

2018 IL App (1st) 160423-U

No. 1-16-0423

Order filed June 13, 2018

Third 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. 15 CR 10710
)	
RICHARD ARTIS,)	The Honorable
)	Vincent M. Gaughan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Cobbs and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction affirmed where the State proved beyond a reasonable doubt that he was guilty of delivery of a controlled substance.

¶ 2 Following a jury trial, defendant Richard Artis was convicted of delivery of a controlled substance (720 ILCS 570/401(e) (West 2014)) and sentenced to four years' imprisonment. On appeal, defendant challenges the sufficiency of the evidence against him. We affirm.

¶ 3 Defendant was charged with one count of delivery of a controlled substance, specifically less than 10 grams of phencyclidine (“PCP”), and one count of possession of that controlled substance with intent to deliver (720 ILCS 570/4-1(e) (West 2014)).¹

¶ 4 At trial, Chicago police officer Bryan Cox testified that, on June 11, 2015, he was assigned to a narcotics surveillance team on the 1500 block of South Sawyer Avenue, where he acted as the surveillance officer. He had conducted surveillance for narcotics transactions hundreds of times, which had resulted in hundreds of arrests. Cox’s role that day was to find a location where drugs were being sold, watch from a covert position to see if people were selling drugs, and to relay that information to the enforcement officers. At 2:20 p.m., from 30 to 40 feet away, he was watching defendant through binoculars. Defendant was dressed in a black hooded sweatshirt, and stood with four other people. The day was clear and nothing obstructed Cox’s viewing of defendant.

¶ 5 Cox saw a man approach defendant, engage in a short conversation and give defendant money. Defendant reached into his right sweatshirt pocket, removed a clear sandwich baggy that had small tinfoil packets in it, and handed a packet to the man. Cox observed the same transaction occur with another man who approached defendant. Cox then observed a Cadillac pull up, a man exit the vehicle and approach defendant. Defendant handed the man a “large amount” of money and the man drove off.

¶ 6 Cox then saw a woman approach defendant and show him money, but not tender it. Defendant reached into his pocket, removed the same sandwich bag, and gave her one of the shiny packets therein. Cox related this information to the enforcement officers so they could

¹ The State originally charged defendant with delivery of and possession with intent to deliver less than 50 grams of phencyclidine, but amended the charges prior to trial to lower the amount of the controlled substance to less than 10 grams of phencyclidine.

detain defendant based on his belief defendant was engaged in narcotics transactions. Cox included a description of defendant and his location.

¶ 7 “While” the team was approaching the block, defendant handed the sandwich bag to another person, co-arrestee Jacquez Person, who ran to a tree and placed the bag at the base. Within 30 to 60 seconds, the officers arrived and detained defendant, the four men he was with, and the woman who had started to walk northbound. Cox observed Officer Pruger recover the plastic bag from under the tree. Cox never lost sight of defendant and saw him being detained.

¶ 8 On cross-examination, Cox acknowledged that, while on surveillance, he could not hear the conversations between the individuals who were detained. There were at least three other men with defendant when Cox called in the enforcement officers. Defendant had no money or narcotics on him when searched. Cox did not tell anyone to follow the Cadillac. He stated that defendant was the only one wearing a black-hooded sweatshirt, and he had “no doubt” defendant was the person he saw engaged in narcotics transactions.

¶ 9 Officer Rocco Pruger testified that he was working as an enforcement officer on June 11, 2015. He was in an unmarked vehicle one to two blocks away from where Cox was positioned and was in constant communication with Cox via radio. Around 2:40 p.m., he received a radio call from Cox which led him to move to the 1500 block of South Sawyer. It took him and the other enforcement officers 30 to 60 seconds to arrive. There, they observed a group of men standing on the corner in close proximity to each other, and a woman walking away. Pruger identified defendant in court as the only man in the group wearing a black hooded sweatshirt.

¶ 10 The officers detained the men and Cox directed Pruger to “the middle tree” on the parkway in the 3200 block of West 15th Street. There, Pruger found a plastic bag containing 15 smaller green-tinted Ziploc bags each containing a tinfoil packet. Inside the packets was a brown

substance with a strong chemical smell. Pruger did not see any drug transactions. He was not told to stop the Cadillac. He did not see anybody place the bag of narcotics on the ground by the tree, and did not find any drugs or money on defendant. Pruger explained that the inventory report stated the drugs were recovered from Person because Cox last saw Person in possession of the bag.

¶ 11 Officer David Salgado testified that he was an enforcement officer on the scene. When he arrived at the 1500 block of South Sawyer, he approached a woman walking northbound. As he approached, she placed an object in her mouth. Salgado ordered her to spit out the contents and she spat out a green-tinted mini Ziploc baggy containing a tinfoil packet. He placed the woman in custody and recovered \$10 from her. At his direction, Officer Theodore recovered the baggy. Salgado then arrested Person, who was in the same group as defendant. Officer Ramirez inventoried the green tinted baggy of suspect PCP recovered from the woman and the 15 baggies of suspect PCP “packaged in the same manner.”

¶ 12 Officer Peter Theodore testified he was also an enforcement officer on the narcotics surveillance team. When the team approached the scene, he was directed to recover a plastic bag on the ground near where a woman was being detained by Officer Salgado. Inside the bag was a small tinfoil pack with what he suspected to be PCP. Theodore did not see defendant do anything illegal; he acted based on what the surveillance officer said.

