

THIRD DIVISION
April 13, 2011

No. 1-09-2334

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 13274
)	
OTHA JEFFERSON,)	Honorable
)	Kevin M. Sheehan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE STEELE delivered the judgment of the court.
Presiding Justice Quinn and Justice Neville concurred in
the judgment.

O R D E R

HELD: The defendant was proved guilty beyond a reasonable doubt of aggravated discharge of a firearm and was properly convicted as an armed habitual criminal.

Following a bench trial, defendant Otha Jefferson was convicted of being an armed habitual criminal and of aggravated discharge of a firearm and was sentenced to concurrent terms of eight and six years' imprisonment, respectively. On appeal,

defendant contends that his conviction for the offense of being an armed habitual criminal violated the *ex post facto* clause of the United States Constitution; that the evidence was insufficient to convict him of aggravated discharge of a firearm where the State did not prove he fired shots toward a vehicle; and that his convictions and sentences violate the one-act, one-crime rule.¹ For the reasons that follow, we affirm.

At trial, Chicago police officer Louis Loaiza testified that on June 25, 2008, he was working narcotics surveillance. Around 11 p.m., Officer Loaiza heard three or four gunshots coming from the direction of 16th Street and Harding Avenue, which was about a block away from his location. He radioed the information to his partners, who were working enforcement, and moved toward the area on foot. As he approached, he saw two men standing about 300 feet from him, at the mouth of an alley. Officer Loaiza later identified the men as defendant and codefendant, Senneca Hamilton. Officer Loaiza testified that defendant and Hamilton were "each firing a handgun westbound at a vehicle which was stopped on the west side of Harding in the alley." He noted multiple shots and stated that he "saw the muzzle flash coming from their hands." As Officer Loaiza got closer, the vehicle

¹In his reply brief, defendant has withdrawn an additional contention for appeal.

drove away and defendant and Hamilton "continued firing westbound at the vehicle."

After Hamilton fired a few more shots, he and defendant ran toward Officer Loaiza into the alley. Officer Loaiza pursued them as they ran through the alley and up the back steps of a house. Hamilton went inside and slammed the door, leaving defendant on the porch. Defendant dropped a handgun on the porch, went over the porch railing, and jumped the fence into the back yard of the neighboring building. Officer Loaiza testified that he ran around the fence, caught up with defendant, and arrested him. By this time, other officers had arrived on the scene. Officer Loaiza yelled out to them, and in response, one of the other officers recovered the handgun defendant had dropped on the porch.

At trial, Officer Loaiza identified various photographs of the scene. While describing one photograph, he stated, "[T]hat's where the SUV was parked or was stopped when the two male blacks were shooting at that vehicle."

Chicago police officer Marcos Bocanegra testified that on the night in question, he and another officer were working as enforcement officers for Officer Loaiza, who was conducting surveillance. About 11 p.m., Officer Bocanegra, who had the windows of the squad car rolled down, heard multiple shots being fired. At the same time, Officer Loaiza radioed that he heard

shots fired. Officer Bocanegra and his partner drove to the area identified by Officer Loaiza. There, Officer Bocanegra saw codefendant Hamilton in an alley, shooting. Officer Bocanegra got out of the squad car and gave chase. Hamilton ran through the alley toward the back of a house. Defendant, who was holding a gun, was running a few feet behind Hamilton. Officer Bocanegra saw Hamilton go into the house. Defendant went up onto the porch but then jumped over the railing. Officer Bocanegra testified that he followed Hamilton into the house and arrested him.

Chicago police officer Rick Caballero testified that around 11 p.m. on the night in question, he and his partner responded to a call of shots being fired. Following the radioed information, he and other officers went to the back yard of the house in question. As Officer Caballero was going up the steps to the house's back porch, he heard Officer Loaiza, who was in the neighboring back yard, yelling that an offender had dropped a gun on the porch. Officer Caballero located and recovered the gun.

The State entered into evidence two certified copies of conviction for defendant. The parties stipulated to the testimony of an evidence technician regarding the number and caliber of expended shell casings recovered from the scene.

The trial court convicted defendant of being an armed habitual criminal and of aggravated discharge of a firearm.

Subsequently, the court sentenced defendant to concurrent terms of eight and six years' imprisonment, respectively.

Defendant's first contention on appeal is that his conviction for being an armed habitual criminal violated the *ex post facto* clause of the United States Constitution because one of his prior convictions occurred before the effective date of the legislation creating the offense. A challenge to the constitutionality of a statute is reviewed *de novo*. *People v. Leonard*, 391 Ill. App. 3d 926, 931 (2009).

