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2012 IL App (4th) 120003-U

Filed 8/7/12

NO. 4-12-0003

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
JOSE E. MARTINEZ-GONSALEZ,)	No. 11CF98
Defendant-Appellant.)	
)	Honorable
)	James E. Souk,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices McCullough and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, rejecting the defendant's chain-of-custody and weight-of-cocaine challenges as forfeited and insufficient to prove that he was not proved guilty beyond a reasonable doubt.

¶ 2 Following a September 2011 bench trial, the trial court found defendant, Jose E. Martinez-Gonzalez, guilty of unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (2010) (1 gram or more but less than 15 grams of any substance containing cocaine). In November 2011, the court sentenced defendant to four years in prison.

¶ 3 Defendant appeals, arguing that the State failed to prove him guilty beyond a reasonable doubt because the State failed to establish (1) the chain of custody and (2) the "true" weight of the cocaine. We disagree and affirm.

¶ 4

I. BACKGROUND

¶ 5 In February 2011, the State charged defendant with unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (2010) (1 gram or more but less than 15 grams of any substance containing cocaine) as a result of a confidential buy the police had arranged in December 2009. (Apparently, the State did not charge defendant until approximately one year after the transaction in order to protect the identity of its confidential informant (CI).)

¶ 6 In support of its case at defendant's September 2011 bench trial (which occurred almost two years after the alleged drug sale), the State presented (1) a video recording of the December 2009 transaction, (2) the cocaine recovered from the CI, and (3) testimony from (a) a representative from the State's crime laboratory, (b) the officers who oversaw the confidential buy, and (c) the CI.

¶ 7 The State played for the trial court a video recording that showed defendant enter the CI's vehicle and sit with the CI for approximately 45 seconds. The video recording showed defendant leaving the CI's vehicle and getting into his own vehicle before walking toward a "Quick n' Easy" convenient store located nearby.

¶ 8 Officer Edward Shumaker testified that he was part of the special narcotics task force that initiated the controlled buy. Shumaker explained that he was the surveillance officer positioned between the Quick n' Easy store and "Famous Dave's" restaurant. Shortly after defendant walked to the Quick n' Easy, Shumaker followed the CI's vehicle to a predetermined rendezvous point.

¶ 9 Officer Scott Lake testified that he was also part of the task force and that he met with Inspector Christopher Renken and the CI before the controlled buy. Lake was in charge of

videotaping the transaction. At that meeting, the CI was searched, but Lake said that he could not recall whether he or Renken performed the search because it had "been a long time." Lake explained that he transported the cocaine recovered from the CI to the evidence locker at the police station and later to the crime lab.

¶ 10 Renken testified that the confidential buy was designed to allow the CI to exchange \$370 for two "eight-balls" of cocaine in the parking lot of Famous Dave's restaurant. Renken met with the CI and searched the CI before he gave the CI \$370. Renken added that he "believed" another officer searched the CI's vehicle, which would have included a search of "all the pockets, underneath the seats, inside of any kinds of bags or anything like that." Renken said that after the CI met with defendant, Renken followed the CI's vehicle to the prearranged rendezvous point at "Red Lobster" restaurant. At Red Lobster, the CI gave Renken two small Baggies containing white powder and Renken again searched the CI and his vehicle. Renken added that after searching the CI, he initialed, field-tested, and later transported the cocaine back to the evidence locker.

¶ 11 Renken explained that he interviewed defendant following his arrest. After waiving his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), defendant told Renken that he did not sell cocaine, but merely delivered it and purchased it for friends from time to time.

¶ 12 The CI testified that he worked with defendant at Famous Dave's restaurant. He explained that prior to the confidential buy, Renken searched him and his vehicle before Renken gave him \$370 to purchase the cocaine from defendant. The CI said that defendant gave him two eight-balls of cocaine in exchange for \$370, adding that Renken followed him to Red Lobster after the confidential buy was completed, where he turned over to Renken the cocaine that

defendant had sold him.

