

2013 IL App (2d) 130409-U  
No. 2-13-0409  
Order filed October 28, 2014

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kendall County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	Nos. 12-CF-174
	)	12-CM-477
	)	12-TR-4517
	)	12-TR-4518
	)	
KEIOTTO TENNIAL,	)	Honorable
	)	John A. Barsanti,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE SPENCE delivered the judgment of the court.  
Presiding Justice Burke and Justice Zenoff concurred in the judgment.

**ORDER**

¶ 1 *Held:* The State proved beyond a reasonable doubt that defendant's possession of cocaine was with the intent to deliver: in addition to a significant amount of cocaine (and cannabis), defendant possessed a large amount of cash and did not possess drug paraphernalia related to personal use, leading an expert to opine that defendant had such intent.

¶ 2 Following a jury trial, defendant, Keiotto Tennial, was convicted of various offenses, including unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2012)). Defendant was sentenced to 15 years' imprisonment. On

appeal, defendant argues that the State failed to prove that he had the necessary intent to deliver. Accordingly, defendant claims that his conviction should be reduced to simple possession. For the reasons that follow, we affirm.

¶ 3 At defendant's trial, Officer Angerame testified that he was on patrol in Kendall County on May 19, 2012, at approximately 1:58 a.m., when he saw defendant driving 21 miles over the speed limit. Angerame stopped defendant and asked him for his driver's license. Defendant gave Angerame a state identification card, and, with this card, Angerame was able to verify that defendant's driving privileges had been revoked. Angerame arrested defendant, conducted a quick pat-down search, and discovered a large sum of money in the right-front pocket of defendant's loose-fitting pants. Angerame also searched defendant's car. In that search, Angerame did not find "any items of contraband, weapons, or anything else." Angerame escorted defendant to the police station, searched defendant again for weapons, found no weapons, and then removed money from defendant's pocket. The money, which totaled \$1,705, consisted of 3 \$100, 2 \$50, 62 \$20, 6 \$10, and 5 \$1 bills. After recovering the money from defendant, Angerame handcuffed defendant to a nearby bench and left the area.

¶ 4 Officer Luis Gerena testified that he was in the master control unit of the Kendall County sheriff's department that night, monitoring various parts of that facility. From this location, he saw Angerame escorting defendant into the department at approximately 2:45 a.m. Gerena observed Angerame quickly search defendant, recover a large amount of money from defendant's pocket, secure defendant to a bench, and then leave the area. As Gerena continued to watch, he saw defendant lift his pant leg, and, after several seconds, a white ball fell out. Gerena alerted other officers to what he observed, two officers approached defendant, and they recovered the substance.

¶ 5 Officer Shawn Mellish was one of the officers who helped recover the substance. Mellish stated that it was white and powdery and that it was contained in a small baggie. Officer Joseph Goins, who was working with Mellish, was transporting defendant to another area for a strip search when he saw several more small baggies fall out of defendant's pant leg. Mellish testified that some of these small baggies contained a white substance and that some held a green substance.

¶ 6 Angerame, who was working with Mellish and Goins, took all of the baggies into evidence. Three baggies contained a green leafy substance, which Angerame believed was cannabis. Angerame weighed each of the baggies and conducted a field test on each of them. The substance in each of the three baggies tested positive for cannabis. Angerame also conducted field tests on the eight baggies recovered from defendant that contained either a white powdery substance or a white chunky substance. The substance in each of these baggies, which was tied off at the end with a knot, tested positive for cocaine.

¶ 7 Deborah Magolen, a forensic scientist, conducted further tests on some of the substances recovered from defendant. One of the baggies containing a white powdery substance weighed 27.8 grams and tested positive for the presence of cocaine. Although Magolen did not test the other white powdery substances, she did weigh those baggies. The total weight of the other two baggies was 8.9 grams. In addition, Magolen weighed and tested the white chunky substance recovered from defendant. One baggie weighed 12.6 grams and tested positive for crack cocaine. Although Magolen did not test the other four baggies, she did weigh them. The gross weight of these four baggies was 17.5 grams. The three baggies containing a green leafy substance that were recovered from defendant weighed 5.2 grams, and the substance in each baggie tested positive for cannabis.

