2017 IL App (1st) 151748-U

No. 1-15-1748

October 31, 2017

Second Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 12 CR 10643
	)	
DEMETRIUS TAYLOR,	)	Honorable
	)	Joseph Michael Claps,
Defendant-Appellant.	)	Judge presiding.

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Hyman and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for possession of a controlled substance is affirmed over his contention that the State's witness provided "an incredible dropsy story" and was impeached.

¶ 2 Following a bench trial, Demetrius Taylor, the defendant, was convicted of possession of a controlled substance (cocaine) (720 ILCS 570/402(c) (West 2012)) and sentenced to one year

in prison.[1] On appeal, defendant contends that the State did not prove him guilty beyond a reasonable doubt because the State's witness was incredible, impeached, and provided a "dropsy" story. For the reasons below, we affirm defendant's conviction.

¶ 3 At trial, Chicago police officer Bruno testified that, at approximately 7 p.m. on May 18, 2012, he and his partner, Officer Fazy, were on patrol in an unmarked vehicle conducting a narcotics surveillance when he saw defendant speaking with a woman in the vicinity of 2015 East 72nd Street. When Bruno was about 100 to 150 feet away, he saw the woman tender United States currency to defendant and defendant hand her back a "small item." Bruno believed he had witnessed a "hand-to-hand transaction," so he approached, pulled up and exited his vehicle. When he was about ten feet away, defendant looked in Bruno's direction and dropped "to the ground several small items." Bruno recovered the items, which were "seven clear plastic bags containing suspect crack cocaine."

¶ 4 Defendant was placed into custody, and Fazy read defendant his *Miranda* rights. Defendant indicated he understood his rights, and told Bruno that he would give Bruno his gun if Bruno would "give him a break." Defendant directed Bruno's team to an apartment building, where defendant signed a consent to search form. Then, Bruno and his partners went up to the third floor apartment. The apartment door was locked, and Bruno could not recall whether he or another officer opened the door. Defendant directed him to a living room area and told him that the gun was inside a jacket that was on top of a pile of clothes. Bruno recovered the gun, which

[1] Defendant's first name is inconsistently spelled throughout the record. This order will spell defendant's name as Demetrius Taylor, which is the same spelling used on defendant's opening brief, the presentence investigation report, and the arrest report.

was loaded with six live rounds. At the police station, Bruno turned over the gun and seven bags of suspect cocaine to Fazy, who inventoried the items.

¶ 5 On cross-examination, Bruno could not recall the clothes, height, or weight of the woman he initially saw standing with defendant at 2015 East 72nd Street. He did not include a description of the woman in his police report and, although Bruno requested other police units at the scene, no one located the woman. Bruno could not see the small item that defendant gave to the woman. When Bruno and Fazy approached defendant, he did not try to run. Bruno did not recover any narcotics during a custodial search of defendant at the scene and did not know if any money was recovered from defendant at that time. Bruno did not inventory any money recovered from defendant. Bruno could not recall whether defendant had been on a bicycle.

¶ 6 Bruno testified that the address where defendant directed him and where he recovered the gun was "7152 South Bennett." He acknowledged that his police report and the consent to search form defendant signed listed "7052 South Bennett" as the address. Bruno testified that the incorrect address provided in the police report was a clerical error. When Bruno searched 7152 South Bennett, defendant had keys on him, which were not inventoried as evidence, and Bruno did not know if the apartment door was open, or if defendant had used the keys to open it. Bruno did not inventory the jacket in which he found the gun or any of defendant's clothing from the apartment. Defendant's Illinois identification card listed 1953 East 72nd Street as his address, and Bruno acknowledged that there was no proof of residency inventoried as evidence connecting defendant to 7152 South Bennett.

¶ 7 On re-direct, Bruno testified that the lockup keeper inventoried $148.50 of cash that belonged to defendant.

