2016 IL App (4th) 140383-U

NO. 4-14-0383

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 6, 2016
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
MICHAEL K. PEPPERS,	)	No. 13CF1617
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the State presented sufficient evidence for the jury to find defendant guilty of unlawful delivery of a controlled substance.

¶ 2 In March 2014, a jury found defendant, Michael K. Peppers, guilty of unlawful delivery of a controlled substance (720 ILCS 570/401(d) (i) (West 2012)). Following the jury's verdict, defendant filed a motion for a new trial. In April 2014, the trial court denied defendant's motion and sentenced him to nine years' imprisonment. Defendant appeals, arguing the State failed to prove him guilty beyond a reasonable doubt because the conviction rests on contradictory, confusing, and unbelievable testimony. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On December 11, 2013, a bill of indictment alleging defendant committed the offense of unlawful delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2012)),

was filed. The State alleged, on October 17, 2013, defendant knowingly and unlawfully delivered to Bloomington, Illinois, police department confidential source, Raymond Dillingham, less than one gram of cocaine.

¶ 5 Defendant went to jury trial on March 10, 2014. Dillingham testified regarding his history of drug use. He stated his drug of choice for the past 33 years has been cocaine and he used it "[e]very day[,] all day." The last time he used cocaine was October 31, 2013. He estimated he used between $600 and $1,000 worth of cocaine in a given day. Dillingham also testified to his extensive criminal history, which included (1) a 2005 conviction in Ohio for falsification, (2) a 2007 conviction in Ohio for burglary, (3) a 2012 conviction in McLean County for obstructing identification, (4) a 2012 conviction for theft in McLean County, and (5) a 2013 conviction for possession of a controlled substance (cocaine). Dillingham also testified to awaiting sentencing due to his recent plea of guilty to delivery of a look-alike substance in exchange for the dismissal of other charges.

¶ 6 Dillingham further testified, while on bond pending sentencing for the delivery of a look-alike substance conviction, he worked as a confidential source for the Bloomington police department. He testified he was a confidential source before for the Normal police department, in an effort to avoid prosecution when he was caught selling cocaine to an undercover detective. However, he stated this was his first time working as a confidential source for the Bloomington police department.

¶ 7 Dillingham testified that on October 17, 2013, he was working as a confidential source for Detective Stephen Brown from the Bloomington police department. He met Brown at a local brewery, Illinois Brewing Company (IBC), where they played a game of pool and Brown gave him some money. Dillingham stated Brown searched him at IBC and he did not

have any drugs or money on him. After Brown gave him money, he walked alone to a different tavern called Mug Shots and Brown followed behind.

¶ 8 While at Mug Shots, Dillingham testified other detectives were with Brown. Dillingham had a couple of drinks and called defendant on the telephone. When defendant arrived, Dillingham gave defendant all the money he received from Brown. Defendant left the bar and returned 15 to 20 minutes later with cocaine. Dillingham testified he sat a couple of stools over from Brown and two to three other detectives. Defendant handed the cocaine to Dillingham, which he turned over to Brown.

¶ 9 Dillingham also testified regarding an affidavit he signed while he and defendant were in the county jail. The affidavit states defendant never sold him any drugs at any time. Dillingham testified he signed the affidavit, in the presence of the defendant, of his own free will. According to Dillingham, signing the affidavit prevented everyone knowing he was a confidential source, as he was concerned about his safety. Dillingham and defendant were in the same section of the county jail for 44 days and no conflicts arose.

¶ 10 Brown testified that on October 17, 2013, he was working as a detective for the Bloomington police department's vice unit. Brown stated earlier that day, he met with Dillingham to discuss drug information and they scheduled to meet later at IBC. Brown noted this was not the first time Dillingham worked for him as a confidential informant with the Bloomington police department. While at IBC, Brown provided Dillingham approximately $150 or $160 of prerecorded money for purchasing narcotics. Brown also testified he searched Dillingham to ensure he did not bring his own money or drugs because "some people will try to set people up." Brown then instructed Dillingham to walk to Mug Shots and informed him surveillance officers would be watching him down the street. Brown walked to Mug Shots with

Detective Todd McClusky and followed two minutes behind Dillingham. Once Brown and McClusky arrived at Mug Shots, they sat at the bar. Dillingham took a seat at the far end of the bar. The detectives were wearing plain clothes.

