2015 IL App (1st) 122619-U

FIRST DIVISION
January 26, 2015

No. 1-12-2619

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. 09 CR 15312
	)	
BRANDON LEWIS,	)	Honorable
	)	Arthur F. Hill, Jr.,
Defendant-Appellant.	)	Judge Presiding.

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

ORDER

Held: We hold defendant's ineffective assistance claim fails because the affirmative defense of compulsion is not available where there is not an imminent threat of harm to the defendant and defendant had the opportunity to withdraw from the criminal enterprise. We also hold that the State presented sufficient evidence to convict defendant of the one attempted murder conviction he has appealed. We order that the fine assessed against defendant pursuant to the Violent Crimes Victim's Assistance Act (720 ILCS 240/10 (West 2008)) be reduced by $21 and that defendant's mittimus be corrected to reflect one additional day of credit for time spent in pretrial custody.

¶ 1 A jury convicted defendant, Brandon Lewis, of two counts of attempted first degree murder in connection with an August 8, 2009 shooting which left two people injured. Defendant raises the following issues for our review: (1) whether he received the effective assistance of counsel when his trial counsel did not request a jury instruction on the affirmative defense of compulsion; (2) whether the State presented sufficient evidence that defendant shot and injured Tony Williams to sustain one of defendant's convictions for attempted first degree murder; (3) whether the fine assessed against defendant pursuant to the Violent Crimes Victim's Assistance Act (VCVA Act) (720 ILCS 240/10 (West 2008)) must be reduced by $21; and (4) whether defendant's mittimus needs to be corrected to reflect one additional day of credit spent in pretrial custody.

¶ 2 We hold defendant's ineffective assistance claim fails because the affirmative defense of compulsion is not available where there is not an imminent threat of harm to the defendant and defendant had the opportunity to withdraw from the criminal enterprise. We also hold that the State presented sufficient evidence to convict defendant of the attempted murder of Tony Williams. The State concedes, and we agree, that the fine assessed against defendant pursuant to the VCVA Act (720 ILCS 240/10 (West 2008)) must be reduced by $21, and that defendant's mittimus needs to be corrected to reflect one additional day of credit spent in pretrial custody.

¶ 3 JURISDICTION

¶ 4 The circuit court sentenced defendant on August 16, 2012. Defendant timely filed his notice of appeal on the same day. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. Feb. 6, 2013).

¶ 5 BACKGROUND

¶ 6 Defendant was charged by indictment with the attempted first degree murder and aggravated battery with a firearm of Shakeil Robinson and the attempted first degree murder and aggravated battery with a firearm of Tony Williams.

¶ 7 At trial, Shakeil Robinson testified that on August 8, 2009, at approximately 9:30 p.m., he was walking on the sidewalk on 65th Street in Chicago, Illinois, and heading toward Claremont Avenue. Robinson noticed a group of five to ten people he recognized near the corner of 65th and Claremont. When Robinson was 50 feet away from the corner, a female approached him and began talking to him. Robinson then heard gunshots. He explained "[w]hen I was talking to the female I heard one shot and then I started running, and they just kept shooting." The shots were being fired from behind Robinson, and he ran towards the corner of 65th and Claremont. The group of people at the corner dispersed. Robinson heard multiple shots, but he did not see who was doing the shooting. When he arrived at the corner of 65th and Claremont, Robinson felt a pain in his left foot from being shot. He managed to continue running to a nearby vacant lot when he fell down in pain. The police and fire departments responded quickly to the shooting. Robinson's injuries required surgery and monthly physical therapy. Robinson testified he was unable to identify anyone from the shooting in the photo array shown to him by the police. On cross-examination, Robinson testified that he did not know defendant and that he had no idea who shot him.

¶ 8 Tony Williams testified that on August 8, 2009, he lived at 65th and Claremont. Around 9:30 in the evening, he left his house alone and walked to the store to purchase bread. While he was walking to the store, he looked behind him because he saw a car coming at a fast pace. The car stopped in front of a white line on the street approximately 10 feet away from

Williams. Williams then saw and heard gunfire. He saw a gun but he did not see a person standing at or near the car. A bullet hit him in his buttocks. He fell to the ground and heard more gunfire. Williams described his injuries to the jury and testified that he endured multiple surgeries. Williams explained he was not able to see the face of the person who shot him because it was dark outside. He did not see other people out on the street by 65th and Claremont.

