2012 IL App (1st) 111273-U

THIRD DIVISION
November 14, 2012

No. 1-11-1273

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. 10 CR 7876
	)	
DEBRA CONLEY,	)	Honorable
	)	Maura Slattery-Boyle,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE SALONE delivered the judgment of the court.
Justices Neville and Steele concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for delivery of a controlled substance is affirmed where the evidence proved beyond a reasonable doubt that defendant was predisposed to commit the crime, and therefore, was not entrapped by the police officer.

¶ 2 Following a bench trial,[1] defendant Debra Conley was convicted of delivery of a controlled substance for delivering crack cocaine to an undercover police officer. The trial court sentenced defendant to three years' imprisonment. Defendant contends that the State failed to prove her guilty beyond a reasonable doubt because the evidence showed that she was entrapped

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[1]Defendant was tried in a simultaneous but severed bench trial with codefendant Jamar Frelix. Frelix was acquitted following the trial.

where the police officer induced her to deliver the cocaine, and the State failed to present sufficient evidence that she was predisposed to commit the crime. Defendant also contends, and the State agrees, that her mittimus must be amended to reflect the correct offense of which she was convicted. We affirm and correct the mittimus.

¶ 3 At trial, Chicago police officer Clark Eichman testified that on February 18, 2010, he was working as an undercover "buy officer" purchasing narcotics as part of a narcotics team. While sitting in his parked car near a Burger King restaurant, Officer Eichman made eye contact with defendant. He then rolled down his window and told her he wanted crack cocaine, and defendant got into his car. She did not appear to be under the influence of drugs at that time. They drove a short distance, and defendant made a call using the officer's cell phone. Officer Eichman denied telling defendant that he would buy her some heroin if she got him the cocaine. Officer Eichman gave defendant $30 and she gave him two small rocks in return, which she got from someone else. Defendant short-changed the officer about $10, and he assumed she pocketed the money. Defendant did not tell him that she was getting heroin from the same dealer, nor did she mention that she was a heroin addict. Defendant gave Officer Eichman her telephone number that day.

¶ 4 Officer Eichman further testified that the following day, February 19, 2010, the date at issue in this case, he called defendant and told her that he needed some crack cocaine. Defendant told the officer to meet her in the 1300 block of North Laurel Avenue. Officer Eichman then notified his fellow officers to set up a surveillance at that location. When Officer Eichman arrived at the location, defendant was standing on the sidewalk. He pulled up to the curb and defendant entered the passenger seat of his car. Defendant asked the officer what he needed, and he replied "four rocks." Defendant then made a call on her cell phone and told the man who answered "I got my friend with me again. I need four of those seeds." She also told the man "[y]ou know where I'm at," and hung up the phone. Shortly thereafter, a blue Grand Am driven

by codefendant Jamar Frelix pulled up next to the officer's car and defendant said "[t]here he is. Give me $50." Officer Eichman gave defendant $50 of prerecorded money. Defendant exited the officer's car and walked to the open passenger's window of Frelix's car. She reached inside and handed the money to Frelix in exchange for two small white objects enclosed in plastic. Defendant returned to the officer's car and handed him two plastic bags containing suspect crack cocaine.

¶ 5 As Frelix drove away, a police surveillance car followed him. Officer Eichman then signaled to his narcotics team that a transaction had occurred. Per defendant's request, Officer Eichman drove her to a gas station at the corner of Division Street and Laramie Avenue. While en route, officers from the narcotics team stopped their car and asked them both to exit the vehicle and identify themselves. After the brief stop, they reentered the car and Officer Eichman dropped off defendant at the gas station. Officer Eichman then drove past the location where the surveillance officers had stopped Frelix, and identified Frelix as the man who sold the drugs to defendant. At the police station, Officer Eichman inventoried the drugs he received from defendant in accordance with police procedures, and identified defendant and Frelix in two separate photo arrays. Officer Eichman knew that the rocks defendant gave him were too small to cost $50, but he did not ask for any of his money back. Defendant was not searched during the police stop, so it is unknown if she had any of the prerecorded money on her. During a subsequent conversation, Officer Eichman learned that defendant had a narcotics addiction.

¶ 6 Chicago police officer Perry Williams testified that he stopped the blue Grand Am, asked Frelix to exit the car, and asked him for identification and to empty his pockets. Frelix had $50 consisting of two $20 bills and two $5 bills. Officer Williams checked the serial numbers on those bills and found that the money was from the prerecorded funds used by Officer Eichman. Officer Williams then told Frelix that he was free to go. The parties stipulated that a forensic

chemist tested the two items defendant gave to Officer Eichman and found them to be positive for 0.2 gram of cocaine.

