

No. 1-10-2508

served before sentencing. On this direct appeal, defendant claims (1) that the trial court violated defendant's sixth amendment right to confront witnesses against him when it did not allow him to cross-examine the surveillance officer as to his exact surveillance location; and (2) that the trial court erred by crediting defendant with only 380 days for time served instead of 400 days. The State agrees with defendant that his mittimus should be corrected to reflect a credit for the 400 days he served. For the following reasons, we affirm defendant's conviction and order the mittimus corrected.

¶ 3 BACKGROUND

¶ 4 In the case at bar, defendant was convicted of delivery of a controlled substance within 1,000 feet of a school in violation of Section 407(B)(1) of the Illinois Controlled Substances Act (720 ILCS 570/407(B)(1) (West 2008)) after Police Officer Joseph Sullivan testified that he observed defendant receive money from a female and hand that female two small, white objects which were confiscated, tested, and determined to be 0.2 grams of crack cocaine.

¶ 5 I. Pretrial Proceedings

¶ 6 Prior to trial, defendant filed a motion for pretrial disclosure of the police surveillance location. Defense counsel argued that the exact surveillance location was critical where the entire basis for the arrest was a single officer's testimony that he observed a single drug transaction. The State responded with an offer of proof that the surveillance location was "on [Truman] college property" and "[w]ithin the facility." The State also stated that the surveillance location was used on a regular basis and that it was in the interest of the public that the surveillance location be preserved because of ongoing drug traffic in the area of Truman College. The State

No. 1-10-2508

further claimed that defendant would still be able to cross-examine Officer Sullivan about the distance, lighting conditions, and visual obstructions from his surveillance point. Defense counsel responded by saying that, if Officer Sullivan's testimony at the preliminary hearing was accurate about the surveillance location being 25 to 30 feet from defendant on West Wilson Avenue, then the surveillance location could not be inside Truman College as the officer's testimony indicated. Defense counsel next argued that the exact surveillance location was needed in order to make observations from that location and use the observations to show that Officer Sullivan's observations were impossible which would affect the credibility of the officer's testimony.

¶ 7 The trial judge conducted an *in camera* interview with Officer Sullivan regarding the exact surveillance location. After the interview, the trial judge stated that she learned facts that "further indicated Truman College itself has been having ongoing difficulties with the sale of narcotics on its property or within a thousand feet" and that the police department had "elevated this particular area to what they call *** level two." The level two category indicated an elevated number of arrests and calls for service concerning narcotics. The State argued that narcotics in the Truman College area were a "community problem" and that the public interest outweighed defendant's need to know the exact surveillance location. Defense counsel repeated its need for the exact surveillance location in order to determine if Officer Sullivan was able to observe the drug transaction as he indicated.

¶ 8 The trial court denied defendant's motion *in limine* for pretrial disclosure of the surveillance location. The court stated:

“After having the *in camera* inspection and discussion with the officer, I find that the public interest in this case outweighs the defendant’s rights. You may certainly cross-examine him about distance, weather, obstructions and whatever binoculars or other aids he used to observe.

However, the fact that there’s been ongoing narcotics dealings across the street from the college within a thousand feet, which is the charge, does impact on the safety of the public very seriously. The problem is so serious there that they’ve elevated their attention to this problem.

There aren’t a lot of locations in that area where surveillance can occur. As a matter of fact, it’s very limited. And this is it, based on my discussions with the officer.

For that reason, the public interest in this case outweighs the defendant’s right to have disclosure there.”

¶ 9 Prior to trial and after discussing motions *in limine* not at issue on appeal, defendant asked the trial judge to reconsider her denial of the motion *in limine* to disclose the surveillance location. The trial judge declined but stated:

“I believe if there’s any issue with regard to the officer’s ability to observe, that you would need to question him on further, ask for a sidebar and we will address it and I will certainly not

preclude you in any way from exploring areas where you would need to explore them in order to understand the officer's ability to observe.”

¶ 10

II. Trial

¶ 11 The State's evidence at trial consisted of the testimony of three witnesses: Officer Sullivan, who observed the drug transaction; Officer Esposito, who arrested Chi Chi Sales and recovered the two objects of suspected cocaine; and Officer Bennett, who arrested defendant and recovered \$24 from him.

¶ 12 Officer Joseph Sullivan testified that he, Officers Meredith Esposito, John Meindl, and Angelo Bennett of the Chicago police department were part of a surveillance operation in the area of Truman College at 1145 West Wilson Avenue on July 8, 2009, at 5 p.m. Officer Sullivan was the surveillance officer for the operation and testified that he had a north view of the subject area from a position elevated above ground level. Officers Esposito and Meindl were positioned in an unmarked vehicle in the vicinity of 4615 North Clifton Avenue but did not have a view of the subject property. Officer Bennett was positioned in the vicinity of 4620 North Broadway Street and also did not have a view of the subject property. Officer Sullivan testified that he was in radio contact with Officers Esposito and Bennett.

