2015 IL App (2d) 140001-U
No. 2-14-0001
Order filed December 7, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 12-CF-861
JOSE OMAR CORRAL,	)	Honorable Kathryn E. Creswell,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of delivery of a controlled substance, as the State's informant's testimony, as corroborated, supported the conclusion that defendant sold him the cocaine that he then provided to the police.

¶ 2 Defendant, Jose Omar Corral,[1] appeals from the judgment of the circuit court of Du Page County finding him guilty of the unlawful delivery of 15 or more, but less than 100, grams of a

[1] We note that, although defendant is referred to by this name in the notice of appeal and a large part of the record, he is referred to as Omar J. Corral in other parts of the record,

controlled substance (720 ILCS 570/401(a)(2)(A) (West 2010)), contending that he was not proved guilty beyond a reasonable doubt. Because, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found defendant guilty beyond a reasonable doubt, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on one count of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)), one count of the unlawful sale or delivery of a firearm (720 ILCS 5/24-3(A)(d), (C)(9) (West 2010)), one count of possession of a firearm without a firearm owner's identification card (430 ILCS 65/2(a)(1), 14(c)(3) (West 2010)), and one count of unlawful delivery of 15 or more, but less than 100, grams of a controlled substance (cocaine) (720 ILCS 570/401(a)(2)(A) (West 2010)). Following a bench trial, defendant was found guilty of unlawful delivery of cocaine, and the State nol-prossed the remaining charges. Defendant was sentenced to 12 years' imprisonment. Defendant's motion to reduce his sentence was denied, and he filed a timely notice of appeal.

¶ 5 The following facts are from defendant's bench trial. In 2010, Ricardo Wilhelm began working undercover for the Addison police department and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATFE). Because of his cooperation, he received a 60-day jail sentence and two years' probation on his conviction of felony driving under the influence, even though he faced a possible sentence of one to six years in prison. He had a drug-possession charge and several misdemeanor charges dismissed, and, although his driver's license was revoked, the police allowed him to drive while he was working undercover. The police also paid for his airline ticket, motel, and food related to his traveling to testify in this and other cases.

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including the indictment.

¶ 6 Wilhelm first got to know defendant in 2005. In 2011, defendant was living in a house in Addison. Wilhelm had been to defendant's home over 50 times.

¶ 7 During the week and a half before May 17, 2011, Wilhelm had several unrecorded conversations with defendant in defendant's home. They spoke about Wilhelm purchasing an ounce of cocaine from defendant. According to Wilhelm, they agreed to a price of "between [$]9[00] and *** like [$]1,000 or something like that." Defendant told him that whenever he wanted to purchase the cocaine he should call and defendant would have it ready.

¶ 8 On May 17, 2011, Wilhelm made a recorded telephone call to defendant to arrange the purchase of the cocaine on the following day. During that conversation, Wilhelm asked defendant if he was going to dilute the cocaine, and defendant said no. An audio recording of that call was admitted at trial.

¶ 9 On May 18, 2011, Wilhelm met with the police. The police searched him and his vehicle and placed audio and video recording equipment in his clothing. Wilhelm then drove to defendant's house.

¶ 10 While driving to defendant's house, Wilhelm called defendant and left a message. When defendant returned his call, Wilhelm told him that he was on the way. When Wilhelm arrived at defendant's house, he remained in his car. Defendant exited the house and entered Wilhelm's car.

¶ 11 As Wilhelm handed defendant $900, which had been provided by the police, he told him "here's the whole stack." Defendant counted the money and told Wilhelm that it was short $100. Wilhelm gave defendant an additional $100 of his own money. Defendant went into the house to retrieve the cocaine.

¶ 12 When defendant returned to Wilhelm's car, he weighed the cocaine on an electronic scale. The cocaine, which was in a plastic bag, weighed 29 grams.[2] At trial, Wilhelm described the cocaine as "all rocked up," explaining that it was "clumped up" and not "just powder." After a brief conversation, defendant exited the car and Wilhelm left.

¶ 13 When Wilhelm met with the officers shortly after the purchase, he handed them "the cocaine." The State introduced the cocaine into evidence as exhibit 3. Although the cocaine was in a Ziploc bag, Wilhelm identified an empty plastic bag in exhibit 3 as the one that held the cocaine when he bought it. Wilhelm identified the cocaine as appearing to be the same amount of cocaine as that sold to him by defendant. After Wilhelm delivered the cocaine to the officers, they removed the recorders and searched both him and his car.

¶ 14 During cross-examination, Wilhelm admitted to lying to the police regarding his identity and being charged with obstruction of justice for having done so. He admitted that he also drove with a revoked driver's license without police authority and that he purchased and used cocaine, both contrary to the terms of his cooperation agreement with the police. He further admitted that he was not sure that the cocaine he identified in court was the "exact same cocaine" he had purchased from defendant. He denied that he had given the cocaine to defendant and that defendant in turn sold it to him. When asked if the police gave him $950 to purchase the cocaine, Wilhelm said that he thought that it was only $900. He denied stealing the $50 difference. The parties stipulated that if called to testify Detective Bjes would state that he gave Wilhelm $950 for the drug purchase.

