2018 IL App (1st) 160250-U

No. 1-16-0250

Order filed March 22, 2018

Fourth Division

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. 15 CR 7739
	)	
VALENTINO WHITE,	)	Honorable
	)	Thomas M. Davy,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for unlawful use of a weapon by a felon over his contention the evidence was insufficient to establish his identity.

¶ 2 Following a bench trial, defendant Valentino White was found guilty of, among other offenses, unlawful use or possession of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2014)) and sentenced to six years' imprisonment. On appeal, defendant argues the

evidence was insufficient to find him guilty beyond a reasonable doubt where he was identified as the offender based on the sleeve of his jacket. We affirm.

¶ 3 Defendant was charged by information with two counts of UUWF and six counts of aggravated unlawful use of a weapon (AUUW) stemming from acts occurring on April 24, 2015, in Chicago. The following evidence was presented at defendant's trial.

¶ 4 Chicago police officer Jarredd Cochran testified that, on April 24, 2015, around 8:42 p.m., he was working with Officer Kevin Burg in a marked police vehicle. In the area of 81st Street and Kimbark Avenue, Cochran observed a 1997 green Nissan Altima drive through a stop sign without stopping. The officers turned to follow the car and activated their emergency equipment. The Altima did not stop and continued to drive southbound on Kimbark.

¶ 5 The Altima drove through the stop sign at 82nd Street before turning right onto 83rd Street. Using the police vehicle's spotlight, the officers illuminated the back of the Altima and observed two men in the car. Eventually, the Altima began to slow down on 83rd Street. At this point, in addition to the police spotlight, there were also street lights illuminating the area. Cochran, from about 25 feet away with nothing obstructing his view, witnessed an arm, which had on a jacket, reach out of the front passenger window and throw out a handgun. The jacket had a gray sleeve with two white stripes and "metal studs implanted" on it.

¶ 6 The officers immediately recovered the handgun and continued to pursue the Altima, which made a right turn onto Ingleside Avenue. Cochran briefly lost sight of the Altima while he was recovering the gun. When the officers caught up to the Altima, they noticed it had crashed into a parked car and both the driver's side and passenger's side doors were open. They called for backup and immediately began to search the area for the occupants of the Altima.

¶ 7 Cochran searched an empty lot adjacent to where the Altima had crashed and saw defendant, whom he identified in court, between two parked cars. Defendant was lying down on his stomach, out of breath, and was wearing translucent latex gloves. Defendant was also wearing the same navy blue Pelle Pelle brand jacket having a gray sleeve with two white stripes and metal studs implanted on it that he observed on the arm of the man that threw the handgun out of the Altima. Cochran explained that, prior to becoming a police officer, he worked at Urban Mens clothing store and was familiar with the popular Pelle Pelle brand jackets. Pelle Pelle brand jackets were "common" with younger men, but Cochran had not seen the style of Pelle Pelle jacket defendant was wearing. Defendant was placed into custody but the driver of the Altima was not located.

¶ 8 The handgun recovered was inventoried and identified as a Ruger P-94, .40 caliber two-tone semi-automatic handgun, loaded with ten rounds in the magazine and one round in the chamber. The jacket and latex gloves were inventoried separately. Cochran testified that about two to two and a half minutes passed from the time he first observed the Altima until the time he apprehended defendant. About 30 seconds passed from the time he saw defendant drop the gun until he apprehended defendant. Cochran did not notice any other people in the area and later determined that the Altima was not registered to defendant.

¶ 9 Officer Burg testified consistently with the testimony of Officer Cochran as to the events on the evening of April 24, 2015. Burg testified that the sleeve of the passenger's arm that threw out the gun was gray with white stripes and metal studs. About 10 seconds after the officers observed the crashed Altima, Cochran had apprehended defendant. After defendant was apprehended, Burg noticed that defendant was out of breath and wearing latex gloves as well as

the same blue jacket with gray sleeves and white stripes. While Burg was transporting defendant to the police station, defendant told him, "you know I'm gonna [*sic*] beat this case, right." Burg did not respond to defendant.

¶ 10 The State introduced a certification from the Illinois State Police that defendant had never been issued a Firearm Owner's Identification card or concealed carry license as of May 27, 2015. It also introduced a certified birth certificate for defendant having a birth date of May 31, 1991. Finally, the State introduced a certified copy of conviction in case number 10 CR 1216401, for Class 2 manufacture/delivery of a controlled substance from July 22, 2010.

