

No. 1-11-2047

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 9393
)	
ROMEL BROCKS,)	Honorable
)	Vincent M. Gaughan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Quinn and Simon concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant proven guilty beyond a reasonable doubt for unlawful use of a weapon by a felon where he was seen placing a gun in a car console area; defendant's conviction affirmed.
- ¶ 2 Following a bench trial, defendant Romel Brocks was convicted of unlawful use of a weapon by a felon and sentenced to 38 months in prison. On appeal, defendant contends that his conviction should be reversed because the evidence was insufficient to prove that he possessed a weapon. We affirm.

¶ 3 At trial, Officer Robert Stegmiller testified that on April 23, 2010 at about 1:25 pm, while on patrol with five other officers divided among three unmarked cars, he saw Darius Dawson standing near a barbershop at 618 East 47th Street in Chicago. He also noticed two individuals sitting in the only vehicle in a vacant lot just west of the barbershop. Dawson "shouted something out." Officer Stegmiller alerted his fellow officers, including Sergeant Jose Lopez. When Officer Stegmiller approached the car in the lot, he saw 35-year-old defendant in the driver's seat and Hezakia Anthony in the front passenger seat. When Sergeant Lopez approached the car closer to the rear, he alerted Officer Stegmiller to the presence of a gun. Officer Stegmiller detained defendant. Sergeant Lopez then recovered the gun from the car and showed it to Officer Stegmiller. Defendant, Anthony, and Dawson were arrested and given *Miranda* warnings. Once at the station, defendant was given *Miranda* warnings a second time, which defendant acknowledged he understood. Defendant then "stated something to the effect that the gun was his" and that Anthony and Dawson did not know he had a gun. Defendant further stated that he had the gun for protection "because the GD's were trying to kill him."

¶ 4 Sergeant Lopez testified that he responded to a call from Officer Stegmiller. At the vacant lot, he saw defendant sitting in the driver's seat and Anthony in the front passenger seat of a tan Cutlass Sierra that was the only vehicle there. As Sergeant Lopez approached the car from behind, he looked through the car's rear windshield and side. Sergeant Lopez saw defendant place a handgun inside the center gear shift console area. After defendant was out of the car, Sergeant Lopez recovered a .40 caliber Smith & Wesson from underneath the car's gear shift cover in the center console area.

¶ 5 Both officers admitted that no pictures were taken of the car. Additionally, there was no written acknowledgment that defendant waived or understood his *Miranda* rights. The only written record of defendant's statement was contained in the case report. The gun was not

submitted for fingerprint identification or a DNA analysis, and a gunshot residue exam was not completed.

¶ 6 Two witnesses testified for the defense. The first, Dawson, testified that on April 23 he went to the nearby barbershop for a haircut and saw his friend, Anthony, in a car. Three or four other cars were in the lot. Dawson went in the car with him. No one else was in the car and Dawson did not see a weapon in the car. From the car, Dawson saw defendant, a friend who Dawson had known for five or six years, as he was about to enter the barbershop. Defendant walked over to Dawson, who started to get out of the car to go to the barbershop himself when the police pulled up and told Dawson, Anthony, defendant, and a couple of other unidentified people to get up against the wall. Dawson then saw officers searching other cars in the lot. The police arrested Dawson along with Anthony and defendant.

¶ 7 Defendant's second witness, Jessica Williams, testified that she knew defendant from the neighborhood. On April 23, she was working at a beauty salon located at 630 East 47th Street. She had parked her car in the lot near the barbershop. While outside on her break, she saw police officers pull into the lot and search through different cars, including Williams's car. Williams asked the officers why they were searching her car. The officers replied they were "looking for something." During this encounter, Williams saw defendant on the side of the lot, but did not see defendant inside a car.

¶ 8 The parties stipulated that the car belonged to Ingmar Vaughn. The parties also stipulated to a certified copy of defendant's prior conviction for burglary.

¶ 9 In closing, defendant argued that the State's evidence was insufficient to establish proof of the offense beyond a reasonable doubt. Although six officers were present, only Sergeant Lopez testified to seeing defendant handle the weapon. In addition, the State did not provide any tangible or physical evidence to corroborate Sergeant Lopez's claim. In rebuttal, the State

argued that the gun was large enough to be seen through the window of the car. Sergeant Lopez's testimony was credible and corroborated by Officer Stegmiller's testimony and defendant's statement at the police station.

