

No. 1-14-3789

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. 10 CR 16312
)	
MICHON LEWIS,)	Honorable
)	Neil J. Linehan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Pierce and Justice Simon concurred in the judgment.

O R D E R

¶ 1 **Held:** Judgment entered on defendant's conviction for possession of a controlled substance affirmed over his claim that the evidence was insufficient to prove him guilty of that offense beyond a reasonable doubt.

¶ 2 Defendant Michon Lewis appeals from his bench trial conviction for possession of a controlled substance, contesting the sufficiency of the evidence to prove his possession beyond a reasonable doubt. He contends the police officers' testimony was improbable and contradicted by

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a defense witness. Because the trial court's decision was supported by the evidence and the law, we affirm.

¶ 3 Background

¶ 4 At trial, Chicago police officer David Bachler testified that at 11:30 a.m. on August 17, 2010, he and his partner, Officer Gomez, were in an unmarked police car when Bachler saw a Durango (the SUV) going in the opposite direction. Bachler made a U-turn and followed the SUV. At a railroad crossing, the SUV stopped and, as the officers pulled up behind it, the passenger fled the down a nearby alley. Officer Gomez gave chase to the passenger. Officer Bachler walked up to the driver's side of the parked SUV.

¶ 5 Officer Bachler saw Lewis attempting to stuff a bag between the center console and the seat. The bag was about the size of a small orange and contained a brown powdery substance. Based on his experience, Bachler believed the substance in the bag to be heroin. Bachler ordered defendant out of the car, took him into custody, and then recovered the narcotics. When Gomez returned from the alley, having lost track of the passenger, Bachler gave the bag to him.

¶ 6 On cross-examination, Bachler stated that when the passenger fled, he believed that the person had done something wrong. He also stated he lost sight of Officer Gomez, and that he was standing next to the driver's side door of the vehicle when he saw Lewis with the narcotics.

¶ 7 Officer Gomez related the same series of events as Officer Bachler. He testified that he chased the passenger, but was unable to catch him, and returned to find Bachler had detained the driver. Gomez stated that Bachler handed him a bag containing brown powder that appeared to be heroin.

¶ 8 After the trial court denied Lewis' motion for a directed finding, Wyatt Hurd testified on behalf of Lewis. Hurd, who lived at 9700 South Harvard Avenue, testified that at 11:30 a.m. on

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August 17, 2010, he was standing outside his home smoking a cigarette when he heard a "beep" from a police car. He looked up and saw someone jump out of a green Durango and run down a nearby alley, followed by a police officer from the police car. Hurd walked down the street until he was directly across from the alley and saw another officer approach Lewis who was sitting in the driver's seat. Hurd saw an officer holding a pistol approach the SUV, and never saw him take a bag or any object from the truck. The officer searched Lewis, and put him into the back seat of the police car.

¶ 9 When Hurd saw the officer who had run down the alley return, waving something in his hand. Hurd was too far away to tell what he was holding, but described the item to be the size of a small ball. The officers then started "congratulating" each other, by smiling and nodding. Hurd left the area when the officers started searching the SUV.

¶ 10 Hurd testified that in 2005, he was convicted of possession of a controlled substance and satisfactorily completed an 18-month term of probation. He acknowledged seeing Lewis around the neighborhood, but otherwise was unfamiliar with him. Before trial, Lewis asked Hurd to speak with defense counsel, which he did. Hurd was not being paid for his testimony and he was not given anything in exchange for his testimony except a ride to the courthouse because he did not own a car.

¶ 11 Following closing argument, the trial court found Lewis guilty of possession of a controlled substance. In issuing its ruling, the court reviewed the testimony of the officers and Hurd, noting the differences. The trial court recounted Hurd's testimony that he saw a gun, and saw Officer Gomez come out of the alley holding something in his hand. The court stated that it did not know whether this testimony was impeaching because Hurd could not identify the object. The court further stated that it was clear from defendant's argument that he wanted the court to

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make a reasonable inference that the narcotics were not recovered from the SUV, but dropped by the fleeing passenger. On this point, the court, after observing the demeanor of each witness, found Officers Bachler and Gomez credible, and concluded that Lewis had been proved guilty of possession of a controlled substance beyond a reasonable doubt. At the sentencing hearing, the court considered the appropriate factors in mitigation and aggravation, and sentenced Lewis to four years' imprisonment.

