2019 IL App (1st) 163139-U

No. 1-16-3139

Order filed March 22, 2019

Sixth Division

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 17396
	)	
DANTON DELONEY,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence did not prove defendant guilty beyond a reasonable doubt because, in violation of the *corpus delicti* rule, there was insufficient independent evidence corroborating the defendant's extrajudicial statement.

¶ 2 After a bench trial, defendant Danton Deloney was found guilty of two counts of aggravated unlawful use of a weapon (AUUW), and sentenced to two years' probation. On appeal, he contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt because, in violation of the *corpus delicti* rule, the only evidence that he had not been

issued a valid concealed carry license (CCL) came from his own out-of-court statement. We reverse.

¶ 3 Defendant was charged by indictment with six counts of AUUW (720 ILCS 5/24-1.6 (West 2014)) arising from an incident on October 6, 2015. Counts I and IV alleged that defendant knowingly carried a firearm without having been issued a currently valid CCL (720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5); (a)(2), (a)(3)(A-5) (West 2014)), and counts II, III, V, and VI alleged that defendant had not been issued a currently valid Firearm Owner's Identification (FOID) card (720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5); (a)(1), (a)(3)(C); (a)(2), (a)(3)(A-5); (a)(2), (a)(3)(C) (West 2014)).

¶ 4 At trial, Chicago police officer James Drish testified that he and his partner, Officer Michael Donahue, were on duty on October 6, 2015, when he saw a Hyundai with an improperly displayed license plate. Drish initiated a traffic stop. Defendant was seated in the driver's seat and was the only person in the car. Drish asked defendant "if there is anything in the vehicle that should not be there, any contraband?" Defendant responded, "[Y]es, I have a firearm," which he told Drish was located under the driver's seat. Drish asked defendant to exit the car, conducted a protective pat-down, and placed him in handcuffs. Donahue recovered a loaded, semiautomatic "High Point" handgun from under the driver's seat, and defendant was arrested. Defendant never presented Drish with a FOID card or CCL.

¶ 5 Chicago police detective Joseph Murtaugh testified that he Mirandized and interviewed defendant at the police station on October 6, 2015. Defendant told Murtaugh that he was at the police station because the police performed a traffic stop and found a gun on him. Defendant explained that he had used the gun at a shooting range in his home state of Indiana several days

earlier, and forgot that the gun was under the seat until police pulled him over. Murtaugh asked defendant if he had "any license" for the gun, and defendant responded that he had "applied for a license" eight months ago, but had not received one. Defendant also told Murtaugh that he was born on August 22, 1989.

¶ 6 Bob Radmacher, a supervisor in the Firearm Services Bureau for the Illinois State Police, testified that he received a request to search the FOID and CCL records for defendant's name with a birth date of *October* 22, 1989. He performed the search and found that, as of November 9, 2015, no one with that name and birth date had been issued a valid FOID card or CCL. On cross-examination, Radmacher testified that he only searched defendant's name in combination with the October 22, 1989 birth date; he did not search defendant's name alone.

¶ 7 After the State rested, defense counsel moved for a directed verdict, arguing that the State failed to prove that defendant lacked a valid FOID card or CCL because Radmacher did not search for the correct birth date. In rebuttal, the State conceded that it failed to prove that defendant did not have a valid FOID card, but argued that defendant's statements to Murtaugh provided a sufficient basis to find him guilty on counts I and IV, which alleged that he did not have a valid CCL. The court denied defendant's motion.

¶ 8 For its case-in-chief, the defense submitted defendant's Indiana driver's license. In tendering the license as an exhibit, defense counsel represented that defendant was born on August 22.[1] The defense then rested.

¶ 9 After closing arguments, the court found defendant guilty of AUUW on counts I and IV, which alleged that he had not been issued a currently valid CCL. In so holding, the court stated

[1] Defense counsel stated that the license showed that defendant's birth date was August 22, 2016. In their briefs, the parties agree that defense counsel misspoke regarding the year on the license.

that "even though it's kind of unusual, I believe the State has been able to prove *** the element of failure to carry a concealed weapon permit" where defendant did not present such a license and admitted that he had not received one. However, the court noted that defendant's statements to Murtaugh did not address whether he had been issued a FOID card, and it acquitted him on the remaining counts. Defendant filed a motion for a new trial, which the court denied. Following a sentencing hearing, the court sentenced him to two years' probation on count I. Although the transcript does not mention that the counts were merged, sentence was not imposed on count II.

¶ 10 On appeal, defendant argues that the evidence was insufficient to establish his guilt beyond a reasonable doubt because, in violation of the *corpus delicti* rule, the only evidence that he had not been issued a currently valid CCL came from his own statement to Murtaugh. In response, the State maintains that there was sufficient evidence corroborating defendant's admission because defendant never produced a CCL, never claimed to have been issued one, and told Drish about the firearm in response to a question about the presence of "contraband."