This court has rejected *ex post facto* challenges to the armed habitual criminal statute several times. See, e.g., *People v. Thomas*, No. 1-09-0398, slip op. at 7-8 (Ill. App. Feb. 2, 2011); *People v. Adams*, 404 Ill. App. 3d 405, 413 (2010); *People v. Bailey*, 396 Ill. App. 3d 459, 461-64 (2009), *Leonard*, 391 Ill. App. 3d at 930-32. Defendant acknowledges this line of cases but argues that we should not follow them because they were incorrectly decided and conflict with *People v. Dunigan*, 165 Ill. 2d 235 (1995). Defendant's argument fails. The same argument regarding *Dunigan* was considered in *Leonard* and *Thomas* and was rejected. *Thomas*, slip op. at 8; *Leonard*, 391 Ill. App. 3d at 932. In keeping with precedent, we find that the armed habitual criminal statute does not violate the *ex post facto* clause.

Defendant's next contention is that the evidence was insufficient to convict him of aggravated discharge of a firearm.

Noting that he was charged with "knowingly or intentionally discharg[ing] a firearm in the direction of a vehicle he knew, or reasonably should have known, to be occupied by a person," defendant argues that the State failed to establish an element of the offense because it did not prove he fired shots specifically directed toward a vehicle. Defendant asserts that the State's evidence was only that he fired an unspecified number of shots westbound and that an SUV drove off once shots were fired. He maintains that this evidence was circumstantial, did not eliminate the possibility that he fired the gun wildly, and did not establish that he directed shots at the SUV.

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). Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). 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 court of review will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131

(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).

Here, Officer Loaiza testified that defendant was "firing a handgun westbound at a vehicle," that he "saw the muzzle flash coming from their hands," and that when the vehicle drove away, defendant "continued firing westbound at the vehicle." Additionally, when describing a photograph of the scene, he stated, "[T]hat's where the SUV was parked or was stopped when the two male blacks were shooting at that vehicle." In light of this testimony, we conclude that it was reasonable for the trial court to find that defendant fired in the direction of the vehicle in question.

The case upon which defendant relies, *People v. Hartfield*, 266 Ill. App. 3d 607 (1994), is distinguishable from the instant facts. In *Hartfield*, a detective heard gunshots while he was chasing the defendant, who was armed. *Hartfield*, 266 Ill. App. 3d at 608. At trial, the detective specifically testified that he never saw the defendant fire his gun. *Hartfield*, 266 Ill. App. 3d at 609. We reversed the defendant's conviction for aggravated discharge of a firearm because the State "failed to present any evidence whatsoever that defendant aimed his weapon at [the] Detective." *Hartfield*, 266 Ill. App. 3d at 609.

In contrast, in the instant case, Officer Loaiza testified that he saw defendant shooting, noted the muzzle flash coming from defendant's hand, and stated three times that defendant was firing "at" the vehicle. This is not a case where the State presented no evidence of an element of the charged offense.

We can not agree with defendant that Officer Loaiza's testimony failed to sufficiently establish the direction in which he fired. Considered in the light most favorable to the prosecution, the evidence presented by the State was sufficient for the trial court to convict defendant of aggravated discharge of a firearm. The evidence was not "so unsatisfactory, improbable or implausible" so as to raise a reasonable doubt as to defendant's guilt. *Slim*, 127 Ill. 2d at 307.

Defendant's final contention is that his convictions and sentences for being an armed habitual criminal and for aggravated discharge of a firearm violate the one-act, one-crime rule because the act of possessing the firearm -- an element of the first crime -- was accomplished by the physical act of discharging the firearm -- an element of the second crime. Defendant argues that where the same act gave rise to both convictions, his conviction for the less serious offense must be vacated.

Under the one-act, one-crime doctrine, multiple convictions may not be based on precisely the same physical act. *People v.*

Artis, 232 Ill. 2d 156, 165 (2009). However, so long as multiple offenses do not result from precisely the same physical act, a person can be guilty of multiple offenses that share a common act. *People v. Rodriguez*, 169 Ill. 2d 183, 188 (1996). An "act" for purposes of this doctrine is "any overt or outward manifestation which will support a different offense." *People v. King*, 66 Ill. 2d 551, 566 (1977).

In our view, the evidence produced at trial in the instant case supports separate convictions for being an armed habitual criminal based on the possession of the gun and for aggravated discharge of a firearm based on shooting that gun. We agree with the State that while both offenses shared the common element of possession, the offenses were based on separate acts occurring at different points in time.

In committing the offense of aggravated discharge, defendant possessed the gun but also engaged in the additional, overt act of firing the gun at an occupied vehicle. The act of shooting was complete when defendant stopped firing the gun. Separate from the shooting, defendant possessed the gun while he ran through the alley and up onto the porch where the gun was recovered. This possession was distinct from the discharge of the weapon. See *People v. Dawson*, 403 Ill. App. 3d 499, 513 (2010) (conviction for carrying a firearm loaded, uncased, and accessible in an automobile and conviction for unlawful discharge

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of a firearm did not violate one-act, one-crime doctrine because transporting the weapon was a distinct act from discharging it). Based on the evidence presented, we conclude that defendant's conduct in committing the two offenses did not consist of a single act. Defendant's argument fails.

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

Affirmed.