

2017 IL App (1st) 152159-U  
No. 1-15-2159  
Order filed November 22, 2017

Fourth Division

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

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. 13 CR 15670
	)	
JOHNATHAN MANNING,	)	Honorable
	)	Thomas M. Davy,
Defendant-Appellant.	)	Judge, presiding.

---

JUSTICE GORDON delivered the judgment of the court.  
Presiding Justice Burke and Justice Ellis concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant's conviction for unlawful use of a weapon by a felon affirmed where the police officer's testimony was credible; sentence modified from Class X to Class 2 and mandatory supervised release term reduced where defendant was not subject to Class X sentencing.
- ¶ 2 Following a bench trial, defendant Johnathan Manning was convicted of unlawful use of a weapon by a felon (UUWF) and sentenced to seven years' imprisonment as a Class X offender. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable

doubt because the police officer's testimony was not credible. Defendant also contends, and the State agrees, that his sentence should be modified from Class X to Class 2, and his term of mandatory supervised release (MSR) reduced, because he was not subject to Class X sentencing. We affirm defendant's conviction and modify his sentence.

¶ 3 Defendant was tried on two counts of UUWF, and four counts of aggravated unlawful use of a weapon (AUUW). At trial, Chicago police officer James testified that, on the night of July 27, 2013, he was on patrol with his partner when he heard gunshots. A flash message came over the police radio stating that shots had been fired at a house from a tan or silver minivan. James observed a minivan that matched the description driving down a residential street. He activated his emergency lights and curbed the vehicle.

¶ 4 James approached the driver's side of the minivan with his gun drawn. The area was lit by streetlights, and two spotlights on the police vehicle were pointed at the minivan. As James approached the minivan from a distance of 5 to 10 feet, he observed defendant sitting inside the van making "furtive movements." James initially testified that defendant was seated directly behind the passenger, but later testified that he was sitting behind the driver's seat. One of the spotlights was shining on the area where defendant was sitting. Nothing blocked James' view as he approached the minivan. James observed defendant leaning over behind the driver's seat with his hands in front of him. Defendant placed an object that appeared to be a handgun "down up under" the back of the driver's seat. Defendant then sat up in his seat.

¶ 5 James opened the door of the minivan and directed defendant and the other four men inside the vehicle to exit. The men were detained at the rear of the minivan and handcuffed to each other for safety reasons. James and Officer Schaffer searched the minivan. James observed

Schaffer recover a .40-caliber blue steel handgun from the same location where he observed defendant placing the object. Schaffer also recovered a magazine containing ammunition from that same location. Defendant was placed under arrest.

¶ 6 On cross-examination, James testified that defendant had some type of hard object in his hand. James did not observe the color of the object, nor could he view the full shape of the object because it was in defendant's hands. The part James observed, however, looked "something like a pistol." The item appeared to be a hard object rather than a soft object. When defense counsel asked James why he thought it was a hard object, he replied "I don't know."

¶ 7 The State presented a stipulation that Officer Schaffer recovered a Glock .40-caliber firearm and a magazine containing three live rounds. The State also presented a certified copy of defendant's prior felony drug conviction in case number 08 CR 7040. In addition, the State presented a certification from the Illinois State Police indicting that defendant had never been issued a firearm owner's identification card.

¶ 8 The trial court granted defendant's motion for a directed finding as to two counts of AUUW. The court stated that pursuant to *People v. Aguilar*, 2013 IL 112116, the evidence would not support convictions on those counts.

¶ 9 Gregory Freeman testified for the defense that he was driving the minivan on the way to a barbeque with defendant and three other men when he was stopped by police. The officers pulled alongside the minivan, pointed a gun out the window of their vehicle, and ordered Freeman to pull over. The officers approached the minivan with their guns drawn, opened the door, and pulled the men out of the vehicle. The police took the men to the rear of the van, searched them, and handcuffed them to each other. The police searched the minivan for 15 to 20 minutes, but

did not remove any items from the vehicle. Freeman did not know if there was a gun inside the minivan, and denied that defendant had a gun. Freeman later acknowledged that police recovered a gun from the vehicle. Freeman also acknowledged that there were streetlights at the scene, and that lights from the police vehicle illuminated the inside of the minivan.

¶ 10 Defendant testified that he was riding to a barbeque in the minivan with his friends when they were stopped by police. Defendant was seated behind the driver's seat. The officers approached the minivan with their guns drawn and told the men to exit the van. Defendant and his friends remained at the back of the van handcuffed to each other while the police searched the vehicle. Defendant observed the officers exit the minivan with a gun, but he did not know where they had found it. Defendant denied knowing that there was a gun in the vehicle. He had been inside the minivan for 40 minutes to an hour and never observed the gun during that time. He also denied making any movements or gestures while the police approached, and denied touching the gun or ammunition. Defendant acknowledged that there were streetlights in the area, and that lights from the police vehicle were shining into the minivan.

¶ 11 In rebuttal, the State presented a certified copy of defendant's prior conviction for possession of a stolen motor vehicle (PSMV) to impeach his credibility.

