

2018 IL App (1st)161624-U

No. 1-16-1624

Order filed November 13, 2018

Second 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. 15 CR 10489
)	
CHARLES SMITH,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for armed habitual criminal affirmed over his contention that a police officer's testimony was unbelievable and contrary to human experience.

¶ 2 Following a bench trial, defendant Charles Smith was found guilty of armed habitual criminal and sentenced to eight years in prison. On appeal, Smith contends that he was not proven guilty, beyond a reasonable doubt, because a police officer's testimony at trial was unbelievable and contrary to human experience. We affirm.

¶ 3 Following his arrest on June 20, 2015, Smith was charged by information with the offense of armed habitual criminal, unlawful use or possession of a weapon, and aggravated unlawful use of weapon. The charges arose after the recovery of two handguns, a Colt .45 and a .38 caliber revolver.

¶ 4 On the morning of June 20, 2015, Chicago Police Officer Sergio Calderon was assisting Officer Richard McCallum in the investigation of a false temporary registration on a minivan. There were two civilians at the scene, including Smith, who did not own the van. Calderon observed Smith and the other civilian speak to McCallum regarding the minivan. During this conversation, Smith asked McCallum whether items could be removed from the vehicle. After Smith received permission to enter the minivan, he entered the driver's side door, retrieved "the plate" and handed it to McCallum. Smith then went around the vehicle, opened the passenger side door and began to remove items. Calderon testified that Smith "made a point" to show him "item by item" as he removed things from the vehicle. Calderon observed that Smith was removing clothing from the vehicle and turned away, directing his attention to McCallum and the other civilian. He next heard "a metal clinking noise, [or] metallic sound" as something hit the ground. The sound came from the passenger side of the minivan where Smith was standing. Calderon turned back toward Smith and observed Smith walking away, but did not see Smith pick anything up. Smith was pressing a bundle of clothes to his chest. Calderon observed the butt of a handgun between Smith's chest and the clothing.

¶ 5 Calderon had spent several years in the military and had seen "a lot" of weapons, and nothing obstructed his view of the weapon. As Smith walked quickly toward a building, Calderon told him multiple times to stop and began to approach him, but Calderon did not pull

his service weapon or tell Smith to drop the weapon and get on the ground. Smith did not stop, entered the building, and “slammed” the door. Calderon then looked through a window. He observed Smith walk toward the back of the house and make a right before he lost sight of him. Calderon unsuccessfully attempted to gain entry into the building. A few minutes later, Smith opened the door and Calderon detained him.

¶ 6 Calderon was present when Smith was given *Miranda* warnings. Calderon then asked Smith where the gun was, and Smith took the officers to the building’s laundry room in the basement and said, “It’s there.” There, another officer recovered a .38 caliber handgun from a laundry bin. However, the butt of this handgun was not the same type that Calderon had observed Smith carrying. A further search of the laundry bin uncovered a loaded Colt .45. Calderon recognized the butt of this handgun as the one that Smith had been carrying. An assault rifle and a TEC-9 were also recovered from the basement.

¶ 7 The State then introduced into evidence Smith’s certified records of conviction for the manufacture or delivery of a controlled substance in case numbers 01 CR 28163 and 07 CR 06440. The State also introduced into evidence a letter from the Illinois State Police indicating that Smith did not have either a Firearm Owner’s Identification Card or a Firearm Concealed Carry License on June 20, 2015.

¶ 8 The trial court found Smith guilty of the unlawful use or possession of a weapon and aggravated unlawful use of weapon with regard to the Colt .45, and gave Smith “the benefit of the doubt” as to .38 caliber recover, that is, the handgun that Calderon did not recognize. The court also found Smith guilty of armed habitual criminal. In making its findings, the court stated that Calderon was a “particularly compelling and credible witness.” The court also noted that

Calderon “cautiously” and “calmly walked” toward Smith, rather than “aggravating [the situation and] making it worse than it might have been.” The trial court sentenced Smith to eight years in prison for armed habitual criminal.

¶ 9 Here, Smith contends that he was not proven guilty, beyond a reasonable doubt, of armed habitual criminal because Calderon’s testimony regarding the events leading up to his arrest was unbelievable and contrary to human experience.

¶ 10 When reviewing a challenge to the sufficiency of the evidence, the relevant question is 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. It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *People v. Bradford*, 2016 IL 118674, ¶ 12. A reviewing court will not substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses. *Id.* We will reverse a defendant’s conviction only where the evidence is so unreasonable, improbable or unsatisfactory that a reasonable doubt of guilt remains. *Id.*

¶ 11 To sustain a conviction for the offense of armed habitual criminal, the State must establish that the defendant received, sold, possessed or transferred a firearm after having been convicted of two or more qualifying offenses. See 720 ILCS 5/24-1.7 (West 2014). Smith contests only his possession of the firearm.

¶ 12 Taking the evidence in the light most favorable to the State, a rational trier of fact could have found that Smith possessed a firearm when Calderon testified that after he heard a “metallic sound,” he turned around and observed the butt of a handgun poking out from between Smith’s

body and the pile of clothing Smith was carrying. Calderon, who had seen many weapons during his military service, then followed Smith to the building from which the firearm was later recovered.

¶ 13 Smith, however, contends that it is unbelievable that he walked to, and entered the building without either dropping the clothing he was carrying or Calderon catching up to him. He also argues that it is contrary to human experience that Calderon did not chase Smith or draw his weapon. He finally argues that if he did have a firearm, it is unbelievable that he voluntarily permitted officers into the house and led them to the firearm.

¶ 14 Smith asks this court to reweigh the evidence presented at trial and come to a different conclusion. But that is not our role. To the extent Smith argues it is unlikely that he would not have dropped something on his way to the building or that Calderon would not have caught up to him, we note that Calderon testified that Smith walked away quickly and it is therefore not unbelievable that Smith was able reach, and enter, the building without dropping anything. While Smith is correct that Calderon did not run after Smith or pull his service weapon, Calderon testified that he gave Smith multiple commands to stop. Although Smith argues that it is unbelievable that Calderon did not draw his weapon when faced with a man with a handgun, Smith was not holding the weapon or threatening officers with it and the trial court's conclusion Calderon chose to act "cautiously" and "calmly" when approaching Smith rather than "aggravating" the situation is not unreasonable. The trial court found Calderon to be a "particularly compelling and credible witness," as evidenced by the finding of guilt; we will not substitute our judgment for that of the trial court on this issue. See *People v. Jones*, 2015 IL App

(1st) 142597, ¶ 20 (a reviewing court will not substitute its “judgment for that of the trier of fact on questions concerning the weight of the evidence or the credibility of the witnesses”).

¶ 15 Smith finally argues that it is unbelievable that he would open the door to officers and lead them to the location of the firearm after previously ignoring Calderon’s instructions to stop. But Smith could have realized the futility of continuing to remain in the building after Calderon observed him with the gun and determined that the path of least resistance was to show the officers where the gun was hidden. The trial court was not required to search out all possible explanations consistent with Smith’s innocence and raise them to a level of reasonable doubt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. This is not a case where the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to defendant’s guilt. Accordingly, Smith’s challenge to the sufficiency of the evidence fails and we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.