2017 IL App (1st) 152894-U

No. 1-15-2894

Order filed November 16, 2017

Fourth 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 CR 10033
	)	
ROBERT TERRELL,	)	Honorable
	)	Joseph G. Kazmierski, Jr.,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence presented at trial was sufficient to sustain defendant's conviction for unlawful use of a weapon by a felon.

¶ 2 Following a bench trial, defendant Robert Terrell was convicted of unlawful use of a weapon by a felon (UUWF) and sentenced to three years in prison. On appeal, defendant challenges the sufficiency of the evidence, arguing that "it is not believable that three police officers looking into [defendant's] car and interacting with him for 15 to 20 minutes failed to see

a gun in plain view on the floorboards, yet one of the officers saw the gun at issue less than an hour later, and [defendant] had not been in the car since the officers left after their initial encounter with him." For the reasons that follow, we affirm.

¶ 3 Defendant's conviction arose from the events of May 15, 2014. Following his arrest, defendant was charged with one count of UUWF premised on a prior conviction for aggravated unlawful use of a weapon (AUUW), one count of UUWF premised on a prior conviction for aggravated battery, one count of AUUW premised on not having a concealed carry permit, and one count of AUUW premised on not having a firearm owner's identification (FOID) card.

¶ 4 At trial, Chicago police officer Andre Benford testified that around 7 a.m. on the day in question, he was on patrol when he received a dispatch call reporting a man sitting in a white Chevy in the 7800 block of Escanaba Avenue, exposing himself as children walked past. Benford responded to the scene, where he observed a car matching the description given by the dispatcher. The car was 10 to 15 yards from the rear of a house located at 2970 East 78th Street and was occupied by defendant, whom Benford identified in court. Benford approached and asked defendant to step out of the car. Benford was able to see inside the car at that time, but did not notice anything out of the ordinary. Officers Newman and Negron were also on the scene and were present for Benford's initial contact with defendant.

¶ 5 After defendant stepped out of the car, Benford explained to him why he and the other officers were there. Benford asked defendant for identification and conducted an interview. Specifically, Benford asked defendant if he had "any business parked on the street at that time," and defendant answered that he was in the car because it was not working properly or was low on fuel. The officers did not handcuff defendant or place him into custody. After the interview

was complete, defendant asked Officers Newman and Negron for a ride, and Benford overheard the other officers say they were going to take defendant to a hospital. Benford saw defendant leave the scene with Newman and Negron. Benford considered the dispatch to be concluded.

¶ 6 Benford remained "at the location," filling out paperwork or looking at other materials in his squad car. While he was doing so, a woman, later identified as Meneka Heath, approached and began yelling at him. Heath reported to Benford that defendant was an offender in a domestic battery, and Benford relayed this information to Officers Newman and Negron. Sometime later, Newman and Negron returned to 2970 East 78th Street with defendant, who was detained and in police custody.

¶ 7 Benford thereafter "bec[a]me aware" that Newman had had a conversation with defendant about something located in his car. Benford obtained a key from defendant and then approached the car. Benford stated that as he approached the driver's side, he could see in plain view what he believed at that time to be the butt of a handgun on the floorboards, protruding from underneath the driver's seat. In court, Benford confirmed that he had not seen the gun during his earlier encounter with defendant. He explained, "It wasn't as in plain view as I saw it the second time I approached the vehicle. I wasn't necessarily looking for a weapon at that time, but it was not there the first time I was at the vehicle." Benford testified that once he saw the gun, he used defendant's key to unlock the door, retrieved and secured the weapon, which was loaded, and notified his partners. The group thereafter relocated to the police station, where the gun was inventoried and defendant was processed.

¶ 8 On cross-examination, Benford agreed that when he first approached defendant, he looked through the driver's window of the car and saw defendant had on a shirt and pants.

