

NOTICE
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2019 IL App (5th) 160232-U

NO. 5-16-0232

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Lawrence County.
)	
v.)	No. 15-CF-70
)	
RANDY J. ADERHOLT,)	Honorable
)	Robert M. Hopkins,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Overstreet and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in refusing to instruct the jury on possession as a voluntary act. The State presented sufficient evidence to support a finding the defendant knowingly possessed the methamphetamine recovered from the scene. The State did not improperly shift the burden of proof to the defense.

¶ 2 The defendant, Randy J. Aderholt (Aderholt), appeals from the trial court’s judgment, entered after a jury verdict, convicting him of unlawful possession of a methamphetamine. We affirm.

¶ 3 The State charged Aderholt with unlawful possession of less than 5 grams of methamphetamine (720 ILCS 646/60(b)(1) (West 2014)), a Class 3 felony. The following evidence was presented at Aderholt's trial.

¶ 4 On July 11, 2015, at approximately 6:15 p.m., Deputy Trenton Masterson (Masterson) responded to a call that a subject was acting erratically at the Mach 1 gas station in Lawrenceville. When Masterson approached the area, he saw Aderholt in the parking lot of the gas station standing next to a red, Chevy S-10 truck, "throwing his arms up in the air." Aderholt got into the passenger side of the truck and his friend, Stacy Phillips (Phillips), drove the truck out of the parking lot.

¶ 5 Masterson followed the truck and eventually stopped the vehicle for failing to signal a left turn. When Masterson signaled for the truck to pull over, Phillips stopped the truck in a bank parking lot. Aderholt immediately exited the truck from the passenger side and began walking toward Masterson. It was hot outside, and Aderholt was wearing a pair of black shorts and no shirt. Masterson exited his vehicle and ordered Aderholt to stop and put his hands where Masterson could see them. Aderholt complied. Masterson then ordered the driver, Phillips, who was still seated inside of the truck, to show his hands. Phillips complied, and put his hands outside of the window of the truck.

¶ 6 Masterson testified Aderholt then dropped hands and turned around so that his back was facing Masterson. Aderholt then brought his hands to the front of his body and Masterson was not able to see what Aderholt was doing with his hands. In response to Aderholt's movements, Masterson drew his service weapon and ordered Aderholt to turn around and show his hands. Aderholt did not initially respond and Masterson had to

repeat the order. Aderholt eventually complied, and when Aderholt turned around to face Masterson, he did not see anything in Aderholt's hands. Masterson then ordered Aderholt to lie on the ground, on his stomach, with his hands behind his back. Aderholt complied with Masterson's order; however, in doing so, Aderholt again turned away from Masterson.

¶ 7 At this time, Officers Ryan Curtis (Curtis) and James Lyle (Lyle) of the Lawrenceville Police Department arrived at the scene. Curtis testified he handcuffed Aderholt's hands behind his back while Aderholt was lying on the ground because Aderholt "kept on moving his hands" and was "digging toward[] the front of his person." While Aderholt was lying on the ground, Curtis searched Aderholt for a weapon, rolling him from side-to-side. When Curtis rolled Aderholt to the right, Masterson and Lyle observed a white, powdery substance on the asphalt underneath Aderholt. The white substance appeared stuck to Aderholt's body. Masterson testified the substance was stuck to Aderholt's bare chest. Lyle testified he observed the substance on the front of Aderholt's shorts and on Aderholt's "chest and or belly area."

¶ 8 After Curtis placed the handcuffs on Aderholt, Curtis assisted Aderholt to a standing position. The officers then observed two plastic baggies on the ground where Aderholt had been lying. At that time, Curtis also noticed the white, powdery substance on Aderholt's person. Masterson and Curtis testified that prior to placing Aderholt into a squad car, Aderholt licked some of the white substance from his body.

¶ 9 The State admitted into evidence two photographs taken at the scene by Lyle. Exhibit 1 was a photograph of the asphalt parking lot depicting a white, powdery

substance loose on the asphalt, a baggy containing a white substance, and a second baggy nearby. Exhibit 2 was a photo of Aderholt showing a white substance on the front of Aderholt's shorts and abdominal area. The officers collected the substance from the ground, which contained .6 grams of a substance containing methamphetamine.

