

2019 IL App (1st) 170228-U
No. 1-17-0228
Order filed September 30, 2019

Second Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the
) Circuit Court of
Plaintiff-Appellee,) Cook County.
)
v.) No. 16 CR 4604
)
JERROD McKINNEY,) Honorable
) Erica L. Reddick,
Defendant-Appellant.) Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for unlawful possession of a weapon by a felon is affirmed over his challenge to the sufficiency of the evidence. Remanded as to fines and fees order.

¶ 2 Following a bench trial, defendant Jerrod McKinney was found guilty of unlawful possession of a weapon by a felon, sentenced to 4½ years' imprisonment, and assessed fines and fees. On appeal, defendant contends the State did not prove beyond a reasonable doubt that he possessed a firearm because it was not introduced at trial, no physical or forensic evidence linked

him to the firearm, and police officers provided inconsistent testimony. Additionally, defendant maintains that the fines and fees order should be corrected by vacating the \$5 Electronic Citation fee and the \$5 Court System fee, and offsetting the \$15 State Police Operations fee with presentence custody credit. We affirm defendant's conviction, and remand as to the fines and fees order.

¶ 3 Defendant was charged by indictment with four counts of unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2016)), and six counts of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (3)(a-5); (a)(1), (3)(C); (a)(1), (3)(D); (a)(2), (3)(A-5); (a)(2), (3)(C); (a)(2), (3)(D) (West 2016)).

¶ 4 At trial, Chicago police officer Steven Holden testified that around 8:30 p.m. on March 7, 2016, he was driving an unmarked vehicle with Officer Shantell Clinton in the 6300 block of South Martin Luther King Jr. Drive. They entered a cul-de-sac with a parking area surrounded by buildings, and Holden observed defendant exit a building and walk in their direction. Defendant was grabbing the crotch area of his pants, as if holding something up, and limped as he walked behind a parked Caravan which was positioned between himself and the officers. At that time, other people were also in the parking lot.

¶ 5 The officers decided to conduct an investigatory stop, but each time they drove near defendant, he changed directions, still limping and holding the bulged crotch area of his pants. When defendant moved behind the Caravan again, the officers exited their vehicle. As Holden got out, he heard a "metal clinking" sound from the ground "directly behind" the Caravan but did not see defendant at that moment. Holden and Clinton walked around the Caravan from opposite directions, and Holden saw defendant walking normally, without a limp and without holding his

crotch area. Holden handcuffed defendant, and Clinton recovered a firearm from behind the Caravan.

¶ 6 The officers transported defendant to the police station. Holden stated that during processing, he asked defendant if he had a Firearm Owners Identification (FOID) card. Defendant replied that he did not, and never presented a card to the officers. Then, Holden advised defendant of the *Miranda* rights, and defendant stated, in the presence of the firearm, that “he had the weapon for his protection.”

¶ 7 On cross-examination, Holden testified that he asked defendant about the FOID card after administering his *Miranda* rights. He explained the FOID card questioning was not mentioned in the arrest report he prepared because the report only needed to address probable cause issues. Holden acknowledged the report stated that, after he administered the *Miranda* rights, defendant invoked his right to remain silent. Holden agreed that he never saw defendant holding a gun.

¶ 8 On redirect examination, Holden maintained that defendant said that “he had the weapon for his protection” after receiving the *Miranda* warnings and invoking his right to remain silent. On recross-examination, Holden stated that a separate “case report” noted that defendant volunteered his inculpatory statement after being Mirandized.

¶ 9 Clinton testified to substantially the same events as Holden. She noticed defendant leave the building, walking with a “slight limp” and holding a bulge by “his crotch area.” When the officers approached him in their vehicle, he changed direction and walked behind a van. As Clinton exited the vehicle, 25 feet from the van, she heard a “clink” from defendant’s side of the van and then observed him walking without the limp or bulge. Clinton went around the van, and near the rear tire, found a “blue steel Glock 27 .40-caliber gun” with 1 round in the chamber and

29 rounds in an extended-clip magazine. No one else was nearby, and she did not see other objects that could have made the clinking noise. The officers took defendant to the police station, and Clinton inventoried the firearm.

¶ 10 On cross-examination, Clinton agreed that she never saw defendant holding the firearm. When defendant was on the other side of the van, she observed him through the windows but did not see his hands. At the police station, Clinton was present when Holden advised defendant of the *Miranda* rights. She heard defendant state that he had the firearm for protection and did not have a FOID card, but acknowledged she did not mention the latter statement in her “case incident report.” Clinton also stated that defendant “refused to talk to us after we read him the rights.”

¶ 11 Following this testimony, the State admitted into evidence a certified copy of defendant’s conviction for aggravated robbery in case number 12 CR 18392, and rested.

