2012 IL App (1st) 100431-U

FOURTH DIVISION
August 30, 2012

No. 1-10-0431

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 1668201
	)	
	)	
ANTOINE BOUZI,	)	The Honorable
	)	Garritt E. Howard,
Defendant-Appellant.	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: Evidence at trial was sufficient to find defendant guilty beyond a reasonable doubt of attempted murder. The court properly admitted prior inconsistent statements as substantive evidence. The State fulfilled its burden of proving intent with regard to the attempted murder charge. Affirmed.

¶ 2 Following a bench trial, defendant was found guilty of attempted murder, then sentenced to 35 years' imprisonment. On appeal, defendant contends the State failed to prove him guilty beyond a reasonable doubt. He argues his conviction rested on the prior inconsistent statements, admitted as substantive evidence, of two State witnesses who were not believable given their

criminal records and drug use. Defendant also contends the State failed to prove he had the requisite intent to commit attempted murder. We affirm.

¶ 3 BACKGROUND

¶ 4 Defendant, age 19, was arrested and then charged with the attempted murder of Evanston Police Officer Thomas Giese after two witnesses, Reginald Tate and Issace Taylor, saw defendant bearing a gun shortly before shots were fired at the officer around Brown Avenue in Evanston during the early morning hours of July 29, 2008. At trial, the State posited that an argument ensued between two rival groups, Tate and his brother Dantrel Posey on the one hand and defendant and his cousin Taylor on the other. This occurred immediately before police arrived. They broke up the impending fight, and defendant fled with Officer Giese in close pursuit, then shot at the officer.

¶ 5 Trial evidence revealed that Evanston Police Officers Willie Hunt and McCray were patrolling an area in Evanston known for criminal activity around 2:40 a.m. when they encountered a group of approximately 15 teenagers and young adults loitering. Officer Hunt, known as "Lucky" to the teenagers, was familiar with many in the group, including Tate and Posey, and recognized defendant. Officers requested that the group leave, but defendant, clad in a white t-shirt, sat in a nearby lawn chair with his head buried between his legs. He eventually left, and the group dispersed somewhat. However, as the officers drove away, they noticed the group recongregating in the middle of the street, prompting the officers to call for backup. Officer Giese arrived in full uniform and a marked squad car, along with Detective Jodie Hart, and the police formed an enforcement plan.

¶ 6 The combined testimony of the officers revealed the following. Officer Giese and Detective Hart walked through a gangway and emerged onto 1818 Brown, where they observed a

group surrounding two teenagers arguing in the middle of the street. Officer Giese recognized one of the individuals as Tate, age 16. The other individual had his back to Officer Giese but was a black male, about five foot seven inches, 170 pounds, and wearing long dark colored shorts, a white do-rag, and a white t-shirt. Someone yelled, "police," and Officer Giese then shined his flashlight on the two youths. The youth in the white shirt crouched over at the waist, with his arms at his waist, then walked sideways with his back to the officers. Officer Giese again flashed his light at the individual, announced his office, and ordered him to "come here," but the youth ran "full sprint" westbound into the gangway of 1822 Brown. Officer Giese gave chase, hurdled a garbage can knocked in his path, and repeatedly announced his office while requesting that the individual stop running. The youth crossed the alley into another gangway until he came to the front of 1823 Hovland Court. There, he turned around and aimed the muzzle of his gun "right at" Officer Giese, who was standing about 20 to 25 feet away, apparently in the gangway. Officer Giese saw the muzzle flash twice and heard two shots, then threw himself into the bushes, drew his weapon, and radioed for assistance. Detective Hart and Officer Hunt heard the shots. Detective Hart detained Taylor and another individual who had begun running behind Officer Giese. Following the shooting, Officer Giese observed holes in the front porch at 1823 Hovland and discovered a sawed-off shotgun with a handle wrapped in black electrical tape underneath a car parked just north of 1823 Hovland. The parties stipulated that a shotgun with two spent shells was recovered in that same area. Officer Giese then viewed nine individuals detained at the scene, but eliminated them as the possible shooter based on their size, stature, and clothing.

