2017 IL App (1st) 143536-U

No. 1-14-3536

Order filed May 10, 2017

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 20386
	)	
WILLIAM LOCKHART,	)	Honorable
	)	Arthur F. Hill,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the ruling of the trial court where the testimony of four credible witnesses was sufficient to support defendant's convictions for aggravated unauthorized use of a weapon and unlawful use of a weapon by a felon.

¶ 2 Following a bench trial, defendant William Lockhart was convicted of two counts of aggravated unlawful use of a weapon (AUUW) (720 ILCS 24-1.6(a)(1)/(3)(C), (a)(2)/(3)(C) (West 2012)), two counts of unlawful use of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2012)), and resisting a peace officer causing injury (720 ILCS 5/31-1(a-7) (West

2012)). After merging the counts, the court sentenced him to concurrent terms of five and a half years' imprisonment on one count of AUUW and two years for resisting. On appeal, defendant contends that his convictions for AUUW and UUWF should be reversed because the testimony offered at trial was irreconcilable or flagrantly false and thus insufficient to support his convictions. We affirm.

¶ 3 At trial, Officer Cuatchan testified that, at approximately 11:40 a.m. on October 12, 2013, he was in a marked squad car with two partners when they received a call detailing a "[m]ale black wearing a red hoodie with a gun" near the area of 1151 South Central Park Avenue. Cuatchan and his partners responded to that area where they saw a man matching that description sitting on the porch of 1141 South Central Park Avenue. The man on the porch was wearing a "red hoodie," and Cuatchan identified him in court as defendant.

¶ 4 Cuatchan exited his car and approached defendant. Defendant got off the porch and fled southbound. Cuatchan pursued defendant and saw him reach into his waistband, remove a "large pistol," and drop it. Defendant continued to flee while Cuatchan stopped to recover the firearm. Cuatchan's partner, Officer Chico, continued in pursuit of defendant. Lieutenant O'Shea, in an unmarked police car, cut off defendant as he ran through a vacant lot at 1151 South Central Park Avenue. Defendant ran into the vehicle, "bounced off," continued to run, and was tackled by Chico. Defendant "continued to resist arrest, flailing his arms trying to defeat the arrest." Chico, who sustained laceration to his elbow when he tackled defendant, "repeatedly" told defendant to "stop resisting." Cuatchan testified that the pistol he recovered contained nine live rounds of ammunition.

¶ 5 During cross examination, Cuatchan testified he could not recall any more details from the dispatch call beyond that the suspect was a "male black" in a "red hoodie." He testified that

the call directed him and his partners to the area of Roosevelt Road and Central Park Avenue. Cuatchan did not observe a gun when he first saw defendant on the porch. Cuatchan elaborated that, when they first approached defendant, defendant walked approximately "a couple feet" northbound before he took off running. Defendant was "[a]bout a car length away" when he removed the firearm from his waistband with his right hand and discarded it.

¶ 6 Officer Chico testified that, at approximately 11:40 a.m. on October 12, 2013, he was working with his partners Officers Cuatchan and Torres when they received a call detailing a "[p]erson with a gun." The call informed the officers that "[t]he potential offender had a red hoodie." They proceeded to the area of 1151 South Central Park Avenue where they saw a man, identified in court as defendant, matching that description, sitting on a porch. Chico got out of the car, approached defendant, and asked to speak with him. Defendant stood up, put his hands up, and fled. Chico pursued defendant southbound through an empty lot. Lieutenant O'Shea tried to cut him off in his unmarked vehicle, which defendant ran into. When defendant tried to continue fleeing, Chico tackled him. Defendant disobeyed Chico's commands to comply with the arrest and flailed his arms and legs. Chico suffered an injury that required four stitches in his elbow. Chico "took [defendant] down for emergency handcuffing, cuffed him and took him into custody."

¶ 7 During cross examination, Chico testified that he never saw defendant with a firearm. Chico said that he approached the porch and asked to speak with defendant. Defendant stood up, raised his hands with his palms facing out, and took off running. Chico did not see defendant discard the weapon and defendant did not fall when he ran into the unmarked police car.

