

No. 1-15-0496

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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. 13 CR 13386
)	
JONATHAN MILLER,)	Honorable
)	James Michael Obbish,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed defendant's conviction where the evidence was sufficient to prove him guilty beyond a reasonable doubt of possession of a controlled substance.

¶ 2 Following a bench trial, defendant Jonathan Miller was convicted of possession of a controlled substance. Based on defendant's criminal history, he was sentenced to 30 months' imprisonment. On appeal, defendant challenges the sufficiency of the evidence because, in light of an arresting officer's testimony being found insufficient to prove possession of a firearm due to the breakdown of the inventory process, the major inconsistencies between the physical evidence and the officer's account of the incident, and the officer's unreliable testimony which

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attempted to shield her partner's actions from scrutiny, no reasonable trier of fact would find the officer's testimony regarding proof of possession of a controlled substance to be credible. We affirm.

¶ 3 Defendant's conviction arose from an incident involving a traffic stop on June 18, 2013. Following his arrest, defendant was charged with one count of being an armed habitual criminal; one count of armed violence; three counts of unlawful use of a weapon by a felon (UUWF); six counts of aggravated unlawful use of a weapon (AUUW); and two counts of possession of less than 30 grams of phencyclidine (PCP).

¶ 4 At trial, Chicago police officer, Elizabeth Perez, testified that, at about 8:25 p.m. on the date of the offense, she and her partner, Officer Jesus Delgado, were on uniformed patrol in a marked police vehicle in the area of 3837 W. 13th Street in Chicago, when she observed a black Chrysler travel through a stop sign at 13th and Avers Streets. At that time, the officers were a little more than a half-block away from the Chrysler. After witnessing the traffic violation, Officer Delgado activated the police vehicle's lights and siren and the Chrysler travelled about a half block before pulling over. After the Chrysler was curbed, the officers approached the vehicle: Officer Perez on the passenger side; and Officer Delgado on the driver side. As Officer Perez approached the vehicle she could see that the passenger side window was up and the driver side window was down. Officer Perez identified defendant as the driver of the Chrysler.

¶ 5 At the passenger side window, Officer Perez observed Officer Delgado reach through the open driver side window. She did not see if Officer Delgado had anything in his hands as he reached into the vehicle. However, upon making contact with defendant's waistband, she saw the officer recover a silver handgun with a black grip. Officer Delgado then secured the handgun

by placing it into his own pants pocket. Nothing obstructed Officer Perez's view of her partner when he removed the handgun from defendant's waistband.

¶ 6 Officer Perez walked over to the driver side of the vehicle. Officer Delgado removed defendant from the vehicle, handcuffed him, and performed a custodial search. Officer Perez observed Officer's Delgado place his left hand into defendant's left pocket. Officer Perez did not see anything in Officer Delgado's hands prior to reaching into defendant's pocket. Officer Perez then observed Office Delgado remove from defendant's pocket two Ziploc baggies containing tinfoil packets. Officer Delgado showed Officer Perez what he had recovered from defendant's pockets. Upon further investigation, Officer Perez found a black substance suspected to be phencyclidine (PCP). Defendant was then transported to the 10th District police station.

¶ 7 On cross-examination, Officer Perez testified that, prior to Officer Delgado removing items from defendant's person, she did not see a firearm in defendant's waistband, and did not know the location of the firearm. Upon recovering the firearm, Officer Delgado did not hold it up in the air. Even though she observed her partner place the recovered firearm into his own pocket, Officer Perez did not see the firearm again while at the scene. Officer Perez confirmed that she performed a pat-down for weapons on defendant while he stood at the driver side of the vehicle, but she did not search defendant's pockets.

¶ 8 On redirect, Officer Perez stated that her partner showed her the suspect PCP within seconds of recovering the baggies from defendant's pocket. On recross, Officer Perez testified that she had been pointing her flashlight onto the rear floor of the vehicle when she observed her partner reach into the vehicle. She then observed Office Delgado recover a handgun from the vehicle. She never saw the handgun in defendant's waistband.

