

NOTICE

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FILED

October 17, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 160022-U
NO. 4-16-0022

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
D'ANDRE TEMPLETON,)	No. 13CF1196
Defendant-Appellant.)	
)	Honorable
)	John W. Belz,
)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence presented by the State was sufficient to prove defendant guilty of unlawful possession of a weapon by a felon beyond a reasonable doubt.

¶ 2 Following a jury trial, defendant, D'Andre Templeton, was convicted of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)) and the trial court sentenced him to nine years in prison. Defendant appeals, arguing the evidence presented by the State was insufficient to support his conviction. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 2013, a grand jury indicted defendant on charges of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(1) (West 2012)) and unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)). In October 2015, defendant's jury trial was conducted.

¶ 5 At trial, the State presented evidence regarding a shooting incident on December 8, 2013, near an apartment building located on West Scarritt Street in Springfield, Illinois. Larry Swann testified he resided in apartment number 1 of the building. He also performed maintenance work on the building and was its property manager. On the morning of December 8, 2013, Swann was standing at the front door of his apartment drinking coffee. He “heard a fire” sound, which he thought was the sound of a car backfiring. He then observed a gray or silver car pull up outside the building. Swann testified two males exited the vehicle. One of the males was wearing a “black hoodie” with white lettering that said “R.E.P. or P.E.B.” The other individual “was a black male with dreadlocks.” The male with dreadlocks went “up the stairs” to apartment number 9 while the male wearing the “black hoodie” walked “down in front of [Swann’s] apartment and *** stood there.” Swann estimated that the man was 20 to 25 feet away from him. He identified defendant as the man wearing the black hoodie.

¶ 6 Swann further testified that he stepped outside of his apartment and was standing on his “deck” when he saw defendant with a gun. He stated that defendant “was standing right there in front of [him]” and fired the gun once. Swann observed “fire fly from the barrel” of defendant’s gun. He also heard defendant “holler” at someone, stating “ ‘You’re nothing but a pussy. Come on down here and do something.’ ” According to Swann, after defendant fired the gun, defendant returned to the car and then went up to apartment number 9.

¶ 7 Swann testified he called the police when he saw defendant “pull the gun.” Further, he described the incident as occurring “[i]n the morning time” and while it was “clear” and “sunny” outside. The State submitted a black hooded sweatshirt into evidence, and Swann identified it as the sweatshirt he saw defendant wearing at the time of the incident.

¶ 8 Swann stated he was familiar with firearms and had received some firearm

training. He described the gun he observed defendant shoot as a “[b]lack revolver with wooden handles like a trainee pistol.” The State submitted a gun into evidence, and Swann identified it as the gun he saw defendant fire on December 8, 2013. Swann testified that after observing defendant fire the gun on December 8, 2013, he next observed the weapon a few months later when he and his son found the gun “in the attic of *** [a]partment [number 9] above the kitchen.” According to Swann, he and his son were performing roofing work on the apartment building when his son found the gun. He stated he called the police and a police officer responded and took the gun. Swann testified he never moved or touched the gun.

¶ 9 Swann stated he was familiar with the Scarritt Street building’s apartments. According to Swann, a person could gain access to the location where the gun was found through an exhaust vent located in a closet that held the apartment’s furnace and water heater. Swann testified it appeared that the gun had been thrown to the location where it was found utilizing the exhaust vent inside apartment number 9.

¶ 10 On cross-examination, Swann testified that he believed two females were also in the silver car he had described. Additionally, besides the male with dreadlocks and defendant, Swann believed there was a third individual “up the street” who was involved in the incident. He testified he heard someone “hollering” as he stood outside of his apartment. After defendant entered apartment number 9, Swann “look[ed] up the road” and saw someone driving away in a pickup truck.

¶ 11 Swann further asserted that on the day of the shooting he identified defendant as the shooter to the police. The following colloquy occurred between Swann and defense counsel:

“Q. Now, on the day of the incident in dispute, was [defendant] ever shown to you by the police officers that day and they asked you, ‘Mr. Swann, is

this the guy that you saw shoot?’