¶ 8 Lieutenant Daniel O'Shea testified that, at approximately 11:40 a.m. on October 12, 2013, he received an "OEMC" reporting a "person with a gun wearing red sweatshirt at

Roosevelt and Central Park." O'Shea toured the area and saw a police car from the 10th District pull up at "approximately 1141 South Central Park." O'Shea looked on the porch and saw "an individual matching the description of the call of the person with a gun," wearing a red hooded sweatshirt. O'Shea then saw the man on the porch, who O'Shea identified in court as defendant, "stand up, exit the porch, came down the stairs, looked in the officers' direction and fled southbound on Central Park." Defendant ran southbound on the sidewalk adjacent to Central Park Avenue and O'Shea drove his car parallel to the running defendant and officers in pursuit. O'Shea saw defendant remove a "blue steel revolver, from his waistband area and discard it to the sidewalk" before continuing to flee. O'Shea was approximately "10 feet" from defendant when he discarded the revolver. O'Shea pursued in his vehicle and, after defendant went southeast into a vacant lot, cut defendant off. Defendant ran into O'Shea's car and was tackled by Officer Chico.

¶ 9 During cross examination, O'Shea testified that "[t]he only thing [he] saw [defendant] do which is with his hands is reach into his waistband." O'Shea testified that defendant reached into his waistband with his right hand.

¶ 10 Detective Robert Carrillo testified that, on October 12, 2013, he spoke with defendant at the police station. Carrillo read defendant his Miranda rights from the "FOP book." Defendant waived his rights and asked Carrillo "why the police had taken his granddad away, his granddad and his nine children away." Carrillo "had an idea that he was referring to the weapon because the weapon was a nine-shot revolver." Defendant went on to say "he didn't know how the police knew that he had the granddad with him because he didn't pull it out on anybody." Carrillo asked if defendant was referring to the firearm, to which defendant said "yea, the granddad had been in the family for a very long time."

¶ 11 During cross examination, defense counsel asked Carrillo if he presented defendant with "any type of written Miranda waiver form." Carrillo responded, "[t]here is no such thing, sir." Counsel then asked if Carrillo had ever heard of a form that allows a suspect to waive their rights and give a written statement. Carrillo said that he had "[o]n TV, sir. There is no such procedure in the Chicago Police Department." Carrillo then testified that he'd never taken a written statement in his 18 years as a police officer. Carrillo testified he "is not allowed to take handwritten statements." He stated "only State's attorneys can take handwritten statements" and that he contacted that State's Attorney's office to bring in a State's attorney to take a handwritten statement, but none ever arrived.

¶ 12 The parties stipulated that, at the time of the offense, defendant did not have a valid FOID card. They also stipulated that defendant was previously convicted of Class 4 possession of a controlled substance, a felony, under Case No. 06 CR 0805102. The State rested. The court denied defendant's motion for a directed verdict.

¶ 13 Defendant testified that, on October 12, 2013, he went to 1141 Central Park Avenue to see a woman, "Pooda," whom he previously had a relationship with. He was waiting on the porch along with Pooda and her relative when the police pulled up with one officer "hanging out the window, pointing up on the porch where [defendant] was sitting at with the ladies saying there that MF go." Defendant testified Officer Cuatchan offered the profanity. Defendant testified that he knew Cuatchan from a previous arrest that resulted in dismissal of the charge. He stated that, when he saw Cuatchan approach, he "panicked" because, the last time Cuatchan arrested him, "he made me sleep in another bullpen when my clothes was in another bullpen." Defendant testified he was "awfully frightened" when he saw Cuatchan, was "startled" by the profanity, and he thought "he was gonna come after me."

¶ 14 Defendant testified that, when Cuatchan "first got out the car, he started running." Defendant ran away from the police. Defendant was then "cut off by a truck" that "slightly hit [him]." He was then tackled and "immediately put [his] arms behind [his] back." Defendant denied tossing anything while running from the police and denied having a weapon. He denied telling the police he had a gun he called his "granddad."

¶ 15 During cross examination, defendant testified he never spoke with Detective Carrillo and, in fact, had never seen him before Carrillo testified in court. The State entered the same certified statement of conviction that it entered during its case in chief for impeachment purposes.

¶ 16 The trial court found defendant guilty of all counts; two counts of AUUW, two counts of UUWF, and one count of resisting a peace officer causing injury. It stated that it "heard the testimony of the witnesses, *** had a chance to gauge their credibility while they testified, *** heard arguments of counsel." The court listed the witnesses and summarized their testimony. It stated "I do not believe the defendant at all. I do believe the police officers who were extremely credible." The case proceeded to posttrial motions and sentencing.

