

2019 IL App (1st) 170010-U

No. 1-17-0010

Order filed on August 13, 2019.

Second 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. 13 CR 1206
)	
JUAN ROBINSON,)	The Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Coghlan concurred in the judgment.

ORDER

- ¶ 1 *Held:* The evidence was sufficient to prove defendant guilty of first degree murder beyond a reasonable doubt. The cause is remanded to the circuit court to allow defendant the opportunity to file a motion challenging the calculation of his presentence incarceration credit.
- ¶ 2 Following a bench trial, defendant Juan Robinson was convicted of first degree murder, attempt first degree murder and aggravated discharge of a firearm. He was sentenced to consecutive prison terms of 40 years for the murder and 26 years for the attempt murder, both of

which ran concurrently with a 10-year prison term for aggravated discharge of a firearm. Defendant now appeals, challenging only his murder conviction. In particular, defendant contends that the State failed to prove that either he or his codefendant, Keith Anthony,¹ fired the fatal gunshot. Defendant also asks this court to remand the matter so that he may file a motion in the circuit court challenging the calculation of his presentence incarceration credit. We affirm defendant's murder conviction, but remand as to the incarceration credit.

¶ 3 Defendant and Anthony were each charged by indictment with the first degree murder of Jaleen Armstrong (720 ILCS 5/9-1(a) (1)-(3) (West 2012)), the attempt murders of Charles Golden and Quawon Stokes (720 ILCS 5/8-4(a) (West 2012); 720 ILCS 5/9-1(a)(1) (West 2012)), and the aggravated discharge of firearm toward Golden and Stokes (720 ILCS 5/24-1.2(a)(2) (West 2012)). The murder charges alleged, in pertinent part, that either defendant or Anthony shot and killed Armstrong.

¶ 4 Prior to trial, the State filed a motion *in limine* seeking to admit evidence of other crimes allegedly committed by defendant, which the State argued would show defendant's intent and motive to kill Stokes, whom it believed to be defendant's target. Specifically, the State sought to elicit evidence that the shooting in the present case was the culmination of a feud between defendant and Stokes that involved multiple prior shootings after an incident in which Stokes robbed defendant's friend at a dice game. The trial court granted the motion over the defense's objection, stating that the conflict between defendant and Stokes "put[s] everything in a context."

¶ 5 At trial, Golden testified that he smoked marijuana with his friends Armstrong, Stokes, Tymel Dunlap, Ryan Clark, and Jeffrey Spencer on the afternoon of April 6, 2012. Afterwards,

¹Anthony, who was tried jointly with defendant, has a separate appeal pending before this court in case number 1-16-0426. He is not a party to this appeal.

they decided to search on foot for a man called “Big Jerald,” whom Spencer wanted to fight because of a previous incident between the two. Golden testified that nobody in his group was armed, but that he was not sure if the confrontation with Big Jerald was to be “a fistfight only.”

¶ 6 Before Golden and his friends could find Big Jerald, two other men opened fire at them near the intersection of 81st Street and Maryland Avenue. Golden was about 40 feet from the gunmen, but he did not recognize them or see their faces. He denied recognizing Anthony and defendant, who went by the nickname “Suicide,” as the shooters. Golden also denied remembering numerous other details about the shooting, but, after the State obtained the court’s permission to treat him as a hostile witness, he eventually acknowledged some of the events. In particular, Golden testified that, upon encountering the shooters, Stokes said “that looks like Suicide” and ran into the street. Golden and Armstrong took cover behind the driver’s side of a school bus parked on the south side of 81st Street and stayed “[s]ide by side” throughout the shooting. Golden heard bullets hit the passenger’s side of the bus, and agreed that the gunmen were “shooting in the direction of [him] and all [his] friends.” The gunmen fled after firing approximately 20 shots. As the shooters ran away, Golden shouted that they were “bogus.” After the shooting, Golden carried Armstrong, who had been shot in the leg and was bleeding profusely, to the parking lot of the nearby Paradise Supermarket. Emergency responders arrived and took Armstrong away in an ambulance.

¶ 7 Golden met with the police and prosecutors multiple times throughout the investigation, but he did not recall going to the police station on April 11, 2012. The State presented Golden with two advisory forms and two photo arrays. One of the arrays contained Anthony’s photograph, and the other array contained defendant’s photograph. Golden acknowledged that

his signature appeared on the advisory forms and next to defendant and Anthony's photographs, but he denied identifying them as the shooters.

