2014 IL App (1st) 122279-U

SIXTH DIVISION
June 27, 2014

No. 1-12-2279

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 11905
	)	
ANTWAN TURNER,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

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

ORDER

¶ 1 Held: We affirm defendant's conviction of aggravated battery with a firearm over his contentions that the evidence was insufficient to convict him, and that the trial court committed prejudicial error where it barred the introduction of the victim's purported juvenile delinquency adjudication.

¶ 2 Following a bench trial, defendant Antwan Turner was convicted of aggravated battery with a firearm and sentenced to 10 years' imprisonment. On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt where his alibi witness testified more credibly

than the victim, and the State's only corroborative testimony by the victim's Father was unbelievable where it was contradicted by a police officer. Additionally, defendant contends that the trial court committed prejudicial error and violated his constitutional right of cross-examination by barring the introduction of the victim's juvenile delinquency adjudication. We affirm.

¶ 3 At trial, Jelani Faulk, who was 14 years old at the time of the incident, testified that he lived at 6049 South Artesian Avenue in Chicago. At about 2:30 p.m. on May 17, 2011, Faulk was sitting outside an apartment complex at 6030 South Artesian Avenue smoking a cigarette when defendant, who he knew from the neighborhood, ran up to him, placed a gun to his chest, and shot him. Faulk ran away and defendant shot at him three more times before Faulk reached 59th Street and Artesian Avenue. Faulk indicated that he was shot "three times with one graze wound." The following colloquy occurred between assistant state's attorney (ASA) Emily Leuin and Faulk regarding the location of his injuries:

> "Q. You said he shot you the first time; is that correct?
> A. Yes.
> Q. Where was it that he shot you?
> A. I have a graze wound –
> Q. If you could show us where on your body you were shot.
> A. One, two, three; the exit hole is right here.
> MS. LEUIN: If the record will reflect the witness has pointed to his left arm on the top of his arm in the elbow area to three particular circles.
> THE COURT: Record will so reflect.
> Q. Anywhere else other than the three circles?
> A. A graze wound right here.
> MS. LEUIN: May the record reflect the witness is pointing to the area on the left side below his nipple area about a couple of inches.
> THE COURT: Record will so reflect."

Following the shooting, a woman picked up Faulk in her car and drove him to a nearby restaurant where he called an ambulance. He was treated for his injuries at the hospital and subsequently told police what happened.

¶ 4 On cross-examination, Faulk testified that although defendant aimed the gun at his chest, he believed the first shot struck his arm. The following colloquy occurred between defense counsel David Dunne and Faulk:

> "Q. Is it your testimony as you are running away that you got hit in the chest?
> A. What I am saying is I got shot in the arm, and I took off running, and, while I am running, he shot maybe three more times, so he fired the gun four times.
> Q. Mr. Faulk, you said – as you are running away, is that when you are saying today you got hit in the chest?
> A. It is hard to know when someone is shooting at you where you got hit first."

¶ 5 Defense counsel then asked Faulk on cross-examination if he had ever been found delinquent before. Faulk responded positively, but ASA Leuin objected to the question. In sustaining the objection, the court concluded that, "I think there is a Supreme Court case that says this is not permissible." Defense counsel asked no further questions and Faulk's testimony concluded.

¶ 6 Thaddeus Keys, Faulk's father, testified that on June 22, 2011, he went to the courthouse at 51st Street and Wentworth Avenue with Faulk. Faulk entered the bathroom inside of the courthouse and defendant followed him. Keys then entered the bathroom to ensure Faulk's safety. While the three were in the bathroom, Keys indicated that defendant stated, "I wouldn't have never shot [Faulk] if he had never came [*sic*] at me." Keys told Detective Murphy what defendant had stated in the bathroom.

¶ 7 Following Keys' testimony, the parties stipulated that evidence technician David Scarriot recovered one expended shell casing at the scene of the crime. The parties also stipulated that Moria McEldowney, a forensic scientist, would testify that she tested the inventoried cartridge case and found no latent impressions suitable for comparison on it.

¶ 8 The parties further stipulated to the testimony of Chicago Police Detective Roger

Murphy, who would testify that he had a conversation with Keys on June 22, 2011. According to Murphy, Keys told him that defendant asked Faulk why he was pressing charges against him and said, "I thought we were cool." Murphy then stated that Keys asked defendant not to speak to Faulk, and defendant became angry with Keys.

