

2012 IL App (2d) 110021-U
No. 2-11-0021
Order filed April 16, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-2785
)	
MAURICE D. HILL,)	Honorable
)	Timothy Q. Sheldon,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

Held: The State produced sufficient proof of the *corpus delicti* of being an armed habitual criminal and thus sufficiently corroborated defendant's confession: the State proved that the guns at issue existed and that defendant at least constructively possessed them.

¶ 1 After a bench trial, defendant, Maurice D. Hill, was convicted of being an armed habitual criminal (AHC) (720 ILCS 5/24-1.7(a) (West 2008)). On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt, because his confession was not sufficiently corroborated by proof of the *corpus delicti*. We affirm.

¶ 2 Defendant was charged with four counts of AHC and four counts of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)). The AHC charges alleged that, on April 7, 2009, defendant, who had been convicted of aggravated robbery, unlawful delivery of a controlled substance, and unlawful delivery of cannabis, knowingly possessed (1) a Ruger Mini-14 .223-caliber rifle; (2) a Hi-Point Firearms Model 995 9-millimeter rifle; (3) a GP WASR-10 7.62-millimeter rifle; and (4) an AK 7.62-millimeter rifle. The four counts of unlawful possession of a weapon by a felon were based on his alleged possession of these firearms.

¶ 3 At defendant's trial, the State first called Frank Trost, who testified as follows. On April 7, 2009, Trost was a detective in the Elgin police department's drug unit. That afternoon, defendant was arrested in Aurora and taken to the jail in Elgin. In the evening, Trost and Detective Jason Morales spoke to him. Trost asked defendant whether he wanted to help the police in a drug investigation. Defendant declined but said that he had some guns that he could get off the street. He said that he could get the police "some big guns," specifically "[a] Mini 14, AK, and a Tommy." Trost responded that he was interested in receiving the guns but that, as a convicted felon, defendant should not have them in the first place. Defendant replied that he could bring the guns to Trost and that he had "done this in Chicago before." Trost said that defendant could bring him the guns. Defendant told Trost that he "wanted to go home." He added that he would get the guns for Trost and that he did not want other people to get arrested "for his weapons."

¶ 4 Trost testified that he told defendant to have the guns delivered to the station, after which Trost would "show him pictures" and interview him about who owned the guns. He said that he "would not charge [defendant] that night with the guns" and would let him be released. Otherwise, Trost made no promises. Trost and Morales then gave defendant his cell phone and took him outside

the jail. There, defendant made several calls, mentioning that he “needed to have the AKs and the other guns” brought to him at the station. Trost instructed defendant to have the guns brought to a parking lot just north of the station. Because defendant had said that the guns would be in his car, a Pontiac Bonneville, Trost asked his permission to enter the car to get the guns. Defendant gave permission and said that the car would be unlocked. Trost took him back to the jail.

¶ 5 Trost testified that he then told Detectives Rouse and Bisceglie to watch the parking lot. Later, Trost learned that two cars had pulled in. A person walked away from one car, entered the other car, and drove off. Trost, Morales, Rouse, and Bisceglie went to the parking lot. They saw a Pontiac; a check showed that it was registered to defendant. The car was unlocked. In the rear were four rifles inside bags. The detectives removed the guns and photographed them. The guns were a Hi-Point 9-millimeter rifle, a Mini-14, and two AKs. At trial, the guns and the photographs were admitted into evidence.

¶ 6 Trost testified that, in the jail interview room, defendant signed a *Miranda* waiver and spoke on tape. Trost wanted to show defendant the photographs of the guns in order to see whether he could identify them. A CD of the interview and a transcript of the CD were admitted at trial. After defendant waived his rights, the interview proceeded as follows:

“DET: Okay. Alright, the reason that we are here *** is, we’ve been speaking to you earlier, and you advised us that ah, you have in your possession some weapons that you wish to turn over to us.

MH: Right.

DET: Okay. What were the weapons that you wish to turn over to us.

MH: A [*sic*] AK 47, mini 14, a rifle, and a [*sic*] AK with a Tommy Clip.

DET: Okay, and whose weapons are these?

MH: There [*sic*] mine.

DET: Okay, and ah, can you legally own weapons?

MH: No.”

¶ 7 After defendant agreed that the Bonneville was his car, the interview continued:

“DET: Um, what I’m gonna show you is, I have three pictures, *** just tell me what each picture is. *** This first picture shows a rifle with a magazine on top of ah, white garbage bags Can you describe to me or tell me what that is?

MH: It’s a mini 14.

