2018 IL App (2d) 160979-U
No. 2-16-0979
Order filed March 12, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ARMEER ASAD, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 15-CF-1880 Honorable Donald Tegeler, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly allowed into evidence one of defendant's prior bad acts to show the absence of mistake in the instant case when the prior bad act occurred within a year of the instant offense, both incidents involved cannabis and heroin, and in both instances defendant claimed that he had no idea what was going on when confronted by the police. The trial court also properly found defendant guilty beyond a reasonable doubt of all the charged offenses when there was sufficient circumstantial evidence that he possessed both the heroin and the cannabis with the intent to deliver.

¶ 2 After a bench trial, defendant Armeer Asad was convicted of unlawful possession of a controlled substance (heroin) with intent to deliver (720 ILCS 570/401(a)(1)(A) (West 2014)); unlawful possession of a controlled substance (heroin) (720 ILCS 570/402(a)(1)(A) (West

2014)); unlawful possession of cannabis with the intent to deliver (720 ILCS 550/5(e) (West 2014)); and unlawful possession of cannabis (720 ILCS 550/4(e) (West 2014)). He was subsequently sentenced to seven and a half years' imprisonment for unlawful possession of a controlled substance with intent to deliver and a concurrent term of six years' imprisonment for unlawful possession of cannabis with the intent to deliver. The possession convictions were merged into their respective delivery convictions. On appeal, defendant argues that the trial court erred in: (1) admitting and relying upon other-crimes evidence; and (2) finding him guilty beyond a reasonable doubt of these charges, with or without the admission of the other-crimes evidence. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The record reflects that before trial, the State filed a motion to admit other acts pursuant to Illinois Rule of Evidence 404(b) (eff. Jan. 1, 2011). It then filed an amended motion. A brief recitation of the facts from the instant case was included in the State's amended motion. Specifically, the State noted that on November 17, 2015, defendant was a passenger in a rental car with Minnesota plates, driven by Ndikho Brunson. Illinois state troopers pulled over the car at a toll plaza on westbound Interstate 90. Brunson told the police that they were going to Minnesota. A search of the car yielded heroin and marijuana. The drugs were found near personal items of both Brunson and defendant. The troopers also found other items indicative of possession of controlled substances with the intent to deliver, for example, mixing agents and paper masks. When defendant was interviewed by investigating officers he said that he was from Chicago and was headed to O'Hare airport to meet his "baby mama." He was picked up from his girlfriend's house at 51st and Greenwood Streets in Chicago.

¶ 5 When defendant was asked why he was stopped in Elgin, which was 30 miles west of O'Hare airport, defendant said that he had fallen asleep. A state trooper asked defendant why he had a backpack with him that contained multiple pairs of underwear, jeans, socks and toiletry items if he was only going to visit someone at O'Hare airport and return home. Defendant did not answer.

¶ 6 In the amended motion the State sought to introduce at trial two of defendant's prior criminal acts. The first incident occurred on November 25, 2014, in Duluth, Minnesota. Defendant was arrested at a Motel 6 with other individuals. During the arrest, officers found the following evidence in the motel room: $2,842 from the defendant's pockets; a backpack containing a small bag of pills; a portable scale; another backpack containing white powder; multiple cell phones; marijuana; and MDMA (also known as Ecstasy). A strip search at the jail yielded heroin that fell from defendant's pants, and a baggie of MDMA was removed from his rectum at a hospital after a search warrant was executed. In the motion the State indicated that defendant pled guilty "to this incident" on May 14, 2015. The second incident occurred on September 30, 2015, in Duluth, Minnesota. It involved an investigation into a controlled buy of heroin. However, the State did not indicate in the motion if defendant was ever arrested, charged or convicted of a crime as a result of this investigation.

¶ 7 The State argued that defendant's prior contact and charges in Minnesota were relevant to illustrate both knowledge and intent with regard to the presence of controlled substances in the instant case. It referred to the "threshold similarity" between charged and uncharged offenses in order for other crimes to be admissible. It argued that the incident in Duluth on November 25, 2014, satisfied the requirement of a threshold similarity as a result of: (1) the incident's nearness in time to the instant offenses; and (2) the fact that the crime in Duluth involved the same drugs

as in this case, heroin and marijuana. The State also argued that the location of the drugs in both incidents illustrated the defendant's knowledge, especially as it related to who possessed the controlled substances in the rental car here. It noted that the rental car vehicle headed in a direction someone would take when traveling to Minnesota. This incident, the State argued, provided evidence that defendant, a resident of Chicago, possessed "prior connections in dealing with controlled substances in the state of Minnesota."

¶ 8 On April 15, 2016, a hearing was held on the State's motion. The trial court ultimately allowed the admission of the November 25 incident as probative for absence of mistake, saying, "I believe that the law doesn't require I have to do a weighing thing, but it is more probative than prejudicial, and I will use it only for the absence of mistake and that one limited purpose." The court did not allow the September 30, 2015 incident, to be admitted into evidence for any purpose.

¶ 9 At trial, Illinois state trooper Greg Melzer testified that on November 17, 2015, both he and trooper Nicholas Colon were working on Interstate 90 westbound toll plaza nine, otherwise known as the Randall Road toll plaza, between Route 31 and Randall Road. Melzer was standing between lanes one and two, and Colon was standing between lanes two and three. At around 1:28 p.m., Melzer's attention was drawn to a black Toyota Camry approaching the toll plaza in lane two. The Camry made a quick, veering motion across the marked median that separated lanes one and two without using any signal. He noticed that the Camry had a Minnesota license plate. Melzer approached the driver's side of the vehicle with the intent of informing the driver of the reason for the stop. At the time he stopped the Camry it was traveling westbound and away from O'Hare Airport. As Melzer was approaching the vehicle, the window on the driver's side of the vehicle "was either down or going down so that the driver could pay

his toll." Melzer noticed that the driver was spraying cologne throughout the vehicle and that there was an overwhelming odor of raw cannabis emanating from the vehicle. The odor of raw cannabis was coming from multiple areas of the car, including the entire passenger compartment and trunk.

¶ 10 Melzer said that when asked for identification, Brunson retrieved his license from a tan backpack with the brand "MCM" on it, located directly behind Brunson on the rear passenger's seat. Once Brunson lifted his backpack Melzer saw a plain, black plastic bag knotted at the bottom, directly underneath the backpack. Upon receiving Brunson's identification, Melzer asked Brunson where he and defendant were headed. Brunson said they were going to Minnesota. Melzer asked defendant if he was also going to Minnesota and he agreed that he was also going to Minnesota. Melzer then requested that Brunson pull to off to the side of the road, which Brunson did.

