

No. 1-11-1498

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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. 10 CR 13235
	)	
ANDREW SNEED,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE R. GORDON delivered the judgment of the court.  
Presiding Justice Lampkin and Justice Garcia concurred in the judgment.

**ORDER**

¶ 1 *Held:* We find that there was sufficient evidence to support defendant’s conviction for aggravated assault for pointing a gun at a police officer where Chicago police officers provided testimony about defendant’s actions, and where this testimony was corroborated by a gun recovered by police and a shell casing found in defendant’s pocket that matched the gun.

¶ 2 Following a jury trial, defendant was convicted of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6 (West 2010)) and aggravated assault (720 ILCS 5/12-2 (West 2010)), and found not guilty of reckless discharge of a firearm (720 ILCS 5/24-1.5 (West 2010)). The trial court entered judgment on only the aggravated assault charge but not on the aggravated unlawful

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use of a weapon charge.<sup>1</sup> Defendant was sentenced to four years in the Illinois Department of Corrections to be followed by one year of mandatory supervised release. On this appeal, defendant claims that there was insufficient evidence to support his conviction. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 In the case at bar, there is no dispute that, on July 5, 2010, defendant was shot by a Chicago police officer. The officers had been dispatched to a street party of approximately 200 people near Washington Boulevard and Leclaire Avenue in Chicago after loud noises were reported. An officer testified that, after hearing gun shots, he observed defendant drop and then pick up a “hard object” which the officer believed was a gun. After police ordered defendant to stop, he ran and officers chased and eventually shot him. Later, at the hospital where defendant was taken, a police evidence technician found a spent shell casing in defendant’s pocket that matched a gun which an officer testified that he observed defendant drop after defendant was shot.

¶ 5 I. Pretrial Proceedings

¶ 6 On July 27, 2010, defendant was indicted on: (1) four counts of aggravated unlawful use of a weapon, (2) two counts of unlawful use or possession of a weapon by a felon, (3) two counts of aggravated assault, and (4) one count of reckless discharge of a firearm. The indictment charged that, on July 5, 2010, defendant fired a gun at a crowd of people and pointed a gun at

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<sup>1</sup>The record does not show that the trial judge entered judgment notwithstanding the verdict. The half-sheet states simply that judgment was not entered on count 1.

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Officer Christopher McGuire. The State proceeded on one count of aggravated unlawful use of a weapon, one count of aggravated assault, and one count of reckless discharge of a firearm.

¶ 7 On April 1, 2011, prior to trial, defendant filed a motion *in limine* to exclude: (1) evidence of his gang affiliation, (2) evidence of his behavior in the ambulance after being arrested, and (3) evidence that the gun recovered during the incident was linked to another occurrence. The trial court granted the motion to exclude evidence of his gang affiliation and of the gun's link to another occurrence, but denied the motion to exclude defendant's behavior in the ambulance. Additionally, the trial court granted a motion *in limine* filed by the State to admit evidence of defendant's prior conviction if he chose to testify.

¶ 8 II. Evidence at Trial

¶ 9 At trial, the State called nine witnesses: Chicago police officers Juan Cifuentes, Christopher McGuire, and Kristophe Mrockowski; emergency medical technician Katie Hoppenrath; Chicago police evidence technicians Dean Barney and Kathleen Gahagan; Illinois State Police evidence technicians Ellen Chapman and Tracy Konior; and Chicago police detective Steven DeSalvo.

¶ 10 Officer Juan Cifuentes testified that, on July 5, 2012, at 2:14 a.m., he and his partner, Officer Dimalanta, were dispatched to a call concerning a noise disturbance near Washington and Leclaire. Upon their arrival, they observed a party of over 100 people in an empty lot that was spilling over into the street. The officers parked their marked squad vehicle on Leclaire, 20 to 30 feet north of Washington. Cifuentes testified that they observed a fight erupt near their vehicle which then merged with another fight occurring at the same time. After they exited their vehicle,

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Cifuentes heard a gunshot coming from the west. Cifuentes turned to look in the direction of the shot, when he heard two additional gunshots, and observed two muzzle flashes coming from the corner of Washington and Leclaire, about 15 to 30 feet away. He testified that these shots were fired in the direction of the police officers and the crowd, and that he observed defendant in a striped red and black polo shirt standing in the area where the shots originated.

