2017 IL App (1st) 151443-U

No. 1-15-1443

Order filed October 18, 2017

Third Division

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. 14 CR 21535
	)	
ANTHONY HUDSON,	)	Honorable
	)	Mary Colleen Roberts,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE COBBS delivered the judgment of the court.
Justices Fitzgerald Smith and Howse concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's convictions for unlawful use of a weapon by a felon where the evidence at trial established each element of the offense beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Anthony Hudson was convicted of two counts of unlawful use of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2014)) and sentenced to concurrent three-year terms in prison. On appeal, defendant contends that the State

failed to prove beyond a reasonable doubt that he knowingly possessed a handgun, because the responding officer's "dropsy" testimony was incredible and uncorroborated. We affirm.

¶ 3 Defendant was charged with two counts of UUWF for possession of a firearm and ammunition and four counts of aggravated unlawful use of a weapon. Defendant waived his right to a jury trial and the case proceeded to a bench trial.

¶ 4 Officer Garcia Benjamin testified that he was on patrol with his partner, Officer Richard Carl, at 10:30 p.m. on November 26, 2014, when they responded to a shots fired call. As they were touring the area in their unmarked vehicle, they encountered defendant driving eastbound on Wilcox Street. Benjamin observed defendant almost hit the sidewalk "on the curb" and decided to conduct a field investigation.

¶ 5 The officers pulled up towards defendant's vehicle facing the driver's side door, exited their vehicle, and announced their office. Benjamin testified that he had a clear view of defendant, who was driving, but not of defendant's passenger. After the officers announced their office, defendant and his passenger exited the vehicle. From 7 to 10 feet away, Benjamin saw defendant look in the direction of the officers, toss an unknown black object into his car, and run. Benjamin gave chase and apprehended defendant a few houses away. Defendant's passenger had also run but escaped custody.

¶ 6 Officer Carl remained with defendant's vehicle while Benjamin gave chase. When Benjamin returned, Carl shone his flashlight into defendant's vehicle and both officers observed a gun on the passenger-side floorboard. Carl recovered the weapon, which was found to be a blue steel semiautomatic weapon loaded with six live rounds. Benjamin and Carl searched defendant's vehicle and found no other dark object such as defendant had thrown into the car.

Upon further investigation, they found defendant did not have a concealed carry permit or a Firearm Owner's Identification Card.

¶ 7 The parties stipulated that defendant had a prior conviction for manufacturing or delivery of a controlled substance dating back to September 17, 2012. The court denied defendant's motion for a directed finding, and the defense rested.

¶ 8 The court found defendant guilty of all charges, stating that it found Benjamin reliable as he testified credibly, was not impeached, and demonstrated no bias throughout his testimony. The court found the circumstantial evidence presented allowed the court to infer that the black object Benjamin saw defendant throw into the vehicle was the same black object, the semiautomatic weapon, found in the vehicle, and that defendant possessed that weapon. The court subsequently merged the four aggravated unlawful use of a weapon counts into one UUWF count and sentenced defendant to concurrent three-year terms of imprisonment on the two UUWF counts.

¶ 9 Defendant appeals the UUWF convictions, arguing the State failed to prove beyond a reasonable doubt that he possessed a firearm because Officer Benjamin's testimony that defendant exited his vehicle, saw the officers, and then decided to throw the gun into the vehicle in plain view of the officers was incredible and uncorroborated.

¶ 10 Where a criminal conviction is challenged based on sufficiency of the evidence, a reviewing court, considering all the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime. *People v. Brown*, 2013 IL 114196, ¶ 48. This standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the

evidence, and to draw reasonable inferences from basic facts to ultimate facts. *People v. Howery*, 178 Ill. 2d 1, 38 (1997). Accordingly, a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *People v. Cooper*, 194 Ill. 2d 419, 430-31 (2000).

¶ 11 The trier of fact is not required to disregard inferences that flow normally from the evidence or to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). Further, a criminal conviction may be based solely on circumstantial evidence, and the same standard of review will apply. *Brown* 2013 IL 114196, ¶ 49. In reviewing a trial court's decision, we must give proper deference to the trier of fact who observed the witnesses testify, because it was in the "superior position to assess the credibility of witnesses, resolve inconsistencies, determine the weight to assign the testimony and draw reasonable inferences therefrom." *People v. Vaughn*, 2011 IL App (1^{st}) 092834, ¶ 24.

¶ 12 To sustain defendant's UUWF convictions, the State was required to prove that defendant knowingly possessed a weapon or ammunition and that he had previously been convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2012). The parties stipulated to defendant's prior felony conviction. Defendant's sole argument is that Benjamin's testimony was so incredible that the trial court erred in finding the State proved beyond a reasonable doubt that defendant possessed the loaded gun.

¶ 13 Viewing the evidence in the light most favorable to the State, we find a rational trier of fact could have concluded that the State met its burden to prove defendant possessed the gun and ammunition found in the vehicle. Benjamin testified that he saw defendant throw a dark object

into his vehicle before running away from the police. When the officers later searched the same vehicle, they found a blue-steel semiautomatic weapon loaded with six live rounds. Benjamin testified that, except for the gun, there were no other dark objects found in the vehicle. The testimony of a single witness, if positive and credible, is sufficient to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Benjamin's testimony was sufficient to prove beyond a reasonable doubt that the dark object defendant possessed and threw into the vehicle was the gun recovered from the vehicle.

¶ 14 Defendant argues that Benjamin's testimony that defendant would exit the vehicle and throw illegal contraband back into the vehicle mere steps away from the officers was incredible and unworthy of belief. He argues that this is unbelievable "dropsy" testimony. See *People v. Ash*, 346 Ill. App. 3d. 809, 816 (2004) ("A 'dropsy case' is one where a police officer, to avoid the exclusion of evidence on fourth-amendment grounds, falsely testifies that the defendant dropped the narcotics in plain view"). Defendant cites to numerous news and law review articles to support his assertion that police officers often perjure themselves on the stand in order to prevent evidence from being excluded.

¶ 15 Defendant did not introduce the articles to the trial court, and therefore, we do not consider them here. See *People v. Brooks*, 187 Ill. 2d 91, 128 (1999) (evidence submitted for review on appeal must have been presented to the fact finder at trial). Further, even if, as defendant suggests, police perjury is rampant, anecdotal evidence thereof does not "compel the trier of fact to disbelieve any officer's testimony that describes seeing a defendant dropping or abandoning contraband." *People v. Moore*, 2014 IL App (1st) 110793-B, ¶¶12-13, *vacated on other grounds*, 2016 IL 117919. The trier of fact is the sole judge of credibility at trial and, on

this record, we find no reason to disturb its findings that Benjamin's testimony was reliable, unimpeached, unbiased and credible. Benjamin's testimony was not so improbable or insufficient that no reasonable person would accept it, or that it raises a reasonable doubt regarding defendant's guilt. *People v. Simpson*, 2015 IL App (1st) 130303, ¶¶41, 44. Accordingly, Benjamin's testimony was sufficient to establish beyond a reasonable doubt that defendant possessed the gun found in his vehicle.

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

¶ 17 Affirmed.