¶ 8 Golden also did not recall speaking to Holly Kremin, an assistant state's attorney, or Chicago police detective Donovan Jackson on September 17, 2012. When the State presented Golden with a handwritten statement from that date, he denied giving the statement, but acknowledged that he signed it on each page and next to several corrections. He denied naming defendant and Anthony as the shooters, but acknowledged telling Kremin that he had known defendant, his "best friend," for about 12 years, and Anthony, defendant's cousin, for about six months. The State asked Golden whether he made various other statements about the shooting to Kremin, and he replied, "I don't recall" to nearly all of the questions.

¶ 9 The State also questioned Golden extensively about whether he made certain statements before the grand jury. He did not recall testifying before the grand jury or giving any of the answers he was asked about. The State presented Golden with several exhibits introduced during his grand jury testimony, including a copy of his signed, handwritten statement to Kremin. Golden then acknowledged that he viewed these exhibits while appearing before a grand jury, and testified that they were in substantially the same condition as when he did so.

¶ 10 Stokes testified he had "some issues" with defendant, but he did not remember exchanging gunfire with him on April 2, 2012. On April 6, 2012, Stokes heard gunshots as he was walking near the intersection of 81st and Maryland with Armstrong, Golden, and others. However, Stokes immediately ran away and did not see the shooters. He did not have a firearm and did not believe any of his friends were armed. He denied remembering that defendant and Anthony, both of whom he knew from the neighborhood, were the gunmen.

¶ 11 After the shooting, Stokes viewed two photo arrays at the police station, but he did not remember whom he identified in the photographs. The State presented Stokes with two advisory forms and two photo arrays, all of which bore his signature. Stokes acknowledged that he had signed next to the photographs of defendant and Anthony, but he did not recall seeing the arrays before.

¶ 12 Stokes viewed a physical lineup at the police station several days later. He did not recall signing an advisory form or identifying defendant as one of the shooters. When presented with the form, Stokes acknowledged his signature, but reiterated that he did not remember signing it.

¶ 13 Stokes also appeared before the grand jury, but did not recall anything other than testifying that he was with Armstrong, Golden, Dunlap, Clark, and Spencer on the day of the shooting.

¶ 14 Spencer testified that he was walking with Armstrong, Golden, Dunlap, and Clark on the afternoon of April 6, 2012. Neither Spencer nor any of his friends had a firearm. As they neared the intersection of 81st and Maryland, Spencer received a phone call and fell several feet behind the rest of the group because he did not want them to hear his conversation. He then heard gunshots and immediately fled. He acknowledged that police interviewed him on April 8, 2012, but he did not recall what he told them.

¶ 15 Assistant State's Attorney Jamie Santini testified that he interviewed Golden on September 17, 2012, and elicited his grand jury testimony on the same day. Santini identified a transcript of Golden's grand jury testimony, which was entered into evidence and is in the record on appeal. According to the transcript, Golden explained that there was a "beef" between Stokes and defendant stemming from an incident in April 2012 in which Stokes stole \$80 from a man called "T-Bone" at a dice game. Shortly thereafter, T-Bone retaliated by retrieving a firearm

from defendant and shooting at, but missing, Stokes. Stokes later responded by shooting out the windows of defendant's house while defendant's girlfriend was home. Golden was present the next day when Stokes and defendant engaged in a gunfight.

¶ 16 Several days later, on April 6, 2012, Golden was with Stokes and others when they decided to "jump" Big Jerald, with whom Spencer had a "beef." Nobody in the group was armed. When they arrived at 81st and Maryland, Stokes stated, "that look[s] like Suicide." Golden then saw defendant and Anthony standing to the north with firearms in their hands. Most of the group ran away, but Golden and Armstrong remained. Golden raised his hands and told defendant, "bro, this me." However, defendant and Anthony approached and began firing. Golden and Armstrong took cover behind a school bus parked on the south side of 81st Street. Defendant and Anthony fired about 20 shots, some of which Golden heard hit the bus. When Golden and Armstrong reached the other side of the bus, defendant and Anthony stopped firing and fled. As they ran away, Golden told defendant that he was "bogus."

¶ 17 After the shooting, Golden saw that Armstrong had been shot in the leg and could not walk. He draped Armstrong over his shoulder and carried him to the front of the nearby Paradise Supermarket. An ambulance arrived and took Armstrong to the hospital. Later that night, defendant called Golden's cousin looking for Golden. Golden took the phone from his cousin and spoke to defendant. During the conversation, defendant apologized for Armstrong's death and stated that he did not intend to shoot Armstrong.

