

2019 IL App (1st) 162841-U

No. 1-16-2841

February 25, 2019

First Division

**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 DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 15398
	)	
EQUUNNE KING,	)	Honorable
	)	William H. Hooks,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE WALKER delivered the judgment of the court.  
Presiding Justice Mikva and Justice Griffin concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm defendant's conviction for possession of a controlled substance where the evidence established that he entered an alley, went directly to a balled-up newspaper containing heroin, manipulated it, and returned it to the ground.

¶ 2 Following a bench trial, defendant Equunne King was convicted of possession of a controlled substance and sentenced to two years' probation. On appeal, defendant argues the State failed to prove him guilty beyond a reasonable doubt where it presented no evidence that he

knowingly possessed heroin contained in a balled-up newspaper, when a police officer saw him enter an alley, pick up the newspaper, manipulate it, and put it down. We affirm.

¶ 3 BACKGROUND

¶ 4 Defendant was charged by information with one count of possession of a controlled substance for allegedly possessing 15 grams or more but less than 100 grams of a substance containing heroin (720 ILCS 570/402(a)(1)(A) (West 2014)), arising from an incident in Chicago on August 5, 2015.

¶ 5 At trial, Chicago Police Officer Pasko testified that at approximately 7:22 p.m. on August 5, 2015, he was conducting narcotics surveillance alone in an unmarked vehicle facing west in an alley near 2715 West Lake Street. While it was still light outside, Pasko observed defendant, whom he identified in court, riding a bicycle eastbound into the alley, wearing a black hat with white stars and a black tee shirt. Defendant passed Pasko and stopped 20 feet away in the alley. According to Pasko, defendant “looked in all directions, bent down while he was straddling the bicycle, picked up a baseball-sized balled-up piece of newspaper, [and] manipulated something inside that newspaper.” Pasko stated that “it looked like [defendant] retrieved an item” because he opened the newspaper and moved his right hand from the newspaper to his right front pocket. Defendant then put the newspaper on the ground and rode his bicycle out of the alley in the direction from which he arrived.

¶ 6 Pasko radioed his partners, enforcement officers Kanski and Wisz, and gave them a description of defendant and what he saw. He then broke surveillance and lost sight of the newspaper ball for about four seconds while he confirmed defendant was no longer in the alley. Pasko retrieved the newspaper and opened it, finding “one plastic bag containing five smaller

plastic bags, each containing 13 pink-tinted bags containing a white powdery substance, suspect heroin,” for a total of 65 pink-tinted bags. Pasko radioed another description of defendant, as well as what he found, to Kanski and Wisz. About 1½ minutes after defendant left the alley, Pasko received a radio transmission stating the enforcement officers detained a subject matching the description he had provided. Pasko drove to the officers’ location, positively identified defendant, and gave the newspaper and bags to Kanski.

¶ 7 On cross-examination, Pasko testified that he did not see defendant ball-up the newspaper before placing it on the ground, but it was balled-up when Pasko retrieved it. Pasko acknowledged testifying at a preliminary hearing that he never lost sight of the newspaper. Additionally, Pasko testified there was debris elsewhere in the alley, but on redirect examination, stated there was no other balled-up newspaper in the area where he saw defendant.

¶ 8 Kanski testified that he and Wisz were in an unmarked vehicle when Pasko radioed them. Pasko described a subject who had stopped in an alley, picked up an object from a grassy area, placed something in his pocket, put the object back on the ground, and headed westbound on his bicycle. One or two minutes after receiving this communication, Kanski and Wisz observed an individual matching the description given by Pasko, whom Kanski identified as defendant. Kanski radioed Pasko, who arrived at the location and positively identified defendant. Kanski then placed defendant in custody and returned to the 12th District police station, where Pasko gave him the newspaper and bags of suspect heroin, which Kanski inventoried. On cross-examination, Kanski confirmed that he did not recover any narcotics or currency from defendant.

¶ 9 The State entered a stipulation between the parties that the chain of custody of the newspaper ball and bags of heroin had been proper and correct at all times. The parties also

stipulated that if called to testify, Dori Binkowski, a forensic scientist with the Illinois State Police, would have stated that she analyzed the contents of 31 of the 65 bags and determined that they contained a total of 15.1 grams of a substance containing heroin.

¶ 10 The State rested and defendant made a motion for acquittal, which the trial court denied. The defense rested without presenting any evidence.

¶ 11 During closing arguments, the State contended the evidence established defendant's actual possession of the heroin contained in the balled-up newspaper. Defense counsel responded that the State had not established knowing possession because no evidence showed that defendant intended to maintain control over the newspaper and not abandon it, and the testimony only showed he had picked up the item and put it down after seeing it.

¶ 12 The trial court found defendant guilty of possession of a controlled substance. The court stated that it found the testimony of Pasko and Kanski credible, and that this was "a clear cut case of actual possession of a controlled substance in the balled-up newspaper." The trial court also stated that it did not believe defense counsel's theory that defendant only "picked up the item and saw it was narcotics and quickly let go of it after discovering what it was." The trial court denied defendant's motion for a new trial, and following a sentencing hearing, sentenced defendant to two years' probation.

¶ 13 ANALYSIS

¶ 14 On appeal, defendant argues the trial court erred in finding him guilty of possession of a controlled substance where the State presented no evidence showing he knowingly possessed the heroin inside the newspaper ball, either actually or constructively. In response, the State argues

there was sufficient circumstantial evidence of knowledge to support a finding of guilt beyond a reasonable doubt.

