

No. 1-15-0082

**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 8653
	)	
EDWIN ALMODOVAR,	)	Honorable
	)	William G. Lacy,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE PIERCE delivered the judgment of the court.  
Justices Neville and Simon concurred in the judgment.

**O R D E R**

¶ 1 *Held:* The State proved beyond a reasonable doubt that defendant was guilty of being an armed habitual criminal where minor, immaterial inconsistencies did not render the testimony of the State's witnesses incredible.

¶ 2 After a jury trial, defendant Edwin Almodovar was found guilty of being an armed habitual criminal. The trial court sentenced defendant to 14 years' incarceration. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because inconsistencies and omissions rendered the testimony of the State's witnesses incredible. He also

argues that the jury could not reasonably discount the testimony of the defense witnesses. We affirm.

¶ 3 Chicago police officer Alphonsus O'Connor testified that he and other officers executed a search warrant on a second floor apartment at 1 a.m. on April 10, 2012. O'Connor knocked on the apartment's front door and announced that he was with the police. When no one responded, another officer forced entry into the apartment. As the police officers entered, O'Connor saw a woman sleeping on a couch and heard a dog barking by the apartment's back door. O'Connor went to the back door and let the dog outside. In order to ensure the dog had left down the stairs, O'Connor looked out onto the apartment's porch which was part of the building's exterior, rear staircase. At that time, he observed defendant, whom the officer identified in court, running down the stairway from the building's third floor apartment. Defendant carried two bags. One of the bags was a white, plastic grocery bag. He looked towards O'Connor and stated, "Oh, shit." He then threw the bags down on the second floor landing, turned around, and ran back up the stairs. As the bags hit the ground, O'Connor heard a "thump." He noticed the barrel of a handgun protruding out of the white bag and yelled, "Gun." Sergeant Kevin Moriarty and another officer came out of the apartment and ran up the stairs after defendant. O'Connor remained on the second floor landing. During the pursuit, he heard the door to the third-floor apartment slam. O'Connor reached into the bag and recovered a large, loaded handgun with a 30-round magazine. He removed the magazine and then followed the other officers up the stairs. When he got to the third floor landing, he saw that Moriarty and the other officer were handcuffing defendant.

¶ 4 On cross-examination, O'Connor stated that there were approximately 10 officers present on April 10, 2012, but he could not remember the exact number or every officer's name. Before

the search, the officers met somewhere else in the neighborhood to coordinate, but O'Connor could not remember the address of where the officers originally met. When they later approached the apartment building, one of the officers had to pry open a gate, but O'Connor could not remember which officer pried the gate. He also stated that it was another officer who knocked and announced. When the officers entered, O'Connor was the second or third officer into the apartment. Inside the apartment, O'Connor spoke with the woman they had found sleeping, but he could not remember her name. Later, when O'Connor followed the other officers up to the third floor, he stayed on the third floor porch and did not enter the apartment, although he could see most of the interior from his position. The officer also testified that the back porch had artificial lights and that he did not know where the white bag was at the time of trial.

¶ 5 Moriarty testified that he was standing 10 feet from the back door when he heard O'Connor call out from the porch. He and another officer ran out and up the stairs. As Moriarty passed O'Connor, he saw him reach down to pick something up, but he could not identify what the object was. Moriarty did not hear the third floor door open or close. When the officers reached the third floor apartment, they found it locked. The other officer kicked open the door and they found defendant standing inside. Moriarty ordered him to the ground and defendant was handcuffed. O'Connor came up afterwards and identified defendant as the man he had seen.

¶ 6 On cross-examination, Moriarty stated that he could not recall where he was in the line of police officers standing outside the apartment's front door, but thought it was "probably third or fourth." He noted that police officers Williams, Kast, and Allenson were ahead of him. He did not know where O'Connor stood. He also stated that O'Connor entered the third floor apartment when he identified defendant.

¶ 7 Chicago police sergeant Erik Madsen testified that he interviewed defendant hours after his arrest. After Madsen verbally apprised defendant of his *Miranda* rights, defendant indicated that he understood his rights and agreed to speak with the officer. Madsen asked defendant how he had obtained the recovered firearm. Defendant replied that he had purchased the handgun for protection two years earlier. On cross-examination, Madsen stated that he did not give defendant a written copy of the *Miranda* warnings and did not record the subsequent interview. Madsen did not take notes during the minutes-long interview, but included the admission in the case report immediately afterwards.

¶ 8 The parties stipulated that defendant had previously been convicted of two felony convictions which were qualifying convictions under the armed habitual criminal statute. They also stipulated that an expert had examined the recovered handgun and found no fingerprints suitable for testing.

¶ 9 Defendant moved for a directed finding which the trial court denied.

