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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. 11 CR 2309
)	
VALERIE SCOTT,)	Honorable
)	Carol Howard,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment entered on defendant's conviction of delivery of a controlled substance affirmed over her contention that evidence was insufficient to establish the element of delivery.

¶ 2 The trial judge, following a stipulated bench trial, found defendant Valerie Scott guilty of possession of a controlled substance, and delivery of a controlled substance, then sentenced her to six years in prison as a Class X offender based on her prior felony convictions. On appeal, Scott does not contest her possession of a controlled substance, but contends that the evidence was not strong enough to prove her guilty of the delivery count beyond a reasonable doubt. We affirm. Viewing the evidence in a manner most favorable to the prosecution, the evidence offered sufficed to allow the trial court to find Scott guilty of the delivery.

¶ 3

Background

¶ 4 On January 9, 2011, Scott was arrested and charged with possession with intent to deliver more than five grams but less than 15 grams of cocaine; and delivery of less than one gram of cocaine. Before trial, Scott filed a motion to quash her arrest and suppress the resulting evidence. At the hearing on that motion, Scott testified that she had been "high" for several days before her arrest. On the morning of January 9, she got high, stole drugs from a dealer on the south side of Chicago, and travelled to her daughter's house on the west side. After spending some time with her daughter and grandchildren, Scott walked to West Madison Street and North Laramie Avenue, where she met an unknown male, later identified as Clarence Cobbs. (Cobbs, who was arrested with defendant, and charged with possession of a controlled substance, is not a party to this appeal.)

¶ 5 Scott testified that she asked Cobbs where they could get high, and they walked together towards Washington Boulevard. At that point, two police officers drove up to them, jumped out of their car, grabbed Cobbs, and found two bags of drugs on him. After the officers detained Cobbs, they asked Scott where Cobbs got "his stuff." She responded that she did not know. They began to search her, even though she told them that they were not supposed to because she was a female. The officers then "got mad and told [her] that just for [her] being a smart ass [they were] going to give [her] one of his bags[,] and arrested her. She was taken to the police station, where they recovered narcotics from her left shirt pocket. Scott denied yelling anything before meeting Cobbs, giving him any money or narcotics, or receiving any narcotics or money from him. She stated that she was "broke," that the police did not recover any money from her, and that the drugs recovered from her person were intended for personal use.

¶ 6 Chicago police Officer Cifuentes testified that on the day in question, he and his partner

were conducting undercover surveillance after receiving anonymous calls of narcotics activity in the area of 5200 West Washington Street. About noon, Officer Cifuentes saw Scott 50 to 60 feet away, yelling "Rocks, rocks, rocks," which he knew to be a street term for crack-cocaine. He then saw Cobbs approach Scott, briefly speak with her, and give her US currency. After receiving the money, Scott reached into her right pant leg, grabbed a small unknown item and quickly gave it to Cobbs, who grabbed the item with his hand. Based on his training and experience, Officer Cifuentes testified that he believed the exchange to be a hand-to-hand narcotics transaction.

¶ 7 At that point, the officers broke surveillance and approached Cobbs and Scott for an interview. Cobbs looked in the officers' direction and dropped the item to the ground. Officer Cifuentes' partner recovered "two knotted small baggies containing a rock-like substance," which "were wrapped in United States currency." Officer Cifuentes suspected the items to be crack-cocaine, and the same items he saw Scott hand to Cobbs. Officer Cifuentes denied searching Scott on the street or calling her a "smart ass" before arresting her. It was bright outside, and nothing was blocking Cifuentes' view of Scott and Cobbs during the transaction.

¶ 8 The trial court found that Officer Cifuentes' testimony concerning Scott shouting "rocks, rocks" was credible, and that based on that testimony, he had probable cause to arrest her. Accordingly, the court denied Scott's motion to quash and suppress.

¶ 9 The parties proceeded by way of a stipulated bench trial. After Scott waived her right to a jury trial and signed a waiver, the parties stipulated that Officer Cifuentes' and Scott's testimonies would be the same as that at the pretrial hearing on the motion to suppress. They also stipulated that, if called to testify, Officer Carla Jackson would testify that she recovered one clear plastic bag from Scott's right pant leg, which was found to contain 55 smaller plastic bags of suspect

cocaine, and \$68 in US currency. The parties further stipulated to the testimony of a forensic chemist's that 31 of the 55 bags tested positive for cocaine, and totaled about 9 grams. In addition, the parties stipulated to a proper chain of custody of the items recovered near Cobbs, which also were found positive for cocaine, with a weight of .3 gram.

¶ 10 Scott waived her right to testify, and argument was presented. Defense counsel, while acknowledging proof of Scott's possession of the controlled substance, argued that the State failed to prove possession with intent to deliver, or delivery of a controlled substance. The trial court noted that Scott "intended to get high with Mr. Cobbs[,]" and "very well may have shared some of her drugs with Mr. Cobbs[,]" and thus "a delivery took place." The court also noted that the State proved that Scott was in possession of 55 items of drugs, but that "her intent in possessing the drugs was not to sell them but to get high with them[,]" and thus found her guilty of the lesser included offense of possession of a controlled substance. At sentencing, the State pointed out Scott's prior felony convictions, including possession and possession with intent to deliver a controlled substance, and the court sentenced her to concurrent terms of six years in prison as a Class X felon (730 ILCS 5/5-4.5-95(b) (West 2010)), followed by three years of mandatory supervised release.

