

No. 1-13-1502

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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. 12 CR 21884
)	
CHARLES KING,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Ellis concurred in the judgment.

O R D E R

¶ 1 *Held:* Judgment entered on defendant's conviction for unlawful use of a weapon by a felon affirmed over his claim that the evidence was insufficient to prove him guilty beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Charles King was found guilty of two counts of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)), and six counts of aggravated unlawful use of a weapon (720 ILCS 5/24-1(a) (West 2010)). The court merged these counts at sentencing, and imposed a single term of 102 months' imprisonment. On appeal,

defendant contends that the evidence was insufficient to prove him guilty of possessing a firearm beyond a reasonable doubt.

¶ 3 The evidence adduced at trial shows that around midnight on November 15, 2012, Chicago police arrested defendant following a traffic stop at 805 North Avers Avenue. At trial, Chicago Police Officer Timothy Gorzkowski testified that he and two other officers were patrolling that area of the city when they observed a Lincoln Town Car with a cracked windshield being driven in the opposite direction. Officer Doug McDermott, who was driving the patrol car, made a U-turn and conducted a traffic stop on Avers Avenue. The two officers, along with Officer Obaldo, exited their car and began to approach the Town Car on foot telling the five occupants to show their hands. One of the occupants began to exit the vehicle from the rear driver-side passenger door, and Officer Obaldo engaged that person while Officers McDermott and Gorzkowski approached the other side of the car.

¶ 4 Officer Gorzkowski noticed that the person in the front passenger seat did not have his hands up, but was instead looking down into his lap with his shoulders and arms moving as if he were manipulating something between his legs. When he got close enough to look through the passenger-side window, Officer Gorzkowski saw defendant sitting in the front seat "manipulating" a gun between his legs. Officer Gorzkowski could not tell whether defendant was inserting a magazine into the gun or taking it out, and he again told defendant to raise his hands. Defendant did so, dropping the gun onto the floor of the car, and exited the vehicle at Officer Gorzkowski's request. Officer Gorzkowski then retrieved the gun from the Town Car and arrested defendant. The officers completed contact cards for the other occupants of the car, and took defendant to the police station for questioning.

¶ 5 Officer Gorzkowski heard Officers McDermott and Obaldo interview defendant at the station. Defendant told the officers that he purchased the gun for \$350 from a guy on the street for protection. Defendant then told the officers that he was "a four" and had "five stars," which, when questioned by Officer Gorzkowski, he explained was his rank as a member of the Four Corner Hustlers street gang. Officer Gorzkowski discovered that defendant did not have a Firearm Owner Identification card and that there was a bullet in the chamber of the gun recovered from the Town Car.

¶ 6 The State then introduced into evidence a certified record issued by the Illinois State Police showing defendant's date of birth and that he had never been issued a FOID card before the date of the arrest in this case. The State also introduced a certified copy of defendant's prior felony conviction as an element of the charged offense.

¶ 7 Officer McDermott then testified to his involvement in defendant's arrest in this case. He recalled that defendant provided him with a date of birth of June 27, 1979, as indicated on the arrest report.

¶ 8 Defendant testified on his own behalf that on the night of November 15, 2012, he, along with two of his younger brothers and two of his cousins, decided to go out. His cousin, "Pepper," drove the group in the Town Car and parked on Avers Avenue. As his other cousin started to get out of the parked car, defendant heard someone shout to get back inside, and the cousin returned. Defendant then saw three uniformed police officers approaching the car with guns drawn, and their squad car parked two cars back. The officers told everyone to put their hands up and all the occupants of the car, including himself, raised their hands. The officers asked Pepper for his license, and when he told them it was suspended, they handcuffed him. The officers then ordered

everyone out of the car and handcuffed each of them. Following a search of the car, the officers discovered a gun under the front passenger seat where defendant had been sitting. Defendant denied that this was his gun, that he had ever seen or touched it, or that he even knew there was a gun in the car.

¶ 9 The officers then took defendant to the police station where he spoke with Officers McDermott and Obaldo. He denied telling them that the gun was his, that he bought it for protection, or that he was in a gang. He testified that he was previously a member of the Four Corner Hustlers, but left the gang in 2005. He also testified that he was approached by detectives who asked him to help them set up people who sold guns, but he declined.

¶ 10 The parties stipulated that, if called, Chicago Police Detective Heerdt would testify that he and his partner spoke to defendant on November 15, 2011, after advising him of his Miranda rights. Defendant told Detective Heerdt that the gun was not his, and that he did not know to whom it belonged. He also stated that the car was owned by his cousin, Pepper, and that he did not know any of the other occupants in the car. He denied telling anyone that the gun was his, and stated that his DNA would not be found on the gun.

¶ 11 The State then requested that the certified copy of defendant's prior felony conviction, previously introduced as an element of the charge, also be used to impeach defendant's credibility. The court received it for that purpose.

¶ 12 Following closing arguments, the court found defendant guilty of two counts of unlawful use of a weapon by a felon and six counts of aggravated unlawful use of a weapon, but acquitted him of the two counts of possession of a firearm by a gang member. In announcing its decision, the court stated that it found Officer Gorzkowski's testimony credible beyond a reasonable doubt

regarding the circumstances of the traffic stop relating to the gun. The court also found it informative that defendant acknowledged the gun was his and described how and why he purchased it in his interview with the two officers.

