

SIXTH DIVISION  
September 30, 2015

No. 1-13-2889

**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. 13 CR 2896
	)	
AISHA JOHNSON,	)	Honorable
	)	Rickey Jones,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice ROCHFORD and Justice DELORT concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Evidence was sufficient to prove defendant guilty of possession of a controlled substance beyond a reasonable doubt where police officer's testimony was not contrary to human experience and the trial court found the officer credible.

¶ 2 Following a bench trial, defendant Aisha Johnson was found guilty of possession of a controlled substance and sentenced to one year in prison. On appeal, defendant contends that the evidence was insufficient to prove her guilty beyond a reasonable doubt because the testimony of the State's key witness was incredible. We affirm.

¶ 3 At trial, Chicago police officer Albert Wyroba testified that he and two other officers, including officer Toberto Delcid, drove in an unmarked police car near the intersection of Lotus and Huron on the morning of January 10, 2013. Earlier, the officers had received information that a woman named Aisha with a white Saturn was selling narcotics in the area. While driving, the officers saw a white Saturn parked on Lotus. The car faced the officers and Wyroba observed defendant sitting in the driver's seat with her husband in the passenger seat. Driving towards defendant, the officers stopped their car parallel to the Saturn and Wyroba got out of the vehicle. As he walked towards the passenger side of defendant's car, Wyroba saw defendant "attempting to conceal a bag between the center console and the driver's side seat." The clear bag contained smaller baggies filled with white objects. Another officer moved defendant and her husband into the back of the Saturn while Wyroba entered the vehicle and recovered the bag. It contained 22 baggies of suspected cocaine.

¶ 4 Chicago police officer Roberto Delcid testified consistently with Wyroba's testimony. While Delcid did not see the clear bag in defendant's hands, he did witness Wyroba remove it from her car.

¶ 5 The parties stipulated that a forensic chemist had tested 15 of the 22 baggies and opined that they contained 5.5 grams of cocaine. The remaining bags weighed 2.6 grams.

¶ 6 Defendant's daughter Domenica Henderson testified regarding a subsequent search of defendant's home. The State objected to the relevance of Domenica's testimony and the court sustained the objection, striking the testimony in its entirety.

¶ 7 Defendant's husband David Henderson testified that he and defendant were about to drive to the store when the police "boxed [them] in." Officers handcuffed the couple and placed them in the back of the Saturn while they searched the car's front section. When the officers found

nothing in the car, they took David's apartment key and searched the couple's home for 8 to 10 minutes. The officers then returned, grabbed defendant, and brought her into the apartment as they searched again.

¶ 8 The trial court found defendant not guilty of possession of a controlled with intent to deliver, but found her guilty of the lesser included offense of possession of a controlled substance. The court explicitly found the officers' testimony credible and the Hendersons' testimony not credible. It sentenced defendant to one year of incarceration. Defendant appeals.

¶ 9 Defendant solely contends that the State failed to prove her guilty beyond a reasonable doubt of possession of a controlled substance because Wyroba's testimony was "unworthy of belief." She argues that Wyroba's account of events is contrary to human experience because she would not rationally have held narcotics in plain view as she saw officers approaching. She also asserts that had the officers actually found narcotics in her possession, they would not have conducted "an illegal search" of her home. The State responds that it presented sufficient evidence to prove defendant guilty beyond a reasonable doubt, and notes that the trial court explicitly found the officers' testimony credible.

¶ 10 Due process requires the State to prove each element of a criminal offense beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004), citing *In re Winship*, 397 U.S. 358, 364 (1970). When reviewing the sufficiency of evidence, a reviewing court must decide "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 313 (1979); See also *Cunningham*, 212 Ill. 2d at 278. A reviewing court will not overturn a guilty verdict unless the

evidence is "so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 11 A reviewing court must give due consideration to the fact that a trial court is able to see and hear the witnesses. *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001). A fact finder's determination of a witness's credibility "is entitled to great deference but is not conclusive." *Cunningham*, 212 Ill. 2d at 279. Where a conviction depends on eyewitness testimony, the reviewing court may find testimony insufficient "only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *Id.* We will reverse a conviction based on eye witness testimony where it is "improbable, unconvincing or contrary to human experience." *Ortiz*, 196 Ill. 2d at 267.

¶ 12 A possession of a controlled substance conviction requires proof that a defendant: (1) knew of the presence of a controlled substance and (2) either actually or constructively possessed the substance. See *People v. Eghan*, 344 Ill. App. 3d 301, 306 (2003). Actual possession is an offender's "present personal dominion" over the substance when the offender "exercises immediate and exclusive dominion or control over the illicit material." *Id.* at 306-07.

¶ 13 We find that the State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt. Wyroba observed defendant holding the bag containing cocaine. She actively tried to conceal the bag from the approaching officers. The parties stipulated that the substance tested positively for cocaine. Taking the evidence in the light most favorable to the State, a rational trier of fact could find beyond a reasonable doubt that defendant knowingly exercised actual possession over the cocaine.

¶ 14 Defendant's argument that Wyroba testified incredibly is unpersuasive. She cites *Ortiz* for the proposition that a reviewing court must reverse a conviction based upon testimony that is

"contrary to human experience." *Ortiz*, 196 Ill. 2d at 267. She asserts that it is highly improbable that she would "commit such a bewildering act of self-sabotage" by holding up a bag of cocaine in plain view while police officers openly approached her. This, however, misconstrues Wyroba's testimony. The officer testified that defendant was trying to conceal the bag in between her seat and the center console when the officers approached. An offender's attempt to hide contraband from a police officer's view is neither bewildering nor contrary to human experience.

¶ 15 Defendant also argues, as defense counsel argued at trial, that the officers had no reason to search her home if they had truly found cocaine in her car. The trial court considered this argument which was based primarily upon the testimony of defendant's husband and found the officers' version of events more credible. Wyroba's testimony is not so contrary to human experience that it requires this court to disregard the trial court's express credibility findings.

¶ 16 Finally, defendant analogizes her case to "dropsy" cases where police officers allege an offender inexplicably dropped contraband in the officers' presence as a pretextual basis for an illegal search. *People v. Ash*, 346 Ill. App. 3d 809, 816 (2004) (defining "dropsy" cases).

Defendant also cites cases concerning pretextual traffic stops. See, e.g., *People v. Thompson*, 283 Ill App. 3d 796 (1996). We note that defendant has not raised a constitutional claim of an illegal search or seizure under the fourth amendment on appeal. She claims only that the evidence presented was insufficient to convict her. Therefore, we find the cited cases to be irrelevant to the question before us.

¶ 17 Taking the evidence in the light most favorable to the prosecution, a rational fact finder could have accepted Wyroba's testimony and found defendant guilty of possession of a controlled substance beyond a reasonable doubt. Accordingly, we affirm the judgment of the circuit court of Cook County.

1-13-2889

¶ 18 Affirmed.