¶ 13 Officer Sullivan testified that at 5:45 p.m., from his surveillance point, he used binoculars to observe defendant standing in front of a Mexican restaurant on West Wilson Avenue. Officer Sullivan was 25 to 30 feet from the defendant and could view the entire front of defendant's

No. 1-10-2508

body. Officer Sullivan observed that defendant was wearing a red New York Yankees hat, brown pants, and a brown sweatshirt.

¶ 14 Officer Sullivan testified that he then observed a female, later identified as Chi Chi Sales, wearing blue jeans and a black T-shirt with purple lettering walking westbound on West Wilson Avenue. Officer Sullivan observed Sales approach defendant and observed defendant's and Sales' mouths and hands moving in a conversation, but he was unable to hear or determine what was said. The conversation lasted approximately one to two minutes. Afterwards, Officer Sullivan observed Sales transfer green paper United States currency to defendant. Officer Sullivan was unable to observe the denomination of the transferred money but observed it was more than one bill. Defendant placed the money in his right pants' pocket and entered the Mexican restaurant where Sullivan could not observe further.

¶ 15 Officer Sullivan testified that, after approximately one minute, he observed defendant exit the restaurant. Sales stood to the east of the door when defendant faced her and placed two small white objects in the palm of Sale's right hand. Officer Sullivan testified that the objects were the "size of an M&M peanut" or a "pea." Sales then placed the two white objects into her right pants' pocket.

¶ 16 Officer Sullivan testified that, after the transaction, he observed Sales walk westbound on West Wilson Avenue and defendant walk eastbound. At 5:48 p.m., Officer Sullivan radioed Officers Esposito and Bennett and notified them of the transaction he had observed and the direction of defendant's and Sales' movements. Officer Sullivan also indicated that defendant

No. 1-10-2508

was wearing a red New York Yankees hat, brown pants, and a brown sweatshirt, while Sales was wearing blue jeans and a black T-shirt with purple lettering.

¶ 17 Officer Sullivan then testified that he observed Sales walk westbound on West Wilson Avenue and turn right onto North Clifton Avenue and walk northbound. Officer Sullivan testified that he observed Officers Esposito and Meindl then stop Sales and search Sales' pants pocket. As described in more detail later, Esposito testified that she discovered two small rocks of suspected crack cocaine in a clear plastic knotted bag from Sales right pants' pocket during this search. Officer Sullivan testified that, during this time, he never lost sight of Sales. He never observed Sales place anything in her pocket or remove anything from her pocket. Nor did Officer Sullivan observe Sales place her hands in her pocket after the transaction, or observe anything fall out of Sales' pocket after the transaction.

¶ 18 Officer Sullivan testified that approximately 10 to 15 minutes later at the 23rd District Police Station, he identified defendant as the person who had completed the earlier drug transaction. Defendant was still wearing a red New York Yankees hat, brown sweatpants, and a brown sweatshirt.

¶ 19 Next, defense counsel extensively cross-examined Officer Sullivan. Defense counsel first asked, "you can't tell us where you were when you made these observations, isn't that correct?" The State objected, claiming that it would violate the trial court's order on a motion *in limine*. The trial court stated "this was the subject of a motion *in limine*. I did indicate that the specific area could not be disclosed" and sustained the objection.

No. 1-10-2508

¶ 20 Defense counsel next asked Officer Sullivan, “all you could tell us is that you were 25 to 30 feet away when you made these observations, isn’t that correct?” Officer Sullivan replied, “[t]hat’s correct.” Officer Sullivan also stated that he was in an elevated position; and that when looking at 1118 West Wilson Avenue, he was facing north.

¶ 21 During cross-examination, Officer Sullivan testified that he used binoculars at various times during his surveillance, including when the currency and pea-sized objects were transferred. He testified that he could not make out the bills’ denominations. Officer Sullivan recalled it took 5 to 10 seconds to transfer the objects. Defense counsel asked Officer Sullivan whether any police officers entered the Mexican restaurant, and Officer Sullivan testified that they did not. Defense counsel also asked if any officer had searched Sales before the drug transaction, and Officer Sullivan testified that they had not. Defense counsel asked whether the drug transaction occurred during rush hour, and Officer Sullivan said “yes” but stated that the area of surveillance was not known for having rush hour traffic.

¶ 22 During cross-examination, defense counsel also asked Officer Sullivan about his familiarity with the area of surveillance. Officer Sullivan identified three businesses on the same side of the street as 1118 West Wilson Avenue: the Mexican restaurant, a Wilson Mega Mall, and a Popeye’s restaurant. Officer Sullivan further identified a CTA Station north of the surveillance area on North Broadway Street. Next, Officer Sullivan placed an “x” where the defendant had been arrested, stating it was “just above Popeye’s Chicken and Diskette Notation.”

¶ 23 Defense counsel also cross-examined Officer Sullivan about his arrest report. Officer Sullivan testified that Officer Esposito prepared the report and that Officer Sullivan adopted it.

