2018 IL App (1st) 162842-U

SIXTH DIVISION
OCTOBER 12, 2018

No. 1-16-2842

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 16671
	)	
EDDIE WILLIAMS,	)	Honorable
	)	Mauricio Araujo,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence presented was sufficient to sustain defendant's conviction for possession of heroin with intent to deliver where the drugs were packaged in a manner consistent with being sold, and a police officer observed defendant engage in a hand-to-hand transaction. The mittimus is corrected to accurately reflect the offense of which defendant was convicted.

¶ 2 Following a bench trial, defendant Eddie Williams was convicted of possession of more than 1 gram, but less than 15 grams, of a controlled substance (heroin) with intent to deliver (720 ILCS 570/401(c)(1) (West 2014)). Defendant was sentenced, based on his criminal background,

as a Class X offender to six years in prison. On appeal, defendant contends that his conviction should be reduced to simple possession of a controlled substance because the State did not establish his intent to deliver the 3.5 grams of heroin in his possession. He also argues that the mittimus should be corrected to accurately state the offense of which he was convicted. For the following reasons, we affirm the judgment of the circuit court of Cook County and order that the mittimus be corrected.

¶ 3 BACKGROUND

¶ 4 At trial, Chicago police officer Matthew Bouch testified that at approximately 6:55 p.m. on September 14, 2015, he and three other officers were performing a routine patrol in an unmarked vehicle near 852 North Saint Louis Avenue in Chicago. Officer Bouch was in the front passenger seat and observed defendant standing on the sidewalk about 100 feet away from the car. Officer Bouch saw defendant accept United States currency from a man and then hand the man a "small purple item." The officers' car then approached defendant, and an officer seated in the back seat exited the car. Officer Bouch testified that defendant "looked in our direction and then began to flee" from the officers on a bike. The officers followed defendant in their car. After a couple of blocks, defendant attempted to cut through a vacant lot and crashed his bike into a bush.

¶ 5 Officer Bouch exited the car and pursued defendant on foot. When Officer Bouch was about 20 feet from defendant and getting closer to him, defendant "reached into his right front pants pocket, removed his hand and dropped several purple items to the ground and continued to flee." Officer Bouch recovered the items from the ground and continued to pursue defendant, eventually arresting him in a gangway at 734 North Saint Louis Avenue. Officer Bouch

maintained sight of defendant during the entire pursuit until defendant turned into the gangway, and lost sight of him for "just a few seconds."

¶ 6 Officer Bouch searched defendant and recovered $46 in cash. Officer Bouch testified that the items he recovered during the pursuit were 12 purple-tinted zip-top bags containing suspect heroin wrapped in tape. Officer Bouch, who had made "thousands" of narcotics arrests and observed as many hand-to-hand narcotics transactions, stated that the packaging and amount of suspect heroin recovered in this case were not consistent with personal use, but instead with narcotics that were being sold.

¶ 7 The parties stipulated that Officer Bouch kept the 12 zip-top bags in his control until they were inventoried. The parties further stipulated that the bags contained a total of 3.5 grams of heroin.

¶ 8 After hearing the parties' arguments on the sufficiency of the evidence of defendant's intent to deliver the heroin, the trial court stated: "Technically there's nothing to say that he couldn't have just bought for his personal use and he was on his way home." The court then reviewed the evidence and found that it established defendant's possession of a controlled substance, noting the officer's testimony as to the hand-to-hand transaction, the pursuit of defendant, and the fact that defendant dropped the drugs that were retrieved. The court further found the transaction, the narcotics' packaging, and substance amount were sufficient to prove defendant's possession with intent to deliver.

¶ 9 Defendant filed a motion for a new trial, which was denied. At sentencing, the State presented evidence of defendant's prior felony convictions, and defendant addressed the court in allocution. The court sentenced him to six years in prison. This appeal followed.

¶ 10 ANALYSIS

¶ 11 We note that we have jurisdiction to review this matter, as defendant filed a timely notice of appeal. Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. July 1, 2017).

¶ 12 On appeal, defendant first contends that his conviction should be reduced to simple possession because the State did not provide sufficient evidence of his intent to deliver the narcotics. He argues that the single transaction witnessed by Officer Bouch did not establish his intent to deliver the remaining 3.5 grams of heroin, which he asserts was an amount consistent with his possession of the drug for personal use.

¶ 13 Where a defendant challenges the sufficiency of the evidence, a criminal conviction will not be overturned unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is not the function of this court to retry the defendant; rather, the relevant 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 crime beyond a reasonable doubt. *Givens*, 237 Ill. 2d at 334.

¶ 14 To establish the possession of narcotics with intent to deliver, the State must prove: (1) the defendant had knowledge of the presence of the narcotics; (2) the narcotics were in the defendant's immediate possession or control; and (3) the defendant intended to deliver the narcotics. *People v. Patel*, 2013 IL App (4th) 121111, ¶ 32 (citing *People v. Robinson*, 167 Ill. 2d 397, 407 (1995)). Here, defendant challenges the third element, *i.e.*, the proof of his intent to deliver.

