

NOTICE
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2012 IL App (4th) 110544-U
NO. 4-11-0544
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
November 27, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
GUADALUPE MARTINEZ,)	No. 10CF87
Defendant-Appellant.)	
)	Honorable
)	James E. Souk,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt.

¶ 2 In January 2010, the State charged defendant, Guadalupe Martinez, with three crimes related to cocaine distribution. In April 2011, at his trial on all three charges, the jury found defendant guilty of one count (unlawful delivery of less than 15 grams of a substance containing cocaine) and not guilty of the other two. In June 2011, the trial court sentenced defendant to 25 years' imprisonment.

¶ 3 On appeal, defendant argues the State failed to prove him guilty beyond a reasonable doubt. Specifically, defendant claims the State's key witness, a confidential informant, so lacked credibility due to bias, inconsistency in testifying, and drug use that the jury could not have reasonably believed his testimony implicating defendant. We disagree and affirm.

¶ 4

I. BACKGROUND

¶ 5 The State charged defendant in a three-count information. The first count alleged that, on January 27, 2010, defendant unlawfully possessed with the intent to deliver between 15 and 100 grams of a substance containing cocaine. 720 ILCS 570/401(a)(2)(A) (West 2008). The second count alleged that, on January 8, 2010, defendant unlawfully delivered between 15 and 100 grams of a substance containing cocaine to a confidential informant. 720 ILCS 570/401(a)(2)(A) (West 2008). The third count alleged that, on December 1, 2009, defendant unlawfully delivered less than 15 grams of a substance containing cocaine to the same confidential informant identified in the second count. 720 ILCS 570/401(c)(2) (West 2008). In February 2010, a McLean County grand jury indicted defendant on the same counts.

¶ 6 Defendant's October 2010 trial ended in mistrial when a witness for the State mentioned defendant's status as a parolee, in violation of the trial court's earlier order excluding such evidence. In April 2011, the court held a second jury trial.

¶ 7 The proof on the third count at issue here included testimony from Anthony Todd Schaefer, who was the confidential informant identified in the indictment, and investigators for the Illinois State Police task force investigating defendant, as well as the cocaine Schaefer said he purchased from defendant. Schaefer testified that he met defendant while they worked together at a retail store and came to understand that defendant could sell him drugs. Schaefer occasionally relied on defendant for rides home from work since he lacked a driver's license and borrowed money from defendant, a self-confessed loan shark, but otherwise they had no social relationship.

¶ 8 In January or February 2009, Schaefer resumed his role as a confidential

informant for an Illinois State Police narcotics task force operating out of Bloomington. Schaefer stated his reason for working as an informant at that time was the compensation. (He had previously worked with the police in exchange for prosecutorial leniency and favorable sentencing in addition to money but was not facing charges in early 2009.) The investigators he worked with, led by inspector Edward Shumaker, directed him to engage defendant in the lead-up to a controlled drug deal.

¶ 9 In November 2009, according to Schaefer, defendant agreed to sell Schaefer a half-ounce (14 grams) of cocaine. On December 1, 2009, in Inspector Shumaker's presence, Schaefer called defendant to arrange the deal. Defendant agreed to meet Schaefer at a Chili's restaurant in Bloomington later that day.

¶ 10 That afternoon, Schaefer and task force investigators proceeded to the restaurant. Before he was transported there, Schaefer was searched for any drugs or money, and none were found. Schaefer was given \$700 in cash to use in procuring cocaine from defendant. Schaefer and a task force investigator waited at the bar area in the restaurant while defendant drove there from out of town. Schaefer made several calls to defendant to check his progress. The calls were not recorded. All told, Schaefer was left waiting in the restaurant for more than two hours. Just when he and the investigators were going to give up and leave, a final call was exchanged in which defendant announced he was arriving at the restaurant.

¶ 11 Defendant instructed Schaefer to get into defendant's car in the Chili's parking lot, where Inspector Shumaker was waiting in a surveillance van. The Chili's was located in a strip mall, so its parking lot connected to a circuit of roads encompassing the shopping center's greater parking area. Defendant drove Schaefer around the strip mall parking lot; Schaefer explained the

driving was intended to evade detection by, and avoid the suspicion of, any possible witnesses. Inspector Shumaker observed defendant's vehicle stop briefly in the lot in front of a Best Buy store before continuing its lap around the parking lot. According to Schaefer, during this lap he paid defendant \$600 and defendant gave him a quarter-ounce (7 grams) of "better grade" cocaine. He also spoke with defendant about making a future purchase of a larger amount of cocaine; defendant expressed interest in participating. Inspector Shumaker never lost sight of defendant's car, but was unable to observe the exchange of drugs and money inside it. According to him, no other person entered or left the car before it returned to the Chili's parking lot, where defendant let Schaeffer out of the car.

