

No. 1-10-1373

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 21476
	)	
CARLOS MURILLO,	)	Honorable
	)	Carol Howard,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's conviction for attempted first degree murder based on the theory of accountability is affirmed where the evidence sufficiently established that the codefendant gunman possessed the specific intent to kill when he fired multiple gunshots at the victim, striking him twice.

¶ 2 Following a bench trial, defendant Carlos Murillo was convicted of attempted first degree murder and aggravated battery with a firearm based on the theory of accountability, and was sentenced to 21 years' imprisonment. On appeal, defendant solely contends that his attempted murder conviction must be reversed and his case remanded to the trial court for sentencing on his conviction for aggravated battery with a firearm because the State failed to prove beyond a

reasonable doubt that the codefendant gunman, Alex Casarez, possessed the specific intent to kill when he shot the victim, Rodolfo Sosa. We affirm.

¶ 3 Defendant and codefendants Casarez and Gonzalo Garduno were indicted together on charges of attempted first degree murder, aggravated battery with a firearm and aggravated unlawful use of a weapon. Casarez pleaded guilty to the attempted murder offense and was sentenced to 21 years' imprisonment. Defendant and Garduno were subsequently tried in simultaneous, but separate, bench trials.

¶ 4 At trial, Rodolfo Sosa testified that about 10:50 p.m. on September 23, 2007, he had left his friend's house and was walking alone on the sidewalk on Kedvale Avenue near 31<sup>st</sup> Street when he noticed a white SUV with temporary Illinois license plates double-parked on the street with its headlights turned off. As he got closer to the vehicle, Sosa saw three or four people inside, and someone inside looked at him. He then heard a gunshot come from the front passenger's window of the SUV and felt a bullet hit him near his abdomen, just below his chest. Sosa fell to the ground and rolled along the length of a parked car. As he did so, he heard the SUV advancing and heard three more gunshots coming from the passenger's window of the SUV. A second bullet grazed the left side of Sosa's abdomen, and he then rolled to the rear of the parked car. The SUV drove away slowly, and Sosa ran back to his friend's house and told him he had been shot. Sosa was taken by ambulance to Mt. Sinai Hospital where he underwent surgery to have the bullet removed.

¶ 5 Ariana Madrigal testified that on the evening of September 23, 2007, she picked up her boyfriend, defendant, at 24<sup>th</sup> Street and St. Louis Avenue in her white two-door Ford Explorer SUV, which had a bumper bar in the front and temporary license plates. Defendant drove the SUV and Madrigal rode in the passenger's seat. Defendant stopped at a liquor store and bought a bottle of vodka which he drank while driving. He then picked up codefendants Casarez and

Garduno, and greeted them with the Latin King gang sign. Casarez, also known as Mousey, sat behind Madrigal on the passenger's side, and Garduno sat behind defendant. As they drove around the neighborhood, the men drank and smoked marijuana. They discussed another Latin King who had been murdered, and defendant said that the situation was "fucked up."

¶ 6 Shortly thereafter, defendant stopped the SUV on a residential street. Madrigal heard Garduno say that he "wanted to do it," and defendant replied "no. This is all you, Mousey." Defendant then said "get him." Madrigal heard a loud gunshot blast next to her head and crouched down inside the SUV. She felt Casarez reaching his arm towards her open window and heard him fire two more gunshots. After defendant drove away, the men were laughing, and either Casarez or Garduno said "we got them." Defendant drove to his house in Cicero and Garduno handed defendant an object wrapped inside a blue rag. The men exited the SUV and walked towards defendant's garage. A few minutes later, they returned to the SUV and defendant drove back to the area of 24<sup>th</sup> Street where he dropped off Casarez. A short time later, defendant picked up another man whom Madrigal did not know. As they continued driving, Madrigal asked defendant "why did he do it." Defendant became angry and told her not to worry about it. He then began driving erratically, and the police stopped the SUV.