¶ 11 Cifuentes testified that he then observed defendant drop and pick up a “hard object,” place that object in the back left side of his waistband, and run west on Washington. Cifuentes believed that defendant was holding a gun and began to chase him. As the chase began, he yelled to another police officer, Kristophe Mrockowski, who had arrived at the scene: “The guy with the striped polo shirt has a gun.” Cifuentes lost sight of defendant and Mrockowski when the two passed behind Mrockowski’s vehicle.

¶ 12 Cifuentes testified that he heard another gunshot, and ran north on Leamington Avenue toward the sound of the gunshot’s origin, and observed defendant fall down at the intersection of Leamington and West End Avenue. Cifuentes then handcuffed defendant, and conducted a protective pat-down, which covered the waistband area over the clothing, and found no gun.

¶ 13 The State next called Officer Christopher McGuire, who testified that he and his partner, Officer Richard Pellerano, responded to a radio call about shots being fired and drove their marked sports utility vehicle to the area of Washington and Leclaire. McGuire testified that Officer Pellerano yelled to him: “That’s the guy with the gun.” McGuire observed defendant running westbound toward him clutching the left side of his waistband, but McGuire did not observe an object in defendant’s hand or a bulge in defendant’s waistband. Defendant then

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began running in the opposite direction and then turned to run back towards McGuire, who started to chase defendant down an alley and into a vacant lot adjacent to Leamington.

Defendant then slipped and regained his footing as he turned to enter a vacant lot. McGuire did not observe any evidence of a gun as defendant slipped. The alley was “well illuminated” from artificial lighting, while the vacant lot was “less adequately” lit, but still had illumination from the streetlights.

¶ 14 McGuire testified that, when defendant reached the edge of the vacant lot, defendant scaled a chain link fence and became stuck at the top of the fence facing north, with his right foot on the sidewalk side and his left foot on the vacant lot side. McGuire testified that defendant then drew a gun with his right hand and pointed it at McGuire, who was then 5 to 10 feet away. McGuire fired one shot at defendant who fell over the fence onto the sidewalk. After defendant was struck by the bullet, he ran north on Leamington. McGuire did not observe or hear a gun fall as defendant fell off the fence. McGuire holstered his weapon, scaled the fence, and continued to chase defendant when McGuire observed defendant fall. McGuire was able to reach defendant and conduct a full pat-down search over defendant's clothing, which did not reveal a weapon. Defendant was bleeding and complained of trouble breathing. Cifuentes then arrived and handcuffed defendant, and McGuire called for an ambulance. Mrockowski arrived next and showed McGuire the gun that Mrockowski recovered near the fence.

¶ 15 Katie Hoppenrath, a Chicago fire department paramedic dispatched to the scene, testified that defendant was shot in his left shoulder and that, after he was placed in her ambulance, his handcuffs were removed to allow the paramedics to administer medical care and treatment.

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Defendant did not cooperate. Specifically, he declined to provide information and flailed his arms and placed his bloody hands on some of the ambulance equipment.

¶ 16 The State next called Officer Dean Barney, a Chicago police evidence technician, who testified that he was dispatched to defendant's hospital room at 4 a.m. on July 5, 2010, to collect material from defendant's hands for a gunshot residue test. Barney observed that defendant's left hand was handcuffed to a bed, his right hand had an IV attached to it, and defendant's hands were covered in blood. Barney searched defendant's clothing, finding a spent shell casing in the pocket of defendant's shorts.

¶ 17 Ellen Chapman, an Illinois State Police forensic analyst, testified that she conducted tests on the materials accumulated by Officer Barney from defendant's hands. The tests were negative for the presence of gunshot residue. A negative test is one where fewer than three dry component gunshot residue particles are found. Chapman concluded that defendant may not have fired a gun. She also testified that gunshot residue may be removed by hand washing, by touching other objects, or by putting hands in pockets.

¶ 18 The State then called Officer Kristophe Mrockowski, who testified that he and his partner parked their marked sports utility vehicle facing north on Leamington near the intersection of Washington. When Mrockowski exited the vehicle, Cifuentes shouted to him: "This is the guy, stop him." Mrockowski observed defendant walk quickly around his vehicle and ordered defendant to stop. Instead, defendant ran, and Mrockowski chased him. Mrockowski observed defendant holding his left waistband but he did not observe a gun or a bulge in defendant's

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pocket. As Mrockowski chased defendant, he observed McGuire and another officer near Washington and Laramie and shouted to them: “This is the guy with the gun.”