¶ 11 Melzer testified that he told trooper Colon that he smelled the odor of raw cannabis and he asked Colon to accompany him during his next approach of the vehicle. He also told Colon that Brunson and defendant told him that they were going to Minnesota. Melzer retrieved his squad car and pulled it up behind the Camry as it pulled to a stop. Colon then pulled his vehicle next to the Camry, while an additional trooper pulled up behind Melzer. Colon asked Brunson to exit the vehicle, and he escorted Brunson to Melzer's vehicle. Melzer told Brunson that his driver's license had been suspended and he placed Brunson in handcuffs in the rear of the squad car. Melzer then approached the passenger side of the Camry and asked defendant for identification. Once defendant provided his identification Melzer again asked defendant where he was going. Defendant gave Melzer a mumbled statement that he did not understand. Melzer then asked defendant whether any of the bags in the Camry belonged to him and defendant said

no. Melzer asked defendant whether he had smoked any cannabis in the vehicle and again defendant said no. Melzer asked defendant to exit the vehicle so that he could search it. Defendant exited the Camry and Melzer escorted him to Colon's vehicle, where he placed defendant in handcuffs and told him that he was being detained while officers searched the vehicle. Defendant then said something along the lines of "I don't know anything about it. I am not involved. I don't know anything about what is going on, something to that effect."

¶ 12 Melzer and Colon searched the Camry. Melzer began searching the front driver's seat area while Colon searched the front passenger's side of the vehicle. There were multiple drinks, food wrappers, cell phones and a wallet in the front driver's side of the vehicle. There were also five bottles or cans of aerosol or cologne throughout the vehicle. One of the bottles or cans found during the search was a can of "Ozone," an odorizer spray, which was found on the floorboard of the rear passenger's seat. Melzer opened up the black, plastic bag that he had seen earlier when Brunson took his identification out of the MCM backpack. In it he found one container labeled "100% caffeine," a separate container was labeled "quinine," and a third, smaller container that Melzer believed was labeled "HGL alcohol," on its side. The container labeled "100% caffeine" was sealed, but Melzer thought it had been resealed and no longer possessed a factory seal. While returning to the front of the vehicle to find the trunk release button, Melzer saw three items that appeared to be bars of soap in the pocket of the driver's side door. The bars were a little larger than the size of a bar of soap and were wrapped in blue and white packaging that read "mannite cicogna." Melzer also found paper masks in the glove box.

¶ 13 While searching the trunk, Melzer said that he immediately saw the following items: multiple shopping bags, a shoe box and a couple of backpacks. As he and Colon searched the trunk, the continued odor of raw cannabis persisted, both inside the vehicle and inside the trunk.

Colon began inspecting a black, Swiss Gear backpack on the right side of the trunk. In it, Colon found two heat sealed packages containing a green leafy substance, which the officers believed was cannabis. After finding the heat sealed packages Melzer informed Brunson and defendant that they were under arrest, and he advised both of them of their *Miranda* rights. After being *Mirandized*, defendant again told Melzer that he did not know anything about the cannabis. A tow truck took the Camry to a local police facility. At the facility Melzer did another search of the Camry. He started by opening the trunk and removing all of its contents, including the black, Swiss Gear backpack, shopping bags and the shoebox. As he was removing the trunk's contents, he noticed that the carpeting surrounding the trunk was loose, which raised his suspicions. Melzer pulled back the edges of the carpeting around the edge of the trunk and uncovered a black, plastic bag that had been "stuffed into a factory void metal hole in the trunk area." The void was between the trunk and the back passenger's seat and directly above where the back seats would fold down.

¶ 14 When Melzer opened the black plastic bag he saw a clear, plastic bag that was knotted with a tan or off-white chunk-and-powder substance inside of it. He suspected that the plastic bag contained heroin. Melzer secured those items and then interviewed defendant in the sergeant's office of the police facility, alongside trooper Colon. When asked about the driver of the Camry defendant indicated that Brunson was his father's friend. When Melzer asked where defendant was going, defendant said he was going to O'Hare to meet his "baby mama." Melzer asked defendant if he had anything in the Camry that belonged to him, defendant said that a black, MCM backpack in the trunk belonged to him.

¶ 15 Melzer asked defendant where he had been before he was stopped and defendant told him that Brunson had picked him up at 51st and Greenwood in Chicago, where defendant lived with

his girlfriend. He said he was going to O'Hare airport. Melzer then said to him, "If you were going to O'Hare airport, how did you end up in Elgin, which is approximately 30 miles west of O'Hare?" Defendant said he fell asleep. Melzer then asked defendant if the Camry had stopped anywhere in between where he was picked up at 51st and Greenwood and where he was stopped at the toll plaza. Defendant said that he and Brunson "stopped at a house" after Brunson picked him up, but he did not know where the house was because he was sleeping when Brunson made the stop. When asked how he knew that Brunson made the stop if he was asleep when it happened, the defendant did not answer. Melzer asked defendant what he planned on doing at O'Hare, and defendant said that he was going to meet with his "baby mama" and then go home. If that was so, Melzer questioned, why did his backpack contain multiple pairs of underwear, socks and other clothes? Defendant did not answer Melzer. When asked who rented the Camry defendant said that he did not know.

¶ 16 On cross examination, Melzer said that before he put defendant in Colon's squad car he patted him down and did a cursory search his person. He found no drugs or other contraband on him. After defendant was arrested and before going to the police station Melzer did a more thorough search of defendant and nothing of evidentiary value was recovered from his person. Also, no evidence was recovered from defendant's backpack.

¶ 17 Melzer said the quinine, caffeine and alcohol were recovered from the Camry's backseat from inside a black, knotted, plastic bag that was underneath Brunson's tan backpack. He did not see the black plastic bag until Brunson moved his backpack. He only became aware of the bag's contents after he had undone the knot on the bag.

¶ 18 Melzer said that he and Colon had opened and then closed the trunk prior to uncovering the cannabis in the Camry's trunk. He would have closed the trunk had he initially seen the

marijuana or cannabis in plain view. Despite the overwhelming odor of marijuana emanating within the entire vehicle, he did not deviate from his practice of finishing the search inside the vehicle before searching the trunk. He acknowledged that the cannabis was not in plain view.