¶ 12

Analysis

¶ 13 Lewis contends that the evidence was insufficient to prove him guilty of possession of a controlled substance beyond a reasonable doubt. He maintains that the testimony of the officers was improbable and contrary to human experience. He also asserts that the trial court should have accepted the testimony of the independent eyewitness whose testimony contradicted the officers' testimony and showed that Lewis did not possess the narcotics.

¶ 14 Where defendant challenges the sufficiency of the evidence to sustain his or her conviction, the reviewing court must consider whether, after viewing the evidence in a light most favorable to the prosecution, 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 (2004). This standard recognizes the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any conflicts and inconsistencies in the evidence, and to draw reasonable inferences. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court must allow all reasonable inferences from the record in favor of the prosecution, and will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 15 To sustain a conviction for possession of a controlled substance, the State was required to prove beyond a reasonable doubt that defendant had knowledge and possession of the narcotics. 720 ILCS 570/402 (West 2010); *People v. Givens*, 237 Ill. 2d 311, 334-35 (2010). Actual possession occurs where defendant has present, personal dominion over the narcotics and exercises immediate and exclusive control over them. *Givens*, 237 Ill. 2d at 335.

¶ 16 Viewed in a light most favorable to the State, the evidence shows that after making a U-turn in an unmarked police car and pulling up behind the SUV, the two officers saw the passenger flee. Officer Gomez ran after the passenger, while Officer Bachler approached the driver. Officer Bachler saw Lewis attempting to stuff a bag containing a brown powdery substance between the center console and the driver's seat. Based on his experience, Bachler believed that the bag contained heroin. Bachler ordered Lewis out of the SUV and recovered the bag, which was later determined to contain 32.1 grams of heroin. This evidence and the reasonable inferences from it suffice to allow a reasonable trier of fact to find Lewis guilty of possession of a controlled substance beyond a reasonable doubt. 720 ILCS 570/402 (West 2010); *Givens*, 237 Ill. 2d at 336.

¶ 17 Lewis, nonetheless, contends that Officer Bachler's testimony was improbable and contrary to human experience where he had ample time to hide the narcotics before Bachler approached the driver's side door. He further maintains that Officer Gomez's testimony does not corroborate Officer Bachler's testimony because he did not see him recover the narcotics.

¶ 18 Lewis questions the credibility determination of the witnesses made by the trial court. This challenge presents nothing more than a request to reweigh the trial court's credibility determination. But credibility is a matter within the province of the trial court (*Sutherland*, 223 Ill. 2d at 242), and we will not substitute our judgment for that of the trial court unless the proof

is so unsatisfactory that it raises a reasonable doubt of guilt (*People v. Berland*, 74 Ill. 2d 286, 305-06 (1978)).

¶ 19 Officer Bachler testified that when he approached the SUV, he saw Lewis attempting to conceal what turned out to be a bag of narcotics between the console and his seat. Although Officer Gomez was not present, he testified that when he returned, Bachler was holding the bag of narcotics, which he then gave him for inventory, thus corroborating Bachler's account of the recovery of the contraband. Hurd, on the other hand, testified for the defense that the officer who returned from the alley appeared to be holding a small ball in his hand and the officers then smiled and nodded at each other. The trial court settled this contradictory testimony in favor of the officers, and, notwithstanding Lewis' contrary assertions, we find nothing inherently improbable about their testimony (*People v. Foules*, 258 Ill. App. 3d 645, 654 (1993)), nor do we find a basis for reversal (*Berland*, 74 Ill. 2d at 306).

¶ 20 Lewis next contends that the reasonable inferences from Hurd's testimony show that the narcotics were recovered from the fleeing passenger, and not from him. This, however, is no more than an assertion that the trial court should have accepted the version of the incident as presented by Hurd, rather than that provided by the officers. The trial court was not required to do so (*People v. Wilks*, 175 Ill. App. 3d 68, 73 (1988)), and Hurd's testimony that he did not see the officers recover anything from the SUV does not provide a basis for disturbing the court's acceptance of Officer Bachler's testimony that he recovered the controlled substance from the space between the center console and Lewis' seat. *Berland*, 74 Ill. 2d at 306.

¶ 21 Finally, there is a matter that deserves comment, though we do not rule on it. We cannot help but bemoan the elapse of more than three years between the filing of the motion of appeal on August 29, 2011, and the appointment of the Office of Appellate Defender on November 21,

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2014. That Lewis served most of his sentence before obtaining appellate counsel is unacceptable, no matter what its cause. Inordinate delay in the appointment of counsel frustrates a defendant's diligence in timely filing the notice of appeal and undermines the effectiveness of defendant's appellate rights.

¶ 22 We affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.