

No. 1-11-2089

**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 15212
	)	
COREY HOSKINS,	)	Honorable
	)	Mary Colleen Roberts,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE SIMON delivered the judgment of the court.  
Harris, P.J., and Quinn, J., concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Judgment entered on armed habitual criminal conviction affirmed over claims that evidence was insufficient and nine-year sentence was excessive.
- ¶ 2 Following a bench trial, defendant Corey Hoskins was convicted of the offense of armed habitual criminal and sentenced to nine years' imprisonment. On appeal, defendant maintains that the State failed to prove him guilty of that offense beyond a reasonable doubt, and that his sentence is excessive.
- ¶ 3 The incident giving rise to the charges filed in this case took place on August 11, 2010, on the south side of Chicago. At trial, Chicago police officer Anthony Gemignani testified that

1-11-2089

in the afternoon hours of that day, he and his partner, Officer Gerald Lau, were on routine patrol in the 6400 block of South May Street, wearing plain clothes and driving an unmarked vehicle. At 3:17 p.m. they observed three individuals, including defendant, standing on the sidewalk in front of a vacant lot. Defendant was wearing a blue t-shirt with a bulge on the left side of his waist, and it appeared that he had something tucked in his waistband.

¶ 4 Officer Gemignani exited the vehicle to conduct a field interview, and defendant began to run through the vacant lot behind him, holding his left side. Officer Gemignani briefly lost sight of defendant, but then observed him running through another vacant lot on Aberdeen Street. As defendant ran through that lot, Officer Gemignani was 25 feet behind defendant and observed him reach into his waistband with his left hand, and toss "what appeared to be a brown handgun," which "threw [him] off. " He explained that "[a]s it was travelling [*sic*] away from his body, then I could see it was a gun." Officer Gemignani initially thought the weapon was a B-B gun because he had never seen a brown handgun before.

¶ 5 Officer Gemignani further testified that defendant threw the handgun toward the bushes, but he did not see exactly where it landed. The officer pursued defendant through the vacant lot and across 64th Street, and when defendant ran by some houses, Officer Gemignani's view of him was obstructed for six seconds. When defendant came back into view, he was running and removing his t-shirt, and went into the house at 6411 South May Street. Officer Gemignani apprehended defendant, who was out of breath and sweating profusely, in the foyer of that house. Officer Lau followed the chase in the car, and took defendant into custody.

¶ 6 Officer Gemignani also testified that he went back to the vacant lot at 6356 South Aberdeen Street to retrieve the weapon he had seen defendant drop there, and found the gun in the bushes. The gun was a loaded Taurus .40 caliber and uncased. Officer Gemignani noted that four minutes passed between the time he saw defendant toss the gun and when he recovered it, and that the gun remained in his constant custody, care, and control from the time he recovered it

1-11-2089

until he arrived at the police station. At the station, Officer Lau inventoried the weapon, and defendant told Officer Gemignani that he did not have a valid FOID card.

¶ 7 The parties stipulated that Officer Lau would testify that he took possession of the gun, which had one .40 caliber magazine with nine live rounds, from Officer Gemignani, that he inventoried the gun following all proper procedures with regard thereto, and that the gun remained in his constant custody, care and control from the time he received the gun until the time he inventoried it.

¶ 8 The parties further stipulated that Officer Zepeda would testify that he advised defendant of his *Miranda* rights, and when he asked defendant why he had a gun, defendant replied, "I was just looking to get high and I don't trust mother f\*\*\*s around here." Defendant also admitted that he was a gang member, and that his gang controlled the area of 64th and Carpenter Streets. The State was then allowed to admit into evidence certified copies of defendant's prior felony convictions for unlawful use of a weapon by a felon and vehicular hijacking.

¶ 9 The defense then called Jairus Moore as a witness. He testified that at 2:45 p.m. on August 11, 2010, he was on the porch at 6411 South May Street where his then girlfriend, Ashley Eason, her mother, Kimberly Eason, and sister, Fallon Milton, lived. He and defendant, whom he has known for most of his life, had been talking on the porch for 30 minutes when an officer ran up with his gun drawn and asked them questions, such as, "did he run in here," and "where did he go." The officer then told Moore and defendant to stretch out on the ground and other policemen arrived. The officers went into the house and placed defendant and Moore in the back of a police car. Moore was released after police checked their names.

¶ 10 Moore further testified that defendant did not run around the area that afternoon, and he did not see him in possession of a gun that day. Moore also stated that he did not see defendant go inside the house, pull off his t-shirt, or sweat profusely.

