

FIFTH DIVISION
September 13, 2013

No. 1-12-0936

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 19888
)	
ALVIN HAWKINS,)	Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge Presiding.

JUSTICE Palmer delivered the judgment of the court.
Presiding Justice Gordon and Justice Taylor concurred in the judgment.

ORDER

- ¶ 1 *Held:* The evidence presented by the State was sufficient to prove defendant guilty beyond a reasonable doubt of possession of a controlled substance with intent to deliver.
- ¶ 2 Following a bench trial, defendant Alvin Hawkins was convicted of possession of a controlled substance with intent to deliver and sentenced to 51 months in prison. On appeal, defendant challenges the sufficiency of the evidence. He argues that the only evidence the State

presented to prove he was in a basement where drugs were found, as opposed to in an upstairs room, was the impeached testimony of two police officers.

¶ 3 For the reasons that follow, we affirm.

¶ 4 Defendant's conviction arose from the events of October 9, 2010. On that day, defendant, Devon Butler, Dion Butler, and Toney Givan were arrested and charged with possession of a controlled substance with intent to deliver. Givan pleaded guilty to a charge of possession of a controlled substance. Defendant, Devon Butler, and Dion Butler proceeded to a joint bench trial.¹

¶ 5 At trial, Chicago police officer Marion Swiatkowski testified that about 2 p.m. on the day in question, she and her partner, Officer Matthew Lopez, were on patrol when they received a call over the radio stating that people with guns were in the basement of a house, manufacturing narcotics. The officers drove to the given address. Upon arrival, Officer Swiatkowski saw Lieutenant Kevin Chambers in front of the house talking to two women. The officers told the women why they were there and asked one of the women, Charlene Bergen, if she would sign a consent to search form. Initially, Bergen refused, stating that she did not see anyone in the house. Lieutenant Chambers called dispatch to verify who had called in the complaint, and then left to retrieve a consent form. When he returned about 20 minutes later with a form, Bergen signed it. The form indicated it was signed at 2:53 p.m.

¶ 6 Officer Swiatkowski testified that Officer Lopez and Lieutenant Chambers went into the house while she stayed outside with Bergen. She did not recall how long the officers were inside. Later, at the police station, Officer Swiatkowski inventoried numerous items that were recovered from the house, including suspect heroin, a razor blade with residue, a bus card with

¹Codefendants' appeals are currently pending before this court in *People v. Devon Butler*, No. 1-12-2946, and *People v. Dion Butler*, No. 1-12-0934.

residue, a strainer with residue, red gel tabs, a digital scale, empty bags, a grinder, and U.S. currency.

¶ 7 Chicago police officer Matthew Lopez testified that about 2 p.m. on the day in question, he and Officer Swiatkowski went to the house in question in response to a 9-1-1 call about people with weapons manufacturing narcotics in the basement. When they arrived at the scene, Lieutenant Chambers was on the porch, talking with two women. One of the women, Charlene Bergen, signed a consent to search form.

¶ 8 Officer Lopez testified that he and Lieutenant Chambers entered the house and went into the basement. There, Officer Lopez observed several men in a bedroom, "all congregated together." He clarified that defendant and Devon Butler were seated across from each other on plastic stools at a small glass table, Dion Butler was standing near Devon Butler's shoulder, and Toney Givan was seated on a bed just behind the other men. Defendant was mixing up small piles of white powder with a CTA bus card and a razor blade; Devon Butler was using a spoon to place white powder into small plastic bags; Dion Butler was disassembling "gel tab type pills" and pouring the white substance inside the pills onto the glass table; and Givan was weighing little green plastic bags on a digital scale. Officer Lopez believed the men were mixing and manufacturing heroin. In court, Officer Lopez identified several photographs of the basement and stated that they truly and accurately depicted the way the room appeared on the day in question.

¶ 9 Officer Lopez testified that he announced his office and started grabbing the men in the room so they would not be able to destroy any of the evidence on the table. He recovered a number of items from the basement, including the suspect heroin. He placed the loose suspect heroin that had been on the table in a single plastic bag and collected 11 prepackaged bags of suspect heroin. Defendant and the other men were placed in custody.

¶ 10 The parties stipulated that a forensic chemist tested the contents of 5 of 11 Ziploc baggies, which tested positive for heroin in the amount of 1.3 grams. She also tested the contents of one clear sandwich bag, which tested positive for heroin in the amount of 10.7 grams.

¶ 11 In his defense, defendant called Toney Givan, who had earlier pleaded guilty to possession of a controlled substance in the instant case. Givan testified that on the day in question, he was at home, alone in his basement watching television. He denied that he was seated on a bed, weighing items on a scale. About 12 p.m., he heard someone call him. He did not recognize the man's voice because he was high on heroin. Givan came out of the bedroom, saw a gun pointed at him, turned, and ran. A police officer grabbed him, put a gun to his head, placed him on the floor, and handcuffed him. Givan stated, "After that, a tall I guess detective come down with the long dreads in his hair tearing up the basement down there. The lieutenant took me upstairs." Once upstairs, Givan observed defendant, Dion Butler, and Devon Butler in handcuffs. He had earlier asked the three men to come over to watch football, but did not know exactly what time they were going to arrive. Givan testified that an officer cuffed him to the other men and all four were led out of the house and into a police van.

