

No. 1-09-2671

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SECOND DIVISION
May 3, 2011

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 8050
)	
JAKI BELL,)	Honorable
)	James M. Obbish,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Karnezis concurred
in the judgment.

O R D E R

Held: Evidence sufficient to sustain defendant's conviction for aggravated battery with a firearm over claim that witness identifications were unreliable; sentence affirmed.

Following a bench trial, defendant Jaki Bell was found guilty of aggravated battery with a firearm, then sentenced to 15 years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt where

the testimony of the eyewitnesses was unreliable. He also contends that his sentence should be reduced based on his lack of criminal background, his youth, and his potential for rehabilitation.

The charges in this case arose from a shooting incident that occurred on South Houston Avenue in Chicago. The record shows, in relevant part, that about 9:15 p.m., on March 20, 2008, Adamnesha H., her stepsister Deandra F., Brianna J., and Nicky J. met with Joshua L. (aka "Juice"), Flynn D., and Darien B. (collectively, the Group) on the sidewalk near 8845 South Houston Avenue. Two individuals approached as the Group was conversing, and shots were fired, striking Adamnesha H. in the back.

Deandra F., who is 17 years of age, testified that she saw two boys walking towards the Group from the direction of 87th Street, but could not identify them at first because it was dark outside. However, as they came under the streetlight about two to three houses away, she had a clear, unobstructed view of defendant's face. He was wearing a dark hoodie, as well as a black doo-rag and a black "scar face hat with some rhinestones on it." She had seen him wearing the hat and doo-rag earlier that day at a Family Dollar store and identified those items at trial. Deandra F. had known defendant from the neighborhood for about two weeks, and had walked with him earlier in the day. She did not see the face of defendant's companion.

Deandra F. further testified that seeing defendant in the area made her nervous, and she alerted Adamnesha H., who was dating defendant's friend Dwayne, of his presence. Defendant's companion then shouted, "King Love," and Deandra F. saw defendant point a gun towards the Group. She saw gunfire, heard about three shots, and ran into the street without looking back.

Flynn D., who is 15 years of age, testified that he saw two males in black hoodies walking towards the Group. He recognized defendant from about five houses away, but could not see his companion. The streetlight was "bright enough," and he had an unobstructed view of defendant's face. Flynn D. had known defendant for at least two years and had spoken with him in the past. He observed that defendant was wearing a black hoodie with the hood over his head, black jeans, and black shoes.

Flynn D. heard someone say, "King love" and "Stone love," which he took as a signal to run. He then saw defendant pull a gun out of his left pocket and start shooting from about four houses away. Flynn D. saw gunfire from the gun in defendant's hands, which he testified on cross-examination was the first time he saw defendant's face. He also heard about three shots fired, but did not see a gun in the hands of defendant's companion.

Flynn D. then ran towards his house without turning to see where defendant went, and picked up Adamnesha H., who had been shot. He took her to his home and his mother called the police,

but he did not speak with officers at the scene. Flynn D. also testified that he was a Gangster Disciple at the time of the shooting, that defendant had previously told him that he was a Black Stone, and that those two gangs are not friendly.

Nicky J., who is 16 years of age, testified that she saw two boys walking towards the Group. She recognized one of the boys from about five or six houses away as defendant. She had an unobstructed view of his face, but she did not see the other boy. She described defendant as short, with a "little fro" and wearing a gray hoodie. She had seen defendant several times before, and found the streetlight at the time bright enough to enable her to see down the block.

One of the boys yelled out, "Ambro killer, King lover." When she heard this, she was afraid that they were about to start shooting. She ran between a car and a van, then to the end of the block. While she was between the two cars, she heard six to seven gunshots, and never looked back after she started running. When police arrived, she told them that she saw defendant, and that he was short with a "mini fro" and wearing a gray hoodie.

Brianna J., who is 14 years of age, testified that she saw two boys about five or six houses away walking towards the Group, and recognized one of them as defendant. She had an unobstructed view of defendant and had seen him several times before on Commercial Avenue, but she did not recognize the other boy. She

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acknowledged that she did not see defendant's face, but noticed his short, "kind of cocky" figure and that he was wearing a gray hoodie.

When one of the boys said, "King love, Ambro killer," she ran between some cars, then to the end of the block away from them. Meanwhile, she heard six or seven shots fired, and never looked back. She later spoke with two police officers at Flynn D.'s house, but does not remember if she gave them defendant's name or the description she provided. She also met with Detective Delfavero at the police station that night and told him that she was not sure who the shooter was and that Jacque Thomas was with the shooter. However, Brianna J. denied telling him that the shooter was possibly someone known as "five-0."

