

No. 1-11-1275

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. 10 CR 16196
)	
MICHAEL TAYLOR,)	Honorable
)	Maura Slattery-Boyle,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Justices Harris and Pierce concurred in the judgment.

ORDER

¶ 1 **Held:** Judgment affirmed over defendant's challenges to the sufficiency of the evidence to sustain his conviction, and the trial court's compliance with Illinois Supreme Court Rule 431(b).

¶ 2 Defendant, Michael Taylor, was convicted of delivery of a controlled substance (720 ILCS 570/401(d) (West 2010)) and sentenced to five years' imprisonment. On appeal, he challenges the sufficiency of the evidence to sustain that conviction, and alleges that his conviction must be reversed because the trial court failed to comply with Illinois Supreme Court Rule 431(b).

¶ 3 The evidence adduced at trial showed that, on August 19, 2010, defendant sold less than one gram of heroin to undercover Chicago police officer McCann, who was working as part of a team of police officers investigating narcotics sales near the 5300 block of West Division in Chicago. Officer McCann testified that she parked her undercover vehicle at a strip mall located on that block, and defendant and a co-offender, Tyjuan Williams, approached the driver's side window of her vehicle, and defendant asked her "how many" she wanted. The officer stated that she wanted "three[.]" Defendant asked if she wanted "rocks or blows" (terms which are used to refer to, respectively, cocaine and heroin), and she responded that she wanted "three blows[.]" Defendant and Williams then walked away from the vehicle and into an alley, and Officer McCann lost sight of them for approximately two minutes. When they returned to the vehicle, defendant told her to give Williams \$30. She gave him \$30 in pre-recorded funds, and, in return, defendant handed her "three folded tin foil packets" containing white powder. Defendant and Williams walked away, and Officer McCann radioed to the surveillance team that the transaction was "positive" and gave them a description of the offenders.

¶ 4 Officer Louie testified that on August 19, 2010, he was on duty as part of a team of surveillance officers, and observed defendant and Williams standing near the intersection of North Long Avenue and West Division Street. He radioed Officer McCann, who was working as the "undercover buy" officer, and told her to come "have [a] conversation with" defendant. Officer McCann drove to the location, and engaged in a conversation with defendant, while Officer Louie observed the interaction from approximately 75 feet away. He then saw defendant walk into an alley, and return to Officer McCann's vehicle less than five minutes later. Officer Louie observed a brief conversation, and saw defendant reach inside the vehicle. Defendant then

walked away from the location, about three blocks westbound on Crystal Street to the area of Division and Central. Officer Louie testified that Crystal Street is a one-way street going west.

¶ 5 Officer Louie followed defendant in his vehicle, and saw him enter a cell phone store and a restaurant, spending approximately 10 minutes at each location. Defendant then reappeared, and walked eastbound to the intersection of Division and Long, where he stood for about 10 minutes until a vehicle arrived. He and Williams entered the vehicle, and Officer Louie maintained surveillance and radioed to his partners a description of the vehicle and its movement.

¶ 6 Officer Dukes testified that he and his partner, Officer Kuykendall, stopped the vehicle defendant was traveling in near 5800 West Potomac Avenue. The officers had defendant, Williams, and the two other occupants exit the car, and Officer McCann drove by and identified defendant and Williams as the offenders who had sold her heroin. Officer McCann saw defendant from about five feet away, and nothing obstructed her view as she drove by. Defendant and Williams were arrested, and, in the search that followed, no narcotics or pre-recorded funds were found in the vehicle or on any of the occupants.

¶ 7 The State also called Martinique Rutherford, a forensic scientist at the Illinois State Police Forensic Science Center. Rutherford testified that she received and tested the packets of suspect heroin which Officer McCann purchased from defendant, and the test results showed that the packets contained heroin.

¶ 8 After defendant's motion for a directed verdict was denied, the defense called Lorne Gorelick as a witness. He testified that he is an attorney at the public defender's office, and is familiar with the area of 5350 West Division Street. Gorelick stated that on February 11, 2011, he went out to that area, and observed that Crystal is a one-way street going eastbound, and that

there is a Chicago police department "pod" camera on top of a pole on the northeast corner of Central and Division. On cross-examination, Gorelick admitted that he could not tell if the camera was working on that date, or if the camera was there on August 19, 2010.

¶ 9 After closing arguments were presented by respective counsel, the jury returned a verdict finding defendant guilty of the charged offense. In this appeal, defendant first challenges the sufficiency of the evidence to prove him guilty beyond a reasonable doubt.

¶ 10 When considering a challenge to the sufficiency of the evidence, the relevant question on appeal is 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. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). It is the responsibility of the trier of fact to determine the weight to be given to the witnesses' testimony, the witnesses' credibility and the reasonable inferences to be drawn from the evidence. *People v. Brown*, 362 Ill. App. 3d 374, 377 (2005). Although the determination of the trier of fact is not conclusive, its findings on witness credibility are entitled to great weight, and this court will reverse a conviction only where the evidence is so unreasonable, improbable or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 542 (1999). For the reasons that follow, we do not find this to be such a case.

