2018 IL App (1st) 151537-U

No. 1-15-1537

Order filed January 9, 2018

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 12468
	)	
ANTWAN CARTER,	)	Honorable
	)	Mauricio Araujo,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Neville and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for delivery of a controlled substance is affirmed over his contention that the State failed to prove beyond a reasonable doubt that he delivered heroin to an undercover police officer.

¶ 2 Following a bench trial, defendant Antwan Carter was found guilty of delivery of a controlled substance (720 ILCS 570/401(d)(West 2014)) and sentenced to four years' imprisonment. On appeal, defendant contends that the State failed to prove beyond a reasonable

doubt that he delivered heroin to an undercover police officer because the identification testimony of the State's witnesses was unreliable. We affirm.

¶ 3 Defendant, along with codefendant, Anthony Sanchez[1], was charged by indictment with two counts of delivery of a controlled substance. 720 ILCS 570/401(d) (West 2014). Count one alleged that defendant unlawfully and knowingly delivered less than one gram of a substance containing heroin, or an analog thereof within 1000 feet of any public park. 720 ILCS 570/407(b)(2) /401(d) (West 2014). Count two alleged that defendant unlawfully and knowingly delivered less than one gram of a substance containing heroin, or an analog thereof. 720 ILCS 570/401(d) (West 2014). The State dismissed the first count before trial and proceeded on count two.

¶ 4 At trial, Chicago police officer Jose Rojas testified that on June 24, 2014, he was a member of the narcotics unit based out of Homan Square and on duty working in an undercover capacity. Rojas was riding a bicycle in the vicinity of Chicago Avenue and Trumbull Avenue. At approximately 4:00 p.m., as Rojas rode past 831 North Trumbull, he observed defendant standing in the area. Defendant shouted to Rojas "[B]lows right here. Right here." Rojas understood the word "blows" as street terminology for heroin. Rojas rode his bicycle to defendant and told him that he needed "two." Defendant turned northbound on Trumbull, yelled "yo" to Sanchez, and directed Rojas to him. Rojas rode to Sanchez's location. Sanchez asked Rojas how many he needed. Rojas replied "two blows" and gave Sanchez a $20 bill that was prerecorded as "1505 funds." Sanchez reached into his pocket and removed two taped Ziploc baggies with the "Notre Dame emblem" on each of the baggies. Rojas took the baggies from Sanchez, placed them in his pocket, and rode away from the area. As he did so, he removed his

[1] Anthony Sanchez pled guilty and was not part of defendant's trial.

hat, signaling his fellow officers that a positive narcotics transaction had been made. Rojas rode to his undercover vehicle and placed his bicycle in the car. Rojas then returned to the area of Chicago and Trumbull and saw defendant and Sanchez being detained by his fellow police officers. Rojas signaled a positive identification over the police radio and defendant and Sanchez were arrested. Rojas returned to Homan Square and inventoried the two baggies he received from Sanchez.

¶ 5 On cross-examination, Rojas acknowledged that, in his police report, he described defendant as wearing a "white t-shirt and dark jeans" and that this was common attire for young males in that neighborhood. Rojas admitted that he did not hear defendant yelling "blows" to anyone else or see him flagging down cars. Rojas testified that he spent a total of 15 seconds with defendant and acknowledged that defendant did not take any money from him and did not give him narcotics.

¶ 6 Officer Piek testified that, about 3:40 p.m., on June 24, 2014, he was working as a surveillance officer for the narcotics unit and was in the area of Chicago Avenue and Trumbull Avenue as part of an on-going narcotics investigation. From his undercover vehicle, Piek observed defendant and Sanchez on the northwest corner of Chicago and Trumbull pacing back and forth "yelling out in traffic, looking at cars passing by." Approximately 20 minutes later, Piek observed Rojas ride to the location on a bicycle and approach defendant. Piek testified that he was approximately 75 to 100 feet away from defendant and Rojas. Piek observed as defendant pointed to Sanchez and watched Rojas ride to where Sanchez was standing. Piek, who was about 10 feet away from Rojas and Sanchez, saw them engage in a hand-to-hand transaction. During the transaction, Rojas tendered Sanchez money and in return Sanchez gave Rojas small objects.

Piek watched as Rojas rode away from the area. Moments later, Piek saw Sanchez walk to where defendant was standing and give defendant an unknown object.

¶ 7 On cross-examination, Piek acknowledged that, in his police report, he did not include that Sanchez gave an object to defendant.