A. Yes.

Q. He was physically brought to you?

A. He was down by the police car.

Q. Was he physically marched up to you and an officer said, ‘Mr. Swann, is this the guy?’

A. The officer asked me which one was it that I seen shoot, fire the gun.

Q. What did you tell him?

A. I told him it was the one that had the short hair with the black hoodie on.

Q. Was that after the two folks were removed from the apartment or before the two folks were removed from the apartment?

A. It was after the two folks was removed.”

Swann stated he did not remember which police officer asked him to identify the shooter.

¶ 12 On further cross-examination, Swann acknowledged that defendant was not the leaseholder of apartment 9. He also testified that, when the police officer came to retrieve the gun that Swann and his son found above apartment number 9, he told the officer that the gun had been involved in the December 8, 2013, shooting.

¶ 13 On redirect, Swann testified that although he did not see the other person’s face, defendant had been yelling at someone at the time of the shooting. Swann asserted that while yelling, defendant was facing in the direction of where Swann heard the first “boom,” which he initially believed was a car backfiring.

¶ 14 The State next presented the testimony of police officers Kerry Miller, Robert

Davidsmeyer, and Joseph Womble, each of whom described being called to the scene of the shooting incident on December 8, 2013. The officers' testimony showed the police spoke with Swann and that several officers were on the scene. Ultimately, apartment number 9 was brought to the attention of the police. The apartment was secured to keep people from entering or exiting, and a search warrant was obtained. Officers attempted to make contact with the apartment's occupants but received no response. The police then deployed "gas" inside the building, allowing them to gain access to the apartment. Two individuals were found inside apartment number 9 and taken into police custody. Those individuals were identified as defendant and a man named Sergio Keys.

¶ 15 On cross-examination, Officer Miller testified that when he first arrived on the scene, he was "flagged *** down" by an individual named Steven Allen. According to Miller, Allen reported "that he observed a black male in a tan Carhartt[-]type jacket shooting at another black male [who was] standing in front of the [apartment] building." Allen stated that he did not see the man who was by the apartment building "shooting back." Allen also reported to Miller that he had not been "close enough to identify either person" involved in the incident.

¶ 16 On further cross-examination, Miller testified that, at some point, two females showed up at the scene—a female named Mia Poe and a female with the last name of Fletcher but whose first name Miller could not remember. Both Poe and Fletcher reported being present when the shooting incident occurred. Additionally, Miller testified there was a silver vehicle at the scene, stating, "[T]hat's what the girl showed up in later[.]" The silver vehicle was searched but was "negative for any contraband or weapons."

¶ 17 Kim Overby, a crime scene technician and emergency response team member was also dispatched to the Scarritt Street apartment building on December 8, 2013. Overby assisted in

the search of apartment number 9 and testified that a “Link card” belonging to an individual named Aaron Lewis was found inside the apartment. According to Overby, the police did not find a gun, ammunition, or shell casings during their search.

¶ 18 Police officer Robert Haley testified on April 26, 2014, he was dispatched to the Scarritt Street apartment building in response to a call that a gun was found on the roof of the building. Haley testified he went to the roof and secured the gun. He identified the gun submitted into evidence by the State as the one he retrieved from the roof of the Scarritt Street apartment building.

¶ 19 On cross-examination, Haley testified he spoke with Swann upon arriving at the apartment building. Swann was already on the roof, and Haley climbed up to the roof using a ladder. He noted the roof was being worked on and described it as having “a lot of open holes.” Haley testified the gun was lying “in some debris.” Swann reported to Haley that he did not touch the gun and that he called the police as soon as he saw it. When the gun was discovered, it did not have any live rounds in it or any spent projectiles and no ammunition was found with the gun. Haley testified that he did not remember Swann reporting that the gun was the same weapon Swann observed during a December 2013 shooting incident. However, Haley testified he already knew about the shooting incident and, when he returned to his headquarters, he reported what was found to his supervisor.

