2012 IL App (1st) 102936-U

SIXTH DIVISION
June 15, 2012

No. 1-10-2936

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. 07 CR 21741
	)	
CHARLES LEE,	)	Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice R.E. Gordon and Justice Garcia concurred in the judgment.

O R D E R

¶ 1 *HELD:* Defendant was proven guilty beyond a reasonable doubt when the evidence at trial established that he was involved in a drug deal with the victims, was seen entering and leaving the home where the victims were shot and killed shortly before the discovery of their bodies, and defendant later stated that a robbery had been planned but that codefendant "f*** up."

¶ 2 After a jury trial, defendant Charles Lee was convicted of first degree murder and sentenced to natural life in prison. On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt because the State's witnesses were unbelievable and the case against him was entirely circumstantial. We affirm.

¶ 3 In November 2006, the victims, Bernard Hawkins and Cordell "K.P." Peeples, were shot

and killed. Defendant and codefendant Rashawn "J.B." Carter were subsequently charged with first degree murder and armed robbery. Defendant and codefendant were tried separately.

¶ 4 At trial, the State's theory of the case was that the victims were killed as a result of a failed drug deal. The State supported this theory with the testimony of Tyrone Gordon and Derrick Cotton. Gordon, who participated in planning the drug deal, watched as the victims entered a house with defendant and codefendant. Gordon discovered the body of one of the victims shortly after observing defendant and codefendant leave that house. Cotton testified that defendant told him that a robbery had been planned but that codefendant had "f*** up."

¶ 5 At trial, Tyrone Gordon testified that although he had previously worked as a "drug mule," he no longer worked in the drug trade or used drugs.[1] In November 2006, Gordon arrived in Chicago with $32,000 to buy drugs. For the next several days, Gordon "hung out" with the victims while they purchased drugs for him to take back to Tennessee. He met codefendant while shooting pool with Peeples. On the day of the shooting, Gordon and the victims drove around in Peeples' white van, shopping for drugs and eating. Around 4 p.m. they went to Ford City Mall where they met defendant and codefendant. Codefendant and defendant were in a gray Dodge Charger. After 10-15 minutes, the group drove in two cars to a White Castle where there was more discussion about purchasing drugs.

¶ 6 Later, Gordon and the victims went to a house on Blackstone and 92nd Street. They then stayed outside. When he became cold, Gordon received permission from Peeples to sit in the van. Defendant and codefendant subsequently arrived in the gray Charger. Gordon watched as the men talked. After five minutes or so, another van arrived. Hawkins went to that van, spoke to its occupants, received something and put it underneath his coat. Hawkins then returned to the

[1] The record indicates that Gordon also used the alias "Milton Gordon" and the nickname "Knott."

group and the men went inside. Gordon remained in the white van and "dozed off."

¶ 7 At one point, Gordon heard a noise, looked up and saw defendant and codefendant running out of the house. One of the men had two bags in his hand. Gordon explained that when defendant and codefendant had exited the Charger, they only had one bag. He watched as defendant and codefendant got into the Charger and left. After 10 minutes, Gordon went into the house. When he opened the door, he saw blood and Peeples' body. He was "very, very scared." He tried, unsuccessfully, to get back into the van and then to flag down a squad car. After being "turned around" a few times, Gordon began walking to a Taco Bell where Hawkins' friend Chandra Gillman worked. He arrived some 90 minutes later and told Gillman what had happened. The pair then drove back to the house. There, Gordon spoke to officers. He later identified codefendant in a photographic array. In January 2007, he tentatively identified defendant from a photographic array. He subsequently identified defendant in a lineup.

¶ 8 Chandra Gillman, who was dating Hawkins at the time of his death, testified that when Gordon arrived and told her about the victims, she immediately got into her car and drove to the house. En route she phoned the police. When she arrived, Gillman looked into the house and saw Peeples' body but did not go inside.

¶ 9 Detective William Sullivan testified that when he and his partner entered the house through the back door, they observed blood on the floor and on the wall in the kitchen. They then proceeded to the hallway where they saw the body of Peeples. Peeples' upper body was lying in the dining room and his lower body was in the hallway. Sullivan observed that Peeples' shirt was covered in blood. Sullivan then went downstairs. In the basement, he saw Hawkins' body and observed that Hawkins had suffered a gunshot wound to the face. Both victims were dead when Sullivan entered the house.

