

2018 IL App (1st) 152712-U

No. 1-15-2712

Order filed August 17, 2018

Fifth Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 14 CR 11622
)	
DIOP YOUNG,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's convictions for four counts of aggravated discharge of a firearm affirmed over his challenge to the sufficiency of the evidence; no violation of the one-act, one-crime rule where there were four victims.

¶ 2 Following a bench trial, defendant Diop Young was convicted of four counts of aggravated discharge of a firearm for firing several gunshots at a vehicle containing three women and a baby. The trial court sentenced defendant to four concurrent terms of 12 years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a

reasonable doubt because there was conflicting testimony as to whether he was the offender who discharged a handgun at the vehicle. Defendant also contends that three of his convictions should be vacated under the one-act, one-crime doctrine. We affirm.

¶ 3 Defendant was tried on 12 counts of attempted first degree murder and four counts of aggravated discharge of a firearm. At trial, Jasmine Parker testified that about 5:30 p.m. on May 25, 2014, she was riding in the back seat of a Mercedes SUV driven by Vivian Bolden. Parker was sitting behind the passenger's seat, Tori Robinson was sitting behind the driver's seat, and Parker's eight-month-old son, Steven, was sitting in a car seat between the two women. As they approached the intersection of 90th Street and Dr. Martin Luther King Jr. Drive, Parker observed defendant standing on the opposite side of the street "a couple feet" away from her. Parker identified defendant in court. Parker had known defendant for a couple of years. Defendant was wearing a baseball cap and a white t-shirt. He was standing with a man whom Parker did not know. The unknown man had a very dark complexion and wore dreadlocks in his hair.

¶ 4 As Bolden made a right turn, Parker observed defendant holding the right side of his hip by the waistband with his elbow cocked "like he had something." The other man pointed a black handgun at the SUV. Parker grabbed her son and got down inside the vehicle. She heard six to eight gunshots. Bullets struck the SUV, shattering the glass. No one in the SUV was struck. Bolden continued driving and turned left onto 91st Street. All three women called 911. At the scene, Parker told the police what happened and gave them a description of defendant and the other individual. On May 28, 2014, Parker identified defendant in a lineup.

¶ 5 On cross-examination, Parker testified that she knew defendant because she was friends with his niece. Parker acknowledged that when she noticed the man with the handgun, she

immediately ducked down inside the vehicle. When she heard the gunshots, she could not see anything.

¶ 6 Vivian Bolden testified substantially the same as Parker regarding their arrival at the scene, except that she said Parker was seated behind her and Robinson was seated behind the passenger's seat. When Bolden stopped at the stop sign, she observed defendant standing across the street with another man. Bolden identified defendant in court. Defendant was wearing a red cap, a white shirt, and khaki shorts. The other man was wearing gray jogging pants and a black shirt. As Bolden turned onto King Drive, she observed defendant pull out a black semiautomatic weapon with a silver tip. Bolden was about 15 feet away from defendant. Bolden observed defendant extend his arm and fire two gunshots towards her vehicle. The second shot struck her driver's door. Bolden ducked down inside her vehicle and heard multiple gunshots. As Bolden turned left onto 91st Street, she observed defendant and the other man running towards her vehicle. Bolden called the police and flagged down an officer. She told the police what happened and gave them descriptions of the two men. On May 27, 2014, Bolden identified defendant in a lineup.

¶ 7 On cross-examination, Bolden testified that the other man had longer hair than defendant. In regards to that man, Bolden knew "of him." She explained that she knew he was in a different gang than the one in that neighborhood, to which her then-boyfriend belonged. Bolden did not observe the other man holding a firearm. Bolden acknowledged that the shooting happened very quickly and that she was paying attention to the road while she was driving.

¶ 8 Pursuant to the court's questioning, Bolden testified that she had previously seen defendant in the neighborhood and knew he lived in that area. At the time of the shooting, she

recognized defendant as someone she knew, but she did “not exactly” know his name. Bolden informed the police that she knew defendant from the neighborhood, but she did not give them his name.