¶ 19 Melzer testified that he saw Brunson spraying cologne inside the vehicle, but that he did not see defendant doing so. In addition to the drugs and other containers found in the car, Melzer said that he also found cigars that he believed were used to roll up marijuana as cigarettes.

¶ 20 When Melzer ran a check on Brunson's driver's license, the results indicated that his license was suspended and that he was wanted on an arrest warrant in Minnesota for "dangerous drugs." Brunson had $ 471 in his possession when he was arrested; defendant only had a few dollars on him when he was arrested.

¶ 21 A joint stipulation of the parties regarding the chain of custody and lab results was offered into evidence. The cannabis seized weighed 865.7 grams, and the heroin weighted 99.2 grams. The cannabis and the heroin were then admitted into evidence per stipulation of the parties.

¶ 22 Trooper Nicholas Colon testified that on November 17, 2015, both he and Melzer were in uniform and working at the toll plaza. At around 1:28 p.m., Melzer directed a black Toyota Camry, to pull over. Defendant was in the passenger seat of the vehicle. While approaching the vehicle Colon detected the smells of an odor-masking spray, a cologne-type fragrance and the odor of raw cannabis. Colon searched the front passenger side of the car, including the glove compartment. He found paper masks in the glove compartment. Once he completed his search of the interior of the vehicle he searched the rear passenger's side of the trunk. Colon noted the presence of two black backpacks in the Camry's truck. The brand of one backpack was MCM and the other backpack was a Swiss Gear. When Colon searched the black Swiss Gear backpack

he recovered two vacuum heat sealed bags of cannabis. Colon was the only trooper who searched the glove box. His recollection was that the glove box was shut but not locked.

¶ 23 Sergeant Jeff File testified that he was an expert in narcotics investigations and the possession with intent to deliver narcotics. He said that when dealing with pounds of bulk cannabis, the cannabis can be valued between two and four thousand dollars per pound. File estimated that a bulk amount of cannabis was around two pounds of cannabis. With regard to heroin, anywhere between 3.5 grams to an ounce or larger would be considered a bulk purchase of heroin. In his experience, purchases of marijuana or heroin in bulk allow for further distribution of the contraband at a price that is advantageous to the seller. Cutting agents are typically added to narcotics in order to increase the amount of contraband available for purchase. File said that the 99 grams of heroin found in the Camry was more than a typical user would purchase and would have ranged in value from between $4,400 to $5,000 as a bulk purchase.

¶ 24 File said that he was not personally involved in defendant's arrest but he was aware of the facts surrounding the arrest. He had an opportunity to review the evidence in this case, and he opined that the cannabis recovered from the Camry was possessed with an intent to deliver because a personal user of cannabis would not purchase or travel with the amount of cannabis found in the Camry's trunk. The heroin was also possessed with the intent to deliver based upon the manner in which it was packaged as well as the presence of cutting agents and paper masks. Paper masks are used when cutting heroin in order to avoid inhaling the drug and risk becoming high or addicted to it. There would be no reason for a heroin user to add a cutting agent to heroin if it was purchased for his or her own use. File also noted that no heroin-related user paraphernalia was found in the Camry. File said that Chicago is a "source city" where drugs enter the United States and are distributed to smaller cities, including Duluth, Minnesota. If an

individual traveled westbound on Interstate 90, he or she would approach Interstate 39, which could take an individual north into Wisconsin and then further north to Duluth, Minnesota.

¶ 25 During cross examination, File acknowledged that he did not examine defendant's cell phone or have personal knowledge of any information that might be found on it. However, he opined that experienced drug dealers would often possess multiple cell phones, for example, one for their personal use, a business phone and a dedicated drug line that allowed users to get in touch with the drug dealer. File did not know if defendant had any money on him when he was arrested. He had never experienced a situation where a "heavy" smoker of marijuana purchased one or two pounds of it. File acknowledged that the cannabis found in the trunk was not packaged for distribution, *i.e.*, broken up into multiple packages or bags. There was very little paraphernalia in the Camry except some hollowed out cigars. File said those cigars are generally used to put marijuana inside; they are typically a delivery system for a smoker of marijuana. No heroin-related user paraphernalia was recovered from the Camry.

¶ 26 File testified that neither the absence of information from defendant's cell phone or the fact that defendant only had one cell phone in his possession changed his opinion that both the heroin and cannabis recovered from the Camry were possessed with an intent to deliver. He based his opinion on the quantity of the drugs recovered from the vehicle and the fact that a typical user would not purchase these products in the quantities found in the Camry.

¶ 27 Duluth police officer Brian Jones testified that at approximately 9:48 a.m. on November 25, 2014, he assisted officers Nilsson and Johnson at a Motel 6 located at 200 South 27th Avenue West. Nilsson and Johnson had received information that possible suspects in a theft case might be staying at the motel, one of whom had a felony warrant out for his arrest. When they arrived at the motel, the desk clerk told the officers that the odor of marijuana was

emanating from a particular room. As the officers approached that room they also smelled marijuana coming from room 253. Officer Johnson knocked on the door to room 253 and someone answered the door. Jones saw two other men inside the motel room, one white and one black. Jones identified defendant as one of those individuals he saw in room 253 on November 25, 2014.

¶ 28 Jones and his colleagues entered the motel room; Jones had contact with the white male while Nilsson had contact with defendant. Jones and Nilsson requested identification from each man. Jones observed a white plastic bucket on a dresser to his right. As he walked by it he noticed that it contained a large baggie of marijuana. He also saw a cellophane baggie with a fairly large amount of white power in it on the bed near where Nilsson and defendant were standing. Jones picked up the cellophane baggie and put it inside the white plastic bucket with the marijuana. Jones could not remember if he asked each of the occupants in the room if the contraband belonged to them, but when he held up the contraband and asked whether anyone wanted to tell him what the contraband was, defendant responded by saying he did not know. Jones then placed defendant into handcuffs and searched the room. While searching defendant Jones found a large amount of money in his pocket.

¶ 29 Defendant was strip searched at the jail. Jones watched defendant remove his pants and underwear. When a correctional officer shook out defendant's pants, Jones saw a small piece of cellophane fall out of the pants and land on the floor. As he approached the piece of cellophane, the correctional officer noted said that he also saw what appeared to be some substance in rock form lying on the floor. Jones then noticed the rock-like substance; he had not seen that substance on the floor before the piece of cellophane fell out of defendant's pants. The rocks were a brownish-gray color, which led Jones to believe that the rocks might be heroin.

