FIRST DIVISION
October 22, 2018

No. 1-16-2301

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 8617
	)	
MELVIN BROOKS,	)	Honorable
	)	Michael B. McHale,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Pierce and Griffin concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence presented at trial was sufficient to prove defendant guilty beyond a reasonable doubt. The mittimus is corrected to reflect that defendant was convicted of possession of a controlled substance, not possession of a controlled substance with intent to deliver.

¶ 2 Following a bench trial, defendant Melvin Brooks was convicted of possession of a controlled substance (720 ILCS 570/402(a)(7.5)(A)(ii) (West 2016)) and sentenced to five years in prison. On appeal, Mr. Brooks challenges the sufficiency of the evidence, contending that the arresting officers' account of events was inconsistent and unworthy of belief. If we do not reverse his conviction, Mr. Brooks contends that the mittimus must be corrected. For the reasons

that follow, we affirm and order correction of the mittimus.

¶ 3 I. BACKGROUND

¶ 4 Mr. Brooks's conviction arose from events that occurred in Chicago in the early morning hours of March 17, 2013. Following his arrest, Mr. Brooks was charged by information with one count of possession of a controlled substance with intent to deliver (between 15 and 200 pills of N-Benzylpiperazine (BZP)) and one count of possession of cannabis.

¶ 5 At trial, Chicago police officer Shawn Najm testified that at about 4:30 a.m. on the day in question he was riding in an unmarked police vehicle driven by his partner, Officer John Sego, when he observed a car that was traveling in front of them on West Garfield Boulevard run a red light at Halsted Street. Officer Najm testified that he and his partner approached the car, activated their emergency equipment, "paralleled the vehicle for a second," and observed the car until it curbed. When asked to elaborate on the term "paralleled," Officer Najm explained that Officer Sego pulled up on the car's driver's side and both cars travelled at the same speed, about 30 miles per hour, for a short distance of "maybe a block." While the cars paralleled, Officer Najm, whose window was a couple of feet from the driver's window, saw that the car's sole occupant was its driver, whom he identified in court as Mr. Brooks. Officer Najm also observed that Mr. Brooks had a large bag of pills in his hand.

¶ 6 When the cars stopped, the police car was still to the left side of the curbed car, "maybe" at the area of the curbed car's rear door. Officer Najm got out of the police car and approached the driver's side of the curbed car. Because he had observed a large bag of pills in Mr. Brooks's hand, he "wanted to get up to the door as fast as possible." As Officer Najm was walking up to Mr. Brooks, he saw Mr. Brooks start making a movement with the bag toward the waistband of his pants. Officer Najm described the bag as a larger sandwich bag, knotted, and filled with

multicolored pills. He opened the driver's door and ordered Mr. Brooks out of the car. Officer Sego, who was next to Officer Najm, "took control" of Mr. Brooks, who was still holding the bag, and moved him to the rear of the car.

¶ 7 As Officer Sego was handcuffing Mr. Brooks, Officer Najm walked around to the passenger side of the curbed car, looked inside with a flashlight, and saw what he believed to be cannabis on the passenger floorboard. The cannabis was in plain view in three knotted bags, each containing about 20 smaller Ziploc bags. Officer Najm recovered the suspect cannabis and later inventoried it at the police station. Either he or Officer Sego inventoried the bag of pills, which contained 75 pills.

¶ 8 On cross-examination, Officer Najm agreed that the distance between where Mr. Brooks ran the red light, at 800 West Garfield Boulevard, and where his car was curbed, at 523 West Garfield Boulevard, was "essentially" three and a half blocks. He explained that after Mr. Brooks ran the light, he and Officer Sego slowed down and paused, as they did not want to get hit by crossing traffic, proceeded through the intersection, and then caught up with Mr. Brooks. They then paralleled Mr. Brooks's car for a "short time," just long enough for Officer Najm to look into the car and see Mr. Brooks holding the bag of pills in his right hand. When asked whether Mr. Brooks was holding the bag at his waistband or in the air, Officer Najm answered that it was in the air. Then, when asked whether Mr. Brooks had the bag above head-level, at head-level, or below head-level, Officer Najm responded, "I would say a little lower than his head, or maybe head level." He stated, "He had it up in a manner as to, I believe, he observed us, and he was going to try to hide it." Officer Najm could see roughly the entire bag, as it was too big to be cupped or balled inside the palm, and he could discern that it was filled with multicolored pills. After Officer Najm observed the bag, it took only seconds for the officers to curb the car and

seconds for Officer Najm to get out of the police car and approach Mr. Brooks on foot. Officer Najm reiterated that at this point, Mr. Brooks was attempting to place the bag into his waistband.

