

1-09-3212

**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).

---

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. 08 CR 21381
	)	
RODNEY MOORE,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE CUNNINGHAM delivered the judgment of the court.  
Presiding Justice Quinn and Justice Harris concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Testimony of victim and an eyewitness sufficed to establish that the defendant used a firearm in the commission of a robbery.
- ¶ 2 Following a bench trial, the defendant Rodney Moore was convicted of armed robbery using a firearm (720 ILCS 5/18-2(a)(2) (West 2008)) and sentenced to 22 years in prison, of which 15 years was a mandatory term for carrying a firearm during the commission of the robbery (720 ILCS 5/18-2(b) (West 2008)). On appeal, the defendant contends that the State failed to prove that what he was carrying or using was a firearm as defined by statute.
- ¶ 3 At trial, the State's evidence established the following. On October 30, 2008, Adolfo Gonzalez was working as a mechanic for Gutierrez Auto at 3814 West Armitage Avenue in Chicago, Illinois. At about 11:30 a.m., Gonzalez and his boss stepped outside the building and observed three

1-09-3212

black men walking around near the shop. At about 2 p.m. Gonzalez' boss left and Gonzalez was working alone in the garage. He sensed somebody behind him and when he turned around he saw a man whom he subsequently identified as the defendant pointing a gun at his head and demanding money. Gonzalez recalled that the defendant was standing two feet away from him. The defendant forced Gonzalez to turn around and began to walk him to the office by poking him in the back of the head with the gun. The defendant said "Give me the money, motherfucker." On the way, the defendant took Gonzalez' wallet from his back pants pocket. According to Gonzalez, the wallet contained approximately \$350. Gonzalez saw an opportunity and fled across the street. On the way, two black men standing by the entrance tried unsuccessfully to stop him. One of them was wearing a black jacket with big yellow letters on the back, and the other man had on a sweater with many colors on it. Gonzalez had noticed that the defendant had on a black hoodie. From across the street he saw the three men run off together. He used his cell phone to telephone the police, who quickly arrived. Gonzalez gave them a clothing description of all three men. Shortly thereafter the police took Gonzalez from the store to a location several blocks away, where he identified the two men who had tried to stop him as he fled. That evening he identified the defendant in a line-up as the man "who had the gun in his hand." Gonzalez also identified the defendant in court at the trial.

¶ 4 Lawrence McDonald testified that he was one of the two men standing outside of the garage when Gonzalez fled. He knew the other man as "Rosco." McDonald testified that he and Rosco were standing there smoking marijuana as the defendant went inside the garage and pointed a gun at a "Mexican man." The defendant was pointing the gun at the man's back as they walked toward the front of the garage. McDonald described the gun as "all black" and appearing to be a 9 millimeter. The defendant told the man to open the door, but instead the man ran. At this time McDonald and Rosco ran toward a park and the defendant ran in another direction. McDonald testified that he and Rosco were apprehended shortly thereafter and taken to the police station. From there McDonald called his girlfriend and she brought the defendant to the station. McDonald denied

knowing that the defendant had a gun or planned a robbery that day when he encountered him on the street. The defendant had told McDonald that he needed to "hit a lick" but McDonald testified that he only interpreted this to mean that the defendant needed to get some money. McDonald admitted to having several prior felony convictions, but he denied that the State had offered him anything in exchange for his testimony.

¶ 5 After final arguments were heard, the defendant was convicted of armed robbery using a firearm and sentenced to a total of 22 years in prison. On appeal, the defendant contends that the State's evidence was insufficient to establish that he was carrying a firearm as defined by statute and therefore his conviction should be reduced to armed robbery using a deadly weapon or simple robbery, and remanded for resentencing.

