2017 IL App (1st) 143654-U

SIXTH DIVISION
MAY 12, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 12141
	)	
ADOLFO RODRIGUEZ,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge, presiding.
	)	

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err when it denied defendant's "Motion to Quash Stop and Arrest and Suppress Evidence." The State proved beyond a reasonable doubt that defendant was guilty of the offense of aggravated unlawful use of a weapon.

¶ 2 Following a bench trial, defendant, Adolfo Rodriguez, was found guilty of the offense of aggravated unlawful use of a weapon (AUUW) and sentenced to 18 months in prison. On appeal, defendant argues that the trial court erred when it denied his motion to quash arrest and suppress evidence and that the State failed to prove that he was guilty of AUUW beyond a reasonable

doubt. Under both contentions, defendant requests that we reverse his conviction. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 Defendant's conviction arose from an incident that took place on June 28, 2014, which resulted in him being charged with six counts of AUUW. Prior to trial, defendant filed a "Motion to Quash Stop and Arrest and Suppress Evidence," alleging that the officers stopped him without authority of a valid search or arrest warrant and that the officers could not have reasonably interpreted that his conduct constituted a reasonable suspicion that he had committed, or was about to commit, a crime.

¶ 5 At a hearing on the motion, Chicago police officer Navarro testified that he had been a police officer for six years, had worked with the 10th District for about five years, and was familiar with the gangs, and their respective gang signs, in the 10th District. On the day in question, he and his partner were driving an unmarked car and were dressed in plain clothes. Officer Navarro was wearing a bulletproof vest with a visible badge. At about 4:30 a.m., the officers responded to a call of "a gang disturbance on the 2400 block of South Christiana." When they arrived at 2431 South Christiana and were about 75 feet away, Officer Navarro saw defendant and another individual flashing gang signs. Defendant was flashing the gang signs at passing vehicles. Officer Navarro testified that the streetlights were on, that the sun was starting to come out, as it was dawn, and that he had a good view of defendant.

¶ 6 When Officer Navarro was about 30 to 40 feet away from defendant, he got out of his car, announced "Chicago Police," and approached defendant. His partner approached the other individual. Defendant fled on foot, and Officer Navarro followed him. Officer Navarro did not

see any weapons in defendant's hands, but when defendant was running, Officer Navarro saw him holding his right side. Defendant ran into a fenced area, shut the gate, did not open it for Officer Navarro, and refused Officer Navarro's instructions to come out. When Officer Navarro jumped over the fence, defendant attempted to run from him again. Officer Navarro chased defendant, caught up to him, and placed him into handcuffs.

¶ 7 During a patdown of defendant, Officer Navarro felt a small handgun in defendant's right pants pocket. As Officer Navarro felt the handgun, defendant stated " 'It is a .22, Officer.' " Officer Navarro recovered a .22 caliber Phoenix Arms handgun from defendant.

¶ 8 The trial court denied defendant's motion to suppress. In doing so, the trial court noted that it found Officer Navarro credible and compelling and stated as follows:

> "It is 4:30 in the morning on a residential street in a gang infested area. The officer is driving by and sees [defendant] flashing gang signs at passing cars. That is the height of disorderly conduct at the very least. He is trying to agitate the community, and nothing good comes from flashing gang signs in that manner in an aggressive and assertive manner. The police officer was in his rights to approach. He started to run away holding on his side. The officer had reasonable suspicion to believe he was armed as well. He found the gun."

¶ 9 At trial, the State presented evidence of the incident through Officer Navarro, who provided testimony consistent with his testimony at the hearing on defendant's motion to suppress. In addition, Officer Navarro testified about the events that occurred after defendant was arrested. At the police station, Officer Navarro read defendant his *Miranda* rights. Defendant indicated that he wanted to waive his rights. Defendant then stated, " 'Like I told you outside,

that's my gun, I'm not going to tell you where I got it from. I was with my friends, and I've been hanging out with those guys for about two years, and that's how long I have been a King for.' "

¶ 10 When Officer Navarro recovered the handgun, it was loaded with one live round in the chamber and three live rounds in the magazine. Officer Navarro testified that the "firearms receipt and worksheet" that was created for the recovered handgun stated that "the force shows signs of firing residue. It also says at the time it was received, it was inoperable due to a malfunction with the safety on the handgun." Officer Navarro agreed that the report stated that "the left grip was removed to manually disengage the safety, and then the gun was able to fire." Officer Navarro also agreed that "the left grip had to be removed to manually disengage the safety" and that the handgun "could not be fired for test firing purposes until the safety was manually disengaged." Based on his firearms training, his experience with the Chicago Police Department, and his 11 years with the Marine Corps, Officer Navarro testified that it would take "hardly any effort at all without the use of tools" to "remove the left grip from the gun and manually engage the safety that was stuck on the gun."

