

NOTICE

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2013 IL App (5th) 110086-U

NO. 5-11-0086

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

CLIFFORD D. MOORE,

Defendant-Appellant.

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Appeal from the  
Circuit Court of  
Massac County.

No. 10-CF-106

Honorable  
Joseph Jackson,  
Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.

Presiding Justice Spomer and Justice Goldenhersh concurred in the judgment.

**ORDER**

¶ 1 *Held*: The defendant was proven guilty beyond a reasonable doubt of unlawful possession of a weapon by a felon.

¶ 2 The defendant, Clifford D. Moore, appeals from his conviction for unlawful possession of a weapon by a felon after a jury found him guilty in the circuit court of Massac County. On appeal, the defendant argues that the State failed to prove that he knowingly possessed a firearm beyond a reasonable doubt. For the reasons that follow, we affirm.

¶ 3 On September 21, 2010, the State charged the defendant and his brother, Lonnie J. Moore, by information with one count of aggravated discharge of a firearm and one count of unlawful possession of a weapon by a felon. On November 22, 2010, the State filed a motion for joinder, requesting that the trial court join the two cases for trial. Thereafter, the trial court granted the motion.

¶ 4 The following evidence was adduced at the defendant's jury trial. On the afternoon

of September 16, 2010, Crystal Riley was visiting a friend who lived at Strickland Apartments in Metropolis, Illinois. They were sitting on the front porch when Crystal observed Lonnie Moore and the defendant walking toward Arkita Davis's house. She noted that Lonnie was wearing jean shorts and no shirt and the defendant was wearing a red "Dickie outfit" or a red T-shirt and red shorts.

¶ 5 Crystal observed that Lonnie and the defendant were walking toward a group of approximately 10 men on the back porch of the Davis residence. It appeared that Lonnie and the defendant were making "face gestures" toward the group of men. An argument ensued between the Moore brothers, who were standing in the street, and the men. The group of men then began walking toward the brothers. Crystal observed Lonnie lift the defendant's shirt to display a firearm. From her location, she could see the handle of the gun in the defendant's waistband. She described the gun handle as black and rectangular in shape. Crystal estimated that she was approximately 30 feet from the men.

¶ 6 Crystal noticed that Cory Rhodes and Shane Doyle were part of the group arguing with the Moore brothers. She heard the defendant tell Rhodes that "he was going to mark him on sight when he seen [*sic*] him," meaning that he would hurt or kill Rhodes. Rhodes responded that he would not do anything to the defendant. Doyle warned the brothers to stay out of Davis's front yard.

¶ 7 Crystal then observed the defendant and Lonnie running away from the Davis residence and running behind Strickland Apartments. She heard three or four gunshots behind her and concluded that the shots were coming from the direction of the Moore brothers. However, she could not see the Moore brothers because they were outside her line of sight. Crystal started running toward her mother's house. As she was running, she heard gunshots coming from the Davis residence. Crystal testified that she did not see the Moore brothers shooting the gun, and she did not see Doyle with a weapon. She had her back to the

scene when she heard the second set of gunshots because she was running toward her mother's house. Crystal was dating Doyle's sister's uncle.

¶ 8 Candace Riley, Crystal's sister, was at Strickland Apartments visiting her mother on the afternoon of September 16. She observed Tara Smith and Lonnie standing outside the apartment complex, and she approached them because she wanted to borrow a cigarette. Candace and Smith then went to sit on Candace's mother's porch. While sitting on the porch, Candace observed Lonnie and the defendant walking toward 11th Street, in the direction of the Davis residence. She testified that the defendant was wearing red shorts. Smith asked Candace to walk with her toward 11th Street because she believed something was about to happen.

¶ 9 Candace observed the defendant and Lonnie standing in the street near the Davis residence, arguing with Cory Rhodes, who was standing in Davis's yard. Candace did not see anyone else in the yard. She testified that she was standing on a sidewalk near 11th Street, approximately 30 to 50 feet from the Moore brothers, when she observed Lonnie pull a gun out of the defendant's pants. She explained that the gun was tucked behind the defendant's belt on his left side. When she observed Lonnie pull out the gun, she started quickly walking across the street toward her aunt's house because her aunt was "well known to call the police." She had to run directly past the Moore brothers in order to reach her aunt's house. As she was running, she heard gunshots behind her. She estimated that she had heard more than 10 gunshots. She did not see Doyle throughout the entire incident. When asked whether she would be surprised that an officer had determined that she was 88 feet away from where the Moore brothers were standing, she replied that she had not taken any measurements.

