

No. 1-12-1796

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 CR 14340
)	
MARTIN HARRIS,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Defendant was proven guilty beyond a reasonable doubt of aggravated discharge of a firearm and unlawful restraint, where the victim testified that he was detained by defendant who indicated he had a weapon, the victim heard a gunshot as he ran away, and physical evidence of a broken car window and bullet fragment corroborated the victim's description of the shooting. Affirmed.

¶ 2 Defendant Martin Harris and codefendant Sean Coleman, who is not a party to this appeal, were charged by information with committing the offenses of armed robbery, aggravated discharge of a firearm, and aggravated unlawful restraint. The matter proceeded to a bench trial.

Defendant's motion for a directed finding was granted in part, but he was found guilty of the robbery, aggravated discharge of a firearm, and unlawful restraint. The trial court subsequently granted defendant's motion for a new trial in part, vacated the robbery conviction, and sentenced defendant to concurrent terms of 10 years' and 3 years' imprisonment, for the aggravated discharge of a firearm and unlawful restraint convictions, respectively. Defendant appeals, contending that the State failed to prove him guilty beyond a reasonable doubt.

¶ 3 At trial, the victim, Tyrese Smith, testified that on August 15, 2011 at approximately 8:45 a.m., he was near 62nd and Washtenaw walking to a store near 63rd and Washtenaw. As he was walking he saw two men he recognized from the neighborhood, defendant and Coleman. Coleman asked Smith what he was doing there, and Smith replied he was on his way to the store. Coleman asked Smith if he thought it was a game. Coleman then asked what was in Smith's pockets, and started to reach into Smith's pocket. Smith "swiped" Coleman's hand away, and Coleman said to defendant "if you move again, shoot his ass." Smith testified that he did not see a weapon, but defendant was holding his hand in his pocket. Coleman and defendant took \$10, Smith's driver's license and a cell phone.

¶ 4 Smith further testified that after they took his items, Coleman repeatedly told defendant to shoot. Smith "figured he was going to shoot, so [he] took off and ran." Smith ran toward Fairfield and 62nd. As he ran away, Smith heard a gunshot. Smith testified "[i]t was fired toward me, but once I split in between the car, it bounced on the car." When Smith returned later, he saw that a window had been "shot out" on the car. Smith ran to a friend's house, where he called his father, who, in turn, called the police. Smith met with the police and subsequently identified Coleman in a show-up and, later, identified defendant in a line-up at the police station.

¶ 5 On cross-examination by Coleman's attorney, Smith testified that he saw Coleman approximately 15 minutes after the incident. The police searched Coleman, but did not recover the items he had taken from Smith.

¶ 6 On cross-examination by defendant's attorney, Smith testified that he was with a man named Jeffery during the incident. No threats were made toward Jeffery and no one tried to take his belongings.

¶ 7 The parties stipulated that if called to testify, an evidence technician, Officer Scumaci, would testify that he recovered a bullet fragment from an automobile parked on Washtenaw. Scumaci would further testify that he also recovered a bullet fragment from the stairs near the door to Fairview Academy across the street.

¶ 8 Defendant and Coleman both moved for directed findings. Following argument, the trial court granted the motion, in part, finding that the State had not met its burden on the offense of armed robbery, but allowing the trial to continue on the lesser-included offense of robbery, and the offenses of unlawful restraint and aggravated discharge of a firearm.

¶ 9 Following the partial directed finding, the parties stipulated to testimony by police officers that perfected certain impeachment of Smith. Neither defendant nor Coleman presented any other evidence. Following additional argument the trial court found Coleman and defendant guilty stating, in pertinent part:

"I have listened carefully. Given these two very young men quite a bit of benefit of doubt as to Count 1. That's the extent of the benefit that they're going to get. They're guilty of robbery and aggravated discharged [*sic*] of a firearm. One telling the other to fire a shot, which actually did happen, and unlawful restraint."

¶ 10 Defendant filed a motion for a new trial. The trial court granted the motion, in part, stating:

"All right. As I reflect on this case going back to the post trial motions, I am totally clear about the shooting that happened and I recall not being quite as clear about the robbery portion of this, that what happened did involve a shooting, the evidence in the robbery on reflection may have been a little bit limited. So I am going to grant part of the post trial motion, I'm going to vacate the finding on the robbery and grant post trial relief so he's just going to stand for sentencing now for aggravated discharge of a firearm and for unlawful restraint a Class 1 and a Class 4."

The trial court subsequently sentenced defendant to concurrent prison terms of 10 years for the aggravated discharge of a firearm count and 3 years for the unlawful restraint count. Defendant filed a motion to reconsider the sentence, which the trial court denied. Defendant timely appeals, contending that the evidence was insufficient to prove him guilty beyond a reasonable doubt.

