2015 IL App (1st) 131027-U

FOURTH DIVISION
March 12, 2015

No. 1-13-1027

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 19350
	)	
RILEY HOLMES,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's conviction is affirmed because the trial court could reasonably accept the testimony of an officer who engaged in a controlled buy with defendant.

¶ 2 Following a bench trial, defendant, Riley Holmes, was convicted of delivery of a controlled substance and sentenced to three and a half years in prison. He appeals, arguing the

State failed to prove him guilty beyond a reasonable doubt because the officer who conducted the undercover buy (Officer Pittman) presented unbelievable and uncorroborated testimony that was impeached by her report. For the reasons that follow, we affirm.

¶ 3 At trial, Officer Troutman testified that he was working as an enforcement officer as part of a seven-person team near 6552 South Vernon on September 29, 2012. Troutman received a radio communication at approximately 11 a.m. informing him that Officer Angela Pittman, while working undercover, had engaged in a positive narcotics purchase. Pittman described the subject as a black man wearing dark clothing and riding a bicycle eastbound on 65th Street from Vernon, "just a little bit" in front of Pittman's undercover vehicle. Officers Troutman and Zinchuk relocated and arrested defendant at around 600 East 65th Street, an intersection two blocks from South Vernon. Defendant fit Pittman's description and was riding a bike about 10 to 30 feet in front of Pittman's car. Pittman made a positive identification of defendant by radio less than a minute later. Pittman also gave Troutman two knotted plastic bags containing crack cocaine, which Troutman inventoried.

¶ 4 Troutman did not know if other people were nearby during the buy but said nobody was present when the officers detained defendant. The officers conducted a search of defendant but found no drugs or money. After arresting defendant, the officers inventoried a black wallet, three cell phones, and miscellaneous items, but they did not inventory a bike. Troutman's report did not state that defendant was on a bike when he was arrested.

¶ 5 Chicago police officer Angela Pittman testified that she met defendant outside a McDonald's near 63rd Street and King Drive. She told defendant she was looking to purchase crack cocaine, and defendant told her he could take her to a place where he could get it for her.

Defendant then instructed Pittman to drive her car to the 6600 block of Vernon and led the way to that location on his bike. When they arrived, defendant told Pittman to park at 6552 Vernon on the west side of the street, which she did. Defendant leaned his bike against Pittman's car and asked her to watch it. Pittman told defendant she wanted to purchase "two crack cocaine," and defendant said it would cost $20. Pittman asked defendant if he had identification (ID) to leave with her. In response, he gave her his wallet and Illinois ID card, and she gave him $20 in prerecorded funds. Pittman said the photograph on the ID matched defendant, but she did not note the address or date of birth on defendant's ID.

¶ 6 Defendant crossed over to the other side of the street and began walking southbound. Pittman started to lose sight of him, so she moved his bike from her car and began driving southbound. She was able to observe defendant again at a home at 6637 South Vernon, talking to a black man. After seeing defendant give the man money and enter the home, Pittman "flipped a U-turn" on the two-way street and returned to her original location, parking in her original space. Defendant walked to the passenger side of Pittman's window, removed from his mouth two clear, knotted bags with white rocks, and handed them to Pittman. Pittman observed the items to be crack cocaine. Defendant and Pittman then discussed going somewhere so that he could smoke some of the crack cocaine she had purchased. Pittman returned defendant's wallet and ID, which had fallen on the car's floor, and followed him in her car from about 10 to 15 feet away as he rode his bike eastbound on 65th. She radioed her team members that she had made a positive narcotics purchase and continued to follow defendant until the enforcement officers eventually passed her in their unmarked vehicle. She told the officers via radio that defendant was in front of her, and they detained defendant. Afterward, Pittman confirmed defendant's identity as she

drove away. Later, at the police station, Pittman gave Troutman the narcotics, which he inventoried.

¶ 7 On cross-examination, Pittman acknowledged that her report did not mention that she lost sight of defendant as he walked to 6637 South Vernon. She also did not include in her report that she drove her vehicle to 6637 South Vernon, saw defendant enter the home, or drove back to her original location and parked in her original spot. Likewise, her report did not indicate that defendant exchanged money with a person at 6637 South Vernon. On redirect, Pittman explained that her report was only a summary of events, and it did state that she observed defendant go to 6637 South Vernon and make contact at that location.

¶ 8 The parties stipulated to the chain of custody of the two items Pittman tendered to Troutman and the chemical composition. The forensic chemist tested one of the two items and found it positive for less than .1 gram of cocaine.

¶ 9 On this evidence, the trial court found defendant guilty, stating as follows. "The Court has had the ability to observe the witnesses, their interests and bias when they testified in this case. Although the reports written in the case are not perfect, I have no question about Officer Pittman's testimony in this matter." At a subsequent hearing, the court denied defendant's post-trial motion, finding it was "fairly clear" from the officers' testimony that defendant was a retailer who was assisted in the transaction by a "wholesaler" in the neighborhood. The court also stated it had "no difficulty with the officer's testimony." Thereafter, the court sentenced defendant to three and a half years in prison and denied his motion to reconsider sentence. This appeal followed.