¶ 11 In order to convict defendant of delivery of a controlled substance, the State was required to prove that he knowingly delivered heroin to Officer McCann. 720 ILCS 570/401(d) (West 2010). The evidence, viewed in the light most favorable to the prosecution, shows that defendant approached the driver's side window of Officer McCann's undercover vehicle, asked her "how many" she wanted, and if she wanted "rocks or blows[.]" Officer McCann indicated that she wanted three "blows" and defendant left, and returned with three tin foil packets of white powder

which were later confirmed to contain heroin. Defendant gave the packets to Officer McCann in exchange for \$30, and walked away. This exchange was observed and corroborated by Officer Louie, who was surveilling the transaction. From this evidence, a rational jury could find that defendant was proved guilty beyond a reasonable doubt of delivery of a controlled substance.

¶ 12 Defendant, however, disputes that conclusion, and asserts that, because the pre-recorded funds used to purchase the heroin was not recovered, the evidence was insufficient to convict him. He acknowledges that there was testimony at trial showing that defendant entered a restaurant and cell phone store after the transaction, but notes that Officer Louie could not remember if defendant was carrying anything that appeared to have been purchased in those establishments upon his exit. He maintains that the officers should have checked the stores for the pre-recorded funds, and their failure to do so "casts serious doubt" on the State's case.

¶ 13 The State argues that this case is analogous to *People v. Trotter*, 293 Ill. App. 3d 617 (1997), where this court rejected the argument that defendant was not proven guilty of delivery of a controlled substance because the pre-recorded funds used to purchase the narcotics were not recovered. Defendant, on the other hand, attempts to factually distinguish *Trotter*, because in that case, a longer period elapsed between the drug transaction and defendant's arrest, giving defendant more time in which he "could have done something with the money." We are unpersuaded.

¶ 14 *Trotter* stands for the proposition that there is no requirement that pre-recorded or marked funds used in a narcotics transaction be recovered for a conviction to stand (*Trotter*, 293 Ill. App. 3d at 619 (citing *People v. Lopez*, 187 Ill. App. 3d 999, 1005 (1989))), and it does not distinguish between cases in which there is a shorter or longer period of time between the transaction and arrest. Moreover, as in *Trotter*, defendant in this case eluded surveillance for a period of time

during which he had the opportunity to dispose of the pre-recorded proceeds of the sale. We therefore find no meaningful difference between this case and *Trotter*, and similarly hold that the failure to recover the pre-recorded funds does not create a reasonable doubt of his guilt.

¶ 15 Defendant next contends that Officer McCann's "drive by" identification of him casts doubt on the State's case where she "did not even stop the car when she made the identification." This argument, however, goes to the credibility of the witnesses and weight to be given to their testimony, which is the responsibility of the trier of fact. *Brown*, 362 Ill. App. 3d at 377. Here, Officer McCann made a positive identification of defendant and his co-offender soon after the transaction. She testified that, when identifying defendant, she was able to see him from only five feet away, and nothing obstructed her view. The officer also identified defendant in court as the person from whom she bought heroin. Under these circumstances, we find no basis to disturb the jury's determination and reject defendant's claim.

¶ 16 Defendant, however, points to Officer Louie's testimony that Crystal Street is a one-way street going west, and notes that Gorelick testified to the contrary—that Crystal is a one-way going east—to further his argument. He also requests that we take judicial notice that Gorelick's testimony is confirmed by Google Maps, and find that this impeachment "calls into question the credibility" of Officer Louie's testimony. Even if we were to take judicial notice that Crystal Street goes east, this minor discrepancy does not detract from Officer Louie's consistent testimony of his observations of the transaction, or Officer McCann's testimony identifying defendant as the provider of the narcotics. *People v. Reed*, 80 Ill. App. 3d 771, 778 (1980). This minor discrepancy was fully explored at trial (*People v. Scott*, 152 Ill. App. 3d 868, 872 (1987)) and is not of such magnitude as to undermine the officer's credibility regarding his observations of defendant (*People v. Villalobos*, 78 Ill. App. 3d 6, 13 (1979)) or create a reasonable doubt of

defendant's guilt (*Scott*, 152 Ill. App. 3d at 872). We therefore conclude that the evidence was sufficient to allow a rational jury to find defendant guilty of delivery of a controlled substance beyond a reasonable doubt.

¶ 17 Defendant next contends that the circuit court failed to comply with Supreme Court Rule 431(b) (eff. May 1, 2007), because it did not adequately ensure that the jurors understood and accepted the Rule 431(b) principles of law. Defendant concedes that he did not preserve this issue for review by objecting to the circuit court's alleged failure to comply with Rule 431(b), but contends that we should review the court's alleged failure to comply with Rule 431(b) for plain error under the first prong of analysis, because the evidence was closely balanced. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010).

