2019 IL App (1st) 160633-U
No. 1-16-0633
Order filed January 8, 2019

Second Division

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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 9566
	)	
FREDERICK WILLIAMS,	)	Honorable
	)	Mauricio Araujo,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for delivery of a controlled substance affirmed where State presented sufficient evidence to prove he was not entrapped into committing the offense.

¶ 2 A jury found Frederick Williams guilty of delivery of a controlled substance, and the trial court sentenced him to 6 years' imprisonment. On appeal, Williams contends the State failed to disprove his affirmative defense of entrapment. We affirm. The State presented sufficient evidence to show the police did not improperly induce Williams to commit the offense, and that Williams was predisposed to do so.

¶ 3 Background

¶ 4 Williams was charged by indictment with two counts of delivery of a controlled substance, each alleging that he knowingly delivered less than one gram of cocaine, or an analog of it. The State nolle-prossed one count. Williams went to a jury trial on a single count of delivery of a controlled substance.

¶ 5 At trial, Chicago police officer Rosario Lazzara testified that, on May 5, 2014, at about 10 p.m., he was on surveillance in an undercover operation to purchase narcotics. He had worked in a similar capacity hundreds of times. Lazzara was watching Maxwell's restaurant from a covert car when he saw Williams approach a brown, four-door sedan in the parking lot. Williams quickly reached into the front driver's side window and walked away, counting money. The sedan left. Lazzara had not seen Williams asking people for money or panhandling. Based on his observations, Lazzara directed Officer Mirus to attempt a controlled narcotics purchase.

¶ 6 A few minutes later, Mirus entered the restaurant's parking lot driving an undercover automobile. He spoke to Williams through his open front passenger window and Williams approached. Williams got in and Mirus parked. Within minutes, a Chevy Impala parked next to Mirus. Williams got out, and quickly reached in and out of the Impala's rear passenger window. He then got back in Mirus' car and Mirus drove Williams to the 4800 block of Harrison, where Williams entered a nearby gangway. Mirus drove away. Lazzara remained. Fifteen minutes later, Williams came out. Lazzara radioed enforcement officers to conduct an investigatory stop of Williams. After Mirus drove past the scene, Williams was taken into custody.

¶ 7 On cross-examination, Lazzara testified that he had not seen Williams engaging in drug solicitation, such as by yelling "C" or "rock" or making gestures "like he was a drug seller."

Before Williams approached the brown sedan, Lazzarra did not see him reach into his pocket, hold anything in his hands, or spit anything from his mouth. He did not see Williams hand anything to the occupant. Lazzara acknowledged Williams "came out" of the sedan with money, which was consistent with panhandling. On redirect, he noted this also indicated drug dealing.

¶ 8 Chicago police officer Joseph Mirus testified that he was working as an undercover officer with a team of 10 officers, tasked with purchasing narcotics undercover. Mirus had participated in over 1000 narcotics investigations, over 50 times as the undercover buy officer. Mirus served as "surveillance personal" to contact Williams, who was standing in the parking lot of the Maxwell Street Original Restaurant. Mirus, wearing civilian clothes, drove up to Williams in a covert auto and asked him "if there was any C out here right now." Williams replied "We got dubs. My guy is bringing some more right now." Mirus told the jury "C" was street terminology for crack-cocaine and "dubs" was street terminology for a $20 bag of narcotics.

¶ 9 After Williams told Mirus he "had dubs coming," Williams got into the front passenger seat and instructed Mirus to pull into a parking space. Once parked, Williams asked Mirus "how many [he] wanted." Mirus knew he was being asked how many bags of narcotics, and told Williams two. Williams then asked to use Mirus's phone to call "his guy" to determine where he was. After the call, Williams deleted the number before returning the phone to Mirus. He told Mirus, "my guy will be here in a minute. He's in the car."

¶ 10 A few minutes later, an Impala with four occupants pulled into an adjacent parking space. Williams told Mirus, "My guy's here. Give me the money. I got you. You're all good." Mirus gave Williams $40 in prerecorded bills. Williams got out and handed the money to a man sitting in the rear passenger seat, who handed "unknown" items to Williams. Then Williams reentered

Mirus' auto and the Impala drove off. Williams handed Mirus two clear Ziploc plastic bags with green dollar sign logos, each containing "a white rock-like substance" of suspect crack-cocaine.