No. 1-10-2508

Officer Sullivan explained that the arrest report had a summary of the important facts establishing probable cause. Defense counsel asked if the arrest report indicated that Sales walked westbound to approach defendant. Officer Sullivan did not recall, but once shown the arrest report refreshed his recollection and testified that it did not. Officer Sullivan said it was an important fact, but not an important fact in regard to documentation. Defense counsel then asked Officer Sullivan if he included in the arrest report the length of the initial conversation between defendant and Sales was one minute. After reviewing the report and again refreshing his recollection, Officer Sullivan testified that it did not, but it did say “short conversation.” Defense counsel next asked whether the arrest report included the fact that the defendant walked eastbound on West Wilson Avenue following the transaction with Sales. Officer Sullivan responded that it did not, but that it was likely in the case report. Officer Sullivan further testified that he did not include the fact defendant was wearing a red Yankees hat in his arrest report, but that he had included a description of defendant in his vice case report.

¶ 24 Following Officer Sullivan’s testimony, Officer Esposito testified that she did not observe the transaction between defendant and Sales. She recognized People’s Exhibit Numbers 1(a) and 1(b) as the rock-like substances she recovered from Sales’ right pant pocket, and People’s Exhibit 2(a) and 2(b) as the clear plastic bags the substances were in when she arrested Sales. Defense counsel also questioned Officer Esposito’s arrest report. Officer Esposito testified that she believed the fact that defendant proceeded eastbound after the transaction was not in the arrest report, but that it was included in the case report. She further stated that Officer Sullivan

No. 1-10-2508

had provided a clothing description for defendant, and that this was also included in the case report but not the arrest report.

¶ 25 Following Officer Esposito's testimony, Officer Bennett testified that while Officers Esposito and Meindl were apprehending Sales, Officer Bennett observed defendant walking northbound on North Broadway Street and stopped him. Upon learning that Sales was in possession of suspected crack cocaine, Officer Bennett arrested defendant. Officer Bennett discovered \$24 dollars from defendant's right front pants' pocket, consisting of one \$20 bill and four \$1 bills. He further testified that, based on his experience as a narcotics officer, 0.2 grams of cocaine would usually cost \$24. Officer Bennett also testified that the denominations of the currencies confiscated from defendant were not in the arrest report, but were on the inventory slip.

¶ 26 Both parties stipulated that the distance between 1118 West Wilson Avenue and Truman College at 1145 West Wilson Avenue was 169 feet.

¶ 27 Defendant rested and did not present any evidence or testify on his own behalf. Defendant then moved for a directed verdict, which the trial court denied.

¶ 28 The jury found defendant guilty of delivery of a controlled substance within 1,000 feet of a school, and the trial court entered judgment on the verdict.

¶ 29 **III. Posttrial Proceedings and Sentencing**

¶ 30 Defendant filed a posttrial motion for a new trial, arguing that the trial court erred in denying defendant's motion to disclose Officer Sullivan's exact surveillance location arguing it limited defense counsel's ability to cross-examine witnesses. Defendant argued that the trial

No. 1-10-2508

court further erred by refusing to allow defense counsel to elicit from the State's witness that the location of the surveillance officer was being kept from the jury. Defense counsel argued that he was denied a fair trial because the central issue of the case was whether Officer Sullivan could accurately observe the drug transaction from his exact surveillance location and as a result, did not have the ability to impeach the police officer or otherwise affect his credibility.

¶ 31 The State responded that it did not object to the defense counsel's cross-examination of Officer Sullivan about his distance from the transaction, his elevated position, or the direction he was facing. The State further argued that the trial court gave defendant great latitude on cross-examination, and that the surveillance location could have been determined from the testimony elicited from the defense counsel's questions.

¶ 32 The trial court denied defendant's motion, stating:

“The court, in fact, did indicate that the defendant through his attorney could question about height, distance, length, opportunity to observe, [and] lighting. And I also indicated that if he wished to ask another question if he felt that the questions were impeding his ability to discern that he could ask for a sidebar. And he did ask for a sidebar. And I allowed him to go in to certain areas. And after having had a hearing where I balanced the prejudice against the probative value finding that the only surveillance point that was available for these [o]fficers because of the location of the college and the expressway was the place that

the officers had and since there was an overriding public interest in wanting to protect the public and the students from the defendant's dealing drugs across [the] street which had become a problem the [c]ourt would not permit the actual disclosure. However, I did allow latitude in that area.”

¶ 33 On August 12, 2009, defendant was sentenced to 10 years in the Illinois Department of Corrections. Although defendant was held continuously in custody from his arrest on July 8, 2008, until his sentencing on August 12, 2009, the trial court credited defendant with 380 days for time served when he was in custody for 400 days.

¶ 34 Defendant filed a notice of appeal on August 12, 2010, and this appeal followed.

¶ 35 ANALYSIS

¶ 36 On this direct appeal, defendant claims (1) that the trial court violated defendant's sixth amendment right to confront witnesses against him when it did not allow him to cross-examine the surveillance officer as to his exact surveillance location; and (2) that the trial court erred by crediting defendant with only 380 days for time served instead of 400 days. The State agrees with defendant that his mittimus should be corrected to reflect a credit of 400 days. For the following reasons, we affirm the defendant's conviction and order the mittimus corrected.

