SECOND DIVISION
July 9, 2013

No. 1-11-0457

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. 09 CR 21185
	)	
CRAIG SANDERS,	)	Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge Presiding.

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

O R D E R

¶ 1 *Held*: Where defendant barricaded the door and dropped a plastic bag of cocaine inside a house, and stated he worked for someone who controlled narcotics sales, evidence was sufficient to sustain his convictions for possession of a controlled substance with intent to deliver and criminal fortification of a residence; eight-year sentence for criminal fortification was in excess of statutory maximum; trial court correctly imposed a three-year MSR term; conviction affirmed, sentence modified, and MSR term affirmed.

¶ 2 Following a bench trial, defendant Craig Sanders was convicted of possession of a controlled substance with intent to deliver and criminal fortification of a residence and sentenced to two concurrent eight-year prison terms. On appeal, defendant contends that (1) the evidence

was insufficient to prove he intended to deliver the cocaine, (2) the evidence was insufficient to sustain his conviction for criminal fortification, (3) the trial court imposed a void sentence that was three years higher than the statutory maximum for criminal fortification of a residence, and (4) his mandatory supervised release (MSR) term should be reduced. We affirm defendant's convictions, modify his sentence for his criminal fortification conviction, and affirm his MSR term.

¶ 3 At trial, Officer Joseph Rizzi testified that he was conducting surveillance as part of a team of officers that was going to execute a search warrant on October 28, 2009 at a house at 1919 West Marquette in Chicago. Around 12:30 p.m., he observed defendant leave the house and meet Pernoris Brownridge, who had pulled up in a vehicle at the corner of Winchester and Marquette. Defendant and Brownridge engaged in a suspected narcotics transaction, with defendant handing Brownridge what appeared to be money in exchange for a white bag. When defendant walked back to the house, Officer Rizzi alerted enforcement officers, who went to execute the search warrant. Officer Rizzi arrived after the enforcement officers, and observed that a two-by-four board was lodged between the wall and the front door handle, and the door was pushed in at the bottom. At least seven people were inside the house, including defendant.

¶ 4 Officer Mora testified that he was an enforcement officer on October 28. After Officer Rizzi alerted him of the suspected narcotics transaction, Officer Mora and his partner approached the house and announced their office and that they had a search warrant. Defendant ran up the stairs to the house, placed a two-by-four piece of wood behind the door, and closed it. To enter, Officer Mora's partner kicked the door once, which allowed the officers to slide through an opening created by the forced entry. Once inside, Officer Mora pursued defendant, who dropped a clear, knotted plastic bag containing chunks of suspect cocaine. Defendant was placed in custody and Officer Mora recovered the plastic bag and gave it to another officer to be

inventoried. No other items were recovered from the house, but a two-by-four board had been placed across the rear door, creating a barricade. After being read *Miranda* warnings, defendant "related something to the effect that he slept or lived on the couch in the location," and that he "worked security for [Brownridge], who controlled the narcotics sales in that location." Defendant also told the officers that he had been instructed by Brownridge to barricade the doors because of prior robberies. Officer Mora admitted he did not remember if there were other people on the street or if he had been driving that day, did not recall the exact layout of the house, and could not recall the exact location in the house where defendant made his statement.

¶ 5 Officer Baltazar, who was also working as an enforcement officer, testified that he helped secure the house. When he arrived, the front door was warped towards the bottom and an elongated piece of wood was propped up against its back. A second piece of wood lay at the bottom of the floor behind the door. The back door was held closed by two brackets and a large piece of wood.

¶ 6 The parties stipulated that the contents of the plastic bag tested positive for cocaine and the content's weight was 3.1 grams.

¶ 7 For the defense, Gregory Buckner testified that on October 28, he was at the house at 1919 West Marquette, which is owned by his friend Larry Gentry. When Bucker arrived at 8 a.m., about five people were in the house, including defendant. For the next five hours, Buckner, defendant, and a woman named Linda sat in the living room watching a movie. During this time, defendant may have left to use the bathroom for a couple of minutes, but otherwise remained in the living room. Because the lock on the door was broken, a stick had been placed between the wall and the door. Bucker did not know who had placed the stick there. Around 1 p.m., police arrived, kicking in the door, and ordered everyone on the floor. The police then ransacked the house, looking for a pistol.

