

No. 1-14-0910

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 13236
)	
STEVE RUFFIN,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice McBride and Justice Howse concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Evidence sufficient to establish that defendant possessed and delivered cocaine to undercover officer even though pre-recorded funds used by officer were not recovered from defendant. *Mittimus* corrected to accurately reflect name of one offense.
- ¶ 2 Following a bench trial, defendant Steve Ruffin was convicted of possession of more than 1 gram, but less than 15 grams, of cocaine with intent to deliver (720 ILCS 570/401(c)(2) (West 2012)) and delivery of less than 1 gram of cocaine (720 ILCS 570/401(d) (West 2012)). He was

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then sentenced to two concurrent terms of six years' imprisonment. On appeal, defendant contends that the State did not prove beyond a reasonable doubt that he was the person who sold the cocaine to an undercover officer because the pre-recorded funds that the undercover officer used to purchase drugs were not found on defendant. He also asserts that his mittimus should be corrected to reflect the correct name of one offense.

¶ 3 At trial, Chicago police officer Steven Leveille testified that, at about 5:24 p.m. on June 19, 2013, he was working as an undercover purchaser with a narcotics enforcement team in the 3800 block of West Adams Street in Chicago. Officer Leveille approached defendant, who asked what he was looking for. Defendant was standing alone, but, according to the officer, there "were other subjects in the area." Officer Leveille testified that he asked defendant for "C block," which is crack cocaine. Defendant asked how many he wanted, and the officer replied one.

¶ 4 Defendant told Leveille to follow him, and they walked to the area of 3848 West Adams, where Leveille "stayed on the sidewalk and the defendant traveled a little bit further east on Adams to a vacant lot." Defendant stepped off the sidewalk, retrieved a large sandwich bag from an area near several metal poles, removed a small zip-top bag from the larger bag, and returned.

¶ 5 Leveille testified that defendant handed him "a green Ziploc bag containing a white rock-like substance which [Leveille] believed to be suspect crack cocaine." In exchange, Leveille handed defendant \$10 in "1505 funds," bills whose serial numbers had been recorded to them to be identified later.

¶ 6 After receiving the bag, Officer Leveille walked away and signaled to the surveillance officers that a transaction had occurred. Leveille walked to his car, informed the team via radio that he had purchased suspected crack cocaine, and described where he last saw the seller.

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Officers detained defendant at 3851 West Adams, where Officer Leveille identified him as the seller. About 10 minutes elapsed between their prior contact and his identification of defendant.

¶ 7 On cross-examination, Officer Leveille testified that no other individual was near defendant during the transaction. He said the use of "1505 funds" helps officers to track the money when it is recovered from a suspect and that the pre-recorded bills are "the only funds [he was] allowed to use to make purchases of narcotics."

¶ 8 Chicago police officer Shirene Hicks, the surveillance officer assigned to the team, testified that she observed Officer Leveille speak to defendant and saw the two men walk together to 3848 West Adams.

¶ 9 Officer Hicks lost sight of defendant for about 90 seconds when he walked out of her view as Officer Leveille waited. When defendant returned to her line of vision, defendant and Officer Leveille engaged in a hand-to-hand transaction. She testified that about 20 other people were "lingering around" the area. After the transaction, defendant walked to 3851 West Adams and spoke to a group of four or five men. She testified that "no more than five minutes" elapsed between the exchange and defendant's arrest.

¶ 10 On cross-examination, Officer Hicks testified that defendant was one of several "possible targets" of their narcotics surveillance and that defendant was the only person arrested. Officer Hicks did not see defendant exchange items with anyone else. Officer Hicks said defendant "was in a group" and she was "not sure if he handed anything off."

¶ 11 Chicago police officer Scott Kravitz testified that he and his partner, Officer Nunez, were part of the enforcement team. After receiving a radio call, Kravitz went to a silver pole in a vacant lot at "approximately 3840 West Adams" and recovered a clear zip-top bag containing 13

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green-tinted bags containing suspected crack cocaine. No one was present near the pole when he recovered those items.

¶ 12 Officer Kravitz further testified that Officer Nunez searched defendant and recovered \$135 from the front pocket of his jeans and \$52 from the rear pocket. None of the serial numbers from those bills matched the serial number of the pre-recorded funds used by Officer Leveille. On cross-examination, Kravitz said that he was given a description of one offender and that he detained defendant within a minute of receiving that description.