¶ 7 Defendant testified that on February 18, 2010, she was exiting a Burger King restaurant when Officer Eichman made eye contact with her from his car. The officer rolled down his window and asked her if she knew where to get some "rocks." Defendant replied that she knew where to get some, but she did not use cocaine. Officer Eichman then asked defendant if he could take her to get the drugs, and he offered to buy her whatever she wanted. Defendant testified that she was ill due to heroin withdrawal at that time and she wanted heroin. She further testified that she did not appear to be sick and looked like an "ordinary person." Defendant had only a dollar and some change on her. She told Officer Eichman that she wanted heroin, and she then got in his car. They drove to Laurel Avenue, and defendant then called someone who brought the drugs to their location. Officer Eichman gave defendant $30 and told her to get him two "rocks" and get herself whatever she needed. Defendant bought the cocaine and heroin with Officer Eichman's money, then returned to the officer's car, gave him the cocaine, and showed him the heroin she got for herself. Before leaving, Officer Eichman told defendant that his name was "Ike." She denied giving him her telephone number that day. Defendant acknowledged that the next day, Officer Eichman called her on her mother's cell phone. Defendant then testified that the officer had asked her if he could get back in touch with her, and she had given him the cell phone number.

¶ 8 Defendant testified that on February 19, 2010, the date at issue, Officer Eichman called her on her mother's cell phone while she was driving her mother to a doctor's appointment. The officer asked defendant if she could get him some "rocks." She replied that she probably could, but was busy at the time. Defendant met Officer Eichman later that day on Laurel Avenue. She testified that she met him because "[h]e wanted me to get something for him." The officer had

told defendant that he wanted three "rocks," and defendant said she could get it for him. Officer Eichman told her that she could also get something for herself. Defendant was feeling ill because she needed heroin, but she did not have any money to buy her own drugs. Defendant entered Officer Eichman's car, made a phone call, and someone came to their location and brought cocaine and heroin. The officer gave defendant $50, which she then gave to the person who brought the drugs. Defendant bought Officer Eichman three "rocks" and used the rest of the money to buy herself two bags of heroin, which she showed him. She handed the "rocks" to Officer Eichman, knowing she was giving him cocaine. Defendant acknowledged that she had a 2004 conviction for possession of a controlled substance.

¶ 9 In closing argument, defense counsel asserted that defendant was not predisposed to deliver cocaine and had been entrapped by Officer Eichman. Counsel claimed defendant was predisposed to buy herself heroin, and the officer took advantage of defendant's need to satisfy her drug addiction. The trial court expressly found that Officers Eichman and Williams testified "very credibly" and that defendant's testimony was "incredible and unbelievable." The court then found defendant guilty of delivery of a controlled substance. In denying defendant's motion for a new trial, the court explained that defendant's claim of entrapment failed because the court did not believe that Officer Eichman offered to buy defendant heroin if she got him cocaine.

¶ 10 On appeal, defendant concedes that she delivered cocaine to Officer Eichman. Defendant contends, however, that the State failed to prove her guilty beyond a reasonable doubt because the evidence showed that she was entrapped by Officer Eichman. Defendant claims that Officer Eichman induced her to deliver the cocaine, and that the State failed to present sufficient evidence that she was predisposed to commit the crime. Defendant argues that she was only predisposed to use heroin for her drug addiction, and that Officer Eichman preyed upon her weakness.

¶ 11 When defendant argues the evidence is insufficient to sustain her conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). This standard applies whether the evidence is direct or circumstantial. *Id.* at 281. A criminal conviction will not be reversed based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). In a bench trial, the trial court, sitting as the trier of fact, is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences therefrom. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). In weighing the evidence, the fact finder is not required to disregard the inferences that naturally flow from the evidence. *Jackson*, 232 Ill. 2d at 281. This court is prohibited from substituting its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *Id.* at 280-81.

¶ 12 Entrapment is a statutory defense which states as follows:

> "A person is not guilty of an offense if his or her conduct is incited or induced by a public officer or employee, or agent of either, for the purpose of obtaining evidence for the prosecution of that person. However, this Section is inapplicable if the person was pre-disposed to commit the offense and the public officer or employee, or agent of either, merely affords to that person the opportunity or facility for committing an offense." 720 ILCS 5/7-12 (West 2010).

When defendant claims entrapment, she must demonstrate that the State improperly induced her to commit the crime, and that she was not otherwise predisposed to do so. *People v. Sanchez*, 388 Ill. App. 3d 467, 474 (2009). Where defendant presents even slight evidence of entrapment, it becomes the State's burden to rebut the entrapment defense beyond a reasonable doubt. *Sanchez*, 388 Ill. App. 3d at 474. Whether defendant was entrapped is a question to be resolved by the trier of fact. *People v. Placek*, 184 Ill. 2d 370, 381 (1998).

