

No. 1-12-0809

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 12685
	)	
JOSE MELENDEZ,	)	Honorable
	)	Raymond Myles,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Lampkin and Reyes concurred in the judgment.

**ORDER**

¶ 1 **Held:** Evidence was sufficient to sustain defendant's conviction for delivery of a controlled substance and we affirmed the judgment but vacated the \$20 probable cause hearing fee and granted defendant a credit of \$5 per day for time served in presentence custody against his fines.

¶ 2 Following a bench trial, defendant Jose Melendez was convicted of delivery of a controlled substance and sentenced to two years probation under Treatment Alternatives for Safe Communities (TASC). On appeal, defendant argues the State failed to prove him guilty beyond a reasonable doubt; contests the probable cause hearing fee which was assessed against him; and

maintains he is entitled to a \$5-per-day credit for time served in presentence custody against his fines. We affirm, but modify defendant's fines, fees and costs order.

¶ 3 At trial,<sup>1</sup> Chicago police officer, Sergio Corona, testified that on June 26, 2010, he and his partner, Officer Ryan Delaney, were conducting an undercover narcotics investigation in the area of Point Street and California Avenue in Chicago. Officer Corona had been a police officer for over ten years and had been assigned to the Gang Enforcement Division for over three years. At 7 p.m., Officer Corona, who was in civilian dress, walked to the residence located at 2136 North Point Street (the residence) where he observed three males sitting on the porch. The three males were later identified as defendant, codefendant Jaegen Ellison, and Trevone Jackson. Officer Corona asked codefendant: "Do you have anything?" Codefendant replied he had some "rocks." Based on his experience, Officer Corona knew that "rocks" meant crack cocaine. Codefendant then told Officer Corona to meet him "up the block." Officer Corona walked east on Point Street to 2120 North Point Street, "approximately five houses down from" the residence. As he waited there, codefendant approached him and informed him he had "dubs." Based on his experience, Officer Corona knew "dubs" to be a larger form of crack cocaine. Officer Corona informed codefendant he wanted eight "dubs" for \$100 and gave codefendant \$100 in prerecorded funds. Codefendant gave Officer Corona a plastic bag which contained eight small knotted plastic bags. Each knotted plastic bag held a white rock-like substance which Officer Corona suspected was crack cocaine. Officer Corona testified that Mr. Jackson did not

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<sup>1</sup>Defendant was tried jointly with codefendant Jaegen Ellison, who appealed in *People v. Ellison*, No. 1-12-0808 (2013) (dispositional order). This court granted codefendant's agreed request to summarily dispose of the appeal by directing the clerk of the circuit court to correct his fines, fees, and costs order.

deliver the drugs to him.

¶ 4 Chicago police officer, Ryan Delaney, testified that on June 26, 2010, he was assigned as an undercover surveillance officer. Officer Delaney set up his surveillance across the street and 70 feet from the residence. He was in an unmarked car with tinted windows. It was a clear and sunny day, traffic was light, and nothing obstructed his view of the residence and the area between 2120 and 2136 North Point Street. At 7 p.m., Officer Delaney observed Officer Corona approach the residence where three individuals sat on the porch, including defendant and codefendant. The porch was elevated, with a stairway leading up to it, and a banister around it. Officer Delaney testified that the banister did not impair his ability to observe people entering and leaving the residence. Officer Delaney observed Officer Corona engage in a brief conversation, but he could not hear the conversation. Officer Corona then walked toward 2120 North Point Street.

¶ 5 Officer Delaney testified he continued to "watch the porch" and observed defendant enter the residence. Defendant returned to the porch in a "matter of moments" and gave codefendant a "normal clear plastic bag." Codefendant left the porch carrying the plastic bag in his hand and walked toward Officer Corona. Officer Delaney further observed Officer Corona give codefendant money, and codefendant gave Officer Corona "the small bag [codefendant] had in his hand." Officer Delaney could not see the contents of the bag. Officer Corona then walked away. Codefendant counted the money and walked back toward the residence with the money in his hand. Codefendant gave some of the money to both defendant and Mr. Jackson, who were still on the porch.

¶ 6 The parties stipulated that the suspect narcotics sold to Officer Corona tested positive for

cocaine.

