2019 IL App (1st) 170127-U

FIFTH DIVISION
Order filed: February 15, 2019

No. 1-17-0127

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. 14 CR 21622-01
	)	
DANTE JEFFRIES,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's conviction for aggravated unlawful use of a weapon is affirmed over his contention that the State failed to present sufficient evidence that he possessed a firearm. The defendant's fines, fees, and costs order must be corrected.

¶ 2 Following a bench trial, the defendant, Dante Jeffries, was convicted of aggravated unlawful use of a weapon (AUUW) in violation of section 24-1.6(a)(1), (3)(C) of the Criminal Code of 2012 (Code) (720 ILCS 5/24-1.6(a)(1), (3)(C) (West 2014). He was sentenced to 4

years' imprisonment, receiving 740 days' credit for time served, followed by a 2-year term of mandatory supervised release (MSR). He now appeals, arguing that he was not proven guilty beyond a reasonable doubt and that certain fines and fees were erroneously imposed. For the following reasons, we affirm and correct the fines and fees order.

¶ 3 The defendant was charged by information with four counts of AUUW, two counts of unlawful use of a weapon by a felon (UUWF), and one count of defacing the identification marks of a firearm.[1] Relevant to this appeal, the charges alleged that on November 29, 2014, the defendant, a convicted felon, possessed a loaded firearm with a defaced serial number while on a public way and without a valid firearm owner's identification (FOID) card. The matter proceeded to a bench trial on all counts.

¶ 4 Officer Sanchez, an 11-year veteran of the Chicago Police Department (CPD), testified that, on November 29, 2014, he was on patrol driving an unmarked car with his partner, Officer Juhan Perez. [2] Around 1:30 p.m., the officers were dispatched to 6700 South State Street to search for an individual fitting "a particular description." The officers arrived in the area with their emergency lights activated, stopping their vehicle at the intersection of 67th and State Street. There, Officer Sanchez's attention was drawn to an individual, whom he identified in court as the defendant, wearing a red jacket. The defendant was standing in-between cars on a two-lane off-ramp of the Dan Ryan Expressway. Also present on the off-ramp were several other men as well as a group of "bucket boys," *i.e.*, kids playing buckets as drums.

[1] The defendant was charged along with codefendant, Jerry McFee, who is not party to this appeal. At the defendant's request, we take judicial notice that McFee plead guilty to one count of AUUW in case No. 14 CR 2162202. See *People v. Davis*, 65 Ill. 2d 157, 164-65 (1976) (a reviewing court may take judicial notice of public records and other judicial proceedings).

[2] Officer Sanchez's first name is not contained within the record.

¶ 5 From a distance of 50 to 75 feet away, Officer Sanchez observed the defendant holding a "blue steel handgun" in his right hand. Officer Sanchez, who testified that he was familiar with firearms due to his training and experience as a police officer, explained that "blue steel" refers to a rust prevention process for firearms and that such firearms appear black in color. Officer Sanchez saw the handgun for "a second" before the defendant looked in his direction, placed the gun on the ground, and ran southbound. Several other people present also fled. Officer Sanchez exited the vehicle and pursued the defendant on foot. The defendant jumped the median dividing State Street from the off-ramp and entered a tow yard at 6727 South State Street. Officer Sanchez followed as the defendant made his way to the back of the property and then entered into a box trailer. Officer Sanchez radioed for backup, which arrived shortly thereafter. He instructed one of the responding officers to open the box trailer's door and, when the officer did so, Officer Sanchez saw the defendant inside. Officer Sanchez placed the defendant into custody and read him his *Miranda* rights. Subsequently, the defendant told Officer Sanchez that he "had the gun because [he] was supposed to go rob the bucket boys."

¶ 6 On cross-examination, Officer Sanchez testified that he was the only person present when the defendant made his inculpatory statement and the statement was not memorialized in writing. Officer Arturo Mena, not Officer Sanchez, authored the arrest report for the defendant. Officer Sanchez told Officer Mena that the defendant was holding a blue steel semi-automatic handgun.

¶ 7 Officer Perez similarly testified that, when he and Officer Sanchez arrived at 6700 South State Street, he saw the defendant standing in the off-ramp. Following the defendant's flight, Officer Perez approached the location where he had seen the defendant standing. As he did so, he

saw an individual near that area bend over, retrieve an object from the ground, and walk toward a nearby tire shop. At the same time, Officer Mena arrived on the scene.

¶ 8 Officer Mena testified that after arriving at 6700 South State Street and speaking with Officer Perez, he focused his attention on an individual, who he later learned was the codefendant. Officer Mena pursued the codefendant into a tire shop, where he apprehended him emerging from the shop's restroom. After a brief search of the restroom, Officer Mena recovered a loaded handgun from a cabinet beneath the sink. Officer Mena identified People's Exhibit No. 1 as the weapon he recovered from the restroom and it was admitted into evidence. He described the firearm as a "blue steel semiautomatic handgun" that was black in color with a silver stripe along the slide. The gun's serial number was indecipherable.