¶ 7 Brenda Guerrero testified that she was on her front porch on 31<sup>st</sup> Street talking with her brother when she saw a white two-door Ford Explorer with a black ramming bar, temporary license plates and no headlights come to a complete stop on the street. Guerrero then heard four gunshots and saw a flash of light come from the passenger side of the SUV. There was a slight pause after the first gunshot, but the remaining shots were fired in rapid succession. Guerrero heard Sosa repeatedly say that he had been shot. He grabbed his abdomen and fell to the ground. The SUV drove away at a normal speed, and Guerrero saw four occupants inside the vehicle.

Guerrero called police and later gave them a description of the SUV. About an hour later, the police took her to 26<sup>th</sup> Street where she identified the SUV.

¶ 8 The State called codefendant Casarez to testify, noting for the court that he had already pled guilty to the attempted murder charge and was not given any type of a deal in exchange for his plea. During the State's examination, Casarez was declared an adverse witness. Casarez testified that he did not remember if he was in a car with defendant and Garduno the night before he was arrested and did not recall what happened that night. He acknowledged that after he was arrested, he gave a written statement to assistant State's Attorney (ASA) Michael O'Malley recounting what occurred when he was in the vehicle with defendant and Garduno. Casarez testified that the detectives forced him to say what was in his statement. He conceded, however, that when he pled guilty, he agreed that the facts in his statement regarding the shooting of Sosa were correct. Casarez confirmed that the facts he agreed to at his guilty plea hearing described how he had reached his hand out the window and "fired at the person."

¶ 9 Casarez further testified that he told ASA O'Malley the truth because he thought O'Malley was his attorney. However, when questioned about specific facts, Casarez repeatedly said that he could not remember what happened and denied telling those facts to the ASA. Casarez acknowledged that the Two-Sixers are a rival gang to the Latin Kings and that the Two-Sixer territory included the area of 31<sup>st</sup> Street and Kedvale Avenue. He also said that the Two-Sixer colors are black and beige.

¶ 10 Assistant State's Attorney Michael O'Malley testified that prior to interviewing Casarez at the police station, he told Casarez that he was not his lawyer and advised him of his *Miranda* rights. Casarez then made an inculpatory statement which he elected to have memorialized in writing. ASA O'Malley read Casarez's statement into evidence. Therein, Casarez stated that while they were riding in the SUV, defendant showed him and Garduno a gun, which he placed

in the center of the car. When they reached 31<sup>st</sup> Street, Garduno picked up the gun and said he had seen two members of the rival Two-Sixer gang in a park and wanted to get out of the SUV. Defendant continued driving. When they saw a group of people on the street, defendant said "[g]ive it to Mousy. They're right there." Garduno then handed Casarez the gun and told him "[a]im at them." Casarez stated that he held the gun out the passenger side window and aimed towards a car because he did not want to hit anyone. He fired multiple gunshots and saw a man fall to the ground near the car at which he had been aiming. Casarez stated that one member of the group near the car was wearing the Two-Sixer gang colors of black and beige, and that is why "they were chosen to be shot at" by defendant and Garduno.

¶ 11 Chicago police sergeant Jose Garcia testified that he was present when defendant was advised of his *Miranda* rights by ASA Jon Neuleib and agreed to give a written statement. Sergeant Garcia read defendant's statement into evidence. Therein, defendant stated that while driving around in the SUV with codefendants and Madrigal, he removed a gun from his pocket and placed it at the base of his seat. He told everyone in the SUV to watch out for rival gang members because they were driving in Two-Sixer territory and he was concerned that someone might shoot at the SUV. Defendant heard gunshots, then saw Casarez leaning over Madrigal with his arm extended out the window of the SUV. He saw Casarez fire the last two gunshots.