¶ 19 Mrockowski testified that he also chased defendant down the alley and into the vacant lot. He estimated that he was 20 to 30 feet behind McGuire, who was about 30 feet behind defendant. As defendant entered the vacant lot, defendant slipped and his shirt moved upward, and Mrockowski observed the butt of a black handgun in defendant’s waistband. McGuire was not blocking his view of defendant when this occurred. Defendant regained his footing and continued running, while Mrockowski and McGuire continued pursuing him.

¶ 20 Next, Mrockowski testified that, when he was roughly 15 feet behind defendant and 5 to 10 feet behind McGuire, he observed defendant become stuck on top of the fence. He then heard a gunshot but he could not determine who fired it. Mrockowski did not observe McGuire or defendant draw a gun and he did not observe McGuire shoot defendant. Mrockowski testified that he then observed defendant drop a handgun on the vacant lot side of the fence. Mrockowski picked up this gun, a .9-millimeter semiautomatic TEC-9 pistol, and continued chasing defendant without emptying the ammunition. He testified that he carried the gun with him rather than leaving it because there were still people in the vicinity, and he felt it would not be safe to leave the gun unattended.

¶ 21 Officer Kathleen Gahagan, a Chicago police evidence technician, testified that she was dispatched to the scene of the shooting at 2:40 a.m. on July 5, 2010, and found a spent shell casing on the sidewalk on Leamington near the vacant lot where defendant was shot. Gahagan

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testified that she did not find shell casings on Washington. She photographed the recovered gun and ammunition, and swabbed the gun for DNA.

¶ 22 The State then called Tracy Konior, an Illinois State Police evidence technician. Konior testified that the shell casing recovered by Officer Gahagan matched Officer McGuire's gun; and that the shell casing recovered by Officer Barney from defendant's shorts matched the gun found by Officer Mrockowski in the vacant lot.

¶ 23 The State introduced stipulations between the parties that, if Illinois State Police forensic analysts Casey Karaffa, Ryan Paulson, and Jennifer Barrett were called to testify, they would testify that the gun recovered by Officer Mrockowski had no male DNA on it or fingerprint impressions suitable for testing.

¶ 24 III. Conviction and Sentencing

¶ 25 As noted, on April 6, 2011, a jury convicted defendant of one count of aggravated unlawful use of a weapon and one count of aggravated assault, and found him not guilty of one count of reckless discharge of a firearm. On April 27, 2011, defendant filed a posttrial motion for a new trial, which the trial court denied. On April 28, 2011, after hearing aggravation and mitigation, the trial court sentenced defendant to four years in the Illinois Department of Corrections to be followed by one year of mandatory supervised release. The trial court entered judgment on only the aggravated assault conviction and not on the aggravated unlawful use of a weapon conviction.

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¶ 26 At this sentencing hearing, defendant made a statement that he had begun to be a practicing Christian while in prison and that he realized the stress he had put his mother through.

The trial judge stated:

“I was thinking of a much higher sentence, but what you have said has enlightened me that you’re accepting responsibility. So what I’m going to do is on Count 1 [for aggravated unlawful use of a weapon] I will not enter judgment, but on [] Count 7, which is aggravated assault on a police officer, I’m going to extend the term. I’m going to sentence you to four years in the Illinois Department of Corrections, one year mandatory supervised release.

Without your statement, I’ll tell you, it would have been a lot higher. And I do believe what you said and I do believe that there’s a real good chance for rehabilitation.”

After the trial court denied defendant’s posttrial motion to reconsider his sentence, defendant filed this timely appeal.

¶ 27 ANALYSIS

¶ 28 On appeal, defendant argues that the State provided insufficient evidence to support his conviction of aggravated assault. For the following reasons, we affirm.

¶ 29 I. Standard of Review

¶ 30 “Due process requires proof beyond a reasonable doubt in order to convict a criminal defendant.” *People v. Ross*, 229 Ill. 2d 255, 272 (2008). “When reviewing a challenge to the

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sufficiency of the evidence, this court considers whether, viewing the evidence in the light most favorable to the State, ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (Emphasis in original.) *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

¶ 31 This court must “ ‘determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.’ ” *Wheeler*, 226 Ill. 2d at 114 (quoting *Jackson*, 443 U.S. at 318). “[W]here the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether, in light 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). “[T]he reviewing court does not retry the defendant, and the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence.” *Ross*, 229 Ill. 2d at 272. However, “merely because the trier of fact accepted certain testimony or made certain inferences based on the evidence does not guarantee the reasonableness of its decision.” *Ross*, 229 Ill. 2d at 272. “[A] conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant’s guilt.” *Wheeler*, 226 Ill. 2d at 115.

