2017 IL App (1st) 151601-U

No. 1-15-1601

Order filed November 16, 2017

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 3937
	)	
FRANK STITH,	)	Honorable
	)	Rickey Jones,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for delivery of a controlled substance affirmed over his contention that the evidence at trial was insufficient to disprove his affirmative defense of entrapment.

¶ 2 Following a bench trial, defendant Frank Stith was convicted of delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2014)) and sentenced to six years' imprisonment. On appeal, defendant contends that the evidence at trial was insufficient to disprove his affirmative defense of entrapment.

¶ 3 Defendant was charged with delivery of a controlled substance and delivery of a controlled substance within 1000 feet of a school. At trial, he raised the affirmative defense of entrapment. Chicago police officer Gus Corona testified that on February 7, 2014, at approximately 12:07 p.m., he was on duty as part of an undercover narcotics team. Corona was acting as an undercover officer in the area of 1800 S. Keeler. He was in radio contact with the other officers on his team who were acting in surveillance and enforcement capacities. Corona arrived in the area in a covert vehicle and was dressed in civilian clothes. He had acted as an undercover officer "over a hundred" times. Upon arrival, Corona observed defendant on the sidewalk at approximately 1820 S. Keeler. Corona parked his vehicle on the street and rolled down his window. Defendant asked what Corona was looking for and Corona replied that he wanted to purchase heroin. Defendant made a call on his cell phone to an unknown individual. Corona could not hear the phone call, but after defendant finished, he entered the passenger side of Corona's vehicle and instructed him to drive two blocks away to the 1800 block of South Kildare.

¶ 4 Corona parked at 4309 W. 18th Street and defendant asked how many "blows" Corona wanted to purchase. Corona understood "blows" to be a street term for heroin, and responded that he wanted two. Defendant exited the vehicle and entered a residence at 1803 S. Kildare. He was out of Corona's view for several minutes. When defendant reappeared, he returned to Corona's vehicle and gave him two tin foil packages containing suspected heroin in exchange for $30 in prerecorded bills. After the transaction, Corona and defendant discussed future narcotics transactions and exchanged phone numbers.

¶ 5 Corona thereafter drove away and radioed the surveillance and enforcement officers that he had a positive "hand-to-hand" transaction with defendant. He additionally radioed defendant's location and his physical description. Corona subsequently received a communication from his team and relocated to 1606 S. Kildare, where he identified defendant, who had been detained, as the person who sold him suspected heroin in exchange for $30. Corona retained control over the tin foil packets and later inventoried them and sent them to the Illinois crime lab for testing and analysis.

¶ 6 On cross-examination, Corona testified that he used three prerecorded $10 bills to purchase the narcotics from defendant. However, he denied telling defendant that he could keep one of the $10 bills for his own personal benefit. Corona acknowledged that the report he prepared stated that Corona told defendant he was looking to purchase heroin, not that defendant approached him. He further acknowledged that he did not see defendant engage in drug transactions prior to speaking with him.

¶ 7 On redirect, Corona testified that defendant had asked how many blows he wanted, but acknowledged it was a "mistake on [his] part" that he previously testified that defendant asked about blows as soon as Corona pulled up in his vehicle.

¶ 8 Officer Joseph Watson testified that he was a Chicago police officer in the narcotics division. On February 7, 2014, around 12:07 p.m., he was working as a surveillance officer as part of a team working to conduct a narcotics purchase. Watson was in radio communication with other team members. While in the area of 1820 S. Keeler, Watson conducted surveillance from a covert vehicle. He observed Corona drive into the area and saw three other subjects,

including defendant, walking on the sidewalk. Defendant was not with anyone and was "[j]ust standing there. Walking. Just loitering in the area."

