

No. 1-15-2419

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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. 12 CR 12571
)	
CLINTON MOORE,)	Honorable
)	Thomas J. Byrne,
Defendant-Appellant.)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Defendant's conviction for being an armed habitual criminal is affirmed. The police had probable cause to believe that defendant had committed a crime. The officer validly entered defendant's apartment under the exigent circumstance of hot pursuit. The evidence was sufficient for the trial court to conclude that defendant possessed a weapon. Defendant's trial counsel was not ineffective in failing to impeach the officer at trial with his testimony from the suppression hearing.

¶ 2 Following a bench trial, defendant Clinton Moore was convicted of being an armed habitual criminal and was sentenced to 11 years in prison. On appeal, Mr. Moore contends that (1) the State failed to prove his guilt beyond a reasonable doubt because the testimony of its sole

witness, a police officer, was not credible; (2) the trial court erred in denying his motion to quash his arrest and suppress evidence; and (3) his trial counsel was ineffective for failing to impeach the officer with his inconsistent testimony from the suppression hearing. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 Mr. Moore was charged with being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)), unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)), and unlawful possession of ammunition by a felon (720 ILCS 5/24-1.1(a) (West 2012)). In March 2014, Mr. Moore filed a motion to quash his arrest and suppress evidence.

¶ 5 At the hearing on Mr. Moore's motion, Chicago police officer Patrick Kinney testified that, at approximately midnight on June 16, 2012, he and his partner were dressed in plain clothes and were conducting a routine vehicle patrol near 70th Street and Yale Avenue. The officers heard five or six gunshots east of their location. The officers travelled toward the sound of the shots and parked on South Wentworth Avenue. Officer Kinney spoke to several people who said the shots came from a building across the street, at 7031 South Wentworth Avenue.

¶ 6 As Officer Kinney approached the building on foot, he saw a man, whom he later identified as Mr. Moore, standing between 25 and 35 feet away on the second-floor porch. Officer Kinney did not recall if any lights were on in the porch area. Officer Kinney saw a semi-automatic handgun in Mr. Moore's right hand. He could see the barrel of the weapon and a portion of the magazine. Mr. Moore looked in the officer's direction and "started to flee into the residence," at which point Officer Kinney "gave [] several verbal directions" and ran after Mr. Moore.

¶ 7 During questioning by defense counsel, the following exchange occurred:

“Q. So he went into that door that you could not see from where you were standing, correct?”

A. Yes.

Q. You then ran across the sidewalk, through the fence, up the two flights of stairs and into the door, correct?

A. I was actually closer at that point. I was at the bottom of the steps when he started to flee.”

¶ 8 Officer Kinney stated that he had started to walk toward Mr. Moore before Mr. Moore ran inside, and shouted directions to Mr. Moore while approaching the bottom of the stairs.

¶ 9 The officer lost sight of Mr. Moore for “maybe one second” while following him into the second-floor apartment, where he saw Mr. Moore holding the gun. The officer also encountered another man, whom he later identified as Kenneth Hall, in the apartment. Mr. Moore dropped the gun and entered a bedroom, where a woman was present. Officer Kinney recovered the weapon, which he testified was the same firearm he had seen in Mr. Moore’s hand.

¶ 10 In denying the motion to suppress, the trial court noted that the officer saw Mr. Moore holding the weapon and found the officer’s entry into the apartment was justified by Mr. Moore’s flight. Mr. Moore filed a *pro se* motion for reconsideration of that ruling, which was denied.

¶ 11 At trial, Officer Kinney’s recitation of the events preceding Mr. Moore’s arrest was as follows. He stated he and his partner were in plain clothes and wore vests, duty belts, handcuffs, stars, and other equipment. He testified to hearing the gunshots and said that when he and his partner got to 70th Street and Wentworth Avenue, individuals on the street pointed them to 7031 South Wentworth Avenue. Officer Kinney testified that the building was boarded up and

appeared to be abandoned. The area was illuminated by streetlights. However, Officer Kinney testified that the building was “back from the street.”

