

No. 1-12-2018

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. 11 CR 12748
)	
RICKY EWING,)	Honorable
)	Evelyn B. Clay,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Simon and Justice Neville concurred in the judgment.

O R D E R

¶ 1 *Held:* The evidence presented at trial was sufficient to support defendant's conviction for possession of a controlled substance with intent to deliver. The clerk of the circuit court is ordered to amend the mittimus.

¶ 2 Following a bench trial, defendant Ricky Ewing was convicted of possession of a controlled substance with intent to deliver and, based on his criminal history, sentenced to a Class X term of seven years in prison. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he intended to deliver the controlled substances in his

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possession. Defendant further contends that the mittimus must be corrected to state the actual offense of which he was convicted.

¶ 3 For the reasons that follow, we affirm and order the mittimus amended.

¶ 4 At trial, Chicago police officer Darius Reed testified that at about 11 a.m. on July 16, 2011, he was conducting narcotics surveillance from the mouth of an alley in Chicago. As Officer Reed watched, defendant, who was about 20 feet from the officer, walked up to the passenger side of a pickup truck. Defendant accepted an unknown amount of money from the truck's passenger. Defendant then "reached into his left palm and a white object retrieving a small item out of the white object in his palm, and handed the small item that he retrieved out of that white item to the passenger of that vehicle." Officer Reed, who believed he had observed a narcotics transaction, announced his office and took a few steps toward defendant. Defendant looked in the officer's direction, clenched his left hand, and ran.

¶ 5 Officer Reed testified that he ran to his unmarked car and told his partners what he had seen. He and Officer Buckner got in the car and pursued defendant. Officer Reed lost sight of defendant for about 10 to 15 seconds, but then spotted him and pulled up next to him. Defendant looked at the officers "and then he motioned with his left hand towards his mouth with a white object going into his mouth." Officer Buckner announced her office and got out of the car. Defendant backed away while trying to speak. Officer Reed also got out of the car. Defendant continued to try to speak and back away. Officer Reed testified that he observed "a white object in his mouth and also a yellow mini Ziploc bag, containing white powder, which I believe[d] to be heroin."

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¶ 6 Officer Reed told defendant to stop moving and Officer Buckner attempted to detain defendant, but he "snatched away." As both officers continued to try to restrain defendant, defendant stiffened his body and pulled away. When Officer Buckner attempted to place a handcuff on defendant, he pulled away again, causing himself and both officers to fall to the ground. Two more officers arrived on the scene and assisted in handcuffing defendant.

¶ 7 Officer Reed testified that at his direction, defendant spit out the object in his mouth, which was a white plastic bag the size of a golf ball. Inside the bag were 13 clear mini Ziploc baggies with an undecipherable logo containing suspect crack cocaine and 12 yellow-tinted mini Ziploc baggies with a Batman logo containing suspect heroin. After defendant was placed into custody, *Mirandized*, and taken to the police station, \$40 was recovered from his person during a custodial search.

¶ 8 Chicago police officer Rico Carter testified that when he and defendant were alone in the processing room at the police station, defendant said something to the effect of, "Officer, I didn't serve that truck. I handed him the money, and I was getting the work from him." Officer Carter testified that "work" was the street term for narcotics that are packaged for sale. He understood defendant to mean that "he was turning in the money and he was getting more work to pass out to sell." On cross-examination, Officer Carter acknowledged that defendant's statement was not memorialized.

¶ 9 The parties stipulated that if called, a forensic chemist would have testified that she received an inventoried envelope containing 12 yellow-tinted mini Ziploc bags and 13 clear mini Ziploc bags. The 12 yellow tinted bags weighed 2.2 grams, while the 13 clear bags weighed 1.7 grams. The chemist tested six of the yellow-tinted bags, which weighed 1.1 grams and tested

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positive for heroin. She also tested eight of the clear bags, which weighed 1.1 grams and tested positive for cocaine.

¶ 10 The trial court found defendant guilty of two counts of possession of a controlled substance with intent to deliver (cocaine and heroin). The counts were merged and, based on defendant's criminal history, the trial court sentenced defendant to a Class X term of seven years in prison.

¶ 11 On appeal, defendant first contends that the State failed to prove beyond a reasonable doubt that he intended to deliver the controlled substances in his possession. He argues that the 2.2 grams of heroin and 1.7 grams of cocaine found on him are amounts consistent with possession for personal use, that his single transaction with the passenger of the pickup truck provides no basis for establishing intent, and that his statement to the police following his arrest does not support a conclusion that he had an intent to distribute. Defendant further argues that no other factors were present that would suggest he was engaged in the sale of drugs, such as evidence of the purity of the drugs, or possession of large amounts of cash, weapons, or distribution-related equipment.

