2017 IL App (1st) 150750-U

No. 1-15-0750

Order filed September 29, 2017

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 5687
	)	
CORTEZ ROSS,	)	Honorable
	)	Thomas J. Byrne,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Hyman and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated battery of a peace officer is affirmed over his contention that there was insufficient evidence to prove beyond a reasonable doubt that he knowingly and voluntarily discharged a firearm.

¶ 2 Following a bench trial, defendant was convicted of aggravated battery of a peace officer, and sentenced as a Class X offender to 18 years' imprisonment. On appeal, defendant contends that his conviction should be reversed because the State did not prove beyond a reasonable doubt that he voluntarily and knowingly discharged a firearm. We affirm.

¶ 3 Defendant was arrested on February 19, 2012, by three officers from the Chicago Police Department's gang enforcement unit, who were on patrol and responded to a report of an individual with a gun at 6810 South Stony Island Avenue. During his arrest, defendant shot one of the officers. Defendant was subsequently charged by indictment with fifteen counts of attempted first degree murder, three counts of aggravated battery, four counts of aggravated discharge of a firearm, and two counts of restricting or obstructing a peace officer.

¶ 4 At trial, Officer Mark Pickert testified that, on February 19, 2012, at 4:00 PM, he along with his partners, Officers Rodney Jones and Jameka Sherrod, responded to a radio dispatch of a person with a gun near the area of 6810 South Stony Island. There, the officers briefly detained a suspect and then saw several individuals running eastbound across Stony Island. The officers drove to the area of 69th Street and Cornell Avenue where they saw two men running near an alley. As Pickert and Sherrod exited the vehicle to chase after the men, Pickert heard an officer say “he’s gotta gun.” Pickert, who was wearing a blue jacket that had “Chicago Police” written in “big white letters” on the back of it, followed one of the men into the alley and tackled him. Meanwhile, Sherrod followed the other man, whom Pickert identified as defendant. As Pickert exited the alley through a gangway, he saw, from a distance of about 30 yards, Sherrod tackle defendant on East End Avenue.

¶ 5 Pickert testified that defendant was uncooperative and struggled with the officers. As Sherrod tried to place defendant into custody, Pickert heard her say defendant had a gun. Pickert then assisted Sherrod in attempting to place defendant into custody. As the officers struggled with defendant, he raised his left hand from underneath Sherrod’s head and Pickert saw the muzzle of a gun sticking out from the sleeve of defendant’s sweatshirt. Picket stated that,

because the gun was pointed at the back of Sherrod's head, he pushed her to prevent her from being shot. Pickert then saw that the gun was pointed at his face. Pickert grabbbed the muzzle with his left hand so it was no longer pointed at him. As Pickert held the muzzle of the gun, his palm covered the front of the barrel. Defendant refused to comply with Pickert's verbal commands to drop the gun. The gun then went off, shooting Pickert in his left hand. Because of Pickert's injuries from the shooting, he is no longer qualified to be an officer for the Chicago Police Department.

¶ 6 Sherrod testified, substantially, to the same sequence of events as Pickert. She stated that, on the date and time in question, she was in plainclothes with an outer vest displaying a police star. Sherrod and her partners responded to a report of a person with a gun near the area of 6810 South Stony Island. There, the officers detained a suspect. As they did so, Sherrod saw a group of individuals running away from the area. The officers followed the group to the alley of East End Avenue where Sherrod saw two individuals running. Sherrod identified defendant as one of the men. Sherrod said "police, stop," and pursued defendant down the alley. She stated that, while chasing defendant, she was unable to see his left hand because his sleeve was covering it. Eventually, she followed defendant out of the alley and through a gangway that led to East End. There, Sherrod caught up to defendant and tackled him in front of 6730 South East End.

