SECOND DIVISION
December 4, 2012

No. 1-11-1259

**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).

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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 1889 |
| | ) | |
| FREDRICK BRYANT, | ) | The Honorable |
| | ) | Arthur F. Hill, |
| Defendant-Appellant. | ) | Judge Presiding. |

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JUSTICE QUINN delivered the judgment of the court.
Presiding Justice Harris and Justice Simon concurred in the judgment.

**O R D E R**

¶ 1 *HELD*: Defendant was proven guilty beyond a reasonable doubt of the offense of armed habitual criminal when the evidence at trial established that he was in possession of a firearm after two qualifying felony convictions.

¶ 2 Following a bench trial, defendant Fredrick Bryant was found guilty of the offense of armed habitual criminal and sentenced to seven years and six months in prison. On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt because the testimony of the State's sole inculpatory witness was incredible and contrary to human experience. We affirm.

¶ 3 Defendant was charged by information with, *inter alia*, the offense of armed habitual criminal after a December 2009 incident during which a police officer saw a handgun sticking out of defendant's waistband.

¶ 4 At trial, Officer Wyroba testified that he was part of a team executing a search warrant. Upon arrival at the location, Wyroba knocked on the "scissor gates." The gates were locked by an inward facing lock and the inside door was partially open. After the officers knocked and announced their office, defendant came to the door and opened it further. Defendant, who appeared stunned, looked at them for two to three seconds then slammed the door shut. In that time, Wyroba observed the butt of a handgun in defendant's waistband. The handgun had a brown handle which appeared to be wood. He could also see the gun's hammer. After defendant closed the door, the officers heard "some commotion." They then broke the lock and entered the apartment.

¶ 5 As the officers made a forced entry through the front door, defendant rushed past them into the living room. Defendant ultimately "dove like Superman out the window," *i.e.*, arm and head first through the blinds, window, and screen. While several officers chased defendant on foot, Wyroba pursued him in a police vehicle. Ultimately, Wyroba exited the vehicle, gave chase, and took defendant into custody. Defendant had blood on his arms and appeared stunned. Wyroba called for an ambulance and waited with defendant until it arrived. Officers Kroll and Savage were also present. As they were waiting, the officers inquired why defendant had run away, and he responded that he thought they were the "eviction police." When Wyroba later returned to the apartment, he observed Officer Frigo recover a revolver from the kitchen floor. The handgun was near several garbage bags.

¶ 6 During cross-examination, Wyroba testified that he did not remember what defendant was wearing that day. He also acknowledged that the case report and his testimony at a preliminary hearing did not include details regarding the handgun's hammer.

¶ 7 Officer Frigo testified that after defendant was taken into custody, he returned to the apartment and conduced a systematic search of the residence. Frigo recovered, *inter alia*, a revolver from under some trash in the kitchen. The revolver contained five live rounds.

¶ 8 Certified copies of defendant's 2007 conviction for the manufacture and delivery of a controlled substance and his 2006 conviction for burglary were then admitted without objection.

¶ 9 Bridgette McCowan testified that she was at her boyfriend's home on the day in question with her child, defendant, and Fatima McCoy. When defendant left to go to the corner store, he almost immediately reentered the kitchen looking shocked and scared. The neighborhood had recently suffered from a series of break-ins, so McCowan, thinking they were going to be robbed, grabbed a gun from the "junk drawer." She knew the drawer contained a gun because she had seen it when getting her child's medicine, which was also kept there. Although she was going to give the gun to defendant, he ran away and ultimately exited the apartment through a window. McCowan then threw the gun in the trash. She explained that when she heard the police, she became scared and threw it away. Although she did not see a gun in defendant's possession, she admitted during cross-examination that he was out of her sight when he left the kitchen.

¶ 10 In finding defendant guilty of the offense of armed habitual criminal and the unlawful use of a weapon by a felon, the trial court stated that while Wyroba and Frigo were credible witnesses, McCowan was not. The court then merged these findings and sentenced defendant to seven years and six months in prison for the armed habitual criminal conviction.

