2019 IL App (4th) 170556-U

NO. 4-17-0556

FILED
October 11, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
JERMARI C. DORSEY,	)	No. 16CF101
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err by denying defendant's motion to suppress, and defendant was not denied effective assistance of counsel. Moreover, while the State proved beyond a reasonable doubt defendant possessed heroin with the intent to deliver, it failed to prove he did so within 1000 feet of a public park.

¶ 2 In January 2016, the State charged defendant, Jermari C. Dorsey, by information with one count of unlawful possession of a controlled substance with the intent to deliver within 1000 feet of a public park (720 ILCS 570/407(b)(1) (West 2016)) and one count of manufacture or delivery of a controlled substance (720 ILCS 570/401(a)(2)(A) (West Supp. 2015)). In July 2016, defendant filed a motion to suppress his statements made to police after his arrest. The next month, the Champaign County circuit court held a hearing on defendant's motion to suppress and denied it. After a May 2017 trial, a jury found defendant guilty of both charges. Defendant filed a posttrial motion raising numerous issues. At a joint hearing in July 2017, the

court denied defendant's posttrial motion and sentenced him to 25 years' imprisonment on each count to run concurrently.

¶ 3 Defendant appeals, asserting (1) the circuit court erred by denying his motion to suppress, (2) the State's evidence was insufficient to prove beyond a reasonable doubt he unlawfully possessed a controlled substance with the intent to deliver within 1000 feet of a public park, and (3) he was denied effective assistance of counsel. We affirm in part, reverse in part, and remand the cause with directions.

¶ 4 I. BACKGROUND

¶ 5 The charge of unlawful possession of a controlled substance with the intent to deliver asserted that, on January 22, 2016, defendant, while at 203 South Dodson Drive, Urbana, a location within 1000 feet of Weaver Park, did knowingly and unlawfully possess with the intent to deliver 1 gram or more but less than 15 grams of a substance containing heroin. The other charge alleged defendant did knowingly and unlawfully possess with the intent to deliver 15 grams or more but less than 100 grams of a substance containing cocaine.

¶ 6 A. Motion To Suppress

¶ 7 Defendant's July 2016 motion to suppress alleged the police arrested defendant and read him his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). After hearing his *Miranda* rights, defendant informed the police he did not want to talk, but the police continued to interrogate him. Defendant argued the statements he made to the police were not voluntary and violated his constitutional rights.

¶ 8 On August 26, 2016, the circuit court held an evidentiary hearing on defendant's motion to suppress. The State presented the testimony of (1) Jim Kerner, a police officer with the City of Urbana and (2) Tim Beckett, a deputy with the Champaign County Sheriff's Office.

¶ 9 Officer Kerner testified the police made three controlled buys at 203 South Dodson Drive and, afterwards, he obtained a search warrant for the residence. Around 9 a.m. on January 22, 2016, the police executed the search warrant on 203 South Dodson Drive (hereinafter Residence) and found defendant and his girlfriend, Angela Wade, inside. Once the Residence was secure, Officer Kerner and Deputy Beckett removed defendant from the home and placed him in a police van. Inside the van, Officer Kerner read defendant his *Miranda* rights and asked defendant if he understood each one. According to Officer Kerner, defendant never gave any indication he did not understand his rights. While Officer Kerner was talking to defendant, Deputy Beckett exited the van, spoke to Investigator Seth Herrig, and returned to the van. Defendant told the officers he had been living at 203 South Dodson Drive for the past couple of months with Wade and their two daughters. Defendant also stated he smoked cannabis daily for many years. He smoked about 14 grams of cannabis every day. Officer Kerner then asked defendant if he used any other drugs, and defendant told him, " 'I don't think I want to talk to you any more.' " Officer Kerner estimated 10 minutes elapsed between the time Officer Kerner started reading the *Miranda* warnings and defendant's aforementioned statement. Deputy Beckett heard defendant's statement and then told defendant the search warrant team had located a sizable amount of suspected cocaine inside the Residence. Deputy Beckett then asked defendant whether the cocaine belonged to him or Wade. Defendant replied all of the cocaine was his and none of it belonged to Wade. Defendant then stated he wanted an attorney present prior to any further questioning. Officer Kerner then concluded the interview of defendant.