¶ 9 Talitha Brown, defendant's girlfriend in May 2011, testified for the defense that she owned a home daycare at 6200 South Campbell Avenue in Chicago and had two employees. Defendant, who lived with Brown, helped her with her business by providing transportation and assistance with miscellaneous duties around the daycare. In particular, defendant would ride with her as she picked up and dropped off the children that went to the daycare. On May 17, 2011, the day before Brown's birthday, defendant was with her at the daycare. During the afternoon hours, Brown had to transport some children and defendant assisted her. They first transported a child to 67th Street and Wentworth Avenue at approximately 2:30 p.m. Brown and defendant then went to defendant's grandmother's house at 5711 South Seeley Avenue because they had free time before they needed to drop off the next child. Defendant went inside his grandmother's house for about 10 minutes while Brown stayed in the car with the child. When defendant returned, they dropped off the last child at 108th Street and South Edbrooke Avenue at about 3:30 p.m. They returned to 6200 South Campbell Avenue to wait for the other children to get picked up. The last child was picked up at 5:45 p.m., and then Brown and defendant proceeded to make plans for her birthday. Except for the 10 minutes that defendant was at his grandmother's house, he was never out of Brown's sight.

¶ 10 Brown also testified that she was with defendant at the courthouse at 51st and Wentworth Avenue on June 22, 2011. She saw defendant enter the bathroom, followed by Keys and Faulk. Brown then saw defendant exit the bathroom first. She never entered the bathroom and was

unable to hear anything inside of it.

¶ 11 Following closing arguments, the trial court found defendant guilty of aggravated battery with a firearm. In doing so, the court noted that Faulk's testimony was credible and that he unequivocally identified defendant as the shooter. The fact that the first wound might have been a graze wound or Faulk may have turned and the shot went through his arm was irrelevant. The court also found the testimony of Brown incredible. In discussing the bathroom incident, the court found that, even if it did not consider the alleged admission by defendant as testified to by Keys, it could "draw an inference" from defendant's statement "I thought we were cool."

¶ 12 In a posttrial motion for a new trial, defense counsel argued, in pertinent part, that the circuit court erred by denying counsel an opportunity to cross-examine Faulk about his juvenile background. The court denied the motion and sentenced defendant to 10 years' imprisonment.

¶ 13 On appeal, defendant contests the sufficiency of the evidence, arguing that Brown's alibi testimony was more credible than Faulk's testimony, and Key's corroborating testimony that defendant admitted to the shooting was unbelievable and contradicted by Detective Murphy.

¶ 14 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. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). 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). Reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 15 A person commits aggravated battery with a firearm by knowingly or intentionally discharging a firearm, causing injury to another person while committing a battery. 720 ILCS 5/12-4.2(a)(1) (West 2010), now codified as 720 ILCS 5/12-3.05(e)(1) (West 2012).

¶ 16 Viewing the evidence in the light most favorable to the State, as we must, the evidence in this case sufficiently established that defendant shot Faulk four times at about 2:30 p.m. on May 17, 2011, outside an apartment complex at 6030 South Artesian Avenue. Faulk specifically testified that as he was sitting on the steps of an apartment building smoking a cigarette, defendant, who he knew from the neighborhood, ran up to him, placed a gun to his chest, and shot him. As Faulk ran away, defendant proceeded to shoot him three more times.

¶ 17 Defendant nevertheless contends that the testimony of Faulk and Keys was not credible, particularly in comparison to Brown's unimpeached testimony. He initially maintains that Faulk's description of how the shooting occurred defied logic. Specifically, defendant points to Faulk's testimony that defendant ran around the corner at 60th and Artesian and immediately ran up to where Faulk was sitting, placed a gun to his chest, and pulled the trigger. Defendant argues that Faulk's testimony implied that defendant knew Faulk be at that location before defendant turned the corner. However, according to Faulk's testimony, he had been sitting in front of an apartment complex that he did not live at for about five minutes where he just happened to stop to smoke a cigarette. Defendant also points out that Faulk's testimony was inconsistent regarding where he was first shot, there was a lack of physical evidence and motive for the shooting, and the trial court improperly inferred defendant made an incriminating statement when, according to Detective Murphy, Keys told him that defendant told Faulk "I thought we were cool." Defendant finally insists that the fact that the record indicates he was initially

charged with a misdemeanor, *i.e.*, battery, for the shooting shows that police and prosecutors had "significant reservations" about Faulk's account of the offense.