¶ 9 Watson observed defendant for two to three minutes prior to Corona's arrival. When Corona arrived in the area, Watson observed him engage in conversation with defendant. Defendant approached the driver side of Corona's vehicle and then walked to the passenger side and got into the vehicle. The vehicle started driving, and Watson relocated with it. He maintained visual contact with Corona's vehicle and parked approximately three car lengths away when Corona parked at 4309 W. 18th Street. When defendant exited Corona's vehicle and walked into a residence, Watson lost sight of him. However, defendant reappeared and walked back to Corona's vehicle. The vehicle relocated again to 16th Street.

¶ 10 Watson could not discern what occurred inside Corona's vehicle. When they returned to 16th Street, defendant exited the vehicle and walked northbound, went into a store, and then continued walking. Watson maintained visual contact with defendant and received a radio transmission regarding a "positive buy for heroin." Watson relayed defendant's location to enforcement officers and, at some point, they arrived on the scene.

¶ 11 On cross-examination, Watson acknowledged that his police report did not include a reference to defendant entering a store, but maintained that it was not a significant fact. Watson did not observe defendant engage in any transactions prior to speaking with Corona.

¶ 12 Officer Robert Ramirez testified that he was on duty as an enforcement officer for a narcotics investigation on February 7, 2014 around 12:07 p.m. As an enforcement officer, he monitored radio transmissions from other team members and was in the general area of 16th Street and Kildare. At approximately 12:12 p.m., Ramirez received a radio transmission from

Corona regarding a positive narcotics transaction, and, pursuant to that transmission, detained defendant near 16th Street and Kildare. Corona identified defendant via radio, and Ramirez placed defendant into custody and transferred him to the police station for processing. At the station, Ramirez performed a custodial search of defendant and recovered a $10 bill that had been prerecorded for use in their narcotics investigation.

¶ 13 On cross-examination, Ramirez testified that he had been involved in "hundreds, if not thousands" of drug cases and was familiar with the phrase "dime bag." He "imagine[d]" that a "dime bag" of heroin meant a "$10 bag of heroin." Ramirez agreed with defense counsel that there was $30 used in the purchase of the suspected narcotics in the instant case.

¶ 14 Following the live testimony, the parties stipulated that, if called, Catherine Frost Klimek, would testify that she is a forensic scientist employed at the Illinois State Police crime lab. She received a heat sealed inventory containing two items of white powder. She tested the items and found that they contained .4 grams of powder, which tested positive for heroin.

¶ 15 Defendant testified that he was 44 years old and had addictions to both heroin and PCP. On February 7, 2014, at approximately 12:07 p.m., he was approached by Corona, who rolled down his window and said, "[D]o you know where some heroin at?" Defendant replied, "no," but Corona asked him a second time. Defendant again responded, "no," and Corona stated, "[M]an, I'm kind of messed up." Defendant assumed that Corona was sick and that "people didn't know him so they probably wouldn't allow him to buy" heroin from them. Corona then offered to buy defendant heroin if defendant would purchase heroin for Corona. He gave defendant three $10 bills and told defendant that he could keep one bill for himself. Defendant did not have heroin on his person at that time.

¶ 16 He drove with Corona to another location and Corona told defendant to "get him two and get [defendant] one." Defendant went into a house, bought $20 of heroin from an individual, and retained $10 for himself. He gave two bags containing heroin to Corona.

¶ 17 Defendant stated that when he first spoke to Corona, he did not have any heroin on his person and had not engaged in any drug transactions prior to his interaction with him. Defendant also denied going into a store.

¶ 18 On cross-examination, defendant acknowledged that, although Corona offered to buy him heroin if he would purchase heroin for Corona, defendant did not buy heroin for himself; instead, he kept the money in order to purchase PCP.

¶ 19 The State called Officer Corona in rebuttal. Corona testified that he did not offer to purchase heroin for defendant if defendant purchased heroin on his behalf. Corona had been an officer for ten years and conducted over a thousand narcotics investigations. He was familiar with how narcotics are packaged on the street, and in his experience, narcotics are packaged in different weight amounts.

