

No. 1-13-2372

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 6250
	)	
DIQUAN WOOTEN,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE PUCINSKI delivered the judgment of the court.  
Justices Hyman and Mason concurred in the judgment.

**O R D E R**

- ¶ 1 **Held:** The State presented sufficient evidence to prove beyond a reasonable doubt that defendant was guilty of aggravated battery with a firearm despite his claims that one of the State's identification witness's testimony was incredible, the State's other identification witness was unreliable and the physical evidence did not support his guilt.
- ¶ 2 Following a bench trial, the trial court found defendant Diquan Wooten guilty on one count of aggravated battery with a firearm and not guilty on three counts of attempted murder and one count of aggravated discharge of a firearm. The court sentenced defendant to eight years

in prison. On appeal, defendant contends that: (1) the State failed to prove him guilty beyond a reasonable doubt where the State's identification witnesses, Blair Davis and Bianca Sampson, provided unreliable and incredible testimony, respectively, while defendant's witness, Gregory Sampson, affirmatively refuted Davis and Bianca and where the physical evidence undermined the State's case; and (2) his mittimus should be corrected to reflect his proper presentence custody credit. For the reasons that follow, we affirm the judgment of the circuit court and order the clerk of the circuit court to correct defendant's mittimus to reflect 475 days of presentence custody credit.

¶ 3 At trial, Blair Davis testified that on the evening of February 25, 2012, he picked his girlfriend, Bianca Sampson, up from her house on the 5200 block of South Green Street in Chicago. Davis, driving his friend's car, drove the two to buy marijuana. When they returned to Bianca's house, the two remained in the car, but switched seats. Davis then turned the interior lights on in the car, and they began to "roll up one blunt" of marijuana.

¶ 4 But before they could finish, a "big" man armed with a gun and a white shirt covering the lower portion of his face came up to the right side of the car. The man "banged" on the window three to five times. In court, Davis identified the man as defendant, though he admitted it was the first time he was identifying defendant as the armed individual. Davis refused to let defendant in the car. However, Bianca opened her door and exited the car. Davis, unsure why Bianca left the car, remained inside and "jumped from the passenger's [seat] to the driver's seat."

¶ 5 Defendant then walked directly in front of the car and fired two shots at Davis from approximately three feet away. One shot hit Davis in the chest, and the other shot hit the steering

wheel. Davis drove away until he determined defendant was not going to shoot again. Bianca, who had either been "sitting or laying" down just to the left of the car, stood up, ran toward defendant's house and tried "to get him outside."

¶ 6 Approximately 10 minutes later, an ambulance arrived and took Davis to the hospital where he was treated for a gunshot wound. At the hospital, he talked to the police but told them that he did know the individual who shot him even though he admitted in court he knew it was defendant. Davis did not want to be a "snitch," and instead, he wanted to exact his own "revenge" by killing defendant himself. He did not recall the police ever showing him a photo array or conducting a lineup.

¶ 7 Prior to the shooting, Davis saw defendant "all the time" because he lived on the same block as Bianca. Davis insisted that he and defendant never had any "problem[s]" in the past.

¶ 8 On cross-examination, Davis admitted he lied to the police about not knowing who shot him. He decided to identify defendant at trial because he was "not going to try to kill" him anymore because it was "not the right thing to do."

¶ 9 Bianca Sampson testified that Davis, her boyfriend, was not from her neighborhood, drove a nice car, wore lots of jewelry and individuals in the neighborhood, including defendant, were generally not accepting of him. On February 25, 2012, Davis picked her up from her house so that they could buy marijuana and alcohol. At first, Bianca said she drove because Davis told her to, but later said she drove because she "love[d] driving." Davis and Bianca proceeded to a location where they bought marijuana, then drove to a liquor store and finally returned to Bianca's house. They remained in the car and "roll[ed] two blunts up." Before they could smoke

their "blunts," defendant came up to the car with a gun in his left hand and knocked on the window. Bianca had known defendant for several years because he lived on the same block she did. Defendant had a white shirt concealing part of his face and a "hoodie" on, but everything above his nose and beneath his forehead was visible.

