

2020 IL App (1st) 181011-U

No. 1-18-1011

Order filed June 17, 2020

Third 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 15298
)	
RENARD WHITLEY,)	Honorable
)	Kenneth J. Wadas,
Defendant-Appellant.)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's conviction for unlawful use or possession of a weapon by a felon is affirmed over his challenge to the sufficiency of the evidence.
- ¶ 2 Following a bench trial, defendant Renard Whitley was convicted of unlawful use or possession of a weapon by a felon (UUWF) and sentenced to three years' imprisonment. On appeal, defendant contends that the evidence was insufficient to sustain his conviction because the

State did not establish beyond a reasonable doubt that defendant possessed the revolver that was recovered from the vehicle in which he was a passenger. We affirm.

¶ 3 Defendant was charged with two counts of UUWF for knowingly possessing a firearm and ammunition when he had previously been convicted of a felony, and four counts of aggravated unlawful use of a weapon for knowingly possessing an uncased, loaded, immediately accessible firearm while he was a passenger in a vehicle and when he had not been issued a valid concealed carry license or firearm owner's identification card.

¶ 4 At trial, Chicago police officer Benjamin Garcia testified that, at approximately 1:00 a.m. on September 16, 2016, he was driving a Chicago police vehicle southbound on Springfield Avenue with two partners when he saw a four-door sedan traveling northbound on Springfield with its headlights turned off. Garcia followed the sedan and pulled it over on South Pulaski Road. He approached the driver's side of the sedan on foot and "engage[d] with" the female driver. The streetlights on Pulaski were lit and Garcia used his flashlight to help illuminate the interior of the sedan. Defendant, whom Garcia identified in court, was seated in the rear of the sedan, directly behind the driver.

¶ 5 Garcia testified that as he approached the sedan, he ordered all of its occupants to show their hands. As Garcia was speaking to the driver, he saw defendant make furtive movements towards his waistband with both hands near the middle of his stomach. Garcia turned his flashlight towards defendant, and one of Garcia's partners began yelling "to see hands, hands again." Garcia then saw a shiny metal object drop from defendant's left hand onto the floor of the vehicle. Garcia immediately opened the rear driver's-side door of the sedan and ordered defendant out; defendant complied. Garcia then saw a chrome and blue steel revolver on the floor of the sedan near where

defendant's feet had been and recovered the weapon, which was loaded. There was nothing else on the rear driver's-side floor of the vehicle, and nothing else "shiny" on the floor of the vehicle. Defendant was arrested.

¶ 6 On cross-examination, Garcia testified that when he first approached the sedan after pulling it over, the interior lights of the vehicle were off and it was dark inside. The driver's window was down. Garcia did not recall how many people were in the sedan, as he was paying attention to the driver's side. He saw at least one other person in the rear seat in addition to defendant, but he could not recall whether there was anyone in the front passenger seat. Garcia could see what everyone in the backseat was doing, and defendant caught his attention as he was the only person who did not have his hands showing. Over the course of a few seconds, Garcia noticed defendant making furtive gestures near his waist, flashed his light toward the back seat, and saw a shiny metallic object drop from defendant's left hand to the floor. Garcia described the gun he recovered as a "small revolver."

¶ 7 The State submitted into evidence a certified copy of defendant's 2012 felony narcotics conviction.

¶ 8 The trial court found defendant guilty on all counts. In announcing its ruling, the court stated that "[t]he officer's testimony was clear and convincing, unimpeached, and credible" and that it had "no reason to disbelieve the officer."

¶ 9 The court denied defendant's motion for a new trial, merged the counts, and sentenced defendant to three years' imprisonment on one count of UUWF. Defendant timely appealed.

¶ 10 On appeal, defendant contends that the State failed to produce sufficient evidence to prove beyond a reasonable doubt that he possessed the revolver that Officer Garcia recovered from the

floor of the sedan. Specifically, defendant argues that Garcia's claim that he saw defendant drop a shiny metallic object from his left hand (which Garcia shortly thereafter discovered was a revolver) was not credible and that Garcia's testimony was unreliable because it was uncorroborated.

¶ 11 When a defendant challenges his conviction based on the sufficiency of the evidence, we review 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. Bradford*, 2016 IL 118674, ¶ 12. It is the trier of fact's responsibility to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *Id.* Thus, we do not substitute our judgment for that of the fact finder. *People v. Simpson*, 2015 IL App (1st) 130303, ¶ 44. We will not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 52.

