

No. 1-14-2270

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 14617
	)	
WILLIE McDANIEL,	)	Honorable
	)	Mary Colleen Roberts,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAVIN delivered the judgment of the court.  
Presiding Justice Mason and Justice Fitzgerald Smith 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 State successfully proved each element of the offense beyond a reasonable doubt.

¶ 2 Defendant Willie McDaniel was charged with two counts of delivery of a controlled substance stemming from an orchestrated narcotics purchase by an undercover Chicago police officer. Following a bench trial, he was convicted of one count of delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2012)) and sentenced to six years' imprisonment. On

appeal, defendant argues the evidence presented at trial was insufficient to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 At trial, the State called three Chicago police officers to testify in support of its case. Officer Darryl Smith testified that on the afternoon of July 10, 2013, he was on duty assigned to a Chicago Police Department (CPD) narcotics team as an undercover officer. Working in the area of 1154 South Springfield in Chicago, Smith was approached by a male wearing a white T-shirt and plaid shorts. The man, identified by Smith in court as defendant, asked Smith what he was looking for, to which Smith replied that he was looking for “blows,” which Smith knew was a street term for heroin. Following the conversation, defendant instructed Smith to follow him a short distance to approximately 1154 South Springfield. There, Smith handed defendant two \$10 bills of CPD “1505” funds with prerecorded serial numbers JF33559859A and JD81244865A, and defendant gave Smith one Ziploc bag containing suspect heroin. The parties stipulated at trial to the serial numbers of the \$10 bills.

¶ 4 After the transaction, Smith alerted the narcotics team that he had engaged in a positive narcotics purchase with a black male having a shaved head wearing a white T-shirt and plaid shorts. Approximately two minutes later, Smith returned to the area in his vehicle and identified defendant as the individual who sold him suspected narcotics. Smith later inventoried the suspected narcotics as inventory number 12950312.

¶ 5 Officer Wherfel testified that, shortly after Smith's radio transmission, he arrived at the location and detained an individual, who he identified in court as defendant. Smith then returned to the area in his vehicle and radioed to Wherfel that the individual detained was the person who had sold him narcotics. At this point, Wherfel placed defendant under arrest and performed a custodial search of him. The search recovered the two \$10 “1505” bills, identified by serial

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numbers JF33559859A and JD81244865A, as well as an additional \$80 in United States Currency. Wherfel inventoried the “1505” funds pursuant to CPD procedure and generated inventory number 12950315.

¶ 6 Officer Lepine testified he was working on the same narcotics team as Smith and Wherfel in a surveillance capacity. From a distance of fifty feet away in the area of 1154 South Springfield, Lepine observed Smith arrive in an undercover vehicle and engage in a conversation with a man Lepine identified in court as defendant. Lepine further observed Smith and defendant engage in a hand-to-hand transaction before Smith left the area in his vehicle. Although Lepine was not able to see what exactly had been exchanged, based on his experience in over 1,000 narcotics investigations, he believed it to be a narcotics transaction. From his vantage point, Lepine continued to observe defendant until Wherfel detained him. Lepine then witnessed Smith return to the area.

¶ 7 The parties stipulated that if called to testify, Lennetta Watson, a forensic scientist at the Illinois State Police crime lab, would state that she is qualified as an expert in the area of forensic chemistry. She would further testify that she received inventory number 12950312 and following analysis, it tested positive for the presence of heroin with a weight of 0.3 grams.

¶ 8 The trial court subsequently found defendant guilty of delivery of a controlled substance noting:

“I observed the way in which each of the officers testified in the State’s case in chief. I listened to how they answered the questions. I listened to, I observed the way in which they answered those questions. And I heard nothing in their testimony individually and

as compared to one another that would impeach their testimony. So

I find each of those officers' testimony credible.”

¶ 9 The trial court denied defendant's motion for a new trial and sentenced him to the mandatory minimum of six years' imprisonment as a Class X offender based on his prior convictions. Defendant filed a timely notice of appeal.

¶ 10 On appeal, defendant argues that the evidence presented at trial was insufficient to prove him guilty beyond a reasonable doubt. Namely, defendant contends that the testimony of Officer Smith is “unbelievable” because Smith did not testify regarding from where defendant retrieved the heroin before handing it to Smith. Defendant also argues that, because the individual \$10 “1505” bills were not entered into evidence, there is no physical proof the funds were used in the transaction with defendant. Lastly, defendant argues that no other narcotics or narcotics paraphernalia were recovered from defendant after his arrest. For those reasons and because neither Officer Wherfel nor Lepine witnessed the specific items exchanged, defendant argues the conviction cannot stand.

