

FOURTH DIVISION
March 12, 2015

No. 1-12-3293

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. 12 CR 2975
)	
JAMES ROBINSON,)	Honorable
)	Carol M. Howard,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Judgment entered on defendant's conviction of possession of a controlled substance affirmed over his challenge to the sufficiency of the evidence claiming that the sole witness' testimony was unreliable.
- ¶ 2 Following a bench trial, defendant James Robinson was found guilty of possession of a controlled substance and sentenced to 48 months' imprisonment. On appeal, defendant contends

that the State failed to prove him guilty of that offense beyond a reasonable doubt where the testimony of the sole witness for the State was unreliable.

¶ 3 The record shows that defendant was charged with possession of a controlled substance with intent to deliver in connection with an incident that occurred on the west side of Chicago on January 10, 2012. At trial, Chicago police officer Adam Dedo testified that about 4 p.m. on that date, he and his partner were dressed in plain clothes and sitting in an unmarked vehicle near the intersection of Chicago and Avers Avenues. Officer Dedo was wearing a vest over his clothes that displayed the Chicago Police Department insignia and his badge number, and his partner was not.

¶ 4 Officer Dedo further testified that they drove to an alleyway near the intersection where a citizen approached and began to speak to his partner. As he did so, Officer Dedo exited the vehicle and began walking north on Avers Avenue toward a vacant building. After walking about 20 feet, Officer Dedo saw defendant standing on a street corner near a graveled area about 100 feet to the northeast. He then saw a Hispanic person approach defendant and gesture as if to hand defendant something. Defendant then walked about 10 feet in his direction, and bent down as if to retrieve an item from the graveled area. After that, defendant walked back toward the Hispanic person and made a motion as if to hand him something. Officer Dedo was too far away to hear any conversation between them, or to glimpse if anything was actually handed over in either direction, and, thus, no attempt was made to detain the Hispanic person after his interaction with defendant.

¶ 5 About one minute after defendant's encounter with the Hispanic person, Officer Dedo saw a black male approach defendant in the same spot. This person also gestured toward

defendant as if to hand him something and defendant then walked over to the graveled area and bent down, before walking back and handing an unknown item to that person. The recipient then walked back to Chicago Avenue and was not detained by the officers.

¶ 6 After making these two observations, Officer Dedo jogged back to his partner and told him he had "just seen two transactions." The officers then drove north down Avers Avenue to the area where defendant was standing, and detained him within seconds. During that drive, Officer Dedo did not see anyone go near the graveled area where defendant had bent down twice, and when he inspected that area, he discovered a piece of tinfoil with purple tape about the size of a quarter containing what he believed to be heroin. The officers arrested defendant and brought him to the police station.

¶ 7 On cross-examination, Officer Dedo stated that no narcotics were found on defendant's person at the time of the arrest, but that he was carrying \$39. Officer Dedo also stated that he observed the Hispanic person snort the contents of a package after his interaction with defendant, but he acknowledged that he did not include this information in his police report or testify to it on direct examination.

¶ 8 At that point, the parties stipulated that George Gomez, a forensic chemist with the Illinois State Police Crime Lab, would testify that he received from the Chicago Police Department a tinfoil packet that had been heat-sealed and tagged in an inventory bag. Testing showed that the contents of the packet were positive for heroin and weighed .2 gram. The parties further stipulated that a proper chain of custody was maintained at all times.

¶ 9 Following closing arguments, the court found defendant guilty of the lesser-included offense of possession of a controlled substance. In issuing its ruling, the court commented that it

did not believe that Officer Dedo, a 14-year police veteran, would see someone snorting drugs on the street and not stop him.

¶ 10 In this appeal, defendant contends that the State did not prove him guilty of possession of a controlled substance beyond a reasonable doubt where Officer Dedo's testimony was incredible, contradictory, and contrary to human nature. The State responds that Officer Dedo's credible testimony regarding his observation of defendant's two transactions with different persons and recovery of heroin and money established defendant's guilt of possession of a controlled substance.