¶ 12 The parties stipulated that if recalled, Sosa would testify that he left his friend's house with a group of three or four people. About 15 to 30 seconds before he was shot, Sosa walked southbound, while the rest of the group headed northbound. The parties further stipulated that Chicago police evidence technician Paul Ward recovered five fired shell casings from the street where Sosa was shot. In addition, the parties stipulated that firearms expert Aimee Stevens would testify that all five of the shell casings were fired from the gun recovered by police from defendant's garage, and the bullet recovered from Sosa's body was also fired from that same gun.

¶ 13 The trial court took a week to review all the evidence in the case before issuing its ruling. The court stated that it reviewed the trial transcript, defendant's statement, the other exhibits admitted into evidence, and case law submitted by the parties. Based on its close scrutiny of the evidence and the law, the court found defendant and codefendant Garduno guilty of attempted first degree murder, aggravated battery with a firearm and unlawful use of a weapon (Uuw).

¶ 14 At a hearing on defendant's motion for a new trial, defense counsel argued that the State failed to show that defendant had the intent to kill Sosa. Counsel asked the court to vacate its finding of guilt for the attempted first degree murder charge and to consider the charge of aggravated battery with a firearm. The State argued that the case law showed that in drive-by shootings, where a defendant fires multiple gunshots at a person walking down the street, there is sufficient evidence to show that he intended to commit murder. The State further argued that the evidence showed that this was a case of the Latin Kings trying to kill someone they believed was a rival gang member. The State noted that Sosa was struck by two of the five bullets, and that the codefendants were laughing following the shooting. The State also argued that defendant was the leader in this case, he was six years older than his codefendants, he owned the gun, and he told Garduno to give the gun to Casarez saying "they're right there." The State conceded that codefendant Garduno was less involved than defendant, but still accountable. The trial court denied defendant's motion for a new trial, but granted Garduno's motion in part, vacating the guilty finding for the attempted murder charge and sustaining the guilty finding for the aggravated battery with a firearm charge. The court merged defendant's aggravated battery and Uuw charges into the attempted murder charge and sentenced him to 6 years' imprisonment, plus a 15-year enhancement for being armed with a firearm during the offense, for an aggregate sentence of 21 years' imprisonment.

¶ 15 On appeal, defendant solely contends that his attempted murder conviction must be reversed and his case remanded to the trial court for sentencing on his conviction for aggravated battery with a firearm because the State failed to prove beyond a reasonable doubt that either defendant or codefendant Casarez possessed the specific intent to kill when Casarez shot Sosa. Defendant argues that Casarez's statement shows that he aimed and fired the gun at a parked car because he did not want to shoot anyone, and he just happened to hit Sosa. He further claims that the State provided only circumstantial evidence of their intent to kill, relying on Casarez's act of firing multiple gunshots out the car window, and that this evidence alone is insufficient to prove beyond a reasonable doubt that they intended to kill Sosa. Defendant also notes that the trial court vacated Garduno's attempted murder conviction and contends that either they both had the intent to kill through Casarez, or neither of them did.

¶ 16 The State argues that the evidence did show that defendant intended to kill Sosa, noting that he brought a loaded handgun with him, drove into enemy territory, told Garduno to give the gun to Casarez, then told Casarez to "get him." The State also points out that Casarez fired multiple shots at Sosa, watched him fall, then continued shooting at him as they drove away. In addition, the State argues that it was proper for the trial court to vacate Garduno's attempted murder conviction and not defendant's because the evidence showed that defendant's participation in the shooting was greater than Garduno's.

