

2019 IL App (1st) 161566-U

No. 1-16-1566

Order filed May 17, 2019

Fifth 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 C6 60830
	)	
MARCELL ALEXANDER,	)	Honorable
	)	Michele M. Pitman,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE HALL delivered the judgment of the court.  
Justices Hoffman and Lampkin concurred in the judgment.

**ORDER**

¶ 1 *Held:* The evidence was sufficient to prove defendant guilty of aggravated unlawful use of a weapon and unlawful use of a weapon by a felon where the trial court did not err in crediting the testimony of two police deputies who observed defendant remove a gun from his waistband while fleeing.

¶ 2 Following a bench trial, defendant Marcell Alexander was found guilty of two counts of aggravated unlawful use of a weapon and one count of unlawful use of a weapon by a felon. He was sentenced to four years' imprisonment on one of the aggravated unlawful use of a weapon

counts. On appeal, defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt. In particular, he claims that the testimony of police deputies who testified that they saw him remove a gun from his waistband while fleeing was unreliable. We affirm.

¶ 3 Defendant was charged in a three-count information with aggravated unlawful use of a weapon predicated on possessing a loaded gun without having a valid concealed carry license (720 ILCS 5/24-1.6(a)(1), (3)(A-5) (West 2012)) (count I); aggravated unlawful use of a weapon based on possessing a gun without a currently valid Firearm Owner's Identification (FOID) card (720 ILCS 5/24-1.6(a)(1), (3)(C) (West 2012)) (count II); and unlawful possession of a weapon by a felon for possessing a gun after having been convicted of a felony (720 ILCS 5/24-1.1(a) (West 2012)) (count III). The charges arose from an incident on June 24, 2014, in Harvey, Illinois.

¶ 4 At trial, Harvey deputy police chief Jason Banks testified that, on the afternoon of June 24, 2014, he was patrolling the area around 15110 Turlington Avenue in an unmarked SUV. Banks sat in the front passenger's seat, Deputy Chief Mike Neil drove, and Deputy Chief Greg Thomas rode in the back seat. As they drove north on Lexington, the street directly west of Turlington Avenue, Banks noticed approximately 10 people congregating outside the house at 15110 Turlington Avenue. He explained that he could see the group because Turlington Avenue is "pretty desolate," with many torn down homes and an open field directly north of the house. As the SUV approached the residence and pulled into a driveway next to the house, the group began to disperse. Banks saw defendant, whom he identified in court, stand up from a chair near the porch, pull a black revolver from his waistband, and run into the house. Banks testified that

defendant starting running “once it was obvious that we were stopping” and that he “probably” had a foot on the ground when defendant ran. Banks was 15 feet away from defendant and he did not see anyone else run into the house.

¶ 5 According to Banks, Thomas followed defendant into the house while Banks ordered the other people to the ground. They complied, so he did not put any of them in handcuffs, but at least seven more police officers eventually arrived to help secure the scene. Banks entered the house approximately one minute later and went into a bedroom to the right of the front door, where he saw Thomas handcuffing defendant. The same gun that defendant pulled out of his waistband, which Banks identified in court, was lying on the bed. Banks did not see defendant toss the gun onto the bed. On cross-examination, Banks testified he believed that defendant wore a white shirt, but could not remember what pants he wore.

¶ 6 Thomas testified that as the SUV approached the house, he saw defendant, whom he identified in court, stand up, pull a black revolver from his waistband, and run into the house. Defendant was the only person he saw run inside. Thomas followed defendant into the bedroom to the right of the front door, and saw him toss the gun onto the bed. Thomas then placed him in handcuffs and recovered the gun, which was loaded with six live rounds. He did not submit the gun for forensic testing.

¶ 7 At the police station, Thomas and Officer Andrew Wallace advised defendant of his *Miranda* rights. Defendant signed a form stating that he understood his rights, and he agreed to provide a written statement. Thomas typed the statement immediately after interviewing defendant and gave him a chance to review and revise the document before signing it. Both the form and statement were entered into evidence.

