2018 IL App (1st) 162113-U

No. 1-16-2113

Order filed December 13, 2018

Fourth Division

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. 14 CR 14876
	)	
BRANDON FOX,	)	Honorable
	)	Mauricio Araujo,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice McBride and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence presented at trial was sufficient to prove defendant guilty beyond a reasonable doubt of possession of a controlled substance.

¶ 2 Following a bench trial, defendant Brandon Fox was convicted of possession of a controlled substance (between 1 and 15 grams of cocaine) (720 ILCS 570/402(c) (West 2014)) and sentenced to two years of probation. On appeal, defendant challenges the sufficiency of the

evidence, contending that the arresting officer's account of events was contrary to human experience. For the reasons that follow, we affirm.

¶ 3 Defendant's conviction arose from events that occurred in Chicago on June 28, 2014. Following his arrest, defendant was charged by information with one count of possession of a controlled substance with intent to deliver (between 1 and 15 grams of cocaine) and one count of possession of a controlled substance (less than 200 grams of alprazolam).

¶ 4 At trial, Chicago police officer Jeffrey Mayer testified that on the day in question, he was on routine patrol with his partner, Officer Jesse Cavazos, in a marked police vehicle. About 11:39 p.m., Mayer noticed a vehicle driving toward them without its headlights on. Cavazos made a U-turn, turned on the police lights and sirens, and curbed the vehicle. There were two people in the vehicle, and its windows were rolled down. In court, Mayer identified defendant as the driver of the vehicle and defendant's brother, codefendant Justin Boyd, as the passenger.[1]

¶ 5 Mayer approached the passenger side of the curbed vehicle on foot. He illuminated the vehicle with his flashlight and noticed a clear plastic bag containing a white rocklike substance in the center console. Cavazos, who was at the driver's side, asked defendant to exit the vehicle. Defendant reached over with his left hand to unbuckle his seat belt, grabbed the bag, and attempted to place it in his mouth. Before he could do so, Cavazos grabbed defendant's arm and defendant dropped the bag. Boyd picked up the bag, tried to place it in defendant's hand twice, and then dropped it back into the center console.

¶ 6 At this point, Mayer opened the passenger door and reached for the bag, but Boyd slapped Mayer's hand out of the way. Mayer removed Boyd from the vehicle. When Mayer then

[1] Boyd was tried simultaneously with defendant, found guilty of possession of a controlled substance, and sentenced to one year in prison. He is not party to this appeal.

reached for the bag a second time, defendant swung at him with his right hand. Mayer deflected the blow and Cavazos was able to remove defendant from the vehicle. Mayer then noticed a folded-up white napkin or tissue on the driver's seat. He recovered the tissue and found it contained 10 white prescription pills. Defendant was unable to produce a prescription for the pills. Cavazos then recovered the bag containing the white rocklike substance from the console.

¶ 7 Mayer testified that, after being given *Miranda* warnings at the police station, defendant stated "that he just bought that 3-5 and was going to sell some of it and smoke the rest with some weed, you know, a primo." Mayer acknowledged that his recitation of defendant's statement was not verbatim.

¶ 8 On cross-examination, Mayer testified that "3-5" referred to narcotics. He also confirmed that there was a cupholder in the center console, and when asked by counsel whether the bag of cocaine was in the cupholder, he answered, "Yes, the console area there." Mayer testified that during one of Boyd's two attempts to give the bag to defendant, defendant managed to place the bag in his hand and tried to put it in his mouth a second time. Defense counsel then asked, "At all times Officer Cavazos got [defendant's] left hand, correct?" and Mayer answered, "That's why [defendant] was unsuccessful placing it in his mouth, yes." When defense counsel asked which hand Boyd used to slap at Mayer and which hand Boyd used to grab the bag, Mayer answered that the entire interaction happened fast and he was not sure. He testified that Boyd was not holding the bag at the time he was slapping Mayer's hand; instead, during the slapping, the bag "was like a wet bar of soap just flying around the car [and] fell back in the center console." Mayer admitted that the inventory report he prepared indicated it was Cavazos who recovered

the napkin and pills, but testified that notation was a clerical error. Finally, Mayer testified that a vehicle impound form listed the vehicle's owner as Shenelle Taylor.

¶ 9 The parties stipulated as to the chain of custody of the bag of suspect cocaine and the 10 pills of suspect alprazolam. They further stipulated that if called as a witness, a forensic chemist at the Illinois State Police Crime Laboratory would testify that testing revealed the items were positive for 2.9 grams of cocaine and 2.3 grams of alprazolam.

¶ 10 Following closing arguments, the trial court acquitted defendant of possession of alprazolam. With regard to the cocaine, the trial court concluded that intent to deliver had not been proved, but found defendant guilty of the lesser included offense of possession of a controlled substance. The court subsequently sentenced defendant to two years of probation.

¶ 11 On appeal, defendant challenges the sufficiency of the evidence to sustain his conviction. When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact would find the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). The testimony of a single witness, if positive and credible, is sufficient to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). A reviewing court will not reverse a conviction simply because the defendant claims that a witness was not credible. *Siguenza-Brito*, 235 Ill. 2d at 228. Rather, reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to

the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Where a guilty finding depends on eyewitness testimony, a reviewing court, keeping in mind that it was the factfinder who observed and heard the witnesses, must decide whether any factfinder could reasonably accept the witnesses' testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). It is for the finder of fact to judge how flaws in a witness's testimony affect the credibility of a witness as a whole. *Cunningham*, 212 Ill. 2d at 283.