¶ 37 I. Standard of Review

¶ 38 The latitude permitted on cross-examination is “left largely to the discretion of the trial court and its determination will not be overturned absent a clear abuse of discretion that resulted in manifest prejudice.” *People v. Criss*, 294 Ill. App. 3d 276, 279-80 (1997). A trial court abuses

No. 1-10-2508

its discretion when its decision is arbitrary or exceeds the bounds of reason. *Prairie v. Snow Valley Health Resources, Inc.*, 324 Ill. App. 3d 568, 571 (2001). A criminal defendant has the fundamental right to confront the witnesses against him, including the right to cross-examine those witnesses. *Criss*, 294 Ill. App. 3d at 279. This right to confront a witness is not absolute, and a trial court may limit the scope of cross-examination so long as the right to confront witnesses has been satisfied. *People v. Averhart*, 311 Ill. App. 3d 492, 497 (1999). The right to confront witnesses is violated when the “limitation on cross-examination create[s] a substantial danger of prejudice by denying defendant his right to test the truth of the testimony.” *Averhart*, 311 Ill. App. 3d 497. This right is satisfied when “the defendant is permitted to expose the fact-finder to facts from which it can assess [the] credibility and reliability of the witness.” *People v. Quinn*, 332 Ill. App. 3d 40, 43 (2002). The court does not look to what the defendant has been prohibited from doing, but looks to the entire record to determine if the jury was “made aware of adequate factors concerning relevant areas of impeachment of a witness.” *Averhart*, 311 Ill. App. 3d at 497.

¶ 39 The State has a “qualified privilege regarding disclosure of secret surveillance locations.” *People v. Bell*, 373 Ill. App. 3d 811, 818 (2007). To compel disclosure, defendant has the burden to “demonstrate a need for disclosure, not mere speculation that the information may possibly prove useful.” *Criss*, 294 Ill. App. 3d at 281. “Disclosure should be decided on a case-by-case basis, balancing the public interest in keeping the location secret with the defendant’s interest in preparing a defense.” *Criss*, 294 Ill. App. 3d at 281. “A trial court should also ‘endeavor to protect the public interests that give rise to the surveillance location privilege, while also taking

No. 1-10-2508

any steps necessary to ensure accurate fact finding.’ ” *Criss*, 294 Ill. App. 3d at 281 (quoting *United States v. Green*, 670 F.2d 1148, 1155 (D.C. Cir.1981)). When considering the public’s interest in nondisclosure, the factors the trial court should consider are “the crime charged, the possible defenses, and the potential significance of the privileged information.” *Quinn*, 332 Ill. App. 3d at 43. “[A]t trial disclosure of a surveillance point will be compelled if the allegedly privileged information is material on the issue of guilt.” *People v. Knight*, 323 Ill. App. 3d 1117, 1127, (2001).

¶ 40

II. Right To Confront Witness

¶ 41 In the case at bar, defendant argues that his sixth amendment right to cross-examine a witness against him was violated when defendant was barred from discovering the exact surveillance location of a police officer. First, defendant argues that without the exact surveillance he was unable to contradict Officer Sullivan’s testimony about the distance between his exact surveillance location and where he claimed Williams stood during the drug transaction. Defendant uses three facts determined from the trial record to support this contention: (1) Officer Sullivan testified that he was 25 to 30 feet from defendant when he observed the drug transaction, (2) the State offered as proof before trial that Officer Sullivan was on Truman College property and within the facility, and (3) and the State stipulated that the distance between 1118 West Wilson Avenue, where Officer Sullivan observed the drug transaction, and Truman College, at 1145 West Wilson Avenue, is 169 feet. Defendant argues that it was impossible, given these facts, that Officer Sullivan was only 25 to 30 feet from the transaction at 1118 West Wilson Avenue if he was located in a Truman College facility 169 feet away. Although the

No. 1-10-2508

defendant's math is correct, we do not find this argument persuasive for the following reasons.

¶ 42 First, defendant was allowed at trial to extensively cross-examine Officer Sullivan regarding his surveillance, the distance he was from the transaction, his elevated position, the direction he was facing, the lighting, the possible obstructions to his view, his familiarity with the area under surveillance, whether Officer Sullivan used binoculars during various times of the surveillance, and the contents of Officer Sullivan's arrest reports. Through this cross-examination, defense counsel was able to bring out sufficient enough information concerning location to allow a jury to assess Officer Sullivan's credibility and the weight that they can determine his testimony deserves.

¶ 43 During cross-examination, defendant was precluded from discovering the exact surveillance location and from informing the jury it would not receive that information. However, the trial court never prohibited defendant from raising the issue that the State, prior to trial, offered as proof that the surveillance location was in Truman College and within the facility. Nor did the trial court prohibit defendant from discussing that the State stipulated the distance between 1118 West Wilson Avenue, where Officer Sullivan observed the drug transaction, and Truman College, at 1145 West Wilson Avenue, was 169 feet. Thus, defendant was free to argue the mathematical disparity at trial and discredit the officer's testimony.

