2015 IL App (1st) 130916-U

SIXTH DIVISION
February 20, 2015

No. 1-13-0916

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 16012
	)	
LEVELL WATTS,	)	Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held*: We affirmed defendant's conviction where the evidence was sufficient to sustain defendant's conviction of possession of a controlled substance and the trial court found a police officer credibly testified he saw defendant drop a bag which contained heroin.

¶ 2 Defendant, Levell Watts, was charged with one count of possession of a controlled substance, two counts of possession of a controlled substance with intent to deliver, and two counts of delivery of a controlled substance, stemming from an incident which occurred on August 3, 2012, in Chicago, Illinois within 1,000 feet of a school.

¶ 3 Following a bench trial, defendant was found guilty of possession of a controlled substance only, and was sentenced to 30 months' imprisonment. On appeal, defendant contends the evidence was insufficient to sustain his conviction where the testimony of the arresting officer was uncorroborated and inherently incredible.

¶ 4 At trial, Chicago police officer, Joshua Bernson, after identifying defendant in court, testified that at approximately 12 p.m. on August 3, 2012, he and his partner were on routine patrol in the area of 5300 South Laflin Street in Chicago. Officer Bernson stated that the area is known for heavy narcotics trafficking. The officers were in an unmarked police vehicle, dressed in plain clothes, and wearing vests with their badges displayed, when Officer Bernson saw defendant loitering on a corner next to an unidentified male on a bicycle. The officers drove around the block twice and saw that another unidentified male was walking north on the west side of Laflin Street toward defendant. As the officers proceeded north on Laflin Street, Officer Bernson observed defendant and the unidentified male through the rear-view mirror of their vehicle. Officer Bernson, who has 10 years of experience as a Chicago police officer, explained that he believed a narcotics transaction was about to take place because of the area in question, and the demeanor of defendant and the unidentified male.

¶ 5 Officer Bernson parked his vehicle on 54th Street, between Justine and Laflin Streets, and began his surveillance of the potential narcotics transaction. The officer watched as the unidentified male followed defendant, who was stopped at the entrance of an alley. Defendant turned to face the unidentified man and removed a small, white, square object from what appeared to be a clear, plastic, sandwich bag, which defendant held in his left hand. Defendant placed the small, white, square object into the hand of the unidentified man. Officer Bernson

testified that, at the time of the transaction, he was "probably 50-yards maybe" from defendant, with nothing obstructing his view, when he observed defendant's right side. Officer Bernson stated that he had not received a radio description of defendant, and that he did not recall the presence of children, adults, or other vehicles in the area at that time of the incident.

¶ 6 The officers began to approach defendant on foot. The unidentified male who was with defendant walked east on 54th Street, and Officer Bernson's partner followed him. Officer Bernson continued to approach defendant, who was walking toward him. When he was approximately 30 to 40 feet from defendant, Officer Bernson observed that defendant had dropped the sandwich bag that he held in his left hand into the grass. Defendant was immediately detained by Officer Bernson who recovered the sandwich bag which held ten smaller plastic bags containing a white powdery substance from the spot where defendant had dropped it.

¶ 7 The parties stipulated to the chain of custody of the 10 items which were recovered from defendant. The parties further stipulated that Illinois State Police crime lab forensic chemist Peter Anzalone tested the contents of 4 of the 10 items, that the 4 items which weighed 1.3 grams tested positive for heroin, and that the total estimated weight of all 10 items was 3.3 grams.

¶ 8 Investigator Clarence Travis, of the Cook County State's Attorney's Office, testified to the procedures he followed in measuring the distance between 1440 West 54th Street, the location of defendant's arrest, and Arthur Libby Elementary School, located at 5300 South Loomis Avenue. Mr. Travis measured a distance of 319 feet.

¶ 9 After the close of evidence and closing arguments, the trial court summarized Officer Bernson's testimony as to the officer's observations of defendant, including defendant's hand-to-

hand exchange with another person, and dropping the drugs. The trial court then concluded that the officer had testified "very credibly and honestly" and found defendant guilty of possession of a controlled substance. The trial court further found, after noting again that although Officer Bernson had testified very credibly, that the State had not met its burden regarding the remaining counts. The trial court, thus, found defendant not-guilty of two counts of possession of a controlled substance with intent to deliver, and two counts of delivery of a controlled substance. Defendant was sentenced to 30 months' imprisonment.

¶ 10 On appeal, defendant argues the evidence was insufficient to prove him guilty beyond a reasonable doubt because Officer Bernson's testimony was contrary to basic human experience, and was improbable and unbelievable. Specifically, defendant argues that Officer Bernson's testimony was "dropsy" testimony which presented an illogical scenario where defendant had dropped narcotics in plain view of a police officer. Defendant also argues that Officer Bernson's testimony was uncorroborated by other witnesses. Defendant, thus, requests that this court reverse his conviction.

¶ 10 "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." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies to all criminal cases, whether the evidence is direct or circumstantial (*People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992)), and acknowledges the responsibility of the trier of fact to determine the credibility of witnesses, to weigh the evidence, and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *Id*. at 375. A reviewing court

will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory, as to justify a reasonable doubt of defendant's guilt. *Id*.