¶ 12 Defendant contends that his conviction must be reversed because Officer Mayer's account of events was too implausible to believe. He asserts that Mayer attributed to him an act so contrary to human experience, "*i.e.*, gratuitously waiting until he was grappling with a police officer before brazenly attempting to dispose of illegal drugs," that no rational trier of fact could have accepted that story as true. Defendant argues that it "taxes the gullibility of the credulous" that defendant would not attempt to conceal a bag of cocaine prior to the police officers' arrival at his vehicle, but rather, senselessly wait for a conspicuous moment to reach for the narcotics. He further asserts that it defies common sense that he would have used his left hand during his interaction with the police, when using his right hand "would have been far more intuitive and discreet"; that even if he used his left hand initially, his alleged "continued insistence on solely using that hand is entirely dubious as his left arm was quickly restrained by Officer Cavazos"; and that it is inconceivable that Boyd would choose to place the bag in defendant's left hand twice, since that hand was farther away from Boyd and being held by Cavazos. Defendant concludes that because Mayer's testimony regarding the events surrounding his arrest was incredible, the remainder of his testimony, including his testimony that defendant gave an inculpatory statement, must also be called into question.

¶ 13 Defendant's arguments for reversal involve matters of credibility that are for the trial court to resolve in its role as trier of fact. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002). As noted above, it is the trier of fact who assesses the credibility of witnesses, the weight to be given their testimony, and the inferences to be drawn from the evidence, and who resolves conflicts or inconsistencies in the evidence. *Tenney*, 205 Ill. 2d at 428; *Brooks*, 187 Ill. 2d at 131.

¶ 14 As an initial matter, we note that contrary to defendant's assertions, Mayer did not testify that defendant solely used his left hand during the interaction with the police, or that it was exclusively defendant's left hand into which Boyd tried to place the bag. What Mayer related at trial with regard to specific hands was that defendant used his left hand to reach toward the buckle of his seat belt, grab the bag, and attempt to put it in his mouth; that defendant used his right hand to swing at Mayer; and that Officer Cavazos grabbed and held defendant's left arm or hand. During the rest of his testimony, Mayer did not specify which hand was involved in particular actions. We are mindful that on cross-examination, when defense counsel asked Mayer, "At all times Officer Cavazos got [defendant's] left hand, correct?" he answered, "That's why [defendant] was unsuccessful placing it in his mouth, yes." However, we do not find this answer particularly enlightening. All the statement establishes is Mayer's opinion that Cavazos's grip was the reason defendant was not able to put the bag in his mouth. It does not definitively establish that defendant exclusively used his left hand or that Boyd only reached for defendant's left hand.

¶ 15 The trial court was well aware of defendant's position that the State's evidence regarding defendant's use of his left hand was questionable. In opening statements, defense counsel related that after the police approached the stopped vehicle:

> "There is a scrum, and they are claiming that apparently the police must think that [defendant] is left-handed because they are saying that when he reaches to undo his seat belt when he is asked to get out of the car with his left hand, that very same hand is then reaching because he apparently sees this rock of cocaine in the cupholder area. He is reaching with the left hand."

Defense counsel again broached the topic of right hand versus left hand in closing, when he argued as follows:

> "Judge, if [defendant] knew [the drugs] were there and he wanted to secrete it, why didn't he do it? He's got his right hand free. Remember he is using his left hand to unbuckle the seat belt and then reach for the cocaine.
>
> ***
>
> [I]f Justin Boyd's job is to hide the drugs, why does he put it in the left hand of [defendant]? That's being held by the other officer. That's not going to his mouth because that's being held by the officer, unless the officer lets go, but why not put it in [defendant's] other hand if he wants to secrete or hide the drugs?"

¶ 16 The trial court, despite having its attention focused by defense counsel on the unlikeliness of defendant using his left hand and of Boyd trying to place the drugs in defendant's left hand, apparently found Mayer's testimony credible. See *People v. Moody*, 2016 IL App (1st) 130071, ¶ 52 (guilty verdict indicated that jury found complaining witness to be credible). This was the court's prerogative in its role as the trier of fact. *Moody*, 2016 IL App (1st) 130071, ¶ 52. We

will not substitute our judgment for that of the trial court on this question of credibility. *Brooks*, 187 Ill. 2d at 131.

¶ 17 We find that the evidence supporting defendant's conviction could reasonably be accepted by the trial court. Mayer testified that when his partner asked defendant to exit the curbed vehicle, defendant reached toward his seat belt buckle, grabbed a bag of cocaine from the center console, and attempted to place it in his mouth. He dropped the bag, his passenger picked it up and tried to hand it back to defendant twice, defendant attempted to put it in his mouth again, and the bag flew around "like a wet bar of soap" until it landed back in the console. Defendant then gave a postarrest statement admitting to possessing the bag of cocaine. Contrary to defendant's arguments, this is not a case in which the description of the crime proffered by the State was incredible on its face. See *Cunningham*, 212 Ill. 2d at 284. While defendant maintains it is contrary to human experience and taxes the gullibility of the credulous that he would have waited until the officers arrived at his vehicle to attempt to conceal or dispose of a bag of drugs, we note that there is no evidence that he actually waited to take such actions. Mayer testified as to what he observed when he arrived at the vehicle–he did not, and could not have, relayed information about what defendant was doing in relation to the bag of drugs prior to that moment. It is also possible that defendant did not realize that the drugs were in the console until the officers arrived at the vehicle.

¶ 18 Having heard the evidence, the trial court was convinced of defendant's guilt beyond a reasonable doubt. After reviewing the evidence in the light most favorable to the prosecution, which we must, we conclude that the evidence was not "so unsatisfactory, improbable or

implausible" as to raise a reasonable doubt as to defendant's guilt. *Slim*, 127 Ill. 2d at 307. Accordingly, defendant's challenge to the sufficiency of the evidence fails.

¶ 19 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 20 Affirmed.