¶ 30 The strip search continued. When defendant bent over and spread his buttocks Jones saw what appeared to be the corner of a baggie. He asked defendant to remove the baggie, and defendant said that "there was not anything there." Defendant then prevented Jones from retrieving the baggie by clenching his buttocks. Therefore, defendant was taken to the hospital to retrieve the baggie pursuant to a search warrant. Prior to departing for the hospital Jones counted and seized $2,842 from defendant. He field-tested the rocks that fell out of defendant's pants with an "NIK test kit" designed specifically for detecting heroin. The test results indicated that the rocks were positive for heroin.

¶ 31 At the hospital a doctor removed the baggie from defendant's rectum. The baggie contained white capsules. When field tested, the capsules tested positive for MDMA. When defendant was booked he said that he was from Chicago.

¶ 32 The State then admitted into evidence, without objection, a certified copy of conviction in Minnesota for the sale of a controlled substance in the third degree, which was the subject matter of Jones's testimony. Defendant pled guilty to that offense and received a sentence of probation.

¶ 33 Prior to rendering its verdict, the trial court noted the presence of cannabis that had been sitting in open court for around an hour and a half and it said that it could still smell the cannabis from the bench. Turning to the facts of the case, the court then noted that on several occasions defendant said that the bags in the car with Brunson were not his, he denied smoking any cannabis, and he knew nothing about this case or the facts of this case. The court said that in the Minnesota case defendant made the same kind of denials, although he did eventually plead guilty to possessing MDMA because it was found in his rectum. It reviewed the facts of the instant case and found that based upon the evidence it had before it, it was convinced beyond a reasonable doubt that defendant knew there was cannabis and heroin in the Camry, along with

everything else found in the Camry. Also, it found that defendant's statement that he was going to O'Hare airport when the Camry was not traveling in that direction was incredible, along with everything else defendant said in this case. Therefore, it found that defendant knowingly and unlawfully possessed the heroin and cannabis in question and that he possessed both drugs with the intent to deliver.

¶ 34 Defendant subsequently filed a motion to reconsider, or in the alternative a motion for a new trial, which the trial court denied. Defendant was sentenced to seven and a half years' imprisonment in the Illinois Department of Corrections (IDOC) for unlawful possession of a controlled substance with the intent to deliver and a concurrent term of 6 years in the IDOC for unlawful possession of cannabis with the intent to deliver. The remanding charges were merged with their appropriate counterparts. Defendant filed a timely notice of appeal.

¶ 35 II. ANALYSIS

¶ 36 On appeal, defendant argues that the trial court erred in: (1) admitting and relying upon other-crimes evidence; and (2) finding him guilty beyond a reasonable doubt of these charges, with or without the admission of the other-crimes evidence. We will first address his argument regarding other-crimes evidence.

¶ 37 A. Other-Crimes Evidence

¶ 38 Defendant first argues that the trial court erred when it admitted and relied upon the evidence surrounding his 2014 conviction in Minnesota for possessing MDMA[1] where that crime was admitted for the sole purpose of showing absence of mistake here. He argues that absence of mistake was not at issue in this trial, and none of the other available exceptions to

[1] It appears from the Minnesota sentencing record that a charge of possessing the heroin rocks was dismissed, perhaps in exchange for defendant's guilty plea to possessing MDMA.

Illinois Rule of Evidence 404(b) (eff. January 1, 2011) applied either. As such, the trial court improperly relied upon the Minnesota conviction to find him guilty of the instant offenses.

¶ 39 Illinois Rule of Evidence 404(b) provides in relevant part:

> "(b) Other Crimes, Wrongs or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith ***. Such evidence may also be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, or absence of mistake or accident." Ill. R. Evid. 404(b) (eff. Jan. 1, 2011).

¶ 40 As our rules of evidence point out, evidence of other crimes is not admissible to prove a criminal defendant's propensity to commit crimes. *People v. Wilson*, 214 Ill. 2d 127, 135 (2005); Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). In order to be admissible, other crimes evidence must have some threshold similarity to the charged crimes. *Id*. at 136. Even where evidence of other crimes is admissible, a trial court may exclude the evidence where the probative value is substantially outweighed by the danger of unfair prejudice to a defendant. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). However, that rule is based upon the belief that evidence that is more prejudicial than probative over-persuades the jury, which might convict a defendant only because it feels he or she is a bad person deserving punishment. *People v. Gancarz*, 369 Ill. App. 3d 154, 167 (2006) (*rev'd in part on other grounds*). This court has further explained, however, that in a bench trial the risk of jury over-persuasion does not exist. *Id*. In fact, when other crimes evidence is introduced for a limited purpose in a bench trial it is presumed that the trial judge considered it only for that purpose. *Id*.

¶ 41 A trial court's ruling on a motion to admit other crimes evidence is reviewed for an abuse of discretion. *People v. Chapman*, 2012 IL 111896, ¶ 19. The question is not whether the

reviewing court would have made the same decision if it were acting as the trial court. Rather, the question is whether the trial court's decision is "arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it." *People v. McDonald*, 2016 IL 118882, ¶ 32. The abuse of discretion standard of review is highly deferential. *People v. Lerma*, 2016 IL 118496, ¶ 32. Thus, we will not reverse the trial court's ruling here absent a clear abuse of that discretion. *People v. Dabbs*, 239 Ill. 2d 277, 284 (2010).

¶ 42 Defendant first argues that the trial court erred when it: (1) did not conduct the requisite balancing test in order to determine if the admission of the facts surrounding the 2014 Minnesota crime was more probative than prejudicial; and (2) explicitly found that it did not have to do a balancing test.

¶ 43 The record belies defendant's claim. When ruling on the admissibility of the Minnesota conviction the trial court specifically stated, "I believe that the law doesn't require I have to do a weighing thing, but it is more probative than prejudicial, and I will use it only for the absence of mistake and that one limited purpose." Although the trial judge's comment that he did not have to conduct a "weighing thing" was in error, it is clear that the court decided to weigh the evidence anyway, and it found the prior crime to be more probative than prejudicial. Therefore, we find no error on these points.

