

No. 1-13-0195

**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. 11 CR 3835
	)	
JIMELL ELLIOT,	)	Honorable
	)	Carol Howard,
Defendant-Appellant.	)	Judge Presiding.

---

PRESIDING JUSTICE PUCINSKI delivered the judgment of the court.  
Justices Lavin and Hyman concurred in the judgment.

**O R D E R**

¶ 1 **Held:** Defendant's conviction for delivery of a controlled substance affirmed over contention that evidence was insufficient; mittimus corrected to reflect proper sentence.

¶ 2 Following a bench trial, defendant Jimell Elliot was found guilty of possession of a controlled substance with intent to deliver and delivery of a controlled substance, then sentenced to nine years' imprisonment. On appeal, defendant contends that the evidence was insufficient to prove him guilty of delivery of a controlled substance, and requests that his conviction be reversed. He also requests that his mittimus be corrected to reflect the proper conviction.

¶ 3 The charges files against defendant in this case arose from an incident that occurred on February 7, 2011, on the west side of Chicago. Officer Bocanegra testified that about 11:25 a.m., he was conducting a narcotics surveillance operation in the 3600 block of West Douglas Boulevard. From his vantage point approximately 100 to 150 feet away, he observed an individual, who he identified in court as defendant, engaging in suspected narcotics transactions with two unknown black males. Each time, the unknown black male approached defendant, conversed with him, then tendered U.S. currency to him, which defendant placed in his right pants pocket. Defendant then went to a five-foot tall snow bank which was behind him, retrieved a brown paper bag from it, removed a "red item" from the bag, and gave the item to the individual who had tendered the currency. After observing the second exchange, Officer Bocanegra radioed his enforcement team and directed them to defendant's location.

¶ 4 At the same time, a black female, later identified as Leola Knight,<sup>1</sup> walked up to defendant, conversed with him and tendered him U.S. currency, which defendant placed in his right pants pocket. He then retrieved an item out of the same brown paper bag in the snow bank, "jabbed" the bag back into the snow, and quickly tendered the item to Knight. As the enforcement cars approached, defendant and Knight began to walk eastbound on the sidewalk, and Officer Bocanegra walked to the snow bank. He retrieved the brown paper bag from inside the snow bank, and observed that defendant and Knight had been detained by the enforcement officers. The bag contained 10 items encased in red tape containing a white powder, which he suspected was heroin. Officer Bocanegra testified that he did not lose sight of the paper bag before he took it and kept it in his care and custody until he gave it to his partner, Officer

---

<sup>1</sup> Knight, who was defendant's co-arrestee and co-defendant, is not a party to this appeal.

Alonzo.

¶ 5 Officer Alonzo testified that he was a member of the enforcement team, and Officer Bocanegra directed him to detain defendant and Knight. He drove his car near Central Park and West Douglas, and observed that defendant and Knight were walking eastbound toward him. Officer Alonzo exited his car and approached Knight, while his partner approached defendant. Knight looked in Officer Alonzo's direction, dropped a small object to the ground, and covered it with her left foot. As Officer Alonzo detained her, he asked her to move her foot, and recovered a small "tin-foil red-taped packet containing a powdery substance," of suspect heroin. He kept the item in his care, custody and control, along with the brown paper bag and its contents given to him by Officer Bocanegra, until all the items were properly inventoried at the police station. Officer Alonzo testified that the item recovered from underneath Knight's foot was the same as those inside the brown paper bag he received from Officer Bocanegra. Following a custodial search, the officers also recovered \$75 from defendant.

¶ 6 A forensic drug chemist testified for the State that the tin-foiled packet recovered from Knight tested positive for .274 gram of heroin, and that 5 out of the 10 tin-foiled packets that were enclosed in red tape and recovered from the brown paper bag tested positive for 1.27 grams of heroin.

¶ 7 Defendant testified on his own behalf and admitted to prior convictions for felony possession, aggravated battery, possession of a controlled substance, and possession of a look-alike substance, but claimed he was innocent of the instant offense. He testified that on February 7, 2011, at 11:25 a.m., he was on Douglas Boulevard looking for an "alley mechanic" to replace the brake rotors on his girlfriend's car. He was briefly standing near a snow bank that was five-feet tall and speaking to an unknown individual about the mechanic's whereabouts, when the

police drove up in an unmarked car and told them to turn around and place their hands on the gate. Defendant stated that an officer pointed a taser at him from across the street and he complied with their instructions. The officers searched him, and brought two other unknown individuals to his location. Following a search of the area, the officers found "something," and asked for the responsible party, but no one confessed. The officers then handcuffed defendant and the others and ran their names.

¶ 8 Defendant testified that he was on parole at the time, that one of the officers told him that he was being watched, and that the items they found belonged to him. Another officer told him that he would be released if he provided information about "a house" or "a gun," but he did not know what he was referring to. Defendant testified that he did not put his hands into a bag in the snow bank and take something out, and that he was not selling drugs that day.