¶ 11 The trial court found defendant guilty of two counts of UUWF and six counts of AUUW. The court found that "[t]he probabilities of someone wearing the same type of coat no matter how popular the high end Pelle Pelle may be in the immediate area in the very short period of time" are "very, very slim." It further stated that it did not consider defendant's statement to Burg in finding defendant guilty. Defendant's written motion for a new trial was denied, and the court proceeded to sentencing. It sentenced defendant to six years' imprisonment on one count of UUWF. Defendant filed a timely notice of appeal.

¶ 12 On appeal, defendant argues the evidence was insufficient to sustain his conviction for UUWF where the officers' description of defendant's navy blue Pelle Pelle jacket having a gray sleeve with white stripes and metal studs implanted on it was inadequate to establish his identity. Because the evidence was insufficient to establish his identity, defendant contends we should reverse his conviction outright.

¶ 13 We note the dispute between the parties as to the proper standard of review to be applied. Defendant argues for *de novo* review, alleging that his challenge to the evidence involves

whether the uncontested facts of the case were sufficient to convict him. See *In re Ryan B.*, 212 Ill. 2d 226, 231 (2004). Specifically, he contends that an identification based on his jacket sleeve is insufficient to sustain a conviction as a matter of law. The State maintains that the sufficiency of the evidence standard of review should apply. See *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004).

¶ 14 Here, defendant is challenging the inferences that can be drawn from the evidence, namely the identification that he was the individual wearing a Pelle Pelle jacket having gray sleeves with white stripes and metal studs who threw a gun out of the moving Altima. See *People v. Stewart*, 406 Ill. App. 3d 518, 525 (2010). Accordingly, his argument challenges the sufficiency of the evidence presented at trial. *Id.*

¶ 15 Therefore, when considering a challenge to the sufficiency of the evidence, a reviewing 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 essential elements of the offense proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. "A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). In a bench trial, the trial judge, as the trier of fact, has the duty of determining the credibility of witnesses, weighing the evidence and any inferences derived, and resolving any conflicts in the evidence. *People v. Brown*, 2017 IL App (1st) 142877, ¶ 39. A conviction will not be overturned unless the evidence is so improbable, unsatisfactory, or inconclusive that a reasonable doubt of defendant's guilt exists. *People v. Belknap*, 2014 IL 117094, ¶ 67.

¶ 16 The State must prove beyond a reasonable doubt the identity of the individual who committed the charged offense. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). "The reliability of a witness's identification of a defendant is a question for the trier of fact." *In re Keith C.*, 378 Ill. App. 3d 252, 258 (2007). It is well settled that circumstantial evidence may be used to establish the identity of the accused. *People v. Darrah*, 18 Ill. App. 3d 1018, 1022 (1974).

¶ 17 Further, a conviction may be based on circumstantial evidence, provided that it satisfies proof beyond a reasonable doubt of the charged offense. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). "The trier of fact need not, however, be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. It is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *Id.*

¶ 18 The State asks us to consider the "identification" of defendant in light of the factors set out in the United States Supreme Court case of *Neil v. Biggers*, 409 U.S. 188 (1972). However, we find the *Biggers* factors are not useful here because, strictly speaking, there was no identification. That is, the police identified defendant as the man they arrested, but never saw the man in the car in order to make a positive identification. Rather, we view this case as a circumstantial evidence case, *i.e.*, was there sufficient circumstantial evidence to prove that the man arrested, defendant, was the passenger observed throwing a gun from the car.

¶ 19 Viewing the evidence in the light most favorable to the State, we find the evidence was sufficient to prove defendant's identity. The officers testified that, while pursuing a green Altima, they observed the arm of the passenger reach out of the car's window and throw out a handgun. At this point, the officers' spotlights were illuminating the car. The person was wearing a navy blue Pelle Pelle jacket with gray sleeves having white stripes and metal studs implanted

on it. Cochran recovered the gun, and the officers caught up with the Altima, which had crashed into a parked car. About 10 seconds later, Cochran observed defendant lying on his stomach between two cars in an empty lot. Defendant was wearing the same coat as the person who threw the gun out of the window, was out of breath, and wearing latex gloves. Given this evidence, including the identifying characteristics of the sleeve of defendant's jacket, the trier of fact could have found defendant was the person who had thrown the gun out of the Altima. Indeed, the trial court explicitly found that "[t]he probabilities of someone wearing the same type of coat no matter how popular the high end Pelle Pelle may be in the immediate area in the very short period of time" are "very, very slim."

