

No. 1-12-1798

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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. 11 CR 5687
)	
NICHOLAS WILLIAMS,)	Honorable
)	Matthew E. Coghlan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Harris and Justice Liu concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Defendant's conviction for aggravated discharge of a firearm affirmed over claim of insufficient evidence.
- ¶ 2 Following a bench trial, defendant, Nicholas Williams, was found guilty of aggravated discharge of a firearm, then sentenced to eight years' imprisonment. On appeal, defendant contends that the evidence was insufficient to sustain that conviction.

¶ 3 At trial, the victim, George Catchings, testified that about 10:30 p.m. on December 30, 2010, he got into his 2002 Savannah GMC van to pick up his girlfriend, Venita Shannon, and her sister at a bus station located at 35th and the Dan Ryan expressway. He drove southbound on Cambridge Avenue, and stopped at a stop sign at Cambridge and Chestnut Avenue. He looked out his left window and saw a man who he knew as "Fifty" "calling [his] name, making gestures, [and] trying to get [him] out of [his] van." Catchings explained that he did not have a good relationship with Fifty, and believed that Fifty was trying to get him out of his van to fight. Catchings testified that he laughed, and began to drive away.

¶ 4 As he pulled away from the stop sign, he saw a person wearing black pants and a black hooded sweatshirt "speedwalking" toward his van with a black object in his hand. He recognized this person as defendant, who Catchings had known for several years as a friend of his cousin and who went by the nickname "Sticks." He stated that it was dark outside, but that the street was illuminated by streetlights and that he was able to see defendant's face "clearly[.]" Catchings then saw defendant, who was about five feet from the van, extend his hand holding a black object toward it. He heard what he thought were bullets hitting the van, and, when he looked back towards defendant, he saw "fire" coming from his hand. Catchings hit the gas pedal, and defendant ran alongside the driver's side of the van in front of cars parked on the side of the street. In total, Catchings heard defendant shoot at him about seven or eight times.

¶ 5 Catchings later stopped at Chicago Avenue to "get a hold of [himself]" and then continued driving to pick up Shannon and her sister. When they got into the van, he told them what happened and who had shot at him. As they were driving to a police station to report the incident, Catchings was pulled over by police at Larrabee and Oak Street. Catchings informed

the police of the shooting which had occurred approximately 30 minutes before, and named defendant as the shooter. He then drove to the police station where police took several photographs of his van. Catchings identified these photos at trial, which depicted five bullet holes in the driver's side door, and a shattered driver's side rear window. Two days later, Catchings returned to the police station, viewed a photo lineup, and identified defendant as the person who shot at him and his van.

¶ 6 On cross-examination, Catchings acknowledged that he had previously been convicted of murder, manufacture or delivery of cannabis, and aggravated battery of a police officer or fireman. He also admitted to having the word "Insane" tattooed on his body and having been formerly associated with a gang.

¶ 7 Richard McCalley testified that he had known both Catchings and defendant from the neighborhood for several years. On the evening of the incident, McCalley was homeless, and was "scrapping" for metal in garbage dumpsters located about 20 to 30 feet from the intersection of Cambridge and Chestnut. He stated that it was dark, but that the streetlights were illuminated, and there was a stop sign at the intersection.

¶ 8 While he was scrapping in one of the dumpsters, he heard four or five gunshots, and looked up in the direction of the shots. He saw a van, which he recognized as belonging to Catchings, being driven southbound on Cambridge, while a man was running alongside it. McCalley recognized the man as defendant, and stated that nothing obstructed his view of him at the time. Defendant was wearing a black hooded sweatshirt and was holding a gun in his hand, which was pointed at the van. As the van sped off, McCalley saw defendant put the gun in his pocket, and run down a stairway on the street, opposite of the garbage dumpsters. McCalley

went back to scrapping and did not immediately tell police because he "did not want to get involved."

¶ 9 The next day, McCalley saw Catchings on the street. Catchings asked McCalley if he would go to the police station and report what he saw the night before. McCalley agreed, then went to the police station, gave a statement about what he had witnessed, and identified defendant in a photo lineup as the person he had seen pointing a gun at Catchings's van.

¶ 10 On cross-examination, McCalley admitted that he does drugs, that he was on drugs the night of the shooting, and that he had previously gotten drugs from Catchings. He also acknowledged that he had gone to defense counsel's office with defendant's brother and told counsel that the statement he gave to police was not true. He explained that defendant's brother asked him to go with him to counsel's office, drove him there, and stayed with McCalley the entire time he talked to counsel. Defendant's brother made McCalley "nervous" and he thought that "if [he] didn't change what [he] said, [he] was going to be in danger." McCalley then confirmed that the statement he gave to police was truthful.

