2018 IL App (1st) 150798-U

SIXTH DIVISION
FEBRUARY 23, 2018

No. 1-15-0798

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 06 CR 25139
	)	
JEMETRIC NICHOLSON,	)	Honorable
	)	Frank G. Zelezinski,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction, where the evidence was sufficient to support the jury's finding of great bodily harm, and the imposition of consecutive sentences, where the trial court's finding of severe bodily injury was not against the manifest weight of the evidence.

¶ 2 Following a jury trial, defendant Jemetric Nicholson was found guilty of two counts of attempted first-degree murder (720 ILCS 5/8-4(a), 9-1 (West 2006)) and sentenced to two consecutive terms of 55 years' imprisonment. Defendant's sentences included a 25-year minimum enhancement because he personally discharged a firearm which caused great bodily

harm to another person. 720 ILCS 5/8-4(c)(1)(D) (West 2006). The sentences were further ordered to be served consecutive to the sentences imposed in two other cases. On appeal, defendant argues the evidence was insufficient to sustain the jury's finding of great bodily harm, with respect to one of the victims, as required to impose a 25-year sentence enhancement. He further argues the trial court's finding of severe bodily injury with respect to one of the victims, as required to impose consecutive sentences, was against the manifest weight of the evidence. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 Defendant was charged with, *inter alia*, eight counts of attempted first-degree murder stemming from the September 26, 2006 shooting of Lonnie Cooksey and Eric Johnson in Harvey, Illinois. Relevant here, Count 2 of the indictment charged that defendant, during the commission of attempted first-degree murder, personally discharged a firearm that proximately caused great bodily harm or death to Johnson. As defendant only challenges the evidence supporting the jury's finding of great bodily harm to Johnson and the trial court's subsequent finding of severe bodily injury, we will limit our recitation of the facts presented to those necessary to resolve the appeal.

¶ 5 Lonnie Cooksey, also known as "Pen" or "Pin," testified that, on September 26, 2006, he was at a gas station at 159th and Wood Street with several friends, including Johnson, also known as "E.J." After Cooksey got gas and a car wash, he went near the building containing the car wash to urinate. While urinating, he heard "a few gunshots" and paused. Cooksey then felt a bullet hit him from behind. He ran to his car and drove away. Cooksey was shot in both of his

legs and went to a nearby hospital. Eventually, he had surgery on one of his legs at a different hospital.

¶ 6 Cooksey further testified that he tried to assist prosecutors in locating Johnson but was unable to find him. Cooksey testified that he was a member of "S.T.O.," which was a "rap group and a dance group." He denied knowing defendant and being in a fight with him.

¶ 7 George Guider testified that, on September 26, 2006, he picked up defendant, whom he identified in court, with the intention of driving him to Calumet City, Illinois. As they were driving, Guider decided to stop for alcohol at 159th and Dixie Highway. On the way, they passed a gas station, and defendant told Guider to stop. Guider stopped his car, and defendant ran to a gangway that was between a house and a nearby business.

¶ 8 About four to five minutes later, Guider heard about six gunshots and ducked. Defendant then ran back and got into the car. Guider noticed defendant had a gun that was "[p]robably a Mac or a Tech or something." Guider drove to a "safe house," where defendant stated that he had shot Cooksey while Cooksey was urinating.

¶ 9 Guider told defendant to give him the gun, which Guider put in the back of the garage at the "safe house." Guider dropped defendant at 152nd and Center Avenue, and went back to "work" selling drugs. Eventually, Guider returned to the "safe house" and brought the gun from the garage into the house. Defendant later arrived in a brown Cadillac and picked up the gun. Guider subsequently observed the brown Cadillac pulled over at the side of the road with its doors open and a police car parked behind it. Guider denied shooting Cooksey or Johnson, but stated that he pleaded guilty to his role in the shooting under an accountability theory. Guider

testified on cross-examination that "S.T.O." refers to "Shorties Taking Over," a street gang in Harvey.

