2025 IL App (4th) 231308-U

NO. 4-23-1308

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 2, 2025
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
STANSON N. CARTER,	)	No. 17CF1255
Defendant-Appellant.	)	
	)	Honorable
	)	Raylene D. Grischow,
	)	Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court.
Presiding Justice Harris and Justice Vancil concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The evidence was sufficient to support defendant's convictions, (2) there was sufficient justification to conduct a search of defendant's person, (3) the chain-of-custody objection to a prosecution exhibit was procedurally barred and defendant could not establish prejudice, and (4) defendant failed to establish that his sentence was excessive.

¶ 2 Defendant Stanson N. Carter appeals his conviction of possession of heroin with intent to deliver and resisting a peace officer and subsequent sentence of 16 years' imprisonment. He argues on appeal that (1) the evidence was insufficient to prove his guilt of the offenses beyond a reasonable doubt, (2) law enforcement lacked a sufficient reasonable suspicion that he was armed and dangerous to justify a pat-down search, (3) People's exhibit No. 5 lacked a sufficient chain of custody, and (4) the sentence imposed was excessive. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 2017, defendant was charged in a three-count information with unlawful possession with intent to deliver a controlled substance (heroin) (720 ILCS 570/401(a)(1)(A) (West 2016)), unlawful possession of a controlled substance (heroin) (*id.* § 402(a)(1)(A)), and resisting a peace officer (720 ILCS 5/31-1(a) (West 2016)). The charges stemmed from a traffic stop that escalated into a foot chase. Defendant filed a motion to suppress, arguing that the officer conducting the traffic stop lacked a reasonable, articulable suspicion that defendant was armed and therefore was unjustified in subjecting him to a pat-down search and the heroin should be suppressed. But for the unlawful search, defendant argues, he would have been cited for a minor traffic violation and allowed to leave the scene. A hearing on the motion to suppress ensued, at which defendant and Illinois State Police (ISP) Trooper Chris Owen testified.

¶ 5 A. Hearing on Defendant's Motion to Suppress

¶ 6 Defendant testified that on November 30, 2017, he was involved in a traffic stop along Interstate 55 in Sangamon County. The trooper who initiated the traffic stop did not present an arrest or search warrant but eventually requested that defendant step out of his car and then subjected him to a pat-down search. Defendant did not initially leave the vehicle when requested, exiting only when the trooper "forcefully" told him to exit. After exiting the vehicle, defendant went back into the vehicle, only to exit yet again. At that point, the trooper asked defendant to move back towards the front of the police squad car. Once in front of the vehicle, the trooper indicated he was going to pat defendant down. Defendant told the trooper that he did not have any weapons on his person. Defendant claimed he fled the scene when the trooper informed him he was going to place defendant in handcuffs. Then defendant fled until he "got tired and gave up." Once defendant was placed under arrest, officers did not find any contraband on his person.

¶ 7 Owen was a lieutenant colonel with the ISP and had been so employed for over 20 years. During that time, he also spent four years with a Drug Enforcement Administration task force, where he familiarized himself with the distribution and individual use of narcotics. On November 30, 2017, he was the Commander of ISP District 9 and was patrolling along Interstate 55. That interstate was known "for a lot of criminal activities including people transporting weapons," and the particular portion of the interstate he was patrolling that day was one of the busier portions in Sangamon County.

¶ 8 Owen initiated a traffic stop and made contact with defendant from the passenger-side window. He noticed cannabis residue in the vehicle and detected an odor of burnt cannabis. Although a certain level of nervousness is expected from motorists during a traffic stop, defendant's actions were not consistent with other motorists, as he was sweating when it was 40 degrees outside and the vehicle was not hot. Defendant's carotid artery on the side of his neck was pulsating, something Owen had come to recognize through experience as a sign that criminal activity was afoot.

¶ 9 Defendant provided the requested documentation, and Owen asked that he step out of the vehicle and join him to expedite review of the documentation. Defendant initially exited his vehicle but then returned to the driver's seat and began rolling his window up. Owen had further conversation with defendant and asked him to step out of the vehicle, explaining that he was "going to give him a warning and everything was going to be okay."

¶ 10 As defendant was exiting the vehicle, Owen was able to see that the zipper on defendant's pants was partially unzipped. Once defendant was standing outside the vehicle, Owen noticed an abnormal bulge in the groin area of his pants. Based on his training and experience, Owen was concerned that the bulge could be a weapon. Owen had been involved in incidents

where such bulges, including in some instances in the groin area, turned out to be weapons.

