2012 IL App (4th) 100146-U

Filed 1/4/12

NO. 4-10-0146

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
STEVE JONES II,	)	No. 09CF98
Defendant-Appellant.	)	
	)	Honorable
	)	William O. Mays,
	)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Presiding Justice Turner and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The State presented sufficient evidence to convict defendant of criminal drug conspiracy. The trial court's violation of Illinois Supreme Court Rule 431(b) does not meet the requirements for plain-error review.

¶ 2 A jury found defendant, Steve Jones II, guilty of criminal drug conspiracy (720 ILCS 570/405.1 (West 2008)). The trial court sentenced defendant to nine years' imprisonment in the Illinois Department of Corrections. On appeal, defendant argues his conviction must be reversed, because (1) the State did not present sufficient evidence on each element necessary for conviction and (2) the court violated Illinois Supreme Court Rule 431(b) (eff. May 1, 2007). We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with committing criminal drug conspiracy (720 ILCS 570/405.1(a) (West 2008)). A jury found defendant guilty. The trial court sentenced defendant

to nine years' imprisonment in the Illinois Department of Corrections.

¶ 5 In September 2008, Lee Mangold, an inspector with the West Central Illinois Drug Task Force, and Matt McElfresh, a deputy sheriff with the Adams County sheriff's office, received information that Steve Jones, Sr., defendant's father, was engaging in illegal drug activities. Steve Sr. was allegedly purchasing drugs in St. Louis, Missouri, and reselling them in Quincy, Illinois. Mangold and McElfresh learned that Walter and Janet Thompson were also involved in Steve Sr.'s drug activities. When confronted by the officers regarding their involvement with Steve Sr., Walter and Janet admitted to accompanying Steve Sr. to St. Louis to purchase drugs and agreed to help the officers in their investigation. Janet testified that during the summer of 2008 she alone accompanied Steve Sr. on three-to-four trips to St. Louis. In the past, Janet worked as a confidential source for law enforcement. She has a criminal record that includes convictions for forgery, financial identity theft, unlawful use of a credit card, and retail theft.

¶ 6 On September 25, 2008, Walter informed Mangold that Steve Sr. was planning a trip to St. Louis for the following day. Walter was aware of the trip because Steve Sr. wanted Janet to accompany him on the trip in order to hide the drugs he would be purchasing. The officers decided to allow Steve Sr. and Janet to make the trip to St. Louis. However**,** the officers planned to perform a vehicle stop during Steve Sr.'s return trip to Quincy. Later that same day, McElfresh placed a global positioning system (GPS) tracking device on the vehicle Steve Sr. planned to drive to St. Louis. No warrant was obtained for the GPS device.

¶ 7 On the day of the trip, September 26, 2008, Steve Sr. told Janet that defendant and his nephew, who lived in Hannibal, Missouri, would also be going on the trip. At approximately

3 p.m., defendant, Janet, and Steve Sr. left Quincy for St. Louis. The police did not search Janet before she left on the trip. On the way to St. Louis, they picked up Steve Sr.'s nephew. At trial, Janet testified that during the drive to St. Louis, she witnessed defendant give Steve Sr. approximately $150 to purchase an 8-ball or 3.5 grams of crack cocaine. She also testified that defendant and Steve Sr. discussed their intent to take the cocaine and "weigh it out, bag it up and sell it."

¶ 8 After arriving in St. Louis, Steve Sr. and Janet entered the residence of Steve Sr.'s drug dealer and exchanged $300 for one-half ounce of crack cocaine. Before leaving the drug dealer's residence, Janet hid the crack cocaine in her underwear. Defendant was not present when the crack cocaine was purchased.

¶ 9 Following the purchase, Janet drove the vehicle to a gas station in Hannibal. At the gas station, Janet called Mangold to let him know of their location. She had been in contact with Mangold throughout the trip via telephone. In Hannibal**,** Steve Sr. took over as driver. Shortly after Steve Sr. began driving, the police performed a vehicle stop after Steve Sr. failed to use his turn signal when exiting the interstate. During the vehicle stop, a drug-sniffing dog detected an illegal substance on Janet. Janet gave McElfresh the substance she was concealing. The police arrested Steve Sr. and defendant.

¶ 10 After his arrest, defendant spoke with Mangold regarding the crack cocaine found on Janet's person. During the interview, defendant admitted to giving Steve Sr. money to purchase an 8-ball of crack cocaine. The substance Janet gave to McElfresh was tested and found to contain cocaine.

¶ 11 At the trial, defendant did not testify on his own behalf.

¶ 12 The trial court sentenced defendant as stated.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant argues that (1) the State did not present sufficient evidence on each element necessary for conviction and (2) the trial court violated Illinois Supreme Court Rule 431(b).

