

2018 IL App (1st) 160242-U

No. 1-16-0242

Order filed June 18, 2018

First 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 22996 |
| |) | |
| CHARLES LOFTON, |) | Honorable |
| |) | Clayton J. Crane, |
| Defendant-Appellant. |) | Judge, presiding. |

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm defendant's conviction for being an armed habitual criminal over his contention that the State failed to prove beyond a reasonable doubt that he possessed a firearm.

¶ 2 Following a bench trial, defendant Charles Lofton was convicted of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)) and sentenced to six years' imprisonment. Defendant appeals, arguing that the State failed to prove beyond a reasonable doubt that he possessed a firearm. We affirm.

¶ 3 Defendant was charged by information with one count of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)), two counts of unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)), and two counts of aggravated unlawful use of a weapon by a felon (720 ILCS 5/24-1.6(a)(1), (2) (West 2012)). He waived his right to a jury trial and, on November 5, 2015, the case proceeded to a bench trial.

¶ 4 Chicago police sergeant Brian Hawkins testified that, on November 14, 2013, he was on patrol with his partner, Officer Driver, investigating a series of shootings in the area of 72nd Street and South Vincennes Avenue. Hawkins was driving an unmarked police vehicle and turned south into the mouth of an alley. As he did so, he saw defendant and another person standing in the alley wearing hooded sweatshirts. Hawkins saw the two individuals pull their hoods over their heads and tighten the drawstrings. Defendant looked in Hawkins's direction and then ran northbound through the alley before turning west on 72nd Street. The other person in the alley ran in the opposite direction as defendant.

¶ 5 When defendant ran, Driver exited the vehicle and pursued him on foot. Hawkins reversed out of the alley and followed defendant westbound on 72nd Street. Hawkins saw defendant outpace Driver and turn southbound onto Vincennes Avenue. As Hawkins continued his pursuit, he saw defendant toss a handgun over a fence located at 7203 South Vincennes Avenue. Defendant eventually stopped running at 7253 South Vincennes Avenue and was detained by Hawkins and other officers.

¶ 6 After detaining defendant, Hawkins returned to 7203 South Vincennes Avenue, which was a "court way building" with a wrought iron fence at its entrance. On the opposite side of the fence was a "grassy area" where he recovered a loaded handgun. Hawkins testified that he never

lost sight of defendant during the pursuit. He estimated that he recovered the handgun approximately three minutes after he saw defendant throw it. Hawkins did not see anyone near that area when defendant threw the gun, nor was anyone in that area when he recovered it. Hawkins returned to the station, where Driver inventoried the firearm, a Springfield Armory Model P9 handgun.

¶ 7 On cross-examination, Hawkins acknowledged that both the arrest and case incident reports that he filled out indicated that defendant was detained at 7252 South Vincennes Avenue rather than 7253 South Vincennes Avenue. Hawkins admitted that this was a typographical error in his reports. Hawkins maintained that defendant remained on the east side of Vincennes Avenue and never crossed the street to the west side. Hawkins could not recall whether Driver accompanied him when he recovered the handgun.

¶ 8 On redirect examination, Hawkins explained that defendant was apprehended in front of a vacant lot surrounded by a chain-link fence. The lot did not have an address affixed to it, requiring Hawkins to approximate the address. He provided an officer with directions to where defendant was detained and asked for an approximation of the address. The officer's approximation erroneously placed the location on the west side of Vincennes Avenue rather than the east side.

¶ 9 Chicago police officer Anthony Driver testified that he was on patrol with Sergeant Hawkins when he saw defendant come out of an alley onto 72nd Street and put the hood of his sweatshirt down to cover his face. Defendant then "crouched down" and exited the alley. Driver exited the vehicle and called for defendant to come over. Defendant looked toward Driver and then fled. Driver pursued defendant on foot as he ran west on 72nd Street. Defendant alluded

Driver and turned south on Vincennes Avenue. By the time Driver made the same turn on Vincennes Avenue, he saw defendant further down the street. Defendant stopped as squad cars caught up with him and he was detained.

¶ 10 On cross-examination, Driver testified that defendant was detained near 7251 South Vincennes Avenue. He admitted that, on December 2, 2013, he had previously testified about this incident at a preliminary hearing. He acknowledged that, during his prior testimony, he erroneously stated that defendant was detained at 7252 South Vincennes. He testified that he accompanied Hawkins to 7203 South Vincennes Avenue where Hawkins recovered a handgun. In his prior testimony, Driver stated that the handgun was recovered in the “parkway” at that address. Driver explained that he understood “parkway” to mean the area between the door of the residence and the street. He described the area at that address as being “street, grass, sidewalk, and then a court way and then a door.” When shown a photograph by counsel, he acknowledged that it depicted 7203 South Vincennes Avenue.