¶ 15 “The due process clause of the fourteenth amendment to the United States Constitution requires that a person may not be convicted in state court ‘except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.’ ” *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) (quoting *In re Winship*, 397 U.S. 358, 364 (1970)). The standard of review on a challenge to the sufficiency of the evidence 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.’ ” (Emphasis in original.) *People v. Cooper*, 194 Ill. 2d 419, 430-31 (2000) (quoting *Jackson v. Virginia*, 433 U.S. 307, 319 (1979)).

¶ 16 When a defendant challenges the sufficiency of the evidence, it is not the reviewing court’s function to retry the defendant. *People v. Schmalz*, 194 Ill. 2d 75, 80 (2000). Rather, “[i]t is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts.” *People v. Bradford*, 2016 IL 118674, ¶ 12. It is also the trier of fact’s responsibility to decide which of the competing inferences to accept. *People v. Teague*, 2013 IL App (1st) 110349, ¶ 28. The trier of fact need not “disregard inferences which flow normally from the evidence before it,” or “search out all possible explanations consistent with innocence and raise those explanations to a level of reasonable doubt.” *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. The reviewing court “must allow all reasonable inferences from the record in favor of the prosecution” (*People v. Givens*, 237 Ill. 2d 311, 334 (2010)), and will not reverse a conviction unless the evidence is “so unreasonable,

improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt" (*Bradford*, 2016 IL 118674, ¶ 12).

¶ 17 Section 402 of the Illinois Controlled Substances Act (720 ILCS 570/402 (West 2014)) provides that "it is unlawful for any person knowingly to possess" a controlled substance, including heroin. To establish a defendant's guilt for possession of a controlled substance, the State must show: "(1) the identity of the substance at issue, *i.e.*, that it is a controlled substance in the proper amount; and (2) that defendant knowingly possessed that substance." *People v. Besz*, 345 Ill. App. 3d 50, 53 (2003).

¶ 18 Under section 4-5(a) of the Criminal Code of 2012 (720 ILCS 5/4-5(a) (West 2014)), "a person knows or acts knowingly or with knowledge" of the "nature or attendant circumstances of his or her conduct, \*\*\* when he or she is consciously aware that his or her conduct is of that nature or that those circumstances exist." A defendant's knowledge "is a question of fact for the trier of fact to decide." *People v. Frazier*, 2016 IL App (1st) 140911, ¶ 23. "The element of knowledge is rarely shown by direct proof, and is usually established by circumstantial evidence." *People v. Fleming*, 2013 IL App (1st) 120386, ¶ 74. Where possession of contraband has been shown, "an inference of guilty knowledge can be drawn from the surrounding facts and circumstances." *Schmalz*, 194 Ill. 2d at 82.

¶ 19 Defendant does not challenge Officer Pasko's testimony that he picked up the ball of newspaper containing heroin, manipulated it, and then set it back down. Rather, defendant argues the evidence does not prove he knew the newspaper contained heroin when Pasko and Kanski's testimony only showed he abandoned the heroin on the ground and did not have drugs on his person when he was arrested.

¶ 20 Viewing the evidence in the light most favorable to the State, we find that a rational trier of fact could find beyond a reasonable doubt that defendant had knowledge of the heroin contained within the ball of newspaper. Pasko testified that, from 20 feet away, he saw defendant ride his bicycle into an alley, stop at the only newspaper in the vicinity, look in all directions, and bend down to pick up the newspaper. Defendant manipulated something inside the newspaper and appeared to retrieve an item, moving his right hand from the newspaper to his right front pocket. After putting the newspaper back down, defendant rode his bicycle towards the same direction from which he arrived. The trial court found Pasko's testimony credible. *People v. Bradford*, 2016 IL 118674 ( It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence and draw reasonable inference from the facts).

¶ 21 Based on Pasko's description of defendant's conduct, a rational trier of fact could have inferred that defendant knew the balled-up newspaper contained heroin, and that he approached it for the purpose of picking up the heroin. The testimony that defendant looked in all directions before picking up the newspaper supports an inference that he did not want to be seen possessing the controlled substance. Moreover, a rational trier of fact could have inferred that defendant was not simply passing through the alley, but rather entered and exited the alley from the same direction to obtain the heroin in the balled-up newspaper. The trial court reasonably concluded that defendant actually and knowingly possessed the heroin within the newspaper ball.

¶ 22 To the extent defendant argues he lacked knowing possession of the heroin because he returned the newspaper to the ground and had no heroin on his person when he was arrested, such evidence did not require the trier of fact to find a reasonable doubt of his guilt. Pasko testified that about 1½ minutes passed from the moment defendant rode away from the

newspaper to the moment his partners informed him they had detained defendant. Kanski testified that about one or two minutes passed from the time he received Pasko's description of defendant to the time he observed defendant. A rational trier of fact could have reasonably inferred defendant had hidden or exchanged any heroin that he still possessed during the time period in which defendant was out of the officers' sight. Regardless of whether defendant had heroin on his person after leaving the alley, however, there was sufficient circumstantial evidence for a rational trier of fact to infer defendant knowingly possessed heroin at the time he picked up the balled-up newspaper in the alley and manipulated it. Because a rational trier of fact could have found defendant guilty of actual possession of a controlled substance beyond a reasonable doubt, we need not reach defendant's further contention that he lacked constructive possession of the heroin.

¶ 23

#### CONCLUSION

¶ 24 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 25 Affirmed.