2012 IL App (1st) 110003-U

FOURTH DIVISION
June 28, 2012

No. 1-11-0003

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. 10 CR 3908
	)	
MARCUS HARRISON,	)	The Honorable
	)	John A. Wasilewski
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Sterba concurred in the judgment.

ORDER

¶ 1 *Held*: The State presented sufficient evidence to sustain defendant's conviction for unlawful use of a weapon by a felon and the statute creating the offense does not violate the second amendment to the United States Constitution.

¶ 2 Following a bench trial, defendant Marcus Harrison was convicted of unlawful use or possession of a weapon by a felon (UUW) and was sentenced as a Class X offender to 12

years' imprisonment. On appeal, defendant asserts the State failed to prove beyond a reasonable doubt that he possessed a weapon and that the conviction must be vacated because the statute creating this offense violates the constitutional right to bear arms. We affirm.

¶ 3 At trial, Officer Jose Cortez testified that at approximately 10:55 p.m. on February 8, 2010, he and his partner Officer Awadallah arrived in a marked vehicle at 7154 South Vincennes Avenue in Chicago in response to a call reporting a domestic battery with a handgun. Upon arrival, Officer Cortez observed Marcus Harrison ("Marcus"), defendant's nephew of the same name, standing in front of the building. Marcus confirmed that he called the police, reporting the domestic battery. Marcus then led the police into the first-floor apartment, using his keys to get through the common door, another door, and then the door to the apartment where he apparently lived with his grandmother and defendant. The apartment had a window that faced the street.

¶ 4 Officer Cortez testified that he and his partner entered the apartment first with guns drawn. Marcus apparently followed them into the apartment. From approximately 10 feet away, the officers saw defendant motion to stand up and place a handgun under the couch. As the officers arrested defendant, he told them that he was on parole and living on the couch. Officer Cortez testified that defendant also said he would get six years and only do two, apparently referring to a prison sentence, and would then kill Marcus. Officer Cortez later confirmed that the police report indicated defendant said he would get six years, be out in three and kill Marcus. The officers immediately recovered the gun

from under the couch a few feet away from where defendant was sitting. Following Officer Cortez's testimony, the State presented the record of defendant's prior conviction for aggravated discharge of a firearm.

¶ 5 Marcus, who also had prior felony convictions, testified for the defense that defendant did not have the gun but rather, Marcus' friend, Laird Marble ("Marble"), put the gun under the couch. Marcus had invited Marble over to help Marcus look for guys who had "jumped" him earlier in the day. After walking around the neighborhood, Marble and Marcus returned to his apartment where they smoked marijuana and drank alcohol. When defendant arrived, he wanted them to leave because they were smoking marijuana in the house and Marcus' grandmother was there. Marcus and defendant proceeded to get into "a little scuffle" in which Marcus pushed defendant, who then hit Marcus in the head. Defendant ultimately pushed Marcus and Marble out the door. Marble then left and Marcus called the police.

¶ 6 When the police arrived five minutes later, Marcus let them into the building, unlocking the common door and leading them through another door before unlocking the apartment door. Marcus walked in first and the police followed. Marcus did not see defendant with a gun. In addition, defendant was sitting on the couch when the police arrested him and took him to the hallway. Marcus further testified that defendant did not say he would get six years, be out in three or that he would kill Marcus. While defendant was in the hallway, Marcus showed the police where the gun was hidden under the couch. Marcus testified that he lied when he told the police that defendant had a gun because Marcus was

"under the influence at the time."

¶ 7 The trial court found defendant guilty of UUW based on the witnesses' credibility. The court noted that it had observed the manner in which the witnesses testified and found Marcus to be both biased and unbelievable. In contrast, the court found that Officer Cortez testified forthrightly. The court subsequently sentenced defendant to 12 years in prison.

¶ 8 On appeal, defendant first asserts that the evidence was insufficient to sustain his conviction because unlike Marcus' testimony, Officer Cortez's testimony that defendant had a gun was not plausible. We review a challenge to the sufficiency of evidence by determining "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." (Emphasis in original.) *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In addition, the trial court is in the best position to determine the credibility of witnesses because it sees and hears them during their testimony. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). Thus, a reviewing court will not substitute the trier of fact's judgment with its own. *People v. Jennings*, 364 Ill. App. 3d 473, 478 (2005). Furthermore, a conviction will only be reversed if the evidence is so improbable that there is reasonable doubt of the defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8. For a defendant to be convicted of UUW, the State must prove beyond a reasonable doubt that the defendant knowingly possessed a prohibited weapon and has been convicted of a prior felony. 720 ILCS 5/24-1.1(a) (West

2010).