¶ 8 The trial court found defendant guilty of possession of a controlled substance with intent to deliver and criminal fortification of a residence or building.

¶ 9 Defendant filed a motion for a new trial, arguing that the police testimony was not reliable and the testimony describing defendant barricading the front door was not credible. In denying defendant's motion for a new trial, the trial court stated:

> "One officer says he saw [defendant] grab a two-by-four and [the] door closes, but he saw him grab a two-by-four***
>
> The Court heard the testimony of the witness who said he didn't hear any bull horn or anything like that. I found it incredulous and not believable at all***There was not impeachment or any inconsistencies***
>
> The Court finds each of the officers testified credibly and were not impeached."

Based on his background, defendant was sentenced as a Class X offender, and received concurrent eight-year prison terms for possession of a controlled substance with intent to deliver and criminal fortification of a residence or building. Defendant was also subject to a three-year term of MSR.

¶ 10 On appeal, defendant contends his conviction for possession of a controlled substance with intent to deliver should be reduced to simple possession of a controlled substance because the State failed to prove beyond a reasonable doubt that he intended to deliver the cocaine. Specifically, defendant argues that the State did not present evidence that the small amount of cocaine he possessed was packaged for sale and the evidence suggests he was a buyer, rather than a seller. In addition, defendant's statement to Officer Mora does not demonstrate that defendant intended to deliver the drugs he possessed. Defendant also asserts that Officer Mora's

account of defendant's statement is unreliable because it was vague and Officer Mora's memory was called into question during trial.

¶ 11 When a defendant challenges the sufficiency of the evidence, "the relevant question 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." (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard applies in all criminal cases, regardless of the nature of the evidence. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). It is not the reviewing court's function to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In a bench trial, the trial judge determines the credibility of the witnesses, weighs and draws reasonable inferences from the evidence, and resolves any conflicts in the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). A defendant's conviction will not be reversed unless the evidence is so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 12 To establish possession of a controlled substance with intent to deliver, the State must prove that the defendant knew of the presence of the narcotics, the narcotics were in the defendant's immediate possession or control, and the defendant intended to deliver the narcotics. 720 ILCS 570/401 (West 2010); *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). Defendant only disputes that he intended to deliver the cocaine recovered at the house. Direct evidence of intent to deliver is rare, and is most often proved by circumstantial evidence. *People v. Ellison*, 2013 IL App (1st) 101261, ¶ 14. The reviewing court examines the nature and quantity of the circumstantial evidence to support an inference of intent to deliver. *People v. Beverly*, 278 Ill. App. 3d 794, 799 (1996). When the amount of narcotics seized may be considered consistent with personal use, our courts have required additional evidence of intent to deliver to support a

conviction. *Robinson*, 167 Ill. 2d at 411. Factors that are probative of intent to deliver include whether the quantity of narcotics is too large to be consistent with personal use, the high purity of the drug confiscated, how the narcotics are packaged, and possession of weapons, large amounts of cash, and drug paraphernalia. *Id*. at 408. However, proof of intent to deliver must be determined on a case-by-case basis, and there is no hard and fast rule to be applied in every case. *Id*. at 414. Possession of as little as 1.1 grams of narcotics, viewed alongside other factors, has been found sufficient to establish intent to deliver. See *People v. White*, 221 Ill. 2d 1, 7, 19-20 (2006), *abrogated on other grounds by People v. Luedemann*, 222 Ill. 2d 530, 551 (2006).

¶ 13 Here, the evidence sufficiently supports the trial court's finding that defendant intended to deliver the cocaine found at the house. Defendant, who worked security for Brownridge, was seen leaving the house at 1919 West Marquette, engaging in a suspicious transaction with Brownridge, and then returning to the house, where he dropped a bag of cocaine later recovered by police. Defendant's role in working for Brownridge, who controlled narcotics sales, suggests he was more than a mere purchaser. The trier of fact is not required to disregard inferences which flow normally from the evidence and seek out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. Hall*, 194 Ill. 2d 305, 332 (2000). Further, defendant barricaded the door when he was alerted to the police, and the house's rear door was barricaded as well. Evidence of fortification can be considered as evidence that a defendant is engaged in drug sales rather than personal use. See *People v. K.A.*, 291 Ill. App. 3d 1, 6 (1997) (noting that a drug house is a dwelling not used primarily as a residence but instead as a dwelling used for packaging and distributing drugs).

