2019 IL App (1st) 171446-U

No. 1-17-1446

Order filed September 27, 2019

Fifth Division

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 16 CR 18176
	)	
DANIELS BUMPAS,	)	Honorable
	)	Thomas Joseph Hennelly,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for delivery of a controlled substance over his argument that the State failed to prove beyond a reasonable doubt that he delivered heroin to an undercover police officer. We remand to the circuit court to allow defendant to file a motion addressing fines and fees pursuant to Rule 472.

¶ 2 Following a bench trial, defendant Daniels Bumpas was found guilty of delivery of a controlled substance (720 ILCS 570/401(d) (West Supp. 2015)) and sentenced to four years'

imprisonment.[1] The trial court also imposed a total of $1,749 in fines, fees and costs. On appeal, defendant contends that the State failed to present sufficient evidence to sustain his conviction, and that the court erred in the assessment of fines, fees, and costs. We affirm defendant's conviction and remand to the trial court for consideration of his fines and fees claim.

¶ 3 Defendant was charged by indictment with delivery of a controlled substance within 1000 feet of a public park and delivery of a controlled substance. Defendant waived his right to a jury trial and the case proceeded to a bench trial. The State nol-prossed the count of delivery of a controlled substance within 1000 feet of a public park.

¶ 4 At trial, Officer Adrianne Carter of the Chicago police department testified that on August 19, 2016, at 11:30 a.m. she was part of a surveillance team conducting a narcotics investigation near the corner of West Van Buren Street and South Lotus Avenue. During the investigation, Carter was undercover and her role was to buy narcotics. Carter saw defendant, who was wearing a yellow shirt and blue jeans. As she approached, defendant asked if she "was looking for blows," which Carter, based on her training and experience, understood to mean heroin. She replied, "two." Defendant and Carter then crossed the street and defendant handed her two plastic bags from his waistband. The bags contained a white powdery substance. Carter gave defendant $20, and left the area. As she walked away, Carter gave a "nonverbal" signal to the other officers on her team to inform them of the positive drug purchase.

¶ 5 Once she returned to a police vehicle, Carter radioed other officers and informed them of the transaction. She also provided the officers with a description of defendant and his location.

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[1] Throughout the record on appeal, defendant's first name is generally spelled as "Daniels," but occasionally as "Daniel." The indictment and defendant's notice of appeal name him as "Daniels," so we use that spelling.

After other officers detained defendant, Carter drove past him, and made a positive identification. At the station, Carter inventoried the suspected narcotics and identified defendant from a photo array. On cross-examination, Carter testified that the plan was for her to make "buys," and then later an arrest would be made. She responded affirmatively when asked if it was an ongoing narcotics investigation.

¶ 6 Officer John Thornton testified that he operated as a surveillance officer during the narcotics investigation in question. Thornton saw Carter talk with defendant. The pair then walked out of Thornton's view, and reappeared a short time later. After Carter gave a nonverbal confirmation of a positive narcotics buy, Thornton radioed a description and location of defendant. Thornton and other enforcement officers conducted a "street stop" during which they detained defendant and let him go. Thornton was familiar with defendant from his time working in the district. He did not see a hand-to-hand narcotics transaction between Carter and defendant.

¶ 7 Officer Galligan testified that he worked as an enforcement officer for the narcotics investigation. Galligan was working with Officer Ohle when Thornton radioed the location and description of defendant.[2] Galligan conducted an identification stop of defendant and obtained his name, date of birth, and address. The officers did not search defendant and released him after Galligan confirmed there was a positive identification from Carter. On November 16, 2016, Galligan arrested defendant for the narcotics transaction with Carter.

¶ 8 The parties stipulated that one of the two bags of white powder inventoried by Carter tested positive for heroin in the weight of 0.2 grams. The total estimated weight of both bags of the substance was 0.4 grams. The proper chain of custody was maintained at all times.

[2] The officers' first names do not appear in the record.

¶ 9 The court found defendant guilty of delivery of a controlled substance. In doing so, the court noted the delay between the transaction and defendant's arrest but found "the testimony of the police officers to be very credible." Defendant filed a motion for a new trial, arguing, in part, that the evidence was insufficient to sustain his conviction. The court denied the motion.

¶ 10 The court sentenced defendant to four years' imprisonment and assessed a total of $1,749 in fines, fees, and costs. Defendant was given credit for 271 days he spent in presentence custody. Defendant filed a motion to reconsider sentence, which was denied.

¶ 11 On appeal, defendant first argues there was insufficient evidence to prove him guilty beyond a reasonable doubt. He contends that Carter's testimony was insufficient to establish his guilt because he was not searched at the time he was stopped and he was not arrested until three months after the transaction.

¶ 12 On arguments involving insufficient evidence, this court reviews "the evidence in the light most favorable to the State," and determines if "any rational trier of fact could have found the required elements beyond a reasonable doubt." *People v. Newton*, 2018 IL 122958, ¶ 24. The role of the appellate court is not to retry a defendant's case. *Id.*; *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Specifically, on the issue of credibility of witnesses, a reviewing court must not substitute its conclusions for that of the trier of fact. *People v. Brown*, 2013 IL 114196, ¶ 48. However, these judgments by the trier of fact are not conclusive. *Id.* We will overturn a trial court's determination where "the evidence is so unreasonable, improbable, or unsatisfactory" that guilt is not proven beyond a reasonable doubt. *Newton*, 2018 IL 122958, ¶ 24.

