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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF	)	Appeal from the
ILLINOIS,	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	No. 13 CR 13226
v.	)	
	)	Honorable
ARTHUR TURNER,	)	James Michael Obbish,
	)	Judge, presiding.
Defendant-Appellant.	)	

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JUSTICE COBBS delivered the judgment of the court.  
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Evidence was sufficient to support defendant's convictions for armed violence and unlawful possession of a weapon by a felon where the arresting officer offered credible testimony. Counsel was not ineffective for failing to impeach a State witness regarding defendant's alleged admission of gun possession or for failing to object to testimony regarding defendant's state issued identification card.

¶ 2 Following a bench trial, defendant, Arthur Turner, was found guilty of armed violence and the unlawful possession of a weapon by a felon. Defendant was sentenced to concurrent terms of 18 years for armed violence and 15 years for unlawful possession of a weapon by a

felon. On appeal, defendant argues the State failed to prove him guilty beyond a reasonable doubt because the testimony of the arresting officer was incredible, contradicted, and impeached. Additionally, defendant argues he received ineffective assistance of counsel because defense counsel 1) failed to impeach a State witness and 2) failed to object to testimony regarding defendant's state-issued identification card. We affirm.

¶ 3

### BACKGROUND

¶ 4

At trial, Chicago police officer Bill Caro testified that on June 19, 2013, he was sitting alone in a marked police car near 1500 South Spaulding when he heard gunshots coming from about 200 feet away. He drove in the direction of the shots, toward South Christiana Avenue, and saw three men running westbound. One of the three men was wearing a green, army-style jacket and holding a hand gun in his right hand. Officer Caro identified that man as defendant.

¶ 5

Officer Caro called into the police station and began pursuing the three men. He observed defendant removing his jacket while running north on South Homan Avenue and then he saw defendant drop the jacket near a van at 1426 South Homan Avenue. He continued to follow the defendant by car until he was able to detain and arrest him. Officer Caro then performed a protective pat down search of defendant and took from him a cell phone, watch, and cell phone charger.

¶ 6

Officer Caro further testified that he instructed a responding police officer, Arturo Vega, to go back to the van where defendant dropped the green, army-style jacket. At the van, Officer Vega found a loaded, .380 caliber semi-automatic hand gun wrapped inside a green, army-style jacket. Officer Caro confirmed this to be the same jacket he saw defendant discard near the van. Officer Caro then found a state ID issued to Arthur Turner inside the

jacket. The state ID was not photographed or inventoried during the arrest. Officer Caro returned the state ID to defendant after he was processed.

¶ 7

On cross-examination, the following exchange occurred:

"Q. Isn't true that you found 26 clear plastic bags of white powder substance, suspect heroin, on my client when you performed a custodial search of my client?

A. No I did not.

Q. You testified at a preliminary hearing transcript in this matter on the 9<sup>th</sup> of July 2013; isn't that correct?

A. Yes.

Q. That was before Judge Pavlus at Branch 44?

A. Yes.

Q. At that time you were asked this question and did you give this answer: "Did you conduct a custodial search of the defendant on the scene? Yes. Was anything recovered? 26 clear plastic bags of white powder substance, suspect heroin".

A. That is incorrect.

Q. Just to clarify, when you say that is incorrect, are you saying the answers you gave on that day are incorrect or the answer today is incorrect?

A. The answer I gave that day. What I meant to say is I conducted a protective pat down, not a full custodial search of the arrestee."

¶ 8 Defense counsel also asked Officer Caro why he returned the state ID to defendant and he responded that it was "standard procedure". However, after further questioning Officer Caro admitted he made a personal decision to return the state ID.<sup>1</sup>

¶ 9 In his testimony, Officer Vega corroborated Officer Caro's testimony regarding the location of the green, army-style jacket and recovery of the loaded hand gun. Defense counsel did not ask Officer Vega any questions on cross examination.

¶ 10 Police Officer Everardo Reyes testified that he transported defendant to the police station. During the transport he heard the defendant say, "Bi\*\*h I should have shot that officer". Defense counsel objected on the basis that she had not been tendered any documents related to that statement. In response, the State directed defense counsel to a misdemeanor complaint, signed by Officers Caro and Reyes, alleging that defendant stated, "B\*\*ch I should have shot you mother\*\*\*ers" in the presence of Officers Caro and Reyes at the police station.<sup>2</sup> After reviewing the document, defense counsel withdrew her objection. Officer Reyes then testified that he conducted a custodial search of defendant at the police station and found 26 baggies of a white, powdery substance. The substance was later confirmed as heroin. In addition to the heroin, the officers inventoried .380 caliber shell casings that Officer Caro recovered near the scene.