¶ 7 Officer Delaney, Officer Corona, and other officers later returned to the residence pursuant to a search warrant and arrested defendant, codefendant, and Mr. Jackson. Officers Corona and Delaney testified that \$60 of the prerecorded funds used in the drug transaction were found on codefendant, \$20 of those funds were found on defendant, and the remaining \$20 of those funds were found on Mr. Jackson

¶ 8 Trevone Jackson testified on behalf of defendant. Mr. Jackson has been friends with defendant for 5 years and codefendant for 13 years. At approximately 7 p.m. on June 26, 2010, Mr. Jackson was at the residence when he received a phone call from a drug buyer who went by the name of "Eyes." After speaking with Eyes, Mr. Jackson met him at Point Street and Francis Place, where Eyes bought drugs from him for \$100. Mr. Jackson then returned to the residence and gave \$20 each to defendant and codefendant because he owed them money. Mr. Jackson kept \$60 for himself. Approximately five minutes later, the police arrived and arrested defendant, codefendant, and Mr. Jackson.

¶ 9 Codefendant testified that on June 26, 2010, he was on the porch of the residence with defendant and Mr. Jackson. He did not sell drugs to Officer Corona and defendant did not give him anything that day. During the hour before the police arrived, Mr. Jackson went to the store and, when he returned approximately 5 minutes later, he gave \$20 each to codefendant and defendant because he owed them money. The police arrived on the scene with a warrant immediately following this transaction.

¶ 10 At the close of evidence, the trial court found defendant guilty of delivery of a controlled substance. The trial court found that during his surveillance, Officer Delaney had a "clear and

unobstructed view" of the activity at issue. Defendant was sentenced to 2 years TASC probation and assessed certain fines, fees, and costs. Defendant now appeals.

¶ 11 On appeal, defendant argues the State failed to prove him guilty beyond a reasonable doubt of delivery of a controlled substance because the evidence did not establish that the bag defendant gave to codefendant contained the narcotics which codefendant sold to the Officer Corona.

¶ 12 When a defendant challenges the sufficiency of the evidence to sustain his conviction, we must view the evidence in the light most favorable to the prosecution (*People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)), and determine whether the record supports a finding of guilty beyond a reasonable doubt. *Id.* at 279. The trier of fact bears the burden of resolving conflicts in the testimony, weighing the evidence, and drawing reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of guilt. *Id.*

¶ 13 Defendant was convicted of delivery of a controlled substance—less than one gram of cocaine—in violation of section 570/401(d) of the Illinois Controlled Substances Act. 720 ILCS 570/401(d) (West 2010). Delivery is defined as "the actual, constructive or attempted transfer of possession of a controlled substance, with or without consideration, whether or not there is an agency relationship. 720 ILCS 570/102(h) (West 2009).

¶ 14 Officers Corona and Delaney were involved in an undercover narcotics investigation near 2136 North Point Street. Outside the residence, Officer Corona approached defendant, codefendant, and Mr. Jackson for drugs. Codefendant informed him they had crack cocaine and directed Officer Corona to walk up the block. Officer Delaney observed Officer Corona walk

away, then observed defendant enter the residence and exit holding a small plastic bag, which he then gave to codefendant. Codefendant walked to Officer Corona with the bag and informed the officer he had "dubs." Codefendant then gave the plastic bag to Officer Corona in exchange for \$100 in prerecorded funds. Officer Delaney observed codefendant count the money, then give some of the money to defendant and Mr. Jackson. After making the arrest, the officers found the prerecorded funds used in this transaction in the possession of defendant, codefendant and Mr. Jackson. Additionally, the recovered items in the plastic bag given to Officer Corona tested positive for cocaine. The evidence established that possession of the cocaine was transferred from defendant to codefendant and sold to Officer Corona. The sale of the narcotics was accomplished through the concerted efforts of defendant and codefendant who shared the profits. The corroborating testimony provided by Officers Delaney and Corona was sufficient for a trier of fact to conclude defendant was proved guilty beyond a reasonable doubt of the delivery of a controlled substance. *People v. Loferski*, 235 Ill. App. 3d 675, 682 (1992).

