2015 IL App (3d) 140217-U

Order filed October 6, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0217 Circuit No. 13-CF-296
KARRINGTON D. WALKER,	)	Honorable Stephen A. Kouri,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence at trial was sufficient to prove defendant guilty beyond a reasonable doubt of attempted first degree murder.

¶ 2 Defendant, Karrington D. Walker, appeals his conviction for attempted first degree murder, arguing that the evidence at trial was insufficient to prove that he had the intent to kill. We find that the evidence was sufficient to prove defendant guilty beyond a reasonable doubt of attempted first degree murder as a reasonable jury could infer from the facts that defendant had the specific intent to kill.

¶ 3 FACTS

¶ 4 On April 5, 2013, defendant was charged with attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2012)). The charge stated,

> "he, with the intent to commit the offense of First Degree murder in violation of 720 ILCS 5/9-1(a)(1), knowingly performed an act which constitutes a substantial step toward the commission of that offense, in that he without lawful justification personally discharged a firearm at Maurice Sargent, that proximately caused a great bodily harm to Maurice Sargent with the intent to kill Maurice Sargent."

¶ 5 On January 28, 2014, a jury trial commenced and the following evidence was adduced. On April 5, 2013, at approximately 5:15 p.m. Officer Richard Brecklin of the Peoria police department was dispatched in response to a traffic accident. Upon arrival at the scene, he found that Maurice Sargent had been shot in the leg. He asked Sargent what happened, and Sargent told him that "he was near the barbershop, and he was talking to a friend. While talking to a friend, another male came from the other side and fired several shots at him." Brecklin testified that Sargent indicated that "Karrington" shot him.

¶ 6 Maurice Sargent testified that he was driving down Warren Street. He slowed down at a stop sign, heard a loud noise, and then felt himself get shot in the leg from the passenger side. He was shot three times, once on the right buttock, once on the right thigh, and once on the left thigh. He did not see anyone approach the vehicle or fire a weapon. He tried to drive to the hospital, but crashed his car. Sargent said that he did not really remember what happened after the accident as he "was in a daze," but he vaguely remembered telling the police what happened. He then went to the hospital, where he did not distinctly remember talking to another police officer, and did not remember looking at a photo lineup.

¶ 7 Sargent testified that he knew defendant prior to the incident. He had "seen him at the club a couple times." When asked whether he had ever had an altercation with defendant, Sargent stated, "Yeah. One night, it wasn't really no big deal. It was just, you know, drinking a little bit. I think he got into it with probably one of my friends or something, but we really never had an altercation where we was gonna fight or nothing like that." This "altercation" happened prior to the day Sargent was shot.

¶ 8 Officer Keith McDaniel of the Peoria police department testified that he went to see Sargent at the hospital. He showed Sargent a photo lineup of suspects. Sargent circled the picture of defendant, wrote that he was 100% sure it was defendant, and then signed his name by the photo.

¶ 9 Defendant was apprehended shortly after the shooting on April 5, 2013. He submitted to a gunshot residue (GSR) sampling from both his hands. Scott Rochowicz, Illinois State Police forensic scientist, stated that he received the samples from the GSR kit, tested the samples, and found that defendant's right hand was negative for the presence of GSR, but defendant's left hand tested positive for GSR. He said this meant that defendant either: (1) discharged a firearm; (2) was in close proximity (four to six feet) to a firearm when it was discharged; or (3) came into contact with an item that had GSR on it.

¶ 10 The remaining evidence at trial confirmed that two bullets and three shell casings were found. One bullet was recovered from the driver's side floorboard in Sargent's car, and one bullet was found under the driver's seat.[1] The three casings were found one block from where

[1]At trial, Maurice Sargent testified that upon arrival at the hospital, a bullet (the third bullet) was still lodged in his leg. It is unclear whether this bullet was recovered.

Sargent ultimately crashed his vehicle. The two bullets found were shot from the same gun. The gun was never found. No fingerprints were discovered anywhere near the accident.

¶ 11 Ultimately, the jury found defendant guilty of attempted first degree murder.[2] Defendant filed a motion for a new trial, arguing that he had not been proven guilty beyond a reasonable doubt as (1) Sargent never identified defendant as the shooter in open court, and (2) there was no physical evidence linking defendant to the offense. The motion was denied. The court sentenced defendant to a term of 35 years' imprisonment on attempted first degree murder. Defendant's motion to reconsider sentence was denied on March 11, 2014. Defendant filed a timely notice of appeal on March 12, 2014.

¶ 12 ANALYSIS

¶ 13 On appeal, defendant's sole argument is that "the State failed to prove [defendant] guilty beyond a reasonable doubt of attempt murder where there was no evidence that he had a specific intent to kill." Because we find the evidence was sufficient for a reasonable trier of fact to find that defendant had the specific intent, we affirm.