¶ 10 Deputy Beckett's testimony was similar to Officer Kerner's. Deputy Beckett also testified defendant did not give any indication he did not understand his *Miranda* rights. Moreover, Deputy Beckett explained his talk outside the van with Investigator Herrig was for

just a "minute." Deputy Beckett stated he was in the van when defendant stated, " 'I don't think I want to talk any more.' " Deputy Beckett then informed defendant of the large amount of cocaine found in the Residence and asked whose it was. Defendant replied it was his and not Wade's. After that, defendant asked for an attorney, and the interview concluded.

¶ 11 Defendant did not present any testimony. Defense counsel argued defendant was in custody and his statement " 'I don't want to talk any more' " clearly invoked defendant's fifth amendment rights. The circuit court disagreed, finding defendant's statement was equivocal. The court denied the motion to suppress.

¶ 12 B. Trial

¶ 13 On May 9, 2017, the circuit court commenced defendant's jury trial. The State presented the testimony of (1) Champaign police officer Cully Schweska, (2) Champaign detective sergeant Matthew Henson, (3) Investigator Herrig, (4) Officer Kerner, (5) Deputy Beckett, (6) Urbana police detective Matthew Quinley, and (7) Illinois State Police forensic scientist Linda Jenkins. The State also presented numerous exhibits, most of which consisted of controlled substances. Defendant presented Wade's testimony and his state identification card, which listed his address as "208 W Beardsley Ave." The evidence relevant to the issues on appeal is set forth below.

¶ 14 Officer Kerner testified he was the case agent for the investigation and had obtained the search warrant for the Residence. He had a team of 20 to 30 people who executed the search warrant on January 22, 2016. Wade and defendant were the only two people in the Residence when the search warrant was executed. Officer Kerner escorted defendant out of the Residence with Deputy Beckett. Officer Kerner's testimony about the interview of defendant was similar to his testimony at the hearing on defendant's motion to suppress. Additionally,

Officer Kerner testified he removed defendant's wallet. Inside defendant's wallet was his Illinois identification card and $414 in cash. Officer Kerner gave the identification card and cash to Detective Quinley. Deputy Beckett's testimony about the interview of defendant was also similar to the testimony he gave at the suppression hearing.

¶ 15 Investigator Herrig testified he searched one of the bedrooms of the Residence. Inside a large plastic bag, Investigator Herrig found several pieces of mail addressed to defendant with the address 203 South Dodson. Investigator Herrig identified the State's exhibit Nos. 29A, 29B, 29C, and 29D as photographs of the pieces of mail he located in the Residence.

¶ 16 Officer Schweska testified one of the areas of the Residence he searched was a room on the west side of the house, which he described as a "sun room." Officer Schweska first found a red plastic tub to the left of the entry into the room. The red tub contained a digital scale. Officer Schweska identified the scale he found in the sun room as State's exhibit No. 19 because it had been marked with Detective Quinley's initials. Officer Schweska also located a green plastic flower pot on a shelf. Inside the green flower pot was a removable clear plastic pot. Officer Schweska found clear plastic bags containing individual bags, some of which contained a white-colored substance and some contained a tan-colored substance. Some of the bags were in the clear plastic pot, and some were located in the bottom of the green pot. Based on his training and experience, Officer Schweska believed the white-colored substance to be cocaine and the tan-colored substance to be heroin.

¶ 17 During his testimony, Officer Schweska identified several of the State's exhibits that he found in the flower pot. He identified State's exhibit No. 3 as 15 bags containing a substance he believed to be crack cocaine. Officer Schweska also believed the substances in State's exhibit Nos. 2 and 5 contained cocaine. He identified State's exhibit No. 7 as a bag

containing a tan rock-like substance and No. 8 as three clear plastic bags containing a tan-brown substance. Officer Schweska believed the substances in State's exhibit Nos. 7 and 8 to be heroin. The State's exhibit No. 9 was two bags containing a tan-colored, rock-like substance, which Officer Schweska also believed to be heroin. Additionally, Officer Schweska identified the State's exhibits Nos. 11, 12, and 13 as clear bags containing pills. The State's exhibit No. 14 contained a green powder, and State's exhibit No. 16 contained a green-colored, leaf-like substance. Based on his training and experience, he believed State's exhibit No. 16 contained cannabis. All of the aforementioned exhibits were found by Officer Schweska in the green and clear flower pots.

