

FIRST DIVISION
JANUARY 11, 2016

No. 1-13-3810

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. 11 CR 18955 |
| |) | |
| ALEXANDER CRUZ, |) | Honorable |
| |) | Sharon M. Sullivan, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Liu and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to prove defendant guilty of armed robbery with a firearm where the victim testified that defendant took his money while threatening him with a "silver gun" and police officers later recovered a functioning firearm along with proceeds from the crime and the clothing worn by the offenders from an apartment from which defendant and his co-defendant fled.

¶ 2 Following a bench trial, defendant Alexander Cruz was found guilty of armed robbery with a firearm and sentenced to 23 years of incarceration. On appeal, defendant contends that the State failed to present sufficient evidence to prove beyond a reasonable doubt that he possessed a firearm because while the victim described being threatened by a "silver gun," later witnesses

described the functioning handgun recovered by the police as "blue steel" and "black." We affirm.

¶ 3 The evidence at trial established that defendant and co-defendant Sir Ballenger were walking on Irving Park Road in Chicago around midnight on October 30, 2011. According to Ballenger, who testified pursuant to a plea agreement for his involvement in the robbery, he used defendant's phone to place a delivery order with Manzo's Restaurant, giving an address on Irving Park Road. Shortly thereafter, Gansukh Shatar, a delivery driver with Manzo's, arrived at the given address with multiple pizzas and other food. Shatar called defendant's phone number and was told "Okay. I'm coming down. Please wait for me." After some time, he again called the number and was again told to wait. While Shatar stood waiting, defendant and Ballenger approached him from across the street. According to Shatar, defendant wore a gray long-sleeve t-shirt with a hood, and Ballenger wore a black t-shirt. As Ballenger stood in front of Shatar, defendant placed a handgun to the delivery driver's hip. Shatar both saw and felt the handgun, describing it as "like a silver gun" and "small." Ballenger testified that he saw the handgun and he thought it was black.¹ Defendant told Shatar, "Don't move and give me all your money, all the money. If you move, I will shoot you." After Shatar gave defendant his money, defendant told Ballenger to take the food. The two men then walked off down the street as Shatar watched. He lost sight of them at an apartment building with a blue awning a few buildings away. Shatar returned to Manzo's and the police were called.

¹ At trial, while Ballenger initially stated he did not remember seeing a gun, he admitted to seeing the gun when confronted with prior inconsistent statements.

1-13-3810

¶ 4 Several police officers responded. After a brief discussion, they drove Shatar back to the building with the blue awning. At the building, only one apartment had lights on so police officers Berg, Prince, and Toweey knocked on the apartment's front door. The tenant, Tory Neil, allowed the officers into the apartment. Two women were present. Around the time the three officers entered the apartment, Officer Patel was guarding the back entrance to the building. He saw Ballenger and defendant quickly descend the building's back stairs. When they reached the bottom of the stairwell, defendant removed a nearby light bulb, and both men crouched down in the dark. Shortly thereafter, Toweey came down the stairs and Patel pointed him to the hiding men. Officers brought Ballenger and defendant back to a squad car where Shatar identified the men as the robbers, but indicated that they had changed clothes. In a search of the apartment, Officer Prince found a black t-shirt and a gray long-sleeve t-shirt without a hood in the bathroom. He recovered a loaded, "blue steel" firearm behind the room's radiator. Elsewhere in the apartment, he found pizza boxes and food bags from Manzo's. Officer Keating, the State's expert witness, examined and test fired the recovered handgun. He opined that the firearm was functional and described it as black, glossy, and three inches long. He noted that due to its shine, the handgun could appear silver under some lighting conditions.

¶ 5 According to defendant, he walked with Ballenger to a bus stop to meet a woman on the night of the robbery. He lent Ballenger his phone, and Ballenger then left the bus stop. Eventually, defendant and the woman walked to Neil's apartment where they found Neil, Ballenger, Ballenger's girlfriend, and two other men all eating pizza and chicken. When the police later arrived, defendant left down the back stairs. He fled because he was on probation and

police officers had previously threatened to arrest him for criminal trespass if they found him in Neil's apartment.

¶ 6 The trial court found defendant guilty of armed robbery with a firearm. It explained that it found all of the State's witnesses to be credible and defendant not credible. Defendant appeals.

