SIXTH DIVISION
January 29, 2016

No. 1-14-0243

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. 12 CR 16167
	)	
CHARLES MORGAN,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 ***Held:*** A trial court has the inherent authority to correct its own rulings. The evidence was sufficient to convict defendant of reckless discharge of a firearm and aggravated unlawful use of a weapon where defendant was seen holding a gun near area where the officer heard shots, and the gun was later recovered from a toilet tank in the bathroom where he was apprehended.

¶ 2 Following a bench trial, defendant Charles Morgan was convicted of reckless discharge of a firearm and aggravated unlawful use of a weapon (aggravated UUW) for possessing a firearm without having a currently valid Firearm Owner's Identification (FOID) card. The trial

court sentenced defendant to two concurrent one-year prison terms. On appeal, defendant first contends that his mittimus must be corrected by deleting the conviction and sentence for reckless discharge of a firearm because the trial court's oral pronouncement at trial and accompanying order stated a finding of guilt as to aggravated UUW only. He further contends that he was not proven guilty of any offense because "the State's version of events" is contrary to human experience. For the reasons set forth below, we affirm.

¶ 3 Defendant was tried in a joint bench trial with his codefendant, Tremal Williams, who has a separate appeal (No. 1-14-0244). At trial, Chicago police sergeant Adam Zelitzky testified that at about 6:45 p.m. on July 31, 2012, he was working alone in uniform in a marked police car when he heard numerous gunshots, reported the shots and his location in a police radio call, and drove to the intersection of Ohio and Sawyer.

¶ 4 Arriving at that location, Sergeant Zelitzky made a second radio call after seeing two men he later identified as defendant and Williams "somewhere between walking fast and jogging" toward him. Sergeant Zelitzky was between 40 and 50 feet away from them. As he saw defendant and Williams running, he heard gunshots coming from the same area where defendant and Williams were, though he "did not see a muzzle flash." Both defendant and Williams held guns and had their arms extended in front of them toward a group of at least three or four people standing about 100 feet away on a corner across the street.

¶ 5 Sergeant Zelitzky stated he immediately got out of his car and followed defendant and Williams, who ran toward the back door of a house at 549 North Sawyer and entered the house carrying their weapons. When he arrived at the house, he waited for about 30 seconds for backup officers before he and the other officers entered. Sergeant Zelitzky proceeded to the

second floor because he heard "several people" inside a bathroom. As he neared the bathroom door, he "heard a commotion" and the "distinct sound of porcelain being moved."

¶ 6 An officer opened the bathroom door, and defendant and co-defendant were standing in the bathroom. Two guns were recovered from the toilet tank in that bathroom.

¶ 7 On cross-examination, Sergeant Zelitzky testified he arrived at the corner of Ohio and Sawyer between 30 and 45 seconds after hearing the gunshots. He made a second radio call after stopping his car and before he got out and followed defendant and Williams into the residence. He described the weapons defendant and Williams carried as "[s]emiautomatic handguns, blue steel or black in finish, medium frame." In contrast to his earlier testimony that he first heard noises in the bathroom after he gone to the second floor, he stated on cross-examination that he first heard the "commotion" in the bathroom while he was still on the first floor. While on the first floor, he told several people in the house to go outside for their own safety.

¶ 8 Chicago police officer Joel Holler testified he responded to a radio call seeking assistance at 549 North Sawyer and went to the second floor of the residence. Other officers were present near the closed bathroom door. Officer Holler testified that "[t]here was a commotion, and then I could hear a clank." He described the "clank" as the "very distinct sound" of the top of the toilet tank being moved. An officer opened the bathroom door, and defendant and Williams were inside the bathroom. No one else was in the bathroom.

¶ 9 Officer Holler searched the bathroom. After removing the lid of the toilet tank, he recovered two .380-caliber semi-automatic pistols. The weapons were blue steel, and each was loaded with three rounds of ammunition. He also searched the area of 3229 West Ohio, where Sergeant Zelitzky first observed defendant and Williams with weapons. Officer Holler recovered two .380-caliber shell casings from that area.

¶ 10 The parties stipulated that Helen Hunter, an Illinois State Police firearms identification specialist, would testify that both recovered .380-caliber shell casings were fired from one of the two weapons recovered from the toilet tank. The State also entered into evidence a certified letter from the Illinois State Police Crime Lab stating that defendant's date of birth was September 14, 1977, and that he had never been issued a FOID card.

¶ 11 Defendant testified that Williams and Kenneth Gardner were his downstairs neighbors. He was in his bedroom playing a video game when he heard gunshots so he went to the living room and pulled his mother to the floor. Five or six minutes later, he heard knocking at the back door. Williams and Gardner were there. Gardner asked what defendant was up to and if he could use the bathroom. Defendant said yes. Williams went to sit with defendant's mother and defendant returned his videogame. When there was another knock, defendant asked his mother to answer the door. Defendant heard the door open. Police officers then entered the bedroom and told defendant to come out. Defendant denied having a gun outside and did not know why officers came to his home; he was home all day. Defendant denied owning a gun, had never fired a gun, and is afraid of guns.