¶ 18 Golden subsequently spoke to police on April 11, 2012. He told them "everything that happened," except that defendant, his "best friend," was involved. Golden identified Anthony as one of the shooters in a photo array, but did not identify defendant even though he viewed an array containing his photograph. Golden spoke to detectives again on September 17, 2012. He

reiterated his statements from April 11, but this time identified defendant as the other gunman. He then met with Kremin and signed a handwritten statement identifying defendant as the second shooter.

¶ 19 Santini further testified that he interviewed Stokes on September 25, 2012, and Stokes agreed to appear before the grand jury. The State entered excerpts from Stokes's grand jury testimony into evidence.

¶ 20 The transcript, which is included in the record on appeal, shows that Stokes told the grand jury that he, Armstrong, Golden, Dunlap, Clark, and Spencer were on their way to confront Big Jerald when Spencer announced, "There goes Suicide." Stokes looked north and saw defendant, whom he saw "[e]very day" around the neighborhood, pointing a firearm at them. Golden and Armstrong took cover behind a school bus parked on the south side of 81st Street, and Stokes ran toward the north side of the street. Defendant fired at the bus. As Stokes ran, he spotted Anthony "standing off the alley shooting toward my way." Stokes turned around and ran south. Defendant began firing in Stokes's direction, so he "ducked behind the [white] car" that was parked "a couple spaces" behind the bus. Anthony began firing at the school bus. Stokes eventually stood up and ran further south. Once Stokes was far enough away, he turned around to see both defendant and Anthony firing at the school bus while Golden and Armstrong were "[m]oving around and trying to get back around the school bus." Stokes heard Golden say, "Suicide, bro, it's us," and saw Armstrong fall to the ground by "the corner of the school bus ***, like, around the school bus."

¶ 21 Evidence technician Victor Rivera testified that he processed the crime scene approximately two hours after the shooting. He identified 74 photographs he took of the area, many of which show the school bus parked on 81st Street and the white vehicle parked

approximately one car length behind the bus. The photographs also show a bullet hole in the hood of the white vehicle and several scrapes along its roof. Rivera recovered and inventoried eight .40-caliber shell casings in the street near the rear passenger's side of the bus, and one 9-millimeter shell casing from a nearby alley that the photographs show is on the north side of the school bus. On cross-examination, Rivera identified a photograph showing blood on the curb next to the front driver's side of the bus and in the Paradise parking lot. He did not observe any bullet holes in the bus.

¶ 22 Loretta McQueen, who was defendant's girlfriend of two years at the time of the shooting, testified that defendant and Stokes used to be friends, but had a falling out over a dice game. The disagreement prompted an incident in which Stokes went to McQueen's house, "shot [her] windows out," and "tried to blow [her] head off."

¶ 23 On the day of the shooting in the present case, McQueen went to a restaurant near the Paradise Supermarket to pick up some food. As she exited the restaurant, she saw Golden lying in the Paradise parking lot, cradling Armstrong in his arms. McQueen approached, but did not speak with them because the police were keeping people away. She left the area and called defendant on her way home because of some "information" she had heard from the crowd outside the supermarket. During the call, McQueen informed defendant that "they said that you shot [Armstrong] out here." Defendant replied, "I wasn't shooting at [Armstrong], I was shooting at [Stokes]," and that Anthony was the one who shot Armstrong. McQueen urged defendant to "turn himself in" and hung up. She had not spoken to defendant since 2012.

¶ 24 Jackson testified that he and his partner, Detective Gregory Buie, were assigned to investigate Armstrong's death. They examined his body at the hospital and noticed a "through and through" bullet hole from his right buttock to the front of his right thigh. Jackson

interviewed McQueen, Dunlap, and Clark on April 7, 2012, and Stokes on April 9, 2012. Stokes identified defendant and Anthony as the shooters in separate photo arrays. On April 11, 2012, Stokes identified defendant in a physical lineup, and Golden identified Anthony in a photo array.

¶ 25 On April 17, 2012, Jackson and Buie traveled to the Dane County jail in Madison, Wisconsin, and met with Madison police detective Helgren² and investigator Marie Burgette Bach. After the conversation, Jackson took possession of a .40-caliber semiautomatic handgun, a magazine, and 15 live rounds. He returned to Chicago and submitted the items for forensic testing.