¶ 17 The court denied defendant's motion for a new trial. It merged the AUUW and UUWF convictions and sentenced defendant to five and a half years' imprisonment on one count of AUUW. It also sentenced him to a concurrent term of two years for resisting arrest. Defendant timely appealed.

¶ 18 On appeal, defendant argues the evidence that he possessed a firearm was insufficient to support his convictions for AUUW and UUWF. Specifically, he contends that the testimony of the three police officers was unbelievable and "irreconcilable" and the testimony of Detective Carrillo was "flagrantly false and unreliable."

¶ 19 When a defendant challenges the sufficiency of the evidence, the question is whether, after reviewing 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. On review, all reasonable inferences from the evidence are drawn in favor of the State. *People v. Martin*, 2011 IL 109102, ¶ 15. The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on questions involving the weight of the evidence, conflicts in the testimony, or the credibility of witnesses. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). A defendant's conviction will be reversed only if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009). "[W]here the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether, in view of the record, a fact finder could reasonably accept the testimony as true beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004).

¶ 20 To sustain the convictions for AUUW, the State was required to prove that defendant knowingly carried on or about his person, at a time when he was not on his own land (Count 1) or upon any public street (Count 2), any firearm, and he had not been issued a valid FOID card at the time. 720 ILCS 5/24–1.6(a)(1), (3)(C) (West 2012); 720 ILCS 5/24–1.6(a)(2), (3)(C) (West 2012). To sustain the convictions for UUWF, the State had to prove that defendant was a felon and knowingly possessed a firearm (Count 3) or ammunition (Count 4). 720 ILCS 5/24-1.1(a) (West 2012).

¶ 21 Defendant does not contend that he possessed a valid FOID card at the time of his arrest, nor does he contest his status as a felon. Rather, he argues that the State failed to prove that he carried a firearm.

¶ 22 The testimony from Officers Cuatchan, Chico, and O'Shea, along with Detective Carrillo was ample to support a finding that defendant possessed a firearm. The positive testimony of a single credible witness is sufficient to support a criminal conviction. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Here, two Chicago police officers testified they clearly saw defendant discard a firearm while fleeing from the police. Cuatchan was "[a]bout a car length away," in broad daylight, when defendant reached into his waistband, removed a "large pistol," and discarded it. Likewise, Lieutenant O'Shea was approximately 10 feet from defendant when he observed him remove a "blue steel revolver" from his waistband and discard it. Cuatchan recovered the firearm immediately, while Officer Chico continued in pursuit of defendant. The firearm was inventoried according to protocol. Further, Detective Carrillo testified defendant, who referred to his "granddad" and "nine children" being taken away, affirmed that that "the granddad had been in the family a long time" when asked if the "granddad" he referred to was the firearm.

¶ 23 The trial court found the four police officers to be "extremely credible," and we must give due consideration to the ability of the trial court to see and hear the witnesses. *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001). It is for the trier of fact to resolve any inconsistencies or contradictions in witness testimony, and it is entitled to accept or reject as much or as little of a witness's testimony as it sees fit. *People v. Logan*, 352 Ill. App. 3d, 73, 80-81 (2004). The court resolved the inconsistencies here and found the police witnesses credible.

¶ 24 Nevertheless, although a fact finder's determination of a witness's credibility is entitled to great deference, it is not conclusive. *Cunningham*, 212 Ill. 2d at 280. Where a conviction

depends on eyewitness testimony, the reviewing court may find testimony insufficient "where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *Id.*

¶ 25 To that end, defendant argues that the testimony of Officers Cuatchan and Chico and Lieutenant O'Shea was "irreconcilable" and "riddled with crucial inconsistencies, vague statements incapable of verification, and unabashed fabrication." He argues that the three police officers could provide "barely any" information regarding the dispatch call that led them to defendant and they provided different accounts of defendant's actions after being approached by the officers. He points out that Chico did not witness defendant discard a firearm, even though Chico was running next to Cuatchan when Cuatchan saw defendant discard the gun. He also points out that the State introduced no corroborating evidence, such as the gun itself, a photograph of the gun, or fingerprint evidence tying defendant to the gun. Defendant asserts such corroborating evidence is necessary where, as here, the witnesses' accounts differ significantly. Defendant concludes that the trial court's finding that the officers were "extremely credible" was unreasonable in light of the unreliable testimony. We disagree.