¶ 18 Under both prongs of plain error, defendant bears the burden of persuasion, and if defendant fails to meet his burden, his procedural default will be honored. *Hillier*, 237 Ill. 2d at 545. However, we must first determine whether error occurred, for without error, there can be no plain error. *People v. Lopez*, 2012 IL App (1st) 101395, ¶ 64. Since the issue concerns compliance with a supreme court rule, our review is *de novo*. *People v. Ware*, 407 Ill. App. 3d 315, 341 (2011).

¶ 19 Supreme Court Rule 431(b), requires the trial court to ask prospective jurors in a criminal trial whether they understand and accept the following four principles of law: (1) that defendant is presumed innocent of the charges against him; (2) that before defendant can be convicted the State must prove him guilty beyond a reasonable doubt; (3) that defendant is not required to offer any evidence on his own behalf; and (4) that if defendant does not testify, it cannot be held against him. Defendant claims that the court failed to ask the jury if they understood the third principle, that defendant did not have to offer evidence on his behalf; and that it failed to ask if

they understood and accepted that they could not hold defendant's failure to testify against him.

We find, however, that the record shows otherwise.

¶ 20 Here, the trial court substantially complied with Rule 431(b) when it stated to the venire, the following:

"It is an absolute essential as we select this jury that each of you understand and embrace these fundamental principles; that is, that all persons charged with a crime are presumed to be innocent and that it is the burden of the State who has brought the charges to prove the defendant guilty beyond a reasonable doubt.

What this means is the defendant, Mr. Taylor, has no obligation to testify [on] his own behalf or to call any witnesses in his defense. He may simply sit here and rely upon what he and his attorneys perceive to be the inability of the State to present sufficient evidence to meet their burden. Should that happen, you will have to decide the case on the basis of the evidence presented by the Prosecution.

The fact that Mr. Taylor chooses not to testify must not be considered by you in any way in arriving at your verdict. However, should Mr. Taylor elect to testify or should his attorneys present witnesses on his behalf, you are to consider that evidence in the same manner and by the same standard as evidence presented by the state's attorneys.

The bottom line, however, is there is no burden upon Mr. Taylor to prove his innocence. It's the State's burden to prove him guilty beyond a reasonable doubt.

Ladies and gentlemen, I'm going to ask every one of the venire, is there anyone here that cannot follow the principle that an individual is innocent until proven guilty from the very beginning of the case they're innocent, all the way until the end until you've heard all the evidence, the instruction, and then you begin to deliberate if you are selected for this jury?

Is there anyone here who cannot uphold that basic proposition of legal law? If you can't, please raise your hand.

Let the record reflect that everyone in the venire indicates that they can follow that proposition.

We'll continue on. Ladies and gentlemen, also it is very fundamental in American jurisprudence that an individual is not required to prove their innocence. Rather, it is upon the State to prove an individual guilty beyond a reasonable doubt. And that no defendant or Mr. Taylor does not need to testify.

Is there anyone here that cannot follow that principle of law, that it is the burden of the State, not Mr. Taylor, and he has no duty or obligation to testify, is there anyone in the venire that cannot follow that premise?

Let the record reflect that no one has raised their hands at this time."

¶ 21 This transcript clearly shows that the trial court explicitly told the venire that it was "essential" that they "understand and embrace" the following fundamental principles: "that all persons charged with a crime are presumed to be innocent[.]" that it is "the State's burden to prove him guilty beyond a reasonable doubt[.]" and that defendant "has no obligation to *** call any witnesses in his defense[, and] may simply *** rely upon *** the inability of the State to present sufficient evidence to meet their burden." The court also informed the venire that defendant "has no obligation to testify on his own behalf[,] *** [and] [t]he fact that Mr. Taylor chooses not to testify must not be considered by you in any way in arriving at your verdict." The court then inquired of the venire as to whether anyone could not "uphold" the "basic proposition of law" that that an individual is innocent until proven guilty, or "follow" the "premise" that the burden is on "the State, not [defendant], and he has no duty or obligation to testify[.]" By doing so, the court afforded the venire an opportunity to disagree with each principle, and we find the admonishments sufficient to ascertain the potential jurors' understanding and acceptance of the four principles. *People v. Vargas*, 409 Ill. App. 3d 790, 796 (2011). Although the court did not use the precise language of Rule 431(b), the words that it did use clearly indicated to the prospective jurors that the court was asking them, whether they understood and accepted the principles enumerated in the rule. *People v. Quinonez*, 2011 IL App (1st) 092333, ¶ 50 (2011). Thus, we find no error, and, as a result, there can be no plain error to excuse defendant's forfeiture of this issue. *Lopez*, 2012 IL App (1st) 101395, ¶ 64.

¶ 22 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.