¶ 10 Bianca exited the car and exclaimed to defendant "what is [*sic*] you on?" Approximately four seconds later, Davis "jump[ed] over" to the driver's seat in the car and attempted to drive away. But before he could, defendant shot at Davis. Despite being shot, Davis sped away from the scene toward a vacant lot, but accidentally "ran [Bianca's] legs over" in the process.

¶ 11 After Davis drove away, Bianca saw defendant run into his house, which was only three or four houses away from Bianca's. She followed defendant toward his house and saw defendant's grandmother, Lottie Banks, who was looking out a second-story window. Bianca asked Banks where defendant was located, and Banks told Bianca that defendant was in the bathroom. Bianca then ran back to help Davis.

¶ 12 The police and an ambulance eventually arrived at the scene. Bianca told the police at the scene that defendant had shot at Davis. In court, she also stated that neither she nor Davis had any "problems" with defendant prior to the incident. However, she noted that her brother, Gregory Sampson, a friend of defendant, had "hid[] [her] papers" so she would not come to court.

¶ 13 On cross-examination, Bianca stated that she told Banks her grandson had shot Davis. Bianca testified that she first talked to the police outside her house shortly after the shooting and then a second time after she returned home from the hospital. However, she admitted initially

refusing to give a handwritten statement to the police because "people get killed all the time for [giving statements to the police]." Eventually, she gave a statement to the police.

¶ 14 Bianca told the police that she often had arguments with defendant, including one time where defendant said he was going to rob Davis and shoot him. However, in court, Bianca described the quarrels as "little play arguments" that were never serious. She further stated that the time defendant told her that he would shoot Davis was only because defendant saw her crying after being dropped off by Davis.

¶ 15 Officer Jason Venegas of the Chicago police department testified that on February 25, 2012, he responded to a radio call of a person being shot on the 5200 block of South Green Street. At the scene, he spoke with Bianca who told him that defendant, who was wearing a black "hoody," had shot Davis and directed him to defendant's house. Venegas rang the doorbell of defendant's house, defendant answered and Venegas arrested him. He saw a black "hoody" near the entrance inside the home, but it was never inventoried. Venegas also spoke with Banks who told him that she did not know where defendant had been most of the day except for the last few minutes. Venegas did not believe the police recovered a gun from defendant's house.

¶ 16 An evidence technician from the Chicago police department testified that he tested both of defendant's hands for gunshot residue. A forensic scientist for the Illinois State Police testified that a gunshot residue test came back positive on defendant's left hand, indicating that defendant either discharged a firearm, had contact with an item that had gunshot residue on it or his left hand had been in an environment where a gun was discharged. However, the test was negative

for defendant's right hand. On cross-examination, the forensic scientist admitted that an individual can obtain gunshot residue from handling a "discharged cartridge case."

¶ 17 Defendant moved for a directed finding, but the trial court denied his motion.

¶ 18 Lottie Banks testified that she and Bianca were friends, and that Bianca would braid her hair every couple of weeks. On February 25, 2012, Banks heard someone outside her house, "hollering, 'Mama Lottie Mama Lottie.' " Banks looked out her window and saw Bianca in a distressed state. Bianca then inquired about defendant's whereabouts. Banks replied that defendant was in the house, and Bianca left. While looking out the window, Banks saw police, fire trucks and an ambulance.

¶ 19 In court, Banks said defendant had been inside her home approximately 20 to 30 minutes prior to her interaction with Bianca because Banks heard defendant talking to a man downstairs in the house. She also did not believe defendant left the house that night because she was home. However, on cross-examination, Banks admitted that once she went upstairs that night, she could not be sure what defendant was doing downstairs. She also noted defendant was right handed.

¶ 20 Approximately 10 minutes after Bianca left, the police knocked on Banks's door and asked her if defendant was inside. Defendant then came to the door, and the police arrested him. The police then proceeded to search her house. She tried to tell the police that defendant was not involved in the shooting, but "they tried to make a joke out of what [she] was telling them." Later, she refused to speak with an investigator from the Cook County State's Attorney's Office because she tried talking to an individual from the State's Attorney's Office once before, but they did not want to listen to her.