¶ 26 Jackson met with Golden again on September 17, 2012. This time, Golden identified defendant as one of the gunmen. Jackson notified Kremin, and was present when she interviewed Golden later that afternoon. Jackson observed Kremin memorialize Golden's statements in a handwritten document, which he identified in court.

¶ 27 Jackson published Golden's written statement, which is in the record on appeal and is substantially similar to his grand jury testimony. Notably, Golden stated that Anthony and defendant fired 20 to 25 gunshots "at them" from about 20 feet away. Nobody in Golden's group was armed. When Golden and defendant spoke on the phone later that day, defendant apologized for Armstrong's death and stated that "the bullet wasn't meant for him." Golden did not immediately implicate defendant because he did not want to "snitch on" his "best friend." However, after reflecting on the incident, Golden decided to identify defendant "before he flees from the police or kills someone else."

¶ 28 On cross-examination, Jackson testified that he did not recall seeing bullet holes in the school bus. The parties stipulated that the photographs taken at the scene did not depict any

²Helgren's first name does not appear in the transcript.

“apparent bullet holes, per se, in any school bus.” He acknowledged that Stokes told him that one of the shooters went “all the way around the school bus” and fired at Golden and Armstrong.

¶ 29 Ashley Tirnanic, who lived just outside Madison, Wisconsin, testified that her friend Larron Brookins came to her apartment around 1 a.m. on April 16, 2012, and asked to stay overnight. She allowed Brookins to sleep on her couch. When Tirnanic awoke later that morning, Brookins asked to borrow the keys to her vehicle in order to retrieve some of his clothes that he put in the trunk the previous week. Tirnanic testified that she had not looked in her trunk since the time Brookins put his clothes there. At approximately 11 a.m., Tirnanic and Brookins drove to a local Arby’s and picked up Anthony and his girlfriend, neither of whom Tirnanic had ever met. Upon arriving, Brookins exited the vehicle and moved some car seats from the backseat to the trunk in order to make room for Anthony and his girlfriend. Tirnanic then dropped the three of them off at a local apartment complex. As she drove home, police conducted a traffic stop of her vehicle. Tirnanic gave the officers consent to search her vehicle, and they found a firearm in the trunk. She had never seen the weapon before and did not know why it was in her vehicle.

¶ 30 The State entered a stipulation that Madison police officer Caleb Bedford would testify that he pulled over and searched Tirnanic’s vehicle on April 16, 2012. In the trunk, Bedford discovered a .40-caliber handgun and a magazine with 15 live rounds concealed in a bag of clothing. Bach photographed the firearm, took possession of it, and maintained a proper chain of custody. Madison police officer Brian Barney subsequently arrested Anthony at an apartment complex in Madison on April 16, 2012.

¶ 31 The State next entered the stipulated testimony of Lisa Gilbert, a forensic scientist for the Illinois State Police and an expert in fingerprint identification. Gilbert tested the firearm, magazine, and ammunition, but did not find any latent fingerprints suitable for comparison.

¶ 32 The State also entered a stipulation that forensic scientist Jennifer Hanna would testify as an expert in firearm and toolmark identification. Hanna found that the 9-millimeter shell casing recovered from the scene was suitable for microscopic comparison, but did not find a match in the IBIS database. She also examined the .40-caliber shell casings recovered from the scene, and concluded that they were all fired by the firearm found in Tirnanic's vehicle.

¶ 33 Finally, the State entered a stipulation that Dr. Hilary McElligott, an assistant Cook County medical examiner, performed a postmortem examination of Armstrong's body on April 7, 2012. McElligott determined that the cause of death was a gunshot wound that began in the right buttock, traveled through the femoral artery, and exited through the right thigh. She would identify photographs showing Armstrong's injuries.

¶ 34 The defense rested without presenting evidence. In closing, defense counsel argued, in part, that "the only way that Mr. Armstrong could have gotten shot in the butt was if he was shot by Mr. Golden or Mr. Stokes" because they were the only people on the same side of the bus and there were no bullet holes in the bus.

¶ 35 The trial court found defendant guilty of Armstrong's murder, the attempt murder of Stokes, and aggravated discharge of a firearm toward Golden. However, the court found defendant not guilty of the attempt murder of Golden. In so ruling, the court stated that it believed Stokes, rather than Armstrong or Golden, was the intended target of the shooting, but applied the doctrine of transferred intent to the murder charge.