¶ 18 Detective Sergeant Henson testified he searched the kitchen and found a canine dewormer box. He identified the State's exhibit No. 4 as six individual bags each containing a white powdery substance that he found in the dewormer box. Based on his training and experience, he believed the white powdery substance to be cocaine. Detective Sergeant Henson also searched the laundry room that contained a chest-style deep freeze. In the chest, he found a tan-colored plate with residue on it. Under the plate was a digital scale with an "off-color white residue" on it. Detective Sergeant Henson also found a tan-colored "cookie" and a clear bag containing a green leafy substance. He identified the State's exhibit No. 15 as being the bag with the green leafy substance, which he believed to be cannabis. The State's exhibit No. 1 was the "cookie" in the freezer. Detective Sergeant Henson explained the cookie was cocaine reduced to its base form.

¶ 19 Detective Quinley was the only State's witness to address the Residence's location to Weaver Park. The entirety of his testimony on that issue was the following:

"Q. And Investigator Quinley, during the course—or Detective Quinley,

during the course of this investigation, were you able to determine the proximity of that residence to Weaver Park?

A. Yes.

Q. Okay. And how did you go about doing that?

A. Through Google Maps we'll do it, but also, it's a visual line. 203 South Dodson bumps up to the Baker Lane which is a dirt road that separates the back of residences to Weaver Park and Thomas Payne School.

MR. LERNER [DEFENSE COUNSEL]: Your Honor, I'm going to object as to the first part of his answer. Google Maps, I think that calls for hearsay.

THE COURT: The objection is overruled.

A. So once you get past Baker Lane, now you're into Weaver Park property, so my guesstimation [*sic*] is it's about 300 feet from the center of the residence to Weaver Park."

¶ 20 As to the search warrant of the Residence, Detective Quinley testified he was responsible for photographing and collecting the evidence. He identified the State's exhibit No. 1 as the white, rock-like substance Detective Sergeant Henson located in the chest freezer. Detective Sergeant Henson pointed the substance out to him, and he photographed the substance and collected it. When collecting the substance, Detective Quinley wore rubber gloves and placed the substance into an evidence bag, which was then secured in a larger bag until he left the Residence. When he was finished collecting all of the evidence, he returned to the Urbana police department where he processed the evidence. Detective Quinley separated the substances from the bags, weighed the substances, and field tested portions of the substances. After that, he bagged and sealed the substances. Detective Quinley also created a tag for all of the items. The

tag indicates where the evidence was found and how it relates to a specific case. Detective Quinley processed all of the evidence discovered at the Residence following the above procedure.

¶ 21 Jenkins testified she worked at the Illinois State Police Forensic Center in Chicago. The circuit court authorized Jenkins to testify as an expert. When Jenkins receives items for analysis, she first makes sure the evidence and the description of the evidence matches. Jenkins then proceeds to do analysis by weighing out the evidence and testing it to verify the contents of the evidence. Once she is done with the testing, Jenkins repackages the evidence, places it back in the evidence bag it was submitted with, and puts it in the vault area.

¶ 22 As to the State's exhibit No. 1, Jenkins testified she recognized it based on the markings she placed on it. She also noted a small tag stating "Illinois State Police," which is placed on the evidence when it is brought to the laboratory. Jenkins testified the State's exhibit No. 1 weighed 20.5 grams and was a chunky substance. After performing two tests, Jenkins confirmed the chunky substance was cocaine. Jenkins also testified about the State's exhibit No. 9, which she described as a chunky powder. The powder weighed 5.3 grams. Jenkins again performed two tests, which confirmed the powder was heroin. Defense counsel did not object to Jenkins's testimony about the test results. The only objection raised to the admission of the substances themselves was a relevancy objection to the substances that were not tested.

¶ 23 Wade testified she owned the Residence and defendant was not living there on January 22, 2016. Defendant would frequently visit because he had a child living in the home. According to Wade, defendant did not have a permanent residence, so he left some personal items at her home and had some of his mail sent there. Wade had never observed defendant with drugs or anyone seeking drugs from defendant. Wade testified she did not know how the drugs

got into her home.

