

THIRD DIVISION
November 10, 2015

No. 1-14-0020

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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. 11 CR 15947
)	
BILLY PACK,)	Honorable
)	Michael McHale,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

O R D E R

¶ 1 **Held:** Evidence was sufficient to support defendant's conviction for unlawful use of a weapon by a felon where police officer observed defendant standing on a public street with a gun in his waistband, defendant was seen tossing weapon into yard during brief foot pursuit, and the weapon was recovered from the yard.

¶ 2 Following a bench trial, defendant Billy Pack was convicted of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)) and was sentenced to three years in the Illinois Department of Corrections boot camp. On appeal, defendant contends the State failed to prove

his guilt beyond a reasonable doubt because his conviction was based on the inconsistent and implausible testimony of two police officers who stated they saw defendant standing on the street with a gun in his waistband and then recovered a weapon from a nearby yard after a foot chase. We affirm.

¶ 3 At trial, the State presented the testimony of Chicago police officers Natalie Joritz and Erin Murphy. Officer Joritz testified that at about 1:40 a.m. on September 5, 2011, she and Officer Murphy were on duty in an unmarked squad car near 35th Street and Western Avenue in Chicago. Officer Joritz described the neighborhood as a "residential area off of a busy street" and said a vacant lot was nearby.

¶ 4 While travelling west on 35th Street, Officer Joritz saw defendant standing alone on the sidewalk. She identified defendant in court and testified she saw a "yellow handle sticking out of" defendant's waistband. The area was illuminated by streetlights, and the officer's view of defendant was not obstructed. Officer Joritz was between three and seven feet away from defendant, who turned around and ran through the vacant lot and onto Western Avenue. She pursued defendant on foot as he entered a gangway at 3441 Western Avenue.

¶ 5 As Officer Joritz followed defendant through the gangway, defendant removed a firearm from his waistband. Defendant threw the weapon over a fence and jumped over the fence after it. The officer remained in the yard and radioed her partner to report the direction in which defendant ran. Officer Joritz caught up to defendant and arrested him. A loaded firearm was recovered from the area where defendant had jumped the fence. The weapon and six bullets that

had been removed from the weapon were entered into evidence. Photographs of the area taken in daylight also were introduced.

¶ 6 On cross-examination, Officer Joritz stated she was a passenger in the squad car and was nearest the sidewalk on which defendant was walking. Defendant was about 20 feet away when she first observed him. Defendant was wearing a T-shirt over another shirt. She could not recall if defendant's shirt was tucked into his waistband. She observed defendant for 30 seconds and saw the handle of the weapon.

¶ 7 Officer Joritz estimated that between 30 and 45 seconds elapsed from the time defendant jumped over the fence until he was stopped and handcuffed on the porch of a residence. She stated defendant "gasped" and "fell into the porch" after she chased and caught up to him. Defendant denied possessing a weapon. No one else was present when defendant was detained. Officer Joritz said she lost sight of defendant for 10 seconds after he jumped over the fence. No fingerprints were taken from the weapon. She could not recall if defendant's right hand was bandaged.

¶ 8 Officer Murphy offered testimony consistent with her partner's account. Officer Murphy testified she and Officer Joritz were responding to a call of shots fired when she saw defendant standing about 30 feet away on the sidewalk on 35th Street, facing them. She testified the area was well-lit and her view was not obstructed. Officer Murphy stated a yellow handle was protruding from defendant's waist, and she recognized it as a gun as she got closer to defendant.

¶ 9 When Officer Joritz got out of the car, defendant turned around and fled through the vacant lot. While her partner pursued defendant on foot, Officer Murphy drove the squad car in

the area where defendant went through the gangway. Officer Murphy identified the weapon introduced into evidence as the weapon seen in defendant's waistband. Consistent with her partner's testimony, Officer Murphy stated that no other people were in the vicinity when defendant was observed on the sidewalk.

¶ 10 On cross-examination, Officer Murphy testified defendant's shirt was tucked into the front of defendant's pants. She stated the report of shots fired did not involve the area in which these events occurred. Only defendant and police officers were present when defendant was arrested. The State entered into evidence a certified statement of conviction showing that defendant was convicted of aggravated unlawful use of a weapon in 2002.

