

No. 1-13-0140

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 6270
	)	
KEVIN REDDING,	)	Honorable
	)	Thomas Hennelly,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE McBRIDE delivered the judgment of the court.  
Justice Gordon and Justice Reyes concurred in the judgment.

**O R D E R**

¶ 1 **Held:** Evidence at trial was sufficient to convict defendant beyond a reasonable doubt of possession of a controlled substance where a police officer observed defendant exercise control over a small dirt pile which officers later found concealed 23 packets of heroin. Officer's testimony was not incredible where any missing details or inconsistencies were insignificant.

¶ 2 Following a bench trial, defendant Kevin Redding was convicted of possession of a controlled substance and sentenced to three years in prison. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 Defendant was charged with possession of a controlled substance with intent to deliver. The charge arose out of narcotics surveillance by Chicago police officers on April 15, 2011. An officer observed defendant interact with three separate individuals, accepting money in exchange for objects taken from a small dirt pile. The officer radioed waiting enforcement officers who arrived and arrested defendant.

¶ 4 At trial, Chicago police officer Robert Goins testified that he was conducting narcotics surveillance across the street from a vacant lot at 3709 West Grenshaw Street at 6:20 p.m. on April 15, 2011. Defendant stood in the southwest corner of the lot near a wrought-iron fence, about 60 to 75 feet away from Goins. A man approached defendant and they had a brief conversation. The man handed money to defendant, who then bent down and removed an unknown item from a pile of loose dirt behind him. The pile was a couple inches high and four to five inches long. Defendant gave the item to the man. Goins testified on direct that the man then walked southbound through the vacant lot. On cross-examination, Goins said the man walked east down the street and then southbound through the lot. Subsequently, defendant had identical encounters with a second and then a third man. After the third man left, Goins radioed four other officers. He described defendant as wearing a black jacket and a blue sweatshirt. The officers arrived and detained defendant about three houses west of the vacant lot. Goins watched defendant's arrest. He then directed Timothy Belcik, one of the officers, to the dirt mound. Belcik went to the area and removed several objects from the dirt pile.

¶ 5 Goins further testified, at the time of the surveillance, several people were "milling" about the street, but none were in "direct proximity" to defendant. Goins could not remember if the street lights had been on at that time. None of the three other individuals observed were arrested. During testimony, Goins circled the location of the dirt pile on People's Exhibit Number

1, a picture of the vacant lot.

¶ 6 Belcik testified that he worked as an enforcement officer on the day of the surveillance. He arrived at the vacant lot and Goins directed him to the dirt pile near a wrought-iron fence. Belcik recovered 23 packets of white powder from the pile. About 30 seconds passed between Goins radioing the other officers and Belcik's recovery of the packets. During testimony, Belcik circled the location of the dirt pile on People's Exhibit Number 3, a picture of the vacant lot. Belcik circled the same area that Goins had in his testimony.

¶ 7 Forensic chemist Melissa McCann testified that she tested 15 of the 23 packets that the police sent to her. McCann opined that the 15 packets contained 5.2 grams of heroin.

¶ 8 The State rested. The trial court denied defendant's motion for a directed finding.

¶ 9 Defendant presented two stipulations. The first noted that an officer inventoried the packets of heroin and estimated they had a weight of 4.46 grams. The second noted that an employee with the Chicago Department of Emergency and Management Communications had found no records of activity by the police unit in this matter for the given time interval. Defendant also presented climatological data that showed the sunset occurred at 6:31 p.m. on the day of the surveillance and that various amounts of rain had accumulated from 2 p.m. through 5 p.m., with traces of rain at 6 p.m. and 7 p.m. Defendant did not testify.

¶ 10 The trial court found defendant not guilty of possession of a controlled substance with intent to deliver, stating the intent to deliver had not been proven beyond a reasonable doubt. The court found defendant guilty of the lesser charge of possession of a controlled substance. In its rulings, the court stated that Goins's testimony had not been impeached.

¶ 11 Defendant filed a motion for a new trial which the trial court denied. The trial court sentenced defendant to three years' imprisonment. Defendant appeals.

¶ 12 Defendant contends that the State failed to prove him guilty beyond a reasonable doubt of possession of a controlled substance. Specifically, defendant argues that the State failed to introduce sufficient evidence connecting him to the bags of heroin found in the vacant lot. He notes that officers found no drugs on him, none of the alleged buyers were ever arrested and no one saw him place drugs into the pile. Defendant argues that as the trial court found him not guilty of possession with intent to deliver, it is possible that the observed transactions were innocent in nature. Defendant does not challenge that the packets contained heroin.

