2018 IL App (1st) 161674-U

SIXTH DIVISION
AUGUST 17, 2018

No. 1-16-1674

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 14882
	)	
KEVIN ARMSTRONG,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence presented at trial was sufficient to prove defendant guilty beyond a reasonable doubt of the crime of being an armed habitual criminal.

¶ 2 Following a bench trial, defendant Kevin Armstrong was convicted of the crime of being an armed habitual criminal (720 ILCS 5/24-1.7 (West 2014)) and sentenced to six years in prison. On appeal, defendant challenges the sufficiency of the evidence, arguing that the State failed to prove that he possessed a firearm where no gun or other physical evidence was

introduced at trial, and the arresting police officer's testimony was uncorroborated and implausible. For the reasons that follow, we affirm the judgment of the circuit court of Cook County.

¶ 3 Following his arrest on July 27, 2014, defendant was charged with one count of being an armed habitual criminal, and several other firearms-related offenses. Prior to trial, the State *nol-prossed* all counts except for the armed habitual criminal count.

¶ 4 At trial, Chicago police officer Matthew Schaller testified that about 7:30 p.m. on the day of defendant's arrest, he and his partner, Officer Orozco, drove to the 8100 block of South Loomis Boulevard in their squad car in response to a radio call. When they arrived, a woman, later identified as Asani Williams, approached their car. Williams told the officers that she had been in a physical altercation or fight with her neighbor. She further reported that "he had said to her that he was going to go get a gun," and she pointed northward.

¶ 5 Officer Schaller looked in the direction in which Williams pointed and saw defendant, whom he identified in court, coming out of a house about three houses away. Nothing obstructed Officer Schaller's view of defendant through his squad car's windshield. In defendant's right hand, which was on the side farther away from the squad car, Officer Schaller saw a shiny chrome or nickel-plated revolver. Defendant descended the house's porch steps and started walking across the sidewalk and toward the street between two parked cars, with the gun still in his hand.

¶ 6 When defendant was near the parked cars, he looked in the officers' direction. At this point, Officers Schaller and Orozco got out of their car and began to approach defendant, and defendant turned and started walking back toward the house. The officers ran after defendant "as fast as [they] could," announced their office, and told defendant to drop the gun. Defendant ran

up the porch stairs and into the house. Officer Schaller was at the bottom of the steps as defendant "was just making the door." The officers ran up the steps as fast as they could but defendant shut the front door. The door was locked, but the officers broke the door's glass panel open with their steel batons. They stepped through the broken glass panel into the entryway, and then Officer Schaller kicked open the locked interior door. As the officers stepped into the front room, Officer Schaller saw defendant standing a couple of feet away, facing the officers and holding the gun.

¶ 7 Officer Schaller ordered defendant to drop the gun. In response, defendant ran toward a bedroom. He dropped the gun behind a radiator outside the bedroom door, entered the room, and sat on the bed. The officers ordered defendant out of the bedroom and onto the ground. Defendant complied and was placed into custody. Officer Schaller then went to the radiator and recovered a loaded, .38 caliber revolver from the floor.

¶ 8 At the police station, Officer Schaller advised defendant of his *Miranda* rights, which he indicated he understood. Defendant then spoke with Officer Schaller about the gun. Specifically, Officer Schaller testified, "He said, I never had a gun. He doesn't own a gun, but then he said he doesn't really remember, so he could have had one."

¶ 9 On cross-examination, Officer Schaller estimated that he was about 80 to 100 feet from defendant's house when he first saw defendant on the porch. When asked how far he was from defendant when defendant started running up the steps, Officer Schaller answered, "Maybe a house length at the time, a city block." On redirect examination, Officer Schaller testified that he had no trouble recognizing the object in defendant's hands as a nickel-plated gun, despite the distance between them, as he could clearly see the cylinder of the revolver.

¶ 10 Apart from Officer Schaller's testimony, the State entered into evidence two certified copies of conviction. One reflected that defendant was convicted of possession of a controlled substance with intent to deliver in 1990. The other reflected a 1992 conviction for the same offense.

¶ 11 After the State's evidence, defendant made a motion for a directed finding, which the trial court denied. Defendant presented no evidence. Following closing arguments, the trial court found defendant guilty of being an armed habitual criminal. Defendant filed a motion for a new trial, arguing, among other things, that Officer Schaller's testimony was uncorroborated and incredible. After a hearing, the trial court denied the motion. The court subsequently sentenced defendant to six years in prison, and denied his motion to reconsider sentence.

