

2018 IL App (1st) 152594-U  
No. 1-15-2594

Order filed January 8, 2018

FIRST 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 17316
	)	
ANTHONY GASTON,	)	Honorable
	)	Mary Colleen Roberts,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Pierce and Justice Mikva concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant's conviction for delivery of a controlled substance is affirmed over his contention that the State failed to prove beyond a reasonable doubt that he delivered heroin to an undercover police officer.
- ¶ 2 Following a jury trial, defendant Anthony Gaston was convicted of delivery of a controlled substance (720 ILCS 570/401(d) (West 2014)) and sentenced to six years'

imprisonment. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he delivered heroin to an undercover police officer. We affirm.

¶ 3 Defendant was charged by indictment with one count of delivery of a controlled substance. 720 ILCS 570/401(d) (West 2014). The count alleged that defendant unlawfully and knowingly delivered less than one gram of a substance containing heroin, or an analog thereof. 720 ILCS 570/401(d) (West 2014).

¶ 4 At trial, Chicago police officer Larry Rattler testified that he was a member of the narcotics unit and worked as an undercover officer (UCO) that purchased narcotics. On September 3, 2014, Rattler was on duty and working with his narcotics team. Rattler explained that his narcotics team consisted of surveillance officers who ensure the safety of the UCO and enforcement officers who detain the offenders after a narcotics purchase. At about 5:00 p.m., Rattler monitored a call via his police radio from his surveillance officer of a person selling narcotics in the vicinity of 3058 West Van Buren Street. The surveillance officer described the seller as a “male black wearing a multi-colored shirt and black jean shorts.” Rattler drove his covert vehicle to the area and saw defendant, who fit that description. Rattler left his vehicle and approached defendant on foot. Rattler asked defendant for a “blow,” meaning heroin in “street” terminology. Rattler handed defendant “\$10 prerecorded funds” and received from defendant a small plastic bag with a black spade logo. The bag contained a white powder that Rattler believed to be heroin. Rattler returned to his vehicle and left the area.

¶ 5 Rattler radioed to his narcotics surveillance team that a positive narcotics transaction occurred and gave a description of defendant to his fellow officers. A short time later, Rattler received a radio communication from his enforcement officers that defendant was being

detained. Rattler then returned to the area, drove past where defendant was detained and signaled to his team that they had detained the right person. Defendant was placed under arrest. Rattler drove to the police station and inventoried the plastic bag that he received from defendant. The inventoried bag was sent to the Illinois State Police Crime Lab for analysis.

¶ 6 On cross-examination, Rattler acknowledged that all the money used in narcotics transactions is prerecorded with a bursar, a police officer in charge of the funds. Rattler admitted that he did not see where defendant went after the transaction.

¶ 7 Chicago police officer Marvin Randolph testified he works as a surveillance officer for the narcotics unit. On September 3, 2014, Randolph was in a covert vehicle and on “roving surveillance” in the area of Albany Avenue and Van Buren Street. Randolph observed defendant, who was standing at 3058 West Van Buren, engage in hand-to-hand transactions with at least four “unknown citizens.” Randolph described a hand-to-hand narcotic transaction as consisting of one person approaching another and handing currency to that person in return for an unknown item. Based on his experience, Randolph concluded that defendant was engaging in narcotics transactions. Randolph transmitted a description of defendant as wearing a “blue and white shirt and black jean shorts.” Randolph stayed in a “fixed position” until he saw UCO Rattler arrive in the area. Randolph observed Rattler approach defendant, but they moved out of his view. Randolph testified that he was not using binoculars and nothing was blocking his view. After approximately two or three minutes, Randolph heard over his police radio that a positive narcotics purchase had been made.

¶ 8 On cross-examination, Randolph acknowledged that he did not stop any of the people he observed engage in hand-to-hand transactions with defendant. Randolph also admitted that he

did not see the transaction between Rattler and defendant. Randolph acknowledged that he was approximately two hundred feet away from defendant when he observed the four transactions and that he did not take a photograph of the transactions.

¶ 9 Chicago police officer Defonda Louie testified that, on September 3, 2014, she was working as an enforcement officer in the area of Albany and Van Buren. There, she observed defendant, who was wearing a “blue and white striped shirt and black jean shorts,” engage in a brief conversation with UCO Rattler. Louie acknowledged that she could not hear what they were saying. Louie observed defendant tender a small unknown object to Rattler in exchange for money. After the exchange, Rattler walked to Albany and Van Buren, while defendant walked east bound down the alley. Louie lost sight of defendant for about a minute. During this time period, Louie was in constant communications with Rattler. Louie heard over the police radio that there was a positive buy and “went mobile” to search for defendant. Louie circled the block and saw defendant exit the alley walking westbound toward Albany. Louie observed Rattler, who was in his car, and monitored that he signaled a positive identification of defendant. Defendant was then placed under arrest.

¶ 10 On cross-examination, Louie acknowledged that the 1505 prerecorded funds were not recovered from defendant. Louie admitted she never took a picture of defendant and that a camera would have compromised the investigation.