¶ 7 Defendant solely contends that the State failed to prove beyond a reasonable doubt that he possessed a functioning "firearm" as statutorily defined. He asserts that the issue before the court is partially one of statutory construction, and argues that the lay-testimony of Shatar is insufficient to prove beyond a reasonable doubt that defendant possessed a weapon that fits the technical definition found in section 1.1 of the Firearm Owners Identification Card Act (430 ILCS 65/1.1 (West 2010)). See also 720 ILCS 5/2-7.5 (West 2010). His argument is predicated on the underlying proposition that Officer Keating's testimony regarding the handgun recovered by police is irrelevant to our determination because Shatar described a "silver gun" while Keating examined a black handgun. As we disagree with this underlying proposition, we conclude the issue before us is solely one of the sufficiency of the evidence, rather than a matter of statutory construction.

¶ 8 Due process requires the State to prove each element of a criminal offense beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004), citing *In re Winship*, 397 U.S. 358, 364 (1970). When reviewing the sufficiency of evidence, a reviewing court must decide "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 313 (1979); See also *Cunningham*, 212 Ill. 2d at 278. A reviewing court will not overturn a guilty verdict unless the

evidence is "so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005). On appeal, the reviewing court must resolve all reasonable inferences in favor of the prosecution. *Cunningham*, 212 Ill. 2d at 280. It is the duty of the trier of fact to resolve any minor discrepancies and inconsistencies presented by the evidence. See *id.* at 283. This court may not retry a defendant on appeal. *People v. Milka*, 211 Ill. 2d 150, 178 (2004).

¶ 9 To prove defendant guilty of armed robbery as charged, the State had to prove that he knowingly took money from the person or presence of Shatar by the use of force or by threatening the imminent use of force, while armed with a firearm. See 720 ILCS 5/18-2(a)(2) (West 2010). A firearm is statutorily defined as "any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas," excluding several weapons irrelevant to the current case. 720 ILCS 5/2-7.5 (West 2010); 430 ILCS 65/1.1 (West 2010).

¶ 10 Viewing the evidence in the light most favorable to the State, a rational fact-finder could find defendant guilty of armed robbery with a firearm beyond a reasonable doubt. Shatar testified that defendant pressed a handgun into his side, threatened him, and took his money. Ballenger's testimony corroborated Shatar's account. Shortly thereafter, police officers found a loaded and functioning firearm in the apartment defendant admittedly fled from. Shatar testified that the robbers wore a gray and a black t-shirt, and the officers recovered the gun in close proximity to a gray and a black t-shirt. In addition, the stolen pizzas and food were found in the same apartment.

¶ 11 Defendant argues that the trial court could not reasonably infer that the gun seen by Shatar and the recovered gun were the same, because Shatar described a silver gun and the police recovered a black gun. This argument is unpersuasive, because the State's expert witness testified that the recovered gun could appear silver due to the glare caused by its glossy finish. However, even without the expert's explanatory testimony, defendant's argument would fail. It was the trial court's duty to resolve any minor discrepancies and inconsistencies presented by the evidence, and we defer to its findings. *Cunningham*, 212 Ill. 2d at 283. The varying descriptions of the gun's color are not so significantly contradictory that they render the trial court's findings unreasonable. The trial court could reasonably infer that the gun described by Shatar and the functioning weapon recovered by the police were the same firearm. Consequently, based upon Shatar and Ballenger's testimony that defendant used a handgun and the expert's testimony that the recovered gun was functional, the trial court could rationally find beyond a reasonable doubt that defendant committed armed robbery with a firearm.

¶ 12 We note that defendant asks us to hold that *People v. Fields*, 2014 IL App (1st) 110311, and *People v. Malone*, 2012 IL App (1st) 110517, were wrongly decided because they hold that a lay witness's visual observation alone is sufficient to prove the presence of a functional firearm. However, because the State presented Keating's expert testimony that the handgun involved was a functional firearm, we need not consider whether Shatar and Ballenger's descriptions of a "gun" were independently sufficient to support a finding that defendant used a firearm. Therefore, we need not consider the holdings in *Fields* and *Malone*.

1-13-3810

¶ 13 For the foregoing reasons, we find that the State proved defendant guilty armed robbery with a firearm beyond a reasonable doubt. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 14 Affirmed.