¶ 13 Kerry Nielson, the State's forensic scientist, testified that he tested the substance in this case and that the result of that test revealed that the substance was cocaine. The substance weighed 5.9 grams. In response to questions from defense counsel related to the accuracy of the digital scales Nielson used to determine the weight of the substance, Nielson responded that (1) he did not calibrate the scales himself, as that was done by an outside company once a year, and (2) he verified the accuracy of the scales by checking them against known weight values once a week.

¶ 14 Defendant testified on his own behalf, maintaining that he did not sell cocaine to the CI. Defendant admitted, however, that he was the man in the vehicle with the CI on the video recording.

¶ 15 On this evidence, the trial court convicted defendant, finding as follows:

"[C]ertainly there's a few differences in the officer's testimony. I think I would agree with [the prosecutor] that it's probably the result of *** Lake not having written a report and not being the case agent and *** Renken's memory as the case agent is probably a little bit better.

There is no question as to what's on the video. The Defendant doesn't dispute that that's him *** involved in this short transaction, and no one but [the CI] is able to testify to what happened ***, but otherwise it's a fairly typical controlled buy with very little opportunity, or, in this case, very little motive to conjure

up some fake drug deal and come up with this amount of cocaine somehow unless he got it from the Defendant.

[The CI], as a matter of fact, is as confidential sources go, particularly credible. Many of them are, just on the surface, not very credible people, and often they are people who have been caught dealing drugs themselves and are looking for a deal, not that he's any saint, but the Court found him to be credible.

The Defendant is not found to be credible by the Court, and to believe him, the Court would have to believe that *** Renken is lying about their interview and about the admissions the Defendant made, not about this particular incident, but selling cocaine, or, if you will, delivering it for friends or whatever generally, and the Court does not believe that the officer is lying.

Putting all the evidence together with the video and the manner in which this was conducted, the State has proven [its case] beyond a reasonable doubt. The Defendant is found guilty."

¶ 16 Following a November 2011 sentencing hearing, the trial court sentenced defendant to four years in prison.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt because the State failed to establish (1) the chain of custody and (2) the "true" weight of

the cocaine. We address the defendant's contentions in turn.

¶ 20

A. The Standard of Review

¶ 21

Defendant's contentions in this case attack the sufficiency of the evidence presented to convict him. Challenges to the sufficiency of the State's evidence are judged under the now familiar standard reiterated by our supreme court in *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224, 920 N.E.2d 233, 240 (2009), as follows:

"Where a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime. [Citation.] ' "Under this standard of review, it is the responsibility of the trier of fact to 'fairly *** resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.' " [Citations.] Therefore, a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses. [Citations.] A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt. [Citations.] This same standard of review applies regardless of whether the defendant received a bench or jury trial. [Citation.]"

¶ 22 B. Defendant's Claim That the State Failed To Prove the Chain of Custody

¶ 23 Defendant contends that the State failed to prove the chain of custody. As best we can tell, defendant asserts that the chain of custody was not sufficiently complete to demonstrate that the bags of cocaine introduced at trial and analyzed by the State's expert were the bags sold to the CI because the officers' testimony at trial was inconsistent. Defendant concludes that the officers' inconsistent testimony leaves doubt as to whether the CI received the cocaine he turned over from defendant, rendering the evidence against him insufficient. We disagree.

¶ 24 Initially, we note that defendant has forfeited any challenge to the chain of custody, given that he failed to contemporaneously object to the admission of the cocaine at trial. See *People v. Woods*, 214 Ill. 2d 455, 475, 828 N.E.2d 247, 259 (2005) (a challenge to a chain of custody is an evidentiary issue generally subject to forfeiture if not preserved by making a specific objection at trial and including a specific claim in a posttrial motion). However, even if defendant had not forfeited his chain-of-custody claim, it would fail as it is meritless.