[2] 29 grams equals 1.022945 ounces. http://www.metric-conversions.org/weight/grams-to-ounces (last visited Nov. 10, 2015).

¶ 15 On re-direct examination, Wilhelm testified that he had purchased cocaine from defendant numerous times before May 17, 2011.

¶ 16 Agent Jeffrey Sisto of the ATFE testified that Wilhelm was equipped with both audio and video recorders and an audio transmitter. According to Agent Sisto, he, along with other officers, met with Wilhelm after the drug purchase. Agent Sisto observed Wilhelm give another agent a clear plastic bag containing a "white powdery substance."

¶ 17 The parties stipulated that the substance in exhibit 3 tested positive for cocaine, that it weighed 26.1 grams, and that the "chain of custody and other foundational requirements [were] satisfied with regard to the [cocaine] *** such that it [was] properly admissible at trial."

¶ 18 In closing, defendant argued that he had not been proved guilty beyond a reasonable doubt. In doing so, he emphasized Wilhelm's lack of credibility and the absence of any police testimony about any search of Wilhelm. He essentially contended that, although he was involved in a transaction with Wilhelm, the State did not prove that the substance he delivered was cocaine.

¶ 19 The trial court, noting that the testimony of an informant is "viewed with great suspicion" and that informants "usually have backgrounds," found that the recording of the May 17, 2011, telephone conversation clearly revealed a discussion about cocaine and that the recording from May 18, 2011, was clear "as to what [defendant and Wilhelm were] talking about." The court found that on May 17, 2011, Wilhelm arranged the drug deal and that on May 18, 2011, he went to defendant's house, defendant entered Wilhelm's car, defendant counted the money, and defendant went into his house and returned with cocaine in the amount of 15 or more, but less than 100, grams. Thus, the court found defendant guilty.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant contends that, because the State never presented evidence establishing that he delivered the cocaine admitted at trial, it failed to prove him guilty beyond a reasonable doubt.

¶ 22 When considering a challenge to the sufficiency of the evidence, a reviewing court does not retry the defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *People v. Bishop*, 218 Ill. 2d 232, 249 (2006). Testimony may be found insufficient, but only where the evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 23 The testimony of a single witness, if positive and credible, is sufficient to convict. *Smith*, 185 Ill. 2d at 541. The credibility of a witness is within the province of the trier of fact, and its finding on such matters, although not conclusive, is entitled to great weight. *Smith*, 185 Ill. 2d at 542. We will reverse a conviction only where the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *Smith*, 185 Ill. 2d at 542.

¶ 24 It is well established that the credibility of a government informant, as with any other witness, is a question for the trier of fact (*People v. Manning*, 182 Ill. 2d 193, 210 (1998)) and that such testimony can be the basis of a guilty finding (*People v. Rivera*, 2011 IL App (2d) 091060, ¶ 36). Nonetheless, such testimony should be treated cautiously. *Rivera*, 2011 IL App (2d) 091060, ¶ 36.

¶ 25 In this case, as defendant recognizes, there is no question that the substance that Wilhelm delivered to the officers was cocaine. Defendant, however, maintains that, because the State failed to prove that the substance he sold to Wilhelm was the cocaine admitted at trial, the State

failed to prove beyond a reasonable doubt that the substance he delivered to Wilhelm was cocaine.

¶ 26 We hold that the evidence, when viewed in the light most favorable to the State, showed that defendant was proved guilty beyond a reasonable doubt. Wilhelm testified that he had discussed with defendant purchasing an ounce of cocaine during the week or so leading up to May 17, 2011. They agreed to a price between $900 and $1,000. On May 17, 2011, Wilhelm telephoned to arrange the sale the next day. During that conversation, defendant assured Wilhelm that he would not dilute the cocaine.

¶ 27 On May 18, 2011, Wilhelm met with the officers before meeting with defendant. According to Wilhelm, the officers gave him $900, searched both him and his car, and placed audio and video recorders in his clothing.

¶ 28 As he drove to defendant's house, Wilhelm spoke to defendant on the telephone and notified him that he was on his way. After Wilhelm arrived, defendant exited his house and entered Wilhelm's car. Wilhelm handed him $900. When defendant asked him for an additional $100, Wilhelm gave him the money. Defendant then went into his house to retrieve the cocaine.

¶ 29 Upon reentering Wilhelm's car, defendant weighed the plastic bag containing the cocaine, which weighed 29 grams, or slightly over 1 ounce. Wilhelm described the cocaine as "clumped up" and not just powder.

¶ 30 Wilhelm then drove and met with the officers, who again searched him and his car. He handed them what he testified to as being "the cocaine." That substance was then tested and determined to be cocaine that weighed, without the plastic bag, 26.1 grams.

¶ 31 Wilhelm's testimony, if believed, established that defendant delivered the same cocaine to Wilhelm that Wilhelm in turn handed over to the officers. As discussed, the testimony of a

single witness, if positive and credible, is sufficient to convict. *Smith*, 185 Ill. 2d at 541. Although Wilhelm's testimony, as that of a government informant, was to be treated cautiously (see *Rivera*, 2011 IL App (2d) 091060, ¶ 36), his credibility was a question for the trial court (see *Manning*, 182 Ill. 2d at 210). Indeed, the trial court found Wilhelm credible.

