

No. 1-14-1071

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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. 12 CR 10991
)	
JOSE GARCIA,)	Honorable
)	Maura Slattery-Boyle,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice Reyes and Justice Gordon concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm defendant's convictions for attempted first degree murder and being an armed habitual criminal where the victim positively identified defendant and other evidence corroborated the victim's testimony.

¶ 2 Following a bench trial, defendant Jose Garcia was convicted of attempted first degree murder and being an armed habitual criminal. Defendant was sentenced to concurrent prison terms of 45 years and 10 years, respectively. On appeal, defendant contends the evidence was insufficient to sustain his conviction where the testimony of the victim, the only witness to the

shooting, was inconsistent, uncorroborated, unreliable, and no other evidence connected defendant to the offenses. We affirm.

¶ 3 Jeremy Spivey, the 21-year-old victim, testified that he was standing outside a store at Montrose and Kimball in Chicago at 5:30 p.m. on May 17, 2012. As he texted on his cell phone and waved to a girl walking past, defendant ran from a gangway beside the store. He wore a black hat with a royal blue bill and the letters "KC" in white, along with a royal blue shirt, blue shorts, and black and white shoes. The victim, who had known defendant as Jose or Shadow since grade school, "focused on [defendant's] face" and saw him smile. Defendant shot the victim multiple times with a black gun from six to eight feet away. The victim fell to the ground but was alert until paramedics took him to the hospital, where he was treated for injuries to his lung, diaphragm, stomach, and left arm. At the time of trial, bullets remained lodged in his right shoulder and spine. On May 21, 2012, police officers showed the victim a photo array and he identified defendant. The victim further testified that he belonged to the Maniac Latin Disciples for four years but left the gang four years before trial. He knew that defendant belonged to a gang in May 2012, but denied having any arguments or disagreements with defendant at the time of the shooting.

¶ 4 During direct examination, the victim viewed and narrated videos from cameras located outside the store. In one video, the offender, who the victim identified as defendant, exited a car near a gangway in the alley behind Montrose. In another video, the victim stood in front of the store, texting on his cell phone and waiving to a girl, when defendant emerged from the gangway and began shooting. Defendant's face was not visible but he wore a black hat with a blue bill and white lettering, a blue tee shirt, blue pants, and black and white shoes.

¶ 5 On cross-examination, the victim testified that he knew defendant for a decade but may have told police officers he knew defendant for only five or six years. The victim knew defendant's older brother as Big Shadow and defendant as Little Shadow, but explained that he was referring to defendant when he told officers that Shadow shot him. The victim estimated that he fell to the ground five seconds after defendant exited the gangway. He did not view defendant in a physical lineup and denied that defendant wore a mask during the shooting. The victim acknowledged that he was shot at a "gang corner" but denied knowing whether gang members often used a nearby pay phone. He admitted that he was arrested for possession of marijuana in the alley three days before the shooting and that he was arrested again for possession of marijuana after the shooting.

¶ 6 On redirect examination, the victim testified that in May 2012, defendant belonged to the Simon City Royals, a rival of the Maniac Latin Disciples. The victim knew defendant's brother, who was "a bigger guy," and could distinguish between the two men. He had no doubt that defendant shot him.

¶ 7 Daniel Gutierrez testified that he managed the store on Montrose. He stated that cameras located outside the front and back of the store were functioning properly at the time of the shooting and he provided police officers with videos from both cameras. The videos were admitted into evidence and included in the record on appeal.

¶ 8 The parties stipulated that Dr. Marius Katilius would qualify as an expert witness as to medical trauma treatment. Katilius would testify the victim was brought to the hospital in critical condition on the day of the shooting. The victim suffered 11 gunshot wounds, including two wounds to his left flank, one to the right side of his back, and eight to his left arm. The victim

also sustained blood in his abdomen, two holes in his stomach, a hole in his diaphragm, and an injury to his colon. One bullet was removed from the victim's chest.

¶ 9 Manuel Robles testified that he was driving through the alley behind the store on Montrose about 5:30 p.m. on May 17, 2012. A man appeared near the porch and gangway behind the store, running with one hand beneath his shirt. No one else was running from the gangway. Robles could not identify the man in a physical lineup but recalled he was wearing pants and a shirt.