¶ 12 The defense moved for a directed finding, which the trial court granted as to three counts of aggravated unlawful use of a weapon. The defense rested without presenting evidence.

¶ 13 During closing arguments, defense counsel noted that neither officer saw defendant holding the firearm, and the State did not produce the firearm or forensic evidence linking it to defendant. Counsel also argued the officers provided contradictory testimony about defendant’s inculpatory statements, and were impeached by their reports.

¶ 14 The trial court found defendant guilty of each count of unlawful possession of a weapon by a felon, and not guilty of the remaining counts of aggravated unlawful use of a weapon. In so holding, the court stated that the officers “candidly admitted” that Holden’s arrest report and Clinton’s case incident report contained different information about the incident. However, the

court did not find a “divergence” in Holden and Clinton’s testimony about events preceding defendant’s arrest. Additionally, the court noted that the State “specifically asked for clarity” regarding the circumstances of defendant’s inculpatory statement, and that both officers ultimately “testified similarly as to the order of events surrounding the statement.”

¶ 15 Defendant filed a posttrial motion seeking an acquittal or new trial, which the trial court denied. Following a sentencing hearing, the court merged the counts of unlawful possession of a weapon by a felon, sentenced defendant to 4½ years’ imprisonment with 303 days presentence custody credit, and imposed fines and fees totaling \$524. Defendant’s motion to reconsider sentence, which did not challenge the fines and fees order, was denied.

¶ 16 On appeal, defendant argues that he was not proven guilty of unlawful possession of a weapon by a felon beyond a reasonable doubt. According to defendant, no rational trier of fact could have accepted Holden and Clinton’s testimony that he possessed a firearm when it was not introduced at trial, no physical or forensic evidence linked him to the firearm, and the officers’ testimony was inconsistent with each other and their police reports.

¶ 17 The State maintains that the evidence established beyond a reasonable doubt that defendant was a felon in unlawful possession of a weapon where the court concluded the police officers credibly testified despite apparent inconsistencies between their testimony and reports.

¶ 18 When reviewing a challenge to the sufficiency of the evidence, the reviewing court must consider 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 crime beyond a reasonable doubt.” (Internal quotation marks omitted.) *People v. Belknap*, 2014 IL 117094, ¶ 67. “This standard of review does not allow the reviewing court to substitute its judgment for that of the fact finder on

questions involving the weight of the evidence or the credibility of the witnesses.” *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). “[R]eviewing courts apply this standard regardless of whether the evidence is direct or circumstantial, and circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. Thus, the standard of review gives ‘full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.’ ” (Internal quotation marks and citations omitted.) *Id.* Moreover, “[a] conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant’s guilt.” *Belknap*, 2014 IL 117094, ¶ 67.

¶ 19 To sustain a conviction for unlawful possession of a weapon by a felon, the evidence must establish beyond a reasonable doubt that the defendant knowingly possessed a firearm and was convicted of a prior felony. 720 ILCS 5/24-1.1(a) (West 2016). Here, there is no question that defendant was a convicted felon due to his prior conviction for aggravated robbery in case number 12 CR 18392. Only defendant’s possession of the weapon is at issue.

¶ 20 At the time of his arrest, defendant was not in actual possession of the firearm. However, possession of contraband can also be constructive. *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 23. To establish constructive possession, the State must prove that defendant had knowledge of the contraband and exercised immediate and exclusive control over the area where the contraband was found. *Id.* “Knowledge may be shown by evidence of defendant’s acts, declarations, or conduct from which it can be inferred that he knew the contraband existed in the place where it was found.” *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. Contraband may be considered to be under the defendant’s immediate control if it is within his easy reach, and

when a weapon is recovered in the same location where the defendant attempted to conceal it, the trier of fact may infer that the area was within his immediate and exclusive control. *People v. Grant*, 339 Ill. App. 3d 792, 798-99 (2003). Here, defendant does not challenge the elements of constructive possession, but contests his conviction based on the witnesses' credibility.

¶ 21 In this case, Holden and Clinton testified that defendant exited a building, walking with a limp and holding a bulge in the crotch area of his pants. Without further testimony from the police explaining why the way he was walking was suspicious, for example, the officers' experience observing people walking with concealed weapons, this investigative stop might have been troubling. However, his evasive actions justified the stop. When the officers drove toward him, defendant repeatedly changed direction. The officers exited their vehicle and heard a clinking sound from where defendant was standing behind a van. In that location, Clinton recovered a "blue steel Glock 27 .40-caliber gun" with 1 round in the chamber and 29 rounds in an extended-clip magazine. Clinton neither observed anyone else in that area nor saw anything else that could have made the metal clinking sound. At the police station, defendant was given his *Miranda* rights, and in the presence of both police officers stated that he had the weapon for protection. According to the officers, defendant made this statement in the presence of the firearm.

