

NOTICE

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2017 IL App (4th) 150701-U

NO. 4-15-0701

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 8, 2017
Carla Bender
4th District Appellate
Court, IL

| | | |
|----------------------------------|---|--------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | McLean County |
| TERRANCE NELSON, |) | No. 14CF1205 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | J. Casey Costigan, |
| |) | Judge Presiding. |

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court convicted defendant of unlawful delivery of a controlled substance within 1000 feet of a church and unlawful delivery of a controlled substance. Defendant appealed, arguing that the State failed to prove him guilty beyond a reasonable doubt. The appellate court affirmed defendant's conviction.

¶ 2 In October 2014, the State indicted defendant, Terrance Nelson, for unlawful delivery of a controlled substance within 1000 feet of a church and unlawful delivery of a controlled substance. At defendant's June 2015 bench trial, Dayne Lowe, a drug-addicted felon working as a confidential informant for the Bloomington police department, testified that he purchased crack cocaine from defendant as part of a controlled buy. In July 2015, the court found defendant guilty of both charges. In August 2015, the court sentenced defendant to eight years in prison.

¶ 3 Defendant appeals, arguing that the State failed to prove him guilty beyond a reasonable doubt because (1) the State's case relied on the Lowe's testimony and (2) the

controlled buy was substantially flawed. We disagree and affirm.

¶ 4

BACKGROUND

¶ 5 In October 2014, the State filed a two-count indictment against defendant. Count I was for unlawful delivery of a controlled substance within 1000 feet of a church (720 ILCS 570/407(b)(2) (West 2014)). Count II was for unlawful delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2014)).

¶ 6

A. The Testimony of Dayne Lowe

¶ 7 At defendant's June 2015 bench trial, Dayne Lowe testified that he was working in October 2014 as a confidential source for the Bloomington police department. On October 9, 2014, he sent defendant a text message for Lowe to purchase crack cocaine as part of a controlled buy. Lowe stated that before the controlled buy, Bloomington police searched him for drugs and gave him \$100 in prerecorded bills.

¶ 8

Lowe then drove to an alley near the Red and Blue Food Mart in Bloomington. Lowe testified that he saw defendant in that alley, and he also observed an unknown male slip defendant a wrapper. Defendant then walked up to Lowe's car and tossed the wrapper onto the passenger seat. Lowe testified further that he then gave defendant \$100 in prerecorded bills.

¶ 9

On cross-examination, Lowe testified that the Bloomington police paid him for his services as a confidential informant. He also conceded that he was addicted to drugs and was a convicted felon. Lowe added that he was on conditional discharge for domestic battery.

¶ 10

B. The Police Officers' Testimony

¶ 11

Officer Jared Bierbaum testified that he observed the text messages sent by Lowe to defendant for the purpose of buying drugs. Bierbaum stated that he then gave defendant prerecorded bills to purchase crack cocaine from defendant. Bierbaum stated that he thoroughly

searched Lowe and his car prior to the controlled buy and that Lowe was not in possession of any contraband. Specifically, Bierbaum testified as follows:

"I searched Dayne Lowe's person. I searched his shoes, socks, his pockets, his waistband, inside his mouth, under his tongue, and his hair, and his pockets, inside a cigarette box. I searched every possible place that I could so that I could ensure that he had no narcotics on him.

* * *

When I searched Dayne Lowe's [car], I searched the center console, glove box, underneath the seats, the floor mat, the crevices underneath the backset, the dashboard, and any other place that I could reasonably conceive that he could be hiding a narcotic."

Bierbaum testified that, after the search, he and other officers followed Lowe to the Red and Blue Food Mart to monitor the controlled buy.

¶ 12 Officer Stephen Brown testified that he saw Lowe's vehicle while it was in the alley near the Red and Blue Food Mart. Brown testified that he saw a male in a grey hooded sweatshirt walk towards the passenger side of Lowe's vehicle. Brown later identified this person as defendant.

¶ 13 Bierbaum testified that after the controlled buy, Lowe returned to him with a baggie. The substance inside the baggie tested positive for cocaine. Bierbaum testified that he then directed officer Bradley Massey to stop defendant.