¶ 32 II. Elements of Aggravated Assault

¶ 33 Defendant was convicted of aggravated assault for drawing and pointing a firearm at a Chicago police officer. 720 ILCS 5/12-2 (West 2010). The statute provides, in pertinent part, that:

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“(a) A person commits an aggravated assault, when, in committing an assault, he:

\* \* \*

(6) Knows the individual assaulted to be a peace officer, a community policing volunteer, a private security officer, or a fireman while the officer or fireman is engaged in the execution of any of his official duties \*\*\* and the assault is *committed other than by the discharge of a firearm in the direction of the officer or fireman \*\*\*.*” (Emphasis added.) 720 ILCS 5/12-2(a)(6) (West 2010).

The statute for the included crime of assault provides that:

“A person commits an assault when, without lawful authority, he engages in conduct which places another in reasonable apprehension of receiving a battery.” 720 ILCS 5/12-1(a) (West 2010).

Furthermore, the statute for battery provides that:

“A person commits battery if he intentionally or knowingly without legal justification and by any means, (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.” 720 ILCS 5/12-3(a) (West 2010).

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¶ 34 Thus, the State must prove beyond a reasonable doubt that defendant: (1) committed assault; (2) knew during the assault that the individual assaulted was a police officer engaged in the execution of his official duties; and (3) committed the assault other than by the discharge of a firearm in the direction of the individual assaulted. 720 ILCS 5/12-2(a)(6) (West 2010).

Defendant concedes in his appellate brief that he knew that Officer McGuire was a police officer engaged in the execution of his official duties, and both parties agree that defendant did not discharge a firearm in the direction of Officer McGuire.

¶ 35 The only issue before us is whether defendant committed an assault. To prove assault, the State must prove that defendant, without lawful authority, engaged in conduct which placed another in reasonable apprehension of receiving a battery. 720 ILCS 5/12-1(a) (West 2010).

Whether the alleged victim was placed in reasonable apprehension of receiving a battery can be inferred from the evidence presented at trial. *In re Gino W.*, 354 Ill. App. 3d 775, 778 (2005); *People v. Chrisopoulos*, 82 Ill. App. 3d 581, 585 (1980). Our Illinois supreme court has held that “one who points a loaded revolver at another, within shooting distance, in a threatening manner, is guilty of an assault.” *People v. Preis*, 27 Ill. 2d 315, 318-19 (1963).

¶ 36 III. Sufficiency of the Evidence for Assault

¶ 37 In reviewing the sufficiency of the evidence to prove assault in the case at bar, our focus is on the moment at which defendant pointed a gun at Officer McGuire from the top of the fence. From Officer McGuire's testimony and the other evidence admitted at trial, a rational trier of fact could have found beyond a reasonable doubt that defendant pointed a gun at Officer McGuire,

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causing him to reasonably apprehend a battery. *Wheeler*, 226 Ill. 2d at 114 ("viewing the evidence in the light most favorable to the State").

¶ 38 First, McGuire testified that defendant drew a gun and pointed it at McGuire after defendant became stuck on top of the fence in the vacant lot. Our supreme court has long held that the testimony of a single credible witness is sufficient to sustain a conviction. *People v. Piatkowski*, 225 Ill. 2d 551, 566 (2007) ("A positive identification by a single eyewitness who had ample opportunity to observe is sufficient to support a conviction."); *Cunningham*, 212 Ill. 2d at 284-85; *People v. Brinkley*, 33 Ill. 2d 403, 405-06 (1965). The fact that McGuire fired at defendant supports the inference that he reasonably apprehended a battery, especially in light of his training as a police officer. *In re Gino W.*, 354 Ill. App. 3d at 778 ("[R]easonable apprehension may be inferred from the evidence presented at trial, including the conduct of both the victim and the [defendant]."); *Chrisopoulos*, 82 Ill. App. 3d at 585. Defendant's act of drawing and pointing a gun at Officer McGuire within shooting distance constitutes assault. *Preis*, 27 Ill. 2d at 318-19.