¶ 8 The statement consists of two typed pages. The first page contains the heading “Statement of Marcell Alexander,” five typed paragraphs, and six hand-drawn diagonal lines below the typing. Below the diagonal lines are the signatures of Thomas, Wallace, and defendant. Their initials also appear in two places where minor corrections were made to the typed text. The second page of the statement contains one typed paragraph above more hand-drawn diagonal lines. Below the lines are the signatures of Thomas, Wallace, and defendant. Thomas testified that he drew the diagonal lines below the text to indicate where the statement ended. He explained the purpose of these lines to defendant, who acknowledged that he understood before signing the statement.

¶ 9 The fifth paragraph on the first page states that defendant’s brother drove him to the house on Turlington Avenue to film a music video. He stood in front of the house with several other people he did not know. Approximately 15 minutes later, a tan SUV approached the residence. A man said, “There goes the police,” and threw a gun into defendant’s lap. Defendant then ran inside the house with the gun because “he did not want to get locked up for someone else[’s] gun.” He threw the gun onto the bed in a bedroom located to the right of the front door. A photograph of the gun, signed by defendant and the police officers, was attached to his statement.

¶ 10 On cross-examination, Thomas acknowledged that he did not specify in his police report or in his testimony at a preliminary hearing that defendant was seated when he first saw him. Thomas also testified that he believed defendant was wearing a black T-shirt and black shorts, but could not be certain without reviewing his report.

¶ 11 The State entered into evidence a document from the Illinois State Police certifying that defendant had not been issued a FOID card or concealed carry license prior to March 10, 2015. The State also entered a certified copy of defendant's felony conviction for possession of cannabis from 2010. The State then rested and defendant moved for a directed finding, which the trial court denied.

¶ 12 Defendant testified that his friend's girlfriend drove him to the house on Turlington Avenue. He had never been to the house before, but had been hired to record a music video there. About 10 other people were outside the house as defendant set up his camera. When a tan SUV pulled into the driveway, defendant thought "it was about to be a gang retaliation." A few people, including defendant, ran into the house. Defendant testified that he held his camera as he ran inside. The last person inside the house locked the front door. Outside the house, police announced themselves and threatened to call DCFS. Someone unlocked the door, and the police escorted everybody out of the house and placed them in handcuffs. The police searched the house and found a gun. They asked the group about their criminal histories, and defendant was the only one who admitted that he had a prior felony conviction. The police then transported him to the police station.

¶ 13 Defendant further testified that Thomas and another officer advised him of his *Miranda* rights and questioned him. Defendant told the officers that he ran inside because he feared there would be a "gunfight" between the people at the house and the people in the SUV. He denied stating that somebody threw a gun into his lap or that he handled a gun at any point during the incident. He added that he recognized only some of the paragraphs and his signature on his typed statement, and that the fifth paragraph and the diagonal lines at the bottom of both pages were

not there when he signed the statement. On cross-examination, defendant acknowledged signing the photograph of the gun, but stated that he only signed it in order to confirm that it depicted the gun that the police retrieved from the house. Following this testimony, the defense introduced four photographs of several handcuffed men sitting on the ground in front of 15110 Turlington Avenue. The defense then rested.

¶ 14 In rebuttal, the State recalled Thomas. He denied adding text or lines to defendant's written statement once defendant signed it. Additionally, the State asked the trial court to consider defendant's prior felony conviction for purposes of impeachment.

¶ 15 Following closing arguments, the court found that Banks and Thomas were credible and that defendant was not credible. The court stated that it did not believe defendant's version of events or that police added the "incriminating parts" of the typed statement only after he signed it. The court found defendant guilty on all counts.

¶ 16 Defendant's posttrial motion challenged, among other things, the sufficiency of the evidence. The court denied the motion, reiterating that the State met its burden of proof beyond a reasonable doubt.