¶ 11 Based on defendant's demeanor, Owen thought he was a flight risk. The totality of the circumstances led him to believe defendant was possibly carrying a weapon, so Owen wanted to conduct a pat-down search of defendant for safety reasons. He informed defendant he was going to pat him down and asked that he place his hands on the hood of the squad car. Defendant immediately placed his hand in his pocket. Owen was alarmed at the sudden movement and tried to defuse the situation. Defendant pulled his hand out of his pocket with the keys to his vehicle and asked if he could get back inside his vehicle. Owen denied the request and grabbed the keys. Defendant then fled south down the shoulder and west over a fence into a farm field.

¶ 12 After securing his squad car and before giving chase, Owen called into ISP dispatch and provided a description of defendant; he explained that there was a bulge in the front of his pants to alert responding officers there was possibly a weapon involved. Owen maintained a visual of defendant while he fled to the fence and noticed that both of his hands were in his groin area. Approximately two minutes later, Owen found defendant with his pants zipper fully unzipped, and the bulge was no longer visible. Owen searched defendant and did not locate a weapon.

¶ 13 Troopers who responded to the dispatch call searched the area where defendant was found for potential evidence. Recovered from the immediate area where defendant was detained were a ripped clear plastic bag and another ripped plastic bag containing a substance that tested positive for heroin. The bag containing heroin was partially buried in the ground and covered with dirt and leaves.

¶ 14 The dash cam footage from the traffic stop was admitted without objection. It showed the moment that defendant fled from the scene as Owen was just beginning the pat-down search. Defendant had already removed his car keys from his pocket and Owen was holding on to

them, telling defendant to put his hands on the hood of the squad car. Defendant made a sudden move toward the shoulder as Owen took the car keys from his hand. As Owen relayed the events to ISP dispatch and requested backup, defendant can be seen running down the shoulder of the highway and jumping a fence. Defendant was well ahead by the time Owen began to give chase. Owen never threatened to place defendant in handcuffs during the initial encounter.

¶ 15 On cross-examination, Owen reasserted that Interstate 55 was a "common area for crime." Defendant did not make any "aggressive movements" before he fled, but he was nervous. Owen agreed that it would be reasonable for an individual attempting to run with baggy pants on to have to hold them up while running. Owen never lost sight of defendant and did not see him drop any items while he was fleeing. Owen did not see defendant digging in the dirt, but when he detained him, defendant was on his hands and knees, with dirt on his "right hand index finger, webbing, and thumb." The ripped, clear plastic bag was found shortly after defendant was arrested, while the bag containing heroin was not found until "significantly later."

¶ 16 Following cross-examination, the trial court watched the dash cam footage of the traffic stop once again. The court took a short recess and then ruled from the bench, finding that the attempted pat-down search was reasonable given the circumstances. The court reasoned that Owen's testimony was credible and defendant's was not. The motion to suppress was denied.

¶ 17 B. Bench Trial

¶ 18 The matter proceeded to a bench trial. Owen's testimony was essentially the same as that at the hearing on the motion to suppress. Owen expounded on what took place at the end of the chase and the events afterward. He found defendant on his hands and knees in a thicket of trees and shrubs about a quarter mile from the interstate and adjacent to a farm field. Owen was "about 40 to 50 yards" away from defendant when he spotted him in the thicket. The ground in

that area was a combination of farm field, leaves, and sticks. His view of defendant in the thicket was somewhat obstructed, and he could not see defendant's hands. Owen instructed defendant to crawl out of the thicket towards him and secured defendant in handcuffs. Owen had a microphone on his person that recorded him during the chase and defendant's arrest that was submitted into evidence. Defendant's pants were completely unzipped and the bulge was gone. He marked the area where defendant was detained with a brick that was in the area. The crops in the field had already been harvested, and there was no reason for anyone to be in the field. Other officers arrived on the scene and emergency services were called for defendant after he claimed to have ingested a "cannabis-filled blunt" and declared, " 'Get it out of me.' "

¶ 19 Owen traveled with defendant to the hospital while other officers finished searching the scene of the arrest. While at the hospital, Owen noticed that defendant's right hand, specifically his thumb and index finger, had mud caked on it, while the other hand was clean. Owen took photographs of the hand, and they were also submitted into evidence. Owen assumed that defendant had been digging in the dirt in the area where he was detained, especially because it was present on only one hand. He relayed that information to his fellow officers, and they returned to the scene of defendant's arrest to continue the search for contraband. The subsequent search located a bag of suspected heroin in the ground "within a few yards" of where defendant was detained. Owen returned to the scene and took custody of the bag of suspected heroin. He weighed the substance at 25.5 grams and a field test was positive for heroin. Based on Owen's training and experience, the amount of heroin was more consistent with distribution rather than individual use. End users of heroin typically do not buy "bulk quantity" because they cannot afford it. He believed distributors often kept on hand amounts ranging from an ounce to several kilograms. Owen also recovered two cell phones from defendant's vehicle. The prosecution presented Owen with the

exhibits containing, among other things, the cell phones taken from the vehicle and the heroin located during the search. All the items were in substantially the same condition as when he booked them into evidence, and he followed "proper protocols" when booking the items into evidence. Defense counsel noted that he had no objection to the heroin found at the scene, labeled as People's exhibit No. 5, being entered into evidence.