¶ 25 We outlined the standard for chain-of-custody challenges in *People v. Echavarria*, 362 Ill. App. 3d 599, 604-05, 840 N.E.2d 815, 821 (2005), as follows:

"The State bears the burden of showing a chain of custody sufficiently complete to make it improbable the evidence has been subject to tampering or substitution by showing the police took reasonable protective measures to ensure the substance recovered was the same as the substance tested. Unless a defendant produces evidence of actual tampering, substitution, or contamination, a sufficiently complete chain of custody does not

require every person in the chain to testify. [Citation.]

Deficiencies in a chain of custody go to the weight and not the admissibility of evidence. Even where a link is missing in a chain of custody, the evidence is properly admitted where testimony sufficiently described the condition of the evidence when delivered which matched the description of the evidence when examined.

[Citation.]"

¶ 26 Here, the State presented sufficient evidence to demonstrate that the cocaine recovered from its CI was not subject to tampering. The experienced trial judge, serving as fact finder, resolved the apparent inconsistencies in the testimony of Lake and Renken as to which officer deposited the bags of cocaine into the evidence locker in favor of Renken. Thus, viewed in the light most favorable to the State, the State's evidence showed the following. The narcotics task force set up a confidential buy, targeting defendant. Defendant met the CI in a parking lot and sold him two eight-balls of cocaine for \$370. The police retrieved the cocaine from defendant at a predetermined rendezvous point and secured that evidence through standard chain-of-custody techniques. Renken initialed, field-tested, and later transported the cocaine back to the evidence locker before it was taken to Nielsen's laboratory for testing. Approximately one year later—in an attempt to protect the CI—the State charged defendant with unlawful delivery of 5.9 grams of cocaine. For his part, defendant produced no evidence of actual tampering, substitution, or contamination of the evidence.

¶ 27 The experienced trial judge viewed this evidence as sufficient to prove defendant guilty beyond a reasonable doubt, and the record supports the judge's findings in that regard.

¶ 28 C. Defendant's Claim That the State Failed To Prove the Weight of the Cocaine

¶ 29 Defendant next contends that the State failed to prove the "true" weight of the cocaine in this case. Specifically, defendant asserts as follows:

"Kerry Nielson testified that the weight of the substance he tested was 5.9 grams. However, he could not testify that the weight was properly calibrated as he did not calibrate the scale himself, the scale was ten years old, he did not know when it was last recalibrated before weighing this evidence and did not know the results of the calibration. As such, if the scale was not calibrated correctly, the weight of the substance had not been established. Defendant was charged with unlawful delivery of more than 1 gram but less than 15 grams of cocaine. Without proof that the evidence was weighed correctly, the State has not proven that Defendant delivered more than 1 gram but less than 15 grams of cocaine."

This is the totality of defendant's argument related to the weight of the cocaine in this case.

Defendant's failure to offer any analysis whatsoever, or to cite legal authority in support of his contention, results in forfeiture. See *People v. Mertz*, 218 Ill. 2d 1, 91, 842 N.E.2d 618, 667 (2005) (defendant's failure to offer analysis and cite legal authority in support of retroactive application resulted in forfeiture of the issue); see also Ill. S. C. R. 341(h)(7) (eff. July 1, 2008) ("Argument, which shall contain the contentions of the appellant and the reasons therefor, with

citation of the authorities and the pages of the record relied on").

¶ 30 Although we conclude that defendant has forfeited this argument under Rule 341(h)(7), we note also that defendant (1) affirmatively waived this contention during closing arguments when he conceded to the trial court that he was not objecting to the weight of the cocaine in evidence, and (2) has forfeited review of this contention by failing to include it in his posttrial motion. Accordingly, we decline to further address defendant's contention.

¶ 31 **III. CONCLUSION**

¶ 32 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State a \$75 statutory assessment against defendant as costs of this appeal.

¶ 33 Affirmed.