¶ 17 Following a sentencing hearing, the court merged the counts into a single count of aggravated unlawful use of a weapon predicated on possessing a gun without a valid FOID card (count II), and sentenced defendant to four years' imprisonment. The trial court denied defendant's motion to reconsider sentence, and this appeal followed.

¶ 18 On appeal, defendant contends that the evidence was insufficient to find him guilty beyond a reasonable doubt of either aggravated unlawful use of a weapon or unlawful use of a weapon by a felon. In particular, he argues that the testimony of Banks and Thomas was

inconsistent as to when he fled and what he wore. Defendant also argues that their testimony was contrary to human experience because they testified that defendant revealed a hidden gun and attempted to dispose of it while the police were present. In response, the State contends that any minor inconsistencies in the deputies' testimony do not create reasonable doubt of defendant's guilt, and that their description of defendant's conduct was consistent with human nature.

¶ 19 The standard of review on a challenge to the sufficiency of the evidence is 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. Gray*, 2017 IL 120958, ¶ 35. It is the trier of fact's responsibility to weigh, resolve conflicts in, and draw reasonable inferences from the testimony (*People v. Bradford*, 2016 IL 118674, ¶ 12), as it is in the best position to make those determinations because it saw and heard the witnesses (*People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007)). Accordingly, we do not substitute our judgment for that of the trier of fact on issues of witness credibility and weight of the evidence. *Bradford*, 2016 IL 118674, ¶ 12. We will reverse a conviction only where the evidence is so improbable, unreasonable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Gray*, 2017 IL 120958, ¶ 35.

¶ 20 Relevant here, a person commits aggravated unlawful use of a weapon when, absent certain inapplicable exceptions, he knowingly carries any firearm on his person without having been issued a valid FOID card. 720 ILCS 5/24-1.6(a)(1), (3)(C) (West 2012). When committed by a felon, the offense is a Class 2 felony punishable by a prison sentence of three to seven years. 720 ILCS 5/24-1.6(d)(3) (West 2012). A person commits unlawful use of a weapon by a felon when he knowingly possesses on his person any firearm after having been convicted of a felony.

720 ILCS 5/24-1.1(a) (West 2012). As charged here, unlawful use of a weapon by a felon is a Class 3 felony punishable by a prison sentence of 2 to 10 years. 720 ILCS 5/24-1.1(e) (West 2012). On appeal, defendant only challenges the sufficiency of the evidence with respect to the element of possession.

¶ 21 When, as here, a conviction depends on eyewitness testimony, we must decide whether any trier of fact could reasonably accept it to be true beyond a reasonable doubt. *Gray*, 2017 IL 120958, ¶ 36. The positive testimony of a single credible witness is sufficient to sustain a conviction. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). A reviewing court may find testimony insufficient where it is “ ‘contrary to the laws of nature or universal human experience.’ ” *Gray*, 2017 IL 120958, ¶ 48 (quoting *People v. Coulson*, 13 Ill. 2d 290, 297 (1958)). However, eyewitness testimony is insufficient only where the record compels us to conclude that no reasonable person could believe it. *Gray*, 2017 IL 120958, ¶ 36.

¶ 22 Here, taking the evidence in the light most favorable to the State, we find that a rational trier of fact could find defendant guilty of aggravated unlawful use of a weapon and unlawful use of a weapon by a felon. Banks and Thomas, whom the court expressly found to be credible, both testified that, as their SUV approached 15110 Turlington Avenue, they saw defendant stand up, remove a gun from his waistband, and run into the house with the gun in his hand. Thomas testified that he chased defendant into a bedroom and observed him toss the gun onto the bed. Banks saw that same gun lying on the bed when he observed Thomas arresting defendant in the bedroom. Banks and Thomas identified defendant and the gun in court. The deputies’ testimony alone, if believed, was sufficient to establish beyond a reasonable doubt that defendant possessed



the gun. *Smith*, 185 Ill. 2d at 541 (the testimony of a single credible witness is enough to convict).

Based on this evidence, a rational trier of fact could find that defendant possessed the gun.