¶ 12 The positive and credible testimony of a single witness is sufficient to convict, *People v. Gray*, 2017 IL 120958, ¶ 36, and the credibility of a witness is determined by the trier of fact. *Simpson*, 2015 IL App (1st) 130303, ¶ 44. The State is not required to present corroborating physical evidence at trial, and a lack of physical evidence to corroborate eyewitness testimony is not in itself a reason for reversal. *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23 (internal citation omitted). The State is also not required to corroborate the testimony of a police officer with the testimony of his partners. *People v. Ash*, 346 Ill. App. 3d 809, 818 (2004) (explaining that when a defendant is accused of dropping contraband in plain view, "we [do] not require, as a matter of law, the corroboration of a police officer's testimony.").

¶ 13 To sustain the conviction for UUWF as charged, the State needed to prove beyond a reasonable doubt that (1) defendant knowingly possessed a firearm on or about his person and (2) defendant had been convicted of a felony prior to the date of this incident. 720 ILCS 5/24-1.1(a) (West 2016). Defendant does not dispute that the evidence was sufficient to establish his prior felony conviction. He only challenges the sufficiency of the evidence with respect to his possession of the firearm.

¶ 14 Possession of a firearm can be actual or constructive. *People v. Dismuke*, 2017 IL App (2d) 141203, ¶ 44. Actual possession is established by testimony that defendant exercised some form of dominion over the firearm, such as trying to conceal it or being seen while attempting to discard it. *People v. Miller*, 2018 IL App (1st) 152967, ¶ 9. Actual possession “does not require present personal touching of the illicit material.” *People v. Givens*, 237 Ill.2d 311, 335 (2010) (internal citation omitted).

¶ 15 Viewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could have found that defendant actually possessed the revolver that Garcia recovered. Garcia testified that he was standing on the driver’s side of the sedan, which was the side on which defendant was seated. Although the vehicle’s interior lights were not on, there was artificial lighting from streetlights and Garcia used a flashlight to help illuminate the interior of the sedan. Garcia testified that his flashlight was pointed towards defendant when he saw defendant drop a shiny metallic object from his left hand to the floor of the car. Almost immediately thereafter, Garcia saw that this object was a firearm and recovered it from the floor below where defendant had been sitting. Garcia saw no other shiny object on the floor of the vehicle. The trial court

expressly found Garcia credible. We find Garcia's testimony sufficient to establish defendant's possession of the firearm and, thus, to sustain his conviction for UUWF.

¶ 16 Defendant argues that Garcia could not possibly have seen him drop a metallic object from his left hand given where Garcia was standing and the unlit interior of the sedan. This is primarily an issue of credibility and, as noted above, we do not substitute our judgment for the trier of fact's judgment on matters of credibility. *Simpson*, 2015 IL App (1st) 130303, ¶ 44. Garcia testified that his flashlight was pointed towards defendant when he saw defendant drop the metallic object, *i.e.*, defendant was illuminated. In fact, his attention had been drawn to defendant because he saw that defendant was the only occupant of the sedan who did not show his hands as directed. The finder of fact could have rationally concluded that defendant's hands were fully visible to Garcia, who was looking towards the front of defendant's body with his flashlight when defendant dropped the metal object. Defendant also suggests that Garcia did not actually know who of the three people in the car dropped the gun. However, Garcia's testimony established defendant's actual and exclusive possession of the revolver because Garcia saw it drop from defendant's left hand specifically. Based on this record, we cannot find that Garcia's testimony was so implausible as to warrant reversal.

¶ 17 Defendant also contends that the evidence of his possession of the firearm was insufficient because Garcia's testimony was not corroborated by any other witnesses or physical evidence. However, as noted above, the State was not required to present corroborating physical evidence or eyewitness testimony to sustain its burden of proof. *Herron*, 2012 IL App (1st) 090663, ¶ 23; *Ash*, 346 Ill. App. 3d at 818. It is well established that the testimony of a single witness, even if contradicted by the defendant, does not render a conviction reversible, so long as the testimony of

the witness is positive and the witness is credible. *People v. Siguenza-Brito*, 235 Ill.2d 213, 228 (2009). In this case, Garcia's testimony was positive and uncontradicted, and the trial court found Garcia to be credible. Because the trial court found Garcia's testimony to be credible, the lack of corroborating evidence had no bearing on defendant's conviction. *Herron*, 2012 IL App (1st) 090663, ¶ 23. Thus, lack of corroboration is not a basis for reversing defendant's conviction.

¶ 18 For the reasons stated, we affirm defendant's conviction.

¶ 19 Affirmed.