¶ 11 The State attempted to elicit testimony regarding the birth date listed on the state ID from Officer Reyes but defense counsel objected. The trial judge sustained that objection.<sup>3</sup> During cross examination, defense counsel questioned Officer Reyes about defendant's statement. Officer Reyes stated that Officer Caro was not present when defendant made the statement.

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<sup>1</sup> The record is silent as to the Chicago Police Department's standard procedure for collecting and inventorying personal items subsequent to arrest.

<sup>2</sup> Neither party contests the substance of the misdemeanor complaint. However, it was not admitted at trial.

He also admitted that he made no attempt to document defendant's statement and did not have defendant sign any documents verifying that he made the statement.

¶ 12 The parties stipulated to the testimony of Hasain Hamayat, a forensic chemist at the Illinois State Police Crime Lab, that if called, he would have testified that the white powder substance recovered from defendant was heroin. The court then admitted, over defense counsel's objection, a certified copy of a report from the Firearm Services Bureau that showed defendant did not have a valid Firearm's Owner's Identification card. The State also admitted a certified copy of defendant's prior felony robbery conviction.

¶ 13 After the State rested, defense counsel moved for a directed finding on the counts related to the possession of a controlled substance with the intent to deliver. Defense counsel argued that the State had not presented any evidence establishing a specific intent to deliver any controlled substance. The trial court granted a directed finding only on those counts and defense then also rested.

¶ 14 In finding defendant guilty of the remaining charges, the trial court found that Officer Caro's testimony regarding the events leading up to the arrest and the arrest itself was credible. The court placed particular emphasis on the fact that Officer Caro was able to direct Officer Vega to the location of the green, army-style jacket that contained the hand gun. The trial court noted that Officer Caro had been impeached regarding his preliminary testimony; however, that the impeachment was not substantial and its effect was lessened because of the corroborating testimony of the other officers. Lastly, the trial court stated that the state ID should have been inventoried and not returned to the defendant. However, it could "disregard

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<sup>3</sup> In sustaining defense counsel's objection, the trial court noted that because the state ID was not inventoried or photographed it was hearsay because the document would have spoken for itself.

the testimony of Officer Caro as to what was in the jacket and still find that the State has proved defendant guilty of the various counts beyond a reasonable doubt".

¶ 15 In denying defendant's motion for a new trial, the court reiterated that it found Officer Caro to be a credible witness.

¶ 16 ANALYSIS

¶ 17 Defendant contends that the State failed to prove him guilty beyond a reasonable doubt because its primary evidence, Officer Caro's testimony, was incredible, contradicted, and impeached to the point that a reasonable fact finder could not find guilt beyond a reasonable doubt. Specifically, he asserts that Officer Caro's testimony regarding the discovery of defendant's state ID was contrary to human experience, his statements regarding police evidence procedures and inventory processing were proved false through his own testimony, and he previously testified falsely in the case.

¶ 18 When a defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009).

¶ 19 The testimony of a single, credible witness may be sufficient to convict. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts, and drawing

reasonable inferences from the evidence presented. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009); *People v. Slim*, 127 Ill. 2d 302, 307 (1989). A criminal conviction will not be reversed simply because a defendant claims that a witness was not credible or that the evidence was contradictory. *Siguenza-Brito*, 235 Ill. 2d at 228. We will only reverse a criminal conviction based upon an insufficiency claim if the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 20 Defendant relies on *People v. Johnson*, 191 Ill. App. 3d 940 (1989), for its argument that his conviction should be reversed because Officer Caro's testimony was incredible and inconsistent. The facts in *Johnson* are distinguishable. In *Johnson*, the testifying officer elicited the help of an informant to purchase eight packets of cocaine from the defendant. *Id.* at 941. After receiving the cocaine, the officer waited two weeks before he brought it to the crime laboratory. *Id.* at 942-43. At trial, the officer did not explain why it took two weeks to give the cocaine to the crime laboratory. *Id.* He testified that subsequent to the drug transaction, the defendant gave him a piece of paper with his contact information but that piece of paper was not presented at trial. *Id.* at 946. Further, the prosecution failed to produce the informant or any other corroborating witness to testify at trial. *Id.* at 46-47. In reversing the conviction, the appellate court found the uncorroborated testimony of the police officer suspect and insufficient to prove the defendant guilty beyond a reasonable doubt. *Id.*

¶ 21 Here, unlike in *Johnson*, the State offered the testimony of three officers. The testimonies of Officers Vega and Reyes corroborated the eye-witness testimony of Officer Caro. Officer Caro testified about the shooting that gave rise to the arrest. He described the defendant fleeing the area wearing a green, army-style jacket and carrying a hand gun. Officer Vega

testified that Officer Caro gave him information that led to the recovery of a green, army-style jacket and loaded hand gun. Lastly, Officer Reyes testified that during transport, defendant made a statement that would support an inference that he did have a hand gun prior to arrest.

