

No. 1-15-0882

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. 12 CR 15309
)	
CAREY NUYEN,)	Honorable
)	Richard D. Schwind,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice McBride concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm defendant's conviction because the evidence was sufficient to prove him guilty beyond a reasonable doubt of reckless discharge of a firearm.

¶ 2 Following a jury trial, defendant Carey Nuyen was convicted of one count of reckless discharge of a firearm (720 ILCS 5/24-1.5)(a) (West 2010) and sentenced to two years' imprisonment. On appeal, he argues the evidence was insufficient to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 Defendant was charged by indictment with one count of aggravated discharge of a firearm in the direction of Judson Richards and one count of reckless discharge of a firearm for endangering the life of Richards by discharging the firearm in his direction, stemming from acts occurring on June 24, 2012 in Streamwood, Illinois. At trial, the following evidence was presented.

¶ 4 Imelda Hanson testified she lived with her son at 3 Oak Knoll Court in Streamwood. Defendant, her former boyfriend, lived with her. Hanson had asked him to move out but he was still living there in June 2012. Defendant's first cousin, Judson Richards, came on June 19, 2012, to help Hanson persuade defendant to move out of the house.

¶ 5 On June 23, 2012, around 11:00 p.m., Hanson was upstairs in her room. Richards was downstairs with defendant, playing music. Defendant had been drinking. Hanson sent a text message to defendant instructing him to turn the music down. Richards came upstairs but went into a different room. Defendant also came upstairs. Hanson heard him say "f***ing whore," then heard a knock on her door. When she eventually opened her door, she saw defendant outside holding a handgun.

¶ 6 Hanson followed defendant downstairs to the office adjoining the kitchen, where she tried to take the gun away from him. Unable to do so, Hanson asked defendant to open the slide, and she observed a "red snap cap." Richards started to walk down the stairs and defendant stood up by the doorway leading to the kitchen. Defendant was standing in a crouched position. He had the gun in front of him, with both hands extended forward clutched together, and stated: "I'm going to shoot." Hanson ran towards the kitchen to go upstairs when she encountered Richards. She attempted to push him away and said, "he has a gun, he has a gun." Richards pushed her to the side and said, "no, he's not going to shoot me." Hanson then heard a gunshot and Richards

say "I've been shot." She also heard defendant's dog crying and yelping. The dog was about a foot away from Richards.

¶ 7 Hanson saw blood on the stairs and ran upstairs. When she came back down, she noticed Richards had pinned defendant against the wall. Richards was holding the gun in his right hand and told Hanson to take it away. Hanson took the gun and put it in a lunch bag upstairs. When she returned downstairs, she saw Richards on top of defendant, restraining him. Richards called 911 and Hanson went down the street until she was contacted to return home. At trial, she identified the hand gun defendant was holding and various photographs of the scene.

¶ 8 On cross-examination, Hanson acknowledged telling Detective Carrillo that she heard the gunshot as she was running up the stairs. She had also told him that she heard the dog crying and a struggle before she ran back downstairs. On redirect, she stated that she was in the room when the gun fired.

¶ 9 Hanson testified that she is in the United States from the Philippines on a "U-visa." In 2011, she was placed on deportation status but it was "terminated." The State's Attorney's office had informed the immigration court and Hanson's immigration attorney that she was a witness in the present case. Hanson denied she received any promises or consideration for her testimony in the present case.

¶ 10 Streamwood police officer Patrick Silver testified that, on June 24, 2012, at 12:30 a.m., he went to the scene of a gunshot disturbance at 3 Oak Knoll Court. There, Silver observed a man, identified in court as defendant, bound with a belt and painter's tape and another man, Richards, sitting on top of him. Defendant and Richards were placed in handcuffs while officers searched the home to see if anyone else was present. During the search, a wounded dog was found in a bedroom and immediately transported to an animal hospital. A bullet fragment was

discovered in the kitchen floor. Defendant told Silver that his girlfriend had been at the home but left. He further stated that he had been involved in a fight with Richards and had been holding a gun.

