

No. 1-13-4056

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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. 10 CR 15797
)	
BRUNO SALGADO,)	Honorable
)	Vincent M. Gaughan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice McBride and Justice Cobbs concurred in the judgment.

O R D E R

- ¶ 1 **Held:** First-degree murder and aggravated battery convictions affirmed. Evidence sufficiently established defendant's identity and proved element of great bodily harm beyond reasonable doubt. Mittimus amended to correct number of days of presentencing credit.
- ¶ 2 Following a bench trial, defendant Bruno Salgado¹ was convicted of first degree murder and aggravated battery, and sentenced to concurrent prison terms of 30 years and 5 years,

¹ Defendant is also known as Miguel Mungia.

respectively. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because the identification testimony was weak, uncorroborated, and consistent with the defense theory of mistaken identification. Alternatively, defendant contends that his aggravated battery conviction should be reduced to simple battery because the State failed to prove that the victim suffered great bodily harm. Defendant also contends that his mittimus should be amended to reflect the correct number of days' credit for presentencing custody.

¶ 3 On July 10, 1982, a man shot and killed Ismael Solano, and shot and wounded Jose Arnaldo and Roy Vega, outside a bar in Chicago. Exactly 28 years later, on July 10, 2010, defendant was arrested for that shooting and charged with 14 counts of first degree murder, 2 counts of attempted first degree murder, and 8 counts of aggravated battery.

¶ 4 At trial, Jose Arnaldo testified that on July 9, 1982, he and his cousin, Ismael Solano, worked the second shift (3 to 11 p.m.) at Accurate Products. After work, they went to a nearby bar on Lincoln Avenue that was frequented by their coworkers because the bar owner cashed their paychecks when they bought drinks. Arnaldo testified that several of his coworkers were at the bar that night, including Jesus Avila, Angel Garcia, Roy Vega, and a man named Enrique.

¶ 5 About 15 minutes after Arnaldo and Solano arrived at the bar, defendant arrived with another man. Defendant worked the first shift at Accurate Products, and during the five months that Arnaldo had worked there, he saw defendant at work once or twice each week either between shifts or in the locker room. Arnaldo did not see defendant at work on the day of the shooting.

¶ 6 Arnaldo testified that, about 15 minutes after defendant arrived, he began acting belligerently and started arguing with no one in particular. Neither Arnaldo nor Solano, nor any of their coworkers, had any interaction with defendant or his friend inside the bar.

¶ 7 Arnaldo further testified that, after he was at the bar for about 45 minutes, he, Solano and their friends decided to go home. Arnaldo and Solano left the bar first and walked to Solano's car, which was parked in the lot in front of the bar, about 30 yards from the front door. When they reached the car, Arnaldo saw defendant's friend fighting with Roy Vega on the ground. Arnaldo did not see defendant at this time. While Arnaldo stayed by the car, Solano approached the men, grabbed Vega, and dragged him towards the car. When Solano reached the car, Arnaldo heard four or five gunshots. He turned around and saw defendant standing about 20 steps away, shooting at Solano and Vega. Arnaldo walked towards defendant, and when Arnaldo was about 14 steps from defendant, he told defendant to stop shooting and asked defendant if he was crazy. Defendant turned toward Arnaldo and shot him in his left shoulder. Arnaldo returned to the car, sat on the ground, and saw Solano and Vega lying on the ground. Arnaldo did not see where defendant or his friend went, and no one else in the parking lot had a weapon or fired a gun.

¶ 8 Shortly after the shooting, the police and an ambulance arrived, and Arnaldo was taken to Illinois Masonic Hospital. Arnaldo testified that "the bullet went straight through" his shoulder, and "[i]t didn't injure any vital organs so they just patched me up." He was discharged from the hospital at about 5 or 6 p.m. that evening.

¶ 9 The next day, Arnaldo went to the police station and identified defendant in a photograph shown to him by detectives. In court, Arnaldo identified the photo array he was shown by police

and the photograph of defendant he had selected. Arnaldo also identified defendant in court.

