2016 IL App (1st) 141213-U

THIRD DIVISION
July 13, 2016

No. 1-14-1213

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 22043
	)	
ELIAS MIRELES,	)	Honorable
	)	William G. Lacy,
Defendant-Appellant.	)	Judge Presiding.

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

O R D E R

¶ 1 *Held:* The exclusive jurisdiction provision of the Juvenile Court Act of 1987 (705 ILCS 405/5-120 (West 2012)), did not deprive defendant of his constitutional rights. Defendant was proven guilty of possession of contraband in a penal institution beyond a reasonable doubt when a corrections officer observed defendant pull a metal object later identified as a "shank" from his waistband and toss it into a bathroom, the officer never lost sight of the object and no one else was around defendant. Defendant's mittimus must be corrected to reflect the actual number of days he spent in custody prior to sentencing.

¶ 2 Following a bench trial, defendant Elias Mireles was found guilty of possession of contraband in a penal institution and sentenced to four years in prison. Although he was 17 years old at the time of the offense, defendant was tried and sentenced as an adult in accordance with the exclusive jurisdiction provision set forth in section 5-120 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-120 (West 2012)).

¶ 3 On appeal, defendant contends the exclusive jurisdiction provision of the Act, which exempted him from juvenile court proceedings due to his age, deprived him of his constitutional right to due process and violates the eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution. He also contends that he was not proven guilty beyond a reasonable doubt of possession of contraband in a penal institution because, *inter alia,* his testimony "cast into doubt" the testimony of the State's sole witness. Defendant finally contends that his mittimus must be corrected to reflect the 505 days he spent in custody prior to sentencing. We affirm and correct the mittimus.

¶ 4 At trial, corrections officer Anthony Colquitt testified that on October 31, 2012, he responded to an "all available call" on the radio. He explained that an "all available call" means that an officer needs assistance. When officers arrived at the "Division 10 3D" dayroom all detainees were instructed to get on the ground. Colquitt observed defendant reach into his waistband with his right hand and toss a metal object into the bathroom area. He was about 8 to 10 feet away from defendant when defendant threw the object. Colquitt described the object as a "sharpened metal object probably about six inches in length," *i.e.*, a "shank" or "homemade knife." He never lost sight of the object and there was nothing else on the floor. Colquitt

described the shank as "like a screw type" wrapped in a bed sheet "at the handle." No one else was around defendant. Colquitt recovered the shank, handcuffed defendant and then searched defendant. A blue lighter was recovered from defendant's back pocket. The shank and the blue lighter were later inventoried. At trial, Colquitt identified the shank and the blue lighter. The shank and the blue lighter were then admitted into evidence without objection.

¶ 5 During cross-examination, Colquitt testified that "several officers" responded to the radio call and that other detainees were present in the dayroom. There is not a camera in the dayroom. Although Sergeant Rodriguez was present, Colquitt did not know if he had a video camera.

¶ 6 Defendant testified that while inmates are in the dayroom, an officer monitors them from "the control panel." A camera is "near the officer's head." When another inmate began "kind of acting crazy," and running around, an "all available" was called and 10-20 officers arrived. There were 48 inmates in the dayroom. The inmate "acting weird" was first told to get down, and then everyone else was told to get on the ground. Once everyone was prone, Sergeant Rodriguez came into the dayroom with a handheld camera, got on a bench, and started recording. The occupants of each cell were, in turn, searched and locked in their cell.

¶ 7 When it was defendant's turn, he got up, wiped the dirt from the floor off and walked to his cell. Although he stepped inside, he was asked to come back out to be searched. An officer had just begun to search him when Rodriguez said "watch the Latino with the long hair," that is, defendant. Defendant was handcuffed and taken into a hallway. There, he saw Colquitt hitting a shank against a wall. Colquitt said, "this is yours, right," and stated that he found the shank on

defendant. When defendant replied that Colquitt had not searched him, Colquitt gave him a "smirk." Defendant had never seen the shank before. He also denied that he had a lighter.

¶ 8 During cross-examination, defendant testified that he had been in jail for almost three years and had no problems with anyone. However, he was "recently *** jumped at court." Defendant did not carry a weapon in jail and denied possessing the shank. He did not remember seeing Colquitt in the dayroom that day, but did see Colquitt in the hallway. Defendant knew Colquitt was a corrections officer, but had no problems with him and no reason to dislike him. He did not know if the camera "over the control panel where the officer sits" took pictures or recorded or if it even worked.