¶ 8 Chicago police officer Debra Witt testified that on June 24, 2014, she was working as an enforcement officer for the narcotics unit. Witt received a description of two individuals wanted for a narcotics transaction in the area of Chicago and Trumbull. Defendant was described as a "male black about 6'2" weighing 180 lbs. wearing a white T-shirt and dark jeans" and Sanchez was described as a "male Hispanic 5'11" 180 lbs. also wearing a white T-shirt and dark jeans." Witt arrived at the location and detained two individuals who matched that description. Witt arrested defendant after she received a positive identification signal from Rojas. She recovered a $20 bill marked as "1505 funds" from defendant's pocket. Witt knew it was the "1505 funds" because the serial number matched the number she had received. Witt testified that the "1505 funds" serial numbers are either written down, a picture of the bill is taken, or the officers put the image of the bills into their telephones.

¶ 9 On cross-examination, Witt acknowledged that defendant and Sanchez were just "hanging out" when she arrived in the area. Witt admitted that she recovered $9 from Sanchez.

¶ 10 The parties stipulated that the two baggies that Rojas received from Sanchez were examined by an analyst at the Illinois State Police Crime Lab and tested positive for the presence of heroin in the amount of .1 grams of actual weight. The State rested. Defendant did not present any evidence.

¶ 11 Based on this evidence the trial court found defendant guilty of delivery of a controlled substance. In announcing its decision, the court recounted the evidence presented and Rojas's testimony regarding his initial encounter with defendant. The court pointed out that defendant directing Rojas to Sanchez where the narcotics transaction was completed and that Officer Witt recovered the "1505 funds" from defendant. The court rejected trial counsel's closing argument that Officer Piek's testimony was incredible and found defendant "guilty beyond a reasonable doubt." The court subsequently sentenced defendant to four years' imprisonment.

¶ 12 On appeal, defendant challenges the sufficiency of the evidence to sustain his conviction. Defendant contends that the State failed to prove that the $20 bill recovered from him was the prerecorded funds and that the officers' testimony failed to prove that he was involved in the narcotics transaction.

¶ 13 The standard of review on a challenge to the sufficiency of the evidence is 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. *People v. Wheeler,* 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases regardless whether the evidence is direct or circumstantial. *People v. Herring,* 324 Ill.App.3d 458, 460 (2001); *People v. Campbell,* 146 Ill. 2d 363, 374-75 (1992). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson,* 2013 IL. App (1st) 102332 ¶ 27; *People v. Ortiz,* 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not the reviewing court's duty to retry the defendant. *People v. Beauchamp,* 241 Ill. 2d 1, 8 (2011); *People v. Collins,* 106 Ill. 2d 237, 261 (1985). A reviewing court will only reverse a criminal

conviction when the evidence is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8; *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 14 In order to sustain a finding of guilt for delivery of a controlled substance, the State was required to prove beyond a reasonable doubt that defendant "had (1) knowledge of the presence of a controlled substance, (2) the controlled substance within his or her immediate control, and (3) the intent to deliver it. *People v. Rivas*, 302 Ill. App. 3d 421, 429-30 (1998) (citing, *People v. Pintos*, 133 Ill. 2d 286 (1989)); 720 ILCS 570/401(d) (West 2014). The element of knowledge can rarely be proven directly, and it is established by defendant's actions, declarations or conduct from which the trier of fact may infer that the defendant knew of the existence of the controlled substance." *Id.*

¶ 15 After viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could find that defendant knowingly delivered .1 gram of heroin. The record shows that, during a narcotics investigation, Officer Rojas observed defendant standing on a street corner and shouting "[B]lows right here. Right here." Rojas knew that "blows" was a street term for heroin. Rojas approached defendant and told him that he wanted "two blows." Defendant called out to Sanchez, who was standing nearby, and directed Rojas to Sanchez. Rojas rode to Sanchez and handed him a $20 bill of prerecorded funds. In exchange for the money, Sanchez gave Rojas two baggies containing heroin. Both defendant and Sanchez were arrested and the prerecorded funds were recovered from defendant. This evidence, and the reasonable inferences therefrom, support the conclusion that defendant was guilty of delivery of a controlled substance beyond a reasonable doubt.

¶ 16 Defendant nevertheless argues that the evidence was insufficient to establish his guilt because the State failed to show that the $20 bill recovered from him was prerecorded funds. In support of this argument, defendant points out that Rojas could not say where he obtained the $20 bill or how he knew it was prerecorded. He also points out that the State did not introduce the serial number of the bill or produce the prerecorded funds sheet. Contrary to defendant's argument, however, the State is not required to produce the prerecorded funds used in a narcotics transaction. *People v. Trotter*, 293 Ill. App. 3d 617, 619 (1997). Moreover, the State was not required to prove that money was exchanged during the transaction to sustain defendant's conviction. See 720 ILCS 570/401 (West 2014); 720 ILCS 570/102 (h) (West 2014) ("delivery" is defined as "the actual, constructive or attempted transfer of possession of a controlled substance with or without consideration").