¶ 13 Our supreme court has identified the following factors for consideration in assessing whether defendant was predisposed to commit a drug-related offense: (1) defendant's initial reluctance or ready willingness to commit the crime; (2) defendant's familiarity with drugs and her willingness to accommodate the needs of drug users; (3) defendant's willingness to profit from the illegal act; (4) defendant's current or prior use of illegal drugs; (5) defendant's participation in cutting or testing the drugs; and (6) defendant's ready access to a supply of drugs. *Placek*, 184 Ill. 2d at 381.

¶ 14 Applying these factors to the case at bar, we find that defendant was predisposed to commit the offense of delivery of a controlled substance. First and foremost, the evidence strongly shows that defendant was ready and willing to commit the offense with absolutely no reluctance. Officer Eichman testified that when he called defendant and told her he needed crack cocaine, she instructed him to meet her on Laurel Avenue. When he arrived at the location, defendant was standing on the sidewalk waiting for him. Defendant got into Officer Eichman's car and asked him what he needed. When the officer told her "four rocks," defendant made a call on her cell phone stating "I got my friend with me again. I need four of those seeds." The evidence further shows that when Frelix arrived at the location, it was defendant who told Officer Eichman to give her $50. She then walked to Frelix's car, gave him the money in exchange for the drugs, returned to the officer's car, and handed the cocaine to Officer Eichman. Defendant's

actions show that she was willing to obtain and deliver cocaine to Officer Eichman without hesitation or reluctance. In fact, the evidence shows that after Officer Eichman's call requesting the cocaine, it was defendant who took the initiative to commit the offense by telling the officer where to meet her, asking him what he wanted, calling her drug supplier, asking him to come to their location, telling the officer to give her $50, then approaching Frelix's car, making the purchase, and handing the cocaine to Officer Eichman.

¶ 15 Second, the evidence shows defendant was very familiar with drugs and willing to accommodate the needs of Officer Eichman, whom she believed was a cocaine user. It is undisputed that defendant is a long-time heroin addict. And, as discussed above, she was ready and willing to help the officer get cocaine, arranging the purchase and taking all of the actions necessary to buy and deliver the cocaine.

¶ 16 Third, the evidence shows that defendant was willing to profit from the illegal act. Officer Eichman told defendant that he needed "four rocks." Defendant then told the officer to give her $50. When defendant returned to the officer's car following the purchase, she handed him two plastic bags of crack cocaine, not four. Officer Eichman testified that he knew the two items did not cost $50, but he did not ask for his money back. Defendant's own testimony shows that she needed heroin, but did not have any money to buy her own drugs. She further testified that she used Officer Eichman's money to buy herself two bags of heroin. The evidence thus shows that defendant willingly engaged in the criminal act for her own benefit to satisfy her need for heroin.

¶ 17 Fourth, as stated above, it is undisputed that defendant is a long-time heroin addict and was using heroin at the time of the offense. There is no evidence to support the fifth factor, that defendant participated in the testing or cutting of the drugs.

¶ 18 Finally, the evidence shows that defendant had ready access to a supply of drugs. Although she did not personally have a supply of drugs in her possession, her supply was a quick phone call away. When Officer Eichman told defendant that he needed "four rocks," she immediately made a call on her cell phone, telling her supplier that she needed "four of those seeds," and "[y]ou know where I'm at." Shortly thereafter, Frelix arrived in his car and defendant made the purchase and handed the cocaine to Officer Eichman.

¶ 19 Our analysis of these factors overwhelmingly demonstrates that defendant was predisposed to committing the offense of delivery of a controlled substance. Officer Eichman's phone call telling defendant that he needed crack cocaine merely afforded her the opportunity to commit the offense. Following his call, it was defendant who willingly took the initiative and all of the actions necessary to commit the offense without any further encouragement from Officer Eichman. Accordingly, the entrapment defense does not apply to defendant. Sitting as the trier of fact, it was the trial court's responsibility to determine the credibility of the witnesses, weigh the evidence, and determine whether defendant was entrapped. Here, the trial court found Officer Eichman's testimony very credible and defendant's testimony incredible and unbelievable. The court also found that defendant was not entrapped. Based on our review, we find no reason to disturb the trial court's determinations, and we sustain her conviction.

¶ 20 Defendant next contends, and the State agrees, that her mittimus must be amended to reflect the correct offense of which she was convicted. The parties agree that the mittimus incorrectly shows that defendant was convicted of Count 1 of the indictment, which was delivery of a controlled substance within 1,000 feet of a school, a Class 1 felony. However, the record shows that the State nol-prossed this charge prior to trial. Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)), we direct

the clerk of the circuit court to amend the mittimus to reflect that defendant was convicted of Count 2, delivery of a controlled substance, under 720 ILCS 570/401(d), a Class 2 felony.

¶ 21 Accordingly, we affirm the judgment of the circuit court of Cook County and amend the mittimus.

¶ 22 Affirmed; mittimus amended.