Adamnesha H., the 13-year-old shooting victim, testified that she saw two boys walk up and stand near the stop sign at 88th Street and Houston Avenue. After one of them said, "King love," she saw defendant point a gun towards the Group. Although it was night, the streetlights were on, and she had an unobstructed view of him about three houses away. She fled with the Group, and as shots were fired, she looked back and saw defendant with the gun, wearing a black hoodie with the hood halfway on and a black hat with rhinestones.

Adamnesha H. tried running between two cars to cross the street, but was shot in the right side of her back before she

could accomplish this. She continued running in the street, but as she reached the corner, she fell to the ground when her right side gave out and she could not walk anymore. Joshua L. picked her up and took her to the house of Flynn D., whose mother called for an ambulance.

The police spoke with Adamnesha H. at the hospital that night and showed her a paper with the photographs of six individuals on it. She identified defendant as the shooter, a person she had seen three or four times before the incident. At trial, she identified the same black hat with rhinestones that her sister Deandra F. identified. She stated that she had seen defendant wearing that hat earlier in the evening at McDonald's, but did not see him in a doo-rag. Defendant was the only person she saw with a gun that night, and she described his companion as Mexican.

The record further shows, in relevant part, that about 10:34 p.m., on March 20, 2008, Chicago police officer Gaines and his partner, Officer White, observed defendant, wearing a gray hoodie, "loitering" at the corner of 92nd Street and Commercial Avenue. When Officer Gaines turned the squad car in his direction, defendant "hurriedly" boarded a parked CTA bus. The officers followed and detained him, then put him in their car and took him home because it was past curfew. As they were filling out a curfew violation notice outside defendant's home, another

squad car pulled up and the officers were shown a photograph of the alleged shooter, *i.e.*, a photo of defendant, and they brought him to the police station. In addition to the gray flannel hoodie, defendant was wearing a black skull cap with rhinestones spelling out "respect" that night, the same hat Deandra F. and Adamnesha H. identified at trial and testified to having seen him wearing on the night of the shooting.

When Chicago police detective Kazupski learned that an individual was in custody, he generated a six-person photo array, which included an image of defendant, and went to the hospital emergency room where Adamnesha H. was being treated. He briefly interviewed Adamnesha H. in the presence of her mother about the shooting and showed her the photo array. Adamnesha H. "immediately" identified defendant as the shooter.

Detective Kazupski returned to the Area 2 Detective Division where, about 12:47 a.m., on March 21, 2008, a gunshot residue test of defendant's hands was conducted. On the next day, Deandra F., Briana J., Nicky J., and Flynn D. were each brought in to view a four-man, seated lineup. After viewing the respective lineups, Deandra F. and Flynn D. positively identified defendant as the shooter, and Briana J. and Nicky J. positively identified defendant as one of the two individuals who approached the Group prior to the shooting.

The investigation of the crime-scene revealed seven expended shell casings in the area of the sidewalk at 8813 South Houston Avenue, next to which was a working streetlight as well as two sets of double flood lights mounted to the front of the house at that address which, when set off, illuminated the area for one to two minutes. Forensic testing revealed that the recovered casings were Winchester .380 caliber automatic cartridge cases, all fired from the same firearm. The officers also found two vehicles with bullet damage at street numbers 8815 and 8839 South Houston Avenue.

Defendant called Elisa Soto. She testified that about 8:38 p.m., on March 20, 2008, she was walking home from church on 88th Street, and when she was halfway between Commercial Avenue and Houston Avenue, she heard shots fired. A few seconds later, she saw two boys running fast down Houston Avenue towards 88th Street and then cut through an alley. She did not see their faces or anything in their hands. She described them as black, and the shorter of the boys about 5' tall, wearing a dark sweatshirt or sweater, possibly gray in color.

Later that night, two detectives came to her home and asked her to come with them and make an identification. They brought her to the police station about 3 or 4 a.m., showed her a lineup of four seated boys, and Detective Cavazos asked her if she could identify any of them. She told him that she had not seen a face,

but could possibly make an identification by height. She remembers three of the boys being made to stand, and identifying number one based on his height. However, she denied telling a detective that one of the individuals was Hispanic.

Defendant also called Mary Wong, the forensic scientist who analyzed the gunshot residue kit administered to him. She concluded that he may not have discharged a firearm with either hand, and if he did, the particles were removed by activity, were not deposited, or were not detected by the procedure. She also analyzed the jacket recovered from defendant for gunshot residue evidence. She concluded that the sampled areas of the jacket may not have been in the environment of a discharged firearm, and if the jacket was in that environment, the particles were removed by activity, were not detected, or were not deposited.