¶ 9 Chicago police officer Torres testified that he and his partner responded to a call of shots fired. Bolden flagged them down near the scene. Bolden told the officers that two men had discharged a firearm towards her vehicle and fled through the park. Bolden and her two female passengers gave police defendant’s name as one of the offenders, and gave descriptions of both men. The driver’s side of Bolden’s vehicle had a flat front tire and a bullet hole in the door panel.

¶ 10 On cross-examination, Torres testified that the women did not know the name of the other offender. Torres denied being told that the unknown offender was the person who shot at the vehicle. He then acknowledged that his case incident report indicated that an unknown offender shot at the vehicle with a black handgun.

¶ 11 Shatia Smith, defendant’s girlfriend, testified for the defense that on May 25, 2014, she and defendant spent the entire day together watching movies at defendant’s grandmother’s house. Defendant was wearing a t-shirt and jogging pants. About 5 p.m., defendant left the house to get cigarettes. He was gone less than 20 minutes. When he returned, he appeared to be normal and fine. He was not agitated or excited, nor did he appear to have been running. Smith did not know defendant to carry a gun.

¶ 12 On cross-examination, Smith acknowledged that defendant’s grandmother lived at 91st Street and King Drive. She also acknowledged that she did not know exactly how long defendant was away from the house. After defendant was arrested, he and Smith discussed the shooting,

and he told her that he was there when the shooting occurred. On redirect examination, Smith testified that defendant did not tell her that he was the shooter.

¶ 13 The trial court found that the evidence showed that both Parker and Bolden knew defendant from the neighborhood. The court stated that defendant was “solidly identified by two people,” and that it believed “he was the shooter in this case.” The court found that the State did not prove that defendant had a specific intent to kill, and therefore found him not guilty of attempted murder. The court found defendant guilty of the four counts of aggravated discharge of a firearm, and sentenced him to concurrent terms of 12 years’ imprisonment.

¶ 14 On appeal, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt because there was conflicting testimony from Parker and Bolden as to who the shooter was – defendant or the other man. Defendant claims that although Bolden testified that he was the shooter, Parker testified that she did not see him with a gun and that the other man was the shooter. He further argues that Bolden’s identification of him as the gunman was unreliable because she had a limited opportunity to view the shooter where the incident happened quickly and her attention was focused on driving while she ducked down inside her vehicle.

¶ 15 The State responds that the testimony from the women was not conflicting where Bolden testified that she observed defendant fire the gun, and Parker testified that she took cover before the shots were fired. The State argues that Parker did not testify that the other man was the shooter, but instead, that she saw him with a gun, then ducked down and did not see who fired the shots. The State further argues that Bolden’s identification of defendant was credible where she recognized him from the neighborhood, had a sufficient opportunity to view him during the offense, and both she and Parker identified him in lineups a couple of days after the shooting.

¶ 16 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). 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 favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 17 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 therein. *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. Beauchamp*, 241 Ill. 2d 1, 8 (2011)), nor simply because defendant claims that a witness was not credible or that the evidence was contradictory (*Siguenza-Brito*, 235 Ill. 2d at 228).

¶ 18 To prove defendant guilty of aggravated discharge of a firearm in this case, the State was required to show that he knowingly or intentionally discharged a firearm in the direction of a vehicle he knew or reasonably should have known to be occupied by a person. 720 ILCS 5-24-1.2(a)(2) (West 2014). Each of the four counts of the offense specified a different occupant of the vehicle: Vivian Bolden, Jasmine Parker, Tori Robinson and Steven Hampton.

