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November 6, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 150377-U

NO. 4-15-0377

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
JAMI SCOTT,	)	No. 14CF248
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State presented sufficient evidence to sustain a conviction for delivery of a controlled substance within 1000 feet of a school.

(2) The trial court did not abuse its discretion by excluding evidence of the confidential source's prior convictions and drug addiction.

(3) Defendant's sentence was not excessive.

¶ 2 Defendant, Jami Scott, appeals his conviction and 10-year sentence for unlawful delivery of cocaine within 1000 feet of a school. 720 ILCS 570/407(b)(1) (West 2014). On appeal, defendant argues (1) the State failed to prove beyond a reasonable doubt the alleged delivery occurred within 1000 feet of school property, (2) the trial court abused its discretion by

excluding certain evidence, and (3) his 10-year sentence is excessive in light of the mitigating factors. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In March 2014, defendant was charged by information with one count of unlawful delivery of a controlled substance (cocaine) within 1000 feet of a school (720 ILCS 570/407(b)(1) (West 2014)) (count I) and one count of unlawful delivery of a controlled substance (cocaine) (720 ILCS 570/401(c)(2) (West 2014)) (count II). The information alleged defendant committed this offense by delivering more than five grams of cocaine to a confidential source at a location within 1000 feet from Illinois Wesleyan University in Bloomington, Illinois.

¶ 5 A. State's Motion *in Limine*

¶ 6 Prior to trial, the State filed a motion *in limine* seeking to exclude evidence relating to the confidential source's "prior arrests, drug usage, or prior convictions." The confidential source had died and therefore would be unable to serve as a witness at defendant's trial. The motion argued (1) the evidence may not be used for impeachment purposes because the confidential source would not be a witness at trial and (2) the evidence would be inadmissible under Illinois Rule of Evidence 403 (eff. Jan. 1, 2011) because any probative value would be outweighed by the prejudicial effect, given the State would have no opportunity to rebut any negative inferences drawn from the evidence.

¶ 7 In October 2014, the trial court held a hearing on the State's motion. The State reiterated its argument the evidence would only be offered to impeach the confidential source's credibility, which would be improper given the fact she was deceased and therefore unable to serve as a witness. Defendant, through counsel, argued the evidence would be indicative of the

confidential source's "access and viability to lawful controlled buys." Defense counsel also noted a lack of audio or video recordings of the controlled buy. Finally, defense counsel indicated it intended to use the evidence to "impeach[ ] the investigation itself" for lack of proper controls.

¶ 8 The trial court granted the State's motion, concluding:

> "[T]he information [defense counsel] is seeking to introduce seems to me to be relevant to one issue and one issue only, and that is the credibility of the confidential source. Obviously that person is not testifying in this case, and I think going beyond that to try to get that information in for other purposes, as suggested here in argument, would be improper; and, therefore, the motion *in limine* is allowed over objection."

Following the court's pronouncement, defense counsel made the following remark: "Just for the record, we're not seeking to impeach the—strictly the credibility of the confidential source but to challenge the investigative techniques." To which the court responded, "By attacking the credibility of the confidential source so, no, you're not going to be allowed to do that."

¶ 9 B. The State's Witnesses

¶ 10 At the January 2015 bench trial, it was generally established on March 3, 2014, a confidential source met defendant at Kroger on North Center Street in Bloomington, Illinois. The confidential source was picked up by defendant in the Kroger parking lot, near the southwest corner of the Kroger building. The two exited the Kroger parking lot and drove south on North Center Street for approximately one block to Walgreens, which is located in the city block adjacent to the south of Kroger. The following testimony was elicited.

¶ 11 1. *Detective Scott Lake*

¶ 12 Detective Scott Lake was, at the time, a detective with the Bloomington police department and was assigned to the vice unit. On March 3, 2014, Detective Lake was assigned to a controlled buy involving defendant. His role was to observe and perform video surveillance of the buy. Detective Lake was positioned in a surveillance vehicle in the Kroger parking lot. Detective Lake observed Detective Stephen Brown drop the confidential source off at Kroger. Then approximately four minutes later, defendant drove up to the confidential source in a maroon car, and she entered his car. Detective Lake stated the car sat for about 15 seconds before exiting the Kroger parking lot. The car drove southbound on North Center Street, crossed East Emerson Street, and turned left into the Walgreens parking lot across the street from Kroger.

¶ 13 2. *Detective Kevin Raisbeck*

¶ 14 Detective Kevin Raisbeck was a detective with the Bloomington police department assigned to the vice unit. On March 3, 2014, Officer Raisbeck was responsible for maintaining the surveillance log and searching defendant's car following his arrest. Detective Raisbeck discovered a cell phone in defendant's car, which he verified was linked to the same phone number used to set up the controlled buy.

