2018 IL App (5th) 140352-U

NO. 5-14-0352

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Massac County.
	)	
v.	)	No. 12-CF-161
	)	
BRADLEY W. DYE,	)	Honorable
	)	Joseph Jackson,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE BARBERIS delivered the judgment of the court.
Justices Welch and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to support the defendant's conviction; mittimus corrected.

¶ 2 Following a bench trial, the defendant, Bradley W. Dye, was convicted of drug-induced homicide (720 ILCS 5/9-3.3(a) (West 2012)) and sentenced to 18 years' imprisonment to be followed by 3 years' mandatory supervised release. On appeal, the defendant asserts that the State failed to present sufficient evidence to sustain the conviction. The defendant alternatively argues that the mittimus should be amended to reflect the proper amount of presentence custody credit. We affirm and amend the mittimus.

¶ 3 BACKGROUND

¶ 4 In December 2012, a grand jury returned an indictment charging the defendant with one count of drug-induced homicide, a Class X felony. See 720 ILCS 5/9-3.3(b) (West 2012). According to the indictment, on or about June 5, 2012, the defendant knowingly delivered heroin to Jordan Sullivan (Jordan), and Jordan thereafter injected a portion of the heroin, causing his death.

¶ 5 In March 2014, the case proceeded to a bench trial where it was generally established that Jordan had been released from the Massac County jail on June 5, 2012; Jordan died from a heroin overdose; and his body was discovered on June 6, 2012. Several witnesses testified to the events leading to and surrounding Jordan's death.

¶ 6 Robin Hunt (Robin), Jordan's mother, testified that she picked Jordan up from the jail at approximately 9 a.m. and took him to a local restaurant for breakfast. After eating breakfast, Robin gave Jordan $20 for pocket money and dropped him off at his father's residence.

¶ 7 George Sullivan (George), Jordan's father, testified to the following. At approximately 11 a.m. on June 5, 2012, George had a brief conversation with Jordan at his home and then returned to work. George usually worked from 7 a.m. to 7 p.m. Jordan was at home when George returned shortly after 7 p.m. George allowed Jordan to borrow his truck that evening because Jordan did not have his own vehicle. Although George could not remember the exact time, he believed that Jordan left shortly after 8 p.m. and

returned 20 to 25 minutes later. Jordan did not leave the house again and had no visitors. When George went to sleep at 10 p.m., Jordan was alone in his bedroom.

¶ 8 On June 6, 2012, George worked his usual shift from 7 a.m. to 7 p.m. Jordan was asleep on the recliner in his bedroom when George left for work that morning. When George returned home shortly after 7 p.m., he found Jordan in his bedroom "slumped all the way over" in front of the recliner, along with a washcloth, spoon, syringe, and two small bags. George removed these items from Jordan's bedroom and placed them on the kitchen table. He then discovered that Jordan was stiff and cold to the touch, which prompted him to call emergency personnel. Shortly after emergency personnel arrived, Jordan was pronounced dead.

¶ 9 Gary McDuffee (McDuffee), Jordan's friend, testified to the following. McDuffee was with Jordan at George's residence for several hours following Jordan's release from jail. McDuffee and Jordan obtained "a bag of weed" that afternoon. Jerez Mayweather (Mayweather) and his girlfriend then stopped by for approximately 30 minutes. McDuffee left shortly after Mayweather.

¶ 10 Later that evening, McDuffee and Jordan exchanged text messages. Jordan first asked McDuffee if he knew where to get "tabs," which McDuffee understood as a request for "Lortabs," a prescription pain medication. McDuffee replied that he could not get "tabs" but could get "ron," which was a slang term McDuffee used for heroin. Jordan initially seemed interested but ignored subsequent text messages and phone calls from McDuffee. McDuffee stated that he did not provide Jordan with heroin that evening because he was unable to make further contact with Jordan. McDuffee also claimed that

he would have contacted the defendant to obtain the heroin for Jordan because the other dealer McDuffee used was out of town.