¶ 6 For purposes of the armed robbery statute, a firearm is defined as follows:

" 'Firearm' means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas; excluding, however:

(1) any pneumatic gun, spring gun, paint ball gun or B-B gun which either expels a single globular projectile not exceeding .18 inch in diameter and which has a maximum muzzle velocity of less than 700 feet per second or breakable paint balls containing washable marking colors;

(2) any device used exclusively for signal[ing] or safety and required or recommended by the United States Coast Guard or the Interstate Commerce Commission;

(3) any device used exclusively for the firing of stud cartridges, explosive rivets or similar industrial ammunition; and

(4) an antique firearm (other than a machine-gun) which,

although designed as a weapon, the Department of State Police finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon." 430 ILCS 65/1.1 (West 2008).

Because no weapon was found on the defendant when he came to the police station, the defendant asserts that the object used in this robbery could have been one of the enumerated devices which are not included in the definition of a firearm for purposes of the armed robbery statute. For this argument the defendant relies heavily on *People v. Ross*, 229 Ill. 2d 255 (2009). But in *Ross* the issue was whether what police described as a .177-caliber pellet gun was a dangerous weapon. For unexplained reasons the police failed to produce the gun or a photograph of the gun at trial. Nor was there any evidence that it was loaded, no evidence it was brandished as a bludgeon, and no evidence of its weight or composition. Under these circumstances the supreme court determined that the State had failed to prove that the pellet gun was a dangerous weapon. *Ross*, 229 Ill. 2d at 276-277. Here, the issue of dangerousness was not before the court; merely whether the item brandished by the defendant was a firearm as defined by statute. An amendment in the armed robbery statute, which became effective after the crime in *Ross* took place, removed the requirement of proof of a dangerous weapon when the defendant is armed with a firearm. Evidence of a dangerous weapon can be established through circumstantial evidence even if the weapon was not seen. *People v. Toy*, 407 Ill. App. 3d 272, 291 (2011).

¶ 7 The trier of fact may consider inferences that arise from the evidence in order to find guilt beyond a reasonable doubt. *People v. Hall*, 114 Ill. 2d 376, 409 (1986). Furthermore, it is the primary responsibility of the trier of fact to determine the credibility of witnesses. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). Thus, in *People v. Hill*, 346 Ill. App. 3d 545, 546-547 (2004), the evidence was deemed sufficient to prove that the defendant used a firearm in the course of an attempted armed robbery when the object he possessed was variously described by witnesses as

"silver, sort of like a .45", "silver or chrome-colored" with a long barrel, and a "nickel-plated automatic." In *People v. Pryor*, 372 Ill. App. 3d 422, 430-31 (2007), circumstantial evidence was deemed sufficient to prove beyond a reasonable doubt the the defendant's guilt of aggravated vehicular hijacking where the aggravating factor was that the defendant carried a gun (720 ILCS 5/18-4(a)(4) (West 2002)). The victim testified that he saw the defendant holding a silver object which appeared to be a gun, the defendant threatened to shoot the victim, and the victim testified that the object felt like a gun when the defendant pressed it against the victim's stomach. *Pryor*, 372 Ill. App. 3d at 430-431. Finally, in *People v. Garcia*, 229 Ill. App. 3d 436, 438 (1992), the evidence was deemed sufficient to prove that the defendant was armed with a gun despite no weapon having been recovered from the defendant upon his subsequent arrest where the victim testified that the defendant produced a small, black hand-held gun that "looked real."

¶ 8 In the case before us the victim testified that the defendant brandished a gun which the defendant then used to poke the victim in the back of the head in order to force him towards an office. A second witness described the gun as "all black" and appearing to be a 9 millimeter weapon. No witness suggested in any way that this object was a rivet gun, a paint ball gun, or any of the other small number of items excepted by statute from the definition of a firearm. Under these circumstances we find that the trial court was justified in concluding that the object used by the defendant to commit this robbery was a firearm. The defendant was properly sentenced to the add-on 15-year prison term consecutive to the underlying 7-year term.

¶ 9 Accordingly, we affirm the judgment and sentence of the trial court.

¶ 10 Affirmed.