¶ 9 People's exhibit number 1 was presented to Officer Perez. The officer identified it as the gun that was removed from defendant's waistband and testified that the gun was in the same or substantially the same condition as when she last saw it. While she was at the police station, she examined the gun and determined it was loaded with one bullet in the chamber and three in the magazine. People's exhibit number 2 was then presented to Officer Perez, which she identified as four hollow point rounds. She knew they were hollow point rounds because the tips were indented with a curving around them and they were in the same or substantially the same condition as when she last saw them. On cross-examination, Officer Perez acknowledged that, after Officer Delgado placed the handgun into his pocket; she "didn't see it anymore."

¶ 10 The parties stipulated that if called, Officer Delgado would testify that he recovered two Ziploc bags containing tinfoil packets of suspect PCP, and that he kept those items in his safekeeping and control until he inventoried them under inventory number 12933428 pursuant to Chicago Police Department Procedures. The parties further stipulated that if called, Illinois State Police forensic chemist, Pat Junious Hawkins, would testify that she received inventory number 12933428 in a heat-sealed condition, which contained two plastic bags that held tinfoil packets containing a substance which tested positive for 0.5 grams of PCP. Later, People's exhibits number 3 (a "no FOID certification" for defendant), and 4 (certified copies of conviction reflecting defendant's prior convictions for UUWF and for delivery of a controlled substance) were presented.

¶ 11 After the State rested, defendant made a motion for a directed finding, which the trial court denied.

¶ 12 Defense counsel then recalled Officer Perez to the stand. In answer to questions posed by defense counsel, Officer Perez acknowledged that: the weapon her partner found was "a 9-

millimeter two-inch barrel with four live rounds, one in the chamber and three in the magazine;” a 9-millimeter handgun is a semiautomatic weapon; and a magazine is a rectangular device containing bullets that is inserted into the handle of a weapon. Officer Perez also acknowledged that People’s exhibit number 1 was the firearm she saw Officer Delgado recover from defendant, and that the firearm was a revolver that did not have a magazine. When asked whether the firearm she identified in court was a 9-millimeter, Officer Perez answered: “I am not sure exactly the dimensions of it.” After the parties stipulated that “the 9-millimeter semi-automatic with one live round and three in the chamber was inventoried under number 12933213,” Officer Perez admitted that she did not know who physically transported People’s exhibit number 1 to trial. Defense counsel then asked: “Are you sure the weapon you have identified in court today is the weapon Officer Delgado recovered that day?” Officer Perez answered: “It is.”

¶ 13 On cross-examination, Officer Perez explained that there are basically two types of handguns: automatics and revolvers. Automatics have a magazine that holds ammunition in the stock of the weapon, and revolvers have a “different device” in the middle of the gun above the handle, which is also referred to as a magazine.

¶ 14 On redirect, Officer Perez stated that she did not know the caliber of People’s exhibit number 1. Defense counsel asked whether it was a 9-millimeter, and she answered: “I believe so, yes.” When shown the handgun by the court, however, Officer Perez stated that it was definitely a revolver. Defense counsel then asked Officer Perez the caliber of the gun she carried. She stated it was a 9-millimeter semiautomatic and then agreed that People’s exhibit number 1 did not physically resemble the 9-millimeter she carried.

¶ 15 At the close of Officer Perez's testimony, the trial court stated: "So the record is clear, the gun is a Smith and Wesson .38-caliber based on the markings on the gun. It is definitely a revolver."

¶ 16 The trial court found defendant guilty of the two counts of possession of a controlled substance and not guilty of all weapons-related charges. In explaining the acquittals, the trial court stated that Officer Perez had testified in a credible manner as to observing her partner's actions on the date of the offense. However, the court then acknowledged that, while inventory number 12933213 listed the recovered gun as a High Point-C9 Lugar 9-millimeter semiautomatic pistol with a magazine containing four bullets for a 9-millimeter Lugar, the handgun introduced at trial was a .38-caliber Special Smith and Wesson revolver. The court stated: "I know that Officer Perez is far more experienced in firearms than I am, but I know she knows that this is not a 9-millimeter Lugar ***." The trial court also noted that the original complaint signed by Officer Delgado initially identified the recovered weapon as a "High Point Luger model C9 9MM 2in barrel blue steel semi-automatic handgun," however, this description had been crossed out in blue ink and replaced in handwritten words: "a firearm." Given the "rather bizarre circumstances" regarding People's exhibit number 1, the trial court found defendant not guilty of the weapons charges. Nevertheless, the trial court reiterated that it found Officer Perez's testimony to be credible, despite the fact that "her partner has completely botched up the process of making sure that what is alleged to have been recovered from [defendant] on the date in question is the same thing that is being introduced here as [People's exhibit number 1]," and that the inventory procedure was "completely discombobulated in this case." The trial court concluded:

