2014 IL App (1st) 123097-U

SECOND DIVISION
June 24, 2014

No. 1-12-3097

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. 10 CR 14951
	)	
RICKY WILLIAMS,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Simon and Pierce concurred in the judgment.

O R D E R

¶ 1 *Held*: The judgment of the trial court is affirmed where denial of defendant's motion to quash arrest and suppress evidence was proper, the evidence at trial was sufficient to convict, and the sentence is not excessive.

¶ 2 Following a bench trial, defendant Ricky Williams was convicted of manufacture or delivery of a controlled substance (more than 15 but less than 100 grams of heroin) and sentenced to 15 years in prison. On appeal, defendant contends that the trial court erred in

denying his motion to quash arrest and suppress evidence, that the evidence was insufficient to prove him guilty beyond a reasonable doubt, and that his sentence is excessive. For the reasons that follow, we affirm.

¶ 3 Defendant's conviction arose from the events of July 21, 2010. Prior to trial, defendant filed a motion to quash arrest and suppress statements. Two police officers testified at the hearing on the motion.

¶ 4 Chicago police officer Darius Reed testified that he had been a police officer for over six years and that his work primarily involved dealing with narcotics sales and violent gang offenders. As a result of his training, Officer Reed learned that certain mixing agents, particularly Dormin, a sleeping pill, are used to dilute the strength of heroin. He also learned that heroin is packaged in mini Ziploc bags and pieces of tinfoil. Over the course of his career, he had recovered heroin and related paraphernalia hundreds of times.

¶ 5 Officer Reed testified that on the morning of the day in question, he and his partner had a conversation at the police station with a "concerned citizen" regarding activities taking place at 5046 West Washington Blvd., Chicago. The citizen was not someone who had been arrested or who was "working off a case," but rather, had simply come in off the street with pertinent information. Officer Reed had had no contact with the citizen before. The citizen related that defendant, Debbie Williams, and an unknown black man were cutting, mixing, and bagging heroin in Unit 1A of the building at 5046 West Washington Blvd., and that after doing so, they would exit the rear of the building with a black bag in their hands. The citizen gave detailed descriptions of defendant and Debbie Williams. Officer Reed put that information into a computer database and came up with some photographs. The citizen identified defendant and Debbie Williams in those photographs.

¶ 6 Based on the information from the citizen, Officer Reed and about seven other team members relocated to the given address. Around 12:30 p.m., Officer Reed and his partner took up surveillance in the building's alley in plain clothes and a covert vehicle. They maintained constant radio contact with their fellow officers. About an hour into their surveillance, Officer Reed saw defendant and a man named Sedale Cummings exit the rear of the building. Defendant was holding a black plastic bag, which he handed to Cummings. Cummings placed the bag in a garbage can. The two men then walked down the alley.

¶ 7 After defendant and Cummings walked past the covert vehicle, Officer Reed radioed enforcement officers to detain them. Officer Reed saw Officers Herrera and Cantore detain defendant and Cummings. The men were not handcuffed at that time; they were being detained because the police did not want them to leave the area until they had investigated the contents of the black plastic bag. Officer Reed then radioed Officer Lagunas to recover the black plastic bag from the garbage can, which he did within less than a minute of defendant and Cummings being detained. The bag contained empty Dormin bottles, about 100 broken and empty Dormin capsules, tin foil, sandwich bags, and over 100 mini Ziploc baggies. After Officer Reed saw the contents of the bag, defendant and Cummings were placed into custody for possession of drug paraphernalia and advised of their *Miranda* rights. Defendant was then placed in a squad car, where he remained while the police continued their investigation. Defendant made two statements while inside the car.

