

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).

2012 IL App (4th) 100795-U

Filed 2/8/12

NO. 4-10-0795

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
AMOD R. FLAKES,)	No. 10CF291
Defendant-Appellant.)	
)	Honorable
)	Peter C. Cavanagh,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Steigmann and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* The State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt of reckless discharge of a firearm.

¶ 2 In May 2010, the State charged defendant, Amod R. Flakes, with aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(1) (West 2010)) and reckless discharge of a firearm (720 ILCS 5/24-1.5(a) (West 2010)). Following a July 2010 bench trial, the trial court found defendant guilty of reckless discharge of a firearm. The court sentenced defendant to five years' imprisonment with one year of mandatory supervised release. Defendant appeals, arguing the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On May 6, 2010, defendant was present at a gathering that took place at 2013 East Kansas Street in Springfield, Illinois. The State's two witnesses, Torando Fairlee and Leon

Brown, and approximately four to six other people were present. Defendant was present at the house for roughly two hours, conversing with Brown and a few others on the porch, before leaving with Brown to play pool at a pool hall. Brown testified that he and defendant were gone from the residence for approximately two hours. Upon their return, defendant threw a beer into Brown's truck. Brown responded by shoving defendant into the truck and pulling his pocketknife out of his pocket. Immediately following this incident, someone knocked defendant to the ground next to the truck. No one testified and no evidence was presented as to how or why defendant ended up on the ground.

¶ 5 After defendant arose from the ground he left the residence. Ten to thirty minutes later, defendant walked back toward the residence by way of an alley running behind the house. Fairlee testified that defendant pulled a revolver out of his pants as he was walking down the alley and fired in Fairlee's direction. Fairlee testified he started running on the side of the house toward the front of the house when defendant started shooting. Fairlee testified defendant fired approximately five to six shots in total. Brown also testified he heard gunshots coming from the alley behind the house.

¶ 6 As Fairlee ran from the back of the house to the front of the house, he warned the people on the porch that defendant had returned with a gun. Everyone on the porch went inside the house and defendant left. No one was injured during the incident except Fairlee's dog. Brown testified that defendant returned to the residence to apologize for shooting the dog and was subsequently arrested.

¶ 7 The State charged defendant with aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(1) (West 2010)), reckless discharge of a firearm (720 ILCS 5/24-1.5(a) (West 2010)),

and possession of a firearm without a firearms owners' identification (FOID) card (430 ILCS 65/2(a)(1) (West 2010)). The State dismissed the charge for possession of a firearm without a FOID card. The trial court found defendant guilty of reckless discharge of a firearm and not guilty of aggravated discharge of a firearm.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, defendant argues the State failed to prove him guilty beyond a reasonable doubt of reckless discharge of a firearm. Specifically, he argues the evidence was insufficient because (1) the State did not present any physical evidence and (2) the State's two eyewitnesses provided conflicting testimony.

¶ 11 "A person commits reckless discharge of a firearm by discharging a firearm in a reckless manner which endangers the bodily safety of an individual." 720 ILCS 5/24-1.5(a) (West 2010). The standard of review 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. Cox*, 195 Ill. 2d 378, 387, 748 N.E.2d 166, 172 (2001) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). A conviction will only be reversed if "the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217, 824 N.E.2d 262, 267-68 (2005). We conclude the evidence was sufficient to find defendant guilty beyond a reasonable doubt.

¶ 12 A. Physical Evidence

¶ 13 Defendant first argues he was not proved guilty beyond a reasonable doubt

because the State did not present any "reliable physical evidence that a gun was even shot." Specifically, defendant argues (1) no bullet casings were found around the house; (2) no bullet holes were in or around the house; (3) even though the dog was shot, no bullets were found around the dog pen; (4) the State did not present evidence of gunpowder residue on defendant's hands or clothing; and (5) an officer, four blocks away at the time of dispatch, did not hear any gunshots.

¶ 14 In response, the State argues that no bullet casings were found because evidence presented indicated the gun used was a revolver, and casings from rounds fired from revolvers remain inside the gun after it is fired. Fairlee testified defendant pulled a silver revolver from his pants. Further, Officer Craig Neighbours, the first officer to arrive on the scene, testified he saw a man running from the scene with a silver object, approximately six to eight inches in length. Neighbours testified he believed the object he saw to be a handgun.

¶ 15 As for the injury to Fairlee's dog, despite the lack of a bullet in the cage, the State argues the evidence was sufficient for the trial court to infer defendant shot the dog. Melissa Calhoun, an animal control officer called to the scene, testified the dog had a "good size hole in her muzzle" and a hole inside her mouth. She also testified the wound to the dog was inconsistent with dog fighting and she did not believe that to be the cause of the injury. Further, Brown testified defendant returned to the scene to apologize for shooting the dog, and that is when defendant was arrested.