¶ 11 Williams asked Mirus to leave, stating police were across the street. Mirus dropped Williams at the 4800 block of West Harrison. Mirus and Williams interacted for six to seven minutes.

¶ 12 After driving a "safe distance," Mirus notified assisting officers that a positive narcotics transaction had occurred. He provided them with a description of Williams and his last known location. Fifteen minutes later, Mirus returned to where he had dropped off Williams and saw enforcement personnel detaining him. Mirus informed assisting officers that Williams was the person who had tendered him suspect crack-cocaine.

¶ 13 On cross-examination, Mirus testified that, when he first saw Williams standing in the parking lot, there were no other vehicles in the lot. Mirus had not seen Williams engage in any hand-to-hand transactions with suspect drug purchasers beforehand, and did not see "security personnel" looking out for Williams. Before approaching Williams, Mirus did not see Williams possess money, drugs, or a cell phone. He and Williams did not discuss Williams getting a $20 "finder's fee." Mirus denied providing Williams with the name of somebody from whom he had previously purchased drugs and asking Williams to call that person.

¶ 14 Mirus knew, based on his experience as a police officer, that a dub bag sold for $20. The dubs Mirus purchased from Williams were neither the largest nor the smallest dubs he had ever purchased, and the weight of dubs can vary between locations. Mirus acknowledged he wrote in his report that he purchased 0.8 grams of crack-cocaine, but subsequently learned from a crime lab report that the dubs weighed only a total of .2 grams. He explained he did not have an

"exact" lab scale that was "scientifically calibrated," and he was trained to estimate a dub as being 0.4 grams. Mirus could not recall if the dubs weighed 0.8 grams when he weighed them at the police station. His report stated that the dubs he purchased had an estimated street value of $98.40, a computer generated value based on his .8 grams estimate. Mirus acknowledged that the bags he purchased were "light." Based on the lab report, he overpaid by $20. On redirect examination, Mirus testified he overpaid in "maybe" 25 percent of his undercover purchases.

¶ 15 Elaine Harris, a forensic scientist for the Illinois State Police, testified that the substance Mirus inventoried amounted to 0.2 grams cocaine.

¶ 16 Williams testified that he was in Maxwell's parking lot panhandling—asking for change or offering to get customers their food for keeping the change. At the time, Williams was unemployed and panhandled there two to three times a week. When Officer Mirus drove into the parking lot, no other vehicles were present. Williams did not know Mirus was a police officer. He approached the driver's side and made his usual request for change and offer to pick up food. Mirus replied that he had no change; Williams returned to standing in front of the restaurant.

¶ 17 Shortly afterward, Mirus made eye contact with Williams and "whispered" something to him. Williams did not hear Mirus, so asked him what he said. Mirus rolled down his window and said, "Come here for a minute." Williams walked back to the driver's side, thinking that Mirus had found some change for him. Mirus asked Williams if he could help him and in return would help Williams. Williams asked what Mirus meant, and Mirus responded that he was trying to find "some C." Mirus said that if Williams "looked out for him and found him some C," then Mirus would get Williams something to eat. Williams told Mirus he did not "know anything

about that," and suggested that Mirus look around because "it" would not be hard to find. Mirus suggested Williams get out of the cold into his auto and think about it.

¶ 18 Mirus asked Williams whether he knew anybody Mirus could call or a place he could take him to get cocaine. Williams told him "no," explaining to him that he did not want to put himself in jeopardy and did not want to lose his panhandling location to someone else. Mirus asked Williams if he could think of anybody else or any other way to obtain drugs because he was "feining." Mirus seemed like he was "looking for drugs in a desparate way."

¶ 19 Mirus told Williams he "normally got" from D.B., a name Williams recognized as the cousin of a friend. Williams did not know D.B.'s name or that he sold drugs, but had seen him around the neighborhood and occasionally spoke to him. He knew D.B.'s number and called D.B. for Mirus because he assumed Mirus knew him. He told D.B. that somebody was trying to get something from him. D.B. said he would be there in a few minutes. When the call ended, Williams erased D.B.'s number at the request of D.B. who said he did not recognize the number.

