

No. 1-14-1678

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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. 13 CR 5176
)	
JAMIE JACKSON,)	Honorable
)	William Hooks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice McBride and Justice Ellis concurred in the judgment.

O R D E R

- ¶ 1 *Held:* We affirm the judgment of the circuit court where the evidence was sufficient to convict defendant of delivery of a controlled substance, and the trial court did not deprive defendant of a fair trial where it did not shift the burden of proof to the defense.
- ¶ 2 Following a bench trial, defendant Jamie Jackson was found guilty of delivery of a

controlled substance and sentenced to three years' imprisonment. On appeal, defendant contests the sufficiency of the evidence supporting his conviction, asserting that the State's main witness provided inconsistent testimony, and there was no testimony confirming that the money found on defendant came from prerecorded funds. Defendant also maintains that he was denied a fair trial where the trial court improperly shifted the burden of proof to the defense to establish a reasonable doubt of guilt. We affirm.

¶ 3 Defendant was charged with two felony narcotics offenses. Specifically, he was charged with possession of a controlled substance with intent to deliver 1 gram or more but less than 15 grams of cocaine (720 ILCS 570/401(c)(2) (West 2012)), and delivery of less than 1 gram of cocaine (720 ILCS 570/401(d) (West 2012)).

¶ 4 At trial, Officer Marcus Myles testified that he was working undercover as part of a narcotics team in the area of 403 North Lawler Avenue in Chicago at approximately 4:15 p.m. on February 12, 2013. Myles was somewhat familiar with the area in question. He saw a man standing at 5228 West Kinzie Street and asked him if there was any crack cocaine in the area. The man informed Myles that he was waiting for cocaine, and Myles waited with him. Five minutes later, a black Lincoln town car, which Myles believed contained two men and one woman, drove westbound on Kinzie Street and parked at 403 North Lawler Avenue. The man who was waiting with Myles ran to the Lincoln with Myles closely behind him. The man handed money to defendant, who Myles identified in court as sitting in the rear passenger seat of the Lincoln town car, and stated "give me one." Defendant gave him one clear plastic bag containing suspect crack cocaine. The man walked away and Myles approached defendant, handing him two \$10 bills of prerecorded funds. Myles stated "give me two," and defendant reached inside a clear

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plastic bag that was next to the console. Defendant pulled out two plastic bags and handed them to Myles in exchange for the \$20 of prerecorded funds.

¶ 5 Myles secured the items and returned to his covert vehicle. He notified his team members via radio transmission of the positive narcotics purchase, and described the subject vehicle as a black Lincoln town car and defendant as a black man wearing a gray hooded jacket, black pants, and gray Nike shoes. The Lincoln town car was detained by enforcement officers in the area of 5053 West Ohio Street. Myles drove past the scene approximately five minutes after he made the purchase, and identified defendant as being the man from whom he had purchased the suspect narcotics. When Myles made the identification, defendant and the other occupants of the car were standing outside the vehicle, with defendant at the rear of the vehicle and the others near the front. Myles indicated that, as he was driving by, defendant was being brought from the rear of the vehicle to the front. Myles later inventoried the suspect cocaine that he bought from defendant at the police station under inventory number 12830931.

¶ 6 Officer Paul Meagher testified that he received a radio communication from Officer Myles that Myles had made a drug purchase. Myles described the vehicle and the individual involved in the transaction. Shortly after receiving the message, Meagher and his partner stopped the Lincoln and detained defendant who was inside. The occupants of the vehicle were taken from the vehicle. Meagher could not recall whether defendant was escorted to the front or rear of the vehicle, nor could he remember if the other occupants of the vehicle moved to where defendant was standing. Myles identified defendant as the man who sold him narcotics. Meagher's custodial search of defendant revealed prerecorded funds commingled with additional money. Meagher's partner recovered 1 clear bag containing 22 smaller packets of suspect

cocaine, which were inventoried at the police station under inventory number 12830946.

¶ 7 The parties stipulated that Denise Sylvester, a forensic scientist, would testify that she received inventory number 12830931 in a heat-sealed condition, tested the two items inside, and found that they testified positive for .2 grams of cocaine. Sylvester would also testify that she received inventory number 12830946 in a heat sealed condition, tested 7 of the 22 items found inside, and established that those items tested positive for 1.1 grams of cocaine.

