2017 IL App (1st) 143575-U

No. 1-14-3575

Order filed September 20, 2017

Third Division



IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County, |
| | ) | |
| v. | ) | No. 13 CR 13268 |
| | ) | |
| DEANDRE FIELDS, | ) | Honorable |
| | ) | Vincent M. Gaughan, |
| Defendant-Appellant. | ) | Judge Presiding. |

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Cobbs and Justice Howse concurred in the judgment.

**ORDER**

¶ 1 *Held*: Evidence sufficient to convict defendant of attempted first degree murder and aggravated assault on an accountability basis. Prison sentence of 22 years for attempted murder by firearm not excessive.

¶ 2 Following a 2014 bench trial, defendant Deandre Fields was convicted of attempted first degree murder and aggravated assault and sentenced to concurrent prison terms of 22 and 3 years. On appeal, he contends that the evidence was insufficient to convict him on an accountability basis, and that his 22-year sentence was excessive. We affirm.

¶ 3 Defendant and codefendants Denzel Bonner, Antonio Bryant, Dajuan Gates, and Tyshawn Reese were charged with attempted first degree murder for, on or about April 28, 2013, shooting Nicklaus Dorsey about the body while armed with a firearm and with the intent to kill. The charges alleged that Bryant and Reese each personally discharged a firearm that caused great bodily harm to Dorsey. Defendant, Bonner, Bryant, and Reese were also charged with aggravated assault for, on the same day, placing Ronald Coleman in reasonable apprehension of a battery by pointing a firearm at him when they knew him to be a peace officer engaged in the performance of his duties. Defendant's trial was severed from all codefendants.

¶ 4 At trial, Nicklaus Dorsey testified that, on the night of April 28, 2013, he was crossing the street from his home to his parked car when he noticed a maroon car stopped in the street. He saw someone exit the driver side of the maroon car but paid little attention and thus did not see the person's face. Dorsey then heard multiple gunshots and took cover behind his parked car, but was shot while taking cover. He believed the shots were coming from the direction of the maroon car but did not get a good look at the shooter before fleeing into his home. Once inside, he noticed his wound and called for an ambulance. His bullet wound to the buttocks required a colostomy, surgeries, and a week in the hospital. At trial, the bullet was still inside him and he still had stomach and buttock pain.

¶ 5 Officer Ronald Coleman testified that he was off-duty and not in uniform, but carrying his badge and gun and driving an unmarked police car, on the night in question. He was parking that car on the street when a maroon car with four occupants stopped abruptly nearby. Two men exited the maroon car, from the rear passenger side and rear driver side, and fired several gunshots. The passenger-side shooter had a revolver and the driver-side shooter had a semiautomatic pistol. Both men re-entered the maroon car and it drove away. Officer Coleman

reported the incident by telephone and followed the maroon car. As he was leaving, he heard Dorsey exclaim that he had been shot. When the maroon car stopped at an intersection where a state trooper was conducting an unrelated traffic stop, Officer Coleman exited his car and announced his office. The occupants of the maroon car turned in his direction, and the two men in the rear seat slumped down as if hiding from view. When Officer Coleman told the maroon car to stop, holding up his badge, codefendant Reese in the rear driver-side seat pointed a gun at him. (Officer Coleman testified that he recognized Reese as the shooter who had exited the rear driver side.) Officer Coleman fired ten shots at the maroon car, which drove away. The state trooper confirmed that Officer Coleman was an officer and then reported the incident by radio. While Officer Coleman described the shooters to other officers, he could make no identification or description of the driver or front-seat passenger.

¶ 6 The next day, Officer Coleman viewed two photographic arrays from which he identified codefendants Reese and Bryant as the shooters from the driver side and passenger side respectively. Several weeks later, he viewed a lineup from which he identified Reese. He had never seen Reese or Bryant before the shooting. A security video from a school on the street where Dorsey lived was shown at trial, as Officer Coleman testified that it was an accurate depiction of the shooting of Dorsey.

¶ 7 State Trooper Timothy Mayerbock testified that he was conducting a traffic stop on the night in question when he heard a man announce that he was a police officer and fire several shots into a dark red or maroon car with four occupants. When the maroon car fled, he saw that the man was a police officer, not in uniform but wearing his badge. Trooper Mayerbock reported the incident by radio and heard a few minutes later that the maroon car had been found a few blocks away. When he went to that location, he saw a maroon car with the rear window shot out,

a revolver in plain view, and blood trails leading from the car. Because Trooper Mayerbock was conducting a traffic stop at the time of the incident, the video system in his patrol car was recording. He testified that the video accurately depicted the incident, and it was shown at trial.