¶ 24 At the conclusion of the trial, the jury found defendant guilty of both charges.

¶ 25 C. Posttrial

¶ 26 On May 15, 2017, defendant filed a motion notwithstanding the verdict or in the alternative a motion for a new trial. In his motion, defendant asserted the circuit court erred by (1) denying his motion to suppress, (2) denying his motion *in limine* regarding his prior convictions, (3) failing to properly address the State permitting the jury to see exhibits that had not been entered into evidence, (4) allowing testimony related to cannabis found in the searched residence, (5) allowing testimony about untested controlled substances found in the searched home, and (6) not allowing defense counsel to approach the bench to address an objection. Defendant also contended the jury erred by finding him guilty based solely on circumstantial evidence and finding him guilty of being within 1000 feet of a public park.

¶ 27 At the beginning of the July 24, 2017, joint hearing on defendant's posttrial motion and sentencing, the following dialogue took place between the circuit court and defense counsel:

> "THE COURT: Now, anything you wish to add to your post-trial motion?
>
> MR. LERNER [DEFENSE COUNSEL]: Just briefly, your Honor. I think the motion stands for itself.
>
> I did want to discuss just briefly this argument that we had quite a number of items that were presented before the jury that were—
>
> THE COURT: Well, let me ask you a question about that sort of related to that issue. As I recall, the testimony I think it was Officer Quinley left the house with the specific drugs in question that got tested and then the next we heard we

had a scientist from Chicago who was telling us what the substances were. Was there reason why you didn't object to the chain or did you feel that—I mean, I understand that testimony's kind of mind-numbing, but there wasn't an objection on your part and I was wondering if that was a tactical decision based upon your assessment of the case?

MR. LERNER: The—as far as I think that the—that there was no foundation or anything as to things that they alleged were controlled substances that were never tested.

THE COURT: But what about the stuff that was tested?

MR. LERNER: The—frankly, I don't remember whether there was a whole [*sic*] in the chain or not. If I made an error, I made an error.

THE COURT: All right. All right. Just, again, I just wanted to get your position on that matter."

After hearing defense counsel's other arguments, the court denied defendant's posttrial motion. The court then addressed sentencing. Defendant declined to make a statement. The court considered the parties' recommendations and the mitigating and aggravating factors and sentenced defendant to two concurrent prison terms of 25 years.

¶ 28 On July 31, 2017, defendant filed a timely notice of appeal in compliance with Illinois Supreme Court Rule 606 (eff. July 1, 2017), listing only the count involving cocaine. On August 2, 2017, defendant filed a timely amended notice of appeal under Illinois Supreme Court Rules 606(d) (eff. July 1, 2017) and 303(b)(5) (eff. July 1, 2017) listing both of defendant's convictions and sentences. Accordingly, this court has jurisdiction of defendant's convictions and sentences under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 29 II. ANALYSIS

¶ 30 A. Motion to Suppress

¶ 31 Defendant contends the circuit court erred by denying his motion to suppress the statements he made after he invoked his right to remain silent. The State disagrees contending defendant did not clearly assert his right to remain silent. When reviewing a circuit court's ruling on a motion to suppress evidence, this court applies a two-part standard of review. *People v. Brooks*, 2017 IL 121413, ¶ 21, 104 N.E.3d 417. We review the circuit court's factual findings under the manifest weight of the evidence standard and then apply the *de novo* standard of review to the circuit court's ultimate legal ruling on whether the evidence should be suppressed. *Brooks*, 2017 IL 121413, ¶ 21.

¶ 32 In *Berghuis v. Thompkins*, 560 U.S. 370, 381-82 (2010), the United States Supreme Court adopted the same standards for determining when an accused has invoked the *Miranda* right to remain silent as the ones for analyzing the *Miranda* right to counsel at issue in *Davis v. United States*, 512 U.S. 452 (1994). Thus, when an accused invokes his or her *Miranda* right to remain silent, the invocation must be unambiguous and unequivocal. *Berghuis*, 560 U.S. at 381-82. The invocation must be sufficiently clear that a reasonable police officer in those circumstances would understand the statement to be an invocation of the right to remain silent. See *Davis*, 512 U.S. at 459. If the accused's statement concerning the *Miranda* right " 'is ambiguous or equivocal' " or if the accused makes no statement, "the police are not required to end the interrogation, [citation], or ask questions to clarify whether the accused wants to invoke his or her *Miranda* rights." *Berghuis*, 560 U.S. at 381 (quoting *Davis*, 512 U.S. at 459).

