

No. 1-12-2656

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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. 11 CR 13923
)	
KEYLON WILLIAMS,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Hyman and Justice Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held:* The officer's testimony was so incredible and contrary to human experience that it created a reasonable doubt regarding defendant's guilt and, therefore, defendant's conviction was reversed.

¶ 2 This case, which resulted in defendant, Keylon Williams' conviction as an armed habitual criminal, originated in a traffic stop. See 720 ILCS 5/24-1.7(a) (West 2010). According to the State's evidence, when a vehicle driven by William Coleman in which Williams was riding as a passenger was stopped by police because Williams and Coleman were not wearing seat belts,

Williams held in his open palm clear, knotted plastic baggies containing crack cocaine, so that when an officer approached from the passenger side, the drugs were plainly visible. After seizing the drugs, the officer searched Williams and found a loaded handgun in his pants pocket. Because we find this scenario improbable and "contrary to human experience," *People v. Vasquez*, 233 Ill. App. 3d 517, 527 (1992), we reverse.

¶ 3 According to the State's theory of the case, Williams was seen holding suspected narcotics during a routine traffic stop, and a subsequent search resulted in the recovery of a handgun from Williams' pocket. Williams, on the other hand, argues that the traffic stop was pretextual, and that the handgun was planted on him.

¶ 4 At trial, Officer Dave Bachler testified that on August 5, 2011, he and Officer Arturo Villanueva were on duty near 8957 South Ashland Avenue. Villanueva was driving an unmarked police vehicle and Bachler was in the passenger seat. Bachler observed a Buick approach the intersection at 90th and Ashland heading westbound on 90th, and noticed that neither the passenger in the car nor the driver was wearing a seatbelt. The officers, who were driving northbound on Ashland, activated their emergency lights to initiate a traffic stop and made a right turn heading eastbound on 90th. Villanueva exited the driver's side of the police vehicle and approached the driver's side of Coleman's vehicle. Bachler exited the passenger side of the police vehicle, walked around the front of the vehicle and around the back of Coleman's vehicle to the passenger's side. As Bachler approached the car and looked through the passenger window, he saw Williams holding in his right hand closest to the window small knotted plastic baggies containing a white rock-like substance that he suspected was cocaine. Williams did not try to conceal the baggies or hide them under the seat; rather, he held them in his open palm.

Bachler reached through the open window and grabbed the items from Williams. Bachler asked Williams to exit the car; Williams exited and was placed into custody. Officer Bachler then proceeded to search Williams, and found a .22 caliber handgun in his left pants pocket.

¶ 5 Villanueva testified that as he approached Coleman's vehicle, he was focused on the driver and so did not notice anything in the passenger's hand. He was alerted to the presence of suspected narcotics when Bachler signaled to him as Bachler approached the passenger side window.

¶ 6 The State admitted into evidence a certified copy of Williams' convictions for residential burglary and aggravated unlawful use of a weapon and rested.

¶ 7 Williams testified that he was a passenger in Coleman's car when the police pulled up alongside them. He denied having drugs in his hand while the police were conducting the traffic stop. He stated that a police officer took him out of the car and searched him, but did not find anything. The police then handcuffed the two men, placed them in the backseat of the squad car, and searched the interior of the car. The police told Williams that they found a gun in the car. Williams denied having a gun in his pocket, and claimed that the officer planted a gun on him. He acknowledged that he was not the owner of the vehicle, and did not know either officer from a previous interaction.

¶ 8 In closing, the State urged the court to accept Bachler's version of events. The State argued that Williams' version was self-serving and defied common sense because an officer would not plant a gun in a car that did not even belong to Williams. Williams argued that he presented a more believable version of events. He noted that it was highly implausible that he would be in possession of drugs in plain view of the officers without attempting to conceal them.

He also reiterated that Bachler did not find the gun in his pants pocket, but instead planted the evidence in the car after detaining the men. The court found Bachler "more credible" than Williams, found Williams guilty of armed habitual criminal, and sentenced him to 78 months in prison.

¶ 9 On appeal, Williams contends that the State did not present sufficient evidence to find him guilty beyond a reasonable doubt of armed habitual criminal because Bachler's testimony was "too implausible to believe." We agree.

¶ 10 "The due process clause of the fourteenth amendment to the United States Constitution requires that a person may not be convicted in state court 'except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.'" *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) quoting *In re Winship*, 397 U.S. 358, 364 (1970).

When a defendant challenges the sufficiency of the evidence, the appellate court must determine "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, 319 (1979); see also *People v. Collins*, 214 Ill. 2d 206, 217 (2005). It is not the role of the reviewing court to retry the defendant, and a conviction will not be set aside unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt regarding the defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

Although the question of witness credibility is normally for the trier of fact, a reviewing court will not hesitate to reverse the fact finder's determination if it finds the testimony is contrary to the laws of nature or universal human experience. *People v. Jones*, 81 Ill. App. 3d 798, 802 (1980).

¶ 11 A person commits the offense of being an armed habitual criminal if he “receives, sells, possesses, or transfers any firearm” after having been convicted of at least two triggering offenses. 720 ILCS 5/24–1.7 (West 2008). Williams does not contest that he was previously convicted of the triggering felonies. The sole question on review is whether Bachler's testimony was plausible, and thus sufficient to establish that Williams possessed a firearm.

¶ 12 We find the evidence insufficient to prove Williams guilty of armed habitual criminal. In this case, Bachler testified that he and his partner were conducting a routine traffic stop and as he was approaching the passenger side of the car (which, by his estimate, took him several seconds), he observed Williams holding in his open palm clear, knotted plastic baggies containing crack cocaine. According to Bachler, Williams did not close his hand to conceal the baggies, put them in his pocket or attempt to hide the baggies under his seat. Indeed, accepting Bachler's account that the drugs were in Williams' right hand closest to the window, we must also believe that Williams held them up for Bachler to see as he approached from the rear of the car.

¶ 13 We find this scenario highly suspect. See *People v. Cunningham*, 333 Ill. App. 3d 1045, 1052 (2002), reversed, 212 Ill. 2d 274 (2004) (“[T]his is not a case where the officer testified that the 'drugs were on the front seat.' We are always suspicious of these cases because we think drug dealers must be smarter than to leave their merchandise in plain view.”) (Greiman, J., dissenting). It is simply contrary to human experience that Williams, who had two prior convictions for residential burglary and aggravated unlawful use of a weapon, would make no effort to conceal the drugs in some way once he saw the officers and instead keep them in his open palm. See *People v. Vasquez*, 233 Ill. App. 3d 517, 527 (1992). The improbability surrounding Bachler's account of his initial encounter with Williams (which provided the basis

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for ordering Williams out of the car and frisking him) casts grave doubt over the reliability of his testimony regarding the subsequent search and recovery of the weapon. Accordingly, we find that no rational trier of fact could find Bachler's testimony plausible or reliable, thereby creating a reasonable doubt regarding Williams' guilt. See *Smith*, 185 Ill. 2d at 542. Thus, we reverse Williams' conviction for armed habitual criminal.

¶ 14 For the foregoing reasons, we reverse the judgment of the Circuit court of Cook County.

¶ 15 Reversed.