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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 16644
	)	
DEANTE LEE,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge, presiding.

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PRESIDING JUSTICE HYMAN delivered the judgment of the court.  
Justices Neville and Pierce concurred in the judgment.

**ORDER**

¶ 1 *Held:* Affirmed where the evidence was sufficient to support defendant's convictions for aggravated discharge of a firearm and unlawful use of a weapon by a felon, each of which rested on distinct, separate acts.

¶ 2 Defendant Deante Lee contends that the State presented insufficient evidence to support his convictions of aggravated discharge of a firearm (720 ILCS 24/1.2(a) (2) (West 2012)) and unlawful use of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2012)), as the testimony was biased, incredible, and uncorroborated by physical evidence. Lee further contends

that his UUWF conviction should be vacated under the one-act, one-crime doctrine. We affirm. It is for the trier of fact to weigh how flaws in part of a witness' testimony, including inconsistencies with prior statements, affect the credibility of the whole, and five credible witnesses placed a gun in Lee's hand, which they say he fired. As to his alternative argument regarding the one-act, one-crime rule, while both offenses required Lee to possess a firearm, aggravated discharge of a firearm and UUWF require a different and additional act to secure convictions. The act of possessing a firearm, standing alone, was insufficient to support either conviction.

¶ 3 Background

¶ 4 Lee and codefendant Damonte Lofton were charged with seven counts of attempted first-degree murder and nine counts of aggravated discharge of a firearm. Lee also was charged with UUWF and aggravated unlawful use of a weapon (AUUW). All charges stemmed from an August 7, 2012 shooting, when Lee, a convicted felon, allegedly possessed and fired a gun in the direction of people and a building at 7030 South Hermitage Avenue. The case proceeded as a joint bench trial.

¶ 5 At trial, Qyarvi Ferguson testified that, at about 9:30 p.m. on August 7, he and his friends, Lamontraye Taylor and Joseph Davis, were a few houses from 7030 South Hermitage, where he lived with family members. Ferguson heard two gunshots that seemed to have been fired from the direction of his house.

¶ 6 As he approached his house, Ferguson saw his aunt, Takesha Campbell, arguing with "Gym Shoe," identified in court as codefendant Lofton. Ferguson approached the altercation intending to fight Lofton. Taylor and Davis joined him. Ferguson then saw Lofton's older brother, identified in court as Lee, approach with a gun. Ferguson told his family to retreat inside

the house. Ferguson and another aunt, Tiffany Campbell, proceeded up the porch stairs when Ferguson saw Lee aiming his gun at him. Ferguson also saw, for the first time, that Lofton had a firearm too. Ferguson testified that he believed Lee and Lofton were about to shoot, so he fired his gun “about three or four times” and ran into the house. As Ferguson fired at Lee and Lofton, he could “feel” bullets flying past him. He testified he could feel the bullets “coming from in front of me, behind me,” but then said he did not see anyone behind him. Ferguson testified that when the shots began, his cousins, Tyanna and Tiffany; his aunt Tiffany Campbell; and his friends, Taylor and Davis, were all outside. Ferguson retreated into the house and lay on the floor until the gunshots stopped. The police arrived and arrested Ferguson.

¶ 7 During cross-examination, Ferguson testified that he told police that day he had fired a gun. He also stated that, after the initial shots, he ran back to his house, went to his cousin’s room, and retrieved his gun. Ferguson clarified that Lee fired first.

¶ 8 Takesha Campbell testified that she was inside the house when she heard gunshots. She ran outside and approached Lofton at 7016 South Hermitage and confronted him about firing shots in an area where children were present. She and Lofton continued to argue as she turned to go back to her house. Her daughter Tyanna, niece Takaij, nephew Tyrone, and sister Tiffany were all outside. Ferguson and his friends then approached and challenged Lofton to a fight. Lofton pulled out a gun, then Takesha saw Lee, whom she had known for “about eight years” and identified in court, running towards them. Lee and Lofton both fired their guns as she gathered her niece and retreated inside her home. Takesha saw Ferguson outside as the shots continued.

