced their office, and the men fled. They were able to apprehend one of the men. After Officer Mason placed this individual in his squad car, Officer Wojcik arrived, and they entered apartment W-1, which had evidence of the door having been forced open, to see if there were any other suspects still there. They found no other suspects, and Officer Mason then processed the burglary scene.

¶ 4 Officer Mason testified that while he was processing the scene, he noticed "several indicators of narcotics trafficking." The officer explained that the entire apartment had been sorted through by the burglars and there were drawers left on the bed in one of the bedrooms. In one of these open drawers the officer observed a green, plant-like substance consistent with the appearance of cannabis, and an off-white, rock-like substance. In an open garbage can in the kitchen he observed a plate with off-white, rock-like substance on it and several baggies, which had the corners removed. He field tested the off-white, rock-like substance, and it tested positive for the presence of narcotics.

¶ 5 Officer Mason testified that defendant and Thomas Dawson then arrived at the apartment. Defendant identified himself as the renter of the apartment in question, and Dawson indicated that he also lived there. Officer Mason placed defendant in custody.

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¶ 6 Officer Mason further testified that he obtained a search warrant for the apartment, and returned to the apartment with Officers Serrano and Siatta. Officer Mason testified that in the kitchen cabinet he recovered a box of baggies which had two spoons with tape on the handles. The spoons had white powder residue on them. The officer testified that based on his experience, the condition of the spoons indicated that they were used in the manufacturing of narcotics. Officer Mason recovered two razor blades in an adjacent kitchen cabinet which also had a chunky, white substance on them. He explained that these blades were similar to what is used to cut up narcotics after it has been cooked. The officer also recovered a measuring cup in the kitchen which had a white, powder substance in it, which the officer explained was typically used to measure narcotics prior to manufacturing them. The officer also found in the kitchen cabinet Dormin which is used to mix narcotics prior to cooking them to harden the substance.

¶ 7 Officer Mason testified that in one of the bedrooms he found a pair of keys under a mattress. In another room, he found a safe with a white powder residue on the top. He used the keys he found under the mattress in the other bedroom to unlock the safe. Inside the safe he found a couple of digital scales which had a white powder residue on them, as well as a light brown substance. He also found seven bags of light brown powder substance which field tested positive for the presence of heroin. The bags were clear plastic bags, knotted and cut at the top. Officer Mason also found a spoon in the safe, and \$998. The money consisted of mostly singles and small bills, with the largest bill being a \$20 bill.

¶ 8 Illinois State police forensic scientist James Coglianesse testified that the recovered seven bags of light brown substance tested positive for heroin. Coglianesse further testified that the recovered heroin weighed 6.4 grams.

¶ 9 Defendant testified that he knew Dawson used heroin, and that he was trying to get him off of it. Defendant testified that he allowed Dawson to stay with him but "didn't know none of this" regarding the narcotics found in his apartment. Defendant stated that Dawson had gone to prison several times for heroin related incidents. Defendant stated that Dawson had a safe in his apartment but that he did not know what was in the safe. Defendant did not know there were drugs in the safe, did not intend to possess any drugs, and did not intend to deliver drugs. Defendant further testified that he "don't mess with heroin," but has seen it before, and that he does not know how much heroin is worth. Defendant testified that when he learned there were drugs in the safe, he was disappointed.

¶ 10 During closing arguments, defense counsel argued, *inter alia*, that defendant's roommate was a heroin user, and that the heroin recovered was in user sized quantities. Counsel explained that the heroin in this case was found in the same type of bags that it is purchased in. He stated that seven small bags of heroin would be seven hits of heroin for a user, and that the money found in the safe was for buying heroin.

¶ 11 At the close of evidence, the jury found defendant guilty of possession of a controlled substance with intent to deliver. Defendant filed a motion for a new trial, which was denied.