¶ 8 Richard Wilk, an expert in narcotics investigations, testified that the baggie containing 27.8 grams of a white powdery substance was significant, as 28 grams is an ounce on the street and sells for a few hundred dollars. Wilk believed that selling in bulk like this is beneficial, because, by selling in large quantities, a dealer is not on the street as often, and thus he minimizes his risk of being arrested or robbed. Likewise, buying in bulk is beneficial, because a user usually gets a better deal when he buys a large amount. However, Wilk noted that a user will not buy several small bags containing cocaine, because doing so would cost too much. Based on his expertise, Wilk believed that defendant possessed the 27.8 grams of cocaine with the intent to sell it, as users generally do not have “multiple ounces just sitting around and waiting.” Wilk thought that the 12.6 grams of cocaine was also significant, because 12.6 grams is close to half of an ounce, and half of an ounce is common packaging for cocaine. Wilk stated that these two larger baggies of cocaine were probably a little shy of being an ounce and half of an ounce, because a small amount is usually “pinched off” by the dealer for the dealer’s own use before the sale. According to Wilk, this 40.4 grams of cocaine that Magolen tested would sell for about \$4,000.

¶ 9 Wilk believed that the smaller baggies of cocaine recovered from defendant each contained an eighth of an ounce, which is referred to as an eight ball on the street. Regarding how these smaller quantities of cocaine were packaged, Wilk testified that cocaine is usually packaged this way, placed in the corner of a sandwich bag and sealed tightly with a knot. Wilk explained that packaging cocaine this way ensures that the substance is watertight and that the substance cannot get out.

¶ 10 When asked about the money recovered from defendant, Wilk stated that dealers usually possess smaller denominations, like \$20 bills. Further, Wilk observed that dealers generally

keep their money separate from where they keep their drugs. By doing this, dealers protect themselves from getting ripped off and potentially limit what is seized from them if they are arrested.

¶ 11 Wilk also testified about the materials used to ingest cocaine. Specifically, Wilk stated that users will have straws, rolled-up dollar bills, a flat surface like a mirror, and a razor blade. In preparing to testify, Wilk learned that none of these types of items were found on defendant or in his car.

¶ 12 After considering all of these facts, Wilk concluded that defendant possessed the cocaine with the intent to deliver it.

¶ 13 The jury found defendant guilty, and he was sentenced. This timely appeal followed.

¶ 14 On appeal, defendant concedes that the State proved him guilty of unlawful possession of a controlled substance. However, defendant argues that the evidence was insufficient to prove him guilty beyond a reasonable doubt of having the intent to deliver. In that regard, he argues that the amount of cocaine, combined with the insufficiency of the evidence of drug dealing, merely showed that he possessed the cocaine for personal use.

¶ 15 Evidence is sufficient to sustain a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Perez*, 189 Ill. 2d 254, 265-66 (2000). In assessing the sufficiency of the evidence, we do not retry the case. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, we defer to the trier of fact's assessment of witness credibility, the weight it gave the evidence, and the reasonable inferences it drew from the evidence. *People v. Steidl*, 142 Ill. 2d 204, 226 (1991).

¶ 16 To establish possession of a controlled substance with the intent to deliver, the State must prove beyond a reasonable doubt that: (1) the defendant knew that the controlled substance was present; (2) the defendant was in immediate possession or control of the drugs; and (3) the defendant intended to deliver the drugs. *People v. Jennings*, 364 Ill. App. 3d 473, 478 (2005). Here, defendant challenges the sufficiency of the evidence only as to the element of intent to deliver.

¶ 17 Direct evidence of intent to deliver is rare. *People v. Robinson*, 167 Ill. 2d 397, 408 (1995). Therefore, circumstantial evidence is commonly used to prove intent. *Id.* There are various factors from which one may infer intent. *Id.* Those include: (1) the quantity of the controlled substance when it is too large to be viewed as being for personal consumption; (2) the high degree of purity of the drugs; (3) the possession of weapons; (4) the possession of large amounts of cash; (5) the possession of police scanners, beepers, or cellular telephones; (6) the possession of drug paraphernalia; and (7) the manner in which the drugs are packaged. *Id.* In assessing whether a defendant had the intent to deliver, we are not limited to these factors. *People v. Bush*, 214 Ill. 2d 318, 327 (2005). Rather, they are merely examples of the many factors that a court may consider as indicative of intent. *Id.*

¶ 18 Turning to the facts here, we begin our analysis with the amount of cocaine possessed by defendant. We do so because the quantity of a controlled substance alone can be sufficient to prove intent to deliver. See *Robinson*, 167 Ill. 2d at 410-11. That is the case, however, only where the amount of the drugs could not reasonably be viewed as being only for personal consumption. *Id.* at 411. As the quantity of the controlled substance decreases, the need for additional circumstantial evidence of intent to deliver increases. *Id.* at 413.

