

FIFTH DIVISION
JANUARY 22, 2016

No. 1-14-1503

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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. 13 CR 3629
)	
DION HAYES,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

O R D E R

- ¶ 1 *Held:* The testimony of a single credible witness established defendant's guilt of aggravated unlawful use of a weapon beyond a reasonable doubt.
- ¶ 2 Following a bench trial, defendant Dion Hayes was found guilty of aggravated unlawful use of a weapon (AUUW) and was sentenced to 18 months in the Illinois Department of Corrections (IDOC). On appeal, defendant claims he was not proven guilty beyond a reasonable doubt because the testimony of the sole State witness was uncorroborated and unreliable. We affirm.

¶ 3 Defendant was charged by information with four counts of AUUW. The State proceeded to trial on two counts charging him with possession of a firearm without a currently valid firearm owners identification (FOID) card.

¶ 4 At trial, the State presented one witness, Chicago Police Officer Robert Vahl, a police veteran of over 14 years who testified that on the afternoon of January 10, 2013, he and three other officers were conducting an undercover narcotics surveillance in the 5400 block of South Laflin Street. At about 2 p.m., Vahl and another officer were in an undercover conversion van in the vicinity of 5411 South Laflin when Vahl observed defendant from a distance of about 50 feet. From his position toward the rear of the van, Vahl observed defendant exit a vacant lot on the west side of the street and cross the street. At the same time, Vahl also observed four other individuals who fanned out, two in each direction; Vahl believed they were lookouts. Vahl's attention was centered primarily on defendant. As defendant crossed in front of the van, Vahl moved up to the passenger seat. He observed defendant approach the south gangway at 5411 South Laflin and remove a blue steel handgun from his waistband. Vahl had an unobstructed view of defendant's right profile and immediately recognized that the object defendant was holding was a firearm. Vahl was sure of what he observed: a handgun in defendant's possession. Defendant was then about 25 to 50 feet from him. Defendant went about four feet into the gangway and placed the handgun down in the gangway. He placed a plastic bag over the weapon and then placed leaves and dirt or debris on top of that.

¶ 5 Vahl radioed his enforcement officers of his observations, provided a description of defendant's clothing and nickname, and reported defendant's location on the block. Vahl had encountered defendant on previous occasions. The enforcement officers, Barsch and Worciak,

proceeded to the 5400 block of South Laflin in their vehicles. Defendant came out of the gangway to approximately the sidewalk area and fled eastbound. Barsch and Worciak pursued defendant on foot, while Vahl took up the pursuit in his van. Defendant went east, crossed Bishop, went as far as Loomis two blocks east, and then doubled back toward Laflin. Vahl briefly lost sight of defendant but apprehended him in the alley between Bishop and Loomis. The chase took about one to two minutes. Vahl turned him over to the enforcement officers and immediately returned to the 5407 South Laflin gangway where he recovered "[a] blue steel .45 caliber semi-automatic handgun containing seven live rounds." There was no other contraband in the gangway. The gangway was out of Vahl's sight for about five minutes before he returned to that location and recovered the weapon under the bag. Before Vahl began his pursuit of defendant, Vahl did not observe anyone else enter or exit the gangway. None of the other four individuals Vahl had observed earlier was on the block when defendant was arrested, but Vahl conceded on cross-examination that it was possible they could have gone into the gangway while he was in pursuit of defendant.

¶ 6 Vahl participated in processing the arrest of defendant at the police station and learned that his address was in the 6400-block of Washtenaw, which was not the address where Vahl observed defendant with the firearm. The weapon and ammunition were inventoried but were not produced at trial.

¶ 7 After the State rested, defendant elected not to present any evidence. The parties waived closing argument and stipulated that defendant did not have a FOID card. The court found defendant guilty after observing: "I have a witness that was not impeached; that was clear and credible; the sole and single witness, whose testimony made sense. There was nothing to rebut

what he said." Defendant filed a written posttrial motion which the trial court denied. The court sentenced defendant to 18 months in the IDOC and credited him with 281 days served while in custody prior to sentencing.