¶ 11 Brown further testified, while seated at the bar, he and McClusky consumed alcohol in an effort to maintain their undercover appearance. Brown observed Dillingham speaking with defendant, but he could not hear the conversation. Dillingham then called Brown while in the bar and asked if he could give money to defendant and then defendant would bring back drugs. Brown claimed this was the only phone call that took place that evening. After the call, Dillingham and defendant stepped outside to smoke a cigarette. Brown could see Dillingham and defendant standing in the smoking area and talking. About two minutes later, Dillingham came into the bar by himself and sat to the right of Brown. Approximately 15 to 20 minutes later, defendant walked toward the right side of Dillingham, and Brown observed Dillingham reach his arm down in what appeared to be a hand-to-hand transaction. Dillingham immediately reached out to Brown and dropped two bags of cocaine in his hand. Brown testified he could see Dillingham during the entire time they were at Mug Shots. Following defendant's arrest, about two months later, the police were not able to recover the prerecorded money.

¶ 12 McClusky testified to a similar set of facts with a few insignificant differences. McClusky stated he, Brown, and Dillingham walked from IBC to Mug Shots as a group. He observed Dillingham and defendant briefly speak and then defendant left Mug Shots. Dillingham then sat next to Brown. McClusky stated defendant was gone for approximately 30 minutes before he returned. McClusky then observed the same hand-to-hand transaction Brown described between defendant and Dillingham. McClusky testified Dillingham then turned to Brown and gave him something.

¶ 13 On March 10, 2014, a jury found defendant guilty of unlawful delivery of a controlled substance. On March 11, 2014, defendant filed a motion for a new trial, arguing (1) material elements of the offense charged were not proved beyond a reasonable doubt and (2) the findings and verdict were against the manifest weight of the evidence. On April 28, 2014, the trial court denied defendant's motion and sentenced him to nine years' imprisonment.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant contends the State failed to prove beyond a reasonable doubt that he committed the offense of unlawful delivery of a controlled substance. He contends the conviction rests on contradictory, confusing, and unbelievable testimony.

¶ 17 "Where a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48, 1 N.E.3d 888. This standard of review gives the trier of fact the responsibility to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *People v. Howery*, 178 Ill. 2d 1, 38, 687 N.E.2d 836, 854 (1997) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A reviewing court will not retry the defendant and due consideration must be given to the trier of fact, which saw and heard the witnesses and, therefore, was in the best position to judge their credibility. *In re Jonathan C.B.*, 2011 IL 107750, ¶ 59, 958 N.E.2d 227. A conviction will only be reversed when the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 115, 871 N.E.2d 728, 740 (2007).

¶ 18 Here, the State charged defendant with unlawful delivery to Dillingham of less than one gram of a substance containing cocaine (720 ILCS 570/401(d)(i) (West 2012)). The State's evidence showed Dillingham agreed to act as a confidential police source and met with Brown at IBC. At IBC, subsequent to searching Dillingham, Brown provided him with money. Dillingham walked to a different bar, Mug Shots. While at Mug Shots, he interacted with defendant and discussed a purchase for drugs. The testimony conflicts as to whether defendant was first contacted by phone or in person at Mug Shots. At some point, while at Mug Shots, defendant received money from Dillingham and left to acquire the drugs. When he returned, a hand-to-hand exchange occurred between defendant and Dillingham. After this exchange, Dillingham reached over to Brown and dropped two bags of cocaine into his hand.

¶ 19 Nevertheless, defendant argues Dillingham's testimony was untrustworthy because it was contradictory, he was a drug addict, he was awaiting sentencing in a different criminal case, and he signed an affidavit in jail claiming defendant never sold him any drugs. We address each of these arguments in turn.

¶ 20 First, we acknowledge Dillingham's testimony contained minor variations from the detectives' testimony. The contended variances were whether Dillingham (1) walked alone to Mug Shots, (2) previously worked as a confidential source for the Bloomington police department, (3) called defendant or first contacted defendant while at Mug Shots, and (4) stepped outside with defendant in a smoking area. It was the jury's function to resolve conflicts in the evidence, and the evidence still showed a transaction for drugs occurred between Dillingham and defendant. See *People v. Evans*, 209 Ill. 2d 194, 212, 808 N.E.2d 939, 949 (2004). The jury "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."

