2018 IL App (1st) 150345-U

No. 1-15-0345

Order filed July 26, 2018

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. 13 CR 50
	)	
LOUIS DEAN,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Burke and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated unlawful use of a weapon affirmed. State proved beyond reasonable doubt that defendant knowingly possessed handgun.

¶ 2 Following a bench trial, defendant Louis Dean was convicted of one count of aggravated unlawful use of a weapon (AUUW) (720 ILCS 24-1.6(a)(1)/(3)(C) (West 2012)) and sentenced to 18 months' probation. On appeal, defendant contends his conviction for AUUW should be

reversed because the State failed to prove he knowingly possessed a handgun beyond a reasonable doubt. We affirm.

¶ 3 Defendant went to trial on two counts of AUUW for possessing a firearm without a valid Firearm Owner's Identification (FOID) card (Count 4) and for possessing an uncased, loaded, and immediately accessible firearm without a valid FOID card (Count 2). At trial, Chicago police officer Ronald Vahl testified that, on November 19, 2012, he and his partners, Officers Barsch, Kakos, and Carey, were in a vehicle patrolling the 3700 block of South Wentworth, which was a Chicago Housing Authority (CHA) complex. Around 12:00 to 12:30 p.m., Vahl saw defendant among a large group of approximately 8 to 10 other people. Based on his prior interactions with defendant, Vahl knew that defendant was not a resident of the CHA complex. Defendant was wearing a black jacket with a light colored "hoodie" and a "skull cap."

¶ 4 Vahl initially observed defendant sit down on a rock and thought that defendant was attempting to conceal himself behind the individuals in the group. As the officers got closer, defendant ran away, "grabbing his right * * * waistband area." Based on his experience, having made numerous weapons arrests where the weapons were held in waistbands, Vahl believed that defendant might be armed. Kakos and Barsch pursued an individual, who ran from the group in a different direction on foot, while Vahl and Carey pursued defendant in their vehicle. Shortly thereafter, Carey got out of the car to pursue someone else on foot and Vahl drove on alone in pursuit of defendant. Vahl lost sight of defendant when defendant turned onto a narrow sidewalk where the vehicle could not follow. But Vahl shortly spotted him again running through the complex. He detained defendant for criminal trespassing on CHA property. Vahl testified it was

"a minute or possibly less" between when he saw defendant on the rock and when he detained him.

¶ 5 Approximately 10 minutes after Vahl detained defendant and placed him in the rear of his vehicle, Carey returned to the vehicle with a handgun that he had recovered, and showed it to Vahl. Vahl gave defendant his *Miranda* warnings. Defendant admitted to possessing the handgun "during the course of the foot pursuit." He told Vahl he had purchased it the previous Friday for $150 and was carrying it because someone in a champagne-colored SUV had threatened him twice at the CHA property.

¶ 6 Vahl subsequently obtained CHA video surveillance of the incident. The parties stipulated to the evidentiary foundation for the footage. A DVD containing 13 video files, each from a different camera in use at the CHA property, was ultimately admitted into evidence. Three video clips were played to the court and narrated by Vahl.

¶ 7 Vahl testified that the first file labeled "235 West 37th Place," depicted him and his partners approaching a group of individuals from north to south on the 3700 block of South Wells Street. The video showed defendant sitting on a rock adjacent to a group of approximately 11 people and, 12 seconds later, depicted defendant running away from the group with Vahl's vehicle following behind him.

¶ 8 Vahl testified that the file labeled "3749 South Wells" depicted one of the walkways between two of the row houses, spanning from east to west. Vahl stated that this area was just south of the location he first observed defendant run. In the video, a man wearing a black jacket with a gray hoodie underneath—the clothes defendant was wearing—is seen running down the

walkway. The man stopped briefly to throw something from his waistband towards a group of houses and then continued to run.

¶ 9 Vahl testified that the last file, labeled "3747 South Wells," depicted a person running down the sidewalk towards Wentworth Avenue, just south and east of where Vahl initially observed defendant running from the rock. Vahl stated the person in the video appeared to be wearing the exact same clothing that defendant was wearing that day and he had seen defendant enter the area depicted on the video.

¶ 10 There are two files on the disk identified as "3747 South Wells." In the file labeled "3747Swells_SE-121," a dumpster enclosed by a brick wall is shown in the top right hand corner of the screen. The video depicts a person wearing a black jacket with a gray hoodie underneath —again, the clothes defendant was wearing—running by the bottom corner of the screen, not near the dumpster.