¶ 11 As an initial matter, defendant contends that the standard of review for this issue is *de novo* because he challenges only whether the undisputed facts are sufficient to establish an element of the charges as a matter of law. However, defendant does not raise a question of law, but rather a factual dispute as to whether the State presented sufficient evidence to corroborate his extrajudicial inculpatory statement. *People v. Salinas*, 347 Ill. App. 3d 867, 879-80 (2004) (rejecting a defendant's contention that *de novo* review was appropriate to determine whether the *corpus delicti* rule was satisfied). Accordingly, defendant is challenging the sufficiency of the evidence. *People v. Hurry*, 2013 IL App (3d) 100150-B, ¶ 11 (citing *People v. Sargent*, 239 Ill. 2d 166 (2010)). When a defendant challenges the sufficiency of the evidence, a reviewing court

must determine whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Gray*, 2017 IL 120958, ¶ 35. While the trial court's findings are entitled to great deference, due process requires that the State prove each and every element of an offense beyond a reasonable doubt. *People v. Lucas*, 231 Ill. 2d 169, 182 (2008). In all criminal cases, a conviction must rest on the strength of the State's case, not on the weakness of the defendant's case. *People v. Scott*, 2018 IL App (2d) 151056, ¶ 31 (citing *People v. Coulson*, 13 Ill. 2d 290, 296 (1958)). A criminal conviction must be reversed if the evidence was "so unreasonable, improbable, or unsatisfactory" that there remains a reasonable doubt of defendant's guilt. *People v. Brown*, 2013 IL 114196, ¶ 48.

¶ 12 To sustain a conviction, the State must prove two separate propositions: (1) that a crime occurred, *i.e.*, the *corpus delicti*, and (2) that the defendant committed the crime. *Sargent*, 239 Ill. 2d at 183. As a general rule, a defendant's out-of-court statements alone cannot establish the *corpus delicti* of an offense. *Id.* The State may use a defendant's extrajudicial statements to prove the *corpus delicti* of an offense only if it also establishes sufficient independent evidence to corroborate the statements. See *People v. Willingham*, 89 Ill. 2d 352, 358-59 (1982) ("It is axiomatic that, in order for a conviction based on a confession to be sustained, the confession must be corroborated."). Although the corroborating evidence need not prove the charged offense beyond a reasonable doubt, it must at least tend to establish that a crime occurred. *Sargent*, 239 Ill. 2d at 183-84. Ultimately, whether there is sufficient evidence to corroborate a defendant's admission is a fact-intensive inquiry that must be decided on a case-by-case basis. *People v. Lara*, 2012 IL 112370, ¶ 26.

¶ 13 To convict defendant of AUUW as charged in count I, the State was required to prove beyond a reasonable doubt that he knowingly (1) carried a handgun in a vehicle; (2) not on his own land, legal dwelling, or fixed place of business or that of another as an invitee; (3) while the handgun was uncased, loaded, and immediately accessible; and (4) without having been issued a currently valid CCL. 720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5) (West 2014). As charged in count IV, the State was required to prove that defendant knowingly (1) carried a handgun; (2) on a public street or public land within city limits; (3) while the handgun was uncased, loaded, and immediately accessible; and (4) without having been issued a currently valid CCL. 720 ILCS 5/24-1.6(a)(2), (a)(3)(A-5) (West 2014). On each count, defendant challenges the sufficiency of the evidence only with respect to the element that he had not been issued a currently valid CCL.

¶ 14 The trial evidence consisted of the testimony of the State's three witnesses, Radmacher, Murtaugh, and Drish, and the Indiana driver's license that defendant produced. The evidence showed that Radmacher searched the Illinois State Police's CCL database for defendant's name, but included the incorrect birth date. He never searched defendant's name alone. Thus, Radmacher's testimony had no tendency to prove that defendant had not been issued a CCL, and is irrelevant to the issue on appeal. Murtaugh testified only to his brief post-arrest interview with defendant at the police station, during which defendant explained that police had pulled him over and found the gun that he had placed under his seat several days earlier. Murtaugh asked defendant if he had "any license" for the gun, and defendant replied that he had applied for "a license," but had not received one. Even assuming, *arguendo*, that this statement could reasonably be construed as an admission that he had not been issued a valid CCL in either Illinois or Indiana, Murtaugh's testimony provides no corroboration independent of defendant's

own statements. Thus, the State must rely on Drish's testimony to satisfy the *corpus deliciti* rule. Drish testified that he and Donahue initiated a traffic stop after observing defendant's vehicle with an improperly displayed license plate. Drish asked defendant whether he had "anything in the vehicle that should not be there, any contraband," and defendant told him that he had a gun under his seat. Defendant was removed from the car, searched, handcuffed, and eventually arrested when Donahue recovered the gun. Although defendant did not present a CCL, there is no evidence that Drish ever asked him to do so.