¶ 15 Whether an inference of intent is sufficiently raised must be determined on a case-by-case basis after a careful review of the circumstances surrounding the defendant's arrest. *People v. Clark*, 349 Ill. App. 3d 701, 704 (2004). Because direct evidence of a defendant's intent to deliver is rare, such intent is most often proved by circumstantial evidence. *Robinson*, 167 Ill. 2d at 407. When considering whether the circumstantial evidence supports a finding of the defendant's intent to deliver, this court has weighed several factors enunciated in *Robinson* that have been considered probative of a defendant's intent to deliver: (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) the possession and amount of cash; (5) the 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. *Id*. at 414; *People v. Ellison*, 2013 IL App (1st) 101261, ¶ 14.

¶ 16 That said, this court has found the factors set out in *Robinson* are not exhaustive. *People v. Bush*, 214 Ill. 2d 318, 328 (2005); *Ellison*, 2013 IL App (1st) 101261, ¶ 14. Rather, the minimum evidence that a reviewing court needs to affirm a conviction for possession with intent to deliver is: (1) that the drugs were packaged for sale; and (2) at least one additional factor tending to show an intent to deliver. *People v. Blakney*, 375 Ill. App. 3d 554, 559 (2007).

¶ 17 For example, in *Bush*, a police officer conducting narcotics surveillance observed the defendant retrieve small items from a brown paper bag kept near a fence and engage in two transactions. *Id*. at 321. After the defendant was detained, the bag was recovered and contained a white chunk of less than .1 gram of crack cocaine. *Id*. at 321-22. The supreme court found that despite the absence of any of the *Robinson* factors, the defendant's actions supported a finding of

her intent to deliver a controlled substance. *Id*. at 328. The supreme court stated that the trial court "was permitted to draw all reasonable inferences from the evidence in this case, including that defendant intended to sell the remaining contents of the brown paper bag." *Id*. at 329.

¶ 18 Here, after viewing the evidence in the light most favorable to the State, we find that a rational trier of fact could have found defendant intended to deliver the heroin. The record shows that defendant possessed a total of 3.5 grams of heroin, packaged in 12 purple-tinted zip-top bags wrapped in tape, and had $46 in cash on him at the time of his arrest.. See, *e.g.*, *People v. Pittman*, 2014 IL App (1st) 123499, ¶ 17 (a total of 4.9 grams of heroin in 21 separate packages with eight packages taped together "in a line" supported a finding of the defendant's intent to deliver). In addition to the narcotics' packaging and defendant's possession of cash, Officer Bouch observed defendant engage in a hand-to-hand transaction. Specifically, Officer Bouch saw defendant accept money from a man and then hand him a "small purple item" in return. After that exchange, defendant saw Officer Bouch approach, fled, and dropped the narcotics during the chase. Officer Bouch recovered the narcotics and testified, based on his experience, the packaging and the amount of heroin were not consistent with personal use. This evidence, and the reasonable inferences therefrom, were sufficient for the trial court to conclude that defendant intended to sell the heroin and, thus, sustain his conviction for possession of a controlled substance with intent to deliver.

¶ 19 Defendant nevertheless argues that the 3.5 grams of heroin recovered from him does not support a finding of his intent to deliver because the packaging could reflect the state in which he bought the drugs from someone else for his own personal use. Although the trial court expressly voiced that possible scenario, Officer Bouch testified that the amount and packaging were not

consistent with defendant's personal use of the heroin. And again, Officer Bouch saw defendant engage in a hand-to-hand transaction where *defendant* was the person who accepted the *money*.

¶ 20 In arguing that the possession of drugs packaged in small amounts is not dispositive of this issue, defendant cites, *inter alia*, *People v. Crenshaw*, 202 Ill. App. 3d 432, 436 (1990), *People v. McLemore*, 203 Ill. App. 3d 1052, 1057 (1990), and *People v. Thomas*, 261 Ill. App. 3d 366, 370-71 (1994). In those cases, the possession of narcotics in individual packets and other indicia of drug transactions (*e.g.*, several $100 bills in *McLemore* and a loaded gun in *Thomas*) were found insufficient to prove the defendants' intent to deliver. We do not find those cases persuasive; this court has noted, citing *Robinson*, that *Crenshaw*, *McLemore*, *Thomas* and similar decisions "have been seriously questioned and probably repudiated by our supreme court." *Blakney*, 375 Ill. App 3d at 558; *People v. Beverly*, 278 Ill. App. 3d 794, 800 (1996). Accordingly, we affirm defendant's conviction of possession with intent to deliver.

¶ 21 Defendant's remaining contention on appeal is that the mittimus must be corrected to accurately state the offense for which he was convicted. A review of the mittimus confirms that it lists a conviction for the possession of a controlled substance with intent to deliver within 1000 feet of a school (720 ILCS 570/407(b)(1) (West 2014)). Defendant argues, and the State concedes, that the mittimus should be corrected to reflect the offense of possession with intent to deliver. Accordingly, pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the mittimus corrected to reflect a conviction for possession of heroin with intent to deliver.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County and order the mittimus to be corrected.

¶ 24 Affirmed; mittimus corrected.