¶ 10 Aderholt testified that on July 11, 2015, he received a ride to the gas station from a friend in order to retrieve money from the ATM to pay his rent. Aderholt then called Phillips to pick him up, and stated he was waving his arms to flag down Phillips. Aderholt testified Phillips then drove him to the bank so Aderholt could withdraw money from the ATM. Aderholt testified Masterson approached him in the bank parking lot after Aderholt exited Phillips' vehicle. Aderholt testified Masterson pointed his service weapon at him and ordered him to move away from Phillips' vehicle and to get down on the ground, which he did. Aderholt stated the asphalt was hot, and that he moved while lying on the ground in order to remove some glass and rock from beneath his shoulders. Aderholt insisted he kept his hands visible because he did not want Masterson to shoot him. Aderholt testified the officers handcuffed him with his hands behind his back and then stood him up on his feet. Once he was standing, Aderholt looked down and noticed the powder stuck to him. Aderholt testified he did not have any drugs in his possession prior to the powder's becoming stuck to him. During direct examination, Aderholt testified as follows:

“Q. And do you know how that got on you?

A. Well, I looked on the ground, and I seen a trail of it leaving behind me.

Q. So do you know where it came from originally?

A. Well, essentially, he kept telling me, Back up. Back up, so he could take the picture. Well, I was back around the truck by the time that it happened, and I was in an area I hadn't even been in. And I looked down as I was going backwards because I was stepping on stuff, and then there it was. The baggy and the trail of the pile."

¶ 11 During cross-examination, Aderholt testified he did not notice anything on the ground underneath him because Masterson was pointing a gun at him and he was focused on obeying Masterson's commands. During cross-examination, and without objection by the defense, the State also asked Aderholt about the origin of the methamphetamine:

"Q. And where did that come from?

A. The ground. The pavement. The hot pavement.

Q. But you didn't notice it when you got down on the ground?

A. No. I was looking forward laying on the ground wondering why I was being drawn on...

Q. You can't explain where that powdery substance came from?

A. It came from the pavement, sir.

Q. But you don't know how it got there?

A. No, sir."

¶ 12 At the instruction conference, Aderholt requested that the court instruct the jury pursuant to Illinois Pattern Jury Instructions, Criminal, No. 4.15 (4th ed. 2000) (hereinafter IPI Criminal 4th), which defines when possession is a voluntary act. Defense counsel argued the instruction was relevant because Aderholt was arguably in possession of the methamphetamine by virtue of the substance being stuck to the front of his body, but that such possession was not a voluntary act. The State objected to the instruction,

arguing the evidence supported a finding that Aderholt possessed the substance and was attempting to dispose of the methamphetamine. The court refused Aderholt's requested instruction, finding that the instruction unnecessarily complicated the case.

¶ 13 The jury found Aderholt guilty of unlawful possession of methamphetamine and the court sentenced him to a seven-year term of imprisonment. This appeal follows.

¶ 14 Jury Instructions

¶ 15 In his first point on appeal, Aderholt argues the trial court erred in refusing his request to instruct the jury that possession must be a voluntary act. We review the trial court's refusal to give a tendered jury instruction for an abuse of discretion. *People v. Monroe*, 366 Ill. App. 3d 1080, 1088 (2006). Our review is *de novo*, however, when the issue on appeal is whether the given instructions adequately conveyed to the jury the law applicable to the case. *People v. Olaska*, 2017 IL App (2d) 150567, ¶ 119.

¶ 16 The purpose of jury instructions is to provide the jury with the correct legal principles applicable to the evidence so the jury can reach a correct conclusion. *Monroe*, 366 Ill. App. 3d at 1088. Jury instructions must be read as a whole and are sufficient if they fully and fairly present the law applicable to the theories of the parties. *Monroe*, 366 Ill. App. 3d at 1088. The instructions should not be misleading or confusing. *Monroe*, 366 Ill. App. 3d at 1088.

¶ 17 A person commits the offense of methamphetamine possession when he knowingly possesses methamphetamine or a substance containing methamphetamine. 720 ILCS 646/60(a) (West 2014). The trial court instructed the jury that in order to sustain a conviction on the charge, the State must prove, "[t]hat the defendant knowingly

possessed methamphetamine or a substance containing methamphetamine.” Aderholt requested the trial court provide the jury with a voluntary possession instruction, IPI Criminal 4th No. 4.15, which provides that “[p]ossession is a voluntary act if the person knowingly procured or received the thing possessed, or was aware of his control of the thing for a sufficient time to have been able to terminate his possession.” The trial court refused to give the tendered instruction because it found the instruction unnecessarily complicated the issues in the case.