¶ 11 The State offered into evidence certification from the Illinois State Police that defendant's date of birth was January 20, 1994, and that as of July 29, 2014, defendant had never been issued a Firearm Owners Identification (FOID) card or a concealed carry license.

¶ 12 Defendant did not call any witnesses. Following closing argument, the trial court found defendant guilty of AUUW. In finding him guilty, the trial court noted that it found Officer Navarro's testimony to be "credible and compelling beyond a reasonable doubt." The trial court stated that "[t]he gun had bullets in it, one in the chamber and three other bullets in the magazine" and discussed the handgun as follows:

> "It is accurate and true that the gun couldn't be fired as it was at that time, but all they [*sic*] had to happen was without even the use of tools, to just disengage the safety. It's not like it didn't have a firing pen [*sic*] at all, it was totally flawed. The gun was ready to go, disengaging [*sic*] safety, sounds like a very minor matter."

The trial court denied defendant's motion for a new trial, merged the counts, and sentenced him to 18 months in prison. The trial court denied defendant's motion to reconsider sentence. This appeal followed.

¶ 13 ANALYSIS

¶ 14 Defendant's first contention on appeal is that the trial court erred when it denied his motion to suppress. He argues that Officer Navarro had no reasonable, articulable suspicion of criminal activity, and that he had no valid basis to search him. Defendant asserts that the trial court relied on two factors, namely that he was flashing gang signs and that he ran from the police, who were dressed in plainclothes and exited an unmarked car, and that these factors do not satisfy the requisite threshold needed for articulable suspicion. Defendant requests that we find that his fourth amendment rights were violated and that we suppress the firearm that was seized by Officer Navarro during the incident.

¶ 15 A trial court's ruling on a motion to suppress presents a mixed question of law and fact. *People v. Lampitok*, 207 Ill. 2d 231, 240 (2003). When we review a trial court's ruling on a motion to suppress evidence, we apply a two-part standard of review. *People v. Timmsen*, 2016 IL 118181, ¶ 11. We review the trial court's factual findings with "great deference" (*People v. Jackson*, 2012 IL App (1st) 103300, ¶ 13), and "we will reverse those findings only if they are against the manifest weight of the evidence" (*People v. Luedemann*, 222 Ill. 2d 530, 542 (2006)).

However, a reviewing court may "undertake its own assessment of the facts in relation to the issues and may draw its own conclusions when deciding what relief should be granted." *Luedemann*, 222 Ill. 2d at 542. We apply the *de novo* standard of review when we review the trial court's ultimate ruling regarding whether the evidence should have been suppressed. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004).

¶ 16 The fourth amendment guarantees the right to be free from unreasonable search and seizures. *People v. Colyar*, 2013 IL 111835, ¶ 31; U.S. Const., amend. IV. However, "not every encounter between the police and a private citizen results in a seizure." *Luedemann*, 222 Ill. 2d at 544. If the encounter does not result in a seizure, then the fourth amendment is not implicated. *People v. Thomas*, 198 Ill. 2d 103, 111 (2001).

¶ 17 When there is a seizure of a person, "the fourth amendment generally requires a warrant supported by probable cause." *Thomas*, 198 Ill. 2d at 108. In *Terry v. Ohio*, 392 U.S. 1 (1968), the United States Supreme Court recognized an exception to the warrant requirement for investigative stops known as *Terry* stops. *People v. Sims*, 2014 IL App (1st) 121306, ¶ 8. Pursuant to *Terry*, "a police officer may lawfully stop a person for brief questioning when the officer reasonably believes that the person has committed, or is about to commit, a crime." *People v. Jackson*, 2012 IL App (1st) 103300, ¶ 16. The officer must have "a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (citing *Terry*, 392 U.S. at 30).