¶ 13 The State responds that the evidence presented at trial sufficiently proved defendant guilty beyond a reasonable doubt of possession of a controlled substance. The State asserts that the evidence produced at trial showed defendant retrieved baggies hidden in a pile of loose dirt and the objects tested positive for heroin.

¶ 14 Due process requires the State to prove each element of a conviction beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004), citing *In re Winship*, 397 U.S. 358, 364 (1970). When reviewing the sufficiency of evidence, a reviewing court must decide "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Cunningham*, 212 Ill. 2d at 278. A reviewing court will not overturn a guilty verdict unless the evidence is "so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 15 A possession of a controlled substance conviction requires proof that a defendant: (1) knew of the presence of a controlled substance and (2) either actually or constructively possessed the substance. See *People v. Eghan*, 344 Ill. App. 3d 301, 306 (2003). Constructive possession

occurs when the defendant has the intent and capacity to maintain control over a substance.

*People v. Burks*, 343 Ill. App. 3d 765, 769 (2003). It is established when a defendant knew drugs were present and exercised some control over them. *Id.*

¶ 16 In *People v. Harden*, this court found constructive possession where the defendant repeatedly returned to a hidden bag later found to contain cocaine. *People v. Harden*, 2011 IL App (1st) 092309, ¶ 31. Two individuals separately approached the defendant and handed him money, the defendant then ran and retrieved several unknown, small items from a plastic bag hidden next to a pillar. *Id.*, ¶ 28. The defendant returned to each individual and gave them the objects. *Id.* Police recovered the bag and found it contained cocaine. *Id.*, ¶ 31. The *Harden* reviewing court found that the State had sufficiently proven constructive possession. See *id.*, ¶ 38.

¶ 17 In *People v. Smith*, the defendant walked to an area, picked something up from the ground, and gave the object to an individual in exchange for money. *People v. Smith*, 288 Ill. App. 3d 820, 824 (1997). Police found a wine bottle cap containing cocaine in the area the defendant had been. *Id.* The *Smith* reviewing court also found sufficient evidence of constructive possession. *Id.*

¶ 18 The facts in this case strongly resemble *Harden* and *Smith*. Goins testified that individuals approached defendant and gave him money. He then turned and reached down to the dirt pile, removing a small, unidentified object. He gave the object to the individual. When police searched the dirt pile they found it contained small packets of heroin. Like in *Harden*, a rational fact-finder could find beyond a reasonable doubt that defendant knew of the heroin hidden in the dirt pile and that he exercised control over both the dirt pile and the drugs within it.

¶ 19 Defendant suggests that we should view the transactions as innocent, given the trial

court's findings. However, the trial court only explicitly found that intent to deliver was not proven beyond a reasonable doubt. The court made no explicit finding as to the nature of the objects given to the individuals. Moreover, even if we accept defendant's suggestion that the transactions were innocent (which we do not), the evidence supports a finding of constructive possession. Assuming *arguendo* that the objects exchanged were not drugs, the evidence still establishes that defendant hid objects in the pile of dirt, exercising control over the pile as a hiding place. As the drugs were secreted within that hiding place, we find that a rational fact finder could conclude beyond a reasonable doubt that defendant also maintained control over the heroin, and therefore had constructive possession.

¶ 20 Defendant fails to distinguish the current facts from *Harden*. He argues that unlike in *Harden*, defendant was arrested about three houses away from the recovered heroin. He does not explain why that factual distinction is material. By definition, constructive possession means that an offender is not in the immediate presence of the contraband. See *People v. Eiland*, 217 Ill. App. 3d 250, 260 (1991) (distinguishing actual from constructive possession).

¶ 21 Defendant also argues that other people were present on the street and Goins looked away from the dirt pile for a short time. While Goins did testify that other people were "milling about," he also stated that no one was in "direct proximity" to defendant and the dirt pile. He testified that he watched the other officers detain defendant, but directed Belcik to the dirt pile before they had searched defendant. Officer Belcik testified that about 30 seconds passed between Goins's radio call and his recovery of the heroin. Taking the evidence in the light most favorable to the prosecution, Goins looked away from the dirt pile for less than a minute. It is not impossible that in that time, an unknown individual hid the heroin in the location that defendant had just been using to store objects and then quickly left without being seen by the officers three

houses away. However, the trial court was not required to "to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Hall*, 194 Ill. 2d 305, 332 (2000).