¶ 8 On appeal, defendant asserts that the evidence was not sufficient to establish his guilt beyond a reasonable doubt. He claims that Officer Vahl was not a credible witness and that his testimony was uncorroborated by physical evidence or other witness testimony and lacking in verifiable detail.

¶ 9 It is not our function to retry a defendant. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, the relevant inquiry is whether, after reviewing 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. *People v. Rowell*, 229 Ill. 2d 82, 98 (2008). This standard of review recognizes the responsibility of the trier of fact to assess witness credibility, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *People v. Billups*, 384 Ill. App. 3d 844, 846 (2008). "Because the trial judge is in a superior position to weigh the evidence and decide on the credibility of the witnesses, we may not reverse the judgment merely because we might have reached a different conclusion." *People v. Love*, 404 Ill. App. 3d 784, 787 (2010). A reviewing court must allow all reasonable inferences from the record in favor of the prosecution and will not overturn the decision of the trier of fact unless the evidence is so improbable, unsatisfactory, or inconclusive as to justify a reasonable doubt as to the defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011).

¶ 10 Defendant contends that the State failed to establish his guilt of AUUW beyond a reasonable doubt because Vahl's trial testimony was uncorroborated by testimony of other police

officers and by the introduction of physical evidence (the weapon was not introduced in evidence). Defendant also asserts that Vahl was not a credible witness given the little time and distance in which he viewed the weapon defendant allegedly was holding. These same arguments were presented to and rejected by the trial court in defendant's written posttrial motion and defense counsel's argument on the motion. Where the same argument was presented to the trial court, it is not our prerogative to retry the case. *People v. Castillo*, 372 Ill. App. 3d 11, 20 (2007).

¶ 11 Nevertheless, defendant contends on appeal that Vahl's testimony was unreliable because it was uncorroborated by testimony of any other witness, even though there were other police officers "around." However, the testimony of a single witness is sufficient to convict if the testimony is positive and the witness is credible. *People v. Bannister*, 378 Ill. App. 3d 19, 39 (2007). Defendant also asserts that Vahl's testimony was uncorroborated by any physical evidence, and he notes that the firearm Vahl claimed to recover was not produced at trial. The lack of physical evidence does not raise a reasonable doubt where an eyewitness has positively identified the defendant as the perpetrator. *People v. Reed*, 396 Ill. App. 3d 636, 649 (3009). The testimony of even a lay witness is sufficient to prove possession of a firearm, even where the firearm is not introduced in evidence at trial. *People v. Washington*, 2012 IL 107993, ¶¶ 35-36.

¶ 12 Defendant claims that Vahl's testimony was not credible because he observed the firearm defendant removed from his waistband only for one to two seconds and from a distance of at least 25 feet, and it seems questionable that Vahl's view could have been unobstructed because he was moving around in the van. We first note that Vahl did not testify he was moving about in the van when he observed defendant holding the firearm. As to the time and distance in which Vahl viewed the firearm, he was a police veteran of over 14 years. The courts make the

distinction between a citizen identification witness and a police officer witness; the latter's degree of attention would normally be higher and greater than that of an average citizen witnessing a crime. *People v. Stanley*, 397 Ill. App. 3d 598, 611 (2009).

¶ 13 Defendant further attacks Vahl's credibility concerning his testimony that the firearm was left unguarded in the gangway for five minutes. Defendant claims that anyone could have placed a gun in the location during that time. Moreover, defendant asserts Vahl never testified the firearm he observed defendant hide in the gangway was the same firearm Vahl recovered. However, Vahl's testimony must be deemed more credible than defendant's suggestion that in the space of five minutes, someone else entered the gangway, found the blue steel handgun defendant had hidden, and replaced it with another blue steel handgun for Vahl to find.

¶ 14 Defendant also complains that Vahl's testimony lacked clarity and detail. He claims Vahl's testimony was unclear as to which police officers pursued defendant on foot. Defendant claims Vahl testified that Barsch and Worciak pursued defendant in their vehicles, and then, in contradiction, Vahl testified he pursued defendant in his vehicle "paralleling the foot pursuit." We disagree with defendant's interpretation of the testimony. Vahl never said Barsch and Worciak pursued defendant in their vehicles. He said that those two officers were at some other location and came to the 5400 Laflin area "initially" in vehicles. He then testified that he pursued defendant in his vehicle "paralleling the foot pursuit." The most reasonable interpretation of the testimony is that Barsch and Worciak drove to that location and then pursued defendant on foot.