¶ 20 Defendant argues that the officers provided no facial or physical descriptions of the man who dropped the gun from the Altima and, based on their angle of pursuit, were not otherwise able to provide the man's race, weight, age, height, or hairstyle. He argues a "fleeting view" of the jacket sleeve is insufficient to establish his identity as the person who discarded the gun. However, defendant neglects to mention the circumstantial evidence surrounding the entire sequence of events, which only lasted two and a half minutes. During this time, the officers had their emergency equipment activated, their spotlights illuminated on the car's passengers, and were in constant pursuit of the fleeing Altima. From 25 feet away with nothing obstructing their view, Cochran and Burg observed the arm of the passenger discard a gun from the window. The passenger was wearing a navy blue Pelle Pelle jacket having a gray sleeve with white stripes and metal studs implanted on it. About 10 seconds after observing the crashed Altima, defendant was discovered lying prone between two cars and out of breath, wearing a coat that matched the sleeve officers had previously observed. Given this evidence, we cannot say the officers merely

had a "fleeting view" of the jacket sleeve, which lead to their identification of defendant. Rather, the distinctive jacket sleeve along with this other evidence allowed the trier of fact to find defendant was the person who discarded the gun from the window of the Altima.

¶ 21 Defendant argues the circumstantial evidence coupled with the inadequate clothing description is insufficient to prove his guilt beyond a reasonable doubt. Specifically, he argues that, although he was apprehended near the crashed Altima, proximity to crime is not incriminating, especially where the officers here "did not look very hard for other suspects." We disagree with defendant's characterization of the evidence. Here, Cochran observed defendant, wearing a navy blue Pelle Pelle jacket containing a gray sleeve with white stripes and metal studs, lying on his stomach between two cars in a vacant lot. Defendant was discovered 10 seconds after the officers observed the crashed Altima, was out of breath, and was wearing latex gloves. Further, there were no other people in the area. Given this evidence, we cannot say that no rational trier of fact could find the identification of defendant beyond a reasonable doubt.

¶ 22 Defendant contends the testimony that he was out of breath "should be taken with a grain of salt" because the alleged distance was only 100 to 150 yards. He further asserts the officers did not see him flee the Altima, and the fact he was wearing latex gloves is actually exculpatory because there was no testimony that the man who threw out the gun was wearing gloves. However, "the trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Hall*, 194 Ill. 2d at 332. Here, the evidence, viewed in the light most favorable to the State, was sufficient to sustain defendant's conviction. It was not so

unsatisfactory, improbable, or implausible as to raise a reasonable doubt as to his guilt. See *Belknap*, 2014 IL 117094, ¶ 67.

¶ 23 Defendant further asserts that Illinois courts have repeatedly rejected identifications based on entirely on a partial clothing description. Defendant cites *People v. McGee*, 21 Ill. 2d 440, 444-45 (1961), *People v. Hughes*, 59 Ill. App. 3d 860, 862-63 (1978), *People v. Moore*, 6 Ill. App. 3d 932, 936 (1972), and *People v. Kincy*, 72 Ill. App. 2d 419, 427-28 (1966), as instances where courts have reversed convictions based on witnesses's identifications of clothing alone.

¶ 24 However, "[t]he identification of distinctive clothing worn by a defendant may be sufficient to sustain his conviction, particularly when other evidence of guilt exists, and a positive facial identification is not required." *People v. Ward*, 66 Ill. App. 3d 690, 693 (1978). Unlike in the cases cited by defendant, both Cochran and Burg provided a detailed description of the distinctive sleeve of defendant's navy blue Pelle Pelle jacket, which was gray with two white stripes and metal studs implanted on it. Further, defendant was apprehended hiding between two cars in a vacant lot with no other people around roughly 30 seconds after officers observed someone drop the handgun out of the Altima. Moreover, in *McGee*, the court overturned the conviction where there existed only a vague clothing description of the defendant in light of uncontradicted alibi evidence. See *McGee*, 21 Ill. 2d at 444-45. Here, no alibi evidence was presented such that there was no compelling evidence to contrast with the trial court's finding of guilt as in *McGee*. See *People v. Herrett*, 137 Ill. 2d 195, 205-06 (1990) (distinguishing *McGee* on this point). Accordingly, where further evidence of defendant's guilt was presented, his

reliance on these cases for the proposition that identifications based entirely on a partial clothing description is unpersuasive.

¶ 25 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.