

No. 1-13-3469

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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 6709
)	
TOREY WINTERS,)	Honorable
)	Mary Margaret Brosnahan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Gordon and Palmer concurred in the judgment.

O R D E R

¶ 1 *Held:* The evidence was sufficient to convict defendant of possession of a controlled substance where police officers credibly testified that they recovered heroin from defendant following a custodial search.

¶ 2 Following a jury trial, defendant Torey Winters was convicted of possession of a controlled substance and sentenced to an extended-term of 3 1/2 years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt where the testifying police officers did not provide a credible account of the events, and no physical evidence linked him to the recovered heroin. We affirm.

¶ 3 Defendant was charged with aggravated battery to a peace officer and possession of less than 15 grams of heroin, stemming from a March 8, 2012, incident where police allegedly observed him manipulating an item in a plastic bag in a high crime area and attempted to stop and interview him. A struggle ensued culminating in defendant's arrest, and a custodial search of defendant revealed less than 15 grams of heroin.

¶ 4 During opening statements, defense counsel argued that the charges in this case were fabricated to cover up police brutality. Defense counsel also indicated that the State would not be able to produce any physical evidence, such as fingerprints or DNA, tying defendant to the drugs, and that only \$10 was recovered from defendant, which was "[n]ot exactly what a drug dealer rolls around in."

¶ 5 At trial, Officer Juan Cifuentes testified that on March 8, 2012, he was on patrol in an unmarked car with his partner Officer Diaz in the vicinity of West Augusta Boulevard and North Lavergne Avenue in Chicago, an area known for high narcotic sales. At about 10:45 p.m., Cifuentes observed defendant walking on Augusta Boulevard manipulating items in a black plastic bag. Based on Cifuentes' experience, which included over 100 narcotics investigations during his three years as part of a tactical unit, he believed defendant was involved in narcotics related activity and decided to stop him to conduct a field interview. Cifuentes exited his car, approached defendant, and said "[p]olice. Come here." Defendant did not obey Cifuentes' demand. Cifuentes continued to approach defendant, and when Cifuentes came within arm's length of him, defendant shoved Cifuentes in the chest and kicked him causing the two men to separate. Defendant fled and Cifuentes pursued him on foot.

¶ 6 About one minute later, defendant stopped and stated, "[y]ou ain't taking me down," and lunged towards Cifuentes. Cifuentes lunged back and tried to tackle defendant as they both fell

over a fence. Cifuentes stood up and reached for his radio, but defendant, who was on his back, kicked upward and dislodged the radio from Cifuentes' hand. Defendant picked up the radio and tried to strike Cifuentes with it. Cifuentes got on top of defendant and inflicted multiple open-hand strikes, closed-fist strikes, and elbows to defendant's head and body. During the struggle, Cifuentes was unable to make a call on his radio because defendant continued to wield it, striking Cifuentes on the shoulder. Squad cars passed by Cifuentes and he tried to alert the officers of his location with his flashlight. Cifuentes was able to secure one handcuff on defendant before Diaz came to his aid. Both officers secured the second handcuff on defendant and performed a custodial search of him. Cifuentes found the black bag defendant was manipulating in his left coat pocket and examined the contents of the bag, which included 41 tinfoil packets of suspect heroin. Defendant continued to kick and scream while he was being arrested. Cifuentes, who had a swollen right hand, went to the hospital the same evening and was x-rayed. He did not have any subsequent difficulties with his wrist and did not miss work.

¶ 7 Officer Diaz testified similarly to Officer Cifuentes that defendant was walking on Augusta Boulevard manipulating an item in a black plastic bag. Based on Diaz's eight years of experience as a police officer, which included hundreds of narcotics-related arrests, he believed defendant was manipulating narcotics. Diaz stopped his unmarked car and Cifuentes exited the passenger seat and approached defendant. Cifuentes announced his office and attempted to perform a field interview of defendant, but defendant pushed and kicked Cifuentes and then fled. Cifuentes pursued defendant, and Diaz, who had not fully exited his vehicle, went back inside and attempted to follow them. Diaz lost sight of Cifuentes and defendant, and could not reach Cifuentes through his radio. Diaz patrolled the area in his car, and then exited to look for Cifuentes on foot. About five or six minutes later, Diaz found Cifuentes attempting to place

defendant into custody. Diaz observed that Cifuentes' radio was in defendant's hand. After Diaz assisted Cifuentes in arresting defendant, Cifuentes searched defendant and found 41 tinfoil packets of suspect heroin in a ziploc bag within a larger black plastic bag, as well as \$10.