Defendant finally called Detective Marc Delfavero, who testified that when he interviewed Brianna J., she told him that she was not sure who the shooter was, but mentioned that it may have been an individual named "50," and that Jacque Thomas was with the shooter.

The parties stipulated, in relevant part, that: (1) Chicago police officer Vicari, who prepared the General Offense Case Report, would testify that Nicky J. and Brianna J. described the two offenders as black males in all black clothing, but did not name the shooter; (2) Flynn D. told the grand jury that Juice

picked up Adamnesha H. after she was shot and put her in the gangway; and (3) Detective Cavazos would testify that Elisa Soto told him that the two individuals she saw running were a short, young Hispanic male, about 5' tall, and another taller individual in the same age range who was either a darker-skinned Hispanic or possibly black.

In announcing its decision at the close of evidence, the trial court observed, *inter alia*, that the area of the shooting was well-lit, and that even though the opportunity to observe the shooter was limited because of the short time-span in which the incident occurred, it was significant that the State's eyewitnesses knew defendant, which the court found different from identifying a stranger. As further corroboration of the identifications made of defendant, the court noted the distinctive clothing, *i.e.* the hat with rhinestones spelling "respect," which at least one witness had seen him wearing earlier in the day at McDonald's, and which would have reflected any light in the area of the shooting. In sum, the court concluded that the State had proved the identification of defendant as the shooter beyond a reasonable doubt, and found him guilty of aggravated battery with a firearm.

At defendant's sentencing hearing, the State argued in aggravation that defendant's conduct caused or threatened serious harm, highlighting the fact that he fired seven shots at a group

of people standing and talking on the sidewalk, and that he hit one of them in the back. In mitigation, defense counsel noted that defendant was convicted of an offense serious enough to justify that he be tried as an adult at the age of 15, but that he was only four weeks past his 15th birthday at the time of the incident, and if the offense had occurred one month earlier, he would not have been so tried. Counsel also noted that defendant had never been found delinquent of any offense, had participated in school while in the detention center, and had performed well with a class rank of 28 out of about 98. Counsel finally noted that defendant's family was committed to him, and urged that the minimum sentence be imposed.

Before announcing its sentencing determination, the court noted that it had read defendant's presentence investigation report, listened to counsel's arguments, and reviewed the statute regarding mitigating and aggravating factors. The court found that defendant's age stood out in mitigation, as well as the fact that he had never been found delinquent, despite multiple contacts with the police department and juvenile justice providers since 2003. In aggravation, however, the court found no arguable justification or excuse for defendant's actions, and that there was no evidence that he was unlikely to commit another crime. The court also expressed a desire to deter others from

committing the same crime and, ultimately, imposed a sentence of 15 years.

In this appeal from that judgment, defendant first contends that the State failed to prove him guilty of aggravated battery with a firearm beyond a reasonable doubt because the State's identification witnesses were unreliable. He maintains that the opportunity of each witness to view the offender was limited given the physical evidence which shows that they viewed the shooter at night and from a distance of at least 250 feet.

In a criminal prosecution, the State has the burden of proving the identity of the offender beyond a reasonable doubt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). The identification by a single witness is sufficient to sustain a conviction if that witness viewed the accused under circumstances permitting a positive identification. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). This is so even in the presence of contradictory alibi testimony, provided that the witness had an adequate opportunity to view the accused and that the in-court identification is positive and credible. *Slim*, 127 Ill. 2d at 307.

In a bench trial, it is the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A

reviewing court will not overturn the trial court's judgment unless the evidence is so unsatisfactory, improbable, or implausible as to justify a reasonable doubt of defendant's guilt. *Slim*, 127 Ill. 2d at 307.

In this case, the trial court acknowledged the short time span for the witnesses to observe the shooter, but found the area well-lit and their familiarity with defendant a significant factor in their identification of him as the offender. The court also found some corroborating evidence in his distinctive clothing which one of the witnesses had seen him wearing earlier that evening. The court thus found the identifications reliable.

In assessing the reliability of an identification, we consider: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the witness' level of certainty at the identification confrontation; and (5) the length of time between the crime and the identification confrontation. *Lewis*, 165 Ill. 2d at 356.

