2014 IL App (2d) 121075-U
No. 2-12-1075
Order filed July 24, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. TIMOTHY MORRIS, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 11-CF-2340 Honorable John J. Kinsella, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hudson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of criminal drug conspiracy, as the jury could credit the State's evidence that defendant did not merely engage in a buyer-seller drug transaction but rather was a cog in a larger delivery operation.

¶ 2 Following a jury trial, defendant, Timothy Morris, was convicted of criminal drug conspiracy (720 ILCS 570/405.1(a) (West 2010)), and he was sentenced to 10 years' imprisonment. On appeal, he claims that he was not proved guilty beyond a reasonable doubt. More specifically, although he admits that he sold drugs, he claims that evidence of the single drug transaction in which he was involved established only that he was engaged in a buyer-seller

relationship, which is insufficient to prove criminal drug conspiracy. We disagree. Thus, we affirm.

¶ 3 The following facts are relevant to resolving the issue raised. In September 2011, Kenneth Czubak, an undercover Naperville police officer, was part of an investigation of Gilda Ruales and Teresa Sanchez for selling ecstasy pills. As part of this investigation, Officer Czubak purchased 200 ecstasy pills from Ruales, observing first that Ruales obtained the pills from Marchello Hicks. After purchasing the 200 ecstasy pills, Officer Czubak talked with Ruales about meeting twice a month and purchasing larger quantities of ecstasy pills from her.

¶ 4 In October 2011, Officer Czubak again arranged to buy ecstasy pills from Ruales. Ruales told Officer Czubak that "her guy," meaning Hicks, was unavailable to supply her with the drugs, but that she could go through "her other guy," meaning defendant. With regard to defendant, Ruales told Officer Czubak that "she only went through [defendant] when she was in a situation where she wouldn't purchase Ecstasy from [Hicks]," that the pills would be similar to those that Hicks supplied, and that purchasing the drugs from defendant would cost an additional $100. Knowing this, Officer Czubak agreed to buy 300 ecstasy pills from Ruales.

¶ 5 On October 6, 2011, Scott Thorsen, a Naperville police officer, observed defendant at a Family Dollar store on the west side of Chicago. Officer Thorsen observed defendant approach the car in which Ruales was seated. Before defendant spoke with Ruales, Officer Thorsen saw defendant talking on a cell phone. Phone records revealed that defendant was talking to Hicks, who is defendant's cousin, and defendant told Officer Thorsen after he was arrested that he called Hicks to make sure that Ruales was one of the women for whom he was looking. Ruales and Sanchez, who was with Ruales that day, told defendant that they were looking for "Gangster," which is Hicks's nickname, and that they wanted to deal with Hicks, not defendant,

in the future. Once Ruales and Sanchez identified Hicks as "Gangster," defendant knew that these were the women for whom he was looking. Officer Thorsen saw defendant finish his phone call, engage in a conversation with Ruales and Sanchez, and walk away from Ruales's car while counting money.

¶ 6 Soon thereafter, defendant was arrested. Recovered from defendant was $1,375. Almost half of this amount consisted of bills that the police had prerecorded and that were used in the September sale.

¶ 7 After defendant was arrested, Officer Thorsen questioned him about his involvement in the drug transaction. While defendant initially denied his involvement, telling Officer Thorsen that he was in the area to buy a shirt, defendant eventually provided details about the drug transaction. For instance, although defendant was unsure of how many ecstasy pills he sold Ruales and Sanchez, he said that he "sold them all of them," that "[t]hey were packaged into small individual baggies of twenty-five pills in each individual bag," and that he got the pills from Hicks. The pills, which were found inside a paper coffee cup, were packaged in 12 golf-ball-sized clear plastic baggies.

¶ 8 Officer Thorsen testified that, when he talked to defendant, defendant told him that "he was delivering the Ecstasy pills for *** Hicks," "he had been doing it [for] approximately a month or so," the deliveries "took place at various locations around the west side of Chicago," and he received $100 each time he made a delivery for Hicks. Defendant would receive his payment when, within a day or two after the delivery, he turned over to Hicks the money defendant got from selling the drugs. After talking to Officer Thorsen, defendant voluntarily made a written statement that was consistent with what he told Officer Thorsen, and defendant signed the statement after writing it.

¶ 9 When defendant testified, he admitted that he sold to Ruales ecstasy pills that he got from "local people around the neighborhood." However, he denied knowing and being related to Hicks, contended that Officer Thorsen was not truthful about the conversation they had, denied making a written statement and signing it, and claimed that the money he had on him when he was arrested came from an unemployment matter.

¶ 10 The jury found defendant guilty, defendant was sentenced, and this timely appeal followed.

¶ 11 At issue in this appeal is whether defendant was proved guilty beyond a reasonable doubt of criminal drug conspiracy. More specifically, defendant asks us to consider whether the evidence established beyond a reasonable doubt that he was involved in something more than a single drug transaction with Ruales.

¶ 12 Evidence is sufficient to sustain a conviction if, when viewed 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. Perez*, 189 Ill. 2d 254, 265-66 (2000). In assessing the sufficiency of the evidence, we do not retry the case. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, we defer to the trier of fact's assessment of witness credibility, the weight it gave the evidence, and the reasonable inferences it drew from the evidence. *People v. Steidl*, 142 Ill. 2d 204, 226 (1991).

