



officers had been assigned to the Metropolitan Enforcement Group of Southern Illinois (MEGSI), a drug task force composed of one officer from each of 13 participating southern Illinois police forces and sheriff's departments. They were on patrol in an unmarked police car specifically designed for undercover work. The vehicle was equipped with flashing red and blue lights and a siren; however, the lights were not mounted on top of the car. Instead, the car's headlights were designed to flash with alternating red and blue covers, and there was an additional set of red and blue flashing lights on the dashboard.

¶ 4 Detective Friedrich testified that he and Officer Arendell were on patrol in Cottage Hills, an unincorporated area in Madison County, when they observed a van stop for a stop sign. The van had two occupants. According to Friedrich, "it took a long amount of time, several seconds before it could make a decision" on which direction to turn at the intersection. He testified that the officers thought that this behavior was suspicious. The van then accelerated and began traveling at an excessive rate of speed for a residential area. He estimated the van's speed to be 35 to 40 miles per hour.

¶ 5 The officers followed the van and saw it go through a stop sign without stopping. At this point, they activated their vehicle's flashing lights. Detective Friedrich testified that the van initially slowed and pulled to the side of the road as if it were going to stop, but then it sped up. He estimated that the van increased its speed to approximately 40 to 50 miles per hour. He saw the passenger side door open and close several times. The van then headed onto a dead-end street. Instead of stopping, however, it drove over a culvert and continued across a park.

¶ 6 Detective Friedrich testified that he slowed down so he could drive over the culvert carefully. Although he and Officer Arendell lost sight of the speeding van,

they were able to follow its tracks across the grass. They found the van on its side in a ditch. Detective Friedrich testified that they found the defendant in the yard of a nearby house. He was approximately 10 feet away from the overturned van walking away from the van. The other occupant of the van was not at the scene.

¶ 7 Detective Friedrich stated that the defendant told them that he was a passenger in the van and that the van was driven by Jacky Forgy, who had fled on foot. The officers called for an ambulance for the defendant because there was a gash on his forehead. Once the ambulance came, they retraced the route they had followed in pursuit of the van. Detective Friedrich was asked why they did so. He replied, "My experience in law enforcement is that any time the door opens like that they are doing one of two things: either trying to throw something out of the vehicle or get out and run." He explained that because no one got out and fled on foot when the door opened during their pursuit of the van, he wanted to search to see if anything had been thrown from the van.

¶ 8 Detective Friedrich testified that they retraced their route to the location where they saw the passenger side door of the van open. There, they found a large bag containing an off-white chunky chalk-like substance that smelled of anhydrous ammonia. Detective Friedrich testified that the substance looked like methamphetamine. Nearby, they found three small pieces of foil, each of which contained a less than one gram of a powder. Detective Friedrich testified that methamphetamine was usually packaged for sale wrapped in small foils. Further along the path traveled by the van during the pursuit, they found a hypodermic syringe. The syringe was clear and had an orange cap. All items were found along the right side of the path traveled by the van—the passenger side. The substance found in the large bag and the three small foils was later tested and found to be

methamphetamine. The large bag contained over 100 grams of the substance.

¶ 9 Detective Friedrich testified that they subsequently conducted a search of the van. There, they found three hypodermic syringes on the floor in front of the front passenger seat. These syringes were all clear with orange caps matching the syringe found along the route taken by the van during the pursuit. In addition, they found a package of clear tubing. Detective Friedrich explained that tubing of this kind was used in the process of cooking methamphetamine. He further testified that the interior of the van smelled of anhydrous ammonia, which is used in the manufacture of methamphetamine.

¶ 10 On cross-examination, Friedrich testified that he had been involved in numerous drug-related investigations in Cottage Hills. He acknowledged that it was not unusual to find drugs in the area. On redirect, however, he testified that it is not the norm to find a bag with over 100 grams of an illicit substance just lying in the street.

¶ 11 Officer Arendell's testimony was mostly consistent with that of Detective Friedrich. Officer Arendell testified that during the pursuit of the van, he saw the passenger side door open approximately six to eight inches, not enough for someone to jump out. He further testified that the van drove a short distance with the door open before it closed again. He also testified that he did not see anything thrown from the van while the door was open. In addition, he testified that the officers began to retrace the route of their pursuit to look for evidence approximately 35 to 40 minutes after they arrived at the scene of the crash. He further stated that the syringe found outside the van was found along the tire tracks made by the van as it crossed the park.