¶ 12 After defendant exited the Chili's parking lot, Schaefer met with a task force investigator who drove him to another restaurant's parking lot in the same shopping center, where Inspector Shumaker waited for them. Schaefer gave Inspector Shumaker the cocaine and the unused \$100 and reported that defendant said he was willing to sell to him again in larger amounts. A subsequent search revealed no other drugs or money on Schaefer's person. Based on Schaefer's representations, Inspector Shumaker decided to continue the investigation and escalate the quantity of narcotics involved in each purchase, rather than immediately arrest defendant.

¶ 13 The two counts on which the jury acquitted defendant alleged two later instances when defendant met with Schaefer for the purpose of selling him cocaine. The proof on those two counts was as follows. In advance of a January 8, 2010, meeting between Schaefer and defendant that was supposed to take place at a hotel in Bloomington, task force investigators bugged a hotel room with video and audio monitoring devices. Again, Schaefer was searched before meeting with defendant and no drugs or cash were found on his person. In addition,

Schaefer was wired for audio recording. Several calls between Schaefer and defendant on the day of the transaction, in which defendant updated Schaefer on his travel time to the hotel, were recorded and later played for the jury.

¶ 14 According to Schaefer, defendant had agreed to sell him one ounce (28 grams) of cocaine. Schaefer was instructed to leave the cash he was furnished for the purchase in the hotel room to lure defendant there, with the ultimate aim of capturing the drug deal on a video recording. However, instead of following Schaefer to his room, defendant demanded that Schaefer get the money and return to defendant's car.

¶ 15 Defendant then drove Schaefer to a mall across the street from the hotel. Investigators tailing them lost visual contact when defendant and Schaefer went into a Macy's store. According to Schaefer, defendant ordered him into the upstairs restroom at Macy's. Surveillance video showed Schaefer and defendant in the store, but they were not recorded in the restroom. Schaefer testified that after they left the store, the drug deal again took place in defendant's car. While the tail was resumed when defendant and Schaefer emerged from Macy's, again no one witnessed the actual transaction. The recording from Schaefer's wire revealed no mention of cocaine, cash, or an exchange. Again, after defendant dropped him off at the hotel, Schaefer gave the ounce of cocaine to Inspector Shumaker.

¶ 16 The task force then planned one final purchase. According to Schaefer, defendant agreed to sell him three ounces (84 grams) of cocaine. They were to meet on January 27, 2010, at another hotel in Bloomington. Again, Schaefer was searched before the meeting and no drugs or cash were found. Again, several phone calls between Schaefer and defendant were recorded. When defendant arrived at the hotel, the task force moved in and arrested him, expecting based

on the two previous deals to find the cocaine on his person or in his car. However, no drugs were found. A search of defendant's girlfriend's residence resulted in the recovery of three ounces of cocaine from a suit bag.

¶ 17 Following the evidence and arguments, the jury found defendant guilty of the third count of the indictment and not guilty of the other two counts. In June 2011, the trial court sentenced defendant to 25 years' imprisonment on the indictment's third count. The court noted defendant's extensive history of drug-related convictions and his eligibility for Class X sentencing.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 Defendant argues the evidence was insufficient to sustain his conviction of cocaine delivery on the third count of the indictment. Specifically, he contends that Schaefer was such a "terrible witness" that a reasonable jury could not have believed his testimony that defendant sold drugs to him. We disagree. Schaefer's testimony was not so incredible as to create a reasonable doubt of defendant's guilt that the jury overlooked or ignored. The jury's verdict was not so unreasonable as to warrant reversal.

¶ 21 When a defendant challenges the sufficiency of the evidence against him, we will affirm so long as, "viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Internal quotation marks omitted.) (Emphasis in original.) *People v. Wheeler*, 226 Ill. 2d 92, 114, 871 N.E.2d 728, 740 (2007) (quoting *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985), quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). That is not to

say that findings of fact are beyond this court's review. *People v. Minnieweather*, 301 Ill. App. 3d 574, 577, 703 N.E.2d 912, 913-14 (1998). However, giving deference to the jury's determination of guilt, we will not set aside a guilty verdict on grounds of insufficient evidence unless the proof "is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of [the] defendant's guilt." *Wheeler*, 226 Ill. 2d at 115, 871 N.E.2d at 740.

