

No. 1-15-1399

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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 CR 9947
)	
AKEEM GRANDBERRY,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Pierce and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt of unlawful use or possession of a weapon by a felon. The court rejects defendant's argument that the police officer's testimony that he saw defendant place a gun near some stairs must be rejected as contrary to human experience.

¶ 2 Following a bench trial, defendant Akeem Grandberry was convicted of unlawful use or possession of a weapon by a felon (UUWF) and sentenced to 5 1/2 years' imprisonment. On

appeal, he argues that the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3

BACKGROUND

¶ 4 Mr. Grandberry was charged with eight counts: four counts of UUWF, four counts of aggravated unlawful use of a weapon (AUUW), and one count of defacing identification marks of firearms.

¶ 5 At trial, Chicago police officer Pratscher testified that, at around 11:15 p.m. on May 21, 2014, he was working surveillance “in the yard of 1934 [South St. Louis Avenue]” and saw a man, identified in court as Mr. Grandberry, standing on the sidewalk “approximately at 1936, 1938 South St. Louis.” The two men were approximately 50 feet apart and it was dark out, but the streetlights were on. Officer Pratscher testified that he heard Mr. Grandberry say to another individual “look out for me,” somebody “said I got you,” and then Officer Pratscher saw Mr. Grandberry walk through a park to the alley and enter the backyard of 1934 South St. Louis Avenue. Officer Pratscher and Mr. Grandberry were now 15 to 20 feet apart. Mr. Grandberry “looked around for a little bit” in the backyard and then “walked up some stairs and removed a dark item from his waistband *** [and] placed it by some steps.” Officer Pratscher testified that he was 20 or 25 feet away from Mr. Grandberry when this occurred. Mr. Grandberry then returned to the sidewalk the same way he had come.

¶ 6 Officer Pratscher radioed enforcement officers and reported what he saw. He gave a description of Mr. Grandberry, who was wearing a “white T-shirt, some gray sweatpants, and red underwear,” as he had “his pants pretty low on his waist.” Officer Pratscher left his initial surveillance position and relocated in the backyard to view Mr. Grandberry walking. Thirty seconds after Officer Pratscher radioed his description, his partner, Officer Rosen, detained Mr. Grandberry near 1930 South St. Louis Avenue. Officer Pratscher testified that a minute after he

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saw Mr. Grandberry place an object near the stairs, he recovered a handgun from under them. There was nothing else there. He radioed to report the recovery of the handgun. Officer Pratscher gave the handgun to another police officer, Officer Navarro, and told Officer Rosen that the man Officer Rosen had in custody, Mr. Grandberry, was the man he saw placing the handgun in the yard. On cross-examination, Officer Pratscher testified that 1934 South St. Louis Avenue was the home of Mr. Grandberry's father and Mr. Grandberry told the officer that he did not live there.

¶ 7 Chicago police officer Navarro testified that, around 11:15 p.m. on May 21, 2014, he was providing enforcement for Officers Pratscher and Rosen. He and Officer Pratscher were in constant radio communication. Officer Pratscher, working surveillance, radioed that "he observed a male subject remove a handgun from his waistband and place it underneath some stairs." Officer Navarro relocated to 1934 South St. Louis Avenue and saw Officer Rosen with a man, identified in court as Mr. Grandberry. He then went to the rear yard of 1934 South St. Louis Avenue and observed Officer Pratscher recover the handgun, which Officer Pratcher gave to Officer Navarro. Officer Navarro "cleared" the handgun, found that it had one round chambered and twelve rounds in the magazine, and noticed that the serial number was "scratched off."

¶ 8 On cross-examination, Officer Navarro testified that the officers were surveilling the area that night following complaints of "narcotics and gang activity." He acknowledged that he did not see anyone place the handgun under the steps. When he arrived at 1934 South St. Louis Avenue, Mr. Grandberry was already in a squad car.

¶ 9 The State introduced a certified copy of Mr. Grandberry's conviction for aggravated robbery in case number 10 CR 07095. It also introduced a certification from the Illinois State Police indicating that Mr. Grandberry had not been issued a Firearm Owners Identification Card. The State rested its case and Mr. Grandberry made a motion for a directed finding, which the

court denied.

¶ 10 Thomas Grandberry, Mr. Grandberry's father, testified for the defense that, on May 21, 2014, he lived at 1934 South St. Louis Avenue and that he remembered the day "very well." That evening, he was in the kitchen. When asked what he could see from his kitchen, Thomas responded, "I can see the whole backyard. I have a vacant lot next door. It's empty. And I got a couple cars parked on it. And everything is very visible." At around 11:15 p.m., he saw four officers "coming over the fence" in the backyard. He did not see his son in the backyard. Thomas went outside and "questioned" the officers. They told him that "they were looking for somebody. *** [S]omebody told him that somebody put a gun in the back." Thomas testified that "after that conversation they must have stayed back there another two hours, or something like that." An officer came back with a gun "from off the stairs *** going up to the second floor," and the police had Mr. Grandberry in custody.