¶ 10 Iris Mojica, defendant's sister testified that she was sleeping in the front room of the second floor apartment when officers forcibly entered in the early morning of April 10, 2012. The officers handcuffed her and asked her questions. After the officers left, she noticed damage to the wall and ceiling near the back staircase. She also went up to the third floor apartment and noticed that it looked like it had been thoroughly searched. She also testified that there were no lights near the back staircase.

¶ 11 Evelyn Rivera testified that she was with defendant in the third floor apartment on the night of April 9, 2012, and into the following morning. At about 1:15 a.m., they heard people running up the back staircase. As defendant walked over to the back door, police officers broke

open the door and arrested defendant. According to Rivera, defendant had not left the apartment at any point that night. She testified that she was defendant's friend. She also acknowledged that she had a prior felony conviction for aggravated driving under the influence. On cross-examination, Rivera admitted that defendant was her son's uncle and that she loved him as a family member.

¶ 12 Sergeant Moriarty testified for the State in rebuttal, stating that no woman was present in the third floor apartment during defendant's arrest.

¶ 13 The jury found defendant guilty of being an armed habitual criminal. The trial court sentenced defendant to 14 years' incarceration. Defendant appeals.

¶ 14 Defendant solely contends that the State failed to prove him guilty of being an armed habitual criminal beyond a reasonable doubt. He argues: (1) various inconsistencies and omissions in the testimony of the State's witnesses render their accounts incredible; (2) Officer O'Connor's inability to recall numerous details rendered his testimony vague and incredible; (3) the failure to memorialize defendant's *Miranda* warning and subsequent interview also renders the police witnesses incredible; and (4) the testimony of the defense witnesses was not impeached and not contradicted, and therefore the jury was unreasonable in disregarding it. The State responds that any inconsistencies or omissions in the police officers' testimonies were minor and immaterial. It also argues that the lack of a written or video-recorded documentation of defendant's interview does not render it incredible. It further asserts that both of defendant's witnesses were impeached and contradicted.

¶ 15 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). This court may not retry a defendant on appeal. *People v. Milka*, 211 Ill. 2d 150, 178 (2004). A reviewing court must resolve all reasonable inferences in favor of the prosecution. *Cunningham*, 212 Ill. 2d at 280.

¶ 16 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). A reviewing court must give due consideration to the fact that a trier of fact is able to see and hear the witnesses. See *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001). It is for the trier of fact to resolve any inconsistencies or contradictions in the testimony of the witnesses. *People v. Bull*, 185 Ill. 2d 179, 205 (1998). 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.*

¶ 17 An individual commits the offense of being an armed habitual criminal when "he or she receives, sells, possesses, or transfers any firearm" after being previously convicted two or more times of any of an enumerated list of felonies. 720 ILCS 5/24-1.7(a) (West 2012). Defendant

stipulated that he has two qualifying felony convictions; therefore, the only disputed issue is whether the State sufficiently proved that defendant possessed a firearm.

¶ 18 When taking the evidence in the light most favorable to the State, a rational fact-finder could find beyond a reasonable doubt that defendant possessed a weapon. Officer O'Connor testified that he observed defendant come down the stairs holding a bag and then throw that bag to the ground. Inside the bag, O'Connor found a loaded handgun. Defendant's reaction upon seeing the police officer, declaring "oh, shit" and immediately fleeing, provides further evidence of his consciousness of guilt. See *People v. Grant*, 2014 IL App (1st) 100174-B, ¶ 33. Moreover, defendant admitted to Sergeant Madsen that he possessed the firearm, having purchased it for protection. It is clear that the jury could rationally find beyond a reasonable doubt that defendant possessed a firearm.

¶ 19 Defendant argues that no reasonable jury could accept O'Connor's testimony as true because it contained numerous inconsistencies. Many of the alleged discrepancies and omissions cited by defendant are minor details that occurred prior to O'Connor seeing defendant and which are wholly immaterial to the question of whether defendant possessed a firearm. Similarly, we find the inconsistency between O'Connor's and Moriarty's testimonies, regarding whether O'Connor entered the third floor apartment to identify defendant or remained on the landing and looked into the room, to be insignificant.

¶ 20 Other contradictions asserted by defendant were not actually inconsistencies. O'Connor testified that he heard defendant speak, heard the thump of the handgun hitting the floor, and heard the third floor apartment door slam, while Moriarty did not hear any of these sounds. These two accounts do not, however, necessarily indicate any contradiction. The two men were

standing in different locations during each instance and the fact that Moriarty did not hear a given sound does not necessarily imply that the sound did not occur. The differences between the officers' accounts are not so considerable as to render the jury's reliance on their testimonies unreasonable. Defendant also alleges that O'Connor contradicted himself regarding when he first saw the firearm. Having reviewed the record, it is clear that no such contradiction exists.