¶ 22 Viewing these facts in the light most favorable to the State, the trial court could have found the essential elements of the crime beyond a reasonable doubt. Defendant's conduct in holding his pants' crotch area, limping, and trying to evade the police officers allowed for the inference that he was knowingly holding something which he did not want the officers to find. Both Holden and Clinton testified that there was a clinking sound when defendant went behind

the van, after which he no longer limped. This suggests that defendant placed the firearm on the ground. As Clinton recovered the firearm from behind the van, it can be inferred that it had been within defendant's easy reach and immediate and exclusive control. Further, defendant's inculpatory statement following his arrest also corroborates that he had the firearm. The officers' testimony regarding defendant's conduct was neither improbable nor contrary to human experience and supports the trial court's determination. *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24 (the reviewing court will not substitute its judgment for that of the trial court on issues involving the credibility of the witnesses or the inferences drawn from the evidence).

¶ 23 While the State did not produce the gun or forensic evidence at trial, such absence is not fatal as the positive and credible testimony of a single witness can be sufficient evidence to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Moreover, "[p]roof of physical evidence connecting a defendant to a crime has never been required to establish guilt." *People v. Williams*, 182 Ill. 2d 171, 192 (1998). To the contrary, if a witness's testimony is otherwise credible, "the State [is] not required to present additional physical evidence" that links a defendant to a firearm. (Internal quotation marks omitted.) *People v. Campbell*, 2019 IL App (1st) 161640, ¶ 33 (affirming conviction where officers testified defendant dropped a firearm in plain view, but the State did not present the gun itself or any other forensic evidence linking defendant to the firearm).

¶ 24 Further, though the officers' records contained different accounts of when defendant received the *Miranda* warnings, made inculpatory statements, and invoked his right to remain silent, the evidence, viewed in the light most favorable to the State, supported a finding that the police officers' explanations of the same were credible. Holden explained the arrest report

contained information relevant to probable cause, and that different information was included in Clinton's case report. Even assuming, *arguendo*, Holden and Clinton's accounts could be deemed conflicting, it was the role of the trier of fact to resolve any such conflicts or inconsistencies in the evidence. *People v. Balfour*, 2015 IL App (1st) 122325, ¶ 57 (citing *People v. Davis*, 304 Ill. App. 3d 427, 441 (1999)). Here, the circuit court determined that there was not a divergence in the officers' testimony and held that there was sufficient evidence to convict defendant of unlawful possession of a weapon by a felon, and this court lacks any basis to substitute its judgment for that of the trial court because its determinations were not unreasonable. *Belknap*, 2014 IL 117094, ¶ 67; *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007). Moreover, the alleged inconsistencies identified by defendant all involve events following his arrest, and not the officers' testimony as to his constructive possession of the firearm. As we have explained, that testimony was consistent. Consequently, defendant's challenge to the sufficiency of the evidence is without merit.

¶ 25 Next, defendant contends that we should vacate the \$5 Electronic Citation fee (705 ILCS 105/27.3e (West 2016)) and \$5 Court System fee (55 ILCS 5/5-1101(a) (West 2016)), which were not applicable to his case, and should offset the \$15 State Police Operations fee (705 ILCS 105.27.3a-1.5 (West 2014)) by the credit for his presentence custody. Defendant did not raise his challenges to the fines and fees order or the credit calculation in the circuit court and, instead, raises them for the first time on appeal.

¶ 26 On February 26, 2019, while this appeal was pending, our Supreme Court adopted new Illinois Supreme Court Rule 472, which sets forth the procedure in criminal cases for correcting sentencing errors in, as relevant here, the "imposition or calculation of fines, fees, assessments,

or costs” and “calculation of presentence custody credit” (Ill. S. Ct. R. 472(1), (3) (eff. Mar. 1, 2019)). Subsequently, on May 17, 2019, Rule 472 was amended to provide that “[i]n all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule.” Ill. S. Ct. R. 472(e) (eff. May 17, 2019). “No appeal may be taken” on the ground of any of the sentencing errors enumerated in the rule unless that alleged error “has first been raised in the circuit court.” Ill. S. Ct. R. 472(c) (eff. May 17, 2019). Therefore, pursuant to Rule 472, we “remand to the circuit court to allow defendant to file a motion pursuant to this rule,” raising the alleged errors regarding the \$5 Electronic Citation fee and the \$5 Court System fee, as well as his claim that the \$15 State Police Operations fee should be offset by the credit for his presentence custody. Ill. S. Ct. R. 472(e) (eff. May 17, 2019).

¶ 27 Accordingly, the fines and fees issue is remanded pursuant to Rule 472(e). The trial court is affirmed in all other respects.

¶ 28 Affirmed; remanded as to fines and fees.