¶ 11 Fallon Milton testified that she has known defendant for six years, and lives at 6411 South May Street. At 2:30 p.m. on August 11, 2010, she was outside that residence with Moore

1-11-2089

and defendant who were there talking. She left at 2:35 p.m., and when she returned 20 minutes later, defendant and Moore were still there. She then went inside to change her children's clothing, and when she opened the bedroom door, she saw officers with their guns drawn. The officers asked her, "where is he at; don't lie to me." She did not know what they were talking about, and told them so. The police then "[r]ansack[ed] the house," and she exited her home with her children and saw defendant and Moore in a police car.

¶ 12 At the close of evidence, the court found defendant guilty of armed habitual criminal. In doing so, the court noted that it was its role to observe the witnesses as they testify, to listen to their answers, and consider their biases, and corroborating evidence, then found the police officer credible, and the defense witnesses incredible. The court recalled that the officers observed defendant with a bulge in his waistband, and that he fled when Officer Gemignani exited his car. The court found that Officer Gemignani testified credibly regarding his pursuit of defendant during which he saw defendant toss an item from his waistband that he recognized as a gun. The court also found that the officer's testimony regarding defendant's possession of a gun was corroborated by the stipulated testimony of Officer Zepeda who asked defendant why he had a gun, and he replied, "I was just looking to get high; don't trust these mother f\*\*\*\*s"

¶ 13 Defendant filed a motion for a new trial and asked the court to reconsider its findings. Defendant maintained that the testimony of the police officer was inconsistent, impeached and contradicted by defense witnesses who testified credibly, consistently and were not impeached. The court denied the motion, and stood on its findings of credibility, fact, and guilt.

¶ 14 At the sentencing hearing, the parties noted that defendant had five prior felony convictions, including possession of a stolen vehicle, unlawful use of a weapon by a felon, vehicular hijacking, manufacture/delivery of a controlled substance, and possession of a controlled substance, and a misdemeanor for driving under the influence. The court observed that defendant had been sent to boot camp for some of the prior offenses, and noted for the record the presence of defendant's mother, grandmother and other family members on each and every

1-11-2089

day the court had heard the matter. In aggravation, the State noted defendant's loving and supportive family, but maintained that he rejected that support and continued to engage in criminal behavior.

¶ 15 In mitigation, defense counsel noted that defendant was 27 years old, that his father was not a part of his life, and that his mother worked for the Cook County Department of Corrections. Counsel further noted that he had been sent to boot camp for his prior conviction for possession of a stolen vehicle, and vehicular hijacking, and that in each of these cases, the car involved was associated with one of defendant's friends or a relative. Counsel also informed the court that defendant has a close relationship with his younger brother who suffers from cerebral palsy and a mild cognitive disorder, as well as with his 10-year-old son, and that defendant had obtained his GED. In further mitigation, defense counsel presented a letter from defendant's grandmother and testimony from defendant's mother who reiterated that defendant was a great father.

¶ 16 Defendant exercised his right of allocution, informing the court that he regrets what he has done, and noted that he could have gone in any direction in life but chose the one that landed him in front of the court. Defendant further stated that he is ready to change his life, that he is tired of letting down those who love him, and wants to be there for his son to prevent him from going down the same path that he has taken.

¶ 17 In announcing its sentencing decision, the court noted that it had reviewed defendant's pretrial investigation report, listened to his mother, and read the letter from his grandmother. The court further noted, however, defendant's criminal history which showed that he did not care about himself or others, that several courts had tried to give him opportunities to turn his life around, and that for the last nine years he has done nothing but spend time in the Department of Corrections. The court then sentenced him to nine years' imprisonment.

¶ 18 Defendant filed a motion to reconsider sentence alleging that the court failed to consider certain factors in mitigation and that the sentence imposed was overly harsh in light of his rehabilitative potential. The court denied the motion, noting that defendant has found himself

1-11-2089

arrested, charged and convicted of various felonies since 2001, and that the sentence was fair and proportionate to the charges and his criminal history.

¶ 19 On appeal, defendant first contends that the State failed to prove him guilty of armed habitual criminal beyond a reasonable doubt. He specifically maintains that the State failed to show that the firearm police recovered was the same object that he had dropped.

¶ 20 As an initial matter, defendant asserts that our standard of review is *de novo* because the issue is purely a legal one. We disagree. Defendant is challenging the sufficiency of the evidence to prove an element of the offense (*People v. Pulley*, 345 Ill. App. 3d 916, 920 (2004)); and, in such a case, the standard of review is whether, after reviewing 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. Williams*, 193 Ill. 2d 306, 338 (2000)). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of defendant's guilt. *People v. Campbell*, 146 Ill 2d. 363, 375 (1992). For the reasons that follow, we do not find this to be such a case.