¶ 10 Assistant medical examiner Lauren Moser then testified regarding the autopsies of Hawkins and Peeples which were conducted by assistant medical examiner Wendy Lavezzi. The

autopsy reports indicated that Hawkins had three gunshot wounds and two gunshot graze wounds to his body, and that Peeples' body had eight gunshot wounds and two gunshot graze wounds. Based upon her examination of the victims' bodies, Lavezzi had concluded within a reasonable degree of scientific and medical certainty that the victims' cause of death was multiple gunshot wounds and their manner of death was homicide. Moser testified her review of the autopsy reports had led her to the same conclusions.

¶ 11 Zenobia Williams testified that she had dated codefendant for five or six years. On November 19, 2006, she met codefendant in a hotel room in Springfield. While there, she saw two ounces of cocaine. During her visit, codefendant's cell phone rang "at least five times." When codefendant answered, Williams could hear the conversation and recognized defendant's voice. She head defendant tell codefendant to stop "running" his mouth. When she looked out of the window, she saw defendant in a gray Charger in the parking lot.

¶ 12 The State then presented the testimony of defendant's cousin Derrick Cotton, a heroin user, who had six prior felony convictions. Although Cotton had made a previous statement to the police and testified before the grand jury, at trial he testified that he did not remember making certain statements and asserted that he had been "high" during the grand jury proceedings.

¶ 13 Cotton acknowledged that he had spoken to an assistant State's Attorney (ASA) and a detective a few days after his arrest for retail theft in February of 2007 and had made a written statement. However, he was not offered the chance to edit the statement and became ill while making it. When he felt better, he returned to the police station to finish the statement.

¶ 14 When questioned about the contents of the written statement, Cotton admitted that he had said defendant told people in a barber shop to say that defendant was playing cards and drinking on the night of the shooting. He also admitted that he "may have" indicated to the police and the ASA that during a second conversation with defendant, defendant had talked about what had

happened to Peeples.[2] However, Cotton asserted that he was so high during that second conversation that he did not remember what defendant said. He then testified that the assertion in his written statement that defendant said the shooting was the work of "Folks," while pointing at codefendant was the truth.

¶ 15 Cotton next testified that he did not remember speaking to defendant on the date of the second conversation and could not "fully" remember what he had said to the police and the ASA in his written statement. However, he then testified that he did in fact say that defendant had said that it was supposed to be a robbery but that codefendant had "f*** up" and called codefendant a "goof -a*** n***."

¶ 16 Cotton remembered testifying before the grand jury and "guess[ed]" that he had testified that defendant had instructed people at the barber shop to state, if questioned, that defendant was playing cards and drinking at a party on the night in question. He admitted to testifying that when he asked defendant whether defendant had anything to do with the victims' deaths, defendant indicated that it was all the work of Folks, that is, codefendant. However, Cotton did not recall testifying that defendant told him that "it" was supposed to be a robbery but that codefendant, a "goof -a*** n***" had "f*** up." Although he had testified before the grand jury

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[2] Defendant correctly points out in footnote No. 2 of his brief that portions of Cotton's handwritten statement recounting what defendant told him about the incident were improperly admitted. See 725 ILCS 5/115-10.1(c)(2) (West 2006). However, this court also notes that the same subject matter was discussed by Cotton under oath before the grand jury and that these statements to the grand jury were properly admitted under section 115-10.1(c)(1) (725 ILCS 5/115-10.1(c)(1) (West 2006)). As defendant does not raise this admission as error, this court will not address it further. See Supreme Court Rule 341(h)(7) (eff. July 1, 2008) (points not argued in appellant's brief are waived).

that he was telling the truth, he was high during his testimony, and, therefore, did not remember testifying that he was not under the influence of alcohol or drugs.

¶ 17 During cross-examination, Cotton testified that he was unemployed, supported himself by stealing and selling drugs and had used heroin that day. He had gotten sick while making his written statement because he had not taken any heroin. After his release from the hospital, he used heroin and then went to finish his statement. Cotton admitted that he "always" sought to avoid prosecution and would lie in order to do so.

