

No. 1-11-1769

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THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County
Plaintiff-Appellee,)	
)	
v.)	No. 10 CR 12372
)	
JAMES WILLIAMS,)	Honorable
)	Luciano Panici,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Neville and Justice Sterba concurred in the judgment.

ORDER

¶ 1 Held: Defendant was proven guilty of unlawful use of a weapon by a felon beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant James Williams was convicted of two counts of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010), and was sentenced to eight years' imprisonment. Defendant now appeals and argues that the State failed to prove him guilty beyond a reasonable doubt because an eyewitness' testimony was incredible. For the following reasons, we affirm the judgment of the trial court.

¶ 3

BACKGROUND

¶ 4 Venice Matthews testified that at approximately 1:00 a.m. on May 10, 2010, she, defendant and Sheldon Cobb were at Mr. Ricky's night club in Dolton, Illinois. Defendant and Sheldon were friends. Venice and Sheldon had been dating for about three years but she broke up with him after they were released from custody later in the day on May 10, 2010. After the night club closed, defendant, Venice and Sheldon, got into a white van together and drove to a Menard's parking lot, about five minutes away. There were about five to seven cars in the lot.

¶ 5 About 30 minutes later, the police arrived in the parking lot. When this occurred, Venice, defendant and Sheldon were sitting in the van. Defendant was in the driver's seat, Sheldon was in the front passenger's seat and Venice was seated in the back seat of the van on the driver's side. Defendant drove off pretty quickly and exited the Menard's parking lot onto the main thoroughfare. A police car was in front of the van with its lights activated. Defendant did not stop, but continued to drive about 100 feet. As he was driving, defendant said, "[y]ou know I got the banger." Venice believed "the banger" to be a gun. Defendant tried to pass the gun to Sheldon but Sheldon refused to take it. Defendant pointed the gun at Venice, and said, "[b]itch, put it in your purse" or, "[b]itch, hide it in your purse." Venice had never seen the gun before. She grabbed the gun from defendant and dropped it on top of her purse. The police ultimately stopped the van. Venice identified the gun in open court.

¶ 6 On cross-examination, Venice testified that she was 19 years old in May 2010. At some point while they were in the parking lot, they all got out of the van. As soon as defendant stopped the van, two police officers were standing by the van windows and she was forced out of

the van. Venice left her purse on the floor of the van, near her seat. Venice was aware that the police recovered marijuana from the van. She was arrested.

¶ 7 Later that morning, Venice gave a statement to a police officer, wherein she stated, "[a]s the police was [sic] surrounding us, the driver, James, turns to me and says, 'Bitch, hide the gun.' My mind went blank and I was scared to death. I took the weapon and tried to hide it in my purse." Venice denied that she didn't tell the police that James told her to put the gun in her purse. When asked, "it's not in your statement, right? You said more than this to them," Venice replied "[w]ell, yes, something like that."

¶ 8 Dolton Police Officer Joel McQueen testified that he was dispatched to the Menard's parking lot at about 2:30 a.m. on May 10, 2010. The nature of the call was that someone had called to report that an individual in a white van in the parking lot was possibly in possession of a handgun. When he arrived, the white van was driving toward the main street. The driver of the van was speeding and Officer McQueen activated his lights. He could see three individuals in the van; two in the front and one in the back on the driver's side. Officer McQueen observed a lot of hand movements from the individuals seated in the front seat. Officer McQueen stated that it appeared that the driver was "reaching in the backseat for – reaching for something or handing something".

¶ 9 When he ultimately stopped the van, defendant exited and began walking toward his squad car. Officer McQueen ordered him to stop and put his hands up. After defendant was detained, Officer McQueen approached the vehicle and looked inside. He saw a female passenger seated in the backseat directly behind the driver's seat. Using his flashlight, he

observed that directly by her foot was a black purse with the butt of a silver pistol sticking out. Officer McQueen recovered the weapon, which was loaded and contained seven live rounds. One expended round was in the chamber. The gun was inventoried pursuant to Dolton police department procedure. Defendant, Venice and Sheldon were placed under arrest.

