

No. 1-14-1826

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 CR 16461
)	
KENSEAN WILLIAMS,)	Honorable
)	Vincent M. Gaughan,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence established beyond a reasonable doubt that defendant was guilty of unlawful possession of contraband in a penal institution.

¶ 2 Following a bench trial, defendant Kensean Williams was found guilty of unlawful possession of contraband (a dangerous weapon) in a penal institution and was sentenced to 5½ years' imprisonment. On appeal, defendant contends the evidence failed to establish his knowledge of and control over the presence of the weapon in his prison cell. Defendant also challenges the imposition of certain fees. We affirm defendant's conviction and direct the clerk of the circuit court to correct the fines and fees order.

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¶ 3 Defendant was charged with unlawful possession of contraband in a penal institution in violation of section 31A-1.1(b)(2) of the Criminal Code of 2012. 720 ILCS 5/31A-1.1(b) (West 2012). The indictment charged that defendant possessed "a dangerous weapon, to wit: a shank" while being imprisoned in Cook County jail.

¶ 4 Raymond Callahan, a correctional officer for the Cook County Sheriff's Department, testified at trial that on August 3, 2013, he was assigned to Division Six at Cook County jail. On that date, defendant (whom Officer Callahan identified at trial) was housed in cell number 11 in "Segregation 1P" and had occupied the cell without a cellmate for approximately one week. At 12:21 p.m., on that same date, Officer Callahan searched defendant's cell and found a brown paper commissary bag lying on the floor of the cell next to defendant's bunk. The bag contained "what seemed to be a shank, two spoons wrapped up with bed sheets with a sharpened piece of tile at the end of it." The bag also contained "personal property" including socks and papers. Officer Callahan had not previously searched defendant's cell. Officer Callahan identified the State's exhibit number 1 as the shank found in defendant's cell and it was admitted into evidence.

¶ 5 On cross-examination, Officer Callahan confirmed that there are 900 inmates housed at Division Six, and inmates are allowed movement in and out of their cells. Officer Callahan prepared a written report about the search of defendant's cell. The report mentioned "shower supplies," but did not mention that he had found personal items in the commissary bag. He was alone when he searched defendant's cell. Defendant was not in his cell at the time of the search. Officer Callahan did not take photographs or use a video camera during the search of defendant's cell. He did not witness defendant touching the commissary bag. Officer Callahan did not inventory the items contained in the bag, other than the shank.

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¶ 6 On redirect examination, Officer Callahan testified that no other inmates were allowed inside of defendant's cell and that he had never seen any other inmate inside defendant's cell. On recross-examination, Officer Callahan testified that he had not watched defendant's cell over the duration of the prior week and he did not know who was in defendant's cell when defendant was not there.

¶ 7 The defense rested without presenting evidence. The trial court found that the State had proved each element of the offense charged and entered a guilty finding.

¶ 8 Defendant was sentenced to 5½ years' imprisonment. The State asked the trial court to impose a fee for defendant's appointed counsel. The trial court then asked the Assistant Public Defender (APD) how many times he had appeared on defendant's behalf. The APD replied that he had appeared ten times. The trial court ruled that a fee of "\$250 would be appropriate." Defendant now appeals.

¶ 9 On appeal, defendant argues that the evidence was insufficient to prove beyond a reasonable doubt that he knowingly had constructive possession of the shank found in his cell.

¶ 10 "To establish defendant's guilt of possession of contraband in a penal institution ***, the State was required to prove that he knowingly possessed contraband ***, regardless of the intent with which he possessed it." *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 21 (citing 720 ILCS 5/31A-1.1(b) (West 2010)). "Once a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review *all of the evidence* is to be considered in the light most favorable to the prosecution." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). In reviewing the evidence, it is not the function of this court to retry the defendant, nor substitute

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our judgment for that of the trier of fact. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). A reviewing court affords great deference to the trier of fact. *People v. Smith*, 318 Ill. App. 3d 64, 73 (2000). A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory, as to justify a reasonable doubt of the defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011).

