

No. 1-12-0387

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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 15347
)	
KAMERON McGEE,)	Honorable
)	Kevin M. Sheehan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Lampkin and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved beyond a reasonable doubt that defendant knowingly possessed a firearm while attempting to board a commercial aircraft. Defendant's convictions for aggravated unlawful use of a weapon and attempting to board a commercial aircraft with a weapon are affirmed.

¶ 2 Following a bench trial, defendant, Kameron McGee, was found guilty of attempting to board an aircraft with a weapon (Count I) and two counts of aggravated unlawful use of a weapon (Counts II and III). Counts II and III merged and defendant received concurrent

sentences on Counts I and II. He received 12 months of felony probation with mandatory costs and fines.

¶ 3 On appeal, defendant contends the State failed to prove both counts beyond a reasonable doubt.

¶ 4 The State's witnesses testified during defendant's bench trial regarding the occurrences at the airport. Transportation Security Agency (TSA) Agent John Reeves testified that at approximately 8:30 a.m. on August 13, 2010, he observed, along with this co-worker Matt Hewitt, an image of what appeared to be a handgun inside a bag that was going through the x-ray machine. Reeves called for TSA Supervisor Betty Davis who testified that she also observed an image of a handgun on the x-ray machine and that she called the Chicago police department. When the police arrived, TSA released the bag from the x-ray machine and asked defendant whether the bag belonged to him, and defendant answered affirmatively. TSA turned the bag over to the police. Davis testified that no one else had access to the bag from the time that Reeves arrived at the machine to the time the bag was turned over to the police.

¶ 5 On cross-examination, Davis testified that defendant was cooperative and he confirmed the bag belonged to him. Defendant did not attempt to run, to avoid answering her questions, was not belligerent, and did not act nervous or hostile. When Davis requested defendant's driver's license and boarding pass, he provided them without attempting to resist and without appearing nervous or sweaty.

¶ 6 Chicago police officer Vince Bielicki testified that when he arrived on the scene, he received possession of the bag from another police officer and then examined its contents. Inside of the bag, he discovered clothes, toiletries, and a semi-automatic 9 millimeter handgun. The weapon had a full clip, but there was no bullet in the chamber. Bielicki had to dig through the bag to find the weapon. He testified there were a lot of other items inside the bag along with the

weapon. After Bielicki recovered the handgun, defendant was arrested and taken to the airport police station where he was interrogated. After waiving his *Miranda* rights, defendant told the police that he forgot the weapon was in his bag.

¶ 7 On cross-examination, Bielicki testified he had to unzip and fish through the bag to retrieve the weapon. There were clothing and toiletries in the bag, and the handgun was in the bag's main compartment. Bielicki explained that defendant appeared surprised and upset when Bielicki pulled the handgun out of the bag. He described defendant's reaction to the officer removing the weapon from the bag as: "[I]t was like oh shit," and defendant appeared surprised.

¶ 8 After the State rested, the defense moved for a directed finding, arguing the State did not prove defendant knew the weapon was in the bag because the testimony demonstrated he forgot the handgun was in the bag. The trial court denied the motion.

¶ 9 Defendant testified that on Friday, August 13, 2010, he went to O'Hare airport to fly to Charlotte, North Carolina for a family reunion. He believes his US Airways flight was scheduled to leave at 9:30 a.m. Defendant's friend was supposed to pick him up at 7 a.m. to drive him to the airport but defendant overslept because he went out the night before to celebrate another friend's birthday. Therefore, he had not slept the night and day before going to the airport.

¶ 10 Defendant was awakened by his friend's calling him and honking the car horn. Defendant then brushed his teeth, threw some water on his face and began frantically packing. After he packed, he rushed down the stairs to his friend's car and placed his bags in the trunk. He checked his luggage with the Skycap and then went to the security line with his carry-on bag. When he arrived at the security line, he removed his belt and shoes, emptied his pockets, placed his carry-on bag on the conveyor belt, and walked through the x-ray machine. After he walked through the x-ray, the belt stopped and TSA employees asked him whether the bag belonged to him, and he responded affirmatively. Davis asked him whether he knew there was a weapon in the bag and

defendant replied no, "[a]bsolutely not." TSA again asked whether he knew there was a weapon in the bag and defendant again replied no. Then the Chicago police arrived.

¶ 11 Defendant testified he observed Bielicki remove a Glock 9 millimeter handgun from his bag. He then became emotional and tears began to form in defendant's eyes. He apologized and told the officers he did not know his handgun was in the bag. Defendant was then placed under arrest.