Defendant remained combative as the other police officers who had arrived on the scene escorted him into a squadrol.

¶ 8 Sergeant Wilfredo Roman testified that he heard a transmission over the radio that Officers Cifuentes and Diaz were involved in a foot pursuit. He responded to the scene in his vehicle and, when he arrived, defendant was in custody. About five or six officers escorted defendant to the squadrol, and defendant was resisting being placed inside by kicking and throwing himself onto the ground. The officers had to make at least three to four attempts before successfully placing defendant into the squadrol. Roman told the transporting officers to take defendant to the hospital because he had blood on him. Through a window in the squadrol, Roman observed defendant kicking the door of the squadrol and lunging into the door with his head. Roman also testified that he reviewed the items recovered by Cifuentes and Diaz, and that one tin foil packet had a street value of about \$10.

¶ 9 Linda Jenkins, a forensic scientist, testified that the powder from 22 of the 41 recovered foil packets weighed 5.1 grams and tested positive for heroin.

¶ 10 Defendant testified that at about 10:30 p.m. on March 8, 2012, he was walking home from his uncle's house when somebody grabbed his left shoulder from behind. Defendant immediately ran away because he was in a high crime area and had been robbed before. He did not have anything in his hand except for his phone, and was not carrying any drugs. Defendant never looked back as he ran away, but noted that someone was apparently behind him. No one yelled "stop" or "police" during the chase, and defendant never obtained a good look at the

person who grabbed him. Defendant slipped and fell, someone got on top of him, and he felt something hit him on the head. He could not get up and thought he was being "mugged."

Defendant did not see who was hitting him, and became unconscious during the beating, and only remembered exiting the squadrol at the hospital where he received treatment for his injuries, including receiving 16 staples in his head and stitches below his right eye, which was black and swollen. He never attempted to harm any officers on the date in question. Defendant had a 2010 conviction for possession of a controlled substance and a 2006 conviction for delivery of cannabis.

¶ 11 Dr. Jagdish Muzumdar testified that he treated Officer Cifuentes for injuries to his right hand, noted it was swollen and had abrasions, and ordered an x-ray for his hand. Cifuentes did not volunteer that he had any other injuries.

¶ 12 Dr. Michele Everett testified that she treated defendant and put sutures and staples in his head wounds. She also sent him for a CT scan of his head, which was customary practice when an individual sustained head trauma. Everett asked defendant if he had suffered a loss of consciousness, and he replied negatively.

¶ 13 In her closing argument, defense counsel contended that the officers' testimony was incredible, and that they "put this case on [defendant], the drugs, all of it, to cover up their own misconduct." Following closing arguments, the jury found defendant not guilty of aggravated battery, but guilty of possession of a controlled substance. This appeal follows.

¶ 14 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt of possession of a controlled substance. In particular, he maintains that the testifying officers were incredible where they provided no real basis for their suspicion that the bag defendant was carrying contained drugs, their description of defendant's behavior was

contrary to human experience, and their testimony was significantly tainted by the beating Officer Cifuentes inflicted on defendant. Defendant also maintains that no physical evidence linked him to the heroin.

¶ 15 In resolving a challenge to the sufficiency of the evidence, we must determine whether, when viewing the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). 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). A defendant's conviction will be reversed only "where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48.

¶ 16 In order to sustain a conviction for possession of a controlled substance, the State must prove beyond a reasonable doubt "that the defendant had knowledge of the presence of the controlled substance and that he or she also had immediate and exclusive possession or control over the narcotics." *People v. Woods*, 214 Ill. 2d 455, 466 (2005). These elements may be proved by circumstantial evidence (*People v. Moore*, 365 Ill. App. 3d 53, 58 (2006)), and possession may be actual, which is the "exercise by the defendant of personal dominion over the illicit material and exists when an individual exercises immediate and exclusive dominion or control over the illicit material" (Internal citations omitted) (*People v. Schmalz*, 194 Ill. 2d 75, 82 (2000)). "Whether there is knowledge and whether there is possession or control are questions of fact to be determined by the trier of fact." *Id.* at 81. The fact finder's determinations will not be disturbed on review unless the evidence is so palpably contrary to the verdict or judgment that it

is unreasonable, improbable or unsatisfactory and thus creates a reasonable doubt of guilt.

People v. Williams, 267 Ill. App. 3d 870, 877 (1994).

