

2018 IL App (1st) 162197-U
No. 1-16-2197
Order filed December 17, 2018

First Division

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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 15141
)	
TREYVON PATTON,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge, presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justices Griffin and Walker concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's conviction for aggravated assault of a peace officer affirmed where the officer's testimony that defendant pointed a firearm at him was credible.
- ¶ 2 Following a bench trial, defendant Treyvon Patton was convicted of aggravated assault of a peace officer and sentenced to three years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because the officer's testimony that defendant pointed a firearm at him is contrary to logic and human experience where a team

of officers was incapable of finding the firearm, which defendant had merely 60 seconds to hide or discard. We affirm.

¶ 3 At trial, Chicago police officer Brian Collins testified that about 8 a.m. on August 30, 2015, he and his partners, Officers Murray¹ and Juan Rocha, drove in a marked police vehicle to a residence on West Hubbard Street to follow up on a report of a domestic battery from the previous day. When the officers arrived at the address, defendant made eye contact with them and attempted to enter the residence. Collins, in full police uniform, exited his vehicle. As defendant walked down the front stairs, Collins identified himself as an officer and asked defendant to come over to speak with him. Defendant pushed open the front gate of the residence and fled down the street. Collins chased defendant.

¶ 4 Collins was 15 to 20 meters behind defendant as they ran through an alley. Defendant ran around a house on Kinzie Street, at which time Collins lost sight of him. Collins ran around the house next door in an attempt to cut off defendant. Collins held his taser in position. As Collins turned the corner of the house, he observed that it had a split-level porch. Collins chased defendant “underground around underneath” the porch. As Collins turned the corner, he “looked low.” Collins heard something above him. Collins looked onto the porch above and observed defendant standing there pointing a black semiautomatic handgun at Collins’ head. The gun was “a couple of feet at most” from Collins’ head. Collins testified that he feared for his life and “thought I was going to die.” Prior to that moment, Collins had not observed defendant with a handgun, nor had defendant made any movements towards his waistband as though he had a gun.

¹ Officer Murray’s first name does not appear in the record.

¶ 5 Collins immediately raised his taser, pulled the trigger, and took cover behind the corner of the house. Only one prong from the taser made contact with defendant, which was not enough to neutralize him. Collins dropped his taser and drew his firearm. He turned the corner and observed that defendant had entered the house and was kicking the door closed behind him.

¶ 6 Collins waited for Murray because he did not want to enter the house alone for safety reasons. Murray arrived in approximately one minute. Murray opened the door and was met by the homeowner, who allowed the officers inside the house. Murray entered the first bedroom as Collins continued walking through the house. Murray called out that he had detained defendant in the bedroom. Collins entered the bedroom and observed Murray placing defendant in custody.

¶ 7 Thereafter, Collins, Murray and other officers searched the residence for defendant's firearm. The gun was never recovered. Collins had experience with firearms from serving in the Army for more than three years, in addition to his police experience. He also previously worked in a firearms store where he assisted with training classes and sales, as well as cleaning and repairing firearms. Collins testified that defendant's black handgun resembled a Beretta 92 FS, or "add iron" as it was known in the military. Based on his experience and training, Collins testified that the gun appeared to be "completely real," and was "not at all" a toy or plastic gun.

¶ 8 On cross-examination, Collins testified that when he ran around the neighboring house, he lost sight of defendant for "less than 20 seconds." Defendant pointed his gun directly at Collins, and "had the drop on [him] at that point." When Collins was "presented with that death threat," the only weapon he held in his hand was the taser, which he attempted to deploy. Collins acknowledged that defendant did not shoot at him. Defendant entered the home with the firearm. Collins entered the home approximately one minute after defendant. Upon entering the home and

walking down the hallway, defendant was found hiding in the first bedroom on the right. About 10 officers searched the entire home and its perimeter, but no weapon was found.

¶ 9 Chicago police detective Matthew Schenatzki testified that he interviewed defendant a few hours after his arrest. After waiving his *Miranda* rights, defendant stated that he was on his porch when the police arrived, and ran because he was “dirty.” Schenatzki asked defendant to explain what he meant by “dirty.” Defendant stated “I was carrying a gun.” Defendant described the gun as a black .22-caliber. Defendant stated that he tossed the gun while he was running, and did not have the gun when he was on the porch at the house on Kinzie. Defendant denied pointing a gun at Collins, and denied entering the house with a gun.

¶ 10 The trial court found that Collins was particularly conscientious and aware of his surroundings. It further found that the fact that defendant did not shoot Collins was not dispositive of the case, but only showed that he was not that coldhearted or crazy. The court noted that defendant acknowledged that he had a gun, and found that defendant used that gun in the manner described by Collins. Accordingly, the trial court found defendant guilty of aggravated assault of a peace officer.

¶ 11 At sentencing, Collins testified that he served in the military in Iraq and Afghanistan. He further testified “the closest I ever came to death was the day the defendant put the gun in my face.” The trial court sentenced defendant to three years’ imprisonment.