¶ 8 The State presented a stipulation that, if a forensic chemist from the Illinois State Police was called to testify, she would testify that, after performing tests on the contents of one of the seven recovered bags of suspect cocaine, the item testified positive for the presence of cocaine in the amount of .1 grams, and the total estimated weight of all seven bags was .8 grams. The State also presented a stipulation that defendant had a prior conviction for possession of a controlled substance with intent to deliver.

¶ 9 Lonnie Ford, who had known defendant for about five years, testified on behalf of defendant. At approximately 7 p.m. on May 18, 2012, when Ford was in a parking lot at 72nd and Jeffrey, defendant rode past him on a bike. Ford saw "somebody" grab defendant and "throw him on the ground." Ford first thought defendant was being robbed but realized it was the police when he saw them put defendant in the car. Ford did not see defendant engage in a transaction with a woman and he left after defendant had been placed in the car. On cross-examination, Ford testified that he saw "the guys grab [defendant]" but did not see anything before that.

¶ 10 Bernard Love, who knew defendant through defendant's mother, also testified on behalf of defendant. Love lived at 7152 South Bennett, apartment 3C, in Chicago. Defendant had never lived with Love. At about 6:30 or 7 p.m. on May 18, 2012, defendant rode his bicycle by Love's front porch. Love felt sick, so he asked defendant to go to the store to play his lottery numbers and pick up his medicine. Love gave defendant money and a key to his apartment. Love then went back inside his apartment and called the paramedics because he felt sick. The paramedics picked Love up at about 5 or 6 p.m., before defendant returned from the store.

¶ 11 Love testified that he had a gun in his apartment on May 18, 2012, and the gun belonged to his friend. Love kept the gun in a drawer in his bedroom. Love was in the hospital "a couple of

days," and when he came home, all the drawers in his bedroom were pulled out, his clothes were on the floor, and "banisters [*sic*] was [*sic*] turned over." He initially thought someone had broken in but subsequently learned police had been in his home.

¶ 12 After closing arguments, the trial court found defendant not guilty of two counts of unlawful use or possession of a weapon by a felon. It found him not guilty of possession of a controlled substance with intent to deliver but guilty of the lesser included offense of possession of a controlled substance. It stated: "[A]lthough somewhat convoluted, it's pretty much a simple case. The police saw whatever they think they saw. They stopped the defendant. He drops bags of cocaine. The rest of this does not make sense[.]" In its explanation regarding the UUWF charges, the trial court stated:

> "The defendant's testimony was that he told them he would bring them to a gun - - show them a gun. The State's testimony was that it was his gun. He brings them to the apartment. A gun is recovered. Again there is no reason to go there unless the defendant brought it up. Bringing it up and knowing where a gun is, doesn't mean he possessed it. I believe the defense's witness who - - only the part about his testimony. I believe he testified credibly.
>
> Now, there's absolutely - - except that he knew the gun was there, otherwise the police wouldn't have found it, there's no other nexus to that apartment than the story or testimony that the defense's witness gave."

The trial court denied defendant's motion for new trial and sentenced him to one year in prison. This appeal followed.

¶ 13 Defendant contends on appeal that the State did not prove that he possessed the cocaine. He asserts that Officer Bruno provided a "dropsy" story, his testimony was incredible, and he was impeached by his actions, testimony, and the defense witnesses. Defendant requests that we reverse his conviction.

¶ 14 When we review the sufficiency of the evidence on appeal, the question 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." *People v. Besz*, 345 Ill. App. 3d 50, 53 (2003). It is the fact finder's responsibility to determine the "credibility of the witnesses, to weigh the evidence and draw reasonable inferences from it, and to resolve any conflicts in the evidence." *People v. Johnson*, 2014 IL App (1st) 120701, ¶ 21. We must give "due consideration" to the fact that the fact finder, the trial court, observed and heard the witnesses. *People v. Scott*, 367 Ill. App. 3d 283, 285 (2006).