¶ 8 Police officer Maureen O'Hearn-Boyle testified that she and another officer responded to a report of a wounded man near the location of the maroon car. In a nearby alley, they found codefendant Bryant, wounded and bleeding from multiple gunshots. She called for an ambulance and then followed a trail of blood from Bryant back to the maroon car, which had a broken rear window and a revolver in plain sight inside the car.

¶ 9 Forensic investigator Paul Presnell testified that he examined and photographed the scene where Officer Coleman fired at the maroon car, finding ten .45-caliber Winchester cartridge cases and a turn signal from a car. He then examined and photographed the scene near Dorsey's home, finding nine .45-caliber "RP" cartridge cases and a spent bullet in a parked car. He then examined and photographed the maroon car, finding a .45-caliber Colt revolver on the rear floor, a hat next to it, and two cellphones on the rear seat. The maroon car had a missing turn signal that "probably" matched the one he recovered earlier. He swabbed the gun and noted that it contained five spent shell casings, and he also swabbed the cellphones. He had the maroon car taken to the police station to be examined. At the police station, he took Officer Coleman's .45-caliber semiautomatic pistol. Presnell inventoried the aforementioned evidence.

¶ 10 The parties stipulated that two spent .45-caliber bullets and a bullet fragment were found in the maroon car, and fabric swatches and fingerprints were taken from the car. The parties stipulated that the five cartridges found in the revolver were fired from it, the ten cartridges found near the maroon car were fired from Officer Coleman's pistol, the nine cartridges from the Dorsey shooting scene were fired from one gun that was neither the revolver nor Officer

Coleman's pistol, and the two spent bullets from the maroon car were not fired from the revolver while Officer Coleman's pistol could not be identified nor eliminated as the source. The parties stipulated that no useable fingerprints were found on the revolver, the five cartridges therein, or the nine cartridges from the Dorsey shooting scene, and that codefendant Bryant's fingerprint was found on the rear passenger door of the maroon car while defendant's fingerprint was found on the driver's vanity mirror. The parties stipulated that Bryant's DNA was found on both cellphones, and in blood on the swatches, from the maroon car.

¶ 11 Police detective Robert Garza testified that, in investigating this incident, he arrested codefendant Gates near the location of the maroon car and interviewed him, and later interviewed codefendant Bonner as he was in the hospital for a gunshot wound. Based on these interviews, Detective Garza was seeking defendant. He arrested defendant at his home on the day after the Dorsey shooting and brought him to the police station, where he interviewed defendant after informing him of his *Miranda* rights. Defendant said that he was driving codefendant Bonner, his cousin, in Bonner's car when they picked up codefendant Gates. Gates told defendant that he had just been shot at and wanted to retaliate against the person who shot at him. Defendant asked Bonner for permission because it was his car, and Bonner agreed. A short time later, two other men entered the maroon car and told defendant where to go. When they arrived there, those two men exited the car and defendant heard gunshots before they re-entered the car. Gates had earlier told defendant that "nobody was going to spray from the car." After someone shot at the maroon car, striking occupants of the car including codefendant Bryant, codefendants Reese and Bryant fled the car. Defendant gave a second interview several hours later to Detective Garza and an Assistant State's Attorney (ASA), after again being informed of his *Miranda* rights. His second account was substantially identical to his first.

¶ 12 On cross-examination, Detective Garza testified that defendant's account included Gates telling defendant that he was going to retaliate during the car ride he was seeking from defendant. However, Detective Garza's report did not say so. By defendant's account, Gates himself did not ride in the maroon car. Defendant's account did not state whether he was aware that (1) the man who shot at the maroon car was a police officer, or (2) any of the other occupants of the maroon car had guns, until two of them exited the car and gunshots were fired.

¶ 13 On redirect examination, Detective Garza testified that defendant was asked what he believed Gates meant by retaliation, and defendant said that they would "go back and shoot at the individuals who shot at Mr. Gates."