¶ 9 Officer Carol Harrigan, an evidence technician with the Chicago police department, testified that she processed the crime scene in this matter in August of 2009. Upon arrival at the crime scene, she photographed the area and recovered evidence. Eight cartridge casings and a fired bullet were recovered from the scene, mostly from the street. The cartridge casings were both .50-caliber and .40-caliber. She then went to a related crime scene at 2016 West 68th Place, and took photographs of a black Buick. She attempted unsuccessfully to recover fingerprint evidence from the inside of the car. She recovered a .50-caliber cartridge casing just north of the vehicle on the sidewalk. A house on Claremont and 65th was hit by several bullets, including one that shattered a window.

¶ 10 On cross-examination, Officer Harrigan explained that a cartridge casing "pops out" onto the ground after an automatic gun is fired. The cartridge casing will not "go super far" from where the weapon is fired. Upon recovery of the cartridge casings, she could not tell how long the cartridge casing had been there. She did not witness the shooting.

¶ 11 Dena Inempolidis, a forensic scientist with the Illinois State Police, testified as an expert in firearm identification. Inempolidis examined nine cartridge cases and one fired bullet and testified that two separate weapons were used in the shooting. She opined that the .40-caliber

cartridge cases she examined were all fired from the same firearm and the .50-caliber cartridge cases she examined were all fired from the same firearm.

¶ 12 Officer James Fitzpatrick of the Chicago police department testified he was on duty on routine patrol in a vehicle at the time of the incident with his two partners: Officers Zattair and Wilkosz. At approximately 9:30 p.m., as they approached 68th place, he "observed a black Buick Century traveling eastbound at a high rate of speed." They activated their emergency lights and followed the vehicle. Eventually the car came to a stop at 2016 West 68th Place and the three occupants of the car exited the vehicle. Two of the occupants fled, while one "almost attempted to flee" before being detained by Officer Fitzpatrick. Officer Wilkosz unsuccessfully chased the driver of the vehicle while Officer Zattair chased and apprehended the person in the passenger seat, defendant. Officer Fitzpatrick detained Walter Agnew, who was in the rear passenger seat. The officers had received information that a shooting had occurred in the area. He observed a .50-caliber shell casing on the sidewalk. Defendant and Walter Agnew were taken to the police station. On cross-examination, Officer Fitzpatrick testified that he did not find a gun at the crime scene.

¶ 13 Officer Nick Zattair of the Chicago police department testified that he chased defendant after defendant exited the car until defendant reached a vacant lot where he stopped and put his hands up. Officer Zattair placed defendant under arrest. As he was walking defendant back to the location where the chase initially started, Officer Zattair learned that there had been a shooting reported in the area approximately six blocks away at 65th and Claremont. Officer Zattair also observed a "spent .50-caliber casing." On cross-examination, Officer Zattair testified that he did not find any guns on defendant.

¶ 14 Detective Brian Lutzow of the Chicago police department testified that he investigated the shooting. Detective Lutzow observed five .50-caliber shell casings recovered along with three .40-caliber shell casings and one fired bullet. Two houses had also been hit with bullets. Detective Lutzow also went to the other crime scene at 2016 West 68th Place where he observed the black Buick Century and the .50-caliber shell casing. The following day, Detective Lutzow contacted the Cook County State's Attorney's Office Felony Review Unit. Assistant State's Attorney (ASA) Mary McMahon was assigned to the case. He was present when ASA McMahon documented a typewritten statement from defendant. On cross-examination, he testified that no rounds were recovered from the houses that sustained bullet damage.

¶ 15 Walter Agnew testified that on August 8, 2009, he was riding in a car with defendant and Jamo. He called defendant a friend, but described Jamo as a guy from the neighborhood that he did not know very well. Jamo picked him up from his house in a black car. Jamo was driving while defendant was in the front passenger seat. Agnew got in the back seat. They drove in the area of 65th and Claremont. A couple of feet from the intersection, Agnew heard gunshots. He explained that "[w]hen we drove towards 65th and Claremont we heard shots and I immediately jumped to the bottom of the seat and the car just drove off rapidly, like real fast." Agnew did not know where the gunshots came from. He heard them and then he "just ducked down." The car sped up when he heard the shots. He did not see anyone shooting. He saw people out on the street at 65th and Claremont, but he did not know if any of the people had guns. He did not see defendant or Jamo with a gun.

