FIRST DIVISION
May 23, 2016

No. 1-14-1065 & 1-14-1066
(CONSOLIDATED)

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 16687
	)	
JIM KENDRICK,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

O R D E R

¶ 1 *Held:* Judgment entered on defendant's convictions of possession of a controlled substance with intent to deliver and delivery of a controlled substance affirmed over challenge to the sufficiency of the evidence.

¶ 2 Following a bench trial, defendant Jim Kendrick was found guilty of unlawful delivery of a controlled substance (heroin), and possession of a controlled substance (cocaine) with intent to deliver, and sentenced to two concurrent terms of 11 years in prison. On appeal, defendant contends that the evidence was insufficient to prove delivery because the witness' testimony was

inconsistent and improbable, and failed to establish identification. He also contends that the evidence was insufficient to prove possession with the intent to deliver.

¶ 3 The charges filed against defendant in this case arose from a controlled-buy operation conducted by undercover Chicago police officers in the afternoon of July 30, 2013, on the south side of Chicago. Following his arrest, defendant was charged with possession of a controlled substance (cocaine) with intent to deliver (Case No. 13 CR-16687), and delivery of a controlled substance (heroin) (Case No. 13 CR-16688). The cases were consolidated prior to trial.

¶ 4 Officer Clark Eichman testified at trial that on the day in question, he and his colleague, Officer Tion Horton, were working as undercover "buy officers," in a team conducting a narcotics investigation. Officer Eichman called an individual nicknamed "Twin," later identified as co-defendant Janice Marsh, who is not a party to this appeal, and the two officers then met her at the corner of 59th Street and Ashland Avenue.

¶ 5 Officer Eichman greeted Marsh, who had delivered drugs to him on a previous occasion, and introduced her to Officer Horton. The trio talked about drugs, then walked westbound on 59th Street toward Marshfield Avenue. Once there, Officer Horton handed Marsh $10 of pre-recorded funds, and Marsh made a phone call.

¶ 6 Soon thereafter, Officer Eichman observed defendant, who was dressed in all tan clothing, walking towards them. Defendant walked eastbound on 59th Street towards Marshfield Avenue, then walked past the trio, and Marsh and Officer Horton accompanied him southbound on Marshfield Avenue. Officer Eichman maintained visual contact with the trio from a distance of about 20 feet. He observed defendant and Marsh walk a short distance further south from

Officer Horton, then Marsh tendered the $10 to defendant, and defendant handed her a clear Ziploc bag. Marsh retuned to Officer Horton, while defendant walked southbound on Marshfield Avenue.

¶ 7 At that point, Officer Eichman called one of the surveillance officers on his personal cell phone and asked him to keep an eye on defendant, as he walked into the alley located at 59th Street. After Officer Horton and Marsh completed the narcotics transaction, Officer Eichman handed Marsh $40 of pre-recorded funds and asked her for crack cocaine. She walked south on Marshfield Avenue to the mouth of the alley located at 59th Street, and defendant reemerged.

¶ 8 Defendant was wearing the same tan clothing as before, however, he was now on a bicycle. He talked to Marsh, but they did not make a transaction, and she walked south on Marshfield Avenue where Officer Eichman observed her making a transaction with somebody else. Officer Eichman completed the exchange of crack cocaine with her shortly thereafter, returned to his vehicle, and radioed the other officers to inform them about the transaction. Officer Eichman testified that later that day, he identified defendant in a photo array as the individual involved in the drug transaction with Officer Horton.

¶ 9 The testimony of Officer Tion Horton was substantially similar in relevant part to that of Officer Eichman. Officer Horton further testified that after being introduced to Marsh, he told her he wanted some "blows," which is a street term for heroin. She asked him "how much was [he] trying to get," and he responded "one." She then told him and Officer Eichman to follow her, and the trio walked to the corner of 59th Street and Marshfield Avenue.