¶ 15 3. *Officer Aaron Veerman*

¶ 16 Officer Aaron Veerman was a police officer with the Bloomington police department assigned to the street crimes unit. On March 3, 2014, Officer Veerman was involved in the controlled buy involving defendant. He was stationed at the McLean County jail, and his responsibility was to arrest defendant when he was notified of probable cause to arrest. Officer Veerman received this notice via radio from two vice detectives who were following the maroon

car involved in the controlled buy. The maroon car entered the parking lot for the McLean County jail, and Officer Veerman executed the arrest when defendant exited the maroon car. Defendant had cash in his hand, and Officer Veerman instructed him to place the cash in his pocket. According to a stipulation offered at trial, the cash was recovered following defendant's arrest and the bills were the marked bills given to the confidential source for the controlled buy.

¶ 17 4. *Detective Stephen Brown*

¶ 18 Detective Brown was a detective with the Bloomington police department assigned to the vice unit. Detective Brown explained a confidential source generally is a person who comes into contact with the police after being arrested or who voluntarily offers information in exchange for compensation. These individuals are familiar with drugs in the community and are likely drug addicts themselves.

¶ 19 On March 3, 2014, Detective Brown was the lead detective on the controlled buy involving defendant and a confidential source. Prior to the controlled buy, Detective Brown, who was then accompanied by Officer Raisbeck, picked up the confidential source and searched her person. The search occurred in the vehicle (the confidential source was in the backseat and Detective Brown was in the front seat). Detective Brown had her remove her coat, which he searched, and he searched her purse. Detective Brown noted she was wearing tight clothes, meaning he would be able to easily detect a bulge in her clothing. Detective Brown patted her front pockets and asked her to turn around so he could see whether she had back pockets, which she did not. The search did not reveal any drugs or money. Detective Brown also confirmed the police car had been searched prior to the controlled buy to ensure there was no contraband in the vehicle.

¶ 20 The confidential source placed a phone call, and she told the male who answered she was going to be dropped off at Kroger and asked him to meet her there. She then asked whether "it [was] two hundred or three hundred." The male voice responded, "three hundred I guess." A few minutes later the confidential source called the number back and asked whether the male would give her a ride to Walgreens after they met at Kroger.

¶ 21 Detective Brown drove the confidential source to Kroger and gave her $300 in marked bills. He dropped her off at the entrance on the south side of the building, near the vending machines. Detective Brown then drove to Walgreens, which was located just across East Emerson Street from Kroger, where he was unable to observe what was happening at Kroger. Approximately 10 minutes later, Detective Brown observed the confidential source exit a maroon car in the Walgreens' parking lot. After the car drove away, Detective Brown drove up to the confidential source, and she entered his car. She handed him a plastic bag containing what Detective Brown believed looked like crack cocaine. A lab report admitted into evidence indicated the substance contained cocaine and weighed 5.3 grams. Detective Brown drove to a different parking lot and conducted a search of the confidential source's person in the same manner as the prior search. The search revealed no money or contraband.

¶ 22 Following defendant's arrest, Detective Brown interviewed defendant. During the interview, Detective Brown confirmed defendant's cell phone number, which was the same number used to conduct the controlled buy and which was linked to the cell phone recovered from the maroon car driven by defendant. Defendant claimed he never possessed or delivered cocaine. Rather, he stated he met the confidential source to pick up $300, which was allegedly the proceeds from the sale of a car. He claimed he was taking the $300 to the jail where his uncle

was incarcerated and intended to apply the money to his uncle's account.

¶ 23 Detective Brown later conducted a measurement between the Kroger parking lot and the campus of Illinois Wesleyan University, which amounted to 731 feet. Detective Brown began his measurement at the northeast corner of the intersection of West Emerson Street and North Center Street, which is located in the southwest corner of the Kroger parking lot. He concluded the measurement at the northwest corner of the intersection of East Emerson Street and North East Street, which is on the campus of Illinois Wesleyan University. When asked how he chose his starting point for the measurement, Detective Brown responded:

> "During [the] investigation the informant was picked up at Kroger, driven to Walgreens. That was the point that was in the middle. I couldn't determine where the actual transaction took place, so I just picked the location [that] would have been I guess the farthest distance from Illinois Wesleyan."

Detective Brown stated he chose his ending point because, although he knew the university owned property comprising the southeast corner of West Emerson Street and North Main Street, there was no sign to prove this fact, whereas a university sign is located at the intersection of East Emerson Street and North East Street. Detective Brown testified this sign was located "well into Illinois Wesleyan." Detective Brown indicated the transaction could have only occurred 731 feet from the university or less.

¶ 24 Detective Brown testified he has lived in the Bloomington area for several years, as he went to college at Illinois State University and has been employed by the Bloomington police department for over eight years. He is familiar with the area and with the locations of the college campuses in the area. Detective Brown testified Illinois Wesleyan University was open

and functioning as a university on March 3, 2014.

