

2019 IL App (1st) 170590-U

No. 1-17-0590

Order filed October 17, 2019

Fourth Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 16 CR 3057
)	
MICHAEL STURDIVANT,)	Honorable
)	Mauricio Araujo,
Defendant-Appellant.)	Judge, presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for delivery of a controlled substance affirmed where the police officers' identification of him as the seller was sufficient to prove him guilty beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Michael Sturdivant was convicted of delivery of a controlled substance for selling heroin to an undercover police officer (720 ILCS 570/401(c)(1) (West 2016)) and sentenced to four years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because it failed to prove that he was

the person who sold the heroin to the officer where the police did not recover any prerecorded funds from him, he was not in possession of any narcotics, and the officers' description of the seller's clothing did not match the clothing worn by defendant. We affirm.

¶ 3 Defendant was charged with one count of delivering between 1 and 15 grams of heroin. At trial, Chicago police officer Syas¹ testified that on January 31, 2016, she was working as a surveillance officer for an undercover narcotics team, which consisted of six or seven officers. About 6:30 p.m., Syas drove to the 3900 block of West Gladys Avenue to conduct surveillance. The area had artificial street lighting, and she did not require any visual aids to make her observations. Syas observed defendant standing on the north side of the street. Syas identified defendant in court. Syas drove closer to defendant and parked her vehicle about seven or eight feet away from him. Syas had a "clear and unobstructed view" and "could see a full view" of defendant. Syas testified that defendant "was wearing a baby blue – I call it baby blue because it was a light blue jacket. He had on a black baseball cap or a black cap." Defendant was standing together with three other men with whom he was interacting.

¶ 4 About two minutes later, Officer Kevin Connolly drove onto the block in an undercover vehicle, stopped in the middle of the street, and had a conversation with defendant. Syas heard defendant tell Connolly to pull over and park his vehicle. Connolly parked directly in front of Syas' vehicle. There were no obstructions between their vehicles. Defendant entered the front passenger's side of Connolly's vehicle. Syas could see that they were having a conversation, but could not hear what was said. Defendant was inside Connolly's vehicle for about one minute, then exited. Based on her 10 years of experience as a narcotics officer making hundreds of

¹ Officer Syas' first name does not appear in the record.

narcotics arrests, Syas found defendant's actions consistent with a narcotics transaction. Defendant crossed the street, returned to the north side of Gladys Avenue where he was previously standing, and resumed his conversation with the same three men he was speaking with before the transaction. Connolly drove away.

¶ 5 Connolly radioed the team that he had made a positive buy for heroin. Connolly described defendant as a black man, about six feet two inches tall, weighing 170 pounds, and wearing a baby blue jacket. From her observation point seven to eight feet from defendant, Syas opined that defendant matched Connolly's description. Throughout this time, Syas never lost sight of defendant. Almost immediately after Connolly radioed the team, the enforcement officers drove onto the block and detained defendant. As the enforcement officers arrived, Connolly was turning off the block. Connolly returned to the location where defendant was detained and communicated with the team over the radio. Defendant was then arrested.

¶ 6 On cross-examination, Syas testified that she was parked on the south side of Gladys Avenue facing westbound. Defendant was standing on the sidewalk on the north side of Gladys, across the street and about two houses away from Syas. He was slightly behind her and to her right. Syas could not describe the men who were standing with defendant. She did not recall seeing any other people on the block. Syas did not observe an exchange of items between Connolly and defendant. As the enforcement officers drove onto the block, Syas heard someone call out "yo, yo," which is a street term to alert people that the police are coming. The enforcement officers stopped their vehicle in the middle of the street directly in front of defendant. A second enforcement vehicle stopped slightly further east. There were two enforcement officers in each vehicle. In addition to detaining defendant, the enforcement officers

detained one man who was standing the closest to defendant. Syas could not see if the other two men were stopped. Connolly returned to the scene less than five minutes after defendant was detained. Syas did not observe defendant engage in any other hand-to-hand transactions.

¶ 7 Syas described defendant's jacket as a waist-length, light blue puffy jacket. She did not recall if the jacket had a hood, but if it did, defendant was not wearing it. Syas did not know if defendant's black hat was a baseball cap with a brim, or a winter cap. Defendant was wearing dark pants. Syas could not tell if he was wearing jeans. She explained that when there is artificial lighting, sometimes a person cannot see if a color is black or dark blue.

