2016 IL App (1st) 141449-U

SIXTH DIVISION
December 9, 2016

No. 1-14-1449

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 13900
	)	
CHARLES WILLIAMS,	)	Honorable
	)	Raymond Myles,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for possession of a controlled substance affirmed where arresting officer testified that defendant dropped a bag of heroin in the officer's presence. Fines, fees, and costs order modified.

¶ 2 Following a bench trial, defendant Charles Williams was convicted of possession of a controlled substance (heroin) in violation of section 570/402(c) of the Illinois Control Substances Act (Act) (720 ILCS 570/402(c) (West 2012)), and sentenced to two years' probation and 50 hours of community service. On appeal, defendant argues that the State failed to prove his guilt beyond a reasonable doubt because the arresting officer's testimony was unreliable. Defendant

also argues that his fines, fees, and costs order should be modified. We affirm defendant's conviction and direct the clerk of the circuit court of Cook County to modify defendant's fines, fees, and costs order.

¶ 3 Defendant was arrested on July 4, 2012, as a result of a Chicago police narcotics investigation and surveillance near the intersection of St. Louis Avenue and Flournoy Street. He was subsequently charged with one count of possession of a controlled substance.

¶ 4 At trial, Chicago police officer Aaron Acevedo testified that, at approximately 7:30 p.m. on July 4, 2012, he and his partner, Officer McCarthy, were conducting a narcotics investigation near the 3400 block of West Flournoy Street in Chicago. Officer Acevedo was the "enforcement officer," and was sitting inside a marked police vehicle "a few blocks" from the surveillance area. Officer McCarthy was the surveillance officer. During the investigation, the officers were in communication via police radio and mobile telephone. Officer McCarthy told him there was an "older man black," at the intersection of Homan Avenue and Flournoy Street. At the intersection, Officer Acevedo observed defendant, who matched that description, standing at the corner. Defendant was the only person in the area at the time. Officer Acevedo exited his vehicle to conduct a field interview with defendant. As he did so, he observed defendant, "[l]ess than ten feet away," "drop a white item from his left hand to the ground." Officer Acevedo arrested defendant and recovered a small "[t]in foil packet of suspect heroin." He placed the suspect heroin into inventory at the 11th District police station.

¶ 5 The parties stipulated that, if called to testify, Illinois State Police Crime Lab forensic scientist Penny Weinstein, would verify that the suspect heroin recovered by Officer Acevedo weighed 0.5 grams and tested positive for the presence of heroin. The State then rested.

¶ 6 Defendant testified that, on the night in question, he was walking to the store and was stopped by the police at the intersection of Homan Avenue and Flournoy Street. A police officer "pulled up and came straight over to [him] and start[ed] patting [him] down," but the officer did not recover anything from defendant's person. The officer then "picked up something on the ground and said this is yours here." Defendant denied dropping anything to the ground. During cross-examination, defendant testified that there were people in the area, including some individuals who were standing in close proximity to him.

¶ 7 After hearing closing arguments, the court found defendant guilty of possession of a controlled substance. In so finding, the court stated: "This is a one-on-one case where credibility is an issue. Both parties told stories that are diametrically opposed to each other. As the court [assesses] the credibility, the court finds that the officer was more credible than the defendant." Prior to sentencing, the court denied defendant's motion for a new trial. Defendant was sentenced to two years' probation, and 50 hours of community service. Defendant was assessed a total of $1,089 in fines, fees, and costs. Defendant appeals.

¶ 8 On appeal, defendant first argues that the State failed to prove him guilty of possession of a controlled substance beyond a reasonable doubt and that Officer Acevedo's testimony was unreliable and insufficient to establish his guilt.

¶ 9 When a defendant challenges the sufficiency of the evidence to sustain a conviction, the 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 offense beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). Under this standard, a reviewing court does not retry the defendant (*People*

v. Beauchamp, 241 Ill. 2d 1, 8 (2011)), or substitute its judgment for that of the trier of fact, on issues involving the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). A criminal conviction will be reversed only if the evidence is so improbable or unsatisfactory that there is a reasonable doubt as to the defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 10 Here, defendant was found guilty of possession of a controlled substance in violation of section 570/402(c) of the Act (720 ILCS 570/402(c) (West 2012)). To sustain a conviction for this offense, the State had to prove, beyond a reasonable doubt, that defendant: (1) had knowledge of the presence of the narcotics and; (2) had possession or control of the narcotics. *Id*.; *Givens*, 237 Ill. 2d at 334-35. Possession is proved by evidence which demonstrates that the defendant exercised "dominion" over the illicit material, here heroin. *People v. Schmalz*, 194 Ill. 2d 75, 82 (2000). Dominion includes attempts to conceal or throw away the contraband. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). "Whether there is knowledge and whether there is possession or control are questions of fact to be determined by the trier of fact." *Schmalz*, 194 Ill. 2d at 81 (citing *People v. Galloway*, 28 Ill. 2d 355, 358 (1963)).

