2015 IL App (1st) 131226-U

SIXTH DIVISION
FILED: March 20, 2015

Nos. 1-13-1226 and 1-13-3832
(CONSOLIDATED)

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 14362
	)	
GREGORY TYUS,	)	Honorable
	)	Lawrence E. Flood,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Evidence was sufficient to sustain defendant's conviction for delivery of a controlled substance based on a theory of accountability.

¶ 2 Following a bench trial, defendant Gregory Tyus was found guilty of delivery of a controlled substance and sentenced, as a Class X offender, to a seven-year term of imprisonment. In these consolidated appeals, defendant challenges the sufficiency of the evidence to sustain his

conviction for that offense under a theory of accountability. We affirm in case No. 1-13-1226 and dismiss case No. 1-13-3832.[*]

¶ 3 Defendant was charged with delivery of a controlled substance in relation to an incident that occurred on the morning of July 15, 2012, in the area of 743 North Waller Street in Chicago, Illinois. During this incident, undercover police officer Angela Pittman engaged in a hand to hand drug transaction with Sandra Myles. Defendant was alleged to have aided Myles in carrying out the transaction.

¶ 4 At trial, Officer Pittman testified that on the morning of July 15, 2012, she was serving as the purchasing officer in an undercover narcotics operation and was dressed in plain clothes and driving an unmarked vehicle. Upon arriving at 743 North Waller Street at approximately 11:22 a.m., she pulled her car up next to a man standing on the east side of Waller Street, whom she identified in court as defendant. When Officer Pittman rolled down her window, defendant asked her what she was looking for. Officer Pittman initially testified that she responded that she was looking for "two rocks," then stated that "he said two blows." Immediately thereafter Officer Pittman clarified that it was she who told defendant she was looking for "two blows," which is a street term for heroin. Officer Pittman further testified that defendant then told her "okay, wait here," and crossed to the west side of Waller Street, walked northbound and met with a female

[*] We note that after defendant filed a timely notice of appeal in this case under Case No. 1-13-1226, he filed an untimely motion to reconsider sentence with the trial court. Thereafter, he filed a late notice of appeal under Case No. 1-13-3832, and the two appeals were subsequently consolidated. We dismiss appeal No. 1-13-3832 because it was filed from an untimely motion to reconsider and is superfluous given defendant's timely filed initial notice of appeal.

who was standing approximately 50 feet away from Officer Pittman's car. Immediately after defendant engaged in conversation with that woman, she walked toward the driver's side of Officer Pittman's car and handed the officer two foil wrapped packages. In exchange, Officer Pittman handed the woman $20 in prerecorded funds. She and the woman did not speak to each other during the entirety of the transaction. After the woman walked away, Officer Pittman informed her team members via radio that she had completed a narcotics transaction, as well as provided them with a description of defendant and the woman. Officer Pittman then drove away, but returned to the area shortly thereafter and positively identified defendant and the woman, who Officer Pittman learned was Myles.

¶ 5 On cross-examination, Officer Pittman testified that she had two separate verbal interactions with defendant on the day of the incident, the first of which occurred approximately 20 minutes before the drug transaction took place. During that first encounter, Officer Pittman approached defendant and inquired about purchasing narcotics and defendant told her that he could "take care" of her, but instructed her to "drive around" because police were coming through the area at that time. Officer Pittman acknowledged that she did not include this prior encounter in her report, and testified that she typically only includes details regarding the actual narcotics purchase in such reports. Officer Pittman testified that she never saw defendant and Myles standing together aside from when defendant engaged Myles in conversation, and acknowledged that she could not hear what was said during that conversation. Officer Pittman never saw defendant hand anything to Myles or saw Myles hand anything to defendant.

1-13-1226U and 1-13-3832U consolidated.

¶ 6 Officer Victor Portis testified that he served as a surveillance officer in the undercover narcotics operation on the day of the incident and corroborated Officer Pittman's testimony regarding the drug transaction, save for the substance of Officer Pittman's conversation with defendant, which he was unable to hear. He added that prior to Officer Pittman's arrival, he saw defendant and Myles standing together on the sidewalk, and that after the transaction, he saw Myles return to the sidewalk where defendant was standing and engage in conversation with him. He further testified that he saw defendant cross the street twice during the entirety of the incident.