The record shows that at the time the shooter discharged his firearm at the Group, he was on the same side of the street, between two to six houses away, and standing next to a streetlight and two sets of double floodlights from the house at 8813 South Houston Avenue. Using Google Maps, we take judicial notice that the distance from 8813 South Houston Avenue, where

the extinguished shell casings were recovered, to 8845 South Houston Avenue, where the Group was standing, is 302 feet (Google Maps, <http://maps.google.com/> (last visited April 6, 2011)). *People v. Stiff*, 391 Ill. App. 3d 494, 504 (2009). Given the ample evidence of the light on the street that night, the familiarity of each witness with defendant based on recent experience, and their unobstructed view, we find that the opportunity to view the offender, though short, was sufficient to support the reliability of their identifications. *People v. Reed*, 80 Ill. App. 3d 771, 778 (1980).

The record further shows that either defendant or his companion yelled out "King love," which drew the attention of the Group in that direction. Additionally, three witnesses testified that they saw defendant with a gun, and two of them observed actual gunfire from it. Moreover, the clothing description provided by Deandra F. and the victim was nearly identical to the clothing the police found defendant wearing that night. These details reflect the witnesses' high degree of attention to the offender and the situation which militates in favor of the reliability of the identifications. *Slim*, 127 Ill. 2d at 311.

As to the accuracy of the witnesses' prior descriptions, defendant calls our attention to the evidence showing that neither Brianna J., nor Nicky J., provided the officers with his name, and only provided general descriptions of the offender.

However, those discrepancies and general initial descriptions do not raise a reasonable doubt where the witnesses made a positive identification of defendant based on their view of him at the time and remained consistent with that identification throughout the trial. *Slim*, 127 Ill. 2d at 309.

The final factors also militate in favor of the State. The day after the shooting, each of the other State's eyewitnesses positively identified defendant from a lineup as being either one of the individuals who approached the Group on the night of the shooting or the shooter himself. On the night of the shooting, the victim "immediately" identified defendant as the shooter from a photo array shown to her in the emergency room of the hospital. At trial, the witnesses affirmed their pretrial identifications through their respective testimonies, thus indicating a high level of certainty in the identifications made. *People v. Godinez*, 191 Ill. App. 3d 6, 11-12 (1989).

Although defendant takes issue with the identifications made by Brianna J. and Nicky J., particularly their failure to name him initially, three other eyewitnesses specifically testified that they saw defendant discharging a firearm in the direction of the Group. We therefore find that the identification evidence was not so unsatisfactory as to raise a reasonable doubt of defendant's identity as the perpetrator (*Lewis*, 165 Ill. 2d at

357; *Slim*, 127 Ill. 2d at 315), and we affirm his conviction for aggravated battery with a firearm.

Defendant next contends that his sentence should be reduced, based on his youth, lack of criminal background, and significant potential for rehabilitation. The State responds that the trial court considered the relevant sentencing factors in arriving at an appropriate term, and that its decision should be affirmed by this court.

It is well-settled that a reviewing court will not disturb the sentence imposed on defendant absent an abuse of discretion by the trial court. *People v. Cabrera*, 116 Ill. 2d 474, 494 (1987). Where, as here, the sentence falls within the prescribed statutory limits, it will not be disturbed unless it is greatly at variance with the purpose and spirit of the law or is manifestly disproportionate to the offense. *Cabrera*, 116 Ill. 2d at 493-94. A sentence will not be found disproportionate where it is commensurate with the seriousness of the crime, and adequate consideration was given to any relevant mitigating circumstances, including the rehabilitation potential of defendant. *People v. Perez*, 108 Ill. 2d 70, 93 (1985).

Defendant claims that the trial court failed to adequately consider his potential for rehabilitation when imposing sentence, focusing instead on deterring others from committing the same crime. The record shows, however, that before imposing sentence,

the court considered the same mitigating factors defendant now cites in this court. In requesting a reduction in sentence, he is essentially asking this court to re-balance the appropriate factors and independently conclude that his sentence is excessive, which is not our function. *People v. Burke*, 164 Ill. App. 3d 889, 902 (1987), citing *People v. Cox*, 82 Ill. 2d 268, 280 (1980).

The 15-year sentence imposed by the court on this Class X offense falls within the guidelines (730 ILCS 5/5-8-1(a)(3) (West 2008) (eff. June 30, 2009)) and was not disproportionate to the offense committed or at variance with the spirit and purpose of the aggravated battery with a firearm statute (*Cabrera*, 116 Ill. 2d at 493-94). The record shows that the court arrived at its decision after considering the appropriate sentencing factors, and we find no abuse of sentencing discretion to permit any modification by this court. *People v. Almo*, 108 Ill. 2d 54, 70 (1985).

Accordingly, we affirm the judgment of the circuit court of Cook County.

Affirmed.