2017 IL App (1st) 150143-U
Order filed: November 9, 2017

FIFTH DIVISION

No. 1-15-0143

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 13239
	)	
KELEEN BISHOP,	)	Honorable
	)	Erica L. Reddick,
Defendant-Appellant.	)	Judge Presiding.

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

ORDER

¶ 1 ***Held*:** We affirmed defendant's conviction for home invasion while armed with a firearm where the evidence at trial sufficiently established that a firearm was used during the home invasion.

¶ 2 Defendant-appellant, Keleen Bishop, was charged with home invasion while armed with a firearm; home invasion causing injury; armed robbery while armed with a firearm; aggravated kidnapping while armed with a firearm; two counts of residential burglary; two counts of aggravated battery of a handicapped person; and one count of aggravated unlawful restraint stemming from events which occurred on October 5, 2012.

¶ 3 Following a bench trial, the court found defendant guilty of all counts, merged the counts into the home invasion with a firearm count, and sentenced defendant to 21 years' imprisonment, which included a 15 year firearm enhancement. On appeal, defendant argues that the State failed to prove beyond a reasonable doubt that a firearm was used during the home invasion. We affirm.

¶ 4 During trial, Donald Wallace testified that he is 21 years old. On October 5, 2012, he lived at 7241 South Oakley Avenue in Chicago (the home) with his twin brother, Ronald, and Ronald's fiancée, Ursula Williams. At 10:15 a.m., Donald was at the home alone when he heard a knock at the door. He asked who it was and a male voice responded "man." Donald did not open the door. Later, Donald went to his back porch to smoke and saw defendant, whom he identified in court, carrying a television through the backyard. He recognized defendant from the neighborhood, but did not know his name. Donald returned inside the home and went to Ursula's bedroom. There, he saw that her bedroom had been ransacked and that her television was missing.

¶ 5 While he was in Ursula's room, another man came in, pulled "a gun," and ordered Donald to get down on the floor. Donald did not recognize the man but testified that the gun was a .22-caliber. He recognized the type of gun the offender carried because Donald had "been around" guns and had handled guns in the past. Donald told the man that he was unable to get down on the floor because he was "handicapped." He had suffered two strokes and, as a result, had disabilities with his hands and feet. Donald ran to his bedroom, closed the door, and attempted to escape through a window. The second man kicked down the bedroom door and ordered Donald to sit on the bed. Donald complied and the man ransacked the room.

¶ 6 When the man left, Donald remained in his bedroom. He then heard a noise coming from the kitchen. When Donald again tried to escape, defendant caught him, punched him twice in the face, and pulled him back into the house. Defendant asked Donald why he ran and Donald told him: "I know you gonna kill me." While defendant removed items from the house, the other man ordered Donald to take off his shoes, blindfolded him, took his phone and wallet, and barricaded him in the dining room. When Donald realized the men had finally left the home, he ran to a neighbor's house and called the police. When police arrived, Donald told the police what had happened, but he did not tell them that he had recognized defendant as one of the offenders.

¶ 7 On June 3, 2013, police came to the home and Donald identified defendant in a photo array. On June 14, at the police station, Donald identified defendant in a lineup as the man who "beat [him] up" and stole items from his home.

¶ 8 On cross-examination, Donald testified that he did not tell the police that defendant was involved until June 3, when he was shown the photo array. He explained that he wanted the police to "catch the other [man] first *** I was scared *** [the] other one *** wanted to kill me."

¶ 9 When he was specifically questioned by defense counsel about the gun, Donald testified that he never touched the gun to see if it was real. When asked if he thought the gun could have been a toy, Donald said: "Uh-uh," but, in response to further questions, acknowledged that he was scared and was not thinking clearly, and that it was possible that the gun could have been a toy.

¶ 10 Ursula Williams testified that, on October 5, 2012, at approximately 10 a.m., she and Ronald left the home to go to work. As they were driving down their street, they saw defendant and another man standing by a stop sign about one block from the home. Ms. Williams had

known defendant since he was a child. As she and Ronald approached the corner, defendant turned away from them.