¶ 20 Following arguments, the court found defendant guilty of delivery of a controlled substance and not guilty of delivery of a controlled substance within 1000 feet of a school. In reaching that conclusion, the court found that the officers' testimonies were credible while defendant's testimony was not credible. The court stated that, "The inconsistencies in the officer's testimony were minor and insignificant as to proof beyond a reasonable doubt of delivery of a controlled substance." Defendant moved for a new trial, arguing the State failed to disprove his entrapment defense. The court denied the motion and sentenced defendant to six years' imprisonment. This appeal followed.

¶ 21 On appeal, defendant contends that the evidence at trial was insufficient to convict him of possession of a controlled substance because he raised the affirmative defense of entrapment, and the State failed to provide sufficient evidence to rebut that defense.

¶ 22 On a challenge to the sufficiency of the evidence, we inquire " '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.' " (Emphasis omitted.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In so doing, we draw all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at 43) and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)).

¶ 23 To prove defendant guilty of delivery of a controlled substance, the State was required to show that the defendant knowingly delivered a controlled substance. 720 ILCS 570/401(d) (West 2014).

¶ 24 Section 7-12 of the Criminal Code governs the affirmative defense of entrapment:

> "A person is not guilty of an offense if his or her conduct is incited or induced by a public officer or employee, or agent of either, for the purpose of obtaining evidence for the prosecution of that person. However, this Section is inapplicable if the person was pre-disposed to commit the offense and the public officer or employee, or agent of either, merely affords to that person the opportunity or facility for committing an offense." 720 ILCS 5/7-12 (West 2014).

¶ 25 By invoking the affirmative defense of entrapment, a defendant necessarily admits that he committed the crime charged, here, delivery of a controlled substance, and must present evidence showing that (1) the State induced or incited him to commit the offense, and (2) he was not

predisposed to commit the offense. *People v. Placek*, 184 Ill. 2d 370, 380-81 (1998). When the defendant presents some evidence to support an entrapment offense, the burden shifts to the State to rebut that defense beyond a reasonable doubt. *People v. Sanchez*, 388 Ill. App. 3d 467, 474 (2009). Whether defendant was entrapped is a question to be resolved by the trier of fact. *Placek*, 184 Ill. 2d at 381.

¶ 26 As an initial matter, we note that the State does not argue that defendant failed to shift the burden, but instead argues that the evidence sufficiently rebutted defendant's entrapment defense.

¶ 27 Entrapment does not exist merely because an agent of the State initiates a relationship leading to the offense. *People v. Ramirez*, 2012 IL App (1st) 093504, ¶ 31. Rather, the inducement prong of the entrapment defense is satisfied "when the course of criminal conduct for which defendant was convicted originated in the mind of a government agent who arbitrarily engaged in a relationship with the defendant and purposely encouraged its growth." *People v. Bonner*, 385 Ill. App. 3d 141, 145 (2008).

¶ 28 Here, we find the State sufficiently rebutted defendant's claim that the State induced him to deliver heroin. Defendant's contentions that the testimony established that Corona approached him to purchase heroin and he repeatedly rejected Corona prior to agreeing to help him may have sufficiently raised the defense of entrapment, but the trial court was not required to accept his version of events. While Officer Corona acknowledged that he was mistaken when he initially testified that defendant approached him, the trial court, who as trier of fact, was in the best position to assess the credibility of the witnesses (see *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009)), expressly found that the inconsistency in Corona's testimony was insignificant.