¶ 17 When defendant argues that the evidence is insufficient to support his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). A criminal conviction will not be reversed based on insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *Id.* at 281. This standard of review applies

whether the evidence is direct or circumstantial, and circumstantial evidence that meets this standard is sufficient to sustain a criminal conviction. *Id.* The trier of fact is responsible for determining the credibility of the witnesses, weighing the testimony, resolving conflicts in the evidence and drawing reasonable inferences therefrom. *Id.* at 280-81. This court is prohibited from substituting its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *Id.*

¶ 18 To prove a defendant guilty of attempted murder, the State must show that he performed an act that constituted a substantial step toward committing a murder, and that he had the criminal intent to kill the victim. *People v. Green*, 339 Ill. App. 3d 443, 451 (2003). Defendant's intent to kill can be established by evidence of the surrounding circumstances, including the use of a deadly weapon, the character of the assault, and any other facts from which an intent to kill may be inferred. *Id.* The intent to kill may be inferred where the State demonstrates that the defendant willingly and voluntarily committed an act, the natural tendency of which is to destroy another person's life. *Id.* Generally, the act of firing a gun, with nothing more, is not sufficient to prove an intent to kill. *People v. Ephraim*, 323 Ill. App. 3d 1097, 1110 (2001). However, an intent to kill may be proven where the surrounding circumstances show that the defendant "fir[ed] a gun at or towards another person with either malice or a total disregard for human life." *Id.* This court has previously found that "[t]he very fact of firing a gun at a person supports the conclusion that the person doing so acted with an intent to kill." *Id.* It is the duty of the trier of fact to determine if the requisite intent to kill existed, and such determination will not be disturbed on appeal unless there is a reasonable doubt as to defendant's guilt. *Green*, 339 Ill. App. 3d at 451.

¶ 19 Here, we find that the evidence was sufficient for the trial court to infer from the surrounding circumstances that defendant and Casarez possessed the intent to kill Sosa. The



evidence established that defendant showed codefendants a loaded gun and placed it in the center of the SUV. Shortly after the men discussed the murder of one of their fellow Latin Kings, defendant stopped the SUV, with its headlights turned off, on a residential street in an area they knew was the territory of the rival Two-Sixer street gang. Madrigal testified that defendant then stopped Garduno from wanting "to do it," and told Casarez "[t]his is all you, Mousey" and "get him." Her testimony was corroborated by Casarez's statement in which he said that when they saw a group of people on the street, defendant told Garduno to give the gun to Casarez, and Garduno told Casarez to "aim at them." Casarez further stated that one of the people in the group was wearing the Two-Sixer gang colors, and that is why "they were chosen to be shot at." It is undisputed that Casarez then fired five gunshots out the passenger window of the SUV, striking Sosa twice. Sosa's testimony showed that after he was shot in the abdomen by the first bullet and fell to the ground, Casarez continued firing more gunshots at him, with a second shot grazing his left side. Madrigal further testified that following the shooting, defendant and codefendants were laughing, and one of them said "we got them." In addition, although Casarez denied the facts in his written statement when he testified, he did confirm that the facts he agreed to at his guilty plea hearing described how he had reached his hand out the window and "fired at the person."

¶ 20 We acknowledge that Casarez claimed in his statement that he aimed towards a car because he did not want to hit anyone. Sitting as the trier of fact, it was the trial court's duty to weigh this evidence and resolve the conflicts therein. The most significant evidence disputing Casarez's claim is that after Sosa was hit by the first gunshot and fell to the ground, Casarez continued firing more gunshots, striking Sosa again. In light of these surrounding circumstances, we find no error in the court's determination that Casarez intended to shoot at Sosa rather than the parked car.

¶ 21 Finally, we reject defendant's argument that his attempted murder conviction should be reversed because the trial court vacated codefendant Garduno's attempted murder conviction. The record shows that at the hearing on defendant and Garduno's motions for new trials, the State conceded that Garduno was less involved in the offense than defendant. The State specifically noted that defendant was the leader in this case, he was six years older than codefendants, he owned the gun, and he told Garduno to give the gun to Casarez saying "they're right there." Madrigal had testified that defendant then told Casarez to "get him." Based on this evidence and the surrounding circumstances noted above, it was proper for the trial court to infer that defendant personally had the specific intent to kill Sosa. Accordingly, we find no error in the trial court's determination that defendant and codefendant were guilty of different offenses.

¶ 22 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.