No. 3–09–0420

Order filed April 7, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois
Plaintiff-Appellee,	)	
v.	)	No. 08–CF–677
DONNIE BAKER,	)	Honorable Clark E. Erickson, Judge, Presiding.
Defendant-Appellant.	)	

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

Held: When the State presented testimony that the defendant had previously sold crack cocaine to a police officer, the amount of crack cocaine was not typical for a user to store, and the manner of packaging was indicative of preparation for sale, the appellate court held that the circuit court did not err when it found that the circumstantial evidence was sufficient to establish that the defendant intended to deliver crack cocaine.

The defendant, Donnie Baker, was convicted of unlawful possession of a controlled substance with intent to deliver while within 1000 feet of senior citizen housing (720 ILCS 570/401(c)(2), 407(b)(1) (West 2008)) and was sentenced to 15 years of imprisonment. On

appeal, the defendant argues that the State failed to prove that he intended to deliver the crack cocaine. We affirm.

FACTS

At the bench trial in this case, a police officer testified that a search warrant was issued for Katherine Baker's residence because a man who lived there, named "D," allegedly sold some crack cocaine to the police. Baker, the defendant's grandmother, testified that the defendant lived with her when the search warrant was executed on October 21, 2008. The defendant kept a box containing some personal belongings in a closet. Carla Sykes, the defendant's aunt, also lived with Baker. Sykes testified that when the police executed a search warrant on the residence, they inquired about a man named "D." Sykes said that "D" was the defendant. She also told them about the aforementioned box in the closet.

The search of the box produced a Crown Royal liquor bag containing 18 individually wrapped plastic bags split between three larger plastic bags. The smaller bags contained what turned out to be a total of 2.3 grams of crack cocaine. The defendant returned to the residence during the search, and he was arrested. The police found two cellular phones on the defendant's person. The police did not find any other materials in the defendant's belongings or on his person that could potentially be indicative of intent to deliver.

The defendant admitted to police that the crack cocaine was his, but he testified that he was an addict and it was for his personal use. The defendant maintained that he bought the crack cocaine earlier that day and had already smoked the contents of four small bags. No pipe was found in the defendant's belongings or on his person. The defendant said that he could use other people's pipes and that he did not like to keep a pipe on his person in case he was stopped by

police.

Kankakee police officer Christopher Kidwell testified that in his 20 years of experience as an officer, he had been involved in hundreds of narcotics-based arrests and the executions of approximately 600 search warrants. Kidwell testified that the manner in which the crack cocaine was packaged in this case indicated preparation for sale. In his experience, Kidwell said he had never encountered a crack cocaine user with more than two or three bags in his or her possession. While he admitted that he was aware of other cases in which undercover police officers purchased more than two or three bags, he stated that it was not typical for crack cocaine users to have that much money at one time. He also testified that it was not typical for crack cocaine users to store the drugs they purchase, as the urge to use was too strong.

At the close of the bench trial, the circuit court found that the manner in which the crack cocaine was found in this case indicated it was going to be sold. The court also placed minor weight on the fact that drug activity had previously occurred at the residence, but did not find it significant that two cellular phones were found on the defendant. Further, the court found Kidwell to be a credible witness. Accordingly, the court found the defendant guilty. After he was later sentenced to 15 years of imprisonment, the defendant appealed.

ANALYSIS

On appeal, the defendant argues that the State failed to prove that he intended to deliver the crack cocaine.

If a defendant alleges on appeal that the evidence was insufficient to prove him guilty, the reviewing court views the evidence in the light most favorable to the prosecution and must determine whether any rational trier of fact could have found the essential elements of the crime

proved beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). "[D]eterminations of the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence are responsibilities of the trier of fact." *People v. McLaurin*, 184 Ill. 2d 58, 79 (1998). We will not retry the defendant or substitute our judgment for that of the trier of fact. *People v. Sucic*, 401 Ill. App. 3d 492, 507 (2010).

As charged in this case, the State was required to prove, *inter alia*, that the defendant intended to deliver the crack cocaine. 720 ILCS 570/401(c)(2), 407(b)(1) (West 2008); see *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). Intent is typically proved through circumstantial evidence. *Robinson*, 167 Ill. 2d at 408. Factors that can be indicative of intent to deliver include whether the amount of narcotics is too large to be consistent with personal use; the possession of drug paraphernalia, police scanners, weapons, scales, cellular phones, or large amounts of cash; and the manner in which the narcotics are packaged. *Robinson*, 167 Ill. 2d at 408.

While the amount of crack cocaine seized in this case is not by itself inconsistent with personal use, our review of the record reveals no error in the circuit court's finding of intent to deliver. An officer testified that a man named "D" from the residence sold crack cocaine to a police officer. Sykes identified "D" as the defendant. The crack cocaine that the defendant admitted was his was packaged in 18 small plastic bags, which were split between three larger bags. Kidwell testified that in his experience, the manner of this packaging indicated preparation for sale, and the storage of such an amount by a user was not typical. The court found Kidwell's testimony credible and implicitly rejected the defendant's claim that the crack cocaine was for personal use, and we find no reason to disturb these credibility assessments. The fact that no other materials were found that could potentially be indicative of intent to deliver does not render

the court's finding of intent erroneous. Viewing the evidence in the light most favorable to the State, we hold that a rational trier of fact could have found intent to deliver proved beyond a reasonable doubt. See *Robinson*, 167 Ill. 2d at 414.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the circuit court of Kankakee County.

Affirmed.