¶ 22 This standard for reviewing arguments on the sufficiency of the evidence "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." (Internal quotation marks omitted.) *People v. Jackson*, 323 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009) (quoting *Jackson*, 443 U.S. at 319). Ordinarily, that means a single credible witness's testimony to an unlawful sale of narcotics is sufficient to sustain a conviction. *People v. Norman*, 28 Ill. 2d 77, 82, 190 N.E.2d 819, 822 (1963).

¶ 23 Here, defendant claims that Schaefer was not sufficiently reliable to sustain his conviction. Defendant first points to Schaefer's possible biases, which he argues discredit him as a witness. Schaefer was a paid informant, who was deeply in arrears on child support and needed money. Through his relationship with police and prosecutors, Schaefer received compensation as a confidential informant and assistance making bond in his back-child-support case when he missed a court date. He also owed considerable sums (albeit illegally) to defendant; while the amount of this debt is unknown, Schaefer once gave defendant his car in partial repayment. Defendant's trial counsel asserted that Schaefer thus had a "dual motivation" to set defendant up—in the words of defendant's appellate counsel, he "was highly motivated to both please prosecutors and implicate [defendant] in these alleged crimes." Evidence of Schaefer's supposed

motive to testify favorably for the State was tempered by testimony that he would be paid regardless of the trial's outcome and that his involvement in this case concluded his work as a confidential informant.

¶ 24 The jury was responsible for measuring the effect, if any, of the evidence of Schaefer's bias on his crucial eyewitness testimony regarding the alleged December 1, 2009, drug deal. While the jury made no specific findings in this regard, the bias evidence is not so overwhelming that, as discussed further below, the jury was precluded from relying on Schaefer's testimony to reach its guilty verdict on the indictment's third count.

¶ 25 Defendant next points to Schaefer's involvement with and use of illegal drugs while working as a confidential informant, in violation of his confidential informant's agreement, as further discrediting evidence. After initially answering nonresponsively to cross-examination on the subject, Schaefer admitted that he may have used cocaine several times with his coworkers during the 2009-10 period when he was working with the task force investigating defendant's drug activity. Using court documents from a previous case, defendant also impeached Schaefer's denial that in 2003 he used marijuana in violation of his probation; Schaefer ultimately equivocated, testifying that he did not recall using drugs at that time but allowing that "that's what the paperwork says." Defendant's girlfriend testified that once, in 2009, she and Schaefer used cocaine together and another time she purchased some hallucinogenic mushrooms from him, although in his testimony Schaefer denied knowing her. Defendant also cites an instance when, in the wire recording made in connection with the second alleged drug purchase, Schaefer could be heard saying to an unidentified person over the phone, "[T]hey are anywhere from two dollars to five dollars apiece. Let me hit you back." Defendant claims that Schaefer was offering

to sell the caller prescription drugs; however, Schaefer denied the same on cross-examination.

¶ 26 While ordinarily a single witness's positive testimony that the defendant committed a crime is sufficient to sustain a conviction, defendant cites two cases in which courts of review have emphasized the implications of a witness's habitual drug use on the credibility of his testimony. In *People v. Strother*, 53 Ill. 2d 95, 99, 290 N.E.2d 201, 204 (1972), the supreme court held that the defendant should have been allowed to examine a witness's arm for needle punctures on cross-examination and have them displayed to the jury. The court reasoned that, since "the testimony of a narcotics addict is subject to suspicion due to the fact that habitual users of narcotics become notorious liars," any evidence of the witness's drug use was relevant to his credibility. *Id.*

¶ 27 Similarly, in *People v. Bazemore*, 25 Ill. 2d 74, 77, 182 N.E.2d 649, 650 (1962), the supreme court stated, "[I]n addition to the effect [narcotics] addiction may have on capacity of the witness to observe, to receive accurate impressions and to retain them in his memory, the courts may consider, too, the effect of addiction upon the power and inclination of the witness to be truthful." In that case, the supreme court reversed the defendant's conviction because the only witness to provide direct evidence of the crime, a confidential informant, was a narcotics addict whose habit required two shots of opiates every day, and his alleged purchase of drugs from the defendant was not sufficiently controlled by the police to assure the court of the defendant's guilt. *Bazemore*, 25 Ill. 2d at 77-78, 182 N.E.2d at 650-51.

