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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 13-CF-2290
)	
MICHAEL B. BOATWRIGHT,)	Honorable
)	John A. Barsanti,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of delivering between 10 and 30 grams of marijuana: despite conflicts in the evidence, the jury was entitled to credit the evidence that defendant delivered two bags rather than one, as necessary to find that he delivered the alleged weight.

¶ 2 Defendant, Michael B. Boatwright, appeals his conviction of delivery of more than 10 grams but not more than 30 grams of marijuana (720 ILCS 550/5(c) (West 2012)), based on his delivery of two bags of marijuana. He contends that the evidence was insufficient to prove beyond a reasonable doubt that he delivered two bags, arguing that the State proved delivery of only one bag weighing 7.5 grams. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was charged in December 2013. In July 2014, a jury trial was held. Police officer Douglas Rashkow testified that, on December 19, 2013, he went to a residence to find defendant's father and was told that he was not there. Rashkow parked about half a block away to wait for him to return. While parked, Rashkow saw 17-year-old Samuel Laskowski skateboarding. He asked Laskowski if he had seen defendant's father, and Laskowski said that he had not seen him. After 10 to 20 minutes, Rashkow decided to check the back of the house. It was after 6 p.m. and dark out. Rashkow saw defendant and Laskowski standing in the doorway, which was illuminated from the kitchen light. He saw Laskowski hand money to defendant and defendant simultaneously hand a plastic bag to Laskowski. He saw Laskowski start to turn around, and defendant, who was facing the outside, started pushing Laskowski out the door. Rashkow stopped Laskowski as he was leaving and asked what he had bought from defendant. Laskowski pulled out a Scott toilet-paper bag¹ and gave it to Rashkow. He told Rashkow that he purchased it for himself and friends. Laskowski was arrested, and it was later determined that the bag contained 7.5 grams of marijuana.

¶ 5 Rashkow next spoke to defendant. No drugs or paraphernalia were recovered, but \$761 in currency sorted by denomination was found in defendant's pocket. Meanwhile, officer Daniel Isaak transported Laskowski to the police station. Isaak informed Laskowski that, if he had any contraband on him when he arrived at the station, he could face felony charges. Laskowski then informed Isaak that he had marijuana in his pocket, and Isaak retrieved a Ziploc bag from Laskowski's right front pocket that contained two baggies that were later determined to each contain 3.8 ounces of marijuana. Laskowski did not indicate that defendant sold the marijuana to

¹ In the record, the parties also refer to the bag as a Walmart bag.

him. Isaak gave the bag to Rashkow, who arrested defendant. Rashkow testified that marijuana does not always look the same, but that the marijuana in each bag recovered had the same color and texture. When defendant was interviewed, he admitted that he sold marijuana to make additional money and stated that he sold \$80 worth of marijuana to Laskowski. He did not state how much he sold in weight.

¶ 6 Laskowski testified that he purchased the Ziploc bag from defendant and put it in a pocket. Then, he turned around and was going to take a step away when defendant said something along the lines of “hey, it’s a better day” and handed him the toilet-paper bag, which he also put in his pocket. He did not look in the bag and gave that bag to Rashkow because it was the only one he thought about. He remembered the Ziploc bag when Isaak asked him if he had anything else, and he then gave it to the officer.

¶ 7 Laskowski testified that he might have misinterpreted a comment from Rashkow that Laskowski could go home if he talked to the officers. He was interviewed by two juvenile detectives. Laskowski testified that he believed that the detectives told him that there was no guarantee that he would be going home, but he also stated that they were trying to get across to him that his statements would not be used against him. A video introduced for impeachment purposes showed that they told him that they would treat him as a witness, that anything he said would not be used against him, and that he would be going home. Laskowski said that his goal at that point was not to help himself out.

¶ 8 Laskowski told the detectives about the toilet-paper bag, but did not tell them about the Ziploc bag. When pressed about that on cross-examination, he said that he might not have reiterated that there was another bag, as he guessed that the toilet-paper bag was the one he was being asked about. He also stated that telling the detectives that there were two separate bags did

not cross his mind. During the interview, he refused to initial a photo of defendant that he identified, stating both that he would be worried about defendant hearing of the interview and that he was not entirely sure of how incriminating it would be or the effect of initialing it. When asked about any offers in exchange for his testimony, Laskowski said that he had spoken to his lawyer about that and that nothing was set, but he hoped that he would not be looking at jail time. He said that he was testifying truthfully.