¶ 9 Tiffany Campbell testified that she was in front of her house when she heard gunshots. She saw Lofton, Ferguson, and two other men engaged in an argument. She testified that Lee,

whom she had known since 2007, and identified in court, approached and pulled out a gun and fired towards her. The gun was in his right hand. Tiffany ran inside and shots continued to be fired into her house. Also inside the house were her mom, Gloria, her sister Takesha Campbell, her child, and Ferguson. Tiffany then saw flashlights and knew it was the police, so she rushed to the door and let them in. During cross examination, Tiffany denied seeing Ferguson possess or fire a gun.

¶ 10 Lamontraye Taylor testified that he was on his front porch, at 7016 South Hermitage, along with Ferguson and two family members. Lee walked past the porch with “his friends,” after which Taylor heard gunshots coming from the back of the house. Everyone on the porch ran inside. When Taylor reemerged, he saw Ferguson and Lofton outside 7030 South Hermitage. Taylor and his cousin Joseph Davis approached Ferguson and Lofton, who were arguing. Taylor then saw “Dino,” whom he identified in court as Lee, emerge from the alley “pointing a gun.” Lee started shooting towards Taylor, who ducked between cars and continued to hear gunshots.

¶ 11 On August 8, 2012, Taylor went to the police station where he identified Lee in a lineup as one of the men “shooting” on August 7. Taylor testified that he did not see Ferguson fire a gun, but acknowledged during cross-examination that he told police in a written statement that he did see Ferguson shoot at Lee.

¶ 12 Joseph Davis testified that he was on the front porch of 7016 South Hermitage when he heard gunshots coming from the back of the house. Sometime later, Davis saw Ferguson and Lofton arguing in front of Ferguson’s house. Davis, along with Taylor, ran towards the confrontation. Lofton’s brother, whom he identified in court as Lee, “started running towards [them] with the gun, started shooting.” Lee had the gun pointed at “everyone,” as well as “the

house” at 7030 South Hermitage. Davis testified he saw Ferguson firing back at Lee. On August 8, 2012, Davis went to the police station where he identified Lee from a lineup.

¶ 13 Tyrone Campbell testified that he was on the porch at 7030 South Hermitage when Lofton approached and began to argue with Ferguson. Tyrone then saw “Dino,” whom he identified in court as Lee, running from the alley and pointing a gun. Lee began to shoot towards the house. Tyrone looked back as he ran inside and saw Lofton and Ferguson firing their guns.

¶ 14 The parties stipulated that a forensic investigator would have testified that he processed the shooting area and performed a gunshot residue test on Lee’s hands. The forensic investigator recovered a .357 Magnum revolver from underneath the porch of the 1740 West 71st Street and recovered a Walther Model P38 9-millimeter semi-automatic handgun, along with an empty magazine, from the trunk of a police car parked outside 7030 South Hermitage. Ryan recovered numerous nine millimeter cartridges, and 45-caliber bullets and cartridges from the porch at 7030 South Hermitage, the neighbor’s lawn, and the lawn across the street.

¶ 15 The parties also stipulated: (i) Officer Lau would have testified that, after speaking to several witnesses, he searched for Lee and Lofton, and found Lee at 1740 West 71<sup>st</sup>, placing him under arrest; (ii) Officer Hardy would have testified that he found a revolver with a spent casing in a stairwell of the gangway east of that address; (iii) a forensic scientist from the Illinois State Police Crime Lab would have testified that the gunshot residue test performed on Lee indicated that Lee “may not have discharged a firearm, and, if [he] did discharge a firearm, the particles were removed by activity, were not deposited or were not detected by the procedure;” (iv) a firearm expert would have testified the bullets and cartridges recovered from the scene were not fired by any of the recovered firearms; (v) an expert in the field of fingerprint identification would have testified that no latent prints suitable for comparison were found on the surface of the

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recovered firearms, magazine, or cartridge casings; and (vi) Lee had been convicted of UUWF. The State rested. Lee's motion for a directed verdict was denied.