¶ 20 On cross-examination, Owen stated that he did not see defendant retrieve anything from his pants during the chase, nor did he see him bury anything. He was unable to say whether there was a continued police presence at the scene of defendant's arrest between the initial search that involved K-9s and the subsequent search that revealed the heroin. Owen was not aware of any evidence of drug trafficking that had been recovered from the cell phones in defendant's car and defendant never admitted to possessing heroin.

¶ 21 Jose Alvarez testified that he was an ISP Sergeant and K-9 handler involved in both searches of the area where defendant was apprehended. The first search was conducted by Alvarez and two other K-9 handlers in the morning hours on the day of defendant's arrest. They found a portion of a ripped bag in the tree line of the thicket in the direction defendant was traveling while fleeing. No testing was done on this bag for fingerprints or to detect the presence of heroin.

¶ 22 Owen asked that they search the area again several hours later when he noticed the mud on defendant's right hand. Alvarez returned to the area and performed a grid search, looking specifically for items buried in the vicinity of the brick Owen previously placed. The second search revealed a "plastic baggy" that had been ripped open approximately 15 yards from the brick and contained a substance that tested positive for heroin. The bag was partially buried and then covered with "mud." The area surrounding the bag was disturbed, and the soil looked to be turned over and contained more moisture than the surrounding farm ground.

¶ 23 Alvarez believed the amount of heroin in the bag was approximately 28 grams, an amount consistent with distribution. It was common for an end user of heroin to consume about a gram per use, but it was uncommon for them to buy the narcotic in bulk amounts. The bag of heroin was given to Owen once he arrived on the scene. Standard procedure would have been for the evidence to be inventoried at the local district headquarters; a vault custodian would have then transferred the evidence to a forensic lab for testing. However, Alvarez was not involved in that process in this particular case.

¶ 24 Aaron Roemer testified that in December 2017, he was a forensic scientist employed by the ISP and specialized in drug chemistry. He analyzed the substance found buried in the farm field and submitted into evidence as People's exhibit No. 5. The substance was off-white and chunky, weighed in at 20.8 grams, and tested positive for heroin. Roemer only analyzed one of the chunks and did not know how much that individual chunk weighed. Roemer described the normal chain-of-custody process involved in transferring a piece of evidence from the ISP to the lab. He stated that he received this exhibit from the ISP and explained that evidence is given a case number when it comes into the lab. He retrieved the exhibit from the vault and made sure it was properly initialed, taking note of the packaging before proceeding with analysis. He then identified the exhibit as the same one he tested at the lab, noting the matching case number, initials, and packaging. Once he was done testing the item, the same protocols would be followed to return the item to the ISP. The agency would come to the lab and would receive "their returns for that day."

¶ 25 C. Motion for Judgment of Acquittal

¶ 26 Once the State rested its case-in-chief, defendant moved for a judgment of acquittal, arguing that the evidence was largely circumstantial and that the State had failed to establish a

chain of custody for People's exhibit No. 5. Defendant argued there was no evidence regarding how the exhibit made its way from the farm field to the forensic lab. The trial court denied the motion and the defense rested.

¶ 27 D. Trial Court's Ruling, Sentencing, and Posttrial Motions

¶ 28 The trial court found defendant guilty of all charges. Defendant filed a motion for judgment of acquittal or a new trial arguing, among other things, that the court erred in denying the motion to suppress where Owen did not have an articulable, reasonable suspicion justifying a search of defendant, that the State failed to establish a chain of custody regarding People's exhibit No. 5, and there was insufficient evidence regarding an intent to deliver. The court denied the motion and proceeded to sentencing.

¶ 29 The presentence investigation report stated defendant was 37 years old and that he had prior convictions for aggravated unlawful use of a weapon in 2005 (a Class 4 felony), possession of "cocaine" in 2006 (a Class 1 felony), and obtaining a controlled substance by fraud or deceit in Indiana in 2012 (a Class 6 felony). Defendant received probation for each of those offenses. He had also received counseling for stress and anxiety and was addicted to drugs.

¶ 30 In his statement in allocution, defendant acknowledged he had made bad decisions in his life but did not believe a lengthy sentence was warranted. Given his age, a lengthy sentence would likely make it more difficult for him to obtain employment upon his release from prison. He also said there was no intent to deliver or to cause harm to anyone.