¶ 12 Defendant explained the acts that led up to his arrest at the airport. He testified that after work on August 10, 2010, he went home to retrieve his handgun so to go to the shooting range. He disassembled the handgun, placed it in the bag and placed the bag in the trunk of his car. After being at the shooting range, he again disassembled the handgun, returned it to his bag and placed the bag in the trunk of his automobile. When he arrived home, to the best of his knowledge, defendant cleaned the handgun and reassembled it. Defendant explained that he usually places the weapon in the night stand by his bed after cleaning and reassembling it. On August 13, 2010, defendant thought the weapon was in his night stand. The handgun is not heavy; it is made mostly of polymer (plastic). The bullets are brass. When he was packing the bag, he did not feel the weapon or observe it in the bottom of the bag. He did not realize the weapon was in the bag until the police found it. Defendant explained he had taken three handgun courses and had owned the weapon for about a year. He testified he did not attempt to board a commercial or chartered aircraft knowing he had a weapon on his person.

¶ 13 Defendant's bag can fit a "good amount" of items and is approximately 18 inches by 18 inches. The weapon and bag belonged to him, and the handgun was in his house. No one else was in the house with him. He admitted after he broke the weapon down, he placed it in his bag.

¶ 14 The trial court did not find defendant's testimony credible. When questioned under cross-examination as to whether he placed the weapon in the bag, defendant hesitated, looked at the judge and asked whether he had to answer that question. The trial court found this was indicative of defendant's lack of credibility and also indicated defendant knew the handgun was in the bag. In the court's opinion, the testimony was uncontroverted that defendant exclusively owned the weapon and had exclusive control over the handgun and the carry-on bag. The trial court also found knowledge despite there being a three-day span between when defendant last touched the handgun after taking it to the shooting range and when it was discovered in the bag at the airport. Defendant was found guilty of boarding an aircraft with a handgun and aggravated unlawful use of a weapon, and was sentenced to one year of felony probation.

¶ 15 Defense counsel filed a post-trial motion for a new trial and argued that defendant did not have the requisite knowledge for possession of a weapon and that defendant was a credible witness. The State argued that forgetfulness is not a defense. The trial court denied defendant's motion.

¶ 16 On appeal, it is undisputed defendant owned the weapon and bag which contained the handgun, carried the weapon into O'Hare airport, and sent the bag carrying the weapon through the x-ray machine at the security checkpoint as he proceeded to travel to North Carolina. Defendant, however, contends that despite these facts, he did not *knowingly* carry the weapon into the airport and attempt to board an aircraft with the handgun because defendant did not realize he mistakenly placed his firearm into his bag. He argues the State failed to prove beyond a reasonable doubt that he was guilty of boarding or attempting to board an aircraft with a weapon and aggravated unlawful possession of a firearm.

¶ 17 In support of his insufficiency of the evidence contention, defendant argues that the trial court interpreted and applied "knowingly" as set forth in sections 24-1.6(a)(1)(3)(A) and 29D-

35.1(A) of the Criminal Code of 1961 (720 ILCS §§ 5/24-1.6(a)(1)(3)(A), 29D-35.1(A) (West 2010)). As such, defendant requests this court apply a *de novo* standard of review, citing *People v. Jones*, 214 Ill. 2d 187, 193 (2005). The State responds that knowledge is a question of fact to be resolved by the trier of fact, citing *People v. Ray*, 232 Ill. App. 3d 459, 462 (1992). The State, accordingly, urges this court to apply the more deferential standard of review provided for in *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). See also, *People v. Ross*, 407 Ill. App. 3d 931, 934-35 (2011).

¶ 18 *Ross* is instructive as we determine which standard of review applies. In that case, the defendant contended on appeal the State failed to prove beyond a reasonable doubt that he knew about the firearm found behind the driver's seat of the vehicle the defendant was driving; the defendant contended the handgun was out of his view and he did not own the vehicle. *Ross*, 407 Ill. App. 3d at 934. On appeal, the defendant claimed the proper standard of review was *de novo* because the question was purely legal. *Id.* This court clarified the defendant was actually asking the court to review the trial court's factual findings, based on the conflicting testimony of the parties' witnesses. *Id.* Therefore, this court reviewed the evidence in the light most favorable to the State and concluded the issue presented was a question of fact, and not of law. *Id.*

¶ 19 Similarly, our review of defendant's appeal in the instant case is a question of fact because at the heart of the matter is defendant's credibility during his testimony at trial. On appeal, defendant contends his testimony was credible. However, as the trial court stated in its findings, it found defendant's testimony evasive and incredible and as a result, found him guilty beyond a reasonable doubt of attempting to carry a weapon onto a commercial aircraft. See *People v. Ingram*, 389 Ill. App. 3d 897, 899 (2009) (rejecting the defendant's argument that the appellate court should apply the *de novo* standard of review because knowledge and possession are questions of fact to be resolved by the jury and those facts were in dispute).

¶ 20 The standard of review is whether, after viewing 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. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Ross*, 229 Ill. 2d 255, 272 (2008). We will not disturb the trial court's findings unless the evidence is so unbelievable, improbable, or unsatisfactory that it creates a reasonable doubt of guilt. *Ingram*, 389 Ill. App. 3d at 899.