¶ 11 Hope Eastwood (Eastwood) then testified to the following details. Eastwood was only acquainted with Jordan through Mayweather. At approximately 11 a.m. on June 5, 2012, she drove Mayweather, along with his girlfriend, to George's residence where Jordan and one of his friends were smoking marijuana. Eastwood did not observe any other drugs. Jordan and Mayweather had a brief conversation in Jordan's bedroom. She overheard Jordan ask Mayweather about heroin, but Mayweather, who was a known heroin dealer, informed Jordan that he did not have any heroin at that time. At approximately 3:30 p.m., Mayweather borrowed Eastwood's vehicle and drove to Carbondale, Illinois, to obtain heroin. Mayweather was stopped by a police officer for a traffic violation and subsequently called Eastwood about her insurance card. Mayweather returned with Eastwood's vehicle at approximately 9 p.m. and gave her two bags of heroin. Eastwood admitted that she was addicted to heroin at the time and usually obtained the drug from Mayweather, but she had also obtained heroin from the defendant in the past. Later that evening, Eastwood drove Mayweather to a trailer in Metropolis, but she did not go inside.

¶ 12 Stacie Speith (Speith), a forensic biologist employed by the Illinois State Police Lab, testified to the following. Speith recovered a small "touch" DNA sample from the syringe found in Jordan's bedroom, but the sample did not contain a complete DNA profile. Speith compared the DNA sample from the syringe to those collected from the defendant, Mayweather, McDuffee, Robin, and George. The limited DNA profile did not

match that of McDuffee or the defendant. While Speith could not exclude Jordan's parents or Mayweather as possible contributors of the DNA found on the syringe, she was unable to make a conclusive match without a complete DNA profile.

¶ 13 Jeremy Copley (Copley), the defendant's friend, testified to the following. Copley admitted that he was previously addicted to heroin and had purchased the drug from the defendant on more than 10 occasions. At the time of Jordan's death, Copley and the defendant used heroin together on a regular basis. After Jordan's death, the defendant told Copley that he "got rid of some stuff" to a "boy" who had overdosed. Although Copley was certain that no one else was present when the defendant made the statement, he could not recall where the conversation had taken place. Copley believed that the "stuff" the defendant was referring to was heroin because they were both using heroin when the defendant made the statement. Copley admitted that he did not know who the defendant was referring to at the time he made the statement. However, Copley later learned of Jordan's death and understood that the "boy" the defendant had referenced was Jordan. Copley did not know Jordan personally, but the two had a mutual friend named Megan Story (Story). Story persuaded Copley to inform the police of the defendant's incriminating statement.

¶ 14 Story then testified to the following details. Story and Jordan had been close friends for several years. She admitted that she was addicted to heroin at the time of Jordan's death. Jordan had been addicted to heroin before he was detained in jail. Story and Jordan exchanged text messages soon after he was released. During this exchange, Jordan expressed a desire to "stay clean." Story warned Jordan to avoid the defendant

because he was a known heroin dealer. Story admitted that she had purchased heroin from the defendant in the past. Later that evening, Jordan texted Story and asked if she had "tabs." After Story reminded Jordan of his desire to "stay clean," she informed him that she did not know where to get "tabs."

¶ 15 Story also testified that Copley and the defendant were both at her house using heroin after Jordan's death. While Story was in another room, she overheard the defendant tell Copley that he had gotten "rid of some stuff" to a "boy" who had overdosed. Story also heard the defendant elaborate that he had given the boy one and a half "baggies" of heroin.

¶ 16 The forensic pathologist, who performed Jordan's autopsy, testified to the following. Upon examination, he was able to determine that Jordan had died four to six hours prior to the discovery of his body, possibly having died before George left for work on June 6, 2012. He opined that Jordan could have died in the chair and then later slumped down to the floor. The pathologist noted puncture wounds near Jordan's left elbow. Following the examination, Jordan's blood samples were sent to an Illinois State Police forensic laboratory for testing. After receiving the test results, the pathologist determined that the cause of Jordan's death was pulmonary edema and congestion due to heroin drug toxicity.

¶ 17 Michael Kennedy (Kennedy), a Metropolis Police Department detective, investigated Jordan's death and testified to the following. After Kennedy arrived at George's home on June 6, 2012, he took photographs and collected several evidentiary items, which included Jordan's cell phone. Kennedy photographed Jordan's cell phone

screen and then submitted the phone for forensic examination. After Kennedy received a phone examination report listing text messages and phone calls that were recovered from the phone, he subpoenaed telephone records from cell phone numbers belonging to Jordan, McDuffee, and the defendant. Kennedy then drafted a memorandum detailing the chronological sequence of pertinent text messages and phone calls after he reviewed the records.

