

No. 2—10—0526  
Order filed April 27, 2011

**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  
SECOND DISTRICT

---

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09—CF—2227
	)	
ARTHUR J. BREWSTER,	)	Honorable
	)	Blanche Hill Fawell,
Defendant-Appellant.	)	Judge, Presiding.

---

JUSTICE BOWMAN delivered the judgment of the court.  
Justices McLaren and Burke concurred in the judgment.

**ORDER**

*Held:* The State proved defendant guilty beyond a reasonable doubt of unlawful possession of a controlled substance; although the State's witness's testimony had some arguable weaknesses, it was not so weak that the trial court was required to discredit it.

Following a bench trial in the circuit court of Du Page County, defendant, Arthur J. Brewster, was found guilty of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2008)) and was sentenced to two years' probation. On appeal, defendant argues that the State failed to prove his guilt beyond a reasonable doubt. We affirm.

At trial, Ashley Gould testified that, on September 6, 2009, she attended a party at a friend's apartment. At about 2 a.m., she was in the bathroom putting on makeup. She testified that she did not need a mirror to put on the particular type of makeup she was using. While in the bathroom, she heard a knock on the door, and although she announced that the bathroom was in use, defendant walked in. According to Gould, defendant was "fidgeting with his pockets." Defendant said, "the cops are here." Gould testified that she was "freaked out," but she acknowledged on cross-examination that she continued to apply makeup. While defendant was fidgeting with his pockets, Gould saw a plastic baggie fall out of defendant's pocket. She picked it up out of curiosity and noticed that it contained white powder. She suspected that the baggie contained drugs. Defendant told her to "toss it" or "get rid of it," and she threw the baggie into the cabinet under the sink. At that point the police were knocking on the bathroom door. Gould exited the bathroom and sat on the bed in the adjoining bedroom. A police officer emerged from the bathroom carrying the baggie and placed it on a table in the bedroom. At one point, Gould walked over to the table and picked up the baggie. She testified, "I was just curious again. I mean, it was stupid." She told the officer that the baggie wasn't hers and that she had picked it up because she had never seen cocaine before and wanted to look at it.

Naperville police officer David Cribaro testified that, on September 6, 2009, at about 2 a.m., he responded to a complaint of a loud party taking place at an apartment. When he arrived, he saw three or four people, including defendant (whom he recognized from prior encounters), on the balcony. Cribaro entered the apartment and went into a bedroom with one of the tenants. He noticed that the bathroom door was closed. He knocked on the door for about a minute and asked whoever was in the bathroom to come out. Defendant and Gould emerged and Cribaro had them sit on either

the floor or the bed. Cribaro went into the bathroom and found a baggie containing white powder in the cabinet under the sink. The tenant, who was still in the bedroom, started to become ill, and Cribaro took him into the bathroom. When Cribaro walked back into the bedroom, he saw Gould walking toward the baggie, which Cribaro had placed on a dresser or a counter. Cribaro stopped Gould before she made contact with the baggie. He asked her why she walking toward the baggie. She replied that she did not know what it was.

The parties stipulated that a laboratory analysis of the substance in the baggie established, to a reasonable degree of scientific certainty, that the substance contained cocaine. Defendant did not testify or call any witnesses.

A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). When reviewing a challenge to 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.) *Id.* at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

Defendant does not dispute that Gould's testimony, *if true*, was sufficient to establish that he was in possession of the substance recovered from the bathroom. Defendant argues, however, that Gould's testimony was not credible. He suggests that from the standpoint of what the police observed at the party—two individuals in a bathroom where a package containing cocaine was found—it is just as likely that Gould was guilty of possession as it is that defendant was. Thus, according to defendant, Gould had a motive to pin the crime on him. Defendant further argues that

Gould's testimony that she was able to see the package fall from defendant's pocket while she was applying makeup, that she picked the package up from the bathroom floor out of curiosity, and that she handled the package a second time after the police had retrieved it from the bathroom is so contrary to common experience that no reasonable trier of fact could find defendant guilty beyond a reasonable doubt based on Gould's testimony.