¶ 21 To sustain a conviction of armed habitual criminal, the State must prove, beyond a reasonable doubt, that defendant possessed a firearm after having being convicted of two or more qualifying felonies. 720 ILCS 5/24-1.7 (West 2010). Defendant does not dispute the proof of his two prior felony convictions, but maintains that there was insufficient proof that the object he dropped was the firearm that was later recovered by Officer Gemignani. He maintains that Officer Gemignani thought defendant had dropped a brown B-B gun, which, as he correctly notes, does not qualify as a firearm (720 ILCS 5/2-7.5 (West 2010); 430 ILCS 65/1.1 (West 2010)), and further, that there was no evidence linking the object he dropped to the item recovered such as fingerprints on the gun or a description of the color of the gun retrieved.

¶ 22 The evidence in this case, when viewed in the light most favorable to the prosecution (*People v. Pintos*, 133 Ill. 2d 286, 292 (1989)), shows that when Officers Lau and Gemignani first observed defendant, he had a bulge on the left side of his waistband, and upon seeing them,

1-11-2089

he fled, holding his side. As Officer Gemignani pursued defendant on foot, he saw defendant pull out something that appeared to be a brown handgun, possibly a B-B gun, but then saw that it was a gun. Four minutes later, Officer Gemignani returned to the location where he observed defendant drop the gun and recovered a loaded, uncased .40 caliber gun, and the parties stipulated to its custody, care and control by the officers. The inference that this gun was the item discarded by defendant flowed normally from the evidence presented to the court (*People v. Martin*, 401 Ill. App. 3d 315, 323-24 (2010)), which was not required to search out all possible explanations consistent with innocence and raise them to the level of a reasonable doubt (*People v. Moore*, 394 Ill. App. 3d 361, 364-65 (2009)).

¶ 23 In addition, further evidence was presented that when Officer Zepeda asked defendant why he had a gun, defendant did not deny it, but instead stated, "I was just looking to get high and I don't trust mother f\*\*\*s around here." The court could reasonably infer from this exchange that defendant was admitting that he was carrying a firearm. *Martin*, 401 Ill. App. 3d at 323-24. Viewing the evidence in the light most favorable to the State, we conclude that the trial court could find that defendant was in possession of a firearm (*People v. Toy*, 407 Ill. App. 3d 272, 288-89 (2011)), and with the evidence of his prior convictions, that he was found guilty of the charged offenses beyond a reasonable doubt.

¶ 24 In reaching this conclusion, we have considered *In re Brown*, 71 Ill. 2d 151 (1978), cited by defendant for his contention that there must be physical evidence establishing that the recovered gun was the same item Officer Gemignani saw defendant toss, and find his reliance misplaced. In *Brown*, the minor was adjudicated delinquent of aggravated battery, and the finding was reversed on appeal where the evidence consisted solely of the uncorroborated and varying testimony of a witness who had originally been charged with the crime but was exonerated of it by condemning the minor. *In re Brown*, 71 Ill. 2d at 155-56. None of these factors are present in this case where a police officer observed defendant drop a gun, which he recovered within minutes from the same location he had seen defendant toss it, and defendant

1-11-2089

essentially admitted to carrying the gun for protection. Accordingly, we find *Brown* inapposite, and no basis for reversal.

¶ 25 Defendant next contends that the nine-year prison sentence imposed by the court was excessive. He maintains that this court should either reduce his sentence to six years' imprisonment or remand for resentencing in light of the nature of the offense, his criminal history and his rehabilitative potential.

¶ 26 There is no dispute that the 9-year sentence imposed by the trial court falls within the statutory range of 6 and 30 years' imprisonment, provided for this offense (720 ILCS 5/24-1.7 (West 2010); 730 ILCS 5/5-4.5-25 (West 2010)), and that we may not disturb that sentence absent an abuse of discretion (*People v. Bennett*, 329 Ill. App. 3d 502, 517 (2002)). We find none here.

¶ 27 The record shows that the court considered the aggravating and mitigating factors presented, the pretrial investigation report, and defendant's close familial relationships. The court also weighed defendant's potential for rehabilitation against his five prior felonies, and failure to take advantage of the opportunities provided to him by pass courts. Accordingly, the court found that nine-years' imprisonment was appropriate.

¶ 28 It is not our prerogative to reweigh the factors which were properly considered by the trial court (*People v. Martin*, 2012 IL App (1st) 093506, ¶¶52-53), and independently conclude that the sentence is excessive (*People v. Burke*, 164 Ill. App. 3d 889, 902 (1987)). Here, it is evident that the court carefully considered the aggravating and mitigating factors and concluded that a nine-year term was appropriate. We cannot say that the trial court abused its discretion in imposing that term. *People v. Shumate*, 94 Ill. App. 3d 478, 485 (1981).

¶ 29 We, therefore, affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.