2018 IL App (1st) 162518-U

No. 1-16-2518

Order filed December 10, 2018

First Division

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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. 15 CR 11341
	)	
ALONZO BALL,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justices Griffin and Walker concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for unlawful use of a weapon by a felon over his contention that the evidence was insufficient to prove him guilty beyond a reasonable doubt.

¶ 2 Following a jury trial, defendant Alonzo Ball was found guilty of unlawful use or possession of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2014)) and sentenced to six and a half years' imprisonment. On appeal, he argues the evidence was insufficient to

prove him guilty beyond a reasonable doubt where the responding officer's testimony was incredible. We affirm.

¶ 3 Defendant was charged by information with two counts of UUWF and four counts of aggravated unlawful use of a weapon stemming from acts occurring July 5, 2015, in Chicago. The State proceeded to trial on one count of UUWF, where the following evidence was presented.

¶ 4 Chicago police officer Michael Margolis testified that, on July 5, 2015, he and his partner, Officer Ryan Krolikowski, were driving in a marked squad car in the area of 69th Street and Ashland Avenue. Margolis received a radio call of a man with a very specific clothing description with a gun in the area of 71st Street and Vincennes Avenue.[1] As the officers passed the intersection of 69th Street and Wentworth Avenue, Margolis observed a man, identified in court as defendant, wearing a white t-shirt and red shorts and riding a pink bicycle, turning onto 69th Street.

¶ 5 After Krolikowski stopped the police car five feet from defendant to conduct a field interview, Margolis attempted to exit the car. Defendant looked in Margolis's direction, jumped off the bicycle, and fled on foot across 69th Street. Margolis pursued defendant, who ran past a stopped bus. Margolis, who was 10 feet behind defendant, saw defendant reach into his right shorts pocket and remove a handgun. Margolis was able to see the barrel and part of the cylinder of the handgun.

¶ 6 Defendant then threw the gun to the ground and it slid underneath the bus. He continued to flee eastbound, and Margolis continued to give chase, providing directions over his police

[1] Prior to trial, the court ruled on a motion *in limine* and instructed the State to elicit at trial that officers received a call regarding a man with "a very specific clothing description."

radio. Krolikowski initially got out of the car and "tried to keep up with us" but, at some point, stopped and returned to the squad car. Defendant ran down 69th Street into an alley and continued running through the alley before proceeding through a gangway to Perry Avenue. Margolis pursued defendant through the gangway and observed defendant jump a 10-foot wrought-iron fence. Margolis then saw defendant remove his white t-shirt and walk on the sidewalk.

¶ 7 Margolis observed a marked squad car pull up on Perry and heard officers get out of the car and announce their office. Margolis retraced his steps back to 69th and Wentworth and saw that the bus was no longer there but a black gun was laying in the middle of the street. A "couple of minutes," after Margolis saw defendant throw the gun, he recovered the loaded gun without gloves and placed it in his pocket. Margolis testified that he did not use gloves to retrieve the gun because of "the exigent circumstances of the gun being in the middle of the street where cars are passing."

¶ 8 Margolis returned to Perry where defendant was placed into custody and observed him in the back of a squad car. Margolis and Krolikowski transported defendant to the police station, where Margolis gave the gun to Krolikowski to inventory. The gun was a .22-caliber revolver with five live rounds.

¶ 9 On cross-examination, Margolis acknowledged the area he was patrolling was a "high crime area" with "a lot of drugs and guns." Margolis further testified that he never yelled to Krolikowski that defendant had a gun and did not request an evidence technician to retrieve the gun. Margolis never requested fingerprinting or DNA testing of the gun because he had already handled it.

¶ 10 Officer Krolikowski testified consistently to Margolis as to the events on July 5, 2015. As he and Margolis approached the area of 69th and Wentworth, Krolikowski observed a man, identified in court as defendant, dressed in a white t-shirt and red shorts and riding a pink bicycle. Krolikowski stopped the squad car in order to conduct a field interview when defendant made eye contact and "took off running."