¶ 13 The parties stipulated that the items in the plastic bag recovered by Officer Kravitz near the silver pole tested positive for 1.1 grams of cocaine. The parties also stipulated that the package Officer Leveille purchased from defendant tested positive for less than .1 gram of cocaine. The defense presented no evidence.

¶ 14 In finding defendant guilty of possession of a controlled substance with intent to deliver and the delivery of a controlled substance, the trial court noted Officer Leveille's testimony that he exchanged prerecorded funds with defendant for a small amount of cocaine and identified defendant as the seller 10 minutes later. The court found that Officer Leveille's testimony was corroborated by Officer Hicks' observation of the hand-to-hand transaction and was further supported by Officer Kravitz's testimony that he went to the location where the transaction reportedly occurred and recovered the narcotics.

¶ 15 The trial court further found:

"The lack of recovery of the 1505 funds does not automatically destroy Officer Leveille's credibility. He said he identified him ten minutes later. One officer said that they were there within a minute to five minutes. Another officer said five minutes.

Regardless, there was some time where the missing money could be explained, but I don't even think the explanation for that is even necessary since Officer Leveille, Officer Kravitz or Officer Hicks were in no way, shape or form impeached in their credible testimony."

¶ 16 On appeal, defendant contends that the State did not establish beyond a reasonable doubt that he was the person who sold the cocaine to Officer Leveille. Defendant argues that even though the officers identified him as the seller, the pre-recorded funds were not recovered from him after his arrest, and he was not seen disposing of the money after the transaction.

¶ 17 Where, as here, a defendant challenges the sufficiency of the evidence, a criminal conviction will not be overturned unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is not the function of this court to retry the defendant; rather, the relevant inquiry is 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. *Givens*, 237 Ill. 2d at 334; *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

¶ 18 In addition to proving the elements of the charged offense, the State has the burden of proving beyond a reasonable doubt the identity of the person who committed the crime. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995); *People v. McCullough*, 2015 IL App (2d) 121364, ¶ 78. The identification of the accused by a single eyewitness is sufficient to sustain a conviction, even in the absence of any physical evidence connecting that person to the crime. *People v. Smith*, 185 Ill. 2d 532, 541 (1999).

¶ 19 In this case, Officer Leveille had ample opportunity to observe defendant and identified him as the seller within 10 minutes of the transaction. His identification was corroborated by Officer Hicks, who testified that she observed defendant perform the hand-to-hand transaction with Leveille. Thus, both Leveille and Hicks had sufficient time in which to observe defendant, supporting the reliability of their identifications of defendant as the seller.

¶ 20 Defendant contends that the absence of the marked funds contradicts the testimony of the officers. It is the responsibility of the trier of fact to assess the credibility of witnesses, weigh the evidence presented, resolve conflicts in the evidence and draw reasonable inferences from the evidence, and its determination is entitled to great deference. *People v. Armstrong*, 2013 IL App (3d) 110388, ¶ 26. Here, the record shows that the trial court specifically addressed the missing pre-recorded funds and weighed that fact against the officers' testimony. But the court concluded that the failure to recover the pre-recorded funds did not "automatically destroy" Officer Leveille's credibility, and we find no basis to disturb that determination.

¶ 21 Moreover, defendant acknowledges two cases in which narcotics convictions have been affirmed, even though the State failed to recover from the defendant the pre-recorded funds used by the undercover officers. In *People v. Trotter*, 293 Ill. App. 3d 617, 618-19 (1997), the team of officers who viewed the defendant left the area after the drug purchase and returned three hours later to arrest the defendant for delivery of a controlled substance. Affirming the defendant's conviction based solely on the testimony of the buying officer, this court stated that "there is no requirement that pre-recorded or marked funds used in a narcotics transaction be recovered for a conviction to stand." *Id.* at 619.