¶ 15 On appeal, we will not retry a defendant (*People v. Hall*, 194 Ill. 2d 305, 329-30 (2000)), or substitute our judgment for that of the fact finder on questions about the weight of the evidence or the credibility of the witnesses. *People v. Brown*, 2013 IL 114196, ¶ 48. On appeal, all reasonable inferences must be drawn in favor of the State. *People v. Saxon*, 374 Ill. App. 3d 409, 416 (2007). We will only overturn or reverse a conviction if the credibility of the witnesses is so improbable that it raises a reasonable doubt (*People v. Mays*, 81 Ill. App. 3d 1090, 1099 (1980)), or if the evidence is "so improbable or unsatisfactory that reasonable doubt of the defendant's guilt remains." *People v. Fountain*, 2011 IL App (1st) 083459-B, ¶ 13.

¶ 16 To prove defendant guilty of possession of a controlled substance, the State had to prove that defendant had knowledge of the cocaine and that it was in his immediate and exclusive

control. *People v. Tates*, 2016 IL App (1st) 140619, ¶ 19. Possession may be established by either actual or constructive possession. *Tates*, 2016 IL App (1st) 140619, ¶ 19. "Actual possession is proved by testimony which shows defendant exercised some form of dominion over the unlawful substance, such as trying to conceal it or throwing it away." *People v. Scott*, 152 Ill. App. 3d 868, 871 (1987). "Actual possession does not require present personal touching of the illicit material but, rather, present personal dominion over it." *People v. Schmalz*, 194 Ill. 2d 75, 82 (2000). To prove constructive possession, the State must prove that the defendant had "intent and capability to maintain control and dominion" over the controlled substance. *Scott*, 367 Ill. App. 3d at 285. " 'Knowledge and possession are factual issues, and the trier of fact's findings on these questions will not be disturbed unless the evidence is so unbelievable, improbable, or palpably contrary to the verdict that it creates a reasonable doubt of the defendant's guilt.' " *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007) (quoting *People v. Brown*, 277 Ill. App. 3d 989, 998 (1996)).

¶ 17 Viewing the evidence in the light most favorable to the State, we conclude that any rational trier of fact could have found beyond a reasonable doubt that defendant had knowledge and possession of the cocaine. Bruno approached defendant after seeing him engage in what Bruno believed to be a "hand-to hand" narcotics transaction. When defendant saw Bruno approaching, he dropped several small items on the ground. Bruno recovered these items, which were seven bags of suspect cocaine. The parties stipulated that one of the bags tested positive for .1 grams of cocaine, and the total estimated weight of the seven recovered bags was .8 grams. Bruno's testimony that he saw defendant drop the bags, standing alone, was sufficient to support the finding that defendant had knowledge and possession of the cocaine. *People v. Siguenza-*

Brito, 235 Ill. 2d 213, 228 (2009) ("The testimony of a single witness, if positive and credible, is sufficient to convict."); *People v. Bradford*, 187 Ill. App. 3d 903, 918 (1989) ("The testimony of a single law enforcement officer is sufficient to support a conviction in a narcotics case.").

¶ 18 Defendant contends, however, that Bruno provided "an incredible dropsy story." See *People v. Ash*, 346 Ill. App. 3d 809, 816 (2004) ("A 'dropsy case' is one in which a police officer, to avoid the exclusion of evidence on fourth-amendment grounds, falsely testifies that the defendant dropped the narcotics in plain view (as opposed to the officer's discovering the narcotics in an illegal search)."). Defendant asserts Bruno's testimony about seeing defendant drop incriminating narcotics in plain view when confronted by the officers "strains credulity" and argues that "the judge gave reason to believe that he found Bruno's story about a transaction incredible, as he acquitted [defendant] of possession with intent." We are not persuaded by defendant's arguments.

¶ 19 The trial court never specifically found that Bruno's testimony was not credible. Moreover, given its finding that defendant was guilty of the lesser-included offense of possession of cocaine, the court necessarily determined that Bruno's testimony was credible with respect to seeing defendant drop the items containing suspect cocaine, which was its prerogative in its role as the fact finder. See *People v. Moody*, 2016 IL App (1st) 130071, ¶ 52. " 'The trier of fact is free to accept or reject as much or as little of a witness's testimony as it pleases.' " *People v. Peoples*, 2015 IL App (1st) 121717, ¶ 67 (quoting *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 22).