¶ 18 At the close of Cotton's testimony, the defense moved to strike his testimony as Cotton had admitted that he was under the influence of heroin and was therefore not competent to testify. The court denied the motion.

¶ 19 ASA Patrick Keane then testified that Cotton agreed to make a written statement which he transcribed. During this process, Cotton indicated he was not well and was taken to the hospital. Keane saw Cotton again later that day and the statement was completed. After Cotton read the first page of the statement out loud, Keane read the rest aloud so that Cotton could make changes. Cotton then made several changes. Keane testified that Cotton said that when he asked defendant if defendant had anything to do with Peeples' death, defendant responded that it was the work of "Folks" and pointed at codefendant. When Keane asked Cotton if he was under the influence of alcohol or drugs, Cotton stated that he was not.

¶ 20 ASA Luann Snow, who met with Cotton before his grand jury appearance, testified that Cotton indicated that he was willing to testify and denied that he was on drugs at that time. During the meeting, he was talkative and friendly. When she asked Cotton, during his testimony, about a conversation he had with defendant regarding the victims' deaths, he testified that defendant said "it" was supposed to be a robbery, but that codefendant had "f*** up."

¶ 21 During a sidebar, the defense objected to the admission of the transcript of Cotton's testimony before the grand jury. The court admitted the transcript over the defense's objection.

¶ 22 After the jury was instructed and retired to deliberate, the defense argued that the entirety of Cotton's grand jury testimony should not go back to the jury, as it contained information that was not admitted at trial. The trial court agreed. When the jury later requested a copy of Cotton's grand jury testimony, a redacted copy was provided. Ultimately, defendant was convicted of first degree murder and sentenced to natural life in prison.

¶ 23 On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt because the evidence against him was entirely circumstantial and the State's witnesses, a "drug mule" and a drug addict, were not worthy of belief.

¶ 24 In assessing the sufficiency of the evidence, the relevant inquiry is whether, considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). This court does not retry the defendant or substitute its judgment for that of the trier of fact with regard to the credibility of witnesses, the weight to be given to each witness's testimony and the reasonable inferences to be drawn from the evidence. *Ross*, 229 Ill. 2d at 272; see also *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006) (it is the trier of fact's responsibility to determine the appropriate weight to afford each witness's testimony, resolve any conflicts or inconsistencies in the evidence and draw reasonable inferences from the testimony). A defendant's conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 25 Initially, defendant contends that he was not proven guilty beyond a reasonable doubt because the case against him was entirely circumstantial.

¶ 26 "Circumstantial evidence is proof of facts or circumstances that give rise to reasonable inferences of other facts that tend to establish the guilt or innocence of the defendant." *People v. Dent*, 230 Ill. App. 3d 238, 243 (1992). A fact finder does not have to be satisfied beyond a

reasonable doubt as to each link in a "chain" of circumstantial evidence as long as the evidence, taken as a whole, satisfies the fact finder beyond a reasonable doubt. *Dent*, 230 Ill. App. 3d at 243. Circumstantial evidence is sufficient to sustain a conviction where it satisfies proof beyond a reasonable doubt of the elements of the crime charged. *Sutherland*, 223 Ill. 2d at 242-43. The standard for reviewing the sufficiency of the evidence is the same regardless of whether the evidence is direct or circumstantial. *People v. Norris*, 399 Ill. App. 3d 525, 531 (2010).

¶ 27 Setting aside momentarily the issue of credibility, we find that the case for conviction here is strong. Viewing the evidence in the light most favorable to the State, as we must, Gordon testified that he and the victims met with defendant and codefendant to discuss a drug sale. He later saw defendant and codefendant enter a house with the victims and then run away from that house shortly before he discovered the body of one of the victims. He noted that defendant and codefendant entered the house with one bag between them and left with two bags. When the police arrived at the house, Gordon spoke with them, then went to a police station where he identified codefendant from a photographic array. Gordon subsequently identified defendant from a photographic array and in a lineup. Williams testified that she saw several ounces of cocaine in codefendant's Springfield hotel room, overheard defendant tell codefendant to stop "running" his mouth, and noticed defendant in a gray Charger in the hotel parking lot.

