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2014 IL App (3d) 120738-U

Order filed April 30, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-12-0738
v.	)	Circuit No. 11-CF-1173
	)	
TERRANCE HOWARD,	)	Honorable
	)	Stephen A. Kouri,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Presiding Justice Lytton and Justice O'Brien concurred in the judgment.

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**ORDER**

¶ 1 *Held:* (1) The evidence was sufficient to convict defendant of unlawful possession with intent to deliver a controlled substance. (2) Defendant's drug assessment is reduced by \$1,290, the amount of defendant's \$5-per-day presentence custody credit.

¶ 2 After a jury trial, defendant, Terrance Howard, was convicted of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2010)) and unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(a)(2)(A) (West 2010)). The trial court sentenced defendant to a total of 20 years' imprisonment. On appeal, defendant argues that: (1) the State failed to prove

that he intended to deliver a controlled substance; and (2) he is entitled to a \$5-per-day credit against his drug assessment. We affirm in part and modify defendant's drug assessment to reflect application of the \$5-per-day credit.

¶ 3

#### FACTS

¶ 4

Defendant was charged by indictment with unlawful possession with intent to deliver a controlled substance, unlawful possession of a controlled substance (720 ILCS 570/402(a)(2)(A) (West 2010)), and domestic battery. The case proceeded to a jury trial.

¶ 5

At trial, Zoya Code testified that she had an on-and-off relationship with defendant for approximately five years. On November 28, 2011, she was staying at the Sleep Inn in Peoria. The room was rented in Code's name but paid for by defendant, who was unemployed at the time. At approximately 3 a.m., defendant came into her room, said "[w]ho's in here" and began looking around. When Code said no one was in the room, defendant punched her and called her a liar. Code had seen defendant consume drugs in the past and thought defendant was high. Code struggled with defendant, and defendant took Code's cellular telephone. The altercation proceeded into the parking lot where Code took a set of keys from defendant. Sandra Simons, the owner of the keys, tried to get the keys from Code. Thereafter, the Peoria police arrived at the scene. Defendant and Simons stopped fighting with Code, and defendant ran off. Code remembered that defendant was wearing a jacket at the time of the altercation.

¶ 6

After the incident, Code told defendant to stop using drugs and get his life together. Defendant and Code then moved into a home on Purdue Street. Initially, Code stated that defendant paid the rent, but Code later said that they did not pay rent. However, after defendant left, Code paid on the home.

¶ 7

Peoria police officer Eric Esser testified that on November 28, 2011, he responded to a domestic incident at the Sleep Inn. At the scene, he saw a group of people in back of the hotel

and observed defendant arguing with a woman. Esser directed defendant to come over, but defendant took his coat off and ran. A search of the coat uncovered two clear plastic sandwich bags, one inside of each of the left pockets. The sandwich bags contained several individually wrapped plastic bags that contained a white substance. The coat did not contain any paraphernalia.

¶ 8 Peoria police officer Ty Piercy testified that he also responded to the incident at the Sleep Inn. Piercy arrived at the scene shortly after Esser and saw the victim yelling at a man who took off his jacket, threw it on the ground, and ran. Piercy was unable to identify the suspect, but he recovered the jacket and found two large baggies inside the jacket. The baggies contained several smaller bags in different sizes and amounts of crack rocks. In total, there were 13 individually packaged baggies.

¶ 9 Illinois State Police forensic scientist Aaron Roemer tested the substance contained within 6 of the 13 small bags. The combined weight of the substance was 15.5 grams. Roemer did not test the remaining seven bags because there was not enough of the substance to reach the next statutory weight limit for an enhanced charge. In Roemer's opinion, the substance contained within the bags was cocaine.

¶ 10 At the close of the trial, the jury found defendant guilty of domestic battery and unlawful possession with intent to deliver a controlled substance. The trial court sentenced defendant to a total of 20 years' imprisonment and imposed a \$3,000 drug assessment. Defendant appeals.

¶ 11 ANALYSIS

¶ 12 I. Sufficiency of the Evidence

¶ 13 Defendant argues that the State failed to prove that he intended to deliver the controlled substance because there was no testimony that the drugs were packaged for sale, the amount was inconsistent with personal use, and defendant was not found in possession of a weapon, a large

amount of cash, a police scanner, a beeper or cell phone, or drug paraphernalia. See *People v. Robinson*, 167 Ill. 2d 397 (1995).

