

No. 1-12-2959

**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).

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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. 12 CR 6620
	)	
KENDRICK GREEN,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Lampkin and Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm the trial court's conviction where the State proved defendant guilty beyond a reasonable doubt. We modify the fines and fees order and award defendant \$985 in presentence credit.

¶ 2 Following a bench trial, defendant, Kendrick Green, was convicted of delivery of a controlled substance. Thereafter, the court sentenced defendant to three years' imprisonment, ordered him to pay assessments totaling \$1,664, and awarded him 197 days credit for time served in presentence custody. On appeal defendant argues the State failed to prove him guilty beyond a reasonable doubt where the officer who observed the alleged offense provided improbable and unconvincing testimony, and that he is entitled to \$985 in presentence credit. We affirm the trial court's judgment, but modify the fines and fees order.

¶ 3 At the August 2012 bench trial, Chicago police officer Aaron Chappell testified that on March 6, 2012, at approximately 10:30 p.m., he was conducting surveillance in an undercover vehicle in the area of 99 South Springfield Avenue. From his vehicle, approximately 25 feet away from the corner of Monroe Street and Springfield Avenue, Officer Chappell had an unobstructed view of defendant and another male, later identified as Sergio Johnson, the codefendant, standing across the street. Officer Chappell heard defendant and Mr. Johnson call out: "I'm the candy man, I'm the candy man, it will cost you a sawbuck." Officer Chappell interpreted these statements as being related to the sale of narcotics. Officer Chappell acknowledged that at the preliminary hearing, he testified that only Mr. Johnson called out the statements.

¶ 4 As Officer Chappell continued his surveillance, he observed a male later identified as Andrew Robinson, approach defendant and Mr. Johnson. Officer Chappell could not see anything in Mr. Robinson's hands. However, the officer did see defendant give Mr. Robinson a "small packaged item." The package was small enough to fit between their fingertips. Officer Chappell then observed Mr. Robinson give Mr. Johnson money. As Mr. Robinson walked away, Officer Chappell could not see what Mr. Robinson had in his hand, or if he had anything in his pockets.

¶ 5 When Officer Chappell radioed for backup, two police officers stopped Mr. Robinson. Officer Chappell then radioed for additional police officers to stop defendant and Mr. Johnson, who were walking southbound on Springfield Avenue. The police officers who arrested defendant and Mr. Johnson did not recover any narcotics from the men and did not recover any money from defendant. Although the police officers found some money on Mr. Johnson, they did not seize it because it was Mr. Johnson's "personal property." Officer Chappell

acknowledged that in his police report, he did not mention the police officers found money on Mr. Johnson.

¶ 6 Chicago police officer Raul Hernandez testified that he and his partner, Officer Rivera, were in a marked police vehicle when Officer Chappell radioed them with a physical description of Mr. Robinson. Officers Hernandez and Rivera then approached Mr. Robinson in their police vehicle. Upon exiting their vehicle, the officers observed from approximately five to eight feet away that Mr. Robinson tossed a small object to the ground. Officer Hernandez recovered the item, which he described as a "clear, plastic bag containing suspect crack cocaine." Officer Chappell testified Officers Hernandez and Rivera showed him the recovered item, and it appeared to be similar to the item he observed defendant give to Mr. Robinson.

¶ 7 Officer Hernandez testified that, at the police station, he watched as Officer Rivera inventory the recovered item as number 125557077, then submit the recovered item to the Illinois State Police crime lab. The parties stipulated that Rosa Lopez, an Illinois State Police forensic chemist, would testify she received item number 125557077, which weighed 0.1 grams, and tested positive for the presence of cocaine.

¶ 8 Based on this evidence, the trial court found defendant guilty of unlawful delivery of a controlled substance. The trial court found the officers' testimony to be credible. The trial court noted that Officer Chappell observed the exchange between Mr. Robinson, defendant, and Mr. Johnson, from 25 feet away—a distance the court described as "close." The trial court then stated it was "sure" the package which Mr. Robinson disposed of when the police officers arrested him was the same package defendant had given to Mr. Robinson. Subsequently, the trial court denied defendant's motion for a new trial, sentenced him to three years imprisonment,

awarded him 197 days' credit for time served in presentence custody, and ordered him to pay certain fines and fees which totaled \$1,664. Defendant appeals.

¶ 9 Defendant first asserts the State presented insufficient evidence to support his conviction for unlawful delivery of a controlled substance. Specifically, defendant contends no rational trier of fact could have found he was engaged in the delivery of a controlled substance because Officer Chappell's testimony concerning the transaction between Mr. Robinson, Mr. Johnson, and defendant, was improbable and unconvincing.