¶ 9 In closing argument, the defense argued that it was incredible that only one officer saw "this incident" considering how many responded to the radio call. The defense then noted that the officer "who watches the people in the dayroom" was not in court to give his or her version of the events, that jails have cameras, and that it was "very questionable" that no videos were presented to support Colquitt's testimony. The defense also highlighted defendant's testimony that Rodriguez was recording, but that no such recording was brought to court. In other words, there was "nothing to support Officer Colquitt's testimony but himself."

¶ 10 In finding defendant guilty, the court stated that considering all the people in the dayroom, it was not "unreasonable" that all the officers did not see "every single thing that was going on." Rather, officers were concentrating on "those people that were within their area." The court then noted that it could

> "only deal with the evidence that has been placed before the Court. Whether there were recording[s] or not recordings, that's not before the court. And even if there were recordings to suggest that these recordings would somehow be exculpatory would be mere conjecture on [the court's] part, and [the court] will not venture into that area."

The court then stated that it found defendant's testimony that he had no problems with "people in the jail" incredible because defendant's testimony came "down to" Colquitt planting a shank and putting a case on him "for no reason at all." The court's assessment of the "credibility of the two witnesses," led to its conclusion that Colquitt was "a very credible witness." Accordingly, the trial court found defendant guilty of possession of contraband in a penal institution, and sentenced him to four years in prison.

¶ 11 On appeal, defendant first contends that the version of the Act's exclusive jurisdiction provision in effect at the time of the offense, which provided that 17-year-olds were to be prosecuted as adults, deprived him of due process and violated the eighth amendment to the United States Constitution and the proportionate penalties clause of the Illinois Constitution.

¶ 12 The version of the exclusive jurisdiction provision in effect at the time of the offense stated that, subject to certain exceptions, Illinois's juvenile court jurisdiction only applied to minors under 17 years old. 705 ILCS 405/5-120 (West 2012). Because defendant was 17 years old at the time of the offense, he was not subject to juvenile proceedings.

¶ 13 In reviewing the exclusive jurisdiction provision, we keep in mind that "[a]ll statutes carry a strong presumption of constitutionality." *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005). The party challenging a statute has the burden to demonstrate that it is invalid. *People v. Graves*,

207 Ill. 2d 478, 482 (2003). "Whether a statute is constitutional is a question of law that we review *de novo*." *Id*.

¶ 14 Defendant argues that the exclusive jurisdiction provision at issue is constitutionally invalid after the United States Supreme Court's decisions in *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012), because the provision did not provide any opportunity for a trial court to consider a defendant's age and its attendant characteristics, or the circumstances of the offense. According to defendant, Illinois's statutory scheme is cruel and unusual because it mandates adult prosecution and sentencing for all 17-year-olds based on a predetermination that those juveniles do not share the inherent characteristics of youth that the Supreme Court has repeatedly said render them less culpable than adult offenders. In further support of his argument, defendant notes that the Act has since been amended to apply to minors under 18 years old.

¶ 15 In *Roper*, the Supreme Court held that imposing the death penalty on juvenile offenders under 18 years old violates the eighth amendment. *Roper*, 543 U.S. at 568. In reaching this conclusion, the Court discussed key differences between juveniles under 18 years old and adults, including a lack of maturity and an underdeveloped sense of responsibility, more vulnerability to negative influences and outside pressures, and a character that is not as well formed as that of an adult. *Id.* at 569-70. In *Graham*, the Court held that the eighth amendment forbids a sentence of life without parole for juvenile offenders who commit nonhomicide offenses because a sentence of life without parole "improperly denies the juvenile offender a chance to demonstrate growth and maturity." *Graham* 560 U.S. at 73-75. In *Miller*, the Court held that the eighth amendment

forbids a sentencing scheme that mandates life in prison without parole for juveniles who commit homicide because such sentencing schemes "by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Miller*, 132 S. Ct. at 2467, 2469.

¶ 16 Although *Roper*, *Graham*, and *Miller* limited the range of penalties for juvenile offenders, defendant's challenge to the exclusive jurisdiction provision of the Act fails in light of, *inter alia*, our supreme court's decision in *People v. Patterson*, 2014 IL 115102.