¶ 44 Next, defendant argues that the trial court erred when it substituted its own interpretation of the basis for which the State requested that the Minnesota conviction be entered. He contends that the State wanted the Minnesota conviction to be entered to show knowledge and intent as it pertained to the presence of controlled substances here. Also, the State never requested absence of mistake to be a basis for admission and only agreed that this basis should be used after the trial court suggested it.

¶ 45 Defendant has cited no authority for the proposition that a trial judge is forbidden from suggesting a basis for the admission of other crimes evidence when the State does not base its argument on that ground. Accordingly, he has forfeited this argument on appeal. See *People v. Hall*, 2012 IL App (2d) 111151, ¶ 12 ("[M]ere contentions, without argument or citation of authority, do not merit consideration on appeal.").

¶ 46 Next, defendant argues that the absence of mistake exception to Illinois Rule of Evidence 404(b) is misguided here because the admission of other crimes evidence to show an absence of mistake on a defendant's part arises only when the defendant claims that his otherwise criminal acts were a result of a mistake, citing to *People v. Lenley*, 345 Ill. App. 3d 399 (2003). In *Lenley*, the defendant was charged with burglary and theft of some equipment from a barn. The trial court allowed the State to introduce evidence of three prior burglaries of barns in the area committed by defendant in order to prove intent, motive, design and absence of mistake. *Id*. at 401. The reviewing court rejected the admission of the other burglaries on all these grounds. In ruling that the trial court erred in allowing evidence of the other burglaries into evidence as absence of mistake, the trial court made the following comments:

> "The admission of other-crimes evidence to show an absence of mistake on a defendant's part arises when the defendant claims that his otherwise criminal acts were the result of a mistake. For example, the defendant might have claimed that he entered Harry Foss's barn with the belief that he was on Uncle Earl's land and that Uncle Earl had given him permission to remove tools from his barn. Had the defendant tendered such a claim, the other three burglaries would have become instantly relevant to dispel the notion that such a mistake had been made.

> Here, there was no claim of mistake. Thus, the other three burglaries were not legitimately admitted to help prove an absence of that claim." *Id*. at 408-09.

¶ 47 Defendant argues that here, he never alleged mistake because he never claimed that the contraband was something other than it was, *i.e,* illegal drugs. Instead, he argues, he claimed no knowledge or possession of the illegal items seized from the Camry. In looking to the Minnesota case, he argues, there was no evidence of a claim of mistake present there, either.

¶ 48 We are not persuaded. Here, the State's theory was that defendant and Brunson were couriers that were transporting drugs from Chicago to Minnesota. This theory was supported at trial by evidence that the rental vehicle driven by Brunson was headed to Minnesota. The car had Minnesota plates, Brunson said that they were headed to Minnesota, and defendant initially agreed to that statement. Melzer retrieved several pairs of underwear, socks and other clothes from defendant's backpack, which suggested that he was on a trip longer than from Chicago to O'Hare airport, the story that he later gave to Melzer.

¶ 49 Sergeant File, an expert in the field of narcotics with the intent to deliver, testified that defendant and Brunson were transporting an amount of cannabis that was more than normally possessed for personal use. He also testified that the heroin found in the Camry was more than possessed for personal use based upon the manner in which it was packaged, as well as the presence of cutting agents and paper masks found inside the Camry. File also found relevant the fact that the heroin and cannabis was located in a vehicle traveling from Chicago to Minnesota when Chicago was a "source city" from which drugs enter the United States and are distributed to smaller cities like Duluth, Minnesota, where defendant and Brunson were headed.

¶ 50 We agree with the State that the incident in Minnesota in 2014 was relevant because it established an absence of mistake in the instant case. Testimony from police officer Jones

established that in 2014, defendant was found in a motel room in Duluth, Minnesota, that smelled strongly like cannabis. A bucket containing a large baggie of cannabis was found on a dresser in the room. A substance that looked like heroin was found in the motel room as well. When officer Jones asked the men in the motel room if anyone knew what the contraband was, defendant said that he did not know what the items were.

¶ 51 Similarly, when trooper Melzer confronted defendant about the presence of cannabis in the trunk of the Camry, defendant said "I don't know anything about that." The incident in Minnesota in 2014 was relevant to show that defendant had previously been in very close proximity to a large quantity of cannabis and suspected heroin and that he had denied any knowledge of them. That incident in Minnesota was relevant to negate defendant statements that he did not know anything about the drugs found in the Camry.

¶ 52 Defendant correctly notes that the first step in deciding whether to admit other crimes evidence is to define what is truly at issue during the trial, citing again to *Lenley*, 345 Ill. App. 3d at 406. Also, the tender of multiple recognized exceptions to the general ban of such evidence, without an articulation of how those exceptions relate to the proof of the charge at hand, is unacceptable. *Id.* Defendant also correctly states that here, the issue is whether defendant possessed the heroin and cannabis, and if he did, whether he possessed it with the intent to deliver. Finally, defendant properly notes that since he did not actually physically possess the contraband in the instant case, the issue here is constructive or joint possession.

¶ 53 However, defendant errs when he says that the Minnesota incident only showed that he actually possessed the bag of MDMA that was found in his rectum. He claims that while he was originally found in a motel room with a number of other people where cannabis and heroin were

found, no effort was made to show that he constructively or jointly possessed that cannabis or heroin, nor could it be conclusively shown.

¶ 54 Defendant's argument has no merit. Other-crimes evidence does not pertain solely to prior convictions; the term encompasses bad acts, and the standard for the admissibility of such evidence is more than mere suspicion, but less than beyond a reasonable doubt. *People v. Gregory*, 2016 IL App (2d) 140294, ¶ 23. See *People v. LeCour*, 273 Ill. App. 3d 1003, 1009-09 (1995) (evidence of defendant's prior drug transactions, although not charged offenses or convictions, were admissible in prosecution for unlawful possession of a controlled substance with the intent to deliver when, among other reasons, those other bad acts tended to remove any doubt that the defendant's conduct on the date of the offense was inadvertent or innocent).

¶ 55 Here, defendant is wrong that the Minnesota incident only showed that he actually possessed the MDMA that was found in his rectum because he only pled guilty to that count. Officer Jones' testimony about the facts surrounding the 2014 Minnesota incident showed that defendant was found in a motel room with a large baggie of cannabis and a bag with a "fairly large amount of white powder in it" in plain view and, when asked what the substances were, defendant claimed ignorance. Also, after he was arrested and strip searched, the rocks that fell out of defendant's pocket were field-tested and determined to be heroin. That evidence certainly gave rise to more than a mere suspicion that defendant constructively possessed the drugs in that motel room. Also, Jones' testimony that the cannabis and alleged heroin were found in large amounts created more than a mere suspicion that defendant possessed those drugs with the intent to deliver.