¶ 11 The defense presented the testimony of defendant and Dennis Murphy. Defendant testified he was 32 years old and worked as a carpenter and that he had injured his right hand at work nine days before his arrest. He denied having a gun in his possession on the night in question. That night, he attended a Labor Day barbecue given by his sister at 3451 South Western Avenue. Defendant was wearing a T-shirt under another shirt, which was not tucked in and was covering his waistband.

¶ 12 At about 1:30 a.m., defendant's sister asked him to prevent two of her male friends from coming to the party. As defendant spoke to the two men, a patrol car pulled up and a female officer got out and asked the men to come over. The men fled and were pursued by police. Defendant returned to the party, which was winding down. Defendant went to the front porch of the house to see if the men and the officers were nearby, and a police officer approached him and arrested him. Defendant said his sister and others were present when he was arrested.

¶ 13 On cross-examination, defendant testified he lived at 2335 West 35th Street at the time of his arrest. He said his sister did not live at the site of the party and one of the men who tried to enter the party was a gang member. Defendant said he was handcuffed by a male officer.

¶ 14 Murphy testified he lived at 3412 South Hermitage and met defendant at the party. Murphy arrived at the party between 4 p.m. and 5 p.m. and was friends with someone who lived at the house. When two men arrived at the party at about 1 a.m., someone said the men were not welcome and should not be allowed into the gathering. Murphy testified defendant walked toward 35th Street and asked the men not to come in. While defendant was doing so, a police car approached and one officer got out of the car. The two men fled and were pursued by one officer. Between 25 and 30 people were in the yard at that time. At that point, defendant returned to the yard. People then began to leave the party.

¶ 15 Murphy next saw defendant sitting in a police car in front of the house. Murphy said he did not see defendant carrying a weapon or running from police that night. Between 10 and 15 people were still at the party at that point. Murphy identified a photograph of the house where the party was held.

¶ 16 On cross-examination, Murphy acknowledged he was not with defendant during the entire party and did not know what defendant had in his pockets. Murphy said he drank between 8 and 10 beers at the party. Murphy said that after the officers arrived, he returned the party and did not know what defendant did at that point. However, on redirect examination, Murphy reiterated his direct testimony that defendant returned to the party after the officers pursued the two would-be partycrashers.

¶ 17 After hearing closing arguments, the trial court found defendant guilty of unlawful use of a weapon by a felon. The court stated that although the officers were responding to a call of shots fired, they "have to address what's right in front of their face" when they viewed defendant with a gun. The court noted that the daytime photographs of the crime scene indicated the sidewalk on 35th Street had "abundant lighting" in the area where the officers observed defendant. As to the weapon, the court stated: "If it had been a black-handled weapon, we might be in a different situation here, but this gun has a yellow handle which certainly makes it easier to see."

¶ 18 The court observed Murphy had consumed between 8 and 10 beers and that his recollection of events was not clear. The court noted Murphy first testified defendant returned to the party after the officers arrived but later testified on cross-examination that he did not know what defendant did after the officers' arrival. The court stated that Murphy was not "in the best opportunity to observe after that many beers." The court also found that even if defendant's hand were injured as he described, he still would have been able to toss the gun, as described by the officers.

¶ 19 The court found the testimony of the officers was unimpeached, stating:

"For me to believe the [d]efense at this point, I'd have to believe they made this thing up out of whole cloth and that the defendant was in a darkened lot where it would have been impossible to see any kind of a gun. The defendant's story to me does not hold weight."

¶ 20 On appeal, defendant contends his conviction should be reversed because the State failed to prove his guilt of the offense of unlawful use of a weapon by a felon beyond a reasonable

doubt. Defendant maintains that the testimony of the police officers was implausible, that the defense witnesses were more credible, and that no physical evidence tied him to the weapon recovered from the yard.

¶ 21 To sustain a conviction for that offense, the State must prove the defendant knowingly possessed a firearm and that he had a prior felony conviction. 720 ILCS 5/24-1.1(a) (West 2010). The State must show the defendant knew of the presence of the firearm and that the weapon was in his immediate and exclusive possession. *People v. Adams*, 388 Ill. App. 3d 762, 766 (2009).