¶ 12 Officer Kinney testified that as he walked into the yard toward the building, he looked up at the top of the stairs and saw Mr. Moore, who stood at the top of what the photographs included in the record make clear is an outside stairwell next to the porch, and Mr. Moore was “already looking in [his] direction.” He testified that Mr. Moore held a firearm in his right hand. Officer Kinney testified that he ordered Mr. Moore to “[d]rop it, drop it. Show me your hands” and that he said “Police.” Mr. Moore ran inside, and Officer Kinney “immediately gave chase,” following Mr. Moore into the apartment. Mr. Moore dropped the gun onto the floor just outside a bedroom when Officer Kinney was about 10 feet away. Officer Kinney recovered a loaded .40 caliber semi-automatic handgun.

¶ 13 On cross-examination, Officer Kinney stated that when he first saw Mr. Moore, Mr. Moore was not pointing the weapon at anyone or firing it. Defense counsel asked Officer Kinney about the timing of his pursuit of Mr. Moore, and Officer Kinney said he “was already running up the stairs as I was giving commands.”

¶ 14 The State entered into evidence a certified copy of Mr. Moore’s 1999 conviction for the Class 2 offense of manufacturing and delivering narcotics in case No. 98 CR 6178 and his 2006 conviction for unlawful use of a weapon by a felon in case No. 04 CR 13255.

¶ 15 For the defense, Lisa Johnson testified she arrived at Mr. Moore’s apartment at about 8 p.m. on the night of these events. She and Mr. Moore stayed in Mr. Moore’s bedroom for two or three hours drinking and smoking marijuana. Mr. Moore only left the bedroom to use the bathroom.

¶ 16 Sometime during that period, Ms. Johnson and Mr. Moore heard five or six gunshots.

No. 1-15-2419

After the shots, a police officer knocked on the bedroom door, entered, and handcuffed Mr. Moore. Ms. Johnson and Mr. Moore were led to the back porch, where Mr. Hall was standing with another officer. The officer who had taken them to the porch went back inside and returned holding a weapon, stating “Look what I found.” Ms. Johnson testified she had not seen Mr. Moore with a weapon and had not seen that weapon in the apartment.

¶ 17 Ms. Johnson also described the apartment’s layout, stating that, when entering, the kitchen was the first room, followed by the living room. According to Ms. Johnson, the bedroom she and Mr. Moore were in was not visible from the kitchen entrance.

¶ 18 On cross-examination, Ms. Johnson said she and Mr. Moore had been friends for 16 or 17 years. Mr. Moore locked the door after letting her in the apartment. The officer was in the apartment for 5 or 10 minutes before emerging with the weapon. The officer then took Ms. Johnson, Mr. Moore, and Mr. Hall back into the living room, where he continued to search and found “another gun somewhere.” On redirect examination, Ms. Johnson acknowledged that the bedroom she and Mr. Moore were in was visible from the hallway outside the kitchen. The defense presented, and the trial court admitted into evidence, three photographs of the building at 7031 South Wentworth Avenue.

¶ 19 The trial court stated Officer Kinney testified “in a credible fashion” and found Mr. Moore guilty on all three charged counts.

¶ 20 The court further noted:

“The officer was responding to an area of shots fired [and] was directed by citizens to a specific address. When he showed up, he wasn’t wandering or looking about, he was on the move with a place to go. The first floor was clearly boarded up, which is shown in the pictures and is corroborated by the testimony of the officer, and he saw

somebody, according to Miss Johnson who spent three hours drinking and smoking marijuana, at the top of the stairs with what he described as a gun.

This officer was on the move. He wasn't stopped and relocating to one position or another. He was on the move when he saw that individual with the gun. And he ran, you know, essentially when he lost sight of the defendant into the apartment blind, he was on high alert and he was moving. I'm sure that as he entered the back of that apartment, the kitchen, he didn't have full visibility of the defendant or that area down towards the door. But that space that would have been a blind spot in that area was covered. In short order, this officer was moving.

