

No. 1-10-2484

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 17464
)	
NATHANIEL BROWN,)	Honorable
)	Michael J. Howlett, Jr.,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Neville and Murphy concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the police officer's testimony sufficiently established defendant had constructive possession of six tinfoil packets of heroin recovered from the steps of a residence, defendant's conviction for possession of a controlled substance with intent to deliver is affirmed.
- ¶ 2 Following a bench trial, defendant Nathaniel Brown was convicted of possession of a controlled substance with intent to deliver and sentenced to four and a half years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because the police officer's testimony failed to show defendant possessed the six tinfoil

packets of heroin recovered from the steps of a residence. Defendant also contends, and the State agrees, that the mittimus should be amended to reflect the correct offense of which he was convicted. We affirm and correct the mittimus.

¶ 3 At trial, Chicago police officer Andrew Camarillo testified that about 11:10 a.m. on August 20, 2009, he was conducting a narcotics surveillance near 4703 West Fulton Street when he saw defendant engage in three suspected narcotics transactions. In each of those transactions, a man approached defendant, and after a brief conversation, defendant accepted money from the man. In each instance, defendant then walked to the steps of the residence at 4703 West Fulton Street, bent down, retrieved an item from the second step, returned to his initial location, and handed the item to the man. Officer Camarillo could not tell what the items were, but they were small enough to fit in defendant's hand. During his surveillance, Officer Camarillo never lost sight of defendant, and no other person went to the step from which defendant retrieved the items.

¶ 4 After observing the third transaction, Officer Camarillo returned to his police car parked in the alley where his partners, Officers Geraldo Perez and Bryant Leahy, were waiting. During this time, Officer Camarillo temporarily lost sight of defendant. The police drove to the Fulton residence, and Officer Camarillo told Officer Perez that defendant had retrieved items from the second step of that residence. When the police arrived at the residence, defendant was standing on the sidewalk with two other individuals. Officer Camarillo detained the men while Officer Perez went to the second step of the residence and recovered six tinfoil packets containing suspected heroin.

¶ 5 Based on his experience, Officer Camarillo estimated that each tinfoil packet of heroin had a street value ranging from \$10 to \$25, depending upon the location of the sale, the person selling the drugs, and the gang involved in the sale. On that particular corner, each packet of

heroin typically sells for \$10, and an average packet usually contains 0.1 gram of heroin. On that basis, Officer Camarillo estimated the weight of the six recovered tinfoil packets to be 0.6 gram of heroin. In this case, Officer Camarillo acknowledged that the subsequent laboratory report indicated the weight of the six packets was 1.2 grams, and thus, each packet contained 0.2 gram. Officer Camarillo said he could not confirm that each packet in this case would cost \$20 instead of \$10 based on its weight. He explained that gangs put more weight in certain packets they save for their regular customers. Therefore, a packet of heroin weighing 0.2 gram could be sold to a regular customer for \$10.

¶ 6 Chicago police officer Geraldo Perez testified that when he arrived at 4703 West Fulton Street with Officers Camarillo and Leahy, he saw defendant standing on the sidewalk a few feet from the steps of the residence with two other individuals. After police detained the three men, Officer Camarillo directed Officer Perez to go to the steps of the residence. Officer Perez went to the steps and recovered six tinfoil packets containing suspect heroin. The packets were not in a bag, but were lying next to each other on the step. When he retrieved those items, no one else was in the area near the steps.

¶ 7 Chicago police officer Bryant Leahy testified that during a custodial search at the police station, he recovered \$35 from defendant. Officer Perez gave Officer Leahy the six tinfoil packets recovered from the steps, and Officer Leahy inventoried those items in accordance with police procedures. The parties stipulated that forensic chemist Elaine Harris tested the six recovered tinfoil packets and found them positive for 1.2 grams of heroin.

¶ 8 Defendant testified he was walking on Fulton Street when he met a man he knew named Antonio with a second man he did not know. The three men continued walking together when the three police officers who testified pulled up in an unmarked detective's car and grabbed him in front of 4702 West Fulton Street. The police detained the men on a gate, then handcuffed

them, and placed them in the car. The police did not go to the residence at 4703 West Fulton Street, but instead, walked to the middle of the block and went behind a house there. A squadrol then arrived at the scene, and defendant and the two men were placed in the squadrol and taken to the police station. Defendant denied he was selling heroin at that location that day and denied placing the packets of heroin on the steps of the residence. Defendant acknowledged that he had three prior convictions for possession of a controlled substance, and one conviction each for possession of cannabis, delivery of cannabis, and robbery.