¶ 25 When asked by defense counsel why there were no "overhears" (audio recording) of the controlled buy, Detective Brown indicated he did not have access to an overhear because to obtain one, he would have had to prove defendant had already committed a felony in order to apply for an overhear for investigative purposes. Detective Brown did not have that information, and he had already decided defendant would be arrested following the controlled buy he had planned for March 3, 2014.

¶ 26 Detective Brown admitted on cross-examination he did not conduct a strip search of the confidential source before or after the controlled buy nor did he pat down her chest area to ensure nothing was concealed in her undergarments. Detective Brown admitted it was possible she could have concealed contraband in her undergarments. Detective Brown also admitted he did not find any drug paraphernalia on defendant's person following the arrest.

¶ 27 The State then rested after admitting its exhibits.

¶ 28 C. Defendant's Motion for Directed Verdict

¶ 29 Defense counsel moved for a directed verdict arguing (1) no witness identified defendant as the individual driving the maroon car and (2) the State presented insufficient evidence of delivery, especially in light of the manner in which the confidential source was searched prior to the controlled buy. The State argued despite the lack of an identification, viewing the testimony in totality was sufficient to identify defendant as the driver of the maroon car because the car was under surveillance the entire time between the confidential source entering the car and defendant's arrest at the McLean County jail. Likewise, the State presented sufficient evidence for the trier of fact to reasonably infer a delivery had occurred. The State

conceded a strip search was not conducted but opined it would be difficult for the confidential source to conceal 5.3 grams of cocaine in the clothes she was wearing.

¶ 30 The trial court denied the motion for directed verdict, concluding the evidence, when viewed in the light most favorable to the State, allows for the reasonable inferences (1) defendant was the driver of the maroon car at all times relevant to this investigation and (2) there were proper controls, *i.e.*, the search of the confidential source, in place to support the inference of a delivery.

¶ 31 D. Defendant's Testimony

¶ 32 Defendant, a Bloomington resident, was employed with the Residence Inn in Bloomington as a general maintenance worker. He has had steady employment since moving to Bloomington from Indiana. While a resident of Indiana, he obtained several criminal convictions, including convictions for unlawful possession of a firearm, burglary, and a narcotics-related crime. While on parole for the narcotics-related conviction, he moved to Bloomington, where he had family ties, and intended to turn his life around and begin a career.

¶ 33 Defendant's uncle was arrested and incarcerated in the McLean County jail. The confidential source was defendant's uncle's girlfriend, and defendant agreed to help "take care" of her while his uncle was incarcerated. On March 3, 2014, defendant's uncle called him and indicated the confidential source had money to apply to his account at the county jail. The confidential source later called and asked defendant to meet her at Kroger and give her a ride to Walgreens. She asked him whether it was supposed to be two or three hundred dollars, and he replied "three hundred I guess."

¶ 34 Defendant then went to Kroger and picked up the confidential source. According

to defendant, she was acting fidgety. He asked what was wrong, and she responded she had the money for his uncle. He thanked her and drove to Walgreens. She gave him the money and got out of his car. He then drove directly to the McLean County jail so he could put the money toward his uncle's account but was arrested in the parking lot. Defendant denied delivering cocaine to the confidential source.

¶ 35 E. Closing Argument and Verdict

¶ 36 During closing argument, the State argued it had met its burden of proof, highlighting the fact the confidential source and the maroon car were under constant surveillance during the entirety of the controlled buy and the only reasonable inference to be drawn was the fact defendant delivered the cocaine in exchange for $300. Defense counsel argued the State fell short of its burden. Defense counsel argued the pre-buy search was deficient and the confidential source could have easily hid the cocaine in her undergarments, in her purse, in her shoe, or somewhere else on her person. Defense counsel also highlighted the lack of an audio recording and the lack of drug paraphernalia on defendant's person or in his car. Counsel also pointed to the fact defendant was arrested in the McLean County jail parking lot as corroborating evidence of his version of events.

¶ 37 The trial court found defendant guilty of both counts, merging count II (unlawful delivery) with count I (unlawful delivery within 1000 feet of a school). The court specifically concluded the pre-buy search of the confidential source, though not thorough, was adequate. The court also highlighted the fact defendant did not testify about the confidential source attempting to retrieve anything from her person, which he should have noticed if she were retrieving 5.3 grams of cocaine hidden on her person. With respect to the distance measured by Detective

Brown, the court did indicate the testimony was a bit unclear. Nonetheless, it determined Detective Brown's testimony was credible and accepted his uncontradicted assertion the delivery could have only occurred closer to the university than what he measured. Accordingly, the court determined the State met its burden of proof with respect to delivery of a controlled substance within 1000 feet of a school.