¶ 9 We find the trial court reasonably accepted Officer Cortez's account of events rather than Marcus' account. The outcome of the case turned on the credibility of the witnesses. Officer Cortez testified that when he and his partner entered the apartment they were about 10 feet away from defendant and saw him put the gun under the couch. In determining that Officer Cortez's testimony was credible, the trial court had the opportunity to observe him. In addition, contrary to defendant's argument, the trial court was not required to find that it was implausible that defendant would bring a gun to the apartment where he was paroled. In *People v. Austin*, 349 Ill. App. 3d 766, 768-69 (2004), the reviewing court upheld the trial court's finding that the defendant, a felon, waited to hide his gun even though he was aware that he was being followed by the police and would go to jail for possessing a gun.

¶ 10 Similarly, we reject defendant's assertion that if he had possessed a gun, he would have hidden it before the police entered the apartment. While the apartment was on the first floor and had a window that faced the street, it is plausible that defendant did not see the police officers arrive. Although defendant argues that he would have heard the police entering as Marcus unlocked doors, it is possible that defendant did not realize it was the police who were entering. Furthermore, no evidence indicated that defendant did in fact know the police had arrived or heard them enter. Even if defendant did know that the police were entering the apartment, he may still have waited too long to hide the gun. Accordingly, the trial court was not required to find that Officer Cortez's testimony that

defendant had a gun was improbable or contrary to human experience.

¶ 11 In contrast to Officer Cortez's testimony, the trial court did not believe Marcus "for a lot of reasons" and found him to be biased, an entirely reasonable finding in light of his familial relationship with defendant. Defendant maintains that Marcus' testimony that defendant did not have a gun was reasonable and should have been relied upon over Officer Cortez's testimony. Specifically, defendant contends that on the night of the arrest, Marcus was angry with defendant and had a motive to lie to the police. Defendant ignores, however, that the trial court could also have reasonably found that Marcus' status as defendant's nephew gave Marcus a motive to lie at trial. Reviewing the facts in the light most favorable to the State, we conclude the evidence that defendant possessed a gun is not improbable, but rather, is sufficient to support a conviction for UUW.

¶ 12 Next, defendant asserts his conviction must be vacated because the UUW statute, which prohibits felons from possessing firearms, is unconstitutional and violates the second amendment to the United States Constitution. The second amendment provides, in pertinent, that “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const., amend. II. In *District of Columbia v. Heller*, 554 U.S. 570, 594 ,626, 635 (2008), the Court found that the second amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home" and recognized that the right to bear arms is a fundamental right under the second amendment. See also *McDonald v. City of Chicago*, 561 U.S. _, _, 130 S.Ct. 3020, 3036-

37 (2010). The Court also noted, however, that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." *Heller*, 561 U.S. at 626. Subsequently, in *McDonald*, the Court held that the second amendment's protections applied to the states through the due process clause of the fourteenth amendment and reiterated that the holding in *Heller* did not place doubt on laws prohibiting felons from possessing firearms. *McDonald*, 561 U.S. at _, 130 S.Ct. at 3047, 3050. Following the Court's opinions in *Heller* and *McDonald*, the First District of this court has applied intermediate scrutiny and rejected constitutional challenges to the UUW statute's prohibition against felons having firearms in their homes. *People v. Spencer*, 2012 IL App (1st) 102094, ¶¶23-31; *People v. Robinson*, 2011 IL App (1st) 100078, ¶¶10-31; see also *People v. Williams*, 2011 IL App (1st) 091667-B, ¶16; *People v. Davis*, 408 Ill. App. 3d 747, 749-51 (2011).

¶ 13 Having considered defendant's arguments and the prior decisions of this court, we adhere to the well-reasoned decisions in *Spencer* and *Robinson*, finding that prohibiting felons from possessing weapons, even in the home, does not run afoul of the second amendment.

¶ 14 For the foregoing reasons, we affirm the trial court's judgment.

¶ 15 Affirmed.