

2018 IL App (1st) 161721-U  
No. 1-16-1721  
Order filed November 15, 2018

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. 15 CR 13949
	)	
ANTHONY BARBER,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge, presiding.

---

JUSTICE GORDON delivered the judgment of the court.  
Presiding Justice McBride and Justice Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm defendant's conviction for unlawful possession of a weapon by a felon over his contention that the State failed to prove him guilty beyond a reasonable doubt; we also order his mittimus corrected to reflect the number of days he spent in presentence custody.

¶ 2 Following a bench trial, defendant Anthony Barber was convicted of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2014)) and sentenced to 42 months' imprisonment. On appeal, defendant argues that his conviction should be reversed because the

State failed to present sufficient evidence that he unlawfully possessed a firearm. He also argues that his mittimus should be corrected to reflect an additional 10 days of pretrial detention credit. We affirm defendant's conviction and order his mittimus corrected.

¶ 3 Defendant was charged by indictment with the following: one count of being an armed habitual criminal (count I), two counts of unlawful possession of a weapon by a felon (counts II and III), four counts of aggravated unlawful use of a weapon (counts IV through VII), and one count of defacing the identification marks of a firearm (count VIII). Defendant waived his right to a jury and the case proceeded to a bench trial.

¶ 4 Officer Michael Vainisi testified that, on August 8, 2015, he and his partner responded to a call regarding a "person with a gun" in the area of the 5900 and 6000 block of South Honore Street. Vainisi observed two individuals on the front porch of a residence matching the description of the person with a gun. Vainisi identified defendant as one of the individuals on the porch. Vainisi and his partner remained in their vehicle observing as other officers approached defendant on the porch. As the officers approached, Vainisi observed defendant move to the porch of the neighboring house and then jump into the gangway. Defendant ran east through the gangway. Vainisi pursued in his vehicle, driving through an alley in the direction that defendant ran. As Vainisi entered the alley, he lost sight of defendant for two or three seconds. Vainisi observed defendant emerge from the gangway, cross the alley, and enter the gangway opposite him. That gangway led to South Wood Street. Vainisi moved his vehicle closer to the gangway, again briefly losing sight of defendant. Vainisi next observed defendant as he exited the gangway onto Wood. There, defendant was apprehended by other officers with suspect cannabis in his hand. Vainisi heard defendant say "All I have is this bag of weed."

¶ 5 After defendant was in custody, Vainisi spoke with an individual in the area. Vainisi ascertained that the individual wished to remain anonymous. After speaking with the individual, Vainisi searched their backyard and, on the back porch, recovered a .22-caliber revolver. Vainisi estimated that the back porch was “12 to 15 feet” from the gangway he observed defendant run through. Vainisi testified that, although he observed defendant in the area of the gangway near the backyard where he found the gun, he had lost sight of defendant at the time that defendant would have been in the portion of the gangway directly parallel to the backyard. Vainisi did not observe defendant throw a gun into the backyard. He also did not observe anyone in the area of the gangway other than defendant until after defendant was arrested.

¶ 6 Vainisi transported defendant to the 7th District police station. After Officer Zydek informed defendant of his *Miranda* rights, defendant told Vainisi that he had purchased the revolver from a friend and kept it for protection. Vainisi testified that the revolver was loaded with six live rounds and its serial number had been “scratched off.” The revolver was inventoried according to department procedures.

¶ 7 On cross-examination, Vainisi testified that the call he responded to described the perpetrators as “two male blacks with white shirts.” Defendant was not wearing a white shirt when he was arrested. Regarding defendant’s statement, Vainisi explained that another officer wrote down defendant’s responses and it was included in a report. Defendant was not given the chance to read the report. On redirect examination, Vainisi testified that the other individual on the porch with defendant did not flee when officers arrived.

¶ 8 Detective Beth Svec testified that, on August 8, 2015, she interviewed defendant alone at the police station. After she read defendant his *Miranda* rights, he agreed to speak with her.

Defendant told Svec that he was on the porch with family when an officer arrived and “snatched” him off the porch. Defendant jumped off the porch and ran down the gangway. Defendant told Svec that he “tossed” a gun as he ran through the gangway. He explained to Svec that the gun belonged to his grandfather. When officers apprehended defendant, he told them that he ran because he possessed marijuana.

¶ 9 A few hours later, Svec participated in another interview with defendant and other officers. During this interview, Svec stood behind the two-way glass in the interview room. Standing behind the glass, she showed defendant the .22-caliber revolver recovered from the scene and asked him to identify if it was the gun that he had tossed in the gangway. Defendant positively identified the revolver.

¶ 10 On cross-examination, Svec testified that she wrote down defendant’s statement during the interview. She acknowledged that she did not give defendant a chance to read the statement. Svec explained that, when defendant identified the revolver, she was standing a foot away from him.

¶ 11 The State introduced a document from the Illinois State Police, indicating that defendant did not have a firearm owner’s identification card or a concealed carry license. The State also introduced a certified copy of defendant’s conviction for armed robbery (No. 04 CR 18991).

¶ 12 Defendant moved for a directed verdict on the armed habitual criminal count, which the court granted. Defendant also moved for a directed verdict on the remaining counts, arguing that the State had failed to prove the *corpus delicti* of the offenses where the only evidence connecting defendant to the gun was his own statement. The court denied defendant’s motion.