¶ 7 Defendant's conviction also rested on formal written statements admitted under section 115-10.1 of the Illinois Code of Criminal Procedure of 1963 (725 ILCS 5/115-10.1 (West 2008)), but ultimately recanted at trial by the crime-scene witnesses, Tate and Taylor, as well as

impeaching evidence. Section 115-10.1 allows a prior inconsistent statement that would otherwise be excluded as hearsay to be admitted as substantive evidence. The State established that Tate met with police the afternoon of July 29 and made a statement regarding the shooting that was substantially the same as the statement memorialized in writing by Assistant State's Attorney Sharon Kanter on August 4 around 9 p.m. ASA Kanter read Tate the statement and they signed each page, as well as initialed any corrections. At trial, Tate acknowledged and identified this statement, which was introduced into evidence as an exhibit and through Tate's testimonial acknowledgments. Defendant did not include that statement or any other exhibits entered into evidence in the record on appeal. According to Tate's statement, around 1 a.m. on July 29, he and Posey were talking when Taylor stepped out of defendant's van, parked nearby, and an argument ensued between Tate and Posey and defendant and Taylor. Defendant, who was clad in a white t-shirt with hair braids and a do-rag, was holding a cigarette; Posey asked for it, but defendant crumpled it up. Defendant and his cohort left but came back about 10 or 15 minutes later. Defendant and Taylor walked towards the youths with defendant swinging a short chrome shotgun with a wood cock-back and black tape on the handle. Tate had seen defendant with that gun two times in the recent past, when defendant tried to rob a pizza delivery man and also when he shot at people. Posey asked defendant who he was "going to shoot with that," but at that point the police showed up in the gangway. Tate then saw defendant "crouch down" and run through the gangway with a uniformed police officer chasing behind. Seconds later, Tate heard gunshots. Per his statement, about 5:30 p.m. on July 29, Tate identified a photograph of defendant as the man he'd seen with a sawed-off shotgun on the 1800 block of Brown. Tate did so again when he gave the statement. Tate's statement indicated it was voluntary, that no threats or promises were made in exchange for the statement or for his identification of defendant, which was not forced. The statement also indicated that on both July 29 and August 4, authorities

permitted Tate to leave at his request.

¶ 8 At trial, Tate's testimony was different. Tate, who was on parole on July 29 and had criminal cases pending at the time of trial, was subpoenaed to testify but appeared only after police arrested him. He initially denied telling Detectives Jason Kohl and Tim Van Dyk that, on July 29, he and Posey were arguing with defendant, who became agitated and left the area only to return a short time later carrying a chrome-colored sawed-off shotgun with black tape around the handle. Tate did not recall telling the detectives that an Evanston police officer appeared in the gangway as defendant was yelling at them and that Tate then saw defendant "crouch over" while grabbing the barrel of a gun and run westbound between two houses. Tate did not recall demonstrating defendant's actions or stating that he saw a police officer run after defendant and seconds later heard two gunshots coming from the area toward which they ran. He also did not remember telling officers that he saw defendant with the gun on two prior occasions.

¶ 9 At trial Tate also denied the truth of his August 4 statement. That is, he testified that no one was arguing on the morning in question and he did not see defendant with a gun then or in the recent past. He claimed to only have heard gunshots around Brown and Emerson streets. Later at trial, while acknowledging his statement that he saw defendant with a sawed-off shotgun, Tate claimed he offered information only because he might "catch a case" and be charged with "mob action or something like that," which would be a violation of his parole. Tate also stated that on July 29, it was the police who first showed him the gun and that's how he knew about the gun and was able to describe it. He further stated the police essentially forced his identification of defendant, so Tate told them what they wanted to know. In sum, he claimed police interrogated him for hours on July 29, feeding him information and forcing his statement. He lied to police so he could leave the station and go home. Tate stated that the police came to his home on August 4 and, over his mother's protest, took him in handcuffs to the station, where he

was interrogated again. He never spoke with the ASA alone, and the ASA did not inquire how he was being treated. On cross-examination, defense counsel disclosed that a week before trial, Tate had signed a two-page affidavit from a defense investigator averring these claims of coercion. The affidavit was entered as a defense exhibit, and Tate acknowledged it at trial.