¶ 18 Despite defendant's contentions to the contrary, Faulk's inconsistent testimony regarding where he sustained his first wound was minor, particularly where the trial court explicitly found his testimony regarding that point irrelevant. See *People v. James*, 348 Ill. App. 3d 498, 505 (2004) (minor inconsistencies in testimony, by themselves, do not create a reasonable doubt). Moreover, the lack of physical evidence, as well as the lack of motive for the shooting, was unnecessary to corroborate an eyewitness account. See *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23 ("[b]ecause the trial court found [the witness'] identification and testimony to be credible, the lack of physical evidence had no bearing on [the defendant's] conviction"); see also *People v. Agnew-Downs*, 404 Ill. App. 3d 218, 228 (2010) (motive is not an essential element of the crime).

¶ 19 Significantly, all of the evidence of which defendant is now trying to refute was analyzed by the trial court. *People v. Baugh*, 358 Ill. App. 3d 718, 737 (2005). It specifically found Faulk's testimony credible and that he unequivocally identified defendant as the shooter. In turn, the court also noted that Brown, defendant's girlfriend, was an incredible witness. See *People v. Johnson*, 2013 IL App (1st) 111317, ¶ 63 (the "trier of fact is not required to accept alibi testimony over positive identification of an accused, particularly where the alibi testimony is provided by [a] biased witness"). In contesting these findings, defendant is requesting this court to reweigh the evidence at trial, which we decline to do. See *People v. Sutherland*, 155 Ill. 2d 1, 17 (1992) (an appellate challenge to the sufficiency of the evidence does not allow the reviewing court to "substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses"); *Siguenza-Brito*, 235 Ill. 2d at 228 (the credible

testimony of a single witness is sufficient to convict even though the defendant contradicts it).

¶ 20 In so finding, we note that defendant's extensive attack of Keys' testimony was misplaced where the court openly found Keys biased in his son's favor, and that he likely embellished or fabricated defendant's alleged admission of guilt. Keys' testimony thus did not contribute to defendant's conviction. Furthermore, defendant's argument that prosecutors initially charged him with a misdemeanor because they had reservations about Faulk's version of the events is pure speculation. See *People v. Guerrero*, 356 Ill. App. 3d 22, 28-29 (2005) (reviewing courts cannot speculate as to facts that do not appear in the record).

¶ 21 Alternatively, defendant contends that we should reverse his conviction and remand for a new trial based on the court's error in barring the introduction of Faulk's purported juvenile delinquent adjudication for impeachment purposes without conducting the balancing analysis mandated by *People v. Montgomery*, 47 Ill. 2d 510 (1971). Defendant specifically contends that he was prejudiced by this error because the State's case rested entirely upon Faulk's credibility.

¶ 22 The rule adopted by our supreme court in *Montgomery*, 47 Ill. 2d at 516, provides that evidence of a witness' prior conviction is admissible to attack his credibility where: (1) the prior crime was punishable by death or imprisonment in excess of one year, or involved dishonesty or false statement regardless of the punishment; (2) less than 10 years has elapsed since the date of conviction of the prior crime or release of the witness from confinement, whichever is later; and (3) the probative value of admitting the prior conviction outweighs the danger of unfair prejudice. This last factor involves a balancing test where the trial court determines the probative value of the convictions, and weighs that against the danger of unfair prejudice. *People v. Atkinson*, 186 Ill. 2d 450, 456 (1999). Both Illinois Supreme Court precedent and Illinois Rule of Evidence 609, which codified the judicial balancing test, allow for impeachment

of a witness with his prior juvenile adjudication, particularly where the witness is a person other than the defendant. See *People v. Villa*, 2011 IL 110777, ¶¶ 26, 32; *Montgomery*, 47 Ill. 2d at 517; Ill. R. Evid. 609(d) (eff. Jan. 1, 2011); see also 705 ILCS 405/5-150(1)(c) (West 2010) (allowing for juvenile adjudications to be used as impeachment evidence). However, such admission is not automatic or mandatory but, rather, is contingent on satisfying the balancing test.