¶ 12 The jury found the defendant guilty of unlawful possession of methamphetamine, but found him not guilty on a charge of unlawful participation in

methamphetamine manufacturing. At a sentencing hearing, Jacky Forgy testified. Forgy was the defendant's older cousin as well as the driver of the van. He was serving a sentence of 12 years for possession of methamphetamine after pleading guilty to charges connected with the same incident.

¶ 13 Forgy testified that on the night in question, he was giving the defendant a ride home. Forgy stated that he had a bag of methamphetamine in a plastic shopping bag hidden in the sleeve of his windbreaker. He testified that he did not tell the defendant about the methamphetamine. Forgy went on to explain that when he first saw the flashing lights on the police car, he started to pull over. He told the defendant to take the bag with the methamphetamine and run with it on foot, but the defendant told him that he was not going to run with it. At that point, Forgy "just pushed the accelerator all the way to the floor."

¶ 14 Forgy then testified that he put the bag in the defendant's lap, but it fell on the floor. Forgy picked up the bag. He testified further that the defendant started yelling at him to pull over and let him out of the van, but Forgy refused to do so. Forgy testified that he gave the bag of methamphetamine back to the defendant. This time, he said, the defendant took the bag and threw it out of the window of the van.

¶ 15 On cross-examination, Forgy admitted that he and the defendant had previously been convicted of a burglary they had committed together. He also admitted he had been convicted on three charges of theft, a charge of obstruction of justice, and another charge of burglary. Before the prosecutor could ask about additional convictions, Forgy stated: "I got about 13 convictions. I've been in prison six times. We heard every—you know, I got a drug problem." He then admitted he had been convicted of five drug-related charges, four of which involved methamphetamine.

¶ 16 Forgy further testified that he was available to testify at the defendant's trial but

had not been called to do so. He stated that defense counsel told him he might be called, but he was not. The prosecutor asked Forgy if he knew why counsel had declined to call him. Initially, Forgy simply said that he did not know why he was not called. He said that he was willing to testify and further stated that he believed counsel was ineffective for not calling him. He eventually explained, however, that defense counsel told Forgy that he thought Forgy was not telling him the truth.

¶ 17 The court sentenced the defendant to 14 years in prison. However, the court subsequently granted the defendant's motion to reconsider his sentence and reduced the sentence to 12 years. This appeal followed.

¶ 18 The defendant first argues that the evidence was not sufficient to prove him guilty beyond a reasonable doubt. He specifically challenges the sufficiency of the evidence to prove that he actually exercised control over the methamphetamine, a crucial element in any charge involving possession of an illicit substance. See *People v. Schmalz*, 194 Ill. 2d 75, 82, 740 N.E.2d 775, 779 (2000). We disagree.

¶ 19 We review sufficiency-of-the-evidence claims in the light most favorable to the prosecution and determine whether any reasonable trier of fact could find all the elements of the crime charged beyond a reasonable doubt. *People v. Sanchez*, 115 Ill. 2d 238, 260, 503 N.E.2d 277, 284 (1986). We give deference to the jury's determinations regarding both the credibility of the witnesses and the inferences to be drawn from the testimony presented. *People v. McLaurin*, 184 Ill. 2d 58, 79, 703 N.E.2d 11, 21 (1998). We will only reverse a defendant's conviction if "the evidence is so improbable or unsatisfactory that a reasonable doubt of the guilt of the defendant remains." *McLaurin*, 184 Ill. 2d at 79, 703 N.E.2d at 21.

¶ 20 Possession may be actual or constructive. *People v. Herron*, 218 Ill. App. 3d 561, 569, 578 N.E.2d 1310, 1316 (1991) (quoting *People v. Scott*, 152 Ill. App. 3d

868, 871, 505 N.E.2d 42, 44 (1987)). This case involves actual possession, which requires the State to prove that the defendant (1) had knowledge of the illegal substance and (2) exercised some form of dominion or control over it. *Herron*, 218 Ill. App. 3d at 569, 578 N.E.2d at 1316 (quoting *Scott*, 152 Ill. App. 3d at 870, 505 N.E.2d at 44). This may be proven through circumstantial evidence, such as evidence that the defendant attempted to conceal or discard the contraband. *Herron*, 218 Ill. App. 3d at 569, 578 N.E.2d at 1316 (quoting *Scott*, 152 Ill. App. 3d at 871, 505 N.E.2d at 44). Indeed, circumstantial evidence is often needed to prove possession of narcotics. However, the circumstantial evidence must be strong enough to prove the defendant's guilt beyond a reasonable doubt. *People v. Stewart*, 27 Ill. App. 3d 520, 523, 327 N.E.2d 287, 289 (1975).