¶ 22 In attempting to distinguish *Harden*, defendant relies on *People v. Evans*, 72 Ill. App. 2d 146 (1966), and *People v. Stewart*, 27 Ill. App. 3d 520 (1975). In *Evans*, the defendant quickly left his seat at a bar when he saw police approaching. *Evans*, 72 Ill. App. 2d at 147. The police found packets of narcotics stuck under the bar with chewing gum. *Id.* The *Evans* court found that defendant's suspicious exit was insufficient to establish possession. *Id.* at 149. In *Stewart*, three witnesses saw the defendant stoop over in a parking lot, but no one saw anything in the defendant's hand. *Stewart*, 27 Ill. App. 3d at 521-22. The *Stewart* court found that possession of drugs found in that area had not been sufficiently proven. *Id.* at 525. In both cases, no evidence showed the defendant had interacted with a specific area or object. Goins testified that defendant reached into the specific dirt pile where drugs were later found and removed objects. Thus we find *Evans* and *Stewart* inapposite.

¶ 23 Defendant also argues that Goins's testimony is called into question by missing details from his account. He first notes that Goins's was unable to see how much money was given to defendant, unable to identify what defendant handed to the individuals, and unable to hear any conversation between the men. Defendant asserts that Goins did not describe defendant or the individuals. He further argues that the trial court should have discredited Goins's testimony because of inconsistencies. He notes that Goins explained defendant was in the southwest corner of the lot, but circled the northwest corner when looking at a picture of the lot. On direct examination he stated that the individuals walked south through the vacant lot, but on cross-examination he explained they walked east and then walked south through the vacant lot. Finally,

Goins stated that it was still daylight out and he could not remember if streetlights were on, but sunset was minutes away.

¶ 24 The trial court explicitly found that Goins had not been impeached and found all the officers' testimony credible. Due consideration must be given to the fact that the trial court is "best equipped to judge the credibility of witnesses." *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). Where "the record is not such that the only inference reasonably drawn from flaws in the testimony is disbelief of the whole," the reviewing court should grant the trial court's credibility determinations deference. *People v. Cunningham*, 212 Ill. 2d 274, 284 (2004).

¶ 25 We first address the details missing from Goins's testimony. His inability to hear the men's conversation from across the street, to count the specific amount of money, or to further identify the small objects in defendant's hands does not significantly impeach his credibility. Goins's inability to hear does not undercut his ability to see defendant's movements, nor does his inability to count the number of bills or further identify the small objects in defendant's hand discredit his observations of larger details. These missing details do not make the trial court's acceptance of Goins's testimony so improbable or so unreasonable as to create a reasonable doubt.

¶ 26 Likewise, any inconsistencies in Goins's testimony are inconsequential. First, despite Goins misstating that defendant was in the southwest corner of the lot, Belcik's testimony corroborates Goins. Both men described the pile as near the wrought-iron fence, and both circled the same area on pictures of the lot. Given Belcik's corroboration, Goins's confusion of north and south is not significant. Second, when describing where the men walked, Goins initially said he saw them each "continue through that vacant lot southbound." When defense counsel asked

where the individuals went, Goins gave a more specific answer: each "walked eastbound on Grenshaw after they made the purchase and then went southbound through that vacant lot." The two statements are not directly contradictory and any difference is insignificant. Finally, Goins's recollection that it "was still daylight out" and his inability to recall whether street lights were on close to sunset do not significantly impeach his testimony. No other witness testified to the lighting conditions that evening. The trial court specifically mentioned that it had considered the climatological data before stating that it found all the officers' testimony credible. Without more, we cannot find that the trial court was unreasonable in finding that any inconsistencies in Goins's statements were insignificant.

¶ 27 Viewing together the asserted missing details and inconsistencies, we do not find that the only inference reasonably drawn is the disbelief of Goins's entire account. See *Cunningham*, 212 Ill. 2d at 284. Therefore we give the trial court's determination of the testimony as credible its due deference and we conclude that that determination is not so unreasonable or improbable as to create a reasonable doubt of defendant's guilt.

¶ 28 For the foregoing reasons, we find that the State sufficiently proved defendant guilty of possession of a controlled substance beyond a reasonable doubt. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 29 Affirmed.