2013 IL App (1st) 113016-U

SECOND DIVISION
April 16, 2013

No. 1-11-3016

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).

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 22352
	)	
CLYDE WILLIAMS,	)	The Honorable
	)	William H. Hooks,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Quinn and Simon concurred in the judgment.

O R D E R

¶ *1* *Held:* Defendant was proved guilty of possession of a controlled substance beyond a reasonable doubt despite alleged weaknesses in the testimony of the State's sole witness. A mathematical error in the fines, fees, and costs was ordered corrected.

¶ 2 Following a bench trial, defendant Clyde Williams was found guilty of possession of a controlled substance, sentenced to a two-year prison term, and ordered to pay $695 in fines, fees,

and costs. On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt. He challenges the credibility of Chicago police officer Baader, the State's sole witness, and characterizes Baader's testimony as "'dropsy' testimony." Defendant alternatively contends, and the State agrees, that there was a mathematical error in the total amount of the fines, fees, and costs, which should have been $675.

¶ 3 Officer Baader testified as follows. A little before 9:45 a.m. on November 24, 2010, Baader was working alone, dressed in uniform, and driving a marked squad car when he went to 9547 South Wentworth in the alley looking for a suspicious person in response to a radio call. When Baader quickly entered the alley, defendant saw him and immediately did an "about-face," turning to the opposite direction. As Baader approached in his vehicle, defendant "fished" around in his pocket while walking away. Baader demonstrated in court by making a motion toward his right hip area with his right hand. Defendant then put his hand up toward his face while his back was to Baader. By the time Baader got out of the vehicle, defendant was at a van that was one car length away from Baader. Baader got out of his vehicle and said, "come here." Defendant then made a throwing motion behind the van and ran. Baader did not recall which hand defendant had used to make the throwing motion. When asked if he had seen anything come out of defendant's hand, Baader initially testified that the van obstructed his view, but later testified that his own vehicle obstructed his view. Baader went to look behind the van and found a clear plastic bag containing a powder that Baader believed was a controlled substance. Baader found the bag in the area where he had seen defendant make the throwing motion. Baader did not find anything else in that area, and he did not specifically remember what he did with that

bag. He also testified that he put the narcotics in his right cargo pocket, and then chased defendant.

¶ 4 While Baader ran he transmitted on the air to the OEMC (the Office of Emergency Communication) that he had a "person running." Defendant "hit the sidewalk" and ran very quickly, while holding his side. Based on that, Baader drew his weapon. Baader continued to chase defendant, who turned by a house that Baader was very familiar with because Baader had been there many times and knew that the yard was open. Baader cut through the yard. He knew that defendant could go northbound, where there would be storage, barbed wire, and bad fences. When Baader turned into that area, he lost sight of defendant for approximately two to three seconds. Baader then saw defendant running again, and chased him. Baader did not see anyone else out there at that point, cut through the yard he knew was open, and heard a thud. Other officers responded to Baader's call for assistance. He did not specifically recall if he gave a description of defendant, but he would typically do so. He kept chasing defendant, who jumped over a fence at approximately 9540 Wentworth "and landed in like a bear-crawl position." Defendant did not regain his two-legged posture after that, and Baader put him down on his face.

¶ 5 Officer Wells got out of his vehicle, stood over defendant, and informed him that he (Wells) had a taser pointed at him and that he should not do anything stupid. Baader noticed that defendant had white powder on his face, around his mouth. Baader returned quickly to the location where he had heard the thud, which was approximately 3/4 of a block away. He went to the center of the alley where he recovered a pill bottle containing a knotted plastic bag which held six smaller bags with white powder. Baader also observed approximately 55 pills

underneath the plastic bags.

¶ 6 Defendant provided a statement to Baader in Wells' presence at the station around 40 minutes after they had left the scene. In response to Baader's questions, defendant stated that cocaine was on his face, inside the bottle, and in the blue pills. Defendant said that he had pitched the pill bottle when he was out of Baader's sight. Baader inventoried the items he recovered and described the inventory procedures.

¶ 7 During cross-examination, Baader testified that the white powder on defendant's face, which defendant said was cocaine, was never recovered or tested. Baader recovered 55 pills, which defendant said were cocaine, but Baader read a report indicating that the pills were not cocaine. The arrest report, which Baader prepared, indicated that Baader arrested defendant at 10342 South Wentworth. Baader testified to 9547 South Wentworth and explained that he had "jotted a wrong address" in the report. Baader testified that he drew his weapon, a side arm, but that is not in the report. Baader had the weapon out during the entire chase and remembered thinking a curse word because the gun was heavy. He did not remember when he holstered his weapon, and he never found any narcotics on defendant.

¶ 8 Defendant's statement to Baader would have occurred within an hour after defendant was taken into custody. Baader would have to look at the report to say what time it was. Defendant's statement was not recorded, was not taken down by a court reporter, and was not written down. Baader did not remember if defendant had only $2.25 on his person. Baader did not recall recovering a large amount of money.

¶ 9 During redirect examination, Baader testified that his report contained a summary of

defendant's statements to him.

¶ 10 The parties stipulated to the laboratory evidence. The bag proved positive for 2.1 grams of cocaine, and six smaller plastic bags proved positive for 1.6 grams of cocaine. The chemist tested one capsule which weighed 0.4 gram, and found no contraband. The chemist did not test the estimated 25.0 grams of powder from the remaining 54 capsules. The pill bottle contained 11.9 grams of powder, and the chemist found no contraband.

¶ 11 The defense did not present any witnesses.

¶ 12 During closing arguments, defense counsel argued that Baader's testimony was not believable. The trial court explicitly stated that it found Baader to be credible. The court observed that defendant's admission that cocaine was in his possession was "particularly damning," especially taken together with his flight from the police. The evidence was recovered near where it was expected to have been thrown. There was white powder on defendant's face.

