THIRD DIVISION
April 15, 2015

No. 1-13-2684

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. 13 CR 5292
	)	
RICHARD COLLINS,	)	Honorable
	)	Rickey Jones,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justice Lavin and Justice Hyman concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment affirmed where the testimony of a police officer that defendant dropped narcotics with sight of the officer's undercover vehicle was not inherently unbelievable.

¶ 2 Following a bench trial, defendant, Richard Collins, was convicted of possession of a controlled substance (720 ILCS 570/402(c) (West 2012)) and sentenced to one year of imprisonment. In this appeal, Collins contends that the State failed to prove him guilty beyond a

reasonable doubt of that offense because the testifying police officer's "dropsy" testimony was unbelievable.

¶ 3 Collins was charged by information with possession of a controlled substance with intent to deliver more than three grams of heroin (720 ILCS 570/401(c)(1) (West 2012); 730 ILCS 5/5-5-3(c)(2)(D-5) (West 2012)). At trial, the State called Chicago police officer Graylin Watson, who testified that he was on duty on February 13, 2013, about 11:55 a.m., driving an unmarked police vehicle near the intersection of Grenshaw Street and Independence Boulevard, which he described as a "high narcotic trafficking" area. Watson was with his partner, Officer Caro, and was dressed in plainclothes. Watson testified that he had received training in "narcotics" and had experience conducting "surveillance" and "making arrests" involving narcotics transactions.

¶ 4 As Watson was driving southbound on Independence Boulevard, he saw a "van that left the corner" and an individual, later identified as Collins "running out of the vacant lot" approximately 75 feet away. Watson turned left on Fillmore Street and turned right into the northbound lanes so that he was still heading southbound on Independence, explaining that he "saw something that looked to me as if there was about to be a narcotics transaction." Collins was running toward the officers' undercover vehicle, and when he was approximately 40 feet from the vehicle, Watson saw Collins drop a white object to the ground. Collins continued to run for a couple of seconds, then started to walk slowly, still heading toward the officers.

¶ 5 Watson curbed his vehicle, exited, and detained Collins, while Caro went to retrieve the object. When Caro returned and showed the item to Watson, Watson confirmed that it was the same object that he had seen Collins drop. The object was a small piece of plastic containing 13 mini Ziploc baggies of suspect heroin. Watson testified that he had a clear view of Collins when

he dropped the object, and he saw no other objects or individuals in the area at the time. The officers retained the plastic object containing suspect heroin, and followed "proper procedures" to inventory, heat-seal, and submit it to the Illinois State Police Crime Lab for forensic testing.

¶ 6 On cross-examination, defense counsel initially questioned Watson about seeing the van and Collins. After Watson confirmed that he wrote an arrest report, the following exchange occurred:

"DEFENSE COUNSEL: And the arrest report doesn't mention anything about seeing—that being about to see a narcotics transaction; does it?"

STATE: Objection. He didn't testify to that.

* * *

THE COURT: He didn't testify to that—

DEFENSE COUNSEL: He said that as he was crossing Fillmore, the reason that he—

THE COURT: That was a supposition though, anyway.

DEFENSE COUNSEL: Of course it is.

THE COURT: Yeah.

DEFENSE COUNSEL: But he—did you indicate that you thought that you were about to observe a narcotics transaction on direct?

OFFICER WATSON: No, I didn't say that.

DEFENSE COUNSEL: You didn't? Okay, all right."

¶ 7 After the conclusion of Watson's testimony, the parties stipulated that Monica Kinslow, a forensic chemist at the crime lab, would testify that she analyzed the contents of 10 of the 13 Ziploc baggies, and determined that they weighed 3.2 grams and tested positive for heroin.

¶ 8 The State rested its case in chief and the trial court denied Collins' motion for a directed finding. The court then permitted Collins to enter two photographs of the location of his arrest, which had been identified by Officer Watson on cross-examination, before the defense rested.

¶ 9 After closing arguments, the court determined that the State had not sustained its burden to prove that Collins intended to deliver the heroin. It concluded, however, that there was proof beyond a reasonable doubt that he had committed the lesser included offense of possession of a controlled substance, and sentenced him to one year of imprisonment for that offense. In this appeal, Collins challenges that judgment, contending that the State failed to prove him guilty beyond a reasonable doubt because Officer Watson's testimony was "vague, inconsistent and illogical" and it was "unlikely that any person in his or her right mind would run towards the police, spontaneously drop a bag of heroin in plain sight of the police, then, rather than flee, continue walking *towards* them."