¶ 9 Officer Najm acknowledged that an arrest report was written, although he did not recall who wrote it. He conceded that nowhere in the report did it indicate he saw Mr. Brooks holding a bag at about head level while he was paralleling Mr. Brooks's car. Instead, the report indicated that as he approached Mr. Brooks's car on foot, he observed a clear plastic bag in Mr. Brooks's right hand. Officer Najm explained that the police report was a summary, stating, "It's all—it's a summary of the events. It's all roughly construed in the same field interview." He then answered affirmatively when asked, "[W]ouldn't you have to agree that the defendant holding a bag of possible narcotics at head level when you're driving parallel to the vehicle is important?" Finally, Officer Najm stated that he eventually learned that the car Mr. Brooks was driving belonged to someone else.

¶ 10 Chicago police officer John Sego testified that on the morning in question, he was with Officer Najm in an unmarked police car on West Garfield Boulevard. About 4:30 a.m., Officer Sego, who was driving, saw a car run the red light at Halsted Street. Officer Sego followed the car through the intersection. As he traveled just to the left of the car, "towards the rear driver side fender," he activated his own car's emergency lights. Officer Sego estimated that at this point, Officer Najm was three or four feet from the driver's window of the other car. The driver of that car, identified in court as Mr. Brooks, veered to the right and stopped.

¶ 11 Officer Sego testified that he and Officer Najm got out of their car. Officer Najm opened Mr. Brooks's door and one of the officers told him to get out. As Mr. Brooks did so, Officer Sego saw he was holding a knotted clear plastic bag containing pills of multiple colors. Officer Sego recovered the bag, which he suspected was ecstasy, and took Mr. Brooks to the back of his

car. Officer Najm went to the passenger side of the car, leaned in, and recovered a bag of suspect cannabis. Later, at the station, Officer Sego inventoried the bag of pills and determined that it contained 75 pills.

¶ 12 On cross-examination, Officer Sego agreed that after he saw Mr. Brooks run the red light, he paused "for a second" before following Mr. Brooks through the intersection. When asked how long he paralleled Mr. Brooks's car before it was curbed, he answered, "Not far at all." He also said that he was driving at or near 30 or 35 miles per hour. Officer Sego agreed that he could see Mr. Brooks while he was paralleling his car. He stated that Mr. Brooks was holding the bag of pills and the steering wheel in his right hand. Defense counsel asked Officer Sego whether he saw Mr. Brooks holding the bag above his head, and Officer Sego answered, "At the steering wheel, I did." Finally, Officer Sego acknowledged that he helped author the arrest report, and that he did not write in it that he saw Mr. Brooks holding the bag of pills at the steering wheel area.

¶ 13 The parties stipulated as to the chain of custody of the bag of pills and the bag of suspect cannabis. They further stipulated that 75 pills were recovered: of those, 16 tested positive for BZP, a scheduled substance; 2 tested positive for benocyclidine, which is not a scheduled substance; and 57 pills were not tested. The other bag contained 23 items that tested positive for 30.16 grams of cannabis.

¶ 14 Defense counsel made a motion for a directed finding, arguing that the officers' testimony was extremely suspect because they contradicted each other with regard to whether Mr. Brooks was holding the bag of pills at head level or by the steering wheel. The trial court denied the motion, stating, "I found the officers to be credible and consistent, I didn't find any significant impeachment at all. I found them, again, to be credible and detailed in their

testimony."