DET: Okay, is this the same Mini 14 that you said was in your possession?

MH: Yeah.

DET: Okay. And this magazine belongs to it?

MH: Yeah.”

¶ 8 Defendant also identified the rifle in a second photograph as an “AK with a drum” and said that it was his weapon. Shown a third photograph depicting two rifles, defendant said that the bottom one was an AK 47 and the top one was an assault rifle.

¶ 9 Trost testified that, after the interview ended, he allowed defendant to go home. Defendant was not charged with anything at that time. From then until when Trost arrested defendant for possessing the guns, he received no further information suggesting that defendant owned the guns.

¶ 10 Bisceglie testified that, at about 11 p.m. on April 7, 2009, he and Rouse watched via a surveillance camera as two cars, one a Pontiac Bonneville, pulled into the parking lot. Apparently,

there was one person in each car. One person entered the second car, which drove off. Bisceglie testified consistently with Trost about the recovery of the guns from the Bonneville.

¶ 11 The trial court admitted certified copies of defendant's convictions of aggravated robbery, unlawful possession of cannabis with the intent to deliver, and unlawful delivery of a controlled substance. The State rested.

¶ 12 Defendant called Maurice Smith, his father. He testified that, on April 7, 2009, defendant resided with him in Chicago. That evening, defendant called and said that he had been arrested. He asked Smith to deliver some guns to the police station. Defendant did not specify which guns to bring but mentioned "four big guns." Smith went to the home of his brother, Willie James, Jr. James had more than four guns at his home, but he gave Smith "the biggest ones he had at the time." These were "the only big guns he had." Smith wrapped up the guns and took them home. Smith did not drive, so he had his "friend" pick up the guns and drive one of defendant's cars to Elgin.

¶ 13 Defendant testified on direct examination as follows. On April 7, 2009, after he was taken to the Elgin police station, Trost and Morales tried to get him to cooperate with the police in a drug investigation. Defendant declined. Trost then brought up the subject of getting guns off the street. Defendant said that he could help. Trost returned defendant's cell phone and told him that, if he procured the guns, Trost would "let [him] go." Defendant called several people, including Smith. He told Smith "to get some big guns and they would let [defendant] go." Defendant and Smith did not discuss specific guns, but defendant felt that Smith knew which guns he meant. Defendant explained that, before April 7, 2009, he had seen them at James' house "for quite a while." He had spoken to Smith and James about what types the guns were. However, he had never possessed the guns, taken them out of James' house, or even touched them.

¶ 14 Defendant testified that he told the officers that the guns belonged to him, because he did not want to get his father into trouble. After the interview, Trost let defendant go, without telling him that he would be charged in connection with the guns.

¶ 15 Defendant testified on cross-examination that he never told Trost that he had “done this before” and never told Trost the types of guns that he could bring him. Defendant called three people from the police station: Smith, his cousin, and his girlfriend. He did not tell any of them which guns specifically he wanted. He did not give the detectives permission to enter his car. Just before the delivery, his car had been in Aurora at his girlfriend’s house, and she had had the keys. Before viewing the photographs of the guns, defendant had had no idea which four guns would be delivered to the station, but he had seen the four guns at issue many times and knew their types.

¶ 16 On redirect examination, defendant explained that he claimed ownership of the guns in order not to get his father into trouble, although it was actually his uncle who had possessed the guns.

¶ 17 In rebuttal, Morales testified that defendant, not the detectives, raised the subject of bringing guns to the Elgin police station. Defendant said that he could procure “four military rifles,” although Morales did not recall him mentioning specific types. When defendant made his phone calls, Morales heard him say, “[B]ring four rifles,” and mention an “AK.” Defendant also told someone to bring the guns in his car to the Elgin police department. He told the detectives that the guns would be in the back of the car and that the detectives had his consent to enter the car and retrieve the guns.

¶ 18 The trial judge found defendant guilty of all the charges. The judge emphasized the taped interview, noting not only defendant’s multiple admissions that the guns were his but also his ability to identify them. The judge found Smith’s testimony “not logical,” because, had Smith merely wanted to get his son released from jail temporarily, he could have tried to post bond instead of

delivering property that cost more than the bond would have, belonged to someone else, and would not be returned. As for defendant's testimony, it was "not believable." His assertion that he had "volunteered up his uncle's property" for the police was "not very intelligent." Also, the evidence proved that the guns had been delivered in defendant's car. Under *People v. Scott*, 152 Ill. App. 3d 868, 871 (1987), this gave rise to the inference that he knew about and possessed the guns.