¶ 13 Based on this evidence, the court found defendant guilty of the remaining counts. The court merged counts III through VIII into count II (unlawful possession of a weapon by a felon). Defendant filed a motion for a new trial, arguing, *inter alia*, that the State did not present sufficient independent evidence to corroborate his out-of-court admission that he possessed a gun. The court denied defendant's motion for a new trial and sentenced defendant to 42 months' imprisonment. Defendant filed a motion to reconsider sentence, which the court denied.

¶ 14 On appeal, defendant first argues that the State failed to prove him guilty beyond a reasonable doubt because it failed to prove the *corpus delicti* of his offenses. Specifically, defendant argues that the State failed to provide sufficient independent evidence to corroborate his out-of-court admissions that he possessed a gun. He therefore asks this court to reverse his conviction.

¶ 15 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)). 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. *Brown*, 2013 IL 114196, ¶ 48.

¶ 16 Here, defendant was convicted of unlawful possession of a firearm by a felon. In order to convict defendant, the State was required to prove that defendant possessed a firearm after having been previously convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2014).

¶ 17 Defendant does not dispute that he was a convicted felon and that possessing a firearm would have been sufficient to sustain his conviction. Rather, he maintains that the State failed to provide sufficient independent evidence to corroborate his out-of-court admissions that he possessed the revolver recovered on the scene and, therefore, the State failed to prove the *corpus delicti* of the offense.

¶ 18 “Under the law of Illinois, proof of an offense requires proof of two distinct propositions or facts beyond a reasonable doubt: (1) that a crime occurred, *i.e.*, the *corpus delicti*; and (2) that the crime was committed by the person charged.” *People v. Sargent*, 239 Ill. 2d 166, 183 (2010). “[P]roof of the *corpus delicti* may not rest exclusively on a defendant’s extrajudicial confession, admission, or other statement.” *Sargent*, 239 Ill. 2d at 183. If the State relies on a defendant’s statements, the State must supplement those statements with “corroborating evidence independent of the defendant’s own statement[s].” *Sargent*, 239 Ill. 2d at 183. The corroborating evidence need not be sufficient in itself to prove the offense beyond a reasonable doubt. *Sargent*, 239 Ill. 2d at 183. Instead, it must merely “tend to show” that the offense occurred. (Emphasis omitted.) *People v. Lara*, 2012 IL 112370, ¶ 18. “If a confession is not corroborated in this way, a conviction based on the confession cannot be sustained.” *Sargent*, 239 Ill. 2d at 183.

¶ 19 After viewing the evidence in the light most favorable to the State, we find that there was sufficient independent evidence to corroborate defendant’s admission that he possessed the revolver and discarded it as he fled police. Stated differently, the independent corroborating evidence tended to show that defendant committed the offense of unlawful possession of a weapon by a felon. The record shows that Vainisi witnessed the majority of defendant’s flight from police. Vainisi observed defendant run through the gangway on South Honore, briefly

losing sight of him until he emerged into the alley. From there, Vainisi observed defendant proceed through the opposite gangway, again briefly losing sight of him before he emerged onto South Wood Street. After speaking with an anonymous citizen, Vainisi recovered a revolver on the back porch of the building located 10 to 12 feet from the gangway. Vainisi did not see anyone else enter that gangway during the time defendant fled and he recovered the revolver. Furthermore, both Vainisi and Svec testified that defendant admitted to tossing a weapon as he fled from the police through the gangway. Svec testified that defendant positively identified the recovered revolver as the weapon that he “tossed.” Although Vainisi did not witness defendant discard a weapon, his eyewitness testimony does “tend to show” that defendant possessed the weapon and discarded it as he fled the gangway. See *People v. Lara*, 2012 IL 112370, ¶ 51 (“[W]e hold that the *corpus delicti* rule requires only that the corroborating evidence correspond with the circumstances recited in the confession and tend to connect the defendant with the crime.”).

¶ 20 In reaching this conclusion, we are not persuaded by defendant’s reliance on *People v. Harris*, 2012 IL App (1st) 100077. Here, unlike in *Harris*, the State did not rely on a hearsay statement as the necessary corroborating evidence to support the *corpus delicti* of an offense. Rather, Vainisi testified to events that he actually witnessed, such as defendant fleeing when officers approached him and that he ran down the gangway a short distance from where the revolver was recovered. Accordingly, the State presented sufficient evidence to sustain defendant’s conviction for unlawful possession of a weapon by a felon.

¶ 21 Defendant also contends, and the State agrees, that his mittimus should be amended to reflect that he has 283 days of presentence custody credit to be applied against his 42-month

custodial sentence. A defendant “shall be given credit on the determinate sentence or maximum term and the minimum period of imprisonment for the number of days spent in custody as a result of the offense for which the sentence was imposed.” 730 ILCS 5/5-4.5-100(b) (West 2014). The record demonstrates that defendant was arrested on August 8, 2015, and remained in custody through the date of his sentencing hearing on May 17, 2016. Thus, defendant spent 283 days in custody prior to sentencing and not 273 days as ordered by the trial court. Accordingly, pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to amend defendant’s mittimus to reflect 283 days of credit.

¶ 22 For these reasons, we affirm the judgment of the circuit court of Cook County and order defendant’s mittimus corrected.

¶ 23 Affirmed; mittimus corrected.