¶ 12 Givan also testified that the only time he observed Officer Lopez was outside the house; Lopez did not go into the basement while Givan was there. When asked which officers were in the basement, Givan answered, "I later found out he was a lieutenant, a short Caucasian one and the one that came in, the one testified if that's him, his hair cut now so I don't know if that's him or not. But the one that came in the basement was a tall African American with real long dreads in his hair because he got up on the bed and went to tearing the ceiling down and he kept asking me, they kept asking me about some guns."

¶ 13 On cross-examination, Givan acknowledged that he had two prior convictions for possession of a controlled substance with intent to deliver, and one prior conviction for unlawful use of a weapon.

¶ 14 Ashley Moore, Dion Butler's girlfriend, testified on defendant's behalf. Moore stated that when she learned of Butler's arrest, she went to the house in question, arriving between 2:30 and 3 p.m. There, she saw defendant, Dion Butler, and Devon Butler being brought out of the house, handcuffed together. After the men were removed from the property, a police officer pulled up in an unmarked car, got out, approached "a short stocky guy" outside the house, and gave him some papers. The officer and the other man then went in the house together.

¶ 15 Devon Butler testified that between 1 and 2 p.m. on the day in question, he, Dion Butler, and defendant went to Givan's house to watch a football game. Givan's mother let them into the house and called to Givan. While the group was waiting for Givan to come up the stairs, three police officers ran into the house and told them to "freeze." Givan described the officers as "two male officers, one female, all Caucasian," and stated that the female officer was not Officer Swiatkowski. The officers handcuffed him, Dion Butler, and defendant. Then the female officer and a "short, stocky" officer he later learned was a lieutenant went downstairs. Later, when two Black officers arrived, the lieutenant directed them to look for guns. Butler testified that the first time he observed Officer Lopez was at a preliminary hearing several weeks after his arrest, and the first time he observed Officer Swiatkowski was at trial.

¶ 16 In rebuttal, the State called Lieutenant Kevin Chambers, who testified that about 2 p.m. on the date in question, he responded to a call of people with guns "cutting up dope" in the basement of a house. When he arrived at the house, he talked with Charlene Bergen and another woman on the porch. After Officer Lopez and Officer Swiatkowski met him at the house,

Lieutenant Chambers went to the police station to retrieve a consent to search form. When he returned with the form, Bergen signed it.

¶ 17 Lieutenant Chambers testified that he and Officer Lopez entered the house and went into the basement. In a bedroom, he observed four people. Defendant was seated at a table, lining up and cutting a white substance with a CTA card; Devon Butler was seated at the table, spooning the white substance into a Ziploc baggie; Dion Butler was standing by the table, opening red gel caps and putting the contents into a pile on the table; and Toney Givan was seated on a bed, holding a scale and weighing Ziploc baggies full of the white substance. On the table were piles of white powder Lieutenant Chambers believed to be heroin. Based on his belief that the men were cutting up and mixing heroin for distribution, Lieutenant Chambers placed them into custody.

¶ 18 On cross-examination, Lieutenant Chambers specified that he arrived at the house somewhere after 2 p.m., "probably closer" to 3 p.m. When asked how long he was away from the scene while he retrieved the consent to search form, Lieutenant Chambers answered, "Probably five to ten minutes. I'm guessing." Counsel asked whether it could have taken him 20 minutes, but Lieutenant Chambers said he could not say for sure. Lieutenant Chambers also acknowledged that defendant's arrest report indicated that the responding officers observed defendant "and co-offenders seated around a glass table."

¶ 19 Following argument, the trial court found defendant guilty of possession of a controlled substance with intent to deliver. In the course of doing so, the court stated it found credible the testimony of Officer Lopez and Lieutenant Chambers regarding what they observed in the basement.

¶ 20 In a posttrial motion, defendant argued, among other things, that the police officers' testimony was both conflicting and incredible regarding the timing of their arrival at the scene,

their descriptions of who was seated at the table, and the existence or absence of a second chair at the table. In denying the motion, the trial court reiterated that it found the officers to be credible. The court stated, "With regard to whether or not the testimony locks totally together or parallels each other, I would be more concerned if it was. The testimony that every word is the same or every single phrase is the same I would gather to guess would be scripted and rehearsed. I do not find either one of those things to be true here. I looked at the officers' testimony. I considered their testimony. I considered their demeanor when they testified and I found the officers to be credible." The trial court acknowledged that time differences existed, but stated that such deviations in testimony were not compelling enough to affect the credibility of the material aspects of the officers' testimony with regard to what they observed. Similarly, the trial court explained that whether there were multiple chairs in the room did not affect its determination of the officers' credibility.

¶ 21 The trial court sentenced defendant to 51 months in prison.