¶ 44 Additionally, at trial, defendant was not prohibited from cross-examining Officer Sullivan regarding his ability to observe and had sufficient opportunity to contradict Officer Sullivan's testimony about the distance he was located at from the transaction.

¶ 45 Second, defendant contends that, without the exact surveillance location, he was unable

No. 1-10-2508

to properly challenge whether Officer Sullivan's view was unobstructed. In support, defendant relies on two photographs obtained from Google map/street-view attached in the appendix to his brief. These photographs were not grid maps, but were standard photographs taken at street level. There was no date or time provided for when these photographs were taken, only the date the defendant retrieved them. Defendant argues the court may take judicial notice of these photographs, and that they prove Officer Sullivan's testimony was impeached. We do not find this argument persuasive.

¶ 46 First, we agree "an appellate court may make take judicial notice of a fact the trial court did not." *People v. Clark*, 406 Ill. App. 3d 622, 632 (2010). A judicially noticed fact may not be one subject to reasonable dispute, meaning that it is either "(1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." *Clark*, 406 Ill. App. 3d at 632. The appellate court has previously found that information from Google Maps is "reliable enough to support a request for judicial notice." *Clark*, 406 Ill. App. 3d at 633; see also *People v. Stiff*, 391 Ill. App. 3d 494, 503-04 (2009) (taking judicial notice of the distance between the place a person was set on fire and the place he made a statement being 295 feet in order to show only a short time had passed between the igniting and his statement); *Hoskin v. Union Pacific R.R. Co.*, 365 Ill. App. 3d 1021, 1025 (2006) (taking judicial notice of the driving distance between witnesses' residences and a courthouse using a MapQuest search).

¶ 47 We do not believe judicial notice of these photographs is appropriate or necessary here. First, while previous courts have taken judicial notice information on Map Quest and Google

No. 1-10-2508

Maps using their mapping function, none have taken judicial notice of “street view photographs.” Second, although courts have taken judicial notice of information from Google Maps in the past, “[f]or a photograph to be admitted, testimony is required to establish that the photograph is a true and correct representation of what it purports to portray.” *Reid v. Sledge*, 224 Ill. App. 3d 817, 821 (1992). Defendant claims, for the first time on appeal, that the photograph would accurately represent the surveillance area on July 8, 2010; however, the correct procedure for admitting photographs into evidence was not followed because no one verified them at trial as true and accurate representations of what they purport to portray; they were not offered into evidence and no proper foundation was laid. Therefore, the photographs are not a source whose accuracy cannot be reasonably questioned.

¶ 48 Third, even if Google map/street view photographs were considered a source whose accuracy cannot be reasonably questioned, courts do not generally take judicial notice of *precise* locations as defendant is requesting on appeal. See *Clark*, 406 Ill. App. 3d at 632-33 (“While courts will take judicial notice of geographical facts such as the fact that a certain city takes place within a certain county, they generally will not take judicial notice of *precise* location of a single city lot or subdivision within city lines.” (Emphasis in original.)).

¶ 49 Fourth, it is not necessary to rely on these photographs. The trial court already allowed defendant to extensively cross-examine Officer Sullivan about possible obstructions to his view, including whether it was rush hour. Furthermore, Officer Sullivan’s observations were corroborated by both Officer Esposito and Officer Bennett and by the evidence of drugs recovered from Sales and money recovered from defendant during their respective custodial

No. 1-10-2508

searches, and even before the arrest, the officer had a reasonable suspicion that a drug transaction had taken place. *Terry v. Ohio*, 392 U.S. 1, 27 (1968). In addition, as we have noted, defendant had sufficient opportunity to cross-examine Officer Sullivan and raise issues of credibility regarding any obstructions to his view. Additionally, even though defendant claims the photographs of Truman College show there is a tree that would have blocked Officer Sullivan's view, the photograph also shows a large gap between the trees that could allow for an unobstructed view. This court cannot find it necessary or appropriate to take judicial notice of defendant's Google map/street view photographs.

¶ 50 Additionally, the trial court gave proper weight to the public interest here of keeping the surveillance location secret. The subject area was one having ongoing problems with drug traffic that caused the police to raise the area to a level two, indicating an elevated number of arrests and calls for service concerning drugs. Furthermore, the trial court indicated it learned from Officer Sullivan this was the only enclosed surveillance location available to monitor the subject area. The trial court properly determined that the public interest in keeping the surveillance location secret outweighs the defendant's need for the exact surveillance location. In making this determination, we rely on several appellate cases that have addressed this same issue before, namely, *People v. Knight*, 323 Ill. App. 3d 1117 (2001), *People v. Bell*, 373 Ill. App. 3d 811 (2007), and *People v. Quinn*, 332 Ill. App. 3d 40 (2002). We will discuss each of these three cases in turn.