¶ 38 F. Sentencing and Posttrial Motions

¶ 39 In January 2015, the trial court held a hearing. Defendant had filed a posttrial motion for acquittal or, in the alternative, for a new trial. The motion alleged the trial court erred by granting the State's motion *in limine* to exclude evidence of the confidential source's drug addiction and prior convictions and arrests. The motion also alleged the evidence was insufficient to prove delivery beyond a reasonable doubt.

¶ 40 The trial court denied defendant's posttrial motion for the same reasons it had earlier pronounced during the proceedings. The hearing then moved into sentencing. With respect to sentencing, the State requested a 20-year sentence, highlighting defendant's prior criminal activity and prison sentences in Indiana and the need for deterrence. Defense counsel highlighted defendant's turbulent youth, his recent rehabilitation, and work history and ethic. Defense counsel argued the strength of the State's case called for a lesser sentence and requested a sentence of no more than eight years in prison.

¶ 41 The trial court stated it considered the arguments and the information in the presentence report. In aggravation, the court noted defendant's significant criminal history, which "weigh[ed] pretty heavily toward the imposition of a stiff sentence[.]" In mitigation, the court highlighted defendant's rehabilitation and work toward becoming a contributing member

of society. The court stated, "[S]o you're doing now exactly what it is that we hope folks do when they come out of the Department of Corrections and that is become responsible and work hard and you're obviously doing that and you're capable of doing that." The court noted defendant's peripheral involvement in this crime and the fact he appeared to be trying to help his uncle. While noting the case was fairly balanced between mitigating and aggravating factors, the court stated "the aggravation probably outweighs the mitigation given the extent of your criminal history here." The court lamented the fact it was unable to place defendant on probation to allow him to continue working in the community. Based on the above, the court imposed a 10-year prison sentence to be followed by three years of mandatory supervised release. The court also imposed several fines and fees.

¶ 42 Prior to the hearing, defense counsel had also filed a motion to stay defendant's sentence pending appeal, which the trial court denied. Defense counsel then requested notice of appeal be filed, and when asked, indicated she did not plan to file a motion to reconsider defendant's sentence.

¶ 43 This appeal followed.

¶ 44 II. ANALYSIS

¶ 45 A. Sufficiency of the Evidence

¶ 46 Defendant argues the State failed to prove the alleged delivery occurred within 1000 feet of Illinois Wesleyan University. See 720 ILCS 570/407(b)(1) (West 2014) (prohibiting the sale of a controlled substance "within 1,000 feet of the real property comprising any school"). "When reviewing a criminal case on appeal, the relevant question is whether a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt as to

each element of the crime in question." *People v. Laws*, 2016 IL App (4th) 140995, ¶ 25, 66 N.E.3d 848. "[T]he reviewing court must view the evidence in the light most favorable to the prosecution," meaning we "allow all reasonable inferences from the record in favor of the prosecution." (Internal quotation marks omitted.) *People v. Cunningham*, 212 Ill. 2d 274, 280, 818 N.E.2d 304, 308 (2004).

¶ 47 1. *Judicial Notice of the Maps*

¶ 48 In support of his argument, defendant offers for the first time on appeal a printout of a Google Map, which he has marked to show the following points: (1) where the confidential source allegedly entered defendant's car, (2) where Detective Brown began his, and (3) where Detective Brown concluded the measurement. Defendant argues the map printout objectively refutes Detective Brown's testimony he began his measurement at the furthest point possible from Illinois Wesleyan University where the delivery could have occurred. Defendant further argues we may take judicial notice of his map, citing *Peters v. Riggs*, 2015 IL App (4th) 140043, ¶ 49, 32 N.E.3d 49 ("[A] court may take judicial notice of geographical facts and 'case law supports the proposition that information acquired from mainstream Internet sites such as MapQuest and Google Maps is reliable enough to support a request for judicial notice.' " (quoting *People v. Clark*, 406 Ill. App. 3d 622, 633 940 N.E.2d 755, 766 (2010))).

¶ 49 The State argues we may not take judicial notice of defendant's map, citing *Sylvester v. Chicago Park District*, 179 Ill. 2d 500, 506-07, 689 N.E.2d 1119, 1123 (1997). In the alternative, the State offers its own map, on which it has marked the same locations—albeit in slightly different positions—and has marked a circle, which allegedly has a 731-feet radius with the center point being the point on Illinois Wesleyan University campus at which Detective

Brown concluded his measurement.