¶ 11 Chicago police officer Richard Sanchez testified that he was working as a surveillance officer on September 3, 2014, and was in the vicinity of Albany and Van Buren. Sanchez went to that location after receiving information about a positive narcotics buy and a description of

defendant from Rattler. Sanchez placed defendant under arrest and performed a custodial search of defendant, which yielded \$176.

¶ 12 On cross-examination Sanchez acknowledged that he did not recover the prerecorded 1505 funds from defendant, nor any narcotics or narcotic packaging. Sanchez admitted that there was no attempt to have a narcotics detecting dog “sniff” the money recovered from defendant.

¶ 13 Moses Boyd, a forensic scientist employed by the Illinois State Police Crime Lab testified that he conducted tests on the item that was submitted to him by Rattler. The package tested positive for the presence of heroin in the amount of .4 grams.

¶ 14 The State rested and defendant did not present any evidence.

¶ 15 The jury returned a guilty verdict on the delivery of controlled substance charge. Defendant was sentenced as a Class X offender, based on his background, to 6 years’ imprisonment.

¶ 16 On appeal, defendant contends that there was insufficient evidence to convict him. The standard of review on a challenge to the sufficiency of the evidence 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. Wheeler*, 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases regardless whether the evidence is direct or circumstantial. *People v. Herring*, 324 Ill.App.3d 458, 460 (2001); *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson*, 2013 IL App (1st) 102332 ¶ 27; *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not the reviewing court’s duty to

retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). A reviewing court will only reverse a criminal conviction when the evidence is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8; *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 17 In order to sustain a finding of guilt for unlawful delivery of a controlled substance, the State was required to prove that defendant knowingly delivered a controlled substance. 720 ILCS 570/401(d) (West 2014); *People v. Brown*, 388 Ill. App. 3d 104, 107-108 (2009). Delivery is defined as “the actual, constructive or attempted transfer of possession of a controlled substance, with or without consideration, whether or not there is an agency relationship.” 720 ILCS 570/102 (h) (West 2014).

¶ 18 In the present case, the evidence, when viewed in the light most favorable to the prosecution, established that defendant knowingly delivered .4 grams of heroin to UCO Rattler. Defendant was observed by Officer Randolph engaging in four suspect narcotic transactions. Randolph radioed defendant's description and location to Rattler. When Rattler arrived at the location, he observed defendant, who fit the description relayed, and approached him. Rattler asked defendant for a “blow,” street terminology for heroin, and gave defendant \$10. Defendant gave Rattler a plastic bag containing a white powder that later tested positive for heroin. After the transaction, defendant walked down the alley out of sight of surveillance officer Louie. When Rattler radioed that a positive buy had been made, Louie searched for defendant and found him exiting the alley. Defendant was detained and Rattler identified him as the person who sold him the heroin. This evidence, and the reasonable inferences therefrom, were sufficient to sustain defendant's conviction for delivery of a controlled substance.

¶ 19 Defendant nevertheless argues that this court should reverse his conviction because the State failed to present videos, photographs or statements linking him to the delivery. He also argues that the evidence was insufficient where the \$10 prerecorded 1505 funds and any additional narcotics were not recovered from him upon his arrest. Defendant further points to the officer's description of his clothing as being inconsistent and therefore unreliable.

¶ 20 We initially note that the “mandate to consider all the evidence on review does not necessitate a point-by-point discussion of every piece of evidence as well as every possible inference that could be drawn therefrom. To engage in such an activity would effectively amount to a retrial on appeal, an improper task expressly inconsistent with past precedent.” *Wheeler*, 226 Ill. 2d 92, 117-18 (2007) (citing *People v. Smith*, 185 Ill. 2d 532, 541 (1999)).

¶ 21 That aside, contrary to defendant's argument, the State is not required to produce the prerecorded funds used in a narcotics transaction. *People v. Trotter*, 293 Ill. App. 3d 617, 619 (1997). Moreover, the State was not required to prove that money was exchanged during the transaction to sustain defendant's conviction. See 720 ILCS 570/401 (West 2014); 720 ILCS 570/102 (h) (West 2014) (“delivery” is defined as “the actual, constructive or attempted transfer of possession of a controlled substance with or without consideration”).

¶ 22 Here, defendant's arguments are, essentially, asking us to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact. This we cannot do. See *People v. Abdullah*, 220 Ill. App. 3d 687, 693 (1991) (“A reviewing court has neither the duty nor the privilege to substitute its judgment for that of the trier of fact”). These alleged inconsistencies were fully explored at trial. As mentioned, it is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences therefrom.

*Brown*, 2013 IL 114196, ¶ 48. In doing so, the trier of fact is not required to disregard inferences that flow from the evidence or search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt (*Brown*, 2013 IL 114196, ¶ 71 (citing *Wheeler*, 226 Ill. 2d at 117)). Based on its decision, it is clear that the jury found the testimony of the officers credible. See *People v Loferski*, 235 Ill. App. 3d 675, 682 (1992) (the testimony of a single police officer, if positive and credible, is sufficient to convict). We will not reverse a conviction simply because defendant claims that a witness was not credible. *People v. Evans*, 209 Ill. 2d 194, 211-12 (2004). Rather, as mentioned, a defendant's conviction will be overturned only if the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *Brown*, 2013 IL 114196, ¶ 48. This is not one of those cases.

¶ 23 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.