

2017 IL App (1st) 151036-U

No. 1-15-1036

Order filed June 22, 2017

Fourth Division

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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 3364
)	
FREDDIE PARSONS,)	Honorable
)	Stanley Sacks,
Defendant-Appellant.)	Judge, presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Ellis and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for unlawful use of a weapon by a felon affirmed over his contention that the evidence was insufficient to prove beyond a reasonable doubt that he was in possession of a firearm while he was a convicted felon.

¶ 2 Following a bench trial, defendant Freddie Parsons was convicted of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)) and sentenced to five years' imprisonment. On appeal, defendant contends that the evidence was insufficient to show that he possessed a firearm while he was a convicted felon. We affirm.

¶ 3 At trial, Detective Patrick Ford of the Chicago police department testified that, in January 2012, he was investigating a kidnapping. During the course of the investigation, at around 2:30 a.m. on January 10, 2012, Ford went to a ransom drop and after a foot chase, arrested Cesar Davidson and Antoine Span. Later that day, Ford and several other police officers returned to the scene to search the area in the daylight. The search spanned the three blocks where the foot chase occurred. During the search, Ford discovered a .40 caliber semiautomatic handgun. Ford called evidence technician Thomas Ellerbeck to recover and inventory the gun.

¶ 4 Approximately two years later, on February 6, 2014, Ford spoke with defendant regarding the recovered gun. Ford was present when assistant State's Attorney Liam Reardon took defendant's statement, which the State introduced into evidence. Without objection from defense counsel, Ford published a portion of the statement. The published portion of the statement read that: (1) defendant previously owned guns, but does not own guns presently; (2) he used to own a variety of guns, including .40 caliber semiautomatic pistols; (3) defendant could not remember how many guns he used to own because he owned so many; (4) he owned both semiautomatic and revolver pistols; (4) he regularly loaned guns to other people for purposes unknown to defendant; (5) defendant sometimes would not get his guns back because the people he loaned them to would be arrested or lie about being arrested; (6) he loaned guns in exchange for favors, weed, money, or using someone's car; (7) defendant last gave a gun away "a couple of years ago;" (8) he knew and was friends with Davidson and Span; and (9) defendant never gave guns to Davidson or Span.

¶ 5 On cross-examination, Ford testified that the gun was recovered in January 2012 during the kidnapping investigation but defendant's statement was not taken until 2014. Ford

acknowledged that, during the 2012 foot chase, he did not see defendant on the scene or in the area. He further acknowledged that he did ask defendant about the particular gun recovered on January 10, 2012, but while defendant admitted to owning .40 caliber guns in the past, he did not state that he owned the gun in question.

¶ 6 The parties stipulated that evidence technician Thomas Ellerbeck was called to the scene to collect and preserve evidence. Ellerbeck recovered a .40 caliber semiautomatic pistol with one live round in the chamber and a magazine containing eight additional rounds. Ellerbeck properly inventoried the gun and sent it to the state crime lab for testing and analysis. The parties further stipulated that Jeannie Hutcherson analyzed the evidence and found a print suitable for comparison on the magazine that was part of the gun inventory. She conducted a latent print analysis of the print and found that it matched defendant's print.

¶ 7 The State introduced into evidence two certified copies of conviction for defendant in cases 07 CR 660424 and 09 CR 09638. Defendant did not testify or present evidence.

¶ 8 Following closing arguments, the court found defendant guilty of unlawful possession of a weapon by a felon.¹ In finding defendant guilty, the court noted that the gun recovered from the area where the 2012 foot chase took place was the same type of gun that defendant admitted to police he previously had owned. The court also noted that defendant admitted to knowing Davidson and Span, that he previously loaned out guns, and that he had last loaned out guns a couple of years prior to 2014. The court emphasized that, while the police did not ask defendant about the particular gun found, the forensic evidence established that he had possessed that gun, concluding that the magazine was part of the gun. The court stated,

¹ Defendant was charged with two counts of unlawful possession of a weapon by a felon, one based on his 2009 felony conviction (count 1) and the other on his 2007 felony conviction (count 2). The record reflects the court found defendant guilty on both counts and merged count 2 into count 1.

“While he denies giving the guns to them, maybe he didn’t give it to them. The fact remains that on that gun, on the magazine of the gun his fingerprints are found. I’m not going to speculate it could have been there two or three years before that incident, chances are that well, or they could not have been there afterwards. The police had the gun since January 2012, so they weren’t put there afterwards. The fingerprints on the gun by partial were put there at least before 2012, which means he had the gun before 2012 at some point or another. Maybe he had it that day, maybe he had it a few days before. As a convicted felon he cannot have guns at all.”

¶ 9 The court went on to note that defendant was not allowed to possess a firearm since his convictions in 2007 and 2009. When defense counsel asked if defendant was guilty of having a gun on January 10, 2012, the court responded,

“As the charge says, [defense counsel], [on] or about. If he had it anywhere around that time, it could have been any time before 2012. The evidence doesn’t prove that he had it that day. The evidence establishes that he had the gun, whether it was that day or some other day before 2012, but after 2009 and that would certainly establish that. I don’t believe it was laying in the alley or the street for three years as of 2012.”

