SIXTH DIVISION
July 24, 2015

No. 1-13-1644

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 2299
	)	
JUAN MANZANARES,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment entered on armed habitual criminal conviction affirmed over defendant's contentions that the trial court erred in denying his motion to quash his arrest and suppress evidence, and that the evidence was insufficient to sustain his conviction.

¶ 2 Following a bench trial, defendant Juan Manzanares was found guilty of armed habitual criminal and sentenced to nine years' imprisonment. On appeal, he contends that the court erred in denying his motion to quash arrest and suppress evidence. He also challenges the sufficiency of the evidence to sustain his conviction.

¶ 3 Defendant was charged with armed habitual criminal, unlawful use of a weapon by a felon, and aggravated unlawful use of a weapon. Prior to trial, defendant filed a motion to quash his arrest and suppress evidence alleging that on December 25, 2011, police made a warrantless and non-consensual entry into his second floor apartment at 5436 South Mozart Street in Chicago, and recovered a weapon and bullets which led to the charges filed in this case. Defendant alleged that the entry into, and search of, his apartment was unconstitutional because police lacked probable cause to enter, and at the time of the arrest, he was not committing any criminal offenses. Defendant maintained that the exclusionary rule prohibits introducing into evidence products of an unreasonable search and seizure, and requested that the items recovered in his case be suppressed.

¶ 4 At the hearing on his motion, defendant testified that on December 25, 2011, he resided in the second floor apartment at 5436 South Mozart Street. At 1:15 a.m. he was in the kitchen of his apartment with Luis and Victor DeLeon, when they heard gunshots in the back alley. Luis went to the rear porch to see where the gunshots were coming from, and a short time later, defendant heard a "boom" coming from the rear door of the first floor apartment. He also heard footsteps on the porch before police kicked in the back door, grabbed the three men, and threw them on the floor. Defendant testified that he did not consent to the police entering his apartment, nor did he have a gun when they did, or throw one in the bathroom. Defendant also testified that he did not see Victor holding a gun.

¶ 5 Chicago police officer Corbett testified that at 1:15 a.m. on December 25, 2011, he responded to a call of shots fired in the vicinity of the 5400 block of South Mozart Street. In the alley of that block, he observed seven spent shell casings on the ground directly behind the garage at 5436 South Mozart Street. He recovered 9 millimeter shell casings, then walked into

the backyard of that premises. Officer Corbett observed movement in the window of the second floor apartment at that location, shined his flashlight at the second floor window, and observed defendant there holding a handgun. Defendant immediately ducked down, and Officer Corbett called for backup. When other officers arrived 20 seconds later, he approached the building and announced his office. He asked the residents to open the door, but they did not, so he forcibly entered the building, and walked up the stairs to the second floor apartment. The door to the apartment was open, and he observed two men standing in the kitchen. Defendant was holding a gun, then fled towards the living room and threw the handgun in the bathroom, and was arrested. Officer Corbett recovered the gun, a Smith & Wesson 9 millimeter semiautomatic weapon, and also discovered a box of 9 millimeter bullets in the bathtub.

¶ 6 Luis DeLeon testified that defendant is his cousin, and at the time in question he was in the kitchen of defendant's apartment with defendant and Victor when he heard gunshots. He went to the back porch to see where the gunshots were coming from, then looked out the window and saw someone shining a flashlight at the window. Luis immediately ducked down, then heard "loud bangs" coming from the rear door of the first floor apartment and footsteps rushing up the stairwell. Police kicked in the door to defendant's apartment, and forced the three men down onto the floor. Luis testified that he did not have a gun at any time, nor did defendant, and that he was arrested that night on a gun charge, but had a Firearm Owner's Identification (FOID) card.

¶ 7 At the close of evidence and argument, the court denied defendant's motion to quash his arrest and suppress evidence. In doing so, the court noted that the officer testified that there was a call about shots fired, and when he relocated to that location, he found some shell casings on the ground and saw someone with a gun. From the evidence provided, the court found there were exigent circumstances to relax the warrant requirement.

¶ 8 At trial, Officer Corbett testified consistently with his suppression hearing testimony. He further testified that he observed defendant in the window of the second floor apartment holding a gun, and when he entered the apartment, he saw defendant there with a gun and another person, Luis DeLeon. As defendant attempted to flee, he threw the gun, which contained one live round, in the bathroom, and was taken into custody. Luis was also arrested on a gun charge related to the same gun.

¶ 9 Chicago police officer Carey testified that he and Officer Cofield transported defendant to the police station. On their way, they read defendant his *Miranda* rights, and defendant waived those rights. He then told the officers that he was at a party that night, but had left it. He admitted that he fired gunshots from the window of his apartment. Defendant also told them that the recovered gun belonged to him. Officer Carey testified that he did not record defendant's statement.