¶ 8 Defendant moved for a directed verdict on the possession of a controlled substance with intent to deliver count, which the court granted. The matter proceeded on the delivery of a controlled substance count.

¶ 9 Nashante Boyd testified on behalf of the defense that she and defendant had been friends for 10 years and were two of the four people in the Lincoln town car. Boyd was in the rear driver-side seat while defendant was in the rear passenger-side seat. Boyd asked the driver to take her to Lawler Avenue and Kinzie Street to sell someone drugs. When they arrived, Boyd believed she sold two people cocaine, but did not know their names, how many bags she sold, or how much money she received in exchange for the drugs. She also did not know the name of the individual who supplied her with narcotics. Boyd stated she stopped selling drugs after this incident.

¶ 10 Boyd further testified that, after the drug sales in question, the police pulled the town car over, made everyone get out of the vehicle, and searched them. Boyd later stated that the police did not search her and never recovered her remaining drugs, which she had hidden in her clothing. The police confiscated the proceeds from the cocaine sales that Boyd had placed in the pocket of a back door and a cup holder. Boyd stated that no car drove past them after the police

ordered everyone out of the vehicle because the police had blocked the street. After standing outside for 20 or 30 minutes, defendant was arrested. Boyd stated that she was the only person who sold drugs that day.

¶ 11 The defense rested and the parties delivered their closing arguments. Following argument, the trial court found defendant guilty of delivery of a controlled substance. In so finding, the court stated that Officer Myles' testimony was credible with respect to his observations and who delivered the controlled substance. In contrast, the court stated that Boyd's testimony was unbelievable and fabricated. The court thus concluded that the State met its burden of proof.

¶ 12 Defendant filed a posttrial motion, arguing that the State failed to prove beyond a reasonable doubt that he delivered a controlled substance. The court denied the motion, reiterating that Boyd's testimony was incredible, and further stating that her testimony "was of great assistance with respect to the State meeting its burden of proof in this matter."

¶ 13 On appeal, defendant first contests the sufficiency of the evidence supporting his conviction. In particular, defendant maintains that Officer Myles' testimony was unreliable where he was confused about the location of the purported drug sale, casting doubt on his suggestive "drive by" identification of defendant. He also maintains that the State failed to establish that the prerecorded funds used to purchase the cocaine were found in his possession.

¶ 14 When a defendant challenges the sufficiency of the evidence to sustain a conviction, the 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, 278-79 (2004). It is the responsibility

of the trier of fact to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011).

¶ 15 To sustain a conviction for delivery of a controlled substance, the State must show that the defendant knowingly delivered a controlled substance. *People v. Brown*, 388 Ill. App. 3d 104, 108 (2009); 720 ILCS 570/401(d) (West 2012).

¶ 16 Viewed in the light most favorable to the State, the evidence in this case established beyond a reasonable doubt that defendant knowingly delivered cocaine to Officer Myles. While working undercover, Myles saw a black Lincoln town car parked at 403 North Lawler Avenue. Myles was less than three inches from the passenger side of the vehicle when an unidentified man handed money to defendant, and said "give me one." Defendant gave the man one clear plastic bag containing suspect crack cocaine, and the unidentified man walked away. Myles then handed defendant two \$10 bills of prerecorded funds and stated "give me two." Defendant reached inside a clear plastic bag, pulled out two plastic bags, and gave them to Myles in exchange for the prerecorded funds. Shortly thereafter, Officer Meagher stopped the Lincoln town car and detained defendant and the other occupants. Myles drove past the scene and identified defendant as the seller. Myles' unequivocal identification of defendant shortly after the drug transaction was enough to establish his guilt. See *People v. Lewis*, 165 Ill. 2d 305, 356 (1995) ("[A] single witness' identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification."). Defendant was arrested and Meagher and his partner conducted a custodial search of defendant,

which revealed prerecorded funds commingled with additional money and bags of suspect narcotics. There is no dispute that the tested items were cocaine. The above evidence shows beyond a reasonable doubt that defendant knowingly delivered cocaine to Myles.