¶ 20 As they waited, Mirus told Williams that he would give him $20, enough for something to eat and whatever else he was "trying to do." When D.B. arrived, Williams asked Mirus for the money and Mirus gave him $40: $20 for drugs, "whatever [Williams] could get," and $20 for Williams. Williams went over to D.B. and asked him what he had. Williams purchased two $10 bags, which he gave to Mirus. Williams pocketed the remaining $20.

¶ 21 Williams then asked Mirus to drive him home, and Mirus drove him to his sister's house. Williams gave the $20 to his sister for overdue rent. He had procured cocaine for Mirus because he needed the $20 to pay his rent as he was on the verge of being "kicked out" of his sister's home. Williams got the two bags of cocaine for the officer because the officer "asked [him] to."

Williams acknowledged he was not using his best judgment when he got "involved in the crime" for $20, and only did so because he needed to pay his rent.

¶ 22 When Williams left 20-30 minutes later to try and make more money at Maxwell's, two officers detained him. They did not recover cocaine from his person, and Williams denied having cocaine at his sister's house or using it. Williams also denied selling or dealing drugs since his convictions for delivery of a controlled substance in 1995, 1996, and 1997.

¶ 23 On cross-examination, Williams testified that, before he sold the cocaine to Mirus, he had been panhandling, although he did not have a begging cup or sign to signify that he was begging and had not been asking for money from people stopped at a nearby traffic light. Mirus had asked for his help buying drugs "maybe four or five different times in different ways" over a few minutes. When Williams was inside the car, Mirus asked him for "C," which Williams knew was crack-cocaine, but Williams told him he wanted nothing to do with that. Williams stayed in the car, however, and finally called D.B. because Mirus appeared to know him. Williams acknowledged asking Mirus for a ride home but denied telling him there were police across the street from Maxwell's. On redirect examination, Williams explained that he did not seek money from motorists because people in the area were familiar with him, and that was not how "you do it in that area."

¶ 24 In rebuttal, Officer Mirus testified that Williams did not ask him for spare change or if he could buy food for him. Mirus did not ask Williams five or six times about purchasing drugs; he asked once, and specifically asked for "C." Williams told him dubs were for sale, which Mirus understood to be $20 bags. Mirus did not recall telling Williams he had previously bought drugs in the area, and denied telling Williams "D.B." had sold him drugs or asking Williams to call

D.B. Mirus did not tell Williams he would give him $20 to get something to eat or spend anyway he wanted. On cross-examination, Mirus said he ordered two dubs, for which he would spend $40, and the dubs he received were on the "smaller side."

¶ 25 The State admitted into evidence Williams' previous conviction for attempted robbery, and rested. Before jury deliberations, the trial court instructed the jury on the defense of entrapment. It also instructed the jury that evidence of Williams's previous convictions for delivery of a controlled substance could only be considered as they pertained to Williams's predisposition, and that Williams's previous conviction for attempted robbery could only be considered with regard to Williams's believability. In closing, defense counsel conceded Williams gave $20 of cocaine to Mirus in exchange for a finder's fee, but argued he was entrapped and the State failed to prove beyond a reasonable doubt that he was not entrapped.

¶ 26 The jury found Williams guilty of delivery of a controlled substance. The trial court denied Williams's posttrial motion and sentenced him to six years' imprisonment.

¶ 27 Analysis

¶ 28 On appeal, Williams contends that the State failed to prove him guilty beyond a reasonable doubt because he raised the affirmative defense of entrapment and the State failed to present sufficient evidence to rebut the defense.

¶ 29 In reviewing 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.) *People v. Jackson*, 232 Ill. 2d 246, 280 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). We "will not reverse a conviction unless the evidence is 'unreasonable,

improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt.' " *Jackson*, 232 Ill. 2d at 281 (quoting *People v. Campbell*, 146 Ill. 2d 363, 375 (1992)).