When asked by defense counsel during cross-examination if he had selected the photo because the person looked like the shooter, Arnaldo testified, "No, that was him." Arnaldo did not recall if he told police defendant's name, or if they told him defendant's name.

¶ 10 Juan Rivera, known in 1982 as Jesus Davila, testified that on July 9, 1982, he worked the second shift at Accurate Products with Solano and Arnaldo. After work, Rivera went with Solano and Arnaldo to the bar on Lincoln Avenue for a few beers. Rivera testified that other coworkers, Angel Garcia, Francisco Roldan, and Roy, were also present.

¶ 11 Rivera testified that, shortly after he, Solano, and Arnaldo got to the bar, defendant arrived at the bar with some of his friends. Rivera knew defendant because defendant worked the first shift at Accurate Products and had previously worked the second shift with Rivera for about a year. Rivera said that he had seen defendant at work earlier that day.

¶ 12 Rivera testified that defendant got upset when Arnaldo started singing in the bar. Solano suggested that they go home, and Rivera left the bar with Solano and Garcia. As they walked to Solano's car, they turned back, saw Arnaldo and Roy fighting near the bar door, and walked towards the men to bring them to Solano's car. When they reached the bar door, Rivera saw that Arnaldo and Roy were fighting with defendant and his two friends, and one of defendant's friends was lying on the ground. Rivera and Solano brought Arnaldo and Roy to Solano's car.

¶ 13 Rivera testified that defendant went to his car, opened the door, and approached the group of men with a gun in his hand. According to Rivera, defendant shot at Solano and Roy from about four feet away. Solano fell, and Roy held his stomach. Rivera estimated that he was

standing two to three feet from defendant when he fired the shots. Defendant began to return to his car parked near Schubert Avenue, and when Arnaldo followed him, defendant turned, shot at Arnaldo, and ran away. Solano was lying on the ground unresponsive, and Arnaldo was holding his shoulder. Rivera was unable to identify defendant in court.

¶ 14 Susan Comstock testified that, about midnight on July 10, 1982, she and Russell Baer were walking past a parking lot at the corner of Lincoln and Schubert Avenues when she heard what she thought was firecrackers. She looked in the parking lot, saw a man holding a gun, and saw flashes from the barrel of the gun as he fired five or six gunshots at a group of four men standing together, one or two of whom fell. Comstock was 25 to 30 feet from the gunman, but because the parking lot was dim, and the shooting occurred a long time ago, she could not describe him. According to Comstock, all of the men appeared to be young Hispanics, and only one man was holding a gun. After the shooting, the gunman looked at her and Baer, then ran out of the parking lot, down Schubert Avenue, and into an alley. Police and an ambulance arrived quickly, and she and Baer spoke with the officers.

¶ 15 Russell Baer testified that, about midnight on July 10, 1982, he and a woman named Sue were walking past the parking lot at the corner of Lincoln and Schubert Avenues when he saw a group of five Hispanic men standing in a semi-circle about 20 feet away and talking loudly in Spanish. One of the men stepped back, Baer saw flashes and heard popping noises, and the other four men jumped and fell to the ground. The gunman turned and looked at Baer and Sue, then ran down Schubert Avenue. When police arrived, Baer described the gunman as a stocky Hispanic man with bushy hair and a moustache. The next day, Baer viewed photographs at

police headquarters and identified one photograph as the man who he thought was the gunman. Baer did not recall that the police in any way suggested to him whom to identify. In court, Baer identified the photo array and the photograph of the man he identified as the gunman in 1982, but he could not identify defendant in court.

¶ 16 Arturo Avila testified that, in the early morning hours of July 10, 1982, he was at a bar in Chicago with defendant, when he was injured and taken to a hospital. Later that day, detectives came to the hospital and showed Avila photographs, and Avila identified the photo labeled 2F as defendant.

¶ 17 Avila testified that before they went to the bar, he and defendant stopped at defendant's job so he could pick up his paycheck. Avila brought a shopping cart and chain with him because defendant was going to weld those items. After picking up defendant's check, they drove to the bar in defendant's car, and Avila stayed in the car while defendant went inside for 5 to 10 minutes. Avila testified that he sat in the back seat of defendant's car and he could not recall if anyone else sat in the front seat with defendant.

