FIFTH DIVISION
February 10, 2017

No. 1-14-3808

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 14736
	)	
DAVONTAE CONNER,	)	Honorable
	)	Rosemary Grant-Higgins,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Hall concurred in the judgment.

O R D E R

¶ 1 *Held:* The evidence was sufficient to prove defendant possessed between 1 and 15 grams of heroin with the intent to deliver it. Mittimus corrected to reflect offense of which defendant was convicted.

¶ 2 Following a jury trial, defendant, Davontae Conner, was convicted of possession with intent to deliver between 1 and 15 grams of heroin. 720 ILCS 570/401(c)(1) (West 2012). Defendant argues the evidence at trial was insufficient to prove beyond a reasonable doubt he had the intent to deliver 1 to 15 grams of heroin because there was only evidence he intended to

sell two of the six packets of heroin in his possession. Defendant also argues his mittimus should be corrected to reflect the offense of which he was convicted. We affirm defendant's conviction because a rational trier of fact could have found defendant intended to deliver all the heroin he possessed in light of the circumstantial evidence presented at trial. We correct defendant's mittimus.

¶ 3 The State charged defendant with one count of possession with intent to deliver between 1 and 15 grams of heroin (720 ILCS 570/401(c)(1) (West 2012)). Trial was held by jury.

¶ 4 At trial, Officer Kevin Deeren testified he had worked in the 10th District police station for over 11 years and had been a member of the tactical team for the last 7 years. In the northern portion of the 10th District, the tactical teams work involved "mostly narcotics and violent crimes."

¶ 5 On July 13, 2013, Deeren and his partner, Officer Peter Theodore, were wearing plain clothes and were on foot patrol in the area of Roosevelt and Pulaski Roads, which is an area with a high number of drug-related crimes. Deeren and Theodore were "loitering" in front of the sandwich shop when Deeren observed defendant and two others on the north side of the street walking westward. The group then reversed their direction and walked eastward toward the two officers.

¶ 6 Deeren testified defendant stopped on the sidewalk in front of the two officers and said, "What ya'll looking for? We got purple bags." Deeren knew "purple bags" was local slang for heroin, which was sometimes packaged in purple-tinted bags. Deeren said, "Give me two." Defendant replied, "Give me your money and, I'll go get the shit." Deeren revealed his office to

defendant, lifting his shirt to reveal his badge, gun, and bulletproof vest. Deeren placed defendant in custody for soliciting unlawful business and patted him down for weapons.

¶ 7 Officers Anthony Rosen and Terrence Pratscher arrived at the scene, placed defendant in their car, and took him to the 10th District police station. Deeren and Theodore returned to the station.

¶ 8 Officer Theodore testified he had worked for the Chicago police department for over seven years and was a tactical officer in the 10th District on July 13, 2013. Theodore was on foot patrol with his partner, Deeren, in the area around Roosevelt and Pulaski Roads, which he knew to be a "high narcotics area." Both officers were in plain clothes. The officers parked their car and walked to a sandwich shop, where they were "just kind of hanging out." Defendant and two other individuals approached the officers and began talking to them. Defendant asked, "What you looking for? We got purple bags." Theodore knew "purple bags" was local slang for heroin. Deeren said, "Give me two." Defendant responded, "Give me your money and I'll get the shit." Deeren and Theodore then announced their office and placed defendant in custody.

¶ 9 Theodore phoned Pratscher and requested assistance at the scene. Pratscher and Rosen arrived and put defendant in their car and transported him to the 10th District police station. Theodore returned to the station with Dereen and began the paperwork related to defendant's arrest. Pratscher approached Theodore with the heroin found on defendant. Theodore secured the heroin and inventoried it.

¶ 10 Officer Pratscher testified he had worked in the 10th District of the Chicago police department for over six years. On July 13, 2013, he was on foot patrol when he received a phone call from Theodore. Pratscher and his partner, Rosen, drove to meet Deeren and Theodore near

the intersection of Roosevelt and Pulaski Roads. He saw defendant handcuffed and standing with the two officers. Pratscher patted defendant down for weapons and transported him to the 10th District.

¶ 11 Pratscher testified he and Rosen placed defendant in a holding cell and performed a custodial search upon arriving at the station. Pratscher was inspecting defendant's shoes when he saw a plastic bag protruding from underneath the label on the tongue of one of the shoes. In Pratscher's experience, this was a place where someone would hide drugs. Pratscher removed the bag and discovered it contained six smaller bags of a white powdery substance. None of the bags were purple. Pratscher reported his discovery to Deeren and then took the bags to Theodore, who was the inventory officer that day. Pratscher identified the bags at trial, stating it looked like three of the six smaller bags had been opened for testing.

¶ 12 Rosa Lopez testified she was a forensic scientist with the Illinois State Police. She received evidence for testing on July 24, 2013. The evidence consisted of one plastic bag containing six smaller bags, each of which contained white powder. Lopez randomly selected three of the six bags and determined the bags contained a total of 1.1 grams of powder and the powder contained heroin.

¶ 13 Following closing arguments, the jury found defendant guilty of possession with the intent to deliver between 1 and 15 grams of heroin (720 ILCS 570/401(c)(1) (West 2012)). On January 23, 2014, the trial court sentenced defendant to seven years' imprisonment as a Class X offender based on his criminal background.