¶ 10 Officer Nikoliou testified that he responded to the shooting and saw the victim in front of the store, his tee shirt covered in blood. He did not see anyone flee the scene.

¶ 11 On cross-examination, Nikoliou testified that the victim did not say anything at the scene and appeared unable to speak. Nikoliou denied that anyone at the scene identified the offender or that he sent a radio message describing the offender. He denied hearing a radio call seeking a white male wearing a dark baseball cap, light colored tee shirt, three quarter length shorts, and dark shoes with white soles.

¶ 12 Detective Leavitt testified that he arrived at the scene after the victim had been taken to the hospital. He determined that cameras at the store captured video of the shooting and the alley. He then went to the hospital, where, before entering surgery, the victim identified the offender as Shadow. Leavitt also learned the offender may have belonged to the Simon City Royals. Using this information, Leavitt located defendant's photograph and a contact card from March 31, 2012. On May 21, 2012, Leavitt showed the victim a photo array and the victim identified defendant without hesitation. Leavitt further testified that the videos from the store's cameras showed defendant exit from a car in the alley, enter the gangway, shoot the victim, and run back towards the vehicle.

¶ 13 On cross-examination, Leavitt acknowledged that he could not identify defendant from the videos, which did not show the offender's face, but that he instead relied on the victim's identification. Leavitt did not know how the offender was described in the initial police call following the shooting, but stated that his supplemental report described the offender as between five feet eight inches and five feet ten inches tall, weighing 175 to 200 pounds, ethnicity unknown, wearing a dark-colored baseball cap, light blue or light colored shorts, a short-sleeved shirt, light colored long shorts, and black and white gym shoes. Leavitt did not recover any of defendant's clothing during his investigation. No vehicle was traced to defendant and the gun used in the shooting was not found.

¶ 14 On redirect examination, Leavitt stated that police officers first learned that a person named Shadow was involved in the shooting by overhearing conversations among other people in the hospital waiting room.

¶ 15 Officer Kaldis testified that on March 31, 2012, he conducted a traffic stop in Chicago during a gang investigation. Defendant, who was in the vehicle, admitted that he belonged to the Simon City Royals and used the nickname Shadow. He did not identify himself as Big Shadow or Little Shadow. Kaldis identified defendant in court as the man who used the name Shadow.

¶ 16 Officer Delgado testified that he arrested defendant in Chicago on May 22, 2012.

¶ 17 The State introduced certified convictions showing that defendant was found guilty of aggravated battery with a firearm in 2007 and aggravated discharge of a firearm in 2004.

¶ 18 The court denied defendant's motion for directed finding and the defense rested.

¶ 19 The court found defendant guilty of two counts of attempted first degree murder, four counts of aggravated unlawful use of a weapon, aggravated battery with a firearm, unlawful use or possession of a weapon by a felon, and being an armed habitual criminal. In its findings, the

court stated that "[i]t's not just simply the fact of one person identifying the shooter," but rather, "[i]t is several pieces of evidence that come forward to identify Mr. Garcia as the shooter." The court observed the victim "emphatically" identified defendant and rejected the notion that defendant was impeached by drug arrests or gang rivalries. The court also noted that videos corroborated the victim's account of events before and during the shooting, Robles saw a person fleeing into the alley, and Officer Kaldis confirmed that defendant used the nickname Shadow.

¶ 20 The court denied defendant's motion for a new trial. At the hearing, the court emphasized that the victim knew defendant and identified him several times. The court also stated that, while the victim's testimony alone was insufficient to sustain a conviction, "all the evidence together proves beyond a reasonable doubt that Mr. Garcia was in fact the one that was shooting that day." After merging the counts, the court sentenced defendant to concurrent prison terms of 45 years for attempted first degree murder and 10 years for being an armed habitual criminal.

¶ 21 Defendant did not file a timely notice of appeal. However, defendant filed a petition for postconviction relief on December 6, 2013, alleging ineffective assistance of trial counsel for failure to file a timely notice of appeal. On March 25, 2014, the trial court allowed defendant to file a late notice of appeal as postconviction relief. *People v. Ross*, 229 Ill. 2d 255, 271 (2008) ("when a postconviction petitioner demonstrates that defense counsel was ineffective for failing to file a notice of appeal, the trial court may allow the petitioner leave to file a late notice of appeal").