The defendant from the top of the stairs had to make a decision when he realized whom he was looking down on, the officer fast approaching, barking commands, identifying himself as a police officer, and he decided to retreat into the apartment. He only had a short distance inside what to do with the gun [*sic*], but he did not want to enter into the room where he was going to close the door while possessing the gun. Between [the] kitchen and that door he didn't find a convenient place to toss it, but he tossed it the last moment, or dropped it is what the testimony actually was, and Officer Kinney was in a position at that juncture to see it. In fact he did see it, he came to defendant, walked past the gun, and after the defendant was detained he recovered the gun.”

¶ 21 At sentencing, the trial court merged the convictions for unlawful possession of a weapon by a felon and unlawful possession of ammunition by a felon into the armed habitual criminal count. Mr. Moore was sentenced to 11 years in prison.

¶ 22 JURISDICTION

¶ 23 Mr. Moore was sentenced on July 24, 2015, and timely filed his notice of appeal on the

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)).

¶ 24

ANALYSIS

¶ 25

A. Motion to Quash Arrest and Suppress Evidence

¶ 26 On appeal, we first address Mr. Moore's contention that his conviction should be reversed because the trial court erred in denying the motion to quash his arrest and suppress evidence. He asserts his motion should have been granted because the fact that he may have possessed a gun either on the porch outside his apartment or inside his apartment did not provide the police with probable cause to arrest him, and because there were no exigent circumstances that justified following him into the apartment without a warrant.

¶ 27 When this offense occurred, on June 16, 2012, the aggravated unlawful use of a weapon (AUUW) statute in Illinois contained a blanket prohibition on the possession of an operable, uncased, loaded, and immediately accessible handgun in public. 720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2010). In 2013, our supreme court declared that statute facially unconstitutional as violating the second amendment. *People v. Aguilar*, 2013 IL 112116, ¶ 21; see also *People v. Burns*, 2015 IL 117387, ¶ 25 (clarifying that there is no limit on the *Aguilar* holding that the ban is unconstitutional). When a statute is declared facially unconstitutional, the statute is void *ab initio*, meaning it was void from its inception. *People v. McFadden*, 2016 IL 117424, ¶ 17.

¶ 28 Mr. Moore argues that under *Aguilar* and *Burns*, Officer Kinney's observation of him on the porch holding a weapon, absent any other specific knowledge, could not have provided the officer with probable cause to believe that a crime was being committed. Citing those cases, Mr.

Moore asserts the “possession of a gun on private property could not provide the police with probable cause to arrest” without any knowledge that his possession of the gun was unlawful.

¶ 29 During the time this case was pending, our supreme court held, in *People v. Holmes*, 2017 IL 120407, ¶ 37, that the unconstitutionality of the AUUW statute recognized in *Aguilar* does not negate the existence of probable cause at the time of a defendant’s arrest. The court stated that although a portion of the AUUW statute was held to be void *ab initio*, that did not retroactively invalidate the probable cause an officer may have had to believe that the defendant was violating the statute that was part of the criminal code at the time of the arrest. *Id.* ¶ 37. *Holmes* makes clear that we must reject Mr. Moore’s argument here that probable cause could not be based on observing Mr. Moore with a gun.

¶ 30 Moreover, the officer’s decision to pursue Mr. Moore did not rest solely on Mr. Moore’s possession of the gun. Officer Kinney also reported having heard gun shots and talked to neighbors who said the shots came from 7031 South Wentworth Avenue. He also saw Mr. Moore run inside when he told Mr. Moore to stop and that he was the “police.” Under these circumstances, the officers had probable cause to pursue and arrest Mr. Moore.

