

No. 1-12-2199

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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
)	
SEAN COLEMAN,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Hyman and Justice Mason concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Evidence sufficient to sustain defendant's convictions for aggravated discharge of a firearm and unlawful restraint.
- ¶ 2 Following a bench trial, defendant Sean Coleman was found guilty of aggravated discharge of a firearm and unlawful restraint, and was sentenced to concurrent, respective terms of five and three years' imprisonment. On appeal, defendant contends that the evidence was insufficient to prove him guilty of those offenses beyond a reasonable doubt where the State

failed to show that he or his codefendant fired a gun in the direction of the victim or that they impaired his freedom of movement.

¶ 3 Defendant and codefendant Martin Harris, who is not a party to this appeal, were charged with armed robbery, aggravated discharge of a firearm, and aggravated unlawful restraint in relation to an incident that occurred on the morning of August 15, 2011, near 6158 South Washtenaw Avenue in Chicago, Illinois. Following the incident, Tyrese Smith, the victim, reported to police that defendant and Harris approached him and stole items from his pockets, then fired a gun at him as he fled. Defendant and Harris were tried at a joint bench trial.

¶ 4 At trial, Smith testified that around 8:45 a.m. on August 15, 2011, he left his apartment located on 62nd Street and Washtenaw Avenue and began walking with a friend to a nearby store. As he did so, he saw defendant and Harris, whom he recognized from the neighborhood, and the two approached him. Defendant asked Smith what he was doing there. After Smith responded that he was on his way to the store, defendant asked him if he thought it was a game. At that point, Smith did not think anything was going to happen, but then Harris tried to reach into Smith's pockets and asked him what was in there. Smith "swiped" Harris' hand away, and defendant told Harris to "shoot his ass," if Smith moved again. Although he did not see a weapon, Smith believed that Harris had a gun because of the manner in which he was holding his hand in his pocket, so Smith let Harris search his pockets. Harris then took Smith's phone, driver's license and \$10 without Smith's permission and handed them to defendant, who continued to tell Harris to shoot Smith. At that point, Smith began running west toward Fairfield and 62nd Street because he "figured [Harris] was going to shoot [him]." Almost immediately thereafter, as he ran between cars, Smith heard a gunshot fired from behind him, where

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defendant and Harris were standing. The gunshot "was fired toward [him], but once [he] split in between the car, it bounced on the car" that was directly in front of him. He then continued to run, but returned to the scene later and saw that the window of that car had been "shot out."

¶ 5 Smith further testified that after the shooting, he ran to a friend's house and called his father, who called the police when he arrived approximately 10 minutes later. After meeting with police, Smith identified defendant as one of his assailants in a show-up which occurred approximately 30 minutes after the incident. That evening, he went to the police station and identified Harris in a photo array. The following day, he returned to the police station and identified Harris in a line up. Smith identified People's Exhibits 5 and 6 as photographs of the car he was hiding behind during the shooting and testified that the photographs accurately reflect how the car looked after the shooting, including the window that was "shot out."

¶ 6 On cross-examination, Smith testified that his friend, Jeffrey Carson, was with him throughout the entire incident, but Carson was not targeted by defendant and Harris. Smith acknowledged that the police informed him that video footage reflected that the incident took place at 8:15 a.m., and denied telling the officer at the scene that it occurred at 9:45 a.m., and subsequently explaining to police that the time discrepancy was due to his father taking a long time to arrive on the scene. He also denied telling police that Harris spoke to him first. Smith acknowledged that he never saw a gun, and denied that he told officers at the scene that Harris pulled a gun out and pointed it at him and that defendant and Harris pushed him against a fence and demanded "his stuff."

¶ 7 Chicago police officer Taylor testified that when he arrived on the scene at approximately 8:45 a.m. on the day of the incident, Smith told him that he had been robbed, pushed and shot at.

At that time, Officer Taylor received a radio message that one of the offenders had been captured, so he took Smith to that location, where Smith identified defendant as one of his assailants. Neither the proceeds from the robbery, nor a gun, were recovered from defendant.

¶ 8 The parties stipulated that, if called, Chicago police officer Scumaci, an evidence technician, would testify that on August 15, 2011, he processed the scene at 6158 South Washtenaw. In doing so, he recovered a bullet fragment from the trunk-well below the rear window of the driver's side of a car with license plate number L210024, which car is depicted in People's Exhibit 7. He also recovered a bullet fragment from the third stair by the northeast door of Fairview Academy, located across the street from the scene.

¶ 9 The State then rested and defendant moved for a directed finding, arguing, *inter alia*, that the owner of the damaged vehicle did not testify, and thus no evidence was presented regarding when and how that vehicle was damaged. The trial court granted the motion solely as to the armed robbery count. In doing so, the court noted that defendant remained on trial for the lesser included offense of robbery.

