SIXTH DIVISION
February 19, 2016

No. 1-13-4022

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. 13 CR 3251
	)	
CHARLES HILL,	)	Honorable
	)	Rickey Jones,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justices HOFFMAN and DELORT concurred in the judgment.

O R D E R

¶ 1 *Held*: We affirm defendant's conviction for possession of a controlled substance where police officers testified that defendant dropped a bag of heroin in their presence; mittimus corrected to reflect additional days of presentence custody credit.

¶ 2 Following a bench trial, defendant Charles Hill was convicted of possession of less than 15 grams of heroin and sentenced to one year in prison. On appeal, defendant contends that the State failed to prove his guilt beyond a reasonable doubt, arguing that the testimony of the arresting officers was incredible for stating that defendant removed a single bag of heroin from his pocket and dropped it in the officers' presence while leaving three more bags in the same

pocket. Defendant also contends that the mittimus should be corrected to reflect 53 additional days of presentence credit. We affirm defendant's conviction and order the mittimus corrected.

¶ 3 At trial, Officer Beckman testified that he was traveling in an unmarked car with three other officers, all in plainclothes, at approximately 10:45 a.m. on January 14, 2013. Near 4416 West Monroe Street in Chicago, Beckman observed defendant standing by another man who was yelling "blows, blows, blows," which Beckman understood as referring to heroin. The officers left the vehicle and defendant turned to face them. When Beckman was 11 to 12 feet away, defendant reached into his left jacket pocket and dropped a white object on the ground. Beckman detained defendant while another officer, Gallagher, recovered the object, a clear miniature zip lock bag containing suspect heroin. Beckman arrested defendant and Gallagher searched him, recovering three similar bags of white powder from the same pocket of defendant's jacket.

¶ 4 Officer Gallagher essentially corroborated Beckman's account. From 15 feet away, Gallagher saw defendant reach into his left jacket pocket and drop the bag of white powder. Gallagher recovered the bag and searched defendant, discovering three more bags of suspect heroin in the same pocket. Gallagher tendered the bags to Officer Clarke, distinguishing where each bag was found.

¶ 5 Officer Clarke testified that he separately inventoried the bag recovered from the sidewalk (12807578) and the three bags recovered from defendant (12807582).

¶ 6 The parties stipulated that Julia Edwards, a forensic chemist at the Illinois State Police crime lab, would testify that she received item 12807578, containing one item of off-white powder, and item 12807582, containing three items of off white-powder, all heat sealed. The powder weighed 1.4 grams in total and tested positive for heroin.

¶ 7 At the close of trial, the court stated that "there is proof beyond a reasonable doubt of possession of a controlled substance" but that "[t]he Court is not convinced beyond a reasonable doubt there was intent to deliver." The court found defendant guilty of possession of less than 15 grams of heroin. Subsequently, the court denied defendant's motion for a new trial and sentenced him to one year in prison.

¶ 8 On appeal, defendant first contends that the evidence failed to establish his guilt beyond a reasonable doubt where the arresting officers' account of events was improbable and contrary to human experience. Defendant argues it defies logic that he would incriminate himself by removing one bag of heroin from his pocket and dropping it in the officers' presence while leaving three other bags in the same pocket. According to defendant, the officers' "dropsy" testimony is inherently suspicious and the only plausible explanation is that they lied to hide the fact that all the drugs were found during an impermissible search.

¶ 9 When a defendant challenges the sufficiency of the evidence, as defendant does here, the reviewing court must consider all the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on questions involving the credibility of witnesses or the weight of the evidence. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory as to raise a reasonable doubt of the defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 10 To sustain a conviction for possession of a controlled substance, the State must show that defendant had knowledge and possession of the drugs. 720 ILCS 570/402 (West 2012); *People v. Givens*, 237 Ill. 2d 311, 334-35 (2010). On appeal, defendant challenges the testimony of the arresting officers, whose testimony tied defendant to the bags of heroin, as improbable and contrary to human experience.