¶ 17 In *Patterson*, our supreme court analyzed the constitutionality of the automatic transfer provision of the Act, and rejected the defendant's procedural and substantive due process, eighth amendment and proportionate penalties claims. *Id.* ¶¶ 93-110. The court rejected the defendant's reliance on *Roper*, *Graham*, and *Miller*, *i.e.*, his reliance on the Supreme Court's eighth amendment caselaw, to support his procedural and substantive due process claims. *Id.* ¶ 97. The court concluded that "a constitutional challenge raised under one theory cannot be supported by decisional law based purely on another provision." *Id*. The court further found that because the automatic transfer statute is not a sentencing statute, the defendant's eighth amendment and proportionate penalties challenges "cannot stand." *Id*. ¶ ¶ 104-106. The court also explained that access to juvenile courts is not a constitutional right because the Illinois juvenile court system is a "creature of legislation." *Id*. ¶ 104.

¶ 18 The same reasoning utilized in rejecting constitutional challenges to the automatic transfer provision of the Act is equally applicable to the exclusive jurisdiction provision

challenged by defendant in this case. We find *People v. Harmon*, 2013 IL App (2d) 120439, instructive.

¶ 19 In that case, the court rejected the same arguments defendant raises here. The court noted that *Roper*, *Graham*, *Miller* and *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), stand for the proposition that a sentencing body must have the chance to take into account mitigating circumstances before sentencing a juvenile to the harshest possible penalty, which was either the death penalty or life imprisonment without the possibility of parole. *Id.* ¶ 54. The court further stated that the trial court in that case was able to consider the defendant's age, as well as other circumstances, at sentencing. *Id.* The court also found that while the eighth amendment prohibits cruel and unusual punishments, the exclusive jurisdiction provision of the Act did not impose punishment; rather, it specified the forum in which a defendant's guilt may be adjudicated. *Id.* ¶¶ 55-56. Therefore, the provision was not subject to, and did not violate, the eighth amendment or the proportionate penalties clause. *Id.* The court also rejected the defendant's due process arguments as the trial court was able to consider the defendant's youth and its attendant circumstances at sentencing. *Id.* ¶¶ 58, 62.

¶ 20 Subsequently, in *People v. Fiveash*, 2015 IL 117669, ¶ 21, our supreme court reiterated that adjudication in a juvenile court is not a matter of a constitutional right. The court noted that although it had recognized the need to consider juveniles' unique characteristics in the eighth amendment context in *People v. Miller*, 202 Ill. 2d 328, 341-42 (2002), and that the United States Supreme Court had done so in *Roper*, *Graham*, and *Miller*, neither court had ever held that the failure to address the inherent differences between juvenile and adult offenders created a due

process violation when the juvenile was potentially subject to a prison sentence involving a term of years rather than the death penalty or natural life in prison. *Fiveash*, 2015 IL 117669, ¶ 45, citing *Patterson*, 2014 IL 115102, ¶¶ 97-98.

¶ 21 Accordingly, we find no due process violation in the case at bar, especially where the trial court was able to consider defendant's youth and its attendant circumstances when sentencing him. See *Harmon*, 2013 IL App (2d) 120439, ¶ 62. Similarly, we conclude that the exclusive jurisdiction provision of the Act is not subject to, and does not violate, the eighth amendment or the proportional penalties clause. *Id*. ¶¶ 55-56. See also *People v. Cavazos*, 2015 IL App (2d) 120444, ¶ 85 (noting the consistent rejection of defendants' efforts in this state to compare the statutes at issue in *Roper*, *Graham* and *Miller* to provisions of the Act).

¶ 22 Defendant next contends that he was not proven guilty of possession of contraband in a penal institution beyond a reasonable doubt because Colquitt's testimony was cast into doubt by defendant's testimony. He argues that the State offered no evidence to either corroborate Colquitt's testimony or rebut his testimony.

¶ 23 When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. The trier of fact is responsible for evaluating the credibility of the witnesses, weighing witness testimony, and determining what inferences to draw from the evidence. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). A reviewing court will not retry the defendant (*People v. Lloyd*, 2013 IL 113510, ¶ 42), or substitute its judgment for that of the trier

of fact on questions involving the weight of the evidence or the credibility of witnesses (*Brown*, 2013 IL 114196, ¶ 48). This court reverses a defendant's conviction only where the evidence is so unreasonable, improbable or unsatisfactory that a reasonable doubt of his guilt remains. *Id*.

¶ 24 Here, viewing the evidence at trial in the light most favorable to the State, as we must (*id.*), there was sufficient evidence to find defendant guilty, beyond a reasonable doubt, of possession of contraband in a penal institution based upon Colquitt's testimony that defendant reached into his waistband with his right hand and tossed a metal object, later identified as a shank, into the bathroom area. Colquitt was about 8 to 10 feet away from defendant, never lost sight of the object, and did not observe anyone else around defendant. The trial court specifically stated that it found Colquitt's testimony credible and that it found defendant's version of events incredible. It was for the trial court, as the trier of fact, to determine witness credibility; we will not substitute our judgment for that of the trial court on this issue. *Id*.

