2020 IL App (3d) 190441-U

Order filed December 24, 2020

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2020

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Whiteside County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-19-0441
v.	)	Circuit No. 18-CF-9
	)	
PEDRO A. RAMOS,	)	Honorable Stanley B. Steines,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices Daugherity and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The evidence was sufficient to allow a reasonable trier of fact to find defendant guilty beyond a reasonable doubt; and (2) the best evidence rule was inapplicable to photographic evidence of text messages.

¶ 2 Defendant, Pedro A. Ramos, appeals following his conviction on two counts of unlawful delivery of a controlled substance. He argues that the evidence with respect to one of those convictions was insufficient. He also contends that the State violated the best evidence rule when

it introduced a photograph showing text messages as they appeared on a phone and that the Whiteside County circuit court thus erred in admitting that evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged via indictment with two counts of unlawful delivery of a controlled substance. Count I alleged that defendant delivered between 15 and 100 grams of a substance containing cocaine on or about February 3, 2017. See 720 ILCS 570/401(a)(2)(A) (West 2016). Count II alleged that defendant delivered between 100 and 400 grams of a substance containing cocaine on January 31, 2017. See *id.* § 401(a)(2)(B).

¶ 5 At defendant's jury trial, Rollie Elder of the Whiteside County Sheriff's Office testified that he conducted a traffic stop on the evening of February 1, 2017. The driver of the vehicle was Adrian Rabadan. Elder's search of the vehicle revealed a handgun as well as a backpack. Inside the backpack, Elder found four separate plastic bags, each containing approximately one ounce of a "a white powdery substance" that field-tested positive as cocaine. The backpack also contained $4650 in cash and a digital scale.

¶ 6 Detective Douglas Wade of the Whiteside County Sheriff's Office conducted an interview with Rabadan after Rabadan had indicated that he wished to cooperate with the investigation. Rabadan told Wade that he could purchase more cocaine from defendant, at which point Wade decided to arrange a controlled purchase.

¶ 7 On February 3, 2017, Rabadan made contact with defendant. Wade identified People's group exhibit No. 3, which was admitted over defendant's objection, as a series of photographs representing a true and accurate depiction of the text message exchange between Rabadan and defendant. The photographs show Rabadan's phone and text messages exchanged with a contact labeled "Pete." The photographs comprising the group exhibit are actually photographs of Wade's

phone displaying a photograph of Rabadan's phone, such that two phones are visible in the photograph as a whole. Wade testified that through the text messages, Rabadan arranged a purchase for later that evening. While many of the individual text messages are illegible as they appear in the actual exhibit in the record, one message shows Rabadan asking: "[W]hat time u thinkin on comin around n could u bring the same??"

¶ 8 Rabadan also made a series of phone calls to defendant while Wade recorded the audio. On one of the recorded calls, which was played in open court, defendant tells Rabadan he has "one left." Rabadan responds that he will "have to go with that then," and defendant responds that he is "on [his] way right now" and will meet Rabadan in an hour.

¶ 9 Wade conducted a search of Rabadan's person for contraband in preparation for the controlled purchase while another officer searched Rabadan's vehicle. The purpose of the searches was to ensure that Rabadan did not have any money or drugs other than those involved in the transaction. The searches revealed no such contraband.

¶ 10 Rabadan was fitted with audio and video recording devices prior to the controlled purchase. Wade also gave Rabadan $4950 for one ounce of cocaine and to repay a portion of an existing "drug debt" to defendant. After the controlled purchase, Rabadan turned over 27 grams of cocaine in a plastic bag, and a search of his person and vehicle revealed no money or other drugs.

¶ 11 On cross-examination, Wade agreed that he questioned the veracity of Rabadan's story several times during his original interview. He testified that it was not unusual for people in Rabadan's position to be untruthful, but Wade repeatedly rejected defense counsel's assertions that Rabadan was "completely" unreliable or incredible. Wade did not verify that the phone number labeled "Pete" in Rabadan's phone actually belonged to defendant. Per Rabadan, Wade

believed that Rabadan owed defendant $5750. An ounce of cocaine could be sold for anywhere between $800 and $1600.

¶ 12 On redirect, Wade testified that he reviewed the video recording on the controlled purchase and identified defendant as "the person in the video." He also identified defendant as appearing in a still image taken from that video.

¶ 13 Todd Shaver of the Illinois State Police conducted surveillance during the controlled purchase. Shaver testified that a vehicle in the driveway of the house that Rabadan entered for the controlled purchase was registered to defendant.

¶ 14 Rabadan testified that charges of armed violence, possession of cocaine with intent to deliver, and aggravated unlawful use of a weapon were pending against him stemming from the February 1, 2017, traffic stop. He had entered an agreement with the State whereby, in exchange for his truthful testimony, he would receive a sentence of probation in his pending case.

¶ 15 Rabadan testified that he obtained the four ounces of cocaine found in his vehicle from defendant. Defendant had provided five ounces of cocaine "[a] couple days prior to the stop," but Rabadan had already sold one ounce when Elder stopped him. Defendant "fronted" the cocaine to Rabadan with the understanding that Rabadan would owe him $5750.