¶ 10 The parties stipulated that Teresa Duzak, a nurse at Ingalls Memorial Hospital, would testify that she conducted triage for Johnson on September 26, 2006. She observed Johnson arrive at the triage area in a wheelchair and saw gunshot wounds to Johnson's left lower leg. He rated the pain as an "8" on a scale of "1 to 10." She also recovered a bullet from Cooksey.

¶ 11 The parties further stipulated that Dr. Walid Knadan would testify that an examination of Johnson revealed a linear laceration to the lateral, distal, portion of his left leg. The stipulation stated as follows:

> "[t]he bleeding was controlled and S.C. fat noted with a very wide wound, which appeared to have some avulsion of the F.C. fat and skin;
>
> That he informed Eric Johnson in great detail of gunshots and closing secondary closures and that he ordered x-rays;
>
> That at approximately 3 a.m. Eric Johnson refused to be x-rayed, even though it was explained to him that a foreign body might be in the leg that could cause serious infection or even loss of limb;
>
> That Eric Johnson's wound was cleansed and dressed with a 4 by 4 dressing. He was prescribed Ibuprofen and Augmentin and instructed to seek follow-up care and was discharged from Ingalls Memorial Hospital."

¶ 12 The parties stipulated that Officer Anthony Warrior would testify that, on September 26, 2006, he responded to Ingalls Memorial Hospital to investigate the shooting of Cooksey and Johnson. While at the hospital, nurse Duzak gave him a bullet she had recovered from Cooksey in the course of his treatment.

¶ 13 Illinois State Police Master Sergeant Matthew Gainer testified that he interviewed defendant on October 6, 2006, after defendant's arrest. Defendant was provided *Miranda* warnings, and was questioned about multiple offenses. This interview was recorded on video and displayed to the jury at trial.

¶ 14 In the video, with respect to the September 26, 2006 shooting at the gas station, defendant asked Sergeant Gainer if Cooksey was "okay." When Gainer mentioned the names of individuals who were with Cooksey at the gas station at the time of the shooting, defendant interjected, "E.J." Defendant further stated that he saw Cooksey and Johnson at the gas station. Defendant acknowledged that he had left the car, in which he was riding with Guider, and approached Cooksey, who was urinating.

¶ 15 Defendant admitted he fired five shots at Cooksey, hitting him in the leg. Defendant explained that "E.J." was standing behind Cooksey during the shooting. When asked if he minded shooting Johnson, defendant responded, "No." Defendant told Sergeant Gainer that after the shooting, he returned to the car. He later drove past the hospital and saw "Pen's people" standing outside.

¶ 16 Following additional evidence and argument, the trial court instructed the jury as to, *inter alia*, attempted first-degree murder, including personal discharge of a firearm causing great bodily harm to both Cooksey and Johnson. The jury found defendant guilty of aggravated battery

with a firearm and attempted first-degree murder, including a special finding that defendant personally discharged a firearm that proximately caused great bodily harm to Johnson. The trial court denied defendant's written motion for a new trial and proceeded to sentencing.

¶ 17 At sentencing, the State sought a sentence of natural life in prison for defendant. In aggravation, the State presented extensive evidence regarding defendant's participation in numerous criminal offenses for which defendant was charged, uncharged, or acquitted. These offenses included murder and attempted murder and involved several shootings. The State further argued that the sentence of natural life should run consecutive to the sentences imposed in defendant's other cases.

¶ 18 The trial court sentenced defendant to two consecutive 55-year prison terms to be served consecutive to the sentences imposed in defendant's other cases (Case No. 09 CR 0483201, weapon in a penal institution and Case no. 07 CR 1868401, attempted murder of Ronald Simpson). The court stated:

> "For this case the defendant was convicted before a jury, a finding of guilty of two counts of attempt first degree murder. These convictions also involved a decision by the jury finding that the defendant, in each of these two counts of attempt first degree murder, he personally discharged a firearm that proximately caused great bodily harm or death to another person.
>
> As a result because there was testimony that there was in fact a serious injury, particularly most of all for Mr. Lonnie Cooksey, as a matter of law this being a Class X offense with

> serious injury, as well as the other matter for that being a Class X offense, any sentences I give must run consecutive to each other."