¶ 16 Agnew testified that when he was taken to the police station, he spoke with Detective Crowder and ASA Dragana Bender. ASA Bender typed a statement based on what Agnew told her, which he signed. Agnew read portions of his statement to the jury as follows. On August

8, 2009, just before 9:30 p.m., he was at a bus stop when he saw a black Buick Century with his friend, the defendant, sitting in the front passenger seat. Jamo was driving the car. Agnew stated that he flagged the Buick down to see if he could get a ride to the train so that he could visit his girlfriend. Agnew sat in the backseat while Jamo drove in a fast and erratic manner. Agnew assumed Jamo was driving towards the train stop, but instead Jamo drove to 65th Street. Agnew saw a group of approximately 10 African-American teenage boys walking eastbound on 65th Street towards Claremont. Jamo stopped the car and Jamo and defendant jumped out of the car at the same time leaving their respective doors open. Defendant and Jamo then turned back towards the teenagers. Both Jamo and defendant were a few steps from the car doors when Agnew heard gun fire coming from both sides of the vehicle. Although he did not see Jamo and defendant, he could hear loud gunshots from either side of the vehicle that sounded as if they were very close by. Agnew heard approximately 10 gunshots. His ears were ringing while he was in the backseat. He did not run away because he was afraid of getting shot. He did not hear any other shots fired except the shots he heard coming from next to the car, and he did not see the teenage boys with any guns. Jamo and defendant then got back in the car and Jamo proceeded to drive erratically making a lot of turns. A minute or two later, Agnew saw the police attempting to pull them over. Jamo and defendant jumped out and ran in different directions. Agnew also got out, but took only a few steps before putting his hands up. After reading his statement to the jury, Agnew admitted that he made the statement, but denied that it was true.

¶ 17 ASA Bender testified as to the taking of Agnew's statement. She described Agnew as cooperative. After typing up Agnew's statement, ASA Bender reviewed it with him and asked him if he wanted to make any changes. Agnew did not make any changes to his statement.

¶ 18 Jeanne Hutcherson, a forensic scientist with the Illinois State Police, testified as an expert in the field of latent print examination. Hutcherson examined a total of nine cartridge cases in relation to this case for latent prints, but did not find any latent prints suitable for comparison. She explained, however, that she had examined "[t]housands" of cartridge cases and has only found a latent print suitable for comparison one time.

¶ 19 Robert Berk, a trace evidence analyst with the Illinois State Police testified as an expert in trace evidence and gunshot residue. He analyzed the gunshot residue evidence in this case and found that defendant's left hand tested positive for the presence of gunshot primer residue. On cross-examination, Berk explained that "[p]ositive test results indicate to me that someone has either handled a firearm that had primer gunshot residue on it, has discharged a firearm, or their hands were close enough to the weapon when it was discharged."

¶ 20 ASA Mary McMahon testified she spoke with defendant after his arrest on August 9, 2009. Defendant admitted his involvement with the shooting and agreed to sign a typed statement. She read defendant's statement to the jury. The statement provided, in relevant part, that around 8:45 p.m. on August 8, 2009, he was walking on the street when Jamo pulled up alongside of him driving a black four-door Buick Century. Jamo opened the driver's side door and told defendant to get in the car. Defendant then sat in the front passenger seat. Jamo explained to defendant that some of the younger guys from the neighborhood had gotten hurt, including one who had his head " 'busted with a bat.' " Jamo told defendant that they were going to retaliate against the people who hurt the younger guys from the neighborhood. While Jamo drove toward 69th Street, he pulled out a gun from his waistband, cocked it and put a round in the chamber, before handing the gun to defendant. Defendant knew that he would use the gun on the people who hurt the younger guys in the neighborhood. At 69th and Artesian, they

picked up Walter Agnew, who sat in the back seat. Agnew was not aware that defendant had a gun or that defendant planned to use the gun in retaliation. As Jamo drove east on 65th Street, defendant saw a group of approximately a dozen people. When Jamo saw the group, he said " ' there goes those [expletives] right there.' " Defendant proceeded to crack his door open with his right hand while holding the gun with his left hand, his dominant hand. Jamo pulled the car over to the curb. At this point, defendant shot two to three rounds in the direction of the group of people, who were about six feet away from where Jamo pulled the car over. After defendant shot two rounds, Jamo got out of the car and shot a black gun several times at the people. The people ran away. Defendant stated that the group of people did not have any guns or weapons and they did not say anything to him or Jamo prior to the shooting. Agnew remained in the car and did not have a gun. Once both Jamo and defendant ran out of ammunition, they sped off in the car. Defendant gave Jamo back the gun that defendant had fired. At 68th and Hoyne, Jamo stopped the car and defendant ran because he had fired the gun and did not want to get caught. He eventually slowed down at 69th and Hoyne in an empty lot and put his hands up.

