

No. 1-10-3583

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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. 10 CR 3861
	)	
MARVIN WARREN,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE MURPHY delivered the judgment of the court.  
Steele, P.J., and Salone, J., concurred in the judgment.

**ORDER**

¶ 1 *Held:* Evidence sufficient to sustain defendant's conviction for armed habitual criminal.

¶ 2 Following a bench trial, defendant Marvin Warren was found guilty of the offense of armed habitual criminal and sentenced to eight years in prison. On appeal, defendant contends that the State failed to prove him guilty of that offense beyond a reasonable doubt.

¶ 3 Defendant's conviction arose from the January 26, 2010, execution of a search warrant by a team of Chicago police officers at a house located at 4113 West West End Avenue in Chicago,

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Illinois. During the search, as relevant to defendant, the officers recovered three firearms and a plastic bag containing 43 smaller plastic bags of crack cocaine. Defendant was charged with armed habitual criminal, possession of a controlled substance with intent to deliver and unlawful use of a weapon by a felon. He was tried jointly with co-defendant Curtis Wright, who is not a party to this appeal.

¶ 4 At trial, the State introduced testimony from several of the police officers who were part of the specialized narcotics unit that executed the search warrant. Officer Altamirano testified that he and his fellow officers arrived at the house about 7:59 p.m., and knocked on the door. After receiving no response, they entered the house, but he could not recall whether they had to use a battering ram to do so. Officer Altamirano further testified that he was the first officer to enter the house, and, because he could hear someone running up the stairs, he immediately proceeded in that direction while announcing his office. On the second floor, he saw a man, whom he identified in-court as defendant, enter a room to the left of the stairs. He continued to announce "police" and "search warrant," and had a profile view of defendant from a distance of approximately 10 feet, when he observed defendant drop a gun to the ground. No one else was in the room.

¶ 5 Officer Altamirano and another officer then handcuffed defendant and recovered the gun, a loaded, 44 Magnum revolver. In the continuing search, Officer Altamirano found two semi-automatic handguns near a couch that was located to the left of defendant. A clear plastic bag containing 43 ziploc bags of suspect crack cocaine was also recovered from under the couch. After advising defendant of his *Miranda* rights, defendant stated that he knew he should not have the gun, but that he was holding it for a friend. Defendant was transported to the police station

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and Officer Altamirano gave the recovered items to an inventory officer. Officer Altamirano could not recall how many people were transported to the police station in this incident, but identified various photos taken at the scene depicting the placement of the guns and drugs. The pictures were introduced into evidence but have not been included in the record on appeal.

¶ 6 Officer Bryant Ortiz testified to details relating to defendant Wright. In addition, Officer Ortiz testified that of the seven people who were in the house that night, only three were arrested and transported to the police station. Officer Ortiz's prior testimony from the hearing on Wright's motion to quash was adopted and incorporated into the trial, but a transcript of that testimony was also not included in the record on appeal.

¶ 7 The parties then stipulated to defendant's previous convictions for criminal drug conspiracy and possession of a controlled substance with intent to deliver. The parties also stipulated that three guns, a loaded 44 Magnum revolver, a Bersa 40 caliber semiautomatic gun and a 9 millimeter semiautomatic Bersa pistol, were inventoried, along with 43 plastic bags of a white rock-like substance. The parties further stipulated that of those 43 plastic bags, the contents of 24 bags were tested, all of which proved positive for cocaine, and that a proper chain of custody for them was maintained at all times.

¶ 8 Dorita Blanton, who testified for the defense, acknowledged her four prior drug-related convictions and her plea of guilty to possession of a controlled substance in relation to this incident. She further testified that she had lived at the house for about a year and was visited there by defendant. On the night of the incident, everyone who was at the house was downstairs when the police arrived, and at no point did defendant or Wright leave that area or go to the

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second floor. She, defendant, Wright, and the four others who were in the house that night were transported to the police station.