¶ 22 The trial court found all of the officers to be credible; any inconsistencies between the offered testimonies were minor and did not affect the overall credibility of the witnesses. The trial court noted that although Officer Caro's testimony regarding the discovery of the heroin was impeached, it was minor and did not affect his credibility because of the "corroboration in the actions that he took". The court found the evidence presented through the testimony of the three police officers sufficient to find defendant guilty beyond a reasonable doubt. We agree.

¶ 23 The trial court is in a superior position to observe witnesses, judge their credibility, and determine the weight their testimony should receive. *People v. Tara*, 367 Ill. App. 3d 479, 483 (2006). The differing details cited by defendant are minor and do not undercut the essential facts of the case that Officer Caro identified defendant as the suspect with the gun. Thus, the testimonies of the three police officers were not so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt.

¶ 24 Defendant attempts to draw a parallel between the absence of key evidence in *Johnson*, 191 Ill. App. 3d 940 (1989), and the officer's failure to inventory the state ID arguing that it undermines and renders Officer Caro's testimony insufficient to support his conviction. Again, we find *Johnson* inapposite. The key evidence here was not the state ID, but was rather Officer Caro's identification of defendant as he fled with the gun and his corroborated testimony concerning discovery of the gun in the discarded green, army-style jacket. The



absence of the state ID did not affect Officer Caro's ability to identify the defendant nor did it affect his ability to credibly testify about what he observed.

¶ 25 Next, defendant argues officer Caro's testimony regarding the discovery of the state ID was incredible and contrary to human experience. Defendant's state ID was found in the green army-style jacket. The officers did not recover a wallet or money clip from defendant. Defendant argues that it is unusual for a state ID to be in a jacket separate from other items. While defendant would have us find otherwise, we will not disturb the trial court's credibility determination regarding Officer Caro's testimony (*People v. Hernandez*, 278 Ill. App. 3d 545, 551 (1996)), nor find that his testimony was contrary to human experience simply because the defendant believes we should do so. After a defendant is convicted of an offense it is not the job of a reviewing court to second-guess the fact finder. *People v. Jones*, 215 Ill. App. 3d 652, 655 (1991).

¶ 26 For the aforementioned reasons, we find that the evidence presented at trial was not so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. The evidence, when viewed in a light favorable to the State, was sufficient to allow a rational fact finder to find the defendant guilty of armed violence and the unlawful possession of a weapon by a felon beyond a reasonable doubt.

¶ 27 Defendant next contends that he received ineffective assistance of counsel because his attorney was unaware of damaging statements allegedly made by defendant until the middle of trial and that counsel failed to object to testimony concerning the state ID. A defendant in a criminal proceeding is guaranteed the right to the assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 684 (1984). That right has long been recognized to be "the right to effective assistance of counsel." *People v. Cherry*, 2016 IL 118728, ¶ 8, (citing *United*

*States v. Cronin*, 466 U.S. 648, 645 (1984)). Although an accused has a fundamental right to the assistance of counsel for his defense, he is only guaranteed competent, not perfect, representation. *Id.* We review claims of ineffective assistance *de novo*. *People v. Berrier*, 362 Ill. App. 3d 1153, 1166-67 (2004).

¶ 28 Defendant initially argues that defense counsel's unfamiliarity with his alleged admission demonstrates counsel's failure to adequately prepare for trial. He argues that there can be no reasonable explanation for defense counsel's failure to investigate the State's evidence against him. Defense counsel's failure to adequately prepare, he argues, constitutes ineffective assistance, for which he is entitled to reversal.

¶ 29 We agree with defendant that counsel had a responsibility to thoroughly investigate the State's evidence against him. Unawareness of the alleged statement suggests a lack of diligence. Even so, to succeed on a claim of ineffective assistance of counsel, a defendant must establish not only that counsel's performance fell below an objective standard of reasonableness, but also that the deficient performance so prejudiced the defense as to deny defendant a fair trial. *People v. Nowicki*, 385 Ill. App. 3d 53, 81 (2008), (citing *Strickland*, 446 U.S. 688 at 687-94). Thus, a court need not decide whether counsel's performance was deficient before analyzing whether the defendant was prejudiced. *People v. Pineda*, 373 Ill. App. 3d 113, 116 (2007). To demonstrate prejudice, a defendant must establish that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Nowicki*, 385 Ill. App. 3d at 82. Accordingly, absent a finding of prejudice, a defendant's ineffective assistant claim must fail.

¶ 30 Defendant argues that, but for counsel's ineffectiveness, a different result would have yielded at trial. In that regard, he makes two separate claims. He first argues that counsel's

failure to investigate the documents in her possession *i.e.*, the misdemeanor complaint, prohibited her from impeaching Officer Reyes about an alleged admission by him and thus, crippled his defense. The misdemeanor complaint alleged that defendant, while in the presence of Officer Caro at the police station, stated that he should have shot the officers. The complaint was signed by Officer Caro and witnessed by Officer Reyes. Contrarily, at trial, Officer Reyes testified that the statement was made to him during the transport of defendant to the station.