¶ 7 Officer John Thornton testified that he served as an enforcement officer in the undercover narcotics operation on the day of the incident. He and his partner, Officer Palino, received information from team members via radio regarding the incident, along with a description of the two subjects. Upon arriving at the scene, Officer Thornton saw defendant and Myles standing approximately five feet away from each other, and he and Officer Palino detained and arrested them. No other individuals were arrested or detained in this case. Officer Thornton further testified that he performed a custodial search of defendant, which revealed no drugs or prerecorded funds. Officer Portis performed a custodial search of Myles, and recovered a $20 bill that matched the serial number of the prerecorded funds Officer Pittman had used in this case. At the police station, Officer Pittman gave him two tin foil packets, which he then inventoried.

¶ 8 The parties then stipulated that forensic chemist Martin Palomo would testify that he tested the contents of one of the two foil wrapped packages he received in relation to this case, that they tested positive for heroin and weighed .1 gram, and that the estimated weight of the

contents of both packages was .2 gram. The parties also stipulated that a proper chain of custody in relation to these items was maintained at all times.

¶ 9 Defendant testified that he was not in possession of or selling any narcotics on the day of the incident, nor was he working with anyone selling narcotics that day. He further testified that at approximately 11 a.m. that day, he was in the area of 743 North Waller Street when a woman who he now knows was an undercover officer pulled up to him and asked "any drugs out here," and he told her that there were not. The woman then asked him if he knew her husband, and drove away after he told her that he did not. Approximately 20 minutes later, the same woman returned and asked him "any blows out here," and he told her "I told you the first time wasn't no blows out here. Go down the street."

¶ 10 Defendant further testified that shortly thereafter, he was standing in the same location talking to his friend Bernard Roberson when Myles, who had been standing down the street, came to speak with them. Defendant was not friends with Myles, but Roberson appeared to know her. Defendant testified that he never directed Myles to engage in a narcotics transaction with the undercover officer, nor did he see Myles approach a car or witness a transaction. Defendant denied speaking to Myles before she approached the undercover officer's car. Defendant testified that in addition to himself and Myles, Roberson was also detained, but not arrested, in relation to this incident.

¶ 11 The trial court found defendant guilty of delivery of a controlled substance. In doing so, the court stated, *inter alia*, that it did not believe defendant's testimony. The court found that the logical inference from the testimony presented was that Myles knew to give Officer Pittman two

tinfoil wrappers of heroin because she learned it from defendant, and thus, that defendant and Myles acted in concert and with the same common purpose. The trial court subsequently sentenced defendant, who was Class X mandatory due to his criminal history, to a seven-year term of imprisonment.

¶ 12 On appeal, defendant contends that the evidence was insufficient to sustain his conviction under a theory of accountability. Although defendant does not contest the sufficiency of the evidence to show that Myles engaged in a narcotics transaction with Officer Pittman, he maintains that the evidence presented failed to show beyond a reasonable doubt that he acted with intent to aid or assist Myles in the delivery of those narcotics or engaged in a common criminal design in relation thereto.

¶ 13 The standard of review on a challenge to the sufficiency of the evidence 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. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies to all criminal cases, whether the evidence is direct or circumstantial, and acknowledges the responsibility of the trier of fact to determine the credibility of the witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). 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. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 14 Under Illinois law, a person is legally accountable for the conduct of another when, either before or during the commission of the offense, with the intent to promote or facilitate the commission thereof, he aids, abets, or attempts to aid that person in planning or committing the offense. 720 ILCS 5/5-2(c) (West 2012). Active participation is not required to be found guilty under a theory of accountability (*People v. Taylor*, 164 Ill. 2d 131, 140-41 (1995)), and to prove defendant had the requisite intent, the State must show that either defendant shared the criminal intent of the principal or that there was a common criminal design (*In re W.C.*, 167 Ill. 2d 307, 337 (1995)).