¶ 56 Finally, we reject defendant's claim that the facts of the prior crime were so distinct from the facts of the instant case that any probative value that existed was substantially outweighed by

the prejudicial effect of its admission. Here, the 2014 Minnesota incident and the instant crime showed a similar course of conduct. For example, in the Minnesota incident, defendant, a native of Chicago, was found in the presence of a delivery amount of cannabis and suspected heroin in a motel in Duluth, Minnesota. In that instance, he told the police that he did not know what the substances were that were found in the motel room that he occupied. Similarly, in this case, defendant and Brunson told officer Melzer that they were headed to Minnesota (even though defendant later changed his story), large amounts of both cannabis and heroin were found in a rental vehicle in which defendant was a passenger, and defendant denied knowing anything about these drugs as well. Also, these two incidents took place in a short period of time; less than a year had elapsed between the two cases. Accordingly, the trial court did not abuse its discretion in allowing into evidence the 2014 incident in Minnesota as other crimes evidence to show that it was not an innocent mistake that defendant found himself in a car driving to Minnesota that contained large amounts of cannabis and heroin in this case.

¶ 57 B. Beyond a Reasonable Doubt

¶ 58 Next, defendant contends that he was not proven guilty of all four charged offenses.

¶ 59 To support a conviction for delivery of a controlled substance, the State must establish that the defendant had: (1) knowledge of the presence of a controlled substance, (2) the controlled substance within his or her immediate control, and (3) the intent to deliver it. *People v. Pintos*, 133 Ill. 2d 286, 291-92 (1989). The element of knowledge can rarely be proven directly, and it is established by the defendant's actions, declarations or conduct from which the trier of fact may infer that the defendant knew of the existence of the controlled substance. *Pintos*, 133 Ill. 2d at 292. Whether a defendant had knowledge of the controlled substance is a question of fact for the trier of fact. *People v. Loferski*, 235 Ill. App. 3d 675, 682 (1992). A

person may have constructive possession of contraband even if that possession is joint or others have access to the area where the contraband was found. *People v. Spencer*, 2016 IL App (1st) 151254, ¶¶ 25. In criminal cases where the sufficiency of the evidence is at issue, the proper standard of review 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 proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The trier of fact is in the best position to judge the witnesses' demeanors and memories as they testified, and to determine the weight to be given their testimony. *People v. Wiggins*, 2016 IL App (1st) 153163, ¶ 68. It can also draw reasonable inferences from the evidence. *People v. Olaska*, 2017 IL App (2d) 150567, ¶ 142. Thus, a finding of knowledge by the trier of fact will not be set aside on review unless the evidence is so contrary to the verdict, or so unreasonable or unsatisfactory that a reasonable doubt as to guilt exists. *Collins,* 106 Ill. 2d at 261.

¶ 60 Defendant claims that the State failed to prove that he possessed the drugs at issue here because neither the drugs nor the cutting agents were readily available to him and that the police had to tear up part of the trunk to find the heroin. He also contends that the cologne and deodorizer bottles, food wrappers and the cell phone found in the Camry did not directly show that he had knowledge of the drugs without somehow showing that he was aware and in possession of the drugs in the trunk.

¶ 61 Again, we are not persuaded. The facts surrounding the 2014 incident in Minnesota, which we have held was properly admitted into evidence, supported a finding that defendant was not simply "in a bad place at a bad time" but that he knew he was participating in a drug delivery when he was traveling with Brunson in the Camry. The other evidence presented in this case also provided enough to convict defendant of all four offenses here as well.

¶ 62 At trial, Officer Melzer testified that as he first approached the Camry he smelled an overwhelming odor of raw cannabis and saw Brunson spraying cologne throughout the vehicle. Officer Colon also testified about the very strong smell of raw cannabis that was emanating from the Camry. The odor was so strong that even the trial court commented about it during the trial. Defendant contends that there was no evidence elicited that defendant himself could smell the cannabis, or that he was even aware of what raw cannabis smelled like. He claims that the trial court "could no more safely make any of these assumptions than it could assume Defendant failed to smell the raw cannabis due to a head cold***." We disagree. Here, two police officers testified about the strong smell of cannabis coming from the Camry. Melzer then saw Brunson spray cologne in the air as he approached the vehicle. It would have been impossible for defendant *not to see* Brunson spray the cologne. Based on those facts it would very reasonable for the trial court to infer that defendant did not mistake the odor of raw cannabis for something else. Again, on review, we draw all reasonable inferences in favor of the State. *Davison*, 233 Ill. 2d at 43.

¶ 63 Defendant's many inconsistent statements to the police here also supported an inference that he had knowledge of and participation in a drug delivery. Defendant and Brunson first told officer Melzer that they were en route to Minnesota at the time of the stop. However, defendant later said that he was actually going to O'Hare airport to meet with his "baby mama" and then return home. He also initially said that he did not have any personal possessions in the car. However, after the cannabis and heroin were found in the trunk he admitted that he had a backpack there. Further, the contents of his backpack were indicative of travel and belie his story about meeting the mother of his child at O'Hare airport. In his brief, defendant claims that the clothes might have been "as a result of coming or going to the gym at some point."

However, there would be no need to store multiple sets of clothing for a trip to the gym, and defendant never told the police that he was going to the gym on his way to see his "baby mama." Defendant's lies to the police about where he was headed on the day of the arrest, along with his initial denial that he had any physical possessions in the car, gave rise to a reasonable inference that he was lying about the purpose of the trip and that he initially lied about not having anything in the trunk because he knew that drugs were stored there.

¶ 64 Defendant next claims that at a bare minimum, he was not proven guilty of the two offenses surrounding the heroin because of its concealed location in the trunk of a rental car, along with no evidence that he had any knowledge of cutting or packaging heroin with the intent to deliver.

¶ 65 In response, the State cites to *People v. Pintos*, 133 Ill. 2d 286 (1989). *Pintos* involved an arranged purchase of cocaine at a hotel. One of the drug dealers told an undercover agent that his "drivers" were bringing the cocaine from Florida to Chicago and would be arriving at the hotel at a certain time. The defendant was seen entering a hotel with another man who was carrying a box, which was eventually shown to have contained cocaine. The drug dealer let defendant and the other individual into his hotel room and later that evening the men spent the night in a hotel room next door to the drug dealer. The next morning, the drug dealer went into the men's room, brought the box back to his room, and attempted to sell it to the undercover agent. Defendant was convicted of intent to deliver a controlled substance. *Id*. at 290.

