

No. 1-13-1772

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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. 11 CR 2712
)	
TAVELL COBBINS,)	Honorable
)	Michael Brown,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

O R D E R

¶ 1 *Held:* The evidence at trial was sufficient to convict defendant of aggravated battery with a firearm where the eyewitnesses' testimony was corroborated by the testimony of an arresting officer and the physical evidence.

¶ 2 Following a bench trial, defendant Tavell Cobbins was convicted of aggravated battery with a firearm and sentenced to eight years in prison. On appeal, defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt because the State's case rested on eyewitnesses who gave completely inconsistent and unbelievable accounts of the shooting. For the reasons that follow, we affirm.

¶ 3 Defendant's conviction arose from the events of January 29, 2011. Early that morning, Keith Miller was shot in the back of the knee as he fled a fight outside a Chicago nightclub located on West Evergreen Avenue near the intersection of North Halsted Street.

¶ 4 Miller testified that on the day in question, he went to the nightclub with his friends Stevie Kimmons and Darius Lawson. Following a brief altercation with a man he did not know, Miller was physically removed from the nightclub by a bouncer. The bouncer also ejected a group of men that included defendant, whom Miller knew by sight from playing basketball in the neighborhood. Defendant was wearing a white t-shirt and jeans. While Miller talked with security about getting his belongings from the coat check, Kimmons and Lawson came outside. A "big brawl" ensued. During the fight, Miller heard someone say, "Go get the heat, go get the heat," which Miller knew was street terminology for a gun. Miller started walking to his car. When he heard three shots "in the air," he ran north on Halsted Street. Lawson ran the same direction, but was ahead of Miller. Miller did not see who was shooting.

¶ 5 Miller testified that as he ran, he turned around and saw that defendant was chasing him. During the chase, defendant said, "I got your bitch ass." Miller did not see a gun in defendant's hands and acknowledged that at least 15 people were running behind him and Lawson. However, no one was between him and defendant, who was about 15 feet away. Miller testified that he heard bullets fly by, fell, and then realized he had been shot in the back of his right knee. When asked "[H]ow much time went by from the time that you got shot to the last time, to the last time you saw [defendant] behind you," Miller answered, "Maybe like three minutes, four minutes." However, upon further questioning by the trial court, Miller demonstrated that he ran for only 20 seconds total, and stated that "maybe" 10 seconds passed between the time he looked back at

defendant and the time he was shot in the knee. Miller admitted that he did not see who shot him and did not know who was behind him at the moment he was shot. Miller tried to get up, but could not stand and was only able to drag himself into a doorway. Eventually, the police arrived and Miller told them he believed defendant shot him. Miller was taken to the hospital. He had two surgeries on his knee and stayed at the hospital for four or five weeks.

¶ 6 Stevie Kimmons testified that as the bouncers were breaking up the fight outside the nightclub, he heard someone say, "Go get the heat, cuz, go get the heat." Kimmons saw two or three men who had been involved in the fight go to the alley across the street from the nightclub, and then saw a short, muscular man with braids fire five or six shots into the air. Miller and Lawson ran off. Kimmons testified that he saw the man with braids get into a silver car in the alley and drive up to a stop sign. Defendant, whom Kimmons knew from playing basketball, went up to the silver car and got a gun from the man with braids. Defendant was wearing jeans and a white t-shirt. Kimmons "ran the other direction" and did not see where defendant went. As Kimmons got into his own car and pulled out from his parking spot, he heard about three more shots. Approximately three minutes elapsed from the time he saw defendant retrieve the gun to the time he heard the gunshots. Kimmons drove around the block and saw Miller lying on the sidewalk. Shortly thereafter, police officers brought defendant to the scene and asked Kimmons to identify him, which he did.