¶ 12 On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he intended to deliver the heroin found in his apartment. He maintains that the amount found in his apartment was consistent with personal use, police did not observe him conduct any drug transactions, and any drug paraphernalia found in the apartment could have been used for common household needs or for the sale of cocaine which was found in the apartment.

¶ 13 As an initial matter, the State maintains that defendant argued below that he did not have anything to do with the heroin and has improperly changed his theory on appeal that he was merely guilty of possession of a controlled substance. The State maintains that this court should not entertain this new theory on appeal. We observe that defendant argued during closing argument that the heroin could have been for his roommate's personal use, explaining that the packages the heroin was found in could have been the same packaging that a drug user buys heroin in. Although defendant now maintains that the heroin was for his personal use, the issue of personal use was raised at trial, and defendant's slight change to it on appeal does not result in prejudice to the State as it was aware of and able to present evidence to discredit the personal use theory at trial. *People v. Krinitsky*, 2012 IL App (1st) 120016, ¶26. Moreover, the cases cited by the State involve the State, not a criminal defendant, improperly raising a new theory on appeal which is not permissible. *People v. Crespo*, Ill. 2d 335, 344 (2001). The doctrine of waiver does not apply to sufficiency of the evidence arguments raised by defendants such as the one presented here. *People v. Williams*, 2013 IL App (1st) 111116, ¶71.

¶ 14 Turning to the substantive matter, we observe that when defendant challenges the sufficiency of the evidence to sustain his conviction, our duty is to determine whether all of the evidence, direct and circumstantial, when viewed in the light most favorable to the prosecution, would cause a rational trier of fact to conclude that the essential elements of the offense have been proven beyond a reasonable doubt. *People v. Wiley*, 165 Ill. 2d 259, 297 (1995). A criminal conviction will be reversed only if the evidence is so unsatisfactory or improbable that it leaves a reasonable doubt of defendant's guilt. *Wiley*, 165 Ill. 2d at 297. For the reasons that follow, we do not find this to be such a case.

¶ 15 Defendant's argument on appeal is that there was insufficient evidence to prove that he intended to deliver the controlled substance. The intent element involves the examination of the nature and quantity of circumstantial evidence necessary to support an inference of intent to deliver. *People v. Robinson*, 167 Ill. 2d 397, 408 (1995). The factors from which intent can be inferred include whether the quantity of controlled substance is too large to be viewed for personal consumption, the high purity of the confiscated 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 substance is packaged. *Robinson*, 167 Ill. 2d at 408. However, given the numerous types of controlled substances and the infinite number of potential scenarios, no hard and fast rule exists when determining whether the facts of a case support a finding of intent to deliver. *People v. Johnson*, 2013 IL App (4th) 120162, ¶28. Furthermore, this list of factors in *Robinson* is not exhaustive of

the factors that can be considered in determining whether intent is proven. *People v. Bush*, 214 Ill. 2d 318, 327 (2005).

¶ 16 In the case at bar, the evidence, viewed in the light most favorable to the prosecution (*People v. Campbell*, 146 Ill. 2d 363, 374 (1992)), shows that Officer Mason found inside defendant's apartment a safe containing seven bags of a light brown substance, which tested positive for the presence of 6.4 grams of heroin. The officer also found in the safe digital scales which had light brown residue on them, as well as \$998 which was in small denominations. In addition, Officer Mason found baggies, razor blades with white residue, and Dormin in the kitchen. White rock-like residue was also found on plates in the kitchen which tested positive for narcotics. Officer Mason testified that based on his experience these items were used in the trafficking of narcotics. Based on this evidence as a whole, a rational trier of fact could conclude beyond a reasonable doubt that defendant intended to deliver the heroin. *People v. Little*, 322 Ill. App. 3d 607, 620 (2001); *People v. Morgan*, 301 Ill. App. 3d 1026, 1031 (1998).