¶ 19 Here, the record shows that the testimony from Bolden and Parker was not conflicting, but instead, that they observed different actions during the offense. Both women testified that as they approached the intersection of 90th Street and King Drive, they observed defendant standing across the street with another man. Both women recognized defendant when they saw him, and Parker knew defendant by his name. Parker testified that as Bolden made a right turn, Parker observed defendant holding the right side of his hip by the waistband with his elbow cocked “like he had something.” Parker then saw the other man point a black gun at their vehicle. Parker immediately grabbed her son, got down inside the vehicle, and heard six to eight gunshots. Parker acknowledged that she could not see anything when the shots were fired. Parker did not testify that the other man fired the gunshots.

¶ 20 Bolden testified that as she turned onto King Drive, she observed defendant pull out a black semiautomatic gun with a silver tip. She observed defendant extend his arm and fire two gunshots towards her vehicle, the second of which struck her driver’s door. Bolden ducked down and heard multiple gunshots. Bolden did not observe the other man holding a gun.

¶ 21 The record thus shows that Parker observed defendant and the other man before the shooting began, while Bolden observed the men as the shooting began. Defendant had his arm cocked at his waistband when Parker ducked down and lost sight of them. At that same moment, Bolden saw defendant pull out the gun and begin shooting. It was the trial court’s duty to weigh the testimony of the witnesses and resolve any possible conflicts therein. *Siguenza-Brito*, 235 Ill. 2d at 228. The trial court found that the testimony from Parker and Bolden established that defendant was the shooter, and we find no reason to disturb that determination.

¶ 22 Defendant also claims that Bolden's identification of him as the gunman was unreliable. Identification of a 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 an 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.*

¶ 23 In assessing identification testimony, the court considers: (1) the witness' opportunity to view the offender at the time of the offense; (2) his degree of attention; (3) the accuracy of the witness' prior description of the offender; (4) the witness' level of certainty at the identification confrontation; and (5) the length of time between the offense and the identification confrontation. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995).

¶ 24 Here, the record shows that the factors support the trial court's finding that Bolden's identification of defendant as the gunman was credible. Bolden testified that she recognized defendant from the neighborhood and knew he lived in that area. Bolden was approximately 15 feet from defendant during the shooting. She observed that defendant was wearing a red cap, a white shirt and khaki shorts, which corroborated Parker's testimony that he was wearing a baseball cap and white t-shirt. Bolden also observed that the other man was wearing gray jogging pants and a black shirt. As Bolden turned the corner, she observed defendant pull out a black semiautomatic gun with a silver tip, extend his arm, and fire two gunshots at her vehicle. Bolden's detailed testimony thus established that she had a good opportunity to view defendant during the offense, and that her degree of attention towards him was very high. Although the three women provided police descriptions of defendant and the other man, the detail of those

descriptions and the information specifically given by Bolden is unknown. Therefore, we cannot say that the prior description favors either party. However, the record further shows that Bolden identified defendant in a lineup just two days after the shooting, and she was certain that defendant was the man who fired the gun at her vehicle.

¶ 25 The determination of Bolden's credibility was a matter entirely within the province of the trial court which heard and observed her testify. *Siguenza-Brito*, 235 Ill. 2d at 228. The trial court found Bolden's testimony credible, expressly stating that defendant was "solidly identified by two people." We find no reason to disturb that determination.

¶ 26 In reaching this decision, we find defendant's reliance on *People v. Rodriguez*, 312 Ill. App. 3d 920 (2000), unpersuasive. In *Rodriguez*, this court reversed the defendant's conviction for first degree murder after finding that the identification testimony from two witnesses was conflicting and unreliable. *Id.* at 934. The eyewitness to the murder initially gave police a description of the gunman at the scene. *Id.* at 923. When police created a composite sketch of the gunman 30 minutes later, the eyewitness added that the gunman had a moustache. *Id.* Nearly two months later, the eyewitness told a detective that one week after the shooting, he saw the gunman outside of a grocery store with a snow blower, but he did not call the police at that time. *Id.* An employee at the grocery store told the detective that the sketch looked like the man who tried to sell him a snow blower, except that "the nose was slightly different." *Id.* The store employee viewed a lineup in which the defendant was a participant, but did not identify him. *Id.* The eyewitness, however, identified the defendant in both a photo array and lineup. *Id.* at 924. At trial, the store employee testified that the man who tried to sell him the snow blower did not have

a moustache and was not the defendant. *Id.* at 934. In light of the conflicting testimony, this court found that the State failed to establish that the defendant was the gunman. *Id.* at 934.

