

No. 1-14-3040

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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. 14 CR 3388
)	
ANTONIO BLAKES,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held:* Judgment affirmed over defendant's challenge to the sufficiency of the evidence to sustain his conviction for armed robbery with a dangerous weapon other than a firearm.

¶ 2 Following a bench trial, defendant Antonio Blakes was found guilty of armed robbery with a dangerous weapon other than a firearm, a Class X felony, and sentenced to six years' imprisonment. On appeal, defendant contests the sufficiency of the evidence to sustain his conviction and maintains that it should be reversed or, in the alternative, reduced to simple robbery and remanded for resentencing. For the following reasons, we affirm.

¶ 3 Defendant's conviction arose from the January 23, 2014, robbery of the victim, Rockell Collazo, in Chicago. Defendant was charged with armed robbery with a firearm and also with armed robbery with a dangerous weapon other than a firearm.

¶ 4 At trial, the victim testified that defendant contacted her through Facebook, which indicated they had mutual friends. They communicated over the phone and Facebook for a couple of months and both attended a mutual friend's social event, but they were not in a dating relationship. At some point during their correspondence, the victim agreed to purchase two iPhones from defendant for \$440 on the day in question. Before meeting defendant, the victim withdrew \$500 from an ATM and then drove to the address he provided, 5113 South Indiana Avenue. She called him when she arrived at around 9:20 p.m. and defendant emerged from the building about 20 minutes later dressed for the "freezing" weather in basketball shorts, flip flops, socks, and a hoodie.

¶ 5 Defendant walked over to the victim who was still in her car. Although he did not have the cell phones with him, he repeatedly insisted that the victim pay him the money. When the victim refused his requests, defendant "showed [her] a gun in his left pocket." He then joined her in the car and removed the gun from his pocket. Pointing the gun in her direction, he said, "[D]on't make me do this." The victim described the gun at trial as a "black automatic nine-millimeter, a nine handgun, about this big, black, automatic. It didn't have a barrel." The prosecutor requested that the record reflect the victim held her hands six inches apart while describing the gun. The court noted it appeared more like eight inches.

¶ 6 After defendant showed the victim the gun, she gave him the \$500 which she had withdrawn earlier that evening. Defendant went back into the building and the victim pressed the

"On-Star" button in her car to call the police. She was directed to a police station, where she reported what transpired earlier that night and gave the police defendant's name. When she met with Chicago police detective Timothy Earls on January 31, 2014, she showed him screenshots of messages sent between her and defendant, and identified defendant from a photo lineup.

¶ 7 Detective Earls testified that the victim identified defendant in a photo lineup on January 31, 2014, and that she showed him screenshots of messages sent between them. The screenshots of the messages introduced at trial identify defendant with his full name and indicate that he provided her with the address "5111s. Indiana" on the evening in question. During his investigation, Detective Earls learned that defendant lived at 5113 South Indiana Avenue. He was taken into custody on February 6, 2014, after an investigatory alert. On cross-examination, the detective testified that the victim informed him defendant used a black semiautomatic, but acknowledged no gun was recovered.

¶ 8 The State rested. Defendant moved for a directed finding, which the court denied. Defendant then rested without presenting evidence.

¶ 9 The court found the victim "to be a credible and compelling witness" and had no doubt that defendant committed the robbery after arranging it via Facebook, "leaving quite the paper trail back to himself." In discharging defendant on count one, armed robbery with a firearm, the court noted that no gun was recovered and it could not "say with certainty that it was actually a firearm or not." The court found defendant guilty on count two, armed robbery with a dangerous weapon other than a firearm, and explained, "The way it was used against her, pointed at her, at her face, it could at the very least have been used as a bludgeon."

¶ 10 On the day defendant's motion for a new trial was set for ruling, defendant addressed the court regarding his conviction. Specifically, he stated that the text messages were silent as to the intended purpose of the meeting and the victim was "obviously a woman that [he] was dating" who was mad about something else. He claimed that he declined the State's plea offers because he did not take anything from her and expressed remorse for not testifying to his version of the events at trial. Further, defendant questioned whether the State proved he was armed with a dangerous weapon and asserted that his arrest after the investigatory stop was unconstitutional. The court denied the motion for a new trial but agreed to review the trial transcript and continued the case to a later date. At the subsequent court proceeding, the court stated that it reviewed the trial transcript and that defendant received "the benefit of the doubt as to the gun." The court sentenced defendant to six years' imprisonment with three years of mandatory supervised release.