¶ 33 In this case, Officer Kerner read defendant his *Miranda* rights and asked defendant if he understood each one. Defendant gave no indication he did not understand his

rights. After answering a few questions, defendant stated, " 'I don't think I want to talk to you any more.' " Deputy Beckett informed defendant of the cocaine found in the Residence and asked defendant if the cocaine was his or Wade's. Defendant responded it was his and then asked for an attorney. The police ended the questioning at that point.

¶ 34 Defendant contends the First District's decision in *People v. Hernandez*, 362 Ill. App. 3d 779, 840 N.E.2d 1254 (2005), is directly on point. There, the defendant agreed to give a videotaped statement to the assistant state's attorney. *Hernandez*, 362 Ill. App. 3d at 781, 840 N.E.2d at 1256. Upon being informed of his *Miranda* rights, the following dialogue took place between the assistant state's attorney and the defendant:

> "Q. Understanding these rights, do you wish to talk to us now?
>
> A. No, not no more.
>
> Q. Do you wish to talk to us now about what we previously spoken [*sic*] to?
>
> A. Yes." *Hernandez*, 362 Ill. App. 3d at 782, 840 N.E.2d at 1257.

The defendant then discussed his role in the murder. *Hernandez*, 362 Ill. App. 3d at 782, 840 N.E.2d at 1257. The First District concluded "the language defendant used here to invoke his right to silence was clear and unequivocal, unlike language from other cases found to be too ambiguous to sufficiently do so." *Hernandez*, 362 Ill. App. 3d at 785-86, 840 N.E.2d at 1260.

¶ 35 Unlike in *Hernandez*, defendant did not use a clear and firm term like "no" and "no more." Defendant included the term "think" when stating he did not want to talk anymore. Thus, we disagree with defendant *Hernandez* is directly on point. Moreover, none of the other cases cited by the parties address the invocation of the right to remain silent in a similar fashion as the situation before us. In *People v. Aldridge*, 68 Ill. App. 3d 181, 186, 385 N.E.2d 396, 400 (1979), the defendant did say "I think you got enough, you got the story now." The reviewing

court found the aforementioned statement and others by the defendant did not show a desire to end all questioning but rather indicated the defendant's reluctance to convey to the officers all the details of the offense. *Aldridge*, 68 Ill. App. 3d at 187, 385 N.E.2d at 401. There, the statement using "think" is different than the statement before us.

¶ 36 The word "think" has numerous meanings. See Merriam-Webster Online Dictionary, http://www.merriam-webster.com/dictionary/think (last visited Aug. 22, 2019). Some of those definitions include the following: "to reflect on: ponder," "to determine by reflecting," "to have as an expectation: anticipate." Merriam-Webster Online Dictionary, http://www.merriam-webster.com/dictionary/think (last visited Aug. 22, 2019). Thus, the word "think" can indicate the person is still considering the matter. When viewing defendant's statement from the viewpoint of a reasonable police officer, we find the inclusion of the term "think" added uncertainty to defendant's statement and made any purported invocation of his right to remain silent unclear and equivocal. Accordingly, we find the circuit court did not err by denying defendant's motion to suppress.

¶ 37 B. Sufficiency of the Evidence

¶ 38 Defendant also contends the State's evidence was insufficient to prove beyond a reasonable doubt he possessed the heroin with the intent to deliver within 1000 feet of a public park. The State disagrees.

¶ 39 Our supreme court has set forth the standard of review for such claims as follows:

> "When considering a challenge to the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the required elements beyond a reasonable doubt. [Citation.] [I]t is not the function of this

court to retry the defendant. [Citation.] All reasonable inferences from the evidence must be drawn in favor of the prosecution. [I]n weighing evidence, the trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. [Citation.] We will not reverse the trial court's judgment unless the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt. [Citation.]" (Internal quotation marks omitted.) *People v. Newton*, 2018 IL 122958, ¶ 24, 120 N.E.3d 948.