¶ 7 Sherrod testified that, after tackling defendant, she struggled to detain him. Defendant refused to comply with her efforts to gain control of his hands. As she remained on top of defendant, she realized defendant had a gun and saw the muzzle of the gun pointed at her face. Sherrod acknowledged that the muzzle could have been pointing at her face as a result of the way defendant fell when she tackled him. After telling Pickert that defendant had a gun, Pickert

assisted her in placing defendant under arrest. As he did so, Pickert shoved Sherrod out of the way, and grabbed the muzzle of the gun. Sherrod then heard a gunshot and realized defendant shot Pickert. She also heard Jones fire his weapon.

¶ 8 Jones testified, substantially, to the same sequence of events as Pickert and Sherrod. He stated that, on the date and time in question, he was wearing plainclothes with a vest that had a police badge on the front, and "police" written on the back of it. Jones drove Pickert and Sherrod to 6810 South Stony Island in response to a report of a person with a gun. There, the officers detained a suspect. Jones then saw some individuals running eastbound across Stony Island. Jones drove Pickert and Sherrod towards the individuals. At the alley between East End Avenue and Cornell, Pickert and Sherrod exited the vehicle and gave chase to the subjects. Jones continued driving down East End until he saw defendant exit the alley. Jones blocked defendant's path. He then saw Sherrod tackle defendant.

¶ 9 Jones assisted Sherrod in detaining defendant. In doing so, he placed his foot on defendant's head, drew his gun, and heard Sherrod announce that defendant had a gun. As Jones shouted for defendant to drop the gun, he saw Pickert push Sherrod away from defendant. After Pickert reached for defendant's gun, Jones saw the gun fire. Pickert then "flew off" to the side, and Jones told Sherrod to step away from defendant. He also screamed for defendant to drop his gun. Defendant did not drop the gun. Jones then shot defendant twice. Jones stated that, because defendant had not dropped the gun after being shot, he shot him one more time. Defendant then lost consciousness. As he did so, defendant had the gun in his hand. Jones kicked the gun out of defendant's hand and two other officers handcuffed defendant.

¶ 10 The State introduced into evidence a surveillance video depicting the shooting. The video was captured by a camera from an apartment building located at 6730 South East End. All three officers testified that the video footage accurately depicted the shooting, and the parties stipulated that the video was recorded on the date in question. The video shows Sherrod tackling defendant before Jones appears with his gun drawn and pointed at defendant. Jones places his foot on defendant's head. Pickert then assists Sherrod in detaining defendant. At this time, defendant's left hand is not visible. After Pickert begins to wrestle with defendant, defendant raises his right hand. As soon as he does, Pickert can be seen dashing away from defendant. Sherrod moves away from defendant as well, and Jones shoots defendant. Defendant then places his right arm in the air, after which Jones shoots defendant again and proceeds to kick the gun out of defendant's left hand.

¶ 11 The parties entered into numerous stipulations regarding the forensic evidence. First, the parties stipulated that, if called, David Ryan, a forensic investigator, would testify that, at the scene of the shooting, he recovered, and properly inventoried, a Glock Model 37 .45 caliber semiautomatic handgun, a fired cartridge case, and eight live rounds of ammunition. Second, the parties stipulated that an evidence technician collected “dabs” of defendant's hands at 6:00 pm on February 19, 2012, and properly inventoried them. Third, the parties stipulated that, if called, Mary Wong, a forensic chemistry expert, would testify that the dabs collected from defendant's hands contained residue from a discharged firearm. Fourth, the parties stipulated that, if called, Dena Inempolidis, a firearms expert, would testify that the fired cartridge recovered from the crime scene was fired from the gun that was recovered from the crime scene. Finally, the parties stipulated that Detectives Scannell and Sandoval would testify that they interviewed Jones on the

night of February 19, 2012, and that Jones related that he could not tell what part of defendant's hoodie jacket was covering the gun.

