FIRST DIVISION
February 2, 2015

No. 1-13-0873

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. 12 CR 16852
	)	
RAFPHEL PAYNE,	)	Honorable
	)	Lawrence E. Flood,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 ***Held*:** The trial evidence was sufficient to convict defendant of possession of a controlled substance because a police officer testified that he saw defendant drop a suspicious object which was later determined to contain heroin. The fines and fees order is corrected to reflect a $5-per-day presentence custody credit.

¶ 2 Following a bench trial, defendant Rafphel Payne was convicted of possession of a controlled substance and sentenced to five years in prison. On appeal, he contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt. He further contends that the fines and fees order must be corrected to reflect that he is entitled to $5-per-day

presentence custody credit. We affirm defendant's conviction and sentence but correct the fines and fees order.

¶ 3 At trial, Chicago police officer Bernardo Manjarrez testified that about 8 p.m. on August 15, 2012, he and his partner, Officer Teague, were on routine patrol, in uniform, and in a marked squad car. As they passed 901 North Lawler Avenue, Officer Manjarrez saw defendant, whom he identified in court, walking less than 30 feet from the car. Defendant looked in the officers' direction, dropped a golf-ball-sized item, and continued walking toward the squad car. The officers got out of the car and detained defendant. While his partner stayed with defendant, Officer Manjarrez went to the area where he saw defendant drop the item. There, he recovered a plastic bag containing 11 small tinfoil packets with tape on top, each containing suspect heroin. After recovering the bag, Officer Manjarrez placed defendant in custody. By this time, Officers Cannata and Riga had arrived at the scene. Officer Manjarrez gave the recovered bag to Officer Cannata. On cross-examination, Officer Manjarrez testified that he was "almost 100 percent sure" he was the passenger in the squad car and stated that he did not recall what defendant was wearing on the day in question.

¶ 4 Chicago police officer Christopher Cannata testified that about 8 p.m. on the day in question, he and his partner were in uniform, in a marked car, when he saw a police car stopped about a block ahead of them. Officer Cannata stated that he saw two officers get out of the car "to make what it [*sic*] looked like a street stop." He saw Officer Manjarrez walk 30 to 45 feet to a parkway area, bend down, and pick up an object. Officer Cannata walked up to Officer Manjarrez, who gave him the object. Officer Cannata described the object as a bundle of 11 taped tinfoil packets, each containing suspect heroin. Officer Cannata thereafter inventoried the object.

¶ 5 The parties stipulated that if called, a forensic chemist would testify that she received 11 foil packets in a clear plastic bag, each separately taped. The total estimated weight of the 11 items was 3.1 grams. The chemist tested four of the items, determined their weight to be 1.1 grams, and found them positive for the presence of heroin.

¶ 6 Defendant made a motion for a directed finding, which was denied. Defendant then waived his right to testify and rested.

¶ 7 Following closing arguments, the trial court found defendant guilty of possession of a controlled substance. In the course of doing so, the trial court specifically stated that it found Officer Manjarrez to be credible and that both officers were "consistent with their testimony" and unimpeached. The court subsequently sentenced defendant to five years in prison.

¶ 8 On appeal, defendant challenges the sufficiency of the evidence. He argues that the police officers were not credible because they described an improbable scenario. Specifically, defendant asserts that the officers' "suspect testimony described such patently self-incriminating conduct that it defies logic and runs counter to basic human experience." Defendant further asserts that Officer Manjarrez's account typifies the sort of "dropsy" evidence that is inherently subject to suspicion. According to defendant's argument, his conviction should be reversed due to the "incredible" nature of the State's evidence.

¶ 9 When reviewing the sufficiency of the evidence, the relevant inquiry 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. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on

these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). Reversal is justified where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 10 Viewing the evidence in the light most favorable to the prosecution, we conclude that the State proved defendant guilty beyond a reasonable doubt. Officer Manjarrez testified that he saw defendant drop a golf-ball-sized object. The object, which he recovered moments later, and which Officer Cannata saw him pick up, turned out to contain heroin. The trial court had the opportunity to observe Officer Manjarrez and Officer Cannata testify, specifically found Officer Manjarrez to be credible, and stated that both officers were "consistent with their testimony" and unimpeached. We do not agree that the officers' testimony was so unsatisfactory, improbable, or implausible as to warrant reversal. See *Slim*, 127 Ill. 2d at 307. We disagree with defendant that it is improbable that he chose to drop a bag of heroin in plain view of two uniformed police officers in a marked squad car. "Far from being contrary to human experience, cases which have come to this court show it to be a common behavior pattern for individuals having narcotics on their person to attempt to dispose of them when suddenly confronted by authorities." *People v. Henderson*, 33 Ill. 2d 225, 229 (1965); see also *People v. Moore*, 2014 IL App (1st) 110793-B, ¶ 10 (noting that "a criminal opting to dispose of contraband after becoming aware of a police presence is not only believable, but also common," and citing cases).

¶ 11 Moreover, we are not convinced by defendant's argument that Officer Manjarrez's testimony was inherently subject to suspicion because it was "dropsy" evidence. This court recently rejected such an argument in *People v. Moore*, 2014 IL App (1st) 110793-B, ¶¶ 12-13. A "dropsy" case is one in which a police officer, to avoid the exclusion of evidence on fourth-amendment grounds, falsely testifies the defendant dropped evidence in plain view. *People v.*

Ash, 346 Ill. App. 3d 809, 816 (2004). In *Moore*, we explained that even if anecdotal evidence actually establishes a rise in the use of "dropsy" testimony, the anecdotal evidence does little to discredit the testimony of police officers in a particular case. *Moore*, 2014 IL App (1st) 110793-B, ¶ 13. We reasoned that while anecdotal evidence might suggest that a trial court or jury would be wise to consider the frequency of police perjury as a factor when judging credibility, it did not require the trier of fact to disbelieve any officer's testimony that describes seeing a defendant dropping contraband. *Id*. The matter is best resolved through effective and detailed cross-examination. Accordingly, defendant's challenge to the sufficiency of the evidence fails. This is not to say that we deny the existence of "dropsy" evidence as defendant argues. Rather, we specifically note that even in the face of allegations that the police have fabricated "dropsy" evidence, the facts of the individual case, in totality, must determine the sufficiency of the evidence for appeal purposes.

¶ 12 Defendant's second contention on appeal is that the fines and fees order must be corrected to reflect 194 days' worth of $5-per-day presentence custody credit applied toward his fines. The State concedes that under section 110-14(a) of the Code of Criminal Procedure, defendant is entitled to $5-per-day presentence custody credit against his fines. 725 ILCS 5/110-14(a) (West 2012). We accept this concession by the State. However, because the amount credited may not exceed the total amount of the fines imposed, defendant's $5-per-day presentence custody credit is limited to $535. *Id*. We order the clerk of the circuit court to correct the files and fees order to reflect this credit.

¶ 13 For the reasons explained above, we affirm defendant's conviction and sentence and order the fines and fees order corrected.

¶ 14 Affirmed as modified.