

2019 IL App (1st) 171440-U

No. 1-17-1440

Order filed October 11, 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).

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 13906
)	
DAWONE MEEKS,)	Honorable
)	Timothy J. Joyce,
Defendant-Appellant.)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's convictions for aggravated discharge of a firearm and unlawful use of a weapon are affirmed over his contention that the State failed to present sufficient evidence that he was armed with a firearm.

¶ 2 Following a bench trial, defendant Dawone Meeks was convicted of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2014)) and aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1) (West 2014)) and sentenced to concurrent sentences of four years and one year imprisonment. On appeal, defendant contends that his convictions should be reversed

because the State failed to prove beyond a reasonable doubt that defendant was armed with a firearm during commission of the offenses. We affirm.

¶ 3 Defendant was charged with one count of aggravated discharge of a firearm and one count of aggravated unlawful use of a weapon, arising from defendant's firing of multiple shots at a group of people on July 5, 2015 at a Mobil gasoline station in Chicago. At trial, Officer Denise Montalvo testified that she had been a Chicago police officer for five years, and was on duty in the early hours of July 5, 2015. She was patrolling in a marked vehicle with Officers Zepeda and Waldbuesser. At approximately 1:48 a.m., Montalvo was at the intersection of Cicero and Madison, the location of a gas station, when she saw individuals running, and heard "loud shots" coming from an individual she identified as defendant. Defendant was wearing a blue plaid shirt and white pants.

¶ 4 Montalvo saw defendant pointing a gun with his right hand toward a crowd and running toward them while shooting. Montalvo demonstrated how defendant's hand appeared at the time, by extending her hand forward. Montalvo heard more than one shot, and indicated that the shots were "very loud." After the shots were fired, the crowd of people at the gas station ran from the defendant. Montalvo did not see any other individuals fire a weapon and heard no other shots. The gas station was lit, and Montalvo had an unobstructed view of defendant.

¶ 5 The gas station was "really busy that day," and as soon as defendant fired the shots, he went to the passenger side window of a vehicle parked at the station. The officers announced they were the police, and told him to stop, but defendant "took off" running on foot, with the officers giving chase. Defendant crossed the street going southbound, ran into an alley heading south, and jumped a fence in the alley at Monroe where the officers lost sight of him. The

officers called out a flash message with his description, and subsequently a unit came out stating that they had someone that matched his description. The officers went through the path that he ran, and recovered defendant's white iPhone and some crack cocaine. Montalvo saw defendant again four to five minutes later with fellow officers, and after she identified him, defendant was placed into custody and transported to the police station.

¶ 6 Montalvo returned to the gas station to look for shell casings, but did not find any. The station was very busy, with a lot of cars and people. Montalvo reviewed surveillance video from the gas station, which showed defendant pointing the gun as she saw it that evening.

¶ 7 On cross-examination, Montalvo stated that although it was dark because of the time of night, the gas station was well lit. Montalvo was the arresting officer in this report, and after reviewing the arrest report, she acknowledged it reflected two discharges of a weapon. While she saw exactly where the weapon was discharged, she could not find any shell casings at that location. She was not sure whether a gunshot residue test was ever performed on defendant. On redirect examination, Montalvo testified that a gun was never recovered, and she did not know whether the gun was a semi-automatic or a revolver.

¶ 8 Officer Teresa Waldbuesser testified that on July 5, 2015, she was driving the marked vehicle in which Montalvo was riding. At approximately 1:48 a.m., the vehicle was near a gas station at 4804 West Madison, when Waldbuesser heard two loud gun shots, and saw people running toward the station. Waldbuesser saw defendant "where the pumps are" with a gun in his right hand, pointed outward, running toward a group of more than five or six people who were running north. The shots appeared to be coming from that direction, and Waldbuesser did not see

anyone else with a gun or hear any other gunshots. The sun was not out at the time, but the gas station was well lit, and there were “quite a few” cars at the station.