¶ 8 Chicago police officer Michael Cantore testified that on the date in question, he and his partner were enforcement officers on the team investigating defendant. At some point, he received a radio transmission, describing defendant and directing him to detain him. Officer Cantore thereafter saw defendant and another man walking down the alley. He stopped

defendant and the other man and conducted a field interview, during which defendant gave his name and presented identification. At that time, Officer Cantore received a radio transmission from Officer Lagunas, stating that he had recovered drug paraphernalia from a black plastic bag that defendant had placed in a garbage can. Defendant was then placed into custody, handcuffed, and given *Miranda* warnings.

¶ 9 Following the hearing, the trial court denied the motion. In the course of doing so, the court made findings that the initial detention of defendant was proper and that the officers had probable cause to arrest defendant for possession of drug paraphernalia after they discovered the items in the black plastic bag.

¶ 10 At trial, Officer Reed testified that his work duties primarily involved narcotics and gang-related crimes. Over the course of his career, he had conducted hundreds of narcotics investigations involving heroin. He testified that based on his training and experience, he was familiar with how heroin was packaged: in mini Ziploc bags, tinfoil, or sandwich bags. He explained that items associated with heroin manufacturing, sale, and distribution include blenders; scales; strainers; razor blades and other things to cut the heroin; and "things that you would dilute it with like Dormin pills, dietary supplements, [and] anything you use to make it a little bit less potent."

¶ 11 Officer Reed testified that about 12:30 p.m. on the day in question, he and his partner were in a covert vehicle in an alley, conducting surveillance of as part of a narcotics investigation team. The investigation, which was focused on Unit 1A of an apartment building at 5046 West Washington Blvd., and in particular, defendant and his mother, Debbie Williams, was based on specific information about narcotics activity taking place at that location. After about an hour of surveillance, Officer Reed saw defendant and Sedale Cummings exit the rear of

the building. In the alley, defendant gave a black plastic bag to Cummings, who then placed the bag inside a garbage can. After defendant and Cummings walked past the officers' car, Officer Reed radioed enforcement officers to detain them. Defendant and Cummings were detained. Within a few moments, Officer Reed radioed Officer Lagunas to inspect the garbage can.

¶ 12 Officer Reed watched as Officer Lagunas recovered the black plastic bag from the garbage can. Over the radio, Officer Lagunas described the contents of the bag. Following further radio communication, defendant and Cummings were arrested for possession of drug paraphernalia. Defendant, who had $880 on his person, was placed in a police vehicle. When Officer Reed inspected the black plastic bag, he found that it contained empty Dormin bottles, broken empty Dormin capsules, and mini Ziploc bags with an apple design on them.

¶ 13 Shortly after defendant's arrest, Officer Reed and his partner relocated to the front vestibule of the apartment building. Officer Reed testified that just before 2 p.m., he saw Debbie Williams come out of Unit 1A with two small children. After Williams walked past and into the courtyard, Officer Reed radioed enforcement officers to conduct a field interview with her. As the enforcement officers were speaking with Williams, Officer Reed saw her reach into her purse and retrieve a white jar. One of the officers opened the jar, in which Officer Reed could see a white, slightly rocky substance, which was later determined to be heroin. Williams was placed into custody.

¶ 14 Following Williams' arrest, Officer Reed went to the police vehicle where defendant was and had a conversation with him. During the conversation, defendant "stated that that stuff is mine, the heroin is mine, it's not hers."

¶ 15 Officer Reed testified that while he was at the vehicle, defendant's sister, Angela Hendricks, exited Unit 1A carrying a large purse. The police detained Hendricks and recovered

$10,045 from her purse. Hendricks then gave verbal consent to search Unit 1A and signed a consent to search form. Officer Reed and other officers searched the apartment, during which they recovered a black book bag. The bag contained strainers; blenders; razor blades; cut-up playing cards, which Officer Reed explained "are used to make smaller the powder of the heroin"; a small baggie containing a white powder suspected to be heroin; digital scales; scissors; sandwich bags; mini Ziploc baggies; and cut tinfoil. The Ziploc bags containing the playing cards had the same red apple design on them that Officer Reed had observed on the baggies in the black plastic bag. The officers also recovered a shoebox, inside of which were cut pieces of tinfoil and a small baggie containing a white powdery substance suspected to be heroin. Finally, the officers recovered three photographs of defendant. They did not find any mail addressed to defendant in the apartment and did not find anything on his person linking him to the apartment. However, Officer Reed acknowledged that he did find proof of residency for someone else. When asked what proof he found, he stated, "I don't remember exactly. I want to say it was a piece of mail for Debbie Williams."

