2019 IL App (1st) 172991-U
No. 1-17-2991
Order filed September 16, 2019

First Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	No. 17 CR 4087
v.	)	
	)	Honorable James B. Linn,
ROBERT SANDERS,	)	Judge presiding.
	)	
Defendant-Appellant.	)	

PRESIDING JUSTICE GRIFFIN delivered the judgment of the court.
Justices Hyman and Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for aggravated unlawful use of a weapon over his contention that the State failed to prove beyond a reasonable doubt that he was in possession of a firearm.

¶ 2 Following a bench trial, defendant Robert Sanders was convicted of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (3)(a-5) (West 2016)) and sentenced to two years' imprisonment. On appeal, defendant contends the State failed to prove beyond a reasonable doubt that he possessed a weapon. For the following reasons, we affirm.

¶ 3 At trial, Chicago police officer Nick Moctezuma testified that at about 10:30 p.m. on February 27, 2017, he was on duty with Officers Moore and Emile Domer.[1] The officers drove to a three-story building on the 6500 block of South Green Street, where a group of men were gambling. The officers approached the men, who were huddled in a small vestibule in the building. The lighting in the vestibule was "medium": not dim and not bright. The men were gambling and had dice and money. As the officers walked up, Moctezuma heard someone yell "Twelve," which he knew was intended to inform others that police were approaching. The officers "started grabbing all of the individuals." Although most of the men were willing to approach the officers, Moctezuma noticed defendant, who was approximately seven to nine feet away, begin to run. Moctezuma observed defendant stand up, "grab his waist side," and run up the stairs. Defendant had been "trying to pull something out of his waistband." Moctezuma indicated for the court how defendant grabbed the right side of his waistband and "reached out with his waistband moving it up like that." Moctezuma did not see any other men from the vestibule go up the stairs.

¶ 4 Moctezuma chased defendant up the stairs. While he was going up the first flight of stairs, he heard a "loud thud, a large object hit the ground." At that point, defendant had reached the second set of stairs. When Moctezuma reached the second floor, defendant turned around and put his hands up into the air. Moctezuma grabbed defendant and conducted a patdown of his coat, waistband, and pants. When he confirmed defendant had "nothing" on his person, he instructed defendant to walk downstairs to his partners. Moctezuma then approached the second flight of stairs and observed a semiautomatic pistol with an extended magazine and a laser sight.

[1] Officer Moore's first name does not appear in the record.

The gun was in the middle of the floor on the landing with nothing around it. The landing was behind where defendant had been when he put his hands up, and he had walked toward Moctezuma. No one else was in the stairwell aside from defendant and there was nothing else on the landing where the gun was located. Moctezuma recovered the gun, which was a "fully-loaded" Ruger nine millimeter with an extended clip and laser sight. There was ammunition in the magazine, and when Moctezuma unloaded the gun "five rounds came out of the chamber." He inventoried the gun. "Seconds" passed between the time when Moctezuma heard the "thud" and recovered the gun from the landing.

¶ 5 On cross-examination, Moctezuma testified that his entry into the building was the first time he had been inside it that day. He acknowledged he had not been to the second or third floors of the building and did not know whether anyone had been on those floors. Moctezuma did not observe defendant with a gun in his hand and did not see what was in defendant's pants.

¶ 6 Chicago police officer Emile Domer testified that on February 27, 2017, he drove with Moctezuma and Moore to the South Green building, based on information that multiple people were loitering and "shooting dice" inside the building's vestibule. The building was a three-flat residential building and a known hangout for Black Disciples gang members. There had been multiple shootings and arrests there. Moore and Moctezuma entered the building, while Domer remained outside. Moore and Moctezuma "funnel[ed]" nine men out of the building to Domer, and he handcuffed them together. One of the men that came out of the building was defendant, with whom Domer was familiar. Domer knew defendant lived on the 6600 block of South Union Street. He was familiar with the building on South Green, and defendant was not known to live there. Defendant was arrested that night.

¶ 7 The parties stipulated that if called, Tracy Schultz would testify she maintained the records for firearm owner's identification (FOID) cards and conceal carry licenses for the Illinois State Police in the Firearms Services Bureau. After searching the records, Schultz could not locate records indicating defendant was ever issued a FOID card or conceal carry license.