¶ 9 After the State's evidence, defendant moved for a directed finding, arguing that the State proved delivery of only one bag weighing less than 10 grams. The court found that this was an issue of credibility and denied the motion.

¶ 10 The defense called one of the detectives who interviewed Laskowski. He testified that Laskowski was nervous and had some reluctance about giving the interview. A portion of the video was played for impeachment purposes. It is not clear from the record which portion was played, but the parties and the record indicate that it was the portion in which Laskowski told the detectives about only the toilet-paper bag. During that portion, Laskowski described a single transaction and mentioned only one bag of marijuana.

¶ 11 During closing, the State argued that Laskowski's testimony was credible and that it defied common sense that he would purchase marijuana from defendant with the police presence in the area if he already had some in his pocket. The jury was instructed on the lesser included offense of delivery of 2.5 to 10 grams of marijuana. During deliberations, the jury requested to view the marijuana because they had difficulty understanding the exact packaging. The jury also asked for transcripts of the testimony. The court sent back the bags of marijuana and asked the jury whose testimony they wanted, because it would take a few hours to prepare transcripts. The

jury did not respond and found defendant guilty of delivery of 10 to 30 grams. Defendant's motion for judgment notwithstanding the verdict was denied, and he appeals.

¶ 12

II. ANALYSIS

¶ 13 Defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt. He argues that Laskowski's testimony was entirely contradicted by that of Rashkow and was so inconsistent with his statements at his interview that the jury could not determine that defendant gave him both bags of marijuana.

¶ 14 A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). On a challenge to the sufficiency of the evidence, "the relevant 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." (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard applies regardless of whether the evidence is direct or circumstantial, and circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). The mere existence of conflicts in the evidence does not by itself require reversal, and the resolution of the conflicts in the evidence and the credibility of the witnesses is the province of the trier of fact. *People v. Ellzey*, 96 Ill. App. 2d 356, 358-59 (1968).

¶ 15 Here, while there were conflicts in the evidence, there was sufficient evidence for the jury to find that defendant delivered both bags. Laskowski testified that he purchased the Ziploc bag from defendant and then, as he turned around, defendant gave him the second bag. While this conflicted with Rashkow's testimony to seeing a single exchange, the jury may have reasonably

believed that the witnesses did not accurately remember the order of events or that Rashkow did not see both transactions. For example, the jury may have determined that Rashkow saw only the first transaction and was blocked from seeing defendant hand the second bag to Laskowski as he pushed Laskowski out the door. Defendant suggests that it is incredible that he would simply give a second bag of marijuana to Laskowski, but the jury could reasonably infer that defendant saw Rashkow and wished to dispose of the second bag. The jury, who heard and saw the witnesses, also could have simply found Laskowski's testimony of the timeline of events more credible than that of Rashkow, or it could have accepted the State's argument that it defied common sense for Laskowski to risk buying marijuana from defendant knowing of the police presence in the area if he already possessed marijuana. While Laskowski's credibility was weakened by his failure to tell other officers about the second bag, he gave explanations for his failure to do so, and it was for the jury to resolve the conflicts in the evidence and determine the credibility of the witnesses.

¶ 16 In addition, other evidence supported the conclusion that both bags came from defendant. Rashkow testified that the marijuana was similar in texture and appearance. The jury viewed the marijuana and its packaging. Thus, the jury could determine whether they believed that it appeared to be the same type and whether the exchange of it, based on its packaging, would have been easy for Rashkow to observe. Finally, while the defense suggested that Laskowski was testifying against defendant in exchange for leniency, there was also evidence that he was hesitant to make a statement implicating defendant and was not motivated by any bargain with the State. As with the other factors, the determination of his credibility in light of that was a matter for the jury.

¶ 17 Defendant cites various cases in which convictions were reversed based on inconsistencies and contradictions. See, e.g., *People v. Smith*, 185 Ill. 2d 532 (1999). But here, as previously discussed, despite the presence of inconsistencies and contradictions, there was sufficient evidence for the jury to reasonably credit Laskowski's testimony that defendant delivered two bags. The jury's credibility determination is entitled to great deference and we will not disturb that determination here. *People v. Moss*, 205 Ill. 2d 139, 165 (2001).

¶ 18

III. CONCLUSION

¶ 19 The evidence was sufficient to prove defendant guilty beyond a reasonable doubt. Accordingly, the judgment of the circuit court of Kane County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 20 Affirmed.