

No. 1-12-2117

**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. 11 CR 5395
	)	
JIHAD MACKEY,	)	Honorable
	)	Thomas Hennelly,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE CONNORS delivered the judgment of the court.  
Justices Hoffman and Cunningham concurred in the judgment.

**O R D E R**

¶ 1 **Held:** The court did not err when it denied defendant's motion to quash arrest and suppress evidence on the basis that the plain view exception to the warrant requirement applied in this case; the officer's testimony that defendant admitted to ownership of contraband is not contrary to human experience and is sufficient to sustain defendant's conviction.

¶ 2 Following a bench trial, defendant Jihad Mackey was convicted of possession of a controlled substance in violation of section 402(c) of the Illinois Controlled Substances Act (720

ILCS 570/402(c) (West 2010)), and sentenced to 18 months in prison. On appeal, defendant argues that the trial court erred when it applied the plain view exception to the warrant requirement to this case because the incriminating nature of the contraband was not "immediately apparent." Defendant also maintains that the State failed to prove him guilty of possession of a controlled substance beyond a reasonable doubt because the arresting officer's testimony was contrary to human experience. We affirm.

¶ 3 Defendant was charged with possession of a controlled substance with intent to deliver in violation of section 401(f) of the Illinois Controlled Substances Act (720 ILCS 570/402(f) (West 2010)), in that he "unlawfully and knowingly possessed with intent to deliver \*\*\* 215.5 grams of substance containing a certain controlled substance, to wit: hydrocodone."

¶ 4 In a motion to quash arrest and suppress evidence, defendant argued that his fourth amendment rights were violated when the police conducted an unlawful traffic stop and performed an unreasonable search and seizure of his person and a car in which he was a passenger. At the hearing on the motion, defendant presented the testimony of Chicago police officer Kathleen McGreal. Officer McGreal testified that after conducting a lawful traffic stop, she smelled marijuana while approaching the passenger side of the car. She observed defendant sitting in the passenger side of the car, and he told her that he had been smoking marijuana. She performed a protective pat-down of defendant, and recovered a bag of marijuana from his sock. After placing defendant in custody, Officer McGreal observed a bag of yellow pills in the back seat. Based on her experience as a police officer she suspected that the pills were narcotics. She called another officer who performed an internet search of the code imprinted on the pills. The trial court found that Officer McGreal's testimony was credible and there was probable cause to arrest defendant. The court also found that the pills that were recovered "were in plain view, that

there was no search, and [Officer McGreal] saw [the pills] as she was placing the defendant under arrest for his admission and for what she observed through her olfactory senses.

Therefore, she had a right to see what she saw." The trial court denied defendant's motion to quash arrest and suppress evidence.

¶ 5 At trial, Officer McGreal provided further detail of her version of events. She testified that on March 12, 2011 she and her partner stopped defendant and the driver of the vehicle after the driver failed to use a turn signal when changing lanes. Upon approaching the passenger window, she smelled burnt cannabis. Defendant admitted to McGreal that he had just finished smoking marijuana. She asked defendant to step out of the car, and she performed a protective pat down of defendant's person. Officer McGreal uncovered a bag of cannabis in his right sock. She asked defendant about the bag, and he responded that "it was a bag of weed that he forgot he had." After this admission, McGreal immediately placed defendant into custody. McGreal then noticed an unzipped black book bag in the backseat with a clear plastic bag of yellow pills sticking out of the top. McGreal, who had been an officer for over ten years, suspected the pills to be narcotics due to her experience as a police officer. She called the police station to have another officer run an internet search, and confirmed that they were hydrocodone according to the number on the pill. Officer McGreal asked defendant and the driver who the pills belonged to, and defendant eventually responded that they were his and that he would "take the fall" for it. The officer asked if he had a prescription for the pills, but he could not produce one.

¶ 6 The parties stipulated to the chain of custody of the pills. The parties also stipulated that the 500 yellow pills that were recovered contained the narcotic hydrocodone and weighed 215.5 grams.

¶ 7 Defendant testified that he was a passenger in a car when Officer McGreal pulled the car over. However, he denied that he told McGreal that he had been smoking marijuana. He stated that McGreal patted him down, found a small bag of marijuana, and arrested him. She then showed defendant a bag of pills, but defendant did not make any statement regarding the pills. He also claimed that neither the bag of pills nor the book bag belonged to him.

¶ 8 The trial court considered both testimonies, and found Officer McGreal's version of events to be more credible than defendant's. The court specifically stated:

"considering the testimony of the witnesses and in judging their credibility, I've taken into account their ability and opportunity to observe, their memory, manner, and demeanor while testifying, and any interest, bias, or prejudice they may have, and the reasonableness of their testimony considered in light of all the other witnesses and the evidence in this case. It merely comes down to a matter of who I believe, and \*\*\* the Court finds Officer McGreal to be credible. I believe Officer McGreal's version of events, not the defendant."