¶ 10 The State presented several witnesses to prove up Tate's prior inconsistent statements. Evanston Police Detectives Van Dyk and Kohl testified that they met with Tate on July 29 around 4:30 p.m., along with Detective Kevin Heines of the juvenile bureau, for about 30 minutes. Detective Van Dyk testified that Tate relayed the story stated above, which Tate initially denied at trial. Detective Van Dyk added that it was Tate who described the gun and stated that he had seen defendant with it on two prior occasions. Detective Van Dyk thus denied describing or showing the gun to Tate as a means of eliciting Tate's statement. He testified the gun was in fact in the crime lab that morning. Detective Van Dyk testified that they did not interrogate Tate for hours or deny him the opportunity to leave, but treated him well, offering him food, drink, and access to the restroom. Evanston Police Department Juvenile Detective Dan Mokos testified that he met with Tate around 5:30 p.m. on July 29, to show Tate the photo lineup array, at which time Tate identified defendant as the person with the sawed off shotgun who fled the scene with police chasing behind. Both detectives denied any threats or coercion relating to Tate's statement or Tate's identification of defendant.

¶ 11 Detective Mokos further testified that he and Detective Jeremy Nieman went to Tate's home on August 4 around 5 p.m. and, with the consent of Tate's mother, transferred him absent handcuffs to the police station. Detective Mokos was present at the initial interview with ASAs Sharon Kanter and Ashley Vonah prior to the entry of Tate's formal statement. Detective Mokos again denied any threats or coercion relating to Tate's statement or Tate's identification of defendant at that time.

¶ 12 ASA Kanter testified that about 9 p.m. on August 4, she memorialized Tate's statement in writing in the presence of ASA Vonah and Detective Lopez. She testified that she read the statement to Tate, they signed each page, and initialed any corrections. ASA Kanter identified Tate's statement at trial. She denied any threats or coercion relating to Tate's statement or Tate's identification of defendant and testified Tate reportedly was treated okay. ASA Kanter, who met with Tate without any police present, further noted that Tate did not then report police threats or coercion.

¶ 13 The second crime-scene witness to be impeached by his prior inconsistent statement was Taylor. The State established that Taylor voluntarily appeared at the police station on August 4 and around 10:30 p.m. that day, ASA Kanter memorialized Taylor's statement in writing with ASA Vonah and Detective Kohl present. ASA Kanter read Taylor the statement and they signed each page, as well as initialed any corrections. At trial, Taylor acknowledged and identified this statement, which was introduced into evidence as an exhibit and through Taylor's testimonial acknowledgments. ASA Kanter also testified to the statement's contents. According to Taylor's statement, defendant, also known as "T," and a group of youths were on the 1800 block of Brown when the police came and dispersed the group. Taylor, who previously had been asleep in defendant's van, awoke only to see defendant walking outside "kind of crouched and limping." Taylor stated that he knew defendant had a gun (he could not tell what kind, but he thought it was a handgun), and that was the reason defendant was limping. The group left, but eventually returned to 1800 Brown, where an argument apparently ensued between defendant and Taylor and Tate and Posey. Tate asked defendant whether he was going to kill Tate, but Taylor responded that defendant didn't have a gun even though Taylor knew defendant really did have one. Taylor stated defendant was behind him, so he couldn't see if defendant actually had the gun out. It was at this point that the police entered the scene. Defendant ran, followed by a

uniformed police officer. Taylor ran after the officer because Taylor wanted to "know why his cousin T was running because Issace didn't know what kind of gun T had." The officer got to the middle of the gangway and Taylor saw his cousin fall and fire one shot in the air and one towards the ground.

¶ 14 Taylor further stated that he met with defendant later that same morning and they smoked a blunt. Taylor claimed defendant had shot at the police, but defendant responded: "No, the mother*** gun just went off." Defendant asked Taylor whether anyone had picked up the gun and Taylor responded, the police. Taylor asked defendant where he threw the gun, and defendant said, "right in front of the mother*** house." Taylor stated that he had drunk a half liter of vodka on the morning in question and was drunk and sick. On August 4, the day Taylor gave his statement, he was not under the influence of drugs or alcohol, although he had smoked marijuana the day before.