¶ 10 On appeal, defendant asserts the evidence was insufficient to sustain his conviction. He concedes that Officer Pittman's testimony, if believed, would support the elements of his delivery charge. However, he contends her testimony was unbelievable because it is contrary to human experience that he would give Pittman his ID and wallet to make $20. Defendant further contends the discrepancies between Pittman's testimony and her report and the lack of corroboration in this case made Pittman's testimony suspect. He observes Troutman did not recover money or drugs on defendant when he arrested him, Troutman did not testify defendant possessed an ID at the time of his arrest, Pittman did not identify the wallet Troutman recovered from defendant, and Pittman did not take note of the personal information on defendant's ID. We disagree with defendant and find the evidence was sufficient to sustain his conviction.

¶ 11 To prove defendant guilty of unlawful delivery of a controlled substance, the State was required to show he knowingly delivered a controlled substance. 720 ILCS 570/401(d) (West 2012); *People v. Brown*, 388 Ill. App. 3d 104, 108 (2009). "Deliver" 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 2012).

¶ 12 We review a challenge to the sufficiency of the evidence by determining " '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.' (Emphasis in original.)" *People v. De Filippo*, 235 Ill. 2d 377, 384-85 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A defendant's conviction will be reversed only "where the evidence is so unreasonable, improbable, or unsatisfactory" as to create a reasonable doubt of defendant's guilt.

People v. Wheeler, 226 Ill. 2d 92, 115 (2007). On review, we will not retry defendant, and the trier of fact remains responsible for determining the credibility of witnesses and the weight to be given to their testimony. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). Testimony may be deemed insufficient under the *Jackson* standard but only where the evidence "compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 13 In this case, the trial court could reasonably have accepted Officer Pittman's testimony. Contrary to defendant's assertion, it is not "improbable, unconvincing, and contrary to human experience" that a drug dealer would give his ID or wallet to a person that he thought was a drug buyer in order to make $20. By doing so, defendant did not "inexplicably" place himself in a vulnerable position; rather, he put himself in the actual position to make money, apparently unaware that Pittman was an undercover officer. A reasonable trier of fact could also have accepted Pittman's testimony that she made no use of the information on defendant's ID, particularly where she was working undercover and started to follow defendant in her car shortly after he gave her his ID. In short, Pittman's testimony was far more plausible than the testimony deemed unbelievable in *People v. Coulson*, 13 Ill. 2d 290, 296 (1958), and *People v. Buchholz*, 363 Ill. 270, 277 (1936), in which the witnesses testified that the defendants voluntarily followed them home after robbing or attempting to rob them.

¶ 14 The discrepancies between Pittman's testimony and her police report do not make her testimony unworthy of belief. Pittman's report indicated only that she observed defendant go to 6637 South Vernon and make contact at that location but omitted that she lost sight of defendant, followed him to 6637 South Vernon, saw him exchange money and go into a building, and later

returned to her original parking spot. However, Pittman explained that her report was only a summary of events, and the trial court explicitly found Pittman's testimony credible even though the "reports written in the case [were] not perfect." It was for the trial court to determine Pittman's credibility and the weight to be given to her testimony. *Ross*, 229 Ill. 2d at 272.[1]

¶ 15 Similarly, we reject defendant's contention that Officer Pittman's testimony concerning the drug transaction was unbelievable because it was uncorroborated. First, we note Troutman's testimony that Pittman gave him two plastic bags of crack cocaine corroborated Pittman's testimony that a transaction took place. Moreover, it is well-established that the testimony of a single witness, if positive and credible, is sufficient to sustain a conviction. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Significatly, Officer Pittman testified she never lost sight of the defendant from the time he gave her the drugs until he was apprehended. The trial court had the opportunity to observe Pittman testify and found her testimony credible, and it is not our function to retry defendant on appeal. *Ross*, 229 Ill. 2d at 272.

¶ 16 In sum, none of the purported flaws in Pittman's testimony convince us that a reasonable trier of fact could not have accepted her testimony beyond a reasonable doubt. Accordingly, we affirm the trial court's judgment.

¶ 17 Affirmed.

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[1] Defendant also contends Pittman's testimony that South Vernon was a two-way street is contradicted by a Google Map that he has appended to his brief. Although we may take judicial notice of distance using Google Maps (see *People v. Stiff*, 391 Ill. App. 3d 494, 504 (2009)), we decline to take judicial notice that South Vernon was a two-way street where defendant never presented any such evidence to the trial court. See *People v. Brown*, 249 Ill. App. 3d 986, 994 (1993) (appellate court cannot consider matters outside the record). In any event, such a minor inconsistency does not render Pittman's testimony unbelievable.