¶ 12 The trial court reviewed all of the evidence presented in detail. The court stated that it considered all of the testimony from the witnesses, as well as the credibility of the witnesses, and found that the State proved defendant guilty beyond a reasonable doubt of UUWF.

¶ 13 At sentencing, the State initially indicated that defendant's UUWF conviction was a Class 2 felony, and that he could receive an extended sentence based on his background. The State later asserted that it was incorrect and that defendant was subject to mandatory Class X

sentencing based on his two prior convictions for PSMV and possession with intent to deliver cocaine. The trial court found that defendant was subject to mandatory Class X sentencing based on his two prior convictions for Class 2 or greater offenses. The court then stated that it was “going to impose the same sentence today that I had planned on imposing in any event.” The court sentenced defendant to seven years’ imprisonment as a Class X offender with a three-year term of MSR.

¶ 14 On appeal, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt because Officer James’ testimony was not credible where it contained contradictions. He argues that James initially testified that defendant was seated behind the passenger, but later testified that he was seated behind the driver. He also argues that James initially testified that defendant was holding a handgun, but later admitted that he could not tell if the object was hard or soft. In addition, defendant claims that James’ testimony that he observed defendant making furtive movements to hide the gun is unbelievable because such observation would have required James to see through the solid metal door of the minivan.

¶ 15 The State responds that James’ testimony was credible, and notes that the trial court expressly stated that it considered the credibility of the witnesses. The State acknowledges that there was a minor discrepancy when James initially testified that defendant was seated behind the passenger. However, he later clarified that defendant was seated behind the driver, and defendant also testified that he was sitting behind the driver. The State argues that James consistently testified that he observed defendant with a gun, and there is no evidence in the record to support defendant’s claim that the minivan had a solid metal door that would have precluded his observations.

¶ 16 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact 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). Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 17 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt (*People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011)), nor simply because defendant claims that a witness was not credible or that the evidence was contradictory (*Siguenza-Brito*, 235 Ill. 2d at 228). The testimony of a single witness, if positive and credible, is sufficient to sustain a conviction, even when contradicted by defendant. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 18 To prove defendant guilty of UUWF in this case, the State was required to show that he knowingly possessed a handgun, and that he had a prior felony conviction for manufacturing or delivering a controlled substance. 720 ILCS 5/24-1.1(a) (West 2012).

¶ 19 Viewed in the light most favorable to the State, we find that the evidence in this case was sufficient for the trial court to find defendant guilty of UUWF. James testified that as he approached the minivan from a distance of 5 to 10 feet, he observed defendant sitting behind the driver making “furtive movements.” James observed defendant leaning over behind the driver’s seat with his hands in front of him. He then observed defendant place an object that appeared to be a handgun “down up under” the back of the driver’s seat. While searching the minivan, James observed Officer Schaffer recover a .40-caliber blue steel handgun from the same location where he observed defendant placing the object. He also observed Schaffer recover a magazine containing ammunition.

¶ 20 The State corroborated James’ testimony with a stipulation that Officer Schaffer recovered a Glock .40-caliber firearm and a magazine containing three live rounds. The State also presented a certified copy of defendant’s prior felony drug conviction. The trial court expressly stated that it considered the credibility of the witnesses in making its guilty finding. The record thus shows that the trial court found James’ testimony credible, and that the evidence was sufficient for the court to convict defendant of UUWF.

¶ 21 In making this finding, we reject defendant’s claim that contradictions in James’ testimony rendered him not credible. Although James initially testified that defendant was sitting behind the passenger, he later testified that defendant was sitting behind the driver’s seat. The rest of James’ testimony consistently had defendant seated behind the driver’s seat as he leaned over and placed the gun under the back of the driver’s seat. Defendant also testified that he was sitting behind the driver’s seat. It was the trial court’s duty as the fact finder to assess the credibility of the witnesses and resolve any conflicts in their testimony. The record shows that

based on the testimony of both witnesses, the court could reasonably conclude that defendant was seated behind the driver, and that the discrepancy in James' testimony was without import.

¶ 22 The record further shows that James consistently testified that the object he observed defendant hide was a handgun. He initially testified that the object "appeared to be a handgun." On cross-examination, James acknowledged that he could not determine the color or full shape of the object, but maintained that he observed "something like a pistol." He also testified that the object appeared to be hard rather than soft. When counsel asked why he thought it was a hard object, James replied "I don't know." This response did not indicate that James was uncertain that the object was a gun, but instead, that he could not explain how he knew that the object was hard rather than soft.

¶ 23 We also reject defendant's claim that James' testimony that he observed defendant making furtive movements to hide the gun is unbelievable because such observation would have required James to look through the solid metal portion of the minivan's door. Defendant argues that the metal portion of the door would have prevented James from observing the movements he claimed to have observed.