¶ 66 On appeal, defendant argued that there was no evidence that he had knowledge of the presence of cocaine in the box. Specifically, he argued that the State failed to present any evidence that showed that : (1) he was observed holding the box; (2) he knew what was in the box; (3) anyone had said anything to him about drugs; (4) he had engaged in any conduct that

showed such knowledge; (5) he had any dealings with the undercover agent-buyer; (6) he was present at the time of the transaction; and (7) he was to receive any benefit from the transaction. Therefore, he claimed, there was no evidence that he knew the box contained cocaine. *Pintos*, 172 Ill. App. 3d at 1101. The appellate court rejected these claims and found that the record showed evidence of actions and conduct from which the trial court could have reasonably inferred that the defendant knew of the existence of the cocaine in the box. *Id* at 1102. Specifically, the court noted the record showed that the defendant was referred to as one of the drivers who were bringing the cocaine from Florida to Chicago. Later, the drivers appeared at the drug dealer's hotel room with a box and that box was subsequently found to contain cocaine. *Id*. Also, that box was in the hotel room with the defendant and the other driver before the drug dealer picked it up the next day and tried to sell it to the undercover agent. Based upon these facts, the court held that the fact that the defendant was not ever seen holding the box was not fatal to the State's case regarding the element of knowledge. *Id*.

¶ 67 In affirming the appellate court our supreme found said:

> "We find that a rational trier of fact could infer from this evidence that Pintos had knowledge that the cardboard box contained cocaine. The mere fact that there was no direct evidence that Pintos carried or saw what was in the box does not, as a matter of law, preclude a finding that he had knowledge. As this court stated in [*People v.*] *Embry*, 20 Ill. 2d [331], 334 [1960], '[t]he element of knowledge is hardly ever susceptible of direct proof, but it may be proved by evidence of acts, declarations or *conduct* of the accused from which the inference may be fairly drawn that he knew of the existence of the narcotics at the place where they were found.'" (Emphasis added). (See also *People v. Jackson* (1961), 23 Ill. 2d 360, 364 (knowledge of existence of narcotics can be proven

> by showing defendant's suspicious behavior in the vicinity of the narcotics); *People v. Mack* (1957), 12 Ill. 2d 151, 159-61 (same).) Pintos' conduct, in accompanying [the other driver] during the time [the drug dealer] was arranging the drug transaction with the undercover agent, supports the inference that he had knowledge of the contents of the box. Accordingly, we affirm the appellate court's decision affirming Pintos' conviction." *Pintos*, 133 Ill. 2d at 292-93 (1989)).

¶ 68 Like in *Pintos*, this case contained several pieces of circumstantial evidence that added up to the proper conclusion that defendant and Brunson were driving from Chicago to Minnesota to deliver illegal drugs. Here, defendant was riding in the Camry with a man who had a large amount of cannabis in his backpack and heroin hidden in a compartment under the carpet in the trunk. The car Brunson was driving was a rental car with Minnesota license plates. When the police pulled the Camry over, both officers could smell a very strong odor of raw cannabis. Trooper Melzer observed Brunson spray cologne throughout the Camry as he approached the car, and it would have been impossible for defendant to not see Brunson spray the cologne. Both defendant and Brunson initially admitted that they were traveling to Minnesota. Defendant later made several inconsistent and illogical statements to police about the purpose of his trip, which were contradicted by his earlier admission to the police that he was traveling to Minnesota. Also, the contents of his backpack contained several pieces of clothing, which contradicted his statement that he was going to O'Hare airport to see his "baby mama" and instead gave rise to a reasonable inference that defendant was on a trip to Minnesota with Brunson. Like in *Pintos*, it is irrelevant that there was no evidence of defendant ever seeing or handling the heroin or cannabis. Instead, the numerous circumstantial pieces of evidence in this case gave rise to the

conclusion that defendant was in joint, constructive possession of both drugs and is therefore guilty of possessing the cannabis and heroin with the intent to deliver.

¶ 69 In his reply brief defendant cites to *People v. Mosely*, 131 Ill. App. 2d 722 (1971), a case decided by the appellate court 18 years before our supreme court rendered its decision in *Pintos,* for his claim that there was insufficient evidence presented to the trial court to convict him of possession of a controlled substance with the intent to deliver here. In *Mosely*, police stopped a vehicle suspected to belong to two individuals whom police believed to be picking marijuana at the side of a nearby road, although the police never saw defendant pick any marijuana. *Id.* at 723. The defendant was the passenger in the vehicle and the vehicle was owned and operated by the driver. Police ordered the men from the vehicle and asked them to open the trunk. The driver produced the key and opened the trunk; bags of marijuana were found in the trunk. A short time later, defendant asked one of the officers if he could give them money and just let them go on their way. *Id.* A jury found defendant guilty of unlawful possession of a narcotic drug. On appeal, the reviewing court reversed and found that there was no evidence presented to support the proposition that defendant had actual or constructive possession over the vehicle or the drugs and found that defendant was nothing more than a passenger. *Id*. at 724. The court also found that the suspicious behavior of defendant offering the officer a bribe in the vicinity of narcotics was not proof of knowledge of the presence of drugs, nor was it proof of all the other elements of criminal possession as well. *Id.* at 725.

¶ 70 *Mosely* is distinguishable from the instant case. Unlike in *Mosely*, in this case we do have evidence that defendant had constructive, joint possession of the cocaine and heroin. As we have found, the fact that both state troopers could smell the overwhelming odor of cannabis emanating from *the entire Camry*, and the fact that it would have been impossible for defendant

not to see Brunson spraying cologne all through the Camry as Trooper Melzer approached the vehicle, was circumstantial evidence that defendant *did in fact* know that illegal drugs were located in that vehicle. Further, defendant's backpack was found in the trunk of the vehicle, where the hidden heroin was later found. Defendant first said that he had no personal possessions in the Camry, but he later admitted that he had a backpack in the trunk. The backpack contained several days' worth of clothing, which was inconsistent with his story that he was only driving to O'Hare airport. All these facts, taken together, create a reasonable inference that defendant knew there were illegal drugs in the Camry and that he constructively possessed them. In *Mosely*, on the other hand, there was absolutely *no evidence* that the defendant was connected in any way to the marijuana that was found in the driver's trunk.

