2016 IL App (1st) 141673-U

FOURTH DIVISION
July 14, 2016

No. 1-14-1673

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. 12 CR 15200
	)	
CARLOS JENKINS,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

O R D E R

¶ 1 *Held*: Eyewitness evidence, corroborated by video, sufficient to convict defendant of armed robbery with a firearm.

¶ 2 Following a 2013 bench trial, defendant Carlos Jenkins was convicted of armed robbery and sentenced to 25 years' imprisonment. On appeal, defendant contends that his conviction should be reduced to robbery because there was insufficient evidence that he was armed with a firearm. For the reasons stated below, we affirm.

¶ 3 Defendant was charged with armed robbery for allegedly taking currency from Brian Green by the use of force or threatening the imminent use of force while armed with a firearm on or about July 15, 2012.

¶ 4 At trial, Brian Green testified that on July 15, 2012, he was working alone as a store clerk when defendant entered the store, briefly engaged Green in conversation, then "robbed [Green] under gunpoint." Defendant drew from his waist a "black gun [with] a brown handle" and demanded money from the cash register, then told Green "hurry up or I'll shoot you." During this time, the gun was pointed at Green "briefly *** for a second or two." After Green gave defendant the money in the cash register – $167 – defendant left the store. Green called the police and described defendant. The store had security video from that day; Green was shown the video at trial and testified that it was an accurate depiction of the robbery, and he also identified a still picture or photograph from that video as depicting "defendant with a gun in his hand." Several days after the incident, Green went to the police station and viewed a lineup, from which he identified defendant as the robber.

¶ 5 Police officer Ken Rzeszutko testified to responding to the reported robbery at the store, taking Green's description of the robber and broadcasting it to other officers, and later obtaining the security video from the store manager and taking still pictures from the video. Several days later, Officer Rzeszutko saw defendant, who matched the description of the robber and the photograph from the store video, and arrested him. Police detective Robert Smith testified to interviewing defendant after his arrest, during which he gave an inculpatory statement.[1] Detective Smith also supervised the lineup and saw Green identify defendant as the robber.

[1] The content of the statement was not described, nor was any written or recorded statement entered into evidence.

¶ 6 The store video and the picture from it were admitted into evidence without objection.

¶ 7 The court denied defendant's motion for a directed finding. Following closing arguments, the court found defendant guilty of armed robbery with a firearm. The court noted that it viewed the store video and found that defendant was clearly the robber in the video, and also found that Green had ample opportunity to view the robber so that his identification was credible. As to whether the robbery was an armed robbery, the court noted Green's description of a black gun with a brown handle and found this was "not [an] extensive description" but no other evidence indicated that the object defendant held was not a gun. The court also noted defendant's threat to shoot Green and found from defendant's actions on the video such as looking over his shoulders that he knew the object he held "was not something innocent." The court expressly found that it was not fatal to the State's case that a gun was not recovered.

¶ 8 In his post-trial motion, defendant argued insufficiency of the evidence. He argued that Green's description of the object defendant held, and the video and photographic evidence, were insufficient to prove that the object was a gun and thus that he committed armed robbery. He argued that Green's testimony that defendant threatened to shoot him was not evidence that defendant actually had a gun. Following arguments, the court denied the motion, finding that Green saw defendant holding an object that looked like a gun during the robbery, and that it was reasonable under the circumstances to conclude that the object was a gun. "It is not required under the law that a person studies the handgun to come up with any details or any type of imperfections or flaws or marks on the gun. Obviously, when a person views a handgun, it's a very serious situation. *** [If] the credible testimony indicates that it is a weapon, I have to look at the ability and opportunity to observe the actual weapon." The court sentenced defendant to 25 years' imprisonment, and this appeal followed.

¶ 9 On appeal, defendant contends that his conviction for armed robbery with a firearm should be reduced to robbery because there was insufficient evidence that he was armed with a firearm.

¶ 10 A person commits armed robbery when he or she commits robbery – knowingly takes property from the person or presence of another by use of force or by threatening imminent use of force – while armed with a firearm or a dangerous weapon other than a firearm. 720 ILCS 5/18-1(a), 18-2(a)(1), (2) (West 2014). For purposes of this statute, a "firearm" is defined in section 1.1 of the Firearm Owners Identification Card Act as "any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas" except for BB guns firing "a single globular projectile" of no more than 0.18 inches at less than 700 feet per second, paint-ball guns, flare guns, nail and rivet guns, and antique firearms designated as such by the State Police. 720 ILCS 5/2-7.5 (West 2014), citing 430 ILCS 65/1.1 (West 2014).