¶ 10 Michael Anthony Pass testified that he was walking from a relative's house toward Charlie's Party Hut, located on 10th Street, when he encountered Lonnie. According to Pass,

Lonnie requested that he tell Doyle that Lonnie wanted Doyle to come out into the street so they could fight. Pass went to the Davis residence to give Doyle the message. Pass and Doyle were standing on the side of the Davis residence when Pass relayed the message. Pass observed three individuals in the backyard, but explained that he could not see the entire yard. After giving Doyle the message, Pass continued walking to Charlie's Party Hut. He explained that he was inside Charlie's Party Hut for a few minutes and was returning to his relative's house when he heard approximately 10 gunshots. He estimated that there was a 10-minute gap between the time he left the Davis residence and when he heard the gunshots. Pass did not see anyone firing a weapon. He saw Lonnie running, but did not see anything in Lonnie's hands.

¶ 11 Pass gave the police two contradictory statements approximately one month after the incident. In his second statement to the police, he admitted seeing Lonnie with a gun firing in the direction where he initially saw Doyle. He did not mention this during his first interview. At trial, he admitted that he was lying to the officers about seeing Lonnie with a gun. Pass testified that he had observed Lonnie pointing, but he did not see a gun in Lonnie's hand.

¶ 12 Augusta Williams, the defendant and Lonnie's aunt, testified that she was visiting a friend, Margaret Bradford, on the afternoon of September 16. Bradford lived in the area of the incident. Candace Riley and a man named Clyde were also present at Bradford's residence. They were all sitting outside in front of Bradford's carport when Williams observed the defendant and Lonnie walking, in the street, toward the Davis residence. Lonnie and the defendant stopped in the street before reaching the residence. Williams then observed Michael Pass enter the Davis residence and return outside with Shane Doyle. She heard Doyle ask Lonnie if he was "coming up here with a gun." Doyle then went back inside the residence. Shortly thereafter, Williams observed Doyle running around the back of the

house toward an alley with a gun in his hand. Williams admitted that there was a tree line between where she was sitting in front of the carport and where the Moore brothers were standing in the street.

¶ 13 As a result of seeing Doyle with a gun, Williams hid behind a refrigerator located in the carport. She subsequently heard gunshots and believed the gunshots were coming from the alley behind the Davis house and from where Lonnie was standing. She did not observe who shot first because she could not see anything from her position behind the refrigerator. She left her hiding place when the shots sounded like they were farther away. Williams then observed Lonnie shooting a gun. She explained that she saw Lonnie's arm extended, heard a boom, and then observed his arm "kick up." She believed that Lonnie was shooting at Doyle, who was standing in an alley behind the Davis residence. She heard a total of six or seven gunshots, but she did not see any evidence of the bullets striking anything. After the shooting, she observed Lonnie and the defendant retreat behind Strickland Apartments, and she did not see where Doyle went. Williams spoke with the police on two occasions regarding the incident. On the first occasion, she reported that she had observed Lonnie pull a pistol out of the defendant's waistband. She did not mention this in her second statement. She testified that she could not recall telling an officer that Lonnie had retrieved the gun from the defendant's waistband.

¶ 14 Scott Deming, a detective with the Metropolis police department, was the crime scene investigator in this case. Deming collected physical evidence from the scene and took photographs of his observations. He recovered two .45-caliber shell casings on the southwest corner of the Davis residence (toward the front of the residence). He explained that it was unlikely, from his observation of the location of the shell casings, that the person shooting the firearm was located behind the home. Instead, he believed that the shooter was standing close to the corner of the front of the residence.

¶ 15 Deming observed three areas in the grass that appeared to be impact points where projectiles had struck the ground. Based on his observation of the impact sites, he concluded that the shots came from the Davis residence. He did not find any impact sites indicating that shots were fired from the Moore brothers' location. The police did not find any bullets or any other shell casings at the scene. No firearms or cap guns were found at the scene. He did not discover any shell casings or any weapons from the area where the Moore brothers were reportedly standing. Deming identified the following reasons as to why a fired gun would not leave a shell casing: the firearm malfunctioned and did not eject the round or it was a revolver. He explained that it was possible for a firearm to be discharged and no impact point or projectile be discovered. He further explained that the discovery of an impact point or a bullet at the scene of a shooting depended on whether the bullet struck an object and on how far the bullet traveled. The officers did not find a cell phone holder at the scene. Although Doyle admitted shooting a firearm, the gun was not recovered because he returned it to its owner and the owner was unidentified.