¶ 21 The state rested. Defendant motioned for a directed verdict, which the court denied.

¶ 22 Defendant testified on his own behalf. He testified that on August 8, 2009, Jamo pulled up to him in his black car. Defendant described Jamo as "like an enforcer in the area I grew up in" and "a violent person" who had spent a long time in jail. Defendant told Jamo that he was going to smoke marijuana. Jamo then told defendant to get in the car with him, which defendant did. Jamo proceeded to drive the car while defendant sat in the front passenger seat. As they were driving, they saw Agnew. Defendant told Agnew that he and Jamo were going to smoke marijuana. Agnew got into the car and sat in the backseat. Defendant testified that, while driving, Jamo told him "something about an incident that happened earlier in the day" with

younger guys from the neighborhood. Jamo gave defendant a gun which he had in his waistline. When asked why he would take the gun, defendant answered " I guess - - I was scared" of Jamo. Defendant explained that as they were approaching 65th Street, the following occurred: "I kind of looked at [Jamo], he got mad and he was like why is those people standing on his corner so he ordered me to jump out the car and me and him proceeded out the car." Defendant testified he got out of the car because he "felt like [he] didn't have a choice." Defendant explained what happened next in the following colloquy with defense counsel:

"Q. Well, where did you aim the gun then?

A. Well, actually when we got out the car [Jamo] *** told the people, the crowd that was standing on the corner, move off the corner. They didn't move so he told me to shoot as in - -

Q. Okay. He's telling you to shoot, you've got a gun. No one has got a gun to your head, do they?

A. No, sir.

Q. No one is threatening to kill you, are they?

A. No, sir."

¶ 23 Defendant did not see Jamo with a gun, but at some point he heard gunshots. He shot the gun two to three times but did not aim the gun at the people in the group. He aimed the first shot toward the ground. He did not shoot the people because he felt he had to let off some warning shots to allow the people to move off the corner. He did not intend his first shot to kill anyone. He "pointed the gun up" the second and third time he fired the gun. He agreed that he pointed it at the buildings across the street. When Jamo and defendant returned to the car, Jamo was "pissed" at defendant because he did not shoot the gun at the people. Jamo

"snatched" the gun from defendant. The police pulled up behind the car approximately thirty seconds later. Once Jamo stopped the car, defendant ran. He eventually stopped. He reached into his pocket, pulled out the marijuana and told the police officer chasing him that he ran because he had marijuana. Defendant testified that he did not run because he fired a weapon or thought that he killed someone.

¶ 24 On cross-examination, defendant testified he was scared of Jamo even though defendant had the gun. Defendant clarified that when Jamo asked him to get in the car; Jamo only asked to smoke marijuana with him and was not threatening him. Defendant admitted that he never told Jamo to stop the car so that he could get out. He also admitted that he did not run when he got out of the car and fired his gun. Defendant testified that he did not know why Jamo gave him the gun when he got into the car. Although defendant was not comfortable driving around with a gun, he did not ask Jamo to stop the car. He clarified that Jamo did not threaten him to get out of the car, but he did tell him to get out of the car at the area of 65th and Claremont. He later described it as a "demand" to get out of the car. Defendant did not know Tony Williams or Shakeil Robinson and he did not see them get shot. He reiterated that he did not see Jamo with a gun but he did hear other gunfire. Defendant further testified that Jamo did not stay on the driver's side when he got out of the car. Rather, he walked towards the group of people. Defendant got back into the car when he heard gunshots, but he waited for Jamo to get back in the car. He never saw Jamo shooting.

¶ 25 On redirect examination, defendant testified that he did not say no to Jamo because he did not want anything to happen to himself or his loved ones. He testified further that he thought something would happen to him if he refused Jamo's instructions based on Jamo being an enforcer.

