

No. 1-16-2175

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)
) Appeal from the
) Circuit Court of
 Plaintiff-Appellee,) Cook County.
)
 v.) No. 13 CR 13286
)
 NIKITA YOUNG,) Honorable
) Brian Flaherty,
 Defendant-Appellant.) Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Griffin concurred in the judgment.
Justice Walker dissented.

ORDER

¶ 1 *Held:* Defendant’s conviction for unlawful possession of a weapon by a felon is affirmed and his argument based on sufficiency of the evidence is rejected.

¶ 2 Following a bench trial, defendant Nikita Young was found guilty of two counts of unlawful possession of a weapon by a felon and one count of aggravated unlawful use of a weapon. The trial court merged the counts and sentenced Mr. Young to an extended-term sentence of 10 years’ imprisonment for unlawful possession of a weapon by a felon. On appeal, Mr. Young argues that the State did not prove beyond a reasonable doubt that he possessed a

firearm. Mr. Young relies on the fact that the one civilian witness who testified did not see him with a gun, there was no physical evidence linking him to the gun, and various inconsistencies in the officers' testimony. We affirm Mr. Young's conviction.

¶ 3

I. BACKGROUND

¶ 4 Mr. Young was charged by indictment with multiple offenses arising from an incident in Chicago Heights on June 19, 2013. The State proceeded on two counts of unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)), and one count of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (3)(C) (West 2012)).

¶ 5 At trial, Daniel Perez testified that on June 19, 2013, at about 9 p.m., he and his five-year-old daughter were in their backyard swimming pool at his home in Chicago Heights. A man he did not know, but who was later identified as Mr. Young, ran around the west side of the property and into his backyard, knocking a boom box off of an air conditioner. A police officer chased Mr. Young and commanded him to "get down" at least three times. Then, the officer drew his weapon and Mr. Young approached him, saying "Don't shoot me. Don't kill me, don't kill me." When Mr. Young "started to go down," the officer jumped on him and other officers who had entered the backyard helped subdue and handcuff Mr. Young in a "big chaotic situation." Once Mr. Young was on the ground, Mr. Perez and his daughter exited the pool but remained in the backyard, in a gazebo located 40 feet from the officers and Mr. Young. Mr. Perez testified that he saw Mr. Young's hands at all times, and did not see a gun or "anything like" the officers taking things out of Mr. Young's hands or coat.

¶ 6 On cross-examination, Mr. Perez reiterated that he had not seen Mr. Young with a gun, nor did he see the police take a gun from him. On redirect examination, Mr. Perez agreed officers had "piled on top" of Mr. Young during the incident and that his daughter had been his "main

concern.”

¶ 7 Chicago Heights police officer Harms testified that on the night of June 19, 2013, he was on patrol in a marked squad car near Division Street and Seventeenth Street with Officer Spain. Officer Harms saw Mr. Young, whom he identified in court, and knew Mr. Young was wanted in another matter. Mr. Young made eye contact with the officers and walked northbound, through different residences’ backyards and across streets, looking over his shoulder at the squad car as the officers followed him. When Mr. Young entered a parking lot, the officers pulled their car over and Mr. Young began to run.

¶ 8 Officer Harms exited the car and chased Mr. Young on foot, telling him to stop. As Officer Harms followed Mr. Young, Officer Fred Serrato and Sergeant Roger Wilson came to the scene in order to assist. When Officer Harms became winded, Officer Serrato and Sergeant Wilson left their car and chased Mr. Young on foot. Officer Harms tracked Mr. Young to the rear of Mr. Perez’s house, where he saw Sergeant Wilson ordering Mr. Young to show his hands. Mr. Young was backpedaling, with his right hand up and his left hand in his pocket. Officer Harms and Sergeant Wilson approached Mr. Young at the same time, grabbed him, and fell to the ground, with Mr. Young falling on his stomach with his left hand still in his pocket. Officer Harms pulled Mr. Young’s hand from his pocket and saw he was holding a firearm. Officer Harms “ripped the gun from his hand and tossed it away.” Once Mr. Young was handcuffed, Officer Harms recovered the firearm and noted that the magazine and chamber were empty. Officer Harms identified the firearm and magazine in court as those Mr. Young had been holding. He testified that he did not show the gun to Mr. Perez nor did he call out the word “gun.”

¶ 9 On cross-examination, Officer Harms testified that there had been a warrant for Mr.