¶ 39 Furthermore, Officer Mrockowski's testimony corroborated Officer McGuire's testimony that defendant possessed a firearm. First, Mrockowski testified that he observed the black butt of a gun in defendant's waistband when defendant's shirt moved up as defendant slipped and that defendant dropped a gun when he fell off the fence. Second, Mrockowski testified that he recovered a gun from near the fence.

¶ 40 In addition, Chicago police evidence technician Dean Barney testified that, later at the hospital, he recovered a spent shell casing from defendant's shorts pocket which matched the gun

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recovered by Mrockowski. In sum, the State presented credible and plausible testimony and physical evidence, which was sufficient to support defendant's conviction.

¶ 41 However, defendant argues that the evidence presented at trial did not prove that defendant pointed a firearm at Officer McGuire. He claims that the evidence is "unreasonable, improbable, or unsatisfactory" such that no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." See *Wheeler*, 226 Ill. 2d at 114-15. We address each of his arguments below.

¶ 42 First, defendant argues that Officer Cifuentes's testimony regarding the initial shooting was not credible because the State did not corroborate Cifuentes's testimony about his belief that defendant discharged a firearm into the crowd. Officer Cifuentes did not testify that he actually observed defendant fire a gun or even that defendant was in possession of a gun. Rather, Cifuentes testified to observing a "hard object" in defendant's hands. Defendant also argues that Cifuentes's statements are implausible because, although he testified that 200 people were present in the crowd, not a single witness was found who could testify that defendant fired a gun. Since the crowd dispersed after the arrival of the police, the lack of bystanders who observed defendant's actions is not surprising. Defendant's argument was presented to the jury in defendant's closing argument; and the jury considered all the evidence and the credibility of the witnesses, and it found defendant not guilty of the reckless discharge of a firearm.

¶ 43 Second, defendant argues that the testimony about his actions from the time he was in the crowd until he entered the vacant lot does not support the conclusion that he possessed a gun or behaved like someone who had just fired a gun. Officer Cifuentes testified that defendant began

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to run after dropping and picking up a “hard object,” while Officer Mrockowski testified that defendant was actually walking toward him. However, it is entirely plausible that defendant ran after the shots were fired but slowed to a walk by the time he reached Officer Mrockowski’s vehicle. We observe that defendant treats Mrockowski’s testimony about defendant’s walking as credible, but at the same time dismisses Mrockowski’s testimony about the subsequent pursuit and recovery of the gun.

¶ 44 Defendant also argues that he was holding his waistband while running to prevent his pants from falling down, not because he was concealing a gun. This assertion is supported by the photograph of the baggy shorts defendant was wearing when he was shot. However, viewing the evidence in the light most favorable to the State, it is equally plausible that defendant was holding his waistband to keep the gun from falling out rather than to keep his pants from falling down. In addition, flight can be evidence of guilt when considered with the other factors tending to establish guilt. *People v. Campbell*, 146 Ill. 2d 363, 388 (1992) (“While flight by itself is not sufficient to establish guilt, it may be a circumstance to be considered with other factors tending to establish guilt.”).

¶ 45 Third, defendant argues that Officer McGuire’s testimony that he pointed a gun at McGuire from atop the fence is implausible because, according to McGuire’s testimony, defendant’s right foot was on the sidewalk side of the fence, and his left foot was on the vacant lot side of the fence. McGuire also testified that defendant drew the gun with his right hand. Defendant claims that such a position would have made it physically awkward for him to use his right hand to point a gun at someone to the left of him. This argument is not persuasive because

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it is physically possible for defendant to have used his right hand to point a gun at McGuire, even if it was awkward.

¶ 46 Fourth, defendant argues that Officer Mrockowski's testimony is incredible when he claimed to have observed, from a distance of 50 to 60 feet at night, the black butt of a handgun against the abdomen of defendant when defendant's shirt briefly moved up as he slid at the edge of the vacant lot. Officer McGuire, who Mrockowski testified was 30 feet closer to defendant, testified that he did not observe a gun in defendant's waistband. Defendant also notes that, for Mrockowski to have observed the gun, McGuire must not have been in Mrockowski's line of sight. Mrockowski testified that, moments later, when he was 15 feet from McGuire, he did not observe defendant draw a gun or observe McGuire shoot defendant, but he did hear the gunshot. Following this gunshot, Mrockowski then observed defendant drop a handgun. At this point in the events, McGuire was still closer to defendant than Mrockowski, but McGuire did not observe or hear a handgun drop to the ground. The record is unclear about which parts of, and to what extent, the alley and vacant lot were illuminated from the streetlights on Leamington and whether the officers were in constant view of defendant at all times.

