2012 IL App (1st) 101371-U

FIRST DIVISION
June 18, 2012

No. 1-10-1371

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. 07 CR 20654
	)	
LARRY COOPER,	)	Honorable Thomas
	)	Joseph Hennelly,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

HELD: Defendant's convictions were affirmed where his pre-trial identification was not suggestive; he was not prejudiced by defense counsel's failure to object to hearsay testimony; he was properly precluded from questioning the victim about the victim's drug use on the day of the offense; and, he was not prejudiced by the prosecutor's remarks in closing argument.

¶ 1 Following a jury trial, defendant Larry Cooper was found guilty of attempt first

degree murder (720 ILCS 5/8-4(a) (West 2006) (720 ILCS 5/9-1(a)(1) (West 2006)) and aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) West 2006)) and was sentenced to a prison term of 31 years. On appeal, defendant contends: (1) the trial court erred in denying his motion to suppress the photo array and lineup identification; (2) trial counsel was ineffective for failing to object to inadmissible hearsay; (3) his sixth amendment right to confrontation was violated; (4) the prosecutor's remarks in closing argument were improper; (5) the mittimus should be corrected to reflect the correct number of pre-sentence days defendant was in custody; and, (6) the mittimus should be corrected to reflect the correct offenses for which defendant was convicted. For the following reasons, we affirm the judgment of the trial court. However, we direct the trial court to correct the mittimus as stated herein.

¶ 2 Background

¶ 3 The victim, Benjamin Clark was shot while sitting in his truck near the 4900 block of West Erie Street in Chicago on September 20, 2007. At trial, Clark testified that at about 7 a.m. that day, he picked up Shandra Grier at her home in Elmwood Park. Clark and Grier were "kind of sort of dating." However, defendant was the father of Grier's two-year old daughter. Clark had known defendant for a few years at that time. Clark and Grier drove around for several hours in Clark's truck. At about 10 a.m., they drove to Grier's home in Elmwood Park. They drove past defendant who was by the back of the house near the garage. Defendant looked in their direction as they drove past him. Clark and Grier then drove to the 4900 block of West Erie, where Grier went inside her

friend's home. While Clark sat in his truck waiting for Grier, he saw defendant approach the truck and pull out a gun. Clark tried to start the truck and drive away but defendant started shooting at him. He remembers hearing about three or four gunshots. Clark ducked down and the shooting stopped. Clark looked up and saw defendant running from the truck. Clark noticed he had been shot and was able to drive away. As he drove past defendant, defendant shot at him again. Clark drove himself to the hospital where he was treated for a gunshot wound to his left side. The bullet, which had lodged under his heart caused his lung to collapse, and doctors ultimately did not remove the bullet in order to prevent further damage.

¶ 4 The following witnesses testified at trial as to the events on the day of the shooting. Eyewitness Donald Rideaux testified that at about 11 a.m., he was outside his home on the 4900 block of West Erie washing his car. He heard loud voices coming from down the street and then heard several gunshots. He turned around and saw defendant running down the street. A white truck came down the street and defendant stopped, pulled out a gun, and shot at the truck twice as the truck passed. Rideaux saw defendant from a distance of about 25 feet "at the most" and "got a good look at him." He described defendant to police officers as having a medium build, in his late teens or early twenties, having a short haircut and, wearing black pants and a light t-shirt. Later that day, Rideaux identified defendant from a photo array as the individual who shot at the truck. The next day, Rideaux identified defendant in a lineup. Rideaux stated that he looked at both the photo array and lineup for about five to six

minutes before identifying defendant. On cross-examination, Rideaux stated that he did not see defendant running with any kind of a limp. Rideaux further stated that he told officers defendant wore an earring in defendant's left ear.

¶ 5 Lee Curtis testified that she lived at 4911 West Erie in Chicago with her daughter and grandchildren. Defendant's brother, Michael Cooper, was the father of five of her grandchildren. At around 11 a.m. Grier came to Curtis' home. Shortly thereafter, Curtis heard gunshots outside. She looked out the window and saw a white truck and a person running across the street who appeared to have a gun in his hand. She saw the man with the gun get into another car, which then left the scene. Curtis stated that she did not recognize defendant as the man with the gun and never told police officers he was. She stated that when she was being interviewed by police officers the officers received a call naming defendant as the shooter. Curtis then told officers that the man with the gun could have been defendant. On cross-examination, Curtis stated that on the day of the shooting, she had been experiencing drug withdrawal symptoms, had blurred vision and was seeing spots. She also stated that she was not wearing her glasses when she looked out the window and did not get a good look at the shooter.