¶ 50 In *Clark*, the Second District took judicial notice of the fact a park was located generally north of a particular intersection after being presented, for the first time on appeal, with a Google Map of the area. *Clark*, 406 Ill. App. 3d at 632-33, 940 N.E.2d at 766; but see *Sylvester v. Chicago Park Dist.*, 179 Ill. 2d 500, 506-07, 689 N.E.2d 1119, 1123 (1997) (declining to take judicial notice of a map and concluding the defendant "waived its contention that plaintiff was injured in a park by failing to present evidence or seek judicial notice of this fact in the trial court"). In concluding it was able to take judicial notice of this fact, it reasoned:

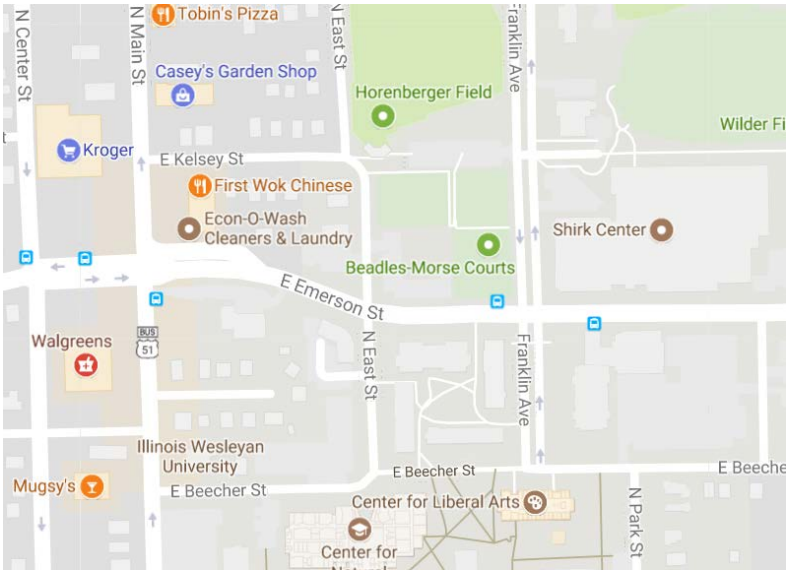
> "An appellate court may take judicial notice of a fact that the trial court did not. [Citations.] A judicially noticed fact must be one not subject to reasonable dispute, meaning that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. [Citations.] While courts will take judicial notice of geographical facts such as the fact that a certain city is located within a certain county, they generally will not take judicial notice of the *precise* location of a single city lot or subdivision within city lines. [Citation.] Given this, it would seem that taking judicial notice that Bressler Park is, simply, north of the Auburn and Furman intersection is exactly the sort of fact appropriate for judicial notice." (Emphasis in original.) *Clark*, 406 Ill. App. 3d at 632-33, 940 N.E.2d at 766.

See also Ill. R. Evid. 201(b) (eff. Jan. 1, 2011).

¶ 51 We decline defendant's and the State's requests to take judicial notice of their

respective maps. The significance of each map is derived from the locations each party has marked on the respective maps, which is offered to show the precise locations where certain events occurred. Because both defendant and the State have marked their respective maps with these locations, the maps have been taken out of the realm of information "generally known within the territorial jurisdiction of the trial court" (Ill. R. Evid. 201(b) (eff. Jan. 1, 2011)). Further, the fact the parties dispute each other's markings demonstrates the marked locations are not "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned" (*id.*). By offering their respective maps and arguments, the parties are attempting to engage this court in fact finding (*i.e.*, determining precisely where these events occurred), which is inappropriate. As the court indicated in *Clark*, the precise location of places or events is not appropriate information for judicial notice. See *Clark*, 406 Ill. App. 3d at 633, 940 N.E.2d at 766. We thus decline to take judicial notice of either map and will exclude those maps from our resolution of the issues on appeal.

¶ 52 Instead, we take judicial notice of the below map, free from markings, which will assist our understanding of the area and put the trial testimony into context. See *id.* at 633, 940 N.E.2d at 766 (taking judicial notice of a map to understand the trial testimony); *People v. Stiff*, 391 Ill. App. 3d 494, 503-04, 904 N.E.2d 1174, 1183 (2009) (taking *sua sponte* judicial notice on appeal of the distance from one house to another using Google Maps).



Google Maps, https://www.google.com/maps/@40.493085,-88.9922534,17z (last visited Sept. 21, 2017).

¶ 53 2. *Sufficiency of the Evidence Produced at Trial*

¶ 54 The evidence at trial established the confidential source entered defendant's car near the "south side of [the Kroger] building" and the two sat in the car for approximately 15 seconds. Defendant then drove west out of the Kroger parking lot and turned south onto North Center Street. Defendant drove south for approximately one block then turned east into the Walgreens parking lot, which is located south of Kroger and just across West Emerson Street. The delivery allegedly occurred at some point while the confidential source was in defendant's car.

¶ 55 Following the controlled buy, Detective Brown measured the distance from the southwest corner of the Kroger parking lot (the northeast corner of the intersection of North Center Street and West Emerson Street) to the northwest corner of East Emerson Street and North East Street, which is a distance of 731 feet. Detective Brown testified he chose this ending

point because, although he knew the university owned property comprising the southeast corner of West Emerson Street and North Main Street, there was no sign to prove this fact, whereas a university sign is located at the intersection of East Emerson Street and North East Street. Detective Brown testified this sign was located "well into Illinois Wesleyan" and indicated the transaction could have only occurred closer to the university property than the point at which he began the measurement.