¶ 51 First, the case of *Knight*, relied on by defendant, is factually distinguishable from the case at bar. In *Knight*, the defendant was convicted of possession of a controlled substance with the

No. 1-10-2508

intent to deliver following a bench trial. At trial, a police officer testified that while in a surveillance operation, he received information that a man in dark sweatpants and a red jacket was selling narcotics. *Knight*, 323 Ill. App. 3d at 1119. While on foot approximately 50 feet away, the officer observed the defendant standing on the sidewalk at 2910 West Fillmore.

Knight, 323 Ill. App. 3d at 1119. The officer observed the defendant receive money from a person in a vehicle. *Knight*, 323 Ill. App. 3d at 1119. During this time, the officer testified that he could observe three-quarters of the defendant's face. *Knight*, 323 Ill. App. 3d at 1119. The defendant then walked to a nearby flower pot and removed a brown bag. *Knight*, 323 Ill. App. 3d at 1119-20. From the bag the defendant removed an object, walked back to the vehicle, and gave the object to the person in the vehicle. *Knight*, 323 Ill. App. 3d at 1120.

¶ 52 The officer testified that, after observing the drug transaction, he retrieved his vehicle with his partner, and returned to 2910 West Fillmore. *Knight*, 323 Ill. App. 3d at 1120. The officer lost sight of the defendant for approximately one to two minutes while retrieving his vehicle. *Knight*, 323 Ill. App. 3d at 1120. The officer then found and arrested the defendant. *Knight*, 323 Ill. App. 3d at 1120. No drugs or money were recovered from the defendant. *Knight*, 323 Ill. App. 3d at 1120. The officer's partner found suspected crack cocaine in the brown bag that was within the flower pot. The officer did not recall the color of the jacket the defendant was wearing. *Knight*, 323 Ill. App. 3d at 1120.

¶ 53 A reverend testified that the defendant, prior to being arrested, was helping her unload a vehicle between 2914 and 2918 West Fillmore. *Knight*, 323 Ill. App. 3d at 1120. The reverend testified that she did not observe the defendant selling drugs on the day in question. *Knight*, 323

No. 1-10-2508

Ill. App. 3d at 1120. Similarly, the defendant's girlfriend testified that, prior to being arrested, the defendant was helping the reverend unload his vehicle. *Knight*, 323 Ill. App. 3d at 1120. She did not observe the defendant selling drugs on the day in question. *Knight*, 323 Ill. App. 3d at 1121. The defendant's girlfriend also testified that another man with a jacket similar to the defendants was selling drugs in the area. *Knight*, 323 Ill. App. 3d at 1121.

¶ 54 The defendant also testified that he was helping unload the reverend's vehicle. *Knight*, 323 Ill. App. 3d at 1121. After the defendant had finished unloading, he was walking down the street when he was stopped and arrested by the police. *Knight*, 323 Ill. App. 3d at 1121. The defendant further testified that a man he knew as "DC," who had a similar jacket, was in the area selling drugs. *Knight*, 323 Ill. App. 3d at 1120.

¶ 55 The appellate court in *Knight* found that, by prohibiting the defendant from cross-examining the officer as to his exact surveillance location, the "defendant was deprived of the opportunity to cast doubt upon [the officer's] testimony and that the denial of this right constitutes prejudicial error." *Knight*, 323 Ill. App. 3d at 1128. The appellate court reasoned "the more crucial the witness is to the government's case, the more important the defendant's right to cross-examine the witness." *Knight*, 323 Ill. App. 3d at 1127. The appellate court also found "[w]here an officer's testimony is uncorroborated, *** the application of the privilege will severely hamper the defendant's ability to cross-examine the officer on key factual issues." *Knight*, 323 Ill. App. 3d at 1128.

¶ 56 The case at bar is distinguishable. First, in *Knight*, the identity of the offender was contested by both the defendant's testimony and by that of two other witnesses. In this case,

No. 1-10-2508

Officer Sullivan gave a detailed description of both defendant and Sales and remained in radio contact with the enforcement officers until both were arrested. This was corroborated by both Officer Esposito's and Officer Bennett's testimony. Also unlike *Knight*, the evidence in this case shows defendant was arrested and a custodial search revealed \$24 dollars in United States currency in the right pants' pocket where Officer Sullivan observed defendant place the money in earlier. Furthermore, Officer Sullivan never lost sight of Sales after the drug transaction, and two rocks of crack cocaine of the size Officer Sullivan observed were recovered from the right pants' pocket where Officer Sullivan observed Sales place them. No such corroborating evidence was recovered in *Knight* from the defendant or buyer. Additionally, defendant was allowed to extensively cross-examine Officer Sullivan sufficiently enough to allow a jury to evaluate his testimony without disclosing the exact surveillance location.

¶ 57 Second, we find that *People v. Bell*, 373 Ill. App. 3d 811 (2007) and *People v. Quinn*, 332 Ill. App. 3d 40 (2002) are instructive. Defendant claims that *Bell* and *Quinn*, where the denial of a motion to disclose a surveillance location was upheld, are factually distinguishable from the case at bar.