¶ 15 Defendant, however, argues Officer Delaney's testimony does not establish that the clear plastic bag he observed defendant give to codefendant was the same bag codefendant gave to Officer Corona. In the same vein, defendant argues because Officer Delaney could not describe the items in the bag which he observed defendant give to codefendant, the evidence fails to establish beyond a reasonable doubt that the bag defendant gave to codefendant contained the drugs codefendant sold to Officer Corona. The fact that Officer Delaney could not see or describe what was contained in the plastic bag does not render the evidence insufficient to establish that defendant delivered narcotics to Officer Corona. The evidence at trial showed Officer Delaney's continuous observation of the plastic bag as it is transferred from defendant, to

codefendant, then to Officer Corona. Officer Corona's testimony established that he obtained a plastic bag from codefendant in exchange for prerecorded funds. The bag contained narcotics. Officer Delaney's testimony is not considered singularly but, rather, in combination with Officer Corona's testimony. Moreover, their testimony was corroborated by the evidence that prerecorded funds used in the transaction between Officer Corona and codefendant were found in the possession of defendant. This evidence established defendant's guilt beyond a reasonable doubt. See *People v. Edwards*, 218 Ill. App. 3d 184, 197 (1991); *People v. Evans*, 122 Ill. App. 3d 733, 738 (1984).

¶ 16 Furthermore, and contrary to defendant's contention, the State was not required to produce a photograph of the recovered narcotics to establish that the item Officer Delaney observed defendant give to codefendant was the same item codefendant delivered to Officer Corona. The testimony of the officers alone was sufficient to convict. See *Loferski*, 235 Ill. App. 3d at 682.

¶ 17 Defendant makes several arguments which attack the credibility of the officers' testimony. Defendant maintains that Officer Delaney's testimony—that he was able to observe the entire transaction which occurred where there was an elevated porch, banister, and parked cars obstructing his view—was incredible. Defendant also maintains that Officer Delaney's testimony—that he was able to observe a plastic bag in codefendant's hand—lacked a sufficient foundation when there was no testimony from him that he had a clear and unobstructed view of codefendant's hand. Finally, defendant asserts that it is highly improbable codefendant would have walked down the street in broad daylight holding a bag of cocaine. We note that Officer Delaney testified he had an unobstructed view of the activity on the porch of the residence, and

of anyone entering and exiting there, and the area between the residence and where Officer Corona stood. Officer Delaney stated he observed defendant give codefendant a clear plastic bag, and observed codefendant holding the bag in his hand as he approached Officer Corona. Officer Delaney observed codefendant give the plastic bag, which was in his hand, to Officer Corona. Thus, the evidence sufficiently established Officer Delaney had an unobstructed view of the plastic bag throughout the transaction.

¶ 18 In the instant case, the trial court assessed the evidence and specifically found Officer Delaney had a clear and unobstructed view of the incident. The ability to observe is a credibility matter which must be resolved by the trial court. *People v. Clemons*, 277 Ill. App. 3d 911, 923 (1996). It is within the province of the trial court to determine the weight of the evidence, the credibility of the witnesses, and the weight accorded their testimony. *Campbell*, 146 Ill. 2d at 375. We find no reason to disturb the credibility determinations made by the trial court on the relevant issues which proved the elements of the offense beyond a reasonable doubt. See *People v. Harden*, 2011 IL App (1st) 092309, ¶ 38. Further, we will not engage in speculation as to whether codefendant's conduct, in walking five houses down to where Officer Corona stood with a small bag of cocaine, is preposterous and incapable of belief. *People v. Austin*, 349 Ill. App. 3d 766, 769 (2004). We give great deference to the trial court's findings that the event happened. *Id.*

¶ 19 Defendant next argues, and the State correctly agrees, the \$20 probable cause hearing fee was assessed in error where no preliminary hearing was held. 55 ILCS 5/4-2002(a) (West 2010); *People v. Smith*, 236 Ill. 2d 162, 173-74 (2010). Accordingly, pursuant to our authority under Supreme Court Rule 615(b)(2) (Ill. S. Ct. R. 615(b)(2) (eff. Jan. 1, 1967)), we vacate the \$20

probable cause hearing fee.

¶ 20 Finally, defendant argues and the State concedes, he is entitled to a \$5-per-day credit for his time served in presentence custody (384 days) against \$1,050 in fines. 725 ILCS 5/110-13 (West 1964). We, therefore, correct the fine, fee, and costs order to reflect this credit.

¶ 21 In light of the foregoing, we affirm the judgment of the circuit court of Cook County and modify defendant's fines, fees, and costs order to reflect a total assessment of \$845 as set forth above.

¶ 22 Affirmed as modified.