¶ 11 Approximately three minutes after this person is seen running, a different man, wearing a black hoodie and black pants, is seen walking by the dumpster. The man crouched down, placed something near the dumpster, and continued to walk off with a man wearing a white hoodie and white pants. Vahl did not testify to this portion of the video.[1]

¶ 12 Officer Carey testified that he observed defendant run from the rock as the police vehicle approached the group of individuals. Carey and Vahl pursued defendant in their vehicle and, early in the pursuit, Carey left the vehicle to pursue other individuals by foot. Carey stated that, after his pursuit of the individual he had been chasing, he began to search the area for a weapon.

[1] It is unclear whether this portion of the video was played in court. However, the DVD, containing 13 video files, was admitted into evidence. Thus, it is presumed the trial court considered it. See *People v. Schuit*, 2016 IL App (1st) 150312, ¶ 105 ("When reviewing a claim of insufficient evidence in a bench trial, we presume that the trial court accurately recalled and considered all the evidence").

Approximately 10 to 12 minutes after he had first encountered defendant, Carey located a blue steel, semiautomatic nine-millimeter handgun loaded with eight live rounds near a dumpster at approximately 3756 Wentworth, which was about 75 to 100 feet from where he first observed defendant running. He showed the weapon to Vahl, in defendant's presence.

¶ 13 At the police station, Carey interviewed defendant in Barsch's presence. He gave defendant his *Miranda* warnings, showed defendant the recovered handgun, and asked him: "Is this the handgun you had today?" Defendant readily replied that it was. Carey denied having any previous conversation with defendant concerning the amount of trouble he would be in if he did not admit that the handgun was his and also denied telling defendant that he would try to help him if he made an admission.

¶ 14 In addition to the surveillance videos, the State entered into evidence a certification form from the Illinois State Police certifying that, as of January 23, 2014, defendant had never been issued a FOID card. The court granted defendant's motion for a directed finding on Count 2, finding the evidence insufficient to show aggravated unlawful use of a firearm based on the possession of an uncased, loaded, and immediately accessible firearm without a valid FOID card. It denied the motion on Count 4.

¶ 15 Defendant testified that he did not possess a firearm on November 19, 2012, when he encountered the officers, and denied making any admissions to Vahl or Carey. He testified that he admitted he possessed the gun to another officer, whom he "didn't see in court today," at the police station. Defendant asserted that he initially denied possessing the handgun, but the officer threatened to charge him with a Class X felony that carried a sentence of "6 to 30 years without probation," if he did not admit to it. The officer told defendant he would be charged "with a one

to three and get probation" if he told the officer that it was his handgun. Defendant asserted that he continued denying possession of the handgun until the officer threatened him a second time, at which point he confessed. Defendant claimed that he never purchased a handgun.

¶ 16 During cross-examination, defendant stated that he was wearing a black jacket and gray hoodie at the time of the offense. He testified that his statement at the police station was made to an officer who had been in court earlier that day, wearing a "red shirt" with a "dark-colored goatee." He and the officer had been alone in the lockup. Defendant asserted that he was not given his *Miranda* warnings in the police car when he was initially detained, but was given them at the police station "after the admission and everything else." Defendant denied being shown the handgun by Vahl or Carey. He claimed the officer in the red shirt showed it to him at the time he was arrested and again at the police station. Defendant then admitted to having a conversation with Vahl about the handgun in the police car, at the time he was arrested, but denied having the conversation with Carey at the police station. Defendant initially denied knowing anyone who owned a champagne-colored SUV, but then admitted telling "officers" that he purchased the handgun for $150 on the previous Friday because he had been threatened on two occasions by someone driving a champagne-colored SUV on CHA property.

¶ 17 On re-direct examination, defendant admitted to making the statements pertaining to purchasing the handgun for protection on his own volition, and that the statements were not something officers told him to say.

¶ 18 Trial was continued to the next day so that Officer Barsch could testify in rebuttal. Barsch testified that he had a beard and was in court the previous day wearing a red shirt under his police vest. He stated he was present during defendant's interrogation by Carey at the police

station, during which Carey showed defendant the gun and defendant responded. Barsch stated that he did not speak, nor did he threaten defendant with a Class X charge or promise him a Class 4 charge if he confessed.