¶ 11 On appeal, defendant contests the sufficiency of the evidence to sustain his conviction. He maintains that the State failed to prove he was armed with a "dangerous weapon" beyond a reasonable doubt because no weapon was recovered or introduced into evidence and because no testimony was provided as to the item's weight or composition. Defendant points out that the court erroneously noted that he pointed the gun at the victim's face, despite her lack of testimony to that effect. As a result, defendant contends that his conviction for armed robbery should be reversed, or, in the alternative, reduced to simple robbery and remanded for resentencing.

¶ 12 When a defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant 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. Woods*, 214 Ill. 2d 455, 470 (2005). In a bench trial, the

trial court determines the credibility of the witnesses, weighs the evidence, draws reasonable inferences therefrom, and resolves any conflicts in the evidence. *People v. Daheya*, 2013 IL App (1st) 122333, ¶ 62. Accordingly, reviewing courts must allow all reasonable inferences from the record in favor of the prosecution (*People v. Cardamone*, 232 Ill. 2d 504, 511 (2009)) and may not overturn a conviction based on insufficient evidence unless the proof is so improbable or unsatisfactory that a reasonable doubt exists (*People v. Williams*, 193 Ill. 2d 306, 338 (2000)).

¶ 13 To sustain defendant's conviction, the State was required to prove that defendant: (1) committed robbery; and (2) carried on or about his person or was otherwise armed with a dangerous weapon other than a firearm. 720 ILCS 5/18-2(a)(1) (West 2014). In analyzing whether an object constitutes a "dangerous weapon," Illinois courts have defined three categories of dangerous objects: (1) objects that are dangerous *per se*, such as loaded guns; (2) objects that are not necessarily dangerous, but were actually used in a dangerous manner during the offense; and (3) objects that are not necessarily dangerous, but may become dangerous when used in a dangerous manner. *McBride*, 2012 IL App (1st) 100375 ¶ 42; see also *People v. Ross*, 229 Ill. 2d 255, 275 (2008) (recognizing appellate court cases' use of the three categories). In determining whether a defendant is armed with a dangerous weapon, the trier of fact may make an inference of dangerousness based upon the evidence. *People v. Washington*, 2012 IL 107993, ¶ 34. A trier of fact may find that a weapon, such as an unloaded real gun or a toy gun, because of its size and weight, was dangerous even though not actually used as a weapon. *Ross*, 229 Ill. 2d at 275-76 (citing *People v. Skelton*, 83 Ill. 2d 58, 64-66 (1980)).

¶ 14 In the instant case, the evidence, viewed in the light most favorable to the prosecution, was sufficient to prove defendant was armed with a dangerous weapon. At trial, the victim

testified that when she refused to give defendant her money, he pointed an item at her through his sweater pocket and then entered her car. Within that confined space, he removed a gun from his pocket. He showed the victim the gun and threatened, "[D]on't make me do this." The victim described the weapon as a "black automatic nine-millimeter, a nine handgun" with no barrel, and held her hands about six to eight inches apart to indicate its length. The trial court determined that the victim was a credible witness. The testimony of one witness, if positive and credible, is sufficient to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We find that the circumstances described by the victim support the inference that defendant was armed with some type of gun that, even if only its butt, could have been used as a bludgeon and the evidence is not so improbable or unsatisfactory that it raises a reasonable doubt as to defendant's guilt. See *Washington*, 2012 IL 107993, ¶¶ 36-37; *People v. Malone*, 2012 IL App (1st) 110517, ¶ 52.

¶ 15 Defendant asserts that his acquittal on the charge of armed robbery with a "firearm," which was subject to a 15-year sentencing enhancement (720 ILCS 5/18-2(b) (West 2014)), shows he did not possess some kind of gun that could have been used as a bludgeon. We disagree. For purposes of our discussion, we note that "firearm" is statutorily defined in the Firearm Owners Identification Card Act as any device which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas. 430 ILCS 65/1.1 (West 2014). The definition of "firearm" includes exceptions for items such as BB guns, spring guns, paint ball guns, antique firearms, and any device used exclusively for the firing of stud cartridges. 430 ILCS 65/1.1 (West 2014).