¶ 21 Gregory Sampson, the younger brother of Bianca, testified that he lived with Bianca and was a long-time friend of defendant. On February 25, 2012, prior to the shooting while walking home, Gregory ran into defendant who was on his porch talking with another man. Gregory and defendant briefly talked, and then Gregory went home. Later, while Gregory was inside his house, he heard two gunshots. He went to the front door, looked outside and saw Bianca try to enter a car. Gregory also saw a "tall guy way way smaller than [defendant]" run down the street past defendant's house.

¶ 22 After the man ran away, Gregory went outside and helped his sister who was lying on the ground, screaming that she could not "feel [her] legs." Then, he ran to Davis because he had just been shot. Once Davis told Gregory that he was "straight," Gregory turned his attention back to his sister. However, she had already "jumped up" and ran down the street to defendant's house. Gregory chased her and told her defendant did not shoot Davis.

¶ 23 On cross-examination, Gregory admitted that he did not think about talking to the police at any time after the shooting and telling them that defendant did not shoot Davis. He also said the police never reached out to him. However, he told defendant's family that he knew defendant did not shoot Davis. Gregory denied that he was giving his sister a hard time about testifying in the case, but said his sister had threatened to kill both him and defendant. Gregory also denied that he had any problems with Davis.

¶ 24 Anthony Wooten testified that he lived with defendant, his brother, and that the day of the shooting, Wooten went to Chuck's Gun Shop in Riverdale. He rented a gun using his firearm owner's identification ("FOID") card and shot at the range. He brought home five or six spent

shell casings that defendant touched. On cross-examination, Wooten stated that Chuck's Gun Shop did not take down his information or copy his FOID card. He also was not aware of any video cameras at the range.

¶25 Detective Robert Girardi of the Chicago police department testified that he interviewed Davis at the hospital after the shooting, but Davis did not know who shot him. Girardi showed Davis a photo array of suspects, which included defendant, but Davis failed to identify anyone. Girardi also interviewed Banks twice, and both times, she indicated that she did not see defendant leave the house that night.

¶ 26 After argument, the trial court found defendant guilty on one count of aggravated battery with a firearm. The court noted that both Bianca and Davis identified defendant. Although the court was "concern[ed]" that Davis only identified defendant at trial for the first time because of "street ethics," it found Bianca's testimony "very clear" and "very compelling." Furthermore, the court believed that Davis was not "well accepted" by members of Bianca's neighborhood because he wore "flashy jewelry." The court also noted while no gun was recovered, defendant's non-dominant hand, his left hand, tested positive for gunshot residue. Finally, the court rejected defendant's "strange" theory that he obtained the gunshot residue on his hand from handling spent casings his brother allegedly brought home from a gun range the day of the shooting.

¶ 27 The court found defendant not guilty on three counts of attempted murder and one count of aggravated discharge of a firearm. The court did not believe defendant intended to kill Davis because defendant had the opportunity to keep shooting at Davis in order to kill him, but did not



do so. The court also did not believe that defendant attempted to hurt Bianca. The court subsequently sentenced defendant to eight years in prison.

¶ 28 Defendant first contends that the State failed to prove him guilty beyond a reasonable doubt where the State's identification witnesses, Davis and Bianca, were unreliable and incredible, respectively, and defendant's witness, Gregory, affirmatively refuted their identification. Additionally, defendant contends the physical evidence undermined the State's case. The State counters, arguing that the unimpeached testimony of Bianca coupled with Davis's identification were sufficient evidence of defendant's guilt.

¶ 29 Due process mandates that a defendant may not be convicted of a crime unless each element constituting that crime is proven beyond a reasonable doubt, (*People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) quoting *In re Winship*, 397 U.S. 358, 364 (1970)), and that burden is on the State. *People v. Diaz*, 377 Ill. App. 3d 339, 345 (2007). When assessing the sufficiency of the evidence in a criminal case, the reviewing court must view the evidence in the light most favorable to the State and then decide if any rational trier of fact could find all the elements of the crime proven beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. All reasonable inferences must be allowed in favor of the State. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). The testimony of a sole credible witness can be sufficient to convict a defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999).