¶ 10 Once there, Marsh made a phone call, and then a black male with a tan shirt and tan pants, identified as defendant, walked towards them "from the west to east." Officer Horton handed Marsh $10 of pre-recorded funds, and defendant walked past him and motioned Marsh to follow him. The three of them walked southbound on Marshfield Avenue. From a distance of about seven feet, Officer Horton observed Marsh tender the $10 of pre-recorded funds to defendant, and defendant handed her one clear Ziploc plastic bag. Defendant then walked southbound into the alley and disappeared out of Officer Horton's line of sight, and Officer Horton followed Marsh as she walked northbound.

¶ 11 Upon returning to the corner of Marshfield Avenue and 59th Street, Marsh handed Officer Horton the small plastic bag, which had black logos on the front, and contained a white powder. Officer Horton stayed at the corner and observed Officer Eichman conduct another narcotics transaction with Marsh, then returned to his vehicle. Later that day, Officer Horton drove by the location where enforcement officers had detained defendant, and identified him. Officer Horton also testified that he inventoried the bag of heroin according to department procedures.

¶ 12 During cross-examination, Officer Horton testified that he withdrew the prerecorded funds used in the investigation in question, wrote up the fund sheet, and the serial number of the $10 bill he used to purchase narcotics was "IL87168556A." Officer Horton added that at the time of the investigation, there were "quite a few" other people out on the street.

¶ 13 Officer Robert Davis testified that he and his partner, Officer Driver, were working as enforcement officers in the narcotics investigation team that day, and he received information via

radio that a black male in tan clothing had engaged in a narcotics transaction near 59th Street and Ashland Avenue. Officer Davis saw defendant riding his bicycle near 60th Street and Ashland Avenue, and attempted to stop him, but defendant fled north on Ashland Avenue. As Officer Davis pursued him, defendant turned onto Justine Street, and crashed his bicycle. When Officer Davis approached defendant, he saw two small, clear Ziploc bags with "number one" logos containing a hard rock-like substance on the ground next to defendant, and then placed defendant into custody. Officer Davis recovered six additional, similar bags, along with $112 when he searched defendant, and gave those items to Officer Driver for safekeeping. He further testified that the serial number of one of the $10 bills he recovered from defendant matched the serial number on the pre-recorded funds sheet.

¶ 14 During cross-examination, Officer Davis testified that he pursued defendant in his undercover police vehicle, and his "Mars lights" were activated. He further testified that he wrote the report following defendant's arrest, and in it, he noted that he found the cash on the ground. Officer Davis created the inventory sheet for the recovered cash, including the pre-recorded funds, and stated that he noted the serial number for the pre-recorded $10 bill on the inventory sheet as "IL86618335A."

¶ 15 The parties stipulated that Chicago police officer Driver would testify that on the day in question, he received eight bags of "suspect heroin" which he kept in his safe keeping and control from the time of recovery to the time of inventory, and that he inventoried those items according to police department procedures.

¶ 16 The parties further stipulated that Naeema Powell, a forensic chemist for the Illinois State Police Crime Lab, would testify that the packet received by Officer Horton tested positive for .3 gram of heroin, and that the eight bags recovered by Officer Davis tested positive for 1.04 grams of cocaine.

¶ 17 Defendant's motion for a directed finding was denied, and defendant entered the inventory sheet for the $10 bill and the pre-recorded fund sheet into evidence.

¶ 18 Following argument, the trial court found defendant guilty of unlawful delivery of a controlled substance (heroin), as well as possession of a controlled substance (cocaine) with intent to deliver. In doing so, it noted that "the tendering of the heroin by the defendant to Janice Marsh was clearly a delivery." The court also noted that:

> "With respect to the items found on and about defendant's person on the ground where the defendant crashed, those items were possessed by the defendant. And while a [*sic*] quantity alone would be insufficient for a finding of with intent to deliver, given the packaging, the number of items, and the fact that the defendant had just completed a delivery of a different substance prior thereto, there will be a finding of delivery of *** possession of a controlled substance with intent to deliver ***."

¶ 19 The trial court subsequently sentenced defendant as a Class X offender to two concurrent terms of 11 years in prison, followed by 3 years of mandatory supervised release.