¶ 16 A. Sufficiency of the Evidence

¶ 17 In a criminal case, the standard for reviewing the sufficiency of the evidence "is whether, when 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. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006). The trier of fact has the responsibility to (1) determine the credibility of witnesses and the weight given to their testimony, (2) resolve conflicts in the evidence, and (3) draw reasonable inferences from that evidence. *People v. Lee*, 213 Ill. 2d 218, 225, 821 N.E.2d 307, 311 (2004). "The fact finder's verdict will not be overturned unless its verdict is so unreasonable, improbable, and unsatisfactory as to leave a reasonable doubt as to the defendant's guilt." *People v. Brown*, 169 Ill. 2d 132, 152, 661 N.E.2d 287, 296 (1996).

¶ 18 "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. [Citations]." *People v. Gates*, 29 Ill. 2d 586, 590, 195 N.E.2d 161, 163 (1964). A person commits the offense of criminal drug conspiracy when, with the intent that an offense set forth in section 401, section 402, or section 407 of the Illinois Controlled Substances Act be committed,

the person agrees with another to the commission of that offense. 720 ILCS 570/405.1(a) (West 2008). The person or co-conspirator must commit an act in furtherance of the agreement. 720 ILCS 570/405.1(a) (West 2008). The trier of fact may infer the existence of an agreement amongst co-conspirators to do a criminal act based on the surrounding facts and circumstances. *People v. Garth*, 353 Ill. App. 3d 108, 121, 817 N.E.2d 1085, 1096 (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." *Garth*, 353 Ill. App. 3d at 121, 817 N.E.2d at 1096.

¶ 19 Defendant argues that the State did not present sufficient evidence to sustain his conviction for criminal drug conspiracy because the State's primary witness, Janet, was not worthy of belief. In support of his argument, defendant points to Janet's criminal history. Janet was convicted of forgery, financial identity theft, unlawful use of a credit card, retail theft, and unlawful possession of methamphetamine precursors. Defendant points to Janet's reason for becoming a police informant as further undermining her credibility. At trial, Janet testified that she served as an informant because "I continue to break the law, and that was the only thing that could help me." In exchange for serving as an informant, Janet was not charged with a crime related to the other trips she took with Steve Sr. to purchase drugs in St. Louis. In support of his argument, defendant also claims that he and Steve Sr. had no more than a buyer-seller relationship and that type of relationship is insufficient to prove a conspiracy to distribute drugs. *People v. Stroud*, 392 Ill. App. 3d 776, 801, 911 N.E.2d 1152, 1174 (2009).

¶ 20 After reviewing the evidence in the light most favorable to the prosecutor, we find that the evidence supports the guilty verdict. Based on the State's evidence, the jury could have

found the essential elements of criminal drug conspiracy beyond a reasonable doubt. Janet's testimony concerning the agreement between defendant and Steve Sr. to purchase and sell the crack cocaine was supported by the testimony of Officer Mangold. Mangold testified that during his interview of defendant, defendant admitted to giving Steve Sr. money to help purchase the crack cocaine at issue. Defendant told Mangold that he was to receive an 8-ball from the amount purchased. Further, defendant's conduct on September 26 was more than mere acquiescence to a crime. Defendant helped determine the amount of crack cocaine purchased by Steve Sr. and provided money to Steve Sr. to purchase the crack cocaine. As shown through Janet's testimony, defendant and Steve Sr. discussed their intent to weigh, bag, and sell the crack cocaine. In furtherance of the conspiracy, Steve Sr. purchased one-half ounce of crack cocaine. The substance Janet gave to McElfresh on the night of September 26 was tested and found to contain cocaine.

¶ 21 Last, defendant and Steve Sr. had more than a buyer-seller relationship. Their involvement was not limited to the exchange of money for drugs. In order to obtain his portion of the crack cocaine, defendant traveled with Steve Sr. from Quincy, Illinois, to St. Louis, Missouri, and back. Defendant was not a bystander just along for the ride to St. Louis. He helped determine the amount of crack cocaine that Steve Sr. purchased and contributed approximately $150 to the purchase of the crack cocaine. Additionally, defendant and Steve Sr. both had an interest in the further sale and delivery of the crack cocaine. Janet testified that during their trip to St. Louis, she heard defendant and Steve Sr. discussing their plans to sell the crack cocaine they purchased. The interaction between defendant and Steve Sr. was more than a mere relationship or transaction.

¶ 22 B. Trial Court's Compliance with Illinois Supreme Court Rule 431(b)

¶ 23 We review the trial court's compliance with a supreme court rule *de novo*. *People v. Lloyd*, 338 Ill. App. 3d 379, 384, 788 N.E.2d 1169, 1173 (2003). Defendant argues that during *voir dire*, the court violated Illinois Supreme Court Rule 431(b) by failing to adequately inform and question the prospective jurors on each of the four principles set forth in that rule. Specifically, defendant claims that the court failed to ask prospective jurors whether they (1) accepted any of the four principles set forth in the rule and (2) understood and accepted the principle that they could not hold defendant's failure to testify against him.

