

SIXTH DIVISION  
January 29, 2016

No. 1-14-0244

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 16167
	)	
TREMAL WILLIAMS,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

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

**ORDER**

**Held:** 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 the area where officer heard shots, and the gun was later recovered from a toilet tank in the bathroom where he was apprehended.

¶ 1 Following a bench trial, defendant Tremal Williams 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 15-month prison terms. On appeal, defendant

contends the State did not prove his guilt beyond a reasonable doubt because the testimony of two police officers that he fired a weapon subsequently recovered from a toilet tank in a bathroom of a building where he lived was not credible. For the reasons set forth below, we affirm.

¶ 2 Defendant was tried in a joint bench trial with his co-defendant, Charles Morgan, who has a separate appeal (No. 1-14-0243). 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.

¶ 3 Arriving at that location, Sergeant Zelitzky made a second radio call after seeing two men he later identified as defendant and Morgan “somewhere between walking fast and jogging” toward him. Sergeant Zelitzky was between 40 and 50 feet away from them. As he saw defendant and Morgan running, he heard gunshots coming from the same area where defendant and Morgan were, though he “did not see a muzzle flash.” Both defendant and Morgan 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.

¶ 4 Sergeant Zelitzky stated he immediately got out of his car and followed defendant and Morgan, 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.”

¶ 5 An officer opened the bathroom door, and defendant and Morgan were standing in the bathroom. Two guns were recovered from the toilet tank in that bathroom. Sergeant Zelitzky arrested defendant, and while being transported in the police car, defendant stated he had fired several shots at the group in retaliation for the beating of his brother earlier that day.

¶ 6 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 Morgan into the residence. He described the weapons defendant and Morgan 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.

¶ 7 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 Morgan were inside the bathroom. No one else was in the bathroom.

¶ 8 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 Morgan with weapons. Officer Holler recovered two .380-caliber shell casings from that area.

¶ 9 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 entered into evidence a certified letter stating defendant's date of birth was January 10, 1993, and he had never been issued a FOID card as of October 2, 2012.

¶ 10 In the defense case, defendant adopted the testimony of Rosiamary Morgan, his co-defendant's mother, who stated that on the date of these events, she and her son were at her son's second-floor apartment at 549 North Sawyer all day. She heard gunshots at about 6:30 p.m. About five minutes later, two men she later learned were defendant and Kenneth Gardner knocked at the door, and her son let them in. She heard her son say he "was playing a game." Gardner asked to use the bathroom. Defendant went into the living room with her, and her son went in a bedroom. Gardner went into the bathroom and then left. Five minutes later, two police officers knocked on the door, entered, and handcuffed defendant and her son.

¶ 11 Richard Williams, defendant's father, testified he lived in the first-floor apartment at 549 North Sawyer. Williams' wife, defendant and Gardner, who was also his son, also lived there. At about 6:30 p.m. on the day in question, Williams heard a noise outside and encountered a police officer who handcuffed him and called for other officers. The officer asked him to sign a paper saying that anything found in his house did not belong to him, and Williams testified he agreed to sign the document "because I didn't have nothing in my house." Williams said officers went to the second-floor unit and brought defendant downstairs.

¶ 12 The trial court found defendant guilty of reckless discharge of a firearm and aggravated UUW for possessing a firearm without a currently valid FOID card. The 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 Morgan 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." Defendant was sentenced to 15 months in prison on each count to be served concurrently.

¶ 13 On appeal, defendant contends the State did not prove his guilt of either offense beyond a reasonable doubt. He argues that in the absence of any physical evidence connecting him to the shooting, such as gunshot residue or fingerprints, his convictions cannot rest solely on the testimony of Sergeant Zelitzky and Officer Holler that he fired a weapon in the direction of the group standing on the corner and hid the weapon in the toilet tank. He argues it was not likely he would still have been moving the toilet tank lid and concealing the weapon within earshot of the officers given Sergeant Zelitzky's testimony that he was delayed in entering the house. The State responds the evidence established that defendant had possession of a weapon and that he fired it at a group of people.

¶ 14 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. *Givens*, 237 Ill. 2d at 334, 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, ¶ 62.

¶ 15 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).

¶ 16 We find the evidence was sufficient to convict defendant of the two offenses. Here, Sergeant Zelitzky testified he heard gunshots nearby and drove to the intersection of Ohio and Sawyer, where he saw defendant and Morgan holding weapons aimed at a group standing about 100 feet away. Defendant and Morgan 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 Morgan from the room. Police recovered two .380-caliber semi-automatic pistols from the toilet tank that matched the general description of the weapons given in Sergeant Zelitzky's testimony based on his initial observation of defendant and Morgan. Two .380-caliber shell casings were recovered from the area where Sergeant Zelitzky first heard gunfire and saw defendant and Morgan holding

weapons. Testing established those two .380-caliber shell casings came from one of the two weapons recovered from the toilet tank.

¶ 17 We reject defendant's contention that the reasonable doubt standard was not satisfied because no physical evidence, such as gunshot residue or fingerprints, connected him to the shooting on the street or the recovered weapons. First, the absence of physical evidence does not mandate reversal where, as here, eyewitness identification is sufficient to sustain a conviction. *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23; *People v. Negron*, 297 Ill. App. 3d 519, 529 (1998). In addition, the firearms identification specialist submitted that both shell casings from the shooting scene were fired from a gun recovered from the toilet tank.