¶ 18 Kennedy then expounded upon the following details as outlined in his memorandum. On June 5, 2012, Jordan exchanged the following text messages with McDuffee, Story, and the defendant between 8:24 and 8:44 p.m. First, Jordan sent separate text messages to McDuffee and Story asking about "tabs." After McDuffee responded that he only had "ron," Jordan texted the defendant and asked if he had any "tabs." Shortly thereafter, Story replied by reminding Jordan of his desire to "stay clean," and Jordan replied that he was not seeking the tabs for himself. Story then asked Jordan if he could obtain "the other" and he responded affirmatively. Kennedy believed that Story was referring to heroin. Story then informed Jordan that she may know something about "bisicuts [*sic*]" the following day.

¶ 19 After his exchange with Story, Jordan asked McDuffee if he could "grab a rob?" Kennedy interpreted Jordan's text message as a request for heroin because he believed Jordan had intended to type "ron." McDuffee then replied, "Come get me lets do it bro." Jordan asked McDuffee if he was at home, and McDuffee replied affirmatively. Jordan then informed McDuffee that he could "throw [McDuffee] a lil," and, in the same message, inquired where they could "do it." McDuffee replied that they could "chill" at

his house. Before Jordan replied to McDuffee, the defendant responded, "Nope, just diesel," to Jordan's initial request for "tabs." Kennedy understood that diesel was a slang term used for heroin. Jordan then responded to the defendant, "Ill [*sic*] take one. Still at brads?" Before the defendant replied, Jordan texted McDuffee stating that he would call McDuffee after he returned home from Walgreens.

¶ 20 At 8:45 p.m., the defendant replied that he was "fixing" to be at Brad's but told Jordan to pick him up at "Charlie's" if Jordan was driving. Jordan asked if he should "head there now" and the defendant responded, "Yeah." Jordan then informed the defendant that he was leaving. At 8:55 p.m., Jordan called the defendant and they spoke for 22 seconds. McDuffee then texted Jordan and asked if he was "still comin thru." Jordan did not respond. At 9:01 p.m., the defendant called Jordan and they spoke for 32 seconds.

¶ 21 From 9:47 to 9:50 p.m., Jordan had a brief phone conversation with his former girlfriend. Jordan then received a call from Mayweather and they spoke for 35 seconds. Jordan received another text message from McDuffee, but Jordan did not respond. On June 6, 2012, at 9:17 a.m., Jordan received a text message from his former girlfriend. Jordan did not respond. At 10:03 a.m., Jordan received a phone call from his cousin and the phone records indicated that they spoke for 1 minute and 31 seconds.

¶ 22 The State introduced the phone examination report and telephone records for the phone numbers belonging to Jordan, McDuffee, and the defendant. These records provided, *inter alia*, the telephone number that dialed or received a call, the time the call took place, and the duration of the phone call. The State also introduced Kennedy's

memorandum, which detailed the chronological order of all pertinent text messages and phone calls. After the State rested, the circuit court denied defense counsel's motion for a directed verdict.

¶ 23 The defendant then testified to the following. He had been friends with Jordan for several years and knew that Jordan was addicted to heroin. The defendant admitted that he had supplied Jordan with heroin in the past. The defendant also acknowledged that he and Jordan exchanged text messages and phone calls on June 5, 2012. Although he initially informed Jordan that he could obtain "diesel," which was a slang term the defendant used for heroin, the defendant called Jordan when he was unable to locate any heroin. During the phone call, the defendant informed Jordan that he was unable to obtain heroin and Jordan responded that he had something else lined up. The defendant denied giving Jordan heroin on June 5, 2012. While the defendant claimed that he did not meet Jordan that evening, he admitted that he had met with Jordan that morning. The defendant initially stated that Jordan was driving George's truck that morning but then stated that he was unsure whose truck Jordan was driving. The defendant also denied making the statement to Copley that he had "got rid of some stuff" to a "boy" who had overdosed. The defense then rested.

