

NOTICE

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2016 IL App (4th) 140519-U

NO. 4-14-0519

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 19, 2016

Carla Bender

4th District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
MICHAEL FRAZIER,)	No. 13CF1161
Defendant-Appellant.)	
)	Honorable
)	Scott Daniel Drazewski,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Knecht and Justice Pope concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State presented sufficient evidence to sustain defendant's conviction of unlawful delivery of a controlled substance on park property on August 26, 2013.
- ¶ 2 In August 2013, a grand jury indicted defendant, Michael Frazier, on eight counts, including unlawful delivery of less than one gram of a controlled substance on park property (count I) (720 ILCS 570/407(b)(2) (West 2012)), unlawful delivery of less than one gram of a controlled substance (count II) (720 ILCS 570/401(d)(i) (West 2012)), unlawful delivery of more than one gram of a controlled substance on park property (count III) (720 ILCS 570/407(b)(1) (West 2012)), unlawful delivery of more than a gram of a controlled substance (count IV) (720 ILCS 570/401(c)(2) (West 2012)), possession with intent to deliver 1 to 15 grams of a controlled substance within 1,000 feet of a park (count V) (720 ILCS 570/407(b)(1) (West 2012)), and unlawful possession with intent to deliver 1 to 15 grams of a controlled substance (count VI) (720

ILCS 570/401(c)(2) (West 2012)). Prior to jury selection, the State nol-prossed the two remaining counts of the indictment.

¶ 3 In January 2014, a jury found defendant guilty on all six counts. During defendant's March 2014 sentencing hearing, the trial court found the three lesser counts merged into the three greater counts. The trial court sentenced defendant to eight years in prison on count I, eight years in prison on count III, and eight years in prison on count V, with all sentences to be served concurrently.

¶ 4 Defendant appeals, arguing the State failed to prove him guilty beyond a reasonable doubt on counts I and II because the conviction was based on contradictory, confusing, and unbelievable testimony. We disagree and affirm. Defendant does not raise any argument on appeal concerning his remaining convictions (counts III to VI).

¶ 5 I. BACKGROUND

¶ 6 In August 2013, a grand jury indicted defendant on the counts of, *inter alia*, unlawful delivery of less than one gram of a controlled substance on park property (count I) (720 ILCS 570/407(b)(2) (West 2012)) and the lesser count of unlawful delivery of less than one gram of a controlled substance (count II) (720 ILCS 570/401(d)(i) (West 2012)). Both counts were based upon allegations that defendant delivered less than one gram of a substance containing cocaine to confidential police source Kimberly Burns on August 26, 2013.

¶ 7 In December 2013, defendant's first trial ended in a mistrial after defense counsel discovered the State failed to tender a complete record of Burns' criminal history. A second jury trial was held in January 2014. The following pertinent facts were gleaned from the testimony presented on retrial.

¶ 8 A. Kimberly Burns

¶ 9 Burns testified at length about her lifelong addiction to various drugs, her run-ins with the law, and her receipt of leniency and money for her work as a confidential police informant with the Bloomington police department. At the time of defendant's trial, Burns admitted that she was still battling her addictions, but she had not been using illegal substances "for a while" and was "trying to stay away from drugs." Burns also acknowledged that she had, at times, traded sex for money.

¶ 10 After her arrest on May 16, 2013, for a drug-related offense, Burns agreed to act as a confidential police source for the Bloomington police department. At the time of the retrial, Burns had been paid on 15 to 20 occasions for a total of nearly \$3,000 for her work as an informant. In part, her role involved assisting the police with controlled purchases of controlled substances.

¶ 11 Burns testified that she assisted the Bloomington police department with a controlled purchase on August 26, 2013, involving defendant. Burns called defendant using her cell phone to arrange a meeting to purchase crack cocaine. Prior to meeting with defendant, Detective Stephen Brown searched her person, including her purse, for illegal contraband, then provided her with money for the transaction. Burns met with defendant in Atwood Wayside Park in Bloomington, Illinois, where she gave defendant the money Brown provided and defendant gave her crack cocaine. Burns then left the park and returned to where Brown was waiting, giving him the Baggie of crack cocaine from defendant.

