

No. 1-09-3427

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 03 CR 2709
	)	
MICHAEL CORHN,	)	Honorable
	)	Fred G. Suria, Jr.,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Presiding Justice Hall and Justice Lampkin concurred in  
judgement.

O R D E R

*Held:* Where the trial court did not err in allowing into evidence testimony regarding weapons found at the scene of the crime, and any alleged error was harmless, the trial court's judgment was affirmed.

Following a bench trial, defendant, Michael Corhn, was convicted of reckless discharge of a firearm and sentenced to 12 months' probation. On appeal, defendant contends the trial court erred in allowing the State to introduce into evidence police testimony regarding the recovery of assault rifles, magazines, and ammunition from his apartment that had no connection with the crime

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for which he was charged. We affirm.

At trial, Commander Marianne Perry testified that she was working with Sergeant Otis Peeples when she heard heavy weapons being fired before midnight on December 31, 2002. Perry and Peeples followed the sound of gunfire to 46th Street and Calumet Avenue in Chicago. By the time they arrived at that location, Perry had heard the gunfire for at least 45 minutes. Perry observed gunfire coming from the second-floor back porch of 4619 Calumet Avenue. The officers got out of their car, and could see two people shooting into the air. One person was shooting a shotgun, while the other was shooting a rifle. Perry and Peeples walked up the back stairs of the residence and saw two individuals holding weapons. Perry identified defendant as the person firing the shotgun. Peeples told both men to drop their weapons, and they complied. Defendant was arrested, but the other shooter ran away and was never apprehended. As Perry stood on the porch with defendant, she saw ammunition "all over the place." Perry did not complete the paperwork for the case at bar, and, when she reviewed it prior to trial, she noticed that the report erroneously indicated that defendant fled.

Officer Dipasquale testified that when he arrived at the address in question, defendant was already detained. Over defendant's objection, the trial court allowed Dipasquale to testify regarding the items he found inside of defendant's apartment. These items included a 12-gauge shotgun, an AKM-47

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semi-automatic assault rifle, a SAS semi-automatic assault rifle, two 30-round SKS magazines, a 30-round magazine that is used with the AMK-47, 7.62-millimeter rounds (504 rounds total, the majority of which were live), 111 12-gauge shotgun shells (the majority of which were live), and 60 30-30 Winchester rounds. Dipasquale also testified that after defendant was arrested and given his *Miranda* warnings, defendant told him that he was firing the weapons and that they belonged to his uncle.

Defendant testified that he lived at 4619 Calumet Avenue and was home on the date in question hosting a party of approximately 10 people. A short time after midnight, defendant heard shots being fired near his kitchen, which lead out to the back porch. Defendant walked toward the kitchen and saw somebody attempting to come into the apartment with a shotgun. Defendant did not allow the person in and took the shotgun away from him. As defendant was putting the shotgun down, the police arrived. Defendant testified that he never fired the gun on the porch, and did not know who attempted to bring the gun into his residence.

David Smith testified that he was at defendant's residence for a New Year's Eve party. According to Smith, there were approximately 35 to 40 people in attendance at the party in defendant's apartment. Smith saw someone coming through the back door carrying a shotgun, which defendant took from him. After defendant took the shotgun from the unknown individual, police arrived at the back porch and told defendant to put down the gun.

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Smith never saw defendant fire a gun on the porch, nor did he see ammunition on the floor. Smith, however, did see police bringing out boxes of ammunition after they searched the residence.

Following argument, the trial court found defendant guilty of reckless discharge of a firearm. In doing so, the court accepted Commander Perry's testimony and found that she was able to identify defendant as the individual carrying the shotgun. Following the trial court's ruling, defendant filed a motion to reconsider, arguing, in pertinent part, that the court erred in allowing the State to introduce evidence of other weapons that were recovered from the residence, as well as ammunition. The trial court denied the motion.