¶ 16 After the police completed the search of the apartment, Officer Reed had another conversation with defendant in the police vehicle. According to Officer Reed, defendant "related that the stuff was his. He said the money too was also his. And he also related that it's our job, we the police and he's a drug dealer and it's our job to catch him." On cross-examination, Officer Reed agreed that defendant "twice admitted to [him] verbally that the heroin that (a), was found in his mother's purse, and (b), the heroin that was found in 5046 was his."

¶ 17 Chicago police sergeant Edward Sullins testified that he was part of the narcotics investigation of 5046 West Washington Blvd. and was present when defendant was talking to Officer Reed in the police car in the alley. According to Sergeant Sullins, "The defendant

essentially stated that all the stuff that we had found was his, that the money belonged to him. He also stated something to the effect that 'you all just doing your job.' You know, 'you the police, I'm the bad guy, I'm the drug dealer,' something essentially to that effect, 'it's your job to catch me.' "

¶ 18 The parties stipulated that if called, Officer Buckner would have testified that on the date in question, she recovered a jar from Debbie Williams that contained a knotted plastic bag of chunky white powder, suspect heroin. The parties further stipulated that if called, Officer Cantore would have testified that he recovered a small knotted plastic bag containing white powder, suspect heroin, from a black book bag. The parties stipulated that the items were inventoried and a proper chain of custody was maintained. Further, the parties stipulated that a forensic chemist would have testified that the substance recovered from the jar tested positive for the presence of heroin and weighed 101 grams, while the substance recovered from the black book bag tested positive for the presence of heroin and weighed 43.5 grams.

¶ 19 Defendant submitted a certified copy of his application for and renewal of his State identification indicating an address at the time of his arrest of 3648 West Polk Street, Chicago. Finally, the parties stipulated that if called, a keeper of records for People's Gas would have testified that on the date in question, the subscriber for Unit 1A was Angela Hendricks.

¶ 20 Following closing arguments, the trial court found defendant guilty of manufacture or delivery of a controlled substance with respect to the heroin found inside Unit 1A. Defendant was found not guilty with respect to the heroin recovered from Debbie Williams' purse. The trial court subsequently sentenced defendant to 15 years in prison.

¶ 21 Defendant's first contention on appeal is that the trial court erred in denying his motion to quash arrest and suppress evidence. He argues that the informant's tip upon which the police

relied lacked reliability and corroboration and that therefore, the police did not have a reasonable, articulable suspicion that he had committed or was about to commit a crime so as to justify stopping him. Defendant further argues that the police did not have probable cause to arrest him. He reiterates that the informant's tip lacked veracity, reliability, and corroboration, and adds an argument that the items found in the bag in the garbage were innocuous objects that did not give the officers probable cause.

¶ 22 The State maintains that defendant has waived this issue for review because he failed to raise it in his motion for a new trial. While it is true that in general, in order to preserve an issue for appeal, an objection must be raised at trial and in a posttrial motion (*People v. Enoch*, 122 Ill. 2d 176, 185 (1988)), our supreme court recently held in *People v. Cregan*, 2014 IL 113600, ¶¶ 15-20, that where a defendant appeals the denial of a motion to quash arrest and suppress evidence based on an alleged constitutional violation, the claim is not forfeited despite the failure to include it in a posttrial motion. The *Cregan* court explained that forfeiture is inapplicable where the unpreserved claim involves a constitutional issue that was properly raised at trial and may be raised later in a postconviction motion, and that it is a matter of judicial economy to decide the issue on direct appeal "rather than requiring a defendant to raise it in a separate postconviction petition." *Id*. at ¶ 18.

