2015 IL App (1st) 140734-U

SIXTH DIVISION
DATE: December 30, 2015

No. 1-14-0734

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. 13 CR 12605
	)	
ZIANTON REECE,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Delort concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment entered on the defendant's conviction for delivery of a controlled substance with intent to deliver was affirmed over his claim that the evidence was insufficient to prove his intent to deliver beyond a reasonable doubt; mittimus corrected.

¶ 2 Following a bench trial, the defendant, Zianton Reece, was found guilty of possession of a controlled substance with intent to deliver, then sentenced to six years' imprisonment. On appeal, the defendant contests the sufficiency of the evidence to prove his intent to deliver beyond a reasonable doubt, and requests that his conviction be reduced to simple possession. He also contends that the mittimus should be corrected to reflect the proper conviction.

¶ 3 At trial, Chicago police officer Jason Edwards testified that at 12:45 p.m. on June 3, 2013, he and a team of officers were conducting surveillance of the bus stop at 625 North Kedzie Avenue in Chicago, Illinois, based upon information received from an informant. The informant told the officers that a black male wearing a bright orange hoodie would be arriving at that bus stop delivering a large amount of heroin. Ten minutes into the surveillance, Officer Edwards observed the defendant, who matched the informant's description, exiting the bus at the indicated bus stop. Officer Edwards radioed his enforcement officers, and watched as Officers Slechter and Mielcarz approached the defendant, who turned and fled by jumping over a nearby fence and into a gangway. Officer Slechter pursued the defendant, and Officer Edwards lost sight of them.

¶ 4 Officer Edwards drove his vehicle around the block and observed the defendant at 627 North Kedzie Avenue. He then assisted the other officers in detaining him. Officer Slechter directed Officer Edwards to a large brick or stone in another gangway, and told him to check underneath it. There, Officer Edwards discovered a large plastic bag containing 11 knotted plastic bags, and a total of 116 smaller Ziploc bags, containing suspect heroin. Officer Edwards gave the narcotics to Officer Slechter, who inventoried them. On cross-examination, Officer Edwards admitted that he lost sight of the defendant for 10 to 20 seconds after he jumped over the fence, and that the stone covering the drugs was located in a gangway between 2 buildings.

¶ 5 Officer Slechter testified that, at 12:45 p.m. on June 3, 2013, he was working as an enforcement officer when he received a call from Officer Edwards, who was conducting surveillance. The call informed him that the individual they were looking for was arriving on the bus. Officer Edwards described the individual as a six-foot tall black male wearing a bright orange hoodie. Officer Slechter drove to the bus stop at Ohio Street and Kedzie Avenue and

observed the defendant, who matched that description. Officer Slechter, who was wearing a vest with his star and name plate, approached the defendant and told him to stop. The defendant turned to look at him, then fled by jumping over a fence and into a gangway.

¶ 6 Officer Slechter followed the defendant over the fence, and pursued him as he jumped over three more fences. He then observed the defendant crouch down near a decorative brick or stone, remove an item from his waistband, and place it under the stone. The defendant jumped over one more fence, and Officer Slechter followed him. The defendant attempted to hide under a staircase, but was taken into custody when the other enforcement officers arrived with Officer Edwards.

¶ 7 Officer Slechter directed Officer Edwards to search under the brick in the other gangway, where Officer Edwards discovered a large plastic bag. Officer Slechter took the bag from Officer Edwards, returned to the police station, and inventoried the bag. The bag contained 11 knotted plastic bags, which held 116 smaller Ziploc bags with a white, powdery substance of suspect heroin. On cross-examination, Officer Slechter stated that he followed the defendant over five or six fences, and that, during his pursuit, he shouted: "Stop, police." He further stated that the item that the defendant placed under the brick was approximately the size of a softball.

¶ 8 Fella Johnson, a forensic scientist at the Illinois State Police, Division of Forensic Services, was accepted by the trial court as an expert in the field of drug chemistry and testified that, on June 10, 2013, she received the inventoried bags from the Chicago police department. She analyzed 30 of the 116 Ziploc bags and found that they tested positive for the presence of heroin with a net weight of 20.8 grams. She estimated that the net weight for the remaining, untested 86 bags was 23 grams.

¶ 9 After the State rested, the defendant acknowledged his two 2011 convictions for possession of a controlled substance, his 2009 conviction for unlawful use of a weapon by a felon, and his 2007 and 2006 convictions for possession of a controlled substance. He then testified that, on June 3, 2013, he took the bus to a barbershop. After he exited the bus, a large black truck pulled up next to him and two tall Caucasian males wearing plain clothes stepped out and approached him. The defendant immediately fled by jumping over the nearby fence and observed one of the men pursuing him. The defendant jumped over five fences before his pursuer eventually caught up to him and put him in handcuffs. Three police officers then surrounded him and started to hit him. The defendant denied possessing any drugs and testified that he ran when the two men approached him because he was afraid for his life. On cross-examination, the defendant stated that he did not see the two men wearing vests or holsters and he did not hear anyone shout "Stop, police."

