

No. 1-11-0790

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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. 09 CR 21292
)	
WILLIE HERRON,)	Honorable
)	Michael Brown,
Defendant-Appellant.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Officer's testimony that he viewed defendant holding a blue steel revolver outside of a residence, and then approximately one minute later viewed defendant alone in a room of the residence with a blue steel revolver lying near him on the floor was sufficient to establish that defendant was in possession of the weapon.

¶ 2 Following a bench trial, defendant Willie Herron was found guilty of being an armed habitual criminal and sentenced to eight years in prison. On appeal, defendant asserts that the State failed to prove beyond a reasonable doubt that he possessed a weapon because the officer's testimony was incredible and lacked corroboration. We affirm.

¶ 3 Officer Eric Rashan testified that he was patrolling the area around 61st and Washtenaw in his marked police car around 11:22 p.m. on September 17, 2009, when he heard gunshots being fired. He also heard a radio transmission which stated that gunshots had been heard in his general location. Rashan turned onto Washtenaw and was flagged down near 61st Street by a man, who told him that a black male had been firing a gun around the corner of 61st and Washtenaw. Approximately 30 or 40 seconds later, Rashan was driving slowly on Washtenaw when he observed defendant walking on the sidewalk. The night was clear and lit by overhead streetlights, and the police car's headlights were on.

¶ 4 Rashan approached defendant in the police car and told him to "come here." Defendant replied "what," and then proceeded to walk quickly. Rashan pulled the police car up so that he was directly behind defendant and observed as defendant then ran up the stairs to a residence located at 6149 South Washtenaw. There was no porch light, but light was coming from the window of the first floor apartment. Defendant moved his right hand near his waistband area and Rashan then observed a blue steel revolver in defendant's right hand as defendant entered the front door of the residence, turning once inside to enter an interior door. Assisted by another officer, Rashan forced entry first through the front door and then through the interior door which he had observed defendant enter. Rashan entered the apartment, observed a group of six or seven individuals in the front living room, and did not see defendant. Rashan continued down a hallway to another room, where he saw defendant, standing alone in the middle of the room, with a .45 caliber blue steel revolver lying on the floor about two or three feet from him. A light was on in the room. Rashan estimated that little over one minute had passed between his initial pursuit of defendant into the building and his discovery of defendant standing in the room next to the revolver.

¶ 5 The State introduced certified copies of defendant's convictions for burglary and delivery of a controlled substance, and then rested.

¶ 6 The court found that, based upon Rashan's "credible" testimony, defendant actually possessed the .45 caliber blue steel revolver outside of the residence, and that he was found by Rashan a short time later in constructive possession of the revolver. Defendant was found guilty of being an armed habitual criminal and unlawful possession of a weapon by a felon. The court merged the latter offense and sentenced defendant to eight years in prison.

¶ 7 On appeal, defendant asserts that the State failed to prove him guilty beyond a reasonable doubt because Officer Rashan's testimony was not sufficient to establish that defendant possessed the revolver.

¶ 8 When reviewing the sufficiency of evidence in a criminal case, a reviewing court's inquiry 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. Sutherland*, 155 Ill. 2d 1, 17 (1992). This court will not reverse a defendant's conviction unless the evidence is "so unreasonable, improbable or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Id.* The testimony of a single witness, if positive and credible, is sufficient to convict. *People v. Smith*, 185 Ill. 2d 532, 541 (1999).

¶ 9 To prove unlawful possession of a weapon by a felon, the State must prove that the defendant knowingly possessed a weapon and that the defendant had previously been convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2008). A person may be convicted of being an armed habitual criminal if he possesses any firearm after being convicted twice of, *inter alia*, any forcible felony, or an included violation of the Illinois Controlled Substances Act. 720 ILCS 5/24-1.7(a)(1), (a)(3) (West 2008).

¶ 10 Defendant here does not challenge the existence of his two prior felony convictions. Instead, he claims that the State failed to prove that he possessed the blue steel revolver. We disagree.

¶ 11 The possession of a weapon by a defendant may be actual or constructive. *People v. Hill*, 2012 IL App (1st) 102028, ¶40. Constructive possession is shown where a defendant had knowledge of the presence of the weapon and defendant had immediate and exclusive control over the area where the weapon was found. *Id.*, citing *People v. Grant*, 339 Ill. App. 3d 792, 798 (2003). Knowledge may be inferred from several factors, including the visibility of the weapon from defendant's location, the amount of time the defendant had to observe the weapon, gestures or movements by the defendant that would suggest an effort to retrieve or conceal the weapon and the size of the weapon. *People v. Bailey*, 333 Ill. App. 3d 888, 891-92 (2002).

¶ 12 Here, Officer Rashan testified that he saw defendant running up the stairs to the residence at 6149 South Washtenaw with a blue steel revolver in his right hand. Though it was dark, there were streetlights above, with additional light coming from the first floor apartment, and Rashan was directly behind defendant, a position which he testified afforded him a view of the revolver. In light of these facts, along with the trial court's determination that Rashan's testimony was "credible," we believe that it was entirely reasonable for the trial court to have found that defendant actually possessed the revolver outside of the residence.

¶ 13 A little over one minute later, and after following defendant into the residence, Rashan observed him, alone in a room, with a blue steel revolver lying about two or three feet away from him on the ground, which indicates exclusive control. A light was on in the room, so the weapon was clearly visible to defendant under *Bailey*, and a .45 caliber revolver is not a small weapon. Defendant had as much as one minute to view the weapon before Rashan discovered him. Defendant made no effort to conceal or retrieve the weapon. However, after considering the

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evidence, including the finding by the trial court that defendant was in *actual* possession of the weapon about one minute before he was discovered in the room, we find no reason to disturb the trial court's finding that he constructively possessed the weapon in the room. We thus find sufficient evidence to support defendant's conviction.

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

¶ 15 Affirmed.