¶ 19 Finding that the other seven charges merged into the first count of AHC, the court sentenced defendant to eight years in prison. Defendant timely appealed.

¶ 20 Defendant contends that he was not proved guilty beyond a reasonable doubt, because a conviction may not rest solely on a confession and the evidence *aliunde* his confession was insufficient to prove the *corpus delicti* of AHC. For the reasons that follow, we disagree.

¶ 21 In deciding on the sufficiency of the evidence, we ask whether all of the evidence, viewed in the light most favorable to the prosecution, was sufficient for a rational fact finder to find the essential elements of the offense beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056,

¶ 31. However, a criminal conviction may not be based solely on an uncorroborated confession. *People v. Phillips*, 215 Ill. 2d 554, 576 (2005); *People v. Holmes*, 67 Ill. 2d 236, 240 (1977). There must be some evidence independent of the confession tending to show that the crime did occur. *Phillips*, 215 Ill. 2d at 576. The corroborating evidence itself need not prove the existence of the crime beyond a reasonable doubt. *Id.* The confession and the corroborating evidence must be considered together to decide whether the defendant was proved guilty beyond a reasonable doubt. *Id.*

¶ 22 As pertinent here, a person is guilty of AHC if he or she possesses any firearm after having been convicted a total of two or more times of any combination of certain specified offenses. 720

ILCS 5/24-1.7(a) (West 2008). Here, defendant does not deny that the State proved beyond a reasonable doubt that he had at least two convictions of one or more of the offenses listed in the AHC statute. He argues only that, although he admitted to possessing the four guns, there was no evidence corroborating this admission. We disagree with defendant.

¶ 23 Defendant has conceded that there was *some* evidence, other than his confession, that the crime of AHC did occur (and that defendant did commit it). He concedes that the State proved the two-or-more-prior-offenses element of AHC beyond a reasonable doubt. He contends, however, that proof of the element of possession rested on no (or insufficient) evidence outside his confession.

¶ 24 We hold that defendant's confession was sufficiently corroborated and thus that he was proved guilty beyond a reasonable doubt. The corroboration included the following. First, the State proved that the guns actually did exist, and it introduced them into evidence at trial. Second, the evidence proved that the guns were delivered in defendant's car. As the State observes, because the car was under his control even though he had allowed someone else to drive it for a limited purpose, the trial court could infer that he constructively possessed the guns. See *Scott*, 152 Ill. App. 3d at 871. Third, defendant not only admitted to owning the guns but correctly identified them both before they were delivered and after he viewed photographs of them. Although defendant argued that his familiarity with the guns resulted from having seen them at his uncle's home, the trial judge did not have to accept this explanation, which was far from airtight. Fourth, the weakness of defendant's explanation, which the judge reasonably disbelieved, corroborated the State's theory that he owned the guns. A defendant need not testify, but, if he does testify, he must tell a reasonable story or be judged by its improbabilities. *People v. Irby*, 237 Ill. App. 3d 38, 67 (1992). The judge disbelieved

defendant, refusing to believe that he or his father could have sought to get him released from jail for a short time by turning over somebody else's property to the police without ever getting it back.

¶ 25 Defendant argues that the evidence, outside the confession, did not prove that he had ever possessed the guns. Defendant notes that nobody testified to having ever seen him with the guns; that his fingerprints were never found on the guns; and that the fact that the guns were in his car did not establish possession. He concludes that, although the corroborating evidence did not completely rule out the possibility that he owned the guns, it did not prove that he did.

¶ 26 Defendant's argument ignores the principle that the corroborating evidence *by itself* need not prove the *corpus delicti* beyond a reasonable doubt. *Phillips*, 215 Ill. 2d at 576. Defendant's argument is a form of "divide and conquer": the confession by itself was legally insufficient to prove the *corpus delicti* or his guilt beyond a reasonable doubt, and the corroborating evidence by itself was insufficient to prove the *corpus delicti* or his guilt beyond a reasonable doubt; therefore the State failed to prove either the *corpus delicti* or his guilt beyond a reasonable doubt. That reasoning is specious, however, because the two types of evidence must be considered together. We conclude that, viewing *all* of the evidence in the light most favorable to the prosecution, a reasonable fact finder could conclude beyond a reasonable doubt that defendant possessed the guns and, indeed, was their *de facto* owner (albeit not their legal owner) when he arranged to have them placed into his car and driven to the station. Defendant's conviction rests on far more than his confession.

¶ 27 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 28 Affirmed.