¶ 18 In section 107-14 of the Code of Criminal Procedure, entitled "temporary questioning without arrest," Illinois codified the *Terry* standard. *Jackson*, 2012 IL App (1st) 103300, ¶ 16. Section 107-14 states as follows:

> "A peace officer, after having identified himself as a peace officer, may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense ***, and may demand the name and address of the person and an explanation of his actions. Such detention and temporary questioning will be conducted in the vicinity of where the person was stopped." 725 ILCS 5/107-14 (West 2014).

¶ 19 Probable cause is not required for a *Terry* stop (*Jackson,* 2012 IL App (1st) 103300, ¶ 16), and the reasonable suspicion standard required for *Terry* stops is "less demanding" than the probable cause standard for arrests (*Timmsen*, 2016 IL 118181, ¶ 9)). To justify a *Terry* stop, the officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry,* 392 U.S. at 21. The police officer need not witness a crime (*Sims*, 2014 IL App (1st) 121306, ¶ 9), but the "officer's inferences must be based on more substantial facts than would support a mere hunch" (*People v. Ertl*, 292 Ill. App. 3d 863, 868 (2nd Dist. 1997)). The reasonable suspicion standard is objective, "with the facts viewed from the perspective of a reasonable officer at the time of the stop." *Sims*, 2014 IL App (1st) 121306, ¶ 9. When reviewing the validity of a *Terry* stop, we consider the totality of the circumstances and the "whole picture." *Timmsen*, 2016 IL 118181, ¶ 8 (citing *United States v. Sokolow,* 490 U.S. 1, 8 (1989)).

¶ 20 A *Terry* stop analysis requires two parts. *Sims*, 2014 IL App (1st) 121306, ¶ 10. First, to justify the investigative stop, the officer must have had a reasonable suspicion that criminal activity was afoot. *Jackson,* 2012 IL App (1st) 103300, ¶ 19. Second, to justify the protective

patdown search, the officer must have "had a reasonable belief that the defendant was armed and dangerous." *Id.*

¶ 21 To begin our analysis, we must first determine at what point in the encounter Officer Navarro "seized" defendant such that the fourth amendment was implicated. *People v. Thomas*, 315 Ill. App. 3d 849, 854 (5th Dist. 2001) ("We must determine whether the show of authority constituted a seizure that implicated fourth amendment protection.").

¶ 22 A person is considered to be "seized" under the fourth amendment when an officer, by physical force or show of authority, has restrained his or her freedom. *People v. Gherna*, 203 Ill. 2d 165, 177 (2003). "In other words, a person has been seized when, considering the totality of the circumstances, a reasonable person would believe he is not free to leave." *People v. Almond*, 2015 IL 113817, ¶ 57. Generally, when determining whether a seizure occurred, courts consider the following factors recognized in *United States v. Mendenhall*, 446 U.S. 544 (1980): "(1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person; or (4) using language or tone of voice compelling the individual to comply with the officer's requests." *Almond*, 2015 IL 113817, ¶ 57 (citing *People v. Oliver*, 236 Ill. 2d 448, 456 (2010)). Illinois courts have recognized that if one of these factors is missing, it is "highly instructive" to the issue of whether a defendant was seized. *Oliver*, 236 Ill. 2d at 457. Finally, even when the police convey a reasonable feeling of restraint, there is no seizure of the person under the fourth amendment until the person submits to the show of authority. *Thomas*, 315 Ill. App. 3d at 857. More specifically, *"[a] person must submit to a show of authority before that show of authority can constitute a seizure."* (Emphasis in original.) *Id.*