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¶ 22 Similarly, in *People v. Brown*, 388 Ill. App. 3d 104, 108-09 (2009), the defendant argued that the buying officer's testimony was not credible because the pre-recorded funds were not recovered. Again rejecting that contention, this court noted that the trier of fact could weigh the "unresolved questions" in the officer's testimony, and further, there was a "plausible explanation as to the missing funds" because the defendant was out of the view of the surveillance officers for a period of time while the defendant went inside a house, where he could have hidden the marked funds. *Id.*

¶ 23 Defendant contends that this case is distinguishable from *Trotter* and *Brown* because, here, no explanation for the missing funds was offered. Defendant points out that he was in Officer Hicks's line of vision when he stood with a group of men after the transaction, and that Officer Hicks did not testify that she saw him pass anything to another person. But Officer Hicks specifically added that defendant "was in a group so I'm not sure if he handed anything off." That is not the same thing as saying that she was *certain* defendant did *not* hand off anything; her testimony left room for the possibility that defendant did pass off the money while among the group of 4 to 5 men, but she did not see the hand-off. Taking the evidence in the light most favorable to the State, we are unwilling to assume the worst from Officer Hicks's testimony. In any event, we cannot say that this slight deficiency in Hicks's testimony rises to the level of reasonable doubt, especially given the length of time that Leveille and Hicks had to observe and identify defendant as the seller. Any discrepancies in witness testimony are for the trier of fact to weigh and resolve, and we have no basis on this record to disturb the factfinder's determination.

¶ 24 Defendant maintains that the trial court should not have relied on the officer's identification testimony because it was unreliable. He notes that there was no evidence that either

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Leveille or Hicks had seen him before the transaction, that Officer Leveille's identification of him after his arrest was impermissibly suggestive because he was the only person in police custody, and that the record does not contain any evidence regarding the accuracy of any prior description of him.

¶ 25 In assessing identification testimony, our courts have looked to the factors set out by the United States Supreme Court in *Neil v. Biggers*, 409 U.S. 188, 200-01 (1972). In *Biggers*, the Court held that circumstances to be considered in evaluating an identification include: (1) the opportunity the witness had to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the witness at the identification confrontation; and (5) the length of time between the crime and the identification. *Id.*; *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989). We also consider whether the witness was acquainted with the suspect before the crime, and whether there was any pressure on the witness to make a certain identification. *Brooks*, 187 Ill. 2d at 130; *People v. Bryant*, 94 Ill. 2d 514, 521 (1983)). No single factor is dispositive; the identification's reliability is based on the totality of the circumstances. *Biggers*, 409 U.S. at 199.

¶ 26 Defendant downplays the factors weighing in favor of the officers' identifications, particularly their ample opportunity to observe defendant throughout the transaction. The opportunity to view the offender has been described as "the most important factor" in evaluating eyewitness identifications (*People v. Wehrwein*, 190 Ill. App. 3d 35, 39 (1989)) and, in this case, both Leveille and Hicks had a significant amount of time to observe defendant. Moreover, the length of time between Leveille's interactions with defendant and his subsequent identification of defendant support the identification, as only 10 minutes elapsed from the transaction to

defendant's apprehension. Finally, the record supports the notion that both Leveille and Hicks paid close attention to defendant's appearance, as their entire purpose in performing the transaction was to ultimately identify and apprehend the seller. While defendant has identified factors weighing against the reliability of the identification testimony, it is not our place to reweigh the trial court's initial assessment of these factors. See *In re Keith C.*, 378 Ill. App. 3d 252, 258 (2007) (reliability of witness's identification is question for trier of fact); *People v. Coleman*, 301 Ill. App. 3d 37, 42 (1998) (trier of fact has prerogative to judge credibility of witnesses and resolve conflicts in testimony). Properly deferring to the trial court's role as trier of fact, we cannot conclude that the identifications in this case were so unreliable or unsatisfactory that defendant's conviction must be reversed.

¶ 27 We conclude that the evidence presented at trial, viewed in the light most favorable to the State, was sufficient to establish defendant's identity as the offender.

¶ 28 Defendant finally contends that the mittimus must be amended to reflect the correct name of the offense of the possession of cocaine with intent to deliver. A review of the mittimus confirms that the accurate statutory citation for that offense (720 ILCS 570/401(a), (c)(2) (West 2012)) is listed there, but the conviction is described as "MFG/DEL" of cocaine. The State concedes the mittimus should be corrected to reflect the offense of possession with intent to deliver, and we agree with the parties.

¶ 29 Accordingly, pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we order the mittimus corrected to reflect a conviction of possession of cocaine with intent to deliver, and affirm the judgment of the circuit court of Cook County in all other respects.

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¶ 30 Affirmed; mittimus corrected.