¶ 30 To prove Williams guilty of delivery of a controlled substance, the State had to prove that he knowingly delivered a controlled substance. 720 ILCS 570/401(d) (West 2014). Williams concedes he delivered the cocaine to Officer Mirus, but maintains that he was entrapped.

¶ 31 Section 7-12 of the Criminal Code governs the affirmative defense of entrapment:

> "A person is not guilty of an offense if his or her conduct is incited or induced by a public officer or employee, or agent of either, for the purpose of obtaining evidence for the prosecution of that person. However, this Section is inapplicable if the person was predisposed to commit the offense and the public officer or employee, or agent of either, merely affords to that person the opportunity or facility for committing an offense." 720 ILCS 5/7-12 (West 2014).

¶ 32 A defendant who raises entrapment as an affirmative defense necessarily admits to committing the crime, albeit because of improper governmental inducement. *People v. Bonner*, 385 Ill. App. 3d 141, 145 (2008). An entrapment defense requires the defendant show: (i) the State improperly induced or incited the defendant to commit the offense and (ii) the defendant was not predisposed to commit the crime. *People v. Sanchez*, 388 Ill. App. 3d 467, 474 (2009). When a defendant presents some evidence of entrapment, however slight, the burden shifts to the State to rebut the entrapment defense beyond a reasonable doubt. *Id.* Generally, the trier of fact resolves the question of whether a defendant was entrapped, and we will not disturb this determination unless we find entrapment as a matter of law. *Bonner*, 382 Ill. App. 3d at 145.

¶ 33 Williams presented evidence that Officer Mirus initiated contact and asked Williams repeatedly to help him acquire cocaine. He also presented evidence that he did not want to participate in the transaction and agreed only because Mirus badgered him into it and Williams needed the $20 finder's fee to pay overdue rent. Thus, some evidence supports an entrapment defense, and the burden shifted to the State to rebut the defense beyond a reasonable doubt.

¶ 34 Taking the evidence in the light most favorable to the State, as we must, we find the State rebutted both prongs of the entrapment defense and proved Williams guilty of delivery of a controlled substance beyond a reasonable doubt.

¶ 35 Inducement

¶ 36 First, the State presented sufficient evidence to show Mirus did not improperly induce Williams to commit the offense. Mirus testified he approached Williams and asked him for crack-cocaine. Even though Mirus initiated contact with Williams, this fact, standing alone, does not show inducement. Merely affording the defendant an opportunity to commit the crime does not established inducement. *People v. Ramirez*, 2012 IL App (1st) 093504, ¶ 31. Consequently, entrapment does not exist where the government agent initiates a relationship leading to a drug transaction. *Bonner*, 382 Ill. App. 3d at 145. Rather, the inducement prong requires the "criminal conduct for which the defendant was convicted originate[] in the mind of a government agent who arbitrarily engaged in a relationship with the defendant and purposely encouraged its growth." *Id*.

¶ 37 Mirus did not arbitrarily engage in a relationship with Williams. He approached Williams in the Maxwell's parking lot because Officer Lazzarra, an experienced narcotics officer, saw Williams engage in what he thought could be a narcotics transaction. When Mirus approached

Williams and asked him where he could get "C," Williams immediately responded "we got dubs," meaning $20 bags of narcotics, and that his "guy" was on his way with "more." Williams then got into Mirus' auto, instructed him to park, and asked Mirus how much he wanted. Williams took Mirus's order and contacted his "guy," who was on his way and pulled up next to Mirus soon afterward. Williams used Mirus' funds to obtain two baggies of cocaine. Mirus' testimony established a lack of improper inducement, as it demonstrates Williams took the opportunity to sell Mirus cocaine without hesitation and had a system in place to facilitate delivery. See *Ramirez*, 2012 IL App (1st) 093504, ¶ 32 (no inducement to commit bribery where, on being offered opportunity to "do business," defendant "jumped on that opportunity without hesitation"); see *People v. Siguenza-Brita*, 235 Ill. 2d 213, 228 (2009) (positive testimony of single credible witness, even if contradicted by defendant, sufficient to sustain conviction).