¶ 20 Kelly Biggs, a forensic scientist with the Illinois State Police forensic science laboratory, testified as an expert in the field of forensic biology and deoxyribonucleic acid (DNA). Biggs analyzed swabs taken from the revolver found at the Scarritt Street apartment building. She testified she found DNA from a mixture of at least four people. However, Biggs stated she was unable to identify or exclude any one individual from contributing DNA because

“[w]ith so many possible contributors ***, it’s impossible to discern any particular person from another.”

¶ 21 Finally, the State presented the testimony of Michael Brown, a detective with the Springfield police department who investigated the December 8, 2013, shooting incident. Brown testified he interviewed defendant as part of his investigation and the interview occurred on the same day as the shooting. Defendant reported to Brown that he was in a vehicle with a man named Sergio Keys. Defendant stated someone fired shots at him and he provided a description of the shooter’s clothing. Defendant told Brown that he ran directly into apartment number 9 and denied that he fired back at the shooter. He also reported that as he ran into the apartment he “saw a dude calling the police.” Defendant told the person calling that he was not the shooter. Defendant further asserted that he locked himself in apartment number 9 because there were warrants out for his arrest. Brown confirmed that defendant had two traffic warrants.

¶ 22 Brown identified a black hooded sweatshirt submitted into evidence by the State as the sweatshirt defendant had been wearing at the time of their interview. He also identified a photograph taken after their interview as depicting defendant wearing a black hooded sweatshirt with the letters “REB” written in white. Brown testified defendant was wearing the same outfit that a witness described the shooter as wearing and defendant acknowledged to Brown that he was wearing the black hooded sweatshirt at the time of the shooting incident.

¶ 23 On cross-examination, Brown testified that his investigation gave him cause to believe that someone did shoot at defendant. Defendant described that individual as wearing “an orange-ish brown” article of clothing “similar to a Carhartt coat.” Brown agreed that defendant’s description of a shooter matched other witness descriptions. He further agreed that a factual dispute existed between accounts provided by Swann and Allen regarding “whether [defendant]

did or didn't shoot back." Brown testified that other people present on the scene included Mia Pope, Erica Fletcher, and the individual in the "Carhartt[-]type coat." He acknowledged that no live rounds or cartridges associated with the weapon found at the Scarritt Street apartment building were ever located and that cartridges were recovered from the area where the individual in the Carhartt coat had reportedly been standing.

¶ 24 Brown further testified that he was not aware of Swann ever being asked to identify defendant as the shooter through a "show-up," an "in-person lineup," or a photographic lineup. He also acknowledged that he never personally interviewed Allen.

¶ 25 On redirect, Brown testified he did not conduct a "photo lineup or a show-up" with Swann because it would have been unfair to defendant to have Swann identify him after Swann had the opportunity to observe defendant being removed from apartment number 9 in handcuffs. Nevertheless, he noted that Swann gave the police "a description" and the police "retrieved [an] individual bearing that description from the apartment that [Swann] said that he went to[.]"

¶ 26 Following the presentation of the State's witnesses, the parties stipulated that defendant had previously been convicted of a Class 2 felony. Both parties then rested. The jury found defendant not guilty of aggravated discharge of a firearm and found defendant guilty of the offense of unlawful possession of a weapon by a felon.

¶ 27 In November 2015, defendant filed a posttrial motion. Relevant to this appeal, he argued the State failed to prove each element of the offense of unlawful possession of a weapon by a felon beyond a reasonable doubt. In December 2015, the trial court denied defendant's posttrial motion and sentenced him to nine years in prison.

¶ 28 This appeal followed.

¶ 29

II. ANALYSIS

¶ 30 On appeal, defendant argues the State failed to prove him guilty of the offense of unlawful possession of a weapon by a felon beyond a reasonable doubt. He points out that the firearm he was alleged to have possessed was not found on his person and not linked to him through any forensic evidence. Defendant further asserts that Swann, the only witness to place the firearm in his possession, was not credible.

