2015 IL App (1st) 131773-U

FOURTH DIVISION
April 9, 2015

No. 1-13-1773

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 6774
	)	
BERNARD COLEMAN,	)	The Honorable
	)	Rickey Jones,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Ellis concurred in the judgment.

O R D E R

¶ 1 *Held:* The State presented sufficient evidence to prove defendant guilty of possession of a controlled substance beyond a reasonable doubt where the record did not reflect that the surveillance officer's testimony was incredible.

¶ 2 Following a bench trial, defendant Bernard Coleman was convicted of possession of a controlled substance and sentenced to four years in prison. On appeal, defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt where numerous inconsistencies rendered the testimony of one of the State's witnesses unreliable. Defendant also

contends that the court improperly assessed a "Streetgang Fine" where there was no evidence presented of gang affiliation and asks this court to adjust his fines and fees order. We affirm and correct the fines and fees order.

¶ 3 Defendant was charged by information with possession of 15 grams or more, but less than 100 grams of heroin. He initially elected to have a jury trial, which resulted in a hung jury. On retrial, defendant waived his right to a jury and elected to have a bench trial before a new judge.

¶ 4 At the subsequent bench trial, Chicago police officer Raymond McInerney testified that he sat in an unmarked police vehicle watching an older Buick on the night of April 3, 2011. He had received information that an individual driving such a vehicle was selling drugs in the area. After a few moments, McInerney saw defendant get into the Buick alone and drive off; McIenerney followed. Defendant soon parked the vehicle and McInerney parked 75 feet away. The officer observed defendant through binoculars. Shortly thereafter, a woman approached defendant and gave him money. Defendant grabbed something from his lap or right side. He made a twisting motion with his arms as if opening something. He appeared to be holding a white container. Defendant took an object from the container and gave it to the woman. McInerney was unable to identify what the object was. The woman then walked away from defendant and towards McInerney. She dumped the contents of a small plastic packet into her hand and snorted them. Defendant drove away and McInerney followed. He radioed other officers and told them he was following defendant. The other officers arrived and stopped defendant's vehicle. McInerney later saw the object he believed to be the container, it was a "white light bulb case [*sic*]".

¶ 5 Chicago police officer Paul Kirner testified that McInerney radioed him to pull over defendant's vehicle. When he stopped defendant's car, Kirner asked defendant to exit the vehicle.

Kirner looked inside the car and saw a white container wedged between the driver's seat and the center console. The container was a plastic, white light bulb base which had some small pieces of glass on it. He found 25 small, Ziploc bags of white powder within the base, along with a larger bag of a chunky, white substance.

¶ 6 The parties stipulated that, if called, a forensic scientist would have testified that she tested 7 of the 25 smaller, plastic bags and found them to contain 1.6 grams of heroin, the other small bags weighed 4.1 grams but were not tested. She found the larger bag contained 13.7 grams of heroin.

¶ 7 The parties also stipulated that defendant did not own the Buick in which he was stopped.

¶ 8 After closing arguments by the parties, the trial court found defendant guilty of possession of a controlled substance and sentenced him to four years' incarceration. The order assessing fines and fees shows a total sum of $1,536 and includes a $100 "Streetgang Fine" pursuant to section 5-9-1.19 of the Code of Corrections (730 ILCS 5/5-9-1.19 (West 2010)). Defendant appeals.

¶ 9 Defendant first contends that the State failed to prove him guilty beyond a reasonable doubt because McInerney was the only witness who observed the alleged drug transaction and his testimony is incredible due to numerous inconsistencies. He argues that McInerney's testimony should be disregarded, and that the remaining evidence is insufficient to prove him guilty beyond a reasonable doubt. He notes that McInerney was not exactly sure where defendant got the container from and could not identify the object defendant handed to the woman. He also notes that McInerney did not know how much money the woman handed to defendant or where the money came from and that the woman was never stopped.

¶ 10 The State responds that McInerney testified reliably and credibly, and that it proved defendant guilty beyond a reasonable doubt.

¶ 11 Due process requires the State to prove each element of a criminal offense beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004), citing *In re Winship*, 397 U.S. 358, 364 (1970). When reviewing the sufficiency of evidence, a reviewing court must decide "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.) *Jackson v. Virginia*, 443 U.S. 307, 313 (1979); See also *Cunningham*, 212 Ill. 2d at 278. A reviewing court will not overturn a guilty verdict unless the evidence is "so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005). Where a conviction depends on eyewitness testimony, the reviewing court may only find testimony insufficient "only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *Cunningham*, 212 Ill. 2d at 279. A fact finder's credibility determination "is entitled to great deference but is not conclusive." *Id.*

¶ 12 A possession of a controlled substance conviction requires proof that a defendant: (1) knew of the presence of a controlled substance and (2) either actually or constructively possessed the substance. See *People v. Eghan*, 344 Ill. App. 3d 301, 306 (2003). Actual possession is an offender's "present personal dominion" over the substance when the offender "exercises immediate and exclusive dominion or control over the illicit material." *Id.* at 306-07.