¶ 13 On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt because Baader was not credible and his testimony was "nonsensical," "uncorroborated," and "cookie cutter 'dropsy' testimony." Defendant maintains that officers frequently have been found to fabricate such testimony. Defendant argues that Baader provided two different addresses for the crime, and his explanation that he jotted down the wrong address was not believable because he claimed to know the area well; that the pill bottle which weighed 55.6 grams would not have made a noise like a "thud," contrary to Baader's testimony; that Baader could not remember which hand defendant used to make a throwing motion, nor could he see what defendant had thrown; that Baader testified inconsistently as to which vehicle blocked his view–a parked van

or his own vehicle; that Baader omitted many details from his police report and did not write down defendant's confession or other statements to him; that Officer Wells, who was present during the statements, did not testify and could have corroborated Baader's testimony about defendant's incriminating statements, if true; that Baader testified defendant told him the capsules contained cocaine, but scientific testing disproved that the capsules contained cocaine; that Baader did not test the white powder on defendant's face or take a picture of defendant's face; that Baader lost sight of defendant during the chase; and that Baader's testimony was perjured.

¶ 14 A criminal conviction will not be reversed on appeal unless the evidence, viewed in the light most favorable for the State, was so improbable as to create a reasonable doubt of guilt. See *People v. Slim*, 127 Ill. 2d 302, 307 (1989); *People v. Smith*, 299 Ill. App. 3d 1056, 1061 (1998). The question on appeal is whether, after viewing the evidence in the light most favorable for the State, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. See *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004); *People v. Killingsworth*, 314 Ill. App. 3d 506, 510 (2000); *Smith*, 299 Ill. App. 3d at 1061.

> "Each individual item of evidence does not have to prove the fact at issue beyond a reasonable doubt. Rather, each individual item of evidence must tend to show that the fact at issue, in this case impairment due to alcohol, is more or less likely. By way of analogy, it is often said that "'a brick is not a wall.'" [Citations.] That is, an individual item of evidence is merely a

> brick, one of many bricks used to build the wall that is the fact at issue." *People v. McKown*, 236 Ill. 2d 278, 304 (2010).

¶ 15 The credibility of the witnesses, the weight of the evidence, and the resolution of any conflicts in the evidence, are matters for the trial court to decide. *Slim*, 127 Ill. 2d at 307. When assessing evidence that can produce conflicting inferences, the fact finder is not required to look for all possible explanations consistent with innocence and elevate them to the level of reasonable doubt. *People v. Digirolamo*, 179 Ill. 2d 24, 45 (1997); see also *People v. Slinkard*, 362 Ill. App. 3d 855, 858 (2006) (State's evidence need not exclude every possible doubt). A court of review must not retry the defendant. *Cunningham*, 212 Ill. 2d at 279. "[A] reviewing court should bear in mind that the fact finder had the benefit of watching the witness' demeanor." *Cunningham*, 212 Ill. 2d at 284.

¶ 16 Slight discrepancies in the testimony do not destroy the credibility of a witness; they affect the weight of that testimony (*People v. Garcia*, 103 Ill. App. 3d 779, 782 (1981)) and merely "go to the question of credibility," which is for the trier of fact (*People v. Voda*, 70 Ill. App. 3d 430, 435-36 (1979)).

¶ 17 In this case, the resolution of defendant's guilt depended on the credibility of the witness and the weight accorded to his testimony. These determinations were within the province of the trial judge, who observed the witness, watched his demeanor, listened to his testimony, and explicitly found that Baader was a credible witness. Although defendant argues that there were various weaknesses in Baader's testimony, defendant's arguments fall within the realm of witness credibility. The trial court was entitled to find that the basic facts presented by the State were

consistent and established that defendant possessed cocaine. The basis for defendant's conviction was not the alleged weaknesses in Baader's testimony. Rather, the following is evidence proving defendant's possession conviction. When Baader entered the alley in his marked vehicle, defendant did not take another step and instead immediately did an "about-face" and walked away while rummaging in his pocket. Defendant then put his hand up to his face. When Baader saw defendant, defendant had white powder on his face, around his mouth, which defendant said was cocaine. When Baader told defendant to "come here," defendant made a throwing motion behind a van and then ran. From that area, Baader recovered a clear plastic bag that contained a powder that Baader suspected to be a controlled substance and that the forensic chemist found to be cocaine. Defendant later admitted that he had cocaine. Thus, many facts established defendant's guilt (see *McKown*, 236 Ill. 2d at 304) and the alleged weaknesses in Baader's testimony were minor and were resolved by the trial court as the trier of fact (see *Garcia*, 103 Ill. App. 3d at 782; *Voda*, 70 Ill. App. 3d at 435-36). Viewing the evidence here as a whole in a light most favorable to the State, we find that the evidence was sufficient to prove that defendant possessed cocaine beyond a reasonable doubt. We have considered, and reject, all of defendant's arguments on appeal.

¶ 18 Next, defendant contends, and the State concedes, that there was a mathematical error in the assessment of fines, fees, and costs and that the total should have been $1,205, not $1,225, with a credit of $530 for 272 days defendant served in presentence custody, for a final total of $675 ($1,205 minus $530), not $695. We therefore direct the clerk of the circuit court to amend the fines, fees, and costs order to reflect that the fines, fees, and costs totaled $1,205 (not $1,225),

with a credit of $530, for a final total of $675 (not $695). See Illinois Supreme Court Rule 615(b)(4) (eff. Aug. 27, 1999).

¶ 19 For the foregoing reasons, the judgment of the circuit court is affirmed and the fines, fees, and costs order is ordered amended.

¶ 20 Affirmed; fines, fees, and costs order is ordered amended.