¶ 17 Nevertheless, defendant argues that Officer Myles provided inconsistent testimony regarding the location of the offense, casting doubt upon other aspects of Myles' testimony. Defendant specifically questions the accuracy of Myles' identification of defendant as the seller, particularly where the identification was suggestive as defendant was separated from the other occupants of the vehicle.

¶ 18 Defendant is correct that Officer Myles' testimony was confused regarding the location of the drug buy. On direct examination, Myles testified that he met an unknown individual at 5228 West Kinzie Street where they waited for cocaine. Myles further testified that the subject vehicle passed them driving westbound on Kinzie Street, turned northbound onto Lawler Avenue, and stopped at 403 North Lawler Avenue where the narcotics purchases were completed. On cross-examination, Myles stated that he "believe[d] the street [was] Lawler," but admitted that he was not from that police district within Chicago, and that he would need to look at a map to be sure. Defendant accurately states in his briefs on appeal that 403 North Lawler Avenue is about five blocks away from Myles' original undercover location at 5228 West Kinzie Street. See *People v. Clark*, 406 Ill. App. 3d 622, 633 (2010) (stating that we may take judicial notice of geographical facts acquired from mainstream Internet sites such as Google Maps).

¶ 19 Defendant claims the above "sort of inconsistency in a witness's testimony is sufficient to cast doubt on his credibility." For support, defendant relies on *People v. Hister*, 60 Ill. 2d 567, 573 (1975), where our supreme court held that conflicting testimony was too inconsistent to

uphold a murder conviction. Defendant highlights the fact that one of the State's witnesses "exhibited uncertainty as to his location at the time of the shooting," as one reason the supreme court held there was a reasonable doubt as to the defendant's guilt. *Id.* at 572. However, defendant omits the myriad of other inconsistencies that contributed to the reversal of the defendant's conviction, *i.e.*, the testimony of each of the two eyewitnesses was remarkably different, and there were inconsistencies relating to the description of the codefendants, the type of automobile they were driving, who was armed and with what type of weapon, what other witnesses were present, the sequence of the events leading up to the shooting, and the number of shots fired. *Id.* at 570-71. Here, any inconsistencies or contradictions by Officer Myles pale in comparison to the long list enumerated in the *Hister* case. We thus find that the inconsistencies do not call into question the validity of Myles' testimony and are minor. See *People v. Wesley*, 382 Ill. App. 3d 588, 592 (2008) ("[m]inor inconsistencies in testimony do not, by themselves, create a reasonable doubt") (Internal quotation marks omitted.)

¶ 20 Moreover, Myles' identification of defendant was not suggestive, as asserted by defendant, where Myles never wavered in his identification, which was made minutes after the transaction. Myles testified he was three inches away from the town car when defendant sold an unknown man suspect cocaine, and, immediately after that transaction was complete, defendant then sold Myles cocaine. Myles identified defendant as the seller to his fellow officers during the drive-by minutes after the transaction. Although defendant was standing at the rear of the town car, the record does not show that the police separated defendant from the group for identification purposes, particularly where Myles testified that "the driver and the female were on the front side of the vehicle and the defendant was *** at the back. I think [the officers] were

bringing [defendant] around the back of the vehicle to the front side. It's customary to keep people on one side, so as I was coming by he was coming around the back of the vehicle." Myles' identification of defendant was consistent and unwavering and the fact that he was confused regarding the exact location of the drug transaction does not cast doubt on the credibility of his identification.

¶ 21 Defendant also contends that he was not proven guilty beyond a reasonable doubt because the State failed to present any testimony confirming that the money found on him consisted of the prerecorded funds Officer Myles allegedly used to purchase the cocaine. In particular, defendant maintains that, although Officer Meagher claimed that he recovered the prerecorded funds from him, he never testified that the serial numbers on that money matched the serial numbers on the prerecorded funds used by Myles. According to defendant, as there is no indication that Meagher even looked at the serial numbers, it cannot be inferred that defendant possessed the money used by Myles. We disagree.