¶ 31 “The State has the burden of proving beyond a reasonable doubt each element of an offense.” *People v. Gray*, 2017 IL 120958, ¶ 35, 91 N.E.3d 876. “When considering a challenge to the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the required elements of the crime beyond a reasonable doubt.” *People v. Bradford*, 2016 IL 118674, ¶ 12, 50 N.E.3d 1112. It is the trier of fact’s responsibility “to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts.” *Gray*, 2017 IL 120958, ¶ 35. A reviewing court should “not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses.” *Id.* On review, “[a] criminal conviction will not be reversed for insufficient evidence unless the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant’s guilt.” *Id.*

¶ 32 Additionally, “[t]he testimony of a single witness is sufficient to convict if the testimony is positive and credible, even where it is contradicted by the defendant.” *Id.* ¶ 36. “Where the finding of the defendant’s guilt depends on eyewitness testimony, a reviewing court must decide whether a fact-finder could reasonably accept the testimony as true beyond a reasonable doubt.” *Id.* “Under this standard, the eyewitness testimony may be found insufficient

only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.” (Internal quotation marks omitted.) *Id.* “A conviction will not be reversed simply because the evidence is contradictory or because the defendant claims that a witness was not credible.” *Id.*

¶ 33 Here, defendant was charged with, and convicted of, the offense of unlawful possession of a weapon by a felon. Specifically, the Criminal Code of 2012 provides that “[i]t is unlawful for a person to knowingly possess on or about his person *** any firearm *** if the person has been convicted of a felony under the laws of this State or any other jurisdiction.” 720 ILCS 5/24-1.1(a) (West 2012). Thus, the State was required to prove beyond a reasonable doubt that defendant knowingly possessed a firearm and that he had previously been convicted of a felony offense.

¶ 34 In this case, it was undisputed that defendant was a convicted felon, and the parties entered into a stipulation regarding that fact at trial. To establish that defendant possessed a firearm, the State presented Swann as a witness. Swann testified that he observed defendant with a gun during a shooting incident that occurred outside Swann’s Scarritt Street apartment. Swann heard gunfire and observed defendant holding a gun while defendant was positioned only 20 to 25 feet away from him. He also stated he heard defendant “hollering” at another individual and, ultimately, observed defendant enter apartment number 9.

¶ 35 Evidence further showed defendant locked himself inside apartment number 9 along with Keys and the police had to deploy “gas” inside the apartment to extricate both individuals. Although no gun was found on the day of the shooting incident, Swann testified that, a few months later, he and his son found a gun in a location that was accessible from apartment number 9 while they were performing roofing work on the apartment building. Swann identified

the gun he found as the same gun he observed defendant with at the time of the shooting incident.

¶ 36 As stated, defendant argues that Swann was not a credible witness. However, we note that Swann's testimony that he observed defendant in actual physical possession of a firearm was not contradicted at trial. Although conflicting evidence was presented regarding whether defendant actually fired a gun, there was no testimony or evidence presented to dispute Swann's assertion that he observed defendant holding a gun. Further, Swann's testimony regarding a shooting incident was generally corroborated by the testimony of the police officers who responded to the scene and defendant's own statement to Brown. Evidence that a gun was ultimately found in a location that had been accessible to apartment number 9, where defendant had locked himself away after the shooting incident, was circumstantial evidence that supported Swann's testimony.

¶ 37 Defendant contends Swann lacked credibility because his testimony was impeached by the testimony of other witnesses. First, he argues that Swann's testimony that he identified defendant as the shooter on the day of the incident was impeached by Brown who testified that no such identification occurred. We disagree that Swann's testimony on this point was contradicted by Brown. Rather, the record shows Brown's testimony was substantially similar to and consistent with Swann's testimony. Specifically, Swann asserted that he identified defendant as the shooter to police on the day of the incident. His testimony indicated that defendant was not physically brought to him but that an officer asked him who he saw shooting. Swann replied that "it was the one that had the short hair and the black hoodie on." Similarly, Brown testified that Swann was never asked to identify defendant through some type of formal procedure such as a "show-up," a photographic lineup, or an "in-person lineup." However, he

asserted that Swann did provide the police with a description of the alleged shooter. Thus, we find no merit to defendant's assertion that Brown impeached Swann's testimony regarding his identification of defendant.