¶ 31 Defendant invites our consideration of *People v. Corder*, 103 Ill. App. 3d 434 (1982), as instructive. In *Corder*, the defendant was convicted based solely on the testimony of an undercover police officer who described the defendant as "clean shaven". *Id.* at 437. In his amended post conviction petition, the defendant alleged ineffective assistance of his trial counsel. *Id.* at 436. The gravamen of the petition alleged defense counsel's incompetence in failing to corroborate defendant's trial testimony regarding the fact that the defendant wore a beard. *Id.* At the evidentiary hearing on the petition, defendant produced witnesses and affidavits of potential witnesses who indicated that they could corroborate the defendant's testimony concerning his beard, however, none of those witnesses, whose names had been disclosed to defense counsel prior to trial, had been contacted by counsel. *Id.* Furthermore, defendant's driver's license, which had been issued six days after commission of the crime and showed him as wearing a beard, had not been introduced by counsel as evidence at trial. *Id.*

¶ 32 On appeal, this court reversed the denial of the defendant's post conviction petition. In so doing, the court found that defense counsel was actually incompetent. Significantly, the court

additionally determined that but for defense counsel's incompetence, the outcome of the defendant's trial probably would have been different. *Id.* at 438.

¶ 33 Here, even were we to conclude that defense counsel's unawareness of the misdemeanor complaint and loss of potential impeachment opportunity rose to the level of incompetence as seen in *Corder*, we fail to see how defendant was prejudiced. Although Officer Reyes' inconsistent statement regarding to whom and where defendant's statement was made may call into question his credibility, the inconsistency was diminimis and was not itself sufficient to defeat those aspects of Officer Caro's testimony concerning the green army-style jacket, discovery of the hand gun, as well as recovery of the shell casings near the scene, all of which the court found credible and were largely corroborated by Officer Vega. It was this testimony upon which the trial court relied in finding defendant guilty. Thus, unlike in *Corder*, we are unable to conclude that any missed opportunity for impeachment of Officer Reyes resulted in prejudice to the defendant.

¶ 34 Defendant additionally cites to *People v. Salgado*, 263 Ill. App. 3d 238 (1994), as support for his ineffective assistance claim. However, *Salgado* is even less availing than *Corder*. In *Salgado*, following a jury trial, the defendant was found guilty of murder, attempted murder and armed violence. *Id.* at 239-240. In addition to defense counsel's failure to impeach a State witness who offered inconsistent identification testimony, counsel failed to request appropriate clarifying instructions to the jury concerning its consideration of inconsistencies in various witnesses' statements. *Id.* at 247-248. The case was reversed and remanded for a new trial. In reversing, the court stated that it was "not confident that the jury would have convicted the defendant had it known of the impeachment of [the State witness] and had it been properly instructed." *Id.* at 249.

¶ 35 Here, unlike in *Salgado*, there was no opportunity for jury confusion as this was a bench, not a jury, trial. Further, unlike in *Salgado*, defendant here presented no evidence in his defense. Most significantly, unlike in *Salgado*, defendant has failed to demonstrate, and based upon our review of the record, we are unable to conclude, that defendant was prejudiced by the unavailability of an impeachment opportunity of Officer Reyes.

¶ 36 For his second claim of ineffective assistance, defendant alleges that he was prejudiced by defense counsel's failure to object to testimony that a state ID was found with the gun. Defense counsel questioned Officer Caro at length about the discovery of the state ID and the reason it was not inventoried with defendant's other possessions. Additionally, counsel did object when the State attempted to use the state ID to elicit testimony about defendant's date of birth. Like with his argument regarding the use of the misdemeanor complaint for impeachment, defendant fails to demonstrate that but for defense counsel's actions the result of the proceedings would have been different.

¶ 37 The court did not rely on the presence of defendant's state ID when making its ruling. As previously articulated, the trial court focused on Officer Caro's identification of defendant stating it could "disregard the testimony of Officer Caro as to what was in the jacket and still find the State has proven the defendant guilty of the various counts here beyond a reasonable doubt."

¶ 38 Defendant has not demonstrated that but for defense counsel's actions, the outcome of the proceedings would be different, thus failing to satisfy the prejudice prong of the *Strickland* test. For these reasons, we cannot say that defendant's defense counsel gave ineffective assistance to defendant.

¶ 39 CONCLUSION

¶ 40 For the foregoing reasons, we find the evidence was not so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. Additionally, we find that defendant did not receive ineffective assistance of counsel. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 41 Affirmed.