¶ 10 When considering a defendant's challenge to the sufficiency of the evidence, this court must determine whether, when viewing the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). In doing so, we will not retry the defendant (*People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011)), or substitute our judgment for that of the trier of fact on issues involving the credibility of witnesses (*People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009)). We will

reverse a conviction only where "the evidence is so improbable, unsatisfactory, or inconclusive" as to create a reasonable doubt of the defendant's guilt. *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 11 In this case, the trial court found defendant guilty of possession of a controlled substance. 720 ILCS 570/402(c) (West 2012). To sustain a conviction that offense, the State must show the defendant had knowledge and possession of the drugs. *People v. Givens*, 237 Ill. 2d 311, 334-35 (2010).

¶ 12 Collins argues that Officer Watson's testimony is "evocative of the 'dropsy' testimony occasionally offered by police officers to justify an otherwise illegal detention or search." Collins cites various law review articles and studies concluding that this kind of "dropsy testimony" is indicative that "police perjury" has become "common practice in our courts" and, as such, the version of events testified to by Officer Watson was "contrary to human experience and unworthy of belief."

¶ 13 A "dropsy case" is one in which a police officer, to avoid the exclusion of evidence as the product of an illegal search, falsely testifies the defendant dropped evidence in plain view. *People v. Ash*, 346 Ill. App. 3d 809, 816 (2004). While courts have on occasion expressed a certain degree of skepticism regarding "dropsy" cases, Collins asks us to categorically label convictions in such cases as the product of police perjury and reverse on that ground. But this court has recently explained that even if anecdotal evidence actually establishes a rise in the use of "dropsy" testimony, such evidence does little to discredit a police officer's testimony in a particular case, and does not require the trier of fact to disbelieve an officer's testimony that describes seeing a defendant dropping contraband. *People v. Moore*, 2014 IL App (1st) 110793-

B, ¶ 13. We decline to find that in all cases it is contrary to human experience that an individual in possession of narcotics will, upon seeing police, attempt to dispose of them by dropping them on the ground.

¶ 14 In this case, the trial court had the opportunity to observe Watson's testimony and, based on its finding of guilt, evidently found his testimony credible. We would be second-guessing the trial court's credibility determination to reverse on this ground. See *People v. Cooper*, 194 Ill. 2d 419, 431 (2000) (revewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses). Whether we surmise that Collins was aware (due to the presence of the ubiquitous "M" license plates on the unmarked vehicle and its wrongway travel on Independence) or unaware of the police presence, we find that he has failed to establish that Watson's testimony was so improbable, unconvincing, and contrary to human experience" (*People v. Appelt*, 2013 IL App (4th) 120394, ¶ 65) that it requires reversal. According to Watson's testimony, Collins was 40 feet away from his vehicle when he dropped the item to the ground. The photograph of the area where Collins was apprehended shows a substantial amount of debris on the ground (although Watson claimed not to see it in the photograph). It would not have been unreasonable for someone in Collins' position, upon seeing a police vehicle, to believe that he could discard narcotics on the ground in a manner that the police would not notice. Further, although Collins argues on appeal that Watson's testimony that he continued to walk in their direction after discarding the item is additional support for the conclusion that Watson's testimony is fabricated, it is, again, not inconceivable that Collins believed that instead of turning and running the other way after

discarding the object, casually walking in the direction of the vehicle would have deflected suspicion from his activity.

¶ 15 As our supreme court has observed, "Far from being contrary to human experience, cases which have come to this court show it to be a common behavior pattern for individuals having narcotics on their person to attempt to dispose of them when suddenly confronted by authorities." *People v. Henderson*, 33 Ill. 2d 225, 229 (1965); see also *Moore*, 2014 IL App (1st) 110793-B, ¶ 10 (noting that "a criminal opting to dispose of contraband after becoming aware of a police presence is not only believable, but also common").

¶ 15 Finally, Collins emphasizes the inconsistency in Watson's testimony, when the officer stated on direct that he "saw something that looked to me as if there was about to be a narcotics transaction" but on cross-examination claimed that he "didn't say that." While we recognize this inconsistency, this is the type of discrepancy that is best resolved by the trier of fact, who has the opportunity to observe the testimony and evaluate a witness's credibility. *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). In this case, the trial court resolved the discrepancy in favor of the State, and we find no reason to disturb that judgment, particularly where, as here, the discrepancy does not go to an element of the offense.

¶ 16 In sum, viewing the evidence in the light most favorable to the prosecution, the evidence is not so improbable, unsatisfactory, or inconclusive as to establish a reasonable doubt of the Collins' guilt. We thus affirm the judgment of the circuit court of Cook County.

¶ 17 Affirmed.