¶ 25 Defendant, however, contends that the evidence was insufficient because the State presented the uncorroborated testimony of only one witness. He further argues that the State's decision not to present the testimony of Sergeant Rodriguez or any other officers present in the dayroom suggests that their testimony might have been unfavorable to the State.

¶ 26 Initially, we reject defendant's conclusion he was not proven guilty beyond a reasonable doubt because the State did not present witnesses at trial to corroborate Colquitt's testimony. Defendant sets forth no authority for the proposition that Colquitt's testimony needed to be corroborated to sustain his conviction. In fact, the law is precisely the opposite. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009) ("It remains the firm holding of this court that the

testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant.").

¶ 27 We also disagree with defendant's conclusion that the State's failure to produce Rodriguez or any of the other officers present in the dayroom at trial "casts doubt on the credibility of Colquitt's testimony" and suggests that the officers' testimony would have been unfavorable to the State. While it is true that caselaw recognizes the propriety of drawing such an inference under certain circumstances, it is also true that the State has no obligation to call every possible witness. See *People v. Smith*, 3 Ill. App. 3d 64, 67 (1971). The State "may accept the risk of [the] unexplained absence of a witness so long as the offense is otherwise proved." *People v. Gonzales*, 125 Ill. App. 2d 225, 235 (1970). Defendant was, of course, free to comment on the fact that the State did not call the other officers (*id.*), and counsel cross-examined Colquitt regarding who else was present in the dayroom. The defense also focused its closing argument on the failure of the State to present the testimony of the other officers, and concluded that there was "nothing to support Officer Colquitt's testimony but himself." Ultimately, the decision whether to draw the inference and what effect, if any, that inference may have had on the weight to which the court afforded Colquitt's testimony was a matter for the trial court to determine as the trier of fact. See *Ross*, 229 Ill. 2d at 272 (the trier of fact is responsible for evaluating the credibility of the witnesses, weighing their testimony, and determining what inferences to draw from the evidence presented).

¶ 28 Defendant further argues that the failure of the State to produce any video recordings of the incident suggests that the omitted evidence "would have been unfavorable to the State's

case." However, as stated above, the testimony of a single witness if positive and credible is sufficient to sustain a defendant's conviction (*Siguenza-Brito*, 235 Ill. 2d at 228). In the case at bar, Colquitt and defendant agreed that Rodriguez was present, however, they disagreed as to whether he had a video camera. Additionally, although defendant testified that there was a camera in the control room, he did not know if it recorded or took pictures or whether it actually worked. The trial court specifically noted that it could only "deal" with the evidence before the court, and that even if such recordings existed, the court declined to speculate that they "would somehow be exculpatory." The court had the opportunity to observe Colquitt testify and found him credible after weighing all the testimony presented at trial including the facts that no recordings were presented and that defendant denied possessing the shank. The court found defendant's testimony incredible because defendant's testimony was essentially that Colquitt planted a shank on him for "for no reason at all." The trier of fact is not required to disregard the inferences that normally flow from the evidence or to seek out all possible explanations consistent with a defendant's innocence and elevate them to reasonable doubt. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60.

¶ 29 Ultimately, this court cannot say that no rational trier of fact could have found defendant guilty when Colquitt testified that he watched defendant throw an object that was later identified as a shank into the dayroom bathroom. *Brown*, 2013 IL 114196, ¶ 48. This court reverses a defendant's conviction only where the evidence is so unreasonable or unsatisfactory that a reasonable doubt of his guilt remains (*id.*); this is not one of those cases. Therefore, we affirm defendant's conviction for possession of contraband in a penal institution.

¶ 30 Defendant finally contends that the mittimus must be corrected to reflect 505 days of presentence custody credit. The State agrees that defendant is entitled to 505 days of presentence custody credit when defendant was arrested on November 15, 2012, and sentenced on April 4, 2014. Therefore, pursuant to our power to correct a mittimus without remand (*People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008)), we direct the clerk of the circuit court to correct the mittimus to reflect 505 days of presentence custody credit.

¶ 31 Accordingly, pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct defendant's mittimus to reflect 505 days of presentence custody credit. We affirm the circuit court of Cook County in all other aspects.

¶ 32 Affirmed; mittimus corrected.