¶ 16 Deming testified that the distance between the corner of the Strickland Apartments and the corner of the Davis residence was over 100 feet. He further testified that the Bradford property was situated on a slope at a higher elevation than the Strickland Apartments. He explained that a person standing on the Bradford property would be looking down on the Strickland Apartment complex. As part of his investigation, he had an individual stand in the general vicinity of the impact zone to determine whether he could see that individual from the Bradford property. Deming explained that he had squatted down to determine whether a shorter person's line of sight would be obstructed. He testified that he was able to see the upper torso of the individual while looking around the edge of the refrigerator in the Bradford carport.

¶ 17 Michael Kennedy, a detective with the Metropolis police department, testified that he

was dispatched to the vicinity of the Strickland Apartment complex on September 16. He was traveling to the scene when he observed two black males running north approximately 2 to 2½ blocks from Strickland Apartments. He identified the men as Lonnie Moore and the defendant. Kennedy observed that Lonnie was wearing jean shorts and no shirt and the defendant was wearing a white "do-rag," a red shirt, and gray shorts. Kennedy ordered the brothers to put their hands in the air, and they immediately began yelling that Shane Doyle had been shooting at them. The brothers were taken into custody and transported to the Metropolis police department. The police officers did not recover any firearms or shell casings along the path that the Moore brothers took from the scene of the incident to the place of their apprehension.

¶ 18 Kennedy spoke with the defendant at the police department, and he volunteered to take a gunshot residue (GSR) test. However, a GSR test was not performed because Kennedy did not have the correct kit. Lonnie refused to talk with the police officers after being informed of his constitutional rights. However, he subsequently told Kennedy that he wanted to "take the charge" and wanted his brother released. The officers did not ask Lonnie to take a GSR test. The police had received a report from Augusta Williams that Lonnie had shot a firearm during the incident. Kennedy retrieved a cell phone from the defendant, but he did not have a cell phone carrying case on him. Neither Lonnie nor the defendant mentioned that Lonnie had a cap gun in his possession during the incident.

¶ 19 Shane Doyle testified that he was charged with aggravated discharge of a firearm and reckless discharge of a firearm for his involvement in this incident, but he had not been promised any leniency for his testimony. On September 16, he was in Davis's backyard with his brother, Cory Rhodes, a guy named Donte, and Donte's friends. Doyle observed the defendant and Lonnie walking down the street toward Charlie's Party Hut, which was located on 10th Street. One of the guys at the Davis residence said hello to the Moore brothers, but

they did not respond. Shortly thereafter, Michael Pass approached Doyle and told him that the defendant and Lonnie were waiting for him in front of the Davis residence. Pass told him that the Moore brothers wanted to fight. Doyle went to the front of the residence with Rhodes, Donte, and Donte's friends and told the Moore brothers "to get on." The defendant and Lonnie were standing in the street, close to the yard.

¶ 20 Lonnie threatened to beat Doyle up, and Doyle told the brothers to leave. In response, Lonnie lifted the defendant's shirt, revealing a revolver. Doyle explained that he had observed the handle and the cylinder of the revolver sticking out of the defendant's pants. Doyle put his hands in the air and retreated from the situation. Doyle went to the side of the Davis house and encountered one of Donte's friends loading a magazine for a semiautomatic firearm. Doyle had only met the man that day and did not remember his name. Doyle asked to borrow the weapon. Doyle explained that he wanted to make Lonnie and the defendant leave and that he would not shoot the gun. He believed that the gun was a 9-millimeter or a .45-caliber semiautomatic. The unidentified man gave Doyle the gun. Doyle engaged the gun's safety device and returned to the Moore brothers, who were standing in the street talking to Rhodes. Doyle pointed the gun at the Moore brothers and told them to leave, and they ran behind a nearby building. Doyle watched them leave.