¶ 9 The officers were about 50 feet from the defendant when they first heard the shots. Once the shots were fired, Waldbuesser pulled up the vehicle, “yelled out [their] office and [defendant] took off running.” At that point, defendant had been standing by another vehicle with his head in the passenger’s side of the vehicle, and appeared to be talking to a person inside. Defendant ran westbound and then southbound. The three officers gave chase on foot, losing defendant at Monroe. The officers called for assistance, and saw defendant a few minutes later when a squad car picked him up and brought him to their location. Defendant was arrested and taken to the police station.

¶ 10 The officers looked for evidence of shell casings at the gas station, but were unable to find any. The gas station was still very busy at this point. Waldbuesser was unsure of what kind of gun defendant had, but knew it was a semi-automatic. The officers also searched for evidence where defendant jumped the fences, and found his cell phone and “some other type of identification.” They did not recover a gun.

¶ 11 The State then presented a video which was stipulated to be the video preserved from the Cicero Mobil Gas Station at 4804 West Madison that was a true and accurate depiction of the incidents that took place at that time. The State published the video and played a portion of the video in open court.

¶ 12 The video was included as a part of the record on appeal. Our review of the relevant portion of the video shows the “pump area” of the gas station at the time in question. At 1:46:10 a.m., as marked in the video, four men walk toward the camera holding their hands near their

waistbands. A few seconds later, the same men and another woman run away from the camera followed by a man wearing a blue plaid shirt who raises his right hand in their direction. Shortly thereafter, the man in the blue plaid shirt walks back toward the camera, holding what appears to be a white cell phone in his left hand and a silver handgun in his right hand. Blue police lights are visible at 1:46:37 a.m., and shortly thereafter a police officer runs in the direction of the camera.

¶ 13 On cross-examination, Waldbuesser stated that she heard many loud noises that day, including fireworks; sometimes people discharge weapons on that day, but she did not hear any other discharges that night. She knew of no reports of gunshot wounds in that area, and never interviewed any of the individuals who were in front of defendant when she heard the discharges. She stated that she knew the gun was not a revolver but a semi-automatic and that a semi-automatic would discharge shell casings, but did not find any casings in the exact area where the shell casings should have been. Waldbuesser had seen a replica gun before, and from where she was, she could not tell if it was a real or replica gun. After the people in front of defendant ran, defendant casually walked back toward a vehicle, and leaned in the vehicle with his hands inside as he spoke with someone, but Waldbuesser did not specifically see him throw anything inside the car. On redirect examination, Waldbuesser testified that she was familiar with gunshots and the gunshots that night sounded “real” to her.

¶ 14 The parties stipulated that, if called to testify, Sergeant Carl Wasielewski would testify that defendant, after being advised of and waiving his rights, gave a statement on July 5, 2015, at 2:20 a.m. and stated in summary that “they came at me, that’s why I did what I did. It was all over some girl originally.”

¶ 15 The parties also stipulated that, if called to testify, Bob Radmacher of the Illinois State Police Firearms Service Bureau would testify that he did a careful search of the files, and found that defendant has never been issued a firearm owner's identification card or a conceal-carry license as of September 6, 2015.

¶ 16 Defendant testified that during the early morning hours of July 5, 2015, he was at a gas station on Cicero and Monroe because his girlfriend was dropping someone off. Defendant and "the girl" had gotten into a "verbal altercation" and she kicked defendant in his head, and he threw a drink on her. The girl called somebody to meet up, and as a result they went to the gas station because she was getting dropped off there.

¶ 17 When they arrived at the gas station, defendant tried to clean the car out, and the girl went toward the store part of the station. She walked toward a car parked at the station, and talked with whoever was in the car, when four people got out of the car and began "coming towards [defendant]." Their hands were in their waistbands, and defendant believed they had guns. Defendant was "scared." The people got "feet away" from defendant, when he pulled out a replica gun, shot it in the air, and chased them away.

¶ 18 Defendant had this replica gun because he did a TV series with a pastor, Tyrone Cave, which aired on YouTube and Channel 19, "to put light on the situation that happened in the neighborhood." Defendant used a replica gun in the making of the series, and had one of the replicas with him at the time of the incident. To defendant's knowledge, this gun was not capable of shooting a bullet, but when it shot it "ma[de] a flash and it just shoot like a real gun, but it don't project anything, like no real bullets." There are actual cartridges that go into the gun.