¶ 13 A rational fact finder could have found that the State proved the elements of the offense beyond a reasonable doubt. McInerney testified that defendant brought a white container up from his lap or right side. He took an item from the container and gave it to a woman. When the woman walked closer, McInerney saw her dump a powder from a plastic bag and snort it. When Kirner stopped defendant, he found a white, plastic light bulb base wedged between the driver's seat and the center console. McInerney later saw the object and confirmed it was the container he

had seen before. Kirner found multiple baggies containing heroin within the base. Taking the evidence in the light most favorable to the prosecution, a fact finder could reasonably conclude that defendant knew the heroin was present and exercised actual, immediate, and exclusive control over the drugs when he reached into the base containing packets of heroin, removed a packet, and gave it to the woman in exchange for money. Therefore, we find that the trial court could rationally find beyond a reasonable doubt that defendant unlawfully possessed a controlled substance.

¶ 14 Defendant's argument that McInerney testified incredibly is unpersuasive. He argues that the testimony is undercut because McInerney could not specify exactly where defendant got the container from and could not identify what he handed to the woman. These minor omissions from McInerney's description are not so significant as to compel a reasonable person to doubt his testimony. Both details are readily explainable by the distance and manner of the observation and are further corroborated by later testimony. While McInerney was unable to specify exactly where the container came from, he did explain that it was in the area of defendant's lap or right side. The container was later found wedged next to the driver's seat, near a driver's right side and lap. While McInerney could not describe the small object pulled from the container when he was 75 feet away, once the woman walked closer he recognized it as a plastic baggy containing powder. Kirner also testified that he found similar plastic baggies in the container. Defendant also argues that McInerney's description of the container is dubious. While McInerney did not initially recognize the container as a light bulb base, he was able to describe its color and upon further viewing identified the recovered base as the white container he had seen earlier. McInerney's inability to determine that the small container was a light bulb base from 75 feet away does not cast compelling doubt on his reliability, particularly where he was later able to identify the light bulb base as the container he saw. Defendant asserts that McInerney testified

that he saw a "container requiring a twisting motion to open and close it." This misconstrues the testimony. McInerney actually stated that he saw defendant make a motion that looked like "he was twisting something or opening something up." It is unclear from the record whether the light bulb base required opening or twisting in order to access the bags within it. McInerney gave a description of what he saw and a possible explanation. Even if that explanation was mistaken, it does not so significantly undercut his observations as to compel a finding that his testimony is unreasonable. Ample evidence was still presented to corroborate the rest of McInerney's testimony and support defendant's conviction beyond a reasonable doubt.

¶ 15 Defendant also asserts that McInerney's testimony is incredible because he could not specify how much money the woman gave, he could not specify where she held the money prior to the transaction, and the police did not arrest the woman. These facts are irrelevant to the elements of defendant's crime and do not impeach McInerney's testimony. It is not unreasonable that McInerney could not determine the denominations printed on the money, nor count the individual bills from 75 feet away. Nor is it unreasonable that McInerney, who was focused on the actions of defendant, did not note where the woman kept her money prior to interacting with defendant. We find that a rational trier of fact could accept McInerney's testimony as true beyond a reasonable doubt.

¶ 16 Defendant next contends that the fines and fees order inaccurately reflects a total of $1,536 due to a miscalculation, where it should reflect a total of $1,284. He also argues that the trial court erroneously assessed a "Streetgang Fine" of $100 against defendant under section 5-9-1.19 of the Code of Corrections, (730 ILCS 5/5-9-1.19 (West 2010)), where there was no evidence presented that defendant had any connection to a street gang. The State concedes both arguments. We accept the State's concession. We vacate the streetgang fine and order the correction of the fines and fees order to reflect a total amount owed of $1,184.

¶ 17 For the foregoing reasons we find that the State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt of possession of a controlled substance. We also find defendant's fines and fees order to be in error. Accordingly, we vacate the "Streetgang Fine," order the circuit court clerk to correct defendant's fines and fees order to reflect a total owed of $1,184, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 18 Affirmed; fines and fees order corrected.