

No. 1-13-0351

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 7259
	)	
JEREMY CURRY,	)	Honorable
	)	Carol Howard,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Presiding Justice Harris and Justice Simon concurred in the judgment.

**O R D E R**

- ¶ 1 **Held:** Conviction affirmed where the State proved defendant guilty beyond a reasonable doubt based on testimony of police officers that defendant dropped narcotics on the sidewalk in front them that was not inherently unbelievable.
- ¶ 2 Following a bench trial, defendant, Jeremy Curry, was convicted of possession of a controlled substance (720 ILCS 570/402(c) (West 2012)) and sentenced to two years in prison. Defendant appeals, asserting the State failed to prove him guilty beyond a reasonable doubt

because the State's witnesses' "dropsy" testimony was unbelievable. For the following reasons, we affirm.

¶ 3 In April 2012, the State charged defendant with possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(1) (West 2012)). The parties do not materially differ in their version of the testimony. The State presented the testimony of Chicago police officers Matthew Bouch and Nowak.<sup>1</sup> The officers testified they were in two separate unmarked Crown Victoria vehicles with "M" license plates near 4309 West Gladys at around 6:45 p.m. on March 13, 2012. Bouch and two other officers rode in the first car. They were each wearing bulletproof vests outside of their clothing and had their police badges displayed. Nowak and two other officers followed directly behind Bouch's vehicle. Nowak was dressed in plain clothes, wearing his Chicago police department star and name tag. The six officers were predominately Caucasian, while the area in which they were patrolling was a predominately African-American neighborhood.

¶ 4 As the two vehicles turned from Kildare onto Gladys, Bouch heard and saw a black male about seven feet away shouting "blows, blows," which Bouch understood to mean the sale of heroin. Bouch saw defendant about 50 feet further away engaged in a conversation with another black male who was wearing a gray hooded sweatshirt. The man in the sweatshirt handed money to defendant, who then retrieved a small, white object from a baby shoe that he had in his hand and transferred it to the man. During this time, Bouch had "a front and partial left profile view" of defendant and saw the item exchanged was larger than a quarter. Nowak similarly testified that he heard from about 70 feet away someone yelling "blows, blows." Further along

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<sup>1</sup> Nowak's first name does not appear in the record.

the sidewalk, Nowak observed a man in a sweatshirt tender money to defendant and defendant then retrieve a small item from a white, toddler-sized shoe he had in his hand.

¶ 5 Bouch and Nowak approached defendant and curbed their vehicles. As Bouch exited his car, he saw defendant look in his direction, drop the baby shoe to the ground directly next to his feet, then begin to walk away. Nowak also said that as he exited his vehicle, defendant, who was about 20 feet away, dropped the white shoe to the sidewalk. According to Nowak, no other shoes or objects were on the sidewalk. Nowak immediately recovered the shoe and found inside of it 11 Ziploc bags, each sealed with white and red tape, containing a white powder substance he suspected was heroin. The parties stipulated 5 of the 11 items later tested positive for heroin. Nowak also conducted a custodial search of defendant and found \$25 but no narcotics. At no time during the incident did defendant flee the area or interact with the man yelling "blows, blows."

¶ 6 Defendant moved for a directed verdict on the grounds that the officers' testimony was highly improbable. The court denied defendant's motion. Defendant testified he was not selling narcotics on March 13, 2012. He offered no other testimony regarding the circumstances before, during or after his arrest. He was not cross-examined. In rebuttal, the State entered into evidence a certified copy of defendant's prior convictions.

¶ 7 On this evidence, the trial court found defendant guilty of the lesser-included offense of possession of a controlled substance. At a subsequent hearing, the court denied defendant's motion for new trial and sentenced him to two years in prison. Thereafter, defendant filed a motion to reconsider sentence, which the court denied. This timely appeal followed.