¶ 16 Upon being stopped, Rabadan originally told Elder that both the cocaine and the handgun "belonged to" defendant and that he was just holding them for defendant. He later admitted to Elder that the cocaine was his and it had been fronted to him.

¶ 17 Rabadan agreed to work with Wade to purchase more cocaine from defendant. He made several attempts to contact defendant, via phone calls and text messages. The police asked if Rabadan could purchase the same amount of cocaine from defendant as he had previously, so Rabadan asked defendant in a text message "if he could do the same thing." Rabadan knew that

he was communicating with defendant because it was the same number that he had always used to contact him. Rabadan confirmed that he knew defendant by the name Pete. When defendant told him that he had "one left," Rabadan understood him to be referring to one ounce of cocaine.

¶ 18 The video of the controlled purchase was played in court. Rabadan identified defendant as the man in the video who gives him cocaine. On the video, Rabadan tells defendant that he is "short" but that he has $4950. As Rabadan begins counting out the money, defendant asks "you took five?" Later, defendant again confirms that "I gave you five, at what, $1150?" Rabadan and defendant then agree that Rabadan owes $800 on his preexisting debt plus the price of the cocaine currently being delivered. Rabadan testified that no one else was in the house during the transaction.

¶ 19 On cross-examination, Rabadan agreed that he initially told Elder that the handgun in his vehicle belonged to someone else and that he was "holding onto the backpack for somebody else." Rabadan also told Wade that he was holding the backpack and the handgun for a friend. He had claimed to not know what was inside the backpack. Rabadan also originally told Wade that the money in the vehicle had been drawn from his checking account. When Wade expressed skepticism, Rabadan told him he got the money from his grandfather.

¶ 20 Later in the interview, when Wade asked Rabadan who the cocaine belonged to, Rabadan said it belonged to defendant. He told Wade that defendant had put the cocaine and the handgun in the vehicle. Defendant did not want to leave the cocaine in his house because there were multiple people coming and going from the residence. Rabadan eventually told Wade that the backpack belonged to him and that defendant had not fronted him any drugs. Rabadan agreed that he was lying to Wade throughout his interview. Only when the story began to break down did he

agree to cooperate and conduct a controlled purchase. Regarding that agreement, Rabadan testified: "I wasn't promised anything, but I was hoping it would help me out in the long run."

¶ 21 Rabadan signed a cooperation agreement shortly before trial. He would not have testified without that agreement. When he was interviewed in preparation for trial, Rabadan told the State that he obtained the cocaine from defendant and was intending to sell it. The cooperation agreement required that Rabadan testify truthfully. Pursuant to the agreement, Rabadan would be able to plead guilty to the charges against him in exchange for 4 years' probation, as opposed to up to 40 years' imprisonment.

¶ 22 The jury found defendant guilty on both counts. The court sentenced him to concurrent terms of 19 years' imprisonment. This appeal follows.

¶ 23 II. ANALYSIS

¶ 24 Defendant contends on appeal that the evidence presented by the State was insufficient to prove him guilty beyond a reasonable doubt that he delivered to Rabadan the cocaine later found in the course of the traffic stop. Defendant does not dispute that the evidence was sufficient with respect to count I, his delivery of cocaine during the controlled purchase. Defendant does argue that the court erred in admitting the photographs of Rabadan's text messages because they were in violation of the best evidence rule.

¶ 25 A. Sufficiency of the Evidence

¶ 26 When a challenge is made to the sufficiency of the evidence at trial, we review whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31; *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In making this determination, we review the evidence in the light most favorable to the prosecution. *Baskerville*, 2012 IL 111056, ¶ 31. All reasonable inferences from the record in

favor of the prosecution will be allowed, and the jury's determinations of witness credibility are likewise entitled to great deference. *People v. Wheeler*, 226 Ill. 2d 92, 115-16 (2007). The trier of fact is not required to seek out or accept any "possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Campbell*, 146 Ill. 2d 363, 380 (1992).

¶ 27 In the instant case, the State's primary evidence that defendant delivered to Rabadan the cocaine contemplated in count II was Rabadan's explicit testimony that defendant had done so. Specifically, Rabadan testified that defendant "fronted" the cocaine to him, providing the cocaine at no up-front cost with the expectation that Rabadan would repay him after selling it. It is well-settled that the testimony of a single credible witness can be sufficient to sustain a conviction. *E.g.*, *People v. Gray*, 2017 IL 120958, ¶ 36. "[O]nly where the record evidence compels the conclusion that no reasonable person could accept" the witness's testimony beyond a reasonable doubt may that evidence be found insufficient. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004); see also *Gray*, 2017 IL 120958, ¶ 36 ("A conviction will not be reversed simply because the evidence is contradictory or because the defendant claims that a witness was not credible.").

¶ 28 To be sure, Rabadan's credibility was imperfect. He originally told Elder and Wade that the handgun did not belong to him and gave Wade multiple different accounts of where the money in his vehicle came from. Rabadan also suffered from the general credibility concerns attendant to those involved in the drug trade as well as people who testify in exchange for some benefit.