Benford also looked down on the floorboard and saw defendant had shoes on. He agreed that he spoke with defendant for about 15 to 20 minutes during the first encounter. Benford clarified that after the other officers drove off with defendant, he initially stayed behind, but then drove around the corner and stopped in front of the building where Meneka Heath lived. At 8:10 a.m., while he was in the "immediate area," he received a 911 call regarding a domestic disturbance. Benford stated he was not sure if he was still on Escanaba Avenue when the call came in, or if he was traveling around the corner, but asserted that it only took him about 30 seconds to drive to "the location." Benford also testified that when he received the call, Heath began yelling at him. Benford admitted he did not know who else other than defendant had a key for defendant's car.

¶ 9 Chicago police officer Ronald Newman testified that on the morning in question, he and his partner responded to a call reporting a man committing a "sex act" in a white Chevy Caprice near the intersection of 78th Street and Escanaba Avenue. When Newman arrived at the location, he saw defendant sitting in a car that matched the description given by the caller. Officer Benford was also at the scene. After it was determined that the call was unfounded, Newman gave defendant a ride to the 7900 block of Stoney Island Avenue because defendant said he wanted to go to that location but was low on gas. During the ride, defendant was not handcuffed or in custody. Newman estimated that he dropped defendant off about 7:55 or 8:00 a.m. He and his partner then resumed patrolling the neighborhood.

¶ 10 About 8:11 a.m., Newman received a dispatch that caused him to head back toward the location where he had first interacted with defendant. When Newman arrived in the area, he saw defendant standing on the street in front of 7900 South Exchange Avenue, which Newman stated was less than half a block from where he had originally encountered defendant. Newman and his

partner asked defendant to get into their squad car to talk about a complaint that was filed against him, and then drove him to the 2900 block of East 78th Street. There, defendant's car was parked in the same spot it had been in earlier.

¶ 11 Newman testified that he advised defendant of his *Miranda* rights, and that after defendant indicated he understood, asked defendant "where was the gun located in the car." Defendant told Newman that there was a gun under the driver's seat. Newman relayed that information to Officer Benford. When Newman asked defendant why he had the gun, defendant answered that he had it for protection because he feared "that the victim's family was going to do harm to him if they caught up to him."

¶ 12 On cross-examination, Newman stated that the call regarding a man exposing himself came in between 6:40 and 6:50 a.m. Newman also stated that he did not write the arrest report. He acknowledged that he reviewed the report and that it did not include the information that defendant had made a statement. When defense counsel asked why defendant's statement was not documented in the arrest report, Newman answered:

> "We couldn't put all the statements that your client stated to us about the gun when we was [*sic*] processing. We would have a two-page report. We had detectives come to the station because he requested them to save his car. He did care about the car. He wanted his car safe. We had detectives come and interview him so we couldn't put everything in the arrest report that your client stated to us. We have to summarize it. *** I explained - - I related it to the officer that did the report writing. I relayed that to him."

¶ 13 Shalonda Bradford testified that on the morning of the day in question, she was at her aunt's house at 2970 East 78th Street with her cousin, Meneka Heath. About 7 a.m., Heath called the police. Around 7:45 a.m., Bradford went outside to smoke a cigarette and saw defendant, who asked her about her cousin. When Bradford finished her cigarette, she went back inside and Heath asked to use her phone to call the police again. The police arrived "like probably five or ten minutes later."

¶ 14 Bradford related that she saw defendant a second time that morning when she was walking a younger cousin to the bus stop. Because the cousin had to be at school by 9 a.m., Bradford estimated in court that this encounter with defendant must have happened "no later than 8:45." Defendant approached Bradford and they had a conversation during which defendant said, "[T]hese police is some stupid mother fuckers 'cause they ain't found the gun." After Bradford and defendant parted ways, Bradford went back to her aunt's house. Heath then called the police again. When the police arrived this time, Bradford told them what defendant had said to her. On cross-examination, Bradford clarified that what defendant said to her was, "[T]hey some dumb stupid mother fuckers 'cause they didn't catch me in the car with the gun."

¶ 15 The State introduced into evidence a certified copy of conviction showing that in 2009, defendant was convicted of aggravated battery in case number 08 CR 22056, and a certified copy of a motor vehicle record showing that the car in question was registered to and owned by defendant. The parties stipulated that on the date in question, defendant did not have a currently valid FOID card or concealed carry permit.

