2011 IL App (1st) 092670-U

FIRST DIVISION
FILED: NOVEMBER 28, 2011

No. 1-09-2670

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 11790
	)	
LOUIS BANKS,	)	Honorable
	)	Jorge Luis Alonso,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Karnezis concurred in the judgment.

O R D E R

¶ 1 *Held:* Where the victim testified positively and credibly with regard to the elements of the crimes charged and some corroborating evidence existed in the record, the evidence was sufficient to convict despite questions regarding the victim's credibility.

¶ 2 Following a bench trial, defendant Louis Banks was convicted of attempted murder and armed robbery and sentenced to concurrent terms of 40 and 20 years' imprisonment, respectively. On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt where the only direct evidence against him came from the victim, whose testimony was unreliable, uncorroborated, and defied belief. For the reasons that follow, we affirm.

¶ 3 Defendant's conviction arose from an early morning shooting in the vicinity of the 9300 block of South Emerald Avenue, Chicago, which left Frederick Henderson dead and Robert Searcy injured. Defendant and codefendant, Gene Thomas, were charged with Henderson's murder and numerous other crimes against Henderson and Searcy. Defendant was acquitted of the charges regarding Henderson but was convicted of the charges concerning Searcy.

¶ 4 The evidence at trial established that on May 4, 2007, defendant, codefendant, and Robert Searcy attended a late-night backyard cookout at the Maywood home of a mutual acquaintance. That night, Searcy was driving a purple Cadillac and codefendant was driving a gray or silver Chevrolet. At least two people at the cookout overheard Searcy and defendant talking about selling or trading tire rims and then saw Searcy, defendant, and codefendant leave the party at the same time.

¶ 5 At trial, Robert Searcy testified that in 1999, he had been convicted of attempted aggravated arson. In addition, at the time of defendant's trial, a misdemeanor charge of resisting a police officer was pending against Searcy. Searcy stated that he had not been offered anything with respect to the open case in exchange for his testimony against defendant.

¶ 6 Searcy testified that, late on the night in question, he went to a gathering at a friend's house in Maywood. Among the people at the party were defendant and codefendant. Searcy drank and socialized with the group and, at some point, started talking with defendant about selling tire rims. Searcy hoped to trade his 22-inch rims for 20-inch rims. Defendant suggested that Searcy consider the 20-inch rims on his car, but after Searcy looked at them, he decided he was not interested. The two men continued discussing tire rims and eventually agreed that Searcy would give defendant the 22-inch rims in exchange for three ounces of cocaine. Their plan was to take the tires and rims to the south side of Chicago, where defendant would then give

Searcy the drugs. Because only three of the tires and rims would fit in Searcy's car, codefendant put the fourth in his car for the drive.

¶ 7 Searcy's friend, Frederick Henderson, joined the group and rode with Searcy to the south side. Defendant rode in the back seat of Searcy's car, and codefendant followed with defendant's son, who had also joined the group. Searcy testified that he missed the exit for 95th Street, so he got off the highway at the next exit, which was Halsted Street. At that point, Searcy did not know where he was going, so he followed codefendant, who led him southbound into the alley of the 9300 block of South Emerald Avenue.

¶ 8 In the alley, Searcy, Henderson, and defendant got out of Searcy's car. As Searcy walked toward the trunk, defendant started shooting at Henderson, who ran toward a gangway. Searcy stated that a "reaction came out my mouth, like what the fuck." After shooting at Henderson two or three times, defendant turned and shot at Searcy two or three times. A bullet grazed Searcy right below his navel and left a burn mark. Searcy testified that he ran to the north end of the alley and said something to codefendant, who was still in the other car. He heard defendant say, "Hey, grab that other banger," whereupon codefendant and defendant's son got out of codefendant's car and started getting the rims out of Searcy's car. According to Searcy, by "banger," defendant meant a gun, not a gang member.

¶ 9 Searcy ran to a nearby house and rang the doorbell. While he was ringing the bell, he heard two or three more gunshots. As he continued to ring the doorbell, he saw a car coming down the street, so he hid in some bushes. From the bushes, he saw that the car was codefendant's and that it had one of his rims on the hood. After the car passed, Searcy went back into the alley. He looked for and called out to Henderson but got no response and could not find him, so he got back into his car and drove home. When asked why he did not drive around the neighborhood to look for Henderson, Searcy answered, "Gunshots."

¶ 10 When Searcy got home, he charged his cell phone and called a friend to see whether anyone had heard from Henderson. Some time later, he learned that Henderson had been killed. At that point, he went to the police and told them defendant and codefendant had shot Henderson. Searcy brought along the boxer shorts he was wearing at the time of the shooting, as they were bloody from his gunshot wound, but the police refused to take them. A photograph of the injury to Searcy's abdomen was admitted into evidence.

¶ 11 Searcy testified that the day after the shooting, he contacted defendant. Specifically, he "chirped" defendant on his Nextel phone. When defendant asked who was calling, Searcy gave a false name. Defendant offered to sell some rims, and Searcy said he would call back. When he did call back, defendant did not answer. When asked by defense counsel why he called defendant, Searcy answered, "Revenge."