¶ 14 ASA Susanne Groebner testified to attending the second interview of defendant with Detective Garza, before which she gave defendant *Miranda* warnings. She interviewed defendant a few hours later with a different detective. During this interview, she gave defendant an opportunity, with nobody else in the room, to describe his treatment by the police and whether his statements had been induced by threats or promises. He told her that he was not forced or threatened to confess, and that he had been allowed to eat and use the washroom. He did not seem to be under the influence of alcohol or drugs. He then chose to have ASA Groebner write down his account as he recounted it again, and they did so. He read a portion of the statement, and then she read the rest to him, before he made corrections and signed each page and she countersigned each page.

¶ 15 The statement was then read into the record. On the night in question, defendant was driving his cousin Bonner in Bonner's red car when they met Gates. (Defendant identified a photograph of Gates.) Gates told defendant that he had been shot at earlier that day and wanted to "get down" with the people who had done so. Defendant explained that "get down" meant

retaliation and could entail fighting with or shooting at the people who had shot at Gates. Defendant asked Bonner for permission because it was his car, and Bonner agreed. Gates left but returned with a man defendant knew only as "2-5." (Defendant identified a photograph of "2-5.") Defendant was in the driver's seat of the maroon car, Bonner was in the front passenger seat, and "2-5" sat in the rear passenger-side seat. Gates left again, and a man defendant knew as Ty joined them, sitting in the rear driver-side seat. (Defendant identified a photograph of Ty.) When they drove away, "2-5" told defendant where to go and when to stop. When they stopped, "2-5" and Ty exited the car. Defendant heard gunshots nearby, then "2-5" and Ty re-entered the car and "2-5" told defendant to drive on. After he had driven about a block, a white car stopped near the maroon car. An occupant of the white car, wearing an orange or red shirt and holding a gun, exited and yelled something indistinct before firing several shots that broke the rear window of the maroon car. Defendant drove away, until Ty told him to stop and said that "2-5" had been shot. Ty and "2-5" left the car, and defendant drove on.

¶ 16 On cross-examination, ASA Groebner testified that defendant's earlier oral account included Gates's remark that shots would not be fired from the car, but she did not include it in the written statement because defendant did not include it as they prepared the written statement. On redirect examination, she testified that defendant's earlier account mentioned retaliation rather than a fight, and it was only in preparing the written statement that he referred to a fight.

¶ 17 Defendant's motion for a directed finding was denied.

¶ 18 Defendant testified that, on the night in question, he was with Bonner, driving Bonner's maroon car, when they were approached by Gates. Gates asked defendant for a short drive, but defendant hesitated as it was not his car. Gates then told defendant that "no one was going to spray out of the car" and said nothing about retaliation for an earlier shooting. Defendant asked

Bonner for permission to give Gates a ride, and Bonner agreed. However, Gates walked away. Ty and "2-5" then appeared and also asked for a ride. Defendant again asked for permission from Bonner, who gave it. Neither Ty nor "2-5" was visibly armed or said that they were about to commit a shooting. They told defendant where to drive to and when to stop, and then they exited the car. Defendant heard gunshots but did not see who was firing. Ty and "2-5" re-entered the car and told defendant to drive away, which he did. After a short time, a white car stopped near them, a man exited, and he yelled something before firing several gunshots. Defendant did not know that the man was a police officer. Because some of the shots struck their car, defendant drove away quickly. After some time, Ty and "2-5" left the car.

¶ 19 Defendant testified that he gave the inculpatory account to the police and ASA because Detective Garza told him that the ASA believed defendant was lying and that "if I wanted to go home," he "would tell her what she wanted to know." During his interrogations, he ate once but did not sleep, and he was tired and had a headache. He denied reading the written statement before signing it, and he denied telling the police or ASA that Gates mentioned "getting down" or explaining that term. On cross-examination, he acknowledged that the statement included correct biographical details about himself, and various corrections with his initials, but maintained that he did not read the statement before signing it and merely initialed where directed. He denied reading aloud the first page of the statement before signing.

¶ 20 In rebuttal, Detective Garza denied telling defendant that the ASA believed he was lying, that he could go home if he gave a statement, or otherwise making threats or promises to defendant. Except during interrogations, he spoke with defendant only to ask him if he wanted to eat, use the washroom, or the like.

¶ 21 Following arguments, the court found defendant guilty of attempted murder and aggravated assault. The court expressly found that he gave his statement voluntarily.

¶ 22 Defendant filed a posttrial motion, arguing (in relevant part) insufficiency of the trial evidence. Following arguments, the court denied the motion and proceeded to sentencing.