¶ 18 Avila testified that, when defendant returned to the car, he told Avila to come inside with him and have a few beers. Avila declined because he was not feeling well, and defendant told him to come inside and not to be afraid because he had a gun. Avila saw an object covered with a cloth inside defendant's car between the two front seats, but he could not see what that object was.

¶ 19 Avila went into the bar with defendant and drank a few beers. Defendant began to argue with some of the men inside the bar, and when Avila felt someone hug him, he left the bar while

defendant stayed inside. When Avila got outside, someone struck him in the head and he fell to the ground. As he lay on the ground, Avila heard two or three gunshots. Avila never saw defendant with a gun that night, and after that night, never saw defendant again.

¶ 20 The parties stipulated that the photograph from the photo array labeled 2F, which the witnesses had identified as the gunman, was a true and accurate depiction of how defendant appeared in 1982. The parties also stipulated that the medical examiner found eight bullet wounds on Solano's body and that his death was due to bullet wounds to his chest, neck, and leg.

¶ 21 Chicago police detective John Campbell testified that, in February 2006, he was assigned to investigate the cold-case homicide of Solano, and that defendant was the suspect named in the case. At that time, it was believed that defendant was living in California under the name Gabriel Figueroa, but he could not be located. In June 2010, Detective Campbell learned that defendant was living in Minneapolis, Minnesota. On July 10, 2010, Campell was informed that defendant had been arrested there.

¶ 22 Isaac Mungia, defendant's brother, testified for the defense. Mungia said that in July 1982, he worked the first shift at Accurate Products and defendant worked the third shift. On July 10, 1982, Mungia's neighbor, Arturo Aviloa, went to his job with him because they were going to weld a cart. After they left the job, Mungia drove to a bar where he always cashed his check, with Poncho Crespo sitting in the front passenger seat and Avila sitting in the back seat.

Defendant arrived at the bar later. Inside the bar, Avila got into an argument with someone who worked at Accurate Products and went outside.²

¶ 23 When Mungia left the bar later that night, several of his friends were outside and he heard that there was a big fight. He saw Avila, whose eye was bleeding, and heard gunshots. Mungia testified that defendant had remained inside the bar to cash his check.

¶ 24 Mungia further testified that on the date in question, he had a moustache, beard and a lot of hair. Defendant used to have a lot of hair but did not at the time of the events in question; Mungia said that defendant had been forced to cut his hair because he had lice. Mungia denied that the photograph labeled 2F was a picture of defendant. He also testified that defendant used the name Bruno Salgado for work purposes.

¶ 25 Mungia testified that defendant arrived home a few minutes after him with one of his friends. The following day, the police came to their apartment, but defendant was in someone else's apartment in the building at the time. Defendant continued living with Mungia in their apartment for about eight months before moving to California.

¶ 26 Jorge Crespo testified that, in July 1982, he worked the first shift at Accurate Products with Isaac Mungia. On the night of the shooting, Crespo went to work with Mungia, then rode with Mungia and a man called "Negro" to the bar at Lincoln and Schubert Avenues. Mungia and Crespo went inside and drank some beers while Negro stayed outside talking and ranting by himself. Defendant arrived at the bar later. Negro came in to the bar talking to himself, an

² Mungia referred to Avila as "Aguilar" in his testimony, but there appears to be no dispute among the parties that he was referring to Avila, and the context of Mungia's and other testimony strongly suggests that Mungia was referring to Avila.

argument ensued, and several people went outside while Crespo, Mungia, and defendant remained inside with about 15 other people.

¶ 27 Crespo testified that, when Mungia left the bar, he heard gunshots outside. Defendant remained inside the bar with Crespo to pay the bar tab. When the police arrived, Crespo and defendant left the bar with everyone else, and Crespo took a cab home because defendant's car had been blocked into its parking space on Lincoln Avenue. Crespo testified that, at the time of the shooting, Mungia had a moustache, beard, and long hair, but defendant was bald. The next day, Crespo saw defendant at work, but he did not see Mungia again until 2012.