¶ 15 Defendant also asserts that Vahl was vague about whether the gangway was at 5411 or 5407 South Laflin. When testimony is unclear, it is the duty of the trier of fact to resolve inconsistencies, determine the weight to assign testimony, and draw reasonable inferences

therefrom. *People v. Jackson*, 2012 IL App (1st) 092833, ¶ 30. Minor discrepancies in the testimony do not necessarily destroy a witness's credibility, but merely affect the weight of the evidence. *People v. Hruza*, 312 Ill. App. 3d 319, 326 (2000). Any lack of clarity in Vahl's testimony was minor and did not affect the outcome of the trial. In all other respects, Vahl's testimony was clear and detailed.

¶ 16 Defendant's contentions are no more than an attack on Vahl's credibility and the weight to be assigned to his testimony. In reviewing a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). The reviewing court must carefully examine the record evidence while bearing in mind that it was the fact finder who observed and heard the evidence. *Cunningham*, 212 Ill. 2d 274 at 280.

¶ 17 Defendant also contends that the object Vahl recovered in the gangway was not shown beyond a reasonable doubt to be a firearm as defined by the Firearm Owners Identification Card Act (FOID Act). 430 ILCS 65/1.1 (West 2012). Defendant, however, was charged by information (counts II and IV) with aggravated unlawful use of a weapon in that he knowingly carried or possessed on or about his person "a firearm" and he had not been issued a currently valid FOID card. 720 ILCS 5/24-1.6(a)(1), (2), (3)(C) (West 2012). Section 2-7.5 of the Criminal Code of 1961 (720 ILCS 5/2-7.5 (West 2012)) provides that the term "firearm" has the meaning ascribed to it in section 1.1 of the FOID Act (430 ILCS 65/1.1 (West 2012)), namely, "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," but specifically excluding any pneumatic gun, spring gun, paint ball or BB gun, any device used exclusively for signaling or

safety, or for the firing of industrial ammunition, and an antique firearm that is primarily a collector's item.

¶ 18 As noted above, testimony, even that of a lay witness, is sufficient to prove possession of a firearm even when the firearm itself is not produced at trial. *People v. Washington*, 2012 IL 107993, ¶¶ 35-36. In *Washington*, 2012 IL 107993, ¶¶ 35-36, our supreme court found that evidence supported a finding that the defendant was armed with a dangerous weapon during the commission of aggravated kidnaping, aggravated vehicular hijacking, and armed robbery. The victim testified that the defendant pointed a gun at him and that, for several minutes, he had an unobstructed view of the weapon. He testified it was a gun. *Washington*, 2012 IL 107993, ¶ 35. Our supreme court noted "that there was no real dispute at trial that defendant possessed some type of gun when he committed the crimes—during closing argument defense counsel did not argue that defendant did not possess a gun, only that it could not be known for sure whether the gun was real or a toy because no gun was ever recovered. However, given [the victim's] unequivocal testimony and the circumstances under which he was able to view the gun, the jury could have reasonably inferred that defendant possessed a real gun. [Citations.]" *Washington*, 2012 IL 107993, ¶ 36.

¶ 19 In the present case, Vahl, who had over 14 years of experience as a police officer, had the time and opportunity to view the weapon after he recovered it. He was in an excellent position to determine that the blue steel handgun he observed defendant pull from his waistband and hide, that Vahl recovered, and described at trial as a blue steel .45-caliber semiautomatic handgun containing seven live rounds of ammunition, was in fact a firearm as defined in section 1.1.

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Since the trial court found Vahl's testimony clear and credible, the court reasonably inferred that the gun recovered by Vahl was a firearm as described in the statute.

¶ 20 After viewing the evidence in the light most favorable to the prosecution, we conclude that any rational factfinder could have found defendant guilty beyond a reasonable doubt. As a result, the judgment of the trial court is affirmed.

¶ 21 Affirmed.