¶ 11 On redirect examination, Driver stated that the handgun was recovered from an area of grass. The State showed Driver a photograph, which he recognized as 7203 South Vincennes Avenue. The State then asked Driver to indicate on the photograph where Hawkins discovered the handgun. Driver marked an area of grass just behind the wrought iron fence.

¶ 12 The State next introduced certified copies of defendant’s prior felony convictions: one for possession of a controlled substance with intent to deliver and the other for unlawful use of a weapon by a felon. The State also introduced a certification from the Illinois State Police showing that, on the date in question, defendant did not possess a Firearm Owner’s Identification card. The State then rested.

¶ 13 The defense rested without presenting evidence. During argument, defense counsel maintained that the State's witnesses were not credible as to where defendant was arrested and where the gun was recovered. Specifically, counsel argued that it is unclear where defendant was apprehended because the police reports and Hawkins' testimony are inconsistent. Counsel further argued that Driver's testimony that the handgun was recovered in a "parkway" was not consistent with the photographs depicting the address.

¶ 14 In announcing its decision, the court stated that it had the ability to "observe the witnesses, their interest and bias as they testified." The court found that it was clear from the testimony that the officers made an error as to the address where defendant was apprehended. The court also found that both officers agreed that the gun was recovered in the grass. The court concluded that, while the report in this case was not "perfect," it was "convinced beyond a reasonable doubt that defendant is guilty." Defendant moved for a new trial, which the court denied. The court then merged all counts into the armed habitual criminal count and sentenced defendant to six years' imprisonment.

¶ 15 On appeal, defendant challenges the sufficiency of the evidence to sustain his conviction. Specifically, defendant contends that the State failed to prove beyond a reasonable doubt that he possessed a firearm because (1) no firearm was introduced at trial, (2) the firearm allegedly recovered was not fingerprinted, and (3) the only evidence connecting defendant to the gun was the testimony of two police officers who offered inconsistent stories.

¶ 16 When a defendant challenges his conviction based upon the sufficiency of the evidence presented against him, we must ask whether, after viewing 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. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). All reasonable inferences from the record must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. It is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Brown*, 2013 IL 114196, ¶ 48. We will not substitute our judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *Brown*, 2013 IL 114196, ¶ 48. A defendant's conviction will not be overturned unless the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Id.*

¶ 17 Here, defendant was found guilty of being an armed habitual criminal. In order to sustain defendant's conviction for this offense the State was required to prove beyond a reasonable doubt that defendant possessed a gun after having been twice-convicted of certain qualifying felonies. See 720 ILCS 5/24-1.7(a) (West 2012). Defendant does not dispute that his two prior felonies qualify under the armed habitual criminal statute. Instead, he solely argues that the State did not prove beyond a reasonable doubt that he possessed a firearm.

¶ 18 After viewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could find that defendant possessed a firearm beyond a reasonable doubt. Hawkins testified that, as he pursued defendant, he saw him toss a handgun over a fence at 7203 South Vincennes Avenue. During the pursuit, Hawkins never lost sight of defendant and no one was in the area where he saw defendant toss the weapon. Hawkins returned to the area a few minutes later and recovered a handgun. He testified that no one was in the area when he returned. Driver likewise testified that he returned with Hawkins to 7203 South Vincennes Avenue and he

saw Hawkins recover a handgun. Both officers testified that the handgun was recovered in an area of grass behind a wrought iron fence. Given this record, we cannot say that the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt.

¶ 19 In reaching this conclusion, we are not persuaded by defendant's argument that the only evidence the State provided to show that he possessed the firearm was Hawkins' unreliable testimony. Defendant maintains that Hawkins' testimony is fatally undermined because no forensic testing, such as a fingerprint analysis, was done on the recovered firearm. He also argues that Drivers's testimony was inconsistent with Hawkins's testimony, further undermining Hawkins's credibility.

¶ 20 Defendant's arguments are, essentially, asking us to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact. This we cannot do. See *People v. Collins*, 214 Ill. 2d 206, 217 (2005) ("In reviewing the evidence, it is not the function of th[is] court to retry the defendant, nor will we substitute our judgment for that of the trier of fact."). A reviewing court will not reverse a conviction simply because defendant claims that a witness was not credible. See *People v. Evans*, 209 Ill. 2d 194, 211-12 (2004). Moreover, discrepancies in testimony affect only its weight and the trier of fact is charged with deciding how such flaws impact the credibility of the whole. *People v. Gray*, 2017 IL 120958, ¶ 47. Finally, in the context of a prosecution for unlawful use of weapons, this court has held that the failure of the State to introduce a weapon at trial does not impair an officer's credibility or raise a reasonable doubt of a defendant's guilt. *In re Angel P.*, 2014 IL App (1st) 121749, ¶ 56 (citing *People v. Delk*, 96 Ill. App. 3d 891, 903 (1981)).

No. 1-16-0242

¶ 21 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.