¶ 31 The trial court acknowledged that defendant had an addiction problem and recommended that he receive drug treatment in the Illinois Department of Corrections. The court imposed sentences of 16 years' imprisonment for count I, unlawful possession with intent to deliver a controlled substance, and 147 days in jail, time served, for count III, resisting a peace

officer. Count II, unlawful possession of a controlled substance, merged into count I.

¶ 32 Defendant filed an amended motion to reconsider sentence, arguing that the 16-year sentence was excessive considering his limited criminal history, the likelihood he would comply with conditions of probation, and the fact that he had accepted responsibility and displayed remorse. The trial court denied the motion.

¶ 33 This appeal followed.

¶ 34 II. ANALYSIS

¶ 35 On appeal, defendant challenges the sufficiency of the evidence underlying his convictions and argues that they should be reversed outright where Owen lacked a reasonable suspicion that defendant was armed sufficient to justify a pat-down search, in violation of the fourth amendment. He also contends that a new trial is required where People's exhibit No. 5 lacked a sufficient foundation to be admitted into evidence. Finally, he argues that the matter needs to be remanded for resentencing. We address each contention in turn.

¶ 36 A. Sufficiency of the Evidence

¶ 37 When faced with a challenge to the sufficiency of the evidence, it is not a reviewing court's function to retry the defendant. *People v. Jones*, 2023 IL 127810, ¶ 28. "When considering the sufficiency of the evidence, we determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the required elements of the crime beyond a reasonable doubt." *People v. Galarza*, 2023 IL 127678, ¶ 25. In a bench trial, it is for the trial court to make credibility determinations, assign the appropriate weight to the evidence submitted, resolve any resulting conflicts or inconsistencies therefrom, and render a decision. *Id.* "[T]he trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of

reasonable doubt." *Id.* (quoting *People v. Hall*, 194 Ill. 2d 305, 332 (2000)). Further, all reasonable inferences from the evidence are drawn in favor of the State. *People v. Bush*, 2023 IL 128747, ¶ 33.

¶ 38 We will overturn a criminal conviction only if the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *Galarza*, 2023 IL 127678, ¶ 26. "This standard applies whether the evidence is direct or circumstantial, and circumstantial evidence that meets this standard is sufficient to sustain a criminal conviction." (Internal quotation marks omitted.) *People v. Aljohani*, 2022 IL 127037, ¶ 66.

¶ 39 To sustain a charge of unlawful possession of a controlled substance with intent to deliver, the State must prove beyond a reasonable doubt that (1) the defendant had knowledge of the presence of the controlled substance (the knowledge element); (2) the controlled substance was in the immediate possession or control of the defendant (the possession element); and (3) the defendant intended to deliver the controlled substance (the intent to deliver element). See 720 ILCS 570/401 (West 2016); *People v. Robinson*, 167 Ill. 2d 397, 407 (1995).

¶ 40 1. *Possession*

¶ 41 Defendant argues that the State failed to establish that he possessed a controlled substance. He points to the circumstantial nature of the evidence and the fact that he was never seen possessing the controlled substance. Defendant also notes that one bag was found immediately, while the bag containing heroin was not found until several hours later.

¶ 42 To prove actual possession, the State needed to show that defendant exercised physical dominion over the controlled substance, such as trying to conceal or dispose of it. *People v. Scott*, 2012 IL App (4th) 100304, ¶ 19. Further, it is well established that an offense can be proven by circumstantial evidence. See *People v. Toolate*, 45 Ill. App. 3d 567, 569 (1976) (explaining an offense may be proven by circumstantial evidence and there is no distinction as to

the weight of circumstantial evidence as opposed to direct evidence); see also *People v. Smith*, 2014 IL App (1st) 123094, ¶ 13 ("Circumstantial evidence is proof of facts and circumstances from which the trier of fact may infer other connected facts which reasonably and usually follow according to common experience." (Internal quotation marks omitted.)).

¶ 43 In this instance, Owen saw a bulge in defendant's pants during the traffic stop with his zipper partially down. Following the foot chase and defendant's apprehension, the bulge was gone and defendant's pants zipper was all the way down; this supports the inference that defendant had discarded the item that was in his pants. Owen testified that defendant seemed to be attempting to access the front of his pants as he fled from the area of the traffic stop. While Owen never lost sight of defendant, he was not able to see his every move from a distance of roughly "40 to 50 yards." Owen made clear that while defendant was in the thicket, he could not see what his hands were doing. While at the hospital, Owen noticed that only one of defendant's hands had mud "caked" on the thumb and index finger. Although defendant claims the fact that he had to crawl on his hands and knees out of the thicket could explain the dirt on his hand, it is unlikely that this would result in dirt only being present on one of defendant's hand and along his nailbeds.

