2017 IL App (1st) 142140-U
No. 1-14-2140
Order filed April 24, 2017

First Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 19722
	)	
MARCUS SHAW,	)	Honorable
	)	Erica L. Reddick,
Defendant-Appellant.	)	Judge presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Connors and Justice Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: Eyewitness evidence sufficient to convict defendant of armed robbery.

¶ 2 Following a 2014 bench trial, defendant Marcus Shaw was convicted of armed robbery and sentenced to 21 years' imprisonment. On appeal, defendant primarily contends that the trial evidence – specifically, eyewitness identification testimony – was insufficient to convict him. Alternatively, he contends that his conviction should be reduced to robbery because there was insufficient evidence that he was armed with a firearm during the robbery. We affirm.

¶ 3 Defendant and codefendant Gregory Lovelady were charged with armed robbery for, on or about September 20, 2012, allegedly taking currency from Camella Allen by the use of force

or threatening the imminent use of force while armed with a firearm. Defendants were also charged with vehicular invasion for, on the same day, allegedly reaching into Camella Allen's motor vehicle, while she was in it, with the intent to commit theft. The court held simultaneous but severed bench trials.

¶ 4 At trial, Camella Allen testified that she and her cousin Camilya Allen[1] were sitting in Camella's parked car in a public park on the afternoon of September 20. Camella was talking on her cellphone when defendant walked up to the driver's window, held a gun at the window pointed at Camella, and demanded that Camella "hurry up and give me your things because I don't want to shoot you." Defendant pushed the gun through the partially-open window and demanded again that Camella "give me your things 'cause I don't want to have to kill you." Camella gave defendant her purse and keys through the gap or opening in the window, and he "skipped" away. (Camella initially stated that the purse contained about $150 cash and then, after considering the cash she received and spent beforehand, concluded that the purse contained $151.) When defendant left, about a minute or two after arriving, Camella called the police, who arrived quickly at the scene. A few minutes later, officers took Camella to identify a man and woman found nearby, but the man was not the robber and she made no identification. Camella went to the police station that evening and viewed a photographic array from which she identified defendant as the robber. On September 24, Camella returned to the police station and viewed a lineup, from which she identified defendant as the robber. Before the array of the 20th and the lineup of the 24th, Camella was admonished that the array or lineup may or may not include the robber and that she was not obliged to make an identification.

[1] We shall refer to Camella and Camilya individually and the Allens collectively.

¶ 5 Camella described the gun that defendant pointed at her as a silver or chrome "automatic," then clarified that she meant a semi-automatic handgun. Camella testified that she knew the difference between a revolver and a semi-automatic handgun because she was taking firearm training. Camella identified defendant at trial. While defendant was wearing a hood during the robbery, it did not obscure his face and Camella testified to having a "clear view of his face." She told the responding officers that the robber wore a gray and white shirt with a hood. She had never seen defendant before the day of the robbery.

¶ 6 Camilya Allen testified that she was in the front passenger seat of Camella's parked car, using her cellphone, when defendant appeared at Camella's window with a "silver" gun in hand and pointed it at Camella. Camilya's first reaction was an incredulous or puzzled look on her face, as if defendant was not "serious," which prompted him to say that he did not "want to kill you guys." Camilya realized that this was a robbery, and saw that Camella's reaction was "frightened" as she gave her purse and keys to defendant. While defendant was wearing a hood – part of a gray and white hooded shirt – it did not obscure his face, and Camilya had "a clear look" at the robber. At trial, Camilya identified defendant as the robber. As defendant walked away, about two minutes after arriving, he joined two men and one woman standing nearby and they left the scene together. At trial, Camilya identified codefendant as one of the two men joined by defendant. When the police stopped codefendant a few minutes after the robbery, Camilya was brought to that location where she identified codefendant as one of the men who left with defendant. Later on the day of the robbery, Camilya went to the police station and viewed a photographic array from which she made no identification. On September 24, Camilya returned to the police station and viewed a lineup, from which she identified defendant as the robber.

¶ 7 A police officer who responded to the reported robbery testified that he stopped codefendant and a woman, who were together, because the woman was wearing a pink shirt as a radio dispatch had described. Another dispatch stated that keys and a purse containing $151 had been stolen, and $151 was found on codefendant. A black purse was found near the arrest scene.

¶ 8 Following arguments, the court denied each defendant's motion for a directed finding. Following closing arguments, the court found defendant guilty of armed robbery with a firearm and vehicular invasion. The court found the Allens "testified clearly and credibly" and corroborated each other's accounts. The court also found codefendant guilty on both counts.[2]

¶ 9 In his post-trial motion, defendant argued insufficiency of the evidence, in particular the evidence that he was armed with a firearm. The court denied the motion, finding that the Allens' credible and unimpeached testimony describing the gun was not negated by their initial reaction that the robbery was a joke nor by the fact that a firearm was not recovered. The court then sentenced defendant to 21 years' imprisonment for armed robbery, with the vehicular invasion count merged.

¶ 10 On appeal, defendant primarily contends that there was insufficient evidence to convict him because his conviction was based on unreliable eyewitness identification testimony.

¶ 11 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

[2] Codefendant was sentenced to 23 years' imprisonment for armed robbery, and we affirmed that judgment. *People v. Lovelady*, No. 1-14-1821 (2016)(unpublished order under Supreme Court Rule 23).

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.