¶ 47 Viewing the evidence in the light most favorable to the State, we can infer from the evidence that McGuire did not obstruct Mrockowski's line of vision of defendant. Officer Mrockowski is a police officer trained to scan for and identify weapons possessed by the people he encounters in his official duties, and it is certainly plausible that he was able to discern a handgun in defendant's waistband. Furthermore, Mrockowski might have been in a relatively darker part of the alley when defendant was shot. During such a rapid sequence of events, it is

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plausible that Mrockowski did not observe the quick moment when defendant drew his gun and was shot by McGuire, who presumably reacted immediately for fear of being shot himself. It is also plausible that, while Mrockowski was able to observe the gun fall to the ground, McGuire was focused on ensuring that his shot neutralized the threat posed by defendant, thus missing the gun fall out of defendant's hands. Again, no witness observes the whole picture; however, the many witnesses who testified in this case together provided a clear picture of what occurred.

¶ 48 Fifth, defendant argues that Officer Mrockowski's testimony about his recovery of the gun is incredible. Mrockowski testified that he did not render the gun safe before continuing his pursuit, which defendant argues is implausible. Defendant claims that, after observing the gun fall to the ground, Mrockowski should not have believed that defendant was armed and therefore should not have continued his pursuit in such a "zealous manner." This argument is unpersuasive because we cannot say that Mrockowski's conduct of pursuing defendant and assisting McGuire in apprehending defendant, without stopping to remove the bullets from the gun is implausible. The jury heard this evidence, considered the credibility of the witnesses, and found defendant guilty of aggravated battery.

¶ 49 Additionally, defendant argues that Officer Mrockowski's testimony is incredible because Mrockowski did not heed the Chicago police department's general orders regarding crime scenes, which provide in pertinent part that:

"In the absence of exigent circumstances, a crime scene will be protected until it is completely processed for physical evidence.  
*Evidence will NOT be disturbed prior to processing, unless it is*

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*absolutely necessary to preserve life or to protect the evidence from loss or damage.*” (Emphasis in original.) Chicago Police Department General Order G04-02, “Crime Scene Protection and Processing,” section III(D) (June 15, 2002).

Mrockowski testified that he carried the recovered gun with him rather than leaving it where it was because there were people in the area, and he did not want to leave the gun unsecured because of its safety hazard.

¶ 50 Sixth, defendant argues that the officers’ testimony about the aftermath of the shooting includes inconsistencies that call their credibility into question. However, minor inconsistencies highlighted by defendant, such as whether Officer McGuire or Officer Cifuentes reached defendant first and whether Officer Mrockowski showed McGuire the recovered gun before Mrockowski placed it in his vehicle, do not make their testimony incredible. “[I]t is for the fact finder to judge how flaws in part of the testimony affect the credibility of the whole.” *Cunningham*, 212 Ill. 2d at 310. We cannot substitute our judgment on credibility issues from that of the jury. *People v. Manning*, 182 Ill. 2d 193, 210 (1998).

¶ 51 In *Cunningham*, our supreme court held that inconsistencies about minor details do not undermine a defendant's conviction. In *Cunningham*, Chicago police officer David Pfest was the only witness against defendant, and he testified that, while on patrol in plain clothes with his partner, he was flagged down by a citizen wearing jeans and a t-shirt. *Cunningham*, 212 Ill. 2d at 276-77. The citizen told him that defendant was selling narcotics and provided defendant’s phone number to Pfest, who called defendant to arrange the purchase of cocaine. *Cunningham*,

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212 Ill. 2d at 277. Defendant was convicted of possession of narcotics, but on appeal, the appellate court reversed the conviction, finding that “the whole scenario as described by Officer Pfest [was] \*\*\* unworthy of belief” because parts of the testimony seemed incredible.

*Cunningham*, 212 Ill. 2d at 278. The supreme court reversed the appellate court, holding that:

“[T]here is nothing in the record showing that the only reasonable inference is that the questionable parts of Pfest’s testimony make the whole unworthy of belief. \*\*\* Where the record is not such that the only inference reasonably drawn from flaws in the testimony is disbelief of the whole, a reviewing court should bear in mind that the fact finder had the benefit of watching the witness’ demeanor. \*\*\* Despite the doubts about some parts of Pfest’s testimony discussed above, the statements that directly support defendant’s conviction for possession of the cocaine could reasonably be accepted by the fact finder, who saw Pfest testify, as true beyond a reasonable doubt.” *Cunningham*, 212 Ill. 2d at 284-85.