¶ 11 Later that morning, after receiving a phone call from Ronald, Ms. Williams returned to the home and found that it was a "mess," a "shambles." Her bedroom window had been knocked in from the outside and was laying on the floor, and the screen was "busted open." Her television was missing and her dresser had been "cleared off." The television was found in a garbage can in the alley behind the home. Donald's shirt was torn, his face was swollen and bruised, and he was hysterical.

¶ 12 On May 28, 2013, she called a detective to give him information about who she thought broke into the home.

¶ 13 Ronald Wallace testified that, on October 5, 2012, he and Ms. Williams were driving in his van when she indicated that there was a man standing outside with defendant. Ronald had known defendant for "at least 17 years." When Ronald returned to the home that day, the kitchen was not as he left it that morning. It had been "trashed," and a glass jar had been moved from a microwave cart to the kitchen table.

¶ 14 Detective John Villa testified that, on May 28, 2013, he received a phone call from Ms. Williams who said that she knew the person responsible for the October 5, 2012, home invasion. Based on this information, the detective compiled a photo array for Donald to view. On June 3, 2013, the detective visited the home and met with Donald. Donald viewed the photo array, and identified defendant from his photo as the person who invaded the home. On June 14, 2013, Donald identified defendant in a lineup at the police station.

¶ 15 Assistant State's Attorney (ASA) Daniel Hanichak testified that, on June 14, 2013, defendant gave a handwritten statement after receiving his Miranda rights. In the statement,

defendant acknowledged that, on October 5, 2012, he and his friend, co-offender Olajuwon Claiborne, saw Ronald leaving the home. The co-offender decided to "break into the house to steal things." The two men entered the home through a rear window. While looking through drawers, defendant heard the co-offender pushing and yelling at someone in the house, and then saw the co-offender push someone who looked like Ronald into a bedroom. Defendant continued searching a bedroom and the kitchen, moving things around, but he found nothing to steal. He then searched the front room and left through the same rear window, taking a laptop with him.

¶ 16 The parties stipulated that defendant had been fingerprinted at the time of his arrest and that defendant's fingerprint standards were properly documented under CV 18680833.

¶ 17 Officer Michael Mazursk, a specially trained forensic evidence technician for 9 years, testified that, on October 5, 2012, he was assigned to process the home. Officer Mazurski recovered a total of six fingerprints from the recovered television and a glass jar, which had been moved to the kitchen table during the incident. The inventoried fingerprint evidence was sent to the Latent Print Unit at Chicago Police Headquarters.

¶ 18 Officer Thomas Cook testified that he has been a Chicago police officer for 23 years, and a latent print examiner for 12 years. As a latent print examiner, his duties include analyzing, comparing, and identifying fingerprints recovered from crimes scenes. Officer Cook made a comparison of the friction ridge found on the glass jar in the kitchen. The officer was of the opinion, to a high degree of certainty, that the lift taken from the glass jar belonged to defendant.

¶ 19 The trial court found defendant guilty on all counts and concluded that Donald's testimony was credible and sufficient to satisfy the State's burden to establish that a firearm had been used during the incident. The court stated:

> "Specifically as to the armed robbery and the elements of the charged offenses with regard to the weapon displayed, clearly Donald Wallace was frightened by the display of the weapon. The display of the weapon was sufficient in his belief, as demonstrated by his actions as to whether that weapon was real or not. The fact that he admits candidly in court under oath that the weapon could have been something other than what he believed it was *** goes to his credibility essentially more so than it does to any claim that the weapon displayed was not real. His actions as well as his demeanor following the events by him being still shaken up, as testified to by [Ms.] Williams, the fact that he complied with the request of the co-offender displaying the weapon at the time of the offense, all of it establishes and proves to this Court that *** there was a firearm displayed, [Donald] was able to clearly identify [the firearm] as a .22-caliber [gun] [due to his] familiarity with weapons."

¶ 20 Prior to sentencing, the court denied defendant's motions to reconsider. The court stated:

> "Again, the allegations with regard to the gun, [Donald's] agreeing that it could possibly have not been a real gun shows his credibility in his efforts to be truthful and forthright before the Court. But again his actions suggest that he believed otherwise."