¶ 23 Here, both parties agree and the record establishes that the trial court considered the juvenile adjudication barred as a matter of law stating, "I think there is a Supreme Court case that says this is not permissible." As the State correctly points out, no such supreme court case exists, and thus the trial court excluded Faulk's purported juvenile adjudication for the wrong reason. Regardless of this error, however, we review the ruling and may affirm for any basis in the record. See *People v. Gomez*, 2011 IL App (1st) 092185, ¶ 55.

¶ 24 Defendant correctly concedes that there is not enough information in the record to determine whether the prior alleged adjudications would ultimately have been admissible evidence. The silence in the record arises because defendant did not make an offer of proof regarding Faulk's juvenile adjudication.

¶ 25 "When a trial court refuses to admit evidence, a formal offer of proof is needed to preserve an appealable issue." *People v. Bowman*, 2012 IL App (1st) 102010, ¶ 34, citing *People v. Peeples*, 155 Ill. 2d 422, 457 (1993). "The two primary functions of an offer of proof are to disclose to the trial judge and opposing counsel the nature of the offered evidence, enabling them to take appropriate action, and to provide the reviewing court with a record to determine whether exclusion of the evidence was erroneous and harmful." *People v. Thompkins*, 181 Ill. 2d 1, 10 (1998); see also *People v. Andrews*, 146 Ill. 2d 413, 421 (1992). The offer of

proof must be considerably detailed and specific where it is unclear what a witness would say. *Peeples*, 155 Ill. 2d at 457-58. By making a detailed offer of proof, a reviewing court can thereby know what was excluded and determine if the exclusion was proper. *Id*. Here, defendant failed to make such an offer of proof, and we thus cannot determine whether Faulk's purported juvenile adjudication was admissible under *Montgomery* and Rule 609(d).

¶ 26 Defendant, citing *People v. Kellas*, 72 Ill. App. 3d 445 (1979), responds that an offer of proof is not required for testimony that might have come out on cross-examination. Defendant specifically argues that he was prejudiced where defense counsel had a right to cross-examine Faulk on his prior juvenile adjudications, but his cross-examination was proscribed because of the court's mistaken belief of the law.

¶ 27 In *Kellas*, the defense attorney started to ask a witness if he had a criminal charge pending at the time of trial. *Id*. at 448. The State objected, and the court sustained the objection. *Id*. at 448. On appeal, the State argued that the appellate court could not consider the issue of the judge's ruling because defense counsel did not make an offer of proof of the testimony that would have been given. *Id*. This court rejected the State's argument, but not for the broad reason proffered by defendant, *i.e.*, that an offer of proof is not required when a witness is being cross-examined and the cross-examination is erroneously proscribed. Rather, we stated that "the admissibility of this type of impeachment is not dependent on whether the examining counsel can prove beforehand that any promises of leniency or special favors had in fact been made to the witness." *Id*. at 453. Thus, it appears that, in *Kellas*, a criminal charge was in fact pending, or its existence was at least not questioned, but the trial court would not allow cross-examination thereon unless it was also shown that promises of leniency had been made with regard to that pending charge. *Id.* at 453-54. We noted that because defense counsel may not know in advance

whether promises had been made, no offer of proof as to that fact was necessary. *Id*. Here, unlike in *Kellas*, we do not know if Faulk even had a previous juvenile adjudication, and the case at bar does not involve any alleged promise of leniency. See *People v. Winfield*, 113 Ill. App. 3d 818, 830-31 (1983) (distinguishing *Kellas* on similar grounds).

¶ 28 We likewise find *People v. Newborn*, 379 Ill. App. 3d 240 (2008), relied on by defendant, distinguishable from the case at bar. In *Newborn*, we reversed the defendant's conviction where he was prejudiced by the trial court's erroneous finding that a witness' two juvenile felony adjudications were inadmissible as a matter of law. *Id*. at 248-49. However, unlike the case at bar, the record in *Newborn* clearly showed that the witness was in fact adjudicated delinquent twice in 2002. *Id*. at 242. Here, because defense counsel failed to make an offer of proof, we cannot say if Faulk was previously adjudicated delinquent.

¶ 29 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 30 Affirmed.