¶ 19 In this case, Magolen tested 40.4 of 66.8 grams of the white substance recovered from defendant and concluded that it was cocaine. Of this amount, 27.8 grams was powder cocaine and 12.6 grams was crack cocaine. We have held that an amount of powder cocaine of 36.9 grams was rationally determined not to be for personal use. See *People v. Romero*, 189 Ill. App. 3d 749, 756 (1989) (jury could easily find that 36.9 grams of powder cocaine was not for personal use, as evidence revealed that this would be 184.5 doses). Thus, a reasonable inference arises that defendant did not possess 40.4 grams of cocaine for personal use. Accordingly, we could conclude that, based solely on the amount of cocaine recovered from defendant, the jury could reasonably find that defendant possessed the cocaine with the intent to sell it. See *Robinson*, 167 Ill. 2d at 411.

¶ 20 However, even assuming that the amount of cocaine recovered from defendant alone cannot sustain defendant's conviction of unlawful possession with the intent to deliver, we still would conclude that defendant was proved guilty beyond a reasonable doubt of that offense. In this case, in addition to the amount of cocaine found on defendant, there was sufficient circumstantial evidence indicating that defendant intended to sell the cocaine. For example, defendant had a large sum of money, *i.e.*, \$1,705, on his person. Almost three fourths of this total amount, or \$1,240, consisted of \$20 bills. According to Wilk, an expert in narcotics investigations, dealers will carry large sums of money made up of smaller denominations like \$20 bills.

¶ 21 With regard to the larger baggies of cocaine, Wilk admitted that users sometimes buy large quantities. However, he clarified that the large quantities will not be made up of several different baggies containing smaller amounts. Here, defendant possessed eight baggies of what field tests indicated was cocaine. Most of these baggies were packaged for sale, and several

were packaged in weights that are commonly sold on the streets. That is, one of the baggies contained close to an ounce, one contained close to half of an ounce, and several others contained what Wilk believed was an eighth of an ounce. Although some of the baggies contained slightly less, Wilk explained that that is not atypical, as a dealer will “pinch off” a small amount for himself before selling it. Moreover, Wilk testified that a user will not have such a large amount of drugs on him, as a user buys the drugs to consume them.

¶ 22 Further, as noted, in addition to the baggies of cocaine, defendant possessed three baggies of marijuana. The fact that defendant possessed more than one type of drug adds to the inference that defendant intended to sell the substances he possessed. See *People v. Morgan*, 301 Ill. App. 3d 1026, 1030 (1998). Finally, missing in this case was any evidence that defendant possessed drug paraphernalia related to the personal use of cocaine, such as a razor, rolled-up bills or straws, and a mirror. A lack of drug paraphernalia associated with personal use is relevant to show intent to deliver. *People v. Williams*, 358 Ill. App. 3d 1098, 1103 (2005). When considering all of these facts, in addition to the fact that a significant amount of cocaine was recovered from defendant, we conclude that a rational trier of fact could find that defendant possessed the cocaine with the intent to sell it.

¶ 23 Citing several cases where the defendants were found in possession of much smaller quantities of drugs, defendant argues that lacking in this case and necessary to prove him guilty was evidence that the drugs were easily detectable in a pat-down search or evidence that defendant possessed a police scanner, weapons, or other paraphernalia associated with dealing drugs. We find defendant’s position untenable. First, whether a defendant is proved guilty beyond a reasonable doubt of having an intent to sell narcotics is resolved on a case-by-case basis, and the fact that evidence in one case is not as strong as that in other cases is not

controlling. *People v. Blan*, 392 Ill. App. 3d 453, 457 (2009). Thus, the absence of some of the *Robinson* factors in this case is immaterial in light of the evidence establishing intent here. Second, to the extent that there can be a comparison, more circumstantial evidence was needed to establish intent in the cases defendant cites, because the defendants there were found in possession of small amounts of drugs. See, e.g., *People v. Clinton*, 397 Ill. App. 3d 215, 219, 226 (2009) (the defendant possessed 13 tinfoil packets containing 1.336 to 2.8 grams of heroin, and no evidence indicated that this amount could not be for personal use). Here, in contrast, the police recovered over 66.8 grams of cocaine from defendant. Given this significant amount, less circumstantial evidence than that needed in *Clinton* was required. See *Robinson*, 167 Ill. 2d at 413. Last, the fact that the drugs were not detectable in a pat-down search is of no consequence. Not only were the drugs packaged in various baggies that defendant kept in the leg of his loose-fitting pants, but the evidence revealed that both searches were done quickly, with the primary goal being the detection of weapons.

¶ 24 For these reasons, the judgment of the circuit court of Kendall County is affirmed.

¶ 25 Affirmed.