¶ 8 Connolly testified that at 6:30 p.m. on January 31, he was working as the undercover "buy officer" on the narcotics team. Connolly drove his vehicle westbound on Gladys Avenue and observed defendant standing on the north side of the street. Other people were nearby, but defendant was standing "pretty much by himself." Connolly identified defendant in court. It was dark outside, but the area was lit with streetlights. Defendant was wearing a baby blue jacket, light blue jeans, and a black hat. Connolly's passenger window was down, and defendant was standing about five feet away on the passenger side of his vehicle. Defendant told Connolly "park," and asked him "[h]ow many do you need?" Connolly parked on the south side of the street directly in front of Syas' vehicle. Defendant entered Connolly's vehicle and sat in the front passenger's seat next to Connolly. The men were in close proximity to each other. Connolly did not have any lights on inside his vehicle. Defendant handed Connolly four green-tinted ziplock bags, each containing suspect heroin. Connolly handed defendant \$40 in prerecorded police funds. Defendant exited the vehicle and Connolly drove away heading westbound.

¶ 9 Connolly radioed his team members that he had made a positive buy. He gave them defendant's "physical and clothing description" and location on the north side of Gladys Avenue. Connolly described defendant's clothing as a "[b]aby blue jacket, light blue jeans, and black hat." Shortly thereafter, Connolly returned to the scene and observed defendant standing on the sidewalk on the north side of Gladys with two enforcement officers, Arletta Kubik and Sanchez.² Over the radio, Connolly identified defendant as the person who sold him the suspect heroin. Defendant was then arrested.

¶ 10 On cross-examination, Connolly testified that when he first observed defendant standing on the street, there were two or three young men standing on the sidewalk about 5 to 10 feet from defendant. Connolly did not recall seeing any other people on the block. Connolly stopped his vehicle in the street about five feet from defendant. When defendant asked how many items he needed, Connolly replied "[f]our." After Connolly parked his vehicle in front of Syas, he waited a short time for defendant to cross the street and enter his vehicle. When defendant entered Connolly's vehicle, they did not say anything further to each other. Defendant immediately handed Connolly the four small baggies, and Connolly handed him two \$20 bills in prerecorded funds. Defendant was inside Connolly's vehicle for 10 to 15 seconds. Defendant wore a black knit hat, not a baseball cap. Connolly's physical description of defendant was that he was a tall black male. He did not give an approximate height or weight. Connolly returned to the scene within a minute and identified defendant. Connolly drove himself to the scene to make the identification. The enforcement officers did not have any other individuals detained, and Connolly did not observe anyone else in the area at that time.

² Officer Sanchez's first name does not appear in the record.

¶ 11 Officer Kubik testified that on January 31 she was working as an enforcement officer with the narcotics team. Shortly after 6:30 p.m., she received a call from Connolly to relocate to an address in the 3900 block of West Gladys Avenue to stop a person who had engaged in a narcotics transaction with him. The offender was described as wearing “a baby blue, light blue jacket, light blue pants and black hat.” When she arrived at the address, Kubik observed that defendant matched the description. Kubik identified defendant in court. Defendant was standing on the sidewalk with another person. When stopped, defendant complied with the officer’s directions. Shortly thereafter, Connolly positively identified defendant as the person who had sold him the narcotics. Defendant was then placed under arrest.

¶ 12 On cross-examination, Kubik testified that the main description of the offender that she received included the address, a clothing description, and that he was a black male. The other man was not stopped and walked away. Kubik’s main focus was on defendant because he was “the only one that matched the description that was given.” Defendant was handcuffed after he was positively identified by Connolly. During a custodial search, police recovered \$30 from defendant, but it was not prerecorded funds. No prerecorded funds or suspect narcotics were recovered from defendant, nor were any recovered from the vicinity where he was standing.

¶ 13 Forensic chemist Kathy Regan testified that she weighed and tested the contents of the four bags received by Connolly and found them positive for 1.988 grams of heroin.