¶ 15 Taylor's trial testimony differed in certain respects. Although Taylor testified that he saw defendant walk up to the van "like his pants were going to fall" and with a limp and "waddle," Taylor testified that's how defendant "always walks." Likewise, although Taylor testified that he saw defendant run westbound through the gangway between two houses with an officer in pursuit and then heard gunshots, Taylor testified that he did not believe defendant had a gun and did not see it. Taylor denied telling the detective that he *knew* defendant had a gun, instead claiming that was only a "guess." Taylor told the officer if "[y]ou say that, then that's what it is." Taylor also denied confronting defendant, "you shot at a police officer." He denied that defendant told him the gun just "went off," that defendant asked whether anyone picked up the gun, and that defendant said he'd thrown the gun in front of the house. Taylor nevertheless acknowledged this information was in his statement. Taylor stated on cross-examination that the aforementioned portions of his written statement were lies and that he made these statements only because police,

during the initial interview, handcuffed him to the wall, then stated they had found Taylor's fingerprints on the gun. Police told him he would be arrested and charged "with some type of accessory" if he didn't cooperate and tell them what they wanted to hear. Taylor added that police would not let him go home. Taylor, who acknowledged he had a pending gun case at the time of trial, also stated that he smokes marijuana daily and had done so on July 29, August 4, and had even smoked prior to testifying in court.

¶ 16 On cross-examination, Taylor further stated that he had met with a defense investigator in December 2008, and Taylor relayed that he did not see defendant limping back to the van like he had an object concealed in his pants, he did not see defendant run from a police officer, and he did not hear the gun.

¶ 17 On redirect examination, Taylor testified the portion of his statement, wherein he saw defendant fall and shoot the gun in the air, was not true. He admitted he told authorities this because he wanted to help his cousin. Although he denied telling police he was harassed in August for being a witness, he ultimately acknowledged that he told authorities he was shot in January 2009 as a result of this case.

¶ 18 The State presented several witnesses to prove up Taylor's prior inconsistent statements. Detective Kohl testified that around 3 p.m. on August 4, for about 45 minutes, he spoke with Taylor who had come voluntarily to the police station to discuss the events on July 29. Detective Lopez was also present. Taylor said he saw his cousin, defendant, run westbound through a gangway and with an officer matching the description of Officer Giese chase after defendant. Taylor also said that prior to this occurrence he saw defendant returning from the van limping and that defendant had an object in his pants. During Detective Kohl's three conversations with Taylor on August 4, Taylor was never handcuffed, and they did not threaten or coerce Taylor's statement.

¶ 19 ASA Kanter verified that she memorialized Taylor's statement in writing later that evening. She read the statement to him, they signed each page and initialed any corrections. She identified the handwritten statement she took from Taylor. Prior to taking the statement, she and ASA Vonah spoke alone with Taylor in the juvenile office. He stated authorities treated him okay and no one had threatened him, forced his statement or promised him anything in exchange. No one told Taylor at any time that they found his prints on the gun and that's why he needed to give the statement. He never said he asked the police to go home, but they wouldn't let him.

¶ 20 Detective Kohl testified that he later met with Taylor on August 15, about two weeks after Taylor gave his written statement, and Taylor told him he had been harassed for his involvement as a witness in the case.

¶ 21 Following the above-stated prove-up testimony, the State presented Detective Nieman as a witness. Detective Nieman testified that he and Detective Mokos transported defendant to the police station on August 4, then interviewed him after advising him of his *Miranda* warnings. Detective Nieman told defendant that he was a suspect in an open investigation, and defendant responded that he had been out of town the last two weeks with his girlfriend and that his uncle could confirm this. Detective Nieman called defendant's uncle, spoke with him, then placed defendant in lockup for booking and processing. Detective Nieman spoke again with defendant in the early morning hours on August 5 and stated that eyewitnesses had given statements placing defendant at the scene with the shotgun, but defendant maintained he was out of town. Defendant asked whether police had found the gun and, when Detective Nieman responded, yes, defendant asked whether his prints were on the gun. Detective Nieman said he did not know and that the gun was in the lab for analysis. Detective Nieman then asked defendant for "his side of the event," but defendant stated, "I can't say" and continued to maintain he was out of town. The interview then ended at defendant's request.