¶ 23 When reviewing a trial court's ruling on a motion to suppress, we give great deference to the trial court's findings of fact and will reverse those findings only if they are against the manifest weight of the evidence. *Cregan*, 2014 IL 113600, ¶ 22. However, the trial court's legal ruling on whether evidence should be suppressed is reviewed *de novo*. *Id*. Here, no factual or credibility dispute exists. Accordingly, our review is *de novo*.

¶ 24 Under the fourth amendment, people are guaranteed the right to be free from unreasonable searches and seizures. *People v. Sorenson*, 196 Ill. 2d 425, 432 (2001). However, not every encounter between the police and a private citizen results in a seizure. *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006). Our supreme court has divided police-citizen encounters into three tiers: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions, or *Terry* stops, which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) consensual encounters, which involve no coercion or detention and thus do not implicate fourth amendment interests. *Luedemann*, 222 Ill. 2d at 544. In the instant case, the parties agree that the encounter between defendant and the police was a *Terry* stop that evolved into an arrest.

¶ 25 In *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968), the Supreme Court held that police officers may stop a person briefly for temporary questioning where the officer reasonably believes that the person has committed or is about to commit a crime. *Sorenson*, 196 Ill. 2d at 432; *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 13. To justify making a *Terry* stop, a police officer must be able to point to specific and articulable facts which, combined with the rational inferences from those facts, reasonably warrant the intrusion. *People v. Thomas*, 198 Ill. 2d 103, 109 (2001). While the facts need not rise to the level of probable cause, a mere hunch is insufficient. *Thomas*, 198 Ill. 2d at 110. Whether a *Terry* stop is reasonable is determined by an objective standard, and the facts are viewed from the perspective of a reasonable officer at the time of the stop. *Sanders*, 2013 IL App (1st) 102696, ¶ 14. On appeal, a reviewing court must be mindful that the decision to make a *Terry* stop is a practical one based on the totality of the circumstances. *Id*.

¶ 26 A police officer may initiate a *Terry* stop based upon information received from a member of the public. *Sanders*, 2013 IL App (1st) 102696, ¶ 15. In general, information provided by a "concerned citizen" is considered more credible than information from a paid informant or a person who provided the information for personal gain. *Id*. However, even when a police officer receives information from an identified informant, some corroboration or other verification of the reliability of the information is required. *Id*. A tip that includes predictive information and readily observable details will be deemed more reliable if the details are confirmed or corroborated by the police. *Id*.

¶ 27 In the instant case, Officer Reed received information from a concerned citizen who was not a paid informant or someone who stood to gain personally from talking to the police. The citizen met with Officer Reed and his partner in person and related that defendant, Debbie Williams, and an unknown man were cutting, mixing, and bagging heroin in Unit 1A of the building at 5046 West Washington Blvd., and that after doing so, they would exit the rear of the building carrying a black bag. The concerned citizen gave detailed descriptions of defendant and Debbie Williams and then identified them in photographs provided by the police. Acting on this tip, the police went to the given address and saw defendant and a second man leaving the rear of the building with a black plastic bag. Thus, the details provided by the concerned citizen were confirmed and corroborated by the officers' observations. Under the totality of the circumstances, we find that the information in the tip was sufficiently reliable to allow an officer to reasonably infer that defendant was involved in criminal activity and to justify a *Terry* stop.