¶ 14 Defendant testified that he had a prior conviction for aggravated battery to a peace officer from 2013, and two convictions for possession of a controlled substance from 2012. About 6 p.m. on January 31, defendant was at his cousin’s house in the 3800 block of West Flournoy Street waiting for his girlfriend, Kiana Ward, to get off work. Ward worked at O’Hare Airport

and left work about 6 p.m. Defendant planned to walk to a liquor store on the corner of Jackson Boulevard and Pulaski Road, stop at Jerk Taco on Pulaski, and then meet Ward at the Pulaski blue line stop and return to his cousin's house. At some point, while talking on the phone, Ward said she would be there in 15 to 20 minutes. Defendant left his cousin's house and began walking to the liquor store. He walked down Flornoy to Springfield Avenue, north on Springfield to Gladys, and turned left onto Gladys. Jackson is one block north of Gladys.

¶ 15 As defendant walked on the north side of Gladys, about three houses before Pulaski, he came across a group of about five men standing on the same side of the street. Defendant stopped and talked with one of those men. Several police officers arrived at the scene in a vehicle and on foot. Four officers approached defendant and the other man and asked what they were doing. The rest of the men fled. Defendant did not run because he knew he did not do anything wrong. The police searched defendant and the other man. They let the other man go and arrested defendant. Defendant repeatedly asked the officers what was happening, but they would not tell him. Defendant denied that he was selling drugs on Gladys, and that he sold drugs to Connolly. On a map, defendant drew a line indicating the path he walked from his cousin's house to where he was stopped by police. Defendant testified that he was wearing a dark blue jacket, a thin gray sweater with some blue inside it, and "probably" blue jeans. Defendant identified a photograph of the jacket he wore that night.

¶ 16 On cross-examination, defendant testified that he was planning to purchase Jose Cuervo liquor at the liquor store, which cost about \$15. He then planned to purchase a big taco to share with Ward. Defendant did not know the real name of the man he spoke with on Gladys, but knew

him from the neighborhood as “Lou.” Lou had stopped defendant as he was walking down the street and asked what he was doing.

¶ 17 The defense offered the map and photograph of defendant’s jacket into evidence and the trial court admitted both items. In rebuttal, the State presented certified copies of defendant’s three prior convictions.

¶ 18 The trial court stated that Ward’s purpose of telling defendant that she would be at the train stop in 20 minutes was so that he would be there waiting for her. The court noted that defendant’s path from his cousin’s house to the liquor store, restaurant and blue line was a mile and a half to a mile and three-quarters, which defendant claimed he was going to walk in 20 minutes. The court found “difficulty” with defendant’s testimony. In regards to the jacket, the court stated “I don’t even know what color this would be, but it is definitely puffy.” The court questioned whether lighting conditions would have an effect on the color. The court found that the three police officers told “basically the same story. And the same story in the little details that I find interesting.” The court stated to defendant “I believe you sold narcotics to the undercover officer.” Accordingly, the trial court found that the State proved defendant guilty beyond a reasonable doubt of delivery of a controlled substance.

¶ 19 At the hearing on defendant’s motion for a new trial, defense counsel argued that the State failed to prove defendant guilty beyond a reasonable doubt. Counsel argued that Syas claimed that she maintained constant surveillance of defendant, however, neither the prerecorded funds nor any narcotics were recovered from him. The State responded that the reason why no prerecorded funds or narcotics were found on defendant was because “[m]any people were involved in this enterprise” and it is common for offenders to hand off money and narcotics to

another person. The State also argued that defendant did not testify credibly. In reply, defense counsel argued that Syas testified that she did not observe defendant exchange any items with another person or drop anything after he exited Connolly's vehicle, and thus, there was no explanation as to what happened to the money.

¶ 20 The trial court found that the money was not required to prove defendant guilty. Instead, the issue was whether defendant had delivered a controlled substance, and the court had found the officers' testimony credible. The court stated that what happened to the money was, "in some way," not relevant. The court stated that it disagreed with counsel's argument that the failure to recover the funds showed that defendant was not guilty. The trial court denied defendant's posttrial motion and sentenced him to the minimum term of four years' imprisonment.

¶ 21 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because it failed to prove that he was the person who sold the heroin to Connolly where the police did not recover any prerecorded funds from him, he was not in possession of any narcotics, and the officers' description of the seller's jacket did not match the jacket he wore that night. Defendant argues that the photograph of his jacket shows that it was not baby blue, as described by the officers, but instead, was a darker shade of blue with dark blue fleece sleeves with a hood. Defendant further argues that the officers had a limited ability to adequately identify the seller where the transaction occurred at night when it was dark, and the seller was inside Connolly's vehicle for only one minute. In addition, defendant claims that he provided a plausible explanation of his whereabouts that evening.