¶ 24 The record contains absolutely no evidence regarding the structure, appearance or composition of the minivan's door. There is no evidence that the structure of the door would have precluded James from seeing inside the vehicle. James testified that nothing obstructed his view as he approached the minivan. James, defendant and Freeman all testified that the area was lit by streetlights, and that the spotlights from the police vehicle were shining into the minivan, illuminating the area where defendant was seated. The trial court found James' testimony



regarding his observations of defendant's movements inside the minivan credible, and we will not disturb that determination.

¶ 25 We note that in his reply brief, defendant asserts that it is "common knowledge" that "minivans have non-transparent doors made of opaque metal," and asks this court to take judicial notice of that fact. He notes the make and model of the minivan. He then lists the websites for the Kelley Blue Book and Edmund's, and suggests that this court search Google to view photographs of the vehicle.

¶ 26 Judicial notice cannot be extended to introduce new factual evidence that was not presented to the trial court. *People v. Boykin*, 2013 IL App (1st) 112696, ¶ 9. Evidence that the minivan had a solid, opaque metal door that would have precluded James from seeing inside is critical material that was not presented to the fact finder, nor was the trial court requested to take judicial notice of the door. We therefore are precluded from taking judicial notice of it. *Boykin*, 2013 IL App (1st) 112696, ¶ 9.

¶ 27 The determination of James' credibility was a matter entirely within the province of the trial court which heard and observed him testify. *Siguenza-Brito*, 235 Ill. 2d at 228. The trial court found his testimony credible, and we find no reason to disturb that determination.

¶ 28 Defendant next contends, and the State agrees, that the trial court erred when it sentenced him as a Class X offender because he was not eligible for mandatory Class X sentencing. Defendant acknowledges that he failed to preserve this issue for appeal because he did not object during sentencing or raise the issue in a postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). The parties agree, however, that this court can review the issue under the second

prong of the plain error doctrine because a clear error occurred which affected defendant's substantial rights. Ill. S. Ct. R. 615(a); *People v. Lewis*, 2014 IL App (1st) 122126, ¶ 27.

¶ 29 The parties agree that the sequencing requirements of the statute were not met because defendant committed the second felony before he was convicted of the first felony. Consequently, they agree that although defendant has two prior convictions for Class 2 or greater offenses, he did not meet the statutory requirements to be subject to sentencing as a Class X offender. 730 ILCS 5/5-4.5-95(b) (West 2012).

¶ 30 We concur with the parties' conclusion. The Class X sentencing statute provides, in relevant part:

“When a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 felony, after having twice been convicted in any state or federal court of an offense that contains the same elements as an offense now (the date the Class 1 or Class 2 felony was committed) classified in Illinois as a Class 2 or greater Class felony and those charges are separately brought and tried and arise out of different series of acts, that defendant shall be sentenced as a Class X offender. This subsection does not apply unless:

- (1) the first felony was committed after February 1, 1978 (the effective date of Public Act 80-1099);
- (2) *the second felony was committed after conviction on the first; and*
- (3) the third felony was committed after conviction on the second.” (Emphasis added.) 730 ILCS 5/5-4.5-95(b) (West 2012).

¶ 31 It is well settled that when construing a statute, we must give effect to the intent of the legislature by giving the language of the statute its plain and ordinary meaning. *People v. Smith*,

2016 IL 119659, ¶ 27. In doing so, we must not depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that the legislature did not express. *Smith*, 2016 IL 119659, ¶ 27.

¶ 32 Pursuant to the statute, to be sentenced as a Class X offender, defendant must have committed the second felony *after* he was convicted of the first felony. Here, the record shows that defendant was arrested for possession of a controlled substance with intent to deliver, a Class 1 felony, on March 18, 2008. He was convicted of that felony in case number 08 CR 7040 on April 25, 2008. Five days *prior* to that conviction, on April 20, 2008, defendant was arrested for PSMV. He was convicted of that Class 2 felony in case number 08 CR 8631 on February 17, 2009. We therefore agree with the parties that because defendant committed the second offense before he was convicted of the first offense, he does not meet the statutory requirements to be subject to sentencing as a Class X offender.

¶ 33 The parties point out that defendant has completed his term of incarceration and is currently serving a three-year term of MSR. The website for the Illinois Department of Corrections (IDOC) confirms that this information is correct. See *People v. Sanchez*, 404 Ill. App. 3d 15, 17 (2010) (this court may take judicial notice of the information appearing on IDOC's website).

¶ 34 The parties further note that the trial court expressly stated that it imposed the seven-year sentence as planned, regardless of whether defendant was sentenced under Class 2 or Class X. The parties therefore agree that this court should reduce the classification of defendant's sentence from Class X to Class 2, and reduce his term of MSR from three years to two years. We agree. Pursuant to our authority under Illinois Supreme Court Rule 615(b)(4) (eff. Aug. 27,

1999)), we reduce defendant's sentence from seven years as a Class X offender to seven years for a Class 2 offense. We also reduce defendant's term of MSR from three years to two years. We direct the clerk of the circuit court to issue a new mittimus to conform with our order.

¶ 35 For these reasons, we modify defendant's sentence as directed above, and affirm his conviction in all other respects.

¶ 36 Affirmed as modified; mittimus corrected.