¶ 29 Yet, as Wade alluded to in his testimony, Rabadan's prior lies did not render him irreparably incredible. In fact, Rabadan never wavered with respect to defendant being the source of the drugs found in his vehicle. While Rabadan initially claimed that the cocaine "belonged" to defendant, and later admitted it had been "fronted" to him, he never said that the cocaine originated with anyone other than defendant. There was no evidence to indicate that Rabadan had somehow

produced the cocaine himself, and there was no apparent motivation for Rabadan to falsely implicate defendant to protect some unknown third party.

¶ 30 Furthermore, Rabadan's testimony that defendant had given him the cocaine found in the vehicle was corroborated by the subsequent controlled purchase. Initially, the mere fact that Rabadan was able to quickly arrange a purchase of cocaine from defendant, without ever using any explicit terminology, tends to establish that the two men had a pre-existing relationship that involved drug sales. Moreover, defendant's repeated references to the "five" previously transferred to Rabadan and the relating debt aligned with Rabadan's testimony that defendant had fronted him five ounces of cocaine.

¶ 31 Defendant insists that Rabadan's testimony was undermined by the fact that he was in possession of $4650 when he was stopped. Defendant reasons that Rabadan could not have made that much money from the sale of only one ounce of cocaine, and that Rabadan must have had most of that money at the time defendant purportedly fronted the five ounces of cocaine. He concludes: "Rabadan would not have needed [defendant] to front the five ounces to him because he could have paid for most or all of it with the cash he already had on hand." We reject this argument. As the State points out, there are numerous reasons that a person, whether within the drug trade or without, might make a purchase on credit despite having cash available. Rabadan's testimony was not undermined by the presence of the money in his vehicle.

¶ 32 In sum, Rabadan testified that defendant had given him the cocaine found in his vehicle. He consistently told Wade the same during his interview, and at no point provided any indication that the cocaine had originated anywhere else. His testimony was further corroborated by the evidence related to the controlled purchase. It would not be unreasonable for a juror to find Rabadan's testimony on that particular point to be credible. Accordingly, we find that the evidence

was sufficient to sustain a conviction of unlawful delivery of a controlled substance as charged in count II of the indictment.

¶ 33 B. Best Evidence Rule

¶ 34 Defendant next argues that the admission of photographs of text messages was in violation of the best evidence rule. He maintains that pursuant to the rule, the State was obligated to introduce any evidence of defendant's text message exchange with Rabadan only through verified records.

¶ 35 The best evidence rule is codified in Rule 1002 of the Illinois Rules of Evidence. Ill. R. Evid. 1002 (eff. Jan. 1, 2011). The rule states: "To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute." *Id.* "The best evidence rule applies only when the contents or terms of a writing are in issue and must be established." *People v. Pelc*, 177 Ill. App. 3d 737, 742 (1988).

¶ 36 Defendant fails to acknowledge the other rules of evidence bearing on the issue. Rule 1003 provides: "A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." Ill. R. Evid. 1003 (eff. Jan. 1, 2011). The rules define a duplicate as "a counterpart produced by the same impression as the original, or from the same matrix, *or by means of photography* *** or by other equivalent techniques which accurately reproduces the original." (Emphasis added.) Ill. R. Evid. 1001 (eff. Jan. 1, 2011).

¶ 37 The photographs of the text messages were thus "duplicates" of the text messages themselves, pursuant to the definition provided by the rules of evidence. Moreover, defendant has not raised any question of the authenticity of the underlying text messages by claiming they were

doctored or manipulated in any way.[1] And we can discern no reason why admission of those duplicates would otherwise be unfair to defendant. In fact, as "[t]he obvious purpose of the best evidence rule is the prevention of fraud" (*People v. Prince*, 1 Ill. App. 3d 853, 857 (1971)), it seems that an actual photograph of the text messages is a reliable way to fully and properly convey the content of those messages.

¶ 38 Even under common law principles, the best evidence rule is inapplicable because the terms of the writing were not in issue, nor did they need to be established. *Pelc*, 177 Ill. App. 3d at 742. The terms of the writing, the text messages, were not "in issue" for the reasons explained above: there was no dispute concerning their actual content. Further, the terms of the text messages did not need to be established. The State was burdened with proving that defendant twice provided Rabadan with cocaine. The content of the text messages was ancillary to the central issue, introduced primarily to establish how the controlled purchase was arranged. While Rabadan's question to defendant of whether he could "bring the same," may be construed as a reference to an earlier drug deal, such evidence was not particularly necessary to the State's case, given the more explicit references to the prior deal made during the phone call and the controlled purchase itself.

¶ 39 In short, we find that the best evidence rule did not apply to the photographs in question. The court therefore committed no error in admitting those photographs into evidence.

¶ 40 III. CONCLUSION

¶ 41 The judgment of the circuit court of Whiteside County is affirmed.

¶ 42 Affirmed.

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[1]Defendant does point out, as he did at trial, that Wade never took steps to confirm that the phone number labeled as "Pete" in Rabadan's phone in fact belonged to defendant. This point, however, does not question the authenticity of the text messages themselves. In any event, that the text messages were actually to and from defendant was plainly demonstrated by defendant's subsequent appearance at the controlled purchase.