¶ 12 Inempolidis, a firearms expert, also testified about tests she performed on the gun recovered from the scene of the shooting. She testified that she examined a Glock Model 37 .45 caliber automatic pistol, and explained that the weapon had three safety features: a firing pin block; a drop safety; and a trigger safety. Inempolidis explained that the firing pin block and the drop safety are designed to ensure that the weapon does not fire when dropped. The trigger safety is a mechanism that prevents the gun from firing unless the mechanism and the trigger are depressed at the same time. Inempolidis stated that the weapon she tested had a functioning trigger safety, and that it required five-and-a-half pounds of pressure to fire. Inempolidis was unable to test the weapon's drop safety.

¶ 13 The trial court denied defendant's motion for an acquittal, and found defendant guilty of three counts of aggravated battery, and one count of resisting a peace officer. In announcing its decision, the court stated that the witnesses testified credibly, and that it was “clear” defendant had his finger on the trigger and fired the gun at somebody he knew was a police officer. The court ordered all counts merged into a single count of aggravated battery against a peace officer (720 ILCS 5/12-3.05(e)(2) (West 2012), and denied defendant's motion for a new trial. The trial court sentenced defendant to eighteen years' imprisonment, and denied defendant's motion to reconsider sentence. Defendant timely appeals.

¶ 14 On appeal, defendant contends that his conviction should be reversed because the State did not prove beyond a reasonable doubt that he knowingly and voluntarily discharged a firearm.

He maintains that the evidence presented did not establish that he deliberately pulled the trigger where Pickert was also applying force to the firearm when it discharged.

¶ 15 Where "a criminal conviction is challenged based on insufficient 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 (citing *Jackson v. Virginia*, 443 U.S. 307, 31-19 (1979)). "It is the trier of fact's responsibility to determine the witnesses' credibility and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence; we will not substitute our judgment for that of the trier of fact on these matters." *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). "We will not overturn a conviction unless the evidence is 'so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt.' " *People v. White*, 2017 IL App (1st) 142358, ¶14 (quoting *Brown*, 2013 IL 114196, ¶48).

¶ 16 A showing of aggravated battery requires the State to prove both the commission of a battery and the presence of an additional factor aggravating that battery. *People v. Cherry*, 2016 IL 118728, ¶16. "A person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a) (West 2012). As relevant here, to establish that defendant committed aggravated battery of a peace officer, the State had to prove that defendant, in committing a battery, knowingly discharged a firearm and caused injury to a person he knew to be a peace officer: 1) while the officer was performing his or her official

duties; or 2) to prevent performance of the officer's official duties 720 ILCS 5/12-3.05(e)(2)(i-ii) (West 2012).

¶ 17 In this case, defendant does not dispute that he knew Pickert was an officer performing his official duties and that, as a result of the gunshot, Pickert suffered bodily harm. Rather, he argues that the State failed to prove beyond a reasonable doubt that he knowingly discharged the gun where Pickert was also holding the gun. A person acts knowingly when he or she is consciously aware of the nature of his or her conduct, and the result of his or her conduct that is practically certain to occur. 720 ILCS 5/4-5(a-b) (West 2012). "By its very nature, 'knowledge' is ordinarily proven by circumstantial evidence rather than by direct evidence." *People v. Nash*, 282 Ill. App. 3d 982, 985 (1996).

¶ 18 After examining the evidence in the light most favorable to the State, we conclude that a rational trier of fact could have found beyond a reasonable doubt that defendant knowingly shot Pickert. The record shows that defendant, who was armed with a handgun, fled from the officers. Sherrod pursued defendant, who did not dispose of his weapon during the chase or yield to her order to stop. After tackling defendant, Sherrod attempted to arrest him. Defendant was uncooperative and struggled with the officers. Defendant refused to comply with Sherrod's efforts to gain control of his hands. He also refused to comply with Pickert's or Jones's verbal commands to drop the gun. After seeing that the gun was pointed at Sherrod, Pickert pushed her out of the way. Pickert then saw that the gun was pointed at his face, grabbed the muzzle of the gun and covered the barrel of the gun with his palm. Defendant then shot him in the hand. Jones shot defendant, who, despite being shot, continued to hold the gun. Jones then shot defendant again and kicked the gun out of defendant's hand. A firearm's expert testified that the gun in

question was equipped with a functioning trigger safety mechanism, which prevents the gun from firing unless the mechanism and the trigger are depressed at the same time. This evidence, and the reasonable inferences therefrom, support the conclusion that defendant knowingly shot Pickert.

