

No. 1-09-2057

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FIFTH DIVISION
March 31, 2011

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. 06 CR 6227
)	
SHAWN MCKNIGHT,)	Honorable
)	Lawrence E. Flood,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Joseph Gordon
concurred in the judgment.

O R D E R

HELD: Where the facts show that defendant was not threatened with imminent death or great bodily harm, the evidence was sufficient to prove him guilty of aggravated battery with a firearm.

After a bench trial, defendant Shawn McKnight was convicted of aggravated battery with a firearm and sentenced as a Class X

offender to six years in prison. On appeal, defendant contends the State failed to show that he did not act under compulsion. We affirm.

Defendant was charged based on an altercation in which he shot Paris O'Bryant in the hand on March 12, 2003. His defense at trial was that he acted under compulsion because he feared imminent harm if he disobeyed the order to shoot O'Bryant.

At trial it was established that Marvel Thompson, Donnell Jehan, and Paris O'Bryant were members of the Black Disciples (BDs) gang. In 2003, Thompson was the "king," or the leader of the gang. In March 2003, after an altercation between O'Bryant and another BD, Thompson gave O'Bryant a direct order not to retaliate. O'Bryant shot at the other BD, violating the order. On March 12, 2003, he was summoned to an abandoned apartment building near 67th and Lowe where 15 or 20 BDs, some armed, were gathered. Defendant was also present. Thompson and Jehan spoke with O'Bryant, then Thompson sent someone to get a gun which he handed to defendant. Thompson told defendant to shoot O'Bryant in the hand and defendant obeyed.

Donnell Jehan testified that he knew defendant as an acquaintance of Thompson and a BD. On March 12, 2003, after questioning, Thompson told O'Bryant "he was found guilty for shooting another member and he had an option to be either shot or violated physically." O'Bryant chose to be shot. After Thompson

sent someone to get a gun, Jehan left the apartment. Jehan never heard Thompson order that no one could leave the apartment. However, at the time of trial, Jehan had pled guilty to federal charges and was facing up to a life sentence which he hoped would be reduced if he testified.

O'Bryant testified that when he arrived at the apartment building, Thompson was questioning three younger BDs about fighting at their high school. They were found in violation, and each received a three minute beating as punishment. When Thompson questioned O'Bryant, he told O'Bryant that if O'Bryant had killed the other BD, Thompson would have killed O'Bryant. Thompson also told O'Bryant that "no one never [sic] disrespected him" like O'Bryant had. Before he shot O'Bryant, defendant asked O'Bryant not to move his hand and said he would not make a mistake. O'Bryant "knew" defendant was a BD. Though at trial he could not remember whether Thompson had ordered that no one could leave the apartment, in an interview with federal investigators he said that he heard the order. At the time of the trial, O'Bryant was serving time for an unrelated offense.

FBI Special Agent Donald Kaiser testified that on October 14, 2004, defendant came to the FBI in order to offer information on behalf of Thompson, who was in federal custody at the time. Defendant told Kaiser about shooting O'Bryant. He indicated that after Thompson told him to shoot, defendant advised O'Bryant to

get a towel and gave O'Bryant the choice of which hand would be shot. Defendant told Kaiser that he did not question Thompson's order because he was afraid he would be beaten or shot if he disobeyed.

Anthony Beard testified that he had known defendant since 1991 through doing construction work for Thompson. To his knowledge, defendant was not a BD. On October 12, 2003, Thompson summoned Beard to the apartment. Defendant was there when he arrived. People were gathered in the kitchen, but Beard was not close enough to hear. He saw O'Bryant being questioned and then heard Thompson say no one could leave the building. When Thompson told defendant to shoot O'Bryant, Beard said defendant's hand was trembling and he looked fearful. Thompson was five or six feet away from defendant when defendant shot the gun. Beard felt he could not leave without being harmed.