¶ 30 While we must carefully examine the evidence before us, we must give the proper deference to the trial court who saw the witnesses testify (*id.*), because it was in the "superior position to assess the credibility of witnesses, resolve inconsistencies, determine the weight to

assign the testimony, and draw reasonable inferences therefrom." *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24. However, despite giving the trial court great deference in credibility determinations, where the evidence is "improbable, unconvincing and contrary to human experience," we will reverse the court's judgment. *People v. Marion*, 2015 IL App (1st) 131011, ¶ 27 quoting *People v. Dawson*, 22 Ill. 2d 260, 264-65 (1961).

¶ 31 Defendant initially argues that Bianca's testimony "does not square with common sense" and that as a whole, we cannot rely on her incredible testimony. Defendant supports his argument by pointing to various inconsistencies and inexplicabilities in her testimony. First, defendant notes that Bianca was sitting in the driver's seat when the shooting occurred. He argues that from her vantage point, she could not see the shooter who was at the passenger side of the car with only part of his face exposed. However, Bianca's testimony revealed that she was very familiar with defendant, and we do not find it unbelievable that she was able to positively identify him. More importantly, it was not unreasonable for the trial court to accept her identification of defendant as the shooter. See *Vaughn*, 2011 IL App (1st) 092834, ¶ 24 (stating the trial court is in the "superior position to assess the credibility of witnesses, resolve inconsistencies, determine the weight to assign the testimony, and draw reasonable inferences therefrom").

¶ 32 Defendant next notes that according to Bianca, defendant was in front of Davis's car when he shot Davis. And when Davis drove his car away, defendant was not hit by the car, a "factual oddity." However, it is quite possible that immediately after shooting twice at Davis, defendant began to run, thus removing himself from the direct path of the car. Moreover, there is

no dispute that Davis was shot by a bullet that entered through the car's windshield. Defendant also points out that Davis ran over Bianca's legs with his car but that she was still able to chase after defendant. Here, we simply do not know if Bianca literally meant that Davis's car ran over her legs or that the car merely sideswiped her. But that something happened to Bianca's legs was corroborated by Davis and defendant's witness, Gregory. Thus, we do not believe that this statement detracted from her overall credibility.

¶ 33 Defendant also argues that Bianca had conflicting reasons for driving Davis to buy marijuana and liquor, and additionally, her story conflicted with Davis's testimony who stated that he drove the couple. Bianca's inconsistency regarding why she drove that night and the apparent conflict with Davis's testimony was of limited impeachment value. Moreover, our supreme court has stated that variations in the testimony of witnesses are "to be expected anytime several persons witness the same event under traumatic circumstances." *People v. Brooks*, 187 Ill. 2d 91, 133 (1999).

¶ 34 Defendant also argues Bianca "admitted to multiple criminal acts" the night Davis was shot by divulging she was a regular buyer of marijuana. While it may be true that Bianca admitted to buying marijuana that night from her "regular seller," we do not believe that this admission detracted from her positive identification of defendant as the shooter. Furthermore, it is not for the reviewing court to evaluate witness credibility; rather, that function is solely reserved for the trier of fact. See *People v. Brown*, 2015 IL App (1st) 130048, ¶ 31.

¶ 35 Finally, defendant argues Bianca's "cooperation \*\*\* varied over time" with the police and so too did her "explanation for those variations." While it is true that Bianca initially did not

want to give a written statement about the shooting because she feared that "people get killed all the time for [giving statements to the police]," this instance was the only one where she did not cooperate. Moreover, she eventually gave a statement to the police. Defendant describes Bianca's action of not talking to officers at the hospital as not cooperating, but the evidence revealed that the police never attempted to speak with her at the hospital. Additionally, she had already spoken to the police at the crime scene and identified defendant as the shooter. Finally, defendant's arguments about Bianca's lack of cooperation affect only the weight accorded to her testimony, and these arguments were presented to and implicitly rejected by the trial court. See *People v. Baugh*, 358 Ill. App. 3d 718, 737 (2005) (finding a defendant's sufficiency of the evidence claim unpersuasive where his arguments on appeal about the weaknesses of the State's evidence were presented to and rejected by the trier of fact).