¶ 9 Bob Radmacher, who supervises the application processing unit of the Illinois State Police Firearms Bureau, testified that a search for the defendant's name and date of birth revealed that he did not possess either a FOID card or a concealed carry license.

¶ 10 The State introduced a certified copy of the defendant's 2008 conviction for possession of a controlled substance and then rested. The defendant moved for a directed finding, which the trial court granted only as to the defacing identification marks of a firearm charge. In so holding, the trial court noted that such a charge "does go to a specific weapon" and "[t]here is no testimony, definitely no direct testimony, tying the [d]efendant to [the recovered firearm]." The trial court further noted that "[a]ny circumstantial evidence that would tie the defendant to [that] weapon is weaker than plain water."

¶ 11 The defendant called Damian Hopkins as a witness, who acknowledged that he had twice been convicted of AUUW. Hopkins testified that he was performing as a "bucket boy" on the

off-ramp on the day in question. Hopkins, who had known the defendant for over two years, saw him there that afternoon. The two spoke and the defendant dropped money in Hopkins' bucket. Hopkins did not see the defendant in possession of a gun. Subsequently, Hopkins was approached by a former bucket boy who "flashed" the black handle of a gun and attempted to rob him. Hopkins saw that the police were arriving and informed the offender, who then fled. Hopkins denied that the defendant was the individual who attempted to rob him.

¶ 12 The trial court found the defendant guilty of two counts of AUUW (counts two and four) and one count of UUWF (count five). The trial court reasoned that Sanchez's "credible and unequivocal" testimony that he saw the defendant in possession of a firearm was "sufficient circumstantial evidence" that the defendant was armed with a firearm. The trial court explained that the State need not prove with "direct or physical evidence that a particular object is a firearm as defined by the statute." Consistent with its prior ruling regarding the defendant's motion for a directed finding, the trial court found the defendant not guilty of the remaining counts alleging possession of firearm ammunition as the State failed to prove beyond a reasonable doubt that the loaded firearm recovered by Officer Mena was the same one Officer Sanchez saw the defendant holding.

¶ 13 The trial court denied the defendant's post-trial motion for a new trial and subsequently merged all counts into count two. The defendant was then sentenced to four years' imprisonment and assessed $544 in fines and fees. This appeal followed.

¶ 14 On appeal, the defendant argues that the State failed to prove him guilty beyond a reasonable doubt because it failed to present sufficient evidence that he possessed a firearm as defined by the Code. 720 ILCS 5/2-7.5 (West 2014). In response, the State argues that the

unequivocal and credible testimony of Officer Sanchez was sufficient evidence to establish the defendant's guilt beyond a reasonable doubt.

¶ 15 When considering a challenge to the sufficiency of the evidence, our function is not to retry the defendant. *People v. Wright*, 2017 IL 119561, ¶ 70. Rather, we must determine whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Brown*, 2013 IL 114196, ¶ 48. This means that we must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Reversal is justified only where the evidence is so improbable, unsatisfactory, or inconclusive as to justify a reasonable doubt as to the defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011).

¶ 16 To prove the defendant guilty of the AUUW and UUWF counts as charged, the State was required to establish beyond a reasonable doubt that he possessed a firearm. Section 2-7.5 of the Code (720 ILCS 5/2-7.5 (West 2014)) provides that the term "firearm" has the meaning ascribed to it by section 1.1 of the Firearm Owners Identification Card Act (FOID ACT) (430 ILCS 65/1.1 (West 2014)), namely, "any device, * * * which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas," but excluding items such as a "paint ball gun," a "B-B gun," or a "pneumatic gun."

¶ 17 The defendant asserts that the evidence was insufficient to prove that he possessed a firearm within the meaning of the Code where Officer Sanchez briefly viewed the defendant from a distance and provided only "mere speculation" and "minimal details" regarding the object he saw the defendant holding. We disagree.

¶ 18 Initially, we note that "courts have consistently held that eyewitness testimony, even that of a lay witness, that the offender possessed a firearm, combined with the 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. Jackson*, 2016 IL App (1st) 141448, ¶ 15. As such, the State is not required to present a firearm in order for the trier of fact to find that the defendant possessed one. See *Wright*, 2017 IL 119561, ¶ 76-77.