¶ 16 Defense counsel made a motion for directed finding, arguing, among other things, that there was no proof defendant was in possession of a firearm where Officer Benford testified he

did not see the gun when he was near the car for 15 to 20 minutes, but then later saw it in plain view. Noting that the gun "appear[ed] in plain view" while defendant was some distance away on Stoney Island Avenue, counsel suggested that there were "other people that lived near that house that were angry and upset at [defendant] and had an opportunity to plant [a gun] on him and had an opportunity to plant it on him and, in fact, told the police that there was a gun in that car." Counsel observed that no DNA or fingerprints linked defendant to the gun, and asserted that defendant's statement to Officer Newman was not dispositive because it was not written down or included in the arrest report.

¶ 17 The trial court granted the motion for directed finding as to count 1, which charged UUWF premised on a prior conviction for AUUW. The trial court denied the motion as to counts 2, 3, and 4.

¶ 18 Defendant introduced three maps of the area into evidence and rested without testifying or presenting any witnesses.

¶ 19 In closing arguments, defense counsel repeated the defense theory that the case involved a "domestic situation" where there was anger toward defendant, and that there was "certainly an opportunity to plant evidence such as a gun on him." Counsel emphasized that Officer Benford observed defendant for 15 to 20 minutes and specifically looked at the car's floorboards, but did not see a gun. Counsel further argued that although Benford testified that he remained on the scene between the two calls, the maps introduced into evidence indicated that the officer actually moved several blocks from where defendant's car was parked to the location of Meneka Heath's residence.

¶ 20 The trial court determined that defendant constructively possessed the gun and found him guilty on counts 2, 3, and 4. In the course of doing so, it made the following statements:

> "I believe the State did prove their case beyond a reasonable doubt for these reasons: This is the defendant's car. It was locked at the time. The case - - it may very well be the cops missed it, they blew it the first time around. Whether they looked in the car to the extent, there never really was any evidence that they looked in the car other than seeing the defendant there. And that's [to] explain how he was dressed or not dressed as he was dressed apparently appropriately at the time. The statement of both of these parties, Meneka Heath and Ms. Bradford does make sense. The cops missed the gun. The defendant tells her that. He described what his impression of the police officers were at the time, and he does corroborate by the further statement that he gave the police that he had the gun for protection. There will be a finding of guilty."

The court merged counts 3 and 4 into count 2, which charged UUWF premised on a prior conviction for aggravated battery.

¶ 21 Defendant filed a motion for new trial, contending, *inter alia*, that he was not proved guilty beyond a reasonable doubt. Noting that Officer Benford did not see a gun during his initial 15-to-20-minute conversation with defendant but then observed a gun in plain view during their second interaction, defendant argued that there was a "gap" in time while Benford was away during which another person could have accessed the car. Observing that there was no evidence showing that the car was locked during this time gap, defendant asserted that the evidence was insufficient to prove constructive possession of the gun. When arguing the motion in court,

defense counsel added a suggestion that "anyone" could have put a gun in the car during the time gap. The trial court denied defendant's motion for a new trial.

¶ 22 The trial court subsequently sentenced defendant to three years in prison. This appeal followed.

¶ 23 On appeal, defendant contends that the evidence is insufficient to sustain his conviction. He makes three arguments in support of his challenge to the sufficiency of the evidence. First, he argues that it "taxes the gullibility of the credulous" and cannot be believed that three trained police officers would fail to see a gun in plain view in his car when they were looking to see if he was wearing pants and shoes and interacted with him for 15 to 20 minutes. Second, defendant asserts that there was time between his two encounters with the police in which someone else could have planted the gun in his car, a likelihood he claims is enhanced by "evidence" that Meneka Heath was actively trying to get him into trouble by falsely reporting at least one crime to the police. Finally, defendant asserts that none of the statements attributed to him are believable, as no officer included defendant's confession to Officer Newman in the police report, and Shalonda Bradford gave the time of defendant's statement to her as 8:45 a.m., but he was already in custody at that point, having been arrested shortly after 8:10 a.m.