On appeal, defendant contends the trial court erred in allowing the State to introduce into evidence police testimony regarding the recovery of multiple assault rifles, magazines, and ammunition that had no connection with the crime for which he was charged. The State, however, maintains that the court properly admitted testimony concerning the weapons and ammunition into evidence, and, even if it was erroneously introduced, its admission was harmless.

The long-standing rule in Illinois is " '[a] weapon generally may not be admitted into evidence unless there is proof to connect it to the defendant and the crime or unless the defendant possessed the weapon when arrested for the crime.' " *People v. Evans*, 373 Ill. App. 3d 948, 960 (2007); quoting *People v. Maldonado*, 240 Ill.

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App. 3d 470, 478 (1992).

However, a weapon may be admitted into evidence when a sufficient nexus shows that it is suitable for the crime charged, although it need not have been used in the commission of the crime. *Maldonado*, 240 Ill. App. 3d at 479. Therefore, where the proper connection is made and it is shown that defendant possessed a weapon which could have been used during the crime, it may be admitted into evidence. *People v. Free*, 94 Ill. 2d 378, 415-16 (1983). Even if weapons are improperly admitted into evidence, such admission is typically regarded as harmless error. *Evans*, 373 Ill. App. 3d at 960. This is particularly true where the evidence did not contribute to the defendant's conviction since his guilt was overwhelming. *People v. Padgett*, 248 Ill. App. 3d 1018, 1025 (1993). The trial court's determination of whether evidence is sufficiently relevant to be admitted into evidence will not be disturbed absent an abuse of discretion. *People v. Babiarz*, 271 Ill. App. 3d 153, 159 (1995).

Here, as to the introduction of testimony concerning the multiple assault rifles, magazines, and ammunition from defendant's apartment, defendant argues that this evidence was irrelevant because it had no connection to the crime charged, *i.e.*, reckless discharge of a firearm. However, Commander Perry testified that she heard heavy gunfire coming from defendant's back porch for approximately 45 minutes, and, when she arrived at his back porch, she saw him holding a shotgun. The fact that Commander Perry only

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saw defendant with a single firearm when she arrived does not rule out the fact that the other weapons and ammunition found in his apartment could have been used in committing the crime. See *People v. Bragg*, 277 Ill. App. 3d 468, 740 (1995) (allowing the State to introduce weapons found in codefendant's apartment where they were suitable for the crime charged). In addition, the introduction of all the weapons and ammunition corroborate Perry's testimony that she heard heavy gun fire for approximately 45 minutes. Therefore, the trial court did not abuse its discretion in admitting evidence of the weapons, magazines, and ammunition found in defendant's apartment.

In reaching this conclusion, we reject defendant's argument that because he was charged with a single count of recklessly firing a "shotgun" from his porch, evidence of any other weapons, accessories, or ammunition was inadmissible because it had no connection with the crime charged. We initially note that the charging instrument specifically stated that defendant committed the offense of "reckless discharge of a firearm in that he discharged a firearm in a reckless manner \*\*\* to wit: [defendant] fired a shotgun from his porch." The weapons found in defendant's apartment all qualified as firearms, and any one of them could have been used to commit the crime at bar. Simply because the charging instrument specifically listed a shotgun as the firearm discharged from his porch does not change that fact.

Moreover, even if the evidence in question was improperly

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admitted, any error was harmless because defendant's guilt was overwhelming. After hearing heavy gunfire, police followed the sound to the address in question and observed gunfire coming from the second-floor back porch. Commander Perry saw two people shooting into the air, one using a shotgun. When police walked up the back stairs of the residence, they saw two individuals holding weapons, and Perry identified defendant as the person with the shotgun. Police also testified that after defendant was arrested, he told Officer Dipasquale that he was firing his uncle's weapons. Although the testimony of defendant and Smith contradicted the State's evidence, the trial court ultimately found the police testimony clear and credible. Based on the strength of the State's case, any error that may have occurred was harmless.

For the foregoing reasons, we affirm the judgment of the circuit court.

Affirmed.