¶ 22 The State responds that defendant was proven guilty where more than one officer observed him engage in the narcotics transaction and each officer provided essentially the same

description of defendant and same narrative of the transaction. The State argues that the identification factors weigh in favor of finding the police officers' identification of defendant reliable where the officers had an ample opportunity to observe defendant at the time of the offense, their description of him was accurate, they were certain it was him, and he was identified within moments after the offense. The State asserts that recovery of the prerecorded funds was not necessary to prove defendant guilty due to the strong evidence in the case, and that he could have handed the money to someone else. The State further argues that it is agreed that defendant was wearing a blue jacket, and the discrepancy as to the shade of blue is not relevant where Connolly viewed defendant face-to-face and Syas kept constant surveillance of him.

¶ 23 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 24 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so

improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt (*People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011)), nor simply because defendant claims that a witness was not credible or that the evidence was contradictory (*Siguenza-Brito*, 235 Ill. 2d at 228).

¶ 25 To prove defendant guilty of delivery of a controlled substance as charged in this case, the State was required to show that he unlawfully and knowingly delivered between 1 and 15 grams of a substance containing heroin. 720 ILCS 570/401(c)(1) (West 2016).

¶ 26 Identification of a defendant by a single witness is sufficient to sustain a conviction where the witness viewed defendant under circumstances that permitted a positive identification. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Such identification is sufficient even where defendant presents contradictory testimony, as long as the witness had an adequate opportunity to view the offender, and provided a positive and credible identification in court. *Id.*

¶ 27 In assessing identification testimony, the court considers: (1) the witness' opportunity to view the offender at the time of the offense; (2) his degree of attention; (3) the accuracy of the witness' prior description of the offender; (4) the witness' level of certainty at the identification confrontation; and (5) the length of time between the offense and the identification confrontation. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995).

¶ 28 Here, the record shows that all of the factors weigh in support of the trial court's finding that the officers' identification of defendant as the man who sold heroin to Connolly was reliable. Syas testified that she maintained a constant surveillance of defendant from a distance of seven or eight feet beginning two minutes before the transaction occurred through the time that he was arrested by the enforcement officers. Syas testified that she had a "clear and unobstructed view" and "could see a full view" of defendant. Syas further testified that Connolly parked directly in

front of her vehicle and she observed defendant enter and exit the front passenger's side of Connolly's vehicle. Syas never lost sight of defendant as he returned to the north side of the street, was detained by the enforcement officers, and arrested. Connolly testified that with his passenger window down, he observed defendant standing about five feet away from him on the passenger side of his vehicle. After Connolly parked, defendant entered Connolly's vehicle and sat in the front passenger's seat next to Connolly. Connolly testified that during the transaction, he and defendant were in close proximity to each other. The testimony therefore showed that both Syas and Connolly had more than an ample opportunity to view defendant at the time of the offense, and the degree of attention by both officers was very high.

¶ 29 Connolly further testified that he drove away from the scene after the transaction, and within a minute, returned to the scene and observed defendant standing on the sidewalk with Kubik and Sanchez. Over the radio, Connolly identified defendant as the person who sold him the suspect heroin. Kubik also testified that Connolly positively identified defendant as the person who had sold him the narcotics. Syas testified that as the enforcement officers arrived at the scene, Connolly was turning at the end of the block, and Connolly returned to the scene less than five minutes after defendant was detained. The record further shows that Connolly, Syas and Kubik all identified defendant in court. The testimony from the three officers thereby established that Connolly's identification of defendant at the scene occurred within minutes of the offense, and his identification was certain. The officers' identification of defendant in court was also certain.

