2015 IL App (1st) 132052-U

SECOND DIVISION
July 21, 2015

No. 1-13-2052

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 14826
	)	
TELLY WATKINS,	)	Honorable
	)	Rickey Jones,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Liu concurred in the judgment.

O R D E R

¶ 1 *Held*: The evidence was sufficient to convict defendant of delivery of a controlled substance on an accountability theory where the State proved he was an active participant in the commission of the narcotics transaction between codefendant and police; we correct the mittimus to properly reflect his conviction for delivery of a controlled substance; judgment affirmed as modified.

¶ 2 Following simultaneous but separate bench trials, Telly Watkins, the defendant, and codefendant Jarlon Garrett[1] were convicted of delivery of a controlled substance. Defendant was

[1] Jarlon Garrett has a separate appeal (1-13-1952).

sentenced to four years' imprisonment. On appeal, defendant contests the sufficiency of the evidence supporting his conviction, arguing that the police testimony was unreliable and impeached by inconsistent statements in their reports. Alternatively, defendant requests that his mittimus be corrected to properly reflect his conviction for delivery of a controlled substance. We affirm as modified.

¶ 3 The record shows that defendant and Garrett were charged with delivery of less than one gram of heroin within 1,000 feet of a school (Count 1) and delivery of less than one gram of heroin (Count 2). The charges stemmed from an incident on July 15, 2012, where an undercover officer bought heroin from a man standing near the corner of Leamington and West End Avenues in Chicago.

¶ 4 At trial, Officer Charon Bady testified that at about 11 a.m. on July 15, 2012, she was working as an undercover narcotics officer on a team that included nine other officers. Bady went to 155 North Leamington Avenue in a covert vehicle and parked. Defendant nodded his head, approached Bady's vehicle, and Bady asked him for two "blows," which was a street term for heroin. Defendant left and went into the house at the aforementioned address. About two minutes later, defendant returned with Garrett who went around the corner and out of sight. Defendant remained on the sidewalk and told Bady to wait 10 minutes for Garrett to return. After about 10 minutes, Bady was about to leave when defendant told her to wait because Garrett was approaching them. Bady drove to a nearby corner to meet with Garrett, who asked her "how many," and Bady responded that she wanted two. Garrett opened a sandwich bag containing several Ziploc bags of suspect heroin, removed two Ziploc bags, and tendered them to Bady while she remained in her car. In return, Bady gave Garrett $20 of pre-recorded funds, left the area, and notified her team members of a positive purchase of heroin, providing her team with a

physical and clothing description of the two offenders. A short time later, both offenders were arrested. Bady did not see the arrest, and the $20 she provided to Garrett was never recovered. On cross-examination, Bady testified that she mistakenly indicated in her police report that defendant was the person who handed her two bags.

¶ 5 Officer Joseph Meloscia testified similarly to Officer Bady. He also testified that he was a surveillance officer at the scene and saw Garrett engage in a transaction with Bady while she was inside of her vehicle. Following the transaction, Bady left the scene and both offenders returned to the residence at 155 North Leamington Avenue. About three to five minutes later, the offenders exited the residence and walked to the corner of West End and Leamington Avenues where they were arrested. On cross-examination, Meloscia testified that his report indicated that after the transaction between Garrett and Bady, only Garrett returned to the residence.

¶ 6 The parties stipulated that the suspect heroin tested positive for 0.4 gram of heroin.

¶ 7 Following closing arguments, the trial court found both offenders not guilty of Count 1, but guilty of Count 2, *i.e.*, delivery of a controlled substance. In doing so, the court found the officers credible and any inconsistencies in their testimony minor and insignificant.

¶ 8 On appeal, defendant contends there was insufficient evidence to support his conviction for delivery of a controlled substance. Specifically, defendant maintains that only 2 of the 10 officers involved in the controlled buy testified, the officers who did testify were not credible, and neither offender was found in possession of the pre-recorded funds they purportedly received from the undercover officer.

¶ 9 In reviewing a sufficiency of the evidence claim, the relevant inquiry is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the defendant guilty of the essential elements of the crime beyond a reasonable doubt.

People v. Davison, 233 Ill. 2d 30, 43 (2009) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). When reviewing the sufficiency of the evidence, an appellate court will not retry the defendant. *People v. Cox*, 195 Ill. 2d 378, 387 (2001). Rather, it is the responsibility of the trier of fact to assess witness credibility, weigh the evidence and draw reasonable inferences therefrom, and resolve any conflicts in the testimony. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A defendant's criminal conviction will not be reversed on appeal unless the reviewing court finds that the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 10 To sustain a conviction of unlawful delivery of a controlled substance based on accountability, the State must establish beyond a reasonable doubt that the defendant: (1) solicited, aided, abetted, agreed or attempted to aid another in the planning or commission of the delivery; (2) his participation took place before or during the commission of the delivery; (3) and he had the concurrent, specific intent to promote or facilitate the commission of the offense. 720 ILCS 5/5-2(c) (West 2012); *People v. Perez*, 189 Ill. 2d 254, 266 (2000). Accountability may be established through a defendant's knowledge of and participation in a criminal scheme, even though there is no evidence he directly participated in the criminal act itself. *Perez*, 189 Ill. 2d at 267. However, a defendant's mere presence at the scene of a crime does not render him accountable. *Perez*, 189 Ill. 2d at 268.

¶ 11 When viewed in the light most favorable to the State, the evidence established that defendant was an active participant in the commission of the narcotics transaction between Officer Bady and Garrett. When Bady arrived at 155 North Leamington Avenue in a covert vehicle and parked, defendant nodded his head and approached her vehicle. After Bady asked defendant for two "blows," he went into a house and returned two minutes later with Garrett.