¶ 31 We also find that exigent circumstances supported the officer’s entry into the apartment without a warrant. Mr. Moore was chased by an officer who heard shots fired, was directed to Mr. Moore’s location by bystanders, and saw Mr. Moore in possession of a weapon. Exigent circumstances exist where police are in “ ‘hot pursuit’ of a suspect who flees from a public place into his residence.” *People v. Brown*, 277 Ill. App. 3d 989, 996 (1996) (citing *United States v. Santana*, 427 U.S. 38, 42-43 (1976)).

¶ 32 Under the hot-pursuit doctrine, police “may enter a private residence without a warrant to effectuate the arrest of a fleeing suspect of whom the police are in ‘hot pursuit.’ ” *People v.*

Davis, 398 Ill. App. 3d 940, 951 (2010). The rationale is that “a suspect may not defeat an arrest which has been set in motion in a public place *** by the expedient of escaping to a private place.” *Santana*, 427 U.S. at 42-43. Officer Kinney was justified in pursuing Mr. Moore into the apartment under the hot-pursuit doctrine. See *Brown*, 277 Ill. App. 3d at 996 (police pursuit of the defendant into an apartment after hearing gunfire, immediately proceeding in the direction of the shooting, and observing the defendant on a porch pointing a gun into the air falls under hot-pursuit doctrine). Therefore, the officer’s entry into the apartment did not violate the fourth amendment, and the trial court did not err in denying Mr. Moore’s motion to quash his arrest and suppress evidence of the weapon found in the apartment.

¶ 33 B. Sufficiency of the Evidence

¶ 34 Mr. Moore also contends that his conviction should be reversed because the evidence was insufficient to establish he was in possession of the firearm. He argues that Officer Kinney’s testimony was not believable because the events could not have occurred as the officer described. Mr. Moore also argues that Officer Kinney’s testimony that he identified the item in Mr. Moore’s hand as a gun was not credible, given the lighting conditions.

¶ 35 When considering a challenge to 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 offense beyond a reasonable doubt. *People v. Bradford*, 2016 IL 118674, ¶ 12. It is the responsibility of the trier of fact, which was the trial judge in this bench trial, to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *Id.* It is not our role as a reviewing court to retry the defendant. *People v. Lloyd*, 2013 IL 113510, ¶ 42. A conviction cannot be overturned unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt as to

the defendant's guilt. *Bradford*, 2016 IL 118674, ¶ 12.

¶ 36 Mr. Moore first argues it is improbable that he would have remained in place at the top of the stairs, as Officer Kinney testified, while the officer ran up the stairs. But it was the task of the trial court, as the trier of fact, to assess the believability of the officer's testimony. See *Bradford*, 2016 IL 118674, ¶ 12. In its ruling, the trial court noted Mr. Moore "had to make a decision when he realized" he was looking at a police officer. It is not unreasonable for the trial court to accept that Mr. Moore would not have immediately reacted as the officer approached.

¶ 37 Mr. Moore also challenges Officer Kinney's testimony that, once inside the apartment, the officer saw him standing outside the bedroom and was only 10 feet away from him when he dropped the gun. He points out that, according to Ms. Johnson's testimony, a person stepping into the kitchen from the porch would not be able to see the bedroom from that vantage point. The record reflects that the trial court acknowledged Ms. Johnson's testimony. The court weighed the accounts of Officer Kinney and Ms. Johnson, noting that as the officer entered the apartment, "he didn't have full visibility of the defendant or that area down toward the [bedroom] door." The court stated the officer was "moving" and came to a position where he could see Mr. Moore drop the weapon outside the bedroom. The trial court's finding that the officer's version of the events was more credible than Ms. Johnson's is not unreasonable.

