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2014 IL App (3d) 120549-U

Order filed September 22, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

| | | |
|-------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE |) | Appeal from the Circuit Court |
| OF ILLINOIS, |) | of the 10th Judicial Circuit, |
| |) | Peoria County, Illinois, |
| Plaintiff-Appellee, |) | |
| |) | Appeal No. 3-12-0549 |
| v. |) | Circuit No. 11-CF-733 |
| |) | |
| SAMUEL CARPENTER, |) | Honorable |
| |) | Timothy M. Lucas, |
| Defendant-Appellant. |) | Judge, Presiding. |

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Lytton concurred in the judgment;
Justice McDade specially concurred.

ORDER

¶ 1 *Held:* (1) The evidence was sufficient for the jury to find the defendant guilty beyond a reasonable doubt of aggravated battery with a firearm. (2) The defendant's sentence was not an abuse of discretion.

¶ 2 After a jury trial, the defendant, Samuel Carpenter, was found guilty of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2010)) and aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (d)(3) (West 2010)). The trial court sentenced the defendant to consecutive terms of 21 years' imprisonment for aggravated battery with a firearm and 6 years' imprisonment for aggravated unlawful use of a weapon. On appeal, the defendant argues that:

(1) the State failed to prove his guilt of aggravated battery with a firearm beyond a reasonable doubt; and (2) his sentence was excessive. We affirm

¶ 3

FACTS

¶ 4

On August 23, 2011, the defendant was charged by indictment with aggravated battery with a firearm and aggravated unlawful use of a weapon. On November 28, 2011, the case proceeded to a jury trial.

¶ 5

At trial, Peoria police officer James Hartman testified that, on June 7, 2011, he responded to a call of shots fired in the area of Richmond Avenue and Linn Street. Hartman arrived at the scene around 4 a.m. Hartman saw an unoccupied green van with blood spattered across the interior. Outside the passenger side of the van, Hartman discovered a small handgun.

¶ 6

Peoria police officer John Briggs testified that on the morning of the incident, he was dispatched to the location of a gunshot victim. At 1810 North North Street, Briggs saw the victim lying facedown, partially inside a residence. The victim had suffered a gunshot wound to the head and was lying in a large pool of blood. Briggs noted that the victim was conscious and stated that "Little Sammie" had shot him. The victim was transferred from the scene to St. Francis hospital.

¶ 7

Peoria police officer Bradley Scott testified that he also responded to the home where the victim was found. At the scene, he noticed that the victim was bleeding from the left side of his head and that a large amount of blood had pooled on the floor. Scott heard the victim say that he had been shot by "Little Sammie."

¶ 8

Dr. Babas Rammos testified that he treated the victim at St. Francis hospital. The victim suffered from a gunshot wound to the left side of his head that presented as an injury above his left eye and a second injury behind his left ear. A computerized tomography scan revealed

ballistic fragments lodged in the victim's head. The victim was released from the hospital the day after he was admitted.

¶ 9 Crime scene technician Paul Tuttle testified that he photographed a blood soaked t-shirt lying in the area where the victim was discovered. At 211 West Richmond Street, Tuttle observed a green van that appeared to have hit a black Nissan truck. A nine-millimeter semiautomatic handgun was lying in the grass near the vehicle. The magazine of the handgun was loaded with seven nine-millimeter bullets. Inside the van, Tuttle saw blood on the front windshield and discovered a shell casing in the driver's door pocket. Inside the passenger door pocket, Tuttle found a clear plastic bag containing apparent cannabis. Tuttle also documented \$2,466 in currency that was discovered at the scene.

¶ 10 The victim testified that he did not recall his location on June 6, 2011, or remember being shot. The victim only remembered being discharged from the hospital on June 8, 2011. The victim said that his memory had been poor since he had been shot. The victim also did not recall speaking with Detective Timothy Moore while he was in the hospital or identifying the shooter from a photographic lineup. The victim did not remember telling Moore that the defendant entered the front passenger door of the van and pulled out a pistol, which the victim tried to wrestle away until he drove off.