¶ 8 The State introduced into evidence defendant's birth certificate, showing he was under the age of 21 on February 27, 2017. The State additionally introduced into evidence a certified copy of defendant's prior juvenile adjudication for robbery.

¶ 9 Defendant elected not to testify. Following arguments, the court found defendant guilty of AUUW. The court found the police officers "credible and compelling." Regarding the gun, the court noted that the officer heard a thud and moments later saw the gun. The court stated:

> "The only thing on the stair where the thud was heard following [defendant's] feet was that gun, and the what I find to be very compelling albeit circumstantial evidence him running away from the police, holding his side, lifting something out of his side, hearing a thud, seeing a gun just where the thud happened [defendant] being the only one that was there, it is proof beyond a reasonable doubt."

¶ 10 The court subsequently denied defendant's motion for a new trial and sentenced him to two years' imprisonment.

¶ 11 On appeal, defendant contends the evidence is insufficient to sustain his AUUW conviction. Specifically, defendant argues the State failed to prove he was in possession of the weapon.

¶ 12 On a challenge to the sufficiency of the evidence, we inquire " '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.' " (Emphasis omitted.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In so doing, we draw all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at 43), and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). Circumstantial evidence is sufficient to sustain a conviction as long as it satisfies proof beyond a reasonable doubt of the charged offense. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). We will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 13 As charged in this case, a person commits the offense of AUUW if he knowingly carries a firearm on or about his person when not on his land or in his abode and the firearm possessed was uncased, loaded, and immediately accessible, and the person had not been issued a currently valid license under the firearm Concealed Carry Act or a valid FOID card at the time of the offense. 720 ILCS 5/24-1.6(a)(1), (3)(a-5), (3)(c) (West 2016).

¶ 14 In this court, defendant challenges only the element of possession and thus we confine our analysis to that element. He argues that none of the State's witnesses testified that they observed him in possession of the gun and no forensic evidence was introduced to link him to the recovered weapon.

¶ 15 Possession may be actual or constructive. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Actual possession is proved by testimony that the defendant exercised some form of

dominion over the contraband. *Id.* at 788. "Because possession is often difficult to prove directly, proving possession frequently rests upon circumstantial evidence." *Love*, 404 Ill. App. 3d at 788.

¶ 16 After viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have concluded that defendant was in possession of the gun. Although Officer Moctezuma did not observe defendant holding the gun, defendant's possession of it can be inferred from the circumstances. See *Love*, 404 Ill. App. 3d at 788. When the officers approached the men in the vestibule gambling, defendant reached for his waistband and fled up the stairs into the building. As Moctezuma gave chase, defendant reached into his waistband as if he was attempting to remove something. When defendant approached the second set of stairs, Moctezuma heard a loud thud like a "heavy object" hitting the ground while he was on the first set of stairs. Once Moctezuma had reached the landing, defendant had turned around with his hands up and the gun was on the ground nearby. No one else had run up the stairs and no one else was around where the gun was located. There was also nothing else on the landing where the gun was located. Moctezuma testified that mere seconds elapsed from the time he heard the "thud" to the time he recovered the gun. We do not find this evidence was "so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Givens*, 237 Ill. 2d at 334.

¶ 17 In reaching this conclusion, we reject defendant's argument that forensic evidence was required to establish his possession of the gun. It is well established that "[t]he testimony of a single witness, if it is positive and the witness credible, is sufficient to convict." *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Further, it is within the province of the trier of fact to draw reasonable inferences from the evidence. *Siguenza-Brito*, 235 Ill. 2d at 228. The trial court

explicitly found Moctezuma's testimony credible and expressly found the evidence led to an inference that defendant was in possession of the gun.

¶ 18 Moreover, despite defendant's contentions that the gun could have been placed in the stairwell by another occupant of the building or that the "thud" could have come from elsewhere, "[a] trier of fact is not required to disregard the inferences that normally flow from the evidence or to seek out all possible explanations consistent with a defendant's innocence and elevate them to reasonable doubt." *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 11. Accordingly, we affirm defendant's conviction for AUUW.

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

¶ 20 Affirmed.