¶ 16 The State argues defendant's contention that no bullet holes were in or around the house is not determinative of whether a gun was recklessly discharged in the vicinity of the house. Fairlee testified defendant shot at him, not at the house, as Fairlee was running through

the alley. Therefore, no bullet holes would have been in the house as defendant did not shoot at the house. Additionally, the State argues it did not need to present evidence of gun residue to prove defendant's guilt.

¶ 17 Finally, the State argues the fact that Officer Neighbours did not hear any gunshots does not mean defendant did not shoot a gun in the area. Neighbours was dispatched after defendant had finished shooting. Although Neighbours was only four blocks away at the time of dispatch, no evidence was presented that Neighbours was four blocks away at the time the shots were actually fired. Fairlee and Brown both testified the police were called after the shots were fired. It is possible that Neighbours was farther than four blocks away prior to dispatch, when the shots were discharged.

¶ 18 We disagree with defendant's argument that the lack of physical evidence precludes a finding he was proved guilty beyond a reasonable doubt. In *Collins*, our supreme court found the defendant's lack-of-physical-evidence argument equally unconvincing. See *Collins*, 214 Ill. 2d at 217-18, 824 N.E.2d at 268. The defendant in *Collins* argued, as defendant does here, that no bullets were recovered from the area or surrounding area of the alleged shooting which would prove the defendant's conduct was reckless and that defendant endangered the bodily safety of any individuals. *Collins*, 214 Ill. 2d at 217, 824 N.E.2d at 268. The supreme court found one officer's testimony that she heard 15 gunshots, the presence of individuals within the defendant's house at the time of the shooting, and evidence that the shots were fired in a residential area was sufficient to establish the defendant was reckless and endangered the bodily safety of others, despite the defendant's argument the State failed to present any physical evidence. *Collins*, 214 Ill. 2d at 218, 824 N.E.2d at 268.

¶ 19 We conclude the evidence in this case was sufficient to establish defendant was reckless and endangered the bodily safety of other individuals, as in *Collins*. Fairlee testified he heard between five to six gunshots. Fairlee testified he saw defendant with a revolver and defendant fired multiple shots at him as Fairlee was running through the alley toward the house. Officer Neighbours also testified he witnessed a man fleeing from the scene with a silver object he believed to be a gun. Brown and Fairlee both testified other individuals were present, socializing on the porch, when shots were fired outside the house. Calhoun testified the dog in the backyard of the house had an injury that "came through the front of the muzzle" and "out her inner gum *** on the inside," which she believed to be inconsistent with a dog-fighting injury. Brown further testified defendant returned to apologize for shooting the dog. After reviewing this evidence in the light most favorable to the prosecution, we conclude a rational trier of fact could have found the State presented sufficient evidence to prove defendant guilty of reckless discharge of a firearm.

¶ 20 B. Conflicting Testimony

¶ 21 Defendant next argues that he was not found guilty beyond a reasonable doubt because the State's two eyewitnesses provided conflicting testimony. Defendant goes into a very lengthy comparison of Fairlee and Brown's testimony and describes how their testimony was conflicting. The State in turn addresses each inconsistency outlined by defendant. However, we find it unnecessary to individually examine each piece of testimony to reach our conclusion that the State presented sufficient evidence to find defendant guilty beyond a reasonable doubt.

¶ 22 Great weight must be given to the trier of fact's findings, and we will not retry defendant when considering the sufficiency of the evidence. *People v. Wheeler*, 226 Ill. 2d 92,

114-15, 871 N.E.2d 728, 740 (2007). We must duly consider the trial court heard and saw the witnesses. *Wheeler*, 226 Ill. 2d at 114-15, 871 N.E.2d at 740. The trier of fact determines witness credibility, draws reasonable inferences from testimony, and resolves conflicts in evidence. *People v. Dillard*, 319 Ill. App. 3d 102, 106, 745 N.E.2d 185, 189 (2001).

¶ 23 At the conclusion of the hearing, the trial court found defendant guilty of reckless discharge of a firearm in that he "act[ed] in an unreasonable manner" and "endangered the bodily safety of another." The trial court found "Mr. Fairlee was credible in the sense that he saw the defendant had a gun and that [defendant] began shooting." The trial judge stated he agreed with defendant "that Mr. Brown's testimony *** isn't always consistent with Mr. Fairlee's." However, he found "Mr. Brown's testimony to be credible and highly corroborated important details with regard to Mr. Fairlee's rendition of the events."

¶ 24 The trial court made determinations about the credibility of the witnesses and the weight to be afforded the conflicting testimony and found the State proved defendant guilty of reckless discharge of a firearm. The evidence permitted a reasonable fact finder to so conclude. We affirm.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 27 Affirmed.