¶ 28 Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the suspect has committed a crime. *People v. Jackson*, 232 Ill. 2d 246, 275 (2009). The existence of probable cause depends

upon the totality of the circumstances at the time of the arrest. *People v. Love*, 199 Ill. 2d 269, 279 (2002). The standard for determining whether probable cause exists is probability of criminal activity, not proof beyond a reasonable doubt. *People v. Lee*, 214 Ill. 2d 476, 485 (2005). A police officer's factual knowledge, based on prior law-enforcement experience, is a relevant factor when considering whether probable cause existed at the time of arrest. *People v. Harris*, 352 Ill. App. 3d 63, 67 (2004). In addition, "[w]hen police officers are working in concert in investigating a crime or possible crime, probable cause may be established from their collective knowledge, even if it is not within the personal knowledge of the arresting officer." *People v. Walter*, 374 Ill. App. 3d 763, 775 (2007).

¶ 29 Here, the officers were acting on a tip that defendant was cutting, mixing, and bagging heroin at a particular address, and that he would exit the back of the building with a black plastic bag. After observing defendant leave the rear of the building with such a bag and watching his companion place the bag in the garbage, Officers Cantore and Herrera initiated a *Terry* stop. While they were conducting a field interview with defendant, Officer Lagunas recovered the black plastic bag from the garbage and discovered that it contained empty Dormin bottles, about 100 broken and empty Dormin capsules, tin foil, sandwich bags, and over 100 mini Ziploc baggies. Officer Reed provided testimony, based on his training and experience, that sleeping pills such as Dormin are used as mixing agents to dilute the strength of heroin, and that heroin is packaged in mini Ziploc bags and pieces of tinfoil. After the contents of the bag were discerned, defendant was placed under arrest. Given the totality of the circumstances in this case, we find that at the time of arrest, a reasonably cautious person would believe that defendant was committing a crime. See *Jackson*, 232 Ill. 2d at 275. Therefore, the officers had probable cause

to arrest defendant and the trial court did not err in denying defendant's motion to suppress the statements made following the arrest.

¶ 30 Defendant's second contention on appeal is that the evidence was insufficient to prove him guilty beyond a reasonable doubt. Specifically, defendant argues that the State did not establish constructive possession of the heroin found in the black book bag. He asserts that he did not have control or dominion over the premises where the drugs were found, as the only evidence linking him to the apartment were photographs of him. He also argues that his alleged statement that "the stuff is mine" should not be credited because he did not see the police recover the heroin and there was no evidence that this statement pertained to the heroin found in the apartment. Finally, defendant argues that because the State did not present any evidence that he had knowledge of the drug paraphernalia found in the garbage bag, the trial court should not have relied on the circumstance that the paraphernalia matched the contraband recovered from inside the apartment.

¶ 31 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 judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). Reversal is justified 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).

¶ 32 Section 401 of the Illinois Controlled Substances Act provides, in relevant part, that "it is unlawful for any person knowingly to manufacture or deliver, or possess with intent to manufacture or deliver, a controlled substance." 720 ILCS 570/401 (West 2010). Possession may be actual or constructive and is often proved with circumstantial evidence. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Where a case is based on circumstantial evidence, it is not necessary for each link in the chain of circumstances to be proved beyond a reasonable doubt; it is sufficient if all the evidence, considered collectively, satisfies the trier of fact beyond a reasonable doubt that the defendant is guilty. *People v. Hall*, 194 Ill. 2d 305, 330 (2000).

¶ 33 Constructive possession – which is at issue in the instant case – exists where a defendant has the intent and capability to maintain control and dominion over the contraband, and may be proved with evidence that the defendant had knowledge of the presence of the contraband and had immediate and exclusive control over the area where the contraband was found. *Love*, 404 Ill. App. 3d at 788. Knowledge may be inferred from surrounding circumstances, such as the defendant's actions, declarations, or other conduct, which indicate that the defendant knew the contraband existed in the place where it was found. *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002); *People v. Smith*, 288 Ill. App. 3d 820, 824 (1997). Hiding drugs indicates an intent to exercise control over them. *McLaurin*, 331 Ill. App. 3d at 503.