¶ 13 Illinois State Police forensic scientist Cathy Regan testified as an expert in the field of drug chemistry. She received inventory from the crime scene and weighed the material found in 1 of the 15 baggies and found it contained .341 grams of plant material. She analyzed this material and determined that it contained PCP. She tested another single baggy containing .305

grams of plant material and it also tested positive for PCP. Regan could not tell how much of the material tested was PCP.

¶ 14 Defendant made a motion for a directed verdict, which was denied, and then rested his case. The jury returned guilty verdicts on both counts. Defendant made a motion for JNOV or a new trial, which the court denied. The court merged the counts and sentenced defendant to 4 years' imprisonment on the delivery of a controlled substance conviction.

¶ 15 Defendant appeals his conviction, arguing the State failed to prove him guilty beyond a reasonable doubt because the State primarily relied upon "the highly improbable testimony" of Officer Cox.

¶ 16 When reviewing the sufficiency of the evidence, this court will not retry the defendant. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, we must consider " '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.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A reviewing court must draw all reasonable inferences from the record in favor of the State. *Davison*, 233 Ill. 2d at 43. This standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *People v. Howery*, 178 Ill. 2d 1, 38 (1997). Accordingly, a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *People v. Cooper*, 194 Ill. 2d 419, 430-31 (2000). A criminal conviction will not be set aside unless the evidence is

so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009)

¶ 17 To prove defendant guilty of delivery of a controlled substance as charged, the State had to prove that defendant knowingly delivered less than 10 grams of a substance containing PCP. 720 ILCS 570/401(e) (West 2014). Delivery means “the actual, constructive or attempted transfer of possession of a controlled substance with or without consideration, whether or not there is an agency relationship.” *People v. Brown*, 388 Ill. App. 3d 104, 108 (2009), quoting 720 ILCS 570/102(h) (West 2014).

¶ 18 Viewing the evidence in the light most favorable to the State, we find it sufficient to prove defendant guilty beyond a reasonable doubt. Officer Cox observed defendant wearing a black-hooded sweatshirt take an unknown amount of money from a man, reach into his pocket, remove a clear sandwich bag containing smaller baggies that each contained tinfoil packets, and hand one of the packets to the man. Cox observed defendant engage in the same transaction with a second man. He then observed defendant give a large amount of money to a man in a Cadillac. After, he observed a woman approach defendant, show him money and receive another tinfoil packet from defendant. Cox called in the enforcement team. He provided a location and description of defendant because he believed defendant was engaging in narcotics transactions. As the enforcement team approached, Cox saw defendant hand Person the bag of small foil packets. Person then placed the bag at the base of a tree down the street, where police recovered it. Chemical testing showed one of the 15 baggies therein contained PCP. The similarly packaged small, green tinted baggy that Cox saw defendant give the woman Cox also was found to contain PCP. The positive testimony by Cox, who saw defendant engage in the transactions from only 30 to 40 feet away, through binoculars on a clear day and with an unobstructed view, is enough to

support defendant's conviction for delivery of PCP. *People v. Thompson*, 2016 IL App (1st) 133648, ¶ 34 (the testimony of a single eyewitness may suffice to convict if the witness is credible and was able to view the defendant under conditions permitting a positive identification).

¶ 19 Defendant argues, however, that Cox's testimony was "fishy" and "objectively unreasonable." He questions why Cox did not wait to call the enforcement officers until after the woman handed over the money for the drugs. He also questions Cox's assertion that defendant and the nearby people all separated shortly after Cox made the radio call to the enforcement officers even though Cox was far enough away that they could not hear his radio call. Defendant claims that, because he was found without money or drugs on him, the more likely scenario is that whoever Cox observed selling drugs fled when he heard tires screeching, and defendant did not run because he was not doing anything wrong.

¶ 20 Any problems with Cox's testimony go to its weight and his credibility as a witness. *People v. Hall*, 194 Ill. 2d 305, 322 (2000). It was for the jury to judge whether there were unresolved questions and, if so, how the flaws affected Cox's credibility as a whole. *People v. Cunningham*, 212 Ill. 2d 274, 285 (2004). The jury may "accept or reject as much or as little of a witness's testimony as it pleases." *People v. Sullivan*, 366 Ill. App. 3d 770, 782 (2006). The jury heard defendant's claim in closing arguments that police "got the wrong guy." It heard his argument that Cox was incredible based on the same arguments defendant now raises on appeal. Defendant essentially asks us to reweigh the jury's credibility determination. This we will not do. *People v. Abdullah*, 220 Ill. App. 3d 687, 693 (a reviewing court has neither the duty nor privilege to substitute its judgment for that of the trier of fact).

¶ 21 It was for the jury to weigh the testimony and determine Cox's credibility. It could reasonable conclude that Cox's testimony that he saw defendant give a "large amount" of money to the driver of the Cadillac and give Person the bag of narcotics explains the lack of narcotics and money found on him when detained. It could reasonable conclude that his testimony that the group of men and the woman separated "while" the team was approaching explained how defendant knew to hide the drugs. In sum, taking the evidence in a light most favorable to the prosecution, a rational trier of fact could find defendant guilty beyond a reasonable doubt.

¶ 22 Accordingly, we affirm defendant's conviction.

¶ 23 Affirmed.