¶ 40 In this case, defendant challenges his conviction for unlawful possession of controlled substance with the intent to deliver within 1000 feet of a public park. Section 401(c)(1) of the Illinois Controlled Substances Act (Act) (720 ILCS 570/401(c)(1) (West Supp. 2015)) makes it a crime to possess with the intent to deliver 1 gram or more but less than 15 grams of any substance containing heroin. A violation of section 401(c) is a Class 1 felony. 720 ILCS 570/401(c) (West Supp. 2015)). Section 407(b)(1) of the Act (720 ILCS 570/407(b)(1) (West 2016)) enhances a section 401(c) offense to a Class X felony if the violation occurs "within 1,000 feet of the real property comprising any school or residential property owned, operated or managed by a public housing agency or leased by a public housing agency as part of a scattered site or mixed-income development, or public park ***."

¶ 41 Defendant argues the State failed to prove both (1) he possessed the heroin and (2) did so within 1000 feet of a public park. As to defendant's possession of the heroin, Officer Schweska testified he found a green flower pot with another clear plastic pot inside of it. The two pots were in the Residence's sun room. He further testified that, inside the two pots were

numerous bags containing various substances. Officer Schweska identified numerous exhibits, including the State's exhibit Nos. 5 and 9. Based on his experience, Officer Schweska believed the substance in State's exhibit No. 5 was cocaine and State's exhibit No. 9 was heroin. After identifying the exhibits, Officer Schweska testified all of the exhibits were found in the two pots. Thus, Officer Schweska did identify the exhibits as being found in the Residence. Jenkins weighed and tested the State's exhibit No. 9 and found it was 5.3 grams of heroin.

¶ 42 Further, Officer Quinley testified he collected State's exhibit No. 1, which was a Baggie with a white substance that was found in the chest freezer in the utility room. Based on his experience, Officer Quinley testified it was crack cocaine. Jenkins testified the State's exhibit No. 1 was 20.5 grams of cocaine. Defendant admitted to Officer Kerner and Deputy Beckett the cocaine in the Residence was his. The police found the heroin in close proximity to the substance Officer Schweska believed to be cocaine. A digital scale was also found in the room where the heroin was located. Defendant also had a large amount of cash on his person. Given the aforementioned circumstances, a jury could have found beyond a reasonable doubt defendant possessed the heroin found in the Residence.

¶ 43 Defendant also contends the State failed to prove Weaver Park was a public park. The Act does not define the term "public park." The Second District defined the term "park" as "a piece of ground in a city or village set apart for ornament or to afford the benefit of air, exercise or amusement." (Internal quotation marks and emphasis omitted.) *People v. Morgan*, 301 Ill. App. 3d 1026, 1031, 704 N.E.2d 928, 932 (1998) (quoting *Emalfarb v. Krater*, 266 Ill. App. 3d 243, 255, 640 N.E.2d 325, 333 (1994)). In this case, Detective Quinley testified the Residence "bumps up" to Baker Lane, a dirt road separating the back of the Residence to Weaver Park and Thomas Payne School. According to Detective Quinley, once a person gets past Baker

Lane, the person is on Weaver Park property. He estimated Weaver Park was 300 feet from the center of the Residence. However, the State presented no evidence "Weaver Park" was a *public* park.

¶ 44 Accordingly, we agree with defendant the State's evidence was insufficient to sustain a guilty finding of the Class X felony. However, the State's evidence was sufficient to prove the lesser included Class 1 felony of possession with the intent to deliver 1 gram or more but less than 15 grams of any substance containing heroin (720 ILCS 570/401(c)(1) (West Supp. 2015)). Thus, we remand for resentencing.

¶ 45 C. Effective Assistance of Counsel

¶ 46 Last, defendant contends his counsel failed to provide effective assistance of counsel for failing to object to the admissibility of the drugs based on the State's failure to establish a chain of custody. The State asserts defendant received effective assistance of counsel and defendant waived any issues concerning the chain of custody.