¶ 22 On appeal, defendant challenges the sufficiency of the evidence. He argues that the only evidence showing he was in the basement with the drugs – as opposed to upstairs – was the police officers' testimony, which he maintains conflicted with each other, the police reports, and the photographic evidence. Specifically, he notes that Lieutenant Chambers testified he arrived at the house close to 3 p.m., but Officer Swiatkowski stated that when she arrived around 2 p.m. Lieutenant Chambers was already there; that photographs depict only one seat at the table, while Officer Lopez and Lieutenant Chambers testified that two men were sitting; and that while police testimony described two men seated at the table, a third standing, and a fourth on a bed, the police report placed defendant "and co-offenders seated around a glass table." Defendant further asserts that the trial court granted the police officers' testimony additional credibility due simply

to their office, and that without any physical evidence establishing his presence in the basement, the State did not meet its burden of proving he was there.

¶ 23 When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). Reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 24 Where a guilty finding depends on eyewitness testimony, a reviewing court, keeping in mind that it was the fact finder who saw and heard the witness, must decide whether any fact finder could reasonably accept the witness's testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004); *People v. Smith*, 185 Ill. 2d 532, 541 (1999). It is for the finder of fact to judge how flaws in a witness's testimony affect the credibility of the whole. *Cunningham*, 212 Ill. 2d at 283. If positive and credible, the testimony of a single witness is sufficient to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 25 Here, Officer Lopez and Lieutenant Chambers testified that when they entered the basement bedroom, they observed defendant sitting at a table, cutting or mixing heroin with a CTA card; Devon Butler sitting at the table, spooning heroin into baggies; Dion Butler standing by the table, opening gel caps and pouring the contents onto the table; and Toney Givan sitting on a bed, holding a scale and weighing baggies. In contrast, Givan testified that he was in the basement by himself when police entered, and Devon Butler testified that he, defendant, and

Dion Butler were upstairs, waiting for Givan when the police arrived at the scene. After hearing both versions of events, viewing the witnesses while testifying, and being made aware by defense counsel of the alleged deficiencies in the police officers' testimony, the trial court chose to believe the State's witnesses over defendant's. This was its prerogative in its role as the trier of fact. *People v. Moser*, 356 Ill. App. 3d 900, 911 (2005). Because the trier of fact is in a superior position to assess the credibility of witnesses, we will not disturb the trial court's determination. *People v. Wittenmyer*, 151 Ill.2d 175, 191–92 (1992).

¶ 26 Defendant is correct that some variance exists in the officers' testimony as to the timing of their arrival at the scene. All three officers stated that they responded to the 9-1-1 call around 2 p.m. However, on cross-examination, Lieutenant Chambers stated that he arrived at the house "probably closer" to 3 p.m., and the consent to search form indicated it was signed at 2:53 p.m. Defense counsel made the trial court aware of the timing issue during closing argument and during argument on the posttrial motion. The court's comments in denying the posttrial motion demonstrate that it was well aware of the issue and took it into account when assessing the officers' credibility. We agree with the trial court that the variance regarding timing "is not that compelling *** with regard to whether or not the officers are credible." Despite the variance in the officers' testimony regarding timing, the portions of their testimony that directly support a finding that defendant possessed heroin with the intent to deliver could reasonably be accepted by the fact finder who saw them testify. See *Cunningham*, 212 Ill. 2d at 285.

¶ 27 We are also mindful that only one chair is visible in the photographs of the basement that were entered into evidence. However, we agree with the State that defendant cannot conclude from these photographs that it was "impossible" for the police to be telling the truth about two people being seated at the table when they arrived on the scene. As the State suggests, it is possible that another chair was in the room but outside the area depicted in the photographs, or

that either defendant or Devon Butler was sitting on something other than a chair when the police arrived. Regardless, the existence or absence of a chair is not dispositive. Defense counsel argued in closing and at the hearing on the posttrial motion that the photographs did not depict a second chair. The trial court responded to the argument, stating that whether there was a single chair or two chairs did not affect its determination that the officers were credible. We will not disturb the trial court's credibility determination. See *Brooks*, 187 Ill. 2d at 131.

¶ 28 Finally, we note defendant's argument that the police report impeaches the officers' testimony because it indicates that defendant "and co-offenders [were] seated around a glass table." The fact that the police report does not track exactly with the officers' description of the scene is of no consequence. "A police report is meant to be a summary, not a blow by blow chronology of what occurred." *People v. Reed*, 243 Ill. App. 3d 598, 608 (1993). Here, Officer Lopez's and Lieutenant Chambers' testimony elaborated upon the general description in the police report. In our view, the document is not impeaching and does not destroy the officers' credibility.

¶ 29 Taken in the light most favorable to the prosecution, the evidence at trial was sufficient to sustain defendant's conviction. Defendant's challenge in this court relates to alleged conflicts and discrepancies in and between the testimony of the police officers, photographs of the scene, and a police report. We have examined these alleged discrepancies and find that they are of the sort properly resolved by the trial court in the role of fact-finder. We will not substitute our judgment for the trial court's on these matters. See *Brooks*, 187 Ill. 2d at 131. After reviewing the record, we cannot say that the evidence was "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to defendant's guilt. *Slim*, 127 Ill. 2d at 307. Defendant's challenge to the sufficiency of the evidence fails.

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¶ 30 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 31 Affirmed.