¶ 15 The State argues that defendant's statements to Murtaugh are corroborated because defendant told Drish about the gun in response to a question about "contraband," and because defendant never produced a CCL or claimed to have been issued one. However, even viewed in the light most favorable to the State, these facts do not sufficiently suggest that a crime occurred. As the State correctly concedes, defendant's mere possession of a firearm is not a crime unless he violates the CCL statute or other regulation. 430 ILCS 66/10(c)(2) (West Supp. 2015) (allowing a CCL holder to keep a loaded, concealed firearm about his person within a vehicle); *People v. Aguilar*, 2013 IL 112116, ¶¶ 19-21 (finding a categorical ban on firearm possession unconstitutional). It is not improbable that a legal gun owner would alert the police to the presence of a firearm immediately upon being pulled over. This is especially so when he is asked about the contents of his vehicle, regardless of the exact phrasing of the question. Indeed, although there is no evidence that Drish asked about a gun, CCL holders are required to inform law enforcement officers of the presence and location of a concealed firearm when requested to do so. 430 ILCS 66/10(h) (West Supp. 2015). Thus, the fact that defendant informed Drish about

the gun in response to Drish's question about "contraband" does not, as the *corpus delicti* rule requires, tend to suggest that a crime had occurred.

¶ 16 We are also unconvinced that defendant's failure to produce a valid CCL or claim to have been issued one sufficiently corroborates his statements to Murtaugh. The State was required to prove that defendant *had not been issued* a currently valid CCL, not merely that he did not possess one on his person. 720 ILCS 5/24-1.6 (a)(3)(A-5) (West 2014). This court has recently held that the failure to present a FOID card does not establish that a person had not been issued one. *In re Gabriel W.*, 2017 IL App (1st) 172120, ¶ 3; *In re Manuel M.*, 2017 IL App (1st) 162381, ¶ 15 (finding that the respondent's failure to present a FOID card was "no evidence" that he had not been issued one). The State contends that defendant had "multiple opportunities" to explain that he was carrying the gun legally if, in fact, he had a valid CCL somewhere other than on his person. However, the evidence showed that defendant was removed from his vehicle, searched, and handcuffed immediately upon informing Drish about the gun under his seat. When Donahue recovered the gun shortly thereafter, defendant was formally arrested. Defendant's silence during this encounter with police does not tend to establish his guilt and cannot be relied upon to sustain his conviction here. See *People v. Quinonez*, 2011 IL App (1st) 092333, ¶ 26 (quoting *People v. Lewerenz*, 24 Ill. 2d 295, 299 (1962)) ("[o]ur supreme court has held that 'an accused is within his rights when he refuses to make a statement [at the time of his arrest], and the fact that he exercised such right has no tendency to prove or disprove the charge against him' "). Similarly, defendant's failure to claim that he had been issued a CCL when questioned by Murtaugh does not tend to establish that he had not been issued a valid CCL because "every

post-arrest silence is insolubly ambiguous" in light of the "assurance that silence will carry no penalty" implicit in the *Miranda* warnings. *Doyle v. Ohio*, 426 U.S. 610, 617-18 (1976).

¶ 17 We acknowledge the State's reliance on our decision in *People v. Grant*, 2014 IL App (1st) 100174-B, wherein we affirmed the defendant's AUUW conviction over, *inter alia*, his *corpus delicti* challenge. However, the facts of *Grant* are distinguishable from the present case. In *Grant*, police officers responded to a report of gunshots near the defendant's house, and arrested him after they observed him attempt to flee with a gun in his hand. *Id.* ¶ 2. The arresting officers asked him if he had a FOID card, and the defendant confessed that he did not have one and that he bought the gun for $75 from a "crack head." *Id.* ¶ 3. Here, there is far less independent evidence to suggest that a crime occurred. Drish and Donahue were not responding to reports of a gun-related crime in the area, and defendant did not attempt to flee from them. Rather, defendant volunteered to Drish that there was a firearm in his vehicle, and there is no evidence that defendant was uncooperative in any way. Additionally, unlike in *Grant*, there is no evidence independent of defendant's admission to not having "a license" that suggests defendant purchased the gun illegally. Finally, although we noted in *Grant* that the defendant failed to produce a FOID card "even when the officer inquired whether he possessed one," defendant's failure to present a CCL in this case is not similarly suggestive that he had not been issued one because there is no evidence that Drish ever asked him to present his CCL. *Id.* ¶ 29.

¶ 18 In short, the only independent evidence corroborating defendant's statements in this case stems from the exercise of his right to remain silent after being handcuffed by police. As we have explained, defendant's silence is fundamentally ambiguous under the facts of this case, and therefore does not tend to establish that a crime occurred for purposes of the *corpus deliciti* rule.

Consequently, the evidence was insufficient to prove beyond a reasonable doubt that defendant committed AUUW, and the findings of guilt on both counts must be reversed.

¶ 19 For the foregoing reasons, we reverse the judgment of the circuit court.

¶ 20 Reversed.