2017 IL App (1st) 151293-U

No. 1-15-1293

Order filed November 28, 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. 14 C6 60552
	)	
JOE PATTERSON,	)	Honorable
	)	Anna Helen Demacopoulos,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Neville and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated unlawful use of a weapon is affirmed where the evidence was sufficient to prove that he knowingly carried or concealed on or about his person an uncased, loaded, and immediately accessible handgun, and had not been issued a concealed carry permit by the State of Illinois.

¶ 2 Following a bench trial, defendant Joe Patterson was convicted of aggravated unlawful use of a weapon (AUUW) and sentenced to two years of probation. On appeal, defendant challenges the sufficiency of the evidence, arguing that the State failed to prove beyond a

reasonable doubt that he knowingly, rather than inadvertently, possessed a handgun in a holster on his hip while in Illinois. For the reasons that follow, we affirm.

¶ 3 Defendant's conviction arose from a traffic stop in Harvey, Illinois, on April 30, 2014. Following his arrest, defendant was charged by information with two counts of AUUW for possessing an uncased, loaded, and immediately accessible handgun without having been issued a currently valid license under Illinois' concealed carry law. Prior to trial, the court heard and denied defendant's motion to quash arrest and suppress evidence.

¶ 4 At trial, Harvey police officer Anthony Marinez testified that while he was on patrol shortly after 11:30 p.m. on the day in question, he saw a car fail to obey a stop sign. He curbed the car, and in court, identified defendant as the driver. In the course of the traffic stop, Marinez learned that defendant had a suspended driver's license, so he placed defendant into custody. During a search incident to arrest, Marinez recovered a fully loaded handgun from defendant's person.

¶ 5 The parties stipulated that on the date in question, defendant had a valid Firearm Owners Identification (FOID) card. They further stipulated that defendant had not ever applied for a concealed carry permit under Illinois law, but did have a nonresident concealed carry permit issued by the state of Florida.

¶ 6 Defendant made a motion for a directed finding, which the trial court denied.

¶ 7 Defendant testified that in April 2014, he lived in Urbana, Illinois, and often visited his father in Harvey, Illinois. His family also owned property in "the south." Because defendant would travel through several states to reach this property, he had obtained a concealed carry

permit from the state of Florida. Defendant explained, "Florida covers the most states than any other concealed carry permit *** so that was the best permit to obtain for travel."

¶ 8 On the date in question, defendant drove to Gary, Indiana, to watch a playoff game at his sister and brother-in-law's. He brought a weapon, which he transported in a case in the trunk of his car. When asked why he brought the gun, he answered, "Gary, Indiana. Just for my safety, protection." Upon arriving at his destination, defendant unpacked the gun, loaded it, and put it on his side in his holster. Defendant watched the game, and when it was over, left Gary and drove to Harvey to check in on his father.

¶ 9 Defendant related that when he was in Harvey, he was stopped by a police officer. During the stop, defendant informed the officer that he was carrying a weapon and was armed, and the officer "radioed in." When defense counsel asked defendant why he did not put the weapon back in the trunk, defendant answered, "I just simply forgot. The late hours, you know." Finally, defendant agreed that he did not "intend on carrying [his] weapon on [his] hip inside Illinois."

¶ 10 In closing, defense counsel argued that defendant had no intent to actually carry his weapon on his person while in Illinois. He asserted that defendant made a simple mistake by forgetting that he had his weapon on him as he drove back to Illinois from Indiana, noted that defendant cooperated with the officer, and was "pretty much complying with all state, federal laws." Counsel further argued that defendant had a valid concealed carry permit from Florida and "we have a full faith and credit clause in our constitution."

¶ 11 In response, the prosecutor argued that defendant did not comply with state law because he knowingly possessed a weapon, concealed on his person, without a concealed carry permit.

The prosecutor suggested that defendant had not actually transported the gun to Indiana in the trunk of his car, but rather, had it on his person the entire evening. Noting defendant had obtained a Florida concealed carry permit "because of the compact that Florida signed," the prosecutor asserted that "[t]he problem is Illinois doesn't sign that compact." The prosecutor concluded by arguing that as an Illinois resident, defendant was bound by the laws of Illinois.