¶ 12 B. Todd McClusky

¶ 13 Officer Todd McClusky testified he was tasked with providing surveillance of the August 26, 2013, controlled purchase. He stated he observed Burns and defendant walking together toward Atwood Wayside Park. McClusky acknowledged his view was such that he was

unable to see any exchange of drugs or money between Burns and defendant.

¶ 14 C. Manuel Hernandez

¶ 15 Officer Manuel Hernandez was assigned to conduct surveillance during the August 26, 2013, controlled purchase. Hernandez testified that he had a clear view of Burns and defendant during their exchange at Atwood Wayside Park. He stated that he observed Burns and defendant walking toward the park and that "they did a transaction there."

¶ 16 On cross-examination, defense counsel asked Hernandez why the radio log from the controlled purchase on August 26 did not reflect his observation of the transaction between Burns and defendant. Hernandez answered, "I did radio in," but he acknowledged, "[i]t's not in the log."

¶ 17 D. Stephen Brown

¶ 18 Detective Stephen Brown testified regarding his interactions with Burns, police protocols involving controlled purchases, and the controlled purchases involving defendant.

¶ 19 Brown testified that, on August 19, 2013, Burns informed him she knew of a drug source named "MC" and had his phone number. He subsequently identified "MC" as defendant. On August 26, 2013, he was present when Burns, while on speaker, placed a phone call to defendant and arranged a meeting at Evans and Monroe Streets in Bloomington to purchase cocaine. Brown heard the voice on the phone with Burns and, upon interviewing defendant on August 27, he thought the voices were similar.

¶ 20 Brown testified that he followed proper protocols for the controlled purchase on August 26. He searched Burns and the car before driving to the purchase location and giving Burns \$100 for the transaction. He observed Burns and defendant meet at Atwood Wayside Park, but he did not witness the actual exchange of money and cocaine from his position. A

short time later, Burns returned to his car and handed him a small Baggie of a substance containing crack cocaine.

¶ 21 On August 27, 2013, defendant was arrested following a second controlled purchase with Burns and admitted selling crack cocaine in a recorded interview with Brown. Defendant stated that he had been selling crack cocaine to Burns and others for approximately two weeks. While defendant did not directly address his involvement in the controlled purchase on August 26, he did confirm making the transaction with Burns on August 27.

¶ 22 Following closing arguments, the jury found defendant guilty on all six counts. On January 23, 2014, defendant filed a motion for judgment notwithstanding the verdict, or, in the alternative, for a new trial. In support of the motion, defendant asserted that the State failed to prove him guilty beyond a reasonable doubt because there were several flaws in the controls during the controlled purchase on August 26, 2013, and because Burns failed to give credible testimony that the drugs came from defendant. The trial court denied defendant's motion.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, defendant argues that the State failed to prove him guilty beyond a reasonable doubt of counts I and II because those convictions were supported by a controlled purchase that lacked the appropriate controls and surveillance and by the testimony of a criminal informant with addiction and other credibility issues. We disagree.

¶ 26 A. Standard of Review

¶ 27 "When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when 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.' " *People v. Ngo*, 388 Ill. App. 3d 1048, 1052, 904 N.E.2d 98, 102 (2008) (quoting *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006)).

The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009). "[A] reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable[,] or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *People v. Rowell*, 229 Ill. 2d 82, 98, 890 N.E.2d 487, 496-97 (2008).

¶ 28 The "testimony by an informant who himself abuses unlawful substances and who participates in an undercover operation to minimize punishment for his own illegal activity should be closely scrutinized." *People v. Anders*, 228 Ill. App. 3d 456, 464, 592 N.E.2d 652, 657 (1992). However, an informant's pending criminal charges and motive of gaining leniency bear upon his credibility, but do not "render his testimony unworthy of belief." *People v. Pittman*, 100 Ill. App. 3d 838, 842, 427 N.E.2d 276, 279 (1981); see also *People v. Pittman*, 93 Ill. 2d 169, 174-75, 442 N.E.2d 836, 838-39 (1982). Our supreme court has held that "where a witness has hopes of reward from the prosecution, his testimony should not be accepted unless it carries within it an 'absolute conviction of its truth.'" *People v. Ash*, 102 Ill. 2d 485, 493, 468 N.E.2d 1153, 1156 (1984) (quoting *People v. Williams*, 65 Ill. 2d 258, 267, 357 N.E.2d 525, 530 (1976)).

