

FIRST DIVISION
MAY 16, 2016

No. 1-14-0311

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. 12 CR 18248
)	
DARIEN HAYNES,)	Honorable
)	Domenica A. Stephenson,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justice Connors and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Affirmed defendant's conviction for delivery of a controlled substance and sentence of three years' imprisonment over his challenge to the sufficiency of the evidence.

¶ 2 Following a jury trial, defendant Darien Haynes was convicted of delivery of a controlled substance and sentenced to three years' imprisonment. On appeal, he challenges the sufficiency of the evidence to sustain his conviction. We affirm.

¶ 3 At trial, Chicago Police Officer Cherron Bady testified that at 9:45 a.m. on September 8, 2012, she was working with Officers Giselle Ruiz and Ronald Norway in the area of 81st Street

and Drexel Avenue in Chicago, which was an area known for "high narcotics" activity. She worked in the narcotics division and her role that day was undercover narcotics buy officer, which she had done over 100 times before. She testified that on the day in question, she was wearing a wig with a head scarf, a white dirty t-shirt, dirty blue jogging pants and "dingy" white gym shoes so that she looked like a drug addict.

¶ 4 Officer Ruiz drove Officer Bady in a covert vehicle to 81st Street and Drexel Avenue, and Officer Bady exited the vehicle. While she stood in the middle of 81st Street, a silver Kia pulled up to her. Defendant, who Officer Bady identified in court as the driver of the Kia, was the only occupant of the car. Defendant asked Officer Bady if she was "straight," which meant did she want drugs. Officer Bady responded, "yes," and asked for "blow," which was the "street term" for heroin. Defendant responded, "no, I got C," which was the "street term" for crack cocaine. Officer Bady asked defendant if she could get his phone number and would call him later. Officer Bady explained that she did not buy cocaine from defendant right then because if she "immediately" switched, he would have suspected that she was a police officer. Officer Bady testified that defendant gave her a telephone number, then drove away and she walked back to the covert vehicle. She then notified her narcotics investigation team that she was going to purchase cocaine. She called defendant, and told him she was the one he had just met and given his phone number and that she wanted to purchase four bags of cocaine.

¶ 5 Based on the phone call, Officer Bady went back to 81st Street and Drexel Avenue. She waited there for five minutes, then noticed the same silver Kia she saw defendant driving earlier stop at 8057 Drexel Avenue. She approached the driver side of the Kia, but the driver, later

identified as Joseph Smith, nodded to her indicating to go to the passenger side of the vehicle.

Officer Bady approached the passenger side of the Kia and saw defendant sitting there.

Defendant tendered her four knotted bags containing suspect crack cocaine and she gave him \$40 in prerecorded funds. There was no one else in the car other than defendant and Smith. At the time of the transaction, Officer Bady noticed that Smith was holding a sandwich bag, which would typically hold 12 to 15 bags of heroin or cocaine, but at the time she saw only the bag. After the narcotics purchase, Smith drove away. Officer Bady then returned to her covert vehicle, notified her team that there was a positive purchase for crack cocaine, and described the Kia as well as the passenger, defendant. She noted that defendant was wearing a black and red hat and a black "hoody."

¶ 6 Officer Bady testified that, less than a minute after notifying her team of a positive narcotics buy, she relocated to 807 East 83rd Street where the enforcement officers had stopped the Kia, two and a half blocks away from where she had purchased the narcotics. Officer Bady drove by with Officer Ruiz and saw defendant and Smith standing behind the enforcement vehicle. She made a positive identification of defendant as the seller. When she drove by defendant, she was two feet away from him.

¶ 7 On cross-examination, Officer Bady testified that her narcotics investigation team included a total of nine officers. Officer Ruiz was a stationary surveillance officer, but there were other "roving" surveillance officers who were moving around. Officer Bady testified that three minutes passed from the time she received defendant's phone number to the time she called it. She did not recall the number, but had written it in her report. Officer Bady also did not know if

any of the "roving" surveillance officers attempted to follow defendant. When defendant and Smith were stopped by the enforcement officers, they were searched. The officers found the prerecorded funds on Smith, but found none on defendant. No drugs were found on Smith. The clear sandwich bag Officer Bady saw in Smith's hand earlier during the transaction was not inventoried.