¶ 12 To sustain a conviction for possession of a controlled substance with intent to deliver, the State must prove beyond a reasonable doubt that the defendant knew the controlled substance was present, was in immediate possession or control of the drugs, and intended to deliver the controlled substance. 720 ILCS 570/401(c)(1) (West 2010); *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). Direct evidence of intent to deliver is rare; therefore, circumstantial evidence is commonly used to prove intent. *Robinson*, 167 Ill. 2d at 408. As outlined by our supreme court in *Robinson*, 167 Ill. 2d at 408, many different factors have been considered as probative of

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intent to deliver, including whether the quantity of controlled substance in the defendant's possession is too large to be viewed as being for personal consumption; the purity of the recovered drugs; the manner in which the substance is packaged; and the possession of weapons, large amounts of cash, police scanners, beepers or cellular telephones, and drug paraphernalia. *Robinson*, 167 Ill. 2d at 408. A court determines whether the inference of intent to deliver is sufficient on a case-by-case basis. *Robinson*, 167 Ill. 2d at 412-13.

¶ 13 In the instant case, Officer Reed testified that he observed defendant approach a pickup truck, accept money from the passenger, and then hand the passenger an item taken from a white object in his hand. When Officer Reed and his partner pursued defendant, defendant put the white object in his mouth. The object turned out to be a white plastic bag containing 13 clear mini Ziploc baggies with an undecipherable logo and containing cocaine and 12 yellow-tinted mini Ziploc baggies with a Batman logo and containing heroin. In addition to this evidence, Officer Carter testified that in the processing room, defendant told him, "Officer, I didn't serve that truck. I handed him the money, and I was getting the work from him." Officer Carter explained that "work" was the street term for narcotics packaged for sale, and that his understanding of defendant's statement was that "he was turning in the money and he was getting more work to pass out to sell."

¶ 14 This evidence was sufficient to prove defendant intended to deliver the controlled substance. See, e.g., *People v. Bush*, 214 Ill. 2d 318, 327-29 (2005) (evidence sufficient where the defendant accepted money from two individuals, handed them unknown items in exchange, and then "resumed her post" each time); *People v. Little*, 322 Ill. App. 3d 607, 616-620 (2001) (evidence sufficient where police witnessed two exchanges and police recovered six bags of

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cocaine from the pockets of the defendant's clothing from which the objects exchanged were retrieved). Defendant's reliance on the absence of factors considered probative of intent to deliver, such as possession of amounts of narcotics inconsistent with personal use, weapons, large amounts of cash, scales, cell phones, or beepers, as outlined in *Robinson*, 167 Ill. 2d at 408, is unpersuasive.

¶ 15 In *Robinson*, the police arrested the defendant based on suspected drug activity in a house, and the State presented no eyewitness testimony that the defendant had been observed engaging in alleged drug transactions. *Robinson*, 167 Ill. 2d at 405-07. Accordingly, the *Robinson* court examined other circumstantial factors indicating an intent to deliver. Here, unlike in *Robinson*, the State presented Officer Reed's eyewitness testimony that he actually observed defendant accept money from a truck's passenger, take a small item from a white object in his hand, and deliver that item to the passenger. Defendant then put the white object in his mouth. When he eventually spit out the white object, it was found to contain 13 baggies of cocaine and 12 baggies of heroin. In addition to this evidence, defendant made a statement to the police that while not entirely consistent with Officer Reed's observations, was nevertheless inculpatory. Given these circumstances, the absence of *Robinson* factors is not dispositive. See *Bush*, 214 Ill. 2d at 328; *Little*, 322 Ill. App. 3d at 616.

¶ 16 While the evidentiary record is not overwhelming in this case, when the evidence is viewed in the light most favorable to the prosecution, it is sufficient to support defendant's conviction. We conclude that a reasonable trier of fact could have found the elements of possession of a controlled substance with intent to deliver based on the evidence presented. Accordingly, defendant's challenge to the sufficiency of the evidence fails.

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¶ 17 Defendant's second contention is that the mittimus should be corrected to change the current labeling of his conviction from including the abbreviation "MFG/DEL" to some sort of wording that reflects that his conviction was for possession with intent to deliver between 1 and 15 grams of cocaine. The State responds that the wording on the mittimus reflects the title of the statutory section defendant was found to have violated, "Manufacture or delivery unauthorized by Act; penalties," and therefore should not be changed. See 720 ILCS 570/401 (West 2010). While we acknowledge the State's position, in our view, the mittimus should reflect the name of the offense as it was set forth on the charging instrument, *i.e.*, "possession of controlled substance with intent to deliver." As such, pursuant to our authority under Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we direct the clerk of the circuit court to amend the mittimus to reflect more accurately the name of defendant's conviction.

¶ 18 For the reasons explained above, we affirm the judgment of the circuit court of Cook County and order amendment of the mittimus.

¶ 19 Affirmed, mittimus amended.