¶ 11 When a defendant challenges the sufficiency of the evidence, "the relevant question is 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); see also *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). It is not our function to retry defendant. *Beauchamp*, 241 Ill. 2d at 8, citing *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). "As a reviewing court, '[w]e will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt.'" *Id.*, quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 12 Defendant was charged with knowingly discharging a firearm in the direction of Smith. See 720 ILCS 5/24-1.2(a)(2) (West 2010). We find that there was ample evidence to support this charge. Smith testified that he heard a gunshot and that the bullet "bounced" off a car near where he was standing. Smith further testified that, when he returned to the scene, a window had been shot out of that car. The parties stipulated that an evidence technician recovered a bullet fragment from the car. Smith's testimony was, at least on this point, clear, unequivocal and supported by physical evidence. Therefore, we conclude that the evidence was sufficient to prove defendant guilty beyond a reasonable doubt.

¶ 13 Defendant, however, argues that he was, in essence, exceedingly unlucky and a victim of circumstance. He argues that it was possible that someone else fired the bullet that struck the car at a time prior to Smith hearing the gunshot and that Smith simply inaccurately surmised the broken window was the result of a gunshot fired at him. Although it is theoretically possible that events unfolded in the way defendant describes, we are not, and the trial court as the finder of fact was not, "required to disregard inferences that flow from the evidence, nor [was] it required to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Bull*, 185 Ill. 2d 179, 205 (1998). Nor do we find that the presence of a bullet fragment at the school casts doubt on Smith's testimony. Defendant accuses the State of offering no explanation for arguing that the bullet recovered from the school was unrelated to this offense. However, we note that the State's argument is consistent with Smith's testimony. Defendant's theory that the bullet recovered from the car was unrelated to the offense is supported by nothing more than speculation.

¶ 14 We find defendant's reliance on *People v. Hartfield*, 266 Ill. App. 3d 607 (1994) unavailing. In *Hartfield*, the defendant was convicted of discharging a firearm in the direction of

a police detective. The detective, however, testified that he merely heard the shot and that he hid behind his car before chasing the defendant, and that he "went down to the ground" when he heard the shots fired. The reviewing court reversed the conviction, holding that there was no direct evidence that the defendant fired in the direction of the detective and that the limited circumstantial evidence was insufficient to support a finding of guilt. *Id.* at 609. Here, like *Hartfield*, the victim did not see the shots fired, but that is where the similarities end. Smith not only testified that the bullet fired at him "bounced" on the car, but physical evidence revealed that the car had a broken window and a bullet fragment was recovered. Because, unlike *Hartfield*, we are presented with testimony regarding where the bullet was aimed and physical evidence supporting that testimony, we cannot reach the same conclusion.

¶ 15 Therefore, we find that the State presented sufficient evidence to prove defendant guilty of aggravated discharge of a firearm beyond a reasonable doubt.

¶ 16 Defendant also contends that the State failed to prove him guilty of unlawful restraint beyond a reasonable doubt.

¶ 17 "A person commits the offense of unlawful restraint when he or she knowingly without legal authority detains another." 720 ILCS 5/10-3(a) (West 2010). The gist of the offense is conduct which prevents the victim from moving from one place to another. *People v. Bowen*, 241 Ill. App. 3d 608, 627-28 (1993). Actual or physical force is not an element of the offense, provided the victim's freedom of movement is impaired. *People v. Lee*, 376 Ill. App. 3d 951, 958 (2007), citing *Bowen*, 241 Ill. App. 3d at 628.

¶ 18 Here, there was ample evidence of conduct which impaired Smith's freedom of movement. Smith testified that he stopped and allowed Coleman to go through his pockets only

because Coleman threatened him and defendant backed up that threat with actions which suggested he had a handgun in his pocket.

¶ 19 Defendant argues that Smith's freedom of movement was not impaired because he never said he "felt detained" and he could, and eventually did, run away from the encounter. First, although Smith never said he "felt detained," it was clear from his testimony that he did not enter into his encounter with defendant and Coleman voluntarily and did not desire to stand there quietly while Coleman went through his pockets. Defendant cites no authority for his suggestion that the evidence is insufficient if a victim fails to describe the crime using the language of the statute, we are aware of no case that holds as much, and such a rule would be generally unworkable. Second, Smith testified that he ran only after he came to the conclusion that defendant intended to shoot regardless of whether Smith acquiesced to his demands. Smith's decision at the end of the encounter that the time to flee had arrived says nothing about whether his freedom of movement was impaired at the start of the encounter. Accordingly we reject defendant's arguments.

¶ 20 Defendant further argues that because the trial court rejected the robbery charge it "[took] away the only method by which Smith could have been unlawfully detained." This argument simply misconstrues the record. The trial court ultimately acquitted defendant of robbery finding that there was insufficient evidence of that crime. However, the trial court never stated, or even suggested, that it did so because it believed there was insufficient evidence that defendant possessed a firearm or insufficient evidence that defendant threatened Smith. The trial court may have had doubts about the robbery, but its comments make it clear that it harbored no doubt that defendant was guilty of unlawful restraint. Therefore, we will not disturb its judgment on that charge.

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

¶ 22 Affirmed.