¶ 36 Despite defendant's argument that accepting Bianca's testimony "requires a suspension of one's disbelief," the key aspects of Bianca's testimony were either corroborated by other witnesses or the physical evidence. Bianca's narrative of events leading up to the shooting was consistent with Davis's narrative in the critical aspects. Both stated that Davis picked Bianca up from her house, both admitted to buying marijuana and that they returned back to her house. Then, while they were "roll[ing] \*\*\* blunts" in Davis's car, both stated defendant, covering part of his face with a white shirt, knocked on the car window. Both also agreed that Bianca exited the car before defendant shot Davis. After the shooting, Bianca followed defendant to his house and yelled for his grandmother, Banks, a fact confirmed by Banks herself. Furthermore, Bianca was steadfast in her identification of defendant. She identified defendant as the shooter

immediately at the crime scene by chasing him to his house and telling Banks. She also told Venegas that defendant had shot Davis and directed him to defendant's house, a fact Venegas confirmed during trial. Finally, Bianca testified that defendant had the gun in his left hand when he knocked on the car door, an observation corroborated by the positive gunshot residue test on defendant's left hand.

¶ 37 Thus, despite the weaknesses in Bianca's testimony which defendant points out, we cannot consider her testimony as a whole incredible where the critical points were corroborated by other evidence. Therefore, her testimony was not so "improbable, unconvincing and contrary to human experience" (see *Marion*, 2015 IL App (1st) 131011, ¶ 27 quoting *Dawson*, 22 Ill. 2d at 264-65), that we should reject the trial court's finding that Bianca was a credible witness.

Accordingly, because the trial court unequivocally accepted Bianca's testimony to be credible and positive, and the testimony of a sole credible witness can be sufficient to convict a defendant (see *Smith*, 185 Ill. 2d at 541), we find that Bianca's testimony alone was sufficient evidence for finding defendant guilty.

¶ 38 While we have found that Bianca's testimony alone was sufficient to convict defendant, we will address defendant's remaining arguments. Defendant asserts that Davis's testimony was unreliable because he failed to identify defendant as his shooter multiple times during the investigation. Moreover, defendant argues that when Davis did identify defendant at trial as his shooter, his explanations for not identifying him until trial were "ever [] changing." We reiterate that credibility determinations are reserved for the trial court. See *Vaughn*, 2011 IL App (1st)

092834, ¶ 24. The trial court placed the weight it determined was necessary on his testimony, and it is not our place to re-weigh this determination.

¶ 39 Defendant also points to various inconsistencies and inexplicabilities in Davis's testimony, all in a similar vein to that of Bianca's testimony. However, as we mentioned discussing Bianca's testimony, minor inconsistencies are "to be expected anytime several persons witness the same event under traumatic circumstances." *Brooks*, 187 Ill. 2d at 133. And the portions of Davis's testimony that defendant argues are inexplicable were corroborated by Bianca's testimony.

¶ 40 Next, defendant argues the physical evidence undermined the State's case. First, he points out he only tested positive for gunshot residue on his non-dominant, left, hand. As the trial court acknowledged, it is quite possible for someone to shoot a gun with his non-dominant hand. Moreover, Bianca testified to defendant holding a gun with his left hand when he banged against the car window with the gun. Second, defendant notes that the black "hoody" that defendant allegedly wore during the shooting was never inventoried by the police and thus never tested for gunshot residue despite lying on the floor of defendant's home. Instead of undermining the State's case, this evidence does the opposite, it supports the State's case. The fact that the black "hoody" was laying on the floor of defendant's home supports Bianca's description to Officer Venegas that the shooter wore a black "hoody." Lastly, defendant argues that the police did not recover a gun from defendant's home. However, there is no requirement that the State prove a gun was recovered in a prosecution for aggravated battery with a firearm. See 720 ILCS 5/12-3.05(e)(1) (West 2012); *People v. Peterson*, 273 Ill. App. 3d 412, 421 (1995).