¶ 11 Illinois courts have repeatedly addressed the issue of the sufficiency of the evidence from which a trier of fact may infer that an object used in a crime was a firearm. In *People v. Ross*, 229 Ill. 2d 255, 273-76 (2008), our supreme court rejected a presumption that an object appearing to be a gun is a loaded and operable firearm, instead finding that a trier of fact may infer from trial evidence that an object was a firearm. In *People v. Washington*, 2012 IL 107993, our supreme court found that the victim's unimpeached testimony may be sufficient evidence that a defendant was armed with a gun during his offense. Given the victim's "unequivocal testimony and the circumstances under which he was able to view the gun, the jury could have reasonably inferred that defendant possessed a *real* gun." (Emphasis added.) *Id.*, ¶ 36. The *Washington* court affirmed a conviction for (in relevant part) armed robbery where the victim had a clear view of

the object pointed at him and testified that it was a gun, when no gun or gun-like object was recovered and when the defense argued in its directed finding motion insufficient evidence of a firearm as charged, and argued to the jury reasonable doubt from the absence of a recovered object. *Id.*, ¶¶ 10-11, 15-16, 34-37.

¶ 12 Since *Ross*, and consistent with *Washington*, we have held that unequivocal and uncontroverted eyewitness testimony that a defendant held a gun is sufficient circumstantial evidence that he or she was armed with a firearm, and the State need not prove with direct or physical evidence that a particular object is a firearm as defined by statute. *People v. Clark*, 2015 IL App (3d) 140036, ¶¶ 20-29; *People v. Wright*, 2015 IL App (1st) 123496, ¶¶ 74-79, appeal allowed, No. 119561; *People v. Fields*, 2014 IL App (1st) 110311, ¶¶ 34-37; *People v. Malone*, 2012 IL App (1st) 110517, ¶¶ 40-52; *People v. Toy*, 407 Ill. App. 3d 272, 286-93 (2011). In so holding, we noted that "unlike in *Ross*, no BB gun or other toy gun was recovered and linked to the crime which could potentially have precluded the jury from inferring that the gun used to commit the crime was not a toy gun." *Clark*, ¶ 28. In other words, the *Ross* court found the evidence insufficient to prove a firearm where the trier of fact credited "the subjective feelings of the victim" over the contradictory "objective nature of the gun" (*Ross*, 229 Ill. 2d at 277), whereas in *Clark*, *Wright*, *Fields*, *Malone*, and *Toy*, there was no such superior objective evidence. We have distinguished *People v. Crowder*, 323 Ill. App. 3d 710 (2001), where the issue was not sufficiency of the evidence but a discovery sanction: "whether the trial court properly dismissed the indictment, which charged the defendant with unlawful possession of weapons by a felon and willful use of weapons, where the State destroyed the gun that formed the basis of the charges after the defendant requested to view it" (*Clark*, ¶ 29) thus "precluding the defendant from mounting a defense." *Fields*, ¶ 37.

¶ 13 On a claim of insufficiency of the evidence, we must determine whether, taking 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. *In re Q.P.*, 2015 IL 118569, ¶ 24. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and it is better equipped than this court to do so as it heard the evidence. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. We do not retry the defendant – we do not substitute our judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses – and we accept all reasonable inferences from the record in favor of the State. *Q.P.*, ¶ 24. The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Jonathon C.B.*, ¶ 60. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt, nor to find a witness was not credible merely because the defendant says so. *Id*. A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Q.P.*, ¶ 24.

¶ 14 Here, taking the evidence in the light most favorable to the State as we must, we cannot conclude that a rational trier of fact would not have found that defendant was armed with a firearm during the robbery of Green. We note that defendant tries to conjure the specter that his gun was a toy, BB gun, or similar non-firearm object from various matters outside the trial evidence and thus beyond our proper consideration. "In support of his contention, defendant cites federal and New York cases in which police officers mistook fake guns for real guns and includes a photograph of an [object] that would not be considered a 'firearm' under the statutory

definition. However, these things were not offered as evidence at trial." *Clark*, ¶ 24. Turning to the trial evidence, Green testified that defendant used a black gun with a brown handle in the robbery and threatened to shoot him. The security video corroborates that Green saw defendant draw from his waistband an object Green firmly and reasonably believed to be a gun. As in *Clark*, *Wright*, *Fields*, *Malone*, and *Toy*, and unlike *Ross*, there was no evidence that the object used in Green's robbery was recovered and found to be a non-firearm. Lastly, while defendant argues that the trial court shifted the burden to him to disprove that he had a firearm during the robbery, we find that the court, in making its findings at the end of trial and in denying the post-trial motion, merely recited and applied the law set forth in *Washington* and our prior cases.

¶ 15 Accordingly, the judgment of the circuit court is affirmed.

¶ 16 Affirmed.