¶ 10 The trial court found defendant guilty of unlawful use of a weapon. The trial court stated that "[a]fter evaluating all the evidence***there are some inconsistencies," but found the State had proven defendant's guilt beyond a reasonable doubt. Defendant was sentenced to 38 months in prison.

¶ 11 On appeal, defendant contends the State failed to prove him guilty beyond a reasonable doubt. In particular, defendant argues that Sergeant Lopez's testimony was impossible to believe and not supported by additional evidence. In contrast, defendant's two eyewitnesses provided reasonable and consistent testimony that directly contradicted the officers' accounts.

¶ 12 When a defendant challenges the sufficiency of the evidence, the 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 offense beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. It is not the reviewing court's function to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In a bench trial, it is for the trial judge, sitting as the trier of fact, to determine the credibility of witnesses, weigh and draw reasonable inferences from the evidence, and resolve any conflicts in the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Where the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether, in light of the record, a fact finder could reasonably accept the testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). A defendant's conviction will not be reversed simply because the evidence is contradictory or because the defendant claims that a witness is not credible. *Siguenza-Brito*, 235 Ill. 2d at 228. Further, a trier of fact is not required to accept any possible explanation

compatible with the defendant's innocence and elevate it to the status of reasonable doubt. *Id.* at 229. A defendant's conviction will not be reversed unless the evidence is so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 13 To sustain a conviction for unlawful use of a weapon by a felon, the State must prove that the defendant knowingly possessed a weapon and had a prior felony conviction. 720 ILCS 5/24-1.1(a) (West 2010). Possession can be actual or constructive. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Actual possession is proven by testimony that shows the defendant exercised some form of dominion over the contraband, such as trying to conceal it or throwing it away. *Id.*

¶ 14 Here, the evidence sufficiently supports the trial court's finding that defendant possessed the gun. Sergeant Lopez testified that he saw defendant, who was sitting in the driver's seat of a car, hide a handgun inside the car's center gear shift console area. Once defendant was out of the car, Sergeant Lopez retrieved the gun from that same location. Officer Stegmiller testified that defendant later "stated something to the effect that the gun was his" and that he had the gun because a gang was trying to kill him. Both officers testified that the car defendant was in was the only car in the lot. In contrast, neither defense witness saw defendant in a car. Dawson, a friend of defendant's, saw defendant as he was about to walk into the barbershop. Williams saw defendant on the side of the lot. Both Dawson and Williams saw officers searching multiple cars in the lot. In its ruling, the trial court noted "there are some inconsistencies." However, it is for the trial court to resolve inconsistencies in the evidence. *Sutherland*, 223 Ill. 2d at 242. A conviction will not be reversed simply because the evidence is contradictory. *Siguenza-Brito*, 235 Ill. 2d at 228. The evidence here is not so unreasonable, improbable, or unsatisfactory as to leave a reasonable doubt of defendant's guilt.

¶ 15 This result does not change because Sergeant Lopez was the only person who saw defendant handling the gun. The testimony of a single witness, if it is positive and the witness is credible, is sufficient to convict. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Further, a complainant's testimony does not need to be corroborated and unequivocal. *People v. Rincon*, 387 Ill. App. 3d 708, 723 (2008). Here, the trial court accepted Sergeant Lopez's testimony about the actual crime and the testimony was corroborated by Officer Stegmiller. Sergeant Lopez's testimony was sufficient for the trial court to find that defendant possessed the gun.

¶ 16 We are not persuaded by defendant's argument that the evidence was insufficient because of a lack of certain evidence. The police officers acknowledged the lack of fingerprint evidence, pictures of the car, and documentation of defendant's statement apart from the case report. This argument is not persuasive when the alleged weaknesses in evidence that defendant raises on appeal were all presented to, and rejected by, the trier of fact. *People v. Baugh*, 358 Ill. App. 3d 718, 737 (2005).

¶ 17 For the reasons stated above, we affirm the judgment of the trial court.

¶ 18 Affirmed.