While Garrett walked away, defendant remained on the sidewalk and told Bady to wait 10 minutes for Garrett to return. Bady did as instructed, and just as she was about to leave, defendant told her to wait because Garrett was approaching them. Bady then drove to a nearby corner where the controlled buy between Bady and Garrett occurred. Following the transaction, Officer Meloscia saw defendant and Garrett return to the residence at 155 North Leamington Avenue, and, shortly thereafter, they exited the residence and were arrested together.

¶ 12 Nevertheless, defendant argues on appeal that the testimony from Officers Bady and Meloscia was so incredible that it was insufficient to sustain his conviction for delivery of a controlled substance. Specifically, defendant maintains that Bady's testimony at trial that Garrett handed her heroin was impeached by her police report indicating that defendant was the individual who gave her the drugs. Furthermore, he maintains that Meloscia's trial testimony that both offenders returned to the house at 155 North Leamington Avenue before emerging a few minutes later and being arrested by enforcement officers was impeached by his police report stating that only Garrett re-entered the house. According to defendant, the officers' inconsistent and impeached statements demonstrated that both officers failed to recall or record the events properly, and thus could not be counted on to present an accurate representation of what happened a year later at trial. Despite defendant's arguments to the contrary, Bady and Meloscia's credibility was an issue for the trier of fact (*Campbell*, 146 Ill. 2d at 375), and the trial court specifically found any inconsistencies in the officers' testimony to be "minor." We will not substitute our judgment for that of the trier of fact, particularly where the officers' testimony was not so improbable as to create a reasonable doubt of defendant's guilt (*Givens*, 237 Ill. 2d at 334).

¶ 13 In so finding, we note that *People v. Schott*, 145 Ill. 2d 188 (1991), and *People v. Herman*, 407 Ill. App. 3d 688 (2011), relied on by defendant, are distinguishable from the case at

bar because the complainants' testimony in those cases was incredible. See *Schott*, 145 Ill. 2d at 206-07 (finding the victim's testimony was "so lacking in credibility" that it left a reasonable doubt as to the defendant's guilt); *Herman*, 407 Ill. App. 3d at 707-09 (finding that it was impossible for any fact finder to reasonably accept any part of the complainant's testimony and concluded that the evidence failed to prove the defendant guilty beyond a reasonable doubt).

¶ 14 In addition, we find the officers' credibility was not undermined by defendant's arguments that the State's case lacked corroborating testimony from enforcement officers, there was no evidence showing the officers made a post-arrest identification, and neither pre-recorded funds nor the additional drugs that Bady claimed Garrett had with him were found in the offenders' possession when they were arrested. We disagree with defendant that the State needed to present corroborating testimony from enforcement officers because "[t]he testimony of one witness if credible and positive is sufficient to convict, even if contradicted by the accused" (*People v. Williams*, 252 Ill. App. 3d 1050, 1060 (1993)), and, here, the State presented the credible testimony of two eyewitnesses. The fact that no evidence at trial showed that Officers Bady and Meloscia made a post-arrest identification of the offenders was immaterial where the record shows they had ample opportunity to view the offenders during the incident, and both made unequivocal identifications of them at trial. See *People v. Jennings*, 142 Ill. App. 3d 1014, 1031 (1986) (finding that even if the post-arrest identification of the defendant was deemed improper, his conviction would still stand where the victim identified the defendant in open court, the in-court identification was supported by the evidence, and the circumstances surrounding the defendant's arrest substantiated the victim's identification).

¶ 15 Moreover, the evidence shows that police did not recover any pre-recorded funds or drugs from the offenders when they were arrested because they had time to dispose of this

evidence when they returned to the residence prior to their arrest. This conclusion is not mere speculation as argued by defendant, but instead an inference drawn from the facts that the trial court implicitly made when it found the offenders guilty. See *Campbell*, 146 Ill. 2d at 375 (stating that it is the responsibility of the trier of fact to draw reasonable inferences from the evidence). Defendant's claim that the officers should have obtained a search warrant to retrieve the unsold heroin and pre-recorded funds supposedly deposited in the house to establish his guilt is unpersuasive where the recovery of these items was not necessary for the State to establish the elements of delivery of a controlled substance.

¶ 16 Next, defendant contends and the State concedes, that his mittimus must be corrected to properly reflect the offense of which he was convicted. The record shows that defendant was charged with one count of the Class 1 offense of delivery of a controlled substance within 1,000 feet of a school, and one count of the Class 2 offense of delivery of a controlled substance. According to the report of proceedings, defendant was convicted of the latter offense. The mittimus, however, incorrectly cites section 407(b)(2) instead of section 401(d) of the Illinois Controlled Substances Act (720 ILCS 570/407(b)(2), 401(d) (West 2012)), misidentifies the offense as "AMT NARC SCHED I/II/SCH/HS/PK," and mislabels the class of the offense as Class 1.

¶ 17 It is well settled that where the common law record conflicts with the report of proceedings, the report of proceedings controls. *People v. Roberson*, 401 Ill. App.3d 758, 774 (2010). Pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the circuit court to correct the mittimus to accurately reflect defendant's conviction of the Class 2 offense of delivery of a controlled substance. *People v. Gorosteata*, 374 Ill. App. 3d 203, 230 (2007).

¶ 18 For the foregoing reasons, we correct defendant's mittimus to accurately reflect that he was convicted of delivery of a controlled substance and affirm his conviction in all other respects.

¶ 19 Affirmed as modified.