

FIRST DIVISION
March 16, 2015

No. 1-13-3214

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 13 CR 714
)	
IBRAHIM SHOMAN,)	The Honorable
)	Thaddeus L. Wilson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Judgment entered on attempted bribery conviction affirmed over defendant's contentions there was insufficient evidence of the original charged offense of bribery, and that this court should adopt the "dangerous proximity of success test" instead of the substantial steps test in determining proof of his guilt.
- ¶ 2 Following a bench trial, defendant Ibrahim Shoman was found guilty of attempted bribery and sentenced to two years' probation. On appeal, defendant contests the sufficiency of

the evidence to sustain his conviction of attempted bribery, and the test used by the court to reach that determination.

¶ 3 At trial, Cook County Sheriff's Police Department officer Tony Robinson testified that he is assigned to the drug traffic unit and occasionally works for the Department of Revenue. On December 17, 2012, he was assigned to the Department of Revenue with Inspector Matthew Thomas, who has since retired. Officer Robinson's main responsibility that day was to drive Inspector Thomas to various stores so that he could conduct inspections regarding compliance with County tax regulations on cigarette sales.

¶ 4 At 11:45 a.m. that day, he drove Inspector Thomas to the store at 2118 West Cermak Road in Chicago, owned by defendant. The purpose of this inspection was to ensure that the owner was in compliance with the requirement that County stickers be affixed to cigarette packages, proving that the taxes have been paid on them. After introducing themselves to defendant, who was behind the register, Inspector Thomas went behind the counter.

¶ 5 Officer Robinson asked defendant how his other cigarette violation case was going, and defendant asked him if he could do anything in regards to the case. Officer Robinson told defendant that he could not talk about his case in the store while he was being inspected, and that he would have to call him at another time. He then gave defendant the phone number for a County-issued cell phone.

¶ 6 Officer Robinson testified that Inspector Thomas found a pack of cigarettes without a County sticker in one of the aisles, and told defendant that he was going to write him a citation. Defendant asked Officer Robinson if he could help him out, and began to offer him various merchandise in the store, including a big screen television set which Officer Robinson did not accept. Inspector Thomas then wanted to look inside defendant's safe in the storage room, and as

they headed to that room, defendant offered Officer Robinson \$1,000. Defendant was facing a potential fine of \$11,000 for the unstamped cigarette box, and while Inspector Thomas looked inside the safe, which did not contain cigarettes, defendant counted out \$1,000 in cash, then motioned it towards Officer Robinson, and said, "here is \$1,000." Officer Robinson told defendant to put the money away. After he exited the storage room, defendant again offered him money, telling him that he wanted him to split the money with Inspector Thomas, and that if he came back tomorrow, he would give him another \$1,000. This time Officer Robinson took the money and placed it in his pocket to make a case against defendant.

¶ 7 Officer Robinson further testified that he left the store at this point, and attempted to call his supervisor, but was unable to reach him. He then returned to the store and took defendant into custody. Four citations were written, including one for unstamped cigarettes, and another for concealment, but he could not recall the subject of the other two citations. Officer Robinson testified that he inventoried the \$1,000 defendant gave him, but he did not bring the inventoried money to court.

¶ 8 Officer Robinson further testified that, before this incident, defendant had been cited for a cigarette violation on November 30, 2012, and attempted to bribe him and Inspector Thomas with a big screen television, other merchandise in the store, and even with a dinner cooked by his wife. Officer Robinson told defendant that his behavior was going to get him into trouble.

¶ 9 Defendant testified that he owns the Dollar and Up business at 2118 West Cermak Road in Chicago. At 11:45 a.m. on December 17, 2012, Officer Robinson and Inspector Thomas came into his store and told him they were from the Department of Revenue and were there to conduct an inspection. Inspector Thomas inspected the cigarettes in his store while Officer Robinson talked to defendant, and asked him about another ticket he had received. Defendant asked the

officer how he could help him with the ticket, and the officer told him that he could get the ticket dismissed. He then gave defendant his phone number, and told him to call.

¶ 10 Defendant further testified that Inspector Thomas asked him to open the safe in his office, but he could not recall the combination, which was on his cell phone, and told the inspector that it needed to be charged. Inspector Thomas told him he was going to write him a ticket for \$20,000 if he did not open the safe, then left the office to further inspect the store while Officer Robinson remained in the office. Defendant eventually retrieved the combination for the safe from his phone, and opened it. The safe contained \$1,000 and some paperwork for the store. Defendant placed these items on the desk inside his office, and told Officer Robinson, "look, there's no cigarettes inside the safe." Defendant told Officer Robinson that he wanted Inspector Thomas to look inside the safe before he started writing him tickets. Inspector Thomas refused to do so and wrote four tickets, including one for unstamped cigarettes, an \$11,000 fine. The inspector told defendant he had to sign the tickets and he did so. Defendant denied offering money to Officer Robinson or Inspector Thomas.

¶ 11 When defendant returned to his office, he noticed that the money he placed on the counter was missing. He called Officer Robinson right away, who told him he was still outside his store. Defendant went outside, and asked the officer his name, then returned to the store and looked for the money but could not find it. He "wasn't sure" if the officer took the money. Five minutes later, the inspector and officer returned to his store and arrested him. Defendant maintained that he never attempted to bribe Officer Robinson and did not tender any money to him.