¶ 11 Defendant argues that the evidence failed to establish he had knowledge of the contraband's presence "hidden in a commissary bag" which was found in his cell. Defendant also argues that, because Officer Callahan testified that defendant was not in his cell, and the State presented no evidence as to where defendant was at the time of the search, no evidence had corroborated the inference that defendant had knowledge of the presence of the contraband. We disagree.

¶ 12 Defendant was the only prisoner occupying the cell at the time of the search and had been its sole occupant for at least one week. The evidence showed that the bag containing the shank was found lying on the floor of defendant's cell next to his bunk and that it also contained personal property. There was no evidence that the bag was concealed from view. The reasonable inferences to be drawn from the evidence presented at trial are the responsibility of the trier of fact. *People v. Staniel*, 153 Ill. 2d 218, 235 (1992). Here, one could reasonably infer from the evidence that defendant had knowledge of the presence of the bag found in his cell lying next to his bunk and in plain view.

¶ 13 Defendant argues that the State failed to prove he had knowledge of the bag and its contents because he was not in the cell when the bag was found. The trial court, as the trier of fact, was not required to accept any possible explanation compatible with defendant's innocence

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and elevate it to the status of reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 230 (2009); see also *People v. Pintos*, 133 Ill. 2d 286, 291 (1989). Rather, our standard of review requires that we " 'must allow all reasonable inferences from the record in favor of the prosecution.' " *Beauchamp*, 241 Ill. 2d at 8 (2011) (quoting *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)). We conclude the trial court was justified in drawing the reasonable inference that defendant had knowledge of the presence of the contraband found in his cell.

¶ 14 Defendant also asserts that the State failed to prove he exercised immediate and exclusive control over the area where the shank was found resting on his claim that other inmates could have had access to his cell. There was no such evidence. Officer Callahan testified that inmates were allowed movement in and out of their cells, not that inmates were allowed movement in and out of *each other's cells*. Indeed, Officer Callahan testified that no other inmates were allowed inside of defendant's cell and that he had never seen any other inmate inside defendant's cell.

¶ 15 In support of his claim that he lacked knowledge of the shank's presence and control over the location of where it was found, defendant relies upon *People v. Maldonado*, 2015 IL App (1st) 131874. In *Maldonado*, police officers executing a search warrant in a residence where heroin was found concealed in a statue, along with several boxes of ammunition, and a box containing a scale and \$1,500 cash. *Id.* ¶ 3. No one was present in the residence when the police executed the search warrant. *Id.* The sole evidence of the defendant's control over the premises consisted of three documents found in the residence: one retail delivery receipt containing the signature of defendant's wife, and two pieces of unopened mail. *Id.* ¶ 7. In reversing the defendant's convictions, this court concluded that there was no direct evidence establishing the

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defendant's control over the premises and no evidence, direct or circumstantial, that the defendant had knowledge of the contraband found therein. *Id.* ¶¶ 41-42.

¶ 16 By contrast here, the testimony of a correctional officer with personal knowledge of cell assignments, established defendant's control over the cell. Officer Callahan testified that, at the time of the search, defendant had exclusively inhabited the cell for approximately one week. This testimony provided a basis for establishing that defendant had knowledge of the bag and its contents which was found lying next to his bunk. Viewing the evidence in the light most favorable to the State, as we must, we conclude that a rational trier of fact could find the elements of defendant's unlawful possession of contraband in a penal institution were established beyond a reasonable doubt.

¶ 17 Defendant also maintains, and the State concedes, that certain fees were erroneously imposed. We agree that the trial court improperly imposed two fees: a \$250 fee for court-appointed counsel without conducting the hearing prescribed by statute (725 ILCS 5/113-3.1 (West 2012)), and a \$5 electronic citation fee (705 ILCS 105/27.3e (West 2012)), applicable only in traffic, misdemeanor, municipal ordinance, or conservation cases.

¶ 18 Pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999)), and our ability to correct a fines and fees order without remand (see *Bowen*, 2015 IL App (1st) 132046, ¶ 68), we direct the clerk of the circuit court to correct the fines and fees order by vacating the \$250 fee for appointed counsel and the \$5 electronic citation fee. The judgment of the circuit court of Cook County is affirmed in all other respects.

¶ 19 Affirmed; fines and fees order corrected.