¶ 19 Defendant nevertheless argues that this evidence was insufficient to show that he pulled the trigger deliberately. In setting forth this argument, defendant acknowledges that he held the gun and that his finger was near the trigger when the gun discharged. He also acknowledges that this evidence is "not inconsistent with the hypothesis that [he] acted knowingly and voluntarily." However, he maintains that evidence of Pickert holding the gun when it discharged also supports the inference that the gun discharged accidentally and, thus, does not prove beyond a reasonable doubt that he deliberately pulled the trigger. See *People v. Steading*, 308 Ill. App. 3d 934, 940 (1999) ("A fact cannot be inferred when a contrary fact could be inferred with equal certainty from the same evidence.").

¶ 20 We initially note that defendant's argument is essentially asking us to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact. However, this court "will not substitute our judgment for that of a trier of fact in cases where the facts could lead to either of two inferences, unless the inference accepted by the fact finder is inherently impossible or unreasonable." *People v. Lemke*, 349 Ill. App. 3d 391, 398 (2004). Here, the inference accepted by the trial court, *i.e.* that defendant knowingly shot Pickert, is not inherently impossible or unreasonable. As mentioned, defendant refused to relinquish the gun before and after Pickert was shot. He also did not drop the gun after being shot. The firearm expert's testimony also supports the inference that defendant knowingly and voluntarily discharged the

gun. The record shows that the gun had a functioning trigger safety mechanism, which prevented the gun from firing unless the mechanism and the trigger are depressed at the same time. Therefore, the inference that defendant voluntarily discharged the gun was not inherently impossible or unreasonable, and thus we will not substitute our judgment for that of the trier of fact.

¶ 21 We are likewise not persuaded by defendant's other arguments that the evidence does not allow for a reasonable inference that he pulled the trigger. According to defendant, inferences of a deliberate discharge are unreasonable where he "repeatedly declined opportunities to make good his escape by shooting" the officers. Defendant also argues that a reasonable inference of deliberate discharge cannot be drawn from him pointing his gun at the officers because their testimony indicates that the way he was holding the gun was incidental to how the officers tackled and restrained him. In addition, he contends that an inference of deliberate discharge is all the more unreasonable because the video footage shows that he surrendered before Jones shot him. Finally, defendant contends that when Pickert grabbed the gun, it could have induced his reflexes to involuntarily pull the trigger. As a result, defendant argues the "evidence simply did not show one way or another whether the gun was discharged deliberately or accidentally."

¶ 22 However, these alleged inconsistencies were fully explored at trial. The trier of fact heard the evidence presented, including that defendant did not attempt to shoot the officers during the chase. Pickert testified that he struggled with defendant for the gun and grabbed the gun by the muzzle. In addition, Sherrod acknowledged that the muzzle of the gun could have been pointing at her face as a result of the way defendant fell when she tackled him. Moreover, the video of the shooting was shown to the trial court. Although the officers' credibility may have been affected

by these alleged inconsistencies, it was the responsibility of the trier of fact to determine their credibility, the weight to be given to their testimony, and to resolve any inconsistencies and conflicts in the evidence. *People v. Starks*, 2014 IL App (1st) 121169 ¶ 51; *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). Based on its ruling, the court resolved these inconsistencies in favor of the State. In doing so, the trier of fact is not required to disregard the inferences that flow from the evidence or search out all possible explanations consistent with a defendant's innocence and raise them to a level of reasonable doubt. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51. We will not substitute our judgment for that of the trier of fact on these matters. *Sutherland*, 223 Ill. 2d at 242. As mentioned, this court will reverse a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009). This is not one of those cases.

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.