¶ 30 In addition, the record shows that the description of defendant was accurate. Connolly testified that he issued a clothing description for defendant wherein he stated that defendant was

wearing a “[b]aby blue jacket, light blue jeans, and black hat.” He also described defendant as a tall black male. Syas testified that when she observed defendant standing on the street, he “was wearing a baby blue – I call it baby blue because it was a light blue jacket. He had on a black baseball cap or a black cap.” Syas thought that Connolly included defendant’s height and weight in his description, and noted that Connolly stated that defendant was wearing a baby blue jacket. From her observation point seven to eight feet from defendant, Syas opined that defendant matched Connolly’s description. Syas further testified that defendant’s jacket was a waist-length, light blue puffy jacket. She did not recall if the jacket had a hood, but if it did, defendant was not wearing it. Syas did not know if defendant’s black hat was a baseball cap with a brim, or a winter cap. Defendant was wearing dark pants. Syas could not tell if he was wearing jeans. She explained that when there is artificial lighting, sometimes a person cannot see if a color is black or dark blue. Kubik testified that Connolly described the offender as wearing “a baby blue, light blue jacket, light blue pants and black hat.” When she arrived at the address, Kubik observed that defendant matched that description. Kubik further testified that her main focus was on defendant rather than the other man he was with because defendant was “the only one that matched the description that was given.” The record thus shows that all three of the police officers agreed on the description of defendant’s clothing, and agreed that defendant matched that description.

¶ 31 It was the trial court’s responsibility to weigh all of the evidence and determine whether it was sufficient to find that the officers positively identified defendant as the offender beyond a reasonable doubt. *Siguenza-Brito*, 235 Ill. 2d at 228. Here, the trial court found the testimony from the police officers credible and stated to defendant “I believe you sold narcotics to the

undercover officer.” Viewing the evidence in the light most favorable to the State, we find that the evidence was sufficient for the trial court to find defendant guilty.

¶ 32 In reaching this conclusion, we find no merit in defendant’s argument that the officers’ description of the seller’s jacket did not match the jacket he was wearing that night. Defendant testified that he was wearing a dark blue jacket, a thin gray sweater with some blue inside it, and “probably” blue jeans. Defendant identified a photograph of the jacket he wore that night, which was admitted into evidence. In reviewing the evidence, the trial court stated “I don’t even know what color this would be, but it is definitely puffy.” The court also questioned whether lighting conditions would have an effect on the color. This court has viewed the photograph of defendant’s jacket contained in the record. It is a puffy jacket with fleece on the sides and lower arms. The front, hood, shoulders and upper arms of the jacket, which are the “puffy” parts, are a bluish-gray color. The fleece appears to be a darker shade of gray. The zipper that runs down the center of the front of the jacket and the trim around the hood is a very bright baby blue color. As noted by the trial court, the exact shade of blue is questionable and may be described differently by different people. However, contrary to defendant’s testimony, it is not dark blue. It is a shade of light blue with baby blue. The determination of the accuracy of the description of the jacket and the weight given to that evidence in identifying defendant as the person who sold the heroin to Connolly was within the province of the trial court. *Siguenza-Brito*, 235 Ill. 2d at 228. The court found the testimony from the police officers credible and the description of the jacket accurate, and we find no basis to disturb that determination.

¶ 33 Nor do we find persuasive defendant’s argument that the State did not prove he was the seller because the police failed to recover the prerecorded funds from him. This court has

previously found that “there is no requirement that pre-recorded or marked funds used in a narcotics transaction be recovered for a conviction to stand.” *People v. Trotter*, 293 Ill. App. 3d 617, 619 (1997) (citing *People v. Lopez*, 187 Ill. App. 3d 999, 1005 (1989)). In fact, to prove defendant guilty of delivery of a controlled substance, the State was not required to show that any money was exchanged during the transaction. See 720 ILCS 570/401 (West 2016); 720 ILCS 570/102(h) (West 2016) (“delivery” is defined as “the actual, constructive or attempted transfer of possession of a controlled substance, with or without consideration, whether or not there is an agency relationship.”).

¶ 34 The fact that the prerecorded funds were not recovered was a matter for the trial court, sitting as the trier of fact, to consider when weighing the evidence. *Siguenza-Brito*, 235 Ill. 2d at 228. In denying defendant’s posttrial motion, the court expressly stated that the money was not required to prove defendant guilty, and that what happened to the money was, “in some way,” not relevant. The court further stated that it disagreed with defense counsel’s argument that the failure to recover the funds showed that defendant was not guilty. The trial court found the testimony of the three police officers credible and concluded that the evidence was sufficient to prove defendant guilty beyond a reasonable doubt. Based on this record, we find no reason to disturb the trial court’s ruling.

¶ 35 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 36 Affirmed.