¶ 27 Unlike *Rodriguez*, the record in this case shows that the testimony of Parker and Bolden was not conflicting. Both women testified that they recognized defendant when they saw him standing across the street with the other man. Parker knew defendant by name, while Bolden recognized him from the neighborhood and knew that he lived in that area. Parker observed defendant with his arm cocked at his waistband “like he had something.” She then saw the other man with a gun, grabbed her son, and got down inside the vehicle before the shooting began. She did not observe who fired the gunshots. Bolden, on the other hand, observed defendant pull out a gun, extend his arm, and fire two gunshots at her vehicle. Although Bolden did not observe the other man holding a gun, the varying observations between her and Parker did not render their testimony conflicting. The trial court found that their testimony established beyond a reasonable doubt that defendant “was the shooter in this case,” and we will not disturb that determination. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 28 Defendant next contends that three of his convictions should be vacated under the one-act, one-crime doctrine. Defendant claims that all four of his convictions are based on his single act of shooting at the vehicle, and that the State charged him with firing at the vehicle, not at the individual people inside the vehicle.

¶ 29 The State responds that the four separate convictions are proper because each was based on a different victim. The State points out that each count in the indictment separately specified that defendant discharged a firearm at a vehicle occupied by a named individual, indicating that the State intended to treat defendant’s conduct as separate, multiple acts.

¶ 30 As a threshold matter, defendant acknowledges that he forfeited this issue for appeal because he failed to object to the multiple convictions at trial and did not raise the issue in his posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). The parties agree, however, that our supreme court has repeatedly held that a one-act, one-crime violation is reviewable under the second prong of the plain error doctrine because it affects the integrity of the judicial process. *People v. Coats*, 2018 IL 121926, ¶ 10. Accordingly, we will consider the issue.

¶ 31 Whether a conviction should be vacated under the one-act, one-crime doctrine is a question of law which we review *de novo*. *Id.* ¶ 12. Under this rule, a defendant cannot be convicted of multiple offenses that are based on precisely the same single physical act. *Id.* ¶ 11 (citing *People v. King*, 66 Ill. 2d 551, 566 (1977)). Where a defendant is convicted of two such offenses, the conviction for the less serious offense must be vacated. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010).

¶ 32 Defendant, however, can be convicted of separate offenses where a common act is part of multiple crimes. *People v. Rodriguez*, 169 Ill. 2d 183, 188 (1996). Our supreme court has consistently defined an "act" as "any overt or outward manifestation which will support a different offense." *Coats*, 2018 IL 121926, ¶ 15 (quoting *People v. King*, 66 Ill. 2d 551, 566 (1977)). Multiple convictions with concurrent sentences are permitted where defendant has committed multiple acts, "despite the interrelationship of those acts." *King*, 66 Ill. 2d at 566. Moreover, "when more than one offense arises from a series of incidental or closely related acts and the offenses are not, by definition, lesser included offenses, convictions with concurrent sentences can be entered." *Id.*

¶ 33 In clarifying the one-act, one-crime rule from *King*, the supreme court explained that a court must first determine whether defendant's conduct consists of a single physical act or separate acts. *Coats*, 2018 IL 121926, ¶ 12 (citing *Rodriguez*, 169 Ill. 2d at 186). If the court determines that defendant committed multiple acts, it must then determine whether any of the offenses are lesser-included offenses. *Id.* If none of the offenses are lesser-included offenses, then multiple convictions may be entered. *Id.*

¶ 34 Under certain circumstances, multiple convictions for the same offense may be proper. *Coats*, 2018 IL 121926, ¶ 24. In such cases, the court should look to the legislative intent behind the statute and determine whether the evidence supports multiple violations. *Id.* To sustain multiple convictions, the charging instrument must indicate that the State intended to treat defendant's conduct as separate, multiple acts. *People v. Crespo*, 203 Ill. 2d 335, 345 (2001).