¶ 22 Following this evidence, the State rested. Defendant called Detective Van Dyk, who testified that he met with a number of individuals, including Posey, who were at the scene and he prepared reports relating to their conversations. The defense then introduced the stipulated testimony of Posey that he was at the scene and arguing when officers arrived, and "five subjects took off running," one of whom was defendant, while those remaining lay on the ground at the officer's command. Shortly thereafter, Posey heard two gunshots. And, finally, the defense introduced the stipulated testimony of his private investigator who said he spoke to Taylor in December 2008 and Taylor told him that he did not see the police chase defendant.

¶ 23 After evidence and argument, the trial court found defendant guilty of the charged offense. In so ruling, the court observed that the key witnesses to the State's case were Tate and Taylor. The court observed that if the trial testimony of each was true, the police officers would have committed perjury. He observed that "if they were going to frame the defendant," the police simply could have identified defendant rather than rest their case on "two guys like" Tate and Taylor. The court noted that Tate was obviously lying when he testified that police actually showed him the shotgun, which was actually in an evidence box ready to be shipped to the crime lab. The court stated Tate actually saw defendant with the gun and Taylor mentioned defendant limping because it was unusual and Taylor thought defendant was secreting a gun. The court found ASA Kanter's testimony and that of the police officers credible that there was no coercive environment and no undue pressure placed on Tate and Taylor to provide their statements. The court found the officers' testimony corroborated details from the witnesses' statements that it was defendant who bent forward and then ran through the gangway with police in hot pursuit. The court determined that defendant provided a false alibi. The court therefore found the prior inconsistent statements of Tate and Taylor more believable than their trial testimony. Based on the evidence, the court concluded that defendant intended to kill Officer Giese from a distance of

20 to 25 feet to avoid being discovered with a sawed-off shotgun and to "make good on his escape." The court thus found defendant guilty beyond a reasonable doubt of the attempted murder of Officer Giese, as well as the lesser charges of aggravated discharge of a weapon, aggravated unlawful use of a weapon, and aggravated assault of a peace officer.

¶ 24 Defendant filed a motion for a new trial, which was denied. The court sentenced defendant to a total of 35 years' imprisonment for attempted murder and for aggravated unlawful use of a weapon, and the remaining charges merged. This appeal followed.

¶ 25 ANALYSIS

¶ 26 Defendant first contends he was not proven guilty beyond a reasonable doubt because the prior inconsistent statements of Tate and Taylor constituted the "sole" evidence against him and these statements were substantially impeached. Defendant complains that Taylor was admittedly drunk at the time of the shooting, Tate was on juvenile parole when he gave his statement, both had run-ins with the law and were admitted liars. Defendant argues this, combined with the lack of corroborative physical evidence, should be enough to overturn his conviction. Defendant raises no issue about the admissibility of the witnesses' prior inconsistent statements.

¶ 27 The standard of review when assessing the sufficiency of the evidence is, considering all the evidence in the light most favorable to the State, whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). It is for the trier of fact to weigh the credibility of the witnesses, the reasonable inferences drawn from the evidence, as well as the prior inconsistent statements, and any disavowal, to determine which is to be believed. *People v. Sims*, 374 Ill. App. 3d 231, 249 (2007); *People v. Arcos*, 282 Ill. App. 3d 870, 875 (1996). A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *Siguenza-Brito*, 235 Ill. 2d at 225.