¶ 23 Here, Officer Navarro, who was wearing a bulletproof vest with a visible badge, exited his vehicle when he was about 30 to 40 feet away from defendant and said, "Chicago Police." Because the record does not indicate that Officer Navarro displayed his weapon when he exited his vehicle, that he physically touched defendant at this initial encounter, or that defendant's freedom to move was overcome by force or threat of force, we conclude that this first encounter between Officer Navarro and defendant does not constitute a seizure under the fourth amendment. See *People v. Tilden*, 70 Ill. App. 3d 859, 863 (1st Dist. 1979) (there was no *Terry* stop where the officer, who was in uniform, did not draw his weapon and asked the defendant to approach and show identification, and where the record did not show any other evidence that the defendant's "freedom to walk away was in any fashion overcome by force or threat of force"); see *People v. Qurash*, 2017 IL App (1st) 143412, ¶ 26 (the officer's statement "come here" did not constitute a seizure). However, even if we were to find that Officer Navarro's initial encounter was a show of authority and that he conveyed a feeling of restraint, the analysis does not end because defendant then ran. See *Thomas*, 315 Ill. App. 3d at 854. Because defendant ran from Officer Navarro and did not yield to authority, at this point in the encounter, he was not yet seized under the fourth amendment. *California v. Hodari D.*, 499 U.S. 621, 626 (1991) ("The narrow question before us is whether, with respect to a show of authority as with respect to application of physical force, a seizure occurs even though the subject does not yield. We hold that it does not."); *Thomas*, 315 Ill. App. 3d at 857 (the "[officer's] attempt to effect an unlawful stop did not implicate the fourth amendment because the defendant took flight and prevented it"). Instead, defendant was seized when Officer Navarro caught up with him and placed him in handcuffs. *Hodari D.*, 499 U.S. 621 at 629 ("assuming that [the officer's] pursuit in the present

case constituted a 'show of authority' enjoining [defendant] to halt, since [defendant] did not comply with that injunction he was not seized until he was tackled").

¶ 24 Having determined that defendant was not seized until Officer Navarro caught up with him and placed him in handcuffs, the next issue is whether, considering the totality of circumstances, Officer Navarro had a reasonable suspicion to justify the investigatory stop. *In re S.V.*, 326 Ill. App. 3d 678, 683 (1st Dist. 2001) ("Courts should be mindful that the decision to make an investigatory stop is a practical one based on the totality of the circumstances."); *Thomas*, 315 Ill. App. 3d at 858 ("We choose to examine [the officer's] basis for a seizure of the defendant's person at that point in time when he was successful in effecting it. By that time, [the officer's] ungrounded suspicion had ripened into suspicion that fully warranted an investigatory stop.").

¶ 25 Here, at about 4:30 a.m. on the day in question, Officer Navarro and his partner responded to a call of "a gang disturbance," and when the officers arrived at the subject location, Officer Navarro saw defendant and another individual flashing gang signs. Defendant was flashing the gang signs at passing vehicles. After Officer Navarro announced his office, defendant ran, holding his right side, into an area with a fence, shut the gate, and refused to comply with Officer Navarro's instructions to come out. When Officer Navarro jumped over the fence, defendant fled again. Viewing these facts as a whole and considering the totality of circumstances that Officer Navarro knew at the time he caught up with defendant and placed him in handcuffs, we conclude that Officer Navarro had a reasonable suspicion that criminal activity was afoot to justify the stop. *Jackson*, 2012 IL App (1st) 103300, ¶ 23 ("we find that defendant's bizarre conduct, plus his presence in a high-crime neighborhood, constituted reasonable

suspicion"); *Thomas*, 198 Ill. 2d at 113 ("Unprovoked flight in the face of a potential encounter with police may raise enough suspicion to justify the ensuing pursuit and investigatory stop."); *Wardlow*, 528 U.S. at 124 ("[N]ervous, evasive behavior is a pertinent factor in determining reasonable suspicion. Headlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such."). (Internal citations omitted.)

¶ 26 Furthermore, viewing all these facts as a whole under the totality of the circumstances, we also conclude that Officer Navarro had a reasonable concern that his safety or the safety of others was in danger so as to justify the patdown. *Jackson*, 2012 IL App (1st) 103300, ¶ 51 ("Since the record discloses bizarre behavior by defendant in a high-crime area, we find that the officers had a reasonable concern about their safety and the safety of others in their vicinity."); *Terry*, 392 U.S. at 27 ("The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.").