¶ 12 Chicago police officer Deirdra Simpson-Torres testified that on May 5, 2007, she was off duty at her home in the 9300 block of South Emerald Avenue. About 3 a.m., she was awakened by the sound of six or seven gunshots coming from her alley. Simpson-Torres looked out the window, saw a dark car parked in the alley, and heard someone shout, "[Y]ou on some [fucked] up shit." Seconds later, she saw a man walking northward through the alley, carrying a plastic garbage bag. Next, the dark car left southbound, and she saw a different man rolling a fat tire with a shiny chrome rim northbound through the alley. Shortly thereafter, Simpson-Torres saw a silver car drive southbound through the alley with a fat tire on the roof. After the silver car passed by, she heard two or three more shots from the south end of the alley.

¶ 13 Following closing arguments, the trial court found defendant guilty of the armed robbery and attempted murder of Searcy. In so doing, the trial court noted that Searcy carried "baggage" as a witness due to his prior conviction, pending misdemeanor charge, plan to obtain drugs from defendant, failure to stay at the scene or call the police immediately after the shooting, and desire

for revenge. The trial court also noted that Searcy was somewhat combative on the stand but nevertheless found his demeanor appropriate given that he had been subjected to cross-examination by both defendant's and codefendant's attorneys. The trial court concluded that Searcy testified credibly and that much of his testimony was corroborated, particularly by the testimony of Officer Simpson-Torres.

¶ 14 The trial court subsequently sentenced defendant to concurrent terms of imprisonment of 40 years for attempted murder and 20 years for armed robbery.

¶ 15 On appeal, defendant challenges the sufficiency of the evidence. He argues that the only direct evidence against him came from Searcy, who was highly unreliable as a witness because his testimony was motivated by an ongoing desire for revenge against defendant for allegedly stealing his tire rims; he was drunk on the night in question, making his observations and memories suspect; he waited at least a full day to report the incident to the police; and he had a prior felony conviction. Defendant further argues that Searcy's testimony that defendant displayed a gun and shot him was not corroborated by other witnesses or by persuasive physical evidence such as a recovered gun, fired bullets, or cartridge shell casings. Finally, defendant asserts that Searcy's account defies belief. He argues that it is inexplicable and contradictory for Searcy to emerge from the bushes and walk back to his car, calling out for Henderson, but then be too fearful to drive around the area to look for him.

¶ 16 When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on

these matters. *People v. Brooks*, 187 Ill. 2d 91, 132 (1999). Reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 17 Where a guilty finding depends on eyewitness testimony, a reviewing court, keeping in mind that it was the fact finder who saw and heard the witness, must decide whether any fact finder could reasonably accept the witness's testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004); *People v. Smith*, 185 Ill. 2d 532, 541 (1999). It is for the finder of fact to judge how flaws in a witness's testimony affect the credibility of the whole. *Cunningham*, 212 Ill. 2d at 283. If it is positive and credible, the testimony of a single witness is sufficient to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 18 In announcing its findings in this case, the trial court specifically acknowledged Searcy's "baggage." The trial court's comments make clear that it was well aware of Searcy's imperfections as a witness and took them into account when assessing his credibility, yet still chose to accept his account. We find sufficient support in the record for the trial court's approach. Searcy positively testified that defendant shot at him and that defendant and codefendant took his tires and rims without paying for them. Even though shell casings were not recovered to support Searcy's testimony, his testimony was corroborated by Simpson-Torres's recollection of numerous gunshot noises in the area, as well as by the injury he sustained to his abdomen. Accordingly, despite the credibility issues raised by defendant, the portions of Searcy's testimony that directly support defendant's conviction could reasonably have been accepted by the fact finder who saw Searcy testify. See *Cunningham*, 212 Ill. 2d at 285.

¶ 19 In reaching this conclusion, we reject defendant's argument that it is inexplicable that Searcy would feel comfortable emerging from the bushes and walking back to his car, but then

be too afraid to drive around the neighborhood and look for Henderson. According to Searcy's testimony, when he walked back to his car, he had just seen codefendant's car driving away from the area of the alley. We agree with the State that Searcy could have walked back to his car thinking that the immediate area was safe, but could have felt that it would be unsafe to drive around the general neighborhood without knowing where the group in codefendant's car had gone. While Searcy may not have taken the most judicious course of action immediately after the shooting, we cannot say that his account of his actions is so outrageous so as to defy belief.

¶ 20 We have examined the deficiencies in Searcy's credibility identified by defendant and find that they are of the sort properly resolved by the trial court in the role of fact finder. We will not substitute our judgment for the trial court's on these matters. See *Brooks*, 187 Ill. 2d at 131. After reviewing the evidence in the light most favorable to the prosecution, we conclude that the evidence was not "so unsatisfactory, improbable or implausible" to raise a reasonable doubt as to defendant's guilt. *Slim*, 127 Ill. 2d at 307. Defendant's challenge to the sufficiency of the evidence fails.

¶ 21 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.