¶ 23 Defendant nevertheless contends that the deputies were not credible because “their testimony conflicted in several critical ways,” including the precise moment defendant fled, the clothing that he wore, and whether he was sitting when the deputies arrived. Allowing all reasonable inferences in favor of the State, as we must (*People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011)), we find no meaningful contradictions. Banks testified that defendant did not flee until “it was obvious” that the SUV was stopping and Banks had one foot on the ground, while Thomas testified that defendant ran as Thomas opened the SUV door. The deputies’ testimony can easily refer to the same moment. While Banks and Thomas’s testimony differed as to defendant’s clothing, we observe that defendant does not challenge their identifications of him, but only their testimony that he possessed the gun. Similarly, whether defendant was sitting down or standing up when the police arrived, and whether it was Banks or other officers who handcuffed the men outside the house, are matters only tangentially relevant to the central question of whether defendant possessed a gun. Thus, a trier of fact could conclude that those issues have little impact on Banks and Thomas’s credibility, and the court was not required to discredit their entire testimony based on minor discrepancies. See *Gray*, 2017 IL 120958, ¶ 47 (trier of fact decides how discrepancies affect witness credibility); *People v. Cunningham*, 212 Ill. 2d 274, 282 (2004) (finding it reasonable to infer that an officer forgot certain details because “the trial occurred some 22 months after the arrest, there is nothing especially memorable about these details, and there is no record evidence tending to show [the officer] would be unlikely to forget them”).

¶ 24 In his briefs on appeal, defendant includes two Google Maps satellite images of the area around Turlington Avenue that he says demonstrate the “sheer improbability” of Banks’ claim that he could see the group outside of 15110 Turlington Avenue from Lexington. Although the satellite images were not before the trial court, defendant argues that we may take judicial notice of the maps. We disagree, as the maps are offered as new evidence on appeal to impeach Banks’ testimony that he could see the people on Turlington Avenue from Lexington. This is not the kind of readily discernible fact of which we may take judicial notice. See *People v. Chambers*, 2016 IL 117911, ¶ 94 n.3 (judicial notice is permissible only for “matters that are readily verifiable from sources of indisputable accuracy”). Therefore, we will not consider the maps.

¶ 25 Additionally, defendant asserts that the deputies’ testimony was generally “contrary to human experience” in that they claimed defendant removed a hidden gun from his waistband and dropped it in plain view of police officers. We disagree, as there is nothing unusual about a suspect attempting to hide contraband once the police arrive. See, e.g., *People v. Henderson*, 33 Ill. 2d 225, 229 (1965) (noting that it is “common behavior” for people carrying drugs to attempt to dispose of them when suddenly confronted by police). While defendant argues that we should not believe the deputies’ testimony because it is evocative of so-called “dropsy” cases wherein officers are alleged to avoid the exclusion of improperly obtained evidence by falsely claiming that suspects dropped the evidence in plain view, the “dropsy” phenomenon is at most one factor for the trier of fact to consider when weighing the credibility of police officers.<sup>1</sup> *People v. Ash*, 346 Ill. App. 3d 809, 816-18 (2004). The trial court was not required to reject the deputies’ testimony and accept the defendant’s account of events. *Gray*, 2017 IL 120958, ¶ 36 (testimony

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<sup>1</sup> In his brief on appeal, defendant cites several law review articles regarding “dropsy” cases, but those articles were never presented to the trial court and will not be considered here. See *People v. Mehlberg*, 249 Ill. App. 3d 499, 532 (1993).

of a single credible witness is sufficient to convict, even where defendant contradicts it). Moreover, although defendant notes that the State chose not to perform forensic testing on the gun, the State adduced credible testimony from Banks and Thomas that connected defendant to the gun. Forensic evidence was, therefore, unnecessary for the State to prove that defendant possessed the gun. *People v. Bennett*, 154 Ill. App. 3d 469, 475 (1987).

¶ 26 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 27 Affirmed.