¶ 19 Here, Officer Sanchez testified unequivocally that when he arrived on the scene in response to a radio dispatch, he observed that the defendant possessed a firearm in his right hand. See *Jackson*, 2016 IL App (1st) 141448, ¶ 15 ("[U]nequivocal testimony that the defendant held a firearm constitutes circumstantial evidence sufficient to show the defendant was armed within the meaning of the statute."). Although Officer Sanchez only briefly viewed the weapon from a distance of 50 to 75 feet away, he was able to describe the firearm as "a blue steel handgun" and later told Officer Mena that it was a semi-automatic handgun. Officer Sanchez, an 11-year veteran of the CPD, explained that blue steel refers to a rust prevention process for metal firearms and that such a handgun appears black in color. The level of detail provided by Officer Sanchez is sufficient to support the inference that the defendant possessed a firearm. See *Wright*, 2017 IL 119561, ¶ 76 (finding evidence sufficient where one witness described the firearm as an "automatic black gun" and a second witness described it as a "9 millimeter pistol"); *People v. Fields*, 2017 IL App (1st) 110311-B, ¶ 37 (finding evidence was sufficient where the witness described the firearm as "black").

¶ 20 Moreover, according to Officer Sanchez's testimony, the defendant subsequently admitted to him that he possessed "the gun" so that he could rob the bucket boys. Finally, Officer

Sanchez's testimony that the defendant looked in his direction before placing the weapon on the street and fleeing further supports the reasonable inference that the item he possessed was a prohibited firearm. See *People v. Harris*, 52 Ill. 2d 558, 561 (1972) (holding that evidence of flight is admissible as a circumstance tending to show consciousness of guilt). "[I]n weighing evidence, the trier of fact is not required to disregard inferences which flow normally from evidence before it [citation], nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt [citation]." *People v. Campbell*, 146 Ill. 2d 363, 380 (1992). Viewing the evidence, together with the reasonable inferences flowing therefrom, in the light most favorable to the State, we conclude that a rational trier of fact could have found beyond a reasonable doubt that the defendant possessed a gun that met the statutory definition of a firearm and thus found him guilty of the charged offenses.

¶ 21 In reaching this conclusion, we are not persuaded by the defendant's reliance on *People v. McLaurin*, 2018 IL App (1st) 170258. Here, unlike in *McLaurin*, Officer Sanchez provided an additional level of detail beyond the firearm's color when he testified that the firearm in the defendant's possession had undergone a rust prevention process and that he told Officer Mena that the gun was a semi-automatic. Our case is further distinguishable from *McLaurin* insofar as Officer Sanchez saw the defendant flee after discarding the handgun and also heard the defendant's oral admission that he possessed a "gun."

¶ 22 Having determined that the State presented sufficient evidence to prove the defendant guilty, we turn to his next assignment of error. The defendant seeks a modification of the fines and fees imposed by the circuit court from $544 to $225.[3] As an initial matter, we note, and the

[3] The defendant argues in his brief that his fines and fees should be reduced to $175 but this appears to be a mathematical error as the disputed charges amount to $319.

State concedes, that the defendant's failure to challenge his assessments in the circuit court does not forfeit his claim here and a reviewing court may modify a fines and fees order without remand. *People v. Mullen*, 2018 IL App (1st) 152306, ¶ 42; *People v. Brown*, 2017 IL App (1st) 150146, ¶ 34. The propriety of court-ordered fines and fees is reviewed *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 23 The defendant first contends that the circuit court erred by assessing a $5 electronic citation fee (705 ILCS 105/27.3e (West 2016)) and a $5 court system fee (55 ILCS 5/5-1101(a) (West 2016)). The State has conceded these errors and we accept its confession of error (*People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46 (electronic citation charge) and *People v. Atkins*, 2014 IL App (1st) 093418-B, ¶ 22 (court system charge)). The State further concedes that the $15 state police operations charge (705 ILCS 105/27.3a(1.5) (West 2016)) and the $50 court system fee (55 ILCS 5/5-1101(c) (West 2016) should have been offset with the defendant's $5-per day credit for time served in presentence custody as mandated under section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2016)). We accept its confession of error (*Moore*, 2014 IL App (1st) 112592-B, ¶ 46 (state police operations charge) and (*People v. Reed*, 2016 IL App (1st) 140498, ¶ 15 (court system charge)). Thus, the electronic citation fee and court systems fee are vacated and two other charges are subject to a credit offset. Accordingly, we reduce the defendant's assessed fees by $75 to correct these errors.

¶ 24 Lastly, the defendant contends that the following fines are actually fees subject to offset by his presentence custody credit: the $2 State's Attorney records automation fee (55 ILCS 5/4–2002.1(c) (West 2016)); the $2 Public Defender records automation fee (55 ILCS 5/3–4012 (2016)); the $190 felony complaint filed charge (705 ILCS 105/27.2a(w)(1)(A) (West 2016));

the $25 clerk automation charge (705 ILCS 105/27.3a(1) (West 2016)); and the $25 document storage charge (705 ILCS 105/27.3c (West 2016)). Our supreme court has recently concluded that these charges are fines and thus not subject to offset by the defendant's presentence incarceration credit. See *People v. Clark*, 2018 IL 122495, ¶ 51.

¶ 25 For the foregoing reasons, the judgment of the circuit court is affirmed and we order the circuit court to correct the order assessing fines, fees, and costs.

¶ 26 Affirmed as modified.