¶ 15 Mr. Brooks testified that around 7 or 8 p.m. on March 16, 2013, he borrowed a friend's car so that he could go see his kids. He fell asleep with the kids, and when he woke, left to return the car to his friend. About 4:30 a.m. on March 17, 2013, he was driving along West Garfield Boulevard on his way to return the car. Mr. Brooks drove through a yellow light at Halsted Street and saw police lights three or four blocks behind him. He pulled over to get out of the way, expecting the police to drive by, but instead, they pulled up behind him. Two officers got out of their car and ordered Mr. Brooks to get out as well. When Mr. Brooks complied, one of the officers, who had his gun out, asked him repeatedly whether he had "anything" on him. Mr. Brooks kept answering no. The officer searched him and placed him in the back seat of the police car. Mr. Brooks saw the officers search his friend's car. After they searched the trunk, they came back to the police car with drugs and showed them to Mr. Brooks. Mr. Brooks testified that he had never seen the drugs before and did not know they were in the car.

¶ 16 Mr. Brooks denied running a red light, holding a bag of pills in his hand, or seeing cannabis on the floorboard. He stated that his friend let a lot of her family members drive the car, and he did not search the car or look in its trunk on the day in question.

¶ 17 On cross-examination, Mr. Brooks agreed that prior to borrowing the car, he did not look around to make sure there was not "anything" inside it. He stated that his friend "used a lot of drugs at the time." He also stated that right before he borrowed the car, his friend's brother had used it, and he agreed that the brother also had "drug issues."

¶ 18 The parties stipulated, for impeachment purposes, that Mr. Brooks had a prior conviction for possession of a controlled substance.

¶ 19 In closing, defense counsel argued, among other things, that the officers' testimony that

Mr. Brooks was holding a bag of pills at head level or level with the steering wheel was suspect and made no sense. The State countered that Mr. Brooks was not believable.

¶ 20 The trial court acquitted Mr. Brooks on the charge of possession of cannabis, finding that there was no evidence as to where the cannabis was located on the passenger side floorboard, whether it was in plain view from the driver's seat, or whether it was within Mr. Brooks's reach. As to the bag of pills, the court found as follows:

> "With respect to Count 1, the pills. I don't have any reasonable doubt that the defendant was holding the bag. I don't find the officers' version to be so farfetched as the defense wants me to believe. It makes sense if someone's panicking and by—I think that's what the defendant was doing, he panicked. He didn't think the cops were going to drive right alongside of him; they did, see it in his hand. Obviously, it wasn't—well, according to him, he saw it was a yellow light, but it seemed like he wasn't paying attention at all as he went through a red light. So he wasn't very aware of his surroundings.
>
> I found the defendant's demeanor to be pretty nervous, a little more than usual. I also did [*sic*] find his version of events to be credible; I found the police to be credible; and I can take his felony conviction into account, and I do, with respect to credibility."

The court found that the State proved possession beyond a reasonable doubt. However, the court concluded that intent to deliver had not been proved, due to the lack of evidence regarding how much BZP was consistent with personal use. Accordingly, the court found Mr. Brooks guilty of the lesser included charge of possession of a controlled substance.

¶ 21 Mr. Brooks filed a motion for a new trial, arguing that the officers' testimony was

improbable and contradictory, and that his own testimony was credible. The trial court denied the motion. Subsequently, the court sentenced Mr. Brooks to five years in prison. Mr. Brooks made an oral motion to reconsider his sentence, which the trial court denied.

¶ 22 II. JURISDICTION

¶ 23 Mr. Brooks was sentenced on July 28, 2016, and timely filed his notice of appeal that same day. This court has jurisdiction pursuant to article VI, section 6 of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6), and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases (Ill. S. Ct. R. 603 (eff. Feb. 6, 2013), R. 606 (eff. Dec. 11, 2014)).

¶ 24 III. ANALYSIS

¶ 25 On appeal, Mr. Brooks's primary challenge is to the sufficiency of the evidence to sustain his conviction. When reviewing the sufficiency of the evidence, the relevant inquiry is 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. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its own judgment on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). A reviewing court will not reverse a conviction simply because the defendant claims that a witness was not credible. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Rather, reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Where a finding of guilt depends on eyewitness testimony, a reviewing court, keeping in mind that it was the fact finder who saw and heard the witnesses,

must decide whether any fact finder could reasonably accept the witnesses' testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004).

