FOURTH DIVISION
January 19, 2017

No. 1-14-2955

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 20075
	)	
LAMONT PRINCE,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices McBride and Burke concurred in the judgment.

O R D E R

¶ 1 *Held*: The evidence was sufficient to prove defendant guilty beyond a reasonable doubt of the offense of possession of a controlled substance with intent to deliver.

¶ 2 Following a bench trial, defendant Lamont Prince was found guilty of the offense of possession of a controlled substance with intent to deliver. Based on his criminal history, he was sentenced as a Class X offender to 10 years in prison. On appeal, defendant argues that the State

did not prove him guilty of the offense of possession of a controlled substance with intent to deliver because it did not prove beyond a reasonable doubt that he intended to deliver the heroin recovered at the apartment where he was arrested. For the reasons below, we affirm.

¶ 3 Defendant's conviction arose from an incident that took place on September 19, 2013. At trial, Chicago police officer Stegmiller testified that he was part of a team of about 13 officers that executed a search warrant, which related to the possession of a handgun, on the subject day in a second floor apartment unit located at 6034 South Prairie Avenue, Chicago, Illinois. The officers entered the apartment by a forced entry and observed a male, identified in court as defendant, and a female in the dining room area. After they entered, Officer Stegmiller performed a systematic search.

¶ 4 Located to the right of the dining room area were two bedrooms containing beds and "some kind of like cabinets," which may have contained clothes. Officer Stegmiller and Officer Brandon searched the northeast bedroom, which they labeled as bedroom number one. In this room, there was male clothing, including a pair of men's pants. There was no identification inside the pants, and Officer Stegmiller did not ask defendant if the pants were his. Inside a plastic bin container, Officer Stegmiller recovered a .380 caliber semi-automatic handgun loaded with six live rounds and a plastic bag with live miscellaneous ammunition. No contraband or weapons were found on defendant when the officers entered the apartment.

¶ 5 The parties stipulated that if Officer Brandon were called as a witness, he would testify that in bedroom one, from inside the pants, he recovered one bag with six smaller bags of suspect cannabis and $331 in United States currency. One of those six bags later tested positive for cannabis in the amount of .4 grams. In the closet of bedroom one, from inside a shoebox, Officer

Brandon recovered six bags of suspect cannabis, which later tested positive for cannabis in the total amount of 2.4 grams.

¶ 6 Officer Daniel Pacelli testified that he searched the southeast bedroom, which was labeled as bedroom number two. Inside that bedroom there was an air mattress, an old television on the floor, and a couple of boxes and bags. He recovered eight bags of suspect heroin inside a box located in the closet. All eight ziplocked bags later tested positive for heroin in the total weight of 1.4 grams. The State showed Officer Pacelli photographs of the heroin he recovered and of the closet where he found it. He testified that the closet did not have any clothes in it and that the photographs accurately reflected and depicted the way that the heroin in the closet looked on the subject day.

¶ 7 The parties stipulated that if called as a witness, Officer Lechy would have testified that he recovered a digital scale from on top of a refrigerator at the subject apartment.

¶ 8 Officer Stegmiller testified that at the police station after defendant's arrest, in order to complete the case report, he and Officer Gallas had a conversation about the amount of heroin recovered from the second bedroom. Officer Gallas was sitting next to Officer Stegmiller at a computer terminal and defendant was sitting on a bench in front of Officer Stegmiller such that he could hear their conversation. During this conversation, Officer Stegmiller told Officer Gallas that approximately three grams of heroin were recovered from the second bedroom, and Officer Stegmiller testified that defendant responded by stating, "Y'all can weigh my dope on my scale, it ain't no 2 grams."

¶ 9 Officer Stegmiller did not know the names of the individuals on the lease, whether any mail or documents were recovered showing defendant's address at the apartment, or whether any

other individuals resided there. However, he testified that he believed the female told him that she was defendant's girlfriend. The parties stipulated that defendant was on parole under Case 07 CR 20855 and that he had been paroled to the address of 6034 South Prairie Avenue, Second Floor, Chicago, Illinois.

¶ 10 At the end of the State's case, defendant made a motion for a directed finding. The trial court granted defendant's motion with respect to the offense of unlawful use or possession of a weapon by a felon but denied his motion with respect to the offense of possession of a controlled substance with intent to deliver. In doing so, the trial court noted, "There's nothing to indicate the defendant's status there, was he a resident, a visitor passing through that tied him to that firearm. Now, there's a statement as to some dope and scales, and the Court denies the defendant's motion as to Count 1."