¶ 26 Defendant called Officer Zattair to testify. Officer Zattair confirmed that when he chased defendant and ultimately caught him, defendant told him he ran because he had marijuana. Officer Zattair found marijuana on defendant and arrested him for having marijuana. Defendant called ASA McMahon to testify. ASA McMahon testified that defendant, in his statement, bought marijuana prior to getting into the car with Jamo and that he told the police that he had marijuana on him at the time of his arrest.

¶ 27 At the jury instruction conference, defense counsel did not request an instruction on the affirmative defense of compulsion. The jury convicted defendant of the attempted first degree murder and aggravated battery with a firearm of Shakeil Robinson and the attempted first degree murder and aggravated battery with a firearm of Tony Williams. The circuit court denied defendant's motion for a judgment of not guilty or in the alternative, a motion for a new trial. The circuit court sentenced defendant to two consecutive six-year sentences for his attempted first degree murder convictions, each with a 20-year enhancement for personally discharging a firearm for a total of 52 years to be served in the Illinois Department of Corrections. The aggravated battery counts merged into the attempted murder counts. Defendant received credit for serving 1,103 days in custody and the circuit court assessed fines, fees, and costs of $794, including a $25 fine under the VCVA Act. 720 ILCS 240/10 (West 2008). Defendant timely appealed.

¶ 28 ANALYSIS

¶ 29 Defendant first argues that his trial counsel was ineffective for failing to seek a jury instruction based on the affirmative defense of compulsion. According to defendant, a jury instruction based on compulsion would have allowed the jury to consider defendant's fear of Jamo which he argues caused him to act as he did. Defendant contends his counsel's decision

prejudiced him because had the jury had the benefit of a compulsion instruction, they may have acquitted him. In response, the State argues that defendant's trial counsel was not ineffective because his decision not to seek a jury instruction on compulsion was strategic, the evidence did not support a compulsion instruction, and defendant failed to establish prejudice. Specifically, the State argues the evidence in the record does not support a compulsion instruction because defendant was not in imminent danger of death or great bodily harm and defendant made no attempt to withdraw from the situation despite numerous opportunities to do so.

¶ 30 The right to the effective assistance of counsel is guaranteed under both the federal and Illinois Constitutions. *People v. Domagala*, 2013 IL 113688, ¶ 36 (citing U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8). Ineffective assistance claims are analyzed under the standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), as adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504 (1984). *Id.* To prove he was denied the effective assistance of counsel, defendant has to show both deficient performance of trial counsel and that trial counsel's performance prejudiced him. *People v. Evans*, 209 Ill. 2d 194, 219-220 (2004). In order to establish deficient performance, a defendant "must prove that counsel's performance, as judged by an objective standard of competence under prevailing professional norms, was so deficient that counsel was not functioning as the 'counsel' guaranteed by the sixth amendment." *People v. Bew*, 228 Ill. 2d 122, 127-28 (2008). Failed strategic decisions do not establish the ineffectiveness of counsel and our supreme court has cautioned that "[c]ounsel's strategic choices are virtually unchallengeable." *People v. Fuller*, 205 Ill. 2d 308, 331 (2002). To establish prejudice, a "defendant must prove that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *People v. Easley*, 192 Ill. 2d 307, 317 (2000). Therefore, "[a] reasonable probability is a probability

sufficient to undermine confidence in the outcome." *Id.* As such, the results of the proceedings must be shown to be fundamentally unfair or unreliable. *Id.* at 317.

¶ 31 A defendant is entitled to instruct the jury on defenses supported by the evidence, and only needs to produce some evidence in order to raise a defense. *People v. Everette*, 141 Ill. 2d 147, 156 (1990). "After a defendant raises a defense, the burden shifts to the State to prove beyond a reasonable doubt that defendant's conduct was not justified by the offense." *People v. Orasco*, 2014 IL App (3d) 120633, ¶ 25.