¶ 34 In the instant case, the State introduced ample circumstantial evidence of defendant's constructive possession of the heroin found in the black book bag in Unit 1A. First, while it was not proved that defendant lived in Unit 1A, defendant acknowledges that his mother and sister lived at that address. He was seen exiting the building, and his photographs were found inside the unit. Thus, defendant had a connection to the apartment. Second, certain pieces of drug paraphernalia recovered from the black plastic bag defendant carried out of the building matched

items recovered from the black book bag. Specifically, both bags contained Ziploc bags with a red apple design on them. Third, and most important, defendant admitted to the police that the heroin found inside the apartment was his. Officer Reed testified that after the police completed their search of the apartment, he had a conversation with defendant during which defendant "related that the stuff was his. He said the money too was also his. And he also related that it's our job, we the police and he's a drug dealer and it's our job to catch him." On cross-examination, Officer Reed specifically agreed that defendant admitted to him that "the heroin that was found in 5046 was his." Sergeant Sullins also testified that he was present for the conversation and heard defendant state "that all the stuff that we had found was his, that the money belonged to him." Viewing this evidence in the light most favorable to the prosecution, we find that a rational trier of fact could conclude that defendant constructively possessed the heroin. Accordingly, the evidence was sufficient to support defendant's conviction.

¶ 35 Defendant's final contention on appeal is that his sentence is excessive. He argues that the 15-year sentence is an abuse of discretion because he lacked culpability and the sentence is inconsistent with the objective of returning him to useful citizenship. Defendant further argues that the sentence is excessive in light of several mitigating factors, in particular, his age, the fact that he did not cause or threaten serious physical harm to anyone, and that he "did not have a significant role in the offense."

¶ 36 Sentencing decisions are entitled to great deference on appeal because the trial court is in a superior position to fashion an appropriate sentence based on firsthand consideration of relevant sentencing factors, including the defendant's credibility, demeanor, moral character, mentality, social environment, habits, and age. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). We will not disturb a sentencing determination absent an abuse of discretion. *People v. Hauschild*,

226 Ill. 2d 63, 90 (2007). Sentences within the permissible statutory range may be deemed the result of an abuse of discretion only where they are "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 37 Here, the record indicates that the trial court was well aware of the underlying facts of the case, including that defendant was not discovered in actual possession of the heroin and that he did not physically harm or threaten to harm anyone. The trial court was also aware that defendant was 30 years old at the time of the offense, as information regarding defendant's age was included in the presentence investigation report considered by the trial court. In addition, in mitigation, defense counsel noted defendant's age, status as a father, and family history. Where mitigating evidence has been presented, it is presumed that the trial court considered it. *People v. Sven*, 365 Ill. App. 3d 226, 242 (2006).

¶ 38 In contrast to the mitigation presented, in aggravation, the State highlighted defendant's criminal history, including convictions for possession of a controlled substance in 2009 and 1997, and several violations of probation.

¶ 39 The trial court sentenced defendant to 15 years' imprisonment, a term within the permissible statutory range for manufacture or delivery of a controlled substance (more than 15 but less than 100 grams of heroin), which is 6 to 30 years. 720 ILCS 570/401(a)(1)(A) (West 2010). Moreover, as noted by the State, defendant was subject to section 408(a) of the Illinois Controlled Substances Act, which provides that any person "convicted of a second or subsequent offense under this Act may be sentenced to imprisonment for a term up to twice the maximum term otherwise authorized." 720 ILCS 570/408(a) (West 2010). Thus, the applicable sentencing range for defendant was 6 to 60 years in prison. The record indicates that the trial court properly

considered the evidence in aggravation and mitigation. Given the facts of the case, the interests of society, and the trial court's consideration of relevant aggravating and mitigating factors, we cannot find that defendant's sentence is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210. Accordingly, we find no abuse of discretion in the length of defendant's sentence.

¶ 40 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 41 Affirmed.