¶ 29 B. Unlawful Delivery of a Controlled Substance in a Park

¶ 30 Here, the State charged defendant with unlawful delivery of less than one gram of a controlled substance on park property on August 26, 2013 (count I) (720 ILCS 570/407(b)(2) (West 2012)). The State's evidence showed Burns agreed to act as a confidential police source

after being arrested for a drug-related offense. On August 26, 2013, Burns telephoned defendant in Brown's presence, arranging a meeting. Brown searched both Burns and the police vehicle used to transport Burns to the site of the controlled purchase and provided her with \$100. Officers conducted surveillance as she and defendant walked into Atwood Wayside Park. Burns returned to Brown's car afterward, handing him less than a gram of a substance containing cocaine.

¶ 31 Although Burns proved to be a witness with a history of criminal issues and addiction, her testimony that defendant gave her crack cocaine on August 26 was corroborated by the testimony of the officers involved. Further, while defendant did not address the transaction on August 26 in his confession, defendant did state that he had provided Burns with drugs on other occasions, including the transaction on August 27, 2013, for which he was also convicted. Given this evidence, a rational trier of fact could have found that all the required elements of the crime of unlawful delivery of a controlled substance in a public park were present on August 26.

¶ 32 Defendant asserted at trial, and here on appeal, that police controls of the alleged drug purchase on August 26, 2013, were flawed. Specifically, he states that none of the officers conducting surveillance on August 26, 2013, actually observed defendant and Burns exchange drugs or money and that Burns could have easily hidden drugs to evade Browns' search of her person and purse. Defendant also challenges Burns' credibility, noting that she is not only a known drug addict with a criminal history, but that she received payment and leniency in her own criminal cases for her work as a confidential source. Defendant claims these issues created a reasonable doubt as to his guilt.

¶ 33 Our supreme court has noted "it is well settled that the 'credibility of a government informant, as with any other witness, is a question for the jury.'" *People v. Evans*, 209 Ill. 2d 194, 213, 808 N.E.2d 939, 949 (2004) (quoting *People v. Manning*, 182 Ill. 2d 193, 210, 695

N.E.2d 423, 431 (1998)). "The established safeguards of the Anglo-American legal system leave the veracity of a witness to be tested by cross-examination, and the credibility of his testimony to be determined by a properly instructed jury." *Evans*, 209 Ill. 2d at 213, 808 N.E.2d at 950 (quoting *Hoffa v. United States*, 385 U.S. 293, 311 (1966)).

¶ 34 Here, the matters raised by defendant on appeal dealing with Burns' truthfulness were fully presented to the jury, and it was the jury's responsibility to judge the credibility of the witnesses. Moreover, the controls and surveillance in place for the August 26 controlled purchase were also before the jury, and it was the duty of the jurors to resolve conflicts in the evidence and draw reasonable inferences from that evidence. The jury could reasonably infer that defendant delivered cocaine to Burns from the following: the phone call made, defendant's appearance at the location ultimately designated for the buy, the search of Burns immediately prior to proceeding with the meeting, and Burns' delivery of cocaine to Detective Brown subsequent to meeting with defendant. Considering the evidence in the light most favorable to the prosecution, a rational jury could have found the essential elements of the charged offenses beyond a reasonable doubt.

¶ 35 III. CONCLUSION

¶ 36 For the foregoing reasons, we conclude the State presented sufficient evidence to sustain defendant's conviction for the delivery of less than a gram of a controlled substance in a public park on August 26, 2013. Because the State successfully defended a portion of the criminal judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620, 479 N.E.2d 328, 333 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978)).

¶ 37 Affirmed.