¶ 56 Defendant argues the testimony was insufficient to prove the alleged transaction took place within 1000 feet of Illinois Wesleyan University because Detective Brown's testimony the transaction could have only occurred closer than 731 feet from the campus was objectively false. Defendant argues the southwest corner of the Kroger building—where the confidential source entered his car—is further from the university sign at which Detective Brown ended the measurement than the northwest corner of East Emerson Street and North East Street, the starting point for the measurement. In support, defendant cites *People v. Davis*, 2016 IL App (1st) 142414, 55 N.E.3d 1246, and *United States v. Soler*, 275 F.3d 146 (1st Cir. 2002).

¶ 57 "In order to convict a defendant of delivery of a controlled substance within 1000 feet of a school, the State must prove beyond a reasonable doubt that the distance from the *actual site* of the transaction to 'the real property comprising any school' is 1000 feet or less. 720 ILCS 570/407(b)(2) (West 2012)." (Emphasis in original.) *Davis*, 2016 IL App (1st) 142414, ¶ 13, 55 N.E.3d 1246; see also *Soler*, 275 F.3d at 154-55.

¶ 58 In *Davis*, the defendant was convicted of delivering a controlled substance within 1000 feet of a school when the alleged transaction occurred in an alley near a gas station. *Davis*, 2016 IL App (1st) 142414, ¶¶ 5, 7, 55 N.E.3d 1246. The parties stipulated the gas station was

822 feet from a school, but the State produced no evidence indicating how large the gas station property was or where on the gas station property the measurement began. *Id.* ¶ 14. The court found the stipulation insufficient to prove the transaction occurred within 1000 feet of a school because it did not establish the distance between the actual site of the transaction—the alley near the gas station—and the school property. *Id.* ¶¶ 15-16.

¶ 59 Similarly, in *Solar*, the First Circuit Court of Appeals concluded the evidence was insufficient to prove the defendant delivered a controlled substance within 1000 feet of a school when the transaction occurred within an apartment and the measurement presented at trial merely demonstrated the distance between the school and an outer wall of the apartment building was 963 feet. *Soler*, 275 F.3d at 154-55. The court concluded "the government must prove beyond a reasonable doubt that the distance from a school to the actual site of the transaction, not merely to the curtilage or exterior wall of the structure in which the transaction takes place, is 1,000 feet or less." *Id.* at 154. Because there was such a modest leeway (37 feet), the court concluded the State failed to prove beyond a reasonable doubt the transaction occurred within 1000 feet of a school, as it was unclear whether the apartment was less than 37 feet from the starting point of the measurement. *Id.* at 154-55. However, the court also recognized,

> "Precise measurements may be unnecessary in some cases where the spatial leeway is relatively great ***. [Citations.] In [some] instances, common sense, common knowledge, and rough indices of distance can carry the day. When the spatial leeway is modest, however, and personal liberty is at stake, courts must examine the government's proof with a more critical eye." *Id.* at 154.

Though *Solar* is not mandatory authority, we find the opinion persuasive and instructive.

¶ 60 Detective Brown's testimony established the property forming the southeast corner of East Emerson Street and North Main Street was owned by Illinois Wesleyan University. "It is generally understood that persons living and working in the community are familiar with various public places in the neighborhood, such as the location of streets, buildings, and the boundaries of counties and town lots." *People v. Morgan*, 301 Ill. App. 3d 1026, 1032, 704 N.E.2d 928, 932 (1998). Detective Brown has been an officer with the Bloomington police department for more than eight years and has lived in Bloomington for even longer. The majority of his time with the police department has been spent in the vice unit, which presumably means he spent "a lot of time on the streets, doing controlled purchases and surveillance and keeping an eye on neighborhoods" (*People v. Sims*, 2014 IL App (4th) 130568, ¶ 138, 9 N.E.3d 621). His testimony demonstrates he is familiar with the area and with the boundaries of Illinois Wesleyan University.

¶ 61 The southeast corner of East Emerson Street and North Main Street comprises the city block catty-corner (to the southeast) of the city block containing Kroger. Accepting as true Detective Brown's testimony and accepting as true defendant's contention the furthest point from the university the alleged transaction could have occurred was the southwest corner of the Kroger building, an examination of the map and common sense tells us the distance from the southwest corner of the Kroger building to the southeast corner of East Emerson Street and North Main Street is significantly shorter than the distance measured by Detective Brown (731 feet).