¶ 17 Defendant also argues that the officers' in court identification testimony of him as the offender was too unreasonable, improbable and unsatisfactory to prove his guilt. Defendant argues that Rojas, Piek, and Witt's in court identification of him was unreasonable because it occurred nine months after the narcotics transaction in question and the officers have conducted numerous narcotics investigations since that time. Defendant further argues that Officer Rojas' description of him was too general and could have fit numerous young males in the area of the transaction; that his identification of defendant at the scene was improbable due to his angle of view; and he did not spend more than 15 seconds with defendant. Defendant also points out that Piek's distance in observation was greater than what he testified to at trial and that his testimony was undermined by the omission of detail of the transaction in his police reports. Lastly, defendant alleges that Witt's testimony failed to prove his involvement in the narcotic sale

because she received a generic description of the offender from Rojas and did not witness the actual transaction.

¶ 18 When a conviction depends on eyewitness testimony, the reviewing court may find the testimony to be insufficient "only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001). A reviewing court will not reverse a conviction based on eyewitness testimony unless that testimony is "improbable, unconvincing, or contrary to human experience." *Id.* It has been well-established that the testimony of a single police 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).

¶ 19 Officers Rojas and Piek were the primary witnesses to the narcotics transaction and identified defendant in court. When assessing identification testimony, this court relies on the factors set forth in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). These factors include (1) the opportunity the witness had to view the offender at the time of the offense; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the offender; (4) the level of certainty demonstrated by the witness at the identification confrontation; and (5) the length of time between the crime and the identification confrontation. *People v. White*, 2017 IL. App (1st) 142358, ¶ 15.

¶ 20 In considering the *Biggers* factors in relation to Officers Rojas and Piek's identification of defendant at the time of the narcotics purchase, we conclude that they weigh in the State's favor. First, the record demonstrates that Rojas had sufficient opportunity to view defendant. Rojas testified that he observed defendant for 15 seconds at Chicago and Trumbull when

defendant shouted to Rojas "[B]lows right here. Right here." Rojas identification was corroborated by Officer Piek who testified that he watched Rojas ride a bicycle to Chicago and Trumbull and approach defendant. Defendant then pointed to Sanchez and Rojas rode his bike to where Sanchez was standing and the narcotics transaction occurred. This court has held that "an encounter as abbreviated as five to ten seconds" is sufficient to support a conviction. *People v. Barnes*, 364 Ill. App. 3d 888, 894 (2006); *People v. Parks*, 50 Ill. App. 3d 929, 933 (1977). Thus, the first *Biggers* factor weighs in favor of the identification of defendant.

¶ 21 The second factor, Rojas and Piek's degree of attention, also weighs in favor of a reliable identification. Rojas was working undercover capacity and had to make sure his description of defendant was sufficient for his fellow enforcement officers to affect the arrest. Piek was the surveillance officer and was responsible for witnessing the transaction as well as for Rojas wellbeing. This court has previously found that, when a police officer is responding to a call, his degree of attention is high "and in all likelihood greater than that of an average citizen witnessing a crime or being victimized by a crime." See *People v. Stanley*, 397 Ill. App. 3d 598, 611 (2009).

¶ 22 Third, the accuracy of the witness's prior description of the offender also supports the reliability of Rojas' identification. The record shows that, when Rojas completed the narcotics transaction with Sanchez, he immediately broadcast a description of defendant. Rojas described him as "male black about 6'2" weighing 180 lbs. wearing a white T-shirt and dark jeans" Although defendant challenged this description in the trial court, "a witness's identification can be sufficient even though the witness provided only a general description based on the overall appearance of the offender." *People v. Slim*, 127 Ill. 2d 302, 308-09 (1989).

¶ 23 Finally, the last two *Biggers* factors—the level of certainty demonstrated by the witness at the identification confrontation and the length of time between the crime and the identification confrontation—further support the reliability of Rojas and Piek's identification. The record shows that Rojas identified defendant within several minutes after the narcotics transaction. Piek witnessed the transaction and moments later, the arrest by Officer Witt. We note that significantly longer lengths of time have not rendered identifications unreliable. See *People v. Malone*, 2012 IL. App. (1st) 110517, ¶ 36 (one year and four month delay between crime and positive identification). Additionally, Rojas drove to where defendant was being detained and signaled to his fellow police officers identifying defendant. Officers Rojas, Piek and Witt also made positive in-court identifications of defendant as the person who engaged in the narcotics transaction. See *People v. Magee*, 374 Ill. App. 3d 1024, 1032-33 (2007) (a witness's identification was sufficient when it was made without hesitation).

¶ 24 In sum, we cannot say that Officers Rojas and Piek's identification of defendant was so unreliable that there exists a reasonable doubt as to defendant's guilt. Therefore, we will not disturb the trial court's finding that defendant was guilty of delivery of a controlled substance.

¶ 25 Affirmed.