¶ 11 Krolikowski exited the squad car but lost sight of defendant behind a bus. After also losing sight of Margolis, Krolikowski got back inside the squad car and drove to Perry, the next block over. As Krolikowski was slowly driving down Perry, he observed defendant shirtless going through a gate. Krolikowski exited his vehicle and placed defendant into custody with the help of an assisting officer. Defendant was "very swe[a]ty" and "out of breath."

¶ 12 Krolikowski and Margolis transported defendant to the police station. Margolis gave Krolikowski the recovered gun to unload and inventory.

¶ 13 On cross-examination, Krolikowski testified that he never heard Margolis yell out that defendant had a gun or that a gun was being tossed.

¶ 14 Chicago police officer Thomas Ellerbeck, an evidence technician, testified as in expert in the field of forensic latent print development and recovery. Upon the request of the defense, Ellerbeck examined the recovered gun and determined it was a .22-caliber revolver. Ellerbeck performed seven different tests on the gun but was unable to develop any fingerprints on it. He explained that, in the over 1300 firearms he has analyzed, he has only been able to find suitable fingerprint impressions approximately 44 times.

¶ 15 The parties stipulated that defendant had a prior qualifying felony conviction for the charge of unlawful possession of a weapon by felon.

¶ 16 During closing arguments, defense counsel argued, *inter alia*, that Margolis "never yells gun," when he believed Krolikowski was trailing him. Counsel continued, "[t]he officer doesn't yell gun. Not credible. If he saw a gun tossed, he is going to yell gun at least because he is going to hope his partner will pick the gun up." Counsel further argued, "[w]hy doesn't he radio, oh, there is a gun back at 69th for somebody to go secure that gun and get that gun." Counsel also highlighted that Margolis never used gloves to pick up the gun and "most telling[ly]," did not request an "[evidence technician] to print the gun." The jury found defendant guilty of UUWF. After defendant's written motion for a new trial was denied, the trial court sentenced defendant to six and a half years' imprisonment.

¶ 17 On appeal, defendant argues the evidence was insufficient to find him guilty of UUWF where Margolis's testimony was incredible. Specifically, he asserts that Margolis (1) never yelled that defendant had a gun, even though he believed Krolikowski was trailing him in pursuit, (2) never radioed to officers that there was a gun on the street where he observed defendant throw it, and (3) failed to use gloves to pick up the gun.

¶ 18 When reviewing the sufficiency of the evidence, we look whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find the elements of the offense beyond a reasonable doubt. *People v. Newton*, 2018 IL 122958, ¶ 24. The trier of fact has the duty of determining the credibility of witnesses, weighing the evidence and any inferences derived therefrom, and resolving any conflicts in the evidence. *People v. Harris*, 2018 IL 121932, ¶ 26. On appeal, we will not retry a defendant. *Newton*, 2018 IL 122958, ¶ 24. Although the determinations of the trier of fact are afforded great deference, they are not conclusive. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). A conviction will not be overturned

unless the evidence is so improbable, unsatisfactory, or inconclusive that a reasonable doubt of defendant's guilt exists. *People v. Brown*, 2013 IL 114196, ¶ 48.

¶ 19 In order to sustain a conviction for UUWF, the State must prove the defendant (1) knowingly possessed a firearm or firearm ammunition and (2) had a prior felony conviction. 720 ILCS 5/24-1.1(a) (West 2014). Here, defendant does not contest that he had a prior felony conviction. Instead, he asserts the evidence was insufficient to show he knowingly possessed a firearm.

¶ 20 Possession may be actual or constructive. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Furthermore, a defendant acts with knowledge when it is proven he is aware of the existence of facts that make his conduct unlawful. *People v. Gean*, 143 Ill. 2d 281, 288 (1991). The element of knowledge is rarely established by direct proof, and is usually shown through circumstantial evidence. *People v. Fleming*, 2013 IL App (1st) 120386, ¶ 74. "Knowledge and possession are factual issues, and we will not disturb the trier of fact's findings on these questions unless the evidence is so unbelievable or improbable that it creates a reasonable doubt as to the defendant's guilt." *People v. Miller*, 2018 IL App (1st) 152967, ¶ 9.