¶ 8 Chicago Police Officer Giselle Ruiz testified that narcotics were bought and sold in the area in question "[a]ll day." Officer Ruiz testified that her job on September 8, 2012 was to keep an eye on Officer Bady. Officer Ruiz parked at 8057 Drexel Avenue, facing southbound, and Officer Bady exited the car. It was a clear day, and there was nothing blocking her view of Officer Bady who was standing at 81st Street and Drexel Avenue. Officer Ruiz observed a silver Kia approach Officer Bady, who had a conversation with the driver. There was only one person in the vehicle. Officer Ruiz testified that the driver was wearing a red and black hat, and nothing was blocking her view of his face. In court, Officer Ruiz identified defendant as the driver. During this encounter, Officer Ruiz was 15 feet away from Officer Bady.

¶ 9 Officer Ruiz testified that defendant drove away, and Officer Bady then got back in the police car. Officer Bady notified their team of what transpired and said that she would call defendant and place an order for crack cocaine. After Officer Bady made the phone call, she exited the car, waited in the street, and a few minutes later the same silver Kia pulled up and stopped. Officer Ruiz testified that Officer Bady was only two feet away from the Kia at this time. Officer Bady initially approached the driver side of the Kia but then went to the passenger side. Officer Ruiz observed two people in the vehicle. She did not recognize the driver, but the

passenger was defendant and he was wearing the same red and black hat. Officer Ruiz saw Officer Bady put her hand in the vehicle and pull it back out, and then the Kia drove away.

Afterwards, Officer Bady reentered the police vehicle, told Officer Ruiz that there was a positive narcotics transaction, and showed her the narcotics, which included four clear bags with rocklike substance that the officer suspected was crack cocaine.

¶ 10 Officer Ruiz further testified that Officer Bady contacted their narcotics team, told them what had transpired, and gave the location the Kia was traveling and a description of the two individuals in the car. Two minutes later, the enforcement officers called Officers Bady and Ruiz and told them they had curbed the vehicle three blocks away at 807 East 83rd Street. With Officer Bady in the car, Officer Ruiz slowly drove by the two offenders, who were standing outside the car, to provide an identification of them. Officer Bady recognized them as the driver of the silver Kia she had seen during the transaction, later identified as Joseph Smith, and the passenger of the Kia, defendant.

¶ 12 Chicago Police Officer Ronald Norway testified that he was working as one of the enforcement officers on the day in question. At 10:30 a.m., he received a call from Officers Ruiz and Bady informing him of a positive narcotics purchase. He was told to look for a silver Kia "SUV" travelling southbound from 81st Street and Drexel Avenue, with two male black individuals and that the passenger was wearing a red hat. Officer Norway found a vehicle matching the description and curbed it with his partner Officer Cunningham. Officer Norway approached the driver side and Officer Cunningham approached the passenger side. They asked the two occupants to exit the vehicle. Officer Norway testified that there were only two

individuals in the car. In court, he identified defendant as the passenger, and used a photograph to identify Smith as the driver. When Officer Bady arrived at the scene and identified the men as the ones involved in the narcotics transaction, Officer Norway placed them in custody. A custodial search was performed, and Officer Norway found the prerecorded funds and a cellular telephone on Smith. A search of defendant revealed only a cellular telephone.

¶ 13 Officer Norway testified that he searched the immediate area of the vehicle, which included the front seat and the passenger seat, and found no narcotics. Officer Norway then inventoried the cellular phones recovered from defendant and Smith. He did not do anything else with these phones.

¶ 14 Patricia Junious-Hawkins testified that she was a forensic scientist drug analyst and worked for the Illinois State Police Forensic Science Center. She testified that the gross weight of the packaging material of the four baggies and the substance in them was 0.659 grams. She removed one of the suspect crack cocaine rocks from its wrapping and found it weighed 0.143 grams. This item tested positive for cocaine.

¶ 15 The defense then called Recharad Glover who testified that he knew defendant for 15 years from "the neighborhood." Glover testified that at 10 a.m. on September 8, 2012, defendant and Smith, who was driving a grey Kia "truck," picked him up. Glover testified that he sat down in the passenger side backseat of the Kia. While they were heading toward 79th Street and Cottage Grove Avenue, Smith received a phone call and drove to 81st Street and Drexel Avenue. When they arrived at the intersection, a lady was standing on the corner, and Smith pulled over. The lady, later identified as Officer Bady, walked up to the passenger side of the vehicle. She

bent over in the car and reached her hand in. Smith put his hand into a package, took out an item, reached over and handed the item to Officer Bady, and Officer Bady gave Smith money in return.