¶ 44 Moreover, defendant displayed nervousness beyond that of a normal motorist and then fled the scene with what Owen believed to be a weapon or contraband. A bag of heroin that was buried was then recovered mere yards from where defendant was found. While defendant posits alternative explanations for the presence of the dirt on his hand and his nervousness and further suggests the possibility of a third party intervening and placing the contraband at the scene, we are unpersuaded. As Owen stated, this was a farm field in November. The crops had already been picked, and there was no reason for another person to have been there.

¶ 45 It is axiomatic that "it is the responsibility of the trier of fact to draw reasonable

inferences from basic facts to ultimate facts" (*id.*), and "the trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt" (internal quotation marks omitted) (*People v. Wheeler*, 226 Ill. 2d 92, 117 (2007)). Accordingly, viewed in the light most favorable to the State, there was sufficient evidence to support the finding that defendant possessed a controlled substance.

¶ 46 In relation to the argument that he was nervous, defendant also references the fact that he is "African American" and Owen is "white." Defendant's own testimony at the hearing on the motion to suppress gives no suggestion that this was the reason for his nervousness, and no evidence to support this inference was presented at trial. We will not engage in speculation or conjecture in deciding this appeal. See *People v. Boykin*, 2013 IL App (1st) 112696, ¶ 9 ("Judicial notice cannot be extended to permit the introduction of new factual evidence not presented to the trial court.").

¶ 47 2. *Intent to Deliver*

¶ 48 In addition to possession, defendant also argues that the State failed to establish that he had an intent to deliver the heroin. "[T]he quantity of controlled substance alone can be sufficient evidence to prove an intent to deliver beyond a reasonable doubt." *Robinson*, 167 Ill. 2d at 410-11. "[W]hen the amount of substance seized is an amount that may be considered consistent with personal use, our courts have properly required additional evidence of intent to deliver to support a conviction." *Id.* at 411. "As the quantity of controlled substance in the defendant's possession decreases, the need for additional circumstantial evidence of intent to deliver to support a conviction increases." *Id.* at 413. Given the infinite factual circumstances courts may face, "there is no hard and fast rule to be applied in every case," and instead, "[t]he question of whether the

evidence is sufficient to prove intent to deliver must be determined on a case-by-case basis." *Id.* at 412-14.

¶ 49 Defendant initially argues that it is "conceivable" that he did, in fact, buy heroin in bulk, as the presentence investigation report detailed that he was gainfully employed at the time of the offense. However, the report was not before the court at trial, and defendant presented no evidence about his financial ability to purchase a large quantity of heroin.

¶ 50 Defendant also argues that the 20.8 grams seized can also form the basis for a charge of unlawful possession of a controlled substance, a Class 1 felony (720 ILCS 570/402(a)(1)(A) (West 2016)). The statutory section provides that a defendant, if sentenced to a term of imprisonment, shall receive a sentence ranging from 4 to 15 years for possession of 15 grams or more but less than 100 grams of heroin. *Id.* He argues that since the amount qualifies for a simple possession charge, additional evidence of intent to deliver was required beyond the amount of the substance.

¶ 51 Looking first to the statutory language, it is clear that the simple possession charge and the intent to distribute charge are not mutually exclusive. We recognize that the statutory provisions defining the two offenses. Here, however, both Owen and Alvarez testified that the amount of heroin seized in this case was beyond that designed for personal use. Owen asserted that often only a tenth of a gram is consumed by an end user multiple times a day, while Alvarez believed it could be up to a gram per use. Both opined that it is uncommon for heroin users to purchase the substance in bulk and that the amount of heroin involved in this matter was consistent with distribution. Reasons for not purchasing in bulk included a lack of funds to finance such a large purchase and the lack of access to bulk quantities.

¶ 52 Viewing the evidence adduced at trial in the light most favorable to the

prosecution—as we must—a rational trier of fact could have found that defendant had the requisite intent to distribute the controlled substance. The evidence supported the inference that the amount of heroin possessed by defendant was for distribution.

¶ 53 B. Justified in Search

¶ 54 Next, defendant argues that Owen lacked a reasonable suspicion that he was armed and dangerous in order to justify a pat-down search of his person. Thus, defendant claims the trial court erred in denying his motion to suppress and there is no basis to support the conviction for resisting a peace officer. When reviewing a challenge to the judgment on a motion to suppress, we afford deference to the findings of fact in determining whether those findings are against the manifest weight of the evidence but review the ultimate question of whether the evidence should have been suppressed *de novo*. *People v. Lozano,* 2023 IL 128609, ¶ 29.