¶ 11 Analysis

¶ 12 On appeal, Scott does not contest her conviction for possession of a controlled substance, and solely challenges the sufficiency of the evidence to prove her guilty of delivery of a controlled substance beyond a reasonable doubt. She asserts that since the trial court found that she did not intend to sell the drugs she possessed and that the drugs recovered from her had different packaging than the drugs dropped by Cobbs, she could not have delivered those drugs to Cobbs.

¶ 13 Where, as here, a defendant challenges the sufficiency of the evidence to sustain her conviction, the relevant question for the reviewing court is whether, 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. Jackson*, 232 Ill. 2d 246, 280 (2009). This standard recognizes the trier of fact's responsibility to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In applying this standard, we allow all reasonable inferences from the record in favor of the prosecution (*People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)), and will not overturn a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt (*People v. Wheeler*, 226 Ill. 2d 92, 115 (2007)).

¶ 14 Scott was found guilty of unlawful delivery of a controlled substance. To sustain a conviction for that offense, the State must prove that Scott knowingly delivered a controlled substance. 720 ILCS 570/401(d) (West 2010); *People v. Brown*, 388 Ill. App. 3d 104, 108 (2009). Delivery means "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 2010); *Brown*, 388 Ill. App. 3d at 108.

¶ 15 Scott contends that the trial court's finding that she yelled "Rocks, rocks, rocks" is inconsistent with the finding that Scott did not intend to sell the drugs, and thus the court's finding of guilt on the delivery charge was not reasonable. We disagree.

¶ 16 Officer Cifuentes testified that he heard Scott yell "Rocks, rocks, rocks," from an unobstructed vantage point about 50 to 60 feet away, saw Cobbs approach Scott and speak with her, and engage in a hand-to-hand transaction. Officer Cifuentes saw Cobbs give Scott US

currency, and Scott give Cobbs an item in return. Although he could not see the item, he believed, based on his experience, that a drug transaction had taken place. When Officer Cifuentes and his partner approached to investigate, Cobbs dropped two small bags to the ground, the contents of which were tested and found positive for cocaine. In addition, Scott admitted that she had stolen drugs from a dealer earlier that day, and intended to get high with Cobbs using those drugs.

¶ 17 In announcing its findings at the close of evidence, the trial court stated that it believed that Scott intended to get high with the drugs in her possession rather than sell them, but, further, that she "may have shared some of her drugs with Mr. Cobbs[,] which was a delivery. The State contends, and we agree, that it is plausible that the court believed that although Scott was yelling "rocks, rocks" in the street, as if to sell them, there was also evidence that she was "strung out" and delivered drugs to Cobbs with the intention of using them with him. Or, as our supreme court has acknowledged without condoning, the reality is that trial judges may exercise lenity in what they perceive to be the interests of justice. *People v. McCoy*, 207 Ill. 2d 352, 358 (2003). In such a situation, the reviewing court will not reject the ruling as unreliable or suggestive of confusion. *Id.*

¶ 18 Scott also contends, however, that the two bags of cocaine wrapped in US currency dropped by Cobbs were different from the 55 bags of cocaine recovered from her, which were not wrapped in currency, and therefore it was unreasonable to conclude that she delivered those drugs to Cobbs. We note, however, that the trial court was aware of this discrepancy, and asked the State for an explanation, which was never directly answered. Notwithstanding, the trial court's decision shows that it found the difference in the packaging of the drugs minor, and resolved the discrepancy in the State's favor, drawing the reasonable inferences from the

testimony that Scott delivered drugs to Cobbs. *Sutherland*, 223 Ill. 2d at 242. Viewed in the light most favorable to the prosecution, the evidence was sufficient to allow the trial court to find that the State proved beyond a reasonable doubt that Scott knowingly transferred less than one gram of cocaine to Cobbs, and thus was proved guilty of delivery of a controlled substance. *Brown*, 388 Ill. App. 3d at 108.

¶ 19 In reaching this conclusion, we reject Scott's contention that it "strains credulity" to conclude that Scott would deliver drugs to Cobbs in broad daylight on a street corner, given her background and her knowledge of the risk of getting caught. By her own admission, Scott had been high for several days preceding her arrest, got high again the morning of the incident, and ostensibly intended to get high again with Cobbs. Given these circumstances, it is not unreasonable that Scott, in her reported state, would deliver drugs to Cobbs before walking somewhere together to use them, and, thus, we find no cause for reversal.

¶ 20 We also reject Scott's argument that Officer Cifuentes' claim that he saw Scott sell drugs to Cobbs was incredible because he approached Scott to conduct a field interview rather than immediately arrest her. Scott maintains that if Officer Cifuentes had seen a narcotics sale, he would not have first conducted an interview. Cifuentes testified that he heard Scott yelling "rocks, rocks," saw what he believed to be a hand-to-hand narcotics transaction, but could not actually see the item she gave Cobbs. Thus, he approached the duo to conduct a field interview and factually assess the situation. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). That Officer Cifuentes chose to proceed this way rather than just arrest her provides no basis for reversal or reasonable doubt of her guilt of delivery of a controlled substance.

¶ 21 Affirmed.