¶ 38 Next, Mr. Moore argues that Officer Kinney could not have seen him holding a gun either at the top of the stairwell or on the porch next to the stairwell because of the low lighting in the area. He asserts the officer's opportunity to see was "severely limited" because it was around midnight, no lights illuminated the immediate area, and according to the officer's account, he was looking up at the man at an angle from a distance of 25 to 35 feet away. Again, this is a challenge to the trial court's finding that the officer's testimony was credible. It was the

job of the trier of fact to consider the officer's testimony regarding his identification of Mr. Moore under those conditions. See *Bradford*, 2016 IL 118674, ¶ 12. The court also viewed photographs of the scene to aid in its credibility determination. Viewed in the light most favorable to the State, the evidence was sufficient for the trial court to accept Officer Kinney's testimony and for this court to sustain the conviction.

¶ 39 C. Ineffective Assistance of Counsel

¶ 40 Mr. Moore's remaining argument on appeal is that his counsel was ineffective for failing to impeach Officer Kinney at trial with his prior inconsistent testimony. He argues that, because Officer Kinney's account was the sole description of the events presented by the State, impeaching the officer's account would have affected the trial's outcome.

¶ 41 At the hearing on Mr. Moore's motion to quash his arrest and suppress evidence, Officer Kinney testified that he first observed Mr. Moore on a porch and that Mr. Moore began to flee inside, at which point the officer shouted directions at Mr. Moore and ran up the stairs in pursuit. The officer stated later at the same hearing that he was standing at the bottom of the steps when Mr. Moore ran into the apartment. Mr. Moore points to Officer Kinney's account at trial, in which he stated that he was already running up the stairs when he ordered Mr. Moore to stop and drop the weapon. Mr. Moore is correct that there is some inconsistency in the two accounts.

¶ 42 But under *Strickland v. Washington*, 466 U.S. 668, 687 (1984), a defendant asserting a claim of ineffective assistance of counsel must show that defense counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defendant. *Id.* A defendant must overcome the strong presumption that the challenged action or inaction of counsel was the product of trial strategy, and not incompetence. *People v. Brown*, 2017 IL App (3d) 140921, ¶ 21.

¶ 43 A reviewing court “will not second-guess decisions which involve counsel’s discretion or strategy.” *People v. Humphries*, 257 Ill. App. 3d 1034, 1041 (1994). “Generally, the decision whether or not to cross-examine or impeach a witness is a matter of trial strategy which will not support a claim of ineffective assistance of counsel.” *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 72 (quoting *People v. Pecoraro*, 175 Ill. 2d 294, 326 (1997)). Here, we cannot agree that the decision not to focus on these inconsistencies during a lengthy and vigorous cross-examination was unreasonable.

¶ 44 We also do not agree that Mr. Moore has demonstrated he was prejudiced by defense counsel’s failure to impeach the officer’s testimony at trial. Officer Kinney’s accounts do not vary so drastically from one another that they undermine his credibility. Regardless of where the officer and Mr. Moore were standing when the officer ordered Mr. Moore to stop, Officer Kinney consistently described seeing Mr. Moore holding the weapon outside of the apartment. So even if we assume that defense counsel erred by failing to impeach the officer with his inconsistencies, we cannot find these deficiencies so significant that they would have affected the outcome of the trial. See *People v. Brown*, 255 Ill. App. 3d 425, 437-38 (1993) (where inconsistent accounts were brought out but additional impeachment would not have changed the result, the defendant could not establish counsel’s deficient representation).

¶ 45 **CONCLUSION**

¶ 46 Mr. Moore’s motion to quash his arrest and suppress evidence of the gun was properly denied because the police officer, who was investigating a report of shots fired and was directed to Mr. Moore’s building by bystanders, had probable cause to believe that Mr. Moore had committed a crime, and justifiably followed Mr. Moore into the apartment under the hot-pursuit doctrine. The evidence was also sufficient to prove that Mr. Moore was in possession of a

No. 1-15-2419

weapon, and trial counsel did not provide deficient representation by failing to impeach the officer.

¶ 47 For the reasons set out above, the judgment of the trial court is affirmed.

¶ 48 Affirmed.