¶ 58 Defendant first argues that *Bell* and *Quinn* are distinguishable because they are bench trials; however, defendant provides no authority showing there is a distinction between bench trials and jury trials when determining whether a trial court abused its discretion in denying a motion to disclose a surveillance location. "[I]t is not necessary to decide this question since the defendant has waived the issue by failing to offer case citation or other support as Supreme Court Rule 341 requires." *Lozman v. Putnam*, 379 Ill. App. 3d 807, 826 (2008); see also Ill. S. Ct. R.

No. 1-10-2508

341(h)(7) (eff. May 24, 2006). Defendant cited no cases that would illustrate that a bench trial and a jury trial differ on the issue before us.

¶ 59 In *Bell*, the defendant was convicted of possession of a controlled substance with the intent deliver in a bench trial. *Bell*, 373 Ill. App. 3d at 813. At trial, a police officer testified that he was part of a surveillance operation using a location with a southwest view of the subject property from an elevated position. *Bell*, 373 Ill. App. 3d at 813. The officer testified that the location was frequently used by police to monitor the subject area because that area was known to have high drug activity. The officer first observed the defendant yelling “blows” at passing vehicles. *Bell*, 373 Ill. App. 3d at 813. The defendant then received money from the passenger of a vehicle. *Bell*, 373 Ill. App. 3d at 813. The defendant walked over to a trash can, and without opening its lid, removed a brown bag. *Bell*, 373 Ill. App. 3d at 813. The defendant removed a clear plastic bag containing several “shiny items” from the brown bag. *Bell*, 373 Ill. App. 3d at 813-14. He took one of the “shiny objects” and handed it to the passenger of the vehicle. *Bell*, 373 Ill. App. 3d at 814.

¶ 60 The officer testified that he then radioed his partner, and the two proceeded to the defendant’s location. *Bell*, 373 Ill. App. 3d at 814. The officer lost sight of the defendant for two to three minutes during this time. *Bell*, 373 Ill. App. 3d at 814. The officer arrested the defendant and recovered \$74 but found no drugs on his person. *Bell*, 373 Ill. App. 3d at 814. The officer then went to the subject garbage can and recovered the brown paper bag which contained suspected heroine wrapped in tinfoil packets. *Bell*, 373 Ill. App. 3d at 814. Later tests confirmed one of the packets tested positive for heroin. *Bell*, 373 Ill. App. 3d at 814.

¶ 61 The defendant was allowed to cross-examine the officer extensively, including “with respect to his surveillance, lighting conditions, any possible obstructions, the officer’s familiarity with the area under surveillance, and whether the officer used binoculars during the surveillance.” *Bell*, 373 Ill. App. 3d at 819. The defendant presented no evidence at trial that the officer’s view was obstructed. *Bell*, 373 Ill. App. 3d at 819. We found that “without pinpointing the exact surveillance location, defendant was permitted to establish the officer’s position sufficiently enough to allow the trial court to assess the officer’s credibility and reliability.” *Bell*, 373 Ill. App. 3d at 819. We held that “considering the public’s interest in preserving the secrecy of the surveillance location that is used often to monitor drug activity in the area, and the relative insignificance of the exact point of surveillance in light of the specificity uncovered on cross-examination, we conclude that the trial court properly granted the State a qualified privilege regarding the disclosure of the exact surveillance location.” *Bell*, 373 Ill. App. 3d at 820.

¶ 62 *Bell* is factually similar to the case at bar. First, both convictions were based on one officer’s testimony. Second, in both cases, the officer observed the general color of the objects, saying in *Bell* they were “shiny,” and in the case at bar “white” and “pea” sized. Also, in both cases the officer lost sight of the defendant for only a few minutes before the defendant was arrested. Also, in both cases, money but not drugs were found on the defendant. Finally, in both cases drugs were found exactly where the officer observed them to be placed, in *Bell* in a flower pot, and here in Sales’ right pants’ pocket.

¶ 63 The latitude of cross-examination in the case at bar was similar to *Bell* as well. Similar to *Bell*, in the case at bar, defendant was allowed to cross-examine Officer Sullivan with respect to

No. 1-10-2508

his surveillance, lighting conditions, any possible obstructions, the Officer Sullivan's familiarity with the area under surveillance, and whether Officer Sullivan used binoculars during the surveillance. In the case at bar, defendant was further allowed to cross-examine Officer Sullivan regarding his arrest report, further providing an opportunity to test the credibility of Officer Sullivan's testimony. Moreover, defendant was allowed to cross-examine Officer Sullivan about the time of day and whether it was rush hour. Also similar to Bell, defendant presented no evidence that would illustrate that the alleged rush hour at this time of day would have obstructed Officer Sullivan's view. Also paralleling Bell, the surveillance area in the case at bar is known as one with a high level of drug sales. For these reasons, Bell supports the trial court's decision to deny the motion to disclose the surveillance location.