¶ 10 In rebuttal, Officer Edwards testified that the defendant tried to escape while the officers were attempting to handcuff him. He further testified that none of the officers hit the defendant, but because he was resisting the arrest, they had to perform an emergency takedown and handcuffing, which required the filing of a Tactical Response Report.

¶ 11 Following closing argument, the trial court found the defendant guilty of possession of a controlled substance with intent to deliver. In rendering its decision, the court reviewed the evidence as related by the officers and, as indicia of the defendant's guilt, the court noted that he ran from the officers when they attempted to confront him. The court also found that the defendant's testimony was incredible and that he was impeached by his background. At the

subsequent sentencing hearing, the court sentenced the defendant to six years' imprisonment after considering the appropriate factors in aggravation and mitigation.

¶ 12 In this appeal from that judgment, the defendant contends that the evidence was insufficient to prove him guilty of possession of a controlled substance with intent to deliver beyond a reasonable doubt. He maintains that the amount of heroin recovered was consistent with his personal use and that the officers did not observe him engage in any drug transactions, nor did the officers discover any cash, weapons, or other paraphernalia associated with the delivery of a controlled substance at the time that he was arrested. He, therefore, asks this court to reduce his conviction to simple possession of a controlled substance and remand his cause for resentencing.

¶ 13 Where a defendant challenges the sufficiency of the evidence to sustain his conviction, the reviewing court must consider whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). This standard recognizes the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any conflicts and inconsistencies in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court must allow all reasonable inferences from the record in favor of the prosecution, and will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 14 To sustain the defendant's conviction for possession of a controlled substance with intent to deliver, the State was required to prove beyond a reasonable doubt that the defendant had knowledge of the presence of narcotics, that the narcotics were in his immediate possession or control, and that he intended to deliver the narcotics. 720 ILCS 570/401; *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). The defendant solely contests the sufficiency of the evidence to establish the element of intent to deliver.

¶ 15 Intent is rarely subject to direct proof and must usually be proven by circumstantial evidence. *Robinson*, 167 Ill. 2d at 408. The supreme court has outlined a number of factors that a court may consider in determining whether circumstantial evidence is sufficient to prove intent, including whether the quantity of the controlled substance in the defendant's possession is too large to be viewed as being for personal consumption, the purity of the narcotics, the possession of weapons, cash, or drug paraphernalia, and the manner of the narcotics' packaging. *Id.* These factors, however, are not exhaustive and are not required to be found in each case involving delivery of a controlled substance "in light of the numerous types of controlled substances and the infinite number of potential factual scenarios in these cases." *Id.* at 414; see e.g., *People v. Bush*, 214 Ill. 2d 318, 329 (finding that "the absence of '*Robinson* factors' is of no consequence" where there are other factors indicative of the defendant's intent to deliver).

¶ 16 In contending that the quantity of narcotics recovered was consistent with his personal use, the defendant repeatedly cites the 20.8 grams of the tested narcotics and does not address the remaining, estimated 23 grams of the untested bags. He contends that only the amounts of the controlled substance that were actually weighed and tested by the forensic chemist should be considered in determining whether he had the requisite intent to deliver.

¶ 17 Generally, a forensic chemist may render an expert opinion with respect to contents of the entire amount of a seized substance, even though the opinion is based upon a testing of only random samples. *Robinson*, 167 Ill. 2d at 409. However, Illinois courts have held that where a defendant could be charged with the lesser-included offense of possession of a smaller amount, the weight of the narcotics is an essential element of the crime and must be proved beyond a reasonable doubt. *People v. Hill*, 169 Ill. App. 3d 901, 911 (1988). The case at bar does not implicate the "lesser-included offense" exception to the general rule that a chemist need only test a random sample of the drugs in order to render a qualified opinion as to the entire amount seized. *Robinson*, 167 Ill. 2d at 409.

¶ 18 The defendant was charged with possession with intent to deliver more than 15 grams, but less than 100 grams of narcotics pursuant to section 401(a)(1)(A) (720 ILCS 570/401 (West 2012)), and Johnson, the forensic chemist who testified for the State, weighed and tested more than 15 grams of the substance. Thus, the existence of the 86 untested packets that were found in the same bag as the 30 packets that tested positive for heroin, and were similar in size and appearance, could be viewed as probative of the defendant's intent to deliver. *Robinson*, 167 Ill. 2d at 410.