“Now, Officer Perez testified that she saw Officer Delgado during the course of a custodial search on scene recover two packets from the defendant’s pocket, and, upon testing, based on the stipulation, one of those packets turned out to be positive for PCP, phencyclidine, in the amount of half a gram. The defendant will be found guilty of Counts [12] and [13]. They will merge for purposes of sentencing.”

¶ 17 The trial court subsequently sentenced defendant to 30 months’ imprisonment. This appeal followed.

¶ 18 On appeal, defendant challenges the sufficiency of the evidence to convict, arguing that Officer Perez’s version of events is not credible because she and Officer Delgado “completely botched the inventory procedure and then [she] testified in a manner intended to legitimize their conduct.” Defendant asserts that Officer Perez’s testimony should be rejected as wholly incredible because she “committed perjury” in order to legitimize Officer Delgado’s actions. Defendant maintains that Officer Perez’s testimony regarding the identity of the handgun casts a shadow of doubt over the entirety of her testimony, including whether Officer Delgado recovered the same tinfoil packets of suspect PCP from defendant that were tested. Defendant concludes that the trial court’s observation that the inventory process regarding the handgun was “completely discombobulated,” should apply with equal force to all the items allegedly recovered and inventoried by Officer Delgado. Further, defendant argues that the trial court acted unreasonably when it accepted Officer Perez’s testimony as sufficient proof of possession of a controlled substance after it had rejected her testimony as insufficient proof of possession of a firearm.

¶ 19 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. *People v. Brooks*, 187 Ill. 2d 91, 132 (1999). A reviewing court will not substitute its judgment for that of the trier of fact on these matters. *Id.* The testimony of a single witness, if positive and credible, is sufficient to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). A reviewing court will not reverse a conviction simply because the defendant claims that a witness was not credible. *Id.* 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).

¶ 20 Here, the trial court was well aware of what it called the “bizarre circumstances regarding People’s Exhibit No. 1,” and Officer Perez’s inconsistent representations about the type of gun recovered and the type of gun presented at trial. Nevertheless, in its role as the trier of fact, it is the trial court’s prerogative to find the testimony of Officer Perez was credible, with regard to her actions and her account of her partner’s actions, on the date of the offense. See *People v. Moody*, 2016 IL App (1st) 130071, ¶ 52. Moreover, “in criminal proceedings, the trier of fact may believe part of a witness’ testimony without believing all of it.” *People v. Sanchez*, 105 Ill. App. 3d 488, 493 (1982). Having reviewed the testimony of Officer Perez, we find no basis to reverse the credibility finding of the trial court, which was in the best position to observe her testimony.

¶ 21 While there is no question that the testimony of Officer Perez regarding the gun was inconsistent, her testimony as to the narcotics recovered from defendant was consistent and clear.

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Officer Perez observed Officer Delgado perform a custodial search of defendant. He reached into defendant's pocket and recovered two Ziploc bags containing tinfoil packets. When Officer Perez examined the items, she found a black substance inside the tinfoil suspected to be PCP. The parties stipulated that Officer Delgado would have testified that he kept the narcotics in his safekeeping and control until he inventoried them pursuant to Chicago Police Department procedures, and that Illinois State Police forensic chemist, Pat Junious Hawkins, would have testified that the contents of one of those tin foil packets tested positive for 0.5 grams of PCP. We find that this evidence, viewed in the light most favorable to the prosecution, was sufficient to establish that defendant possessed PCP. The evidence was not "so unsatisfactory, improbable or implausible" to raise a reasonable doubt as to defendant's guilt. *Slim*, 127 Ill. 2d at 307. Accordingly, defendant's challenge to the sufficiency of the evidence fails.

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

¶ 23 Affirmed.