¶ 11 Hanson returned home and went with Silver to her bedroom, where he located a handgun inside her lunch box. Silver notified Detective Carrillo about the handgun and transported defendant to an interview room at the police station. On the way back from a bathroom break, defendant told Silver " 'I should have put one between his eyes.' "

¶ 12 Evidence technician Cristina Hayden testified that, on June 24, 2012, she went to collect evidence from a shooting at 3 Oak Knoll Court. She observed blood splatter on the floor leading to the upstairs and some blood stains in a bedroom. In the kitchen, she photographed a bullet casing, a snap cap, and a bullet fragment and inventoried the items. Upstairs, she photographed a lunch box that contained a firearm and inventoried the firearm. Hayden also collected gunshot residue from the hands and faces of Richards and defendant and sent the samples to the crime lab for testing.

¶ 13 Hayden identified various photographs she took and evidence she collected from the scene. She further testified that the serial number of the hand gun collected was RK3978, but she had written on the inventory sheet that the serial number was RK39TS. She stated that she did this by "mistake." However, Hayden testified the hand gun presented at trial was the same one she previously photographed and inventoried.

¶ 14 Illinois State Police forensic scientist Scott Rochowicz testified the samples in the residue kit belonging to Richards tested negative for the presence of gunshot residue. The sample from defendant's left hand tested positive for gunshot residue. Rochowicz concluded that either defendant discharged a firearm or was in close proximity to a firearm that was discharged.

¶ 15 Detective Juan Carrillo of the Streamwood Police Department testified that, on June 24, 2012, he arrived at 3 Oak Knoll Court and saw Richards lying on the ground and defendant, whom he identified in court, bound by tape in a chair. Following a search of the residence, Carrillo learned that a dog had been shot and taken to a veterinary clinic. Defendant was transported to an interview room of the Streamwood Police Department. When Carrillo went into the room to photograph defendant, defendant spontaneously told him that "he [defendant] hesitated by hundredths of a second and that he would have rather put two in the chest of [Richards] and one in his orbital socket" than shoot the dog. Carrillo noted defendant appeared to be intoxicated, but that Hanson and Richards did not. Carrillo was present when Hayden took samples for the gunshot residue test. He testified defendant told them that, if "we were looking for powder, we would find it on his [defendant's] right hand at the time he shot it, unfortunately, hundredths of a second too late."

¶ 16 Carrillo further testified that the serial number written in his report was not the correct serial number of the gun that was recovered. He also testified that Hanson told him she was running upstairs when she heard the gunshot. She told him she then heard the dog crying and a scuffle between Richards and defendant.

¶ 17 Defense witness Doctor Mary Lou Kurzeja testified she was a veterinarian and treated a dog for a gunshot wound to the right rear leg on June 24, 2012. The bone in the dog's right rear leg was shattered, and it had three other wounds on its left rear leg. Ultimately, the dog had to be euthanized.

¶ 18 Defense witness Dexter Bartlett testified as an expert in crime scene reconstruction. He examined and photographed Hanson's home at 3 Oak Knoll Court. Bartlett did not find any bullet holes, indentations, or any indication of a ricocheted bullet. Based upon the police reports,

his own observations, and speaking with Hanson, Bartlett concluded it would be impossible for a pistol to have been fired while being pointed at Richards. He stated that a gun was pointed at the dog, but acknowledged that, if a person was standing near the dog, the gun would be pointed in that person's general direction as well.

¶ 19 The jury found defendant guilty of reckless discharge of a firearm. After defendant's written motion for a new trial was denied, the court sentenced him to two years' imprisonment. The court denied his written motion to reconsider sentence, and defendant timely appealed.

¶ 20 On appeal, defendant argues the evidence was insufficient to find him guilty beyond a reasonable doubt of reckless discharge of a firearm.

¶ 21 The standard of review when challenging the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. "A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). The jury, as trier of fact, has the responsibility to determine the credibility of witnesses, weigh the evidence and any inferences derived therefrom, and resolve any conflicts in the evidence. *People v. Kidd*, 2014 IL App (1st) 112854, ¶ 27. A conviction will not be reversed unless "the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt." *In re Q.P.*, 2015 IL 118569, ¶ 24.