¶ 47 This court analyzes ineffective assistance of counsel claims under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Evans*, 186 Ill. 2d 83, 93, 708 N.E.2d 1158, 1163 (1999). To obtain reversal under *Strickland*, a defendant must prove (1) his counsel's performance failed to meet an objective standard of competence and (2) counsel's deficient performance resulted in prejudice to the defendant. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. To satisfy the deficiency prong of *Strickland*, the defendant must demonstrate counsel made errors so serious and counsel's performance was so deficient that counsel was not functioning as "counsel" guaranteed by the sixth amendment (U.S. Const., amend. VI). *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. Further, the defendant must overcome the strong presumption the challenged action or inaction could have been the product of sound trial

strategy. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. To satisfy the prejudice prong, the defendant must prove a reasonable probability exists that, but for counsel's unprofessional errors, the proceeding's result would have been different. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163-64. The *Strickland* Court noted that, when a case is more easily decided on the ground of lack of sufficient prejudice rather than counsel's constitutionally deficient representation, the court should do so. *Strickland*, 466 U.S. at 697.

¶ 48 In cases involving controlled substances, the Illinois rules of evidence require the State to provide a foundation for the admission of the results of chemical testing of a purported controlled substance by showing the police took reasonable protective measures to ensure the recovered substance was the same substance tested by the forensic scientist. *People v. Alsup*, 241 Ill. 2d 266, 274, 948 N.E.2d 24, 28-29 (2011). Before admitting the test results, the circuit court "must determine whether the State has met its 'burden to establish a custody chain that is sufficiently complete to make it improbable that the evidence has been subject to tampering or accidental substitution.' " *Alsup*, 241 Ill. 2d at 274, 948 N.E.2d at 29 (quoting *People v. Woods*, 214 Ill. 2d 455, 467, 828 N.E.2d 247, 255 (2005)). "Once the State has established this *prima facie* case, the burden then shifts to the defendant to show actual evidence of tampering, alteration or substitution." *Alsup*, 241 Ill. 2d at 274-75, 948 N.E.2d at 29.

¶ 49 If defendant does not provide such evidence, a sufficiently complete chain of custody does not require the State to present the testimony of every person in the chain or exclude every possibility of tampering or contamination. *Alsup*, 241 Ill. 2d at 275, 948 N.E.2d at 29. Moreover, the circuit court does not err by admitting evidence where the chain of custody has a missing link if the testimony presented sufficiently described the condition of the evidence when delivered and it matched the description of the evidence when examined. *Alsup*, 241 Ill.

2d at 275, 948 N.E.2d at 29. In such cases, the "deficiencies in the chain of custody go to the weight, not admissibility, of the evidence." *Alsup*, 241 Ill. 2d at 275, 948 N.E.2d at 29.

¶ 50 If defendant's counsel would have objected to the admission of the tests results based on a lack of chain of custody, the State would have had an opportunity to remedy any deficiencies in the custody chain. See *People v. Rodriguez*, 313 Ill. App. 3d 877, 887, 730 N.E.2d 1188, 1196 (2000) (noting "the lack of a timely and specific objection deprives the State of the opportunity to correct any deficiency in the foundational proof"). The record does not indicate any tampering, altering, or substituting of the substances. This was a case where the evidence establishing the chain of custody of the cocaine and heroin was done in a cursory and summary fashion when defense counsel gave no indication he would object to the admission of the test results. The State presented the testimony of the two officers, Officer Schweska and Detective Sergeant Henson, who found the cocaine and heroin at issue in the Residence. It then presented the testimony of Officer Quinley who photographed the cocaine and heroin, removed it from the Residence, and at the police station, weighed the substances, labeled them, and sealed the bags containing the substances. Finally, the State presented the testimony of Jenkins, the scientist who did the chemical testing on the substances at issue. Thus, had defense counsel raised an objection to the chain of custody, the State had the witnesses to cure any alleged defect. Accordingly, we find defendant cannot establish the prejudice prong of the *Strickland* test.

¶ 51 III. CONCLUSION

¶ 52 For the reasons stated, we reverse defendant's conviction for possession with the intent to deliver within 1000 feet of a public park, affirm the Champaign County circuit court's judgment in all other respects, and remand the cause for resentencing on the lesser included offense of unlawful possession with the intent to deliver 1 gram or more but less than 15 grams

of a substance containing heroin (720 ILCS 570/401(c)(1) (West Supp. 2015)).

¶ 53 Affirmed in part and reversed in part; cause remanded with directions.