¶ 11 After examining the evidence in the light most favorable to the State, we conclude that a rational trier of fact could have found, beyond a reasonable doubt, that defendant possessed the heroin. The record shows that Officer Acevedo was part of a narcotics investigation near the intersection of Homan Avenue and Flournoy Street. Officer Acevedo testified that he responded to that intersection in response to the surveillance officer's report of an "older black man." Defendant, who was 51 years old at the time of the incident, and standing on the corner of that

intersection, matched the description. Officer Acevedo approached defendant and witnessed, from a distance of 10 feet, defendant drop from his left hand a small packet to the ground. Officer Acevedo never lost sight of the packet and, after arresting defendant, recovered the small packet. The contents of the small packet tested positive for heroin. This evidence was not so unsatisfactory as to raise a reasonable doubt of defendant's guilt. See *People v. Bradford*, 187 Ill. App. 3d 903, 918 (1989) ("the testimony of a single law enforcement officer is sufficient to support a conviction in a narcotics case"); see also *People v. Smith*, 185 Ill. 2d 532, 541 (1999) (the testimony of a single, credible witness may be sufficient to convict).

¶ 12 Defendant, nevertheless, argues that Officer Acevedo's testimony was "so incredibly vague, unbelievable, and lacking in any way verifiable detail," that it was insufficient to sustain his conviction. Specifically, defendant claims that the officer's testimony, that he dropped the suspect heroin when the officer was less than ten feet away, "describes such patently self-incriminating conduct that it runs counter to the human experience." Defendant also argues that the officer's generic description of an "older man black," combined with the officer's testimony that defendant was the only individual in the area, is self-serving and unreliable.

¶ 13 Essentially, defendant is asking this court to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact, which is not the role of this court. *Siguenza-Brito*, 235 Ill. 2d at 224-25. A reviewing court will not reverse a conviction simply because defendant claims that a witness was not credible. *People v. Evans*, 209 Ill. 2d 194, 211-12 (2004). It was the responsibility of the trier of fact to determine the credibility of the witnesses, the weight to be given to their testimony, and to resolve any inconsistencies and conflicts in the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In announcing its decision, the court

stated: "This is a one-on-one case where credibility is an issue. *** As the court [assesses] the credibility, the court finds that the officer was more credible than the defendant." We will not substitute our judgment for that of the trier of fact on these matters. *Id*. at 242. As mentioned, a reviewing court will reverse a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *Siguenza-Brito*, 235 Ill. 2d at 225. This is not one of those cases.

¶ 14 In reaching this conclusion, we are likewise not persuaded by defendant's argument that Officer Acevedo's testimony was incredible because police officers allegedly frequently fabricate stories of criminal suspects dropping evidence in plain view of police in order to circumvent the search and seizure restrictions of the fourth amendment. See *People v. Ash*, 346 Ill. App. 3d 809, 816 (2004) ("A 'dropsy case' is one in which a police officer, to avoid the exclusion of evidence on fourth-amendment grounds, falsely testifies that the defendant dropped the [evidence] in plain view * * *."). In support of this argument, defendant relies on a law review article; a New York criminal case; and a 1967 article detailing the happenings of a New York Criminal Courtroom, none of which have any binding authority upon this court. That aside, our supreme court has recognized that "[f]ar from being contrary to human experience, cases which have come to this court show it to be a common behavior pattern for individuals having narcotics on their person to attempt to dispose of them when suddenly confronted by authorities." *People v. Henderson*, 33 Ill. 2d 225, 229 (1965) (and cases cited therein). Moreover, this relates to Officer Acevedo's credibility, and is best reserved for the trier of fact. It is not the function of this court to speculate as to why defendant decided to drop narcotics in plain view of an officer.

¶ 15 Defendant next argues, the State concedes, and we agree that the $5 Electronic Citation fee assessed pursuant to section 27.3e of the Clerk of the Courts Act (705 ILCS 105/27.3e (West 2012)), must be vacated, as that fee only applies to traffic, misdemeanor, municipal ordinance, and conservation violations, and does not apply to defendant's felony conviction for possession of a controlled substance. *Id*.; *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 115 (vacating the fee where the defendant's offense did not fall into an enumerated category). Accordingly, we direct the clerk of the circuit court to vacate the $5 Electronic Citation fee from defendant's fines, fees and costs order.

¶ 16 The parties also agree that the trial court failed to award defendant the proper amount of monetary credit for the time he served in presentence custody, and that his presentence custody credit should be applied to the $10 Mental Health Court fee (55 ILCS 5/5-1101(d-5) (West 2012)), and the $30 Children's Advocacy Center fee (55 ILCS 5/5-1101(f-5) (West 2012)), assessed by the trial court. A defendant incarcerated on a bailable offense, who does not supply bail, and against whom a fine is levied, is allowed a credit of $5 for each day he spends in presentence custody. 725 ILCS 5/110-14(a) (West 2012). Here, defendant spent two days in presentence custody. Therefore, he has accumulated $10 credit toward his eligible fees.

¶ 17 We agree with the parties that the $10 Mental Health Court fee (55 ILCS 5/5-1101(d-5) (West 2012)), and the $30 Children's Advocacy Center fee (55 ILCS 5/5-1101(f-5) (West 2012)), are fines subject to offset by defendant's presentence custody credit. See *People v. Williams,* 2011 IL App (1st) 091667-B, ¶ 19 (where this court found that both the Mental Health Court fee and Children's Advocacy Center fee were, in fact, fines and are, therefore, subject to offset by presentence custody credit).

¶ 18 For the reasons stated, defendant's conviction for possession of a controlled substance is affirmed, the $5 Electronic Citation fee is hereby vacated, and defendant is awarded $10 presentence custody credit to offset the $10 Mental Health Court fee, and the $30 Children's Advocacy Center fee. Pursuant to Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the circuit court to correct the fines, fees, and costs order accordingly.

¶ 19 Affirmed; fines, fees, and costs order modified.