¶ 11 On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt when the testimony of Wyroba, the sole inculpatory witness, was incredible.

¶ 12 In assessing the sufficiency of the evidence, the relevant inquiry is whether, considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). This court does not retry the defendant or substitute its judgment for that of the trier of fact with regard to the credibility of witnesses, the weight to be given to each witness's testimony, and the reasonable inferences to be drawn from the evidence. *Ross*, 229 Ill. 2d at 272; see also *People v. Sutherland,* 223 Ill. 2d 187, 242 (2006) (it is the trier of fact's responsibility to determine the appropriate weight to afford each witness's testimony, resolve any inconsistencies in the evidence, and draw reasonable inferences from the testimony). A defendant's conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt. *People v. Siguenza-Brito,* 235 Ill. 2d 213, 225 (2009).

¶ 13 To sustain a conviction for the offense of armed habitual criminal, the State must establish that a defendant possessed a firearm and has at least two prior convictions for certain enumerated offenses. *People v. Ross*, 407 Ill. App. 3d 931, 943 (2011); 720 ILCS 5/24-1.7(a) (West 2008).

¶ 14 Here, defendant contends that the State failed to prove his possession of a firearm beyond a reasonable doubt because it is contrary to human experience that he would answer the door, after hearing police officers announce their office, with a handgun sticking out of his waistband.

¶ 15 Defendant is essentially asking this court to reweigh the evidence against him, which is not our function. Defendant's contentions on appeal focus on the improbability of Wyroba's

testimony in light of defendant's self-interest in not being caught with a firearm and why the trial court was wrong to afford Wyroba's testimony any weight.

¶ 16 At trial, Wyroba testified that when defendant came to the door, he looked at the officers for two to three seconds before slamming the door shut. In those few seconds, Wyroba observed the brown handle of a handgun in defendant's waistband. Although defendant is correct that Wyroba had not previously mentioned the details regarding the gun's hammer and could not remember what defendant was wearing that day, those facts, in and of themselves, were not fatal to the State's case. It was for the trial court, as the trier of fact, to resolve any inconsistencies in the evidence and to draw reasonable inferences from the testimony presented at trial (*Sutherland,* 223 Ill. 2d at 242). Ultimately, this court cannot say that no rational trier of fact could have found defendant possessed a firearm when an officer testified that he observed the butt of a gun protruding from defendant's waistband. *Ross*, 229 Ill. 2d at 272.

¶ 17 With regard to defendant's argument that it is contrary to human experience that he would answer the door with a handgun in his waistband when he knew that the police were there, the evidence at trial indicated that after seeing the police defendant, who appeared stunned, slammed the door and attempted to flee. It is not for this court to speculate as to why defendant acted as he did in this situation and when the evidence is sufficient to establish a defendant's guilt beyond a reasonable doubt, the failure of the State to prove motive does not necessitate reversal. *People v. Reed*, 23 Ill. App. 3d 686, 693 (1974). Although McCowan offered an alternative explanation for the gun's presence in the kitchen*, i.e.,* that she took it out of the junk drawer when she believed the apartment was going to be robbed and then threw it away when she realized that the police were at the door, the trial court did not find her testimony credible; this court will not

substitute its judgment for that of the trial court on this issue. *Ross*, 229 Ill. 2d at 272. Viewing the evidence in the light most favorable to the State, as we must, this court cannot say that no rational trier of fact could have found that defendant possessed a handgun and, consequently, was guilty of the offense of armed habitual criminal when a police officer testified that he saw the handle of a gun sticking out of defendant's waistband. *Ross*, 229 Ill. 2d at 272.

¶ 18 Ultimately, this court reverses a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt (*Siguenza-Brito,* 235 Ill. 2d at 225); this is not one of those cases. Accordingly, we affirm defendant's conviction for the offense of armed habitual criminal.

¶ 19 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.