¶ 12 Our supreme court has repeatedly stated that a valid conviction may be based on a positive identification by a single eyewitness who had ample opportunity to observe. *In re M.W.*, 232 Ill. 2d 408, 435 (2009). A trier of fact assesses the reliability of identification testimony in light of all the facts and circumstances including (1) the witness's opportunity to view the offender at the time of the offense, (2) the witness's degree of attention at the time of the offense, (3) any previous description of the offender by the witness, (4) the degree of certainty shown by the witness in identifying the defendant, and (5) the length of time between the offense and the identification. *Id.*; *People v. Jackson*, 2016 IL App (1st) 133741, ¶ 57. Discrepancies or omissions in a description do not by themselves generate a reasonable doubt regarding a positive identification. *People v. Tomei*, 2013 IL App (1st) 112632, ¶ 50. " '[A] witness is not expected or required to distinguish individual and separate features of a suspect in making an identification. Instead, a witness' positive identification can be sufficient even though the witness gives only a

general description based on the total impression the accused's appearance made.' " *Id.*, ¶ 52, quoting *People v. Slim*, 127 Ill. 2d 302, 308-09 (1989).

¶ 13 Here, as to opportunity to view, the Allens both testified that they had a minute or two to see defendant standing at Camella's car window, and that his face was not obscured by his hooded shirt. As to their degree of attention, while both were using their cellphones when defendant approached, his appearance with a gun pointed at Camella clearly refocused their attention on him rather quickly. Defendant's argument that the Allens' focus would have been on the gun alone is belied by Camella handing her purse and keys through the "cracked" car window and by Camilya observing the other nearby occupants of the park including codefendant and the woman in pink.

¶ 14 As to confidence, the Allens made unequivocal identifications but defendant argues that there is little – or indeed negative – correlation between a witness's confidence and accuracy. However, we have stated that "a low correlation between confidence and accuracy does not necessarily mean that a witness's confidence should play *no* role in our analysis." (Emphasis in original.) *People v. Simmons*, 2016 IL App (1st) 131300, ¶ 96. Regarding Camella's confidence, we find it notable that she refrained from making an identification shortly after the incident when presented by police with a man other than defendant, thus showing that she took care when asked to make an identification rather than leaping to conclusions.

¶ 15 As to the timing of pre-trial identifications, Camella identified defendant in a photographic array a few hours after the robbery, and the Allens separately identified defendant in a lineup four days after the robbery. We cannot find reasonable doubt in defendant's groundless speculation that Camilya identified defendant in the lineup when she did not identify him in the array because "Camilya discussed Camella's identification with her in the four days

between the photo array and the live lineup." Lastly, as to descriptions, the Allens both described defendant as wearing a gray and white hooded shirt.

¶ 16 Applying the five factors here, and taking the evidence in the light most favorable to the State, we conclude that defendant failed to show that the Allens' identification testimony implicating defendant was unreliable. Accordingly, we affirm defendant's conviction of armed robbery.

¶ 17 Defendant alternatively contends that his conviction for armed robbery should be reduced to robbery because there was insufficient evidence that he was armed with a firearm.

¶ 18 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).

¶ 19 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.

¶ 20 Since *Ross*, and consistent with *Washington*, we have held that unequivocal 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. Fields*, 2017 IL App (1st) 110311-B, ¶¶ 34-37; *People v. Jackson*, 2016 IL App (1st) 141448, ¶¶ 13-18; *People v. Hunter*, 2016 IL App (1st) 141904, ¶¶ 14-20, appeal allowed, No. 121306; *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. Davis*, 2015 IL App (1st) 121867, ¶¶ 11-12; *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 *Fields*, *Jackson*, *Hunter*, *Clark*, *Wright*, *Malone*, and *Toy*, there was no such objective evidence.

¶ 21 As we recently stated, "reviewing courts have upheld trial court determinations that the defendant possessed a firearm even where very little description of the weapon was presented" and we have declined to "establish a minimum requirement for showing a defendant possessed a firearm." *Jackson*, ¶ 17. See also *Davis*, ¶¶ 11-12 (sufficient evidence for two armed robbery convictions where one witness described a "big," "dark-colored" gun with a "big thing on the outside where the bullets go in it" and another witness described another gun as "silver," "shiny" and apparently "a real gun"). Our deference to the credibility determinations below "equally applies to a trier of fact's assessment of a witness' testimony that the defendant had a firearm, even where the witness was unable to accurately describe the weapon." *Jackson*, ¶ 14. 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." *Hunter*, ¶ 19.

¶ 22 Here, taking the evidence in the light most favorable to the State as we must, we cannot conclude that a rational trier of fact could not have found that defendant was armed with a firearm during the robbery. Camella described the gun that defendant pointed at her as a silver or chrome semi-automatic, and Camilya similarly described a silver gun. We are not obliged to find reasonable doubt in Camella's colloquial – and quickly corrected – description of the gun as "an automatic." While defendant puts enormous weight on testimony that the Allens' initially

believed the robbery was a joke, it clearly was not. We note that only Camilya testified that the puzzled look on her face was due to disbelief that the robbery was "serious;" she could not know what Camella believed at that same moment. We reject defendant's argument that the Allens should effectively be bound by Camilya's first impression of the situation formed at a glance. The Allens had a greater opportunity to view the gun during the robbery than when they had their initial reaction, and Camilya clarified that Camella looked "frightened." Moreover, the inference that the object defendant held during the robbery was a gun was amply corroborated by the Allens' consistent testimony that defendant demanded that Camella quickly yield her property as he did not want to shoot or kill the Allens.

¶ 23 We note that defendant tries to conjure the specter that the object he held 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; see also *Hunter*, ¶ 20. It was the trial court's power and duty to make inferences and findings from the trial evidence, and evidence and arguments to affect those findings should have been presented there rather than here where we generally defer to the trial court's inferences and findings. 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 merely applied the law set forth in *Washington* and our aforementioned cases.

¶ 24 Accordingly, we affirm the judgment of the circuit court.

¶ 25 Affirmed.