¶ 21 Viewing the evidence in the light most favorable to the State, a rational trier of fact could find defendant guilty beyond a reasonable doubt of UUWF. Margolis testified that as he was chasing defendant, he observed defendant remove a handgun from his right shorts pocket and throw it to the ground. Margolis was able to see the barrel and part of the cylinder of the handgun. He later recovered the gun, a .22-caliber revolver, in the same area where he saw defendant throw it to the ground. The testimony of a single witness, if positive and credible, is

sufficient to convict a defendant. *People v. Gray*, 2017 IL 120958, ¶ 36. Based on Margolis's testimony, the jury could have reasonably found defendant guilty of UUWF.

¶ 22 Defendant nevertheless asserts that Margolis was not credible because he did not yell out "gun," even where he believed Krolikowski was trailing in pursuit behind him. In a related argument, he asserts that Margolis also did not radio to other officers that defendant had thrown a gun, thereby making his testimony unbelievable. Indeed, these arguments were presented to the jury, which subsequently rejected them.

¶ 23 Here, the jury had the duty of determining the credibility of Margolis as a witness, weighing the evidence and any inferences derived therefrom, and resolving any conflicts in the evidence. See *Harris*, 2018 IL 121932, ¶ 26. We will not reverse a conviction where a defendant merely asserts that a witness is not credible. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Where Margolis observed defendant remove a gun from his pants and throw it to the ground during a chase, we do not believe his failure to yell out or radio, "gun" renders the evidence improbable or unsatisfactory that a reasonable doubt of defendant's guilt exists. See *Brown*, 2013 IL 114196, ¶ 48. The jury found Margolis's testimony to be credible, and we defer to that determination. See *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 24 Moreover, the fact that Margolis did not use gloves to retrieve the gun—or that the gun did not contain defendant's fingerprints—does not cast doubt on the jury's verdict. "A trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor must the trier of fact search out all possible explanations consistent with innocence, and raise those explanations to a level of reasonable doubt." *Jonathon C.B.*, 2011 IL 107750, ¶ 60. Here, Margolis explicitly testified that he did not use gloves to retrieve the gun because of "the exigent

circumstances of the gun being in the middle of the street where cars are passing." Further, Ellerbeck testified that he performed seven different tests on the gun but was unable to develop any fingerprints on it and that in the over 1300 firearms he has analyzed, he has only been able to find suitable fingerprint impressions approximately 44 times. The jury could properly accept both Margolis's and Ellerbeck's testimony. See *Harris*, 2018 IL 121932, ¶ 26. Therefore, the evidence, viewed in the light most favorable to the State, establishes that defendant possessed the firearm and thus was guilty of UUWF.

¶ 25 We are not persuaded by defendant's reliance on *People v. Quintana*, 91 Ill. App. 2d 95, 98 (1968), for the proposition that Margolis was unworthy of belief and had an incentive to lie. In *Quintana*, the defendant was convicted of possessing marijuana after a police officer testified that he observed the defendant, who he knew, throw two packages of marijuana under a parked car. *Quintana*, 91 Ill. App. 2d at 96.

¶ 26 On appeal, this court held that "the testimony of the police officer [was] suspect and that his uncorroborated testimony [was] insufficient to prove the defendant guilty beyond a reasonable doubt." *Id.* at 99. This court explained its "skepticism" of the officer's version of events "stem[med] from the prior relationship between the officer and the defendant," which included "harassment" wherein the officer was determined to "get something" on the defendant and "to pressure him into becoming the officer's personal informer." *Id.* at 97-98. Further, this court noted the officer "pursued his personal vendetta" and "it was only after [the defendant's] repeated refusal that a charge was placed against him." *Id.* at 98.

¶ 27 Unlike *Quintana*, there was no evidence that Margolis harbored any animus towards defendant or even had known him before their interaction. Instead, the evidence showed

Margolis had simply come upon defendant after hearing a radio dispatch, and defendant took off running, throwing a gun to the ground as he fled. The concerns exhibited by the *Quintana* court with respect to the officer's testimony are not present here.

¶ 28 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.