¶ 28 In rebuttal, the parties stipulated that Crespo told an investigator with the State's Attorney's Office that, at 11:30 p.m. on the night in question, he was in the bar having a few drinks, but that he was not present at the time of the incident.

¶ 29 The trial court found defendant guilty of first degree murder and aggravated battery with a firearm and sentenced him to concurrent prison terms of 30 years and 5 years, respectively. This appeal followed.

¶ 30 On appeal, defendant first claims that the State failed to prove him guilty beyond a reasonable doubt because the identification testimony was weak, uncorroborated, and consistent with the defense theory of mistaken identification. Defendant argues that Arnaldo, Rivera, and Baer had a limited opportunity to view the gunman, and that their attention would have naturally been diverted to the gun rather than the shooter. Defendant asserts that his theory of mistaken identity was credible and that the witnesses mistook him for his brother who worked at the same

company. He also points out that he never made an inculpatory statement, and that there was no physical evidence tying him to the shooting.

¶ 31 When a defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. This standard applies whether the evidence is direct or circumstantial and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Under this standard, all reasonable inferences from the evidence must be allowed in the State's favor. *Baskerville*, 2012 IL 111056, ¶ 31.

¶ 32 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). Nor will we reverse a conviction simply because defendant claims that a witness was not credible or that the evidence was contradictory. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 33 In this case, the identity of the gunman was the paramount issue. Identification of the defendant by a single witness is sufficient to sustain a conviction where the witness viewed defendant under circumstances that permitted a positive identification. *People v. Slim*, 127 Ill. 2d

302, 307 (1989). Such identification is sufficient even where defendant presents contradictory testimony, as long as the witness had an adequate opportunity to view the offender and provided a positive and credible identification in court. *Id.*

¶ 34 In assessing identification testimony, we consider several factors: (1) the witness's opportunity to view the offender; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the offender; (4) the witness's level of certainty at the identification confrontation; and (5) the length of time between the offense and the identification. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). The identification of the defendant by a witness who was previously acquainted with the defendant is more persuasive than an identification by a stranger. *People v. Barnes*, 364 Ill. App. 3d 888, 895 (2006).

¶ 35 Here, Jose Arnaldo and Juan Rivera made strong, positive identifications of defendant as the gunman, which were strengthened by the fact that they knew defendant from work—they not only identified him but recognized him. Arnaldo recognized defendant as soon as he arrived at the bar that night, because they had worked at the same company for five months, and Arnaldo saw defendant at work once or twice each week over the course of the six months that Arnaldo had worked there. Arnaldo had a sufficient opportunity to view defendant at the time of the shooting because he was standing only 20 steps away from defendant when defendant shot Solano and Vega, and only 14 steps away when defendant shot him. Arnaldo also testified that he approached defendant, told him to stop shooting, and asked him if he was crazy, demonstrating that Arnaldo's focus was trained on defendant at the time of the shooting. Arnaldo

identified defendant in a photo array the day after the shooting, and he also identified defendant at trial.

¶ 36 Rivera also recognized defendant as soon as he arrived at the bar, because they worked at the same company, and Rivera and defendant had previously worked the second shift together for about a year. Rivera also had a sufficient opportunity to view defendant at the time of the shooting because he was standing two to three feet from defendant when he shot Solano, Vega, and Arnaldo.

¶ 37 In addition to the testimony from Arnaldo and Rivera, Russell Baer testified that he was standing only 20 feet away from the group of men when he saw defendant shoot the other men. Shortly after the shooting, Baer spoke with police at the scene and described the gunman as a stocky Hispanic man with bushy hair and a moustache. The next day Baer identified defendant in a photo array. Although he could not identify defendant in court after the passage of nearly three decades, Baer identified the 1982 photograph of defendant as the gunman.