¶ 22 In order to sustain the conviction of reckless discharge of a firearm, the State had to prove defendant (1) discharged a firearm in a reckless manner and (2) endangered the bodily safety of Richards. See 720 ILCS 5/24-1.5(a) (West 2010); see *People v. Collins*, 214 Ill. 2d 206,

212 (2005). A person acts recklessly "when that person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation." 720 ILCS 5/4-6 (West 2010); *People v. Watkins*, 361 Ill. App. 3d 498, 500 (2005).

¶ 23 Defendant concedes the gun was discharged in the kitchen but argues there is no reliable evidence regarding who fired the gun and in which direction it was fired, especially as Richards did not testify. We find the evidence was sufficient to convict defendant of reckless discharge of a firearm. Hanson clearly testified defendant was crouched in the doorway leading to the kitchen pointing the gun and she and Richards were in the kitchen, attempting to push each other aside, when she heard a gunshot. This leads to the necessary conclusion that only defendant could have fired the gun. Further the bullet struck defendant's dog, which was only about a foot away from Richards in the kitchen, leading to the inference that the shot was fired in Richards' direction. The positive testimony of a single credible witness is sufficient to convict a defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Hanson's testimony was ample to show defendant fired the gun in Richards' direction.

¶ 24 The inference that defendant was the shooter is bolstered by the gun residue tests, which established that defendant's hand, not Richards' hands, tested positive, indicating defendant either fired a weapon or was in close proximity to a discharged weapon. Further, Detective Carrillo and Officer Silver testified to inculpatory statements made by defendant. Taking the evidence as a whole, Richards' testimony was unnecessary to determine who fired the gun and where and in what direction the gun was fired. *People v. Irby*, 237 Ill. App. 3d 38, 68 (1992) ("The State is not obligated to call every witness who might testify concerning evidence of the crime"); see also

Collins, 214 Ill. 2d at 217-18 (finding the State was not required to present the "angle or direction of the discharge" in order to sustain the conviction of reckless discharge of a firearm).

¶ 25 Any person who shoots a gun in the close confines of a kitchen where other persons are present consciously disregards a substantial and unjustifiable risk that the persons in the room will be endangered. A reasonable jury could therefore have found that defendant, when he fired a hand gun inside the kitchen thereby striking the dog a foot away from Richards, recklessly discharged a firearm endangering the bodily safety of Richards.

¶ 26 Defendant argues that Hanson is not credible because she was biased, in that her deportation status relied on her assistance to the State in securing defendant's conviction. Specifically, he argues the State provided her with a "U-Visa," allowing her to remain in the United States. However, Hanson testified she did not receive any promises or consideration for her testimony. Further, Hanson's deportation status was the subject of a significant portion of defendant's cross-examination and her alleged bias was argued in closing. Having been fully apprised of Hanson's alleged bias, the jury found defendant guilty, necessarily finding Hanson credible. It was for the jury, as trier of fact, to determine the bias or interest affecting Hanson's credibility, and the weight to be given to her testimony. *People v. Hernandez*, 319 Ill. App. 3d. 520, 532-33 (2001). We do not overturn the jury's credibility determination, as we will not substitute our judgment for that of the trier of fact regarding the credibility of witnesses. See *Siguenza-Brito*, 235 Ill. 2d at 224-25.

¶ 27 Defendant also argues Hanson is not credible because her testimony is contradictory. He points out that Hanson testified she was in the kitchen when she heard the gunshot but acknowledged on cross-examination that she had previously told Detective Carrillo she was running up the stairs when she heard the shot. Again, the jury heard all the testimony, including

Carrillo's corroboration of what Hanson told him, and found defendant was guilty of reckless discharge of a firearm. Necessarily, its finding demonstrated that it found Hanson credible despite the inconsistencies between her trial testimony and statement to Carrillo. We will not substitute our judgment for that of the jury regarding the credibility of witnesses. See *Siguenza-Brito*, 235 Ill. 2d at 224-25. As was its purview, the jury evaluated Hanson's credibility, weighed the conflicting evidence, drew reasonable inferences therefrom and resolved evidentiary conflicts to determine the facts. See *People v. Lara*, 2012 IL 112370, ¶ 46. Further, at trial, Hanson specifically clarified that she was in the room when the gun went off, rather than on the stairs. Unlike in *People v. Casciaro*, 2015 IL App (2d) 131291, cited by defendant, Hanson's testimony was not "so inconsistent, contradictory, and incredible" as to render it "palpably contrary to the verdict." *Casciaro*, 2015 IL App (2d) 131291, ¶ 112 (quoting *People v. Williams*, 65 Ill. 2d 258, 268 (1976)).