¶ 26 Mr. Brooks contends that the State failed to prove he possessed a controlled substance because Officer Najm's and Officer Sego's testimony was too implausible to believe. Specifically, Mr. Brooks argues that the officers attributed to him "an act so contrary to human experience—*i.e.*, openly and gratuitously holding a bag of illegal drugs in his hand while driving right alongside a police car that was attempting to pull him over—that no rational trier of fact could have accepted it as true." According to Mr. Brooks, the officers' testimony describes such a bewildering act of self-sabotage that it taxes the gullibility of the credulous. Mr. Brooks further asserts that the officers contradicted each other in that Officer Najm testified Mr. Brooks was holding the bag of pills "up in the air *** a little lower than his head, or maybe head level," and Officer Sego testified Mr. Brooks "was holding the bag with the steering wheel in his hand." Insisting that he could not have been holding the bag near his head and against the steering wheel at the same time, Mr. Brooks argues that at least one officer's account of events must be untrue, thus calling into question the testimony of both officers. Mr. Brooks also maintains that the officers contradicted the arrest report, which included no reference to them seeing the bag of pills before they stopped the car. He concludes that he presented a more plausible account of the events in his own testimony at trial.

¶ 27 Mr. Brooks's arguments involve matters of credibility that are for the trial court to resolve in its role as trier of fact. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002). As noted above, it is the trier of fact who assesses the credibility of witnesses, the weight to be given their testimony, and the inferences to be drawn from the evidence, and who resolves conflicts or inconsistencies in the evidence. *Id.*; *Brooks*, 187 Ill. 2d at 131.

¶ 28 Here, the trial court heard Officer Najm, Officer Sego, and Mr. Brooks testify. When arguing the motion for a directed finding, Mr. Brooks asserted that Officer Najm and Officer Sego offered "extremely suspect evidence." In closing arguments, defense counsel insisted that the officers' testimony was suspect, "out there," and simply made no sense; asserted that they contradicted each other as to whether Mr. Brooks was holding the bag at head level or in the same hand with which he was holding the steering wheel; and argued it was strange and suspect that the police report said nothing about the officers seeing Mr. Brooks holding the bag while driving. Then, in his motion for a new trial, Mr. Brooks argued that his own testimony was credible while the officers' testimony was improbable, that the officers differed as to where the bag was positioned, and that the "crucial observation" of Mr. Brooks holding the bag while driving was not contained in the arrest reports.

¶ 29 The trial court rejected the challenge to the officers' credibility. When denying the motion for a directed finding, the court indicated it found the officers credible and consistent, and stated it did not find any significant impeachment at all. At the close of trial, the court stated that it found Officer Najm and Officer Sego to be credible, and Mr. Brooks not credible, based, at least in part, on his demeanor and prior felony conviction. The court also stated that it did not find the officers' version of events to be as "farfetched" as the defense claimed. Then, at the hearing on the posttrial motion, the court stated its decision at the close of trial had been correct, noting that "[a] lot of it was based on credibility or lack thereof." The trial court specifically addressed the issue of credibility several times, and each time found the officers credible despite the very arguments Mr. Brooks raises on appeal. The trial court, which saw and heard the witnesses testify, chose to believe Officer Najm and Officer Sego over Mr. Brooks, which was its role as the trier of fact. *People v. Moody*, 2016 IL App (1st) 130071, ¶ 52. We will not

substitute our judgment for that of the trial court on this question of credibility. *Brooks*, 187 Ill. 2d at 131.

¶ 30 We also reject Mr. Brooks's contention that the officers' testimony was necessarily contradictory. While Officer Sego did state that Mr. Brooks was holding both the bag and the steering wheel with his right hand, Officer Najm did *not* testify that Mr. Brooks kept holding the bag "near his head." Officer Najm's testimony on the subject, elicited on cross-examination, was as follows:

> "Q. Well, where, specifically did you see [the bag] in the defendant's hand, while you were driving?
>
> A. It was in his hand.
>
> Q. And was his hand at his waistband or lifted in the air?
>
> A. No, it was up—it was up in the air.
>
> Q. And would you say his hand was lifted in the air at a level higher than his head, at his head level, or lower than his head?
>
> A. I would say a little lower than his head, or maybe head level.
>
> ***
>
> Q. Did you see the defendant raise the bag up or lower the bag down, or was it always at his head level when you saw that bag?
>
> A. When I first saw the bag, it was at his head level. When the car stopped, he was attempting to place it into his waistband, so he was lowering it."