¶ 16 Smith then drove away. By the time they got to Cottage Grove Avenue, "police were swarming" them. There were three police cars. The police removed them from the car and searched them. The police found no narcotics, but found money on Smith. One of the officers pulled Glover aside. The officer asked him what Smith sold, and he told the officer to ask Smith himself. The officer told Glover that he was going to "cut" him and defendant, but Smith was going to jail. Glover believed "cut" meant release them. Another officer arrived, who the other officers called the "boss," and he said, "[f]**k all of them. Lock all of them up." Glover told the "boss" that another officer said he would be released, and this officer told him to shut up or he would pin the entire case on him.

¶ 17 Glover testified that he, defendant, and Smith were all handcuffed together and transported to the police station. There, they were handcuffed to a bench and strip searched. The officers then separated the three men. Fifteen minutes later, Glover was questioned about "murders and guns and stuff." He then took a nap, and later was allowed to leave through the "back door." Glover testified that this incident made an impression on him because his "best friend could be going to jail." Glover stated that he could not just go to the police station and tell them to drop the case against defendant, which was why he was testifying for defendant.

¶ 18 Glover testified that he had known defendant since Glover was 10 years old, grew up with him, and saw him daily. He also knew Smith for eight years. Glover testified that he drove

with defendant to court. Glover testified that he had talked to defendant about what had happened, but that he was present during the incident and knew what happened. Glover testified that at the time of the incident, he understood defendant was being arrested for selling drugs, and Glover thought that he was being arrested too, but he was later released. Glover admitted that he never told police that defendant did not sell any narcotics or have anything to do with narcotics. Glover stated that although a year had gone by since the incident, he did not tell anyone what he saw during the incident until he testified at trial.

¶ 19 Defendant testified in his defense. He testified that he was friends with Smith, and on the day in question, Smith picked him up in a silver Kia, which defendant believed belonged to a girlfriend of Smith. Defendant testified that he never drove the Kia. Glover called defendant, and they went to pick him up. Glover got in the passenger side backseat. When they reached 79th Street and Cottage Grove Avenue, Smith's phone rang. Smith conversed with the other person on the phone for a minute. He then drove to 81st Street and Drexel Avenue. Smith never told them why they were heading to that intersection, and defendant never asked him. Defendant testified that because they were driving around, he did not think that anything out of the ordinary was happening. When they arrived at the location in question, Smith pulled over. A lady, later identified as Officer Bady, was waiting there. She approached the passenger side of the car, Smith handed her some narcotics, and she gave him some money. Defendant stated that he did not know that Smith planned to sell drugs that day, and did not know that he was in the "business" of selling narcotics. Defendant testified that he did not touch the narcotics, and that

Smith had some narcotics left over from the sale. Defendant acknowledged that he had a 2007 felony drug conviction for possession of a controlled substance.

¶ 20 Defendant further testified that after the transaction, Smith pulled away, but then police appeared. The officers removed the three men from the car, and searched them. The officers did not find any narcotics on Smith, and defendant did not know what happened to the narcotics Smith had in his hand after the transaction. There were three police cars present. Defendant, Glover, and Smith were handcuffed and transported to the police station. They were handcuffed individually to a bench then strip searched. Afterwards, the three men were placed in different rooms. An officer asked defendant if he wanted to help them, he said, "[n]o," and they never came back to talk to him.

¶ 21 Defendant testified that he was close friends with Smith and saw him twice a week, but did not know he was a narcotics dealer. Defendant, however, also testified that he had seen Smith sell drugs once shortly before this incident. On the day in question, while they were driving to pick up Glover, defendant noticed crack cocaine in a plastic bag in Smith's hand. After Smith sold some to Officer Bady, defendant did not notice what Smith did with the remainder of the drugs he had on him.

¶ 22 In rebuttal, the State recalled Officer Ruiz who testified that only defendant and Smith were in the Kia, and Glover was not arrested in conjunction with this case. Officer Ruiz further testified that if there was another witness present, police would make a contact card for that person, which would include the person's information and would serve as documented proof that they spoke with that person. A contact card was not created for Glover. Officer Ruiz testified

that, when she and Officer Bady drove by the offenders to make an identification, she did not see a third person. Officer Ruiz testified that she had never met Glover and did not know who he was.