¶ 24 After the trial concluded, the circuit court found the State had proven beyond a reasonable doubt that the defendant was guilty of drug-induced homicide. Defense counsel filed a motion for judgment *non obstante verdicto*, which was argued on the date of the sentencing hearing. After hearing arguments, the court found there was "overwhelming proof" that the defendant delivered heroin to Jordan causing his death and

denied defense counsel's motion. The court cited the text messages and phone calls that were exchanged between the defendant and Jordan. The court concluded that the phone calls were the "culmination in them getting together." The court also noted that Jordan ignored McDuffee, who had also agreed to supply him with heroin, after his exchange with the defendant. The court inferred that Jordan no longer needed McDuffee because he had obtained heroin from the defendant. The court also found that Copley and Story testified credibly regarding the defendant's incriminating statement.

¶ 25 The defendant was sentenced to 18 years' imprisonment with 3 years' mandatory supervised release. The circuit court granted the defendant presentence credit from April 5, 2013, through June 3, 2014, for a total of 424 days. The defendant filed a timely notice of appeal.

¶ 26 ANALYSIS

¶ 27 On appeal, the defendant asserts that the State's evidence is insufficient to prove him guilty beyond a reasonable doubt. Specifically, the defendant argues that the State's evidence was circumstantial; that he consistently denied delivering heroin to Jordan on June 5, 2012; that Copley and Story's testimonies, which purportedly linked him to the crime, were unreliable and contradictory; and that the evidence equally supported a finding that Mayweather delivered the fatal dose of heroin to Jordan.

¶ 28 When reviewing a defendant's challenge to the sufficiency of the State's evidence, a reviewing court must view the evidence in a light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Cardamone*, 232 Ill. 2d 504, 511 (2009).

"This standard of review does not allow the reviewing court to substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses." *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). The reasonable doubt test is applied in reviewing the sufficiency of the evidence in all criminal cases regardless of whether the defendant receives a bench or jury trial (*People v. Howery*, 178 Ill. 2d 1, 38 (1997)) and regardless of whether the evidence is direct or circumstantial (*People v. Pintos*, 133 Ill. 2d 286, 291 (1989)).

¶ 29 A criminal conviction may be sustained on circumstantial evidence, "provided that such evidence satisfies proof beyond a reasonable doubt of the elements of the crime charged." *People v. Hall*, 194 Ill. 2d 305, 330 (2000). "The trier of fact need not *** be satisfied beyond a reasonable doubt as to each link in the chain of circumstances." *Id.* Rather, "[i]t is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *Id*. A reviewing court will not overturn a conviction based on insufficient evidence unless the proof is so unreasonable, improbable, or unsatisfactory that there exists a reasonable doubt as to the defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 30 To sustain the defendant's conviction for drug-induced homicide in the present case, the State was required to prove beyond a reasonable doubt that the defendant unlawfully delivered heroin to Jordan, and that Jordan's death was caused by the injection of any amount of that heroin. See 720 ILCS 5/9-3.3(a) (West 2012). To establish that the defendant's delivery was unlawful, the State was required to prove that the defendant knowingly delivered heroin to Jordan. See 720 ILCS 570/401(a) (West 2012).

¶ 31 Here, when viewed in the light most favorable to the State, the evidence, although largely circumstantial, was sufficient to prove the defendant guilty of drug-induced homicide beyond a reasonable doubt. The State introduced evidence indicating that the defendant agreed to provide Jordan with heroin during an exchange of text messages on June 5, 2012. In particular, the defendant informed Jordan that he had access to "diesel" and Jordan replied that he would "take" some of the "diesel." Both Kennedy and the defendant testified that "diesel" was a slang term used for heroin. Considering this evidence in a light most favorable to the State, it would be reasonable for the circuit court to conclude that the defendant agreed to provide Jordan with heroin.

¶ 32 The State's evidence also showed that the defendant then directed Jordan to leave at a certain time and meet him at a specific location. George testified that Jordan borrowed his truck and left home for approximately 20 to 25 minutes. After Jordan and the defendant exchanged two brief phone calls, Jordan sent no further text messages seeking drugs. Jordan also ignored subsequent text messages and phone calls from McDuffee, who had also agreed to provide him with heroin. Considering this evidence in a light most favorable to the State, it would be reasonable for the circuit court to infer that the defendant delivered heroin to Jordan that evening.