¶ 38 Williams claims Mirus' testimony is not credible, and that his testimony regarding Mirus repeatedly badgered him to help acquire the drugs was credible, and demonstrates Mirus improperly induced him to commit the offense. He asserts Mirus' offer to give him, a poor man who was panhandling, money for food amounted to inducement. Williams notes that it is uncontested that Mirus gave Williams $40 in cash but only bought $20 of cocaine and Mirus admitted to overpaying for the drugs by $20, which supports Williams's assertion that he received a $20 fee for coordinating the drug buy. Williams claims that Mirus recorded an inflated value for the drugs in his police report to hide the "finder's fee" paid Williams.

¶ 39 Nevertheless, the jury as the trier of fact had to resolve whether Williams was entrapped. *People v. Placek*, 184 Ill. 2d 370, 381 (1998). The jury determines the witnesses' credibility and the weight given their testimony, resolves evidentiary conflicts, and draws reasonable inferences

from the evidence. *Ramirez*, 2012 IL App (1st) 093504, ¶ 31. The jury observed the witnesses' testimony, viewed the evidence, and determined Williams was not entrapped, necessarily crediting Mirus' testimony over Williams'. We will not substitute our judgment for that of the jury on issues involving the weight of the evidence and witness credibility. *Id*. Mirus's testimony that Williams never refused his request for cocaine, immediately took his order, and facilitated the transaction supports finding that Mirus merely afforded Williams the opportunity to commit delivery of a controlled substance and Williams was not improperly induced.

¶ 40 Predisposition

¶ 41 Second, the State presented sufficient evidence that Williams was predisposed to commit the offense of delivery of a controlled substance. To prove predisposition, the evidence must establish that defendant was ready and willing to commit the crime without persuasion and before the initial exposure to government agents. *Ramirez*, 2012 IL App (1st) 093504, ¶ 38. Relevant factors in assessing predisposition in drug cases include a defendant's: (i) initial reluctance or willingness to commit the crime; (ii) familiarity with drugs; (iii) willingness to accommodate the needs of drug users; (iv) willingness to profit from the offense; (v) current or prior drug use; (vi) participation in cutting or testing the drugs; (vii) ready access to a supply; (viii) engagement in a course of conduct involving similar offenses; and (ix) subsequent activities. *Bonner*, 382 Ill. App. 3d at 146.

¶ 42 Applying these factors, we find that they weigh in the State's favor. Mirus' testified that, when he asked Williams if there was "any C out here," Williams immediately responded that he had dubs and his "guy" was on his way with more, demonstrating Williams' willingness to participate in the offense and accommodate the needs of a drug user by delivering the requested

cocaine. This is reinforced by Williams then getting in Mirus' automobile, taking his order for two dubs, calling his "guy," and waiting with Mirus until his "guy" arrived with the cocaine. That Williams did not ask what "C" meant and responded with an offer of dubs demonstrates his familiarity with drugs, as does his own testimony that he understood "C" to mean crack-cocaine and told Mirus "C" was not hard to find.

¶ 43 As to profit, Williams testified that he was going to receive $20 from coordinating the drug deal, thus the fourth factor weighs in the State's favor. There is no evidence demonstrating Williams's current or prior drug use or participation in cutting or testing the drugs. But, his ready access to a supply of drugs is shown by his having a "guy" on call; Williams knew the phone number of a source and that source arrived within minutes. Williams admitted to having three convictions for delivery of a controlled substance, arguably demonstrating his engagement in a course of conduct involving similar offenses. Those offenses, however, occurred 20 years ago so we consider this factor neutral. Similarly, Williams' subsequent activity, going home, is neutral.

¶ 44 In sum, although a few of the predisposition factors are neutral or arguably in Williams' favor, the majority support a finding that Williams willingly participated in the criminal activity before his initial exposure to Mirus. As noted, the jury was free to give more weight to Mirus's testimony than to Williams' version. Based on the evidence, the jury reasonably could find Williams was predisposed to engage in the offense of delivery of a controlled substance, reject his entrapment defense, and find him guilty beyond a reasonable doubt.

¶ 45 Affirmed.