¶ 71 Defendant also cites to *People v. Drake*, 288 Ill. App. 3d 963 (1997), a case decided by this court, as support for his claim that there was insufficient evidence that he constructively possessed the narcotics found in the Camry here. In *Drake*, the defendant was charged with, among other offenses, the unlawful possession of cannabis. The trial court granted the defendant's motion to quash arrest and suppress evidence on the ground that there was no probable cause to arrest defendant. *Id*. at 964.

¶ 72 At the hearing on the motion the defendant testified that he was a passenger in the front seat of a vehicle traveling on the east side of Aurora. The vehicle was stopped by two plainclothes policemen for expired license plates. The policemen asked the three occupants of the car to get out of it and they did so. The police spoke to the driver and then began searching the car and the trunk while another officer stood outside with the occupants. The defendant said he saw the police remove some things, including a backpack, from the trunk. The officer

standing next to defendant said nothing, but he placed defendant and the others under arrest after the other officer came back and said, "we got 'em." *Id*. at 965.

¶ 73 Over the defendant's objection, the State was allowed to cross-examine the defendant regarding his whereabouts earlier that evening "subject to tying up the testimony to the relevant issue." *Id*. The defendant said that he was at a John Goodman's house when he saw the backpack in question. At the request of a Bryan Vandenplum, the defendant brought the backpack outside and handed it to Vandenplum, who put it in the trunk. Defendant admitted smoking a joint earlier in the evening, but he denied knowing that cannabis or a gun was in the backpack. *Id*. The State then attempted to use a statement that the defendant made to the police after his arrest, but the defense's objection was sustained. The court found that that line of questioning was irrelevant for the purpose of the hearing, since the issue only concerned what the officer knew at the time of the stop. *Id*.

¶ 74 A deputy sheriff then testified about the facts that were known to him and the other officer at the time of the traffic stop. The deputy sheriff said that earlier that evening, he saw a vehicle registered to a Goodman turn into the driveway at Goodman's house. Goodman's vehicle was followed by another vehicle registered to Vandenplum. People exited the vehicles and went into the house. About twenty minutes later, Vandenplum's vehicle left. The officers stopped Vandenplum's vehicle soon thereafter because the license plates had expired and the registration light was not working. *Id*. at 966. The sheriff deputy knew the Goodman's house was a Vice Lord house and that some of the occupants of the Vandenplum's vehicle were Vice Lords. The deputies asked the occupants to exit the vehicle and they did. The pat down produced no weapons. The defendant was a passenger in the front seat of the vehicle. Vandenplum gave the deputy permission to search the vehicle. He found a pack of rolling

papers on the floorboard of the driver's side of the vehicle but found nothing else in the vehicle's compartment. The deputy used the electric trunk release and opened the trunk. There he found a closed, green vinyl backpack that contained a .22-caliber gun that had been reported stolen. When he unzipped the bag, he found two bags of marijuana that appeared to weigh one ounce each, and $3,100. *Id*.

¶ 75 The trial court found that the facts did not show in any way "that the officers could have picked up on that this particular passenger was in constructive possession" of the contraband. *Id*. at 968. One of the State's arguments on appeal was that the evidence established at the hearing was sufficient to establish joint and constructive possession of the backpack. We disagreed, and held that a person's mere proximity to others independently suspected of criminal activity does not, without more, give probable cause to search or seize that person, citing to *People v. Gross*, 124 Ill. App. 3d 1036, 1038 (1984). We found that there was "no satisfactory evidentiary connection made between defendant and criminal activity involving the contraband found in the trunk. *Drake*, 288 Ill. App. 3d at 968. We further held that "the State did not make even a minimal showing that defendant knew of the contraband, that he had immediate possession of it, or that he exercised any degree of control over it." *Id*. at 969. Finally, we found that absent more evidence connecting the defendant to the contraband, either through his knowledge or possession, his mere presence in the vehicle was insufficient to establish probable cause to arrest. *Id*.

¶ 76 Defendant argues that the *Drake* court had arguably more circumstantial evidence of knowledge and possession than in the instant case. We disagree. In *Drake*, even though defendant testified on cross-examination that he had seen and handled the backpack before, the trial court correctly found that the issue at the hearing on the motion to quash arrest and suppress

evidence centered solely on what the officers knew at the time of the stop. *Id*. All that the officers knew in *Drake* was that the defendant was in the house of a Vice Lord and that some occupants of the vehicle were Vice Lords. There was absolutely no other evidence tying the defendant, a passenger in the vehicle, to the backpack found in the trunk that contained a gun and cannabis.

¶ 77 Here, on the other hand, we have circumstantial evidence of knowledge and possession that is lacking in all the other cases that defendant cites—we have the testimony of troopers Melzer and Colon that when they approached the vehicle they smelled the overwhelming odor of raw cannabis and saw Brunson spraying cologne throughout the entire compartment of the Camry. We can reasonably infer that defendant, too, could smell the cannabis, and that he saw Brunson spray the cologne into the vehicle. We have defendant's inconsistent and illogical responses to the police, and we have the fact that his backpack was found in the trunk of a rental vehicle with Minnesota plates, alongside Brunson's backpack that contained a large amount of cannabis and in the near vicinity of the heroin that was hidden in a compartment in the trunk. We can also reasonably infer that a rental company does not rent out vehicles that contain thousands of dollars of heroin in them, and that previous renters would not have left thousands of dollars of heroin that they had hidden in the vehicle when they returned it to the rental facility. For all these reasons, we find that defendant was proven guilty beyond a reasonable doubt of the charged offenses.

¶ 78 III. CONCLUSION

¶ 79 In sum, the trial court properly allowed into evidence defendant's 2014 prior bad act in Minnesota to show the absence of mistake in the instant case when the prior bad act and the facts surrounding the instant case occurred close in time, both involved heroin and cannabis, and in

both instances defendant claimed that he had no idea what was going on when confronted by the police. The trial court also properly found defendant guilty beyond a reasonable doubt of all the charged offenses when there was sufficient circumstantial evidence that he possessed both the heroin and the cannabis with the intent to deliver.

¶ 80 For the following reasons the circuit court of Kane County is affirmed.

¶ 81 Affirmed.