

No. 1-10-2321

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 18644
)	
JERMAINE REEVES,)	Honorable
)	Raymond Myles,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Robert E. Gordon and Justice Garcia concurred in the judgment.

ORDER

- ¶ 1 *Held:* State's evidence proved defendant guilty of possession of a controlled substance beyond a reasonable doubt. Defendant was not deprived of a fair trial by the introduction of hearsay evidence of a description matching his. Defense counsel's trial strategy of introducing defendant's 19-year-old conviction did not deprive defendant of a fair trial.
- ¶ 2 In a bench trial, defendant Jermaine Reeves was convicted of possession of a controlled substance and was sentenced to 24 months in prison. On appeal, defendant contends that his guilt was not established beyond a reasonable doubt; that he was prejudiced by the introduction

of hearsay evidence of his description; and that his right to a fair trial was violated by his own counsel's introduction of his 19-year-old conviction.

¶ 3 At trial, Chicago police officer Lipsey testified that on September 14, 2009, she was working in civilian clothes in an undercover police vehicle along with her partner, Officer Cignar. In a separate undercover police car, also in civilian clothes, were Officers Staunton, Curry, and Green. Some time before 10 p.m. they drove to 24 North Pulaski to investigate a citizen's complaint concerning a tall black male wearing a dark baseball cap. A liquor store was in the vicinity, which was lighted with streetlights. At a scissor gate located in front of the liquor store, Officer Lipsey saw defendant recovering items from a cigarette box tucked into the scissor gate. She got on the radio and notified Officers Staunton, Curry, and Green that a person fitting the description was doing something with a cigarette box. She then heard someone yell "lights out" and defendant began to walk away from the scene. Officer Curry testified that in her police career she had conducted over 2,000 arrests for narcotics sales and in that period she had learned that "lights out" meant that the police were coming and business should cease. Officer Staunton then saw defendant discard small items on the ground and he and Officer Cignar detained defendant. Officer Lipsey then directed Officer Staunton to the cigarette box tucked into the scissor gate. It was a Newport cigarette box from which Lipsey saw Staunton recover 20 Ziplock bags containing suspected heroin.

¶ 4 Officer Staunton testified that at the time and place in question he saw defendant walking southbound on the sidewalk. When Staunton got out of his car he saw defendant look in his direction and drop some objects to the ground. Defendant was detained and Staunton then recovered the objects from the ground, finding them to be four Ziplock bags containing suspected heroin. Officer Lipsey then directed him to the scissor gate where he found a cigarette box containing 20 additional Ziplock bags of suspected heroin. Defendant was then transported back

to the police station, with Officer Green riding in back of the undercover car with him. Officer Staunton testified that he took the 24 Ziplock bags to the police station, where he gave them to Officer Curry to inventory.

¶ 5 Officer Curry testified that at the time in question he was in an unmarked car with Officers Staunton and Green. When he got out of the car he saw defendant, who was then transported back to the police station. There Officer Staunton gave Officer Curry the four baggies containing suspected heroin along with a Newport cigarette box contain 20 additional baggies containing suspected heroin. Curry placed these items in heat-sealed evidence bags and placed those bags in a locker. Curry testified that the two evidence bags were assigned inventory numbers 11789055 and 11789059.

¶ 6 The parties stipulated that if called to testify, Daniel Bryant, a forensic chemist with the Illinois State Police Crime Lab, would testify that he received those inventory bags in a heat-sealed condition. From the bag with inventory number 11789055, which contained four baggies of a white powder substance, he tested one baggy and found it to contain .1 gram of heroin. From the bag with inventory number 11789059 he tested nine of the twenty baggies and found them to contain 1.1 grams of heroin. The baggies were then placed back in bags in a heat-sealed condition and a proper chain of custody was maintained over them at all times.

¶ 7 The defense elicited testimony from Officer Terry Wysacki of the Illinois State Police that on the evening in question at 10:30 p.m. a check on defendant was run on the agency's LEADS system. Two minutes later and nine minutes later, the LEADS records indicated, a check was run on an individual named Bruce Wilson. However the officer could not establish from where these checks were run or what officers ran them.

¶ 8 Defendant testified on his own behalf that on the date in question at about 10:25 p.m. he was standing in front of a liquor store at 24 North Pulaski. There he encountered Bruce Wilson,

with whom he had worked years earlier. Wilson asked him for a cigarette and defendant gave him a Newport. At that time, two cars which defendant recognized as undercover police vehicles pulled up. Defendant attempted to walk away because he was on parole and did not want any trouble. The officers stopped him and Wilson and searched both of them, then placed them, handcuffed together with one hand free, in one of the undercover police cars, where they sat for about 45 minutes. According to defendant, the police ran checks on both of their names to determine whether they had any outstanding warrants. Defendant and Wilson were transported to the police station, where defendant was placed in a separate room. Defendant claimed that the officers told him that they knew he was on parole and that if he did not provide them with useful information, they would assert that half of the drugs they found belonged to him and half belonged to Wilson. Defendant told them that they had not found drugs on him and they should do their job. At that time, the officers prepared an inventory of defendant's belongings which included a statement that he was in possession of heroin. At trial, defendant denied that he had dropped any drugs on the ground that evening or that he had any drugs on his person at that time. Defense counsel then elicited from him the information that he had prior convictions for felonies, with one 1990 conviction for burglary, two retail theft convictions in 2001, one retail theft conviction in 2005 and one in 2009. Defendant stated on cross-examination that the police car he and Wilson were placed in did not have a cage in it. They were placed in the back seat and two officers were in the front seat when they were transported to the police station.