¶ 10 Officer McQueen testified that the police department received calls that same night for shots fired. He testified that he did not include anything about seeing hand movements in the front seat in his police report. Marijuana was found in the van but Officer McQueen couldn't recall where it was found. Officer McQueen identified defendant in open court. He also identified the gun he recovered on May 10, 2010.

¶ 11 The State then entered into evidence a certified record of defendant's prior felony conviction under case number 05 CR 28367. The State rested. Defendant rested without presenting any evidence.

¶ 12 The trial court found defendant guilty of two counts of unlawful use of a weapon by a felon and sentenced defendant to eight years' imprisonment. It is from this judgment that defendant now appeals.

¶ 13 ANALYSIS

¶ 14 Defendant argues that he was not proven guilty beyond a reasonable doubt because the trial court improperly found the key witness against him to be credible. We disagree.

¶ 15 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, a 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). It is not the function of the reviewing court to retry the defendant or substitute its judgment for that of the trier of fact. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). The trier of fact assesses the credibility of the witnesses, determines the appropriate weight of the testimony and resolves conflicts or inconsistencies in the evidence. *People v. Naylor*, 229 Ill. 2d 584, 614 (2008). A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 16 To sustain a conviction for unlawful use of a weapon by a felon, the State must prove that defendant "knowingly possess[ed] on or about his person or on his land or in his own abode or fixed place of business any weapon prohibited under Section 24-1 of this Act or any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction." 720 ILCS 5/24-1.1(a) (West 2010). Viewed in the light most favorable to the State, we find that the evidence was sufficient to support defendant's conviction.

¶ 17 Venice testified that while she was a passenger in the white van that defendant was driving, she heard defendant state that he had a gun, saw defendant with a gun in his hand, saw defendant try to give the gun to Sheldon, heard Defendant demand that she take the gun from him and saw defendant hand the gun over to her. Venice's testimony was corroborated by Officer McQueen. He testified that he saw a lot of hand movements in the front seat, and saw defendant "reaching into the backseat." This evidence, along with admission into evidence of a certified copy of defendant's prior felony conviction, was clearly sufficient to establish the elements of unlawful use of a weapon by a felon.

¶ 18 Defendant claims that Venice's testimony was incredible because she was impeached by her bias, interest and motive for testifying falsely. Defendant claims that Venice's statement to police wherein she stated that defendant told her to "put [the gun] in her purse" infers that she already was in possession of the gun. In addition, because she could have been charged with a felony, she had a motive to exonerate herself by blaming defendant. Moreover, the only other person in the van was Venice's boyfriend at the time, Sheldon, whom she was not going to let be charged with a crime.

¶ 19 The testimony of a single credible witness with ample opportunity to observe an offense is sufficient to support a conviction, even if it is contradicted by the accused. *People v. Fultz*, 2012 IL App (2d) 101101, ¶ 45, citing *Smith*, 185 Ill. 2d at 541-42. In this case, defendant made the same argument regarding Venice's bias and the trial court found Venice's testimony to be credible and stated so on the record during a ruling on a post-trial motion. Specifically, the court stated, "[t]he testimony of the witness was credible. She was not impeached in any way, shape or form. The Court believed the testimony of the * * * witness and of the police officer." Although the determination of the trier of fact is not conclusive, its findings as to witness credibility are entitled to great weight, and this court will reverse a conviction only where the evidence is so unreasonable, improbable or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *Smith*, 185 Ill. 2d at 542. Such a reversal is not warranted under the facts presented here.

¶ 20 We reject defendant's contention that *Smith*, 185 Ill. 2d 532, is instructive in this case. *Smith* is factually distinguishable where the witness' testimony contained numerous contradictions and inconsistencies. *Id* at 543. The credibility determination made by the trial

1-11-1769

court was not unreasonable, improbable or unsatisfactory.

¶ 21

CONCLUSION

¶ 22 Based on the foregoing, the judgment of the trial court is affirmed.

¶ 23 Affirmed.