The trier of fact is responsible for resolving conflicts in the testimony, weighing the evidence, and determining what inferences to draw, and a reviewing court ordinarily will not substitute its judgment on these matters for that of the trier of fact. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000). Although credibility determinations are not immune from review, they generally will not be disturbed on appeal unless no rational trier of fact could have given credence to the challenged testimony. See, e.g., *People v. Smith*, 185 Ill. 2d 532, 545 (1999). *Smith*, and another Illinois Supreme Court decision, *People v. Schott*, 145 Ill. 2d 188 (1991), shed light on the circumstances under which testimony must be discredited. In *Smith*, our supreme court held that a murder conviction could not be sustained on the basis of the identification testimony of a witness who came forward days after the incident; had a motive to testify falsely to protect her sister and her sister's boyfriend, who were suspected of involvement in the shooting; was impeached with prior inconsistent statements regarding the extent of her drug habit and whether she planned to use drugs with her sister on the evening of the shooting; and offered an account of the crime that was materially different from accounts given by the State's other occurrence witnesses. In *Schott*, our supreme court held that the complaining witness's testimony was too inconsistent and contradictory to sustain her stepfather's conviction of indecent liberties with a child where the witness had previously falsely accused a family member of sexual abuse; she admitted that she lied frequently;

she had told several police officers and a child-welfare specialist that she had fabricated the allegations against her stepfather; and she had given inconsistent testimony in a related juvenile-court proceeding about where and when the offense took place, how often her stepfather had molested her, and other incidental matters.

In contrast, in *People v. Cunningham*, 212 Ill. 2d 274 (2004), our supreme court upheld a conviction of a drug offense, even though the court concluded that aspects of the only occurrence witness's testimony were "subject to question." *Id.* at 280. The witness, Chicago police officer David Pfest, testified that while he was working undercover a citizen flagged him down and informed him that someone nicknamed "Gumby" was selling drugs. Although this encounter occurred outdoors just after midnight in mid-December, Pfest testified that the citizen was dressed in jeans and a T-shirt. Pfest testified that the citizen provided a telephone number at which Gumby could be reached. Pfest called the number and spoke with a man who agreed to sell cocaine to him. They arranged to meet near a restaurant, and the man Pfest spoke with indicated that he would honk his vehicle's horn when he arrived. Fifteen minutes later, Pfest saw a station wagon pull up and the driver honked the horn. Pfest took his radio from his pocket and alerted fellow officers that the suspect had arrived. He then approached the station wagon and observed the defendant—whom he had seen on prior occasions—in the driver's seat. The defendant was holding a baggie containing a yellowish white substance. Appearing to recognize Pfest, the defendant threw the baggie to the floor of the car. Pfest arrested the defendant, and another officer recovered the baggie from the car. It was stipulated that the substance in the baggie contained cocaine. Assessing the plausibility of Pfest's testimony, the *Cunningham* court found no reasonable explanation for why the citizen who approached Pfest was dressed in a T-shirt and jeans after midnight in mid-December or how he knew

that Pfest was a police officer. *Id.* at 281. The *Cunningham* court also found no reasonable explanation why a veteran police officer would use his handheld radio “in sight of a suspected drug dealer during an undercover drug buy.” *Id.* at 281. Nonetheless, the *Cunningham* court concluded that “there is nothing in the record showing that the only reasonable inference is that the questionable parts of Pfest’s testimony make the whole unworthy of belief.” *Id.* at 284.

In our view, Pfest’s testimony in *Cunningham* was considerably more problematic than Gould’s testimony in this case. First, contrary to defendant’s argument, we find nothing implausible about Gould’s testimony that she noticed a package fall from defendant’s pocket while she was applying makeup. She testified that she was capable of applying the makeup without the use of a mirror. Even if she was looking in a mirror, she might very well have been able to see defendant’s reflection in the background when he dropped the baggie.

Defendant also challenges the credibility of Gould’s testimony that she handled the package of cocaine both inside the bathroom and after it had been retrieved by the police. She stated that she did so out of curiosity. Inasmuch as Gould acknowledged that she suspected that the package contained an illegal substance, it was certainly inadvisable for her to handle it. It hardly follows, however, that any rational trier of fact would have concluded that Gould’s testimony was false on these points, let alone that her testimony was unworthy of belief in its entirety. Some of Gould’s conduct (as she detailed it) might seem slightly odd, but it is by no means outside the realm of human experience, which teaches that people in stressful situations often act impulsively and exercise poor judgment. The possibility that the cocaine belonged to Gould—and that she therefore had a motive to testify falsely—was a matter for the trier of fact to consider in evaluating her credibility, but does not, in itself, give rise to a reasonable doubt. Gould’s testimony was not inconsistent or

contradictory, she was not impeached with prior inconsistent statements, she is not an admitted liar, and her testimony did not conflict on any material point with the testimony of the State's other occurrence witness. Under the circumstances, we cannot say that no rational trier of fact could have given credence to her testimony.

For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

Affirmed.