¶ 10 The State then presented defendant's certified statements of convictions for burglary and aggravated domestic battery, which were admitted without objection.

¶ 11 At the close of evidence, the court found defendant guilty of armed habitual criminal. In doing so, the court noted that police saw defendant through the window after a gun was fired and when they went inside his apartment, they found a gun in the bathroom that had been tossed, and the court believed defendant had the gun.

¶ 12 Defendant filed a motion for a new trial, alleging, in relevant part, that the trial court erred in denying his motion to quash arrest and suppress evidence. Defendant pointed out that no witness observed him firing a weapon, there were no exigent circumstances to allow the police to make a forced entry into a private residence without first obtaining a search warrant, and that

police had no reason to select his apartment as the source of the gunshots. The court denied the motion, finding that it did not believe any errors occurred.

¶ 13 On appeal, defendant contends that the court erred in denying his motion to quash his arrest and suppress evidence. He asserts that police did not have probable cause to believe that he had committed a crime when the officer saw him by his apartment window with a gun, or to enter his apartment, and that he was exercising his Second Amendment right to protect himself after hearing shots fired. The State responds that the court's determination that exigent circumstances existed was supported by the evidence to justify both the warrantless entry into defendant's apartment and the seizure of the loaded gun.

¶ 14 On review of a trial court's ruling on a motion to suppress, great deference is accorded the trial court's factual findings and credibility determinations, and the reviewing court will reverse those findings only if they are against the manifest weight of the evidence. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). However, we review *de novo* the legal challenge to the denial of the motion to suppress. *Sorenson*, 196 Ill. 2d at 431. In doing so, we may consider the entire record, including the trial testimony. *People v. Robinson*, 391 Ill. App. 3d 822, 830.

¶ 15 In this case, the court denied defendant's motion to quash and suppress finding that there were exigent circumstances to relax the warrant requirement. Although police are generally prohibited from making a warrantless entry into a private residence under the Illinois and United States Constitutions, an exception to the warrant requirement has been recognized where the State demonstrates exigent circumstances which justified the entry. *People v. Harris*, 297 Ill. App. 3d 1073, 1082 (1998). In *People v. McNeal*, 175 Ill. 2d 335, 345 (1997), the supreme court outlined a number, but not an exhaustive list, of factors relevant to the determination of exigency in a given case, including whether: 1) the crime under investigation was recently committed; 2)

there was any deliberate or unjustified delay by police during which time a warrant could have been obtained; 3) a grave offense was involved, particularly a crime of violence; 4) there was reasonable belief that the suspect was armed; 5) the police were acting on a clear showing of probable cause 6) there was a likelihood that the suspect would escape if not swiftly apprehended; 7) there was strong reason to believe the suspect was in the premises; and 8) the police entry was made peaceably, albeit nonconsensually. The supreme court stated that, in determining whether the police officers acted reasonably, the reviewing court must look to the totality of the circumstances confronting the officers when the entry was made. *McNeal*, 175 Ill. 2d at 345-46.

¶ 16 Applying the *McNeal* factors to the circumstances here, we observe that the record shows that Officer Corbett received a call of shots fired and immediately responded to the scene where he found shell casings in the alley behind the apartment building in which defendant resided, and a trajectory consistent with the theory that the shots were fired therefrom. The officers then saw defendant standing in the window of the second floor apartment with a gun, and also saw him duck down when the officer shined his flashlight on the window. The record thus shows that defendant was on the premises, the crime had been recently committed, and there was reason to believe that he would have escaped if not swiftly apprehended. Finally, although the officers made a forcible entry into the apartment building, the entry into defendant's apartment, though nonconsensual, was not forcible. Based on the totality of these circumstances confronting the police officers at the time, we find that the officers acted reasonably in the face of exigent circumstances, which justified their warrantless entry and recovery of the gun and bullets. *McNeal*, 175 Ill. 2d at 347; *Harris*, 297 Ill. App. 3d at 1083.

¶ 17 In addition, there was, contrary to defendant's contention, probable cause to justify the entry and the arrest. *People v. Pierini*, 278 Ill. App. 3d 974, 977-78 (1996); *People v. Rushing*, 272 Ill. App. 3d 387, 391 (1995). Probable cause only requires sufficient evidence to justify a reasonable belief that defendant has committed or is committing a crime, and "'does not demand any showing that such a belief be correct or more likely true than false.'" *Jones*, 215 Ill. 2d at 277, quoting *Texas v. Brown*, 460 U.S. 730, 741-42 (1983). Here, the facts known to the officers in the circumstances presented were sufficient to justify a reasonable belief that defendant had fired the shots which were the subject of the call (*People v. Sims*, 192 Ill. 2d 592, 615 (2000)), and probable cause to enter and arrest defendant.

