

No. 1-13-0198

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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 5876
)	
JOEL SANCHEZ,)	The Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justices LAMPKIN and ROCHFORD concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence presented by the State was sufficient to prove defendant guilty beyond a reasonable doubt of aggravated battery with a firearm, aggravated unlawful use of a weapon and unlawful use or possession of a weapon by a felon; defendant's mittimus is corrected to reflect the proper pre-sentence custodial credit.

¶ 2 Following a bench trial, defendant Joel Sanchez was found guilty of aggravated battery with a firearm pursuant to section 12-4.2(a)(1) of the Criminal Code of 1961 (the Code) (720 ILCS 5/12-4.2(a)(1)(West 2010)), aggravated unlawful use of a weapon pursuant to section 24-

1.6(a)(1) (3)(A) of the Code (720 ILCS 5/24-1.6(a)(1) (3)(A) (West 2010)), and unlawful use or possession of a weapon by a felon pursuant to section 24-1.1(a) of the Code (720 ILCS 5/24-1.1(a) (West 2010)). Defendant was sentenced to 10 years in prison for aggravated battery and 7 years for both counts of unlawful use of a weapon, to run concurrently. On appeal, defendant contends that (1) the State did not present sufficient evidence to prove defendant guilty beyond a reasonable doubt, and (2) defendant is entitled to two extra days of pre-sentence custody credit. We correct defendant's mittimus to reflect the proper pre-sentence custody credit and otherwise affirm.

¶ 3 Defendant was charged by indictment with four counts of attempted first degree murder and aggravated battery with a firearm, aggravated unlawful use of a weapon, and unlawful use or possession of a weapon by a felon. The trial court granted defendant's motion for directed verdict on the attempted murder counts, but ultimately found him guilty of aggravated battery with a firearm and both counts of unlawful use of a weapon.

¶ 4 At trial, Samuel Hernandez testified that on March 25, 2011, at 7 p.m., he was walking on the sidewalk in the area of Wrightwood and Long in Chicago waiting to meet a girl. As the sun was going down, he heard shouts coming from in front of him from about a block, to a half a block, away. He then heard at least four gunshots, one right after the other. Hernandez ducked and started running westbound toward Central, passing through gangways as he ran. He felt a bullet strike him in the arm. Hernandez called the girl he was going to meet, and she picked him up and took him to the hospital where he was treated. He was not able to identify defendant as the person who shot him, and did not remember where he was when he was shot in the arm.

¶ 5 Officer James McNichols testified at trial for the State that on March 25, 2011, he was working with Officer Pat Kelly. He was on the passenger side in an unmarked squad car wearing

plain clothes. He and Kelly were traveling westbound at the 5300 block of Shubert around 7 p.m. when they heard a single gunshot in the area coming from north of where they were. They turned left and began driving southbound toward an alley, where they saw four to six people "running out of the alley from the street." Officer McNichols then saw defendant running toward the group from about 20 to 25 feet behind them. He saw defendant running out of the alley holding a gun in his right hand. He was about 45 to 50 feet away from defendant when he saw him shoot the gun three to four times toward the crowd. The crowd then ran westbound from the alley. He saw one of the individuals grab his right shoulder and "go down" like he had been shot.

¶ 6 Officer Kelly then drove up Wrightwood southbound and "cornered him off." Officer McNichols pursued defendant. He announced his office and told defendant to stop. Defendant did not stop and Officer McNichols chased him through "the yard of the gangway." As he was coming from the yard, Officer Kelly was running down the gangway toward defendant. Defendant then ran back toward Officer McNichols, ran eastbound, hopped a couple of fences, and tossed a gun onto the roof of a garage at 5342 West Wrightwood. Defendant then ran out of the gangway and Officers McNichols and Kelly tackled him in the alley. Officer Kelly went back to the garage and recovered a gun from the gutter of the garage roof.

¶ 7 When the gun was recovered, all the shells were expended. He did not remember the exact time that defendant was placed in custody and that he did not immediately inform dispatch that he and his partner had retrieved a gun, as there was no policy requiring them to do so. He eventually "called in" the gun about 20 minutes after defendant was arrested.

¶ 8 The State entered into evidence a certified copy of defendant's felony conviction for possession of a stolen motor vehicle. After the State rested, defendant moved for a directed verdict which was granted on the four attempted first degree murder counts. The court ultimately

found defendant guilty of aggravated battery with a firearm and both counts of unlawful use of a weapon.

¶ 9 Defendant filed a motion for a new trial, citing *inter alia*, "the conflicting testimony of the State's witnesses, Hernandez and the police officer." The court denied the motion. Defendant was subsequently sentenced to 10 years in prison for aggravated battery and 7 years for the two counts of unlawful use of a weapon, to run concurrently. He was given pre-sentence custody credit toward his sentence for 624 days.

¶ 10 On appeal, defendant contends that the State's evidence failed to establish beyond a reasonable doubt that defendant was properly convicted of aggravated battery with a firearm and unlawful possession of a weapon by a felon where the complaining witness could not identify who shot him, and where the arresting officer provided wholly incredible testimony about the circumstances of the shooting and the recovery of a gun.

¶ 11 When reviewing the sufficiency of the evidence, the relevant inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *People v. Baskerville*, 2012 IL 111056, ¶ 31. The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 132 (1999). Whether inconsistencies in testimony irreparably undermined the credibility of the State's witnesses is a matter for the trier of fact to decide. *People v. Howard*, 376 Ill. App. 3d 322, 329 (2007).