¶ 11 Venita Shannon testified that she is Catchings's girlfriend, and that when Catchings picked her up on the night of the incident, he told her that Sticks had shot at his van. She also testified that Catchings was late in picking her up, and that she had tried to phone him about the time of the shooting, but he did not answer.

¶ 12 Officer Skip Katich testified that he and his partner were patrolling the Cabrini Green area on the night of the incident, when they heard a report of shots fired near Cambridge and Chestnut. The officers went to the scene and learned that a green van had been involved in the shooting. They later received a report that the van had been pulled over, and, when they reached

the van, Officer Katich spoke to Catchings, then went in search of two men nicknamed Fifty and Sticks. He arrested Fifty that evening about 11:11 p.m., and the next day, another officer arrested defendant.

¶ 13 Lisa Decker testified that she is an evidence technician who processed and took photographs of the scene at Cambridge and Chestnut. She collected six shell casings: three were found in the street in front of 875 North Cambridge, two were found on the sidewalk at that address, and one was found on the sidewalk at 511 West Chestnut. Decker also took photographs of Catchings's van, where she recovered three fired bullets: two located in the driver's side area and one in the passenger area. It was later stipulated that, if called, evidence technician Tonia Brubaker would testify that all six shell casings recovered were fired from the same gun.

¶ 14 Detective Mark Leavitt testified that he interviewed Catchings and McCalley, and that they gave statements about the incident and identified defendant as the shooter in photo lineups. He testified that Catchings told him that defendant had shot at him because defendant was part of a faction of the Gangster Disciples gang, which had "a beef" with Catchings and Catchings's cousin. He further testified that Catchings was associated with the Mafia Insane Vice Lords gang, and that he had "Insane[,] "IVL" and "MIVL" tattooed on his body.

¶ 15 Detective Leavitt also identified a police pod camera video which captured the area of Cambridge and Chestnut at approximately 10:45 p.m. on the night of the shooting. The video, which was played for the trial court and reviewed by this court, shows that about 10:45:00, a group of individuals were gathered on the corner at Cambridge and Chestnut. The camera then pans south on Cambridge, and, about 10:45:10, a figure, identified as McCalley, can be seen

standing in an area of garbage dumpsters. The camera then pans back north, where the group lingers at the corner and in the street near Cambridge and Chestnut. About 10:47:05, headlights from a vehicle, identified as Catchings's van, appear driving southbound on Cambridge towards the corner of Cambridge and Chestnut. At this point, the camera pans southbound again, and, as the van approaches the intersection, it goes out of the video frame about 10:47:12. The camera pans past the garbage dumpsters, and, about 10:47:20, McCalley can be seen raising his head. About 10:47:21, the van comes back into frame, driving southbound, until it disappears again from view about 10:47:22.

¶ 16 Brad Woodland testified for the defense that he is defendant's brother, and that, at some time after the shooting, he saw McCalley on the street. McCalley approached Woodland and told him that Catchings had given him heroin to point out defendant in the lineup. Woodland acknowledged that he contacted defense counsel, made an appointment, drove McCalley to and from counsel's office, and stayed with McCalley the entire time. He stated, however, that McCalley went voluntarily to counsel's office.

¶ 17 After the close of evidence and argument, the trial court found defendant not guilty of attempted murder and guilty of aggravated discharge of a firearm. The court stated that, in light of Catchings's prior criminal history, it "observed his testimony closely and with great suspicion, but his testimony is corroborated by [the] independent evidence" including the damage to the van, the bullets and shell casings that were recovered, and the pod video. The court noted that the video panned away just prior to the actual shooting, but that it showed the van approaching the intersection and then speeding away, and McCalley's presence near the dumpsters. The court

also indicated that it did not believe that Catchings had a motive to testify falsely, noting that he also identified defendant as the shooter to Shannon immediately after he saw her.

¶ 18 In this appeal, defendant challenges the sufficiency of the evidence to sustain his convictions, claiming that Catchings's version of events is an "utter impossibility in light of the [pod camera] video[,]" rendering his identification of Williams suspect. He maintains that the video does not show anyone running alongside the van with a gun, and that there was insufficient time that the van is outside of the video frame for Catchings's version of events to have occurred. The State responds that the video does not contradict, and is in fact supportive of Catchings's testimony, and, that the evidence of defendant's guilt was overwhelming.