¶ 18 Defendant, nonetheless, contends that there is no "fair probability" that a crime was being committed when Officer Corbett entered his apartment citing *People v. Gott*, 346 Ill. App. 3d 236 (2004). In *Gott*, 346 Ill. App. 3d at 246, the Fifth District found there was no probable cause to enter the cabin where police had smelled ether, knew that ether was used in the manufacture of methamphetamine, and when they knocked on the door, observed through a crack, people hiding and rearranging things. In addition, no exigent circumstances existed where the occupants of the cabin did not know police were watching them, there was no indication that the occupants could dispose of the drugs where there was no sink or toilet in the cabin, and the entry was not peaceful. *Gott*, 346 Ill. App. 3d at 247-48. Here, unlike *Gott*, there were exigent circumstances as explained above (*Davis*, 398 Ill. App. 3d at 948), as well as probable cause to believe that defendant had fired the shots which were the subject of the call they were investigating (*Sims*, 192 Ill. 2d at 615).

¶ 19 Defendant also asserts that his statement to Officer Carey should have been suppressed as fruit of the poisonous tree, citing *People v. Bohan*, 158 Ill. App. 3d 811, 820 (1987). However,

since defendant did not object to its admission below, he cannot raise this issue for the first time on appeal. *People v. Coleman*, 129 Ill. 2d 321, 340 (1989). Waiver aside, where the arrest, as explained above, is based on probable cause, then there is no issue regarding the admission of the statement which defendant made after being advised of his *Miranda* rights and waiving them. *People v. Sims*, 192 Ill. 2d 592, 611, 619 (2000).

¶ 20 Defendant next challenges the sufficiency of the evidence to sustain his conviction. He maintains that the testifying officers' accounts of the events were improbable and contrary to human experience.

¶ 21 When defendant challenges the sufficiency of the evidence to sustain his conviction the proper 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. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). This standard recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence and to draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of guilt. *Campbell*, 146 Ill. 2d at 375. For the reasons that follow, we do not find this to be such a case.

¶ 22 To sustain a conviction for armed habitual criminal, the State must show that defendant possessed a firearm after having been convicted of two or more qualifying felony offenses. 720 ILCS 5/24-1.7 (West 2012)). Here, defendant does not dispute his prior convictions, but claims that the State failed to prove that he was in possession of a gun.

¶ 23 Viewed in a light most favorable to the prosecution, the evidence in this case shows that defendant was first seen in the second floor apartment window holding a gun, and when the

officers entered that apartment, defendant threw the gun into the bathroom and attempted to flee. They also found bullets matching the caliber of that gun in the bathroom. In addition, Officer Carey testified that when he was transporting defendant to the police station he admitted that he fired the gun recently and that it belonged to him, and the spent shell casings found in the alley matched the bullets that could be fired from that gun. Based on this evidence and the proof of his two prior felony convictions, we find that a rational trier of fact could conclude that defendant was proved guilty of armed habitual criminal beyond a reasonable doubt.

¶ 24 Defendant contends that Officer Corbett's testimony was unworthy of belief where it was based on an "incredible stroke of luck," and contradicted by testimony at the suppression hearing. Defendant's arguments relate to the credibility of the witnesses, and resolution of conflicts in the testimony which are within the purview of the trier of fact. *Campbell*, 146 Ill. 2d at 375. Here, the trial court clearly found Officer Corbett credible in reaching the conclusion that defendant was guilty of armed habitual criminal. We find no reason to disturb that determination, given the court's superior opportunity to observe the witnesses (*People v. Berland*, 74 Ill. 2d 286, 306-07 (1978)), nor its finding of guilt based thereon (*People v. Bofman*, 283 Ill. App. 3d 546, 553 (1996)).

¶ 25 Defendant further contends that Officer Carey's testimony is unreliable where he did not record defendant's statements and is "too convenient to be true." The court was aware of the officer's failure to note in his report the statement made by defendant, considered the evidence in light of it (*People v. Scott*, 152 Ill. App. 3d 868, 872 (1987)), and concluded that this minor discrepancy did not call his testimony on the elements of the offense into question (*People v. Reed*, 80 Ill. App. 3d 771, 781 (1980)). It was the responsibility of the trial court to determine the significance of the officer's failure to include this fact in his report (*People v. Hobson*, 169 Ill.

App. 3d 485, 495 (1988)), and here, we find that this matter was not of such magnitude as to undermine the officer's credibility (*People v. Villalobos*, 78 Ill. App. 3d 6, 13 (1979)), regarding defendant's possession of the gun. We, therefore, find that the evidence was sufficient to sustain defendant's conviction of armed habitual criminal, and affirm the judgment of the circuit court of Cook County to that effect.

¶ 26 Affirmed.