¶ 35 Here, the State charged defendant with four separate counts of aggravated discharge of a firearm under section 12-1.2(a)(2) of the Criminal Code (720 ILCS 5/24-1.2(a)(2) (West 2014)). That section provides that a defendant is guilty of the offense when he knowingly or intentionally “[d]ischarges a firearm in the direction of another person or in the direction of a vehicle he or she knows or reasonably should know to be occupied by a person.” *Id.* The statute thus shows that the legislature allowed for a defendant to be charged with either shooting at a person, or at a vehicle he knows is occupied by a person. Because the statute defines the criminal act as being directed against a person, or at a vehicle occupied by a person, the statute reflects an intent to allow for multiple convictions where the defendant discharges a firearm at multiple people inside a vehicle.

¶ 36 The record reveals that in the indictment, each count identically alleged that defendant “KNOWINGLY OR INTENTIONALLY DISCHARGED A FIREARM IN THE DIRECTION OF A VEHICLE HE KNEW OR SHOULD HAVE KNOWN TO BE OCCUPIED BY A PERSON, TO WIT:” and named a separate victim – Vivian Bolden, Jasmine Parker, Tori Robinson, and Steven Hampton. The charging instrument thereby indicated that the State intended to treat defendant’s conduct as four separate acts against four individual victims. See *Crespo*, 203 Ill. 2d at 345.

¶ 37 The record further reveals that the evidence supported the four separate convictions. Parker and Bolden both testified as to the four occupants in the vehicle. They also testified that defendant fired multiple gunshots at the vehicle, with Parker specifying that she heard six to eight gunshots. At least two shots struck the vehicle – one struck the driver’s door and another struck the front tire. Based on this record, we conclude that defendant’s convictions for four separate counts of the offense against four victims are proper. *Coats*, 2018 IL 121926, ¶ 24.

¶ 38 In reaching this determination, we find that defendant’s reliance on *People v. Hardin*, 2012 IL App (1st) 100682, is misplaced. In *Hardin*, the defendant was convicted of two counts of aggravated discharge of a firearm in the direction of a vehicle known to be occupied by a peace officer. *Id.* ¶ 1. The evidence showed that the defendant fired one gunshot at a police vehicle occupied by two officers. *Id.* ¶ 4. On appeal, the defendant argued that one of his convictions should be vacated under the one-act, one-crime doctrine because his convictions were for shooting at the vehicle itself, not at the officers inside, and he fired only one gunshot at one vehicle. *Id.* ¶ 25. This court agreed and vacated one of defendant’s convictions. *Id.* ¶¶ 26-39.

¶ 39 However, in *Hardin*, the defendant was convicted under section 24-1.2(a)(4), which prohibits the discharge of a firearm in the direction of a *vehicle* occupied by a peace officer. 720 ILCS 5/24-1.2(a)(4) (West 2008). A separate subsection, (a)(3), prohibits discharge in the direction of a *person* known to be a peace officer. 720 ILCS 5/24-1.2(a)(3) (West 2008). *Id.* ¶ 27.

¶ 40 Unlike *Hardin*, here, defendant was convicted under subsection (a)(2), which provides that a defendant is guilty when he discharges a firearm *in the direction of another person or in the direction of a vehicle* he knows to be occupied by a person. Moreover, in *Hardin*, the defendant committed a single act when he fired one gunshot at one vehicle, while in this case, defendant fired six to eight gunshots at four individuals in the vehicle. Accordingly, defendant's four convictions for aggravated discharge of a firearm are proper.

¶ 41 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 42 Affirmed.