¶ 18 We agree that the trial court properly refused to give the jury instruction on voluntary possession. The question before the jury was whether Aderholt knowingly possessed the methamphetamine recovered from the scene, not whether Aderholt should be held criminally liable by mere virtue of the fact that a controlled substance became involuntarily stuck to his body. The State’s theory was that Aderholt knowingly possessed the methamphetamine prior to lying down on the asphalt and that, in all likelihood, some of the substance became stuck to Aderholt’s clothing and body during his attempts to conceal or dispose of it. Aderholt’s defense was that the methamphetamine never belonged to him and that the substance was, unbeknownst to him, transferred to his person when he lay down on the ground during his encounter with police. The State never argued to the jury that Aderholt should be held criminally liable merely because the substance was involuntarily stuck to his body, and Aderholt’s suggestion that the jury would find him guilty on this basis was not supported by the evidence or the arguments of counsel during trial. The central issue in the case was whether Aderholt knowingly possessed the methamphetamine, not whether Aderholt’s

possession was voluntary. Although the tendered instruction accurately stated the law, the trial court properly refused to give Aderholt's instruction to the jury because it interjected an issue not previously raised in the case, and would have unnecessarily confused the jury.

¶ 19 Sufficiency of the Evidence

¶ 20 Next, Aderholt contends the State failed to prove beyond a reasonable doubt that he knowingly and voluntarily possessed the methamphetamine because the State did not present any evidence of where the methamphetamine came from or that it belonged to Aderholt. On review of a challenge to the sufficiency of the evidence supporting a criminal conviction, this court determines whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Diaz*, 377 Ill. App. 3d 339, 344 (2007). In determining whether sufficient evidence supports the verdict, the court considers the evidence, and the reasonable inferences drawn therefrom, in the light most favorable to the verdict. *People v. Wheeler*, 226 Ill. 2d 92, 116-17 (2007). It is not the function of this court to retry the defendant. *Diaz*, 377 Ill. App. 3d at 344. It is the trier of fact's duty to assess the credibility of the witnesses, and the jury's findings concerning credibility are entitled to great weight. *Wheeler*, 226 Ill. 2d at 114-15. We will not set aside a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *Wheeler*, 226 Ill. 2d at 115.

¶ 21 As already indicated, the crime of methamphetamine possession requires the defendant to knowingly possess methamphetamine or a substance containing

methamphetamine. 720 ILCS 646/60(a) (West 2014). Knowledge is rarely susceptible to direct proof and is frequently established by circumstantial evidence. *People v. Bui*, 381 Ill. App. 3d 397, 419 (2008). The element of knowledge may be established by evidence of acts, statements, or conduct of the defendant, as well as the surrounding circumstances, which supports the inference that he knew of the existence of the illegal substance. *Bui*, 381 Ill. App. 3d at 419. On appeal, Aderholt challenges the sufficiency of the evidence supporting his conviction, asserting the evidence demonstrated only that he had lain down on top of a bag of methamphetamine, the contents of which were then transferred to his body. We disagree.

¶ 22 The evidence at trial was that Aderholt engaged in conduct consistent with attempts to conceal or dispose of an illegal substance. Masterson stated that after Aderholt initially complied with his orders, Aderholt then turned around so that his back was facing Masterson. Aderholt then brought his hands down to the front of his body so that Masterson could not see what Aderholt was doing with his hands. In response to Aderholt's movements, Masterson drew his service weapon on Aderholt and ordered him to turn around and show his hands. Although Aderholt eventually complied, Aderholt did not initially respond and Masterson had to repeat the order. After Masterson ordered Aderholt to lie down on the ground on his stomach, Aderholt again turned his body away from Masterson while doing so. Curtis eventually handcuffed Aderholt's hands behind his back because Aderholt "kept on moving his hands" and was "digging toward[] the front of his person." When lifted to a standing position, two plastic baggies were on the ground where Aderholt had been lying, and methamphetamine was scattered on the

defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *Sebby*, 2017 IL 119445, ¶ 48; Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). The plain error doctrine is a narrow, limited exception to the general rule of procedural default. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). The defendant has the burden of persuasion under plain error review. *Hillier*, 237 Ill. 2d at 545. Aderholt seeks review under the first prong, asserting the evidence was closely balanced and, thus, the guilty verdict may have resulted from the prosecutor's errors and not from the evidence. The first step under the plain error doctrine is to determine whether a clear and obvious error occurred at trial. *Sebby*, 2017 IL 119445, ¶ 49. In this case, after reviewing the record, we find that no error occurred during trial.

