FIRST DIVISION
April 24, 2017

2017 IL App (1st) 143803-U
No. 1-14-3803

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. 13 CR 8914
	)	
PATRICK SAWYER,	)	Honorable
	)	Nicholas R. Ford,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

¶ 1 *Held*: Eyewitness evidence, corroborated by discovery of a firearm, sufficient to convict defendant of armed robbery with a firearm. Conviction for aggravated unlawful restraint vacated because restraint was inherent in the armed robbery.

¶ 2 Following a 2014 bench trial, defendant Patrick Sawyer was convicted of armed robbery and aggravated unlawful restraint and sentenced to concurrent prison terms of 22 and 4 years. On appeal, defendant primarily contends that his armed robbery conviction should be reduced to robbery because there was insufficient evidence that codefendant Linus Peden was armed with a firearm during the robbery. Defendant also contends, and the State agrees, that his conviction for

aggravated unlawful restraint should be vacated as redundant because the restraint was inherent in the robbery. We vacate the aggravated unlawful restraint conviction and otherwise affirm.

¶ 3 Defendants were charged with armed robbery for, on or about March 19, 2013, allegedly taking a cellphone from Kenneth Roland, currency and merchandise from Ghazi Hamdan, and currency and merchandise from Jacqueline Guice by the use of force or threatening the imminent use of force while armed with a firearm. Defendants were also charged with the aggravated unlawful restraint of Roland, Hamdan, and Guice for allegedly detaining them on the same date while armed with a firearm. Before defendant's trial, codefendant entered a guilty plea[1] and received 21 years' imprisonment.

¶ 4 At trial, the evidence was that Hamdan and Guice were working in a store, and Roland was a customer there, when defendants entered, announced a "stickup" and told the occupants to lay down. While codefendant was pointing a gun at Hamdan, defendant went behind the sales counter and had Guice open the cash register. Defendant removed the cash from the register, while codefendant demanded a shopping bag from Guice and filled it with merchandise and a bucket of coins. Defendants took the occupants' cellphones, and defendant tore telephone cords from the wall, before leaving the store. About an hour before the incident, defendant and a woman came to the store in a white car; defendant looked around the store for a few minutes without making a purchase.

¶ 5 Hamdan and Guice identified defendant at trial and previously identified defendants from photographic arrays and lineups. (Roland made no identification, nor did he see or describe a gun, as he was approached from behind and stayed on the floor through the robbery.) Guice testified that she was "not really" familiar with guns and described codefendant's gun as "a big

[1] The record does not indicate to what charge or charges he pled guilty.

barrel gun." When asked on cross-examination if she told the police that the gun was a small black revolver, Guice replied that "I am not sure what the gun is called," though "I am sure what it looked like" and it was a small gun. Asked on cross-examination if she did not "know if it was a real gun," she replied "No." On redirect examination, Guice clarified that she meant by "barrel" the cylinder of a revolver, and that she "treated the gun as a real gun" and was threatened by it. Hamdan described the gun as brownish with a "roll" and saw "the bullet inside the gun." He testified that codefendant repeatedly threatened him "don't move or I'll shoot you."

¶ 6 A police officer who investigated the robbery testified that Hamdan gave her security video from the store for March 19, 2013. Upon watching the video, the officer recognized defendant, and also recognized the car in the video from before the robbery as the car defendant was driving during a January 2013 traffic stop by the officer. Following Hamdan's testimony that the video was an accurate depiction, it was admitted into evidence without objection. Having viewed the video, we find it consistent with the testimony but blurry, with defendants having their backs to the camera much of the time.

¶ 7 Another officer testified that codefendant was in possession of a loaded gun – a gray "medium-sized revolver" with "a shorter barrel" – when he was arrested about a month after the robbery. A police detective testified that he showed codefendant's gun to "the victim," and Guice testified that the police showed her a gun. She "recognized that *** it was similar to the gun that was actually used in this armed robbery" and that "it looked like the same gun." Hamdan was not shown the gun.

¶ 8 The court found defendant guilty of armed robbery with a firearm and aggravated unlawful restraint. The court found Guice to be a "strong witness" who made an unequivocal identification of defendant before and during trial, and found Hamdan to also be a credible

witness. The court noted "some confusion about the exact appearance of the gun" but found the discrepancy insignificant, especially since codefendant was arrested with "the gun."

¶ 9 In his post-trial motion, defendant argued insufficiency of the evidence. The court denied the motion, finding Hamdan and Guice were "strong" witnesses, and sentenced defendant to concurrent prison terms of 22 and 4 years.

¶ 10 On appeal, defendant contends that his conviction for armed robbery with a firearm should be reduced to robbery because there was insufficient evidence that codefendant was armed with a firearm.

¶ 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 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 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).

¶ 13 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.

¶ 14 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.

¶ 15 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.

¶ 16 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 codefendant was armed with a firearm during the robbery. Guice described the robbery gun as a small black revolver, and Hamdan described it as a brown revolver. The trial court was not, and we are not, obliged to put decisive weight on the victims' descriptions of the color of the gun. Color aside, Guice's description of a small revolver with a big cylinder is consistent with the officer's description of the gun recovered from codefendant as a medium-sized revolver with a shorter barrel. While Guice was not absolutely certain that the robbery gun was a firearm, she nonetheless felt threatened by it – that is, she believed it to be a gun – and Hamdan saw a bullet inside the gun as it was pointed at him. Hamdan's testimony that codefendant repeatedly threatened to shoot him corroborates that the object codefendant was holding was a firearm.

¶ 17 Furthermore, Guice was shown the firearm recovered from codefendant and testified that "it was similar to the gun that was actually used in this armed robbery" and "it looked like the

same gun." While defendant challenges the strength of the evidence that the gun recovered from codefendant was the object he held during the robbery, this does not avail defendant. Accepting *arguendo* that the arrest firearm was not proven to be the robbery gun would merely place this case in the company of *Fields*, *Jackson*, *Hunter*, *Clark*, *Wright*, *Malone*, and *Toy*, where there was no evidence that the object at issue was recovered and found to be a non-firearm. Moreover, the trial court found that the object held by codefendant during the robbery was recovered and was indeed a firearm. We cannot conclude that no rational trier of fact would find the recovered firearm to be the robbery gun based on Guice's identification, especially in light of her testimony that she would recognize the robbery gun even if she did not know the proper terminology for it. Stated another way, we are not obligated to elevate to reasonable doubt the possibility that the two objects were not the same merely because Guice did not couch her identification of the gun in words of absolute certainty.

¶ 18 We note that defendant tries to conjure the specter that the object held by codefendant 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 codefendant had a firearm

during the robbery, we find that the court merely applied the law set forth in *Washington* and our aforementioned cases.

¶ 19 Defendant also contends that his conviction for aggravated unlawful restraint should be vacated as redundant because the restraint was inherent in the robbery. The State agrees with the contention, and so do we.

¶ 20 In sum, we vacate the conviction for aggravated unlawful restraint and, pursuant to our authority under Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), direct the clerk of the circuit court to correct the mittimus to reflect the vacatur. We affirm the judgment of the circuit court in all other respects.

¶ 21 Affirmed in part, vacated in part, and mittimus corrected.