¶ 20 In this appeal from that judgment, defendant contends that the evidence was insufficient to sustain either conviction. As to the delivery charge, he maintains that the testimony of the officers was inconsistent and improbable, and that he was misidentified as the seller. As to the

possession of a controlled substance with intent to deliver charge, he asserts that the description of the substance did not match what was actually found in his possession, and that there was insufficient evidence of intent to deliver. We address each conviction in turn.

¶ 21 Where, as here, defendant challenges the sufficiency of the evidence to sustain his convictions, the relevant question for the reviewing court 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 crime beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). 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 inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In applying this standard, we allow all reasonable inferences from the record in favor of the prosecution (*People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)), and will not overturn a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt (*People v. Wheeler*, 226 Ill. 2d 92, 115 (2007)).

¶ 22 To sustain a conviction for the charge of delivery, the State must prove that defendant knowingly delivered a controlled substance. 720 ILCS 570/401(d) (West 2012); *People v. Brown*, 388 Ill. App. 3d 104, 108 (2009). Delivery means "the actual, constructive or attempted transfer of possession of a controlled substance, with or without consideration, whether or not there is an agency relationship." 720 ILCS 570/102(h) (West 2012); *Brown*, 388 Ill. App. 3d at 108.

¶ 23 Here, the officers' testimony established that they were part of a controlled-buy investigation on the day in question, and they contacted Marsh and met her at the corner of 59th Street and Ashland Avenue. After Officer Horton told her he wanted "a blow," or heroin, she made a call on her cell phone, and Officer Horton gave her $10 of pre-recorded funds. Defendant then appeared, approached the trio, and motioned for Marsh and Horton to follow him. From a distance of 20 feet and 7 feet respectively, Officers Eichman and Horton saw Marsh tender the $10 bill to defendant, and defendant, in turn, handed her a clear Ziploc bag containing a white powdery substance, which was later stipulated by the parties to be heroin. Marsh then gave the Ziploc bag to Officer Horton, completing the transaction. Viewed in the light most favorable to the State, this evidence, and the reasonable inferences drawn from it, was sufficient to establish that defendant knowingly delivered heroin to Marsh, and a rational trier of fact could have found him guilty beyond a reasonable doubt. *Brown*, 388 Ill. App. 3d at 108.

¶ 24 Defendant contends, nevertheless, that the testimony of the officers was "too inconsistent and improbable" to prove that he committed a delivery. In doing so, he asserts that the officers testified inconsistently about defendant's location and movements. We disagree.

¶ 25 Contrary to defendant's assertion, both officers testified consistently about defendant's location and movements. They stated that they were standing at the corner of 59th Street and Marshfield Avenue with Marsh, and defendant walked eastbound toward them, then walked past the trio, and Officer Horton and Marsh accompanied him southbound on Marshfield Avenue. After completing the hand to hand transaction with Marsh, defendant walked further southbound on Marshfield Avenue and entered an alley. Defendant reemerged from that same alley shortly

thereafter, wearing the same clothing and riding a bicycle. Defendant was then observed by Officer Davis near 60th Street and Ashland Avenue, and following a chase, he was arrested on Justine Street. We note that this entire sequence of events took place within a four block perimeter, and the testimony of the Officers is not so inconsistent or inherently improbable as to be contrary to common experience. *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001). To the extent there were any inconsistencies in the officer's testimony, it is the purview of the trier-of-fact to resolve any inconsistencies or conflicts in the evidence and to draw reasonable inferences therefrom. *Sutherland*, 223 Ill. 2d at 242. The trial court did so here, as reflected in its ultimate finding of guilt.

¶ 26 Defendant also contends that "the man who sold the heroin to Marsh" had a cell phone and was on foot, whereas he was on a bicycle and did not have the pre-recorded cash or a cell phone when he was arrested. He thus maintains that he could not be the seller. Defendant's assertion, however, is neither supported by the record, nor properly inferred from the evidence presented.

¶ 27 Both "buy officers" in this case gave eyewitness accounts of their interaction with defendant and identified him as the same man who entered the alley on foot, briefly disappeared from their line of sight, then re-emerged from the alley in the same tan clothing that he was wearing earlier, but riding a bicycle. Both Officers Eichman and Horton had ample opportunity to observe defendant, and did so in daylight, from a distance of 20 feet and 7 feet respectively. Under these circumstances, we find that the identification evidence presented was sufficient to

establish defendants' participation in the offenses beyond a reasonable doubt. *People v. Dukes*, 40 Ill. App. 3d 490, 492 (1976).