¶ 27 Defendant takes issue with the trial court's statement that his conduct was "the height of disorderly conduct." Defendant argues that the trial court improperly found that he committed this offense. We do not find defendant's argument persuasive, as a finding that defendant actually committed a crime is not necessary to uphold a finding of reasonable suspicion. When we review the validity of a *Terry* stop, we must consider the totality of circumstances that Officer Navarro knew at the time of the stop. *Jackson*, 2012 IL App (1st) 103300, ¶¶ 17, 18 ("A *Terry* stop permits the police to investigate situations or circumstances that provoke suspicions, to either confirm or dispel those suspicions" and "[t]he validity of an investigative stop turns on

the totality of the circumstances known to the officers at the time."); *People v. Sanford*, 34 Ill. App. 3d 990, 993 (2nd Dist. 1976) ("the question presented is whether the facts available to the officers at the time they detained the defendants were sufficient to justify the detention"). As discussed above, defendant was not seized until Officer Navarro caught up with him and placed him in handcuffs. Therefore, when determining whether there was reasonable suspicion to stop and search defendant, the information available to Officer Navarro included not only that, after he responded to a call of a gang disturbance at 4:30 a.m., he saw defendant flashing gang signs at passing vehicles, but also included defendant's actions that occurred thereafter, including that he ran from Officer Navarro, holding his right side, shut the gate, and ran from Officer Navarro again after Officer Navarro jumped the fence. *People v. Hoekstra*, 371 Ill. App. 3d 720, 723 (2nd Dist. 2007) ("any actions defendant took prior to the time he submitted to the authority of the police officers who initially stopped him may also be considered in determining whether the police had a reasonable suspicion of criminal activity to justify the stop"); *Thomas*, 315 Ill. App. 3d at 858 ("The defendant's response to [the officer's] unsuccessful effort escalated into headlong flight, a consummate act of evasion. It credited other information that [the officer] possessed and gave rise to an articulable suspicion that criminal activity was afoot."). Accordingly, as discussed above, considering the totality of circumstances that Officer Navarro knew at the time he caught up with defendant and placed him in handcuffs, we conclude that Officer Navarro had a reasonable suspicion to justify the stop and search. *Wardlow*, 528 U.S at 125 ("the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior"). In reaching this conclusion, we reject defendant's arguments that Officer Navarro did not have reasonable artiuculable suspicion to stop and search defendant because gang membership cannot justify the stop, and because defendant's actions of flashing

gang signs did not constitute disorderly conduct or a breach of the peace where his actions "were ignored by passing vehicles and where the streets were apparently empty, and the quiet of the residential community was otherwise undisturbed."

¶ 28 Defendant acknowledges *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000), which held that a defendant's unprovoked flight is a "pertinent factor in determining reasonable suspicion." However, he argues that the facts in this case are different because Officer Navarro and his partner were in plain clothes, in an unmarked squad car, and it was dark outside. Defendant asserts that, under these circumstances, his flight did not suggest wrongdoing. We disagree. Defendant ran after Officer Navarro, who was wearing a bulletproof vest with a visible badge, announced his office. Further, Officer Navarro, who the trial court found to be credible, testified that the streetlights were on and that he had a good view of defendant. This testimony leads to the reasonable inference that defendant also had a good view of the officers. Given these facts, we conclude that defendant's response of running after Officer Navarro announced his office is properly considered as a factor in determining whether Officer Navarro had reasonable suspicion that criminal activity was afoot. *Thomas*, 315 Ill. App. 3d at 859 ("[T]he defendant's response to [the officer's] endeavor was nothing short of headlong flight. The defendant's reaction was in no way ambiguous. There was nothing to suggest that the defendant was merely exercising the right to continue on his way or to cause confusion between the exercise of that right and a pure act of evasion."); *Wardlow*, 528 U.S. at 124 ("[M]oreover, it was not merely respondent's presence in an area of heavy narcotics trafficking that aroused the officers' suspicion, but his unprovoked flight upon noticing the police.").