¶ 28 As with the bias evidence, the jury was responsible for determining whether the evidence of Schaefer's involvement in drugs was to be believed and taking that evidence into account in evaluating Schaefer's credibility as a witness. Again, the jury made no specific factual

findings on these points. However, even assuming for the sake of argument that Schaefer was definitively shown to have used cocaine on at least four or five occasions and sold or offered to sell illicit substances on two further occasions over a 12- or 13-month period, Schaefer's involvement in drugs does not present the kind of abject narcotics addiction discussed in *Bazemore*, where the supreme court held it was unreasonable to take the witness at his word because he used addictive opiates twice a day. Moreover, as discussed below, the December 1, 2009, drug deal alleged in the indictment's third count was under sufficient police control that, unlike in *Bazemore*, Schaefer's identification of defendant as the source of the cocaine he turned over to the task force investigators was reasonably corroborated by circumstantial evidence. Accordingly, defendant's reliance on *Bazemore* is unpersuasive. The jury was permitted to believe Schaefer's testimony that he bought drugs from defendant regardless of the evidence of Schaefer's involvement in illegal drug use and trafficking.

¶ 29 Notwithstanding the evidence attacking his reliability as a witness, Schaefer's account of the drug transaction at issue seems reasonably credible. The task force's controls in place for the December 1, 2009, drug deal were conscientious. Searches of Schaefer's person preceding his meeting with defendant revealed no cocaine. According to the investigator who accompanied him in the Chili's restaurant before defendant's arrival, Schaefer was under constant observation from the time he was searched and did not obtain any cocaine while at the restaurant. Schaefer's meeting with defendant occurred entirely in defendant's car, which remained under surveillance from its arrival at Chili's to pick Schaefer up to its departure after having dropped him off. At that time, Schaefer turned over seven grams of cocaine to Inspector Shumaker. Based on his previous experience and his observations in this case, Inspector Shumaker believed

the cocaine Schaefer gave him had not been concealed in a body cavity. The controls in place adequately ensured that defendant was the source of the cocaine.

¶ 30 Defendant nevertheless argues that Schaefer's access to defendant's car as a passenger in the days leading up to the meeting and the possibility that, before being searched by police, Schaefer concealed the cocaine in between two layers of underwear gave rise to a reasonable doubt that the cocaine came from defendant. That fails to account for the meeting itself. Why would defendant drive to Bloomington from out of town just to take Schaefer around a strip mall parking lot for a few minutes? What occurred in the car if not, as Schaefer testified, a drug deal? The circumstantial and direct evidence presented at trial permitted the jurors to find defendant guilty.

¶ 31 Finally, defendant intimates that the guilty verdict on the indictment's third count was inconsistent with the verdicts of not guilty on the other two counts. Defendant supposes the verdict reflected a compromise by the jurors where they may not have unanimously believed defendant guilty of the third count. He further supposes that the compromise resulted from improper questioning by the State that gave rise to the inference that defendant was being held in prison before his trial.

¶ 32 While defendant overlooks the fact that his imprisonment was first broached on direct examination of a defense witness, regardless, we disagree with his premise that the verdicts were inconsistent. First, the jury's acquittal on the first two counts may simply have been an exercise in the jury's historic power of levity. *People v. Murray*, 34 Ill. App. 3d 521, 536, 340 N.E.2d 186, 196-97 (1975) (quoting *People v. Dawson*, 60 Ill. 2d 278, 280-81, 326 N.E.2d 755, 756-57, quoting Justice Friendly in *United States v. Corbane*, 378 F. 2d 420 (2d Cir.

1967)). Second, defendant's cross-examination of the State's witnesses on the indictment's first two counts was more successful in revealing flaws in the prosecution's case, and those counts' weaknesses were apparent. On the second count of the indictment, defendant emphasized the failure of the task force's controls during the second alleged drug purchase to catch defendant in the act—defendant was never present in the hotel room that investigators were monitoring in anticipation of the deal, there was a gap in the task force's surveillance when defendant and Schaefer exited defendant's car and went into a store, and the wire Schaefer was wearing recorded no discernible evidence of an exchange. The task force employed an array of evidence-gathering strategies that turned up little evidence to corroborate Schaefer's testimony. On the indictment's first count, alleging defendant possessed cocaine with the intent to deliver it, the investigators arrested defendant before he met with Schaefer. They expected, based on the previous controlled buys, that defendant would be carrying the drugs, but none were found in searches of his person and his car. Instead, the task force confiscated cocaine found in a suit bag in defendant's girlfriend's residence. Defendant was so circumstantially connected to that suit bag that the jurors could have inferred a reasonable doubt that he actually possessed the cocaine. The proof on the indictment's third count, on which defendant was convicted, was not as tenuous as on the other two. Accordingly, the jury's verdicts were neither inconsistent with each other nor unreasonable.

¶ 33

III. CONCLUSION

¶ 34 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment as costs of this appeal.

¶ 35 Affirmed.