After a sentencing hearing, the trial court merged all counts into the home invasion with a firearm count, and sentenced defendant to 21 years' imprisonment, which included a 15 year firearm enhancement. Defendant has appealed.

¶ 21 On appeal, defendant argues that the State failed to prove, beyond a reasonable doubt, that the home invasion occurred while he or the co-offender was armed with a firearm as defined by the Code of Criminal Procedure. 720 ILCS 5/2-7.5 (West 2012). Defendant contends that,

because Donald, the State's sole eyewitness, made an equivocal statement during his testimony regarding whether he thought the firearm possessed by the co-offender was real or a toy, the State did not meet the burden of proof required for a conviction. Defendant points out that no firearm was recovered and there was no mention of a firearm in his custodial statement. We disagree with defendant.

¶ 22 Where a criminal conviction is challenged based on insufficiency of the evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime. *People v. Brown*, 2013 IL 114196, ¶ 48. This standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *People v. Howery*, 178 Ill. 2d 1, 38 (1997). Accordingly, a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *People v. Cooper*, 194 Ill. 2d 419, 430-31 (2000). The trier of fact is not required to disregard inferences that flow normally from the evidence or to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). Furthermore, a criminal conviction may be based solely on circumstantial evidence, and the same standard of review will apply. *Brown*, 2013 IL 114196, ¶ 49.

¶ 23 A criminal conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007). To sustain a conviction, "[i]t is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *People v. Hall*, 194 Ill. 2d 305, 330 (2000). In reviewing a trial court's decision, we must

give proper deference to the trier of fact who observed the witnesses testify, because it was in the "superior position to assess the credibility of witnesses, resolve inconsistencies, determine the weight to assign the testimony and draw reasonable inferences therefrom." *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24. A trier of fact is free to accept or reject as much or as little of a witness's testimony as it pleases. *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 22.

¶ 24 Defendant was charged with home invasion with a firearm. A person who is not a peace officer acting in the line of duty commits home invasion when he or she knowingly enters the dwelling place of another, knowing one or more persons is present and, while armed with a dangerous weapon, uses force or threatens the imminent use of force upon any person within the dwelling. 720 ILCS 5/12-11(a)(1) (West 2012). Where, as here, a defendant commits home invasion while in possession of a "firearm", the court shall add a 15-year enhancement to defendant's sentence. 720 ILCS 5/12-11(a)(3), (c) (West 2012). Defendant only challenges the sufficiency of the evidence to establish that he or his co-offender was armed with a firearm during commencement of the offenses. He concedes the evidence was sufficient to establish all other elements.

¶ 25 Under the Criminal Code of 2012, the term "firearm" has the meaning ascribed to it in the Firearm Owners Identification Card Act (FOID Act) (430 ILCS 65/1.1 (West 2012)). 720 ILCS 5/2-7.5 (West 2012). As is pertinent here, the FOID Act defines firearm as any device "designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas." 430 ILCS 65/1.1 (West 2012). Excluded from this definition are, *inter alia*, pneumatic guns, spring guns, paint ball guns, certain BB guns and signal guns. *Id.*

¶ 26 The State was not required to prove that defendant or his co-offender possessed a firearm by direct or physical evidence. It is well settled that an eyewitness's unequivocal testimony that

an offender possessed a firearm, combined with circumstances under which the witness was able to view the weapon, is sufficient to allow a reasonable inference that the offender " 'possessed a real gun,' " i.e., the weapon was actually a firearm. *People v. Wright*, 2017 IL 119561, ¶¶ 73-77 (quoting *People v. Washington*, 2012 IL 107993, ¶ 36); *People v. Jackson*, 2016 IL App (1st) 141448, ¶ 15. Therefore, the State did not need to present a firearm for the trial court to determine that defendant possessed one. *Id*.