¶ 9 The trial court expressly found that Officer Camarillo's testimony about defendant going to the steps to retrieve the items was sufficient to support the conclusion that defendant had some control and custody over the activity that was happening in and around those steps. The court noted that Officer Camarillo provided unimpeached testimony that he saw defendant engage in three transactions where defendant went to the steps, and the police later recovered drugs from those steps. The court further stated that it found the testimony from the three police officers credible. The court found that based on all the evidence presented, defendant was guilty of possession of a controlled substance with intent to deliver.

¶ 10 On appeal, defendant first contends the State failed to prove him guilty beyond a reasonable doubt because Officer Camarillo's testimony failed to show defendant possessed the six tinfoil packets of heroin recovered from the steps of the residence. Defendant claims that the officer's testimony did not establish that the packets were present on the steps when defendant accessed the area. Defendant argues that Officer Camarillo was unable to describe the characteristics of the items allegedly retrieved by defendant from the steps, the officer admitted he lost sight of the area before defendant was detained, there were two additional men at the scene when police arrived to arrest defendant, and defendant was not in actual possession of any

substance when he was arrested. Based upon these claims, defendant contends the State failed to show he had any knowledge of the packets on the step.

¶ 11 When defendant argues the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). A criminal conviction will not be reversed based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). In a bench trial, the trial court, sitting as the trier of fact, is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences therefrom. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). This court is prohibited from substituting its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *Jackson*, 232 Ill. 2d at 280-81. Defendant's conviction will not be reversed on review simply because he claims a witness was not credible or the evidence was contradictory. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 12 To convict defendant of possession of a controlled substance with intent to deliver, the State must prove defendant knew the drugs were present, they were in his immediate possession or control, and he intended to deliver the drugs. *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). Possession may be either actual or constructive. *Givens*, 237 Ill. 2d at 335. Possession may be established by constructive possession where defendant did not have actual control of the narcotics, but knew they were present and exercised control over them. *People v. Burks*, 343 Ill. App. 3d 765, 769 (2003). Constructive possession is often demonstrated entirely by circumstantial evidence. *People v. Besz*, 345 Ill. App. 3d 50, 59 (2003). Defendant's knowledge

that the narcotics were in the location where they were found may be inferred from his conduct. *Burks*, 343 Ill. App. 3d at 769.

¶ 13 Here, we find the evidence was sufficient for the trial court to find defendant knowingly possessed the six tinfoil packets of heroin recovered by police from the steps of the residence. Officer Camarillo testified that during each of the three narcotics transactions, he saw defendant walk to the steps of the residence, retrieve a small item from the second step, then return to his initial location and hand that item to a man in exchange for money. During the officer's surveillance, no other person went to that step. When the officers went to the location to detain defendant, Officer Perez recovered six tinfoil packets containing heroin from the second step. These packets were not in a bag, but were next to each other on the step. When Officer Perez retrieved the items, no one else was near the steps. The court found the testimony of the three police officers credible.

¶ 14 Sitting as the trier of fact, it was the trial court's responsibility to weigh the evidence and draw reasonable inferences from that evidence. Here, the trial court expressly found that Officer Camarillo's testimony that he saw defendant go to the steps to retrieve the items was sufficient to support the conclusion that defendant had control and custody over the activity that was happening in and around those steps. Based on defendant's conduct, the court was able to infer defendant's knowledge of the packets of heroin lying on the step. Once the court determined defendant had control of the area around the steps and knowledge of the packets of heroin, it was able to conclude defendant had constructive possession of the drugs. We find no basis to disturb the trial court's finding that defendant had constructive possession of these tinfoil packets. Accordingly, we find that the State presented sufficient evidence to allow the trial court to find defendant guilty beyond a reasonable doubt.

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¶ 15 Defendant next contends, and the State agrees, his mittimus should be amended to reflect the correct offense of which he was convicted. The mittimus incorrectly indicates defendant's conviction was for manufacture or delivery of a controlled substance when, in fact, he was convicted of possession of a controlled substance with intent to deliver. Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)), we direct the clerk of the circuit court to amend the mittimus to reflect that defendant was convicted of the offense of possession of a controlled substance with intent to deliver.

¶ 16 Accordingly, we affirm the judgment of the circuit court of Cook County and amend the mittimus.

¶ 17 Affirmed; mittimus amended.