¶ 24 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). A reviewing court will not reverse a conviction simply because the defendant claims that a witness was not credible. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Where a guilty finding depends on eyewitness testimony, a reviewing court, keeping in mind that it was the fact finder who saw and heard the witnesses, must decide whether any fact finder could reasonably accept the witnesses' testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). It is for the finder of fact to judge how flaws in a witness's testimony affect the credibility of the whole (*id*. at 283), and 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)). 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).

¶ 25 Here, the State presented ample evidence to support the trial court's findings of constructive possession and guilt. Officer Benford and Officer Newman both saw defendant sitting alone in his parked car. After they determined that the dispatch call they were investigating was unfounded, Newman drove defendant away from the scene and dropped him off. Benford stayed behind for a while, doing paperwork. He then left the area briefly. Around this time, defendant told Shalonda Bradford that the police were stupid because they did not find the gun in his car. Thereafter, when the police received a second dispatch call, Benford, Newman, Newman's partner, and defendant reconvened at defendant's car, and defendant told Newman there was a gun under the driver's seat. Benford looked into the car, saw the butt of a handgun protruding from underneath the driver's seat, unlocked the car with defendant's key, and recovered the gun.

¶ 26 Defendant's argument that it "taxes the gullibility of the credulous" that three police officers failed to see the gun on the floorboard of his car during their initial interaction with him is, in essence, a challenge to the trial court's credibility findings. While the trial court did not explicitly announce that it was making a credibility finding, it apparently was satisfied with Officer Benford's explanation that he did not see the gun during his first encounter with defendant because he "wasn't necessarily looking for a weapon at that time" and found him credible. Given the degree of deference that must be accorded to the trial court's factual determinations, we cannot agree with defendant that the trial court erred in accepting the officer's testimony.

¶ 27 With regard to defendant's suggestion that someone could have planted the gun in his car, we agree that this scenario is not beyond the realm of possibility. However, where a defendant relies on circumstantial evidence, surmise, or mere possibility to support a defense that someone else committed the crime being prosecuted, the trier of fact may reject the hypothesis of innocence as unsatisfactory. *People v. Hall*, 194 Ill. 2d 305, 332 (2000). "Moreover, the trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Id*. Here, defendant's theory of being framed is based on nothing more than the existence of a time gap between encounters with the police during which his locked car was not being actively watched by Officer Benford, a lack of testimony as to whether anyone other than himself had a key to the car, a dispatch regarding defendant exposing himself to children that was determined to be unfounded, and evidence that Meneka Heath called the police several times on the morning in question and told Benford in person that defendant was the offender in a

domestic battery. Defense counsel presented this theory of innocence to the trial court in opening statements, while arguing the motion for directed finding, and in closing arguments. The trial court ultimately rejected it. Given that the theory was based on circumstantial evidence, surmise, and mere possibility, we cannot find that the court erred in doing so.

¶ 28 Finally, we cannot find that the trial court acted unreasonably in believing that defendant made incriminating statements to Officer Newman and Shalonda Bradford. Again, we note that matters of credibility are for the trial court to resolve in its role as trier of fact. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002). Newman explained at trial that the police report was a summary of events. The fact that defendant's statement to Newman was not included in that summary does not require the trial court to disbelieve that it occurred. As for the timing of defendant's statement to Bradford, we note that she did not actually pinpoint when it happened, only that it had to have been "no later than" 8:45 a.m. Bradford's testimony, contrary to defendant's argument, does not preclude the possibility that defendant spoke with her prior to his arrest around 8:10 a.m.

¶ 29 Despite the flaws in the State's case that defendant has identified, we find that the evidence directly supporting defendant's conviction could reasonably be accepted by the fact finder who saw and heard the witnesses testify. See *Cunningham*, 212 Ill. 2d at 285. Having heard all the evidence, the trial court was convinced of defendant's guilt beyond a reasonable doubt. 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" 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.

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

¶ 31 Affirmed.