

No. 1-12-1464

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 16993
	)	
NELSON JOHNSON,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* Evidence was sufficient to find defendant guilty of being an armed habitual criminal.

¶ 2 Following a bench trial in the circuit court of Cook County, defendant Nelson Johnson was found guilty of being an armed habitual criminal and sentenced to 10 years of imprisonment. On appeal, defendant contends that the trial evidence was insufficient to find him guilty beyond a reasonable doubt.

1-12-1464

¶ 3 Defendant was charged with being an armed habitual criminal, aggravated unlawful use of a weapon (AUUW), and unlawful use of a weapon by a felon (UUWF) for allegedly possessing a loaded and accessible firearm in a vehicle on a public street at 15801 Vine Street in Harvey, Illinois, after having been previously convicted of aggravated battery in case 04 CR 11499 and manufacture or delivery of a controlled substance in case 06 CR 2749.

¶ 4 Defendant filed a motion to quash his arrest (motion to quash), alleging that he was arrested without a warrant or probable cause and seeking to suppress all evidence arising from his arrest.

¶ 5 At the hearing on the motion to quash, defendant testified that, on June 12, 2010, he was sitting in the driver's seat of a parked white sport utility vehicle (SUV), with the key in the ignition, the doors closed, and no other occupants, when officers approached "at gun point and snatched me out of the car and threw me in handcuffs." After taking defendant about 30 feet away from the vehicle, officers searched the interior of the SUV without his permission. One of the officers came out of the SUV holding a gun, but defendant testified that he had never seen the gun before. On cross-examination, defendant testified that it was not his SUV. He testified that he owned the bag of marijuana and the bottle of liquor that were in the SUV. At the time police officers removed defendant from the SUV, he was talking to a man who was standing next to the driver's side of the vehicle and who lived in the home in front of which the SUV was parked.

1-12-1464

¶ 6 Police officer Rasheed Askew (Officer Askew) testified that he and other officers responded to a woman's anonymous report that a man in a white vehicle pointed a gun at her at that location. When they arrived, he saw a white SUV there, with its driver's door open. The officers approached the SUV with caution, and Officer Askew saw an open and partially empty bottle of liquor on the center console. Defendant admitted to officers that there was a bag of marijuana as well as the liquor bottle in the SUV. Officer Askew recovered the bottle and bag, after which defendant was detained and handcuffed. While defendant stood on the sidewalk a few feet from the SUV, Officer Askew searched the SUV. He found a black pistol on the passenger side in the partially-closed fuse box, which was within reach of anyone sitting in the driver's seat. The gun was not visible until Officer Askew fully opened the fuse box.

¶ 7 Following closing argument, the court denied the motion to quash, finding that the visible open bottle of liquor established an arrestable offense justifying an inventory search of the SUV.

¶ 8 At trial, Officer Askew testified as he had at the hearing on the motion to quash, adding that the pistol was loaded and that the fuse box was located underneath the dashboard. Defendant also testified as he had at the hearing on the motion to quash, adding that he lives about a block from the location of the arrest and search and that he had driven no more than three minutes from home before parking there. Defendant's prior felony convictions and evidence that the SUV belonged to someone else in Indiana, were admitted at trial. The gun was also entered into evidence, and the State offered the gun to the court to feel its weight.

1-12-1464

¶ 9 Following arguments, the trial court found defendant guilty of one count each of armed habitual criminal, AUUW, and UUWF. The court found that the officers approached defendant based on the anonymous report, defendant admitted to possessing and owning the liquor and marijuana, he was arrested, the vehicle was searched, and the gun was recovered. In particular, the court found that "a gun this heavy would not be sustained in the [fuse box] unless the lid was completely sealed and controlled" so that defendant's knowledge of the gun in the partially-open fuse box was proven.

¶ 10 Defendant filed a posttrial motion arguing that there was not probable cause to arrest him or to search the SUV and that the trial evidence was insufficient to convict him. The court denied the motion following the parties' arguments, reiterating its inference that "there was no way that the gun would have been placed there for a long period of time and the defendant being able to travel without that gun falling out of the fuse box."

¶ 11 Following arguments in aggravation and mitigation, the court sentenced defendant to 10 years of imprisonment for the offense of armed habitual criminal. The convictions for AUUW and UUWF were merged into the conviction for armed habitual criminal. Subsequently, the court denied his post-sentencing motion, and this appeal timely followed.

¶ 12 On appeal, defendant contends that the evidence was insufficient to find him guilty beyond a reasonable doubt of being an armed habitual criminal.

1-12-1464

¶ 13 A person commits the offense of being an armed habitual criminal when he "receives, sells, possesses, or transfers any firearm" after being convicted of certain specified felonies. 720 ILCS 5/24-1.7(a) (West 2010). To establish guilt for this offense based on constructive possession of a firearm, the State must prove that the defendant (1) had knowledge of the presence of the firearm and (2) exercised immediate and exclusive control over the area where the firearm was found. *People v. Ross*, 407 Ill. App. 3d 931, 935 (2011). The trier of fact in such a case may make reasonable inferences of knowledge and possession, and knowledge may be proven by evidence of a defendant's acts, declarations or conduct from which it may be inferred that he knew the firearm was located where it was found. *Ross*, 407 Ill. App. 3d at 935-36.

¶ 14 When presented with a challenge to the sufficiency of the evidence, this court must determine whether, after taking 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. *People v. Brown*, 2013 IL 114196, ¶ 48. Because it is the role of the trier of fact to fairly resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences, we will not substitute our judgment for that of the trier of fact on issues involving the weight of evidence or witness credibility. *Id.* The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Similarly, the trier of fact is not required to disregard inferences that flow

1-12-1464

normally from the evidence nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Brown*, 2013 IL 114196, ¶ 48.

¶ 15 Here, taking the evidence in the light most favorable to the State as we must, we cannot conclude that no reasonable finder of fact would find defendant guilty of being an armed habitual criminal. Though there was evidence that the SUV did not belong to defendant, he was its driver and sole occupant before it was searched. As was argued in the trial court, it was reasonable to infer from defendant's ready admission to possessing liquor and marijuana that he was seeking to distract the officers from searching the SUV; that is, that he demonstrated awareness that there was more serious contraband than liquor or marijuana in the SUV. Moreover, it was reasonable for the court to infer from the gun's location in a fuse box, which was located underneath the dashboard behind a partially-closed lid within defendant's reach, that he had recently opened that lid—and thus had knowledge of the gun—because he could not have driven the SUV with the lid loose or ajar without the gun falling out. In this regard, we note that the court was not required to give weight to defendant's testimony, and we decline to substitute our judgment for that of the trial court, which had ample opportunity to assess his credibility.

¶ 16 Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 17 Affirmed.