¶ 16 Officer Brian Forberg testified that he responded to the shooting, and at about 4:40 a.m. the following morning, spoke with Ferguson, who denied having or shooting a gun. The parties stipulated that Officer Mosqueda would have testified that he responded to the scene and saw Ferguson standing on the porch of 7030 South Hermitage, firing a handgun towards 71st Street. Mosqueda ordered Ferguson to stop. Ferguson did not comply and Mosqueda fired shots from his .45 caliber service weapon towards Ferguson.

¶ 17 Codefendant Lofton was found not guilty of all charges. As to Lee, the trial court found him not guilty of attempted murder, but guilty of all eight counts of aggravated discharge of a firearm and UUWF. The trial court stated it "actually discounted some of the testimony of some of the witnesses" and "completely discarded" Takesha Campbell's testimony, labeling it a "complete falsehood." In evaluating the evidence, without considering Takesha Campbell's testimony, the trial court acknowledged "some inconsistencies, some credibility issues." Nevertheless, "virtually every witness places [Lee] with a firearm and shooting a firearm." The trial court also stated it believed "that revolver was [Lee's] weapon."

¶ 18 After hearing evidence in aggravation and mitigation, Lee received six years' imprisonment each for aggravated discharge of a firearm and UUWF. The *mittimus* reflects that the trial court merged the AUUW conviction into the UUWF conviction and all the aggravated discharge of a firearm convictions into one count (count eight).

¶ 19 Analysis

¶ 20 Sufficiency of the Evidence

¶ 21 Lee contends that the evidence was insufficient to support either of his convictions because the testimony presented at trial was incredible and biased. He argues that every witness for the State was either related to or friends with Ferguson, who the police witnessed firing a gun, and were thus motivated to protect him. Lee also argues the witnesses' testimony is incredible as it was impeached, rife with inconsistencies, and uncorroborated by physical evidence.

¶ 22 When a defendant challenges the sufficiency of the evidence, the question this court must answer after it first reviews the evidence in the light most favorable to the prosecution, is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on questions involving the weight of the evidence, conflicts in the testimony, or the credibility of witnesses. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). A defendant's conviction will be reversed only if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009). "[W]here the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether, in view of the record, a fact finder could reasonably accept the testimony as true beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004).

¶ 23 To prove aggravated discharge of a firearm, the State had to prove that Lee discharged a firearm in the direction of another person. 720 ILCS 5/24-1.2(a)(2) (West 2012). To prove UUWF, the State had to prove Lee has a felony conviction and that he knowingly possessed a firearm. 720 ILCS 5/24-1.1(a) (West 2012); *People v. Hill*, 2012 IL App (1st) 102028, ¶ 40.

¶ 24 Lee does not challenge the evidence that he has a prior felony. He argues the insufficiency of the evidence as to his possessing and discharging a firearm.

¶ 25 Possession of a weapon may be proved by showing that the defendant had actual or constructive possession of the weapon. *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). Generally, evidence of constructive possession is circumstantial, proving that the defendant “had knowledge of the presence of the weapon and exercised immediate and exclusive control over the area where the weapon was found.” *Id.*

¶ 26 The testimony of the five eyewitnesses that the trial court considered (Ferguson, Tiffany Campbell, Taylor, Davis, and Tyrone Campbell) was consistent as to: (i) gunshots being fired, (ii) a confrontation ensued between Takesha Campbell and Lofton, and (iii) Ferguson intending to fight Lofton, and (iv) Lee emerging from an alley, gun drawn, and firing shots towards the group of people and the house at 7030 South Hermitage. The trial court acknowledged “some inconsistencies, some credibility issues,” but determined that “virtually every witness places [Lee] with a firearm and shooting a firearm.” The trial court also stated that it believed “the revolver,” the gun recovered by police under the stairs of the building where Lee was arrested, belonged to Lee.

¶ 27 While a fact finder's determination of a witness's credibility deserves great deference, it is not conclusive. *Cunningham*, 212 Ill. 2d at 280. Where a conviction depends on eyewitness testimony, the reviewing court may find testimony insufficient “where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.” *Id.* But, we come to no such conclusion here.

¶ 28 Minor inconsistencies between witnesses' testimony or within one witness' testimony affect the weight of the evidence and do not automatically create a reasonable doubt of guilt.