¶ 26 All three officers gave substantially similar accounts of the dispatch call that brought them to 1141 South Central Park Avenue. Cuatchan testified that the call detailed "[m]ale black wearing a red hoodie with a gun" near the area of 1151 South Central Park Avenue. Chico testified that the call detailed a "[p]erson with a gun" and that "[t]he potential offender had a red hoodie." O'Shea testified the call detailed a "person with a gun wearing red sweatshirt at Roosevelt and Central Park." Defendant finds it suspect that no other details about the call were testified to. Defendant's argument is misguided. He was free to explore the details of the call during cross-examination and did so. Furthermore, additional details of the call were in no way

relevant to whether the evidence was sufficient to show that defendant possessed a gun. We fail to see how additional details regarding the dispatch call would establish reasonable doubt as to whether defendant possessed a firearm.

¶ 27 Defendant contends that Cuatchan, Chico, and O'Shea gave different accounts of defendant's actions once the police approached him. Cuatchan testified defendant walked approximately "a couple feet" northbound before he took off running. Chico testified defendant stood up, raised his hands with his palms facing out, and took off running. O'Shea testified defendant he observed defendant "stand up, exit the porch, came down the stairs, looked in the officers' direction and fled southbound on Central Park." O'Shea did not, as defendant claims, deny that defendant did anything with his hands when the officers approached. Rather, his testimony was that "[t]he only thing I saw [defendant] do which is with his hands is reach into his waistband."

¶ 28 Minor inconsistencies between witnesses' testimony or within one witness' testimony affect the weight of the evidence but do not automatically create a reasonable doubt of guilt. *People v. Gill*, 264 Ill. App. 3d 451, 458-59 (1992). It is for the trier of fact to judge how flaws in part of a witness' testimony, including inconsistencies with prior statements, affect the credibility of the whole. *Cunningham*, 212 Ill. 2d at 283. Here, after the inconsistencies between Cuatchan, Chico, and O'Shea's testimony were fully explored at trial and argued in closing, the trial court found the officers "extremely credible." This was the court's purview and the record does not compel a different conclusion.

¶ 29 Defendant's argument that it is "incomprehensible" that Chico, while running alongside Cuatchan, did not observe defendant discard a gun is similarly unpersuasive. We first reject the notion that, in the course of pursuing a suspect, all police would witness the exact same thing.

We further find that this argument goes to credibility and weight of the evidence, issues reserved for the trial court. We decline to revisit those rulings.

¶ 30 Defendant argues that Detective Carrillo's testimony that Chicago police do not offer written Miranda waiver forms or take written statements undermined the rest of his testimony, in which he stated defendant acknowledged possessing a firearm. However, any issue with Carrillo's testimony was fully-explored during cross examination and, again, the court made its determination on credibility. Defendant further argues that defendant's statement regarding his "granddad and nine children" should not be viewed as "competent testimony" because it is "quite the logical leap" to infer that "granddad and nine children" referred to a nine-shot revolver. However, as the State points out, Carrillo testified that he specifically questioned defendant to clarify whether "the granddad he was referring to was in fact the weapon." Defendant replied "yeah, the granddad has been in the family for a long time." Thus, Carrillo testified that defendant confirmed that he was referring to the firearm, and it was within the discretion of the trial court to determine Carrillo's credibility and how much weight to afford his testimony.

¶ 31 Defendant also argues that the State did not produce any corroborating physical evidence. However, since a single eyewitness's testimony can sustain a conviction, the State is not required to produce corroborating physical evidence. *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23. Because the trial court found the testimony of three police officers and a police detective to be credible and defendant's contrary version of events not believable "at all," the lack of physical evidence has no bearing on defendant's conviction and does not raise a reasonable doubt as to his guilt. *Id.*

¶ 32 The trier of fact may accept or reject all or part of a witness' testimony. *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 22. It is not required to accept explanations that are

consistent with the defendant's innocence or to disregard inferences flowing from the evidence. *People v. Jones*, 2014 IL App (3d) 121016, ¶ 19. Here, after hearing all the testimony, the court rejected defendant's version of events and determined that defendant was in possession of a firearm when he fled from the police. In view of the record and the credibility determinations, we cannot say the evidence was so improbable or unsatisfactory as to render this conclusion unreasonable.

¶ 33 For the foregoing reasons, we affirm the ruling of the trial court.

¶ 34 Affirmed.