¶ 55 The fourth amendment of the United States Constitution provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" (U.S. Const., amend. IV), and it is applicable to the states through the fourteenth amendment (U.S. Const., amend. XIV). See *Elkins v. United States*, 364 U.S. 206, 213 (1960). "[T]he ultimate touchstone of the Fourth Amendment is 'reasonableness' " (*Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006)), and the functional purpose of the amendment is the imposition of "a standard of reasonableness upon the exercise of discretion by law enforcement officers to safeguard the privacy and security of individuals against arbitrary invasions" (*People v. McDonough*, 239 Ill. 2d 260, 266 (2010) (citing *Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979))). Courts generally will suppress evidence obtained in violation of the fourth amendment pursuant to the fruit-of-the-poisonous-tree doctrine, an outgrowth of the exclusionary rule, providing that any evidence obtained by exploiting a fourth-amendment violation is prohibited.

People v. Bonilla, 2018 IL 122484, ¶ 35.

¶ 56 Generally, reasonableness under the fourth amendment requires a warrant supported by probable cause. *People v. Sorenson*, 196 Ill. 2d 425, 432 (2001). An exception to this requirement was recognized by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968), allowing law enforcement, under certain circumstances, to briefly detain an individual for investigatory purposes and conduct a limited protective search for weapons. It is important to note that defendant is not challenging the propriety of the initial traffic stop, but rather the attempted pat-down search. "To justify a patdown of the driver or a passenger during a traffic stop, however, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous." *Arizona v. Johnson*, 555 U.S. 323, 327 (2009).

¶ 57 "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Terry*, 392 U.S. at 27. "[D]ue weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." *Id.*

¶ 58 Initially, the State cites *People v. Bennett*, 2023 IL App (4th) 220325-U, *pet. for leave to appeal pending*, No. 129712 (filed May 30, 2023), noting that Owen both smelled burnt cannabis and viewed raw cannabis residue in defendant's vehicle when he initially made contact, and arguing this, on its own, should be viewed as an alternative basis to justify the attempt to patdown defendant. As this is a developing area of the law, and because it was not a basis for the trial court's ruling, we decline the State's invitation to affirm on an alternative basis.

¶ 59 Additionally, we note that the nature of the area of the traffic stop—Interstate 55

outside of Springfield—should not be given an unduly important place in the analysis. Owen merely testified that Interstate 55 "is known for a lot of criminal activities including people transporting weapons," and that this was among the factors which gave him concern that the bulge in defendant's pants might be a concealed weapon. Owen did not characterize this stretch of road as a "high crime area," and defendant constructs a straw man by attempting to put those words in Owen's mouth for the purpose of criticizing them. That said, defendant is correct that mere presence in a "high crime area" and an identifiable bulge have been held insufficient to justify a pat-down search. *People v. Surles*, 2011 IL App (1st) 100068, ¶ 40. Still, the salient facts should not be looked at in isolation, but together. A single leg may be inadequate to support a table, but three of four of them might be perfectly adequate to do so.

¶ 60 Here, Owen felt that defendant exhibited nervousness beyond what he has normally experienced with other motorists he encountered during traffic stops. The temperature was approximately 40 degrees and defendant's vehicle was not warm, yet he was visibly sweating. The carotid artery in defendant's neck was pulsating. Though defendant exited the vehicle following Owen's first request, he returned to the vehicle thereafter and had to be asked to exit once again. Owen observed a bulge in defendant's pants once he exited the vehicle and stated that, based on his training and experience, he had encountered individuals concealing weapons in that area of their person that resulted in a bulge and had been informed of the same from others in law enforcement. Owen stated he believed that the bulge was possibly a weapon and, based on defendant's actions, he was a flight risk.

¶ 61 The totality of circumstances known to Owen at the time he sought to conduct a pat-down search of defendant was sufficient to support a reasonable suspicion that defendant was armed and dangerous. See *People v. Morales*, 221 Ill. App. 3d 13, 18 (1991) ("A characteristic

bulge in a validly stopped suspect's clothing is a circumstance which is generally sufficient to warrant a frisk."); *Pennsylvania v. Mimms*, 434 U.S. 106, 112 (1977) (holding a large bulge in the defendant's jacket pocket justified a pat-down search).

¶ 62 Accordingly, the attempt to conduct the search was reasonable. Having found the pat-down search was justified, defendant was not entitled to flee the scene. See *People v. Eyler*, 2019 IL App (4th) 170064, ¶ 23 (noting that fleeing from an unlawful *Terry* stop is not resisting or obstructing an authorized act of a police officer). Therefore, his conviction for resisting a peace officer must stand.