¶ 6 Assistant State's Attorney Jason Kopec testified that the day after the shooting he interviewed Curtis at her home. Curtis told him that when she heard gunshots and looked out her window, she saw defendant standing across the street with a gun.

¶ 7 Seneca Wilder, Grier's brother, testified that at around 9:30 or 10:30 that morning, defendant and defendant's daughter came over to his home at 5042 West

Jackson Boulevard. Defendant was upset about how Grier had been treating him and told Seneca that Grier had been "messing around" with other men. At about 2:45 p.m., police officers came and arrested defendant.

¶ 8 J.W. Wilder, also Grier's brother, testified that he lived in the same home with Grier in Elmwood Park. J.W. stated that he had been watching Grier and defendant's daughter until defendant picked her up that day. J.W. had a job interview at 1 p.m. and needed to leave home by 11 a.m. He spoke with defendant on the telephone and asked defendant to come before 11 a.m. However, defendant was late and arrived at about 11 a.m. J.W. denied telling an investigator for the State's Attorney's office that he thought defendant arrived before 10 a.m. because his interview was at 11 a.m.

¶ 9 Kimberly Woodfork testified that she saw defendant with his daughter at the bus stop at Division Street and Laramie Avenue at around 11 a.m. She denied telling an investigator for the State's Attorney's office that she did not remember what time she saw defendant.

¶ 10 Defendant's mother, Mattie Cooper, testified that defendant lived with her at her apartment located at 4858 West Potomac Avenue in Chicago. She stated that at about 8 or 9 a.m., defendant was home and his daughter was already with him. She left home between 10:30 and 11 a.m. and defendant left with his daughter at the same time. She saw them walk down the street towards the bus stop. She further stated that defendant walked with a limp due to a car accident he was in as a child.

¶ 11 Defendant testified that he took a cab to J.W. and Grier's home in Elmwood Park

and arrived there about 9 a.m. to pick up his daughter. Defendant returned home at about 10 a.m. Defendant then left about 10:40 a.m. with his daughter and arrived at Seneca's home at about 11 or 11:10 a.m. Police officers later arrested defendant at Seneca's home. Defendant denied any involvement in the shooting.

¶ 12 In rebuttal, an investigator for the State's Attorney's office, Ann Chambers, testified that she spoke with J.W. in December 2009, and J.W. told her that defendant came over to pick up his daughter before 10 a.m. because J.W. had an interview at 11 a.m. Chambers further stated that she spoke with Woodfork in January 2010 and Woodfork did not remember what time she saw defendant and never stated that she saw him at the bus stop.

¶ 13 Detective Mancuso also testified in rebuttal that he first interviewed defendant on the day of the shooting and a second time the day after the shooting. During both interviews, defendant told Detective Mancuso that he left home between 11 a.m. and 11:30 a.m. and arrived at Seneca's home around noon.

¶ 14 The parties stipulated that defendant had two prior convictions for possession of a controlled substance. The jury subsequently found defendant guilty of attempt first degree murder and aggravated battery with a firearm. The jury also found that during the commission of the attempted murder defendant personally discharged a firearm that caused great bodily harm to Clark. Defendant now appeals.

¶ 15 Analysis

¶ 16 Pre-trial Identification

¶ 17 Defendant first contends on appeal that the motion to suppress his pre-trial identification should have been granted because the photo array and lineup were impermissibly suggestive.

¶ 18 A trial court's factual determinations in ruling on a motion to suppress will be disturbed only if they are against the manifest weight of the evidence. *People v. Sorenson*, 196 Ill. 2d 425, 430-31 (2001). However, the trial court's ultimate determination on a motion to suppress is reviewed *de novo*. *Sorenson*, 196 Ill. 2d at 431.