¶ 29 Defendant cites *People v. Surles*, 2011 IL App (1st) 100068, to support his argument that Officer Navarro's patdown was improper. We find the facts of this case distinguishable. In *Surles*, the defendant was a passenger in a vehicle that the police stopped for a traffic violation. *Id.* ¶ 4. After the driver could not produce a valid driver's license, the officers placed the driver under arrest and ordered the defendant and another passenger out of the vehicle to inventory it. *Id.* ¶ 5. As the defendant stepped out, one of the officers observed a "slight bulge" in the defendant's waistband and performed a patdown search based on that bulge. *Id.* ¶¶ 9-11. On appeal, the defendant argued that he should not have been subjected to a patdown. *Id.* ¶ 15. The reviewing court held that neither the defendant's presence in a high crime area nor the bulge, alone or together, was sufficient to justify the patdown search. *Id.* ¶ 41. Unlike *Surles*, where the only basis for the patdown search was that the officer observed a "slight bulge" in the waistband of the defendant, who was a passenger in a vehicle stopped in a high crime area for a traffic violation, here, a series of circumstances support a finding of reasonable suspicion. Specifically, after Officer Navarro responded to a call of a gang disturbance at 4:30 a.m., he saw defendant flashing gang signs at passing vehicles, and, after he announced his office, defendant ran from him, holding his right side, shut himself in a fenced area, refused to comply with his instructions, and then ran again after Officer Navarro jumped the fence. Accordingly, we find that the facts in *Surles* are distinguishable from the facts in this case, and therefore, *Surles* is not persuasive for our ruling.

¶ 30 In sum, for the reasons explained above, we conclude that the trial court did not err when it denied defendant's "Motion to Quash Stop and Arrest and Suppress Evidence."

¶ 31 Defendant's second contention on appeal is that the State failed to prove him guilty beyond a reasonable doubt of AUUW. He argues that it was uncontroverted that the recovered handgun was "inoperable," and therefore, that his possession fell within a statutory exception to the crime.

¶ 32 When reviewing the sufficiency of the evidence, the question 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). When the evidence supporting a criminal conviction is challenged on appeal, "a reviewing court does not retry the defendant." *People v. Kent*, 2016 IL App (2d) 140340, ¶ 18. Rather, it is the fact finder's responsibility "to determine the credibility of the witnesses and draw reasonable inferences from the evidence." *People v. Robinson*, 167 Ill. 2d 397, 413 (1995). On review, all reasonable inferences from the record must be drawn in favor of the prosecution (*People v. Saxon*, 374 Ill. App. 3d 409, 416 (3rd Dist. 2007)), and we will only reverse a conviction if the evidence is "so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt" (*People v. Green*, 256 Ill. App. 3d 496, 500 (1st Dist. 1993)).

¶ 33 Defendant was charged with six counts of AUUW, and, at sentencing, the trial court merged all six counts into Count II, which alleged that defendant violated section 24-1.6(a)(1)/(3)(C) of the Criminal Code (720 ILCS 5/24-1.6(a)(1)/3(C) (West 2014)) in that he "knowingly carried a handgun, pistol, or revolver, on or about his person, when not on his land or in his abode, legal dwelling, or fixed place of business *** and he had not been issued a currently valid firearm owner's identification card at the time of the offense." Subsection 24-

1.6(c)(i) of the Code provides an exception from AUUW for the transportation or possession of weapons that "are broken down in a non-functioning state." 720 ILCS 5/24-1.6(c)(i) (West 2014).

¶ 34 Here, defendant argues that his possession of the handgun fell into the statutory exception provided in section 24-1.6(c)(i) and that his conviction must be reversed because the State failed to prove "a necessary element of the offense." "The State bears the burden of disproving, beyond a reasonable doubt, the existence of the exceptions appearing as part of the body of a substantive offense in order to sustain a conviction for the offense." *People v. Foster*, 394 Ill. App. 3d 163, 169 (4th Dist. 2009). However, because the exception for weapons that are "broken down in a non-functioning state" is contained in subsection (c)(i) and is not in the body of the substantive offense, namely section 24-1.6(a)(1)/(3)(C), the State was not required to disprove this exception. *Foster*, 394 Ill. App. 3d at 169 (affirming the defendant's conviction for AUUW conviction, stating, "The exception referred to by defendant is not found in the body of the offense charged. It is found later in section 24-1.6 in subsection (c)(i) referring to a weapon in a broken down and nonfunctioning state, and the State is not required to disprove that exception.").