Young's arrest in connection with a murder that had occurred approximately one month prior. Additionally, Officer Harms testified that he had noted in the narrative portion of his police report that Mr. Young was armed, but in a supplemental use of force report, he had marked a box stating "[u]narmed suspect resisted control." He explained that he had marked this box, instead of another box that stated "suspect armed with a firearm threatened officers," because the firearm had been concealed and Mr. Young had not threatened them with it. Officer Harms also acknowledged that he did not follow standard police training which would have required him to call out that he saw a gun. His reason for not calling out "gun" was that he had run six blocks, was out of breath, and "when you see a gun *** you tend to get a little nervous and you want to get his hand away from that."

¶ 10 Sergeant Wilson testified that he pursued Mr. Young to the rear of Mr. Perez's house. In the backyard, Mr. Young threw a radio at Sergeant Wilson and refused to comply with orders to "stop," "get down," and "show [his] hands." Sergeant Wilson drew his weapon and Mr. Young only put his right hand in the air, keeping his left hand in his sweatshirt pocket. When Officers Harms and Serrato arrived, Sergeant Wilson holstered his weapon and attempted to arrest Mr. Young. Officer Harms helped Sergeant Wilson, and both fell to the ground on top of Mr. Young's back, while Sergeant Wilson held Mr. Young's right arm behind him. Sergeant Wilson was unable to "get the left arm which was underneath [Mr. Young's] body." Officer Harms then pulled Mr. Young's left hand out, which was holding a firearm, and threw the weapon to the side. Subsequently, Mr. Young was transported to the police station. Sergeant Wilson identified the firearm and the magazine in court as the one he had seen in Mr. Young's hand in Mr. Perez's backyard.

¶ 11 The State admitted into evidence a certified copy of Mr. Young's conviction for

residential burglary in case number 10 CR 1999. The parties stipulated that Mr. Young did not have a valid FOID card. The State rested, and the defense moved for a directed finding, which the trial court denied. The defense rested without presenting evidence.

¶ 12 During closing arguments, defense counsel stressed that Mr. Perez, who was in the backyard the entire time of the incident, had not seen a firearm and had not heard any of the officers yell “gun.” Further, none of the officers testified to yelling “gun” when they had allegedly seen the firearm. Finally, counsel argued that Officer Harms had been impeached by his own report that stated Mr. Young was “unarmed.” Counsel argued that the evidence did not show beyond a reasonable doubt that Mr. Young possessed a firearm, suggesting that the officers might have fabricated the claim that Mr. Young had a firearm in order to justify his arrest because they believed him to be connected with an unrelated murder case.

¶ 13 The trial court found Mr. Young guilty of two counts of unlawful use or possession of a weapon by a felon and one count of aggravated unlawful use of a weapon. The court acknowledged that Mr. Perez had testified to not seeing a gun, but also noted Mr. Perez’s testimony that his “main concern was taking care of and protecting his daughter.” The court found that Officer Harms credibly explained he had not notified the other officers as to the firearm’s presence because he was winded and focused on removing the firearm from Mr. Young. The court also found credible Officer Harms’s explanation for why his supplemental report stated that Mr. Young was unarmed, and noted that the supplemental report had only limited choices for explaining the incident. Finally, the court found Sergeant Wilson’s testimony credible as well.

¶ 14 Mr. Young filed a posttrial motion seeking a new trial, which the trial court denied. Following a sentencing hearing, the court merged the counts and imposed an extended-term

sentence of 10 years' imprisonment for unlawful possession of a weapon by a felon. Mr. Young's motion to reconsider sentence was denied.

¶ 15

II. JURISDICTION

¶ 16 Mr. Young was sentenced on July 8, 2016, and timely filed his notice of appeal on August 3, 2016. This court has jurisdiction pursuant to article VI, section 6 of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6), and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases (Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. Dec. 11, 2014)).

¶ 17

III. ANALYSIS

¶ 18 On appeal, Mr. Young argues that he was not proven guilty of unlawful possession of a weapon by a felon beyond a reasonable doubt. According to Mr. Young, no rational trier of fact could have accepted the testimony of Officer Harms and Sergeant Wilson that he possessed a firearm when Mr. Perez, the sole neutral eyewitness, did not see him with a firearm, no physical or forensic evidence linked him to the firearm, and the officers' testimony was inconsistent with their training and police reports.

¶ 19 The State maintains that the evidence established beyond a reasonable doubt that Mr. Young was a felon in unlawful possession of a weapon based on the court's conclusion that the police officers credibly testified despite apparent inconsistencies between their testimony and reports.

¶ 20 When reviewing a challenge to the sufficiency of the evidence, the reviewing court must consider whether, viewing the evidence in the light most favorable to the State, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."