¶ 14 In reaching this result, we note that the *Robinson* factors are neither exhaustive nor inflexible, and *Robinson* expressly allows for the consideration of other, unspecified factors "in light of the numerous types of controlled substances and the infinite number of potential factual

scenarios in these cases." *Bush*, 214 Ill. 2d at 327 (quoting *Robinson*, 167 Ill. 2d at 414). For example, intent to deliver has been found based on the amount of cocaine recovered from two bags in a defendant's jacket and his statement that he sold drugs to support his family (*People v. Beachem*, 374 Ill. App. 3d 145, 150 (2007)). Here, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find that defendant intended to deliver the cocaine.

¶ 15 Defendant's argument that Officer Mora's testimony was unreliable, and therefore could not provide proof of defendant's intent to deliver, is essentially an attack on Officer Mora's credibility. We will not substitute our judgment for the trier of fact on issues involving the weight of the evidence or the credibility of witnesses. *Siguenza-Brito*, 235 Ill. 2d at 224-25. A witness's testimony may be found insufficient only where the evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). According to Officer Mora's testimony, defendant stated that he slept or lived in the house and that he worked security for Brownridge, who controlled narcotics sales in that location. While it is true that Officer Mora did not recall certain details, such as whether he was driving that day or where in the house defendant made his statement, it is uniquely the responsibility of the trier of fact to weigh the evidence and assess the credibility of a witness (*People v. Szundy*, 262 Ill. App. 3d 695, 714 (1994)). Moreover, Officer Mora's testimony was corroborated by other direct evidence, such as the fortification of the door and the presence of the plastic bag containing suspect cocaine, which defendant concedes he possessed. Having reviewed the evidence, Officer Mora's testimony is not so unsatisfactory that no reasonable person could accept it beyond a reasonable doubt.

¶ 16 Defendant next asserts that the evidence is insufficient to sustain his conviction for criminal fortification of a residence. Specifically, defendant contends that he was not

responsible for the placement of the two-by-four boards, which were installed because the locks were broken. Defendant also asserts that the officers were not prevented from entering the house and there was no evidence that the house was used for the manufacture, storage, delivery, or trafficking of illegal drugs. Additionally, defendant contends it was physically impossible for Officer Mora to have seen him barricade the door because that could only have happened after the door was closed.

¶ 17 As we are presented with a challenge to the sufficiency of the evidence, 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 offense beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. To sustain a conviction for criminal fortification of a residence, the State must prove the defendant: 1) intended to prevent the lawful entry of a law enforcement officer, 2) maintained the residence in a fortified condition, and 3) knew the residence is used for the manufacture, storage, or delivery of controlled substances. 720 ILCS 5/19-5(a) (West 2010); *People v. Brown*, 277 Ill. App. 3d 989, 999 (1996). "Fortified condition" means preventing or impeding entry through the use of steel doors, wooden planking, crossbars, alarm systems, dogs, or other similar means. 720 ILCS 5/19-5(b) (West 2008).

¶ 18 Here, the evidence is sufficient to prove all three elements of criminal fortification of a residence. After he was alerted that police officers had arrived and had a search warrant, defendant ran up the stairs to the house and placed a wooden two-by-four behind the door. Although defendant stated he was told to barricade the doors because of previous robberies, defendant barricaded the front door in this instance when he was alerted to the police officers' arrival. As to the second element, the two-by-four pieces of wood placed on the front and rear doors could be considered "wooden planking" under the statutory definition of "fortified condition." 720 ILCS 5/19-5(b) (West 2008); *People v. Rasmussen*, 233 Ill. App. 3d 352, 368

(1992). Having seen defendant barricade the front door, an officer kicked the door to force entry, and the officers were able to enter through an opening that was created. Lastly, defendant admitted that Brownridge controlled narcotics sales from "that location," and cocaine was recovered from inside the house. This evidence establishes defendant's knowledge that drugs were delivered or stored on the premises. See *Rasmussen*, 233 Ill. App. 3d at 369 (finding such knowledge where 3.1 grams of cannabis and 1.4 grams of cocaine were seized by the police from the defendant's apartment, and defendant admitted to dumping cocaine into the kitchen sink when he heard police outside his door). As stated above, we will not disturb the trial court's determination that Officer Mora's testimony was credible. See *People v. Curtis*, 296 Ill. App. 3d 991, 999 (1998) (noting that the trier of fact is in a better position to assess witness credibility because it observed the witnesses' demeanor and considered any conflicts or inconsistencies in their testimony). After viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find that defendant committed criminal fortification of a residence beyond a reasonable doubt.