¶ 11 Where defendant challenges the sufficiency of the evidence to sustain his conviction, the reviewing court must determine whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Jordan*, 218 Ill. 2d 255, 269 (2006). This standard recognizes the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to give their testimony, to resolve any conflicts and inconsistencies in the evidence, and to draw reasonable inferences from such evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court must allow all reasonable inferences from the record in favor of the prosecution, and will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Beauchamp*, 241 Ill 2d. 1, 8 (2011); *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 12 To sustain defendant's conviction for possession of a controlled substance in this case, the State was required to prove knowledge of the possession of the substance, and that the substance was in the immediate and exclusive control of defendant. 720 ILCS 570/402 (West 2010);

People v. Frieberg, 147 Ill. 2d 326, 360 (1992). The elements of possession and knowledge are questions of fact that are rarely susceptible of direct proof and may be established by circumstantial evidence. *People v. Moore*, 365 Ill. App. 3d 53, 58 (2006). Possession may be constructive, and exists where defendant does not have personal, present dominion over the controlled substance, but has the intent and capability to maintain control and dominion (*Frieberg*, 147 Ill. 2d at 361), and knows of its presence. *People v. Turnbeaugh*, 116 Ill. App. 3d 199, 205 (1983).

¶ 13 Viewed in a light most favorable to the prosecution, the evidence in this case shows that Officer Dedo observed defendant engage in two separate conversations with two persons who individually approached him while he was standing on a street corner. Officer Dedo continued to watch as defendant received an item from each individual, then walked over and picked something out of a specific spot in the gravel which he handed to each individual. Officer Dedo did not see anyone else in the area at this time, and after he and his partner detained defendant, Officer Dedo inspected the gravel area where defendant had bent over and retrieved an item, and discovered a tinfoil package containing what was later identified as heroin. This evidence, and the reasonable inferences therefrom, were sufficient to allow a reasonable trier of fact to find defendant guilty of possession of a controlled substance beyond a reasonable doubt. *Frieberg*, 147 Ill. 2d at 362.

¶ 14 Defendant, however, takes issue with Officer Dedo's testimony, claiming that it is "incredible" and unreliable; and, since it is the only evidence the State presented against him, he argues that the State did not meet its burden of proving his guilt beyond a reasonable doubt. In making this assertion, defendant essentially challenges the credibility of the State's sole witness.

Credibility issues are matters within the province of the trial court, and this court will not substitute its judgment on these matters unless the proof is so unsatisfactory that a reasonable doubt of guilt appears. *People v. Berland*, 74 Ill. 2d 286, 305-06 (1978). We do not find this to be such a case.

¶ 15 In setting out his argument, defendant calls our attention to Officer Dedo's description of the Hispanic person snorting the contents of a package after meeting with defendant; a fact that the officer failed to include in his police report or mention during direct examination. The court explicitly commented on the officer's testimony regarding the snorting incident, and found it unbelievable that the officer would not have stopped such an individual. However, it is well established that a trier of fact may believe portions of defendant's case and portions of the State's case in rendering its decision, and, as here, where Officer Dedo's testimony was sufficient to support the court's finding of guilt, we will not speculate that the court did not believe the totality of the officer's testimony. *People v. Reed*, 80 Ill. App. 3d 771, 781 (1980).

¶ 16 Defendant also challenges Officer Dedo's testimony that he never lost sight of him on the gravel area. He contends that the only way in which Officer Dedo could perform this feat would be to jog backward. However, this argument ignores the simple explanation that Officer Dedo may have just looked over his shoulder as he jogged the relatively short distance back to his partner and the police vehicle, and fails to raise a reasonable doubt as to any of the essential elements of the charged offense.

¶ 17 Defendant claims that it is "significant" that Officer Dedo, the State's sole witness, never mentioned his partner by name. The record shows, however, that Officer Dedo's partner is listed on the police report for defendant's arrest as Officer Sajdak, and that defendant did not ask to

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identify him on cross-examination. More importantly, defendant has failed to show how the asserted omission affected Officer Dedo's credibility on the elements of the charged offense to raise a reasonable doubt of his guilt.

¶ 18 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 19 Affirmed.