Because the trier of fact is in a superior position to assess the credibility of witnesses, we will not disturb the trial court's determination. *People v. Wittenmyer*, 151 Ill.2d 175, 191-92 (1992).

Reversal is justified only where the evidence is “so improbable or unsatisfactory,” that it raises a reasonable doubt as to the defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 12 We find that the evidence is sufficient to support defendant's conviction. In this case, the victim testified that he was located in the area of Wrightwood and Long when he heard shouts coming from in front of him. He then heard at least four gunshots in quick succession. As he ducked and started running westbound toward Central, he felt a bullet strike him in the arm. Officer McNichols testified that he was driving on the 5300 block of Shubert when he heard gunshots in the area coming from the north. They turned left and began driving southbound, when they saw four to six people running out of an alley from the street. Although Hernandez could not identify defendant as the shooter, Officer McNichols testified that he was about 45 to 50 feet away from defendant when he saw defendant shoot a gun three to four times toward the crowd. The officer then drove up Wrightwood southbound and cornered defendant. Defendant was eventually apprehended after a chase that culminated in defendant tossing a gun onto the roof of a nearby garage, which the officers retrieved immediately. After hearing both Hernandez's and Officer McNichols' testimony, viewing the witnesses while testifying, and being made aware by defense counsel of the alleged deficiencies in Officer McNichols' testimony, the trial court chose to believe the State's witnesses. This was its prerogative in its role as the trier of fact. *People v. Moser*, 356 Ill. App. 3d 900, 911 (2005). Thus, we find that the State's evidence was sufficient to find defendant guilty beyond a reasonable doubt of aggravated battery with a firearm, aggravated unlawful use of a weapon and unlawful use or possession of a weapon by a felon.

¶ 13 Defendant argues that the evidence was insufficient to convict him because Officer McNichols' testimony was not credible. Specifically, defendant argues that Officer McNichols' description of what took place did not fit with the geography of the scene because Hernandez testified that he heard shots coming from somewhere in front of him while he was on Wrightwood and Long, while Officer McNichols testified that he heard gunshots coming from the north, then turned left off of Schubert, putting him southbound. Thus, the officers were not driving in the direction of the gunshots. Although defendant makes much of this argument, we find that the direction in which the officers drove after hearing the gunshots has little bearing on the outcome of this case. Regardless of which direction the officers turned, once they approached the alley, Officer McNichols observed defendant fire his gun toward a crowd.

¶ 14 Defendant further argues that Officer McNichols' testimony was not consistent with Hernandez's testimony that he heard four gunshots in succession, as Officer McNichols testified that he heard a single gunshot and then three more when he arrived at the alley. Despite this alleged variance in testimony regarding whether Officer McNichols heard gunshots in succession, we find that a rational trier of fact could have found defendant guilty beyond a reasonable doubt. See *Brooks*, 187 Ill. 2d at 133-34 (affirming defendant's conviction where the witnesses' statements were "generally consistent in regard to how the event unfolded.") Furthermore, our supreme court has held that variations in witness testimony are "to be expected anytime several persons witness the same event under traumatic circumstances." *Id.* Despite the discrepancies, the portions of Officer McNichols' testimony that directly support a finding that defendant was guilty could reasonably be accepted by the fact finder who saw him testify, as true beyond a reasonable doubt. See *People v. Cunningham*, 212 Ill. 2d 274, 285 (2004); see also *Collins*, 106 Ill. 2d at 262. The court found that Officer McNichols' testimony that defendant, a

convicted felon, fired multiple shots at a group of people and ultimately wounded Hernandez was sufficient to support defendant's conviction of aggravated battery with a firearm, aggravated unlawful use of a weapon and unlawful use or possession of a weapon by a felon.

¶ 15 Defendant also argues that Officer McNichols' testimony regarding the recovery of the gun was not credible because it was not reported until at least 20 minutes after defendant was taken into custody. Officer McNichols testified that after he arrested defendant, the gun was recovered and he eventually called in the gun 20 minutes after defendant was arrested, noting that there was no policy requiring him to immediately call in a gun recovered at the scene of a crime. We find that a rational trier of fact could accept Officer McNichols' testimony as credible despite a 20 minute delay in reporting the recovery of the gun. See *Brooks*, 187 Ill. 2d at 134.

¶ 16 Additionally, we note that defendant uses an on the record pre-trial statement by the State informing the court that a firearm shell casing comparison showed "nothing" to argue that the shell casing did not match the revolver defendant used to shoot at a group of people. Because a firearm report was never entered into evidence, we decline defendant's invitation to speculate that a shell casing found at the scene did not match the recovered gun solely based on the State's pre-trial statement that the lab report showed nothing. Instead, we will limit our analysis to the question of whether the evidence actually presented was sufficient to establish defendant's guilt. Thus, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

¶ 17 Finally, defendant contends, and the State agrees, that his mittimus must be corrected to reflect defendant's 626 days of pre-sentence custody credit. Defendant was taken into custody on March 25, 2011, and sentenced on December 10, 2012. Although the trial court awarded defendant 624 days of pre-sentence custody credit toward his sentence, he should have been

awarded a total of 626 days of credit. Therefore, pursuant to Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we direct the clerk of the circuit court of Cook County to correct defendant's mittimus to reflect a credit of 626 days for time actually served in custody prior to sentencing. See also *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 18 For the reasons stated, we affirm the judgment of the circuit court of Cook County and order the mittimus corrected.

¶ 19 Affirmed; mittimus corrected.