¶ 19 Defendant next contends this case should be remanded for resentencing because his sentence for criminal fortification is three years higher than the maximum sentence permitted by statute. The State agrees that the sentence exceeds the permitted maximum sentence, but asserts that remand is inappropriate. Criminal fortification of a residence is a Class 3 felony (720 ILCS 5/19-5(c) (West 2010)), subject to a prison term of two to five years (730 ILCS 5/5-4.5-40(a) (West 2010)). Where a court having jurisdiction over both the person and the offense imposes a sentence in excess of what the statute permits, the legal and authorized portion of the sentence is valid and the excess portion of the sentence is void. *In re T.E.*, 85 Ill. 2d 326, 333 (1981). In this situation, a reviewing court corrects the sentence by reducing it to the statutory maximum.

People v. Cowart, 389 Ill. App. 3d 1046, 1050 (2009). Accordingly, we reduce the sentence to five years, the maximum term for criminal fortification of a residence.

¶ 20 Finally, defendant argues his mandatory supervised release (MSR) term must be reduced to two years because the proper MSR term for defendants subject to mandatory Class X sentencing is the term for the underlying conviction. We disagree. Because of his criminal history, defendant was sentenced as a Class X offender (730 ILCS 5/5-4.5-95(b) (West 2010)) for possession of a controlled substance with intent to deliver, which is a Class 1 felony (720 ILCS 570/401(c) (West 2010)). Under the Unified Code of Corrections (Unified Code), a Class 1 felony carries an MSR term of two years (730 ILCS 5/5-8-1(d)(2) (West 2010), while a Class X felony carries an MSR term of three years (730 ILCS 5/5-8-1(d)(1) (West 2010)). Section 5-4.5-95(b) states that a defendant who is convicted of a Class 1 or Class 2 felony and has two prior convictions for offenses that are Class 2 or higher "shall be sentenced as a Class X offender" (730 ILCS 5/5-4.5-95(b) (West 2010)). Section 5-8-1(d) states that "every sentence shall include as though written therein a term in additional to the term of imprisonment" (730 ILCS 5/5-8-1(d) (West 2010)). Since the MSR term is part of the sentence under section 5-8-1(d) of the Unified Code and the sentence must be a Class X sentence under section 5-4.5-95(b), together the plain language of the two provisions requires an MSR term of three years. *People v. McKinney*, 399 Ill. App. 3d 77, 81-82 (2010); *People v. Lee*, 397 Ill. App. 3d 1067, 1073 (2010). Because defendant was sentenced as a Class X offender, the trial court properly imposed a three-year MSR term.

¶ 21 Defendant argues that *People v. Pullen*, 192 Ill. 2d 36 (2000), requires a two-year MSR term when a defendant is convicted of a lower class offense but is sentenced as a Class X offender. *Pullen* held that the maximum length of consecutive sentences which a trial court can impose is determined by the class of the underlying felony (*Pullen*, 192 Ill. 2d at 46), and does

not specify the sentence that a Class X offender receives (*People v. Holman*, 402 Ill. App. 3d 645, 653 (2010) (quoting *McKinney*, 399 Ill. App. 3d at 83)). This court has repeatedly rejected defendant's claim that *Pullen* requires that a Class X offender must receive the MSR term that corresponds to his underlying conviction. See *People v. Wade*, 2013 IL App (1st) 112547, ¶ 36-38; *People v. Lampley*, 2011 IL App (1st) 090661-B, ¶ 47-49; *Holman*, 402 Ill. App. 3d at 653; *McKinney*, 399 Ill. App. 3d at 83; *Lee*, 397 Ill. App. 3d at 1073. Defendant contends these cases were improperly decided. However, we see no reason to depart from these well-reasoned decisions. Accordingly, defendant was properly ordered to serve a three-year MSR term.

¶ 22 For the foregoing reasons, we affirm defendant's convictions, modify his sentence for criminal fortification of a residence, and affirm his three-year MSR term.

¶ 23 Affirmed in part and modified in part.