¶ 19 The trial court found defendant guilty of AUUW as charged in Count 4. It found the officers to be "credible when they testified" and defendant to be a "terrible witness" who was "not credible." The court stated it was a reasonable inference that defendant was holding his waistband when he ran in order to conceal something or prevent something from falling down his pant leg. It stated the recovered handgun was a *corpus delicti* corroborating defendant's admitted possession of a handgun. The court also noted that, "quite amazingly," defendant testified he told Barsch about the gun, even though Barsch did not testify to getting any type of statement from defendant. After denying defendant's motion to vacate the guilty verdict, it sentenced defendant to 18 months' probation. This appeal followed.

¶ 20 On appeal, defendant argues the State failed to prove him guilty beyond a reasonable doubt of AUUW, as the State failed to prove he knowingly possessed a firearm. He claims that the State's video evidence showed that the handgun found by police near a dumpster was placed by someone other than defendant. Defendant requests that we reverse his conviction.

¶ 21 When reviewing the sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. It is the fact finder's responsibility "to determine the credibility of witnesses, to resolve any conflicts in the evidence and to draw reasonable inferences from the evidence." *People v. Teague*, 2013 IL App (1st) 110349, ¶ 26. The reviewing court will not

substitute its judgment for that of the trier of fact on issues pertaining to the credibility of witnesses or the weight of the evidence. *Id.*

¶ 22 A defendant may be convicted based entirely on circumstantial evidence, provided that the elements of the crime charged are proven beyond a reasonable doubt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). The trier of fact, however, need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. *Id.* It is sufficient if all the evidence taken together proves the defendant's guilt beyond a reasonable doubt to the fact finder's satisfaction. *Id.* We will reverse a conviction only if the evidence is so improbable or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 23 To sustain defendant's conviction of AUUW as charged in Count 4, the State was required to prove that defendant (1) knowingly carried a firearm on or about his person, (2) at a time when he was not on his own land or in his own abode or place of business, and (3) he had not been issued a valid FOID card. 720 ILCS 24-1.6(a)(1)/(3)(C) (West 2012). Knowledge and possession are factual questions to be resolved by the trier of fact, and we will not disturb those findings "unless the evidence is so unbelievable, improbable, or palpably contrary to the verdict that it creates a reasonable doubt of guilt." *People v. Luckett*, 273 Ill. App. 3d 1023, 1033 (1995). Defendant challenges the possession element of the offense, thus conceding he had no valid FOID card.

¶ 24 Knowing possession may be actual or constructive. *People v. Brown*, 327 Ill. App. 3d 816, 824 (2002). Where possession is constructive, the State must prove that defendant: (1) knew of the presence of the weapon and (2) exercised immediate and exclusive control over the area where the weapon was found. *People v. Stack*, 244 Ill. App. 3d 393, 398 (1993). Knowledge is

often established through circumstantial evidence and rarely direct proof. *People v. Fleming*, 2013 IL App (1st) 120386, ¶ 74. The State may prove knowledge through evidence regarding defendant's acts, statements, or conduct, as well as the surrounding circumstances. *Id* ¶ 75. Control may be proven by demonstrating that defendant had the " 'intent and capability to maintain control and dominion' over an item, even if he lacks personal present dominion over it." *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17 (quoting *People v. Frieberg*, 147 Ill.2d 326, 361 (1992)).

¶ 25 Viewed in the light most favorable to the State, the evidence was sufficient to prove beyond a reasonable doubt that defendant knowingly possessed the handgun recovered by police. Officer Vahl testified that, as his vehicle approached defendant and a group of individuals in the area of the 3700 block of South Wentworth near the CHA complex, defendant crouched on a rock, apparently attempting to conceal himself. Defendant, on his own volition, then ran off while holding the right side of his waistband, which in Vahl's experience led him to suspect that defendant was armed. As the trial court noted, it is a reasonable inference that defendant was holding his waistband in order to conceal a weapon or prevent one from falling down his pants leg as he ran. Defendant had ample time to dispose of the handgun during the time Vahl lost sight of him.

¶ 26 Crucially, defendant admitted to police—twice, in the presence of three different officers—that he possessed a handgun when he ran. Approximately 10 minutes after Vahl detained defendant, Officer Carey returned to the vehicle with a handgun he had recovered a short distance from where defendant had started to run. After Vahl gave defendant his *Miranda* warnings, defendant admitted to Vahl that the recovered handgun was his. He told Vahl that he

had purchased it the previous week for $150 and was carrying it to protect himself from someone in a champagne-colored SUV who had threatened him while at the CHA complex. Defendant then made a second confession at the police station to Carey, after again receiving *Miranda* warnings, affirming that the gun was "the handgun [he] had" on him that day.

