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2011 IL App (3d) 100322-U

Order filed December 14, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois
Plaintiff-Appellee,)	
v.)	Appeal No. 3-10-0322
ASHLEY MOORE,)	Circuit No. 09-CF-234
Defendant-Appellant.)	Honorable Clark E. Erickson, Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* Upon review of conviction for unlawful delivery of controlled substance, appellate court found that informant's testimony and other evidence presented at jury trial was sufficient to prove defendant guilty beyond a reasonable doubt. Therefore, appellate court affirmed defendant's conviction and sentence.

¶ 2 After a jury trial, defendant, Ashley Moore, was found guilty of unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (West 2008)) and sentenced to 13 years' imprisonment. Defendant appeals, arguing that the evidence was insufficient to prove him guilty beyond a reasonable doubt. We affirm the trial court's judgment.

¶ 3 **FACTS**

¶ 4 The charge in the present case arose out of a controlled purchase of cocaine by an informant working with agents of the Kankakee Area Metropolitan Enforcement Group (KAMEG), a police agency that specialized in drug crimes. At defendant's trial, there was no dispute that the target subject of the controlled purchase had sold 1.2 grams of cocaine to the informant. The only issue was identification—whether defendant was the target subject.

¶ 5 The evidence presented at trial established that the informant was a drug addict at the time of the controlled purchase and had worked with KAMEG agents on numerous occasions. For his work, the informant was paid \$100 per transaction and also had two traffic charges dismissed, for which he could have been subject to a fine of about \$1,000. The informant had worked at a furniture store and had seen the target subject before because the target subject had come into the store and had talked to another worker and the informant about selling drugs to them. According to the informant, the target subject had given the informant his cell phone number for that purpose. The informant described the target subject to KAMEG agents and told agents that the target subject's name was "Ashley." Based on the description given by the informant, KAMEG agents believed the target subject to be defendant, Ashley Moore. KAMEG agents showed a picture of defendant to the informant, and the informant positively identified the picture as the subject in question.

¶ 6 On April 16, 2009, with KAMEG agents present, the informant contacted the target subject at the cell phone number he had been given and requested to purchase an "eight ball" of crack cocaine for \$100. KAMEG agents were able to see the cell phone number that the informant had called and could hear the informant's side of the conversation but could not hear the target subject talking. The purchase was set up for later that evening at a specified location. In preparation for the purchase, the informant was searched by agents for contraband or currency and nothing was

found. The informant was given \$100 in prerecorded funds and proceeded to the specified location with the agents.

¶ 7 At about 11:45 p.m., the informant stood on the sidewalk at the specified location, the parking lot of a tavern, and waited for the target subject to arrive. KAMEG agents were in surveillance positions in various locations near the specified area. Within a short time, the target subject pulled up in a black Suburban sports utility vehicle (SUV). The informant got into the SUV, and the target subject drove around the block. The target subject and the informant were the only ones in the SUV. As they drove around, the target subject gave the informant a quantity of suspected cocaine in exchange for the \$100 of prerecorded funds. One of the agents tried to film or photograph the transaction but was unable to do so because of obstructions. After the SUV pulled into a nearby parking lot, the informant got out and walked away, and the SUV drove off. The informant immediately turned over to KAMEG agents a plastic bag containing 10 smaller baggies of suspected cocaine. The informant was again searched for contraband or currency and nothing was found. At the trial, the informant identified defendant as the person who was driving the SUV during the transaction and who sold him the cocaine.

¶ 8 The KAMEG agent who was initially trying to film the transaction was about 75 feet away when the informant got out of the SUV. That agent was familiar with defendant from prior contacts and testified at defendant's trial that as the dome light of the SUV came on, he could see that defendant was the driver of the SUV, even though the SUV's headlights were facing towards him. That agent acknowledged, however, that he did not prepare a police report as to the matter and that his identification of defendant was not put into the report that was prepared by the main case agent.

¶ 9 The target subject was not apprehended immediately after the transaction. Although

KAMEG agents followed the target subject in an attempt to make an arrest, the target subject pulled the SUV over, got out, and ran away on foot. KAMEG agents searched the area but were not able to locate the target subject. The SUV was registered to a "Terrence Moore," who, according to the testimony of one of the KAMEG agents, did not look like defendant.