¶ 22 When considering a challenge to the sufficiency of the evidence in a criminal case, it is not the function of this court to retry the defendant. *People v. Lloyd*, 2013 IL 113510, ¶ 42. Rather, our inquiry as a reviewing court is to determine whether, 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 were proved beyond a reasonable doubt. *Id.* A conviction will not be reversed unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). That standard of review applies in both jury trials and bench trials. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). Under that standard, it is the responsibility of the trier of fact to resolve conflicts in testimony, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009), citing *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1970). Thus, a reviewing court will not substitute its judgment for that of the trial court, which was the trier of fact in this bench trial, on issues involving the weight of evidence or the

credibility of witnesses. *Siguenza-Brito*, 235 Ill. 2d at 224; *People v. Austin*, 349 Ill. App. 3d 766, 769 (2004).

¶ 23 The evidence presented here, viewed in the light most favorable to the State, supports defendant's conviction. Two police officers testified that they observed defendant walk down the street with a yellow-handled weapon visible in his waistband. When the police officers stopped their car, defendant fled and was pursued by one officer on foot. That officer testified that defendant removed the weapon from his pants and tossed it over a fence before being apprehended. A loaded weapon was recovered from the yard and introduced at trial, and both officers identified the weapon as the one observed in defendant's possession.

¶ 24 Defendant's overarching contention on appeal is that the trial court should not have afforded more weight to the testimony of the two police officers than it gave to the version of events set out by the defense. Defendant testified the police stopped their car near him while he was on the street asking the unwelcome partygoers to leave, the police chased those men as they ran, and he remained at the house. He asserts the police later returned to the residence and arrested him. That testimony contrasts with the accounts of Officer Joritz and Officer Murphy, who stated they observed defendant with a gun in his waistband and defendant fled as their police car approached. He contends the officers' version of events was improbable because it is unlikely he would have stood on a busy street with a gun visible in his waistband and then disposed of it in the plain view of Officer Joritz while he ran away.

¶ 25 The State and defense thus presented differing scenarios leading to defendant's arrest, and the task of weighing such testimony belonged to the trier of fact. See *Siguenza-Brito*, 235 Ill. 2d

at 224. In weighing the evidence, the trial court is not required to disregard inferences that flow from the evidence or search out all possible explanations consistent with innocence and raise them to a level consistent with reasonable doubt. *People v. Bull*, 185 Ill. 2d 179, 205 (1998); *People v. Raymond*, 404 Ill. App. 3d 1028, 1041 (2010).

¶ 26 Nonetheless, we will address defendant's specific contentions in turn. Defendant correctly asserts the "testimony of police officers is subject to the same scrutiny applied to civilian witnesses," citing *People v. Defyn*, 222 Ill. App. 3d 504, 513 (1991). Still, it is similarly true that a defendant's testimony does not carry a presumption of veracity and is not entitled to greater deference than the testimony of any other witness. *People v. Barney*, 176 Ill. 2d 69, 74 (1997). While a conviction based on evidence that is improbable, unconvincing or contrary to human experience requires reversal (*People v. Chatha*, 2015 IL App (4th) 130652, ¶ 39), this case does not offer a far-fetched scenario. The fact that a person would carry a weapon on a public street in the manner in which it was viewed by the officers is not so improbable or contrary to human experience as to preclude a finding of guilt beyond a reasonable doubt. Both officers identified the weapon introduced into evidence as the weapon they saw in defendant's waistband. It is not unbelievable that a fleeing suspect, particularly a convicted felon, would attempt to discard a weapon during a pursuit to avoid being caught in possession of the weapon.

¶ 27 The facts of this case are comparable to those in *People v. Moore*, 2014 IL App (1st) 110793-B, in which this court recently rejected the implausibility of a similar version of events as that here. *Moore* set out several cases illustrating the commonality of a defendant's decision to "dispose of contraband after becoming aware of a police presence." *Id.* ¶ 10, citing, *inter alia*,

California v. Hodari D., 499 U.S. 621, 623 (1991) and *People v. Comage*, 241 Ill. 2d 139, 142 (2011). *Moore* further rejected the suggestion, which is also made by defendant here, that police officers often fabricate stories of criminal suspects conveniently dropping evidence in plain view of a police officer. *Id.* ¶ 12, citing *People v. Ash*, 346 Ill. App 3d 809, 816-18 (2004) (describing such "dropsy" cases as those in which a police officer falsely testifies the contraband was dropped in plain view to avoid the exclusion of evidence under the fourth amendment). We agree with *Moore* that the credibility determination of the trier of fact should not be rejected based on the possibility of police perjury. See *Moore*, 2014 IL App (1st) 110793-B, ¶ 13.