*People v. Adams*, 109 Ill. 2d 102, 115 (1985); *People v. Gill*, 264 Ill. App. 3d 451, 458-59 (1992). It is the trier of fact that weighs how flaws in part of a witness' testimony, including inconsistencies with prior statements, affect the credibility of the whole. *Cunningham*, 212 Ill. 2d at 283. The trier of fact may accept or reject all or part of a witness' testimony. *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 22.

¶ 29 The witnesses' testimony was often inconsistent and, given their relationship with Ferguson, possibly biased. As Lee points out, Ferguson testified that he told police on the night of the shooting that he had a gun, but that was refuted by Officer Forberg's testimony that Ferguson said he had no gun. Further, Takesha Campbell, Tiffany Campbell, and Taylor all testified that they did not see Ferguson shooting a gun, in contrast to the other witnesses who did. Lee also argues Taylor's version of events changed between his written statement given to police, his testimony, and then again when confronted with his written statement. Lee points to additional inconsistencies, including a litany of problems with Takesha's testimony.

¶ 30 But, the trial court specifically stated it would not consider Takesha's testimony. Further, the inconsistencies between witnesses' testimony and their comments to police were fully explored at trial during cross-examination and argued in closing, as was their bias. Moreover, we are deferential to the trial court's credibility determination regarding the five eye-witnesses who identified Lee as the shooter. See *Strother*, 53 Ill. 2d at 100-01 (minor discrepancies in testimony taken at two different times does not destroy witness' credibility where defense counsel explored inconsistencies on cross-examination and raised issue in closing argument). All the inconsistencies and alleged bias do not change that, as the trial court concisely stated, "virtually every witness places [Lee] with a firearm and shooting a firearm." In view of the

record and the credibility determinations, we cannot say the evidence was so improbable or unsatisfactory as to render this conclusion unreasonable.

¶ 31 Lee contends that the State failed to produce corroborating evidence such as the recovered firearm or evidence of Lee’s fingerprints on the firearm. But, because a single eyewitness’s testimony can sustain a conviction, the State is not required to produce corroborating physical evidence. *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23. And, as the trial court found the testimony of five eye-witnesses was credible, the lack of corroborating physical evidence that Lee possessed and discharged a firearm at people does not raise a reasonable doubt as to his guilt. *Id.* In sum, the evidence was sufficient to support his convictions for both aggravated discharge of a firearm and UUWF.

¶ 32 One-Act, One-Crime Rule

¶ 33 Alternatively, Lee contends that his UUWF conviction must be vacated under the one-act, one-crime rule, as it is based on the same act as his conviction for aggravated discharge of a firearm—possessing a gun.

¶ 34 Under the one-act, one-crime rule, “a defendant may not be convicted of multiple offenses based on the same physical act.” *People v. Almond*, 2015 IL 113817, ¶ 47. If a defendant is convicted of two offenses based on the same physical act, the less serious offense must be vacated. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). Our supreme court has defined “act” as “ ‘any overt or outward manifestation which will support a different offense.’ ” *People v. Rodriguez*, 169 Ill. 2d 183, 188 (1996) (quoting *People v. King*, 66 Ill. 2d 551, 566 (1977)). If a defendant commits multiple acts, then multiple convictions may stand provided that none of the offenses are lesser-included offenses. *People v. Nunez*, 236 Ill. 2d 488, 494 (2010).

¶ 35 A defendant may still be convicted of two offenses when a common act is part of both offenses because, “ ‘[a]s long as there are multiple acts \* \* \*, their interrelationship does not preclude multiple convictions.’ ” *Rodriguez*, 169 Ill. 2d at 188-89 (quoting *People v. Myers*, 85 Ill. 2d 281, 288 (1981)). We review this issue *de novo*. *Nunez*, 236 Ill. 2d at 493.