¶ 19 We use a two-part analysis to determine whether a pre-trial identification was "impermissibly suggestive." The defendant must first prove that the pre-trial identification was unnecessarily suggestive. *People v. Lacy*, 407 Ill. App. 3d 442, 459 (2011). If the defendant meets this burden, the burden then shifts to the State to prove that the identification is independently reliable. *Lacy*, 407 Ill. App. 3d at 459.

¶ 20 Defendant filed a motion to suppress the pre-trial identification of defendant in the photo array and lineup, which the trial court denied. Defendant contends that the motion to suppress should have been granted because both the photo array and lineup were suggestive. Defendant argues that the photo array was suggestive because defendant was the only one wearing a black shirt while the men in the other photos were all wearing white shirts. Defendant also argues that the photo array was suggestive because he was the only one wearing an earring. Defendant additionally argues that the lineup was suggestive because he was the only common participant

between the photo array and the lineup, he was the only one wearing a jacket, and, there were age, weight, height and complexion differences between the lineup participants.

¶ 21 Regarding the photo array, the trial court commented that while it would have been better to have all participants wearing the same color shirt, defendant's different colored shirt was not in and of itself improperly suggestive. Defendant did not argue in the motion to suppress or before the trial court that the photo array was suggestive because he was the only one wearing an earring, therefore, the trial court did not consider the motion on that basis.

¶ 22 Regarding the lineup, the trial court noted that since the lineup occurred in mid-September, the fact that defendant was the only one wearing a jacket did not necessarily indicate that defendant had been recently arrested and was not suggestive of anything. The court also commented that some of the participants in the lineup varied in their age, weight, height and complexion differences, but there were enough similarities between the participants that the differences did not rise to the level of being suggestive.

¶ 23 Here, we do not find that the photo array and lineup were suggestive. The photos in the photo array were all in black and white and had the same background. All the individuals in the photos had short, closely shaved hair and facial hair around their mouths. They appear to all be close in age and have similar complexions. The fact that defendant is wearing an earring, which is rather small, and wearing a black shirt,

does not rise to the level of being suggestive. These two differences are very minor and do not serve to single out defendant.

¶ 24 Regarding the five participants in the lineup, one of them appears to be older than the others and one appears to weigh significantly more and have a lighter complexion than the others. Of the three remaining individuals, including defendant, they appear to be close in age, weight, height and complexion. Also, the fact that defendant is the only one of the five participants wearing a jacket does not single him out. Of the four other participants, three are wearing short sleeve shirts and one is wearing a long sleeve shirt. Four are wearing long pants or jeans and one is wearing shorts. The lineup occurred in mid-September, and there was no testimony whether that day was warm or cool. Defendant's jacket, which appears to be a lighter-weight jacket, does not necessarily suggest he was just recently arrested. Some of the participants are dressed more warmly than others, and the fact that defendant is wearing a jacket while the others are not, is not so out of place as to make the lineup suggestive.

¶ 25 Even if the pre-trial identification could be deemed suggestive, it will be admissible if the identification was independently reliable. To determine whether the identification was independently reliable we consider the following factors from *Neil v. Biggers*, 409 U.S. 188 (1972), which include: (1) the opportunity the witness had to view the offender at the time of the crime; (2) the degree of attention given by the witness; (3) the accuracy of the witness' prior description of the offender; (4) the level of certainty

the witness demonstrated when identifying the perpetrator in person; and (5) the amount of time that lapsed between the crime and the in-person identification. *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989).

¶ 26 Applying the *Biggers* factors to this case, we find that Rideaux's identification was reliable and thus sufficient to support defendant's conviction. First, Rideaux testified that he viewed defendant from a distance of about 25 feet "at the most," with nothing obstructing his view. He stated that when he heard loud shouting and gunshots he turned around and saw defendant running down the street. He then observed defendant stop running and shoot at the truck as it drove by. Rideaux stated that he "got a good look at him," when defendant stopped running to shoot at the truck. Second, Rideaux gave his full attention to observing defendant run down the street and shoot at the truck. Third, Rideaux described defendant to police officers as having a medium build, in his late teens or early twenties, having a short haircut, wearing black pants and a light t-shirt. Fourth, Rideaux stated that he looked at both the photo array and lineup for about five to six minutes before identifying defendant. Fifth, Rideaux identified defendant in the photo array the same day as the shooting and identified defendant in the lineup the day after the shooting. There was no testimony that Rideaux was unsure of his identification of defendant at any point in time. We find Rideaux's identification of defendant independently reliable. Therefore, the pre-trial identification of defendant was properly admitted.