¶ 32 Section 7-11(a) of the Criminal Code of 1961 codifies the affirmative defense of compulsion, and provides in relevant part: "[a] person is not guilty of an offense *** by reason of conduct which he performs under the compulsion of threat or menace of the imminent infliction of death or great bodily harm, if he reasonably believes death or great bodily harm will be inflicted upon him if he does not perform such conduct." 720 ILCS 5/7-11(a) (West 2008). Only threats of harm to the actor, not to others, establish the defense of compulsion. *People v. Edwards*, 195 Ill. 2d 142, 167 (2001). The threat of death or great bodily harm to the actor must be imminent, and a threat of future injury does not establish the defense of compulsion. *People v. Brown*, 341 Ill. App. 3d 774, 782 (2003). The impending threat of death or great bodily harm must be coupled with a demand that the actor commit a specific criminal act. *People v. Humphries*, 257 Ill. App. 3d 1034, 1044 (1994). Furthermore, "[t]he defense of compulsion is not available to one who passes up an opportunity to withdraw from the criminal enterprise." *People v. Scherzer*, 179 Ill. App. 3d 624, 645-646 (1989).

¶ 33 After reviewing the evidence in the record, and in particular defendant's testimony, we hold that any attempt by defendant's counsel to instruct the jury on the defense of compulsion would have been denied because there was no immediate threat of harm to defendant and

because defendant had ample opportunity to withdraw from the criminal enterprise but chose not to. The evidence at trial does not show that defendant was subject to an imminent threat of harm. Defendant testified that no one threatened him. Rather, defendant's testimony supports the idea that he was scared of future harm based on Jamo's reputation as a violent person. Defendant described Jamo as "an enforcer" and "a violent person." Defendant testified on direct examination that Jamo "told" him to shoot the gun. There is no evidence, however, that Jamo threatened defendant in order to get defendant to fire the gun. Accordingly, we cannot say that defendant's fear of Jamo can be described as anything but a fear of future injury. The threat of future injury does not establish the defense of compulsion. *Brown*, 341 Ill. App. 3d at 782.

¶ 34 Additionally, an instruction on compulsion would have been denied because defendant's testimony shows that he had ample opportunities to remove himself from the criminal enterprise. A compulsion defense is not available where a defendant fails to withdraw himself from the criminal enterprise despite opportunities to do so. *Scherzer*, 179 Ill. App. 3d at 645-646 (1989). Defendant had two opportunities to remove himself from the situation but failed to do so. First when Jamo gave him the gun, the evidence shows they drove around before seeing the group of people on the corner. Defendant admitted that he did not ask to get out of the car despite his discomfort of having to carry the gun. Second, when Jamo told him to get out of the car and subsequently told him to fire the gun, defendant did not object. Rather, he shot the gun. Defendant admitted that Jamo did not threaten him to get out of the car and testified that he did not see Jamo with a gun. The record shows defendant failed to remove himself from the situation despite an opportunity to do so. Accordingly, we hold that defendant cannot show

ineffective assistance of counsel because he cannot show that an instruction on compulsion would have been granted.

¶ 35 Defendant next argues that the State failed to present sufficient evidence to support his conviction for the attempted murder of Tony Williams. Defendant describes Williams's testimony as that of a lone victim shot on a deserted street corner that did not identify or see who shot him. According to defendant, the other evidence presented described the crime scene as a chaotic assault on a substantial group. Due to these alleged "clashing accounts," defendant asks this court to vacate his conviction for the attempted murder of Tony Williams. The State responds that it presented sufficient evidence to prove defendant guilty beyond a reasonable doubt of the attempted murder of Tony Williams.

¶ 36 The due process clause of the fourteenth amendment to the United States Constitution ensures that an accused defendant is not convicted of a crime "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime for which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970); *People v. Carpenter*, 228 Ill. 2d 250, 264 (2008); *People v. Brown*, 2013 IL 114196, ¶ 52 ("the State bears the burden of proving beyond a reasonable doubt each element of a charged offense and the defendant's guilt.") It is not, however, the function of this court to retry a defendant when reviewing whether the evidence at trial was sufficient to sustain a conviction. *People v. Hall*, 194 Ill. 2d 305, 329-30 (2000). Rather, our review is focused on "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 offense beyond a reasonable doubt." *People v. Baskerville*, 2012 IL 111056, ¶ 31. This standard of review applies to both circumstantial and direct evidence. *Brown*, 2013 IL 114196, ¶ 49.