¶ 10 When a defendant challenges the sufficiency of the evidence, this court must determine whether, considering all of the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). In doing so, we will not substitute our judgment for that of the trier of fact on issues relating to the weight of the evidence or witness credibility. *Brown*, 2013 IL 114196, ¶ 48. Rather, our duty is to carefully examine the evidence and note that the trier of fact had the opportunity to see and hear the witnesses. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). We will reverse a conviction only "where the evidence is so unreasonable, improbable, or unsatisfactory" as to create a reasonable doubt of defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 9 To sustain a conviction for unlawful delivery of a controlled substance, the State must prove a defendant knowingly delivered a controlled substance. *People v. Brown*, 388 Ill. App. 3d 104, 108 (2009) (citing 720 ILCS 570/401(d) (West 2006)). " 'Deliver' or 'delivery' means 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 2012).

¶ 10 In this case, the evidence supports the trial court's finding of guilt. Officer Chappell testified that from his unobstructed viewpoint in his undercover vehicle which was parked 25 feet away from defendant, Mr. Johnson, and Mr. Robinson, he observed defendant hand a "small packaged item" to Mr. Robinson and Mr. Robinson then giving Mr. Johnson money. Officer Hernandez testified that, in response to Officer Chappell's radio call, he and another officer approached Mr. Robinson and, from five to eight feet away, observed Mr. Robinson throw away an item wrapped in a plastic bag. Officer Chappell stated the recovered item appeared to be similar to the item he observed defendant hand Mr. Robinson. The parties stipulated that the recovered item later tested positive for the presence of cocaine.

¶ 11 Additionally, defendant argues Officer Chappell's version of events is improbable and unconvincing because: (1) a trained narcotics surveillance officer would not conduct his surveillance across the street from where the suspects were purportedly engaging in illegal sales; and (2) two drug sellers would not vocally advertise their criminal activity while unknown men sat in a vehicle nearby. Defendant also alleges Officer Chappell's claim—that he recognized the recovered item as the item he had observed pass between defendant and Mr. Robinson—is unconvincing because: the alleged transaction took place at 10:30 p.m.; the item was small enough to pass between the men's fingertips; and Officer Chappell was 25 feet away from where the transaction took place. However, the trial court had the opportunity to observe Officer Chappell's testimony and specifically found his testimony to be credible. The trial court noted Officer Chappell's proximity to the exchange, describing it as "close," and stated it was "sure" the package which Mr. Robinson disposed of and which officers recovered was the same

package defendant gave to Mr. Robinson. The trial court's statements made clear that it considered all of the evidence presented, weighed Officer Chappell's credibility and, ultimately, found defendant guilty. We will not substitute our judgment for that of the trier of fact on issues relating to the weight of the evidence or witness credibility. Rather, we will reverse only "where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *People v. Brown*, 2013 IL 114196, ¶ 48. We do not agree that this applies to the case at bar.

¶ 12 Defendant also asserts the fact that the officers did not recover drugs, money, or weapons from either defendant or Mr. Johnson further undermines Officer Chappell's testimony. Defendant contends if he and Mr. Johnson were advertising themselves as "candy men," they would have had an inventory of more narcotics to sell. We find defendant's argument unpersuasive. As the State points out, a plausible explanation exists for defendant not possessing any money—namely, that Mr. Robinson handed Mr. Johnson the money during the exchange. A plausible explanation also exists for neither Mr. Johnson nor defendant possessing any drugs, namely, that defendant was arrested after making his last sale of the day. Viewing the evidence in the light most favorable to the prosecution, as we must, we find a rational trier of fact could have found defendant guilty beyond a reasonable doubt of unlawful delivery of a controlled substance.

¶ 13 Defendant next contends he is entitled to \$985 in credit for time served in presentence custody as an offset against his fines. The State concedes defendant is entitled to the credit. We agree.

¶ 14 A defendant is entitled to a \$5 credit for each day served in presentence custody, not to exceed the amount of the fine assessed against him. 725 ILCS 5/110-14(a) (West 2012)); *People*

*v. Caballero*, 228 Ill. 2d 79, 88-91 (2008) (concluding the defendant was entitled to a \$5-per-day credit for time served in presentence custody as the time served in custody between his conviction and sentencing). Defendant was arrested on March 6, 2012, and remained in custody until he was sentenced on September 19, 2012. Thus, defendant served a total of 197 days in presentence custody. Although the trial court awarded defendant 197 days in sentencing credit, the court's order does not indicate it awarded defendant a corresponding \$5-per-day credit to be used to offset any assessed fines. The court imposed assessments totaling \$1,664, which included a \$1,000 controlled substances fine. 720 ILCS 570/411.2(a)(3) (West 2012). The \$5-per-day credit may be used to offset a controlled substance fine. *People v. Fort*, 373 Ill. App. 3d 882, 889 (2007). Accordingly, we find defendant is entitled to a \$985 credit for the 197 days he served in presentence custody to offset the \$1,000 fine he was assessed.

¶ 15 For the reasons stated, we amend the fines and fees order to award defendant a \$985 credit. We affirm the trial court's judgment in all other respects.

¶ 16 Affirmed as modified.