2012 IL App (1st) 102409-U

FOURTH DIVISION
May 10, 2012

No. 1-10-2409

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
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 6592
	)	
LONNIE WILLIAMS,	)	Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Sterba concurred in the judgment.

O R D E R

¶ 1 *Held*: Where police officers testified they observed defendant toss a bag of cocaine onto a table, evidence was sufficient to support conviction for possession of a controlled substance even considering trial court found a portion of one officer's testimony relating a statement made by defendant was "inherently improbable"; defendant's conviction was affirmed.

¶ 2 Following a bench trial, defendant Lonnie Williams was convicted of possession of a controlled substance and was sentenced to 30 months of probation. On appeal, defendant contends the State failed to prove his guilt beyond a reasonable doubt because the testimony of the arresting officers was not credible. We affirm.

¶ 3 Defendant was charged with being an armed habitual criminal and with four counts of unlawful use of a weapon by a felon and one count of possession of a controlled substance with intent to deliver. Those charges stemmed from events that occurred on March 12, 2009, at defendant's apartment located at 857 North Harding Avenue in Chicago.

¶ 4 Before trial, the court held a hearing on defendant's motion to quash his arrest and suppress the evidence recovered incident to his arrest. Chicago police officer Thomas Munyon testified that at about 8:15 p.m., he was driving a marked squad car and was dispatched to defendant's address to provide backup to another officer, Chicago police sergeant Thomas Keane, who was responding to a report of an individual with a gun.

¶ 5 Officer Munyon testified that when he arrived, Sergeant Keane and another officer, Sergeant Lash, were outside the residence, and another squad car arrived simultaneously to his. A woman later identified as defendant's girlfriend, Shureena Ware, said she and defendant lived in the building's basement apartment. After police confirmed the address with the dispatcher, Ware told the police that defendant was inside with her sister, Shuwanda Harmon. By that time, Officer Lawrence Stiles had arrived at the scene with his partner, and all five officers entered the apartment.

¶ 6 Officer Munyon testified that upon entering the living room, he "could see straight down the whole length of the apartment," and he observed defendant enter the kitchen through a rear door and throw a plastic bag on the kitchen table. The officer testified he was about 50 feet away from defendant. Officer Stiles immediately retrieved the bag, which was later tested and found to contain 2.6 grams of cocaine. Defendant was arrested, and Officer Munyon entered a bedroom in an effort to locate Harmon, and the officer found a scale and other items commonly used in the packaging of narcotics.

¶ 7 Harmon made the initial call to police reporting the incident. The officers subsequently interviewed Harmon and Billy Ware, the brother of both women, and were told defendant had pointed a gun at them and ordered them out of the apartment. Based on further statements by Harmon and Ware, the officers searched the garage behind the apartment building and found a pistol. Sergeant Keane also testified as to the recovery of the weapon from the garage.

¶ 8 Officer Stiles testified that when he arrived at the residence, Officer Munyon was speaking to a woman, who told them to go downstairs and speak to defendant. Officer Stiles stated that upon entering the apartment, he saw defendant enter through a rear door and threw an object on the table. The officer took the item from the table and described it as a clear plastic sandwich bag containing pieces of rock cocaine wrapped in plastic. Officer Stiles testified he announced the contents of the bag to the other officers present, who arrested defendant. After hearing that evidence, the trial court denied defendant's motion to quash his arrest and suppress evidence.

¶ 9 At trial, Billy Ware testified he, Shureena and Harmon were in the apartment with defendant at about 8 p.m. on the night in question when defendant stood in a bedroom with Shureena. Defendant displayed a gun to them and said they all needed to "get the f— out." Harmon offered testimony consistent with that of her brother.

¶ 10 Officer Munyon and Officer Stiles offered testimony consistent with that given at the motion hearing, stating once they were inside the apartment, each of them saw defendant enter the kitchen from a back door and throw the plastic bag containing cocaine onto a table. Officer Munyon also testified that when he interviewed defendant in the police lockup, defendant said he hid the gun in the garage because he knew he should not be in possession of a gun and he did not want to get arrested. The parties stipulated the bag recovered by Officer Stiles contained 2.6 grams of cocaine. The State entered into evidence certified copies of defendant's previous

convictions for possession of a controlled substance with intent to deliver in case No. 91 CR 3189 and delivery of a controlled substance in case No. 95 CR 13742.

¶ 11 At the close of evidence, the trial court found defendant was not guilty of possession of a controlled substance with intent to deliver but found the evidence established the lesser included offense of possession of a controlled substance, which was a Class 4 felony. The court found defendant was in actual possession of the cocaine. However, the court found the State did not establish a sufficient nexus between defendant and the drug-related items recovered from the bedroom. The court also found defendant not guilty of the remaining charged counts of being an armed habitual criminal and unlawful use of a weapon by a felon.