It was not impossible for Mr. Brooks to have been holding the steering wheel and the bag simultaneously (as described by Officer Sego), and also have the bag at head level or a little lower (as described by Officer Najm), and for him then to have lowered it to his waistband. The

officers' testimonies are not inherently contradictory.

¶ 31 We also reject Mr. Brooks's argument that the officers were incredible because their testimonies contradicted the arrest report. The portion of the report upon which Mr. Brooks relies provides, in relevant part, that after curbing Mr. Brooks's car for failing to stop at a red light, the arresting officers "approached to conduct a field interview at which time they observed the offender with a clear knotted plastic bag containing numerous pills in his right hand."

¶ 32 Mr. Brooks's position is that by using the words "at which time" in the police report, Officer Sego "clearly implie[d] that the officers first observed the baggie when they 'approached to conduct a field interview.' " However, "at which time" does not necessarily mean for the first time and the police could have observed the bag while the two cars were paralleling, observed it again when they approached the car on foot, and only included the second observation in the police report. That the police report does not track exactly with the officers' testimony does not mean their testimony is incredible. "A police report is meant to be a summary, not a blow by blow chronology of what occurred." *People v. Reed*, 243 Ill. App. 3d 598, 608 (1993). The police report is not fatally impeaching and did not preclude the trial court from finding the officers to be credible.

¶ 33 In sum, the evidence supporting Mr. Brooks's conviction could reasonably have been accepted by the trial court judge, who saw and heard Officer Najm, Officer Sego, and Mr. Brooks testify. Contrary to Mr. Brooks's arguments, in our view, this is not a case in which the description of the crime proffered by the State's witnesses was incredible on its face. Having heard the evidence, the trial court was convinced of Mr. Brooks's guilt beyond a reasonable doubt. After reviewing the evidence in the light most favorable to the prosecution, which we must, we conclude that the evidence was not "so unsatisfactory, improbable or implausible" as to

raise a reasonable doubt as to Mr. Brooks's guilt. *Slim*, 127 Ill. 2d at 307. Accordingly, Mr. Brooks's challenge to the sufficiency of the evidence fails.

¶ 34 Mr. Brooks's second contention on appeal is that the mittimus should be corrected to reflect that he was convicted of possession of a controlled substance, as opposed to possession of a controlled substance with intent to deliver. Currently, the mittimus indicates that Mr. Brooks was convicted of "MFG 10>15 PILLS ECSTASY/A," in violation of "720-570/401(C)(7.5)(II)." The trial court's pronouncement, however, was that Mr. Brooks was convicted of the lesser included offense of possession of between 15 and 200 pills containing BZP, which is a violation of section 402(a)(7.5)(A)(ii) of the Illinois Controlled Substances Act. 720 ILCS 570/402(a)(7.5)(A)(ii) (West 2016). The State appropriately concedes that the mittimus should be corrected.

¶ 35 Where the mittimus does not correctly reflect the conviction, the proper remedy is to amend the mittimus to conform to the judgment. *People v. Jackson*, 2016 IL App (1st) 133823, ¶ 77. A corrected mittimus can be issued at any time. *People v. Latona*, 184 Ill.2d 260, 278 (1998). Pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), and our authority to correct a mittimus without remand (*People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)), we direct the clerk of the circuit court to correct the mittimus to reflect that Mr. Brooks was convicted of the offense of possession of a controlled substance in violation of section 402(a)(7.5)(A)(ii).

¶ 36 IV. CONCLUSION

¶ 37 For the reasons explained above, we affirm the judgment of the circuit court and order correction of the mittimus.

¶ 38 Affirmed; mittimus corrected.