¶ 17 Viewing the evidence in the light most favorable to the State, as we must, the evidence clearly showed that defendant was in knowing actual possession of less than 15 grams of heroin. Officers Cifuentes and Diaz, who were experienced narcotics investigators, observed defendant walking in an area known for high narcotics sales manipulating items in a black plastic bag. The officers believed defendant was involved in narcotics related activity and tried to stop him to conduct a field interview. Cifuentes stated, "[p]olice. Come here," but defendant did not obey the command. Instead, he shoved and kicked Cifuentes before fleeing on foot. Defendant subsequently lunged at Cifuentes and a struggle ensued, culminating with defendant being taken into custody. A custodial search of defendant revealed the black bag he was initially observed holding, the contents of which included over 5 grams of heroin in tinfoil packets. Defendant remained combative and several officers were required to place him into the squadrol in order to transport him to the hospital.

¶ 18 Defendant attempts to show that the officers planted drugs on him to cover up police brutality. As evidence of this cover up, defendant points to several portions of the officers' testimony at trial, particularly Cifuentes' testimony, and characterizes such testimony as unbelievable and contrary to human experience. In particular, defendant contends that Cifuentes and Diaz's testimony that they suspected defendant of drug activity based only on their observations that he was "manipulating" a bag was vague, diminishing the credibility of the officers. See *People v. Morris*, 30 Ill. App. 3d 1075, 1080 (1975) (vague testimony affects its credibility, not its admissibility). It is well established that the trier of fact not only determines the credibility of a witness but also can accept or reject as much of a witness's testimony as it

pleases. *People v. Snulligan*, 204 Ill. App. 3d 110, 118 (1990). The question in this appeal is not whether the officers had sufficient reason to approach defendant but, rather, whether defendant possessed drugs on March 8, 2012, which the jury concluded that he had.

¶ 19 Defendant next points to Officer Cifuentes' testimony that defendant ran past him after turning and pushing him in the chest, despite the risk of Cifuentes grabbing him. Defendant also questions how he could have pushed Cifuentes with both hands when there was no testimony that he put the black bag he was allegedly manipulating into his pocket. Furthermore, Cifuentes testified that defendant made no attempt to discard the bag, even though it contained about \$400 worth of heroin, and, according to defendant, it "boggles the mind" why a convicted felon with \$400 of heroin in his pocket would choose to stop running from police and instead challenge an officer to a fight. Defendant also maintains it is unbelievable that, during the struggle, Officer Diaz failed to hear the shouts of Cifuentes and defendant, Cifuentes could hit defendant with his hands and elbows while also turning his flashlight on and off in a strobe-like manner, and that Cifuentes incurred no injuries from defendant allegedly striking him repeatedly with the radio.

¶ 20 Defendant's above arguments are merely requests for this court to retry him by reweighing the evidence, including the credibility findings, and substitute our judgment for that of the trial court. We decline to do so where we do not substitute our judgment for that of the trier of fact as to the issues of witness credibility and weight to be given each witness's testimony. *People v. Sutherland*, 155 Ill. 2d 1, 17 (1992). This is particularly true where defendant's account of the events was not worthy of belief, and the jury, which was presented with conflicting versions of events, was not required to accept it. See *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001) ("a fact finder need not accept the defendant's version of events as among competing versions"); *People v. Williams*, 209 Ill. App. 3d 709, 721 (1991) ("[w]hen a defendant

elects to explain the circumstances of what has occurred, he is bound to tell a reasonable story or be judged by its improbabilities"). Most significantly, defendant's testimony that he was unconscious was contradicted by his own witness, Dr. Everett, who testified that by his own admission defendant had not suffered any loss of consciousness. It is also noteworthy that the injuries defendant described at trial were, in part, self-inflicted where Officer Roman testified defendant was lunging at the squadrol's door with his head.

¶ 21 Moreover, the lack of forensic evidence, *i.e.*, DNA and fingerprints, tying defendant to the recovered packets of heroin does not show, as claimed by defendant, that the trial evidence was insufficient to convict him of the charged offense. Officers Cifuentes and Diaz consistently testified that they recovered heroin from defendant following a custodial search, making the absence of physical evidence not dispositive. See *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23 ("[b]ecause the trial court found [the witness's] identification and testimony to be credible, the lack of physical evidence had no bearing on [the defendant's] conviction"). Therefore, we see no reason to upset the jury's determination that defendant possessed the recovered heroin.

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 23 Affirmed.