

NOTICE

Decision filed 02/23/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-08-0574

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	St. Clair County.
)	
v.)	No. 04-CF-1761
)	
DARRON PERKINS,)	Honorable
)	Jan V. Fiss,
Defendant-Appellant.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Stewart and Spomer concurred in the judgment.

R U L E 2 3 O R D E R

Held: (1) The evidence was sufficient to support convictions for armed violence and aggravated battery. (2) The imposed consecutive sentences were not an abuse of discretion.

Defendant, Darron Perkins, was charged in the circuit court of St. Clair County with the commission of several criminal offenses. After a jury returned a verdict of guilt on charges of armed violence and aggravated battery with a firearm, the court entered a judgment on the verdict and sentenced defendant to consecutive sentences of 30 and 10 years' imprisonment. On appeal, defendant raises issues regarding (1) whether the evidence was sufficient to support the convictions in light of asserted discrepancies in the testimony of witnesses and (2) whether the imposed sentences were an abuse of discretion. We affirm.

FACTS

Defendant was charged with seven offenses: (1) the first-degree murder of Keith Williams, (2) the attempted first-degree murder of Halbert Alexander, (3) the attempted first-degree murder of Michael Foster, (4) armed violence for shooting Michael Foster, (5) armed

violence for shooting Alexander, (6) aggravated battery with a firearm for shooting Foster, and (7) aggravated battery with a firearm for shooting Alexander. After a trial, a jury found defendant guilty of three of the charges—the aggravated-battery-with-a-firearm charge for shooting Alexander and the armed violence and aggravated-battery-with-a-firearm charges for shooting Foster.

Defendant's trial began on June 9, 2008. Both the State and defendant presented numerous witnesses, and the jury returned a verdict on June 13, 2008. The testimony of the alleged victims, Alexander and Foster, and defendant's own account of events are at the center of the appeal and provide the background for this court's discussion.

Hal Alexander testified that on December 19, 2004 he was playing in a weekly card game with friends at Dancy's Resale Shop. Alexander identified Foster, Chester Moore, and Charles Powell III as other card players. According to Alexander, defendant came into the store with a young man and accused the card players of harassing his son. Defendant left the store but returned about 20 minutes later and apologized. Defendant left again, but after about 15 minutes bullets were sprayed through the front of the shop. Defendant then kicked in the front door and entered the shop carrying a gun that resembled an AK47. Once inside, defendant had some choice comments for the inhabitants and tried to fire the gun, but it jammed. Defendant then took money off a table and walked out the door.

Foster testified that he was playing in the card game on the date of the incident when defendant entered the shop with a young man and told the card players to stop harassing his son. The young man then said that none of the card players had harassed him, and defendant and the young man left. About 45 minutes to an hour later, defendant returned, apologized, and left. An hour to an hour and a half later, bullets were fired through the front door of the shop and Foster received a shot to his chin. Defendant then entered the shop, took money off a table, and voiced a few choice comments for the inhabitants. As Foster lay on the floor,

defendant stood above him and tried to shoot again but left after the gun misfired three times.

Defendant testified on his own behalf. According to defendant, on the date of the incident he had stopped by the Honey Nest Lounge, located next to Dancy's Resale Shop, for about an hour on his way home from work. Upon leaving the lounge, he went next door to play cards. After playing a couple of hands, lasting a total of about 20 minutes, defendant believed he was being cheated and asked for his money back. Defendant was then pushed out the door and onto the ground in front of the shop by Alexander and Williams. Defendant then walked toward his car, and when he looked back, he saw Alexander and Williams "upping pistols." Defendant ducked and they started shooting. Defendant crawled to his car, popped open the trunk, pulled out an MP15 semiautomatic rifle, and returned fire. Alexander and Williams then ran back into the shop. Defendant went inside the shop and asked why he had been shot at, which he followed with the comment, "Who's the punk motherfucker now?" Defendant then took the money he had lost off the table and left. Defendant stated that he shot because he feared that if he did not return fire, he was going to be killed. Defendant has no children and denied that he had asked anyone to stop bothering his son or otherwise had become involved in any confrontation, prior to playing in the card game.

Cortez Hibbler testified on behalf of defendant. He stated that he had been standing across the street from the shop on the date of the incident when he heard people arguing and turned to see Williams push defendant down and heard Alexander threaten to kick defendant's butt. Defendant got up and Alexander and Williams went back into the shop. He stated that as defendant walked to his car, one or two shots were fired from within the door of the shop. Defendant ducked and scrambled to his car. Defendant then retrieved a long gun from the trunk of his car and fired six or seven shots as he walked towards the shop. Defendant looked into the door but never entered the shop. After defendant left, Hibbler saw Alexander leave the shop with what appeared to be three guns and take them to a nearby

house.

The jury returned a verdict of guilt on one count of armed violence and two counts of aggravated battery with a firearm. A mistrial was declared on the count for murder and the two counts of attempted murder. After a sentencing hearing, defendant was sentenced to 30 years' imprisonment for armed violence and 10 years for aggravated battery with a firearm, to be served consecutively.