¶ 27 Ineffective Assistance of Counsel

¶ 28 Next, defendant contends that trial counsel was ineffective for failing to object to inadmissible hearsay. A defendant claiming ineffective assistance of counsel must establish that counsel's performance was deficient in that it fell below an objective standard of reasonableness and that but for defense counsel's deficient performance, there is a reasonable probability that the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984); *People v. Albanese*, 104 Ill. 2d 504, 525 (1984). The failure to satisfy either prong of this test precludes a finding of ineffective assistance of counsel. *Strickland*, 466 U.S. at 697.

¶ 29 Defendant argues that trial counsel's performance fell below a reasonable level of representation where counsel failed to object to hearsay introduced during Officer Zadura's testimony. Officer Vita Zadura testified that she spoke with Clark at the hospital and Clark described the person who shot him. Officer Zadura stated that Clark told her that:

> "his last name was Cooper, his first name that he went by [was] La-La, that he lives in the area of Potomac and Lemond, that he is a male black about 22 years old, about 5'6", about 150 pounds, that he had brown eyes, black hair, that he was dark complected, and he also told me he had waves in his hair and that he believed that he had a short leg making him walk with a limp."

¶ 30 Defendant maintains that Officer Zadura's testimony was inadmissible hearsay that would have been excluded had trial counsel objected to the testimony. Hearsay

evidence is an out-of-court statement offered to prove the truth of the matter asserted, and is generally inadmissible unless it falls within an exception. *People v. Lawler*, 142 Ill. 2d 548, 557 (1991). Law enforcement officials are permitted to testify regarding their investigation of a crime, but may not testify as to the substance of a conversation they may have had regarding their investigation. *People v. Johnson*, 116 Ill. 2d 13, 24 (1987).

¶ 31 Here, Officer Zadura's testimony included the substance of her conversation with Clark, not merely the steps she took in investigating the crime. The substance of Clark's statement was not necessary to explain the police investigation. It served to bolster Clark's testimony identifying defendant as the shooter. Officer Zadura's testimony regarding the substance of the statement was inadmissible hearsay. The State maintains however, that the testimony was admissible pursuant to section 115-12 of the Code of Criminal Procedure (Code) (725 ILCS 5/115-12 (West 2010)). Section 115-12 of the Code provides:

> "A statement is not rendered inadmissible by the hearsay rule if (a) the declarant testifies at the trial or hearing, and (b) the declarant is subject to cross-examination concerning the statement, and (c) the statement is one of identification of a person made after perceiving him." 725 ILCS 5/115-12 (West 2010).

¶ 32 It is questionable whether this exception applies however, because Clark's statement to Officer Zadura was never brought out during his testimony. Clark did not

give any testimony regarding what he told police officers. He merely testified that police officers came to the hospital after he was shot to talk to him. Clark was asked on cross-examination what the shooter was wearing, whether the shooter was wearing anything on his head and what kind of shoes the shooter was wearing. However, Clark was not subject to cross-examination concerning the statement Officer Zadura attributed to him because there was no testimony regarding what Clark told police officers.

¶ 33 Nevertheless, even if Officer Zadura's testimony about Clark's statement was inadmissible hearsay, defendant did not suffer prejudice from its admission because defendant was identified as the shooter by both Clark and Rideaux. Clark testified that defendant shot him and Rideaux identified defendant in the photo array, lineup and at trial as the man who shot at Clark. There is not a reasonable probability that the result of the proceeding would have been different had trial counsel objected to the testimony and had the trial court excluded it. Trial counsel was not ineffective for failing to object.