¶ 7 On cross-examination, Kimmons stated that defendant was not involved in the altercation inside the club or the fight outside the club. Kimmons also gave details about his movements after he left the nightclub. Kimmons stated that he ran west on Evergreen Avenue, turned north on the next block, which was Dayton Street, and went past his own car. He stated, "And then

when I seen the defendant, I turned back around." Kimmons further testified that he did not see Miller or Lawson in front of defendant, and admitted that he was not sure that the object defendant retrieved from the silver car was a gun, even though it "was in the shape of a gun."

¶ 8 Darius Lawson testified that during the fight outside the nightclub, a man with braids swung at him and he hit back. As the fight went on, Lawson heard someone say, "Go get the heat, go get the heat," and saw two or three men run toward the alley across the street from the club. Approximately a minute later, Lawson heard about three gunshots. He ran east on Evergreen Avenue and then north on Halsted Street, with Miller behind him. As Lawson ran, he heard two more shots hit a pole near him. Lawson continued running. He turned left onto a side street but encountered a group of men who made motions like they intended to fight, so he quickly returned to Halsted Street. There, he saw Miller running and defendant, whom he did not know but identified in court, about a quarter of a block behind Miller. Defendant, who was wearing jeans and a white t-shirt, pointed a gun and fired. Miller fell, tried to get up, and then collapsed. Lawson went to Miller and did not see where defendant went. Sometime later, the police brought defendant to the scene, and Lawson identified him.

¶ 9 Adriel Osorio testified that about 2:30 a.m. on the day in question, he was riding in a car traveling north on Halsted Street, on his way home from work. At the intersection with Evergreen Avenue, he heard three gunshots. Osorio ducked down, but then looked to his left and saw a man about 30 feet away, holding a gun. He described the man as light skinned, about six feet tall, wearing a white t-shirt and jeans. Osorio did not see the man's face. Osorio stated that the gunman's arm was extended out toward Halstead Street, aiming toward a man who was

"hobbling off." The gunman then ran and got into a silver Pontiac. Osorio drove away and called 911.

¶ 10 Chicago police officer Robert Gomez testified that he and his partner responded to a call reporting that a person was shot and that a gray Pontiac was involved. On their way to the reported location, Officer Gomez observed a car matching the description given. Defendant, who was wearing jeans and a white t-shirt, was getting out of the car. Officer Gomez got out of his car, told defendant to stop and let him see his hands, and stated, "I'm going to detain you." Defendant pulled away, so Officer Gomez performed an emergency take-down and placed defendant into custody. Officer Gomez thereafter recovered a warm handgun from defendant's front left pants pocket. The gun was "in slide lock," which meant it had just been fired and exhausted all its rounds. Because Officer Gomez and his partner were in an unmarked cageless car, another officer transported defendant to the scene of the shooting for a show-up identification, where defendant was positively identified.

¶ 11 The parties stipulated that gunshot residue (GSR) testing was performed on defendant's hands and clothing. His left hand and t-shirt were found to contain GSR particles. The results indicated that defendant "discharged a firearm, contacted a primary GSR-related item, or had his left hand in the environment of a discharged firearm," and that his t-shirt "contacted a GSR-related item or [was in the] environment of a discharged firearm." The parties further stipulated that the bullet removed from Miller's leg was fired from the handgun recovered from defendant's pocket.

¶ 12 Defendant did not testify or present any evidence.

¶ 13 The trial court convicted defendant of aggravated battery with a firearm and sentenced him to eight years in prison.

¶ 14 On appeal, defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt because the State's case rested on eyewitnesses who gave "completely inconsistent and unbelievable accounts of the shooting" and there was a lack of other direct evidence that defendant was the shooter. Defendant argues that the testimony of each State witness contradicted the testimony of the prior witness in that Miller and Kimmons related that defendant followed them east and then north on Halsted Street, while Dawson related that defendant went in the opposite direction; that Kimmons actually exculpated defendant by placing him on a completely different street only seconds before the shooting occurred; and that Lawson, the only witness to positively identify defendant as the shooter, "had a terrible opportunity to view the shooter" and "his degree of attention was just as bad." Defendant maintains that at best, the evidence only showed that he was present at the time of the shooting, fled the gunshots along with scores of other young men, and took the gun from the actual shooter before the police arrived. Defendant asserts that because the evidence did not establish beyond a reasonable doubt that he was the person who shot Miller and the State did not charge him under an accountability theory, his conviction must be reversed.