Defendant appeals.

ANALYSIS

Defendant contends that the State failed to prove his guilt beyond a reasonable doubt. The test for the sufficiency of evidence is whether, when viewed in the light most favorable to the State, the evidence was so unsatisfactory that no rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Gabriel*, 398 Ill. App. 3d 332, 341, 924 N.E.2d 1133, 1142 (2010); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). If the evidence of guilt is so unsatisfactory that no rational trier of fact could have found the defendant guilty beyond a reasonable doubt, then the conviction must be reversed. *People v. Schott*, 145 Ill. 2d 188, 206, 582 N.E.2d 690, 698 (1991).

Defendant characterizes the evidence from the State's witnesses as conflicting, confusing, and unbelievable. Defendant centers this characterization on the discrepancies in the State's witnesses' descriptions of the timing of the events. Along with the testimony of Alexander and Foster, the State presented testimony from other participants in the card game—Chester Moore and Charles Powell III. The State's witnesses described a progression of events starting with defendant's initial visit to the shop with a young man he claimed to be his son, defendant's subsequent apology, and defendant's return to the shop with a weapon. Defendant focuses on discrepancies in the descriptions of the durations of these events. For instance, defendant points out that Foster testified that it was daylight when defendant

initially came to the shop, while Alexander testified that the initial visit was between 7:30 and 8:30 p.m. Powell testified that the initial visit was only a minute or two, whereas Alexander described it as taking at least 15 minutes. Defendant also points out that several of the State's witnesses testified that Foster escorted him to the door, while Foster testified defendant left without escort. In addition, Foster testified that defendant returned 45 to 60 minutes later to apologize, while Alexander testified that this occurred within 20 minutes and Powell placed this within 10 minutes.

Defendant also claims that the testimony from the State's witnesses about his actions during the period of the shooting was inconsistent. Foster testified that defendant returned with a weapon approximately an hour to an hour and a half after the apology, while the State's other witnesses placed this within 20 minutes of the apology. Moore testified that defendant kicked in the front door because it was stuck, while Foster testified that defendant shot from the front door and then entered the shop. Defendant points out that although Foster testified at the trial that defendant had continued to try to shoot after his gun jammed, when he was interviewed by the police, Foster admitted that he assumed the gun was jammed because he was still alive. Moore and Powell testified that they were hiding while defendant was shooting and did not see him inside the shop.

Contrary to defendant's assertions, the accounts given by the State's eyewitnesses do not vary wildly. Even assuming variations in the times that the events occurred, the State's witnesses describe the same progression of events from defendant demanding an apology to his returning with a weapon. The asserted discrepancies, either individually or cumulatively, did not undermine the reliability of the testimony of the State's witnesses. The weight to be given the inconsistencies argued by defendant was a matter of credibility within the purview of the trier of fact.

Defendant contends that his claim of self-defense should have been believed by a

rational trier of fact. He asserts that his account was corroborated by other witnesses, the strongest of whom was Cortez Hibbler. Hibbler's testimony is subject to questions similar to those defendant raises about the State's witnesses. For instance, Hibbler waited more than three years to contact law enforcement. Furthermore, in contrast to defendant's own account, Hibbler testified that defendant never entered the shop or retrieved the disputed money.

On appeal the question is not whether the jury could have found defendant not guilty but whether the record supports the jury's verdict. The State presented sufficient evidence to support each of the elements for which defendant was convicted. The evidence supporting the convictions was neither improbable nor unsatisfactory. See *People v. Maggette*, 195 Ill. 2d 336, 353, 747 N.E.2d 339, 353 (2001). The jury was in the best position to evaluate the credibility of the witnesses. The trier of fact determines the weight of the testimony and resolves the conflicts and inconsistencies in the evidence. *People v. Evans*, 209 Ill. 2d 194, 209, 808 N.E.2d 939, 947 (2004).

Defendant requests that this court either reduce his sentence or remand for a new sentencing hearing. At his sentencing hearing, defendant presented evidence of years of service to his community and to his country, including enduring combat in Vietnam. Although praiseworthy, this service and defendant's potential for rehabilitation are only parts of the equation to be considered by the trial court in determining sentence. As the State points out, the need to deter others and the harm caused by defendant's conduct are also factors for review in determining a sentence. See 730 ILCS 5/5-5-3.2(a) (West 2008).

The length of the sentence imposed will not be disturbed absent an abuse of discretion. *People v. Smith*, 318 Ill. App. 3d 64, 74, 740 N.E.2d 1210, 1218 (2000). The record indicates that the trial court considered only appropriate factors. Indeed, the trial court commented favorably on defendant's history of community service. On the other hand, the State presented evidence of the devastating consequences of defendant's use of an assault

weapon. Given that the sentences imposed for each offense rest closer to the statutory minimum than the statutory maximum, defendant's assertion that the court did not give great weight to his mitigating factors is not supported by the record.

Accordingly, the judgment of the circuit court is hereby affirmed.

Affirmed.