¶ 24 Rule 431(b) requires that:

> "(b) The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects.
>
> The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles

set out in this section." Ill. S.Ct. R. 431(b) (eff. May 1, 2007).

¶ 25 To preserve errors for review, a defendant must object to the offending statements at trial and in a written postrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988). A failure to object results in a forfeiture of that issue on appeal. *People v. Yusuf*, 409 Ill. App. 3d 435, 437-38, 949 N.E.2d 1134, 1136 (2011). It is undisputed that defendant failed to object during the trial or in a postrial motion to the asserted error in *voir dire*. However, defendant urges the court to review the error under the first prong of the plain-error doctrine.

¶ 26 The plain-error doctrine set forth in Supreme Court Rule 615(a) (Ill. S.Ct. R. 615(a) (eff. Jan. 1, 1967) provides a narrow exception to the general rule of procedural default. *People v. Walker*, 232 Ill. 2d 113, 124, 902 N.E.2d 691, 697 (2009). The doctrine of plain error allows us to review unreserved error in either of two circumstances: (1) the evidence in the case was so closely balanced that the error might have been the deciding factor that tipped the scales in favor of conviction; or (2) the error was so serious that regardless of whether the evidence was closely balanced, the error denied the defendant a substantial right and therefore a fair trial. *People v. Herron*, 215 Ill. 2d 167, 178-79, 830 N.E.2d 467, 475 (2005). Under both prongs of the plain-error doctrine, defendant has the burden of persuasion. *Walker*, 232 Ill. 2d at 124, 902 N.E.2d at 697.

¶ 27 The first step in the plain-error review process is determining whether an error occurred. *Walker*, 232 Ill. 2d at 124-25, 902 N.E.2d at 697. In *People v. Thompson*, 238 Ill. 2d 598, 939 N.E.2d 403 (2010), the trial court failed to question the prospective jurors as to whether they (1) accepted the first principle, the presumption of innocence, and (2) understood and accepted the third principle, the defendant was not required to produce any evidence on his own

behalf. The supreme court found that the trial court's failure to question the jurors as to whether they understood and accepted each of the four principles constituted a violation of Rule 431(b). *Thompson*, 258 Ill. 2d at 607, 939 N.E.2d at 410. The supreme court also found that the trial court's failure to question jurors as to the third principle, by itself, constituted noncompliance with the rule. *Thompson*, 258 Ill. 2d at 607, 939 N.E.2d at 410.

¶ 28 Similar to *Thompson*, the trial court committed error by failing to question the prospective jurors as to whether they understood and accepted each of the principles enumerated in Rule 431(b). Rule 431(b) does not require that the court recite each element verbatim, but, in this case, the court failed to address, in any manner, the acceptance of (1) the first principle, the presumption of innocence, with the first row of jurors and (2) the third principle, the defendant is not required to produce evidence on his own behalf, with the first and second row of jurors. *People v. Chester*, 409 Ill. App. 3d 442, 447, 949 N.E.2d 1111, 1116 (2011). The court also failed to ask any of the prospective jurors whether they understood or accepted the fourth principle, the defendant's failure to testify cannot be held against him or her. Having found error, we must next determine if the plain-error doctrine applies. We note that defendant does not argue that he was denied a fundamental right to a fair trial. As a result, we confine our review to the first prong of the plain-error doctrine.

¶ 29 This case does not meet the requirements for application of the plain-error doctrine. The evidence was not so closely balanced that the alleged error alone severely threatened to tip the scales of justice against defendant. Janet testified that on their way to St. Louis, defendant and Steve Sr. discussed their intent to weigh, bag, and sell the cocaine they were to purchase. She also testified that she witnessed an exchange of money, approximately

$150, between defendant and Senior. Janet's testimony concerning defendant's involvement in the purchase of the crack cocaine was corroborated by Officer Mangold. At trial, Mangold testified that defendant admitted to giving Steve Sr. money to help purchase the crack cocaine at issue. Defendant told Mangold that he was to receive an 8-ball from the amount purchased. In furtherance of defendant's and Steve Sr.'s agreement to sell the crack cocaine, Steve Sr. purchased one-half ounce of crack cocaine. Additionally, the substance Janet gave to the police on September 26 was tested and found to contain cocaine. Based on these facts, we find that the trial court's Rule 431(b) error did not rise to the level of plain error.

¶ 30 III. CONCLUSION

¶ 31 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we grant the State its statutory assessment of $50 against defendant as costs of this appeal.

¶ 32 Affirmed.