¶ 27 Viewing the evidence in the light most favorable to the prosecution, we conclude that any rational trier of fact could have found that defendant and his co-offender committed the home invasion while armed with a firearm. Donald testified that the co-offender threatened him with a 22-caliber gun. Donald recognized the gun because he had knowledge of weapons, having "handled" them years earlier. Donald had a sufficient opportunity to see the gun and identify it, since he was close to it when the co-offender threatened him with it. Although the co-offender did not explicitly threaten to shoot or kill Donald, he ordered Donald to the floor while "pulling a gun." This could be found to be an implicit threat (see *id.* ¶ 16), and is circumstantial evidence that he possessed a firearm. See *People v. Toy*, 407 Ill. App. 3d 272, 289 (2011). Furthermore, it was clear from Donald's actions that he genuinely believed the gun was real, especially given his testimony that he did not tell the police he knew who defendant was out of fear of being shot.

¶ 28 Defendant argues that, the equivocal testimony of Donald regarding whether the gun was real, was insufficient to satisfy the burden of proof required to demonstrate the use of a firearm. His argument rests upon Donald's answers to questions during his cross examination. During that cross-examination, the following colloquy occurred:

> "[APD]: The man with the alleged gun, you never touched that alleged gun?
>
> [DONALD]: Uh-uh.

[APD]: You didn't feel if it was real?

[DONALD]: No.

[APD]: That gun could have been a toy?

[DONALD]: Uh-uh.

[APD]: When that man had that gun at you, you were scared?

[DONALD]: Yeah.

[APD]: So you weren't thinking clearly?

[DONALD]: Yeah.

[APD]: So that alleged gun could have been not a gun but something that looks like a gun?

[DONALD]: Well, he said get on the floor and I said I handicap, I can't, I live in my room.

[APD]: But that alleged gun, because you weren't thinking clearly, could have not been a real gun?

[DONALD]: Yes."

¶ 29 Reading this cross-examination in full, we do not find that the testimony of Donald was "the epitome of equivocal," as defendant contends. If anything, the line of questioning seemed to cause confusion. Donald testified that the gun was real and only acknowledged it was possible the gun was a toy after giving unsatisfactory answers to defense counsel's two prior attempts to elicit that response.

¶ 30 Defendant cites *People v. Ross*, 229 Ill. 2d 255 (2008), in support of his assertion that Donald's testimony was insufficient to prove that a firearm was used during the home invasion. In *Ross*, the court found that the victim's testimony, that the defendant had a gun, was

insufficient to demonstrate the item was a "dangerous weapon" as required for an armed robbery conviction. *Id*. at 277. The victim described the gun as "black, very portable…small…something you can conceal." *Id*. at 258. However, a police officer testified that he had recovered a pellet gun from the scene that matched the description given by the complainant. *Id.* As there was no evidence that the gun was loaded or brandished as a bludgeon, or regarding its weight or composition, the court found that the State failed to prove the gun was a dangerous weapon. *Id*. at 277. The court also found that the trial court incorrectly based its ruling, that the gun was a dangerous weapon, "on the subjective feelings of the victim, rather than the objective nature of the gun." *Id*. Here, unlike in *Ross*, there was no objective evidence to rebut Donald's specific and certain testimony that the gun with which the co-offender threatened him was a 22-caliber firearm, i.e., a "real" firearm.

¶ 31 As defendant points out, the alleged "firearm" was not recovered, and defendant made no mention of it in his custodial statement. However, the State did not have to present a firearm for the trier of fact, here the trial court, to find that defendant or the co-offender possessed one during the commission of the offense. See *Jackson*, 2016 IL App (1st) 141448, ¶ 15 (citing *Washington*, 2012 IL 107993, ¶ 36). Indeed, defendant's failure to mention the firearm during his custodial statement in no way affects the reliability of Donald's identification of the firearm as a 22-caliber handgun.

¶ 32 Ultimately, whether or not Donald's testimony was sufficient to prove beyond a reasonable doubt that a firearm was used during the home invasion, was for the trial court to decide based on the evidence before it, and not on defendant's speculation.

¶ 33 The evidence introduced at trial established that Donald identified the gun as a 22-caliber handgun, under circumstances allowing him a strong opportunity to view and recognize it. His

subsequent acknowledgment that the gun could have been a toy did not establish that it was, in fact, a toy—only that it *might* have been a toy. Taken in the light most favorable to the State, on this record, any rational trier of fact could conclude that defendant and the co-offender committed the home invasion while armed with a firearm.

¶ 34 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 35 Affirmed.