¶ 13 In this appeal from that judgment, defendant contends that Officer Gorzkowski's testimony is incredible and that the evidence in the record is insufficient to prove him guilty beyond a reasonable doubt. He maintains that Officer Gorzkowski's description of him "manipulating" the gun while being approached by three uniformed police officers is incredible, and contrary to human nature, and, therefore, no reasonable trier of fact could find him guilty of the charged offenses beyond a reasonable doubt.

¶ 14 Where defendant challenges the sufficiency of the evidence to sustain his conviction, the reviewing court must consider whether, after viewing the evidence in a 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. Jordan*, 218 Ill. 2d 255, 270 (2006). This standard recognizes the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to give their testimony, to resolve any conflicts and inconsistencies in the evidence, and to draw reasonable inferences from such evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court must allow all reasonable inferences from the record in favor of the prosecution, and will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Beauchamp*, 241 Ill 2d. 1, 8 (2011); *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 15 To sustain defendant's conviction in this case, the State was required to prove that defendant knowingly possessed a weapon or ammunition and that he had previously been

convicted of a felony. 720 ILCS 5/24-1(a) (West 2010); 720 ILCS 5/24-1.1(a) (West 2012).

Defendant does not dispute his prior felony conviction, but contends that the record is insufficient to prove that he possessed a weapon beyond a reasonable doubt.

¶ 16 Viewed in a light most favorable to the prosecution, the evidence presented in this case shows that three officers stopped a Lincoln Town Car in which defendant was a passenger. As the officers approached the car, they told the five occupants to raise their hands. Defendant did not comply with this directive, and one of the officers observed him in the front passenger seat with his head lowered, moving his arms and shoulders as if manipulating something in his lap. When Officer Gorzkowski approached the front passenger-side window of the car, he noticed defendant holding a magazine and a gun. When Officer Gorzkowski again told defendant to raise his hands, defendant dropped the gun. Officer Gorzkowski then ordered him out of the car and recovered the gun inside. This evidence, and the reasonable inferences therefrom, were sufficient to allow a reasonable trier of fact to find that defendant was in possession of a firearm, and was proved guilty of unlawful use of a weapon by a felon beyond a reasonable doubt. 720 ILCS 5/24-1.1(a) (West 2014); *People v. Dean*, 207 Ill. App. 3d 640, 656 (1990).

¶ 17 Defendant contends, however, that Officer Gorzkowski's testimony is incredible and contrary to human experience. In making this assertion, defendant essentially challenges the credibility of the State's chief witness, an issue within the province of the trial court in this case. This court will not substitute its judgment for that of the trial court on these matters unless the proof is so unsatisfactory that a reasonable doubt of guilt appears. *People v. Berland*, 74 Ill. 2d 286, 305-06 (1978). We do not find this to be such a case.

¶ 18 Defendant specifically calls our attention to Officer Gorzkowski's account of the events leading up to the point where he saw defendant with the gun in his lap. Defendant maintains that no rational trier of fact could believe the officer's testimony regarding his refusal to raise his hands when told to do so by uniformed police, and failure to attempt to conceal the gun in any way. Defendant equates Officer Gorzkowski's testimony to that of officers in "dropsy" cases, where a police officer attempts to justify an otherwise illegal search by testifying that defendant dropped contraband in plain view. See, *e.g.*, *People v. Ash*, 346 Ill. App. 3d 809, 816-19 (2004). Given defendant's status as a convicted felon sitting in a car stopped by police with a gun in his hands, the officer's testimony regarding defendant's movement and lack of initial response to the officers' commands is far from "incredible" as asserted by defendant, citing *People v. Coulson*, 13 Ill. 2d 290 (1958). To the contrary, and as stated above, the evidence as a whole was sufficient to establish defendant's possession of the weapon. *People v. Cunningham*, 212 Ill. 2d 274, 284 (2004).

¶ 19 Defendant further contends that the court should not have found Officer Gorzkowski's testimony reliable, where defendant presented a contradictory and believable version of events. It is well-settled, however, that the trial court may believe portions of the defendant's case and portions of the State's case (*People v. Reed*, 80 Ill. App. 3d 771, 781 (1980)), and, as noted, the trial court here was charged with making the credibility determination and resolving any inconsistencies in the totality of the circumstances (*Sutherland*, 223 Ill. 2d at 242). The court found Officer Gorzkowski's version more believable than defendant's, and the record, as presented, provides no basis for disturbing that determination. *Berland*, 74 Ill. 2d at 305-06.

¶ 20 Defendant next contends that the traffic stop was pretextual because the officers had no valid reason for stopping the Town Car other than the cracked windshield. He argues that the officers had more pressing matters than wasting time and resources to stop a car with a cracked windshield.

¶ 21 Defendant's unfounded protestations notwithstanding, the record clearly shows that the windshield of the Town Car was cracked, which, as a violation of the Illinois Vehicle Code (625 ILCS 5/12-503(e) (West 2014)), provided a reasonable basis for the traffic stop (*People v. Ramsey*, 362 Ill. App. 3d 610, 615 (2005)). There is nothing in the record to suggest that the officers stopped the Town Car for any reason other than that violation (*People v. Perry*, 204 Ill. App. 3d 782, 786 (1990)), and in this regard, we find it noteworthy that defendant withdrew his motion to quash arrest and suppress evidence prior to trial, effectively conceding the validity of the stop.

¶ 22 In sum, we conclude that the evidence was sufficient to establish that defendant unlawfully possessed a firearm, and was proved guilty of unlawful use of a weapon by a felon beyond a reasonable doubt. We, therefore, affirm the judgment of the circuit court of Cook County to that effect.

¶ 23 Affirmed.