People v. Hall, 194 Ill. 2d 305, 332, 743 N.E.2d 521, 538 (2000). We find these variations immaterial and reiterate it was the jury's role to resolve these conflicts to reach its verdict.

¶ 21 Second, defendant argues Dillingham's testimony is untrustworthy because he is a drug addict. Our supreme court has stated, "[t]he question of whether a witness is a narcotics addict is an important consideration in passing upon the credibility of a witness for, as we have stated, the testimony of a narcotics addict is subject to suspicion due to the fact that habitual users of narcotics become notorious liars." *People v. Lewis*, 25 Ill. 2d 396, 399, 185 N.E.2d 168, 169 (1962). Defendant relies upon this statement for the proposition that Dillingham's testimony should not have been believed because he testified at great length regarding his history of drug use. Dillingham stated his drug of choice was cocaine and he used it "[e]very day[,] all day" for the past 33 years. However, Dillingham testified at the time of trial, March 10, 2014, he had not used cocaine since October 31, 2013. In *Lewis*, the State's principal witness testified he was previously a narcotics addict and injected narcotics into his arm with a hypodermic needle that sometimes left a scar. *Id.* at 398-99, 185 N.E.2d at 169. At trial, the witness stated he had not used narcotics since the date of the offense, which was about six months before the date of trial. *Id.* at 398, 185 N.E.2d at 169. Defense counsel requested the witness remove his coat, which the court assumed was to determine if the witness lied about whether he had been taking drugs. *Id.* at 399, 185 N.E.2d at 169. The State objected and the trial court sustained the objection. *Id.*

¶ 22 In *Lewis*, the supreme court found this was error because "[t]he presence of any scars evidencing a *recent use of narcotics* would not only affect the credibility of the witness insofar as the recent use of narcotics was concerned, but also might reasonably cast serious doubt upon the truth of the balance of his testimony." (Emphasis added.) *Id.* The present case is distinguishable. Here, counsel for defendant had the opportunity to challenge Dillingham's

credibility based on Dillingham's extensive history of drug use. Further, defendant fails to argue or suggest that he attempted, but did not get to, present evidence showing Dillingham was a drug user when he testified, and as a result, should not be trusted. Regardless, Dillingham was not the State's sole witness. The State presented the testimony of Brown and McClusky to corroborate Dillingham's testimony. Despite minor variations in each witness's testimony, all witnesses testified regarding a hand-to-hand transaction that occurred when defendant sold cocaine to Dillingham.

¶ 23 Next, defendant argues Dillingham's testimony is untrustworthy as he was awaiting sentencing in his own criminal case. Testimony by a confidential source "who participates in an undercover operation to minimize punishment for his own illegal activity should be closely scrutinized." *People v. Anders,* 228 Ill. App. 3d 456, 464, 592 N.E.2d 652, 657 (1992). Dillingham testified he recently pleaded guilty to delivery of a look-alike substance in exchange for the dismissal of other charges and was awaiting sentencing. Even though Dillingham appeared to have an incentive to fabricate his encounter with defendant, Brown and McClusky corroborated his testimony.

¶ 24 Last, we address the affidavit Dillingham signed while in custody in the county jail. The affidavit states defendant never sold Dillingham any drugs at any time. Dillingham testified he signed the affidavit because he did not want everyone to know he was a confidential source, as he was concerned about his safety. Again, the jury's function was to determine the credibility of the witnesses and to weigh the evidence. Here, the jury believed Dillingham when he indicated he signed the affidavit due to concerns for his safety.

¶ 25 For the aforementioned reasons, we do not find the evidence of guilt was so improbable, unsatisfactory, or unreasonable that no rational fact finder could have found

defendant guilty beyond a reasonable doubt. The jury was in the best position to judge the credibility of the witnesses. As a result, we find the State's evidence was sufficient to support defendant's conviction for unlawful delivery of a controlled substance beyond a reasonable doubt.

¶ 26 III. CONCLUSION

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

¶ 28 Affirmed.