

No. 1-14-1060

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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 17636
	)	
IBN COOKSEY,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE REYES delivered the judgment of the court.  
Justices Gordon and Lampkin concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Evidence was sufficient to prove defendant guilty of unlawful use of a weapon by a felon beyond a reasonable doubt where a police officer observed defendant carrying a handgun, and shortly thereafter, other officers recovered a handgun from the hallway defendant ran through.

¶ 2 Following a bench trial, defendant Ibn Cooksey was found guilty of unlawful use of a weapon by a felon and sentenced to six years' incarceration. On appeal, defendant contends that the State failed to present sufficient evidence to prove beyond a reasonable doubt that he

possessed a weapon because the testimony of the police officer who observed a handgun was incredible and other individuals had access to the hallway where officers recovered a handgun. Defendant also asks this court to correct his mittimus to reflect a single conviction for unlawful use of a weapon by a felon. We affirm and correct the mittimus.

¶ 3 The State charged defendant with two counts of attempted murder (counts 1 and 2), one count of aggravated battery (count 3), one count of armed habitual criminal (count 4), one count of unlawful use of a weapon by a felon (count 5), and one count of aggravated unlawful use of a weapon (count 6). Prior to trial, the State nol-prossed counts 1, 2, and 3. It then stated, "We are proceeding on counts 4 and 5," but made no reference to count 6.

¶ 4 At trial, Chicago police officer Daniel Prskalo testified that he was on patrol with other officers on the night of August 27, 2012, when he heard gunshots. As the officers drove toward the sounds, Prskalo observed an automobile drive through a stop sign without stopping. Defendant was a passenger in the vehicle. When the officers turned on their squad car's emergency lights and sirens, the vehicle briefly pulled over before speeding away. Eventually, the automobile stopped and defendant fled through an alleyway toward the rear entrance of a nearby apartment building. Prskalo exited his squad car and observed a black handgun in defendant's gloved right hand. Prskalo was about 10 yards behind defendant and observed him with the handgun for 8 to 12 seconds. The alleyway was lit by streetlights and the headlights of Prskalo's squad car were pointed toward defendant. When Prskalo followed defendant through the rear entrance of the apartment building, defendant had already exited through the front door. The officer observed defendant's handgun lying on the stairs. Walking out the front door, Prskalo observed that the other officers had arrested defendant.

¶ 5 Chicago police officer Manuel Leano testified that he was standing in front of the apartment building on August 27, 2012. Through the building's window, he observed defendant take off a black shirt. As defendant subsequently exited the building toward Leano, he dropped a glove onto the ground. Leano arrested defendant and then searched the building's first-floor hallway. He found the black shirt and a black handgun near the landing of the staircase. No other individuals were present in the building's common area. Evidence technicians recovered the shirt, the handgun, and the dropped glove.

¶ 6 The State introduced certified copies of defendant's previous felony convictions for robbery and aggravated unlawful use of a weapon. The parties stipulated that the glove recovered from the apartment building was found to contain the DNA of three individuals. Testing indicated that the major DNA profiles present on the glove did not match defendant. However, additional profiles were present but unsuitable for testing.

¶ 7 During closing arguments, the State argued that defendant was guilty of "counts 4 and 5", making no reference to count six. Following arguments, the trial court stated that the State "met their burden of proof as to unlawful use of [a] weapon by felon. On counts 5 and 6." It found defendant not guilty of armed habitual criminal. Defendant's mittimus similarly reflects convictions on count 5, "Felon Poss/Use Firearm Prior," and count 6, "Agg Unlawful Use Weapon/Veh/2nd." Defendant appeals.

¶ 8 Defendant first contends that the State failed to prove beyond a reasonable doubt that he possessed a handgun. He argues that Prskalo's distance from defendant, the lighting in the alley, and the short period of time in which the officer observed him render Prskalo's identification of a handgun unreliable. He also asserts that Leano's testimony does not support a finding of

possession because Leano recovered the weapon from a common area of the building and did not see defendant holding it. He argues that there was no physical evidence connecting defendant to the weapon. The State responds that Prskalo's testimony was sufficient to prove defendant possessed a handgun beyond a reasonable doubt, particularly where it was corroborated by Leano's testimony.

¶ 9 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).

¶ 10 The positive and credible testimony of a single witness is sufficient to support a criminal conviction. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Where eye witness testimony is credible, the State is not required to produce physical evidence. *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23. The reviewing court must give due consideration to the fact that a trial court

is able to see and hear the witnesses. *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001). A fact finder's determination of a witness's credibility "is entitled to great deference but is not conclusive."

*Cunningham*, 212 Ill. 2d at 279. Where a conviction depends on eyewitness testimony, the reviewing court may find testimony insufficient "only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *Id.* A reviewing court will reverse a conviction based on incredible eyewitness testimony only where that testimony is "improbable, unconvincing or contrary to human experience." *Ortiz*, 196 Ill. 2d at 267.

¶ 11 To sustain a conviction for unlawful use of a weapon by a felon, the State was required to prove that defendant: (1) knowingly possessed a weapon, and (2) was previously convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2012). Possession may be actual or constructive. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Actual possession is proven by evidence that a defendant exercised some form of dominion over contraband. *Id.* Where there is no actual possession, constructive possession may be proven if a defendant had "the intent and capability to maintain control and dominion" over an object. *Id.*

¶ 12 We find the State presented sufficient evidence to prove defendant actually possessed a weapon. Prskalo testified that he observed defendant holding a black handgun. His testimony alone supports a finding of actual possession. Moreover, that testimony was corroborated by Leano. Shortly after Prskalo witnessed defendant run into an apartment building with a handgun, Leano observed defendant exit that building without a weapon. Inside the building, in the hallway that defendant had just run through, both officers found a handgun that matched Prskalo's description. No other individuals were present. While defendant argues that the

circumstances of Prskalo's observation render it incredible, the officer's credibility is a question best suited for the fact-finder. See *Ortiz*, 196 Ill. 2d at 267. Moreover, Prskalo was able to view defendant for at least eight seconds, from only ten yards away, while streetlights and his vehicle's headlights illuminated defendant. He expressed no doubt that he had seen a black handgun, and his testimony was corroborated because a black handgun was found. The trial court's acceptance of Prskalo's testimony is not unreasonable, and we therefore defer to its findings. Taking the evidence in the light most favorable to the State, a rational fact-finder could find beyond a reasonable doubt that defendant was in actual possession of the recovered handgun.

Consequently, because defendant's previous convictions are undisputed, we find that the State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt of unlawful use of a weapon by a felon.

¶ 13 Defendant next asks this court to correct the mittimus to reflect that he was convicted only of unlawful use of a weapon by a felon. The State concedes that defendant's conviction for count 6, aggravated unlawful use of a weapon by a felon, was entered in error and that the mittimus should be corrected. We accept the State's concession. Although in its oral pronouncement, the trial court stated that the State had met its burden of proof as to count 6, this was clearly an error as the State indicated it was only proceeding on counts 4 and 5. This court may correct the mittimus without remand. *People v. Magee*, 374 Ill. App. 3d 1024, 1036 (2007); see also Ill. S. Ct. R. 615(b). We direct the clerk of the circuit court to correct defendant's mittimus to reflect a conviction solely on count 5.

¶ 14 For the foregoing reasons, we find that the State proved defendant guilty of unlawful use of a weapon by a felon beyond a reasonable doubt. Accordingly we affirm the judgment of the

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circuit court of Cook County and direct the clerk of the circuit court to correct defendant's mittimus to reflect a single conviction for unlawful use of a weapon by a felon.

¶ 15 Affirmed; mittimus corrected.