¶ 21 The defendant does not dispute the fact that possession may be inferred circumstantially through such evidence. He contends, however, that the evidence in this case was insufficient to prove that he discarded the methamphetamine by throwing it from Forgy's van. He argues that the instant case is analogous to *People v. Stewart*, where this court found circumstantial evidence that a defendant discarded a bag containing drugs was not sufficient to prove him guilty of possession beyond a reasonable doubt. Although there are some similarities between the evidence in *Stewart* and some of the evidence involved in this case, we find *Stewart* distinguishable.

¶ 22 There, a bag containing marijuana was found in the parking lot of a nursing home near where the defendant's car had been parked shortly before it was discovered. Three witnesses testified to seeing the defendant in the vicinity at approximately 10:30 p.m. All three witnesses were sitting in their cars in the parking lot waiting to begin their 11 p.m. shifts working at the nursing home. *Stewart*, 27 Ill.

App. 3d at 521-22, 327 N.E.2d at 288-89. All three testified that they saw the defendant walk from his parked car to a nearby light pole and lean over so his hand was near the ground. All three said that the light provided enough light for them to see the defendant's face or the color of his hair. *Stewart*, 27 Ill. App. 3d at 521-22, 327 N.E.2d at 288-89. One witness testified that the light was as bright as daylight. *Stewart*, 27 Ill. App. 3d at 521, 327 N.E.2d at 288. However, none of the witnesses saw anything in the defendant's hands. *Stewart*, 27 Ill. App. 3d at 521-22, 327 N.E.2d at 288-89.

¶ 23 Two of the witnesses walked to the light pole after they saw the defendant return to his car and drive away. There, they found a cellophane bag containing marijuana. *Stewart*, 27 Ill. App. 3d at 522, 327 N.E.2d at 289. The State's only evidence that the defendant had possession of the marijuana was the testimony of these three witnesses. *Stewart*, 27 Ill. App. 3d at 521, 327 N.E.2d at 288.

¶ 24 This court concluded that the evidence proved nothing more than "the discovery of narcotics in an area where the defendant had been behaving suspiciously." *Stewart*, 27 Ill. App. 3d at 525, 327 N.E.2d at 291. It is important to emphasize that we did not reach this conclusion based solely on the fact that none of the witnesses actually saw the marijuana in the defendant's hands. Indeed, we explained that the "mere possibility" that the drugs were there before the defendant was in the area does not automatically warrant reversal. Rather, we explained, that "possibility must be viewed in light of all the evidence." *Stewart*, 27 Ill. App. 3d at 525, 327 N.E.2d at 291.

¶ 25 Here, as in *Stewart*, a bag containing illegal drugs was found in an area where the defendant had previously been. Here, as in *Stewart*, no witness actually saw the drugs in the defendant's hand. That is where the similarities end.

¶ 26 In *Stewart*, this court emphasized the fact that none of the witnesses saw anything in the defendant's hands despite the fact that he was standing in an area that was so well-lit that all three witnesses were able to clearly see "other details, such as the defendant's face or the color of his hair." *Stewart*, 27 Ill. App. 3d at 525, 327 N.E.2d at 291. This case involves no similar discrepancy. The officers who testified here saw the door to a van open and close while engaged in a relatively high-speed pursuit of the van late at night.

¶ 27 In *Stewart*, this court found that the defendant's act of leaning over and reaching towards the ground with his hand was ambiguous under the circumstances. We stated, however, that similar behavior might not appear to be so ambiguous if it were to occur when a defendant is aware that police officers are approaching or observing him. *Stewart*, 27 Ill. App. 3d at 524-25, 327 N.E.2d at 291. We explained that a defendant's awareness of police presence is a circumstance that explains "otherwise ambiguous movements." *Stewart*, 27 Ill. App. 3d at 524-25, 327 N.E.2d at 291. In other words, a defendant's awareness of police presence provides support for the logical inference that the defendant is attempting to dispose of the drugs before being apprehended.

¶ 28 In this case, unlike the *Stewart* case, the defendant was a passenger in a van being pursued by police officers when the officers saw the passenger side door open and close. Detective Friedrich specifically testified that this behavior typically indicates that a suspect is attempting to throw something out of the vehicle. See *Stewart*, 27 Ill. App. 3d at 523-25, 327 N.E.2d at 290-91 (distinguishing the *Stewart* case from cases in which defendants were observed acting suspiciously while being pursued or observed by police).