¶ 9 In regards to ownership, the court stated that "I do believe \*\*\* that 'I will take the fall for that,' in my view, indicates that it is his narcotics, his hydrocodone or I think it's commonly referred to as Vicodin." However, the court did not believe that the State presented sufficient evidence that defendant intended to deliver the pills, and convicted him of the lesser included offense of possession of a controlled substance. The court sentenced defendant to 18 months in prison.

¶ 10 Defendant subsequently filed a motion to reconsider. In the motion, defendant argued that the State did not present sufficient evidence to prove that defendant was in possession of the pills beyond a reasonable doubt. Defendant argued that Officer McGreal's testimony was

"wholly inconsistent" and the State's evidence failed to assert the necessary elements of the charged offense. Defendant did not challenge the search, and whether the plain view exception applied.

¶ 11 On appeal, defendant first contends that because the criminal nature of the pills was not apparent, Officer McGreal's search failed to meet the plain view exception to the warrant requirement.

¶ 12 Initially, we note that defendant argues that although he failed to challenge the search in a post-trial motion, this issue is properly before the court because whether a search took place is a constitutional issue that he introduced in his motion to suppress. See *People v. Enoch*, 122 Ill. 2d 176, 190 (1988) (holding that "when the defendant fails to comply with the statutory requirement to file a post-trial motion, our review will be limited to constitutional issues which have properly been raised at trial and which can be raised later in a post-conviction hearing petition (Ill. Rev. Stat. 1983, ch. 38, par. 122-1 (now codified as 725 ILCS 5/122-1 (West 2012)), sufficiency of the evidence, and plain error."); *People v. Cregan*, 2014 IL 113600, ¶ 10.

Alternatively, he argues that if the issue was forfeited; the issue is reviewable as plain error. Ill S. Ct. R. 615 (a)(eff. Aug. 27, 1999). Whether we review for constitutional violation or plain error, we must first consider whether an error occurred at all. See *People v. Herron*, 215 Ill 2d 167, 178-79 (2005).

¶ 13 When reviewing a trial court's ruling on a motion to suppress evidence, we will uphold factual findings unless they are against the manifest weight of the evidence, but we review *de novo* the ultimate legal question of whether suppression was warranted. *People v. Absher*, 242 Ill. 2d 77, 82 (2011). A reviewing court may consider evidence presented at trial to determine

whether it was proper to deny a motion to suppress. *People v. Strong*, 316 Ill. App. 3d 807, 813 (2000).

¶ 14 The fourth amendment to the United States Constitution (U.S. Const., amend. IV) protects persons from unreasonable searches and seizures. *People v. Jones*, 215 Ill. 2d 261, 268 (2005). Generally, a search and seizure is reasonable only if the government has first obtained a warrant that authorizes the action. *People v. Rucker*, 294 Ill. App. 3d 218, 223 (1998). Stopping an automobile for a minor traffic violation does not by itself justify a search of the detainee or his vehicle; the officer must reasonably believe that he is confronting a situation more serious than a routine traffic violation. *Jones*, 215 Ill. 2d at 271. An officer may seize an object without a warrant pursuant to the plain view doctrine. This doctrine is an established exception to the prohibition against warrantless searches that allows an officer to seize incriminating evidence that is in plain view. *Rucker*, 294 Ill. App. 3d at 223. The plain view doctrine allows a police officer to seize an object without a search warrant provided that the officer is (1) lawfully located in the place where he observed the object, (2) the object is in plain view, and (3) the object's incriminating nature is immediately apparent. *People v. Garcia*, 2012 IL App (1st) 102940, ¶ 4. The “immediately apparent” or “probable cause” element does not require that an officer “know” that the item he sees is contraband or evidence of a crime; there need be only sufficient evidence to justify the reasonable belief that the defendant has committed or is committing a crime. *Jones*, 215 Ill. 2d 261, 273-274. The reasonable belief necessary to justify a seizure is the same that would justify a finding of probable cause. *People v. Haycraft*, 349 Ill. App. 3d 416, 424 (2004).

¶ 15 We find that defendant's fourth amendment rights were not violated and the court did not err when it determined that the bag of pills were in plain view. In this case, defendant does not challenge whether the traffic stop was valid or whether the object was in plain view. Instead,

defendant argues that the incriminating nature of the bag of pills was not immediately apparent. After finding marijuana in defendant's left sock, Officer McGreal placed defendant in custody. She observed a book bag which contained a plastic bag with 500 yellow pills which she believed to be narcotics. McGreal testified that she suspected that the pills were contraband based on her ten years of experience as a Chicago police officer and called the police station to verify what they were. After reviewing the record, we find that the incriminating nature of the bag of pills was immediately apparent. Although McGreal decided to conduct further investigation of the pills by calling another officer, this did not invalidate her initial belief that the pills were narcotics. She simply confirmed her suspicion by calling another officer to run an internet search to verify that the pills were in fact narcotics. Thus, the plain view exception to the warrant requirement is still applicable in the instant case where the officer believed the pills to be narcotics, and further investigated to confirm her belief. Therefore, defendant's motion to quash arrest and suppress evidence was properly denied. Finding no error, we need not consider whether there was plain error for the purpose of determining whether the defendant waived the issue. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007); see also *People v. Chapman*, 194 Ill. 2d 186, 226 (2000).