¶ 11 The standard of review when challenging the sufficiency of the evidence is whether, after viewing all the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Maggette*, 195 Ill. 2d 336, 353 (2001). A reviewing court must not retry the defendant. *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). Nor will a reviewing court substitute its own judgment for the trier of fact on issues of the credibility of witnesses or the weight of the evidence. *People v. Digirolamo*, 179 Ill. 2d 24, 46 (1997). In a bench trial, the trial judge, as the trier of fact, is tasked with determining the credibility of witnesses, weighing the evidence and any inferences derived, and resolving any conflicts in the evidence. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

A conviction will not be reversed unless "the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 12 In order to sustain the conviction for delivery of a controlled substance, the State must prove the defendant knowingly delivered a controlled substance. 720 ILCS 570/401 (West 2012); *People v. Brown*, 388 Ill. App. 3d 104, 108 (2009). "Delivery" is "the actual, constructive or attempted transfer of possession of a controlled substance with or without consideration, whether or not there is an agency relationship." 720 ILCS 570/102(h) (West 2012); *Brown*, 388 Ill. App. 3d at 108.

¶ 13 Principally, defendant attacks Officer Smith's testimony as "improbable, unconvincing . . ., insufficient" and "unbelievable" because Smith did not testify where specifically the heroin was located moments before the transaction with defendant occurred. In essence, defendant argues that because Smith did not testify specifically regarding from where defendant retrieved the heroin, Smith's entire testimony cannot be believed. This argument is unconvincing. The fact that Smith did not testify regarding from where defendant retrieved the heroin before handing it to Smith is immaterial to whether defendant is guilty of delivery of a controlled substance. The statute only requires that the State prove that the defendant transferred possession of the controlled substance to another person. 720 ILCS 57/401(d) (West 2012); 720 ILCS 570/102(h) (West 2012). It does not require the State to prove from where the offender acquired that substance.

¶ 14 Nor can the omission of this detail be said to have rendered Smith's trial testimony "improbable, unconvincing, and insufficient." Smith testified in significant detail about the events of July 10, 2013 and his encounter with defendant. He testified that he was working

undercover as a narcotics purchaser in the area of 1154 South Springfield when defendant approached him and asked what Smith needed. After Smith indicated that he needed heroin, defendant told Smith to follow him a short distance away. There, defendant exchanged with Smith a Ziploc bag for prerecorded funds. Immediately thereafter, Smith provided a description of defendant to his fellow officers. Defendant was arrested and Smith identified him as the man who gave him the suspected narcotics. The parties later stipulated that the Ziploc bag tested positive for heroin.

¶ 15 Furthermore, Officer Lepine corroborated Smith's testimony by stating that Smith and defendant engaged in a hand-to-hand transaction. While Lepine was unable to see what specific items were exchanged, Smith testified the item was suspected heroin, which forensic testing later confirmed. It was for the trial court to determine the credibility of the witnesses. *Slim*, 127 Ill. 2d at 307. It found the officers' testimony credible and the record does not show otherwise.

¶ 16 Accordingly, the State was able to prove all elements of the offense through Smith's credible testimony. See *People v. Smith*, 185 Ill. 2d 532, 541 (1999) (testimony of a single credible witness sufficient to sustain a conviction).

¶ 17 Next, defendant argues that, because the individual prerecorded \$10 bills were not introduced at trial, there is no physical proof of the money used in the transaction. As an initial matter, the transfer of money is not an essential element of delivery of a controlled substance. See 720 ILCS 570/401(d); 720 ILCS 570/120(h) ("Delivery means . . . with or without consideration"). Therefore, the State did not need to introduce at trial the prerecorded \$10 bills.

¶ 18 Nevertheless, the State did offer evidence that Smith transferred prerecorded funds to defendant in exchange for heroin. Smith testified that, prior to his encounter with defendant, he had checked out funds from the CPD and recorded the serial numbers onto a "1505" funds sheet.

He was shown and questioned about the "1505" prerecorded funds sheet that he had filled out. He also provided, and the parties stipulated to, the serial numbers of the two prerecorded \$10 bills he gave to defendant in exchange for the heroin. Additionally, Officer Wherfel testified that currency with those same serial numbers was recovered from defendant following his arrest. Given this testimony, there is ample evidence to conclude that the defendant exchanged heroin for the prerecorded funds used by Smith.

¶ 19 Furthermore, in response to questioning regarding why the funds were not inventoried for trial, Smith explained that the same prerecorded funds are used in multiple transactions per month, but that he notes in his reports each time they are used. Ultimately, however, the State is not required to produce at trial the prerecorded funds in order to sustain the conviction. See *People v. Trotter*, 293 Ill. App. 3d 617, 619 (1997) ("there is no requirement that pre-recorded or marked funds be recovered for a conviction to stand").

¶ 20 Finally, defendant argues in a single sentence that the evidence presented at trial was insufficient to convict him because no other drugs or drug paraphernalia were found on him shortly after the transaction and arrest. Defendant does not develop this argument or highlight the implications of this fact. Moreover, a defendant's possession of additional narcotics after a transaction has occurred is not an element necessary to proving the defendant guilty of delivery of a controlled substance. See 720 ILCS 570/401(d) (West 2012). Accordingly, we decline to speculate about this undeveloped argument. See Ill. S. Ct. R. 341(h)(7) ("Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on a petition for rehearing").

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¶ 21 Viewing the evidence in the light most favorable to the State, we find the evidence was sufficient to prove defendant guilty beyond a reasonable doubt of delivery of a controlled substance.

¶ 22 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.