2019 IL App (1st) 161439-U
Order filed: March 1, 2019

FIRST DISTRICT
Fifth Division

No. 1-16-1439

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 17714
	)	
JEREMY LEWIS,	)	Honorable
	)	Frank Zelezinski,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed the judgment of the circuit court where the evidence was sufficient to convict defendant of two counts of armed robbery while armed with a firearm.

¶ 2 Following a 2015 bench trial, defendant-appellant, Jeremy Lewis, was convicted of two counts of armed robbery and sentenced to concurrent prison terms of 27 years. On appeal, defendant contends that the evidence was insufficient to establish that he was armed with a firearm during the offenses and, thus, his convictions should be reduced to robberies. For the reasons stated below, we affirm.[1]

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1 In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

¶ 3 Defendant was charged in relevant part with two counts of armed robbery committed on or about October 20, 2012, in violation of 720 ILCS 5/18-2(a)(2) (West 2012), for taking by force or threat of force while armed with a firearm the cell phone and miscellaneous property belonging to Matthew Lewis and an iPad belonging to Jamal Love.

¶ 4 At trial, Mr. M. Lewis and Mr. Love testified that, on the day in question, they and a friend went to the house of a man named "Nikko" to get tattoos. Defendant was also there. While the friend of Mr. M. Lewis and Mr. Love was being tattooed, they listened to music on Mr. Love's iPad.

¶ 5 Between 5 and 6 p.m., Mr. M. Lewis and Mr. Love drove to a nearby McDonald's restaurant. When they returned to Nikko's house, Mr. M. Lewis was holding Mr. Love's iPad and the defendant was sitting alone on the porch. Defendant then told Mr. M. Lewis, "I'm going to need you all to come to the back," and pulled out a gun from a book bag he had. Mr. M. Lewis testified that he was "about five stairs" away when defendant drew the gun, and he described the gun as a "silver and black" Ruger pistol, not a revolver, though he was "[n]ot really" familiar with guns at that time. Mr. Love described the gun as "black and silver" and made of steel rather than plastic. Mr. Love could not recall if it was a revolver or automatic because he is not "good with guns" though he "know[s] what a gun looks like since he had previously seen guns "up close."

¶ 6 Mr. M. Lewis and Mr. Love testified that they walked behind the house with defendant because defendant had a gun. Once the three men were on the side of the house, defendant asked Mr. M. Lewis for the iPad. Mr. M. Lewis complied and placed the iPad into the book bag which defendant was holding. Defendant then asked Mr. M. Lewis for his iPhone. Although the iPhone

was in Mr. Lewis's pocket, he told defendant that it was in Mr. Love's vehicle. The three men then walked to Mr. Love's vehicle. Once there, Mr. M. Lewis went inside the vehicle and reached under the seat. At that time, defendant "flinched back," went behind a tree, and pulled out his gun for the second time. It was then that Mr. M. Lewis gave defendant his iPhone. Defendant then ordered Mr. M. Lewis and Mr. Love to walk to the backyard and empty their pockets. Defendant took $5 and a hoodie from Mr. M. Lewis and car keys from Mr. Love. After the two men had nothing else to give, defendant told the men to "run off," so they ran toward the front of the house and onto the next block.

¶ 7 Mr. Love called a friend to drive them to Mr. Lewis's vehicle, then Mr. M. Lewis and Mr. Love drove to retrieve Mr. Love's vehicle. When they arrived at the location where Mr. Love's vehicle was parked, they found Mr. Love's keys placed on top of the vehicle. Mr. M. Lewis then drove to the Harvey Police Department to report the crime.

¶ 8 Harvey police corporal Barbee testified that he was assigned to investigate the incident and interviewed Mr. M. Lewis and Mr. Love. At the interview, Mr. M. Lewis gave him a photograph of the person who robbed him. Corporal Barbee transmitted the photograph to the Illinois State Police and later received information that the person in the photograph was defendant. Thereafter, Corporal Barbee assembled a photographic array of six men, including defendant, and arranged for the victims to come to the station to view it. On October 31, 2012, Mr. M. Lewis and Mr. Love viewed the photographic array separately and they both identified defendant as the person who robbed them.

¶ 9 Harvey police detective, J. Crocker, also testified that, on August 21, 2013, Mr. M. Lewis and Mr. Love separately viewed a line-up at the police station where they both identified

defendant as the person who robbed them.

¶ 10 In summarizing the evidence, the trial court noted that the gun was not recovered, but Mr. M. Lewis and Mr. Love identified the object that defendant displayed as a gun. The court stated:

> "Mr. Love indicated that he does now know a lot about guns, but he knew the color of the gun and the fact that it was metallic and said it was a gun. [Mr. Lewis] indicated that, in fact, it was a gun. He knew a bit more about it. He indicated it actually might be a Ruger, which is a pistol."

The court expressly found the testimony of Mr. M. Lewis and Mr. Love to be credible.

¶ 11 In his posttrial motion, defendant challenged the sufficiency of the evidence. Counsel, in argument, stated that no gun was found. The court denied the motion and sentenced defendant to concurrent terms of 27 years' in prison. Defendant appealed.

¶ 12 On appeal, defendant contends that the evidence was insufficient to establish that he was armed with a firearm during the robberies and thus asks that his convictions be reduced to simple robberies.