¶ 12 At the close of evidence, the court found defendant guilty of attempted bribery, a lesser included offense of bribery. The court determined that defendant, with the intent to commit

bribery, took a substantial step toward the commission of that offense in his attempt to do so.

The court noted the testimony regarding the receipt and inventory of \$1,000, but that there was no explanation as to why there was nothing in the record regarding that inventory. In light of that gap, the court found defendant guilty of the lesser included offense of attempted bribery.

¶ 13 On appeal, defendant first contends that the court erred in finding him guilty of attempted bribery because there was insufficient evidence to find him guilty of the charged offense of bribery. He maintains that the State failed to prove that he completed the required element of tendering any delivery of money to the arresting officer where no money was ever admitted into evidence at trial, no record of the inventory was produced and there was conflicting evidence as to whether an offer was ever made. He further maintains that finding him guilty of an attempt offense, *i.e.*, an inchoate offense, is a slippery slope, and allows the State two bites at the apple to obtain a conviction.

¶ 14 When defendant challenges the sufficiency of the evidence to sustain his conviction, the proper standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). This standard recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence and to draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of guilt. *Campbell*, 146 Ill. 2d at 375. For the reasons that follow, we do not find this to be such a case.

¶ 15 Defendant contends that because the State failed to prove him guilty of bribery there was insufficient evidence to find him guilty of attempted bribery. We disagree. In *People v. Wallace*,

57 Ill. 2d 285, 292 (1974), the supreme court recognized attempted bribery as a distinct offense which may occur when defendant's conduct does not constitute bribery, but might be construed as a substantial step toward the completion of that offense. *People v. Solis*, 2013 IL App (1st) 102756, ¶11. To prove the offense of bribery, the State must show beyond a reasonable doubt that with the intent to influence the performance of any act related to the function of any public officer, defendant promises or tenders to that person any property which the officer is not authorized by law to accept. 720 ILCS 5/33-1 (West 2012). However, to prove attempted bribery the State must only show that defendant had the specific intent to commit the offense of bribery and took a substantial step toward committing it. *People v. Witherspoon*, 379 Ill. App. 3d 298, 305 (2008).

¶ 16 Viewing the evidence in the light most favorable to the prosecution, the record here shows that after Inspector Thomas found a pack of unstamped cigarettes and was going to issue defendant an \$11,000 ticket, defendant offered Officer Robinson \$1,000 in cash by motioning it over to him and telling him the exact amount. Officer Robinson initially declined the offer and told defendant to put it away. When defendant offered the money again, he told Officer Robinson to split it with Inspector Thomas and to come back the following day for an additional \$1,000. This evidence was sufficient to allow the court to reasonably conclude that defendant had the specific intent to commit the offense of bribery, and took a substantial step toward committing it, thus proving his guilt of attempted bribery beyond a reasonable doubt. *Wallace*, 57 Ill. 2d at 292.

¶ 17 Notwithstanding, defendant contends that the court erred in holding that he took a substantial step toward committing bribery because he did not actually tender money to a State official or come within close proximity of committing the offense. He maintains that the State

was unable to prove that he tendered money to the officer, a substantial and critical element of the charged offense of bribery, where no inventoried money was presented in court.

¶ 18 As set forth above, evidence was presented that defendant offered \$1,000 to Officer Robinson several times, and that he also offered him more money if he came back the following day. There is no requirement in the bribery statute that the money be presented in court or that the inventory report be presented; rather, the mere offer or promise with the requisite intent is sufficient to constitute the completed offense of bribery. *People v. McMillan*, 239 Ill. App. 3d 467, 498. Here, the officer's testimony was sufficient, if believed by the court, to show that defendant took a substantial step toward the completion of the offense of bribery. *People v. Trowers*, 215 Ill. App. 3d 862, 866 (1991). Thus, we find no error by the court or a reasonable doubt of his guilt arising from this claim.

¶ 19 Defendant further contends that *Wallace* gives prosecutors a safety-net allowing the State to charge inchoate offenses when it cannot prove the element that demonstrates a crime was completed and allows the State to circumvent the laws and procedures of the court. The supreme court concluded in *Wallace* that bribery was not exempt from the general attempt provisions of the Criminal Code and is shown by defendant's intent to commit bribery and some act which comprises a substantial step toward the commission. *Wallace*, 57 Ill. 2d at 292. We continue to adhere to that ruling, and find defendant's argument unpersuasive.

¶ 20 Defendant also contends that this court should adopt the "dangerous proximity of success test" for attempted bribery instead of the substantial step test. There is no "dangerous proximity test," *per se*, rather, that phrase has been used to further describe when a "substantial step" toward the completion of the offense has been taken. *People v. Hawkins*, 311 Ill. App. 3d 418, 423-24 (2000).

¶ 21 The Criminal Code of 2012 provides that a person commits the offense of attempt when, with intent to commit a specific offense, he does any act that constitutes a substantial step toward the commission of that offense. 720 ILCS 5/8-4(a) (West 2012). We find that the elements of the offense were proved beyond a reasonable doubt, and affirm the judgment of the circuit court of Cook County to that effect.

¶ 22 Affirmed.