¶ 62 We find the facts of *Davis* and *Solar* distinguishable to the case at bar, though we find the law in those cases instructive. In *Davis*, the record was devoid of evidence showing

where the transaction occurred in relation to the starting points for the measurement or the general size of the gas station property, preventing the fact finder from possibly deducing whether the spatial leeway was large enough to encompass the site of delivery. In *Solar*, the measurement stopped short of the site of delivery, leaving a mere 37 feet of leeway. The fact finder there could not possibly conclude beyond a reasonable doubt the distance to the actual apartment in which the delivery occurred was less than 37 feet. Here, the relevant distance (the distance between the southwest corner of the Kroger building and the southeast corner of East Emerson Street and North Main Street) is *inclusive* of any possible site of delivery. Though we do not have an exact measurement from these two locations, we do have an exact measurement from the northeast corner of North Center Street and West Emerson Street and the northwest corner of East Emerson Street and North East Street, which was 731 feet. Common sense and rough indices of distance, when coupled with an examination of the map, show the distance from the southwest corner of the Kroger building to the southeast corner of East Emerson Street and North Main Street is significantly less than the distance measured by Detective Brown, which allows the reasonable inference the alleged delivery occurred less than 731 feet from the university. Thus, despite the fact Detective Brown chose rather arbitrary locations to measure between, his testimony is nonetheless sufficient to allow a reasonable person, using common sense and rough indices of distance, to conclude beyond a reasonable doubt the alleged delivery occurred within 1000 feet of university property.

¶ 63 B. Character Evidence About the Confidential Source

¶ 64 Next, defendant argues the trial court erred by prohibiting him from introducing evidence relating to the prior drug use, convictions, and arrests of the confidential source, who

was deceased at the time of trial and thus unable to testify. Defendant argues the court's decision impinged on his constitutional right to present a defense. See U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8. According to defendant, the trial court's decision to exclude this evidence is subject to *de novo* review because the court's decision was based upon an erroneous interpretation of the law. For the following reasons, we disagree.

¶ 65 Our supreme court has given the following guidance on the proper standard of review for evidentiary rulings:

> "Evidentiary rulings are within the sound discretion of the trial court and will not be reversed unless the trial court has abused that discretion. [Citations.] An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. [Citation.] Reviewing courts generally use an abuse-of-discretion standard to review evidentiary rulings rather than review them *de novo*. [Citation.]
>
> [The d]efendant argues that the evidentiary rulings at issue here were uniquely legal rulings, which we may review *de novo*. It is true that reviewing courts sometimes review evidentiary rulings *de novo*. This exception to the general rule of deference applies in cases where a trial court's exercise of discretion has been frustrated by an erroneous rule of law. [Citations.]
>
> We reject defendant's argument and review these evidentiary rulings with deference to the trial court. The decision whether to admit evidence cannot be made in isolation. The trial court must consider a number of circumstances that bear on that issue, including questions of reliability and prejudice. [Citation.] In

this case, the trial court exercised discretion in making these evidentiary rulings, *i.e.*, the court based these rulings on the specific circumstances of this case and not on a broadly applicable rule. [Citations.]" (Internal quotation marks omitted.) *People v. Caffey*, 205 Ill. 2d 52, 89-90, 792 N.E.2d 1163, 1188 (2001).

¶ 66 The trial court concluded the evidence was relevant for only one purpose: to impeach the credibility of the confidential source. See generally Ill. R. Evid. 401 (eff. Jan. 1, 2011) (" 'Relevant evidence' " means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); Ill. R. Evid. 402 (eff. Jan. 1, 2011) ("All relevant evidence is admissible, except as otherwise provided by law. Evidence which is not relevant is not admissible."); Ill. R. Evid. 404(a)(3) (eff. Jan. 1, 2011) (limiting the ability to impeach credibility using evidence of prior bad acts); Ill. R. Evid. 608 (eff. Jan. 6, 2015) (stating the rules for impeaching a witness's character for truthfulness or untruthfulness); Ill. R. Evid. 609 (eff. Jan. 6, 2015) (stating the rules for impeaching a witness's credibility with evidence of prior convictions). Because the confidential source did not testify, her credibility was not at issue, rendering the disputed evidence irrelevant for that purpose.

¶ 67 Defendant argues the evidence was relevant to show (1) the confidential source had access to drugs and (2) the likelihood she concealed the drugs on her person prior to the controlled buy because she "was motivated to keep approximately five grams of cocaine on her person at all times, including the time of their meeting." Assuming *arguendo* the evidence was relevant to defendant's defense theory, we find defendant's arguments speculative and remote, and the record is devoid of evidence corroborating the assertion the confidential source was

likely to "keep approximately five grams of cocaine on her person at all times." The mere fact a person may have access to drugs is not necessarily indicative of access to drugs on a given day or of the habit of keeping drugs on his or her person at all times. Further, defendant's second argument is illogical; not only would the confidential source be less likely to possess cocaine on her person when she knew she would be subject to a search before and after the controlled buy but the testimony also established she voluntarily gave the cocaine to Detective Brown. Defendant does not point to any evidence tending to show a motive to frame him for the crime of delivery; rather, he argues she kept cocaine on her person at all times to feed her addiction. It is unclear why her addiction would motivate her to conceal cocaine on her person before and during the controlled buy only to voluntarily relinquish it to Detective Brown following the buy.