¶ 38 Defendant next argues that Swann's testimony regarding his identification of the gun to Haley was impeached by Haley who testified that no such identification was made. Although the witness testimony was conflicting on this point, the conflict does not render Swann's testimony entirely unworthy of belief. As discussed, Swann's testimony regarding his observation of defendant with a gun was clear and uncontradicted. Swann's testimony was also generally corroborated by the testimony of other witnesses regarding what transpired on the day of the shooting and the day the gun was discovered.

¶ 39 Defendant further argues that "[t]he credibility of the State's case of actual possession was *** diminished by its failure to call other eyewitnesses," including Allen, Poe, and Fletcher. He suggests the absence of testimony from these other occurrence witnesses results in a presumption that their testimony would have been unfavorable to the State. We disagree.

¶ 40 "The State is not obligated to call every witness who might testify concerning evidence of the crime" and its failure to call a witness "does not ordinarily create a presumption that the testimony of that witness would be unfavorable to the State." *People v. Irby*, 237 Ill. App. 3d 38, 68, 602 N.E.2d 1349, 1372 (1992).

"As a general rule, if a potential witness is available and appears to have special information relevant to the case, so that his testimony would not merely be cumulative, and the witness' relationship with the State is such that it would ordinarily be expected to favor it, the State's failure to call the witness *may* give rise to a permissible inference that, if the witness were called, the witness'

testimony would have been unfavorable to the State's case. (Emphasis in original.) *Id.*

However, no negative inference will arise where a “witness is also known and available to the defense yet is not called by it.” *Id.* at 69.

¶ 41 Here, the three witnesses referenced by defendant on appeal were equally available to both the State and defendant. Defendant, through citations to the record in his brief, acknowledges that the names and addresses of both Poe and Fletcher appeared on witness lists submitted by the State prior to trial. Further, he makes no argument that either witness had a relationship or connection with the State such that they would be expected to favor it if testifying. Similarly, there is no indication that Allen had any relationship or connection to the State. Although defendant asserts that “nothing in the record indicates that [he] had Allen’s address,” he admits that Allen “was apparently homeless” and attempts to locate Allen were unsuccessful.

¶ 42 Moreover, we note that the record contains evidence regarding the information Allen provided to the police regarding the incident at issue. Similar to Swann, Allen observed a shooting incident that involved two individuals. However, unlike Swann, Allen was not in close proximity to defendant. Allen reported seeing a man in a “Carhartt[-]type jacket shooting at a man who was located in front of the apartment building. However, he stated he was not “close enough to identify either person.” Further, Allen testified only that he did not see the male standing in front of the apartment building “shooting back.” He did not state that the man was unarmed and a reasonable inference from the evidence presented is that he was too far away to affirmatively determine that the man had no weapon.

¶ 43 Accordingly, we reject defendant’s suggestion that a presumption of unfavorable

testimony must arise from the State's failure to call Poe, Fletcher, or Allen as a witness. For the reasons expressed, we find Swann provided clear and convincing testimony from which the jury could find defendant was in actual possession of a firearm at the time of the shooting incident. While conflicting evidence was presented regarding some portions of Swann's testimony, his testimony was otherwise substantially supported by the other evidence presented and not so flawed as to render him unworthy of belief. Ultimately, the evidence presented was sufficient to support each element of the charged offense, including defendant's actual possession of a firearm, and not so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt.

¶ 44

III. CONCLUSION

¶ 45 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its statutory assessment of \$50 as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2016).

¶ 46 Affirmed.