¶ 12 Rosiamary Morgan, defendant's mother, testified consistently with defendant that he was in the bedroom playing a video game and then ran out to pull her to the floor. Five minutes later, there was a knock on the back door and defendant let Williams and Gardner inside. Gardner went into the bathroom, defendant returned to the bedroom and Williams sat with her in the living room. Five minutes later, there was another knock at the door. When Morgan opened the door, a police officer asked "where's the shit?" The police entered and handcuffed defendant and Williams. Gardner ran out the front door. She had never seen defendant with a gun and to the best of her knowledge defendant did not own a gun. During cross-examination, Morgan

testified that defendant was home all day and that the guns in the toilet tank did not belong to her.

¶ 13 When making its findings, the trial court noted there was "a shooting on the street which draws a lot of attention" and that Sergeant Zelitzky and Officer Holler saw defendant run into the residence. The court further noted that both officers testified to hearing the sound of a toilet tank being moved while defendant and Williams were in the bathroom and that the weapons were recovered from the toilet tank. The court found the State's witnesses credible and noted the "witnesses[‘] credibility for the [d]efense is nil." The court found Williams guilty of "possession of a firearm, aggravated use of a weapon, having no FOID card, and the same charge regarding" defendant. A written order entered that day, December 17, 2013, stated "FG" "AGG UUW." The half-sheet in the record on appeal, however, indicates that defendant was found guilty of count 2 (reckless discharge of a firearm), and count 4 (aggravated UUW) on December 17, 2013.

¶ 14 At a later court date, the trial court stated that Williams was "found guilty of a weapons violation for no FOID card for one thing." The court then stated that it "thought he was found guilty of reckless discharge of a firearm also" but that the "print-out from the Clerk's Office indicates a finding of not guilty as to that charge." The court believed that the half-sheet was incorrect and ordered the clerk to correct the half-sheet.

¶ 15 On January 10, 2014, the trial court sentenced defendant to two concurrent one-year prison terms for "the gun charge and the reckless discharge" convictions. Defendant's mittimus reflects convictions for reckless discharge of a firearm and aggravated UUW. The half-sheet in

the record on appeal reflects that defendant was sentenced on count 2 (reckless discharge of a firearm) and count 3 (aggravated UUW).[1]

¶ 16 On appeal, defendant first contends that because the trial court's oral pronouncement at the end of trial and order filed that day reflect only a finding of guilt as to aggravated UUW, his mittimus must be corrected to conform to the trial court's oral pronouncement by deleting the conviction and sentence for reckless discharge of a firearm.[2] See, *e.g.*, *People v. Jones*, 376 Ill. App. 3d 372, 395 (2007) (when the trial court's oral pronouncement conflicts with the written judgment, the oral pronouncement controls and the mittimus must be corrected to mirror the court's oral pronouncement).

¶ 17 The record reveals that at the end of trial, the trial court stated that it found Williams guilty of "possession of a firearm, aggravated use of a weapon, having no FOID card, and the same charge regarding" defendant. A written order, entered that day, states "FG" "AGG UUW." The trial court did not make an oral finding as to the reckless discharge of a firearm charge, and no one inquired as to the disposition of that charge.

¶ 18 Contrary to defendant's argument on appeal, this is not a case where the mittimus must be corrected to conform to the trial court's oral pronouncement because here the trial court did not make an oral pronouncement as to the reckless discharge of a firearm charge. In other words, because the record is silent as to that charge, there is nothing for the mittimus to be

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[1] Although a finding of guilt was entered on count 4 pursuant to section 24-1.6(a)(1), (3)(A) of the aggravated UUW statute (see 720 ILCS 5/24-1.6(a)(1), (3)(A) (West 2012)), defendant was sentenced on count 3 pursuant to section 24-1.6(a)(2), (3)(C) (see 720 ILCS 5/24-1.6(a)(2), (3)(C) (West 2012)).

[2] Defendant argues in his reply brief that because the State originally confessed error as to this issue, but subsequently filed a "corrected" brief raising a substantive argument, the State has forfeited the points raised in its "corrected" brief. See Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013 (points not argued are waived). However, on August 24, 2015, this court granted the State's motion for leave to withdraw the previously filed brief and to file a corrected brief. Thus, defendant's forfeiture argument must fail.

corrected to mirror. Rather, this is a case where the trial court did not make an explicit finding as to each charge at the conclusion of trial, realized this omission, and later acted to correct it.

