

2012 IL App (1st) 110957-U

SECOND DIVISION  
June 26, 2012

No. 1-11-0957

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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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 2093
	)	
AUSTIN BROWN,	)	Honorable
	)	William J. Kunkle,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CONNORS delivered the judgment of the court.  
Presiding Justice Quinn and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* Evidence sufficient to sustain defendant's conviction for offense of armed habitual criminal.

¶ 2 Following a bench trial, defendant Austin Brown was found guilty of the offense of armed habitual criminal, then sentenced to nine years in prison. On appeal, defendant contends that the evidence was insufficient to prove him guilty of armed habitual criminal, where the testimony of the sole State witness was uncorroborated, inherently incredible and contradicted by a defense witness.

¶ 3 Defendant was charged with multiple counts of armed habitual criminal, aggravated unlawful use of a weapon, and unlawful use of a weapon by a felon, stemming from an incident that occurred on January 12, 2010 near 5627 South Bishop Street in Chicago. At trial, Chicago Police Officer Effie Pappas testified that at approximately 5:30 p.m. on that date, she and her partner responded to a dispatch call that men were selling narcotics near 5627 South Bishop Street. She drove her marked police car southbound on Bishop Street and, as she neared the reported location, she saw approximately 15 men, including defendant, in the street. Her attention was drawn to defendant because he was the only one who did not move away as she approached, and remained standing alone behind a white mini-van.

¶ 4 Officer Pappas stopped her car in the middle of the street, approximately 10 feet away from the van, and saw that defendant was holding, and trying to shield the presence of, a shiny object. Shortly thereafter, defendant tossed the object to the snow-covered ground. Nothing else was on the ground, and no one else was near the van. Defendant then walked to the passenger side of the van, which was the side closest to the police car, opened the unlocked, sliding side-door and entered the unoccupied van.

¶ 5 Officer Pappas then exited her car and recovered the object from the ground, while an officer from another police unit that was on the scene, entered the van and detained defendant. Officer Pappas testified that it was dark outside, but that she had a clear view of what was going on and never lost sight of defendant or the shiny object that he dropped. She further testified that the item she recovered from behind the van was a loaded, nine millimeter handgun and, although it had a matte finish, it reflected in a unique way and appeared shiny under the nearby light. The gun was inventoried and submitted into evidence with the Chicago Police Department. Officer Pappas testified that the mini-van was described as abandoned in the incident case report and that she could not recall if it had a license plate.

¶ 6 The parties then stipulated that defendant was separately convicted of aggravated unlawful use of a weapon and armed robbery in 2003. The trial court then granted defendant's motion for a directed finding as to the two firearm owner's identification card charges and whether defendant was an invitee, and the trial continued on the remaining charges.

¶ 7 Darnell Wiley testified for the defense that he lives at 5751 South Bishop and owns a white van. On January 12, 2010, he parked that van on Bishop Street about a half block away from his home, and it was at that location at approximately 5:30 p.m. that day. He locked the van when he parked it, and did not give anyone permission to open the van or enter it. The van, which was not abandoned, has sliding doors on the passenger side, which cannot be opened without a key. He further testified that he was not in the van at the time of the incident and did not see the arrest. He acknowledged having a prior felony conviction for possession of a controlled substance.

¶ 8 Prior to announcing its decision, the trial court stated that the testimony of Officer Pappas was clear, consistent and convincing. The court then found defendant guilty of armed habitual criminal.

¶ 9 On appeal, defendant contends that the evidence was insufficient to prove that he possessed a gun and that his conviction should be reversed. He argues (1) that Officer Pappas' testimony was "dropsy" testimony and, therefore, contrary to human experience, improbable, and unworthy of belief, and (2) that her testimony was uncorroborated by other witnesses or physical evidence.

¶ 10 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 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).

¶ 11 In this case, defendant was found guilty of the offense of armed habitual criminal. This offense occurs where a person "receives, sells, possesses, or transfers" any firearm after previously having been convicted of two or more offenses identified by the statute. 720 ILCS 5/24-1.7(a) (West 2010). Defendant raises no argument regarding his two prior qualifying convictions, but challenges the sufficiency of the evidence to prove his possession of a firearm.