¶ 19 In reviewing a challenge to the sufficiency of the evidence, it is not the function of a reviewing court to retry defendant; rather, we must view the evidence in the light most favorable to the prosecution and determine whether any rational trier-of-fact could have found each of the essential elements of the crime beyond a reasonable doubt. *People v. Ward*, 215 Ill. 2d 317, 322 (2005); *People v. Hayashi*, 386 Ill. App. 3d 113, 122 (2008). The trier-of-fact is responsible for evaluating the credibility of the witnesses, drawing reasonable inferences from the evidence, and resolving any inconsistencies therein. *People v. Bannister*, 378 Ill. App. 3d 19, 39 (2007). A reviewing court may not substitute its judgment for that of the trier-of-fact (*People v. Sutherland*, 223 Ill. 2d 187, 242 (2006)), and ultimately, will not reverse a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of defendant's guilt (*People v. Carodine*, 374 Ill. App. 3d 16, 24 (2007)).

¶ 20 Defendant contends that the pod video contradicts Catchings's testimony and therefore calls his identification of him into question, citing *Scott v. Harris*, 550 U.S. 372, 380 (2007) for

the proposition that where video evidence does not corroborate testimony, the video footage should carry greater weight. We find *Harris* distinguishable from the case at bar. In *Harris*, the Supreme Court considered whether the factual record supported a finding that the respondent was driving in such fashion as to endanger human life. *Harris*, 550 U.S. at 378-81. The Court held that the trial and appellate courts erred in accepting the version of events given by respondent, who had described the pursuit as having "little, if any, actual threat to pedestrians or other motorists, as the roads were mostly empty and [respondent] remained in control of his vehicle." *Harris*, 550 U.S. at 378. The Court observed that "[t]he videotape quite clearly contradicts the version of the story told by respondent[.] *** Far from being the cautious and controlled driver the lower court depicts, what we see on the video more closely resembles a Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury." *Harris*, 550 U.S. at 378-80. The Court therefore held that "[r]espondent's version of events is so utterly discredited by the record that no reasonable jury could have believed him. The Court of Appeals *** should have viewed the facts in the light depicted by the videotape." *Harris*, 550 U.S. at 380-81.

¶ 21 By contrast, the video evidence in this case does not contradict Catchings's testimony, and in fact corroborates it in many respects. As the court noted, the video shows Catchings approach the intersection of Cambridge and Chestnut in his van, and then speed away. It also shows McCalley near the intersection, in a position to witness the incident. Although the camera pans out of view at the time of the shooting, this fact does not contradict Catchings's testimony regarding what happened during this period, and it does not negate Catchings's identification, or defendant's commission of the charged offense.

¶ 22 We are also unpersuaded by defendant's contention that it is an "utter impossibility" that Catchings's version of events could have occurred during the period when the van was out of the video frame. Defendant notes that he does not dispute that gunshots were fired at Catchings's van near the intersection of Cambridge and Chestnut, but claims that there was insufficient time for the rest of Catchings's version of events to have occurred, including Fifty yelling and making gestures at Catchings, and Catchings laughing and driving away while the shooter ran alongside the van. This issue was clearly before the court, which viewed the testimony and the video and found Catchings's version of events credible and consistent with the physical evidence, and we find no basis for interfering with that determination. *Bannister*, 378 Ill. App. 3d at 39.

¶ 23 Defendant also takes issue with the court's conclusion that Catchings did not have a motive to falsely identify defendant. He points to Catchings's testimony that defendant was involved in the Gangster Disciples gang, which had an ongoing "beef" with Catchings and his cousin. He further claims that the evidence showed that Catchings was associated with the Mafia Insane Vice Lords gang, and had "IVL[,] "MIVL" and "Insane" tattooed on his body. Defendant therefore contends that Catchings had a motive to falsely identify defendant due to their ongoing feud and gang affiliations.

¶ 24 At its essence, defendant's argument challenges the trial court's credibility determination, which, as we have previously stated, is properly within its authority. *Bannister*, 378 Ill. App. 3d at 39. This issue was before the court which was ultimately unpersuaded that it provided a motive sufficient to undermine Catchings's identification of defendant as the shooter, and it is not our prerogative to substitute our judgment for that of the trial court on such issues. *Sutherland*, 223 Ill. 2d at 242; *Bannister*, 378 Ill. App. 3d at 39. The court also noted that Catchings

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immediately told Shannon about who had shot at him when he picked her up, at a time when he would be expected to be truthful.

¶ 25 We therefore conclude that the evidence, viewed in a light most favorable to the State, was not so "unsatisfactory, improbable or implausible" to raise a reasonable doubt as to defendant's guilt (*Carodine*, 374 Ill. App. 3d at 24), and we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.