¶ 37 The trier of fact is responsible for determining a witness's credibility and the weight to be given to a witness's testimony, as well as drawing any reasonable inferences from the evidence. *People v. Jimerson*, 127 Ill. 2d 12, 43 (1989). As such, we will not substitute our judgment for that of the trier of fact on credibility issues or reweigh the evidence. *Brown*, 2013 IL 114196, ¶ 48. The trier of fact is in the best position to resolve any conflicting inferences produced by the evidence. *People v. McDonald*, 168 Ill. 2d 420, 447 (1995). Although all reasonable inferences in the record must be given in the prosecution's favor, unreasonable inferences will not be allowed. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). "[T]he trier of fact is not required to disregard inferences that flow from the evidence, nor is it required to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Id.*; see also *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009) ("the trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt.") "The testimony of a single witness, if it is positive and the witness credible, is sufficient to convict." *People v. Smith*, 185 Ill. 2d 532, 541 (1999). A conviction will be reversed where the evidence is so unsatisfactory, unreasonable, or improbable that it raises a reasonable doubt as to defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Our supreme court has recognized that circumstantial evidence alone can support a criminal conviction. *Brown*, 2013 IL 114196, ¶ 49.

¶ 38 Section 5/8-4(a) of the Criminal Code of 1961 defines attempt as follows: "A person commits an attempt when, with intent to commit a specific offense, he does any act which constitutes a substantial step toward the commission of that offense." 720 ILCS 5/8-4(a) (West 2008). First degree murder occurs where a person kills an individual, without legal justification, and in performing the acts that caused the death "he either intends to kill or do great

bodily harm to that individual or another, or knows that such acts will cause death to that individual or another." 720 ILCS 5/9-1(a)(1) (West 2008).

¶ 39 We hold the State presented sufficient evidence showing defendant committed the offense of the attempted murder of Tony Williams. Both the victims in this case, Tony Williams and Shakeil Robinson, testified that at approximately 9:30 p.m. on August 8, 2009, they were shot while in the area of 65th and Claremont in Chicago. Williams saw a car coming behind him at a fast pace before being shot. He was not able to see who shot him because it was dark outside. The State showed defendant fired his gun while in that area at that same time through defendant's statement to ASA Mary McMahon, Walter Agnew's statement, and the evidence of gun residue found on defendant's hand. The State presented testimony from various law enforcement personnel establishing that multiple shots were fired. Defendant and Agnew's statements to the police also established multiple shots were fired. Circumstantial evidence alone can support a criminal conviction. *Brown*, 2013 IL 114196, ¶ 49 (" This court has recognized that a criminal conviction may be based solely on circumstantial evidence."). Viewing this circumstantial evidence in the light most favorable to the prosecution, as we are required to do (*Baskerville*, 2012 IL 111056, ¶ 31), shows that defendant shot both Williams and Robinson at approximately 9:30 p.m. on August 8, 2009, near 65th and Claremont in Chicago.

¶ 40 Defendant's argument focuses on the alleged discrepancy between Tony Williams's testimony and testimony from defendant, Walter Agnew, and Shakeil Robinson. Defendant, Agnew, and Robinson stated that a group of people were at 65th and Claremont at the time of the shooting. We acknowledge that unlike the other eyewitnesses, Williams testified that he did not see any other people out on the street at 65th and Claremont. We remind defendant, however, that it is not our function as a court of review to reweigh the evidence. *Hall*, 194 Ill. 2d at

329-30. Rather, the trier of fact is in the best position to resolve conflicting inferences produced by the testimony. *McDonald*, 168 Ill. 2d at 447. Williams's testimony is not so unreasonable that we should discount it on appeal.

¶ 41 Defendant also asks this court to reduce the fine assessed against him pursuant to the VCVA Act (720 ILCS 240/10 (West 2008)) by $21 and to correct his mittimus to properly reflect one additional day of credit for time spent in pretrial custody. The State concedes these issues. We agree with the parties and order that the fine assessed against defendant pursuant to the VCVA Act (720 ILCS 240/10 (West 2008)) be reduced by $21, and that defendant's mittimus be corrected to reflect one additional day of presentence credit. See *People v. Harper*, 387 Ill. App. 3d 240, 244 (2008) (noting that this court has the authority to correct the mittimus without remanding the case back to the circuit court).

¶ 42 CONCLUSION

¶ 43 We affirm defendant's conviction and sentence. We order that the fine assessed against defendant pursuant to the VCVA Act (720 ILCS 240/10 (West 2008)) be reduced by $21, and that defendant's mittimus be corrected to reflect one additional day of presentence credit.

¶ 44 Affirmed; mittimus corrected.