¶ 20 As the fact finder, the court had the opportunity to hear Bruno and to observe his demeanor and we will not disturb its credibility determinations (see *People v. Mays*, 81 Ill. App.

3d 1090, 1101 (1980)) or reverse defendant's conviction because he claims that Bruno was not credible. See *Siguenza-Brito*, 235 Ill. 2d at 228. On this record, where we review the sufficiency of the evidence, we find no reason why the court should have found Bruno's testimony that defendant dropped the packets of cocaine so incredible or insufficient that no reasonable person could accept it. *People v. Simpson*, 2015 IL App (1st) 130303, ¶ 41 (" 'Testimony may be found insufficient***only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.' ") (quoting *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)); see *People v. Henderson*, 33 Ill. 2d 225, 229 (1965) ("We see no reason to say the trial court should have disbelieved the arresting officers. *** it [is] a common behavior pattern for individuals having narcotics on their person to attempt to dispose of them when suddenly confronted by authorities."). Accordingly, we are not persuaded that we should reverse defendant's conviction because defendant maintains Bruno provided "an incredible dropsy story."

¶ 21 We are similarly unpersuaded that Bruno was impeached by his actions, his testimony, or by Love's testimony.

¶ 22 Defendant first asserts that Bruno was impeached because he testified he recovered the gun at 7152 South Bennett, even though he acknowledged that his police report and the consent to search form provided 7052 South Bennett as the address of the location searched. However, Bruno testified that the incorrect address was a clerical error. Further, this issue was fully argued to the trial court. Given the foregoing, we cannot find that the conflict between the address that Bruno testified he searched, 7152 South Bennett, and the address he testified was listed in the police report and consent to search form, 7052 South Bennett, destroyed his credibility such that

no reasonable person could accept his testimony regarding defendant dropping the bags of cocaine.

¶ 23 Defendant next argues that Bruno contradicted himself because he first testified that he saw an officer open the apartment door but then later testified that he "was not the first officer" and did "not know if the door was open or if [defendant] used his keys." This argument is unpersuasive. The contradiction was, at most, a minor inconsistency that the court weighed in considering Bruno's testimony. *Mays*, 81 Ill. App. 3d at 1099 ("Minor discrepancies in the testimony of an eyewitness do not destroy his credibility and are for the trier of fact to weigh in its deliberations.").

¶ 24 Defendant further asserts that Bruno was impeached because, "Bruno claimed to have seen [defendant] accept money in exchange for drugs, but the State offered no evidence of money found on [defendant.]" However, although Bruno testified no money was recovered from defendant at the scene, he also testified on redirect, without objection, that the lockup keeper inventoried $148.50 as defendant's personal property. Thus, we are unpersuaded by defendant's argument that Bruno was impeached because he testified that he saw defendant accept money.

¶ 25 Finally, defendant asserts that Love's testimony impeached Bruno. The trial court found Love credible, and Love testified that when he returned home the drawers in his bedroom were pulled out, clothes were on the floor, and "banisters [*sic*]" were turned over. Defendant therefore argues that Love's testimony impeached Bruno because Bruno testified that defendant directed him to the gun and Bruno did not search the rest of the apartment. But Bruno did not testify in detail about the appearance of the apartment when he recovered the gun. Nor did he testify to the extent of the other officers' search at the apartment, which was executed pursuant to a consent to

search before Love returned home from the hospital. Accordingly, we do not find that Bruno's testimony regarding the apartment search is inconsistent or contradictory to Love's testimony regarding how his apartment looked when he returned home. In sum, from our review of the record as a whole, including Bruno and Love's testimony, we cannot find that Bruno's testimony was so insufficient that no reasonable person could accept his testimony that he saw defendant drop the cocaine packets.

¶ 26 For the reasons stated, the judgment of the circuit court is affirmed.

¶ 27 Affirmed.