¶ 9 In final argument, defense counsel noted that although defendant had a criminal history he had no prior drug convictions. Defense counsel also argued that defendant's testimony was corroborated by the information elicited concerning a check run on Bruce Wilson's name within minutes of a check being run on defendant. The trial court stated that this was a question of credibility between the officers and defendant and that he believed the officers' version of events.

However, the court found insufficient evidence of intent to deliver and therefore convicted defendant of possession of a controlled substance.

¶ 10 In evaluating defendant's challenge to the sufficiency of the evidence to convict him we must determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). We will reverse a conviction on evidentiary grounds only if the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt as to defendant's guilt remains. *People v. Smith*, 185 Ill. 2d 532, 542 (1999). Defendant points to the evidence that a man named Bruce Wilson was run through the LEADS system at approximately the time that defendant testified Wilson was taken into custody along with defendant. But the defendant's evidence did not establish where in Chicago Wilson was taken into custody, nor did defendant present any evidence that Wilson had drugs in his possession.

¶ 11 We also reject defendant's suggestion that because some law review studies indicate that some police officers lie about defendants dropping evidence in the presence of the police, we must reject Officer Staunton's testimony that defendant dropped baggies of suspected heroin while Staunton was observing him. Such a determination must be made on a case by case basis and we find that Officer Staunton's testimony was corroborated by the fact that defendant was also found to have had a cigarette case containing similar baggies.

¶ 12 In summary, viewing the evidence as a whole, we find that any rational trier of fact could have found defendant guilty of possession of a controlled substance and therefore we find that the evidence was sufficient to convict defendant.

¶ 13 Defendant also contends that it was prejudicial error for the prosecution to elicit, over defense objection, hearsay testimony that the officers were looking for a tall black male with a black baseball cap who was the subject of a citizen complaint to them and that defendant

matched this description. The officers were permitted to explain why they were in the vicinity of 24 North Pulaski. *People v. Henderson*, 142 Ill. 2d 258, 304 (1990). To the extent the information constituted hearsay, it did not relate any specific crime that defendant had allegedly committed and did not specifically identify defendant. On these grounds, we find that it was harmless error. *People v. Banks*, 237 Ill. 2d 154, 180-181 (2010). Defendant was stopped because he was seen to remove objects from a cigarette case placed in the scissor gate of a liquor store, not merely because he matched the description given by the citizen complainant. Accordingly we find no reversible error in the prosecution's limited use of this testimony concerning what they were told by a citizen complainant.

¶ 14 Although defendant also alleges that this testimony violated his Sixth Amendment right to confront witnesses against him, this issue is forfeited because defendant failed to raise it at trial or in his motion for a new trial. *People v. Woods*, 214 Ill. 2d 455, 470 (2005). Defendant's general reference to hearsay in the posttrial motion was insufficient to raise the Sixth Amendment claim he argues on appeal. Furthermore, defendant is incorrect in asserting that he was not required to address forfeiture until the State raised it in its brief. The supreme court in *People v. Hillier*, 237 Ill. 2d 539, 545-46 (2010), held that it is the defendant's burden to establish plain error and that "when a defendant failed to present an argument on how either of the two prongs of the plain-error doctrine is satisfied, he forfeits plain-error review." Defendant's Sixth Amendment claim is forfeited. See *People v. Smith*, 228 Ill. 2d 95, 106 (2008) (one of the most important functions of appellate court is to determine whether an issue has been forfeited, so as to avoid unnecessary expenditure of judicial resources).

¶ 15 Defendant's final contention is that he was denied the effective assistance of counsel when trial counsel elicited from him testimony that he had been convicted of a burglary which occurred well before the permissible time lapse in which such prior convictions may be elicited.

People v. Montgomery, 47 Ill. 2d 510, 516 (1971). But defense counsel utilized this conviction, in conjunction with other more recent convictions, to argue to the trial court that none of defendant's prior convictions were drug offenses. Thus the use of this older offense was part of defense counsel's trial strategy. Defendant on appeal has failed to overcome the strong presumption that trial counsel's actions were the product of sound trial strategy rather than being evidence of incompetence. *People v. Griffin*, 178 Ill. 2d 65, 73-74 (1997). Even a finding in hindsight that this argument was a strategic mistake or that another attorney would have handled the matter differently would not ordinarily justify a finding that defense counsel at trial was incompetent because of his strategic decision. *People v. Negron*, 297 Ill. App. 3d 519, 538 (1998). In any event we note that trial counsel was successful in obtaining a reduction of defendant's offense from possession of a controlled substance with intent to deliver to one for mere possession of a controlled substance. Under all of these circumstances, we do not find that defendant has established ineffective assistance of his trial counsel.

¶ 16 For all of these reasons we affirm defendant's conviction and sentence.

¶ 17 Affirmed.