¶ 64 In Quinn, the defendant was convicted of possession of a controlled substance with the intent to deliver within 1,000 feet of a church. Quinn, 332 Ill. App. 3d at 42. At trial, a police officer testified that he observed the defendant, with binoculars from a distance of 75 to 100 feet, conduct four drug transactions. Quinn, 332 Ill. App. 3d at 42. In each instance, the defendant received money, walked north to a wooden fence, tore an object from a strip of tape, and handed it to the buyer. Quinn, 332 Ill. App. 3d at 42. The officer radioed backup officers and instructed them to detain "a male black wearing a New York jersey with jeans, jean shorts." Quinn, 332 Ill. App. 3d at 42. The officer remained in his location and observed the arrest. Quinn, 332 Ill. App. 3d at 42. The officer testified that this surveillance location was used before and after the defendant's arrest. Quinn, 332 Ill. App. 3d at 42.

¶ 65 On cross-examination, the officer testified that none of the individuals buyers were

No. 1-10-2508

stopped or searched. Quinn, 332 Ill. App. 3d at 42. The officer testified that he did not include that he was wearing binoculars in his police report nor his grand jury testimony. Quinn, 332 Ill. App. 3d at 42. He next testified that he was on foot, south of a particular street on the 700 block, and on the same side of the street as a vacant lot. Quinn, 332 Ill. App. 3d at 43. The trial court sustained the State's objections to the following questions: " 'Were you in a building?' *** You were not in the vacant lot[?] *** Were you south of that vacant lot?' " Quinn, 332 Ill. App. 3d at 42-43.

¶ 66 One of the backup officers corroborated the surveillance officer's testimony. The backup officer testified that she received a radio call to detain a male black, about five feet nine inches tall and weighing 150 pounds, wearing a blue New York jersey and blue jeans shorts. The backup officer further testified that she recovered \$78 from the defendant and narcotics from the strip of tape on the wooden fence. Quinn, 332 Ill. App. 3d at 43.

¶ 67 This court held that the trial court did not abuse its discretion. Quinn, 332 Ill. App. 3d at 44. The defendant was extensively allowed to cross-examine the surveillance officer with respect to "his surveillance location, lighting conditions, and any possible obstructions." We found that "[w]thout pinpointing the exact surveillance location, defendant was permitted to establish the officer's position sufficiently enough to allow the trial court to assess the officer's credibility and reliability." Quinn, 332 Ill. App. 3d at 44. We further stated the defendant was allowed to test the credibility of the surveillance officer's testimony by questioning omissions in his police report. Additionally, we distinguished the case from Knight by saying its case did not involve a dispute in identity. Quinn, 332 Ill. App. 3d at 45. The court held that "[c]onsidering the public's interest

No. 1-10-2508

in keeping the surveillance location a secret and the relative insignificance of the exact point of surveillance in light of the specificity uncovered on cross-examination,” the trial court did not abuse its discretion by minimally limiting cross-examination. *Quinn*, 332 Ill. App. 3d at 45.

¶ 68 Similar to *Quinn*, in this case, there was only one officer observing the drug transaction. Also similar to *Quinn*, Officer Sullivan gave a detailed description of defendant to the other officers, and those officers corroborated that testimony. Additionally similar to *Quinn*, the arresting officer’s discovered money on defendant’s person and discovered the drugs where Officer Sullivan observed them to be placed.

¶ 69 Similar to *Quinn*, in the case at bar, defendant was allowed to extensively cross-examine Officer Sullivan regarding his surveillance, the lighting conditions, and any possible obstructions. Also similar to *Quinn*, defendant was allowed to test Officer Sullivan’s testimony’s credibility and reliability by questioning omissions from his arrest report. Furthermore, the distinction made in *Quinn* regarding the defendant’s identity not being at issue is also true in the case at bar where defendant has not argued mistake of identity. Finally, as the officer testified in *Quinn*, this surveillance location was used on a regular basis to monitor drug traffic. Therefore, *Quinn* supports the trial court in the case at bar denying the motion to disclose the surveillance location.

¶ 70 Considering the public’s interest in maintaining the secrecy of the surveillance location, and the relative insignificance of disclosing the exact surveillance location in light of the specificity discovered from extensive cross-examination at trial, we conclude that the trial court did not abuse its discretion by limiting cross-examination at trial by prohibiting defendant from

No. 1-10-2508

discovering the exact police surveillance location.

¶ 71 III. Time Served

¶ 72 Both defendant and the State agree that defendant's mittimus should be corrected to reflect 400, instead of 380, days of presentence credit for time served in the Illinois Department of Corrections from July 8, 2009, to August 12, 2010. Therefore, we order defendant's mittimus corrected accordingly. See *People v. Troesch*, 57 Ill. App. 2d 466, 468 (1965) ("If a mittimus is incorrect, a corrected mittimus may be issued at any time.")

¶ 73 CONCLUSION

¶ 74 For the foregoing reasons, we affirm the defendant's conviction and order the mittimus corrected.

¶ 75 Affirmed; mittimus corrected to include 400 days credit instead of 380.