¶ 13 In order to sustain defendant's conviction for delivery of a controlled substance, the State was required to prove beyond a reasonable doubt that he had "(1) knowledge of the presence of a

controlled substance, (2) the controlled substance within his or her immediate control, and (3) the intent to deliver it." *People v. Rivas*, 302 Ill. App. 3d 421, 429 (1st Dist. 1998); 720 ILCS 570/401 (West Supp. 2015).

¶ 14 After viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could have concluded that defendant delivered a controlled substance beyond a reasonable doubt. The record shows that Carter was part of a surveillance team conducting a narcotics investigation near the corner of Van Buren and Lotus. There, Carter saw defendant, who asked her if she was "looking for blows." Carter understood blows to mean heroin. After Carter replied "two," the pair crossed the street and defendant retrieved two bags from his waistband and tendered them to Carter in exchange for $20. *People v. White*, 2017 IL App (1st) 142358, ¶ 17 (during a drug purchase an officer will "obviously be focused") (quoting *People v. Jackson*, 2016 IL App (1st) 133741, ¶ 60). The bags contained a white powder substance that later tested positive for heroin. Thornton corroborated that Carter spoke with defendant and the two briefly stepped out of view. After Carter gave a nonverbal signal that a positive transaction had taken place, enforcement officers detained defendant. While defendant was detained, Carter identified him. She also identified him from a photo array. Before releasing defendant, Galligan obtained his name, date of birth, and address. The trial court found each of the officers' testimony to be credible. See *People v. Campbell*, 2015 IL App (1st) 131196, ¶ 29 (where an eyewitness is credible and positive in her identification, her testimony to a narcotics transaction will be sufficient to convict, even when contradicted). This evidence is not so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt.

¶ 15 Here, there is no contradiction of Carter's testimony, and the trial court found her to be credible. Defendant asks us to find the situation so improbable and unreasonable as to justify a reasonable doubt because officers did not search and arrest him on August 19, 2016, but rather waited until November 16, 2016. Carter testified it was an ongoing investigation during which there were first "buys" and then later arrests. The effectiveness of undercover police who make narcotics purchases depends on keeping their employment secret. See *People v. Dunn*, 49 Ill. App. 3d 1002, 1006 (5th Dist. 1977). Where an investigation is ongoing, it is not contrary to human experience for an arrest not to be made on the day of the sale. See *People v. Guido*, 25 Ill. 2d 204, 207-08, 210 (three month delay, where agents thought of buying more narcotics from the defendant, did not raise reasonable doubt as to the defendant's guilt); *People v. Hatch*, 49 Ill. App. 2d 177, 181-82, 187 (1st Dist. 1964) (two month delay was reasonable even though agent was already aware of supplier and the reason for delay was that agent left on vacation after the criminal act and then assumed without investigation that the defendant was hiding from a "shoplifting rap").

¶ 16 We are not persuaded by defendant's authorities because they are readily distinguishable. *People v. Coulson,* 13 Ill. 2d 290, 297-98 (1958) (finding the witness's testimony unconvincing, in part because it was contradicted at points by the witness's aunt); *People v. Quintana*, 91 Ill. App. 2d 95, 98-99 (1st Dist. 1968) (holding an officer's testimony suspect because he engaged in "high-handed display[s] of police power" that violated the defendant's constitutional rights in a "personal vendetta"); *People v. Marion*, 2015 IL App (1st) 131011, ¶ 28 (holding a deal created by the defendant to find rifles when the defendant had no access to rifles made no sense and was contrary to human nature); *People v. Johnson*, 191 Ill. App. 3d 940, 945-47 (1st Dist. 1989)

(finding testimony insufficient to prove guilt where informant and other surveillance officers did not testify, witness threatened to arrest defendant unless he became an informant, and over a year passed between act and arrest).

¶ 17 Defendant next contends he is entitled to a reduction in the total fines, fees, and cost assessment by $1230 since he was in custody for 271 days prior to sentencing and did not receive a $5-per-day credit towards fines imposed at the time of sentencing.

¶ 18 On February 26, 2019, while this appeal was pending, our supreme court adopted new Illinois Supreme Court Rule 472, which sets forth the procedure in criminal cases for correcting sentencing errors in, as relevant here, the "imposition or calculation of fines, fees, and assessments or costs" and "application of *per diem* credit against fines." Ill. S. Ct. R. 472(a)(1), (2) (eff. Mar. 1, 2019). On May 17, 2019, Rule 472 was amended to provide that "[i]n all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule." Ill. S. Ct. R. 472(e) (eff. May 17, 2019). "No appeal may be taken" on the ground of any of the sentencing errors enumerated in the rule unless that alleged error "has first been raised in the circuit court." Ill. S. Ct. R. 472(c) (eff. May 17, 2019). Therefore, pursuant to Rule 472, we "remand to the circuit court to allow [defendant] to file a motion pursuant to this rule," raising the alleged errors regarding assessment of fines and fees and the application of *per diem* presentence custody credit. Ill. S. Ct. R. 472(e) (eff. May 17, 2019).

¶ 19 Affirmed; remanded for consideration of defendant's fines and fees claim.