THIRD DIVISION
June 10, 2015

No. 1-13-1499

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. 12 CR 18608
	)	
JESUS PETROV,	)	Honorable
	)	William T. O'Brien,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justice Lavin and Justice Hyman concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's intent to deliver a controlled substance was proven beyond a reasonable doubt where hospital staff found over 30 grams of cocaine in 26 separate baggies and $3,000 in cash in his pockets.

¶ 2 Following a bench trial, defendant Jesus Petrov was convicted of one count of possession of a controlled substance with intent to deliver and one count of possession of a controlled substance. The trial court sentenced him to eight years' incarceration. On appeal Petrov contends that the State failed to prove his intent to deliver beyond a reasonable doubt. He also contends

that his mittimus should be corrected and that he was improperly assessed an "Electronic Citation Fee." We affirm in part, vacate in part, and correct the mittimus.

¶ 3 At trial, Raul Garcia testified that he was working as a hospital security officer on the evening of September 14, 2012. As he began his shift, Petrov's aunt asked for help with Petrov who was "slumped over" in the passenger seat of a vehicle outside. After taking Petrov to a room, Garcia performed a routine inventory of his belongings. He searched the pockets of Petrov's pants and found a money clip with approximately $3,000, a white substance packaged in a ball, similar packages of a white substance, a package of a green substance, a pipe, and multiple lighters. After inventorying the items, Garcia called the police.

¶ 4 Chicago police officer Hartwig testified that he responded to a call at the hospital and met with Garcia. Garcia gave him 26 small plastic baggies containing white powder, a baggie containing a green, leafy substance, and a pipe used for smoking cannabis.

¶ 5 The parties stipulated that a forensic chemist had tested the white substance from 2 of the 26 baggies and opined that the baggies contained cocaine. The tested baggies weighed 16.1 grams and the 26 baggies weighed 30.3 grams in total.

¶ 6 Petrov testified that he had gone to a party in the early morning of September 14th, 2012. After the party, he walked to his aunt's house and began to argue with her. During the argument, he fainted. He later awoke in the hospital and was told he was being arrested. He did not have any drugs that day, but he did have a large sum of cash. He explained that his father had given him the money for his rent.

¶ 7 The trial judge found Petrov guilty of possession of a controlled substance and possession of a controlled substance with intent to deliver, repeatedly stating that he found Petrov's

testimony "hard to believe". Petrov was sentenced to eight years' incarceration. The court also assessed $3,559 in fines and fees, including a $5 "Electronic Citation Fee." Petrov appeals.

¶ 8 Petrov first contends that the State failed to prove beyond a reasonable doubt that he intended to deliver the cocaine. Petrov argues that the quantity of the substance confirmed to be cocaine and the packaging of the substance were both consistent with personal use. He also notes that he gave an explanation for why he was carrying $3,000. The State responds that the quantity of cocaine, its packaging, and the cash recovered provide sufficient circumstantial evidence to prove Petrov's intent to deliver beyond a reasonable doubt.

¶ 9 Before we address the merits of Petrov's claim, we must first determine our standard of review. Petrov argues that *de novo* review is appropriate, because the facts are not in dispute and the court must determine whether the State proved a statutory element beyond a reasonable doubt. We have previously rejected his argument. *People v. Zaibak*, 2014 IL App (1st) 123332, ¶ 48. Instead, we apply the well-settled standard announced by the United States Supreme Court in *Jackson v. Virginia*, 443 U.S. 307, 313 (1979). When reviewing the sufficiency of evidence, a reviewing court must decide "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 crime beyond a reasonable doubt." (Emphasis in original.) *Id.*; see also *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). A reviewing court will not overturn a guilty verdict unless the evidence is "so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 10 Having determined our standard of review, we now turn to the merits of Petrov's claim. Due process requires the State to prove each element of a criminal offense beyond a reasonable

doubt. *Cunningham*, 212 Ill. 2d at 278 (citing *In re Winship*, 397 U.S. 358, 364 (1970)). But the State is not required to prove every fact supporting a fact finder's inference beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007) ("[T]rier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances.")

¶ 11 Possession of a controlled substance with intent to deliver requires the State to prove: (1) defendant had knowledge of the presence of a controlled substance, (2) the substance was in defendant's immediate possession or control and (3) defendant intended to deliver narcotics. 720 ILCS 570/401(West 2012); *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). Petrov does not dispute the first two elements on appeal.

¶ 12 Given the rarity of direct evidence of intent, it must typically be established through circumstantial evidence. *Robinson*, 167 Ill. 2d at 408. Our supreme court has identified seven non-exclusive factors probative of intent to deliver: (1) the possession of a quantity too large to be for personal consumption; (2) the purity of the drug; (3) the possession of weapons; (5) the possession of large amounts of cash; (6) the possession of police scanners, beepers, or cellular phones; or (7) the possession of drug paraphernalia. *Id*. The court has made clear that these factors are merely examples and that the factors to be considered depend on the facts of the case at hand. See *id.*; *People v. Bush*, 214 Ill. 2d 318, 327 (2005).