¶ 12 The trial court found defendant guilty. In the course of doing so, the court made the following statements:

> "I believe the defendant knew of the law that was necessary in Illinois because he testified about the fact that when he was in Illinois, he had his firearm in a locked box in the trunk of the car, but that when he went to Indiana that night, he took it out of the box and put it on his person coming back into the state of Illinois. I do believe that the defendant was aware of his requirement that he have that gun not on his person but rather in the trunk of his car.
>
> It is a constitutional question, [defense counsel]. And I appreciate that this may go a lot further than this courtroom, but I am bound to follow the laws that have been implemented by the Illinois state legislature for the purpose of protecting the citizens of the state of Illinois.
>
> [Defendant] has a second amendment right to bear arms, and that has been ruled on by the United States Supreme Court. However, the United States Supreme Court has also left it to the states in order to regulate how that second amendment will be recognized. In Illinois it is required of a resident to have a concealed carry permit in order for him to be on the streets of Illinois. I do not

> believe that a nonresident Florida concealed carry has an effect in Illinois. It is not recognized.[1] I do believe that [defendant] probably knew that.
>
> For all of those reasons I do believe that the State has met their burden of proof beyond a reasonable doubt and I do not believe that there is an exception under Illinois law to recognize the concealed carry permit from Florida. So at this time there will be a finding of guilty."

¶ 13 Defendant thereafter filed a motion for a new trial, which the trial court denied. At sentencing, defendant stated to the trial court that he had "honestly made a mistake" when he brought his holstered weapon into Illinois, and opined that it was "unreasonable that something that is 100 percent legal in every state around is a felony once you cross the State lines." The trial court answered defendant by saying that it did not make the laws, but rather, was tasked with making judgments as to whether the laws were followed. The court then stated:

> "I do believe that this was a, I don't want to use the word innocent mistake, but it was poor judgment on [defendant's] behalf. He is licensed to carry that weapon in several other states, but not in the State of Illinois, and I do believe that he knew that. It was just that he got caught, and that is what happened here."

The court imposed a sentence of two years of probation. Although the court did not state that it was merging the counts, the probation order indicates defendant was sentenced on count 1.

¶ 14 On appeal, defendant challenges the sufficiency of the evidence, contending that the State failed to prove beyond a reasonable doubt that he knowingly, rather than inadvertently, returned to Illinois from Indiana with his gun in his holster. Defendant asserts that it was not proven at

[1] Defense counsel did not object to the trial court's statement.

trial that he was consciously aware of the fact that his gun was still loaded and holstered on his hip when he left Indiana. Noting that the trial court did not make any express findings regarding his mental state, defendant maintains that it misconstrued the *mens rea* element of the AUUW statute and thought the relevant issue was whether he was aware of Illinois' concealed carry laws. Defendant further argues that because the trial court found his testimony that he transported the gun to Indiana in a case in his trunk credible, it would be unreasonable, arbitrary, illogical, and irrational to reject his testimony that he simply forgot to return the gun to its case for the return trip. He argues that his act of carrying his concealed gun on his person in Illinois was not knowing or intentional, but rather, was at most negligent, as he "failed to be aware that it was still in his holster," and that while "perhaps [he] should have known that it was [there]," he lacked the conscious awareness that is required to find a knowing act.

¶ 15 When reviewing the sufficiency of the evidence, the relevant inquiry is 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. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). Moreover, the finder of fact may "accept or reject as much or as little of a witness's testimony as it pleases." *People v. Sullivan*, 366 Ill. App. 3d 770, 782 (2006); see also *People v. Sanchez*, 105 Ill. App. 3d 488, 493 (1982) (the trier of fact may believe part of a witness's testimony without believing all of it). Reversal is

justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 16 A person commits AUUW, as charged in count 1 in the instant case, when he does not have a currently valid concealed carry permit issued by the State of Illinois and knowingly carries or conceals an uncased, loaded, and immediately accessible firearm on or about his person. 720 ULCS 5/24-1.6(a)(1), (3)(A-5) (West 2014). Defendant does not contest that he lacked an Illinois concealed carry permit or that he had actual possession of a concealed, uncased, loaded, and immediately accessible firearm. Rather, as detailed above, his challenge to the sufficiency of the evidence pertains only to the element of knowledge.

¶ 17 The Criminal Code of 2012 defines knowledge as follows:

> "Knowledge. A person knows, or acts knowingly or with knowledge of:
>
> (a) The nature or attendant circumstances of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that his or her conduct is of that nature or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists.
>
> (b) The result of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that that result is practically certain to be caused by his conduct.
>
> Conduct performed knowingly or with knowledge is performed wilfully, within the meaning of a statute using the term 'willfully,' unless the statute clearly requires another meaning.

> When the law provides that acting knowingly suffices to establish an element of an offense, that element also is established if a person acts intentionally." 720 ILCS 5/4-5 (West 2014).