¶ 19 The trial court denied defendant's written motion to reconsider sentence. Defendant subsequently filed this appeal.

¶ 20 ANALYSIS

¶ 21 We note that we have jurisdiction to review the final judgment, as the Defendant filed a timely notice of appeal. Ill. S. Ct. R. 603 (eff. Feb 6, 2013); Ill. S. Ct. R. 606 (eff. Dec. 11, 2014).

¶ 22 On appeal, defendant does not challenge the sufficiency of the evidence to sustain his convictions for attempted murder of Cooksey and Johnson. He concedes that he did personally discharge a firearm, which requires a 20-year enhancement to his sentence. See 720 ILCS 5/8-4(c)(1)(C) (West 2006). Instead, he argues that the evidence was insufficient to support a finding that Johnson suffered great bodily harm as a result of his personal discharge of a firearm and thus, a 25-year sentence enhancement is inappropriate. See 720 ILCS 5/8-4(c)(1)(D) (West 2006). He further argues that the trial court's finding of severe bodily injury with respect to Johnson, as required to impose consecutive sentences, was against the manifest weight of the evidence.

¶ 23 When a challenge is made to the sufficiency of the evidence, the standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Lloyd*, 2013 IL 113510, ¶ 42. The jury, as the trier of fact, is tasked with determining the credibility of witnesses, weighing the evidence and any inferences derived, and resolving any

conflicts in the evidence. *People v. Green*, 2017 IL App (1st) 152513, ¶ 102. "A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). A conviction will not be overturned unless the evidence is so improbable, unsatisfactory, or inconclusive that a reasonable doubt of defendant's guilt exists. *Lloyd*, 2013 IL 113510, ¶ 42.

¶ 24 Attempted first-degree murder is subject to a Class X felony sentence and a minimum 25-year enhancement when the use of a firearm proximately causes great bodily harm. 720 ILCS 5/8-4(c)(1)(D) (West 2006). Whether an injury rises to the level of great bodily harm is a question for the trier of fact to determine. *People v. Figures*, 216 Ill. App. 3d 398, 401 (1991). Although great bodily harm does not have a precise legal definition, it calls for evidence of a greater and more serious injury beyond that of a simple battery. *People v. Mandarino*, 2013 IL App (1st) 111772, ¶ 63. "Great bodily harm is not dependent upon hospitalization of the victim, nor the permanency of his disability or disfigurement but, rather, centers upon the injuries the victim did, in fact, receive." *People v. Mimes*, 2014 IL App (1st) 082747-B.

¶ 25 Here, viewing the evidence in the light most favorable to the State, the evidence was sufficient for the jury to find that defendant inflicted great bodily harm on Johnson. While Johnson did not testify, evidence regarding his treatment and appearance at the hospital after the shooting was provided through the stipulated testimony of nurse Duzak and Dr. Knadan. Johnson was wheelchair bound, in pain, with gunshot wounds to his lower left leg. Dr. Knadan provided testimony that Johnson had a "very wide wound" that "appeared to have some avulsion of the F.C. fat and skin."

¶ 26 When determining whether great bodily harm exists, the jury is tasked with drawing reasonable inferences from the evidence and a reviewing court will allow all reasonable inferences in the State's favor. See *People v. Brown*, 2015 IL App (1st) 130048, ¶ 34. Based on the evidence described in this case, it was sufficient to support the jury's finding of great bodily harm. The evidence established that Johnson's injury was greater than a simple battery and, as such, can be characterized as great bodily harm. See *People v. Thigpen*, 2017 IL App (1st) 153151, ¶ 31.

¶ 27 Defendant argues the State presented a "paucity of evidence" as to the nature and severity of Johnson's injury. Specifically, he contends that the stipulation only provided evidence of mere lacerations, and there were no photographs of the injury or testimony regarding any lingering disability. We disagree with defendant's characterization of the evidence. While there were no photographs of the injury or testimony regarding lingering disability, the testimony of nurse Duzak and Dr. Knadan was sufficient to find that Johnson suffered great bodily harm. The testimony established that Johnson's injury was beyond a "mere laceration," and we decline to say that no rational trier of fact could find great bodily harm under these facts.