¶ 9 Following the arguments of counsel, the trial court found defendant guilty of possessing between 1 and 15 grams of heroin with intent to deliver, and delivering less than 1 gram of heroin to Knight. At sentencing, the State pointed out defendant's previous convictions, including three counts of armed robbery and one count of attempted armed robbery in 2002, and a prior Class 2 drug conviction from 1996. The court then sentenced defendant to nine years in prison as a Class X felon (730 ILCS 5/5-4.5-95(b) (West 2010)), followed by three years of mandatory supervised release (MSR).

¶ 10 In this appeal from that judgment, defendant solely challenges the sufficiency of the evidence to prove him guilty of the delivery charge. He asserts that no witnesses saw him possess or deliver the narcotics dropped on the ground by Knight, and, therefore, there was no connection between him and the heroin discovered under Knight's foot.

¶ 11 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the reviewing court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). This standard recognizes the responsibility of the trier of fact, to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In applying this standard, we allow all reasonable inferences from the record in favor of the prosecution (*People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)), and will not overturn a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt (*People v. Wheeler*, 226 Ill. 2d 92, 115 (2007)).

¶ 12 To sustain a conviction for the unlawful delivery of a controlled substance, the State must prove that defendant knowingly delivered a controlled substance. 720 ILCS 570/401(c) (West 2010); *People v. Brown*, 388 Ill. App. 3d 104, 108 (2009). Delivery is defined as “the actual, constructive, or attempted transfer of possession of a controlled substance, with or without consideration, whether or not there is an agency relationship.” 720 ILCS 570/102(h) (West 2010); *Brown*, 388 Ill. App. 3d at 108.

¶ 13 Defendant contends that neither Officer Bocanegra, nor Officer Alonzo saw where Knight procured the item she dropped to the ground, nor did they see defendant handle, possess or deliver that substance to Knight. This contention, however, is not borne out by the record, which shows that while on surveillance, Officer Bocanegra twice observed defendant tender a "red item" from a brown paper bag in a snow bank behind him to an unknown male in exchange for U.S. currency. As Officer Bocanegra radioed the enforcement team, he observed Knight

approach defendant, engage in conversation with him, and tender defendant U.S. currency.

Defendant then retrieved an item from the same brown paper bag that he had retrieved red items from twice previously and quickly tendered the item to her as he "jabbed" the brown paper bag back into the snow bank.

¶ 14 The duo then walked eastbound, and as Officer Alonzo approached, Knight looked in his direction and dropped an object to the ground, which turned out to be a small red-taped tinfoil packet, which tested positive for .274 gram of heroin. Meanwhile, Officer Bocanegra recovered the brown paper bag containing 10 red-taped foil packets from the snow bank and gave it to Officer Alonzo, who testified that the red packet that he found underneath Knight's foot, and the items in the brown paper bag were the same.

¶ 15 This evidence, viewed in the light most favorable to the prosecution was sufficient to allow the trial court to find that the State proved beyond a reasonable doubt that defendant knowingly transferred .274 gram of heroin to Knight, and was thus found guilty of delivery of less than one gram of a controlled substance. *Brown*, 388 Ill. App. 3d at 108.

¶ 16 In reaching this conclusion, we reject defendant's arguments regarding the absence of fingerprint evidence, testimony about Knight's action with the item once defendant tendered it to her, or testimony regarding whether Knight was searched at the time of her arrest. The testimony of a single witness, if positive and the witness credible, is sufficient to convict defendant (*People v. Smith*, 185 Ill. 2d 532, 541 (1999)), and here, credible testimony was presented by the State to support the reasonable inference that the red tinfoil packet containing heroin that Knight dropped on the ground was the same item that defendant handed to her from the brown paper bag. There is no evidence in the record indicating otherwise.

¶ 17 We also note that defendant's reliance on *People v. Ray*, 232 Ill. App. 3d 459, 461 (1992),

and *People v. Flores*, 231 Ill. App. 3d 813, 818 (1992), regarding constructive possession of narcotics, is misplaced. The material element of the instant offense is delivery, and the offense is committed when one delivers a controlled substance to another. *People v. Loferski*, 235 Ill. App. 3d 675, 682 (1992). Defendant does not dispute here that the brown paper bag and its contents belonged to him, and the record shows that there was an actual transfer of possession of a tin-foiled heroin packet enclosed in red tape from defendant's brown paper bag to Knight. Thus, the evidence was sufficient to establish the element of delivery.

¶ 18 Defendant finally asserts, and we agree, that his mittimus should be corrected to reflect his conviction of "possession with intent to deliver," rather than "manufacture or delivery" of a controlled substance as currently stated. Pursuant to our authority under Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the court to modify defendant's mittimus to reflect that the offense of which he was convicted in Count 1 is possession with intent to deliver between 1 and 15 grams of heroin. 720 ILCS 570/401(c)(1) (West 2010).

¶ 19 For the reasons stated, we correct defendant's mittimus as indicated, and affirm the judgment in all other respects.

¶ 20 Affirmed, mittimus corrected.