¶ 52 Although Officer Pfest could not recall minor details like defendant’s phone number, and although his testimony that a citizen was wearing a t-shirt in December in Chicago seemed unusual, these details were not central to defendant’s conviction. Like *Cunningham*, in the case at bar, the inconsistencies in the officers’ testimony concern minor details that do not “directly

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support defendant's conviction" for drawing a gun on Officer McGuire and do not call the officers' credibility into question. See *Cunningham*, 212 Ill. 2d at 285.

¶ 53 Seventh, defendant argues that the spent shell casing linking him to the recovered gun is suspect. He questions the plausibility of Officers McGuire and Cifuentes' testimony because both officers testified that they conducted pat-downs, but neither found the shell casing. Cifuentes testified that he conducted a protective pat-down, which covered the waistband area, over the clothing. McGuire testified that he conducted a full pat-down, also over the clothing. Defendant argues that either type of pat-down should have uncovered the shell casing. In support, he cites, among other cases, *People v. Moss*, 217 Ill. 2d 511, 515 (2005), where an officer felt objects "the size of a nine-volt battery," other "smaller hard pieces," and "a powdery substance" in defendant's pants during a pat-down. Defendant might have more persuasively cited *People v. Mitchell*, 165 Ill. 2d 211, 224 (1995), where an officer found "gun shells" on defendants during a "pat search." Regardless, despite these examples, we must view the evidence in the light most favorable to the State, and it is not inconceivable that an officer would miss a shell casing in an over-the-clothes pat-down search of defendant's shorts. This was an issue for the jury to decide.

¶ 54 Eighth, defendant argues that the lack of other physical evidence tends to prove that he did not possess the gun recovered by Officer Mrockowski. Here, the State correctly notes that the negative gunshot residue test is irrelevant to the charge of aggravated assault because the test speaks to whether defendant recently fired a gun, not whether he possessed a gun. Additionally, no testable fingerprints or male DNA were found on the gun. Here, the testimony of the officers,

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plus the match between the shell casing and the recovered gun, are sufficient to sustain defendant's conviction. Weighed against the other evidence, the absence of physical evidence on the gun is not "so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt." *Wheeler*, 226 Ill. 2d at 115.

¶ 55 Ultimately, at trial, the State had to prove beyond a reasonable doubt that defendant: (1) committed the assault; (2) knew during the assault that the individual assaulted was a police officer engaged in the execution of his official duties; and (3) committed the assault other than by the discharge of a firearm in the direction of the individual assaulted. 720 ILCS 5/12-2(a)(6) (West 2010). It is not disputed that defendant knew that the individual was a police officer engaged in the execution of his official duties. In addition, the State does not rely on the discharge of a gun to support the assault charge. The State needed to prove only the crime of assault: that defendant, without lawful authority, engaged in conduct which placed another in reasonable apprehension of receiving a battery. 720 ILCS 5/12-1(a) (West 2010).

¶ 56 Viewing the evidence in the light most favorable to the State, we find sufficient evidence to support the jury's verdict of aggravated assault in light of: (1) defendant's flight; (2) Officer Cifuentes's testimony that defendant was standing near the origin of the shots fired into the crowd, that he observed defendant drop and pick up a "hard object," place that object in the back left side of his waistband, and run in a westerly direction; (3) McGuire's testimony that defendant drew and pointed a gun at him which required McGuire to shoot defendant; (4) Mrockowski's testimony that he observed the butt of a black handgun in defendant's waistband and observed defendant drop the gun on the vacant lot side of the fence; and (5) the match found by evidence

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technician Konior between the shell casing found in defendant's shorts and the gun. Thus, we find that a rational trier of fact could have found beyond a reasonable doubt that defendant pointed a gun at Officer McGuire on July 5, 2010, causing him to reasonably apprehend a battery. *Wheeler*, 226 Ill. 2d at 114.

¶ 57

#### CONCLUSION

¶ 58 For the foregoing reasons, we find that there was sufficient evidence to support defendant's convictions for aggravated assault, and we affirm.

¶ 59 Affirmed.