¶ 13 "To establish a conspiracy there must be a common design; a concert of will and endeavor on the part of two or more persons with a view to attaining the same unlawful object." *People v. Gates*, 29 Ill. 2d 586, 590 (1963). As relevant here, a person commits the offense of criminal drug conspiracy when, (1) "with the intent that an offense [of unlawful delivery of a controlled substance (see generally 720 ILCS 570/401 (West 2010))] be committed," (2) the

defendant "agree[d] with another to the commission of that offense," and (3) the defendant or a coconspirator committed an act in furtherance of such agreement. 720 ILCS 570/405.1(a) (West 2010). In evaluating whether the State has met its burden on all of the elements, the trier of fact may, based on the surrounding facts and circumstances, infer the existence of an agreement among coconspirators to do a criminal act. *People v. Garth*, 353 Ill. App. 3d 108, 121 (2004). "Because of the clandestine nature of conspiracy, the courts have permitted broad inferences to be drawn from the circumstances, acts[,] and conduct of the parties." *Id.*

¶ 14 With these principles in mind, we determine that defendant was proved guilty beyond a reasonable doubt of criminal drug conspiracy. Specifically, the State's evidence revealed that Officer Czubak had previous dealings with Ruales, who would sell ecstasy pills for Hicks. Consistent with this relationship, defendant, who had worked with Hicks for a month or so prior to October 2011, agreed to deliver to Ruales the 300 pills that Ruales would then sell to Officer Czubak. On October 6, 2011, the agreed-upon meeting date, defendant arrived at a parking lot on the west side of Chicago, which is the area where he made deliveries for Hicks, and phoned Hicks to make sure that Ruales was one of the women to whom he was supposed to sell the pills. When defendant received confirmation from Hicks and Ruales that Ruales was one of the women for whom he was looking, he sold the ecstasy pills to Ruales, knowing that the pills were packaged for resale. That is, according to Officer Thorsen's testimony, defendant knew that the pills were evenly divided and bundled in 12 individual clear plastic baggies. The pills recovered from this sale were indeed packaged in this manner. The fact that defendant knew that the pills he sold to Ruales were prepared for distribution strongly suggests that defendant was part of something more than a simple buyer-seller relationship. See *People v. Stroud*, 392 Ill. App. 3d 776, 801 (2009). Once defendant delivered the drugs to Ruales, he received from her the

payment to which Ruales and Officer Czubak agreed, which included an extra $100 charge, and defendant knew, based on his previous dealings with Hicks, that he would receive from Hicks this extra $100 for his efforts. The reasonable inference to draw from this evidence is that defendant was intimately involved in delivering drugs to Hicks's various distributors, including Ruales. This involvement is enough to establish defendant's guilt. See *People v. Vincent*, 92 Ill. App. 3d 446, 461 (1980) ("When *** the evidence reveals that a conspiracy has been entered into, each conspirator becomes liable for the acts of his co-conspirators done in furtherance of the conspiracy.").

¶ 15 Defendant argues that, based on his testimony, he did nothing more than sell ecstasy one time, without any involvement in or knowledge about Hicks and Ruales's arrangement to continue selling drugs to Officer Czubak. The problem with defendant's argument is that his testimony contradicts what he told Officer Thorsen after he was arrested and what he specified in his written statement. The jury, as the trier of fact, was free to accept either defendant's testimony, where he denied knowing Hicks and making a written statement, or his previous version of the relevant events as he relayed them to Officer Thorsen. The jury chose to believe what defendant told Officer Thorsen, and we will not reassess that choice. Not only is the jury "not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt" (*People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009)), but the jury's "findings of credibility [must be] given greater weight because it saw and heard the witnesses" (*People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51). Accordingly, we cannot credit defendant's testimony over Officer Thorsen's testimony and defendant's written statement and conclude that there is reasonable doubt of defendant's guilt.

¶ 16 Additionally, citing the factors considered in *Stroud*, and essentially elevating them to a test to be applied in all criminal-drug-conspiracy cases, defendant argues that the evidence established only that he and Ruales were involved in a simple buyer-seller relationship. In *Stroud*, the court noted that "[t]he federal courts generally consider factors such as the length of the relationship, the established method of payment, the extent to which the transactions were standardized, *** the level of mutual trust," and "whether the seller was aware of the buyer's resale objectives" in determining whether a defendant can be found guilty of criminal drug conspiracy. *Stroud*, 391 Ill. App. 3d at 801. The court then used these factors to find the defendant guilty of criminal drug conspiracy. *Id.* at 801-02.

¶ 17 We find the *Stroud* factors inapplicable here. First, we are not bound to follow an opinion from another district of the appellate court. See *Kovac v. Barron*, 2014 IL App (2d) 121100, ¶ 85. Second, cases such as this, which are fact-specific, cannot be subject to a "test" that is uniformly applied in every case involving the same offense. Indeed, even the court in *Stroud* never implied that these factors, and only these factors, can be used in determining whether more than a simple buyer-seller relationship was shown. Accordingly, we reject defendant's contention that the *Stroud* factors control here.

¶ 18 Because we conclude that the evidence was sufficient to prove beyond a reasonable doubt defendant's guilt of criminal drug conspiracy, we need not address the parties' alternative claims concerning whether the evidence was sufficient to prove defendant guilty of the lesser included offense of unlawful delivery of a controlled substance.

¶ 19 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 20 Affirmed.