¶ 63 Additionally, even if the pat-down search were improper, it did not lead to discovery of the heroin at issue; defendant could only achieve suppression of the heroin if he could successfully construe it as "fruit of the poisonous tree," *i.e.*, the indirect product of an illegal search. In *People v. Henderson*, 2013 IL 114040, ¶ 33, the supreme court explained that "a court must consider 'whether the chain of causation proceeding from the unlawful conduct has become so attenuated or has been interrupted by some intervening circumstance so as to remove the "taint" imposed upon that evidence by the original illegality.' " (quoting *United States v. Crews*, 445 U.S. 463, 471 (1980)). Factors in this analysis include "the temporal proximity of the illegal police conduct and the discovery of the evidence; the presence of any intervening circumstances; and the purpose and flagrancy of the official misconduct." *Id.*

¶ 64 Here, there was little temporal proximity between the allegedly illegal pat-down search and the discovery of the heroin in the field several hours later. There were significant intervening circumstances, including defendant's flight and apparent hiding of heroin in the dirt, as well as Owen's discovery of defendant's mud-caked hand that led to a second search. Finally, there is nothing flagrant about the nature of the search (and we have, in fact, found it to have been

valid). Here, even if we assume, *arguendo*, that the pat-down search was invalid, it would not justify suppression of the subsequently discovered heroin.

¶ 65 C. People's Exhibit No. 5

¶ 66 Defendant also argues that the trial court erred in admitting People's exhibit No. 5 into evidence, as the State failed to establish a sufficient chain of custody. At trial, when the prosecution moved to admit the exhibit into evidence, defense counsel stated, "No objection." Only after the State had rested its case-in-chief did defendant move for a directed verdict and challenge the chain of custody for the exhibit. However, a challenge to the chain of custody is an evidentiary issue subject to forfeiture if not preserved by, among other things, making a specific objection at trial. *People v. Woods*, 214 Ill. 2d 455, 471 (2005). A *timely* objection is required because the lack thereof "deprives the State of the opportunity to correct any deficiency in the foundational proof at the trial level." *Id.* at 470. Defendant alleges his request for a directed verdict was sufficient to preserve the argument on appeal without citation to supporting authority. Of course, this was not a *timely* objection to the chain of custody, and this court has often recited that it is not a repository for unsupported arguments requiring this court to undertake the burden of research. See *Mikoff v. Unlimited Development, Inc.*, 2024 IL App (4th) 230513, ¶ 42. Accordingly, defendant has forfeited this argument.

¶ 67 Understanding that it was likely that the chain-of-custody objection had been forfeited, defendant advances alternative grounds on which to secure a new trial based on the admission of the exhibit. He argues that counsel was ineffective for failing to object to the exhibit's admission and that the admission of the exhibit constituted either first or second prong plain error.

¶ 68 Defendant's ineffective assistance of counsel argument is easily dispensed with by referencing a recent Fourth District case. In *People v. Aquisto*, 2022 IL App (4th) 200081, ¶¶ 25,

53, the defendant failed to object to the admission of a prosecution exhibit and then attempted to advance the forfeited argument on appeal as ineffective assistance of counsel. This court found the claim "unavailing," reasoning that even assuming,

> "for the sake of argument, that the omission of a chain-of-custody objection was deficient performance. Even so, to find prejudice from the omission of such an objection, we would have to find a reasonable probability that, if defense counsel had made such a chain-of-custody objection, the State would have been unable to cure the objection (and, consequently, the circuit court would have refused to admit People's exhibit No. 1 and would have acquitted defendant of count IV). In the record before us, we find no basis for asserting a reasonable probability that the State would have been incapable of curing any chain-of-custody objection." *Id.* ¶ 64.

The same logic applies here, as nothing in the record indicates that the State would have been unable to cure any defects following the appropriate objection.

¶ 69 Because defendant cannot establish prejudice under his ineffective assistance of counsel argument, his first prong plain error argument also fails. See *People v. White*, 2011 IL 109689, ¶ 133 ("Plain-error review under the closely-balanced-evidence prong of plain error is similar to an analysis for ineffective assistance of counsel based on evidentiary error insofar as a defendant in either case must show he was prejudiced.").

¶ 70 Moreover, second prong plain error analysis does not apply to this alleged error, despite defendant's attempts to present the issue as one of due process. Defendant argues that since there was not a sufficient chain of custody for the exhibit, Roemer's testimony that the exhibit consisted of heroin lacked adequate foundation and violated his due process right to be tried on

competent evidence duly admitted at trial. However, we must note that defendant also failed to object to the testimony of Roemer on this point, in addition to the absence of a timely chain-of-custody objection.