¶ 33 It was undisputed that Jordan was found dead in his bedroom, along with a syringe, the following day. It was also undisputed that Jordan died from a heroin overdose. Jordan's cell phone records indicated no further outgoing text messages seeking drugs. Considering this evidence in a light most favorable to the State, it would be

reasonable for the circuit court to infer that Jordan injected the heroin that was delivered by the defendant causing his death.

¶ 34 In addition, Copley and Story both testified that the defendant admitted he had gotten "rid of some stuff" to "a boy" who had overdosed. While the defendant did not specifically refer to Jordan or heroin, he made the statement shortly after Jordan's heroin overdose. In viewing the testimony in a light most favorable to the State, it would be reasonable for the circuit court to infer that the defendant made this incriminating statement with regard to Jordan's heroin overdose.

¶ 35 Nevertheless, the defendant claims that the State's evidence was insufficient where he consistently denied delivering heroin to Jordan; Copley and Story's testimonies were contradictory and unreliable; and the evidence equally supported a finding that Mayweather delivered the fatal dose of heroin to Jordan. However, the defendant's remaining arguments essentially ask this court to reanalyze the evidence and substitute our judgment for that of the circuit court.

¶ 36 First, the defendant challenges the circuit court's credibility determinations arguing that the court should have credited his trial testimony and rejected Copley and Story's testimonies. However, we will not substitute our judgment for that of the court, sitting as the trier of fact, "on questions involving the weight of the evidence or the credibility of the witnesses" in reviewing a challenge to the sufficiency of the evidence. *Jackson*, 232 Ill. 2d at 280-81. Here, the court was presented with conflicting testimony. Copley and Story testified regarding the defendant's statement that he had gotten "rid of some stuff" to a "boy" who had overdosed, while the defendant denied making the statement and

testified that he did not deliver heroin to Jordan. The court was made aware of the witnesses' drug use, criminal histories, and any discrepancies in their testimonies. After weighing the evidence, the court chose to credit Copley and Story's testimonies over that of the defendant. Although Copley and Story testified inconsistently regarding the circumstances of the conversation, their testimony regarding the substance of the statement was consistent and merely corroborated the State's circumstantial evidence. Thus, we see no basis for rejecting the court's credibility determinations.

¶ 37 Second, the defendant attempts to reanalyze the evidence arguing that the circuit court could have drawn other inferences from the evidence which would have equally implicated Mayweather. Specifically, the defendant points to Eastwood's testimony arguing that Mayweather possessed heroin when he called Jordan later that evening. The defendant also asserts that Mayweather could not be excluded as the contributor of the DNA found on the syringe in Jordan's bedroom. While we must consider all of the evidence, "a point-by-point discussion of every piece of evidence as well as every possible inference that could be drawn therefrom" is improper and "would effectively amount to a retrial on appeal." *Wheeler*, 226 Ill. 2d at 117. Here, the court chose to credit the State's theory of the case after it was presented with this evidence during the course of the bench trial. Although other inferences and conclusions could have been drawn from the evidence, we cannot say that those drawn by the court were unreasonable.

¶ 38 Therefore, after considering all of the evidence in a light most favorable to the State, we conclude that the State's evidence, taken together, reasonably supports a finding that the defendant was guilty of drug-induced homicide beyond a reasonable doubt.

¶ 39 The defendant alternatively contends, and the State concedes, that the mittimus should be corrected to reflect an additional 114 days spent in presentence custody for a total of 538 days. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), this court has the authority to order the clerk to correct the mittimus without remand. See *People v. Flores*, 381 Ill. App. 3d 782, 789 (2008). Accordingly, we direct the clerk of the circuit court to correct the mittimus to reflect that the defendant served 538 days of presentence custody.

¶ 40 CONCLUSION

¶ 41 We affirm the order of the circuit court of Massac County finding the defendant guilty of drug-induced homicide, and order the clerk of the court to correct the mittimus in accordance with this order.

¶ 42 Affirmed; mittimus corrected.