¶ 19 The quantity of the controlled substance recovered alone can be sufficient evidence to prove intent to deliver beyond a reasonable doubt where the amount of the controlled substance could not reasonably be viewed as designed for personal consumption. *Robinson*, 167 Ill. 2d at 410-11. "As the quantity of controlled substance in [the] defendant's possession decreases, the need for additional circumstantial evidence of intent to deliver to support a conviction increases." *Id.* at 413. In contending that the heroin recovered was intended for his personal consumption,

the defendant cites the information contained in his presentence investigation report and related by counsel during mitigation that he had a habit of using one to two grams of heroin per day. He, therefore, contends that the 20.8 grams of heroin actually tested, represented merely a two-week personal supply.

¶ 20 As discussed above, the trial court could properly consider the total, estimated 43.8 grams of heroin recovered, even though the forensic chemist, Johnson, did not test each individual packet. Moreover, the court could consider the manner in which the substance was packaged, and, in appropriate circumstances, packaging alone may be sufficient evidence of intent to deliver. *Robinson*, 167 Ill. 2d at 408, 414. In this case, the defendant had 43.8 grams of heroin, spread across 11 knotted bags, containing a total of 116 individual packets of heroin. This amount and packaging technique is "highly indicative" of his intent to deliver rather than personally consume. *People v. Clark*, 406 Ill. App. 3d 622, 631 (2010). Although the defendant contends that he was not carrying any paraphernalia associated with the sale of narcotics, we observe that he was also not carrying any paraphernalia associated with personal use of heroin. *People v. White*, 221 Ill. 2d 1, 20 (2006), *abrogated on other grounds, People v. Luedemann*, 222 Ill. 2d 530 (2006). In addition, because the heroin was already packaged for sale, there was no need for the defendant to carry other paraphernalia, such as a scale or cutting agents. *Id.*

¶ 21 The defendant, nonetheless, cites *People v. Clinton*, 397 Ill. App. 3d 215, 226 (2009), where this court reversed a defendant's conviction for possession of between 1 and 15 grams of a controlled substance with intent to deliver based upon insufficient evidence. In *Clinton*, a forensic chemist testified that the narcotics recovered from the defendant and contained in 13 tin foil packets tested positive for heroin, with a total estimated weight of 2.8 grams. *Id.* at 218-19.

The court determined that, because the chemist combined the tested samples to determine their weight before testing for the presence of a controlled substance, the evidence was insufficient to prove that the defendant possessed more than one gram of heroin. *Id.* at 223. The court proceeded under the theory that the combined mixture tested positive for heroin and, even though the court had no accurate measure of the amount of heroin, the Controlled Substances Act punished possession with intent to deliver less than one gram. *Id.* at 224. In assessing the sufficiency of the evidence of the defendant's intent to deliver, the court found that there was insufficient circumstantial evidence of intent given the fact that the defendant did not possess any weapons or drug paraphernalia, the police did not observe the defendant involved in a drug transaction, and there was no testimony of the typical packaging for sale of heroin or that the amount of heroin was inconsistent with personal use. *Id*. at 226.

¶ 22 Contrary to *Clinton*, the amount of heroin possessed by the defendant in this case was sufficiently proven at trial to be more than 40 grams. Moreover, the trial court could also consider the fact that the defendant had the 43.8 grams of heroin separated into 116 individual packages contained in 11 knotted bags. *Id*. at 408. Accordingly, given the manner in which the controlled substance possessed by the defendant was packaged, the quantity of the substance recovered, and the defendant's effort to evade the officers upon his arrival at the bus stop, we find that this evidence, and the reasonable inferences therefrom, was sufficient to allow a reasonable trier of fact to find that the defendant possessed the controlled substance with intent to deliver. *Id.* at 410-11, 414-15.

¶ 23 The defendant finally contends that his mittimus should be corrected to reflect that he was convicted of possession of a controlled substance with intent to deliver; not manufacture or

delivery of a controlled substance. We agree that the defendant is entitled to a corrected mittimus reflecting his proper conviction for possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(1)(A) (West 2012)) and order the clerk of the circuit court of Cook County to correct it in that manner (*People v. Harper*, 387 Ill. App. 3d 240, 244 (2008)). Although the defendant contends that we should remand the matter to the trial court with instructions to issue a corrected mittimus, remand is unnecessary where this court has the authority to order the clerk of the circuit court to make necessary corrections to the mittimus. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 24 For the foregoing reasons, we order that the mittimus be corrected in accordance with this order, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 25 Affirmed; mittimus corrected.