¶ 23 The presentencing investigation report (PSI) showed that defendant, born in October 1994, had no juvenile adjudications in Cook County nor any criminal convictions. He was living with his mother at the time of these offenses, and is "very close" to her. He had a "rough" childhood due to poverty but denied any abuse, neglect, or domestic violence in his childhood home. He was the only child of both his parents but has several half-siblings with whom he has a good relationship. He was attending the last year of high school when arrested for these offenses, had been repeatedly suspended but not expelled, and was involved in extracurricular activities such as sports and Junior ROTC. He worked as a summer intern in municipal and county offices from 2007 through 2011. He denied any gang membership or affiliation but admitted that about half of his friends had a gang affiliation. He described his health as "fair," with asthma and bronchitis treated with albuterol, and a heart condition for which he was not taking prescription medication. He never received a mental health evaluation but admitted having "explosive anger and excessive fears," and admitted to a suicide attempt with pills after his arrest for these offenses. He first drank alcohol at age 12 but gave it up in 2012 due to a liquor-poisoning incident. He admitted daily marijuana use since age 12 and infrequent use of "ecstacy" and "mollys."

¶ 24 At the sentencing hearing, the State noted that the minimum sentence for attempted murder while armed with a firearm is 21 years' imprisonment due to a 15-year firearm enhancement. While acknowledging that defendant had no criminal history, the State argued that

the instant offense – agreeing to drive people to retaliate for an earlier shooting, resulting in the wounding of Dorsey, and compounded by the incident with Officer Coleman – was "alarming."

¶ 25 The defense argued that defendant was only 20 years old at sentencing and 18 at the time of the offenses. The defense noted his absence of a criminal history and that his educational and employment history in the PSI showed a "trajectory of his life to being a success." Describing these offenses as a lapse in judgment anomalous to that trajectory, the defense presented several letters of recommendation, certificates, and diplomas. Defense counsel asked for the minimum 21-year sentence.

¶ 26 Defendant addressed the court. He admitted that he made a "bad decision" and apologized to Dorsey, and codefendants Bryant and Reese, for being shot due to his actions. He also apologized to his family. He maintained that "this is not the kid I am. I made a mistake. *** I will continue to learn from my mistakes to be a better person."

¶ 27 The court stated that it considered the statutory aggravating and mitigating factors, and non-statutory mitigating factors, in light of the trial evidence, PSI, and documents provided by the defense. The court noted the injury to Dorsey, including ongoing health effects, and that Officer Coleman could have been killed. Conversely, the court noted defendant's rehabilitative potential showing that he is "going to have a life ahead of you" and is "a bright young man [who] got caught up with this stuff." The court sentenced defendant to 22 years in prison for attempted murder and a concurrent three years for aggravated assault.

¶ 28 On appeal, defendant contends that the evidence was insufficient to convict him of attempted murder and aggravated battery on an accountability basis.

¶ 29 A person commits attempted first degree murder when he, with the intent to kill another, performs any act constituting a substantial step toward killing another. 720 ILCS 5/8-4(a), 9-

1(a)(1) (West 2014). A person commits aggravated assault when he "knowingly engages in conduct which places another in reasonable apprehension of receiving a battery" and knows that the person assaulted is a peace officer performing his official duties. 720 ILCS 5/12-1(a); 12-2(b)(4) (West 2014).

¶ 30 On a claim of insufficiency of the evidence, we must determine whether, taking the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Bradford*, 2016 IL 118674, ¶ 12. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and it is better equipped than this court to do so as it heard the evidence. *Id.*; *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. We do not retry the defendant; that is, we do not substitute our judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses. *Bradford*, ¶ 12. The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Jonathon C.B.*, ¶ 60. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt, nor to find a witness was not credible merely because the defendant says so. *Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Bradford*, ¶ 12.