¶ 11 Kameron Reddick agreed to testify only after he was granted use immunity. Reddick testified that he did not know the defendant, and he was at home on the day of the shooting. Reddick agreed that he spoke with Moore about the June 7, 2011, incident. However, the information Reddick gave was hearsay because he was not present at the time of the shooting. Prior to making a recorded statement, Reddick memorized the events from a statement that Moore had read. Reddick agreed that in the statement, he identified the defendant from a photograph as "Little Sammie, Sam Carpenter, Junior." Reddick also told Moore that the victim

was sitting in a parked green van and spoke to a woman. After the woman walked away, the defendant jumped in the van and put a gun to the victim's head. Reddick agreed that he had told Moore that eventually the victim sped off with the defendant in the van. Reddick heard a gunshot, and the van ran into a truck. Reddick also testified that he was "highly intoxicated" at the time of the interview, and he did not understand the questions that Moore was asking.

¶ 12 Later in the trial, Reddick was recalled to testify by the defense and read an *ex parte* letter that he had sent to the court. In the letter, Reddick said that his statement to the police was false, and he was very intoxicated during the interrogation. Reddick stated that he had been told that his cooperation would help with his pending case, but he had initially refused to testify because his statements to the police were false. On cross-examination, Reddick reported that he cooperated with the police by parroting back the story Moore instructed him to report before the interview began. Despite being very intoxicated, Reddick was able to learn all of the information Moore provided in the 20 minutes before the video-recorded interview.

¶ 13 Moore testified that he interviewed the victim in the hospital. At that time, the victim identified the defendant as the shooter from a six-person photographic lineup. The victim also indicated that on the date of the incident, he was socializing on Richmond Avenue with a group of people that included the defendant. After approximately 15 minutes, the defendant got in the front passenger seat of the van the victim was sitting in. The defendant pulled out a handgun, and the victim tried to push the gun away. Eventually, the victim put the van in drive and pressed the accelerator while he continued to struggle with the defendant. The defendant fired a shot as the van sped off. The victim also indicated that he had a quantity of money in the van, but Moore could not remember the exact sum. During the interview, the victim appeared coherent, but he had some difficulty seeing because his left eye was swollen shut and the sun shone brightly into the hospital room.

¶ 14 On October 8, 2011, Moore interviewed Reddick, who was in custody on an unrelated matter. Moore notified Reddick that he was a possible witness to a shooting. At the time of the interview, Reddick did not appear intoxicated. Moore denied providing Reddick with any information regarding the shooting prior to the video-recorded interview. During the interview, Reddick provided an account of the events of June 7, 2011.

¶ 15 On recall, Moore also denied telling Reddick that his cooperation would lead to assistance with his pending case.

¶ 16 The jury found the defendant guilty of aggravated battery with a firearm and aggravated unlawful use of a weapon.

¶ 17 During the sentencing hearing, the trial court stated that it had considered the evidence at trial, the presentence investigation reports (PSI), and arguments of counsel as to the sentencing alternatives. The defendant's PSI stated that, according to the police report, the defendant entered the van that the victim had driven, produced a nine-millimeter pistol, and "said he wanted his money." Thereafter, the victim drove off and struck a black truck, and the defendant shot the victim in the head.

¶ 18 Considering the factors in aggravation, the court noted that the defendant's conduct "clearly caused or threatened serious harm to [the victim]" and noted that the court had seen the victim's testimony and understood the fact that the victim had been shot in the head. The court also noted that the defendant had a significant prior criminal record and the sentence was necessary to deter others from committing similar offenses. In mitigation, the court noted that it had read the letters from the defendant's family members and stated that they were "sad" and "tragic." The court said that "when you start toting guns and you start making demands for money from people and people who are concerned that they're going to be shot or threatened

with a firearm, and they start something like allegedly [the victim] struggled with the gun, hit the gas and drove away, terrible, terrible things happen."

¶ 19 The court sentenced the defendant to 21 years' imprisonment for aggravated battery with a firearm and a consecutive term of 6 years' imprisonment for aggravated unlawful use of a weapon. The defendant appeals.