Where possession has been shown, an inference of knowledge can be drawn from the surrounding facts and circumstances. *People v. Schmalz*, 194 Ill. 2d 75, 82 (2000). "Knowledge is rarely proven by direct evidence and may be established by evidence of the defendant's acts, declarations or conduct from which the inference may be fairly drawn that he knew of the existence of the contraband where it was found." *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 40. Whether knowledge exists is a factual question to be determined by the trier of fact. *Schmalz*, 194 Ill. 2d at 81.

¶ 18 The evidence presented at trial in the instant case established that defendant, while he was in Indiana, took a handgun from a case in his trunk, unpacked it, loaded it, and put it in a holster on his hip. The gun then remained in this location until it was recovered by Officer Marinez during a search incident to arrest in Illinois. Although the trial court did not make an express finding that defendant had knowledge of the existence of the gun in his hip holster during the time he was in Illinois, it is apparent from the court's guilty finding that it did so. See *People v. Bedell*, 253 Ill. App. 3d 322, 331 (1993) (the trial court is not required to articulate the factual findings underlying its finding of guilt). We cannot find the trial court's factual determination to be unreasonable. This case does not involve an individual unwittingly trapped in an unavoidable situation; there was no evidence to suggest that someone had placed the gun in defendant's holster without his knowledge, or that he thought the holster was empty. Rather, defendant, by his own testimony, admitted that he simply failed to remove the gun from the

holster and return it to its case before crossing state lines. After reviewing the evidence in the light most favorable to the prosecution, which we must, we conclude that the evidence was not "so unsatisfactory, improbable or implausible" as to raise a reasonable doubt as to defendant's guilt. *Slim*, 127 Ill. 2d at 307. Accordingly, defendant's challenge to the sufficiency of the evidence fails.

¶ 19 We are mindful of defendant's argument that his "inadvertent or forgetful behavior" was negligent, rather than knowing. In support of this argument, defendant relies exclusively on this court's opinion in *People v. Witherspoon*, 52 Ill. App. 3d 151 (1977). In *Witherspoon*, the defendant was found in contempt of court for failure to obey a subpoena *ad testificandum* in a criminal trial. *Id*. at 152. At trial, he had testified that he usually awoke at 8 a.m. without the aid of an alarm clock, but that he did not awaken until noon on the day in question, and that when he awoke, he went immediately to the courtroom where he was to testify. *Id*. at 153-54. On appeal, the defendant contended he was not proved guilty beyond a reasonable doubt of willfully failing to obey the subpoena. *Id*. at 152. This court agreed with the defendant and reversed his conviction, finding that the evidence did not prove that he knowingly or willfully was late, but at most, proved that he acted negligently. *Id*. at 154.

¶ 20 While the *Witherspoon* decision touched on the issue of knowing behavior in general, it did not involve the question of knowing possession. As such, we find that it has limited application to the instant case, and it does not change our decision.

¶ 21 We find a better analogy in *People v. Comage*, 303 Ill. App. 3d 269, 271 (1999), a case which "revolve[d] around the requirement that a defendant charged with unlawful possession of a controlled substance possess it knowingly." At trial in *Comage*, evidence was presented that a

pipe used for smoking crack cocaine was recovered from underneath the seat of the defendant's car and that the pipe contained cocaine residue. *Id*. The defendant testified that he had not used the pipe for almost a month, that he did not know the pipe contained cocaine, and that he thought that once the cocaine was burned, it was eliminated. *Id*. He also told the police that he had procured crack cocaine earlier on the day of his arrest, but did not use his own pipe to smoke that cocaine. *Id*. The jury found the defendant guilty of knowingly possessing a substance containing cocaine. *Id*. at 271-72. On appeal, this court found that the evidence was sufficient to support the defendant's conviction, stating as follows:

> "Defendant admitted using the crack pipe a month before he was arrested. He also admitted smoking crack earlier the day he was arrested. While defendant testified he did not use his own pipe earlier that day, the jury was not required to believe this aspect of defendant's testimony. The jury could reasonably conclude that, unless exceptional measures were taken, the defendant knew residue from the crack cocaine would remain, and his prior knowing possession was continuing. The fact the residue was found in defendant's drug paraphernalia demonstrates defendant's possession was not innocent or accidental." *Id*. at 275-76.

¶ 22 Here, as in *Comage*, there is no question that defendant had "prior knowing possession." According to his own testimony, he deliberately and consciously placed his gun in the holster on his hip. As such, we find that the trial court could reasonably conclude that defendant was consciously aware that the gun would remain in that holster until he or someone else removed it, and that his prior knowing possession was continuing. Given the circumstances of the instant

case, it was not unreasonable for the trial court to determine that defendant knowingly possessed an uncased, loaded, and immediately accessible gun in his hip holster while in Illinois.

¶ 23 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 24 Affirmed.