¶ 12 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because Collin’s testimony that defendant pointed a firearm at him is contrary to logic and human experience where a team of 10 officers was incapable of finding the firearm, which defendant had merely 60 seconds to hide or discard. Defendant concedes that he possessed

a gun that morning. He claims, however, that he discarded the firearm before Collins caught up to him, which is why the police could not find the gun inside the house. Defendant argues that the presence of a firearm is an essential element of the offense, and the only evidence that he possessed a gun at the house is Collins' testimony, which is unworthy of belief.

¶ 13 The State responds that the trial court found Collins' testimony credible, and thus, his testimony alone was sufficient to prove defendant guilty. The State further argues that Collins' testimony was partially corroborated by defendant's statement. The State asserts that Collins' testimony is not contrary to human experience where defendant had one minute to dispose of the gun inside the home, which is longer than the 20 seconds he had to discard it outside.

¶ 14 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.

¶ 15 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. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 16 To prove defendant guilty of aggravated assault of a peace officer as charged in this case, the State was required to show that he knowingly, and without lawful authority, engaged in conduct which placed Collins, a Chicago police officer performing his official duties, in reasonable apprehension of receiving a battery, and that he used a firearm, other than by discharging it. 720 ILCS 5/12-2(c)(6) (West 2014).

¶ 17 Here, viewed in the light most favorable to the State, the record shows that the evidence was sufficient for the trial court to find defendant guilty of aggravated assault of a peace officer. Collins testified that while dressed in full police uniform, he identified himself as an officer and asked defendant to come over to speak with him. Defendant fled down the street. Collins chased defendant down Hubbard Street, through an alley, and to a house on Kinzie Street that had a split-level porch. As Collins turned the corner of the house and "looked low," he heard a noise above him. Collins looked up onto the porch and observed defendant pointing a black semiautomatic handgun at Collins' head. The gun was "a couple of feet at most" from Collins' head. Collins testified that he feared for his life and "thought I was going to die." Based on Collins' extensive experience with firearms with both the military and the police, Collins knew that the firearm was "completely real." In a statement to Schenatzki, defendant admitted that he

possessed a gun that morning, but claimed he discarded it while running and denied pointing it at Collins. The trial court found Collins' testimony credible, and found defendant guilty.

¶ 18 Defendant's argument that Collins' testimony is contrary to logic and human experience because the firearm was not recovered is unpersuasive. Collins testified that a team of about 10 officers searched the inside and perimeter of the house, but were unable to locate the firearm. Collins also testified, however, that after defendant entered the house and kicked the door closed, Collins waited outside for one minute for Murray to arrive before entering. Collins explained that he did so for safety reasons, believing that defendant had entered the house armed with the firearm. Upon entering the home and walking down the hall, Murray found defendant hiding in a bedroom. It is possible that during the one minute, defendant secreted the gun somewhere inside the house before Collins and Murray entered, and the police failed to find it. We note that there is no indication in the record as to whether defendant had any familiarity with this particular house or the homeowner. It is unknown what actions defendant or the homeowner took behind closed doors during the minute that Collins waited outside. It was the trial court's duty to weigh the evidence and determine the veracity of Collins' testimony. *Siguenza-Brito*, 235 Ill. 2d at 228. Here, we find no basis to disturb the court's finding that Collins' testimony was credible.

¶ 19 In making this determination, we find defendant's reliance on *People v. Shaw*, 2015 IL App (1st) 123157, is misplaced. In *Shaw*, this court reversed the defendant's robbery conviction after finding that the victim's testimony that the defendant robbed him at gunpoint was implausible. *Shaw*, 2015 IL App (1st) 123157, ¶ 30. There, the police searched the defendant and the CTA station minutes after the alleged robbery occurred, but could not find a gun or the money the victim claimed he gave the defendant. *Id.* ¶ 10. This court found that the surveillance

videos from the CTA station as well as the testimony from the police officers belied the possibility that the defendant had any opportunity to hide or dispose of the handgun, and thus, the only reasonable conclusion was that the defendant never possessed a gun. *Id.* ¶ 26. We further found that the victim's testimony was significantly impeached and directly contradicted by the surveillance videos. *Id.* ¶ 27. Consequently, we concluded that no reasonable trier of fact could have found the victim's testimony credible. *Id.* ¶ 30.

¶ 20 Unlike *Shaw*, in this case, defendant had an opportunity to hide or dispose of the handgun after he entered the house and before the officers entered a minute later. Moreover, Collins' testimony was not impeached. Although defendant claimed in his statement that he disposed of the gun while he was running and denied pointing it at Collins, the trial court found that Collins' testimony that defendant pointed a gun at his head was credible. Based on this record, we find that the trial court's credibility determination was reasonable. *Siguenza-Brito*, 235 Ill. 2d at 228.

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

¶ 22 Affirmed.