¶ 10 Defendant subsequently moved for a new trial, arguing that his fingerprint on the magazine did not establish exclusive control over the firearm and the print could have been placed prior to defendant becoming a convicted felon. The trial court denied defendant’s motion, and noted the court did not find defendant’s arguments reasonable in light of the evidence presented. The court stated,

“I think it’s a reasonable inference based on the evidence that I heard that when he handled the magazine, put the magazine in the gun, the gun was left by either Davidson or Span arguably when they run through a field, whatever they’re running through. He acknowledges he knew them both, Davidson and Span, and had given out guns before and also given out guns -- 40 caliber guns which this happened to be. His mere denial he didn’t give out guns this time really means nothing whatsoever.”

¶ 11 The trial court thereafter sentenced defendant to five years’ imprisonment in the Illinois Department of Corrections and two years of mandatory supervised release. This appeal followed.

¶ 12 On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he possessed the recovered gun when he was a convicted felon. Specifically, he argues that his fingerprint on the magazine is insufficient to show he was in possession of the gun. He also argues the State’s evidence failed to show when the print was placed on the magazine, *i.e.*, that his fingerprint was placed on the magazine after he became a convicted felon. The State responds that defendant’s fingerprint on the magazine was sufficient to prove that he possessed the gun. The State also argues that it is unreasonable to conclude that defendant’s fingerprint on the magazine was there for years prior to the gun’s recovery in 2012.

¶ 13 As an initial matter, defendant contends that the facts are undisputed and therefore *de novo* review applies to determine whether sufficient evidence supports his conviction as a matter of law. See *People v. Smith*, 191 Ill. 2d 408, 411 (2000). We disagree and note that while the facts are undisputed, defendant contests the inferences drawn from the evidence, thereby creating questions of fact. See *People v. Lattimore*, 2011 IL App (1st) 093238, ¶35 (“If divergent inferences could be drawn from undisputed facts, a question of fact remains.”).

¶ 14 On a challenge to the sufficiency of the evidence, we inquire “ ‘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.’ ” (Emphasis omitted.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In so doing, we draw all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at 43) and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). It is within the province of the trier of fact “to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence.” *Id.* at 228. Circumstantial evidence is sufficient in itself to support a conviction, as long as the elements of the crime have been proven beyond a reasonable doubt. *People v. Milka*, 211 Ill. 2d 150, 178 (2004). We will not overturn a criminal conviction “unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt.” *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 15 To sustain the conviction for unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)), the State must prove that defendant had a prior felony conviction and that he knowingly possessed a firearm. *People v. Hill*, 2012 IL App (1st) 102028, ¶ 40. Possession may be actual or constructive. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Actual possession is proved by testimony that the defendant exercised some form of dominion over the contraband. *Id.* at 788. Where there is no actual possession, constructive possession may be proven where the defendant knew the item was present and that he “exercised immediate and exclusive control over the area when the weapon was found.” *People v. Ross*, 407 Ill. App. 3d

931, 935 (2011). “Because possession is often difficult to prove directly, proving possession frequently rests upon circumstantial evidence.” *Love*, 404 Ill. App. 3d at 788.

¶ 16 Here, the parties dispute whether the evidence shows either actual or constructive possession. The evidence established that the police recovered the gun along a street where a foot chase had occurred several hours prior. Defendant, therefore, could not have exercised exclusive and immediate control over the area, so constructive possession is not applicable. Thus, whether defendant possessed the gun turns on whether the State proved actual possession beyond a reasonable doubt.

¶ 17 We conclude that the evidence was sufficient to prove actual possession. We decline defendant’s invitation to infer that he did not possess the gun because his fingerprint was found only on the magazine and no one actually saw him with the gun. The evidence established that defendant admitted to police that (1) he knew Davidson and Span, who led police on a foot chase near where the .40 caliber gun was recovered, (2) he previously owned .40 caliber guns, and (3) he used to loan out .40 caliber guns, although he denied loaning guns to either Davidson or Span. The forensic evidence established, and defendant does not dispute, that his fingerprint was on the magazine that was part of the recovered gun. See *People v. Span*, 2011 IL App (1st) 083037, ¶ 35 (noting that fingerprint evidence is circumstantial). While it is true that defendant was not seen with the gun, nor was his fingerprint on the gun itself, the evidence presented allowed the trial court to reasonably infer that defendant was in actual possession of the gun. *Siguenza-Brito*, 235 Ill. 2d at 228 (It is the responsibility of the trial court, as trier of fact, to draw reasonable inferences from the evidence).

¶ 18 We likewise decline defendant's invitation to infer that his fingerprint could have been placed on the magazine prior to his felony convictions in 2007 and 2009. See *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007) (a reviewing court is not required to seek out all possible explanations consistent with innocence in reviewing a challenge to the sufficiency of the evidence). The trial court expressly rejected this contention and found that it was unreasonable to infer that defendant's print was impressed on the magazine prior to either his 2007 or 2009 conviction and remained until the gun was recovered in 2012. We agree. Further, in a 2014 interview, defendant told police that he had last loaned out guns a "couple" of years prior to his interview. Police recovered the gun in 2012, a couple of years prior to the interview. Defendant had been a convicted felon since 2007 and had a second felony conviction in 2009. Thus, based on this evidence we find that it was a reasonable inference that defendant was in possession of a firearm and placed his fingerprint on the magazine on or about when the gun was discovered on January 10, 2012. See *Givens*, 237 Ill. 2d at 334 ("[A] reviewing court must allow all reasonable inferences from the record in favor of the prosecution.") Accordingly, we conclude that the evidence was sufficient to enable a rational trier of fact to find defendant guilty of unlawful possession of a weapon by a felon beyond a reasonable doubt.

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.