¶ 17 Defendant claims, however, that the State failed to prove that the quantity of heroin found and its packaging was inconsistent with personal use. He further maintains that his intent to deliver was not proved where there was no drug transaction observed, and the drug paraphernalia found could have been used for selling cocaine, common household use, or personal use. He further asserts that the State did not present evidence of any other corroborating factor enumerated in *Robinson* proving his intent to deliver. We observe that not every factor listed in *Robinson* must be shown to prove intent. *Robinson*, 167 Ill. 2d at 414.

¶ 18 Furthermore, although the officers did not testify as to whether 6.4 grams of heroin was inconsistent with personal use, the number of packets found, which was seven separate packets, along with several other corroborating factors clearly showed proof of defendant's intent to deliver the heroin. *People v. Adams*, 388 Ill. App. 3d 762, 766 (2009); *People v. Contreras*, 327 Ill. App. 3d 405, 409 (2002). Specifically, Officer Mason testified that there was a large amount of drug-trafficking paraphernalia found in defendant's apartment, including baggies, scales, spoons with a white powder substance on them, and Dormin, which all point to the inference that defendant intended to deliver the narcotics found in his apartment. Moreover, the scales found in the safe with the heroin had a light brown residue on them, which is the consistency of the heroin found in the apartment. The inference which flows normally from this evidence is that these scales were used to weigh and separate the heroin into the seven packets. *People v. Moore*, 394 Ill. App. 3d 361, 364-65 (2009). In addition, the large quantity of money, \$998, which was found in small denominations and next to the heroin in the safe, supported the inference that defendant intended to deliver the heroin found in his apartment. *People v. Beverly*, 278 Ill. App. 3d 794, 802-03 (1996).

¶ 19 Moreover, there were additional factors which we find were probative of defendant's intent to deliver. *Bush*, 214 Ill. 2d at 327. In particular, the evidence that defendant was selling other narcotics, which included the razor blades, spoons, and a measuring cup which had white residue on them that tested positive for narcotics, leads to the natural inference that defendant was also selling the heroin. *Moore*, 394 Ill. App. 3d at 364-65. In addition, defendant's storing

of the heroin with the large sum of money and scales in a safe is indicative of his intent to deliver. Accordingly, there were many factors showing defendant's intent to deliver the heroin.

¶ 20 We observe that defendant improperly looks at the *Robinson* factors individually, and cites to intent to deliver cocaine cases in which only one or two *Robinson* factors are evident. These cases are thus readily distinguishable from the case at bar in which several factors indicative of intent to deliver were evident. In addition, many of the cases cited by defendant were called into question by *Robinson*, 167 Ill. 2d at 412. *Beverly*, 278 Ill. App. 3d at 800-01.

¶ 21 In sum, considering the evidence as a whole, we conclude that a rational trier of fact could find defendant guilty of possession of a controlled substance with intent to deliver beyond a reasonable doubt.

¶ 22 Finally, defendant contends and the State concedes that the mittimus should reflect a conviction for possession of a controlled substance with intent to deliver instead of manufacturing or delivery of a controlled substance. The indictment shows that defendant was charged, in relevant part, with "possession of a controlled substance with intent to deliver," under section 401(c) of the Illinois Controlled Substances Act (Act) (720 ILCS 570/401(c)(1) (West 2010)). The title of section 401 of the Act is "Manufacture or delivery unauthorized by Act; penalties;" however, the actual offenses described in that section include not just manufacture or delivery but also possession with intent to deliver or manufacture. 720 ILCS 570/401(c)(1) (West 2010). Defendant is entitled to a mittimus reflecting the proper conviction (*People v. Peeples*, 155 Ill. 2d 422, 496 (1993)); and we, therefore, order the clerk of the circuit court to

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correct the mittimus to accurately reflect defendant's conviction of possession of a controlled substance with intent to deliver (*People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)).

¶ 23 In light of the foregoing, we order the mittimus corrected as indicated, and affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed; mittimus corrected.