¶ 23 At the close of evidence, the jury found defendant guilty of delivery of a controlled substance. Defendant filed a motion for a new trial, which the trial court denied, finding that the State proved every material allegation beyond a reasonable doubt. The court noted that the jurors heard the testimony, including any contradictory testimony, and found that the State had met their burden of proof. Defendant was sentenced to three years' imprisonment.

¶ 24 On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he delivered a controlled substance where the testimony of the officers was unreasonable, improbable, and contrary to human experience. He maintains that the defense testimony presented a more reasonable scenario that Joseph Smith, alone, was involved in the delivery.

¶ 25 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the proper standard of review is whether, after viewing 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. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). This standard recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence and to draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of guilt. *Id.* at 375. For the reasons that follow, we do not find this to be such a case.

¶ 26 Defendant contends that the evidence was insufficient to prove him guilty of the charged offense beyond a reasonable doubt because Officer Bady's testimony was contrary to human experience where she testified that she did not originally purchase the cocaine after asking for heroin because she did not want to blow her cover, but, then, three minutes later, called defendant and asked for cocaine. Defendant maintains that the first interaction never occurred, and that his testimony and Glover's unimpeached testimony described the more likely scenario.

¶ 27 Viewed in the light most favorable to the prosecution (*Campbell*, 146 Ill. 2d at 374), the evidence adduced at trial showed that defendant was observed by both Officers Bady and Ruiz driving the silver Kia wearing a red and black hat. He then pulled up to Officer Bady, who asked for heroin, but defendant told her that he only had cocaine. Officer Bady testified that she did not want to blow her cover by "immediately" switching to cocaine, so she asked for his phone number, which he gave to her. Three minutes later, she called him and told him she was interested in purchasing cocaine. Nothing regarding these facts is contrary to human experience. The officer explained that immediately switching would have blown her cover, so she waited. In addition, when defendant returned as a passenger of the Kia, with Smith driving, he was wearing the same hat along with a black "hoody." When Officer Bady went to approach Smith, he directed her to the passenger side. She then went up to defendant, handed him money and he gave her narcotics. Officer Ruiz observed, from two feet away, Officer Bady reach into the Kia, then leave. When the Kia drove away, Officer Bady entered the police vehicle Officer Ruiz was driving and told her there was a positive narcotics transaction. Less than a minute later,

defendant and Smith were apprehended a few blocks away from where the transaction took place. Officers Ruiz and Bady both identified defendant and Smith as the offenders.

¶ 28 Officers Bady and Ruiz testified there were no other offenders involved in the transaction and no one else was in the car. Officer Norway also testified that defendant and Smith were the only individuals in the Kia he had stopped. When Officers Ruiz and Bady drove by defendant and Smith to identify them, they were only two feet away from them, and were able to positively identify them as the offenders. It is well established that the testimony of a single officer, if positive and credible, is sufficient to convict even if contradicted by the defendant. *People v. Loferski*, 235 Ill. App. 3d 675, 682 (1992). Here, Officers Bady and Ruiz both observed and identified defendant as involved in the transaction and Officer Norway observed defendant and Smith as the only two offenders in the Kia when he pulled it over. The jury found the officers credible, believing their testimony over that of defendant and Glover. The jury was not required to accept defendant's exculpatory testimony. *Id.* The officers' testimony was sufficient to establish that defendant first pulled up alone in the Kia and then returned to deliver the cocaine in the same vehicle driven by Smith.

¶ 29 Contrary to defendant's contention, given that two officers later identified him as the same individual involved in the earlier transaction, there was no need for any officers to follow him between the two encounters. The testimony of Officers Bady and Ruiz, alone, was sufficient for the jury to find defendant guilty of delivery of a controlled substance. *Id.*

¶ 30 Defendant contends the officers' testimony is suspect as no prerecorded funds were found on him, but only on Smith, who was also seen by Officer Bady holding a plastic bag. Defendant

maintains that Smith was the one who conducted the narcotics transaction. He also notes that nothing was done with the cellular telephones found on him and Smith, and the State failed to connect the number Officer Bady called to defendant. However, no physical evidence was required to connect defendant to the crime and corroborate the officers' testimony where their identification of him was made under circumstances permitting a positive identification. *People v. Clarke*, 391 Ill. App. 3d 596, 610 (2009).