¶ 29 Moreover, there was additional evidence supporting the conclusion that the

methamphetamine was thrown from the van by the defendant. Materials associated with the manufacture of methamphetamine were found inside the van, and the interior of the van smelled of anhydrous ammonia, which is used in manufacturing methamphetamine. In addition, a syringe was found along the path traveled by the van that matched syringes found inside the van. This evidence, though circumstantial, provides a great deal of support for the jury's conclusion that the methamphetamine was thrown from Forgy's van as it fled from the officers. The fact that all of the items thrown from the van were found along the passenger side supports the conclusion that it was the defendant who discarded all of the items. The requirement of proof beyond a reasonable doubt does not mean that a jury must ignore inferences that flow logically from the evidence. *Scott*, 152 Ill. App. 3d at 872, 505 N.E.2d at 45. This evidence, viewed in its entirety in the light most favorable to the prosecution, is sufficient to support the defendant's conviction beyond a reasonable doubt.

¶ 30 Next, the defendant argues that trial counsel was ineffective for failing to call Forgy as a witness. We evaluate claims of ineffective assistance of counsel under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). In order to prevail, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness. The defendant must also demonstrate that he was prejudiced by counsel's deficient performance—that is, he must show that but for counsel's mistakes, there is a reasonable probability that the result would have been different. *People v. Clemons*, 277 Ill. App. 3d 911, 920-21, 661 N.E.2d 476, 483 (1996).

¶ 31 To prove that counsel's performance was deficient, the defendant must overcome a strong presumption that counsel's decisions were the result of sound trial strategy. *People v. Clendenin*, 238 Ill. 2d 302, 317, 939 N.E.2d 310, 319 (2010). The

decision of which witnesses to call is generally a matter of trial strategy. However, counsel may be found to be ineffective for choosing not to call a witness if that witness could have provided exculpatory testimony or testimony that would have corroborated an otherwise unsupported defense. *People v. Bryant*, 391 Ill. App. 3d 228, 238, 907 N.E.2d 862, 872 (2009).

¶ 32 Here, the defendant argues that Forgy's testimony would have negated the State's charge that the defendant voluntarily possessed the methamphetamine. He further argues that the testimony would have provided further support for his defense that he had nothing to do with "the methamphetamine found in a public road 45 minutes after Kuni had passed that way" because it would further "widen the gap" between him and the methamphetamine. We are not persuaded.

¶ 33 We first note that, as previously discussed, Forgy testified that defense counsel told him that he might be called as a witness in the defendant's trial. This means that counsel actually considered calling Forgy but decided not to do so; counsel did not simply overlook the possibility. We believe there were sound reasons for counsel to make this decision.

¶ 34 As the State points out, Forgy's story is inconsistent with the defense actually presented at trial—which was that the evidence was insufficient to demonstrate that the methamphetamine found on the ground came from the van at all. Thus, counsel had a choice: either he could present the defense he did or he could present Forgy's testimony, concede that the methamphetamine came from the van in which the defendant was a passenger, and hope that the jury believed Forgy's explanation.

¶ 35 There were several difficulties with Forgy's testimony. First, as we have already discussed, Forgy had a lengthy criminal history, including a prior charge for obstruction of justice, and admitted to having an addiction. Both of these facts have

the potential to undermine his credibility as a witness. In addition, jurors might conclude that Forgy had a motive to testify untruthfully to protect his cousin, the defendant. We reiterate that, as Forgy himself admitted, defense counsel did not find his story credible. Counsel may have reasonably believed that a jury would be unlikely to find Forgy any more credible than he did.

¶ 36           Moreover, Forgy's testimony is at odds with the evidence that three small foils containing methamphetamine and a hypodermic syringe were also found along the passenger's side of the path traveled by the van. This evidence leads logically to an inference that the defendant made a deliberate effort to discard as many incriminating items as possible before being apprehended by the police. Thus, it makes Forgy's claim that the defendant reluctantly threw the large bag of methamphetamine from the van after it was thrust upon him against his will seem much less plausible. For these reasons, presenting Forgy's testimony would have been risky. We thus find that counsel's decision not to call him constituted sound trial strategy, and we therefore reject the defendant's claim of ineffective assistance of counsel.

¶ 37           For the reasons stated, we affirm the defendant's conviction.

¶ 38           Affirmed.