

NOTICE
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NO. 4-09-0956

Order Filed 4/7/11

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
DEVIN T. BROWN,)	No. 09CF75
Defendant-Appellant.)	
)	Honorable
)	James E. Souk,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Appleton concur in the judgment.

ORDER

Held: Where the State's evidence was sufficient to find defendant guilty beyond a reasonable doubt, the trial court's judgment was affirmed.

In June 2009, a jury found defendant, Devin T. Brown, guilty of unlawful delivery of a controlled substance and unlawful delivery of a controlled substance within 1,000 feet of a church. In September 2009, the trial court sentenced him to 12 years in prison on the latter conviction.

On appeal, defendant argues the State failed to prove him guilty beyond a reasonable doubt. We affirm.

I. BACKGROUND

In February 2009, a grand jury indicted defendant on four drug offenses, including unlawful delivery of a controlled substance within 1,000 feet of public housing (count I) (720 ILCS

570/401(c)(1), 407(b)(1) (West 2008)), unlawful delivery of a controlled substance (count II) (720 ILCS 570/401(c)(2) (West 2008)), unlawful delivery of a controlled substance within 1,000 feet of a church (count III) (720 ILCS 570/401(c)(1), 407(b)(1) (West 2008)), and unlawful delivery of a controlled substance (count IV) (720 ILCS 570/401(c)(2) (West 2008)). Counts I and II concerned a delivery that allegedly occurred on November 20, 2008, while counts III and IV involved a delivery on December 2, 2008. Defendant pleaded not guilty.

In June 2009, defendant's jury trial commenced. The State moved to dismiss count I, and the case proceeded on the remaining three counts. Demetrius Pearson testified he had seven prior convictions for controlled-substance offenses in Cook County between 1996 and 2005. Three of those convictions involved unlawful delivery. After moving from Chicago to Bloomington, Pearson began selling drugs in December 2006. He was arrested for making a drug sale to an undercover informant in November 2008. Although the police did not promise any specific benefit concerning his potential charges, he agreed to work with officers in hopes of a lesser sentence.

On November 20, 2008, Pearson called "D," identified as defendant, to purchase cocaine. Pearson picked up defendant and drove him to an apartment. Defendant went inside and returned to the vehicle. Pearson and defendant then returned to defendant's

house to complete the transaction. Pearson paid \$140 for the cocaine and returned to the police station.

On December 2, 2008, Pearson called defendant from the police station, and defendant told him to meet at the BP gas station. Once at the station, defendant got into Pearson's car. Pearson stated he had the money in his hand, while defendant had the drugs in his hands. Pearson drove around, but he could not remember whether the transaction was completed in the parking lot or around the corner. He said there was no "hand-to-hand" delivery as defendant picked up the money and set the drugs down on the console. Pearson stopped the car shortly thereafter and let defendant out. Pearson then returned to the police station. Pearson testified he was searched before and after the drug transactions on both occasions.

On cross-examination, Pearson testified he did not use cocaine after agreeing to work with the police but he smoked marijuana once or twice a week. Prior to the transactions, an officer conducted a strip search to make sure he was not concealing contraband.

Bloomington police officer Kiel Nowers testified he conducted surveillance during the two drug buys. At the December 2 buy, Nowers noticed a man walking in the area and stated he looked like a drug dealer because he was loitering and looking around. The man, identified as defendant, entered the car of the

confidential informant.

Bloomington police officer Todd Walcott testified he took part in the surveillance of both transactions. On the December 2 buy, defendant entered the informant's vehicle. Walcott was not able to see an exchange from his vantage point.

Bloomington police detective Todd McClusky testified Pearson agreed to work with the police after being arrested. McClusky made no promises to Pearson regarding his criminal cases. On November 20, 2008, Pearson called defendant to set up a buy. Prior to the transaction, McClusky searched Pearson "very thoroughly," as well as his car. McClusky also photocopied the money given to Pearson to buy the drugs. McClusky followed Pearson, who picked up an individual. Pearson drove the individual to an apartment complex, and the man went inside. Once he returned, Pearson drove back to where he initially picked the man up. Once back at the police station, Detective McClusky retrieved approximately 1.5 grams of cocaine from Pearson and then searched him and the car.

On December 2, 2008, Detective McClusky searched Pearson and his car and had him call "D" to set up a purchase of cocaine. Pearson drove to a gas station. An individual entered Pearson's car, and they left the parking lot. The car stopped shortly thereafter, and the passenger exited. McClusky and Pearson then met back at the police station. McClusky retrieved

cocaine from Pearson and then searched him and the car. McClusky testified there were two churches within 1,000 feet of the gas station.