¶ 28 *In re Vuk R.*, 2013 IL App (1st) 132506, relied upon by defendant, in support of his argument against a finding of great bodily harm, is distinguishable. In that case, the defendant struck the victim several times with his fists breaking the victim's nose and causing the victim to lose consciousness. *Id.* ¶ 4. On appeal, the reviewing court found the evidence insufficient to find "great bodily harm" where there was no evidence regarding any pain suffered by the victim or any details about his treatment. *Id.* ¶ 9.

¶ 29 Unlike in *In re Vuk R.*, here, the evidence included nurse Duzak's testimony that Johnson described his pain as being an "8" on a scale of "1 to 10." Further, Dr. Knadan's testimony established that Johnson had a "very wide wound" that "appeared to have some avulsion of the F.C. fat and skin." The jury heard a description of the treatment which was prescribed. Taking the evidence in the light most favorable to the State, we cannot conclude that no rational jury would find that defendant inflicted great bodily harm on Johnson. Thus, defendant's argument fails.

¶ 30 Defendant next argues the trial court's finding of severe bodily injury with respect to Johnson was against the manifest weight of the evidence where it was merely derivative of the jury's finding of great bodily harm. According to defendant, because this finding was not supported by the record, the trial court improperly imposed his sentence in this case, consecutive to his sentences in Case Nos. 09 CR 0483201 (weapon in a penal institution) and 07 CR 1868401 (attempted murder of Ronald Simpson). Defendant acknowledges that he did not preserve this issue, but he contends that it is reviewable under the plain error doctrine.

¶ 31 In order to preserve an issue for review, the defendant must raise the issue at trial and in a posttrial motion. See *People v. Naylor*, 229 Ill. 2d 584, 592 (2009). However, the improper imposition of consecutive sentences may violate the defendant's fundamental rights and we therefore may review it for plain error. *People v. Lashley*, 2016 IL App (1st) 133401, ¶ 68. The first step of plain-error review requires the reviewing court to determine whether a clear or obvious error occurred. *People v. Sebby*, 2017 IL 119445, ¶ 49. "This requires a 'substantive look' at the issue raised." *People v. Banks*, 2016 IL App (1st) 131009, ¶ 71 (quoting *People v. Johnson*, 208 Ill. 2d 53, 64 (2003)).

¶ 32 Section 5-8-4(a) of the Uniform Code of Corrections (Code) provides that "when multiple sentences of imprisonment are imposed on a defendant at the same time, or when a term of imprisonment is imposed on a defendant who is already subject to sentence in this State *** the sentences shall run concurrently or consecutively as determined by the court." 730 ILCS 5/5-8-4(a) (West 2006). However, section 5-8-4(a)(i) of the Code requires the imposition of mandatory consecutive sentences where "one of the offenses for which defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury." 730 ILCS 5/5-8-4(a)(i) (West 2006).

¶ 33 Here, defendant concedes that the record supports the finding of severe bodily injury with respect to Cooksey, thereby mandating his 55-year sentence for attempted murder of Cooksey to be consecutive to the 55-year sentence for attempted murder of Johnson. See *id*. Further, defendant does not contest that attempted first-degree murder of Johnson is a Class X offense and that the court is authorized to impose a consecutive sentence "when a term of imprisonment is imposed on a defendant who is already subject to sentence in this State." See 720 ILCS 5/8-4(c)(1)(D) (West 2006); 730 ILCS 5/5-8-4(a), (a)(i) (West 2006). Rather, defendant argues the record does not support the trial court's finding that he inflicted severe bodily injury on Johnson. Therefore, our analysis is limited to determining whether the record supports the trial court's finding of severe bodily injury to Johnson as required for the imposition of sentence consecutive to Case Nos. 09 CR 0483201 (weapon in a penal institution) and 07 CR 1868401 (attempted murder of Ronald Simpson), cases where defendant "is already subject to sentence in this State." See 730 ILCS 5/5-8-4(a) (West 2006).