¶ 34 Defendant argues in the alternative that the trial court abused its discretion in admitting Officer Zadura's hearsay testimony of Clark's statement. The admission of evidence is within the trial court's discretion and will not be reversed absent an abuse of that discretion. *People v. Gibson*, 205 Ill. App. 3d 361,369 (1990). Defendant acknowledges that the error was not preserved for review, but urges this court to consider it under the plain error rule. Plain error applies when (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the

closeness of the evidence. *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). We do not find the evidence to be closely balanced. Defendant was positively identified as the shooter by Clark and eyewitness Rideaux and defendant's alibi witnesses testified inconsistently to defendant's whereabouts on the day of the shooting. We also do not find any possible error to be serious. As stated above, defendant was positively identified by both Clark and Rideaux. Officer Zadura's testimony that Clark identified defendant by name was merely cumulative to Clark and Rideaux's testimony at trial. We do not find any plain error.

¶ 35 Right to Confrontation

¶ 36 Next, defendant contends that the trial court violated his sixth amendment right to confrontation. Defense counsel sought to cross-examine Clark regarding his drug use on the day of the offense. Defense counsel argued outside the presence of the jury that Clark's medical records indicated that Clark smoked 25 to 30 blunts (marijuana cigars) a week and that Clark had smoked a blunt the day before the shooting. Defense counsel argued that Clark's drug use was relevant to Clark's ability to identify the shooter. The trial court precluded defense counsel from questioning Clark about his drug use because there was no evidence that Clark had used drugs on the day of the shooting.

¶ 37 The sixth amendment's confrontation clause provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right * * * to be confronted with the witnesses against him." U.S. Const., amend. VI. A criminal defendant's constitutional right to

confrontation includes the right to cross-examine. *People v. Blue*, 205 Ill. 2d 1, 12 (2001). The scope of cross-examination is limited to the subject of direct examination and any permissible matter that affects the witness's credibility. *People v. Kliner*, 185 Ill. 2d 81, 130 (1998). The trial court may limit the scope of cross-examination and unless the defendant can show that his inquiry is not based on a remote or uncertain theory, a court's ruling limiting the scope of examination will be affirmed. *People v. Phillips*, 186 Ill. App. 3d 668, 678 (1989). In order to preserve an issue concerning the trial court's exclusion of impeaching evidence at trial, the defendant must set forth an offer of proof at trial to establish on the record, for the purpose of review, that the evidence he sought to admit was positive and direct on the issue of bias or motive to testify falsely. *People v. Wright*, 234 Ill. App. 3d 880, 894 (1992). The scope of cross-examination with respect to an appropriate subject of inquiry is within the sound discretion of the trial court. *Blue*, 205 Ill. 2d at 13-14.

¶ 38 Here, as the trial court found, there was no evidence that Clark had used drugs on the day of the shooting. Defense counsel was unable to offer any evidence that Clark had used drugs that day. Counsel could only support defendant's theory of Clark's drug use through his medical records that indicated he smoked 25 to 30 blunts a week and had smoked a blunt the day before the shooting. Counsel's theory that Clark had used drugs on the day of the shooting was purely speculative. The trial court did not abuse its discretion in precluding defense counsel from cross-examining Clark regarding his drug use.

¶ 39 Closing Argument

¶ 40 Next, defendant contends that the prosecutor's remarks in closing argument were improper. Defendant argues that the prosecutor misstated evidence, urged jurors to disregard the law and suggested that a witness was afraid of defendant.

¶ 41 Generally, a prosecutor is given wide latitude in closing arguments. *People v. Page*, 156 Ill. 2d 258, 276 (1993). This includes commenting on the evidence and drawing any legitimate inferences from the facts in evidence, even if they are unfavorable to the defendant. *People v. Simms*, 192 Ill. 2d 348, 396 (2000). Prosecutorial misconduct warrants reversal only if it caused substantial prejudice to the defendant, taking into account the content and context of the comments, its relationship to the evidence, and its effect on the defendant's right to a fair and impartial trial. *Simms*, 192 Ill. 2d at 396. The trial court may cure any errors by giving the jury proper instructions on the law to be applied, informing the jury that arguments are not evidence or, sustaining the defendant's objections and instructing the jury to disregard the inappropriate remark. *Simms*, 192 Ill. 2d at 396. The trial court's determination of the propriety of the remarks will not be overturned absent an abuse of discretion. *People v. Wiley*, 165 Ill. 2d 259, 294-95 (1995).