¶ 38 Significantly, the parties stipulated that the photograph from the photo array labeled 2F, which the witnesses had identified as the gunman, was a true and accurate depiction of how defendant appeared in 1982. Arturo Avila also testified that the photograph truly and accurately depicted how defendant appeared in 1982, and that defendant told him that he had a gun when they were in the parking lot at the bar that night. Although defendant's brother, Isaac Mungia, testified that the photo did not depict defendant, and Jorge Crespo testified that defendant was bald at the time of the shooting, their testimony was strongly contradicted by the State's witnesses and the stipulation. The trial court had the superior opportunity to weigh the

contradictions between the prosecution and defense testimony, and we will not second-guess its judgment. See *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 39 Contrary to defendant's assertion, the lack of an inculpatory statement or physical evidence does not require us to find reasonable doubt. The trial court was made well aware of the perceived deficiencies in the State's case and made its ruling after considering all of the evidence. The absence of physical evidence or incriminating statements is not necessarily fatal to a case where the proof is otherwise sufficient, as here. *People v. Williams*, 182 Ill. 2d 171, 192 (1998).

¶ 40 We hold that the evidence was sufficient for the trial court to find defendant guilty beyond a reasonable doubt.

¶ 41 Alternatively, defendant contends that his aggravated battery conviction should be reduced to simple battery, because the State failed to prove that Jose Arnaldo suffered great bodily harm when defendant shot him in the arm. Defendant points to Arnaldo's testimony that the bullet did not injure any of his vital organs, and that the doctor "just patched [him] up." He thus argues that the bullet wound was a temporary injury that did not rise to the severity of great bodily harm.

¶ 42 To prove defendant guilty of aggravated battery in this case, the State was required to show that, in committing a battery, he intentionally or knowingly caused great bodily harm to Arnaldo by shooting him in the body with a firearm. Ill. Rev. Stat. 1981, ch. 38, ¶ 12-4(a). Whether an injury constitutes great bodily harm to support a conviction for aggravated battery is a question of fact to be determined by the trier of fact. *People v. Crespo*, 203 Ill. 2d 335, 344 (2001). "Bodily harm" has been defined as physical pain or damage to the body, such as

lacerations, bruises, or abrasions, whether temporary or permanent. *People v. Mandarino*, 2013 IL App (1st) 111772, ¶ 63. "Great bodily harm," on the other hand, does not lend itself to a precise legal definition, but requires proof of an injury greater and more serious in nature than a simple battery. *Id.* The question is not what the victim did or did not do to treat his injuries, but what injuries he received. *Id.*

¶ 43 Viewed in the light most favorable to the State, we find that the evidence in this case was sufficient for the trial court to find that Arnaldo suffered great bodily harm. Arnaldo testified that defendant shot him in his left shoulder and that "the bullet went straight through" his shoulder. He further testified that he was taken to the hospital in an ambulance, where he was treated and stayed overnight before being discharged approximately 18 hours later. Arnaldo's testimony therefore established that the gunshot wound he received was greater than the injury caused by a simple battery, such as a laceration or bruise. The trial court had the responsibility of determining whether Arnaldo's injury constituted great bodily harm, and we find no reason to disturb its determination that the injury rose to that level.

¶ 44 This court has held that a similar injury rose to the level of great bodily harm. In *People v. Ayala*, 208 Ill. App. 3d 586, 598 (1990), this court held that the State proved great bodily harm where the victim was shot in the leg, the bullet passed through the victim's leg, and the victim spent only 30 minutes in the hospital after he was shot. This case, like *Ayala*, involved a bullet passing through Arnaldo's extremity, which left a wound that required only minimal medical attention. Like the court in *Ayala*, we find that the State sufficiently proved great bodily harm in this case.

¶ 45 Finally, defendant contends, and the State agrees, that he is entitled to sentencing credit for 1153 days served in custody and that his mittimus—which currently states that defendant received 1029 days' credit—should be amended to reflect this correct number. We direct the clerk of the circuit court to amend the mittimus to reflect that defendant is entitled to 1153 days of credit for time served. See Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 46 For these reasons, we affirm the judgment of the circuit court of Cook County and correct the mittimus.

¶ 47 Affirmed; mittimus corrected.