2019 IL App (1st) 162694-U

No. 1-16-2694

March 27, 2019

Third 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. 15 CR 18198
	)	
CHERELLE BELL,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs 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 knowingly delivered heroin to an undercover police officer.

¶ 2 Following a jury trial, defendant, Cherelle Bell, was found guilty of delivery of a controlled substance (720 ILCS 570/401(d) (West 2014)), and sentenced to five years' imprisonment. On appeal, defendant argues that the State failed to prove beyond a reasonable doubt that he knowingly delivered a controlled substance because the testimony of a police

officer, the State's primary witness, was uncorroborated. For the reasons set forth below, we affirm.

¶ 3 On October 15, 2015, defendant was arrested and charged with delivery of a controlled substance within 1000 feet of a school (count 1) and delivery of a controlled substance (count 2), stemming from an undercover narcotics investigation that occurred on October 5, 2015. Prior to trial, the State *nolle prosequied* count 1.

¶ 4 At trial, Chicago police officer Larry Rattler testified that on October 5, 2015, he was part of a narcotics investigation team and working as an undercover buy officer near the area of 300 West Lexington Street. Rattler's team that day included Chicago police officer Elias Lacko, a surveillance officer, and Chicago police officers Richard Sanchez and Elstner,[1] enforcement officers. At approximately 1:00 p.m., Rattler, who was wearing plain clothes and driving a covert vehicle, went to 3049 West Lexington and observed several individuals standing outside that address. He drove to one individual, later identified as defendant, and asked him for "one blow," a street term for heroin. Rattler described defendant as having long dreadlocks and wearing a blue jacket and beige pants. After defendant responded in a negative fashion, Rattler asked an unidentified individual, who was standing nearby and wearing a red hooded sweatshirt. This person instructed him to park. Rattler then observed defendant enter a black Pontiac and leave the area. Defendant returned about fifteen minutes later and walked to a nearby vacant lot. Rattler walked to the vacant lot where he saw defendant handing small plastic bags to unidentified individuals. Defendant asked Rattler "how many," and Rattler responded "one blow." Rattler gave defendant $20 in prerecorded funds and, in exchange, defendant tendered to

[1] Officer Elstner's first name does not appear in the record.

him a small, clear Ziploc bag containing a white powder. Rattler returned to his vehicle and left the area. He radioed his team to confirm a positive narcotics transaction and provide them with a description of the two individuals with whom he had interacted.

¶ 5 A few minutes later, Rattler drove by the area where the enforcement officers had detained the two individuals, which included defendant. Rattler confirmed, over the radio, that those were the correct individuals. He then went to the Homan Square Police Department, identified defendant from a photo array, and inventoried the bag he had received from him.

¶ 6 Officer Elias Lacko testified that, on the date in question, he was the surveillance officer on the narcotics team. Lacko, who was equipped with a video camera and zoom lens, was inside a covert vehicle parked on 2958 West Lexington. From his location, he observed Rattler approach defendant and another individual and then park his vehicle. Lacko described defendant as having long dreadlocks and wearing a blue jacket and beige pants. Lacko testified that he was about three-quarters of a block away, and saw defendant get into a black Pontiac and leave the area. Defendant returned about fifteen minutes later and walked to a vacant lot, which was out of Lacko's view. Lacko then saw Rattler get out of his vehicle and walk towards the same lot. Lacko next observed Rattler drive away from the area.

¶ 7 The surveillance video recorded by Lacko, which was entered into evidence, shows Rattler arriving in his covert vehicle, pulling up to the two individuals involved, and eventually parking the vehicle. It also shows defendant get into a black Pontiac, leave the area, and return about fifteen minutes later. It then shows Rattler walking towards the vacant lot mentioned above. Because a school bus obstructed the view of Rattler returning to his vehicle, the video only shows him driving away from the area.

¶ 8 Officer Richard Sanchez testified that he and his partner, Officer Elstner, detained defendant and the other individual after receiving Rattler's description of the individuals involved in the transaction. Sanchez obtained contact information for both individuals. He explained that neither individual was searched or arrested at this time because the narcotics investigation was ongoing. Ten days later, Sanchez arrested defendant based on the transaction between him and Rattler. At the time of arrest, defendant did not have any drugs or prerecorded funds on his person.

¶ 9 Laneen Blount, a forensic scientist with the Illinois State Police Crime Lab, testified that she received the Ziploc bag containing the white powder. The white powder was tested and identified as .549 grams of heroin.