¶ 11 We cannot say the officers' testimony was so incredible as to raise a reasonable doubt of defendant's guilt. Beckman and Gallagher, wearing plainclothes, emerged from an unmarked car and approached defendant from 11 to 15 feet away. Defendant turned to face them, reached into his pocket, and dropped a bag of heroin on the ground. Beckman detained defendant and Gallagher searched him, finding three more bags in the same pocket. Defendant urges that the self-incriminating conduct described by the officers defies logic, but our supreme court has recognized that "[f]ar from being contrary to human experience, cases which have come to this court show it to be a common behavior pattern for individuals having narcotics on their person to attempt to dispose of them when suddenly confronted by authorities." *People v. Henderson*, 33 Ill. 2d 225, 229 (1965) (and cases cited therein). More recently, in *People v. Moore*, 2014 IL App (1st) 110793-B, we found it common and believable for a criminal to dispose of contraband after becoming aware of a police presence. *Id*. ¶ 10 (defendant's conduct in removing weapon from his person while officers were nearby was consistent with his situation and not improbable). While defendant distinguishes the present case on the basis that officers testified he disposed of only some drugs while leaving more in the same pocket, we find this distinction inconsequential when viewing the officers' testimony as a whole. Both Beckman and Gallagher testified they approached defendant from close range and detained him immediately after he dropped the first

bag. Considered in the light most favorable to the State, this testimony was not so improbable or contrary to human experience as to create a reasonable doubt of defendant's guilt.

¶ 12 Defendant further argues that the only plausible explanation for the officers' "dropsy" testimony is that they lied to avoid the exclusion of evidence from an impermissible search. *People v. Ash*, 346 Ill. App. 3d 809, 816 (2004) ("A 'dropsy case' is one in which a police officer, to avoid the exclusion of evidence on fourth-amendment grounds, falsely testifies that the defendant dropped the narcotics in plain view."). Relying on a law review article that discusses dropsy testimony in search and seizure cases, defendant urges that the police testimony in the present case is inherently suspicious and creates a reasonable doubt of his guilt. A similar argument was raised and rejected in *Moore*, where police testified that the defendant abandoned a gun in their presence. *Moore*, 2014 IL App (1st) 110793-B, ¶ 11. We concluded that reasonable doubt was not established simply because other officers falsified similar testimony in previous cases. *Id*. ¶ 13. Additionally, we noted that anecdotal evidence of an increase in the frequency of dropsy testimony "does not *** compel the trier of fact to disbelieve any officer's testimony that describes witnessing a defendant dropping or abandoning contraband." *Id*. ¶¶ 12-13. In view of *Moore*, the trial court in the present case was neither obliged to discredit the officers nor required to find reasonable doubt due to the content of their testimony. *Id*. ¶ 13; see also, *Jackson*, 232 Ill. 2d at 281 (trier of fact need not "search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt"). The trial court was tasked with determining the credibility of the witnesses and the weight of their testimony, and after doing so, found proof beyond a reasonable doubt that defendant possessed heroin. *Siguenza-Brito*, 235 Ill. 2d at 228 (testimony of one witness, if positive and credible, is sufficient to convict); *People v. Bradford*,

187 Ill. App. 3d 903, 918 (1989) ("The testimony of a single law enforcement officer is sufficient to support a conviction in a narcotics case."). We cannot say the court's findings were so unreasonable or unsatisfactory that we must reverse.

¶ 13 Defendant next contends, and the State concedes, that he is entitled to an additional 53 days of presentence credit. A defendant is entitled to presentence credit for any day spent in custody prior to the day of sentencing. 730 ILCS 5/5-4.5-100 (West 2012); *People v. Williams*, 239 Ill. 2d 503, 505, 509 (2011). Whether the mittimus should be amended is a legal issue, which we review *de novo*. *People v. Harris*, 2012 IL App (1st) 092251, ¶ 34. Here, the trial court awarded defendant 43 days of presentence credit, but the record shows that defendant spent a total of 96 days in presentence custody. Therefore, we order the clerk of the circuit court to correct defendant's mittimus to reflect an additional 53 days of presentence credit. Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999); *People v. Johnson*, 385 Ill. App. 3d 585, 609 (2008) (reviewing court may correct mittimus at any time, without remanding to trial court).

¶ 14 For the foregoing reasons, we affirm defendant's conviction and correct the mittimus as ordered.

¶ 15 Conviction affirmed; mittimus corrected.