¶ 28 Defendant next argues the physical evidence is insufficient to prove his guilt. He contends that it is unclear whether the gun presented at trial was the same gun discharged during the incident. In support, he references the testimony at trial that the serial number written in the reports differs from that of the gun presented at trial. This argument is unconvincing. At trial, Hanson positively identified the gun recovered from her lunch bag as the gun defendant was holding. Further, Hayden testified that she photographed, inventoried, and secured the gun recovered at the scene. At trial, she positively identified that same gun she previously photographed, inventoried, and secured. While Hayden admitted the serial number in her report did not match the one found on the gun, she explained that this was a mistake. It was for the jury to assess the credibility of the witness and resolve any inconsistencies or conflicts in the evidence. *People v. Matthews*, 2012 IL App (1st) 102540, ¶ 19. Further, even if the gun had not

been produced at trial, Hanson's testimony standing alone would be sufficient to support the conviction. The absence of physical evidence does not require reversal of a conviction where eyewitness testimony is sufficient to sustain the conviction. *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23.

¶ 29 Defendant also notes that Hayden did not collect any blood samples from the scene, did not collect any fingerprints or DNA from the gun, and did not perform any ballistic tests on the gun. Again, absence of physical evidence does not require reversal of a conviction where eyewitness testimony is sufficient to sustain the conviction. See *Herron*, 2012 IL App (1st) 090663, ¶ 23. As previously found, Hanson's testimony establishes that defendant was the shooter. Moreover, the State did provide physical evidence, establishing through Hayden and Rochowicz's testimony that testing of the gun residue kit samples taken from defendant came back positive for residue on defendant's left hand. From this result, Rochowicz concluded that defendant discharged a gun or was in close proximity to a gun that was discharged. While defendant argues this testimony is inconclusive, viewing the evidence in the light most favorable to the State, a jury reasonably could find defendant fired the gun.

¶ 30 Defendant argues his statements made to police were not recorded and, in any event, cannot be construed as a confession. However, Detective Carrillo testified the statements were not recorded because defendant made these statements spontaneously and not as a result of questioning. Further, viewing the evidence in the light most favorable to the State, a reasonable jury could have inferred defendant was implicating himself when he said "I should have put one between his eyes." See *People v. Wheeler*, 226 Ill. 2d 92, 116-17 (2007) (" 'the reviewing court must allow all reasonable inferences from the record in favor of the prosecution' " (quoting *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004))).

¶ 31 Defendant argues the jury's not guilty finding as to aggravated discharge of a firearm is inconsistent with its guilty finding as to reckless discharge of a firearm. Specifically, he contends "[i]f there was a finding that the Defendant did not discharge a firearm in the direction of Richards, then we know he was not endangered by the discharge." We disagree. The two offenses are distinct and prohibit different actions. See generally *People v. Kasp*, 352 Ill. App. 3d 180, 187-90 (2004). Aggravated discharge of a firearm involves the "intentional firing of a weapon knowingly and directly at someone." *Id.* at 188. On the other hand, with respect to reckless discharge of a firearm,

"it is not essential that the offender intentionally or knowingly shoot at or in the direction of someone, but simply that he discharge a weapon in such a way as to place a person in danger; unlike aggravated discharge, it is not necessary that the weapon be discharged in the direction of a person for the crime of reckless discharge to be committed." *Id.*(citing 720 ILCS 5/24-1.5 (West 2002)).

¶ 32 Here, the jury could properly reject the notion that defendant "knowingly and directly" fired at someone, namely Richards, yet still find that he placed Richards "in danger" by firing a handgun inside the kitchen of a residential home in close proximity to two individuals. Indeed, the bullet defendant fired struck his dog, which was only a foot away from Richards, demonstrating the danger to Richards posed by the discharge of the gun. We therefore reject defendant's argument that the jury's findings were inconsistent.

¶ 33 Accordingly, the evidence was sufficient to prove defendant guilty beyond a reasonable doubt of reckless discharge of a firearm.

1-15-0882

¶ 34 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 35 Affirmed.