FOURTH DIVISION
November 23, 2016

No. 1-14-0594

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. 13 CR 11989
	)	
KENNETH MADISON,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's conviction affirmed. Evidence was sufficient to prove that engaged in narcotics transaction with undercover police officer. Mittimus corrected.

¶ 2 Following a jury trial, defendant Kenneth Madison was found guilty of delivery of a controlled substance and sentenced, as a Class X Offender (730 ILCS 5/5-4.5-25 (West 2012)), to seven years' imprisonment. On appeal, he contends that the evidence was insufficient to prove

that he was the person who directed an undercover officer to an alley to purchase heroin from an accomplice because the testimony of two police officers, the undercover officer and the surveillance officer, was unreliable and no physical evidence linked him to the crime. He also contends that the mittimus should be corrected to reflect the offense of which he was convicted.

¶ 3 At trial, Chicago police officer Steven Levielle testified that, on June 1, 2013 at 4 p.m., he was working with a team of eight officers as part of a controlled narcotics buy on the 3700 and 3800 blocks of West Polk Street in Chicago, Illinois. Officer Levielle was dressed in civilian clothing and driving an undercover police vehicle. He parked the vehicle at the 3700 block of West Lexington Street, and defendant approached the vehicle and asked Levielle if he was looking for "blows." Levielle testified that "blows" meant heroin.

¶ 4 Officer Levielle testified that defendant was wearing a white hat, a white shirt, gray shorts, and black "gym shoes." Levielle told defendant that he was looking for two "blows," and defendant directed him out of the vehicle and into a nearby alley. Defendant yelled into the alley, "you've got two coming back" and stood at the mouth of the alley. Officer Levielle walked into the alley and observed someone he identified as "Washington." Levielle gave Washington $20 of pre-recorded Chicago Police Department "1505" funds, and, in exchange, Washington handed him two clear, zip-top bags containing a white powdery substance. Levielle walked back to his car and saw defendant standing at the mouth of the alley. No one else dressed like defendant was in the area.

¶ 5 Officer Levielle testified that he radioed his team members that there had been a "positive transaction." He subsequently received a radio call, and based on the information contained in

the call, went to an address where he saw defendant and Washington in custody. He informed the arresting officers via the radio that they were the two men involved in the narcotics transaction, then returned to the police station where he inventoried the plastic bags and their contents.

¶ 6 On cross-examination, Officer Levielle testified that following the incident, he drafted a report in which he described defendant as having a "twist hair style," but said that was a "typographical error" and a "mistake." He also testified that defendant was detained before Washington, who was detained at 3816 West Polk Street. On redirect examination, Levielle testified that defendant was bald and Washington had his "hair in twists."

¶ 7 Chicago police officer Anthony Ceja testified that he was working as a surveillance officer during the transaction. Ceja was driving an undercover vehicle which he parked at the 3700 block of West Lexington Street. From there, he observed Officer Levielle from about 40 to 50 feet. Ceja watched as defendant approached Officer Levielle's car and spoke to him. Ceja testified that defendant was wearing a white baseball hat, sunglasses, a white shirt, gray shorts, and black "gym shoes."

¶ 8 Officer Ceja watched as Levielle got out of his car and walked with defendant to the mouth of the alley. Defendant stayed at the mouth of the alley while Levielle entered. Ceja lost sight of Levielle when he entered the alley, so he drove his vehicle around the block and parked across from the alley. Ceja testified that, looking into the alley, he saw Officer Levielle hand Washington cash and Washington hand Levielle an "unknown small object."

¶ 9 Officer Ceja watched officer Levielle return to his car and then heard Levielle's radio call to the other officers. Ceja lost sight of Washington for five to eight minutes as Washington

walked through the gangway. Ceja later saw defendant at 3723 West Lexington Street, which was about half a block away from the 3700 block of West Polk Street. Ceja located Washington at 3826 West Polk Street and alerted the enforcement officers, who arrived on the scene and took him into custody. Ceja testified that, on June 1, 2013, defendant was bald and Washington had his hair in "small twists."