¶ 21 A defendant will be found guilty of attempting to board an aircraft with a weapon if the State proves beyond a reasonable doubt the defendant attempted to board any commercial or charter aircraft while knowingly possessing any firearm. 720 ILCS 5/29D-35.1(a) (West 2010). Whether defendant "knowingly" possessed the handgun is the sole issue on appeal.

¶ 22 Knowledge may, and most often must, be established by circumstantial evidence. *Ingram*, 389 Ill. App. 3d at 900. Defendant points to the factors in *People v. Davis*, 50 Ill. App. 3d 163, 168 (1977) for analyzing whether he knowingly possessed the weapon. Defendant, however, concedes that these factors are merely instructive and primarily adopted for cases in which weapons are found inside vehicles. These factors are not mandatory or exclusive for the court's consideration; reviewing courts should also consider "any other relevant circumstantial evidence of knowledge, including whether the defendant had a possessory or ownership interest in the weapon." See *Bailey*, 333 Ill. App. 3d at 892.

¶ 23 Defendant cites two cases which he argues illustrate his absence of knowledge of the weapon: *United States v. Holtzhauer*, 463 F. Supp. 2d 742 (S.D. Ohio 2006) and *People v. Bailey*, 333 Ill. App. 3d 888 (2002). Defendant first argues his case is factually similar to *Holtzhauer* in which the district court sitting in Ohio found that the defendant forgot a weapon in his bag when trying to board a flight. *Holtzhauer*, 463 F. Supp. 2d at 747. *Holtzhauer* is factually distinguishable because that defendant's custom was to carry his handgun, pursuant to

Ohio's concealed carry law, with him when he took trips within the state of Ohio. *Id.* at 744. The defendant in fact went on a trip the weekend before his trip and carried his handgun in a locked pouch in his briefcase. *Id.* The district court further noted the defendant's nearly life-long gastrointestinal and back issues that flared up during the weekend and on the morning of his business trip. His back issue caused him to rearrange his luggage before leaving for the airport, and in rearranging his luggage to accommodate his back, defendant stuck various items in the briefcase which held his weapon. The district court explained that the defendant forgot the handgun while under the stress of several factors including the weekend trip, his health issues, his lack of sleep due to not feeling well, and his hurried re-packing. *Id.* at 745. Most importantly, the district court found the defendant's testimony credible. Here, defendant testified that he overslept because he went out to celebrate a friend's birthday the night before and that he did not pack for his vacation until the morning of his trip. The trial court did not find this testimony credible. Thus, defendant's case is distinguishable from *Holtzhauer*. Moreover, "decisions from lower federal courts are not binding on this court." *People v. Johnson*, 408 Ill. App. 3d 107, 118 (2010).

¶ 24 *Bailey* is also distinguishable. The defendant in *Bailey* did not own the handgun or the car in which the weapon was found. *Bailey*, 333 Ill. App. 3d 892. This court also found in *Bailey* that while the defendant was seated in the passenger seat and the handgun was found underneath the passenger seat, the handgun was not readily visible as evidenced by the fact that the recovering officer did not discover the weapon until he looked underneath the passenger seat. *Id.* Moreover, the State did not establish any connection or relationship between the defendant and the owners of the handgun and the car. *Bailey*, 333 Ill. App. 3d at 892. Here, defendant owned the handgun and the bag, and had exclusive possession of both when he entered the airport.

¶ 25 Defendant further contends that no rational trier of fact could have found his testimony incredible. A reviewing court will not retry the defendant. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). Rather, the trier of fact determines witness credibility, weighs testimony, and draws reasonable inferences from the evidence. *Id.* "A conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *Id.* While it may be true that defendant had a difficult time answering the question of whether he put the weapon in his bag, he nevertheless answered affirmatively. Moreover, the trial court found defendant was evasive when he asked the trial court whether he had to answer this question. This question went to the ultimate issue in the case: whether defendant knowingly possessed the handgun. As a result, we defer to the trial court's finding that defendant was evasive in inquiring whether he had to answer this question. Defendant's testimony that he forgot the handgun in his bag is self-serving because it also goes to the ultimate issue. The trial court considered this testimony as well and found defendant lacked credibility.

¶ 26 It is also undisputed that defendant owned the weapon and the bag. Defendant testified that he placed the handgun into bag. The record also evidenced the weapon was a Glock 9 millimeter. Officer Bielicki testified that the clip of the handgun was loaded. Defendant testified the bullets were brass. Although defendant testified that he hastily packed for his vacation on the morning of his flight and did not even look into his bag before placing various items of clothing and toiletries into the bag, the trial court found defendant's testimony incredible. It is within the province of the trial court to make such a determination as the trial court is in the best position to hear the testimony and observe the witnesses. *Jonathon C.B.*, 2011 IL 107750, ¶59. We will not reverse the trial court's finding of incredulity and guilt here, where, viewing the evidence in the light most favorable to the State, we cannot say the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt.

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¶ 27 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.