¶ 10 The jury found defendant guilty of delivery of a controlled substance. Defendant moved for a new trial, which the court denied. The trial court then sentenced him to five years' imprisonment. Defendant made a motion to reconsider sentence, which the court denied.

¶ 11 On appeal, defendant contends that the evidence adduced at trial was insufficient to sustain his conviction because the State failed to prove beyond a reasonable doubt that he knowingly delivered heroin to Rattler.

¶ 12 When faced with a challenge to the sufficiency of the evidence, we must determine whether, "after viewing the evidence in a light most favorable to the State, any rational trier of fact could find all the elements of the crime proven beyond a reasonable doubt." *People v. White*, 2017 IL App (1st) 142358 ¶ 14. "All reasonable inferences from the evidence must be drawn in favor of the prosecution." *People v. Hardman*, 2017 IL 121453 ¶ 37. It is the fact finder's role "to assess the credibility of witnesses, weigh and resolve any conflicts in the evidence, and draw

reasonable conclusions from the evidence." *People v. Church*, 2017 IL App (5th) 140575 ¶ 21. For that reason, upon review, we will not substitute our judgment for that of the fact finder. *People v. Simpson*, 2015 IL App (1st) 130303 ¶ 44. However, the great deference given to the trier of fact's determinations is not without limits; the reviewing court may reverse a conviction where the evidence "is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt." *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 13 To sustain a conviction for delivery of a controlled substance, the State only needs to prove that the defendant knowingly delivered any amount of a controlled substance, with the material elements being knowledge and delivery. *People v. Loferski*, 235 Ill. App. 3d 675, 682 (1992). For offenses of this nature, direct proof is rarely obtained. *People v. Scott*, 2018 IL App (2d) 151056 ¶ 23. Instead, circumstantial evidence is often used and can be sufficient to prove an element of the offense beyond a reasonable doubt. *Id.*

¶ 14 After viewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could find that defendant knowingly delivered .549 grams of heroin to Rattler. The record shows that Rattler, who was part of a narcotics investigation team and working as an undercover buy officer, saw defendant standing in a vacant lot and engaging in hand-to-hand transactions with unidentified individuals. Rattler testified that defendant was handing small plastic bags to these individuals. When Rattler approached, defendant asked "how many," and Rattler responded "one blow," a street term for heroin. Defendant then gave him a small clear bag, containing .549 grams of heroin, in exchange for $20. Based on Rattler's testimony, the jury could have reasonably found defendant knowingly delivered a controlled

substance. Stated differently, the evidence in this case is not so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of defendant's guilt.

¶ 15 Regardless, defendant argues that the evidence was insufficient because Rattler's testimony was not corroborated and his encounter with defendant was brief. We initially note that the testimony of a single witness, if positive and credible, is sufficient to convict a defendant. *People v. Gray*, 2017 IL 120958, ¶ 36. Moreover, even a brief encounter is sufficient to support a conviction. See *People v. Barnes*, 364 Ill. App. 3d 888, 894 (2006) (rejecting the defendant's contention that the identification was unreliable because the incident occurred quickly); *People v. Jackson*, 2016 IL App (1st) 133741 ¶ 60 (police officer's identification was reliable when he observed the defendant during a hand-to-hand transaction in broad daylight).

¶ 16 That said, contrary to defendant's assertion there was corroborating evidence. Lacko, the surveillance officer for the narcotics investigation, testified to a substantially similar sequence of events as Rattler. The State also introduced into evidence the surveillance video recorded by Lacko. Additionally, all of the testifying officers gave the same description of defendant as having long dreadlocks, and wearing a blue jacket and beige pants.

¶ 17 We are likewise not persuaded by defendant's argument that the evidence was insufficient because he did not have prerecorded funds on him at the time of his arrest. It is not a requirement for prerecorded funds to be recovered in order for a defendant's conviction to stand. *People v. Trotter*, 293 Ill. App. 3d 617, 619 (1997). This is especially so, where, as here defendant was not arrested on the same day as his transaction with Rattler. Rather, defendant was arrested ten days later because, as explained by Sanchez, the narcotics investigation was ongoing.

¶ 18 In sum, defendant's arguments are, essentially, asking us to reweigh the evidence in his favor and to 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"). A reviewing court 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).

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

¶ 20 Affirmed.