¶ 68 "It is within the discretion of a trial court to exclude evidence offered by the defense in a criminal case without infringing on the accused's constitutional right to present a defense when the relevancy of the evidence is so speculative as to give the evidence little probative value." *People v. Mikel*, 73 Ill. App. 3d 21, 30, 391 N.E.2d 550, 557 (1979); see also Ill. R. Evid. 403 (eff. Jan. 1, 2011) ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]"). The court was entitled to conclude the evidence was inadmissible because (1) the evidence constitutes inadmissible character evidence and (2) the speculative nature of the evidence rendered its probative value for purposes other than impeachment slight. We therefore conclude the court's decision to grant the State's motion *in limine* was not an abuse of discretion. Because we find the court's decision to exclude the evidence was supported by the Rule 403 admissibility threshold, we need not address the parties' remaining arguments with respect to admissibility of the

character evidence.

¶ 69 C. Defendant's Sentence

¶ 70 Defendant also argues his sentence was excessive in light of the mitigating factors. The State argues defendant forfeited his excessive sentence argument by failing to file a motion to reduce his sentence. Defendant responds by referencing the motion to stay judgment wherein he made similar arguments about the relevant sentencing factors. In the alternative, defendant seeks either prong one or prong two plain-error review.

¶ 71 We need not decide whether defendant has forfeited his claim because regardless of whether we review on the merits or for plain error, we conclude no error occurred. See *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010) (the first step in plain-error analysis is to determine whether error occurred).

¶ 72 At sentencing, the trial court must balance a defendant's rehabilitative potential against the seriousness of the offense. Ill. Const. 1970, art. 1, § 11.

> "Each sentencing decision must be based on the particular circumstances of the case and the court must consider factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citation.] The trial court, having observed the defendant and proceedings, is better able to consider these factors. [Citation.] The trial court's sentencing decision is afforded substantial weight upon review, and a court of review must not substitute its judgment simply because it would have balanced the factors differently." *People v. Harris*, 2015 IL App (4th) 140696, ¶ 54, 32 N.E.3d 211.

¶ 73 Unlawful delivery of more than one gram of cocaine within 1000 feet of a school

is a Class X felony. 720 ILCS 570-407(b)(1) (West 2014). For a Class X felony, "[t]he sentence of imprisonment shall be a determinate sentence of not less than 6 years and not more than 30 years." 730 ILCS 5/5-4.5-25(a) (West 2014). However, any person who "at any time [has] been convicted under [the Illinois Controlled Substances Act] or under any law of the United States or of any State relating to controlled substances" may be sentenced to a term of "imprisonment for a term up to twice the maximum term otherwise authorized." 720 ILCS 570/408(a)-(b) (West 2014). Defendant has 2005 conviction in Indiana relating to narcotics. Thus, the proper sentencing range for this case was 6 to 60 years' imprisonment.

¶ 74 The trial court sentenced defendant to 10 years in prison, which we note is significantly closer to the statutory minimum than the maximum. In its consideration, the court specifically highlighted mitigating factors including defendant's recent rehabilitation, employment history, and his peripheral involvement with the crime at bar. See generally 730 ILCS 5/5-5-3.1 (West 2014) (setting forth factors in mitigation). The court indicated probation would have been a good option for defendant because of his rehabilitation and lamented the fact defendant was convicted of a nonprobational offense. On the other hand, the court noted defendant's significant criminal history, which includes, *inter alia*, convictions for multiple firearm offenses, burglary, and a crime involving narcotics. See generally 730 ILCS 5/5-5-3.1 (West 2014) (setting forth factors in aggravation, including prior criminal activity).

¶ 75 Defendant argues the trial court's remarks indicate its imposition of a 10-year sentence was an abuse of its discretion. We disagree. A review of the transcript of the sentencing hearing reveals the court's thoughtful consideration of the statutory factors and the facts of this particular case. The mere existence of rehabilitative and mitigating factors does not require

imposition of the statutory minimum sentence. See *Harris*, 2015 IL App (4th) 140696, ¶ 58, 32 N.E.3d 211 ("Simply because rehabilitative and mitigating factors are present does not entitle them to greater weight than the seriousness of the offense."). Similarly, the fact the court sympathized with defendant and noted his peripheral and regrettable involvement with this crime likewise does not require imposition of the statutory minimum. We see no error in the court's sentencing of defendant and therefore affirm his within-guidelines sentence of 10 years' imprisonment.

¶ 76 III. CONCLUSION

¶ 77 We affirm the trial court's judgment and award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 78 Affirmed.