¶ 34 A trial court's factual finding of severe bodily injury in the context of mandatory consecutive sentencing will only be reversed if it is against the manifest weight of the evidence. *People v. Deleon*, 227 Ill. 2d 322, 332 (2008) "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Id.*

¶ 35 Not all gunshot wounds are severe simply because they happen to be gunshot wounds. *People v. Austin*, 328 Ill. App. 3d 798, 808 (2002). Instead, "[w]e have to look at the extent of the harm done by the gunshot in the particular case." *People v. Williams*, 335 Ill. App. 3d 596, 599 (2002). Severe bodily injury requires harm that is "something more" than that needed for great bodily harm. *Id.* at 599-600.

¶ 36 Here, the trial court's finding of severe bodily injury was not against the manifest weight of the evidence. The trial court heard the descriptions of Johnson's injury through the testimony of nurse Duzak and Dr. Knadan. The trial court noted:

> "As a result because there was testimony that there was in fact a serious injury, particularly most of all for Mr. Lonnie Cooksey, as a matter of law this being a Class X offense with serious injury, as well as the other matter for that being a Class X offense, any sentences I give must run consecutive to each other."

¶ 37 The court found the nature of Johnson's injury to be "serious," necessitating the imposition of consecutive sentences and did not make a finding that was merely derivative of the jury's finding of great bodily harm. The trial court is presumed to know the law and how to apply it properly. There is nothing in the record of this case to suggest otherwise. See *People v.*

Chatman, 2016 IL App (1st) 152395, ¶ 65. Based on the evidence during the trial, and the trial court's analysis of that evidence, the finding of severe bodily injury was not unreasonable, arbitrary, or lacked a basis in the evidence. See *Deleon*, 227 Ill. 2d at 332-33.

¶ 38 Defendant contends further it was error to impose consecutive sentences as severe bodily injury requires "something more" than great bodily harm and, here, the State did not offer any evidence of Johnson's injury beyond the testimony of nurse Duzak and Dr. Knadan. Defendant relies on *People v. Murray*, 312 Ill. App. 3d 685 (2000), for support of his argument. As we have already explained, the evidence and the court's analysis of that evidence support the finding which the court made. Defendant's reliance on *People v. Murray* is misplaced .

¶ 39 In *Murray*, the parties stipulated that the victim was shot in the foot "with [a] fracture [of] the right *** big toe." *Murray*, 312 Ill. App. 3d at 687. The victim was treated and released within two and half hours of the shooting. Defendant appealed the trial court's imposition of consecutive sentences based on a finding of severe bodily injury. This court found that the circumstances surrounding the injury, (*i.e.* the victim suffered a fractured big toe and was released from the hospital after two and a half hours), did not support a finding of severe bodily injury and, thus, consecutive sentences were improper. *Id.*

¶ 40 Unlike *Murray*, as we have explained, the trial court's finding here of severe bodily injury was not against the manifest weight of the evidence.

¶ 41 We likewise are not persuaded by defendant's reliance on *People v. Jones*, 323 Ill. App. 3d 451 (2001), *People v. Rice*, 321 Ill. App. 3d 475 (2001), *People v. Durham*, 312 Ill. App. 3d 413 (2000), and *People v. Ruiz*, 312 Ill. App. 3d 49 (2000), where, in each of the cases, our court held that the facts of the gunshot wound in each case did not support a finding of severe bodily

injury. We note that our holding in this case does not mean that all gunshot wounds constitute severe bodily harm. Here, however, the trial court's finding of severe bodily injury was not against the manifest weight of the evidence. Accordingly, the imposition of consecutive sentences was not in error and, thus, defendant cannot establish that any error occurred and there can be no plain error. See *People v. Hood*, 2016 IL 118581, ¶ 18.

¶ 42 CONCLUSION

¶ 43 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 44 Affirmed.