¶ 12 The court stated it found defendant's statement to Officer Munyon was "inherently improbable" because if defendant had in fact hid the weapon in the garage to avoid arrest, as he asserted, he likely would have hid the cocaine as well. The court stated as follows:

> "With regard to the [defendant's] statement testified to by the Officer, I find that that statement is not credible. I find that it's inherently improbable. It seems to me that the statement that is attributed to the defendant that he knew he had to get rid of the gun because he couldn't be caught with the gun belies the fact that he was in actual possession of the controlled substances [*sic*]. Just because you get rid of a gun doesn't necessarily mean as [defendant's counsel] pointed out that you made yourself free from being arrested. If he had dope he would have got rid of the dope at the same time he got rid of the gun.
>
> The testimony is clear he had the cocaine and his statement that he had to get rid of the gun because he knew he couldn't be

> caught with the gun, it doesn't make any sense that he would keep the cocaine on him but get rid of the gun."

¶ 13 The court noted defendant's prior convictions and his recent lack of involvement with the court system for nine years, and the court sentenced defendant to 30 months of intensive probation.

¶ 14 On appeal, defendant contends the State failed to prove his guilt of possession of a controlled substance because the testimony of Officers Munyon and Stiles was not credible. He argues his conviction should be reversed because the trial court rejected a portion of Officer Munyon's testimony and the officers' accounts that defendant tossed a bag of cocaine on a table in the presence of police was "wholly incredible" and their description of defendant's behavior was "contrary to human nature."

¶ 15 When considering a challenge to the sufficiency of the evidence, it is not the function of the reviewing court to retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). Rather, we must determine 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. *Beauchamp*, 241 Ill. 2d at 8, citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). This court must allow all reasonable inferences from the record in favor of the prosecution and will not reverse a conviction unless the evidence is so improbable, unsatisfactory or inconclusive that it creates a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8; see also *People v. Collins*, 214 Ill. 2d 206, 217 (2005); *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 16 To establish guilt of the offense of possession of a controlled substance, the State must prove that: (1) the defendant had knowledge of the presence of an illicit substance and (2) the substance was in his immediate and exclusive control. *People v. Carodine*, 374 Ill. App. 3d 16,

25 (2007) (noting that a defendant's possession of the substance may be actual or constructive, and defendant has actual possession when he exercises "present or personal dominion over the substance"). Officer Munyon and Officer Stiles both testified that they saw defendant enter the apartment through a back door and toss the bag of cocaine onto the kitchen table. In finding defendant guilty of possession of a controlled substance (as a lesser included offense of the charged crime of possession of a controlled substance with intent to deliver), the trial court expressly stated that defendant had actual possession of the cocaine.

¶ 17 Defendant contends, however, that the officers' testimony that defendant threw a bag of cocaine onto a table in their presence was simply "improbable and incredible." He argues the officers' testimony strained credulity for several reasons: it is difficult to believe that a person would carry a bag of cocaine in his hand, opposed to in his pocket, and then throw a bag onto a table in the presence of police.

¶ 18 It is axiomatic that the trier of fact, which was the trial judge in this bench trial, is responsible for determining witness credibility and the weight to be given the testimony. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). In weighing the evidence, the trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor is it required to search out all possible explanations consistent with the defendant's innocence and elevate them to the status of reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). Whether the defendant tossed the bag onto the table as a matter of course before he realized the officers were present, or defendant threw the bag in an attempt to remove it from the officers' line of sight, the evidence was uncontradicted that defendant had possession of the bag. The court clearly stated the testimony established defendant was in possession of the cocaine.

¶ 19 In arguing Officer Munyon's testimony was unworthy of belief, defendant points to the portion of the trial court's ruling, which is set out in the fact section above, in which the court

said the "statement testified to" by Officer Munyon was "inherently improbable." Defendant argues the court thereby did not find Officer Munyon to be a credible witness. A careful reading of the court's remarks supports the conclusion that the court was not indicating Officer Munyon's testimony was not believable but, rather, the court was questioning the credibility of the defendant's statement to the officer that he hid the gun in the garage because he knew he should not have a gun in his possession. In any event, if the trial court found Officer Munyon's testimony pertaining to the gun to be improbable, the court did not state that Officer's Munyon's testimony as to the drug possession lacked credibility, and we do not presume otherwise. See *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 22 (the trier of fact is free to accept or reject as much or as little of a witness's testimony as it pleases).

¶ 20 Furthermore, even if the court had discounted Officer Munyon's testimony in its entirety, the court also heard Officer Stiles' account, which mirrored Officer Munyon's testimony as to defendant's possession of the cocaine. The positive and credible testimony of a single witness can be sufficient to convict, even if it is contradicted by the defendant. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). The trial court expressly stated that defendant "was in actual possession of the cocaine," as supported by the testimony of both officers.

¶ 21 Accordingly, because the evidence was sufficient to support defendant's conviction for possession of a controlled substance, the trial court's judgment is affirmed.

¶ 22 Affirmed.