¶ 71 Our supreme court recently reviewed its plain error jurisprudence in *People v. Ratliff*, 2024 IL 129356. In determining whether an error in administering Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) admonishments could be reviewed under the second prong of plain error, the court noted that, generally, the second prong has been equated to a very narrow group of structural errors "that defies harmless error analysis." *Ratliff*, 2024 IL 129356, ¶ 37. The court went on to find that an error in administering the admonishments was subject to harmless error analysis and thus could only be reviewed as first prong plain error. *Id.* ¶¶ 43-44. Similarly, evidentiary errors are subject to harmless error analysis. See *People v. Pinkett*, 2023 IL 127223, ¶ 39 (" '[E]videntiary error is harmless "where there is no *reasonable probability* that the jury would have acquitted the defendant absent the" error.' " (Emphasis in original.)) (quoting *In re E.H.*, 224 Ill. 2d 172, 180 (2006), quoting *People v. Nevitt*, 135 Ill. 2d 423, 447 (1990)). Defendant's evidentiary claim is not cognizable as second prong plain error, despite his attempts to frame the argument as one of due process.

¶ 72 Raised for the first time in his reply brief, defendant also advances the argument that the trial court bears responsibility for the evidence lacking an appropriate chain of custody, regardless of any objection. He argues that the trial court is the "gatekeeper" of evidence and insinuates the court should have *sua sponte* denied admission of the contested evidence. To the extent he argues the trial court erred in failing to *sua sponte* exclude the evidence, we find this issue forfeited because it was raised for the first time in the reply brief. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). The fact that we have found plain error to be inapplicable obviates any

consideration of the issue. Accordingly, we must honor defendant's procedural forfeiture of the chain-of-custody objection.

¶ 73 D. Sentence

¶ 74 Defendant's final argument is that the trial court erred by imposing an excessive sentence. Defendant claims the court failed to afford appropriate weight to certain mitigating factors and "misunderstood" or misremembered his statement in allocution.

¶ 75 "The trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference." *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). Reviewing courts afford great deference to the sentence imposed below because " 'the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the "cold" record.' " *Id.* at 213 (quoting *People v. Fern*, 189 Ill. 2d 48, 53 (1999)). A sentence imposed within the applicable statutory sentencing range is presumed proper. *People v. Webster*, 2023 IL 128428, ¶ 21. Furthermore, we will not substitute our judgment for that of the trial court simply because we would have weighed the sentencing factors differently. *Id.* We will only overturn a sentencing decision where the sentence imposed constitutes an abuse of discretion. *People v. Klein*, 2022 IL App (4th) 200599, ¶ 37.

¶ 76 After reviewing defendant's argument claiming that the trial court misapplied the appropriate weight to be given certain mitigating factors, it becomes clear that he is asking this court to do precisely what it may not; reweigh the sentencing factors. Quite simply, this is not our role. *Id.* The sentencing range for the offense at issue in this appeal was 6 to 30 years. Since the 16-year sentence imposed is within that applicable statutory range, the sentence is presumed proper and we are unable to find that the court abused its discretion.

¶ 77 Defendant argues the weight of the substance should have been considered in mitigation. However, this is not a statutory mitigating factor the trial court was required to consider. See 730 ILCS 5/5-5-3.1 (West 2022). Rather it is a nonstatutory factor the court had the discretion to consider. See *People v. Scott*, 363 Ill. App. 3d 884, 892 (2006) (noting a sentencing court *may* consider nonstatutory factors in crafting a sentence). We are unable to find it was error for the court not to explicitly comment on this circumstance.

¶ 78 Turning to defendant's argument that the trial court misapplied his statement in allocution, we are similarly unable to find the court abused its discretion. Defendant gave his statement in allocution, and the court immediately thereafter imposed a 16-year sentence. Clearly, with such a short period of time between the two occurrences, it is unlikely the court misapplied the statements made by defendant, and there is nothing in the record of the original sentencing hearing that demonstrates what defendant is alleging. Rather, defendant points to the hearing on his motion to reconsider the sentence and alleges that the trial judge erred by commenting:

> "I also did consider his statement of allocution, and I did not find any acceptance in his statements. He blamed everyone but himself. He did not show any remorse or accept any responsibility, and I have all of that in capital letters in my notes here. After reading that, I do remember that as well."

¶ 79 We are unable to find any error in these comments. During defendant's allocution, he denied that he had any intent to distribute the heroin. The trial judge was within her discretion to find that statement amounted to a lack of acceptance, responsibility, or remorse.

¶ 80 III. CONCLUSION

¶ 81 For the reasons stated, we affirm the trial court's judgment.

¶ 82 Affirmed.