¶ 28 As to the testimony regarding the serial number of the $10 bill used in the undercover transaction, defendant correctly points out that the number on the bill recovered from him conflicted with the number in the pre-recorded funds sheet. However, we disagree that this "lack of a serial number match is quite exculpatory." To the contrary, there is no requirement that pre-recorded or marked funds used in a narcotics transaction must be recovered for a conviction to stand. *People v. Trotter*, 293 Ill. App. 3d 617, 619 (1997). Moreover, the testimony of a single witness, if it is positive and the witness is credible, is sufficient to convict defendant (Smith, 185 Ill. 2d at 541), and here, Officer Horton's testimony that a transaction occurred, and that defendant was the seller was sufficient to convict defendant of the delivery charge. Officer Eichman's corroborative testimony adds further credence to Officer Horton's version of events, and, in any case, the trial court was aware of the serial number mismatch, and the its ultimate finding indicates that it resolved this inconsistency in the State's favor. Given the credible and substantial evidence in the record supporting defendant's guilt, we will not set aside the court's decision to convict. *People v. Young*, 133 Ill. App. 3d 886, 890 (1985).

¶ 29 We next address defendant's challenge to the possession of cocaine with intent to deliver conviction. To sustain a conviction on this offense, the State must prove that defendant knew of the narcotics; that the narcotics were in defendant's immediate possession or control; and that he intended to deliver them. 720 ILCS 570/401 (West 2012); *People v. Ellison*, 2013 IL App (1st) 101261, ¶ 13.

¶ 30 The evidence presented at trial showed that Officer Davis received information that a black male in tan clothing had engaged in a narcotics transaction near 59th Street and Ashland Avenue, and then saw defendant, who matched that description, riding his bicycle near 60th Street and Ashland Avenue. As Officer Davis pursued defendant with his police lights on, defendant fled north on Ashland Avenue, then turned onto Justine Street and crashed his bicycle. Officer Davis found two small, clear Ziploc bags with "number one" logos, containing a hard rock-like substance on the ground next to defendant, and the search subsequent to defendant's arrest revealed six additional, similar bags, and $112 cash. The parties stipulated that the contents of those eight bags tested positive for 1.04 grams of cocaine.

¶ 31 This evidence, combined with the evidence that defendant had been observed completing a delivery of heroin just moments before his arrest, was sufficient for a rational trier of fact to find beyond a reasonable doubt, that defendant had unlawfully possessed a controlled substance with the intent to deliver it. *People v. Blakney*, 375 Ill. App. 3d 554, 559 (2007).

¶ 32 Defendant contends, however, that "[Officer Driver's] testimony was presented in the form of a brief stipulation that indicates the enforcement officers recovered heroin, not crack, from [defendant]," and that therefore "the State cannot prove that [he] possessed cocaine when he was arrested." The stipulation that Officer Driver would testify that the bags he received from Officer Davis contained "suspect heroin," however, has no bearing on the fact that the bags ultimately tested positive for cocaine. Moreover, the parties stipulated at trial that a proper chain of custody was maintained over the bags found in defendant's possession, and that they contained 1.04 grams of cocaine, which is sufficient to prove that defendant possessed cocaine when he

was arrested. To the extent that defendant attempts to couch an attack on the foundation of the evidence as a sufficiency-of-the-evidence claim, we must reject his efforts. *People v. Durgan*, 346 Ill. App. 3d 1121, 1131 (2004); *accord*, *People v. Hill*, 345 Ill. App. 3d 620, 631 ("A defendant waives any issue as to the impropriety of evidence if he procures, invites, or acquiesces in the admission of evidence.").

¶ 33 Defendant finally contends that the State failed to provide sufficient evidence of intent, and that therefore his possession of a controlled substance with intent to deliver conviction should be reduced to simple possession of a controlled substance.