¶ 41 Defendant argues that Gregory's testimony "affirmatively contradicted" Davis and Bianca, and that Gregory should be deemed highly credible because he has "no reason to favor" any of the parties involved because of his ties to both defendant and Bianca. First, there was evidence presented at trial that a discord existed between Gregory and Bianca because of her willingness to testify against defendant. Second, it is for the trial court not a reviewing court to resolve conflicting testimony. See *People v. Sims*, 358 Ill. App. 3d 627, 634 (2005). And third, defendant asks us to make an inference about Gregory's loyalty – being either with his friend, defendant, or with his sister, Bianca – a function likewise reserved for the trial court. See *People v. Harmon*, 2012 IL App (3d) 110297, ¶ 11.

¶ 42 Finally, defendant directs our attention to *People v. Coulson*, 13 Ill. 2d 290 (1958). In *Coulson*, the victim of an armed robbery testified that the defendants forced him into a parked car at gunpoint, took his wallet and threatened to shoot him. *Id.* at 293. The victim then told the defendants that he had more money at home, would take them there and would not call the police. *Id.* The defendants drove the victim to his aunt's home, he went inside the home, called the police, returned to the car and told the defendants he would be right back. *Id.* He then went back inside his aunt's home. *Id.* The police eventually arrested the defendants, but no money or guns were found in the defendants' car. In reversing the trial court's finding of guilt, the supreme court found the victim's testimony "taxe[d] the gullibility of the credulous." *Id.* at 296.

¶ 43 However, we find *Coulson* distinguishable. In *Coulson*, the defendants' guilt was premised on the sole account of one witness who gave an account which was unbelievable and uncorroborated. Meanwhile, the present case is much different. Although the court questioned

how much emphasis to place on Davis's identification, saying it had "concern about his testimony," it is clear the State's case did not rely on a single witness like *Coulson*. Whereas the actions that led to the defendants' guilt in *Coulson* could not be corroborated by anyone other than the victim, in the present case, Bianca's testimony could be corroborated in many respects by Davis. Additionally, although Gregory did not identify defendant as the shooter, much of his testimony corroborated Bianca's description of events. Moreover, the physical evidence, including the positive gunshot residue test and black "hoody" found at defendant's home, supported Bianca's identification of defendant.

¶ 44 Accordingly, when all the evidence is viewed in the light most favorable to the State, we cannot say that no rational trier of fact could have found defendant guilty. The evidence in this case is not so "improbable, unconvincing and contrary to human experience," that warrants a reversal of the court's judgment. *Marion*, 2015 IL App (1st) 131011, ¶ 27 quoting *Dawson*, 22 Ill. 2d at 264-65.

¶ 45 Defendant next contends that his mittimus should be corrected to reflect that he is entitled to an additional 74 days of presentence custody credit. Defendant argues, the State concedes, and we agree, that his mittimus must be corrected to accurately reflect his presentence custody credit from 401 days to 475 days.

¶ 46 A defendant held in custody for any part of a day should be given credit against his sentence for that day (*People v. Williams*, 2013 IL App (2d) 120094, ¶ 37; see 730 ILCS 5/5-4.5-100(b) (West 2010)), excluding his day of sentencing. *People v. Harris*, 2012 IL App (1st) 092251, ¶ 37.



¶ 47 The police arrested defendant on February 25, 2012, and the trial court sentenced him on July 10, 2013. However, during that period, defendant's charges were briefly dropped and he was released from custody between March 20, 2012 and April 15, 2012. As such, defendant's presentence custody totaled 475 days, but his mittimus reflected credit for only 401. Therefore, pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), and our ability to correct a mittimus without remand (see *People v. Hill*, 408 Ill. App. 3d 23, 31 (2011)), we order the clerk of the circuit court to correct defendant's mittimus to reflect 475 days of presentence custody credit.

¶ 48 For the reasons stated above, we affirm the judgment of the circuit court of Cook County in all other respects.

¶ 49 Affirmed; mittimus corrected.