¶ 31 A person is criminally accountable for the acts of another when "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission

of the offense." 720 ILCS 5/5-2(a) (West 2014). An express agreement is not necessary to establish a common purpose to commit a crime, and accountability may be established by a defendant's knowledge of and participation in the criminal scheme even without evidence of his direct participation in the criminal act itself. *People v. Hernandez*, 2017 IL App (2d) 150731, ¶ 22. A defendant may be found guilty on an accountability basis if the State establishes either that (1) the defendant and the principal shared the same criminal intent, or (2) there was a common criminal design. *Id.*; *People v. White*, 2016 IL App (2d) 140479, ¶ 21. Evidence that a defendant voluntarily attached himself to a group bent on illegal acts with knowledge of the group's design supports an inference that he shared the common purpose. *White*, ¶ 22. Evidence that a defendant was present at the scene, maintained a close affiliation with his companions after the crime, or failed to report the crime may be considered in determining his accountability. *Hernandez*, ¶ 23. A defendant's intent or knowledge are rarely susceptible to direct proof and may be established by defendant's actions and surrounding circumstances supporting an inference that he had the requisite intent or knowledge. *Hernandez*, ¶ 22; *White*, ¶ 37.

¶ 32 Here, taking the evidence in the light most favorable to the State as we must, we conclude that a reasonable trier of fact could find defendant guilty of attempted murder and aggravated assault on an accountability basis. A reasonable trier of fact could accept defendant's written statement and find that (1) codefendant Gates told defendant that he was shot at earlier in the day in question and wanted to retaliate against the person who shot at him, and (2) defendant agreed to help Gates in this effort by driving codefendants Bryant and Reese, demonstrating his realization that this was a serious request by seeking Bonner's permission to use his car. Defendant places great weight on Gates's assurance that "nobody was going to spray from the car." However, presuming *arguendo* that this remark was made, we are not required to accept

defendant's crabbed and self-serving interpretation of it, nor to elevate it to reasonable doubt. It is reasonable to infer from Gates's stated intention to retaliate against someone who shot at him that Gates intended to have Bryant and Reese shoot at that person. In that context, Gates's assurance is reasonably interpreted as merely a promise not to fire a gun from within the maroon car. This interpretation is borne out by the evidence that the shooters indeed did not fire from inside the car but exited the car and stood on the street to fire at Dorsey. We conclude that defendant's convictions, based on the evidence that he knowingly joined Gates's criminal design of retaliation for an earlier shooting, are not so unreasonable, improbable, or unsatisfactory that we have a reasonable doubt of his guilt.

¶ 33 Defendant also contends that his 22-year sentence is excessive in light of his minimal participation in the offenses, youth, and outstanding character as demonstrated by his lack of criminal history and his strong work ethic.

¶ 34 Attempted first degree murder is a Class X felony punishable by 6 to 30 years' imprisonment, to which 15 years must be added when the offense was committed while armed with a firearm. 720 ILCS 5/8-4(c)(1)(B); 730 ILCS 5/5-4.5-25(a) (West 2014). A sentence within statutory limits is reviewed for abuse of discretion, so that we may alter a sentence only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Snyder*, 2011 IL 111382, ¶ 36. The trial court has wide latitude in sentencing a defendant to any term within the applicable range, and this broad discretion means that we cannot substitute our judgment merely because we would weigh the sentencing factors differently. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 11, citing *People v. Alexander*, 239 Ill. 2d 205, 213 (2010).

¶ 35 In imposing a sentence, the trial court must consider both the seriousness of the offense and the defendant's rehabilitative potential. *Wilson*, ¶ 11. The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Snyder*, ¶ 36. It does not need to expressly outline its reasoning for sentencing, and we presume that it considered all mitigating factors on the record absent some affirmative indication to the contrary other than the sentence itself. *Wilson*, ¶ 11; *People v. Abrams*, 2015 IL App (1st) 133746, ¶¶ 32-33. Because the most important sentencing factor is the seriousness of the offense, the trial court is not required to give greater weight to mitigating factors than to the severity of the offense, nor does the presence of mitigating factors require a minimum sentence. *Alexander* at 214; *Wilson*, ¶ 11; *Abrams*, ¶ 34.

¶ 36 Here, the sentencing range defendant faced for attempted murder by firearm was 21 to 45 years' imprisonment, and the court imposed a 22-year sentence. The trial court was fully apprised of defendant's youth and the mitigating circumstances now argued, and indeed expressly acknowledged his youth and rehabilitative potential at sentencing. The court noted that defendant was "caught up" in the offenses, but also noted the gravity of the offenses, including that Dorsey was still suffering health effects from the shooting. We find no reason to conclude that the trial court abused its broad discretion to balance the seriousness of the offenses and defendant's rehabilitative potential when it imposed a sentence only one year above the applicable minimum sentence.

¶ 37 Accordingly, the judgment of the circuit court is affirmed.

¶ 38 Affirmed.