¶ 21 Thereafter, Doyle began walking toward the front of the Davis residence. As he was walking, he noticed Lonnie pointing a revolver at him. Lonnie began shooting at him, and Doyle took off running. Doyle explained that he was running back and forth alongside the Davis residence while attempting to disengage his gun's safety device. He was also attempting to replace the gun's magazine because he had accidentally dropped it while he was running. Lonnie continued shooting at Doyle until he had to stop to reload. As Lonnie was reloading his firearm, Doyle fired in the air to scare the brothers away. They did not run away, and Doyle began shooting at them because he believed his life was in danger. They



retreated, and Doyle returned the borrowed gun to the owner before also leaving the scene. Doyle believed that he had fired his weapon four or five times. Doyle did not talk with the police until the police located him weeks after the incident.

¶ 22 Lonnie Moore testified that he was previously convicted of unlawful possession of a weapon by a felon and aggravated battery. He testified that he was at his brother's apartment in Strickland Apartments on September 16. Between 12 p.m. and 1 p.m., he went to his aunt's house, which was across the street, to get a cigarette. Augusta Williams was his aunt. He went to the back door of the residence, but his aunt was not home. Before leaving, he picked up a cap gun sitting on a shelf outside his aunt's home. Lonnie explained that he had confiscated the cap gun from his nephew because the nephew was "flashing" it at people and the cap gun appeared realistic. After confiscating the cap gun, Lonnie had placed it on a shelf outside his aunt's home. He had planned to return the cap gun to his nephew later that day.

¶ 23 Lonnie was walking toward his brother's residence when he encountered Tara Smith. Smith told him that Shane Doyle and his brothers were in the area and were threatening to hurt him. Shortly thereafter, the defendant joined them outside, and they decided to walk to Charlie's Party Hut to purchase cigarettes. Lonnie and Smith walked together while the defendant walked slightly behind them. As they were walking, they encountered Michael Pass near the Davis residence. Smith walked away, but he did not know where she went. He observed approximately 10 men on the back porch at Davis's house. He asked Pass to tell Doyle that if Doyle and his brothers wanted to fight him, they knew where to find him. After Pass delivered the message to Doyle, Lonnie observed Doyle, Doyle's brother, and approximately six unidentified men approach with beer and whiskey bottles in their hands. Lonnie got into a verbal argument with the group, and Doyle disappeared. The defendant approached and Lonnie explained what was happening. As he was talking to his brother,

approximately six or seven of the men crossed the street and walked toward them. The defendant grabbed Lonnie and told him to walk away. Lonnie did not walk away and instead pulled out the cap gun to scare the group. He pointed the cap gun at the Davis house and pulled the trigger. He did not point it at the group of men because the cap gun had an orange tip, which would reveal that it was not a real gun. The cap gun made a popping noise when he pulled the trigger, and the group of men took off running. When the defendant realized that Lonnie had shot a cap gun, they both started laughing.

¶ 24 Shortly thereafter, Doyle approached from the back of the house pointing a pistol at them. They took off running before Lonnie could explain that his gun was fake. As they were running, Lonnie heard two gunshots. The brothers took shelter at a nearby playground, and he heard two more gunshots. Lonnie had dropped the cap gun during the run. They were running toward the police station when they encountered police officers and were arrested.

¶ 25 Initially, Lonnie did not tell the officers that he had a cap gun because he was afraid that he would face charges. He admitted telling a police officer that he would take the "weight" if his brother was released. However, he was told that it was too late for that. He eventually admitted having a cap gun at the scene. Lonnie testified that the cap gun was never in the defendant's possession, and he denied lifting the defendant's shirt.

¶ 26 The defendant testified that Lonnie's testimony was accurate. He initially believed that the cap gun was real, and he was surprised when Lonnie pulled out the gun. The cap gun sounded like a firecracker when Lonnie pulled the trigger. As they were running from the scene, he took his cell phone out of its carrying case, which was clipped on his belt, because he intended to call the police. He believed that he had lost the case when they were running because it was not clipped on his belt when they were transported to the police station. He explained that if anyone observed anything underneath his shirt, it would have been the cell phone carrying case.

¶ 27 When the brothers were stopped by Kennedy, the defendant told him that Shane Doyle and his brother had attempted to kill them. The defendant cooperated with the police officers and willingly submitted to a GSR test. He did not mention the cap gun to the officers because he was in shock from the incident and did not believe that it was important.

¶ 28 The defendant testified that he did not have a firearm and that Lonnie did not raise his shirt. He admitted that they were running in the opposite direction of the police station when Kennedy arrested them in the alley, but explained that they had to run in that direction in order to avoid Doyle.