¶ 14 Massey testified that he stopped defendant's car and searched him. Massey stated that, during the search, he found \$20 on defendant's person. Bierbaum testified that this \$20 was some of the prerecorded money given to Lowe for the controlled buy. Bierbaum also testified that when he searched defendant's car, he found a cell phone. When Bierbaum called the number

Lowe had messaged for the purposes of buying drugs, the cell phone found in defendant's car began to ring. Police officers also acknowledged that Lowe received preferential treatment in an unrelated criminal case because of his work as a confidential informant.

¶ 15 C. The Defendant's Evidence

¶ 16 Defendant chose not to testify and did not present any evidence.

¶ 17 D. The Trial Court's Decision

¶ 18 After conducting the July 2015 bench trial, the trial court found defendant guilty of unlawful delivery of a controlled substance within 1000 feet of a church (count I) and unlawful delivery of a controlled substance (count II). The court explained as follows:

"Dayne Lowe testified he set up the drug purchase with defendant and [that] defendant was also [the] one who threw the crack cocaine into his vehicle. While Mr. Lowe does have some [credibility] issues based upon his background, the Court did find him [credible] to identify defendant as the person who took the prerecorded money for the transaction and threw the crack cocaine into his vehicle. The Court further finds that other factors support this conclusion as well. The telephone number used to set up the transaction was defendant's telephone number. Detectives observed defendant. When defendant was pulled over and searched[,] he had \$20 of the prerecorded bills on his person."

¶ 19 In August 2015, the court ruled that count II merged with count I. The court then sentenced defendant to eight years in prison for unlawful delivery of a controlled substance within 1000 feet of a church.

¶ 20 This appeal followed.

¶ 21 ANALYSIS

¶ 22 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt because (1) Lowe's testimony was not credible and (2) the controlled buy transaction was substantially flawed. Defendant argues Lowe was not credible because he was a drug-addicted felon working as a confidential informant. Defendant further argues that the controlled buy was flawed because (1) a drug-sniffing dog was not used to search Lowe, (2) Lowe was not strip searched, and (3) officers did not maintain constant visual contact with Lowe. We disagree.

¶ 23 A. Standard of Review

¶ 24 When a defendant challenges his conviction for insufficient evidence, the relevant question is whether, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Singuenza-Brito*, 235 Ill. 2d 213, 224, 920 N.E.2d 233, 240 (2009). In a bench trial, the trial judge, sitting as the trier of fact, is in the best position to determine the credibility of the witnesses, the weight to be given to testimony, and the reasonable inferences to be drawn from such testimony. *Id.* at 228, 920 N.E.2d at 243; *People v. Hernandez*, 319 Ill. App. 3d 520, 532-33, 745 N.E.2d 673, 684 (2001). A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the credibility of witnesses or the weight of the evidence. *Siguenza-Brito*, 235 Ill. 2d at 224-25, 920 N.E.2d at 240. A reviewing court will not reverse a conviction simply because the evidence is contradictory or because the defendant claims that a witness was not credible. *Id.* Rather, a conviction will be reversed only if the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of defendant's guilt. *Id.* at 225, 920 N.E.2d at 240-41.

¶ 25 B. Sufficiency of the Evidence in This Case

¶ 26 In this case, Bierbaum testified that he thoroughly searched Lowe in accordance

with department protocol prior to the controlled buy and that he did not find any drugs or other contraband on Lowe's person or in his car. Lowe testified that he purchased drugs from defendant with prerecorded money. Bierbaum and Brown corroborated Lowe's testimony. The trial court found this testimony to be credible, and we defer to this assessment. *Siguenza-Brito*, 235 Ill. 2d at 224-25, 920 N.E.2d at 240.

¶ 27 The physical evidence also supported Lowe's testimony. The substance Lowe purchased from defendant tested positive for cocaine. When the police stopped defendant shortly after the controlled buy transaction, defendant was in possession of some of the prerecorded buy money. Bierbaum also found the cell phone Lowe had messaged for the purposes of purchasing drugs in defendant's car.

¶ 28 When viewing the aforementioned evidence in the light most favorable to the State, clearly a rational trier of fact could find defendant guilty beyond a reasonable doubt on both counts.

¶ 29 Finally, we thank the trial court for its written order explaining its decision. We found this order very helpful.

¶ 30 CONCLUSION

¶ 31 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 the cost of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 32 Affirmed.