¶ 9 Darius Jones testified for the defense and acknowledged his six prior drug-related convictions. Jones further testified that he rented the living room of the house at 4113 West West End and used it as a recording studio. On the night of the incident, he invited various people, including defendant, to the house for inspiration to "write lyrics and freestyle the music." When the police arrived, everyone was in the recording studio, which is located by the front door. They had "tracks playing instrumentals," and the volume was loud, so they did not hear the police arrive. After conducting a search, the police transported everyone to the police station.

¶ 10 David McCampbell testified for the defense that on the night of the incident, he was acting as engineer of the recording session. He testified that the recording studio is located to the immediate left of the front door to the house. When the police arrived, music was playing and he was recording Jones' rap vocals, which is basically conversation amplified by speakers. Defendant was in the recording studio when the police arrived and he never left that room after their arrival. Everyone in the house was handcuffed and transported to the police station.

¶ 11 Levie Luke testified for the defense and acknowledged the probationary sentence imposed on his conviction of possession of a controlled substance. He further testified that everyone was in the recording studio when the police arrived and remained in that room until they were all transported to the police station. He did not hear the police arrive because of the music.

¶ 12 Defendant testified that on January 26, 2010, he was on parole. On that night, he went to the house at 4113 West West End to record music and did not have guns or narcotics in his

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possession. He arrived about 7:30 p.m., knocked on the door, which Blanton opened for him, and saw that Jones was already recording.

¶ 13 Defendant further testified that he was in the recording studio when approximately nine officers entered the house and recognized some of the officers as those who had arrested him in the past. The recording studio is not padded, but he did not hear the officers arrive because of the music. The officers handcuffed him and told him to sit on the couch, and he never left the living room after the police entered or went upstairs. He denied going to a bedroom on the second floor and dropping a gun, and also denied telling Officer Altamirano that he was holding the gun for someone. Everyone in the house was taken to the police station where Officer Altamirano asked him if he was on parole.

¶ 14 Wright testified and acknowledged his 2007 convictions for possession of an unlawful weapon inside a penitentiary and possession of a controlled substance. He testified to the details relating to his arrest, and that he did not hear the police prior to their entry to the house because of the volume of the music.

¶ 15 The State called Officer Howard in rebuttal. He testified that he observed Officer Altamirano enter the house and proceed upstairs, and followed him there and entered the bedroom to the right of the stairs. Defendant was in that bedroom being detained by Officer Altamirano. After defendant was secured, Officer Howard pulled back a couch that was in the room and observed three weapons and narcotics under the couch. Two of the guns were directly underneath the couch, and only defendant, Wright and Blanton were transported to the police station.

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¶ 16 Prior to ruling, the trial court summarized the testimony of the defense witnesses that defendant and Wright just happened to be in the house when the police arrived, that neither Wright nor defendant left the first floor, and that they did not hear the officers arrive because of the music. The trial court found the defense witnesses to be "frankly unbelievable," and specified that their testimony regarding not hearing the police because of the music was "preposterous and totally without belief." The trial court further stated that although Officer Ortiz "was not very credible," Officer Altamirano was "a credible witness," and Officer Howard corroborated Officer Altamirano's testimony that defendant was in the room upstairs, even though his testimony did not "add to[o] much" to the question of whether defendant dropped the gun.

¶ 17 The trial court specifically found Officer Altamirano's testimony that defendant dropped the gun credible, that defendant thus possessed that weapon, and was guilty of armed habitual criminal. The trial court further found that there was insufficient evidence to support defendant's possession of the other two guns or narcotics and found him not guilty of the offenses relating to those items.

¶ 18 Defendant filed a motion for a new trial, arguing, *inter alia*, that the testimony of Officer Altamirano and Officer Howard was inconsistent. In denying that motion, the trial court pointed out that Officer Altamirano saw defendant drop the gun whereas Officer Howard came onto the scene after that point, and stated that any arguable inconsistency regarding the location of the guns did not make Officer Altamirano incredible or unworthy of belief. The trial court then sentenced defendant to eight years in prison and denied defendant's motion to reconsider sentence. On appeal, defendant challenges the sufficiency of the evidence to prove beyond a reasonable doubt that he possessed the gun.

