

THIRD DIVISION
October 17, 2012

No. 1-11-1158

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).

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. 10 CR 951
)	
RONNIE CANNON,)	Honorable
)	Thaddeus L. Wilson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE STEELE delivered the judgment of the court.
Presiding Justice Salone and Justice Neville concurred in the judgment.

ORDER

- ¶ 1 *Held:* State proved defendant guilty of unlawful transfer of a firearm beyond a reasonable doubt where indictment charged essential elements of the crime and included surplusage.
- ¶ 2 Following a bench trial, defendant Ronnie Cannon was found guilty of unlawful transfer of a firearm and sentenced to one year of probation. On appeal, defendant contends that his conviction should be reversed because the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 On March 5, 2009, police recovered a .45 caliber handgun thrown to the ground by an unidentified man during a foot chase near 105th and Morgan in Chicago. After inventorying the weapon, officers learned that the gun's serial number was registered to defendant. Police arrested defendant on December 22, 2009, after he admitted that he had given the handgun to his friend Dominique Bullitt sometime during February 2009 without asking to see Bullitt's firearm owners identification (FOID) card. Defendant was charged with unlawful transfer of a firearm and the indictment read in relevant part that defendant:

"knowingly and unlawfully transferred ownership of a firearm***to Dominique Bullitt, and at the time of the transfer, said transferee with whom [defendant] dealt, failed to display a currently valid [FOID] card." 430 ILCS 65/3(a)(West 2008).

¶ 4 Testimony at trial showed that defendant legally purchased the handgun in May 2008 from a gun shop, and possessed both a valid FOID card and a permanent employer registration card (PERC) at the time of purchase and when he was arrested. During February 2009, defendant gave the handgun to his friend Dominique Bullitt after Bullitt asked for the weapon and explained that he might be in some trouble. Defendant never asked Bullitt if Bullitt possessed a valid FOID card and did not fill out any paperwork related to the transfer. Defendant subsequently saw Bullitt three times, and each time saw the gun in a box, just as it had been conveyed. On March 28, 2009, Bullitt was killed in a car crash. After Bullitt's death, defendant twice attempted to retrieve the weapon from Bullitt's family, but to no avail. Defendant claimed that he did not intend to transfer ownership of the weapon, as he had not accepted anything from Bullitt in exchange.

¶ 5 The trial court found defendant guilty of unlawfully transferring the handgun to Bullitt, citing case law which equated transfer of ownership and transfer of possession under the relevant statute.

¶ 6 On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he knowingly and unlawfully transferred *ownership* of the handgun to Bullitt, as was alleged in the indictment. Defendant acknowledges the evidence revealed that he relinquished possession of the gun to Bullitt and the statute under which he was charged does not distinguish between transfer of ownership and possession. He also raises no issue challenging the indictment itself. The State responds that sufficient evidence proved defendant was guilty of unlawful transfer of a weapon and, because the statute does not include the word "ownership," reference to ownership in the indictment was surplusage. We agree with the State.

¶ 7 When presented with a challenge to the sufficiency of evidence, our inquiry 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. Givens*, 237 Ill. 2d 311, 334 (2010). We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011).

¶ 8 In a one-count indictment, defendant was charged with the offense of unlawful transfer of a firearm in violation of section 3(a) of the Firearm Owners Identification Card Act (Act) (430 ILCS 65/3(a) (West 2008)). The indictment charged that defendant "knowingly and unlawfully transferred ownership of a firearm," identified as a .45 caliber handgun, to Bullitt, "and at the time of the transfer, said transferee *** failed to display a currently valid" FOID card. Section 3(a) of the Act provides in relevant part that:

"no person may knowingly transfer, or cause to be transferred, any firearm *** to any person within this State unless the transferee *** displays a currently valid [FOID card]." 430 ILCS 65/3(a) (West 2008).

¶ 9 Most notably, section 3(a) of the Act does not include any language regarding "ownership." However, this court has previously construed the Act to apply equally to transfers of ownership and transfers of actual possession. *People v. Robinson*, 33 Ill. App. 3d 24, 34-35 (1975). Where an indictment charges all essential elements of an offense, other matters unnecessarily added may be regarded as surplusage. *People v. Collins*, 214 Ill. 2d 206, 219 (2005) (citing *People v. Simpkins*, 48 Ill. 2d 106, 111 (1971)).

¶ 10 Here, the indictment charged all essential elements of the instant offense in alleging that defendant "knowingly and unlawfully transferred ownership of a firearm" to Bullitt without determining if Bullitt had a valid FOID. card. We find inclusion of the word "ownership" within the sole count to be surplusage because it does not appear in the statute and its presence in the indictment was unnecessary. As defendant acknowledges, evidence at trial showed defendant gave the handgun to Bullitt after Bullitt revealed that he might be in trouble. Defendant did not ask to see Bullitt's FOID card and subsequently observed the gun in Bullitt's possession three times. Based on the charging instrument and the statutory elements of the offense of unlawful transfer of a firearm, we find that transfer of the ownership of the gun was not a required element and defendant does not dispute that he transferred possession of the gun.

¶ 11 Moreover, to convict a defendant, "every material allegation in the indictment must be proved beyond a reasonable doubt" but "an immaterial allegation need not be so proved." (Internal quotation marks omitted.) *People v. Braddock*, 348 Ill. App. 3d 115, 125 (2004) (quoting *People v. Taranto*, 2 Ill. 2d 476, 482 (1954)). "An averment is material when it is

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essential to the crime or cause of action and cannot be stricken from the indictment or complaint without leaving it insufficient." (Internal quotation marks omitted.) *Id.* at 125. Here, the averment "ownership" is an immaterial allegation that need not be proved because its presence in the indictment is not essential to the offense as defined in section 3(a) of the Act, which pertains only to transfers.

¶ 12 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 13 Affirmed.