¶ 13 A person commits robbery when he knowingly takes property from a person by the use of force or by threatening the imminent use of force. 720 ILCS 5/18-1(a) (West 2012). A person commits armed robbery when he does so while armed with a firearm. 720 ILCS 5/18-2(a)(2) (West 2012). A "firearm" means "any device designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas," with the exception of air guns and spring guns which fire "a single globular projectile" of no more than 0.18 inches at less than 700 feet per second, paintball guns, flare guns, nail and rivet guns, and antique firearms designated by the Illinois State Police. 430 ILCS 65/1.1 (West 2012); 720 ILCS 5/2-7.5 (West 2012).

¶ 14 On a claim of insufficient evidence, this court must determine whether, taking 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. Harris*, 2018 IL 121932, ¶ 26. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and it is better equipped than the reviewing court to do so as it heard the evidence. *Id.*; *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. Thus, we do not retry a defendant. *People v. Newton*, 2018 IL 122958, ¶ 24. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *Id.* Stated another way, the State need not disprove or rule out all possible factual scenarios at trial. *Id.* ¶ 27. The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances if the evidence as a whole satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Id.* ¶ 60. A conviction will be reversed only if the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Harris*, 2018 IL 121932, ¶ 26.

¶ 15 It should also be noted that, generally, "the testimony of a single witness, if positive and credible, is sufficient to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). More specifically, our supreme court has addressed the issue of the sufficiency of the evidence from which a trier of fact may infer that an object used in a crime was a gun or firearm. In *People v. Washington*, 2012 IL 107993, the court affirmed convictions for (in relevant part) aggravated kidnapping and armed robbery when the victim had a clear view of the object pointed at him and testified that it was a gun, though no gun or gun-like object was recovered. The court ruled,

given the victim's "unequivocal testimony and the circumstances under which he was able to view the gun, the jury could have reasonably inferred that defendant possessed a real gun." *Id.* ¶ 36.

¶ 16 Most recently, in *People v. Wright*, 2017 IL 119561, our supreme court considered whether its rationale in *Washington*, considering a version of the armed robbery statute referring broadly to a "dangerous weapon," applies to the present statute specifically concerning a "firearm." *Id.* ¶¶ 71-77. Our supreme court concluded that it does apply, finding:

> "that the evidence proved that the defendant in *Washington* possessed 'a dangerous weapon.' There, we relied on the testimony of a single eyewitness and concluded that a rational trier of fact could infer from the testimony that the defendant possessed a 'real gun.' Our disposition is controlled by the same rationale here." *Id.* ¶ 76.

In *Wright*, three witnesses described the object at issue as a gun, and two of them testified to experience or familiarity with guns and gave a further description of the gun. *Id.* In light of this evidence, our supreme court found the evidence of armed robbery to be sufficient. *Id.* ¶ 77.

¶ 17 This court has also considered the sufficiency of the evidence from which a trier of fact may infer that an object used in a crime was a gun or firearm. This court has consistently held that eyewitness testimony that the offender possessed a firearm, combined with circumstances under which the witness was able to view the weapon, is sufficient to allow a reasonable inference that the weapon was actually a firearm. *People v. Davis*, 2015 IL App (1st) 121867, ¶ 12 (collecting cases).

¶ 18 In *Davis*, two witnesses to separate robberies testified to the defendant holding a "big," "dark-colored" gun in one incident and a "silver," "shiny," and "real gun" in the other, with both

witnesses denying that the gun they saw was the toy gun found upon the defendant's arrest, and the witness to the first incident admitting to not being familiar with guns. *Id.* ¶ 11. In that case, this court found the witnesses testimony sufficient to reasonably infer the defendant's use of a gun in both incidents. *Id.* ¶ 12.

¶ 19 In *People v. Malone*, 2012 IL App (1st) 110517, a witness testified to seeing a defendant holding a black, or black and silver gun during a robbery and hearing "something heavy hit the counter" when the defendant rested the gun on a counter. Despite the witness admitting that this gun "was the first one" they ever saw, we affirmed the defendant's armed robbery conviction. *Id.* ¶¶ 4, 51. We did so over the defendant's argument that the witness did not provide a detailed description of the gun and did not testify that the robber threatened to kill her. *Id*. ¶ 41.

¶ 20 Here, like in *Davis* and *Malone*, both witnesses, Mr. M. Lewis and Mr. Love, gave credible eyewitness testimony. Both of them testified unequivocally that defendant produced a gun from his bag, and each witness testified that his compliance with defendant's demands was due to defendant's gun. Moreover, both Mr. M. Lewis and Mr. Love described the gun as black and silver. Mr. M. Lewis added that it was a Ruger pistol rather than a revolver, and Mr. Love added that it was metal. While they professed to be not particularly familiar with guns, Mr. M. Lewis identified defendant's gun by brand or manufacturer, while Mr. Love testified that he had seen guns "up close" in person, rather than merely on television.

¶ 21 Taking the evidence in the light most favorable to the State, as we must, and consistent with *Washington*, *Wright*, *Malone*, and *Davis*, we conclude that a trier of fact could reasonably infer from such evidence that the defendant was armed with a firearm during the robberies.

¶ 22 Accordingly, the judgment of the circuit court is affirmed.

¶ 23 Affirmed.