¶ 11 On cross-examination, Thomas testified that he did not know what time he saw the "commotion," but that it was in the evening. Thomas never went out more than "3 feet or 4 feet" from his back door while police were there. One officer told him that he "had the kid that put the gun back here in the car," and it turned out to be Mr. Grandberry.

¶ 12 The trial court found Mr. Grandberry guilty on all counts. In finding him guilty, the trial judge stated: "There's no question that the police saw Mr. Grandberry, Akeem Grandberry, place the gun there." The trial court acknowledged that there was some discrepancy in the evidence regarding how long it took the officers to recover the gun, but it was clear that "there was a gun recovered" and that "Akeem Grandberry had the gun."

¶ 13 Mr. Grandberry filed a motion for new trial, in which one point raised was that the State had failed to prove him guilty beyond a reasonable doubt. The court denied the motion, merged

all of Mr. Grandberry's convictions into his conviction for UUWF on Count 1, and sentenced him to 5 1/2 years' imprisonment.

¶ 14

JURISDICTION

¶ 15 Mr. Grandberry was sentenced on April 14, 2015, and timely filed his notice of appeal that same day. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 16

ANALYSIS

¶ 17 On appeal, Mr. Grandberry argues that the evidence is insufficient because the State presented no evidence that Officer Pratscher was hidden from his view and it is contrary to human experience that he would remove a gun from his waistband in plain view of a police officer. We reject this argument and affirm this conviction.

¶ 18 On a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution, and must affirm if "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Davison*, 233 Ill. 2d 30, 43 (2009). We are required to draw "all reasonable inferences in favor of the State." *Id.* We are not permitted to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is within the exclusive province of the trier of fact "to determine the credibility of witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). We will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 19 To prove UUWF, the State must show that a person, who has been previously convicted of a felony, knowingly possessed a firearm or firearm ammunition. 720 ILCS 5/24-1.1(a) (West 2014). Mr. Grandberry does not dispute that he has a prior felony conviction but challenges Officer Pratscher's testimony that he saw Mr. Grandberry in the backyard with a handgun.

¶ 20 Viewing the evidence in the light most favorable to the State, a trier of fact could find Mr. Grandberry guilty of UUWF. Officer Pratscher testified that he was in the backyard of 1934 South St. Louis Avenue working surveillance when he saw Mr. Grandberry 50 feet away on the sidewalk. Mr. Grandberry told someone to "look out for me" and entered the backyard where Officer Pratscher was located. It was dark but there were streetlights. Officer Pratscher, now 15 to 20 feet away from Mr. Grandberry, watched as Mr. Grandberry "walked up some stairs and removed a dark item from his waistband *** [and] placed it by some steps." Officer Pratscher radioed other officers, relayed what he saw, and gave a description of Mr. Grandberry. According to Officer Pratscher's testimony, a minute after he saw Mr. Grandberry place the object near the stairs, Mr. Grandberry was in custody and Officer Pratscher had recovered a handgun from under the back steps in another officer's presence. That was Officer Navarro, who also testified to the recovery of the gun. A rational trier of fact could have concluded that Mr. Grandberry was in possession of the handgun that the officers recovered.

¶ 21 Mr. Grandberry's premise that Officer Pratscher was plainly visible in the backyard is not necessarily true. While Officer Pratscher did not testify that he was hiding, the officer's surveillance location was not an element of the offense and the State was not required to present evidence of it as a part of its case-in-chief. See *Siguenza-Brito*, 235 Ill. 2d at 224 (State must prove essential elements of an offense.). And, even if the officer was not hiding, there was no evidence that Mr. Grandberry looked at or saw Officer Pratscher.

¶ 22 Moreover, even if Mr. Grandberry had known that Officer Pratscher was watching him, it is not inherently unbelievable that Mr. Grandberry, who had a felony conviction, would try to abandon his weapon on the steps, rather than risk being caught with it. We must reject Mr. Grandberry's contention that Officer Pratscher's testimony was so incredible or contrary to human experience that it cannot be relied on to support this conviction.

¶ 23 Considered in the light most favorable to the State, we conclude that the evidence was clearly sufficient to permit the trial court to find the essential elements of UUWF beyond a reasonable doubt.

¶ 24 **CONCLUSION**

¶ 25 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.