¶ 14 When presented with a challenge to the sufficiency of the evidence, we consider whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is not the function of the appellate court to retry a defendant. *People v. Milka*, 211 Ill. 2d 150, 178 (2004). The weight to be given to the evidence, the credibility of the witnesses, and the reasonable inferences to be drawn from the evidence, are all the responsibility of the fact finder. *Id.* We will not overturn the fact finder's

[2]Defendant was also convicted of aggravated battery (720 ILCS 5/12-3.05(e)(1) (West 2012)), but no issues concerning the aggravated battery conviction are raised on appeal.

verdict unless the verdict is so unreasonable, improbable, and unsatisfactory as to leave a reasonable doubt as to the defendant's guilt. *People v. Brown*, 169 Ill. 2d 132, 152 (1996).

¶ 15 To sustain the charge of attempted first degree murder, the State must establish beyond a reasonable doubt that the defendant: (1) performed an act constituting a substantial step toward the commission of murder; and (2) possessed the criminal intent to kill the victim. 720 ILCS 5/8-4(a), 9-1(a)(1) (West 2012). While defendant's argument on appeal focuses solely on the second prong (intent), we note that the discharge of a firearm in the direction of a person constitutes a substantial step. See *People v. Brown*, 341 Ill. App. 3d 774, 781 (2003) ("A rational trier of fact could find from all this evidence that defendant purposely fired his weapon at both [officers] *** and that by firing the weapon he took a substantial step toward committing two murders."). We now turn to the question of defendant's intent.

¶ 16 "Intent to kill may be inferred from the character of the defendant's acts and the circumstances surrounding the commission of the offense (*People v. Terrell*, 132 Ill. 2d 178, 204 (1989)), including the character of the assault, the nature and seriousness of the injury (*People v. Williams*, 165 Ill. 2d 51, 64 (1995)), and the use of a deadly weapon (*People v. Strickland*, 254 Ill. App. 3d 798, 808 (1993))." *In re T.G.*, 285 Ill. App. 3d 838, 843 (1996); *People v. Aliwoli*, 238 Ill. App. 3d 602, 616 (1992) ("Intent may be inferred when the State shows defendant committed a substantial step toward the commission of murder: when he shoots and wounds his victim."); *People v. Green*, 339 Ill. App. 3d 443, 452 (2003) ("Based on the evidence adduced at trial, a rational jury could readily have found beyond a reasonable doubt that Green intended to kill the officers when he shot at them.").

¶ 17 Based on the aforementioned standard of review, we find that the evidence presented at trial was sufficient for a reasonable jury to find defendant guilty beyond a reasonable doubt of

attempted first degree murder. The trial evidence, when taken in the light most favorable to the prosecution, established that Sargent was driving his car, and, as he slowed down at a stop sign, was shot three times. Sargent identified defendant as the shooter by name at the scene and by photo at the hospital. Defendant's left hand tested positive for GSR. Prior to the day of the shooting, Sargent and defendant had had an altercation at a club. Taking the evidence as a whole, a reasonable jury could have found that defendant shot Sargent. Further the jury could have inferred, by the use of a deadly weapon and the altercation with Sargent on a previous occasion, that defendant had the specific intent to kill.

¶ 18 In coming to this conclusion, we reject defendant's contentions that he did not have the intent to kill because: (1) "defendant had the opportunity to kill Sargent, but he did not do so" as "it would have been must easier to shoot at his head or torso, had the shooter intended, because those parts of his body would have been visible through the vehicle's windows"; (2) "defendant did not chase after Sargent to ensure that he was killed"; and (3) "there was scant evidence of a motive for this crime."

¶ 19 First, shooting defendant's legs instead of his head or torso could support the inference that defendant was just a poor marksman and missed, which is not a defense to attempt. See *Green*, 339 Ill. App. 3d at 451-52. It is the responsibility of the jury to decide which of these inferences to make. *Id.* at 452.

¶ 20 Second, defendant possessed the intent to kill at the time he shot Sargent; failure to chase the victim "to ensure that he was killed" did not negate this intent. Accepting this argument on its face would mean that any time an individual shoots someone, but flees after, they would be deemed to have lacked intent to kill. The appropriate analysis examines the individual's intent at the time he or she performed the substantial step, not after. See *People v. Myers*, 85 Ill. 2d 281,

290 (1981) ("once the elements of attempt are complete, abandonment of the criminal purpose is no defense."); *People v. Maxwell*, 130 Ill. App. 3d 212, 217 (1985) ("[t]he fact that an assailant, armed with a deadly weapon, chooses to flee when his victim cries for help, rather than choosing to inflict a fatal injury, does not negate the existence of the intent to kill.").

¶ 21 Third, in response to defendant's argument that there was "scant evidence of a motive," we again point to defendant and Sargent's "altercation" at the club. Furthermore, motive is not an element of the crime of attempted first degree murder, and therefore, does not need to be proven. See 720 ILCS 5/8-4(a), 9-1(a)(1) (West 2012).

¶ 22 Lastly, we note the cases defendant cites in support of these arguments do not involve the use of a deadly weapon. See *People v. Mitchell*, 105 Ill. 2d 1, 9-10 (1984) (holding that beating a child with fists and a belt was insufficient to establish intent to kill); *People v. Jones*, 184 Ill. App. 3d 412, 430 (1989) (holding that hitting a man with the butt of a gun and kicking him repeatedly was insufficient to establish intent to kill).

¶ 23 CONCLUSION

¶ 24 The judgment of the circuit court of Peoria County is affirmed.

¶ 25 Affirmed.