¶ 22 On appeal, defendant contends the evidence was insufficient to sustain his conviction where the testimony of the victim, the only witness to the shooting, was inconsistent, uncorroborated, and unreliable. Defendant argues the victim was biased due to a gang feud and unable to reliably identify his attacker where the shooting was sudden, violent, and lasted only

seconds. Noting that initial police communications mentioned only the offender's clothing, defendant argues the victim did not immediately identify defendant by name, and in fact, did not even know defendant's last name despite claiming to know him for a decade. Defendant observes the trial court found the victim's testimony alone insufficient to sustain a conviction, and argues that no other evidence connected him to the shooting where video of the offender was unclear, no physical evidence was presented, and no other witness provided identification testimony.

¶ 23 The standard of review on a challenge to the sufficiency of the evidence is whether, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on questions involving conflicts in the testimony, the credibility of witnesses, or the weight of the evidence. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). To sustain a conviction, "it is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *Jackson*, 232 Ill. 2d at 281. A defendant's conviction will be reversed only if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 24 To sustain a conviction for attempted first degree murder, the State must show that without lawful justification, defendant took a substantial step toward intentionally killing or doing great bodily harm to another, or knew that such acts would cause death to that individual or another. 720 ILCS 5/8-4(a) (West 2012); 720 ILCS 5/9-1(a)(1) (West 2012). To sustain a conviction for being an armed habitual criminal, the State must show that defendant possessed a firearm after being convicted two or more times of enumerated offenses, including aggravated

discharge of a firearm and aggravated battery with a firearm. 720 ILCS 5/24-1.7 (West 2012).

On appeal, defendant does not contest the elements of either offense but challenges the sufficiency of the evidence identifying him as the offender.

¶ 25 The State must prove the identity of the offender beyond a reasonable doubt. *People v. Lara*, 2012 IL 112370, ¶ 17. In evaluating the reliability of eyewitness identification, we consider the witness' opportunity to view the criminal at the time of the offense, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness when first identifying the defendant as the criminal, and the length of time between the crime and the initial identification. *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989). Where a single eyewitness positively identifies the defendant as the offender, the lack of physical evidence or other corroborating evidence will not raise a reasonable doubt of defendant's guilt. *People v. Reed*, 396 Ill. App. 3d 636, 649 (2009). Where the State introduces both eyewitness testimony and corroborating evidence, the trier of fact may consider all the evidence together in deciding the case. *People v. Hunt*, 99 Ill. App. 3d 958, 964 (1981).

¶ 26 In this case, the victim's identification testimony and the corroborating evidence were sufficient to establish defendant's identity beyond a reasonable doubt. The victim testified that he was standing outside a store when defendant ran from a gangway and shot the victim from six to eight feet away. The victim had known defendant for several years, focused on his face during the shooting, and, at trial, gave a detailed description of defendant's clothing. The trial court noted the victim "emphatically" identified defendant and did not consider the victim biased. *People v. Young*, 263 Ill. App. 3d 627, 634-35 (1994) (where defendant and State's witness belonged to rival gangs, question of credibility reserved for trier of fact); *People v. Zarate*, 264 Ill. App. 3d 667, 673 (1994) (no requirement that observation occur under ideal circumstances or

last for more than brief time). Moreover, videos depicted the offender, who the victim identified as defendant, emerge from the gangway, shoot the victim, and flee to the alley. We have viewed both videos, and, while neither shows defendant's face, both corroborate the victim's account of events and his description of defendant's clothing. About the time of the shooting, Robles saw a man running from the direction of the gangway. Detective Leavitt, referencing the contact card made by Officer Kaldis, confirmed the victim identified defendant by his nickname on the day of the shooting and also identified him in a photo array four days later. Viewing the victim's testimony alongside the corroborating evidence, a rational trier of fact could find that defendant was the offender even without physical evidence or additional identification. *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23 (where victim provided credible identification testimony, "lack of physical evidence had no bearing"); *Hunt*, 99 Ill. App. 3d at 964 ("Even if *** identification of the defendant was insufficient, standing alone, to support a conviction, when it is considered together with the other evidence of defendant's guilt the [outcome] is amply supported.").

¶ 27 For all the foregoing reasons, we affirm the judgment of the trial court.

¶ 28 Affirmed.