¶ 36 Anthony's counsel filed a posttrial motion, arguing that "[t]here is no way to determine who was the actual person that fired the fatal bullet," but that Stokes was the most likely candidate because he was the only person on the same side of the bus as Armstrong and Golden

and “bullets do not travel around buses.” The court denied the motion, observing that the issue was “basically identical to that which was presented *** during the course of trial.”

¶ 37 Defendant also filed a posttrial motion, arguing, *inter alia*, that he was not proven to have shot Armstrong because the testimony alleged that he was on the other side of the bus and there were no bullet holes in the bus. Defendant argued instead that “it was clear that [Stokes] is the one who fired the shot that killed [Armstrong] because he is the only one who is physically in a place t[o] do that.”

¶ 38 The court denied the motion, again noting that defendant’s argument was “identical to that which was referred to at the time of trial.” Following a hearing, the trial court sentenced defendant to consecutive terms of 40 years for first degree murder and 26 years for attempt murder. The court also imposed a 10-year sentence for aggravated discharge of a firearm to run concurrently with the other two sentences.

¶ 39 On appeal, defendant challenges only his murder conviction. Specifically, he again argues that the evidence did not prove that either he or Anthony fired the shot that killed Armstrong. Instead, defendant contends that either Stokes, Spencer, Dunlap, or Clark, whom defendant asserts were all on the same side of the school bus as Armstrong, fired the fatal shot.

¶ 40 When a defendant challenges the sufficiency of the evidence supporting his conviction, a reviewing 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 charged offense beyond a reasonable doubt. *People v. Newton*, 2018 IL 122958, ¶ 24. In making this determination, the reviewing court must draw all reasonable inferences in the State’s favor and must not substitute its own judgment on witness credibility or weight of the evidence for that of the trier of fact. *People v. Hardman*, 2017 IL 121453, ¶ 37. Thus, a conviction will be reversed

only if the evidence was “so unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant’s guilt.” (Internal quotation marks omitted.) *Id.* (quoting *People v. Campbell*, 146 Ill. 2d 363, 375 (1992)).

¶ 41 In order to convict defendant of first degree murder, the State was required to prove beyond a reasonable doubt that either he or Anthony fired the bullet that killed Armstrong while intending to kill or inflict bodily harm on any person. 720 ILCS 5/9-1(a)(1) (West 2012).

¶ 42 The positive testimony of a single credible witness is sufficient to sustain a conviction. *People v. Gray*, 2017 IL 120958, ¶ 36. A lack of physical evidence, such as bullet holes or shell casings, need not render a witness’s testimony unbelievable or insufficient to support a conviction. See *People v. Daheya*, 2013 IL App (1st) 122333, ¶¶ 76-77. Instead, the trier of fact remains responsible for resolving conflicts in the evidence and deciding which of competing reasonable inferences to draw from it. *People v. Teague*, 2013 IL App (1st) 110349, ¶ 28. Moreover, the State is not required to disprove every reasonable hypothesis of a defendant’s innocence, and the trier of fact need not “search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt.” *People v. Hall*, 194 Ill. 2d 305, 332 (2000).

¶ 43 Here, the evidence shows, and defendant does not dispute, that defendant and Anthony encountered Armstrong, Golden, Stokes, Clark, Dunlap, and Spencer at the intersection of 81st and Maryland. Defendant also does not contest the evidence that he attempted to kill Stokes by firing multiple shots in the group’s general direction, or that Armstrong and Golden took cover behind a school bus parked on 81st Street. Indeed, defendant concedes on appeal that the evidence was sufficient to convict him of attempting to murder Stokes, and of discharging a

firearm at Golden, who testified that he remained “[s]ide by side” with Armstrong throughout the shooting.

¶ 44 Notwithstanding, defendant observes that the fatal gunshot struck Armstrong from behind, and argues that neither he nor Anthony (for whose actions defendant is legally responsible) were ever in a position to deliver such a wound because they were in front of Armstrong at all times. In advancing this argument, defendant acknowledges that the transcript of Stokes’s grand jury testimony, which was admitted as substantive evidence, shows that Stokes testified that defendant and Anthony fired at Armstrong and Golden as they were taking cover behind the bus. Stokes also told the grand jury that Armstrong and Golden were later “moving around and trying to get back around the bus” before Armstrong fell to the ground by “the corner of the school bus ***, like, around the school bus.” Even so, defendant argues that Stokes’s account was not credible because (1) he was biased against defendant due to their ongoing feud, (2) he was in a more “natural position” to have fired the fatal shot from behind the white vehicle, (3) there were no bullet holes in the bus, and (4) Golden did not corroborate his claim that Armstrong fell to the ground by the bus. However, the trial court considered all of these matters in finding defendant guilty and in denying his motion for a new trial based on the same argument. It remains the trial court’s role to decide witness credibility and which reasonable inferences to be drawn from the evidence, and we will not substitute our own judgment on appeal. See *Hardman*, 2017 IL 121453, ¶ 37.