¶ 16 Defendant cites two out-of-state cases, *Burkett v. State*, 785 N.E. 2d 276, 277 (Ind. Ct. App. 2003) and *State v. Pinion*, No. 01-CA-006, 2001 WL 1346130 (Ohio App. Dec. 3, 2001) to argue that the incriminating nature of the yellow pills was not immediately apparent. First, we note that *Pinion* is an unpublished opinion with limited precedential value in Ohio, and none in Illinois. Moreover, we find both cases distinguishable. In *Burkett*, the defendant was found in possession of an amber-colored pill bottle containing only five and one-half yellow pills. In *Pinion*, the defendant was in possession of an unlabeled medicine bottle containing 68 pills. In

both cases, the criminal identity of the pills was not immediately apparent as they reasonably could have been prescribed to the defendant. However, as mentioned above, in the instant case defendant was found in possession of an unlabeled clear plastic bag containing 500 pills, the extremely large quantity and packaging made it immediately apparent that the pills were most likely not prescribed to him and gave Officer McGreal probable cause to believe the pills were narcotics. Thus, these cases are distinguishable from the instant case.

¶ 17 We also note that this case is factually similar to *People v. Humphrey*, 361 Ill. App. 3d 947. In *Humphrey*, the arresting officer testified that, after conducting a routine traffic stop, he observed a small, clear plastic container holding several hundred small white tablets partially under the passenger seat and partially visible at the passenger's feet. The officer testified that based on his training as an officer he believed that the pills "could possibly be contraband," but this was "due to the amount" of pills. *Id.* at 950-951. The officer also stated that he did not know what the pills were, and was not sure if "possession of the pills was an arrestable offense." *Id.* Thus, the court found that the plain view exception did not apply. *Id.* However, in this case upon viewing the pills, the officer immediately believed the pills were contraband and that possession of the pills was criminal.

¶ 18 Next, defendant alternatively contends that the State failed to prove defendant guilty of possession of a controlled substance beyond a reasonable doubt because it is contrary to human experience that defendant would admit that the bag of pills belonged to him, and that Officer McGreal's uncorroborated testimony was contradicted by defendant's testimony.

¶ 19 When a defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question on review is whether, after considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime proven

beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). The trier of fact determines the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). A conviction will only be overturned where the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8.

¶ 20 The State presented sufficient evidence to prove defendant guilty of possession of a controlled substance, and defendant's admission to Officer McGreal is not contrary to human experience. During trial, Officer McGreal testified that she conducted a traffic stop in which defendant was the passenger of the car, and as she was approaching the passenger side of the car where defendant was sitting, she smelled burnt cannabis. Defendant admitted to McGreal that he had just finished smoking marijuana. Officer McGreal uncovered a bag of cannabis in his right sock during a protective pat down. She asked defendant about the bag, and he responded that "it was a bag of weed that he forgot he had." After placing defendant in custody, the officer observed the bag of pills, and defendant admitted that the pills belonged to him. Defendant claimed that neither the bag of pills nor book bag belonged to him, and that he did not make a statement to the officer. The court ultimately found that officer McGreal's testimony was credible, stating "[i]t merely comes down to a matter of who I believe, and \*\*\* the Court finds Officer McGreal to be credible. I believe Officer McGreal's version of events, not the defendant." Defendant argues that Officer McGreal's testimony was incredible because it is contrary to human experience that defendant, who had no prior drug related convictions, would admit that he was smoking marijuana and that the bag of pills belonged to him. We disagree.

¶ 21 After reviewing the record and viewing the evidence in the light most favorable to the State, we find that a rational trier of fact could have found the evidence sufficient to find defendant guilty of possession of a controlled substance. Here, Officer McGreal testified that defendant, admittedly under the influence of marijuana, confessed to possession of both marijuana and a readily visible bag of 500 pills in his possession. Defendant claimed that neither the bag of pills nor book bag belonged to him, and that he did not make a statement to the officer. It was for the fact finder to assess the credibility of both Officer McGreal's and defendant's testimony, and the trial court found the officer's testimony more credible. Based on the evidence before us, we cannot say that Officer McGreal's testimony was improbable, unconvincing, and contrary to human experience. *Beauchamp*, 241 Ill. 2d at 8. We believe that it is not contrary to human experience that defendant, when found in possession of illegal drugs, would simply confess ownership of the contraband. Accordingly, we defer to trial court's judgments that Officer McGreal presented credible testimony in this case as it is in the best position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony. *People v. Slater*, 228 Ill. 2d 137, 151 (2008). Additionally, contrary to defendant's contention, we find that the trial court's determination that defendant's oral confession that "I will take the fall for that" was sufficient evidence to establish the element of possession in this case.

¶ 22 For the foregoing reasons, we affirm the judgment of the Circuit court of Cook County.

¶ 23 Affirmed.