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2011 IL App (3d) 090916-U

Order filed August 26, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court
	) of the 12th Judicial Circuit,
	) Will County, Illinois,
Plaintiff-Appellee,	)
	) Appeal No. 3–09–0916
v.	) Circuit No. 09–CM–1506
	)
CHRISTIAN E. RUVALCABA,	) Honorable
	) Brian E. Barrett,
Defendant-Appellant.	) Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Carter and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to prove that defendant was not on his own land when he possessed a firearm, thereby proving his guilt of unlawful use of a weapon. Defendant is entitled to a $15 presentence custody credit.

¶ 2 Defendant, Christian E. Ruvalcaba, was convicted of unlawful use of a weapon (720 ILCS 5/24–1(a)(4) (West 2008)) and possession of a firearm without a requisite firearm owner's identification (FOID) card (430 ILCS 65/2(a)(1) (West 2008)). Defendant appeals, arguing that

the evidence was insufficient to convict him on the charge of unlawful use of a weapon. We affirm the conviction and grant a $15 credit against defendant's fine.

¶ 3 FACTS

¶ 4 On May 2, 2009, Officer Robert Mau of the Joliet police department found defendant asleep in a parked car located in a parking area at 714 Ruby Street. After awakening defendant and learning that his driver's license was suspended, Mau noticed a gun protruding from beneath the driver's seat of the vehicle. Defendant was placed under arrest and charged with unlawful use of a weapon (720 ILCS 5/24–1(a)(4) (West 2008)) and possession of a firearm without a requisite FOID card (430 ILCS 65/2(a)(1) (West 2008)).

¶ 5 Prior to trial, defendant filed a motion to quash the arrest and suppress evidence. At a hearing on the motion, Mau testified that he found defendant in a parked car located in a parking area near an apartment at 714 Ruby Street. During the encounter, Mau noticed a gun located under defendant's seat, in plain view. Defendant told Mau that the gun belonged to his cousin, and that defendant took possession of the gun because he did not want his cousin to get into any trouble. Defendant said that he was waiting in the car for his cousin, who was at his girlfriend's apartment. He said that his cousin's girlfriend lived at 714 Ruby Street.

¶ 6 The trial court denied defendant's motion, and the cause proceeded to a stipulated bench trial. The State's evidence consisted of Mau's testimony from the hearing and a letter from the Illinois State Police indicating that defendant did not possess a valid FOID card at the time of his arrest. The trial court found defendant guilty of both weapons violations. Defendant appeals.

¶ 7 ANALYSIS

¶ 8 Defendant's main argument on appeal is that the evidence at trial was insufficient to convict him of unlawful use of a weapon because the State failed to produce any evidence that defendant was not on his own land when he was found in possession of the weapon. Because defendant's challenge to the sufficiency of the evidence does not question the credibility of witnesses, but instead questions whether the uncontested facts were sufficient to prove the elements of unlawful use of a weapon, our review is *de novo*. *In re Ryan B.*, 212 Ill. 2d 226 (2004).

¶ 9 Section 24–1(a)(4) of the Criminal Code of 1961 provides that a person commits the offense of unlawful use of weapons when he knowingly:

> "Carries or possesses in any vehicle or concealed on or about his person except when on his land or in his own abode or fixed place of business any pistol, revolver, stun gun or taser or other firearm[.]" 720 ILCS 5/24–1(a)(4) (West 2008).

¶ 10 Pursuant to the statute, the State must produce sufficient evidence that defendant was not on his own land or in his own abode or fixed place of business when he possessed the weapon. *People v. Laubscher*, 183 Ill. 2d 330 (1998). It is well established that the State may rely upon circumstantial evidence in sustaining its burden, so long as the State produces some evidence giving rise to a reasonable inference of defendant's guilt. *Id*.

¶ 11 Here, defendant stated to Mau that he was parked at 714 Ruby Street because he was waiting for his cousin who was at his girlfriend's apartment. This statement was sufficient to prove that defendant was not on his own land. Defendant specifically told Mau that his cousin's girlfriend, not himself, lived at 714 Ruby Street. It is reasonable to conclude that an individual

who is on his own land would state that fact instead of saying that he was at another individual's dwelling place. Further, one normally does not sit in a car and wait for others while he is on his own land. Therefore, defendant's statement was sufficient evidence to prove, beyond a reasonable doubt, that he was not on his own land.

¶ 12 It is important to note that defendant's statement distinguishes this case from *Laubscher*, 183 Ill. 2d 330. In *Laubscher*, defendant possessed a gun on the unenclosed lawn of an apartment complex that tenants routinely used to access the building. The only evidence offered by the State regarding defendant's connection with the property was a statement by defendant that he lived in the apartment building. The Illinois Supreme Court ruled that this statement was not sufficient to prove that defendant was simply a tenant and did not own an interest in the apartment building or the surrounding land. In the case at bar, however, defendant did not claim that he lived at or even near the area where he was arrested. In fact, he specifically stated that he was at his cousin's girlfriend's apartment. Therefore, the evidence here is stronger than the evidence in *Laubscher*, and it is enough to prove defendant was not on his own land.

¶ 13 Defendant also contends that he is entitled to a $5 per day monetary credit against his fine for time spent in custody prior to sentencing. The State concedes, and we agree, that defendant is entitled to a credit of $15 toward his fine pursuant to section 110–14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110–14 (West 2008)).

¶ 14 CONCLUSION

¶ 15 Defendant is entitled to a $15 presentence custody credit, and the judgment of the circuit court of Will County is otherwise affirmed.

¶ 16 Affirmed as modified.