¶ 14 "In reviewing the sufficiency of the evidence in a criminal case, 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 offense beyond a reasonable doubt." *People v. Baskerville*, 2012 IL 111056, ¶ 31. As a court of review, we will not retry a defendant, and the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Ross*, 229 Ill. 2d 255 (2008). We will not reverse a criminal conviction unless the evidence was so unreasonable, improbable or unsatisfactory as to create a reasonable doubt of defendant's guilt. *People v. Rowell*, 229 Ill. 2d 82 (2008).

¶ 15 To establish possession with intent to deliver a controlled substance, the State must prove: (1) defendant had knowledge of the presence of the narcotics; (2) the narcotics were in the immediate possession or control of defendant; and (3) defendant intended to deliver the narcotics. 720 ILCS 570/401 (West 2010); *Robinson*, 167 Ill. 2d 397. In this appeal, defendant disputes the State's proof of the third element. Direct evidence of intent to deliver is rare, and therefore such intent must usually be proven by circumstantial evidence. *Robinson*, 167 Ill. 2d 397. Factors probative of a defendant's intent to deliver include: whether the quantity of the controlled substance was too large for personal consumption; the high purity of the drug confiscated; the possession of weapons; the possession of large amounts of cash; the possession of police scanners, beepers or cellular telephones; the possession of drug paraphernalia; and the manner in which the substance is packaged. *Id.*

¶ 16 Here, the evidence showed that defendant took off his jacket, left it at the scene, and fled when police arrived. A search of the jacket uncovered two sandwich bags which contained 13

individual bags of a substance containing cocaine. Defendant argues that individual wrapping of the drugs alone was insufficient to indicate an intent to deliver. See *Robinson*, 167 Ill. 2d 397. However, in addition to this evidence, Code testified that defendant paid for Code's room at the Sleep Inn while he was unemployed and, following the incident, arranged for Code to live with him in a home rent free. That evidence suggested defendant was deriving an income from narcotics.

¶ 17 Defendant relies on *People v. Ellison*, 2013 IL App (1st) 101261, *People v. Clinton*, 397 Ill. App. 3d 215 (2009), and *People v. Sherrod*, 394 Ill. App. 3d 863 (2009) in support of his argument that the State failed to prove intent to deliver. However, the amount possessed in these cases was substantially less than the 15.5 grams defendant was shown to have possessed in this case. See *Ellison*, 2013 IL App (1st) 101261 (possession of 3.112 grams of cocaine and approximately 0.4 grams of heroin was insufficient to prove intent to deliver); *Clinton*, 397 Ill. App. 3d 215 (possession of 13 tin foil packets, which were commingled before testing positive for heroin, with a combined weight of 1.336 grams was insufficient evidence of intent to deliver); and *Sherrod*, 394 Ill. App. 3d 863 (17 individual baggies containing a total of 1.8 grams of cocaine was insufficient evidence of possession with intent to deliver). In addition, seven bags of cocaine were not weighed. Therefore, viewing this evidence in the light most favorable to the State, we hold that the jury could reasonably infer that defendant possessed the drugs with the intent to deliver.

¶ 18 II. \$5-per-day Credit

¶ 19 Defendant argues that he is entitled to a \$5-per-day credit against his drug assessment. The State concedes this issue. We review *de novo* the propriety of defendant's fines and fees. *People v. Marshall*, 242 Ill. 2d 285 (2011).

¶ 20 Section 110-14 of the Code of Criminal Procedure of 1963 allows a "person incarcerated

on aailable offense who does not supply bail and against whom a fine is levied on conviction of such offense \*\*\* a credit of \$5 for each day so incarcerated." 725 ILCS 5/110-14(a) (West 2010). The credit is applicable only to a defendant's fines. *People v. Tolliver*, 363 Ill. App. 3d 94 (2006).

¶ 21 Here, the trial court ordered a \$3,000 drug assessment. This assessment has been held to be a fine subject to reduction by the \$5-per-day presentence incarceration credit. *People v. Jones*, 223 Ill. 2d 569 (2006).

¶ 22 In the instant case, the judgment sheet states that defendant was in custody between December 10, 2011, and August 23, 2012, a total of 258 days. As a result, defendant is entitled to a maximum credit of \$1,290. Therefore, we reduce the drug assessment by \$1,290, leaving a balance of \$1,710.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed as modified.

¶ 25 Affirmed as modified.