



South Francisco Avenue, Chicago. When he arrived, he saw defendant, Serrell York, and Brenda Edwards loitering, and set up surveillance 60 feet away. Edwards was standing in the mouth of the alley on Francisco Avenue between Flournoy and Lexington Streets, when a male and female approached her and a hand-to-hand transaction took place during which Edwards received money, and the male and female then left. In the second transaction, a van approached, and Edwards went to the alley on the west side of Francisco Avenue, bent down near a telephone pole for 10 seconds, stood up, returned to the van, reached her hand inside the van, and when she walked away, the officer saw money in Edwards' hand.

¶ 5 During these transactions, Lee saw York, who was on the east side of Francisco Avenue, walk a little north of the mouth of the alley and a little south "as if he was looking around" and side to side, and briefly converse with Edwards. During the third transaction, York walked south on Francisco Avenue and out of view, and Edwards relocated to the same telephone pole she had gone to earlier, bent down, stood back up, and gave the buyer a small object in exchange for money.

¶ 6 Officer Lee then notified his team and undercover buy officer, Cherron Bady, who drove up to Edwards, and had a brief conversation with her. Edwards then walked by York, who had returned, relocated to the telephone pole, picked up a small plastic bottle, later identified as a Vaseline container, and placed it on a garbage can five feet away from the telephone pole. Edwards walked by York again, and had a quick conversation with him. She then walked up to the beige Jeep that had pulled up, engaged in a transaction with the person inside, and walked away with money in her hand. She returned to Officer Bady, handed him something, and

received money in exchange. Edwards had a brief conversation with York, and he crossed the street, went up to the garbage can, retrieved the bottle, walked back to the east side of the street, opened the bottle, looked inside of it, then placed the bottle in his inside jacket pocket.

¶ 7 At that point, other police officers arrived on the scene, and as they detained York and Edwards, the bottle fell from York's left side, and was picked up by Officer Diego Davila. The bottle contained five packets of suspect heroin which were packaged in the same manner as the heroin sold to Officer Bady, and prerecorded funds were recovered from Edwards.

¶ 8 Officer Bady testified that he met with Edwards and asked her for two blows, the street term for heroin. She told him to park, then walked over to the alley, knelt down near a garbage can and placed a container on top of it. As Edwards was walking back toward Officer Bady, a Jeep arrived and she engaged in a hand to hand transaction with the person in that car. She then walked over to Officer Bady and handed him two zip-lock bags, telling him they were dime bags. In exchange, Officer Bady gave Edwards \$20 in prerecorded funds. Officer Bady then left and notified his team that there was a positive narcotics transaction. Edwards was detained, and Officer Bady identified her as the seller.

¶ 9 Chicago police sergeant Peter Arpaia testified that he was on the surveillance team, and saw Edwards go to a utility pole in the alley, pick up a container, remove items from it, and place the container on top of the nearby garbage can. Two minutes later, Sergeant Arpaia saw York go to the garbage can in the alley, retrieve the container on top of it, look inside and close it, then place it in his left jacket pocket. From there, York met up with Edwards and began to walk away with her, when the officers detained them. Officer Davila testified that while detaining York, he

observed a Vaseline bottle fall from his waist. York looked at the officer and said, "[t]hat's not me. It rolled out from underneath the vehicle." The officer picked up the bottle which contained five packets of suspect heroin.

¶ 10 The parties stipulated that five packets recovered from York tested positive for heroin and weighed 1.06 grams. The items sold to Officer Bady tested positive for heroin and weighed .4 gram.

¶ 11 At the close of evidence, the court found York guilty of possession of heroin with intent to deliver and delivery of heroin based on a theory of accountability. York filed a motion for a new trial, which was denied.

¶ 12 Analysis

¶ 13 On appeal, York first contends that there was insufficient evidence to find him guilty of delivery of heroin beyond a reasonable doubt based on a theory of accountability. He maintains that his mere presence at the scene was insufficient to show that he was accountable for the delivery.

¶ 14 When York 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. We do not find this to be the case here.

¶ 15 To sustain defendant's conviction of delivery of heroin by accountability, the State must show beyond a reasonable doubt that either before or during the commission of the offense, and with the intent to promote or facilitate its commission, defendant solicited, aided, abetted, agreed or attempted to aid, in the planning or commission of the offense. 720 ILCS 5/5-2(c) (West 2012); see also *People v. Roppo*, 234 Ill. App. 3d 116, 126 (1992).

¶ 16 The evidence at trial demonstrated that the police first saw York and Edwards loitering, and then Edwards engage in five narcotics transactions. During each transaction, Edwards relocated to a telephone pole in the alley, and retrieved something which she then handed to the customer in exchange for money. During four of the transactions, Officer Lee saw York walking back and forth in the area, and looking around and side to side. York was also seen talking to Edwards during four of the five transactions. After the fifth one, she briefly spoke with York, who then retrieved the container on the garbage can, from which she had been removing items during the transactions, opened it, looked inside and placed it in a pocket of his jacket. York then met up with Edwards and police detained them as they walked away together, which is when York dropped the bottle from his waist. Police recovered the bottle which contained five packets of heroin. This evidence establishes that York was not merely present at the scene, but acting as a lookout for Edwards, thereby aiding and abetting the commission of an offense (*People v. Johnson*, 318 Ill. App. 3d 281, 290 (2000)), and, in addition, the totality of these circumstances establishes his accountability for the delivery of heroin (*People v. McComb*, 312 Ill. App. 3d 589, 592-93 (2000)). Accordingly, we affirm York's conviction for that offense.

¶ 17 York next contends that the evidence was insufficient to prove him guilty of possession of heroin with intent to deliver. He maintains that his possession of five packets of heroin was consistent with personal consumption and not intent to deliver. We disagree.

¶ 18 The number of packets found in his possession coupled with the events which preceded their recovery, suffice to show York's possession with the intent to deliver. *People v. Bush*, 214 Ill. 2d 318, 327-29 (2005); *People v. Adams*, 388 Ill. App. 3d 762, 766 (2009). Evidence that York was engaged in the sale of other narcotics leads to the natural inference that York was also selling the heroin that was found on him (*People v. Moore*, 394 Ill. App. 3d 361, 364-65 (2009)), and here, where the contraband was found in a bottle that Edwards had been using to retain items in conducting her narcotics sales, and which York retrieved, the evidence supports the conclusion that the heroin found in that bottle was not for personal consumption (*Bush*, 214 Ill. 2d at 327-29).

¶ 19 York cites to numerous cases involving possession of a number of cocaine packets, which were found to be for personal consumption only. But, those cases are distinguishable as they did not include the additional factor that York was seen acting as a lookout for the seller, conversed with the seller during the transactions, and then picked up the bottle from which the seller had been obtaining the items she sold, and continued his association with her even after the transactions. *Johnson*, 318 Ill. App. 3d at 290; *McComb*, 312 Ill. App. 3d at 592-93; We also find York's reliance on *People v. Ellison*, 2013 IL App (1st) 101261, misplaced. In *Ellison*, defendant had 17 packets of cocaine and only 3 packets of heroin weighing .4 gram, which was found consistent with personal consumption. *Ellison*, 2013 IL App (1st) 101261, ¶¶6, 8, 27. Here, by

1-13-0870

contrast, York had five packets of heroin, weighing 1.06 grams, and was proved accountable for the prior heroin transactions out of the same container. Thus, his possession was consistent with the intent to deliver and not personal consumption. *Bush*, 214 Ill. 2d at 327-29; *Adams*, 388 Ill. App. 3d at 766.

¶ 20 We affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.