¶ 20

ANALYSIS

¶ 21

I. Sufficiency of the Evidence

¶ 22

The defendant argues that the State failed to prove beyond a reasonable doubt that he committed aggravated battery with a firearm where there was no evidence that he knowingly caused injury to the victim. The defendant asks this court to review the issue *de novo* because his argument presents a question of law. See *People v. Smith*, 191 Ill. 2d 408 (2000). However, we find that *Smith* is distinguishable because the facts were not in dispute in that case. Here, the defendant challenges the sufficiency of the evidence of his mental state. Therefore, we must determine 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. (Emphasis in original.)" *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

¶ 23

To prove the offense of aggravated battery with a firearm, the State must show beyond a reasonable doubt that a defendant, "in committing a battery, knowingly or intentionally by means of the discharging of a firearm" caused any injury to another person. 720 ILCS 5/12-4.2(a)(1) (West 2010). "A person acts knowingly if he is consciously aware that this conduct is practically certain to cause injury." *People v. Moore*, 358 Ill. App. 3d 683, 688 (2005). A defendant's mental state may be inferred from circumstantial evidence. *People v. DiVincenzo*, 183 Ill. 2d 239 (1998). This task is particularly well suited to the jury. *Id.*

¶ 24 Here, the evidence adduced at trial allowed the jury to infer that the defendant knowingly discharged a firearm that caused injuries to the victim. Moore's testimony of his interviews with the victim and Reddick established that the victim was seated in the driver's seat of a van when the defendant entered the passenger's side with a handgun. The defendant pointed the gun at the victim, and a struggle ensued. During the struggle, the victim attempted to drive off and was shot in the head. Tuttle discovered a handgun near the van and noted that the interior was covered in blood. Although the victim was unable to confirm his statement at trial and Reddick recanted his statement, Moore testified to his recollection of the respective interviews. From this evidence, the jury could determine if Reddick was credible and if the victim's statement was accurate. See *People v. Brown*, 2013 IL 114196 (it is the responsibility of the trier of fact to resolve conflicts in testimony, weigh evidence, and draw reasonable inferences from basic facts to ultimate facts). Given the consistency of the statements that the victim and Reddick gave to the police, we do not find that the jury acted irrationally in accepting this version of events. Furthermore, the jury could rationally infer, from the testimony of Moore and Tuttle and photographs of the crime scene, that the defendant knew his act of pointing a loaded gun at the victim would result in injury.

¶ 25 The defendant argues that the present case is similar to *People v. Lemke*, 349 Ill. App. 3d 391 (2004), where the Fifth District of the Appellate Court stated that pointing a loaded gun at another person constitutes recklessness. However, in the instant case, the defendant not only pointed a loaded gun at the victim, but fought with the victim as the victim tried to push the gun away. As the victim attempted to drive off, a shot was fired. Therefore, the jury could infer that the defendant knew his conduct would cause injury. Overall, the evidence was sufficient for the jury to determine beyond a reasonable doubt that the defendant knowingly discharged a firearm that caused injury to the victim.

¶ 26

II. Sentence

¶ 27

The defendant argues that his sentence was excessive because the trial court: (1) erroneously considered an element of aggravated battery with a firearm as an aggravating factor; (2) did not give sufficient consideration to relevant factors in mitigation; (3) improperly characterized the case as an armed robbery; and (4) erroneously imposed consecutive sentences.

¶ 28

The defendant's sentence may not be altered on review absent an abuse of discretion. *People v. Stacey*, 193 Ill. 2d 203 (2000). A sentence within the statutory range will not be deemed excessive and the result of an abuse of discretion unless the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *Id.* We apply *de novo* review to the legal question of whether the defendant's sentence was the result of a double enhancement. *People v. Chaney*, 379 Ill. App. 3d 524 (2008).

¶ 29

Initially, we note that the defendant's conviction for aggravated battery with a firearm had a sentence range of 15 to 60 years' imprisonment (720 ILCS 5/12-4.2(b) (West 2010)), and the aggravated unlawful use of a weapon conviction had a sentencing range of 3 to 7 years' imprisonment (720 ILCS 5/24-1.6(d)(1) (West 2010)). Therefore, the defendant's sentences of 21 and 6 years' imprisonment were within the applicable sentencing ranges.

¶ 30

The defendant first argues that the trial court erroneously considered the fact that the victim was shot in the head in aggravation when that fact was an element of the offense of aggravated battery with a firearm. Generally, a factor of an offense for which the defendant has been convicted cannot be used as an aggravating factor in sentencing. *People v. Phelps*, 211 Ill. 2d 1 (2004). However, a trial court may consider as an aggravating factor the degree of harm caused to the victim even where bodily harm is implicit in the offense the defendant was found guilty of. *People v. Ehrich*, 165 Ill. App. 3d 1060 (1988). The court may not consider the end

result of the defendant's conduct as an aggravating factor where the result is implicit in the offense for which the sentence is imposed. *Id.*

¶ 31 Here, the trial court implicitly referenced the victim's memory loss and the fact that the victim was shot in the head. Although aggravated battery with a firearm includes an element of "any injury" (720 ILCS 5/12-4.2(a)(1) (West 2010)), the court's reference to the victim's specific injuries was not error because not all aggravated battery with a firearm offenses involve gunshot wounds to the head. See *Ehrich*, 165 Ill. App. 3d 1060 (explaining that a court may not consider the victim's death as an aggravating factor where the defendant was convicted of voluntary manslaughter).