¶ 10 The defense began its case-in-chief and the parties stipulated that, if called, Officer Jesionowski would testify that when he spoke with Smith on the scene, Smith told him that the offenders pushed him against a fence and demanded what he had in his pockets, and that Harris pulled out a gun and pointed it at him, at which point he fled. The parties further stipulated that, if called, Detective Thomas Putell would testify that when he interviewed Smith on the scene, Smith told him that the incident took place at 9:45 a.m. Detective Putell subsequently viewed a video which reflected that the incident took place at 8:10 a.m. When he confronted Smith with

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that information, Smith stated that the discrepancy was due to having waited a long time for his father to arrive from the other side of town.

¶ 11 The defense rested and the parties presented closing arguments. During closing argument, defense counsel argued, *inter alia*, that Smith's testimony was not credible and that no evidence was presented regarding when the damage to the car in question occurred.

¶ 12 The trial court found defendant and Harris guilty of robbery, aggravated discharge of a firearm and unlawful restraint. Defendant filed a motion for a new trial, and, after a hearing was held thereon, the trial court vacated defendant's conviction for robbery, stating that it was giving him the benefit of the doubt because the circumstances leading up to the facts of the robbery were not quite as clear. The trial court then sentenced defendant to concurrent, respective terms of five and three years' imprisonment on his convictions for aggravated discharge of a firearm and unlawful restraint. On appeal, defendant challenges the sufficiency of the evidence to sustain those convictions.

¶ 13 The standard of review on a challenge to the sufficiency of the evidence 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. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies to all criminal cases, whether the evidence is direct or circumstantial, and acknowledges the responsibility of the trier of fact to determine the credibility of the witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). A reviewing court will not reverse a conviction unless the evidence is so

unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt.

People v. Jackson, 232 Ill. 2d 246, 281 (2009).

¶ 14 Defendant was convicted of aggravated discharge of a firearm, which, as charged here, occurs when defendant knowingly or intentionally discharges a firearm in the direction of another person. 720 ILCS 5/24-1.2(a)(2) (West 2010). Defendant maintains that the evidence presented was insufficient in that it failed to show that either he or Harris fired a gun in Smith's direction. For the following reasons, we find that the evidence was sufficient to prove defendant guilty of aggravated discharge of a firearm beyond a reasonable doubt.

¶ 15 Smith testified that defendant repeatedly encouraged Harris to shoot him, that he believed that Harris had a gun due to the manner in which he was holding his hands in his pocket, and that almost immediately upon fleeing from defendant and Harris, he heard a gunshot fired from behind him, where defendant and Harris were standing. Smith further testified that the gunshot was fired in his direction, that he heard the bullet bounce on the car that was directly in front of him, and that when he later returned to the scene, he saw that the window of that car had been "shot out." Additionally, Smith identified People's Exhibits 5 and 6 as photographs depicting damage to that car that was caused by the shooting, and the parties stipulated that Officer Scumaci recovered a bullet fragment from a car on the scene bearing license plate number L210024. We find that in viewing this evidence, and the reasonable inferences drawn therefrom, in the light most favorable to the State (*Siguenza-Brito*, 235 Ill. 2d at 224), it supports the trial court's conclusion that one of the codefendants fired a gun in Smith's direction.

¶ 16 Although, as defendant points out, Smith testified that he never saw a gun and did not see who fired the gunshot that he heard, the fact remains that the evidence supported the inference

that defendant or Harris fired a gun in Smith's direction. In his brief, defendant proposes the possibility that the weapon was fired by "someone unrelated to the instant incident." While this may be a theoretical possibility, neither we nor the trial court are required to ignore inferences that flow from the evidence presented, or to search out all possible explanations that are consistent with innocence and raise them to the level of reasonable doubt. *People v. Bull*, 185 Ill. 2d 179, 205 (1998).

¶ 17 Defendant also takes issue with the State's exhibits. He first argues that Exhibits 5 and 6, which defendant testified depict the car that was directly in front of him at the time of the shooting, fail to establish that the car was hit by a bullet. Defendant maintains that because the car depicted in those photographs was not in "pristine" condition and the car's owner did not testify, it is unclear whether the damage that was sustained by that car pre-existed the shooting. He also argues that the State failed to establish that the car depicted in People's Exhibit 7, from which he stipulated police recovered a bullet fragment, is the same car depicted in People's Exhibits 5 and 6.¹

¶ 18 The record shows that in arguing defendant's motion for a directed verdict, as well as during closing argument, defense counsel argued that no evidence was presented regarding when the damage to that car was sustained or how that damage occurred because the owner of the car did not testify. Thus, defendant's arguments relating to these alleged weaknesses in the sufficiency of the evidence were presented to and rejected by the trial court. *People v. Baugh*,

¹ It is unclear whether defendant is also arguing that the foundation for these exhibits was lacking. To the extent that he does so, we observe that such an argument relates to the admissibility of evidence, which is an issue that may be forfeited, and, here, defendant has done so by failing to raise a foundational issue at trial or in a post-trial motion. *People v. Peppers*, 352 Ill. App. 3d 1002, 1008-10 (2004).