¶ 42 Defendant first argues that the prosecutor misstated the testimony of Seneca Wilder during rebuttal argument. The prosecutor stated that Seneca testified that defendant was at his home between 8:30 and 9:30 a.m., whereas Seneca's testimony was that defendant came to his home between 9:30 and 10 a.m.

¶ 43 Defendant also argues that the prosecutor urged jurors to disregard the law when the prosecutor told the jury not to consider that Clark was a convicted felon, but to consider Clark as a victim. Defendant maintains that even though the trial court sustained defense counsel's objection to the prosecutor's comment, it failed to cure the error.

¶ 44 Defendant further argues that the prosecutor groundlessly implied that Donald Rideaux feared defendant. The prosecutor commented that Rideaux did not want to testify at trial and did not want anyone to know where he lived. Defendant maintains that the prosecutor's remarks constituted a "baseless attack" on defendant's credibility.

¶ 45 Here, none of the above-complained of remarks caused substantial prejudice to defendant. First, although the prosecutor did misstate Seneca Wilder's testimony, when viewed in the context of the entire trial, none of the defense witnesses testified consistently as to defendant's whereabouts the morning of the shooting. The misstatement did not serve to bolster or discredit defendant's case. Second, regarding the prosecutor's comment to consider Clark a victim rather than a convicted felon, the trial court's actions of sustaining defense counsel's objection cured any impropriety in the remark. The trial court advised the jurors several times during closing argument that closing arguments were not evidence and they should rely on their own memories as to the evidence at trial. Third, regarding the prosecutor's comment about Rideaux's apparent reluctance to testify, defendant failed to include the issue in his posttrial motion as error. Reviewing this alleged error pursuant to the plain error doctrine, we

find neither that the evidence was closely balanced nor that the prosecutor's comment was a serious error. As stated above, defendant was identified by both Clark and Rideaux as the shooter. Any possible error in the prosecutor's comment was not so serious as to deprive defendant of a fair trial.

¶ 46 Mittimus Corrections

¶ 47 Defendant next contends that he is entitled to 971 days of pre-sentence custody rather than 955 days as the mittimus reflects. The State agrees. Defendant was taken into custody on September 20, 2007, and he remained in custody until he was sentenced on April 30, 2010. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we direct the trial court to correct the mittimus to reflect that defendant was entitled to 971 days of pre-sentence custody.

¶ 48 Lastly, defendant contends that the mittimus should also be corrected to reflect that defendant was found guilty of only one count of attempt murder, to show that the aggravated battery conviction should merge with the attempt murder, and to reflect the proper statutory cite and Class of the attempt murder conviction. The State agrees.

¶ 49 The jury found defendant guilty of one count of attempt murder and one count of aggravated battery with a firearm. The jury further found that during the commission of the offense of attempt murder, defendant personally discharged a firearm that proximately caused great bodily harm to Clark. The trial court sentenced defendant to a term of 6 years for attempt murder and an additional mandatory 25-years for personally discharging a firearm during the commission of the attempt murder that

caused great bodily harm to Clark. The sentences were to run consecutively for a total term of 31 years. The trial court did not sentence defendant on the aggravated battery with a firearm count.

¶ 50 Pursuant to Rule 615(b)(1) we direct the trial court to correct the mittimus to reflect that defendant was convicted of one count of attempt murder (720 ILCS 5/8-4(a) (West 2006) (720 ILCS 5/9-1(a)(1) (West 2006)), which is a Class X offense, and was sentenced to a six-year term of imprisonment for that offense. The mittimus should also reflect that defendant's aggravated battery with a firearm conviction should merge with defendant's attempt murder conviction. The mittimus did correctly reflect the 25-year mandatory add-on penalty for personally discharging a firearm that proximately caused great bodily harm during the commission of the attempt murder.

¶ 51 Conclusion

¶ 52 Accordingly, we affirm defendant’s convictions for attempt murder and aggravated battery with a firearm, but direct the trial court to correct the mittimus as stated herein.

¶ 53 Affirmed; mittimus corrected.