¶ 10 About 10 days later, defendant was arrested at the furniture store where the informant worked. Defendant did not resist arrest or try to run away. Defendant did not have any drugs in his possession at that time, and the prerecorded currency was never found. At the time of arrest, a cell phone was found on defendant's person. KAMEG agents called the number that the informant had used to contact the target subject, and defendant's cell phone rang.

¶ 11 At defendant's jury trial, after all of the evidence had been presented and closing argument had been made, the jury was instructed on the law. One of the instructions that the jury received was that it should view the testimony of a narcotics addict with close scrutiny and great caution. After completing deliberations, the jury found defendant guilty of unlawful delivery of a controlled substance. Defendant filed motions for new trial, which were subsequently denied. After a sentencing hearing, defendant was sentenced to 13 years' imprisonment. This appeal followed.

¶ 12 ANALYSIS

¶ 13 On appeal, defendant argues that he was not proven guilty beyond a reasonable doubt of unlawful delivery of a controlled substance. Defendant asserts that the only direct witness to the transaction was a paid informant-drug addict, a person whose testimony was highly suspect. Defendant asserts further that the informant's testimony was not corroborated by other evidence and that the testimony of the agent who allegedly saw defendant driving the SUV was incredible and not worthy of belief in that the identification was made at night from 75 feet away with the SUV's

headlights in the agent's eyes and with only the dome light of the SUV illuminating the driver. Based on the claimed lack of evidence, defendant asks that we reverse his conviction and sentence outright.

¶ 14 Pursuant to the *Collins* standard (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)), a reviewing court faced with a challenge to the sufficiency of the evidence must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). The reviewing court will not retry the defendant. *People v. Jimerson*, 127 Ill. 2d 12, 43 (1989). Determinations of witness credibility, the weight to be given testimony, and the reasonable inferences to be drawn from the evidence are responsibilities of the trier of fact, not the reviewing court. See *Jimerson*, 127 Ill. 2d at 43. Thus, the *Collins* standard of review gives " 'full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.' " *Jackson*, 232 Ill. 2d at 281 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This same standard of review is applied by the reviewing court regardless of whether the evidence is direct or circumstantial, or whether defendant received a bench or a jury trial, and circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. *Jackson*, 232 Ill. 2d at 281; *People v. Kotlarz*, 193 Ill. 2d 272, 298 (2000). In applying the *Collins* standard of review, a reviewing court will not reverse a conviction unless the evidence is so improbable or unsatisfactory that it leaves a reasonable doubt of the defendant's guilt. *Jackson*, 232 Ill. 2d at 281; *People v. Flowers*, 306 Ill. App. 3d 259, 266 (1999).

¶ 15 The fact that a witness is both an informant and a drug addict has a definite bearing on that

witness's credibility. See *People v. Bazemore*, 25 Ill. 2d 74, 77 (1962); *People v. Hill*, 83 Ill. App. 2d 116, 119 (1967). The testimony of the informant-addict witness, like the testimony of an accomplice witness, must be considered with caution and carefully scrutinized. *Hill*, 83 Ill. App. 2d at 119. Such testimony, however, is not automatically rendered unworthy of belief. *Hill*, 83 Ill. App. 2d at 119-20. Rather, the evidence supporting the informant-addict's testimony must be considered to determine if it is believable, in light of all of the surrounding circumstances. *Hill*, 83 Ill. App. 2d at 120. The testimony of an informant-addict may be sufficient to support a conviction if it is corroborated by other testimony and believable in light of circumstantial evidence or is otherwise credible under the surrounding circumstances. *People v. Hines*, 30 Ill. 2d 152, 157 (1964); *People v. Lopez*, 187 Ill. App. 3d 999, 1005 (1989). "Convictions have been affirmed in many cases where the exchange was not witnessed if attendant circumstances lent credence to the informer's testimony. [Citations]." *Hill*, 83 Ill. App. 2d at 122. Reasonable doubt does not necessarily arise merely because the money used in the exchange was not recovered or because the defendant was not arrested immediately after the transaction took place. *Lopez*, 187 Ill. App. 3d at 1005.