¶ 11 The trial court found defendant guilty of the offense of possession of a controlled substance with intent to deliver. In doing so, the trial court stated as follows:

> "The Court finds that the statement the defendant made was corroborated by the recovery of scales and dope in quotation marks, as well as cannabis. He was referencing, he was hearing the officer's conversation a few feet away from him when he made the statement referencing those recoveries. There was a female present and a male. These were male clothing in the bedroom where the, some of the items were recovered, and some of the items were recovered from the pants pockets. That was money and cannabis, as I recall, from a man's jeans."

Defendant filed a motion to reconsider, which the trial court denied, noting that "[t]he Court finds that the statement was corroborated. In fact, scales were found there on the premises. In

fact, defendant was - - the evidence came out that that was defendant's address, and the motion for a new trial is denied." The trial court sentenced defendant as a Class X offender to 10 years in prison.

¶ 12 Defendant argues on appeal that the State did not prove him guilty beyond a reasonable doubt of the offense of possession of controlled substance with intent to deliver because it did not prove that he intended to deliver the 1.4 grams of heroin recovered from the apartment.

¶ 13 On appeal, when reviewing the sufficiency of the evidence, the 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). It is the fact finder's responsibility "to determine the credibility of the witnesses and draw reasonable inferences from the evidence." *People v. Robinson*, 167 Ill. 2d 397, 413 (1995). On review, all reasonable inferences from the record must be drawn in favor of the prosecution (*People v. Saxon*, 374 Ill. App. 3d 409, 416 (2007)) and we will only reverse a conviction if the evidence is "so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt" (*People v. Green*, 256 Ill. App. 3d 496, 500 (1993)).

¶ 14 To prove the offense of possession of a controlled substance with intent to deliver, the State must prove that defendant had knowledge of the presence of the controlled substance, that defendant had immediate control or possession of the controlled substance, and that defendant had the intent to deliver the controlled substance. *Green*, 256 Ill. App. 3d at 500. Intent to deliver may be proved by circumstantial evidence. *People v. Berry*, 198 Ill. App. 3d 24, 28 (1990). An examination of the nature and quantity of the circumstantial evidence is necessary to determine

whether the evidence supports an inference of a defendant's intent to deliver. *Robinson,* 167 Ill. 2d at 408.

¶ 15 The Illinois Supreme Court has held that "*in appropriate circumstances*, packaging alone might be sufficient evidence of intent to deliver." *Robinson*, 167 Ill. 2d at 414. However, if only a small amount of drugs is recovered, then "the minimum evidence a reviewing court needs to affirm a conviction is that the drugs were packaged for sale, and at least one additional factor tending to show intent to deliver." *People v. Blakney*, 375 Ill. App. 3d 554, 559 (2007). Further, while the quantity of controlled substance alone can be sufficient to prove intent, if the amount of a controlled substance could be considered an amount consistent with personal use, then additional evidence of intent to deliver is required. *Robinson*, 167 Ill. 2d at 410-11.

¶ 16 The factors courts consider to determine whether a defendant had the intent to deliver include whether the amount of the controlled substance is too large to be viewed as being for personal use, the high purity of the drug, possession of weapons, possession of large amounts of cash, possession of police scanners, beepers, cellular telephones, or drug paraphernalia, and the manner in which the controlled substance is packaged. *Robinson,* 167 Ill. 2d at 408. This list includes examples of factors that courts have considered "probative of intent to deliver" and is not exhaustive. *People v. Ellison,* 2013 IL App (1st) 101261, ¶ 14. Other factors which support the inference that a defendant had intent to deliver the controlled substance include the possession of a combination of drugs and the presence of drug trafficking paraphernalia. *Green,* 256 Ill. App. 3d at 501. Whether the evidence is sufficient to prove a defendant intended to deliver the controlled substance is determined on a case-by-case basis. *Robinson,* 167 Ill. 2d at 412-13.