¶ 22 The record shows that Officer Meagher testified that "[a] custodial search of [defendant] revealed our pre-recorded 1505 funds comingled with additional United States currency ***." Although the above statement does not precisely explain how Meagher confirmed the funds to be 1505 funds, it is clear from his testimony that he was able to identify the 1505 funds because he could differentiate between them and regular currency. See *People v. Lloyd*, 2013 IL 113510, ¶ 42 (stating that all reasonable inferences must be allowed in favor of the State).

¶ 23 We further note that, to the extent defendant is asserting that the State failed to lay a proper foundation for the relevance of the officers' testimony regarding the prerecorded funds, defendant could have objected to any alleged defect. If defendant had made a timely objection,

the State could have cured any alleged defect in laying the foundation by further questioning the officers regarding the prerecorded funds, or even admitting into evidence the prerecorded funds sheet. See *People v. Strother*, 53 Ill. 2d 95, 101 (1972) (finding that although the prerecorded funds sheet, which was introduced to prove the serial numbers recorded were those of the currency used in the controlled purchase, may have been hearsay, it was properly admitted under the past recollection recorded exception to the hearsay rule); *People v. Rivas*, 302 Ill. App. 3d 421, 432 (1998) (prerecorded funds sheet qualifies as a business record).

¶ 24 Moreover, it is significant to note that as defendant was convicted of delivery of a controlled substance, the State was not required to prove that money was exchanged for cocaine. Such an exchange is not an element of the offense of delivery of a controlled substance. See 720 ILCS 570/401 (West 2012); see also *People v. Trotter*, 293 Ill. App. 3d 617, 619 (1997) ("[T]here is no requirement that pre-recorded or marked funds used in a narcotics transaction be recovered for a conviction to stand"). As stated above, Officer Myles' trial testimony showed that defendant handed an unknown man one bag of suspect crack cocaine, and then handed Myles two bags containing crack cocaine. After defendant was apprehended by Officer Meagher, Myles identified defendant as the man who delivered narcotics to him. The trial court specifically found "Officer Myles' testimony *** credible with respect to his observations and who delivered the controlled substance to him." Again, a single witness' identification of the accused is adequate to sustain a conviction as long as he viewed the accused under circumstances allowing a positive identification. *Lewis*, 165 Ill. 2d at 356. Myles viewed defendant under such circumstances here. The recovered prerecorded funds are thus not material to whether defendant delivered cocaine to Myles.

¶ 25 Defendant lastly contends that the trial court deprived him of his due process right to a fair trial by basing its finding of guilt in large part on the weakness of the defense's case rather than the strength of the State's case. In particular, defendant maintains that by commenting that Boyd's testimony assisted the State in proving its case, the trial court improperly shifted the burden of proof to the defense to establish a reasonable doubt.

¶ 26 As an initial matter, defendant admits that this issue may have been forfeited because he did not object to the trial court's comments. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (stating that to preserve a claim, a defendant must both object at trial and include the alleged error in a written posttrial motion). However, defendant argues that we should reach the merits of the issue because it involves the conduct of the trial court (*People v. Rowjee*, 308 Ill. App. 3d 179, 185 (1999)) or, alternatively, as a matter of plain error (*People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)). The State responds that no error occurred, much less plain error, where the court's comments do not show that it improperly shifted the burden to defendant.

¶ 27 The first step in plain-error analysis is to determine whether error occurred at all. *People v. Harris*, 225 Ill. 2d 1, 31 (2007). Where no error occurred, there can be no plain error. *People v. Wilson*, 404 Ill. App. 3d 244, 247 (2010). We review *de novo* whether the trial court applied the correct legal standard. *People v. Cameron*, 2012 IL App (3d) 110020, ¶ 26.

¶ 28 Constitutional due process rights require that the State prove each element of the offense beyond a reasonable doubt (*Cunningham*, 212 Ill. 2d at 278), and that burden never shifts from the State (*People v. Larry*, 2015 IL App (1st) 133664, ¶ 14). Therefore, if the circuit court shifts the burden of proof to the defendant, the defendant must receive a new trial. See *e.g.*, *People v. DeVine*, 295 Ill. App. 3d 537, 544 (1998) (reversing the defendant's conviction where the court