358 Ill. App. 3d 718, 737 (2005). It was for the trier of fact to weigh the evidence and resolve any conflicts therein, and here we have no basis for substituting our judgment for that of the trial court in this regard. *Campbell*, 146 Ill. 2d at 375, 389. In sum, in viewing the evidence in the light most favorable to the State ((*Siguenza-Brito*, 235 Ill. 2d at 224), we find that it was sufficient to allow the trial court to conclude that defendant or Harris fired a gun in Smith's direction, and defendant was thus properly found guilty of aggravated discharge of a firearm beyond a reasonable doubt.

¶ 19 In reaching this conclusion, we have considered *People v. Hartfield*, 266 Ill. App. 3d 607 (1994), upon which defendant relies, and find it distinguishable. In *Hartfield*, the defendant was convicted of aggravated discharge of a firearm based on the testimony of an officer who stated that while he was in pursuit of the defendant, he heard gunshots, but did not see who fired them. *Hartfield*, 266 Ill. App. 3d at 608. On appeal, this court reversed the defendant's conviction, finding that the State had failed to present evidence that the defendant had fired a gun at the officer, as well as failed to present any circumstantial evidence supporting that inference. *Hartfield*, 266 Ill. App. 3d at 609. Here, in contrast, although Smith did not see defendant fire a gun, the State presented circumstantial evidence supporting the inference that defendant or Harris fired a gun in Smith's direction. This evidence included Smith's testimony that he heard the bullet bounce on the car directly in front of him, and the stipulation that bullet fragments were recovered from that car. Accordingly, *Hartfield* is inapplicable to the case at bar.

¶ 20 Defendant's reliance on *People v. Charleston*, 278 Ill. App. 3d 392 (1996), is equally misplaced. In *Charleston*, the defendant was convicted of aggravated discharge of a firearm on evidence that he was seen with a gun approaching an apartment where the victim lived, and

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numerous gunshots were heard soon thereafter. *Charleston*, 278 Ill. App. 3d at 394-98. On appeal, the reviewing court reversed that conviction, finding that the evidence was insufficient to show that the defendant had fired the gun in the direction of the victim. *Charleston*, 278 Ill. App. 3d at 398. In doing so, the court noted that the victim did not testify that shots were fired in her direction, and that investigating officers on the scene did not find any evidence that the defendant had done so. *Charleston*, 278 Ill. App. 3d at 398. Here, in contrast, as discussed above, circumstantial evidence was presented supporting the inference that defendant or Harris fired a gun in Smith's direction, and, accordingly, *Charleston* is distinguishable from this case.

¶ 21 Defendant also contends that the State failed to prove him guilty of unlawful restraint beyond a reasonable doubt. Unlawful restraint occurs when a person detains another knowingly and without legal authority. 720 ILCS 5/10-3(a) (West 2010). The gist of this offense is conduct which prevents a person 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 unlawful restraint, provided that the victim's freedom of movement is impaired. *People v. Lee*, 376 Ill. App. 3d 951, 958 (2007). The duration of the restraint is inconsequential, so long as the victim is actually restrained without legal authority. *People v. Sparks*, 314 Ill. App. 3d 268, 274 (2000), citing *People v. Jones*, 93 Ill. App. 3d 475, 479 (1981).

¶ 22 Smith testified that he stopped and allowed Harris to go through his pockets only because defendant threatened him by instructing Harris to shoot him, and that Harris backed up that threat with actions which suggested that he had a gun in his pocket. Although the duration of this detention may have been short, we observe that a detention as brief as a "few seconds" has been held to be sufficient to sustain a conviction for unlawful restraint. *Jones*, 93 Ill. App. 3d at 479.

In viewing the evidence in the light most favorable to the State (*Siguenza-Brito*, 235 Ill. 2d at 224), we find that it supports the trial court's conclusion that defendant and Harris knowingly detained Smith without legal authority, and defendant was thus properly found guilty of unlawful restraint beyond a reasonable doubt.

¶ 23 Defendant, however, argues that because Smith never testified that he "felt detained" or that his freedom of movement was "impaired," that he was not "detained" within the meaning of the statute. In so arguing, he does not cite, nor are we aware of, any authority holding that evidence is insufficient if a victim fails to describe a crime using the language of the statute. We also reject defendant's contention that Smith's freedom of movement was not impaired because he ultimately ran away. Smith testified that even after he allowed Harris to go through his pockets, defendant continued to instruct Harris to shoot him, and he ran at that point because he believed Harris would do so. We find that Smith's decision to flee when he concluded that he would be shot regardless of whether he was compliant with the demands imposed upon him does not impact whether his freedom of movement was impaired earlier during the encounter.

¶ 24 Defendant also maintains that we must discount Smith's testimony that Harris went through his pockets, which he contends is the only evidence supporting a finding that Smith was detained, because the trial court "rejected" that evidence by vacating his robbery conviction. This argument misconstrues the record, which shows that in vacating defendant's robbery conviction, the trial court stated that it was giving defendant "the benefit of the doubt" on that offense, but that there was "no question" that defendant "absolutely" encouraged the shooting at issue and denied his motion for a new trial in relation to the other two offenses. The court's

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comments make it clear that it harbored no doubt that defendant was guilty of unlawful restraint because Smith's freedom of movement was impaired due to the threat of being shot.

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

¶ 26 Affirmed.