¶ 8 On appeal, defendant contends the State failed to prove him guilty beyond a reasonable doubt. Defendant concedes Bouch's and Nowak's testimony, if believed, was "factually

sufficient" to support his conviction. However, he contends their testimony was unbelievable because it was "dropsy" testimony that presented an illogical scenario, *i.e.* that defendant dropped narcotics in plain view of the officers. He also asserts it was unlikely he even conducted a narcotics exchange in the first place because he would have seen the officers approaching and been able to recognize them given that they were (1) predominately Caucasian, (2) traveling in Crown Victoria cars with "M" plates, and (3) wearing badges and bulletproof vests. We disagree and find the evidence was sufficient to sustain his conviction.

¶ 9 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). Rather, our duty is to carefully examine the evidence while bearing in mind that it was the fact finder who saw and heard the witnesses. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). We will not 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). In addition, 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. *Beauchamp*, 241 Ill. 2d at 8 (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)).

¶ 10 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 for possession of a controlled substance, the State must show the defendant had knowledge and possession of the drugs. *People v. Givens*, 237 Ill. 2d 311, 334-35 (2010).

¶ 11 We find unconvincing defendant's contention that his conviction should be reversed because it was based on "dropsy testimony." A "dropsy case" is one in which a police officer, to avoid the exclusion of evidence on fourth-amendment grounds, falsely testifies the defendant dropped evidence in plain view. *People v. Ash*, 346 Ill. App. 3d 809, 816 (2004). Citing various law review articles, defendant asserts that "dropsy testimony" has become increasingly prevalent and that some courts have found it to be inherently unreliable; accordingly, he contends the officers' testimony in this case should not be believed. However, this court recently rejected an identical argument in *People v. Moore*, 2014 IL App (1st) 110793-B, ¶ 13. In *Moore*, we explained that even if anecdotal evidence actually establishes a rise in the use of "dropsy" testimony, such evidence does little to discredit the police officers' testimony in a particular case. *Id.* ¶ 13. "At best," we reasoned, "such evidence suggests one would be wise to consider the frequency of police perjury as a factor when judging credibility." *Id.* However, anecdotal evidence concerning "dropsy" testimony in other cases does not require the trier of fact to disbelieve any officer's testimony that describes seeing a defendant dropping contraband. *Id.*

¶ 12 Defendant contends *Moore* is inapplicable because it was not a true "dropsy" case in that no evidence was presented establishing the defendant knew the officers were watching him when he dropped his gun.<sup>2</sup> Despite this alleged distinction, we nonetheless find persuasive the *Moore* court's reasoning with respect to the weight to be given anecdotal evidence concerning "dropsy" testimony.

¶ 13 In this case, the trial court had the opportunity to observe Nowak and Bouch testify and, based on its finding of guilt, evidently found them to be credible. Defendant has failed to

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<sup>2</sup> Defendant actually cites to our earlier decision in *Moore* (2013 IL App (1st) 110793). However, the Illinois Supreme Court directed this court to vacate its judgment in *Moore* and reconsider the decision in light of *People v. Aguilar*, 2013 IL 12116. During the pendency of defendant's appeal, we issued our reconsidered decision in *People v. Moore*, 2014 IL App (1st) 110793-B.

establish Nowak's and Bouch's testimony that they saw defendant engage in a transaction and drop a shoe containing narcotics was so "improbable, unconvincing, and contrary to human experience" (*People v. Appelt*, 2013 IL App (4th) 120394, ¶ 65) that we must reverse. This is especially true in this case where the defendant chose to testify and did not offer one word of testimony that related to the circumstances before, during or after he was arrested that would remotely support his appeal. We find unpersuasive defendant's citation to *People v. Warren*, 40 Ill. App. 3d 1008, 1009 (1976), in which an officer testified that when he stopped a vehicle, the defendant had an open bag of marijuana on the floor between his feet. Here, by contrast, Nowak and Bouch described defendant as actively discarding the shoe when he saw them approaching. "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 (and cases cited therein).

¶ 14 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 defendant's guilt. The experienced trial judge reasonably could have found defendant guilty beyond a reasonable doubt of possession of a controlled substance.

¶ 15 For the reasons stated, we affirm the judgment trial court.

¶ 16 Affirmed.