¶ 32 Secondly, the defendant contends that the trial court failed to give adequate consideration to his youth and letters from family members asking for a lenient sentence. However, the trial court considered the defendant's age, stated that it had read the letters, and noted that the letters were "sad" and "tragic." Consequently, we do not find that the trial court improperly weighed this evidence.

¶ 33 Thirdly, the defendant contends that the trial court improperly characterized the facts of the case when it implied that the defendant was attempting to commit an armed robbery. However, the trial court's statement was supported by the fact that a large sum of currency was discovered at the scene, and the defendant's PSI included a reference to the police report that stated the defendant told the victim that "he wanted his money." Given these references, the trial court's statement was not erroneous.

¶ 34 Finally, the defendant argues that the trial court erroneously imposed consecutive sentences because the court did not make a finding that the defendant caused serious bodily injury to the victim, and the facts do not support such a finding. Section 5-8-4(d)(1) of the Unified Code of Corrections requires the imposition of consecutive sentences where a defendant

is convicted of a Class X felony and the defendant inflicted severe bodily injury. 730 ILCS 5/5-8-4(d)(1) (West 2010).

¶ 35 Here, the defendant was convicted of aggravated battery with a firearm, a Class X felony. 720 ILCS 5/12-4.2(b) (West 2010). During the sentencing hearing, the trial court stated that the defendant's conduct "clearly caused" serious harm to the victim. The court noted that the victim was shot in the head and had testified to memory loss. Thus, the trial court found that the defendant's conduct caused serious bodily injury—a conclusion well supported by testimony from the victim, Rammos, and several police officers. Therefore, the trial court was statutorily required to impose consecutive sentences.

¶ 36 CONCLUSION

¶ 37 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 38 Affirmed.

¶ 39 JUSTICE McDADE, specially concurring:

¶ 40 The majority has affirmed defendant's conviction for aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2010)) and aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (d)(3) (West 2010)). I concur in this decision solely because I believe our standard of review requires me to do so. I write separately, however, to make a couple of what I believe to be fair observations.¹

¶ 41 The only evidence against defendant was: the *hearsay* testimony of a police officer (Moore) and the recanted *hearsay* statement of an individual (Reddick) facing prosecution in a separate case. I have scoured the record in vain for any concrete evidence of Carpenter's involvement. There is absolutely no direct evidence of any kind tying him to this crime.

¹ I concur outright with that portion of the majority's decision affirming defendant's sentence.

¶ 42 Detective Moore's *hearsay* testimony consisted of his claim that the victim told him defendant was the shooter. The victim testified, however, that he could not even remember being shot. While I acknowledge that the victim had suffered a head injury, it is important to note that the State never presented any expert testimony explaining the victim's memory loss. We are courts of evidence, not speculation. The victim's testimony that he does not remember speaking to Moore, absent any expert testimony, leaves Moore's *hearsay* testimony uncorroborated by any other evidence and its credibility unsupported.

¶ 43 Reddick was not present at the time of the shooting. While Reddick's recorded *hearsay* statement incriminated defendant, Reddick recanted his version of events at trial. Reddick asserted, under oath, that his statement was the result of parroting back the story Moore instructed him to report in exchange for Moore's promise that he would help Reddick in Reddick's pending case. This admission self-impeaches Reddick's *hearsay* statement and severely undermines its reliability.

¶ 44 I personally would not have found defendant guilty if presented with only the highly questionable evidence discussed above. Significantly, the gun found at the crime scene was never tied to defendant. The State never explained how the victim's body got from the passenger seat of the fleeing van to the porch in a position suggesting that he was exiting the building. The blood, along with all the other physical evidence at the crime scene, was never linked to defendant. While defendant was allegedly in the van, no DNA or other physical evidence was ever presented establishing this fact. Instead, we are left with a felony conviction and a 27-year sentence garnered by unsupported, uncorroborated *hearsay* testimony and a recanted *hearsay* statement. This I find very troubling.