¶ 13 Petrov was found with $3,000 in cash on his person and the trial court explicitly found his explanation for possession of that amount of money "hard to believe." He had 16.1 grams of a substance confirmed to be cocaine. He also had an additional 14.2 grams of a similar white powder that was packaged in the same fashion and found in the same pocket as the confirmed cocaine. Given the similarity, the trial court could reasonably infer that the additional 14.2 grams

were also cocaine. The white powder was packaged in 26 separate baggies. Finally, while Petrov had a cannabis pipe on his person, consistent with the small, single baggie of green leafy substance, he did not have any paraphernalia associated with the personal use of cocaine. See, *e.g.*, *People v. Beverly*, 278 Ill. App. 3d 794, 802 (1996) (citing lack of use paraphernalia as circumstantial evidence of intent to deliver). Thus, Petrov had a large quantity of cocaine, packaged in small parcels, and a large amount of cash without any contrary evidence indicating that the drugs were for personal use. Taking the evidence in the light most favorable to the prosecution, the trial court could rationally have found beyond a reasonable doubt that Petrov intended to deliver the cocaine.

¶ 14 Petrov argues that we may not consider the weight of the untested bags when considering the quantity of drugs recovered, citing *People v. Jones*, 174 Ill. 2d 427 (1996). In *Jones*, the defendant was charged with possession of more than a gram of cocaine with intent to deliver. *Id.* at 427. The police recovered five packets of a white, rocky substance, but only tested the contents of two of the packets. *Id.* While the total weight of the five packets was more than one gram, the tested packets only weighed .59 grams. *Id.* Our supreme court held that the State failed to prove defendant possessed more than a gram of cocaine beyond a reasonable doubt, explaining "[w]hat inference can be drawn concerning the composition of the three packets not tested? Without more, the answer is none at all." *Id.* at 430. We find *Jones* inapposite. The court in *Jones* considered "an essential element of the crime" which the State was required to prove beyond a reasonable doubt. *Id.* at 428-29. Here, Petrov does not contest that the State sufficiently proved that he possessed the minimum quantity of the drug necessary to sustain his conviction. Thus, in this context, the total quantity of the cocaine possessed by Petrov was only

a single link in a chain of circumstantial evidence tending to show his intent to deliver; hence, it need not be proven beyond a reasonable doubt. *Wheeler*, 226 Ill. 2d at 117; see also *People v. Bruce*, 185 Ill. App. 3d 356, 370 (1989) ("[J]ury need not be satisfied beyond a reasonable doubt as to each link in the chain of evidence, and it is sufficient if all the evidence, taken together, satisfies the jury of the defendant's guilt beyond a reasonable doubt.") We find that the similarities between the baggies are sufficient to support a reasonable inference that the untested baggies also contained cocaine, and therefore serve as circumstantial evidence of Petrov's intent. See *Robinson*, 167 Ill. 2d at 410 ("[Q]uantity of the controlled substance possessed in excess of the statutory minimum quantity for the crime charged is not an element of the crime to be proven beyond a reasonable doubt, but is only one of many factors to be taken into account in considering the element of intent to deliver.")

¶ 15 Petrov also cites numerous cases where other convictions for possession with intent to deliver were reversed due to insufficient evidence of intent. See, *e.g.*, *People v. Rivera*, 293 Ill. App. 3d 574 (1997). The amounts of controlled substances vary in these cases from much less than the quantity in this case to slightly more. Other cases reversed convictions after considering similarly packaged drugs or differing amounts of cash. It is unnecessary to discuss these cases in detail given the fact-intensive nature of the inquiry. And while some of the cases may share particular factual similarities to those presented here, none contain the same combination of a large quantity of drugs, a large number of individual baggies, and a large amount of cash. Based on this combination of circumstantial evidence taken in the light most favorable to the State, the trial court could rationally find beyond a reasonable doubt that Petrov possessed the intent to deliver.

¶ 16 Petrov next contends that his mittimus improperly reflects that he was convicted of "MFG/DEL 15<100 GR COCA/ANALOG," and should be corrected. The State concedes the issue and we accept the concession. Where a mittimus incorrectly identifies an offense, it must be corrected to conform to the judgment entered by the trial court. *People v. Gorosteata*, 374 Ill. App. 3d 203, 230 (2007). Petrov was convicted of possession of a controlled substance with intent to deliver and we therefore direct the clerk of the circuit court to correct the mittimus to accurately reflect his conviction.

¶ 17 Petrov also contends that a $5 "Electronic Citation Fee" was improperly assessed against him and the State agrees. Subsection 27.3e of the Clerks of Courts Act, (705 ILCS 105/27.3e (West 2012)), authorizes a $5 fee "in any traffic, misdemeanor, municipal ordinance, or conservation case upon a judgment of guilty or grant of supervision." Petrov's conviction does not fit any of the enumerated cases; therefore, we vacate the $5 fee and direct the clerk of the circuit court to correct the fines and fees orders to reflect a total amount owed of $3,554.

¶ 18 The State sufficiently proved Petrov's intent to deliver a controlled substance beyond a reasonable doubt. With the correction of the mittimus to reflect the correct offense of which Petrov was convicted and to eliminate an inapplicable fee for a total amount owed of $3,554, we affirm the judgment of the circuit court of Cook County in all other respects.

¶ 19 Affirmed in part; vacated in part; mittimus corrected.