¶ 28 Defendant further asserts the officers' testimony that he stood alone on the sidewalk when viewed with the gun in his waistband was not credible because he and Murphy both testified a party attended by 30 people was underway at the time. Defendant also points to Officer Joritz's testimony that upon apprehending him, he "gaspd" and "fell into the porch." He argues that scenario was implausible because he was physically fit and the chase lasted only for a few minutes. When contradictory testimony which could support conflicting conclusions is given at a bench trial, we will not disturb the trial court's factual findings based on that testimony unless a contrary finding is clearly apparent. *People v. Hayashi*, 386 Ill. App. 3d 113, 123 (2008). It was not implausible that the officers could have observed defendant standing alone on the sidewalk even if a party took place in a nearby yard. In addition, Officer Joritz's description of defendant upon the conclusion of her pursuit is consistent with a foot chase in which defendant jumped over a fence.

¶ 29 Defendant also argues that Officer Joritz's trial testimony as to the location of his arrest was inconsistent with the location in the police report, which is included in the common-law record on appeal. Defendant points out that Officer Joritz testified he was arrested at 3441 South Western Avenue, but the officer's police report stated the arrest took place at 3451 South Western Avenue. He argues that inconsistency in the State's case supported his testimony that no chase occurred and that he was arrested at his sister's house. A review of Officer Joritz's testimony indicates that defense counsel did not attempt to impeach the officer with that discrepancy at trial. Thus, defendant cannot seek review of that issue for the first time in this appeal. Even if defense counsel had introduced evidence at trial of the discrepancy in addresses between the officer's trial testimony and the police report, we do not find those facts would have created a reasonable doubt of defendant's guilt given the overall weight of the evidence against him.

¶ 30 In addition to those challenges to the testimony of the two police officers, defendant argues that his own account of the night in question was corroborated by the testimony of Murphy and was "not rebutted by any independent evidence other than the testimony of the officers." Thus, defendant acknowledges his account was not the only version of events presented, and we again note that the job of resolving disparate scenarios and weighing the testimony belongs to the trier of fact. See *Siguenza-Brito*, 235 Ill. 2d at 224. The court was not required to accept defendant's version over that of the two officers.

¶ 31 Defendant points to Murphy's testimony that he never saw defendant with a gun, and he asserts Murphy had no bias or motive to lie and was not impeached by any prior criminal

convictions. As the trial court pointed out in its findings, Murphy's testimony contained internal inconsistencies as to what defendant did after the officers arrived at the party. Murphy first testified that defendant returned to the party after the police arrived. On cross-examination, Murphy contradicted that account and stated that he did not know what defendant did at that point. On redirect, Murphy reiterated his initial testimony that defendant returned to the party. Although defendant argues Murphy was credible because Murphy acknowledged those inconsistencies in his account, it was the task of the trier of fact to judge how any flaws in Murphy's testimony affected the credibility of his overall account. See *Cunningham*, 212 Ill. 2d at 283.

¶ 32 The trial court also noted Murphy's testimony that he drank between 8 and 10 beers at the party, which was a fact brought out on the State's cross-examination of Murphy. Despite defendant's contention that Murphy's candor about his rate of alcohol consumption bolsters the value of Murphy's testimony, intoxication is a valid method of attacking the credibility of a witness. See *People v. Barcik*, 365 Ill. App. 3d 183, 192 (2006). Moreover, defendant argues Murphy was credible because he lacked a criminal record. Even though the prior convictions of a witness can be used to impeach that person's credibility (*People v. Montgomery*, 47 Ill. 2d 510 (1971)), the converse is not automatically true. The purported absence of a criminal record as to Murphy does not make him a more credible witness.

¶ 33 In summary, contrary to defendant's contentions on appeal, the trial court was not required to accept his version or Murphy's version of events as opposed to that of the two police officers. According to those officers, defendant was observed on a public street with a yellow-

handled weapon in his waistband. After a brief foot pursuit, defendant was seen removing the weapon and tossing it into a yard from which it was recovered. The officers at trial identified the weapon recovered from the yard as the weapon on defendant's person. The State also offered evidence of defendant's previous felony conviction. Therefore, the evidence was sufficient to support defendant's conviction of unlawful use of a weapon by a felon.

¶ 34 Accordingly, the judgment of the trial court is affirmed.

¶ 35 Affirmed.