¶ 10 On cross-examination, Officer Ceja testified that there was nothing obstructing his view of Officer Levielle's vehicle or defendant. He also said that after he moved his vehicle to get a better look into the alley, he lost sight of defendant for 10 to 15 minutes until he observed him at 3723 West Lexington Street.

¶ 11 Martin Paloma, a forensic chemist with the Illinois State Police Crime Lab, testified that the contents of the two zip-top bags that Officer Levielle had received tested positive for heroin and weighed approximately 1.268 grams. Paloma did not test the bags for fingerprints.

¶ 12 After two hours of deliberations, the jury sent a note to the court that stated it could not "come to a unanimous decision." The State, defense counsel, and the court agreed to instruct the jury to continue to deliberate, and the court sent a note to the jury to that effect. Approximately one hour later, the jury returned a verdict finding defendant guilty of delivery of a controlled substance. At a subsequent sentencing hearing, after considering the arguments in aggravation and mitigation, the court sentenced defendant as a Class X offender to seven years' imprisonment.

¶ 13 In this appeal, defendant contends that the evidence was insufficient to prove him guilty of delivery of a controlled substance beyond a reasonable doubt. He notes that Officer Levielle

described defendant in his report after the incident as having "hair twists," but he was actually bald. He also notes that there is no physical evidence connecting him to the offense, and that Washington and defendant were arrested in different locations despite the officers' testimony that they were together. The State responds that the Officer Levielle's identification of defendant was reliable and that corroborating physical evidence was not required to link defendant to the offense.

¶ 14 Where a defendant challenges the sufficiency of the evidence to sustain his conviction, the reviewing court must consider whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). This standard recognizes the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any conflicts and inconsistencies in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court must allow all reasonable inferences from the record in favor of the prosecution, and will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011).

¶ 15 In this case, the State was required to prove beyond a reasonable doubt that defendant knowingly delivered heroin with a weight of more than 1 gram, but less than 15 grams. 720 ILCS 570/401(c)(1) (West 2012). Possession may be actual or constructive (*People v. Frieberg*,

147 Ill. 2d 326, 361 (1992)), and may be jointly shared by two or more persons. *People v. Schmalz*, 194 Ill. 2d 75, 82 (2000); *People v. Coots*, 2012 IL App (2d) 100592, ¶ 43.

¶ 16 Viewed in the light most favorable to the prosecution, the evidence in this case proved that defendant was involved in the narcotics transaction. Officers Levielle and Ceja both identified defendant as the individual who directed Levielle into the alley where he purchased heroin from Washington. Levielle testified that defendant used the word "blows," a slang term for heroin. And Levielle identified defendant shortly after the transaction, when he had been apprehended. This evidence proved defendant's guilt.

¶ 17 Defendant maintains that Officer Levielle's identification of him was suspect where he described defendant in his report as having "hair with twists," but defendant was bald. He maintains that Officer Levielle's explanation that this was a "typographical error" was "unlikely," and suggests that defendant was not the person who directed Officer Levielle to the alley to purchase heroin.

¶ 18 In determining the reliability of an identification, this court assesses the factors enumerated by the United States Supreme Court in *Biggers*. *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989); *People v. Rodriguez*, 312 Ill. App. 3d 920, 933 (2000). Those factors are: (1) the opportunity of the witness to view the criminal at the time of the crime, (2) the witness' degree of attention, (3) the accuracy of the witness' prior description of the criminal, (4) the level of certainty demonstrated by the witness at the identification confrontation, and (5) the length of time between the crime and the identification. *Slim*, 127 Ill. 2d at 308. Defendant contends that we should not apply these factors because this is not a "normal" *Biggers* case. Defendant notes

that Officer Ceja only saw defendant from a distance and Officer Levielle described a person who did not match defendant's description. We disagree.