¶ 31 Defendant further contends that Officer Ruiz would have had a difficult time identifying him from where she was located during the transaction as she was trying to remain covert during the drive-by identification. He further points out that Officer Bady failed to identify a very large tattoo on his neck. The record shows Officers Ruiz and Bady were certain of their identifications of defendant as the narcotics seller. During the transaction, Officer Ruiz was only two feet away from the Kia. Further, she had an excellent opportunity to again view defendant while they were only a few feet apart during her drive-by identification shortly thereafter. *People v. Carlton*, 78 Ill. App. 3d 1098, 1105 (1979) (witness had excellent opportunity to view offender at time of crime where she was close enough for a sufficient period of time under conditions adequate for observation and showed sufficient degree of certainty where there was a short-time span between the crime and identification). With regard to defendant's tattoo, Officer Bady noted that defendant was wearing a red and black hat along with a "hoody," which arguably blocked her view of the tattoo. Furthermore, Officer Bady was not questioned regarding the tattoo at trial; she might have recalled it had she been asked about it. Moreover, any minor omission in Officer Bady's description of defendant did not render her identification of him unreliable (*People v.*

Slim, 127 Ill. 2d 302, 308-09 (1989)), especially where her identification was corroborated by the testimony of Officer Ruiz.

¶ 32 Furthermore, Officer Bady noticed only a plastic bag in Smith's hands, not any drugs. Whether Smith's bag held drugs does not make defendant's version of the incident more plausible because the evidence overwhelmingly showed that defendant engaged in the hand-to-hand narcotics transaction with Officer Bady.

¶ 33 As for Glover's testimony that he was present, three officers rebutted his testimony. Officers Bady and Ruiz testified that defendant was alone in the Kia during the first encounter and only defendant and Smith were in the vehicle during the second encounter. Officer Norway testified that there were only two persons in the Kia when he curbed it: Smith and defendant. Glover's testimony was clearly incredible in light of his "best friend" relationship with defendant and the fact that three officers contradicted his testimony. The jury was not required to believe the testimony of defendant and his friend, claiming that the initial encounter never occurred and that Smith sold the drugs, over the testimony of the officers. *People v. Young*, 269 Ill. App. 3d 120, 123-24 (1994) (it is for the trier of fact "to determine the plausibility of [the defendant's] story" and the trier of fact "is entitled to disbelieve the explanation").

¶ 34 In sum, the matters raised by defendant involve the credibility of the officers, which falls within the purview of the trier of fact. *Campbell*, 146 Ill. 2d. at 375. For the reasons stated, we find no basis to upset the jury's determination in this case, and conclude that the evidence was sufficient to prove defendant's guilt beyond a reasonable doubt. *People v. Evans*, 122 Ill. App. 3d

733, 738 (1984) (jury's determination of witness credibility will not be set aside unless it is so unsatisfactory as to create a reasonable doubt of the defendant's guilt).

¶ 35 In reaching this conclusion, we observe that defendant cites *People v. Johnson*, 191 Ill. App. 3d 940 (1989), and *People v. Quintana*, 91 Ill. App. 2d 95, 99 (1968), for his contention that uncorroborated testimony of officers is suspect and insufficient to prove him guilty beyond a reasonable doubt. In both cases cited by defendant, the evidence at trial hinged on the uncorroborated testimony of a single police officer. *Johnson*, 191 Ill. App. 3d at 947; *Quintana*, 91 Ill. App. 2d at 99. Here, however, as set forth above, we have three officers who identified defendant: Officer Ruiz observed the narcotics transaction, Officer Bady conducted the transaction as the undercover buy officer, and Officer Norway pulled defendant and Smith over shortly after the transaction. Accordingly, the officers' testimony was corroborated, and these cases, *Johnson* and *Quintana*, are distinguishable from the present facts. There was more than sufficient evidence in this case for the jury to find defendant guilty of delivery of a controlled substance beyond a reasonable doubt. *Loferski*, 235 Ill. App. 3d at 682 (it is well established that the credible testimony of single officer, alone, is sufficient to convict).

¶ 36 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 37 Affirmed.