Defendant had the replica with him at the time, because it was the 4th of July, and he wanted to shoot it for the fireworks.

¶ 19 At the gas station, defendant thought the people coming toward him had guns, so he drew his replica gun “[j]ust to scare them away.” They ran, and defendant chased them away from the car, because if they started shooting at his car “they could have shot [defendant] and [his] girlfriend.” Defendant did not recognize any of the individuals who came toward him, and was afraid for his and his girlfriend’s lives.

¶ 20 On cross-examination, defendant stated that when he saw the men at the gas station, he did not recognize any of them, but the girl he threw a drink on was walking with them, and they had their hands in their waistbands. Defendant was afraid because he thought they had real guns. Defendant attempted to run away, but knew he had the replica gun, so he shot in the air. The men ran, and defendant “chased them away so they won’t start back shooting.” When he saw the men walking toward him, he did not call out for help, or turn around and run away. He never saw anyone else with a gun. The men ran away from him when they saw his replica gun, and defendant chased them “[b]ecause they ran away.” Defendant was “scared for [him] and his girlfriend” and knew “that if they was going to do something to [him], [he] was trying to make sure they get away from not doing nothing to her.” After the men ran away from him, defendant was no longer scared, because they were gone.

¶ 21 Defendant ran from the police, and “tossed” the gun “before the police man tried to shoot [him].” Tyrone Cave, the producer of the television show, gave him the replica gun, and defendant fired it multiple times on the show. Defendant told the police that “this was all over some girl” and that “there [was] a fake gun on the scene.”

¶ 22 The trial court found defendant guilty of aggravated discharge of a firearm and aggravated unlawful use of a weapon. The court stated it believed the testimony of Officers Montalvo and Waldbuesser, and found they testified “in a clear, straight forward manner” and “[did] not believe that they did exaggerate on any of their testimony.” The court emphasized that the officers’ testimony was “in marked contrast” to defendant’s claim that he pointed the gun and fired it in the air, and both of the officers were very clear that the gun was “pointed outward” when fired.

¶ 23 The court noted that defendant testified that he was defending himself and his girlfriend, and ran at the people, fired in the air, and returned to the car, which was in part confirmed by the video. The video showed that the people had their hands on their belts, which the court considered could have been “indicative of an attempt to communicate that perhaps they had guns.” The court stated that for defendant to respond in the manner in which he did, as evidenced on the video, “would seem at first to be particularly brave.”

¶ 24 However, the court stated that defendant did not act consistently; seconds after he chased the people, defendant walked back and leaned into the car “without any seeming fear whatsoever that these persons would return.” Defendant did not have “any particular concern consonant or consistent with a belief that A, these other persons in fact had guns, or B, that he was powerless to defend against them if they did return because he had a fake gun.” Defendant’s actions were not what a person would do if afraid of these people and genuinely believed they had real guns where he had only a “fake gun.” The court also emphasized that defendant fled from the police, who would have been able to protect him and his girlfriend from any potential attack. The court

did not believe that defendant had a reasonable belief that the men had guns, or that it was necessary to use deadly force to defend himself or another person.

¶ 25 The court subsequently denied defendant's motion to re-open defendant's case and amended motion for a new trial or judgment of acquittal. In denying defendant's amended motion for a new trial or judgment of acquittal, the court commented that it found the officers credible in their testimony and defendant not credible. Furthermore, the court could not "conceive" why defendant would flee from the police if his testimony was truthful, because he would have no contraband and was defending himself, which is not illegal. Additionally, defendant was seeking to protect his girlfriend, but fled the scene while his girlfriend was still there. The case then proceeded to sentencing, and the court sentenced defendant to concurrent terms of four years' and one year's imprisonment.

¶ 26 On appeal, defendant argues that this court should reverse his convictions, because the State failed to prove beyond a reasonable doubt that a firearm was used in the commission of the offenses, because no firearm or other ballistics evidence was recovered, and therefore no evidence existed to distinguish the object involved from a toy or replica gun.