¶ 18 Defendant acknowledges that the physical evidence indicates one of the recovered guns was fired on the street near the intersection of Ohio and Sawyer, quite possibly when Sergeant Zelitzky testified he heard gunshots. Defendant further concedes that because defendant was indisputably arrested on the second floor of the subject residence, it is reasonable to suspect that he might have been the one to shoot a recovered gun. Nonetheless, defendant challenges the reliability of the testimony of the two officers, arguing their accounts were inconsistent and unlikely. We disagree with defendant's characterization. Moreover, it is not the role of this court to re-evaluate the credibility of the witnesses in light of potentially contradictory testimony. *People v. Howard*, 376 Ill. App. 3d 322, 329 (2007).

¶ 19 Contrary to defendant's unsupported speculation, there is nothing unbelievable or implausible about Sergeant Zelitzky arriving at the scene of an ongoing battle just because 30 or 45 seconds elapsed after he initially heard gunshots because he had to travel a block and a half toward the sound of the gunshots. Moreover, Sergeant Zelitzky observed defendant holding a

gun with his arm extended toward several people standing across the street as defendant was quickly *leaving* the scene.

¶ 20 Sergeant Zelitzky then pursued defendant to the subject residence where he waited for about 30 seconds for backup officers to arrive before entering the house. This brief 30-second delay did not undermine the believability of the actions taken by defendant and Morgan in their failed attempt to conceal two guns when being chased by the police.

¶ 21 Furthermore, a review of the testimony reveals the officers' accounts were not contradictory. Sergeant Zelitzky testified on direct examination that he heard a "commotion" after proceeding to the second floor. On cross-examination, he stated he first heard the "commotion" in the bathroom while on the first floor. Officer Holler testified he was on the second floor with other officers when he heard activity inside the bathroom. It is possible that the noise from the bathroom took place in earshot of both officers and was first heard by Sergeant Zelitzky while he was on the first floor. Even assuming *arguendo* those two accounts could be deemed conflicting, it was the role of the trier of fact to resolve any such conflict or inconsistencies in the evidence, and this court lacks any basis to substitute its judgment for that of the trial court on issues of credibility. *People v. Johnson*, 2014 IL App (1st) 120701, ¶ 28, citing *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992).

¶ 22 In addition, we reject defendant's argument that the officers' version is improbable because he and Morgan would not have had time to conceal the weapons. The testimony indicated defendant and Morgan were seen carrying weapons and entering the bathroom. The sound of a toilet tank being lifted was heard outside the bathroom, and the weapons were retrieved from inside the toilet tank. Both officers testified they heard the sound of a toilet tank being moved. Therefore, the evidence established the ability and opportunity for defendant and



Morgan to have placed the guns in the toilet tank, which was a determination to be made by the trier of fact based on the testimony. Considering that testimony in the light most favorable to the prosecution, the trial court could reasonably infer the offenders concealed the weapons in the toilet tank.

¶ 23 Still, defendant contends the officers' testimony was not to be believed, and he explicitly contends the State's witnesses fabricated the toilet-tank scenario in the absence of any physical evidence connecting the offenders with the weapons. He asserts it is implausible that he and Morgan would hide the weapons in the toilet tank because it is not "an ideal storage place for a steel object," and he suggests Sergeant Zelitzky and Officer Holler both could not have been in a position to hear the toilet tank being moved.

¶ 24 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. It is not out of the realm of possibility that a suspect would conceal contraband in such an incongruous location. See, e.g., *People v. Macias*, 371 Ill. App. 3d 632, 638 (2007) (defendant hid gun in toilet tank); *People v. Perez*, 225 Ill. App. 3d 54, 57 (1992) (man working as "bodyguard" for drug transactions stored weapon in toilet tank). Moreover, this court will not reject the trial court's credibility determination based on defendant's unsubstantiated allegation of police perjury. *People v. Moore*, 2014 IL App (1st) 110793-B, ¶ 13. Defendant directs us to *People v. Quintana*, 91 Ill. App. 2d 95, 98 (1968), in which a conviction was reversed because the State relied solely on the uncorroborated testimony of a police officer for whom the defendant had acted as an informant. Here, no suggestion has

been made that the police had a prior relationship with defendant or that the officers harbored a motive to falsely accuse defendant.

¶ 25 Defendant further argues Sergeant Zelitzky's testimony that he admitted to the crimes while being transported in the police car is "doubtful," and he points out the record does not reveal whether officers eventually investigated those who purportedly attacked his brother. As with defendant's previous contentions, we do not find those arguments warrant a finding of reasonable doubt. The fact that Sergeant Zelitzky did not describe any investigation into defendant's allegation does not mean that no such investigation occurred, and even if such investigation took place, it does not negate the testimony of the State witnesses as to defendant's own actions. Moreover, in finding defendant guilty, the trial court did not rely on his statements to Sergeant Zelitzky.

¶ 26 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. 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 UUV.

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

¶ 28 Affirmed.