¶ 34 Since direct evidence of intent to deliver is rare, intent is most often proven by circumstantial evidence. *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). The factors relevant to the inquiry of whether the circumstantial evidence supports an inference of intent to deliver include: (1) whether the quantity of drugs possessed is too large to be reasonably viewed as being for personal consumption; (2) the degree of drug purity; (3) the possession of any weapons; (4) possession and amount of cash; (5) possession of police scanners, beepers or cellular telephones; (6) possession of drug paraphernalia commonly associated with narcotics transactions; and (7) the manner in which the drug is packaged. *Ellison*, 2013 IL App (1st) 101261, ¶ 14. This list of factors is neither exhaustive, nor inflexible. *Id.*

¶ 35 Defendant contends that the quantity of drugs found in his possession was "grossly insufficient to prove intent to deliver." We disagree. The evidence showed that defendant possessed eight pre-packaged bags containing 1.04 grams of cocaine, and $112 in cash at the time of his arrest. As the trial court point out, "given the packaging, the number of items, and the

fact that the defendant had just completed a delivery of a different substance," this circumstantial evidence, combined with the cash found in defendant's possession, and the fact that he fled from Officer Davis' car, which had its Mars lights on, was sufficient to support an inference of intent. Accordingly, we find that a rational trier of fact could have found that defendant had unlawfully possessed a controlled substance with the intent to deliver it, beyond a reasonable doubt. *People v. Blakney*, 375 Ill. App. 3d 554, 559 (2007).

¶ 36 Defendant also contends that he "actually refused to sell crack to Marsh and the undercover officers," which shows a lack of intent to deliver. This contention is not borne out by the record, which simply shows that Officer Eichman observed Marsh walking away from defendant without making a second transaction. Our review reveals no evidence suggesting that defendant "refused" to sell Marsh the cocaine in his possession.

¶ 37 We note that defendant makes several other assertions regarding intent which lack merit. For example, he maintains that he had "a single $10 bill" in his possession, that there was no evidence that the police employed lights or sirens, that he did not make any inculpatory statements, and that he was a drug addict, who intended to use the cocaine himself. To the contrary, the record shows that the $10 bill from pre-recorded funds was comingled with the total amount, not that "a single" $10 bill was part of the sum, and Officer Davis testified that his Mars lights were activated during his pursuit of defendant. Furthermore, there was no evidence produced at trial regarding defendant's drug addiction. Finally, lack of inculpatory statements by defendant is irrelevant to the analysis of whether the State proved intent.

¶ 38 Finally, we reject defendant's reliance on *Ellison*, 2013 IL App (1st) 101261, *People v. Sherrod*, 394 Ill. App. 3d 863 (2009), *Robinson*, 167 Ill. 2d 397, and *People v. Thomas*, 261 Ill. App. 3d 366 (1994), for the proposition that "a legion of Illinois cases hold that greater drug amounts [than defendant's 1.04 grams of cocaine,] and similar packaging were insufficient to prove that the drugs were not for personal use." We find those cases factually inapposite to the case at bar. For example, in *Robinson*, 167 Ill. 2d at 413-14, the supreme court concluded that although the drugs and packing by themselves did not prove intent to sell, other evidence did, in fact, do so, and that therefore defendant was properly convicted of the offense of possession with intent to deliver. The remaining cases are inapplicable here, because there was no other evidence, circumstantial or otherwise, that supported an inference of intent. See *Ellison*, 2013 IL App (1st) 101261, ¶ 27; *Sherrod*, 394 Ill. App. 3d at 866; *Thomas*, 261 Ill. App. 3d at 371. As set forth above, there is ample other evidence of intent in this case. Defendant had been observed completing a delivery of heroin, and he fled when Officer Davis pursued him in his vehicle with the police lights activated. When he was arrested, defendant was found in possession of eight pre-packaged bags containing 1.04 grams of cocaine, and $112 in cash. This evidence was sufficient to support an inference of intent.

¶ 39 In sum, defendant's contentions do not provide a basis for finding the evidence so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt on either of the two convictions (*Wheeler*, 226 Ill. 2d at 115), and we affirm the judgment of the circuit court of Cook County.

¶ 40 Affirmed.