The parties stipulated the bag of cocaine Pearson provided to Detective McClusky on November 20, 2008, weighed 1.2 grams and the cocaine recovered on December 2, 2008, weighed 1.1 grams.

Defendant chose not to testify. Following closing arguments, the jury found defendant guilty on the two counts pertaining to December 2, 2008, and not guilty on the delivery count pertaining to November 20, 2008.

In July 2009, defendant filed a motion for a new trial, which the trial court denied. In September 2009, the court sentenced defendant to 12 years in prison on the unlawful-delivery-of-a-controlled-substance-within-1,000-feet-of-a-church conviction. The court found the remaining unlawful-delivery conviction merged into the greater offense. In October 2009, defendant filed a motion to reconsider sentence, which the court denied. This appeal followed.

II. ANALYSIS

Defendant argues his conviction must be vacated because the State's evidence rested on the uncorroborated claim of a drug-dealing informant who had no credibility and acted solely to avoid criminal liability for his crimes. We disagree.

"When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when 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." *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006). The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009). "[A] reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable[,] or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *People v. Rowell*, 229 Ill. 2d 82, 98, 890 N.E.2d 487, 496-97 (2008).

The "testimony by an informant who himself abuses unlawful substances and who participates in an undercover operation to minimize punishment for his own illegal activity should be closely scrutinized." *People v. Anders*, 228 Ill. App. 3d 456, 464, 592 N.E.2d 652, 657 (1992). The supreme court has held that "where a witness has hopes of reward from the prosecution, his testimony should not be accepted unless it carries within it an 'absolute conviction of its truth.'" *People v. Ash*, 102 Ill. 2d 485, 493, 468 N.E.2d 1153, 1156 (1984) (quoting *People v. Wil-*

liams, 65 Ill. 2d 258, 267, 357 N.E.2d 525, 530 (1976)).

Our supreme court has also noted "it is well settled that the 'credibility of a government informant, as with any other witness, is a question for the jury.'" *People v. Evans*, 209 Ill. 2d 194, 213, 808 N.E.2d 939, 949 (2004) (quoting *People v. Manning*, 182 Ill. 2d 193, 210, 695 N.E.2d 423, 431 (1998)). "The established safeguards of the Anglo-American legal system leave the veracity of a witness to be tested by cross-examination, and the credibility of his testimony to be determined by a properly instructed jury.'" *Evans*, 209 Ill. 2d at 213, 808 N.E.2d at 950 (quoting *Hoffa v. United States*, 385 U.S. 293, 311 (1966)).

In the case *sub judice*, defendant does not dispute he got into Pearson's car at the gas station. Further, defendant does not dispute the substance Pearson gave to Detective McClusky on December 2, 2008, was 1.1 grams of cocaine. Defendant, however, contends the State failed to prove he delivered the cocaine to Pearson.

Pearson testified he called defendant from the police station and was told to meet him at the gas station. Defendant entered the car and they completed the transaction. Pearson then returned to the police station and handed over the cocaine.

Officers Nowers and Walcott testified they saw defendant enter Pearson's car. Detective McClusky testified he

searched Pearson and his car prior to the meeting with defendant to check for contraband. When McClusky and Pearson met back at the police station after the transaction, McClusky retrieved the cocaine.

The State's evidence was more than sufficient to allow the jury to conclude defendant delivered the drugs to Pearson on December 2, 2008. Detective McClusky stated he searched Pearson and his car prior to the meeting with defendant and found no contraband. Officers conducting surveillance of the meeting saw defendant enter Pearson's car and leave shortly thereafter. Under the watchful eyes of the officers, Pearson drove back to the police station, where McClusky retrieved the cocaine from Pearson. A rational jury could find the officers' testimony corroborated Pearson's version of the transaction with defendant and thereby conclude the cocaine in Pearson's possession upon his return to the police station could only have come from defendant.

Defendant argues Pearson's criminal history, his hope for leniency, his marijuana use, his inconsistent testimony, and the lack of an anal cavity search created a reasonable doubt of his guilt. However, these matters were fully laid out for the jury, and it was the jury's responsibility to judge the credibility of the witnesses, to resolve conflicts in the evidence, and draw reasonable inferences from that evidence. Considering the evidence in the light most favorable to the prosecution, a

rational jury could have found the essential elements of the charged offense beyond a reasonable doubt.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

Affirmed.