¶ 36 Initially, we note that Lee concedes that he failed to properly preserve his one-act, one-crime claim for review as he did not raise it in the trial court. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (both trial objection and written posttrial motion raising issue required to preserve error for review); accord *People v. Herron*, 215 Ill. 2d 167, 175 (2005). But as Lee correctly states, we may review one-act, one-crime arguments under the second prong of the plain-error doctrine. *Nunez*, 236 Ill. 2d at 493 (forfeited one-act, one-crime arguments implicate integrity of judicial process and reviewable under second prong of plain error rule). Thus, when a one-act, one-crime violation occurs, the second prong of the plain error test is satisfied. *In Re Samantha V.*, 234 Ill. 2d 359, 378-79 (2009).

¶ 37 We find no one-act, one-crime violation. The aggravated discharge of a firearm charge required the State to prove Lee knowingly discharged a firearm in the direction of another person. 720 ILCS 5/24-1.2(a)(2) (West 2012). The UUWF conviction (720 ILCS 5/24-1.1(a) (West 2012)), required the State to prove Lee had a prior felony conviction and he knowingly possessed a firearm. *Hill*, 2012 IL App (1st) 102028, ¶ 40. Lee argues that, as he could not discharge a firearm without possessing it, so both offenses are based on the same act of possessing a firearm and, as UUWF is a lesser charge, that conviction must be vacated.

¶ 38 Lee ignores, however, that, while each conviction required possession of a firearm, aggravated discharge of a firearm and UUWF required additional acts to secure convictions. The act of possessing a firearm, standing alone, was not sufficient to support either conviction. Lee’s

aggravated discharge of a firearm conviction required the State to prove the additional act of firing the gun in the direction of a person. His UUWF conviction required the State to prove Lee had been previously convicted of a felony.

¶ 39 We find *People v. Pena*, 317 Ill. App. 3d 312 (2000), instructive. There, the defendant was convicted of home invasion and UUWF. *Pena*, Ill. App. 3d at 317. The defendant argued on appeal that, because both convictions shared the common element of possessing a firearm, his UUWF conviction violated the one-act, one-crime rule. *Id.* at 321. The *Pena* court disagreed, holding that, although “both the offense of home invasion and unlawful use of a weapon by a felon shared the common act of possession of a weapon \*\*\*, in committing the offense of home invasion defendant engaged in the additional acts of entering a dwelling place he knew was occupied while armed with a gun” and used force on an occupant of the dwelling. *Id.* at 323. “In committing the offense of unlawful use of a weapon, defendant was required to have and did have the status of being a felon.” *Id.* The court concluded the two offenses did not consist of a single act. *Id.* Then, employing the charging instrument approach, the court found home invasion was not an included offense of UUWF, as the charging instrument for home invasion did not set out anything regarding defendant’s status as convicted felon, an essential element of the UUWF charge. *Id.* at 232-24. Accordingly, defendant failed to show a one-act, one-crime violation.

¶ 40 Each offense requires an act beyond the common act of possession of a firearm. The aggravated discharge of a firearm conviction necessitated both possession and that the firearm be discharged towards a person. The UUWF conviction, as the *Pena* court noted, required Lee not only to possess a firearm but also have been already convicted of a felony. Although Lee’s convictions share possession of a firearm as a common element, the mere act of possessing a firearm was insufficient to convict him of either charges—each offense required an additional

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act. See also *People v. Tolentino*, 409 Ill. App. 3d 598, 610 (2011) (despite sharing element of possession, convictions for armed habitual criminal and discharging firearm not based on single physical act).

¶ 41 The similarity between the present case and *Pena* is further reflected in the charging instruments. As noted, the *Pena* court found home invasion was not an included offense of UUWF, as the charging instrument for home invasion did not set out anything regarding the defendant's status as convicted felon, an essential element of the UUWF charge. Likewise, the indictments charging Lee with aggravated discharge of a firearm did not set out anything regarding Lee's status as a convicted felon.

¶ 42 Even applying the stricter "abstract elements" approach, which compares the statutory elements of the offenses charged (*Tolentino*, 409 Ill. App. 3d at 611), we again find aggravated discharge of a firearm and UUWF require proof of distinct acts unnecessary to prove the other offense. Thus, there being no one-act, one-crime violation, there is no plain error and Lee's claim is forfeited.

¶ 43 Affirmed.