O'Connor repeatedly stated that he first saw the firearm after hearing it "thump" on the floor.

¶ 21 Defendant notes that both Mojica and Rivera contradicted O'Connor's testimony. While O'Connor testified that the stairwell where he saw defendant was lit, defendant's sister testified that there were no lights. O'Connor testified that he saw defendant on the staircase, but Rivera testified that defendant never left the apartment. While these accounts are clearly contradictory, on review we must take the evidence in the light most favorable to the State. *Cunningham*, 212 Ill. 2d at 278. As discussed further below, the jury could reasonably accept O'Connor's testimony over that of the defense witnesses.

¶ 22 Defendant also argues that O'Connor was unable to recall multiple details from the night of defendant's arrest, and that he failed to record these details in his reports. While we acknowledge that O'Connor could not remember multiple details, we note that none of the details cited by defendant relate to the elements the State was required to prove: that defendant possessed a weapon and had prior qualifying convictions. O'Connor expressed no doubt that he saw defendant on the stairwell, defendant was carrying a bag, and that bag contained a firearm. Moreover these details, for example, the name of the officer who pried the gate or the location of the plastic grocery bag at trial, are not so significant that they render the entirety of O'Connor's testimony incredible.



¶ 23 Defendant cites several cases in which our supreme court or the appellate court have found that the State's witnesses were so thoroughly impeached that no reasonable jury could find them to be credible. See *People v. Smith*, 185 Ill. 2d 532 (1999); *People v. Williams*, 65 Ill. 2d 258 (1976); *People v. Coulson*, 13 Ill. 2d 290 (1958); *People v. Broome*, 130 Ill. App. 2d 227 (1970). The facts in each of these cases are entirely dissimilar from the current facts. In each of these cases, the inconsistencies cited by the reviewing court were far more significant and material than those asserted by defendant. Furthermore, in the current case O'Connor's testimony is corroborated in part by that of Officer Moriarty and defendant's own admission. Accordingly, we find each of these cases inapposite.

¶ 24 Defendant also argues that the credibility of Sergeant Madsen is called into doubt because he did not memorialize defendant's *Miranda* warning or record the subsequent interview. Defendant has cited no case law or statute requiring a police officer to memorialize *Miranda* warnings in a written document or requiring the recording of an interview under these circumstances. We note that the State was not required to produce reports or recordings to prove defendant guilty. See *Smith*, 185 Ill. 2d at 541 (holding that the testimony of a single, credible witness may be sufficient to prove defendant guilty beyond a reasonable doubt). Furthermore, Madsen's testimony was not contradicted by any witness. The fact that the warnings and interview were not contemporaneously recorded goes to the weight of Madsen's account, and trial counsel presented each asserted deficiency to the jury. We find that the jury could reasonably accept Madsen's testimony.

¶ 25 Finally, defendant argues that the jury could not reasonably disregard the testimony of the defense witnesses because he asserts both witnesses were not impeached and not contradicted,

citing *People v. Bavas*, Ill. App. 93 720, 724 (1993). We first note that *Bavas* concerned the denial of a defendant's petition to rescind the summary suspension of his license, and the State presented no evidence during the hearing at issue in that case. *Id.* at 721-22. Thus, its applicability to a challenge to the sufficiency of the State's evidence in a criminal trial is questionable. However, we need not determine whether *Bavas*'s holding is applicable to a criminal trial because the defense witnesses in the current case were both contradicted and impeached. Both witnesses were contradicted by the State's witnesses. O'Connor contradicted Mojica's testimony regarding lighting near the stairs, and he also contradicted Rivera's assertion that defendant never left the apartment. Moriarty testified that, contrary to Rivera's testimony, there was no woman present in the third floor apartment. Both witnesses admitted to having a familial connection to defendant and testified that they loved him. Bias is a common form of impeachment. See *People v. Blue*, 205 Ill. 2d 1, 13 (2001). Furthermore, Rivera was further impeached with her prior felony conviction. See *People v. Hotwagner*, 2015 IL App (5th) 130525, ¶ 50. Accordingly, *Bavas* is entirely distinguishable and the jury was not required to accept the defense witnesses' accounts as true.

¶ 26 For the foregoing reasons, we find that the jury could reasonably accept the testimony of the State's witnesses as credible and reject the testimony of the defense witnesses. Therefore, taking the evidence in the light most favorable to the State, a rational fact-finder could find beyond a reasonable doubt that defendant was guilty of being a habitual armed criminal. Accordingly the judgment of the circuit court of Cook County is affirmed.

¶ 27 Affirmed.