¶ 16 In the present case, when viewed under the *Collins* standard, the evidence was sufficient to prove identity—that defendant was the person who had committed the offense. The informant testified that defendant was the driver of the SUV and the person who had sold him the cocaine. The informant's testimony was corroborated by the surrounding circumstances: the informant had previously identified the target subject, whom he knew as Ashley, in a photograph that had been produced by KAMEG agents; the transaction itself was tightly controlled and monitored; and the informant was kept under close surveillance during the transaction. Thus, unlike the cases cited by

defendant, the circumstances of the controlled purchase in the present case lent credibility to the testimony of the informant. Compare *Bazemore*, 25 Ill. 2d at 76-78 (the supreme court held that the evidence presented was not sufficient to convict the defendant of the unlawful sale of narcotic drugs because the only direct witness to the sale was an informant-drug addict and the informant-addict's testimony was not sufficiently corroborated in that the officer involved in the controlled purchase did not keep the informant-addict under surveillance when the purchase took place, the defendant was not arrested until about two months after the purchase, and no drugs or any of the prerecorded money were found on the defendant at the time of the arrest), and *People v. Reddick*, 107 Ill. App. 2d 123, 129-31 (1969) (the appellate court held that the evidence presented was not sufficient to convict the defendant of the sale of a narcotic drug because the only direct witness to the sale was an informant-drug addict and the testimony of the drug addict was not sufficiently corroborated because the officer monitoring the controlled purchase gave inconsistent statements about what had occurred; that conclusion was reached despite the fact that the informant-addict was kept under close surveillance during the transaction, the defendant was immediately arrested after the transaction, and a female subject with the defendant and one of the workers in the establishment had some of the prerecorded currency in their possession), with *Hines*, 30 Ill. 2d at 154-58 (the supreme court held that the evidence presented was sufficient to convict the defendant of the sale and dispensing of narcotics when the only direct witness to the sale was an informant-drug addict, the informant-addict was kept under close surveillance during the controlled purchase, the defendant was arrested immediately after the transaction, and some of the prerecorded funds used to make the purchase were found on defendant's person at the time of the arrest, despite the fact that others were present at the time and were possibly involved in the transaction), *Lopez*, 187 Ill. App. 3d at 1001-06 (the

appellate court held that the evidence presented was sufficient to convict the defendant of delivery of a controlled substance when the only direct witness to the sale was an informant-drug addict and the informant-addict was kept under close surveillance during the controlled purchase, despite the fact that defendant was not arrested immediately after the transaction and the prerecorded money used for the transaction was never recovered), and *Hill*, 83 Ill. App. 2d at 118-23 (the appellate court held that the evidence presented was sufficient to convict the defendant of unlawful sale of a narcotic drug when the only direct witness to the sale was an informant-drug addict; the informant-addict was kept under close surveillance during the controlled purchase; the inspector saw the informer, an acquaintance of the informer and the defendant together prior to the purchase; and the inspector heard the informant talking to the defendant about buying narcotics; despite the fact that the acquaintance was present during the transaction, the defendant was not arrested until several weeks later, and none of the prerecorded funds were recovered). Moreover, the jury in the instant case was specifically instructed to consider the testimony of a narcotics addict, such as the informant in the instant case, with great caution and careful scrutiny.

¶ 17 In addition to the informant's identification of defendant as the person who had committed the offense, the jury also had before it the testimony of one of the agents who was monitoring the transaction—that he was familiar with defendant and that he recognized defendant as the driver of the SUV on the night in question. Although defendant on appeal attacks the credibility of that agent's identification because the agent made the identification at night from about 75 feet away with the SUV's headlights shining at him and with only the dome light of the SUV illuminating the driver, the circumstances of the identification were presented to the jury, and it was for the jury to decide if the testimony of the agent was credible. See *Jimerson*, 127 Ill. 2d at 43.

¶ 18 For the foregoing reasons, we affirm the judgment of the circuit court of Kankakee County.

¶ 19 Affirmed.