¶ 29 After hearing the evidence, the jury found the defendant not guilty of aggravated discharge of a firearm and guilty of unlawful possession of a weapon by a felon. Thereafter, the trial court sentenced him to six years' imprisonment. The defendant appeals his conviction.

¶ 30 The sole issue raised on appeal is whether the defendant was proved guilty beyond a reasonable doubt of unlawful possession of a weapon by a felon. The defendant maintains that the State's evidence was "riddled with inconsistencies, and was presented by people who could not see significant parts of the incident, who had to rely on hunches, or who had personal motive and biases." In particular, the defendant challenges the following inconsistencies and biases in the witnesses' testimony: (1) the witnesses' accounts varied as to the number of people with Doyle during the incident; (2) Candace Riley testified that she never saw Doyle at the scene despite Doyle's admission that he was present; (3) Augusta Williams, Lonnie, and the defendant were the only witnesses to testify that Doyle had a firearm in his possession; (4) Doyle's testimony was self-serving because he was facing charges himself; (5) Doyle's story as to how he had obtained the firearm was improbable; (6) some of the witnesses claimed to know the origin of the gunshots by sound alone; (7) Crystal and Candace both incorrectly testified that the defendant was wearing red shorts, which

indicated that they had previously discussed their testimony regarding the incident; (8) none of the witnesses had the perfect vantage point; and (9) Crystal was dating Doyle's sister's uncle. The defendant also notes that the physical evidence supported his account of the incident.

¶ 31 Section 24-1.1 of the Criminal Code of 1961 (720 ILCS 5/24-1.1 (West 2010)) makes it a felony for a person to knowingly possess a firearm if the person has been convicted of a felony under the laws of this state or any other jurisdiction. "To convict under this section, the State must prove that the defendant possessed a prohibited firearm and that the defendant had received a prior felony conviction." *People v. Lesure*, 271 Ill. App. 3d 679, 682 (1995). Here, the parties stipulated as to the defendant's prior felony conviction. Therefore, the sole issue before the jury was whether the defendant knowingly possessed a prohibited firearm.

¶ 32 When considering a challenge to the sufficiency of the evidence, the relevant question for the reviewing court 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 beyond a reasonable doubt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *People v. Jimerson*, 127 Ill. 2d 12, 43 (1989). Circumstantial evidence is sufficient to sustain a criminal conviction, provided that the circumstantial evidence satisfies proof beyond a reasonable doubt of the elements of the charged offense. *Hall*, 194 Ill. 2d at 330. It is not the function of the reviewing court to retry the defendant. *Id.* at 329-30. Instead, determinations of the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence are the responsibilities of the trier of fact. *Jimerson*, 127 Ill. 2d at 43.

¶ 33 Applying those principles to the case before us, we conclude that there was sufficient evidence to support the defendant's conviction. The jury heard the defendant and Lonnie

testify that Lonnie did not possess a firearm and instead had a cap gun that he had confiscated from his nephew the previous evening. The jury was free to disregard such testimony as not credible. Additionally, the jury heard the witnesses' descriptions of the incident and heard the defense attorneys question the witnesses regarding the accuracy of their descriptions and any obstacles that might have prevented them from accurately observing the incident from their various vantage points. The jury was aware that Doyle was charged with aggravated discharge of a firearm and reckless discharge of a firearm as a result of his actions in this incident and that Crystal Riley dated Shane Doyle's sister's uncle. Williams testified that she had observed Lonnie shooting the gun toward an alley. She explained that she heard a boom and observed the defendant's arm "kick up." Crystal and Candace testified that they had observed Lonnie lift the defendant's shirt to reveal a firearm. The defense attorney challenged this testimony by questioning Crystal and Candace on their exact location when they observed the weapon in the defendant's waistband. Doyle corroborated the testimony of Crystal and Candace by testifying that he had observed the handle and cylinder of a revolver in the defendant's waistband. Further, the jury heard Deming's conclusions on the area where the shooting originated based on the locations of the shell casings and impact points. Deming also testified as to the possible explanations for why no physical evidence was discovered, supporting the State's position that the defendant had possessed and shot a gun. As stated above, the determinations of the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence are the responsibilities of the jury. Accordingly, we conclude that a reasonable jury could have concluded that the State had proved the defendant guilty of unlawful possession of a weapon by a felon beyond a reasonable doubt.

¶ 34 For the foregoing reasons, the judgment of the circuit court of Massac County is hereby affirmed.

¶ 35 Affirmed.