¶ 19 A trial court has the inherent authority to reconsider and correct its rulings, and this power extends to interlocutory rulings as well as to final judgments. *People v. Mink*, 141 Ill. 2d 163, 171 (1990). So long as a case is pending before it, a trial court generally has jurisdiction to reconsider any order which has previously been entered. *Id.*

¶ 20 Here, defendant's case was still pending before the trial court when the court stated that Williams had been found guilty of aggravated UUW and that it "thought" that he was also found guilty of reckless discharge of a firearm but that the "print-out from the Clerk's Office indicates a finding of not guilty as to that charge," *i.e.*, reckless discharge of a firearm. The court stated that it thought the half-sheet was wrong and ordered the clerk to correct it to reflect findings of guilt as to both aggravated UUW and reckless discharge of a firearm. Defense counsel did not object and defendant was convicted and sentenced for aggravated UUW and reckless discharge of a firearm. Ultimately, because the trial court had the power to correct its ruling and to enter a judgment on the reckless discharge of a firearm charge, defendant's argument must fail.

¶ 21 Defendant next contends that he was not proven guilty beyond a reasonable doubt because the State's version of events is "contrary to human experience." Although defendant concedes that two guns were found in the toilet tank in his bathroom, he argues that the State failed to present credible evidence that he possessed or fired a gun.

¶ 22 Where a criminal defendant challenges the sufficiency of the evidence, a conviction will not be overturned unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010) (citing *People v. Collins*, 106 Ill. 2d 237, 261 (1985)). In such a case, it is not the function of

this court to retry the defendant; rather, the relevant inquiry is 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. *Id.* (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). 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). It is well settled that this court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence, the reasonable inferences to be drawn from the evidence, or the credibility of witnesses. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000); *People v. Daheya*, 2013 IL App (1st) 122333, ¶¶ 61-62.

¶ 23 To sustain a conviction for reckless discharge of a firearm, the State must prove the defendant discharged a firearm in a reckless manner which endangers the bodily safety of an individual. 720 ILCS 5/24-1.5(a) (West 2012). To sustain a conviction for aggravated UUW, the State must prove the defendant knowingly carried on or about his person any firearm while not on his land, abode or fixed place of business without a currently valid FOID card. 720 ILCS 5/24-1.6(a)(2), (3)(C) (West 2012).

¶ 24 Here, viewing the evidence at trial in the light most favorable to the State, as we must (*Givens*, 237 Ill. 2d at 334), the evidence was sufficient to convict defendant of the two offenses. Sergeant Zelitzky testified he heard gunshots nearby and drove to the intersection of Ohio and Sawyer, where he saw defendant and Williams holding weapons aimed at a group standing about 100 feet away. Defendant and Williams were pursued as they ran to 549 North Sawyer, where they lived in separate apartments. After officers heard the sound of a toilet tank lid being moved,

they opened the bathroom door and removed defendant and Williams from the bathroom. Police recovered two .380-caliber semi-automatic pistols from the toilet tank matching the general description of the weapons given in Sergeant Zelitzky's testimony based on his initial observation of defendant and Williams. Two .380-caliber shell casings were recovered from the area where Sergeant Zelitzky first heard gunfire and saw defendant and Williams holding weapons. Testing established those two .380-caliber shell casings came from one of the two weapons recovered from the toilet tank.

¶ 25 Defendant, however, argues that both he and his mother testified that he was home all day, his downstairs neighbor was in the bathroom immediately before the police arrived, and it is "improbable" that defendant would hide a firearm in his own toilet. We disagree. It is not improbable that a person with a gun being chased by a police officer would attempt to hide that gun. See, *e.g.*, *People v. Macias*, 371 Ill. App. 3d 632, 638 (2007) (defendant hid a gun in the toilet tank in his bathroom).

¶ 26 The trial court was faced with two competing versions of events. Zelitzky testified that he saw defendant on the street with a gun at the same time that he heard gunshots whereas defendant and his mother asserted that defendant was home all day. It was for the trial court, as the trier of fact, to observe the witnesses, determine their credibility and resolve inconsistencies in the evidence. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009) (in a bench trial, the trial court, as the trier of fact, determines witness credibility and resolves conflicts in the evidence). Although the defense theory of the case was that defendant's downstairs neighbor put the guns in the toilet, a trier of fact is not required to disregard the inferences that flow from the evidence or search out all possible explanations consistent with a defendant's innocence and raise them to a level of reasonable doubt. *In re Jonathon C.B.*, 2011 IL 107750, ¶¶ 60. Rather, it

was for the trial court to both assess the credibility of the witnesses and to draw reasonable inferences from the evidence presented at trial. *Daheya*, 2013 IL App (1st) 122333, ¶¶ 61-62. Although a conviction should be reversed if it is based on evidence that is improbable, unconvincing or contrary to human experience (*People v. Chatha*, 2015 IL App (4th) 130652, ¶ 39), this case does not offer a version of events that could not reasonably have occurred or testimony that strains credulity.

¶ 27 The State presented evidence that defendant was seen with a weapon in his hand after gunfire was heard. Defendant was seen entering a bathroom, and two weapons were recovered from the toilet tank in that bathroom. It was determined that two bullet casings found at the scene were fired from one of the two recovered weapons. Viewing that evidence in the light most favorable to the prosecution, it was sufficient to establish beyond a reasonable doubt that defendant committed the offenses of reckless discharge of a firearm and aggravated UUW.

¶ 28 We affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.