¶ 14 This appeal followed.

¶ 15 On appeal, defendant argues the evidence at trial failed to prove beyond a reasonable doubt he intended to deliver more than the two bags of heroin requested by Deeren. He asserts we should, therefore, reduce his conviction from a Class 1 offense to a Class 2 offense because only two of the bags should have been weighed, not three. Defendant asserts that, if three bags barely exceeded a gram and he only offered to sell two of the six bags in his possession, he is not guilty of intending to sell more than 1 gram of heroin. He also argues the amount of heroin found in his possession was consistent with his personal consumption and there was no evidence he intended to sell four of the six bags he had on his person.

¶ 16 The State responds that the amount of heroin defendant possessed was inconsistent with personal use and defendant's intent to sell all six bags was supported by other circumstantial evidence. The State points to defendant's attempt to conduct a drug transaction with police officers, the individual packaging of the drugs, defendant's presence in an area where drugs are prevalent, and his familiarity with the term "purple bag" used in the sale of heroin in the neighborhood. We agree with the State.

¶ 17 In reviewing the sufficiency of the evidence, we determine whether a rational trier of fact, viewing the evidence in the light most favorable to the State, could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). We will not substitute our judgment for that of the trier of fact with regard to the credibility of witnesses, the weight to be given to each witness's testimony, or the reasonable inferences to be drawn from the evidence. *Id.* A defendant's conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt. *People v. Siguenza-Brito,* 235 Ill. 2d 213, 225 (2009).

¶ 18 To establish possession of a controlled substance with intent to deliver, the State must prove three elements beyond a reasonable doubt: the defendant knew of the narcotics, the narcotics were in his immediate possession or control, and he intended to deliver them. 720 ILCS 570/401 (West 2012); *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). In the case *sub judice*, defendant only challenges the State's evidence as to the third element: his intent to deliver all of the drugs in his possession.

¶ 19 Intent to deliver is most often proven by circumstantial evidence. *Robinson*, 167 Ill. 2d at 408. We must look to whether the nature and quantity of circumstantial evidence supports an inference of intent to deliver. *Id.* Factors relevant in this inquiry include: (1) whether the quantity of drugs possessed is too large to be reasonably viewed as being for personal consumption, (2) the high degree of drug purity, (3) the possession of any weapons, (4) possession of a large amount of cash, (5) 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.* However, this list of factors is not "exhaustive" or "inflexible." *People v. Bush*, 214 Ill. 2d 318, 327 (2005).

¶ 20 "This court has held that when a defendant possesses narcotics within the range of personal use, '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.' " *Ellison*, 2013 IL App (1st) 101261, ¶ 16 (quoting *People v. Blakney*, 375 Ill. App. 3d 554, 559 (2007)). Even if, as defendant asserts, the amount of heroin found on his person could have been for personal use, his contention there was no evidence of his intent to sell all the heroin in his possession is belied by the record in this case.

¶ 21 First, the six bags of heroin found in defendant's possession were bagged individually and alike, indicating they were packaged for sale. See *Robinson*, 167 Ill. 2d at 410 ("[T]he existence of the 21 untested packets that were found in the same bag as the 15 packets that tested positive for cocaine, and were similar in size and appearance, could be viewed as probative of intent to deliver."). Second, defendant was present in a high drug-crime neighborhood. *People v. Ellison*, 2013 IL App (1st) 101261, ¶ 23 ("Courts in Illinois have noted that presence in an area where drug trafficking is common may support an inference that defendant intended to distribute drugs."). Third, testimony showed defendant went out of his way to engage Dereen and Theodore in a heroin transaction, offering to sell them an unspecified number of "purple bags." He did not limit his offer to one or two bags, demonstrating he was prepared to sell whatever he had. Lastly, defendant offered "purple bags," terminology the officers testified meant heroin in the local drug trade near Roosevelt and Pulaski Roads, demonstrating defendant's familiarity with the drug trade in the high drug-crime area. Viewing the evidence in the light most favorable to the State, the jury could reasonably infer that defendant intended to deliver all the heroin on his person. The evidence was sufficient to prove defendant guilty of possession with the intent to deliver between 1 and 15 grams of heroin. Defendant's Class 1 conviction stands.

¶ 22 Defendant also argues, and the State agrees, his mittimus should be corrected to reflect the offense of which he was actually convicted. Defendant was convicted of possession with intent to deliver between 1 and 15 grams of heroin. 720 ILCS 570/401(c)(1) (West 2012). Defendant's mittimus reflects a conviction for "MFG/DEL 1<15 GR HEROIN/ANALOG," indicating he was convicted of the manufacture or delivery of 1 to 15 grams of heroin. As we may correct the mittimus without remanding the cause to the trial court (*People v. Smith*, 2016 IL

App (1st) 140039, ¶ 19), we direct the clerk of the circuit court to correct the mittimus to reflect the correct offense: possession of a controlled substance with intent to deliver.

¶ 23 For the reasons stated, we order the clerk of the circuit court to correct the mittimus to reflect the correct offense of possession of a controlled substance with intent to deliver. We affirm the judgment in all other respects.

¶ 24 Affirmed; mittimus corrected.