(Internal quotation marks omitted.) *People v. Belknap*, 2014 IL 117094, ¶ 67. "This standard of

review does not allow the reviewing court to substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses.” *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Moreover, “[a] conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant’s guilt.” *Belknap*, 2014 IL 117094, ¶ 67.

¶ 21 To sustain a conviction for unlawful possession of a weapon by a felon, the evidence must establish beyond a reasonable doubt that the defendant knowingly possessed a firearm and was convicted of a prior felony. 720 ILCS 5/24-1.1(a) (West 2012). Here, there is no question that Mr. Young was a convicted felon due to his prior conviction for residential burglary in case number 10 CR 1999. Only Mr. Young’s possession of the firearm is at issue.

¶ 22 In this case, Officer Harms and his partner saw Mr. Young while on patrol and knew he was wanted on an outstanding warrant for murder. They made eye contact, and Mr. Young began moving through backyards and streets while watching the officers over his shoulder. When the officers pulled over their squad car, Mr. Young ran and the officers pursued him on foot. When Mr. Young ran into Mr. Perez’s backyard, where Mr. Perez and his five-year old daughter were, he threw a radio at Officer Wilson, and refused to follow Sergeant Wilson’s orders to show his hands. Instead, Mr. Young raised his right hand and kept his left hand in his pocket. Once other officers reached the backyard, Mr. Young was physically subdued and Officer Harms took Mr. Young’s left hand out of his sweatshirt pocket, revealing a firearm, which Officer Harms tossed away.

¶ 23 Viewing these facts in the light most favorable to the State, the trial court could have found beyond a reasonable doubt that Mr. Young possessed a firearm. While Mr. Perez testified that he never saw Mr. Young with a firearm and never heard any of the police officers yell out

“gun,” he acknowledged that the officers had “piled on top” of Mr. Young during the incident and that his daughter had been his “main concern.” Mr. Young maintains that the trial court “misremembered” Mr. Perez’s testimony, resulting in a due process violation because Mr. Perez was “quite clear” he never saw a firearm. This mischaracterizes the trial court’s holding, as it accurately recalled Mr. Perez’s testimony, noting its flaws and how they affected the credibility of the whole, and chose to reject it. *People v. Cunningham*, 212 Ill. 2d 274, 283 (2004). The trier of fact is “free to 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). Under these circumstances, the trial court could reasonably find that Mr. Perez may not have clearly seen what was happening when Mr. Young was on the ground, with two officers on top of him, and the firearm underneath him in his pocket. That a father’s focus would be on his child’s safety is neither improbable nor contrary to human experience, and the trial court was free to accept or reject Mr. Perez’s testimony that he had not seen a firearm. *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24 (the reviewing court will not substitute its judgment for that of the trial court on issues involving the credibility of the witnesses or the inferences drawn from the evidence).

¶ 24 Mr. Young also argues that the officers’ testimony was undermined by several things. First, the officers did not notify each other of the presence of a firearm by yelling out “gun.” But the trial court found that Officer Harms credibly explained that he had not done so because he was out of breath, nervous, and focused on taking the firearm away from Mr. Young. *Id.* Also, Officer Harms’s supplemental use of force report marked “unarmed suspect resisted control.” But the trial court accepted Officer Harms’s explanation that he had done so because the firearm was concealed and Mr. Young had not threatened the officers with it. *Id.* Further, Officer Harms noted Mr. Young was armed in the narrative portion of his police report.

¶ 25 Though the State produced the firearm at trial, Mr. Young points out that there was no forensic evidence linking him to the gun. However, such absence is not fatal as the positive and credible testimony of a single witness can be sufficient evidence to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Moreover, “[p]roof of physical evidence connecting a defendant to a crime has never been required to establish guilt.” *People v. Williams*, 182 Ill. 2d 171, 192 (1998). To the contrary, if a witness’s testimony is otherwise credible, “the State [is] not required to present additional physical evidence” that links a defendant to a firearm. (Internal quotation marks omitted.) *People v. Campbell*, 2019 IL App (1st) 161640, ¶ 33 (affirming conviction where officers testified the defendant dropped a firearm in plain view, but the State did not present the gun itself or any other forensic evidence linking the defendant to the firearm).

¶ 26 Here, the trial court determined that the officers’ testimony was credible and found sufficient evidence to convict Mr. Young of unlawful possession of a weapon by a felon. There is no basis for this court to substitute its judgment for that of the trial court because its determinations were simply not unreasonable. *Belknap*, 2014 IL 117094, ¶ 67. Consequently, Mr. Young’s challenge to the sufficiency of the evidence is without merit.

¶ 27 **IV. CONCLUSION**

¶ 28 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 29 Affirmed.