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¶ 19 The standard of review on a challenge to the sufficiency of the evidence is whether, after 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. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies to all criminal cases, whether the evidence is direct or circumstantial, and acknowledges the responsibility of the trier of fact to determine the credibility of witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). A reviewing court will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 20 In this case, defendant was found guilty of the offense of armed habitual criminal. This offense occurs where a person "receives, sells, possesses, or transfers" any firearm after previously having been convicted of two or more offenses identified by the statute. 720 ILCS 5/24-1.7(a) (West 2010). Defendant raises no argument regarding his two prior qualifying convictions, but challenges the sufficiency of the evidence to prove his possession of a firearm.

¶ 21 The trial court found that defendant was in possession of a firearm based on Officer Altamirano's testimony that he saw defendant discard the gun on the second floor of the house. On review, the finding regarding possession, a factual issue, will not be disturbed unless the evidence is so unbelievable, improbable, or palpably contrary to the verdict that it creates a reasonable doubt of defendant's guilt. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007). We do not find this to be such a case.

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¶ 22 Defendant maintains that Officer Altamirano's testimony is insufficient to prove that he possessed the gun because it was contradicted by the testimony of Officers Ortiz and Howard. We observe that with regard to Officer Ortiz, defendant relies on testimony provided at Wright's motion to quash. Because a transcript of this testimony was not included in the record on appeal, we resolve any doubts arising out of this incompleteness against defendant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Defendant also relies on Officer Ortiz's trial testimony that no one aside from defendant, Wright and Blanton was transported to the police station. We fail to see how this testimony contradicts that of Officer Altamirano, who testified that he could not recall whether anyone aside from those three people was transported to the police station, or how that affects his testimony on his observation of defendant with the gun.

¶ 23 Defendant further argues that Officer Howard's testimony contradicted Officer Altamirano's in two respects: the direction in which Officer Altamirano turned upon reaching the second floor, and the location of the guns and narcotics. The trial court, however, considered this argument and rejected it. The trial court found that Officer Howard's testimony regarding the direction in which he and Officer Altamirano turned was not material impeachment and that any potential inconsistency regarding the location of the guns did not cause it to question the credibility of Officer Altamirano.

¶ 24 Where, as here, the trial court had the benefit of viewing the trial exhibits depicting the placement of the guns, and resolved the cited minor inconsistencies in favor of the State, we have no basis for setting aside the conviction. *People v. Reed*, 80 Ill. App. 3d 771, 781-82 (1980). This is particularly so where defendant failed to include those photographs in the record on

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appeal, requiring that we resolve any doubts arising due to this incompleteness against him.

*Foutch*, 99 Ill. 2d at 391-92.

¶ 25 More importantly, Officer Howard's testimony did not contradict Officer Altamirano's testimony on defendant's possession of the gun, which was the subject of the prosecution. As noted, the trial court found Officer Altamirano's testimony credible and sufficient to establish that element of the offense of armed habitual criminal. In doing so, the trial court necessarily found Officer Altamirano's testimony more credible than that presented by the defense witnesses, and we have no basis for interfering with that determination. *Campbell*, 146 Ill. 2d at 389.

¶ 26 Notwithstanding, defendant argues that the trial court rejected the defense witnesses' testimony on the "irrational" belief that they should have heard the police knocking on the door in spite of the music. We do not find the trial court's determination on this factual issue to be irrational given that: (1) Jones and McCampbell testified that the recording studio, where everyone was gathered at the time the police arrived, is located right next to the door; and (2) defendant testified that the studio is not padded, that when he arrived at the house, Jones was already recording music and Blanton answered the door when he knocked on it. It is the province of the trial court to resolve conflicts in the testimony (*Campbell*, 146 Ill. 2d at 375), and, based on this testimony, it is not irrational to disbelieve that Blanton would have heard defendant's knock over the music, yet no one heard the police when they knocked on the same door. Moreover, the trial court did not state that this was its sole basis for finding that the defense witnesses were not credible.

¶ 27 Taken as a whole, and viewed in the light most favorable to the State (*Siguenza-Brito*, 235 Ill. 2d at 224), we conclude that the evidence was sufficient to permit the court to reasonably

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infer that defendant possessed the gun and was thus found guilty of the charged offense beyond a reasonable doubt. Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.