¶ 27 The standard of review in challenging the sufficiency of the evidence is "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.'" *People v. Belknap*, 2014 IL 117094, ¶ 67 (quoting *People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The trier of fact, here the trial judge, has the responsibility to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. *People v. Brown*, 2013 IL 114196, ¶ 48. Accordingly, this court will not retry the evidence or substitute its judgment for

that of the trier of fact on issues involving the weight of the evidence or credibility of witnesses.

Id. A reviewing court will not reverse a criminal conviction unless the evidence is “unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant’s guilt.” *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 28 In order to prove defendant guilty of aggravated discharge of a firearm as charged, the State needed to establish that defendant knowingly or intentionally discharged a firearm in the direction of another person. 720 ILCS 5/24-1.2(a)(2) (West 2014). In order to prove defendant guilty of aggravated unlawful use of a weapon as charged, the State needed to establish that defendant knowingly carried on or about his person any pistol, revolver, or other firearm, and defendant had not been issued a currently valid Firearm Owner’s Identification Card. 720 ILCS 5/24-1.6(a)(1)/(3)(C) (West 2014).

¶ 29 The term “firearm” under the Illinois Criminal Code has the meaning ascribed to it under the Firearm Owners Identification Act. 720 ILCS 5/2-7.5 (West 2014). Under the Firearm Owners Identification Act, “firearm” is defined as “any device *** designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas.” 430 ILCS 65/1.1 (West 2014). The definition of firearm excludes certain items, including a “pneumatic gun,” “paint ball gun,” “B-B gun,” and “antique firearm.” *Id.* Defendant only challenges the “firearm” element of both charges.

¶ 30 In this case, viewing the evidence in a light most favorable to the State, a rational trier of fact could find, beyond a reasonable doubt, that defendant discharged a “firearm” at a crowd of people at the gas station. The testimonial and video evidence shows that defendant was at the Mobil gasoline station at 1:46 a.m. when he was approached by four individuals, with their hands

at their waistbands. Defendant raised a handgun at these individuals, and fired two shots, following them as they ran away from him. A few seconds later, defendant casually walked back to a vehicle, and had a conversation with the driver. Two police officers witnessed defendant running after the individuals with a gun in his hand. When the police officers announced their office, defendant fled the scene. Furthermore, when questioned by the police, defendant admitted that he did what he did because “they came at [him],” and “[i]t was all over some girl originally.”

¶ 31 Defendant argues that because no ballistics or firearm evidence was recovered, the officers’ subjective belief that defendant discharged a “firearm” is insufficient to support the convictions, because there is no information in their testimony that would distinguish the object from a replica or toy. Despite defendant’s contention, Illinois courts have 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. Jackson*, 2016 IL App (1st) 141448, ¶ 15. Accordingly, the State need not present a firearm in order for the factfinder to find the defendant possessed one. See *People v. Wright*, 2017 IL 119561 ¶¶ 76-77.

¶ 32 In this case, the court credited the testimony of the two witnesses, police officers Montalvo and Waldbuesser who heard the gunshots and witnessed defendant chasing the individuals with the firearm. The court found their testimony “clear and straight forward.” In contrast, the court noted that defendant’s actions were inconsistent. Furthermore, the court commented that defendant fled the scene, rather than ask the police for assistance. See *People v. Harris*, 52 Ill. 2d 558, 561 (1972) (“Evidence of flight is admissible as a circumstance tending to show consciousness of guilt”).

¶ 33 “[I]n weighing evidence, the trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt.” *Jackson*, 232 Ill. 2d at 281. Here, the court, in its role as factfinder, drew an inference from defendant’s actions and behavior that he was armed with a real firearm rather than a replica or toy. We find this inference to be reasonable and will not substitute our judgment for that of the trial court concerning its findings regarding defendant’s credibility, and the reasonable inferences to be drawn from the facts. See *Brown*, 2013 IL 114196, ¶ 48.

¶ 34 Taking the evidence in a light most favorable to the State, we find that a rational trier of fact could have found that defendant was armed with a “firearm.” Under the circumstances, defendant’s convictions for aggravated discharge of a firearm and aggravated unlawful use of a weapon are not so unreasonable or improbable as to create a reasonable doubt of his guilt. Accordingly, we affirm the trial court’s judgment.

¶ 35 Affirmed.