¶ 30 JUSTICE WALKER, dissenting:

¶ 31 The majority finds that Young’s challenge to the sufficiency of the evidence is without merit. I disagree, and respectfully dissent.

¶ 32 Sergeant Wilson testified that when he pursued Young, he was "yelling for him to stop

running." Wilson added:

"I yelled at him to stop[], I yelled at him to show me both his hands. I yelled at him to get down. I yelled at him to comply with all of my commands."

¶ 33 Wilson testified that he saw a gun in Young's hand. Wilson did not recall whether anyone said, "gun." Wilson did not contradict Officer Harms's testimony that it is "standard police training to yell gun when suspect has a gun."

¶ 34 Thus, according to the testimony, both officers violated standard procedure by failing to yell "gun" when they purportedly saw a gun in Young's hand. Wilson offered no excuse for his failure to yell "gun." He had sufficient breath to yell at Young to stop, to show his hands, to get down, and to comply. He omitted the one shout required by standard police training: "gun."

¶ 35 The majority finds there is no basis for this court to substitute its judgment for that of the trial court because the trial court's determinations were not unreasonable. Once again, I disagree.

¶ 36 The trial judge discounted the testimony of the only unbiased witness, Perez, because Perez admitted that he was concerned about his daughter. Perez's parental concern would likely make Perez especially aware of dangers – like a gun thrown on the ground near his daughter. The trial judge also failed to note that Wilson yelled repeatedly, and he yelled everything except the one word required by standard procedures if he had actually seen a gun in Young's hand. Despite the two officers' failure to yell "gun," despite a police report specifying that Young was "unarmed," and despite the testimony of the only unbiased witness that he saw Young's hands at all times and never saw a gun in Young's hands or taken from Young's pocket, the trial judge somehow found, "the evidence was overwhelming against Mr. Young."

¶ 37 In light of the weak case the State presented, I find the trial judge's explicit finding that "the evidence was overwhelming" "reveal[s] such a high degree of favoritism as to make fair

judgment impossible." *Liteky v. United States*, 510 U.S. 540, 555 (1994). It is incredible that two officers, at the same time, both violated standard procedures in the same way by failing to yell "gun" when they purportedly saw a gun. No impartial observer could simply overlook the police report specifying that Young was "unarmed," and then dismiss the testimony of the only unbiased witness. No impartial trier of fact could conclude that the State presented "overwhelming" evidence of guilt. Despite the conflicting evidence, the trial judge found the officers to be credible. A super majority of police officers throughout our state are generally honest and truthful, and they serve and protect with valor. Many of them are our neighbors, friends, and family members. However, the trial judge cannot reject testimony of a neutral and unbiased witness simply to find the police officers credible.

¶ 38 There was no forensic evidence linking Young to a firearm. The majority acknowledges that Officer Harms's supplemental use of force report was marked "unarmed suspect resisted control," and the trial court accepted Officer Harms's explanation that the reason for the discrepancies in his reports existed because the firearm was concealed and Mr. Young had not threatened officers with it.

¶ 39 Because the trial judge found "the evidence was overwhelming," when there was not sufficient evidence to reach that conclusion, this court should not credit any of the trial judge's findings regarding the credibility of the witnesses or the facts of the case. As required by law, the evidence must be viewed in a light most favorable to the State. Viewing the evidence in a light most favorable to the State, the evidence was not sufficient to convict. The testimony of the State's witnesses was so unreasonable, improbable and unsatisfactory that it raises doubt of Young's guilt. See *People v. Belknap*, 2014 IL 117094, ¶ 67. No rational trier of fact would have accepted the conflicting testimony of Officer Harms and Sergeant Wilson.

¶ 40 It is well established that deference should be given to trial judges when they hear the evidence and observe the witnesses. *People v. Furby*, 138 Ill. 2d 434, 455 (1990). However, the appellate court is not a mere mindless rubber-stamp for the trial court's decision after a bench trial. *People v. Anderson*, 303 Ill. App. 3d 1050, 1057 (1999); see also *People v. Hernandez*, 312 Ill. App. 3d 1032, 1037 (2000). A belief that the appellate court must always affirm the trial court's finding of facts and credibility determination constitutes an abdication of the appellate court's constitutional responsibility to examine factual findings. *Anderson* 303 Ill. App. 3d at 1057. When a trial court's findings are so unreasonable and improbable that there is doubt of defendant's guilt, the appellate court must adhere to its constitutional charge and make the proper ruling.

¶ 41 The State failed to prove beyond a reasonable doubt that Young possessed a firearm, and Young's conviction should be reversed. Therefore, I must respectfully dissent.