¶ 16 Here, the trial judge, finding the victim's testimony credible, nonetheless reasoned that no weapon was recovered and that he could not say with certainty that the item characterized by

her was actually a gun. We have held that the State, in order to meet its burden on a charge of armed robbery with a firearm, is not required to prove that a defendant possessed a firearm by either “direct or physical evidence.” See *People v. Wright*, 2015 IL App (1st) 123496, ¶74, appeal allowed, No. 119561 (Nov. 25, 2015). “Eyewitness testimony that an offender possessed a firearm, combined with circumstances under which the witness was able to view the weapon, is sufficient to allow a reasonable inference that the weapon was actually a firearm.” *People v. Jackson*, 2016 IL App (1st) 141448, ¶15.

¶ 17 Our position is wholly supported by *Washington*, a case in which the defendant argued that the State failed to prove he was armed with a dangerous weapon because no gun was presented and there was no testimony regarding the size and weight or the metallic nature of the weapon. *Washington*, 2012 IL 107993, ¶ 24. In *Washington*, the victim testified that defendant abducted him during the day and pointed a “gun” at him several times. *Id.* ¶ 35. The evidence at trial established that, for several minutes, the victim had an unobstructed view of the weapon the defendant possessed. *Id.* Viewing the victim’s unequivocal testimony and the circumstances under which he observed the gun in the light most favorable to the prosecution, the *Washington* court held that the jury reasonably could have inferred that the defendant possessed a real gun, and affirmed his conviction of armed robbery with a dangerous weapon. *Id.* ¶¶ 36-37.

¶ 18 Like in *Washington*, the victim in the instant case observed the weapon defendant pointed at her. We are mindful of defendant’s observation that the trial court erroneously stated defendant pointed the gun at the victim’s face. However, she did testify that while in the car, defendant pointed the “gun” in her direction. Thus, the record reflects that the victim had the opportunity to observe the weapon at close range. Accordingly, here, as in *Washington*, there was no real

dispute that defendant possessed some type of gun when he committed the crime. See *id.* ¶¶ 35-36.

¶ 19 We note that the *Washington* court did not determine whether the evidence was sufficient to prove that the "gun" was a "firearm" because the charged offenses did not include the "other than a firearm" language. *Id.* ¶ 40. Here, as the trial court did not find that defendant possessed a "firearm," *Washington* remains applicable. Accordingly, the evidence was sufficient for the trier of fact to determine that the "gun" that the victim testified was pointed in her direction was a dangerous weapon that could have been used as a bludgeon.

¶ 20 Defendant asserts that the outcome in *Ross* is controlling here. We disagree. *Ross* is clearly distinguishable. The victim in *Ross* testified that the defendant pointed a "black, very portable gun" at him. *Ross*, 299 Ill. 2d at 258. The evidence in *Ross* showed that the "gun" was, in fact, a small BB gun, with only a three-inch barrel. *Id.* The BB gun was not presented at trial and without evidence as to its composition or weight, the *Ross* court held that there could be no inference that the BB gun could have been used as a bludgeon. *Id.* at 277. Thus, the evidence presented at trial in *Ross* "actually precluded a finding that the 'gun' used by the defendant was a dangerous weapon." *Washington*, 2012 IL 107993, ¶ 34 (citing *Ross*, 299 Ill. 2d at 276). Unlike *Ross*, in this case, the evidence of a weapon at trial was to the effect that defendant had a "black automatic nine millimeter" hand-gun about six inches in length, not a three-inch BB gun. See *Ross*, 299 Ill. 2d at 258. Accordingly, defendant's reliance on *Ross* is misplaced.

¶ 21 We give deference, as we must, to the credibility and factual findings of the trial court. Thus, we cannot engage in a reweighing of the evidence. See *People v. Bradford*, 2016 IL 118674, ¶ 12.

The trial judge's determination that he could not say "with certainty" that the item described by the victim was a gun does not defeat his additional finding that the victim's testimony was credible. Although defendant enjoyed the "benefit of the [trial court's] doubt" with respect to whether the item described by the victim was a real gun, in light of his additional finding of the victim's credibility, we reject defendant's assertion that he did not possess some kind of "gun" that could have been used as a bludgeon. Notably, the trial judge's uncertainty concerning the gun was based on the fact the gun was not recovered.

¶ 22 Because we affirm defendant's conviction for armed robbery with a dangerous weapon other than a firearm, we need not address his request that we reduce his conviction to simple robbery. For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.