¶ 15 Pursuant to the common design rule, where two or more persons engage in a common criminal design of agreement, any acts in furtherance thereof committed by one party are considered to be the acts of all parties to the common design and all are equally responsible for the consequences of such further acts. *Id*. Words of agreement are not necessary to establish a common purpose to commit a crime, but rather, the common design may be inferred from the circumstances surrounding the perpetration of the unlawful conduct. *Taylor*, 164 Ill. 2d at 141. Factors that may be considered in determining defendant's accountability based on a common criminal design include his presence during the perpetration of the offense, his continued affiliation with the other offenders after the commission of the crime, and his failure to report the crime. *Id.*

¶ 16 Here, Officer Pittman testified that when she first asked defendant for drugs, he told her he could "take care of" her, but instructed her to drive around due to police presence at that time. When she returned shortly thereafter and asked defendant for "two blows," he said "okay, wait

here," then approached Myles and spoke with her. Immediately thereafter, Myles approached Officer Pittman's car and gave her two tinfoil packets in exchange for $20. Notably, no words were exchanged between Officer Pittman and Myles during the entirety of the transaction. Under these circumstances, we find that it was reasonable for the trial court to infer, as it did, that Myles would have had no way of knowing what to tender to Officer Pittman unless she learned it from defendant. *Id.*

¶ 17 Furthermore, Officer Portis corroborated Officer Pittman's testimony regarding defendant and Myles's involvement in the drug transaction, save for what was said during Officer Pittman's conversation with defendant, which he was unable to hear. Officer Portis also testified that prior to Officer Pittman's arrival on the scene, he saw defendant and Myles standing together on the sidewalk, and that after the drug transaction was completed, Myles returned to the sidewalk where defendant was standing and engaged in conversation with him. Officer Thornton testified that defendant and Myles were standing approximately five feet away from each other at the time he arrived on the scene to detain them. In viewing the evidence presented in the light most favorable to the prosecution (*Siguenza-Brito*, 235 Ill. 2d at 224), we find that it was sufficient to show that defendant was involved in a common criminal design with Myles for the delivery of a controlled substance to Officer Pittman and, accordingly, that he was proven guilty beyond a reasonable doubt of that offense based on a theory of accountability (*Taylor*, 164 Ill. 2d at 141).

¶ 18 Defendant, however, maintains that Officer Pittman's testimony was not credible because (1) she was confused about the type of drug at issue and whether defendant was the buyer or seller, (2) she failed to include her initial encounter with defendant in her report, and (3) her

testimony conflicted with that of Officer Portis in relation to whether defendant ever crossed the street during the incident. Although Officer Pittman initially testified that she told defendant she was looking for two rocks, then testified that "he said two blows," immediately thereafter she clarified that she was the one who stated that she wanted "two blows" from defendant. Officer Pittman also testified that she did not include her initial encounter with defendant in her report because she typically only includes information pertaining to the actual drug purchase in such reports. Defendant's contention that Officer Pittman's testimony conflicted with that of Officer Portis is belied by the record, which shows that Officer Portis did not testify that defendant and Myles stood on the same side of the street the entire time, but rather, that defendant crossed the street at certain points during the incident. It was for the trier of fact to weigh the evidence and resolve any conflicts therein, and we have no basis here for substituting our judgment for that of the trial court in this regard. *Campbell*, 146 Ill. 2d 375, 389.

¶ 19 Defendant also contends that many innocent and "plausible" explanations exist for what transpired on the day of the incident. However, mere possibilities or speculation are insufficient to raise a reasonable doubt of guilt (*People v. Phillips*, 215 Ill. 2d 554, 574 (2005)), and the trial court is not obliged to accept any proffered explanation compatible with defendant's innocence (*People v. Evans*, 209 Ill. 2d 194, 212 (2004)).

¶ 20 Finally, defendant argues that the use of inferences to prove an element of a crime raises due process concerns, citing *People v. Watts*, 181 Ill. 2d 133, 143 (1998). However, *Watts* dealt with the use of permissive and mandatory presumptions in statutes. *Id.* at 141-47. Here, in contrast, no statutory presumption, permissive or mandatory, is at issue. Rather, we are dealing

with the general concept that a finder of fact may draw inferences from the evidence presented, a concept so firmly ingrained in American jurisprudence that we find detailed discussion unnecessary. See, *e.g.*, *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Campbell*, 146 Ill. 2d at 374-75. Accordingly, defendant's reliance upon *Watts* is misplaced.

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County in case No. 1-13-1226, and we dismiss the appeal in case No. 1-13-3832.

¶ 22 No. 1-13-1226, Affirmed
¶ 23 No. 1-13-3832, Appeal Dismissed.