Moreover, even assuming Corona did initiate the contact with defendant, this fact, on its own, is insufficient to show inducement. See *Ramirez*, 2012 IL App (1st) 093504, ¶ 31. Further, although defendant testified that he repeatedly rejected Corona's pleas for heroin, he agreed to help Corona acquire heroin after only a few minutes and two requests. By contrast, in other cases where inducement has been found, the government agents solicited the defendants numerous times, often over a period of days or weeks. See *e.g.*, *Bonner*, 385 Ill. App. 3d at 145 (finding the police induced the defendant to sell drugs where an informant asked him "constantly" and offered sexual favors in exchange for selling drugs); *Day*, 279 Ill. App. 3d at 612 (inducement found where defendant refused informant's repeated requests to sell drugs over the course of three months and acquiesced only after he commenced a dating relationship with informant); *People v. Poulos*, 196 Ill. App. 3d 653, 659-60 (1990) (inducement found where defendant initially rebuffed informant but agreed to sell drugs after two months of repeated solicitations).

¶ 29 Turning to the predisposition prong, we find the State's evidence was sufficient to establish that defendant was predisposed to committing the offense of delivery. To prove predisposition, the State was required to show that the defendant was willing and able to commit the offense without persuasion before his initial exposure to government agents. *Sanchez*, 388 Ill. App. 3d at 474. Our supreme court has identified the following factors for consideration in assessing whether defendant was predisposed to commit a drug-related offense: (1) defendant's initial reluctance or ready willingness to commit the crime; (2) defendant's familiarity with drugs and his willingness to accommodate the needs of drug users; (3) defendant's willingness to profit from the illegal act; (4) defendant's current or prior use of illegal drugs; (5) defendant's

participation in cutting or testing the drugs; and (6) defendant's ready access to a supply of drugs. *Placek*, 184 Ill. 2d at 381.

¶ 30 Here, the first factor weighs in favor of the State. Officer Corona testified that he pulled up to defendant in his vehicle, stated he was looking to purchase heroin, and defendant placed a call to an unknown individual before getting into the vehicle and directing Corona to an address where defendant entered and reemerged with "two blows" of heroin. Although defendant disputes this version of events, it was the court's responsibility to determine the credibility of witnesses, to weigh their testimony, and to resolve any conflicts between them. *Siguenza-Brito*, 235 Ill. 2d at 228. It remains undisputed that defendant willingly assisted Corona in the purchase of heroin after only a few minutes.

¶ 31 The second, fourth, and sixth factors also weigh in favor of the State. Defendant admitted he had a heroin and PCP addiction, and showed he had ready access to heroin by calling an unknown individual and picking the drugs up from a nearby residence immediately upon Corona's request. Likewise, the third factor weighs in favor of the State because the police recovered $10 in prerecorded funds from defendant's person at the time of his arrest, indicating that he profited from the transaction. The fifth factor is inapplicable to this case because none of the testifying officers witnessed defendant obtain the drugs from inside the residence.

¶ 32 Defendant argues that all of these factors show he is merely a drug addict, but do not demonstrate that he was predisposed to deliver heroin. In support of his contention, defendant emphasizes his lack of criminal history concerning drug delivery and his initial reluctance to help Corona acquire heroin. In other words, defendant essentially asks us to reweigh the factors and make a credibility determination in his favor. This is not the proper standard on review, and we

decline to overturn the trial court's credibility determinations. Although defendant's contentions regarding the weight of the factors could indicate that he is merely an addict, as noted above, it was the duty of the trier of fact, here the trial court, to assess the credibility of the witnesses, weigh the evidence, and draw reasonable inferences thereform. See *Siguenza-Brito*, 235 Ill. 2d at 228. The trier of fact is not obligated to accept any possible explanation compatible with the defendant's innocence and elevate it to reasonable doubt. *Id.* at 229. Here, the court made express findings concerning the officers' credibility and defendant's lack of credibility. We do not find that the evidence was so improbable or unsatisfactory that it creates a reasonable doubt of defendant's guilt. See *People v. Givens*, 237 Ill. 2d 311, 334 (2010) (We will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt.").

¶ 33 In sum, overall the predisposition factors weigh against defendant when taken in the light most favorable to the State. Accordingly, we conclude that the State proved beyond a reasonable doubt that defendant was not entrapped.

¶ 34 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 35 Affirmed.