¶ 15 When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the

trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). Reversal is justified where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 16 Viewing the evidence in the light most favorable to the prosecution, we conclude that the State proved defendant guilty beyond a reasonable doubt. Keith Miller, Stevie Kimmons, and Darius Lawson related scenarios that, while not identical in their details, we do not find "completely inconsistent and unbelievable." Miller testified that as he fled from the brawl outside the nightclub, defendant, whom he knew from the neighborhood, chased him and said, "I got your bitch ass." Though he did not see a gun in defendant's hands and numerous other people were running behind him in addition to defendant, Miller stated that no one was between him and defendant when he heard bullets fly by him, fell, and realized he had been shot in the back of the knee. Kimmons testified that after the fight outside the club was broken up, he saw defendant, whom he knew from playing basketball, retrieve an object "in the shape of a gun." Approximately three minutes later, Kimmons heard about three gunshots. He then drove around the block and saw Miller lying on the ground. Lawson testified that he saw defendant chase Miller, point a gun at him, and fire. Although Lawson did not know defendant prior to the shooting, he identified him when the police brought him to the scene for a show-up identification. In addition, his description of defendant's clothing matched the descriptions given by Miller and Kimmons: jeans and a white t-shirt.

¶ 17 In addition to this testimony, the State presented the supporting testimony of a disinterested eyewitness and an arresting officer, as well as corroborating physical evidence.

Adriel Osorio happened upon the scene of the shooting just as it unfolded. He heard gunshots, looked toward the noise, and saw a man in a white t-shirt and jeans aiming a gun toward another man who was "hobbling off." According to Osorio, the gunman then got into a silver Pontiac. Shortly thereafter, Officer Gomez, who was on his way to the scene, saw defendant getting out of a gray Pontiac. Defendant, who was wearing jeans and a white t-shirt, had a warm handgun in his front left pants pocket. GSR was found on defendant's left hand and t-shirt, and it was determined that the bullet removed from Miller's leg was fired from the handgun found in defendant's pocket.

¶ 18 We find that this evidence was more than sufficient to support defendant's conviction. Where a guilty finding depends on eyewitness testimony, a reviewing court, keeping in mind that it was the fact finder who saw and heard the witnesses, must decide whether any fact finder could reasonably accept the testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). It is for the finder of fact to judge how flaws in a witness's testimony affect the credibility of the whole. *Cunningham*, 212 Ill. 2d at 283. In the instant case, defendant is correct that some variance exists in the eyewitnesses' testimony regarding defendant's movements between the time of the fight outside the club and Miller's getting shot, as well as regarding the exact location of the gunman at the time he shot Miller. In our view, these variances are not compelling. Despite the discrepancies identified by defendant, the portions of the eyewitnesses' testimony that directly support a finding that defendant shot Miller could reasonably be accepted by the trial court who saw and heard the witnesses testify. See *Cunningham*, 212 Ill. 2d at 285.

¶ 19 Defendant's challenge in this court relates to matters of credibility and alleged conflicts and discrepancies in and between the testimonies of the eyewitnesses. We have examined these discrepancies and find that they are of the sort properly resolved by the trial court in the role of fact finder. We will not substitute our judgment for the trial court's on these matters or matters of credibility. See *Brooks*, 187 Ill. 2d at 131. After reviewing the record, we cannot say that the evidence was "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to defendant's guilt. *Slim*, 127 Ill. 2d at 307. Defendant's challenge to the sufficiency of the evidence fails.

¶ 20 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 21 Affirmed.