¶ 35 Defendant argues that based on the Supreme Court case *People v. Burns*, 2015 IL 117387, and language in the statute, "it cannot be found that the State proved a necessary element of the offense where [defendant's] firearm was inoperable." However, while *Burns* states that the AUUW statute "constitutes a flat ban on carrying *ready-to-use* guns outside the home" and "categorically prohibits the possession and use of an *operable* firearm for self-defense outside the home," *Burns* does not support the proposition that under the AUUW statute, the State must prove as a necessary element that the weapon was operable. (Emphasis added.)

Burns, 2015 IL 117387, ¶ 25. Rather, as discussed above, while the AUUW statute does contain an exception for weapons that are "broken down in a non-functioning state," this provision is not contained in the body of the substantive offense. *Foster*, 394 Ill. App. 3d at 169.

¶ 36 We note that section 24-2 of the Code, entitled "Exemptions," contains a similar provision as the exception provided in section 24-1.6(c)(i), which, as noted above, provides that section 24-1.6 "does not apply to or affect the *transportation or possession* of weapons" that "are *broken down in a non-functioning state.*" (Emphasis added.) 720 ILCS 5/24-1.6(c)(i) (West 2014). Similarly, section 24-2(b)(4) provides that section 24-1.6 does not apply to or affect "*[t]ransportation* of weapons that are *broken down in a non-functioning state.*" (Emphasis added.) 720 ILCS 5/24-2(b)(4) (West 2014). This exemption is not in the body of the offense, and it is defendant's burden to prove by a preponderance of the evidence that he is entitled to the exemption. *People v. Velez*, 336 Ill. App. 3d 261, 266 (2nd Dist. 2003) ("The defendant bears the burden of proving by a preponderance of the evidence his entitlement to the exemption.").

¶ 37 If a weapon is considered inoperable, that does not necessarily mean that the statutory exemption in section 24-2(b)(4) is satisfied, since the exception only applies to weapons that are both non-functioning and broken down, *i.e.*, disassembled. *People v. Delk*, 96 Ill. App. 3d 891, 902-03 (1st Dist. 1981); *Velez*, 336 Ill. App. 3d at 266 ("a weapon is 'broken down in a non-functioning state' under the exemption only if it is disassembled rather than accidentally broken"). Here, there was no evidence that the recovered handgun was broken down or disassembled. *Delk*, 96 Ill. App. 3d 891 at 903 (affirming where no evidence was introduced that the weapon was disassembled or broken down); *People v. Martinez*, 285 Ill. App. 3d 881, 885 (1st Dist. 1996) (where the defendant argued that the exemption in section 24-2(b)(4) applied

because his stun gun was "broken down in a non-functioning state," this court affirmed his conviction, finding the weapon was simply intact and broken, and stating "[t]his exemption requires that the gun must be not only non-functioning but also broken down, meaning disassembled."). The record indicates that when Officer Navarro recovered the handgun, it was not disassembled, broken down, or in a non-functioning state. Thus, we reject defendant's argument that his possession of the handgun fell into the statutory exception provided in section 24-1.6(c)(i) because the recovered handgun was inoperable.

¶ 38 Notwithstanding the foregoing, we conclude that the State proved beyond a reasonable doubt that the recovered handgun was operable and that the exception provided in section 24-1.6(c)(i) does not apply. Officer Navarro recovered a .22 caliber Phoenix Arms handgun from defendant, and when he recovered it, it was loaded with one live round in the chamber and three live rounds in the magazine. Officer Navarro testified that the "firearms receipt and worksheet" that was created for the recovered handgun stated that "at the time it was received, it was inoperable due to a malfunction with the safety on the handgun." However, Officer Navarro testified that, based on his experience with the Chicago Police Department and with the Marine Corps, it would take "hardly any effort at all without the use of tools" to "remove the left grip from the gun and manually engage the safety that was stuck on the gun." Therefore, the record indicates that when Officer Navarro recovered the handgun, it was functioning and operable, as it would take "hardly any effort" to manually engage the safety. *Delk*, 96 Ill. App. 3d at 902 ("Although the shotgun was rusty and the action 'tight,' and [the officer] 'had to struggle with it a little bit' to move the pumping mechanism, nevertheless the officer did succeed in operating the weapon.").

¶ 39 For the reasons stated above, we affirm defendant's conviction.

¶ 40 Affirmed.