¶ 28 According to Cotton's statement to ASAs Keane and Snow defendant told friends at a barber shop that if defendant was arrested, they were to tell police that defendant was at a party drinking and playing cards on the night of the shooting. When Cotton asked whether defendant was involved in the victims' deaths, defendant indicated that a robbery had been planned, but that codefendant had "f*** up." This court cannot say that no rational trier of fact could have found defendant guilty when he was seen entering the house with the victims and the victims' bodies were discovered shortly after he was seen running out of that house and driving away. *Ross*, 229 Ill. 2d at 272.

¶ 29 Defendant maintains that even if the circumstantial evidence, if credible, would have been sufficient to convict, the testimony of Gordon and Cotton was not worthy of belief, and therefore, insufficient to prove him guilty beyond a reasonable doubt. He argues that both men were admitted criminals and drug users. Defendant further argues that Cotton admitted he would lie to avoid prosecution and that he was high when he made his written statement and testified before the grand jury.

¶ 30 In assessing a sufficiency of the evidence claim on appeal, this court does not retry the defendant or substitute its judgment for that of the trier of fact on the issue of witness credibility and the weight to be given to each witness's testimony (*Ross*, 229 Ill. 2d at 272), yet that is what defendant seeks. He essentially asks this court to reweigh the evidence against him. Defendant's contentions on appeal focus on the credibility, or lack thereof, of Gordon and Cotton, and why the jury was wrong to afford their testimony any weight.

¶ 31 Here, it was undisputed that both Gordon and Cotton were drug users, although Gordon testified that as of the time of trial, he no longer used drugs. Our supreme court has recognized that " 'the testimony of a narcotics addict is subject to suspicion due to the fact that habitual users of narcotics become notorious liars.' " *People v. Rivera*, 2011 IL App (2d) 091060, ¶ 38, quoting *People v. Lewis* 25 Ill. 2d 396, 399 (1962). Both men also admitted that they were involved in the drug industry. These facts certainly affected each man's credibility and the weight that the jury afforded to their testimony (*Sutherland*, 223 Ill. 2d at 242), however a jury is free to accept or reject "as much or as little" as it likes of a witness's testimony (*People v. Logan*, 352 Ill. App. 3d 73, 80-81 (2004)). Here, the jury found Gordon and Cotton credible despite their drug use and criminal livelihoods; this court will not substitute its judgment for that of the jury on this issue. *Ross*, 229 Ill. 2d at 272.

¶ 32 Defendant further contends that Cotton's testimony was not worthy of belief because he was a convicted felon who would do anything to avoid prosecution and who admitted that he was

high when making his written statement, during his grand jury testimony and at trial.

¶ 33 Certainly, Cotton's credibility was affected by his admission that he would lie to the authorities to avoid prosecution and by his status as a convicted felon. However, those facts, in and of themselves, were not fatal to his credibility. Although Cotton testified that he was high when making his statement and before the grand jury, this testimony was contradicted by Keane and Snow who both testified that when asked, Cotton denied being under the influence of drugs. Snow even described Cotton as talkative and friendly. The resolution of this conflict in the evidence was for the jury, as the trier of fact, to decide and this court will not substitute its judgment on this issue. *Ross*, 229 Ill. 2d at 272. Here, the jury obviously found Cotton's written statement and grand jury testimony implicating defendant more credible than his trial testimony as evidenced by the verdict.

¶ 34 This court cannot say that Gordon and Cotton's testimony was "so wholly incredible or so throughly impeached" that it was incapable of being used as evidence against defendant. *People v. Sanders*, 2012 IL App (1st) 102040-B, ¶ 15. Although the credibility of the State's witnesses was certainly affected by their involvement in criminal activity and drug use, a trier of fact is not required to disregard the inferences that flow from the evidence or search out all possible explanations consistent with a defendant's innocence and raise them to a level of reasonable doubt. *People v. McDonald*, 168 Ill. 2d 420, 447 (1995). This court reverses a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt (*Siguenza-Brito*, 235 Ill. 2d at 225); this is not one of those cases. Accordingly, we affirm defendant's conviction.

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

¶ 36 Affirmed.