¶ 11 Here, defendant was found guilty of possession of a controlled substance. To sustain such a conviction, the determinative question is whether defendant had knowledge and possession of the narcotics. *People v. Givens*, 237 Ill. 2d 311, 334-35 (2010); see, also 720 ILCS 570/402 (West 2004) ("it is unlawful for any person knowingly to possess a controlled * * * substance").

¶ 12 Defendant asserts that Officer Bernson's testimony is "dropsy" testimony and, therefore, inherently incredible. Defendant relies on *People v. Ash*, 346 Ill. App. 3d 809 (2004), to support this argument for reversal. The court in *Ash* explained that a " '"dropsy" case' is one in which a police officer, to avoid the exclusion of evidence on fourth-amendment grounds, falsely testifies that the defendant dropped the narcotics in plain view (as opposed to the officer's discovering the narcotics in an illegal search). *Id.* at 816 (citing G. Chin & S. Wells, *The "Blue Wall of Silence"as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. Pitt. L. Rev. 233, 248-49 (1998). However, the *Ash* court affirmed defendant's conviction noting that the officer's testimony, which at first blush might seem "convenient," was not contrary to human experience or unworthy of belief. *Ash*, 346 Ill. App. 3d at 817-18.

¶ 13 Additionally, in *People v. Moore*, 2014 IL App (1st) 110793-B, this court rejected a similar argument. The defendant in *Moore*, who was convicted of aggravated unlawful use of a weapon, argued that he was not proven guilty beyond a reasonable doubt because it belied common sense that he would remove a weapon from his person in the vicinity of police officers. *Id.* ¶¶ 6, 10. This court disagreed and affirmed the defendant's conviction finding that it is not

only believable, but common, that a criminal would attempt to dispose of contraband after becoming aware of a police presence. *Id.* ¶¶ 10, 14. In doing so, this court rejected the defendant's argument that the officer's description of events consisted of "dropsy" testimony, and was, thus, unworthy of belief. *Id.* ¶¶ 13-14. Further, this court reasoned that anecdotal evidence concerning "dropsy" testimony in other cases does not require the trier of fact to disbelieve any officer's testimony which describes a defendant dropping contraband, but merely a factor to consider in judging credibility. *Id.* ¶¶ 12-14.

¶ 14 We find defendant's attempts to distinguish *Moore* misplaced. Defendant points out that the defendant in *Moore* was running from the police. The officer in *Moore*, however, testified that the defendant was part of a group which was gathering at an intersection. *Id.* ¶ 5. The group then "began moving south," at which point the defendant stopped in front of a bush, pulled a gun from his waistband, then dropped it, kicking it under the bush. *Id.* Contrary to defendant's contention, no evidence was presented that the defendant in *Moore* was actively fleeing from the police at the time he dropped the gun. Equally misplaced is defendant's attempt to distinguish that the defendant in *Moore* did not merely drop the contraband at issue but, also, tried to hide it. Our analysis of the "dropsy" testimony in *Moore* was not limited to such scenarios.

¶ 15 Here, Officer Bernson testified that defendant dropped a bag of suspect heroin in plain view. Although defendant argues that it defies logic and runs counter to human experience that he would engage in such conduct, as we found in *Moore*, such conduct is both believable and common. *Id.* ¶ 10 (and cases cited therein); see also *People v. Henderson*, 33 Ill. 2d 225, 229 (1965). Moreover, mere possibility, or speculation, are insufficient to raise a reasonable doubt of

guilt. *People v. Phillips*, 215 Ill. 2d 554, 574 (2005). It is not the function of this court to speculate as to why defendant decided to drop the drugs in plain view of Officer Bernson.

¶ 16 The trial court had the opportunity to observe Officer Bernson testify and specifically found that he testified "very credibly and honestly." We, thus, have no basis for substituting our judgment for that of the trial court in this matter. *Campbell*, 146 Ill. 2d 374-75, 389. In sum, when viewing the evidence presented in the light most favorable to the prosecution (*Siguenza-Brito*, 235 Ill. 2d at 224), we find that the State sustained its burden in establishing that defendant had knowledge and possession of the drugs at issue and, accordingly, that defendant was proven guilty beyond a reasonable doubt of possession of a controlled substance.

¶ 17 We disagree with defendant's argument that, because the trial court found him not-guilty of two counts of possession of a controlled substance with intent to deliver, and two counts of delivery of a controlled substance, the trial court did not find Officer Bernson's testimony to be credible. To the contrary, when the trial court found defendant not-guilty of those four counts, it made clear that, although Officer Bernson was credible, the State had not met its burden as to those charges.

¶ 18 We also have rejected defendant's argument that Officer Bernson's testimony was deficient in that it was not corroborated by the testimony of his partner who was on the scene. The State was not required to corroborate Officer Bernson's credible testimony in order to prove defendant guilty beyond a reasonable doubt. *Ash*, 346 Ill. App. 3d at 818.

¶ 19 Finally, we reject defendant's argument that Officer Bernson's testimony was not credible because Google Maps indicates the officer was substantially more than 50 yards from defendant at the time of the hand-to-hand drug transaction as Officer Bernson testified. The record shows

that Officer Bernson's testimony as to this distance was a mere approximation. As we have discussed, the trial court found the officer to be credible after hearing all the testimony. We will not substitute our judgment as to the credibility finding of the trial court.

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.