¶ 19 Discrepancies or omissions in a witness' description do not, in and of themselves, necessarily generate a reasonable doubt if a positive identification has been made. *Id.* at 309. Although Officer Levielle described defendant in his report as having twists in his hair, he testified that this was a mistake, that Washington had twists in his hair, and that defendant was bald. Moreover, Officer Ceja, who had an unobstructed view of defendant from 40 to 50 feet away, described defendant's clothing consistently with Levielle. Levielle also identified defendant on the scene via a drive-by radio call as the person who directed him to the alley to purchase heroin. In addition, each officer consistently described the clothes defendant was wearing at the time of the offense and also said that no one else present that night was wearing that same clothing.

¶ 20 Both officers, therefore, had an opportunity to view defendant at the time of the offense, both were focused on defendant, both identified him with certainty at trial, and Officer Levielle identified defendant immediately after the incident on the scene. The minor discrepancy identified by defendant does not, in and of itself, create a reasonable doubt as to the reliability of the officers' identification of him. Because the weight of the *Biggers* factors favors the State, we find that defendant's challenge to the identification evidence fails.

¶ 21 Similarly, we are unconvinced by defendant's contention that the fact that he and Washington were not arrested together undermines the State's case by tending to show that defendant was not the person who was working with Washington. First, this argument raises

issues of credibility and the reliability of the officers' identification, which, as discussed, is a matter for the trier of fact. *Id.* at 308; *Sutherland*, 223 Ill. 2d at 242. Moreover, the officers provided an explanation for why the two men were not arrested in the same location. Officer Ceja testified that after the transaction, Washington walked out of the back of the gangway and Ceja lost sight of him for five to eight minutes. Ceja also testified that when he moved his vehicle to look into the alley, he lost sight of defendant for 10 to 15 minutes, until he saw defendant about half a block away from the area where the transaction took place. A trier of fact could have accepted this reasonable explanation for the location of defendant's arrest; we see no reason to second-guess it here. *People v. Brown*, 388 Ill. App. 3d 104, 109 (2009).

¶ 22 Defendant also argues that the State's evidence was insufficient because it failed to produce any physical evidence connecting him to the offense. Defendant's argument is unpersuasive. Our standard of review focuses on the sufficiency of the evidence actually presented by the State to establish the charged offense. *People v. Howard*, 376 Ill. App. 3d 322, 330 (2007). Once the State has met its burden, the reviewing court need not consider whether more evidence was or should have been presented. *Id*. This court has repeatedly held that the State is not required to present corroborating physical evidence of delivery of a controlled substance where it presents credible testimony to support a conviction. See, *e.g.*, *Brown*, 388 Ill. App. 3d at 108-09; *People v. Trotter*, 293 Ill. App. 3d 617, 619 (1997). And we have held that "there is no requirement that pre-recorded or marked funds used in narcotics transactions be recovered for a conviction to stand." *Trotter*, 293 Ill. App. 3d at 619. In this case, it was for the

jury to determine whether there were unresolved questions and, if so, how those questions affected the witnesses' credibility as a whole. *Brown*, 388 Ill. App. 3d at 108.

¶ 23 Defendant also argues that the fact that the jury sent a note to the court stating that it could not come to a unanimous decision casts doubt on his conviction. Even though the jury appeared to struggle in reaching a unanimous verdict, our task on appeal is not to divine the jury's reasons for its verdict. Instead, we must simply ask whether "*any* rational trier of fact"—not *this* trier of fact—could find defendant guilty based on the evidence. (Emphasis in original.) *Cunningham*, 212 Ill. 2d at 278 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We decline to infer anything regarding the sufficiency of the evidence from the jury's note.

¶ 24 Finally, defendant contends, and the State concedes, that his mittimus should be corrected to reflect that he was convicted of delivery of a controlled substance, not manufacture or delivery of heroin. We agree. Defendant's mittimus should reflect his conviction for delivery of a controlled substance with a weight of more than 1 gram, but less than 15 grams. 720 ILCS 570/401(c)(1) (West 2012). We order the clerk of the circuit court to correct the mittimus in that manner. *People v. Harper*, 387 Ill. App. 3d 240, 244 (2008).

¶ 25 Accordingly, we order that the mittimus be corrected in accordance with this order, and affirm the judgment of the circuit court in all other respects.

¶ 26 Affirmed; mittimus corrected.