¶ 32 Moreover, as noted by the trial court, the audio and video recordings corroborated Wilhelm's testimony. The audio recording of the May 17 telephone conversation clearly showed that defendant was intending to sell Wilhelm an ounce of cocaine on May 18. The audio/video recording of the May 18 exchange between defendant and Wilhelm showed that defendant accepted $1,000, which was within the agreed price range. Defendant, in turn, delivered to Wilhelm a substance that weighed approximately one ounce, the agreed amount.

¶ 33 Wilhelm's testimony, corroborated by the audio and video recordings, clearly established that defendant sold Wilhelm approximately one ounce of cocaine. That evidence, when viewed in the light most favorable to the State, was sufficient to prove defendant guilty beyond a reasonable doubt of the delivery of 15 or more, but less than 100, grams of cocaine.

¶ 34 Defendant, however, contends that the State never established that the cocaine admitted at trial was the same substance that he sold to Wilhelm.[3] We do not believe that the State failed to establish that the cocaine at trial was the same as that delivered to Wilhelm. That is so because Wilhelm's testimony, which, as noted, the trial court found credible, established that he transferred to the officers the same substance that he received from defendant. Although

[3] We note the State's suggestion that defendant defaulted this issue by stipulating to the "chain of custody." In light of our resolution, we need not address the State's suggestion. In any event, it appears that the parties below agreed only that the cocaine admitted at trial was what Wilhelm gave the police, not that it was what defendant gave to Wilhelm.

defendant asserts that Wilhelm never testified that he delivered the same substance to the officers, the record shows that Wilhelm testified that he gave the officers "the cocaine." The only reasonable inference from that statement is that he was referring to the cocaine he had purchased from defendant.

¶ 35 Defendant suggests that Wilhelm possibly substituted a lesser quality of cocaine for the substance he received from defendant. That suggestion is curious, however, as it implies that what defendant delivered to Wilhelm was in fact cocaine. Nonetheless, defendant points to several aspects of the evidence that he argues show that Wilhelm substituted the cocaine.

¶ 36 First, defendant notes that Wilhelm described the cocaine sold to him as "clumped up," whereas the cocaine at trial appeared to be powdery. Any discrepancy between Wilhelm's description of the consistency of the cocaine given him by defendant and that admitted at trial is readily explained by the handling of the cocaine by the police as well as during the laboratory testing.

¶ 37 Second, defendant posits that it is suspicious that Wilhelm testified that the officers gave him $900 when the parties stipulated that Detective Bjes gave him $950. Such a discrepancy, however, does not undercut Wilhelm's credibility. Although it shows that Wilhelm might have been mistaken as to how much he was given, it does not show that, in light of all the evidence, he was trying to pull a fast one, such as stealing $50; *i.e.*, particularly where the evidence showed that Wilhelm provided $100 of his own to complete the transaction. Moreover, even if he was, that would not show necessarily that he was lying about the drug transaction.

¶ 38 Third, defendant points out that the substance delivered to Wilhelm weighed 29 grams, whereas the cocaine admitted at trial weighed only 26.1 grams. That difference does not support

defendant's argument, however, as the difference reasonably can be attributed to defendant having weighed the cocaine in the plastic bag and the expert having weighed it without the bag.

¶ 39 Fourth, defendant asserts that there was no evidence that the officers observed Wilhelm's return trip and no evidence, independent of Wilhelm's testimony, regarding the subsequent search of him and his car. Such evidence was unnecessary, however, as Wilhelm's testimony, which the trial court found credible, reasonably implied that he drove directly to the officers and that he was searched. Further, although Wilhelm did not testify that the search of him and his car produced no other cocaine, it can be inferred reasonably that it did not. Nor was it likely that Wilhelm, who knew that he was being monitored via the recording equipment, would have attempted, between the time he left defendant and the time he arrived at the officers' location, to exchange the cocaine he received from defendant with other cocaine.

¶ 40 Finally, defendant's reliance on *People v. Hagberg*, 192 Ill. 2d 29 (2000), *People v. Macoby*, 378 Ill. App. 3d 1095 (2008), and *People v. Ayala*, 96 Ill. App. 3d 880 (1981), is misplaced. In each of those cases, the issue was whether the substance admitted at trial was proved to be a controlled substance. See *Hagberg*, 192 Ill. 2d at 33-34; *Macoby*, 378 Ill. App. 3d at 1100-01; *Ayala*, 96 Ill. App. 3d at 882-83. Here, that was not an issue, as the parties stipulated that the substance admitted was cocaine.

¶ 41 In conclusion, this case boils down to whether Wilhelm's testimony, as corroborated, was sufficient to prove beyond a reasonable doubt that defendant sold him approximately an ounce of cocaine. The trial court found that it was, and the evidence, when viewed in the light most favorable to the prosecution, supports that finding.

¶ 42 III. CONCLUSION

¶ 43 For the reasons stated, we affirm the judgment of the circuit court of Du Page County. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. See 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 44 Affirmed.