¶ 27 Defendant asserts that his confession was "coerced" and false. He stated that he did not tell Carey it was his gun. Rather, he told the bearded officer in the red shirt, Barsch, that the handgun was his, under threats of a Class X conviction. But Barsch's testimony directly rebutted defendant's testimony. The trial court heard all of that testimony and did not believe defendant. It found the three officers "credible" but found defendant to be a "terrible witness" who was "not credible." We will not substitute our judgment for that of the fact finder on its credibility finding. *People v. Tabb*, 374 Ill. App. 3d 680, 692 (2007). We thus have no basis whatsoever to reject the notion that defendant confessed, twice, to possessing the handgun when he fled from the officers.

¶ 28 And defendant admitted that he provided specific details such as the price he paid for the handgun and the reason he purchased it. He never testified that he was coerced to provide *those* details. To the contrary, defendant testified that the officers did not tell him to add the details about how he came to own the handgun; rather, they were his own words. This testimony, the circumstances of defendant's flight while holding his waistband, and the handgun recovered 75 to 100 feet from where defendant first fled, sufficiently corroborated defendant's admissions to establish proof of his "knowing possession" of the firearm. See *People v. Phillips*, 215 Ill. 2d 554, 576 (2005) (defendant's confession and corroborating evidence may be considered together in determining whether defendant committed crime beyond reasonable doubt); *People v. Hall*,

194 Ill. 2d 305, 330 (2000) (circumstantial evidence is sufficient to sustain conviction, provided that the elements of crime charged are proven beyond reasonable doubt).

¶ 29 Defendant's remaining argument concerns the video evidence. To recap, there were two episodes captured on video that showed a fleeing individual disposing of an item. In neither instance was the video clear enough to indicate what, exactly, that item was—that is, whether it was a handgun.

¶ 30 The first episode, involving a man whom Vail identified as defendant based on his clothing, shows defendant throwing an unidentified item from where was standing—the sidewalk—toward a row of homes. The second episode, coming some three minutes later, showed a different man placing an unidentified item under a dumpster.

¶ 31 Defendant claims that it was this second dumping that must have been the gun recovered by Officer Carey—and thus, the gun must have belonged to that individual, not defendant.

¶ 32 This, we would note, is not what defendant argued at trial. At trial, his lawyer argued that the officers "never testified where the weapon was found" and that "[w]e don't know where it was found." Defense counsel never highlighted that video evidence to argue that a different man, wearing different clothes than defendant, disposed of the gun that Officer Carey recovered, or that this fact cast doubt on whether defendant had originally been the one in possession of the handgun when he first fled from police.

¶ 33 Officer Carey was not particularly specific as to where he located the weapon. He was specific on one point, however—he found the weapon at "[a]pproximately 3756 Wentworth." It was found about 75 to 100 feet from where the officers first spotted defendant, and it was along the path that defendant took when he fled from the officers. There is a single allusion to a

"dumpster" in Officer Carey's testimony that, to be sure, could suggest that the officer was testifying that he found the weapon in or near a dumpster. But the defense did not follow up on the fact at all, and it certainly does not automatically follow that the second item-dumping—which occurred by a dumpster—involved a gun at all, much less the gun recovered by the officer. And for that matter, even if the item dumped under the dumpster was a handgun, and even if it was the handgun Officer Carey recovered, we could not discount the possibility that one of defendant's fellow, fleeing cohorts moved defendant's weapon from the first place he tossed it to a more secure hiding place in or around a dumpster.

¶ 34 We do not know any of those things. But here, again, is what we do know: (1) defendant fled from the officers immediately upon seeing them; (2) he favored his right waistband, indicating to the experienced officers that he had a gun; (3) the gun was recovered along the path on which defendant fled; and finally and by far most importantly, (4) defendant admitted—twice, in the presence of three different officers deemed credible by the trial court—that the gun was his. The fact that some video evidence could have poked holes in the State's case is part and parcel of the trial court's role in weighing the evidence and resolving any conflicts therein. *Siguenza-Brito*, 235 Ill. 2d at 228. Taking the evidence in the light most favorable to the State, we cannot say that the evidence was so insubstantial that reversal is warranted. We affirm defendant's conviction.

¶ 35 Affirmed.