¶ 45 Moreover, the record belies defendant’s assertion that the only evidence supporting his murder conviction came from “Stokes and only Stokes.” In particular, Golden agreed at trial that the gunmen were “shooting in the direction of [him] and all [his] friends.” According to Golden’s grand jury testimony and his signed statement to Kremin, he and Armstrong did not

flee immediately upon seeing defendant with a firearm. Rather, they held their ground as Golden tried to prevent the shooting by telling defendant, whom he described as his “best friend,” “Bro this me.” However, defendant opened fire, and Armstrong and Golden retreated behind the school bus. Thus, it would not have been unreasonable for the trier of fact to infer, for example, that Armstrong was shot from behind during the retreat. Additionally, defendant admitted his responsibility for Armstrong’s murder in postshooting phone calls with McQueen and Golden. Based on this evidence, a reasonable trier of fact could have found all elements of the charged offense beyond a reasonable doubt.

¶ 46 Defendant nevertheless argues that the evidence instead showed that either Stokes, Dunlap, Clark, or Spencer shot Armstrong in the buttocks. Initially, we note that the trial court was not required to elevate innocent alternative explanations of the evidence to the level of reasonable doubt. See *Hall*, 194 Ill. 2d at 332 (rejecting the defendant’s argument that someone else might have shot the murder victims). We also note that there was no testimony that Dunlap, Clark, or Spencer remained in the area after the shooting began. Furthermore, there was absolutely no evidence that anyone other than defendant and Anthony fired a weapon or were even armed during the shooting. Indeed, Golden, Stokes, and Spencer all testified that nobody in their group was armed, and Dunlap and Clark did not testify. We also note that no shell casings or other physical evidence of return fire was discovered on Golden and Armstrong’s side of the bus. Indeed, all of the recovered shell casings were found on defendant’s side of the bus, and all but one was discovered to have been fired by the firearm connected to Anthony. The remaining shell casing was discovered in an alley on the north side of the street, and there was testimony that Anthony emerged from such an alley before he began firing. Thus, there is no evidence to support defendant’s contention that, because the group was “primed for violence” with Big

Jerald, it is “a matter of common sense” that they would have been armed. In any event, it was for the trier of fact to determine the credibility of the testimony that Golden and his friends were unarmed, and we will not disturb that finding on appeal.

¶ 47 In short, there was sufficient evidence for a rational trier of fact to find that either defendant or Anthony, the only two shooters in the area, fired the gunshot that resulted in Armstrong’s death. Defendant’s theory that another person could have fired the fatal shot is not supported by the evidence and does not require reversal of his murder conviction.

¶ 48 Finally, in his initial brief on appeal, defendant requested that this court correct the mittimus to reflect that he is entitled to 1274 days of presentence incarceration credit. In his reply brief, defendant now asks us to remand to the circuit court so that it may correct the mittimus in light of Illinois Supreme Court Rule 472.

¶ 49 On February 26, 2019, while this appeal was pending, the Illinois Supreme Court adopted new Rule 472, which sets out the procedure for correcting errors in, among other things, the calculation of presentence custody credit. Ill. St. Ct. R. 472(a)(3) (eff. Mar. 1, 2019). On May 17, 2019, Rule 472 was amended to provide that, “[i]n all criminal cases pending on appeal as of March 1, 2019 *** in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule.” Ill S. Ct. R. 472(e) (eff. May 17, 2019). “No appeal may be taken” based on a type of error enumerated in the rule unless the alleged error “has first been raised in the circuit court.” Ill. S. Ct. R. 472(c) (eff. May 17, 2019). Accordingly, we “remand to the circuit court to allow [defendant] to file a motion pursuant to” Rule 472 raising the alleged error in the calculation of his presentence custody credit. Ill. S. Ct. R. 472(e) (eff. May 17, 2019).

No. 1-17-0010

¶ 50 For the reasons stated above, we affirm defendant's conviction for first degree murder, but remand as to the presentence incarceration credit.

¶ 51 Affirmed in part; remanded in part.