improperly stated the defendant had to establish a reasonable doubt of guilt, and the State's *prima facie* case was not rebutted). However, because the trial court is presumed to know and properly apply the law, including the allocation of the burden of proof, this presumption will be rebutted only where there is "strong affirmative evidence" to the contrary. *People v. Howery*, 178 Ill. 2d 1, 32 (1997). "The trial court's efforts to test, support, or sustain the defense's theories cannot be viewed as improperly diluting the State's burden of proof or improperly shifting that burden to the defendant. *Cameron*, 2012 IL App (3d) 110020, ¶ 28 (citing *Howery*, 178, Ill. 2d at 35). Moreover, a trial court may freely comment on the implausibility of the defense's theories, as long as the record shows it applied the proper burden of proof in finding the defendant guilty. *Id.* (citing *Howery*, 178, Ill. 2d at 34-35).

¶ 29 Here, in finding defendant guilty, the court stated:

*** Officer Myles' testimony is credible with respect to his observations and who delivered the controlled substance to him.

The Court finds completely incredible, unbelievable, and fabricated the testimony of Ms. Boyd. Her testimony was disjointed. Her testimony was more than disjointed. It was actually in this Court's assessment false ***. In addition to that she was making up her testimony as she went along ***[.] I would say the credibility of Ms. Boyd was questionable even on direct-examination but certainly following cross-examination her testimony was proven to be not credible, *** completely bogus.

The information was – she attempted to be self-serving towards this defendant in her testimony. She may have also been selling narcotics, *** but with respect to this particular charge against this particular defendant, *** the State has met its burden of

proof."

¶ 30 At the hearing on defendant's motion for a new trial, which was held over a month after defendant was found guilty, the court also stated:

"The Court remembers this particular case. The female friend of the defendant who testified was actually incredible. *** It was not even bad fiction. It was extraordinary bad fiction. She had no credibility whatsoever before this Court. In fact, her testimony was *** of great assistance with respect to the State meeting its burden of proof in this matter. The Court is comfortable with the assessment concerning the credibility [of] the State's witness. The Court is not impressed with the defendant's witness who came here in this Court's assessment just cried out loud and concerning her observations of her assessment what the defendant did or didn't do on the date. So the Court is comfortable with its *** previous finding of guilt[.]"

¶ 31 Contrary to defendant's claims, the trial court's comments establish that it applied the correct standard and never shifted the burden of proof to defendant. The contested comment that defendant stresses with greatest significance, *i.e.*, "[Boyd's] testimony was *** of great assistance with respect to the State meeting its burden of proof in this matter," does not equate to burden shifting by the court. We find *Howery* supports this conclusion.

¶ 32 In finding the defendant guilty of murder in *Howery*, the trial court stated,

"[A]fter a long, hard search, *** there is no evidence of any kind to support a verdict of not guilty in this case. ***

I thought maybe looking at some of the testimony that was presented by the defendant I could find something that would assist the court and perhaps help the court

from not having to find him guilty. But there's nothing there." *Howery*, 178 Ill. 2d at 31. Our supreme court held that these comments, viewed in the larger context of the court's comments on the strength of the State's evidence, did not equate to impermissible burden shifting by the court. *Id.* at 34. It specifically found that the trial court reviewed all of the trial testimony and exhibits, and, as the defendant presented a reasonable doubt theory, the court's ruling merely showed it considered and rejected that defense. *Id.* at 33. The supreme court also noted that the trial court expressly relied on affirmative evidence presented by the State. *Id.* at 34.

¶ 33 In this instant case, viewing the trial court's comments in their entirety as our supreme court did in *Howery*, we find the trial court relied on affirmative evidence presented by the State when it found Officer Myles' testimony credible with respect to his observations and identification of defendant as the man who delivered the cocaine. Furthermore, in discussing Boyd, the record shows the court was simply pointing out that she was incredible, and thus did nothing to undermine the strength of the State's evidence against defendant. By explicitly stating that "the State has met its burden of proof," the trial court showed it knew that the burden of proof remained with the State throughout the trial. Therefore, the record shows that the trial court never shifted the burden of proof to defendant, but, instead, properly found that the State had proved defendant's guilt beyond a reasonable doubt. In turn, we find no error, let alone plain error, to overcome defendant's forfeiture of this issue.

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

¶ 35 Affirmed.