¶ 12 Based on Officer Pappas' testimony, the trial court found that defendant was in possession of a firearm. On review, the finding regarding possession, a factual issue, will not be disturbed unless the evidence is so unbelievable, improbable, or palpably contrary to the verdict that it creates a reasonable doubt of defendant's guilt. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007).

¶ 13 In arguing for reversal, defendant relies on *People v. Ash*, 346 Ill. App. 3d 809 (2004) and *People v. McMurtry*, 64 Misc. 2d 63 (N.Y. Crim. Ct. 1970) to support his argument that Pappas' testimony is "dropsy" testimony and, therefore, inherently incredible. The court in *Ash* explained that in a dropsy case, a police officer falsely testifies that the defendant dropped evidence in plain view, as opposed to the evidence being recovered from an illegal search, in order to avoid the exclusion of evidence on fourth amendment grounds. 346 Ill. App. 3d at 816 (citing G. Chin & S. Wells, The "Blue Wall of Silence" as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury, 59 U. Pitt. L. Rev. 233, 248-49 (1998)). However, in *Ash*, defendant's conviction

was affirmed and the court noted that the officer's testimony, which at first blush might seem "convenient," was not contrary to human experience or unworthy of belief. 346 Ill. App. 3d at 817-18. In *McMurtry*, a 42-year-old case from a different jurisdiction, the court engaged in a lengthy discussion speculating on the incentives for officers to give false testimony, but then acknowledged that the burden of proof rests with the defendant and denied defendant's motion to suppress evidence where the officer's testimony did not go against the grain of human experience. 64 Misc. 2d at 67.

¶ 14 Here, defendant argues that it is "improbable" and "inherently unreal" that rather than leave the area along with the other men, he would wait until the officers were within 10 feet of him, drop a gun and then walk toward the officers in order to enter the van door that was nearest to the squad car. We disagree. Mere possibilities or speculation are insufficient to raise a reasonable doubt of guilt (*People v. Phillips*, 215 Ill. 2d 554, 574 (2005)), and it is not our function to speculate as to why defendant decided to remain on the scene and then drop the gun and enter the van on the side closest to the police car.

¶ 15 Officer Pappas testified to her observations that evening where defendant dropped the gun he was holding as she and her partner neared the area on a call of criminal activity. Her observations and recovery effort showed defendant's possession of a loaded firearm.

¶ 16 The trial court found her testimony credible, and there is nothing about the officer's testimony that is inherently suspicious, as defendant argues, nor is it inherently unbelievable that, upon seeing police, defendant would attempt to rid himself of incriminating evidence. See *Ash*, 346 Ill. App. 3d at 817-18. The trial court was in a better position to make credibility determinations, and we have no basis for substituting our judgment for that of the trial court in this matter. *Campbell*, 146 Ill. 2d at 389.

¶ 17 Defendant argues, nevertheless, that the evidence was insufficient to prove him guilty because the testimony of Officer Pappas was contradicted by Wiley and was not corroborated by other witnesses or physical evidence. However, Wiley testified that he was not present for the arrest and did not see the incident. Although he testified that he owned a white van that was parked on Bishop Street on the day and time of the arrest, his testimony did not establish that his van was the same van that defendant entered and behind which defendant tossed the handgun.

¶ 18 More importantly, Wiley's testimony did not contradict Officer Pappas' testimony on defendant's possession of the gun, which was the subject of the prosecution. The testimony of a single witness, including that of a law enforcement officer, if positive and credible, is sufficient to convict, *even if* it is contradicted by the defendant. *People v. Loferski*, 235 Ill. App. 3d 675, 682 (1992) (emphasis added). In this case, the trial court found Officer Pappas' testimony credible and sufficient to establish that element of the offense of armed habitual criminal.

¶ 19 Defendant further argues that Officer Pappas' testimony was deficient in that it was not corroborated by physical evidence of the gun or testimony of other officers who were on the scene. The State, however, was not required, as a matter of law, to corroborate Pappas' credible testimony (*Ash*, 346 Ill. App. 3d at 818) and when viewed in the light most favorable to the State (*Siguenza-Brito*, 235 Ill. 2d at 224), we conclude that the State's evidence was sufficient to allow the trial court to find that defendant possessed a gun after having been twice convicted of felonies, and was then found guilty of the offense of armed habitual criminal beyond a reasonable doubt.

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

¶ 21 Affirmed.