¶ 12 On appeal, defendant challenges the sufficiency of the evidence to sustain his conviction. 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). The testimony of a single witness, if positive and credible, is sufficient to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). A reviewing court will not reverse a conviction simply because the defendant claims that a witness was not credible. *Id*. Rather, 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). Where a guilty finding depends on eyewitness testimony, a

reviewing court must decide whether, in light of the record, any fact finder could reasonably accept the testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004).

¶ 13 A person commits the offense of being an armed habitual criminal if he "receives, sells, possesses, or transfers any firearm after having been convicted a total of 2 or more times of any combination of the following offenses: *** any violation of the Illinois Controlled Substances Act." 720 ILCS 5/24-1.7(a)(3) (West 2014). In the instant case, defendant only challenges the element of possession of a firearm.

¶ 14 Defendant contends that the State failed to prove that he possessed a firearm where no gun was introduced at trial, no physical or forensic evidence linked him to any gun, and Officer Schaller's testimony was uncorroborated, dubious, and implausible. Defendant questions Officer Schaller's ability to see a gun in defendant's far hand from a distance of 80 to 100 feet, when defendant was on an elevated porch while Officer Schaller was still inside his squad car. Defendant claims the officer's testimony of "superhuman visual acuity" is incredible. Defendant also doubts Officer Schaller's account of the ensuing chase and recovery of the gun. He maintains that it is implausible that defendant, after disobeying officers, running from them, and locking them out of his residence, would have been found standing in the entryway with a gun in his hand after the officers broke through two doors to gain entry. Similarly, he claims it is implausible that defendant would have dropped a gun behind a radiator in full view of the officers. Defendant further asserts that it "taxes the gullibility of the credulous" that he would have made an incoherent statement about a gun after his arrest. Finally, defendant faults the State for its "decision to avoid forensic testing," such as fingerprint testing of the gun that could have

corroborated Officer Schaller's testimony, as well as its failure to introduce the gun into evidence at trial.

¶ 15 For the most part, defendant's arguments involve matters of credibility that are for the trial court to resolve in its role as trier of fact. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002). As noted above, it is the trier of fact who assesses the credibility of witnesses, and resolves conflicts or inconsistencies in the evidence. *Id*.; *Brooks*, 187 Ill. 2d at 131.

¶ 16 Here, the trial court heard Officer Schaller's testimony and was well aware of defendant's position that it lacked credibility. In closing arguments, defense counsel insisted that the State's version of events was "hard to believe." Counsel questioned Officer Schaller's ability to see a gun in defendant's hand from a distance of 80 to 100 feet, and asserted that it was "too perfect" and not believable that, after a chase during which police broke two doors, defendant would be standing directly in front of the officers with a gun still in his hand. Counsel argued that: "[I]f you *** consider how houses are spaced and distances and time, it could not have happened that way." Similarly, when arguing the motion for a new trial, defense counsel stated that Officer Schaller's testimony was "uncorroborated in any fashion," questioned Officer Schaller's ability to see the gun and argued that defendant's confession did not "make any sense." Counsel further asserted that it was "incredulous" that defendant "would be there standing there, holding the gun, waiting for the officers to come in."

¶ 17 Despite these arguments, the court stated at the close of trial that it found Officer Schaller "very credible," finding it was reasonable to infer from the evidence that "it was all happening very, very quickly." Then, at the hearing on the posttrial motion, the court reiterated that it found his testimony to be believable. We will not substitute our judgment for that of the trial court on this question of credibility. *Brooks*, 187 Ill. 2d at 131.

¶ 18 With regard to defendant's arguments concerning the lack of corroboration, we note that the failure to conduct fingerprint analysis does not render testimonial evidence insufficient. See *People v. Bennett*, 154 Ill. App. 3d 469, 475 (1987) ("[T]he lack of fingerprint evidence does not necessarily raise a reasonable doubt as to guilt," rather, "it is unnecessary and cumulative where there is eyewitness testimony."). In addition, the State was not obligated to present another witness or introduce the gun into evidence; rather, it is settled law that the credible testimony of a single eyewitness is sufficient to establish guilt beyond a reasonable doubt. *Siguenza-Brito*, 235 Ill. 2d at 228; see also *People v. Daheya*, 2013 IL App (1st) 122333, ¶¶ 75-76 (the State was not required to present physical evidence, such as a gun, gunshot residue, or fingerprints, in order to prove defendant guilty beyond a reasonable doubt of aggravated discharge of a firearm).

¶ 19 We find that the evidence supporting defendant's conviction could reasonably be accepted by the trial court, who saw and heard Officer Schaller testify. Contrary to defendant's arguments, in our view, this is not a case in which the witness's description of the crime was incredible on its face. See *Cunningham*, 212 Ill. 2d at 284. 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.

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.