¶ 28 In this case, the trial court considered the prior inconsistent statements of Tate and Taylor made shortly after the shooting, as well as their disavowals of those statements at trial, and the testimony of the officers. The court, for well-articulated reasons, found the prior inconsistent statements more believable that defendant possessed a gun at the time an argument ensued between the rival groups of teenagers, that police appeared suddenly, breaking up the argument, and that it was defendant who then ran westward through the gangway with a uniformed officer in close pursuit. According to Tate's prior inconsistent statement, defendant was wearing a white t-shirt and a do-rag and also had been wielding a short chrome shotgun with a wood cock-back and black tape on the handle. Immediately before defendant ran, Tate saw him "crouch down" while grabbing this gun. These details corroborated the testimony of Officer Giese, who similarly saw the offender, clad in a white t-shirt and do-rag, "crouch" over at the waist with his arms there, too, immediately before running westward through the gangway and shooting at him. Afterwards, Officer Giese discovered in the immediate vicinity a sawed-off shotgun consistent with the description provided by Tate. Detective Hart's testimony also was corroborative. Viewing the evidence in a light most favorable to the State, we conclude this evidence was not so improbable or unsatisfactory as to create a reasonable doubt that it was defendant who shot at Officer Giese, then fled the scene. See *People v. Zizzo*, 301 Ill. App. 3d 481, 489-90 (1998).

¶ 29 We thus reject defendant's claim that this case is similar to *People v. Brown*, 303 Ill. App. 3d 949 (1999), *Arcos*, 282 Ill. App. 3d 870, and *People v. Parker*, 234 Ill. App. 3d 273 (1992). In each of those cases, the prior inconsistent statements suffered from serious weaknesses that are simply not present here. See *People v. Thomas*, 354 Ill. App. 3d 868, 878 (2004) (noting that in *Parker*, the prior statements were severely undermined; in *Arcos*, the trier of fact reached two logically incompatible conclusions, that the witness was disreputable, but that his prior statement was adequate proof of guilt beyond a reasonable doubt; and in *Brown*, the statement implicating

defendant was made two years after the crime). As set forth immediately above, Tate and Taylor's statements made shortly after the shooting were consistent with the testimony of the responding police officers and the physical evidence, and they were even somewhat internally consistent with each other. This consistency existed despite Taylor's apparent intoxicated state and Tate's parole status, of which Detective Van Dyk and ASA Kanter testified they were unaware when securing his statement. The trial judge, who was fully aware of the witnesses' imperfections, expressly determined that the statements were reliable and there was no foul play involved in obtaining them. The State, moreover, provided ample explanation for the recantations by presenting evidence that Taylor was shot for his involvement in the case and, as the trial court noted, both witnesses were reluctant to testify at trial. Based on the foregoing, defendant's claim that the evidence was insufficient must fail.

¶ 30 Defendant next contends the State failed to prove that he had the requisite intent to commit attempted murder. Defendant argues the evidence demonstrates that even if he fired the gun, he did so accidentally. He points to Taylor's prior inconsistent statement that, according to defendant, the gun "just went off," and also notes that it was night-time and unclear where Officer Giese was when shots fired.

¶ 31 The very fact of firing a gun at a person supports the conclusion that the person doing so acted with an intent to kill. *People v. Mitchell*, 209 Ill. App. 3d 562, 569 (1991); *People v. Mimms*, 40 Ill. App. 3d 942, 945 (1976).

¶ 32 In this case, the court found the testimony of Officer Giese credible that defendant stood 20 to 25 feet away from him, and Officer Giese saw defendant aim the muzzle of the gun "right at" Officer Giese when he fired. Officer Giese saw the muzzle flash twice and heard the two shots. The State presented photographic exhibits of the geographic area, and Officer Giese identified where he was in relation to defendant when shots were fired, as well as the strike

marks on the front porch of 1823 Hovland. Defendant has not included those exhibits in the record on appeal, so to the extent there's any doubt arising from the subjects' location and resulting strike marks, we resolve them in favor of the State. See *People v. Lopez*, 229 Ill. 2d 322, 344 (2008). While defendant reportedly stated to Taylor that the shooting was an accident, the trial court was free to disregard such an assertion in light of Officer Giese's competent testimony of his direct encounter with defendant, the evidence that defendant shot not once, but twice, and the resulting physical evidence. See *Mitchell*, 209 Ill. App. 3d at 570. Defendant's claim fails.

¶ 33 CONCLUSION

¶ 34 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 35 Affirmed.