¶ 27 First, Aderholt takes issue with the State's cross-examination during which the State asked Aderholt where the methamphetamine came from. The record indicates, however, that this issue was first raised by the defense during trial. At trial, defense counsel elicited testimony from Aderholt that he was not in possession of any controlled substances prior to lying down on the parking lot. Specifically, during direct examination, defense counsel questioned Aderholt regarding the sudden appearance of the methamphetamine stuck to his body as follows:

“Q. And do you know how that got on you?

A. Well, I looked on the ground, and I seen a trail of it leaving behind me.

Q. So do you know where it came from originally?

A. Well, essentially, he kept telling me, Back up. Back up, so he could take the picture. Well, I was back around the truck by the time that it

happened, and I was in an area I hadn't even been in. And I looked down as I was going backwards because I was stepping on stuff, and then there it was. The baggy and the trail of the pile.”

¶ 28 During cross-examination, the State also questioned Aderholt about the appearance of the methamphetamine on his person:

“Q. And where did that come from?

A. The ground. The pavement. The hot pavement.

Q. But you didn't notice it when you got down on the ground?

A. No. I was looking forward laying on the ground wondering why I was being drawn on...

Q. You can't explain where that powdery substance came from?

A. It came from the pavement, sir.

Q. But you don't know how it got there?

A. No, sir.”

¶ 29 It is clear that it was Aderholt, and not the State, that raised the issue of the unexplained origin of the methamphetamine by testifying on direct examination that he did not know where the substance “came from originally.” We find no error in the State's limited follow-up examination of Aderholt's direct testimony regarding the origin of the methamphetamine. See *People v. Patterson*, 88 Ill. App. 3d 878, 884 (1980) (no error in allowing the State to elicit evidence during cross-examination on issue first raised by the defendant).

¶ 30 Next, Aderholt argues the State improperly shifted the burden of proof to the defense by arguing in rebuttal that Aderholt's “lack of explanation” was “the most

glaring lack of—of a defense that anyone could have.” A prosecutor is given a substantial amount of leeway in making closing argument and is permitted to comment on the evidence and any fair, reasonable inferences it yields. *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). Counsel’s closing argument must be viewed in its entirety, with the challenged remarks viewed in context. *Glasper*, 234 Ill. 2d at 204. Statements which are provoked or invited by the defense counsel’s argument are not improper. *Glasper*, 234 Ill. 2d at 204. The State may challenge a defendant’s credibility or the credibility of his theory of defense when evidence supports the challenge. *Glasper*, 234 Ill. 2d at 207.

¶ 31 The State’s theory of the case was that Aderholt was in possession of the methamphetamine prior to lying down in the parking lot and that the substance became stuck to Aderholt in the process of him attempting to dispose of or conceal the substance. Aderholt’s defense was that he was not in possession of the substance prior to lying down on the parking lot, that the origin of the substance was unknown, and that the substance only transferred to his person during the police encounter. The parties presented these competing theories throughout the trial, including during closing arguments.

¶ 32 During closing argument, the defense emphasized that it was the State’s responsibility to prove its case, and that Aderholt did not have any obligation to prove his innocence. Defense counsel argued that while the defense’s theory that the methamphetamine was on the ground prior to Aderholt’s arrival at the scene “sound[ed] a little odd,” Aderholt’s theory was more believable than the State’s theory that Aderholt “was able to scatter that powder all over the place” while the officers were watching. In rebuttal, the State argued that the methamphetamine was not “scattered all over the

parking lot” but was concentrated in one spot near Aderholt. The State reiterated that the jury was being asked to choose between the parties’ competing theories and argued that Aderholt’s theory was not believable, stating:

“And I think that the lack of explanation of where methamphetamine comes from in the parking lot with nobody else around, I believe that’s the most glaring lack of—of a defense that anyone could have. Bags of methamphetamine don’t just routinely lie around in parking lots.”

Aderholt’s theory of defense was that the methamphetamine recovered from the scene did not belong to him and was present at the scene prior to his arrival, and that any alleged furtive or suspicious movements made by him during his encounter with the officers were innocuous. The State’s rebuttal arguments were made in response to Aderholt’s closing arguments and were a comment on the believability of Aderholt’s defense. The State’s comments were reasonable in light of the evidence and argument presented, and did not impermissibly shift the burden of proof to the defense.

¶ 33 Affirmed.