Defendant testified that he was not a member of the BDs, but he did construction work for Thompson. Defendant was aware that Thompson was king of the BDs and had heard that Thompson was once convicted of murder then set free. When he arrived at the apartment, Thompson and Jehan were questioning O'Bryant in the kitchen. Defendant did not see the three younger BDs being punished, but he heard about them later. Defendant heard Thompson tell O'Bryant that O'Bryant was the only one to ever disobey one of his orders, and if he had killed "that boy,"

O'Bryant "would be getting killed right now." Thompson said no one could leave then told someone to get a pistol. Thompson handed defendant the gun and told him to shoot O'Bryant in the hand. Defendant was fearful, but obeyed. Defendant said he knew that he "would have been badly beaten or shot" if he had said no.

The trial court found defendant guilty of aggravated battery with a firearm. Specifically, the court found that defendant did not act under a direct threat and that defendant's belief that he was threatened with imminent harm was speculative.

On appeal, defendant argues that the State failed to prove beyond a reasonable doubt that he was not acting under compulsion. He argues that he reasonably believed death or great bodily harm would be inflicted on him if he did not shoot.

The standard of review on a challenge to the sufficiency of the evidence 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. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). When considering a challenge to the sufficiency of the evidence, it is not the function of the reviewing court to retry the defendant; it is for the trier of fact to determine the credibility of witnesses, weigh the evidence, draw reasonable inferences and resolve any conflicts in the evidence. *Siguenza-Brito*, 235 Ill. 2d at 228. A conviction will only be reversed if

the evidence is "so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *Siguenza-Brito*, 235 Ill. 2d at 224.

Compulsion is an affirmative defense by which a defendant may be found not guilty of a crime if he acts under "threat or menace of the imminent infliction of death or great bodily harm" and "he reasonably believes death or great bodily harm will be inflicted upon him if he does not perform such conduct." 720 ILCS 5/7-11(a) (West 2002); *People v. Brown*, 341 Ill. App. 3d 774, 782 (2003). Once a defendant has presented " 'some evidence' " of compulsion, the State has the burden to disprove the defendant acted under compulsion beyond a reasonable doubt. *People v. Sims*, 374 Ill. App. 3d 231, 267-68 (2007) (quoting *People v. Pegram*, 124 Ill. 2d 166, 172 (1988)).

Here, we find the evidence was sufficient to prove defendant was not acting under compulsion when he shot O'Bryant. It is uncontroverted that Thompson told defendant to shoot O'Bryant. However, there is no indication that Thompson expressly threatened defendant verbally or by physical intimidation. Defendant's own witness, Beard, testified that Thompson was standing five or six feet away when defendant had the gun. No one aimed a gun at defendant though armed gang members were in the apartment. No one told defendant that there would be consequences if he did not shoot O'Bryant. Furthermore,

defendant shot O'Bryant without giving any indication that he did not want to do so. Under these circumstances, a rational trier of fact could find that defendant did not act under compulsion.

Defendant argues that though there were no direct threats, he was threatened or menaced by virtue of the circumstances. Defendant points out that he knew Thompson was convicted of murder, Thompson ordered that no one could leave the apartment, and he heard Thompson tell O'Bryant that O'Bryant was the only person to disobey his orders and he would have killed O'Bryant if O'Bryant had killed the other BD. However, the only threats defendant heard were directed at O'Bryant. Regardless of whether defendant was a BD, his belief that he was threatened or menaced with imminent death or great bodily harm based on Thompson's violent reputation and threats to another is not reasonable. See *Brown*, 341 Ill. App. 3d at 782 (denial of compulsion instruction affirmed where the defendant believed he would be harmed if he did not commit a robbery for a "violent person capable of killing gang members who disobeyed orders" because the defendant failed to show any threat of immediate harm). It is not our duty to retry defendant and, without more, we cannot find the evidence was so improbable or unsatisfactory as to create a reasonable doubt of defendant's guilt.

For the foregoing reasons, we affirm the judgment of the trial court.

Affirmed.