¶ 17 On appeal, defendant does not challenge the elements of knowledge or possession, but argues that the State did not prove beyond a reasonable doubt that he intended to deliver the 1.4 grams of heroin. Defendant contends that the amount of heroin and its packaging is consistent with personal use and that the scale found in the kitchen does not prove intent to deliver. He argues that the State did not present evidence that any narcotics residue was found on the scale and that a scale can be used for innocuous purposes or to weigh a controlled substance purchased for personal use. Defendant further argues that because the trial court found that there was insufficient evidence to link him to the firearm recovered in the northeast bedroom, bedroom one, then there is insufficient evidence to link him to the cannabis and the $331 found in that room. Defendant requests that we reduce his conviction to simple possession and remand for resentencing.

¶ 18 We find that there is sufficient circumstantial evidence to support the inference that defendant intended to deliver the 1.4 grams of heroin.

¶ 19 The manner in which the heroin was packaged supports an inference of intent to deliver because the 1.4 grams of heroin was not contained in one bag but was packaged in eight ziplocked bags, which were recovered inside a box found in a closet that had no clothes in it. See *Green*, 256 Ill. App. 3d at 501 (affirming conviction where the evidence indicated that 18 clear packages and 26 tinfoil packages of two different controlled substances were recovered and where a scale was observed in the apartment); See *People v. Morgan*, 301 Ill. App. 3d 1026, 1030 (1998)) (affirming conviction where the evidence indicated, among other things, that the 1.4 grams of cocaine was packaged in 17 individually wrapped plastic bags). In addition, not only was the heroin packaged in eight plastic ziplocked bags, but also, a digital scale, which is

considered probative of an intent to deliver, was recovered from on top of the refrigerator. See *People v. Stewart*, 366 Ill. App. 3d 101, 111 (2006).

¶ 20 Additionally, we find that defendant's statement at the police station supports the inference that defendant intended to deliver the 1.4 grams of heroin. After Officer Stegmiller told Officer Gallas about the recovery of approximately three grams of heroin, defendant stated, "Y'all can weigh my dope on my scale, it ain't no 2 grams." Through this statement, defendant acknowledged that both the scale and the heroin were his and that he knew the weight of the heroin, including that it weighed less than two grams. He also specifically connected the scale to being used to weigh the heroin. Moreover, in addition to defendant's statement and the fact that both a digital scale and eight ziplocked bags of heroin were recovered, the record does not indicate that any drug-using paraphernalia was recovered at the subject apartment to indicate that the heroin recovered was for defendant's personal use. See *People v. Beverly*, 278 Ill. App. 3d 794, 803 (1996); See *Morgan*, 301 Ill. App. 3d at 1030.

¶ 21 Furthermore, we find that the record indicates the existence of additional circumstantial evidence which supports an inference of intent to deliver. Defendant's parole address was located at the subject apartment. After the officers forced entry into the apartment, defendant and a female were found inside. In bedroom one in the apartment, there was male clothing, and inside a pair of men's pants, six bags of suspect cannabis, with one of those bags testing positive in the amount of .4 grams of cannabis, and $331 in United States currency were recovered. Inside a shoebox in the closet in bedroom one, six bags of cannabis weighing 2.4 grams were recovered. While defendant was not charged with offenses relating to this cannabis recovered from bedroom one, we find that the presence of the six individual bags of cannabis and the $331 recovered from

inside a pair of men's pants as well as the six individual bags of cannabis recovered inside the shoebox from the apartment where defendant was paroled and where he and a female were found inside after the officers had to force entry, provides additional circumstantial evidence to support an inference of defendant's intent to deliver the 1.4 grams of heroin.

¶ 22 Viewed as a whole and in the light most favorable to the prosecution, we find that this evidence was sufficient to support an inference of intent to deliver the 1.4 grams of heroin recovered in the apartment.

¶ 23 We note that even though the trial court granted defendant's motion for a directed verdict with respect to the offense of unlawful use or possession of a weapon by a felon, the State relies on *People v. Morgan*, 301 Ill. App. 3d 1026, 1030 (1998) to support its argument that the presence of the handgun recovered in bedroom one is indicative of defendant's intent to deliver. We find that even when we do not consider the handgun recovered from bedroom one, there is sufficient evidence to support an inference of intent to deliver.

¶ 24 Accordingly, we conclude that based on the evidence presented at trial, any rational trier of fact could have found defendant guilty of the offense of possession of a controlled substance with the intent to deliver and that the evidence was not "so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Green*, 256 Ill. App. 3d at 500.

¶ 25 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 26 Affirmed.