2017 IL App (1st) 161057-U

No. 1-16-1057

Order filed October 20, 2017

Fifth Division

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. 14 CR 11256
	)	
JOVANY NAVARRO,	)	Honorable
	)	William T. O'Brien,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence sufficient to convict defendant of attempted murder, and the record does not establish that the trial court ignored or misunderstood the forensic evidence.

¶ 2 Following a 2015 bench trial, defendant Jovany Navarro was convicted of attempted first degree murder, committed with a firearm, and sentenced to 45 years' imprisonment. On appeal, he contends that the evidence was insufficient to convict him beyond a reasonable doubt and that the trial court ignored or misunderstood key forensic evidence. We affirm.

¶ 3 Defendant was charged with attempted first degree murder and aggravated battery for allegedly shooting Joey Woelke with a firearm, causing great bodily harm and permanent disfigurement. Defendant was charged with attempted first degree murder and aggravated discharge of a firearm for allegedly shooting at Miguel Mantinan on the same day.

¶ 4 At trial, Miguel Mantinan testified that, late in the afternoon on the day in question, he was with Woelke in the driveway behind Woelke's residence. Woelke was helping him repair an oil leak in his vehicle. While they were working on his automobile, Mantinan noticed a white Ford Explorer sport-utility vehicle (SUV), followed closely by an automobile, approaching along the alley. The Explorer stopped right by Woelke's gate, and Mantinan noticed that defendant was the sole occupant of the vehicle. Defendant was about two feet away, with nothing blocking Mantinan's view of him for several seconds. Defendant pointed a large black handgun at Woelke and Mantinan, then he mumbled something. Mantinan and Woelke fled or took cover, and Mantinan heard several shots before the Explorer and car sped away. Woelke was bleeding from his lower back, and a bullet was lodged in his chest. The police and an ambulance were summoned.

¶ 5 Less than two hours later, police officers informed Mantinan that they found the Explorer and the shooter. Officers took him to a location about a mile away, where he immediately recognized the detained man as the shooter and the Ford Explorer SUV. At trial, he confirmed that the detained man was defendant. On cross-examination, Mantinan testified that he did not know defendant by appearance or name before that day. He had described the shooter to police as wearing a white shirt and having a "fade" haircut and small mustache. He was unable to describe the vehicle following the Explorer and did not see how many occupants were inside.

¶ 6 Joey Woelke testified that a white SUV stopped in the alley by his driveway as he and Mantinan were working on Mantinan's automobile. He noticed the SUV had only one occupant – defendant – who was about six feet away and looking directly at him. Defendant pointed a large black handgun at Woelke and asked "What you is?" Woelke did not answer but instead fled. He heard several gunshots and was shot as he fled. An ambulance later removed him to a hospital. While he was at the hospital, a police officer showed him a photographic array from which he identified defendant as the shooter. Woelke required "a lot of surgery" that left scars, and at the time of the trial he was still limping and suffering sharp pains. He also testified that he was no longer able to work. On cross-examination, Woelke testified that he could not describe the vehicle that followed the white SUV.

¶ 7 Michael Strickley testified that on June 2, 2014, he lived in a second-floor dwelling with windows providing a sweeping view of the alley. At about 7:45 p.m., he heard several gunshots from the direction of the alley and went to look outside. He saw two vehicles, a light-colored SUV followed closely by a blue car, approaching down the alley at about 35 to 40 miles per hour. As the SUV and blue automobile nearly passed his home, Strickley noticed the front license plate number of the SUV – L471180 – and had it written down by his wife. He then phoned the police to report the incident, including the plate number.

¶ 8 Police officer, Michael McKee, testified that during his investigation he discovered that on the day of the shooting the license plate number L471180 was registered to Efren Navarro at the address where defendant also resided. Officer McKee stopped defendant near his home at about 8:45 p.m. and was present when another officer brought Mantinan to make an identification. When defendant was stopped near his home, he was nervous but did not try to

flee, and he informed Officer McKee that he had driven the white Explorer to visit his girlfriend despite not having a driver's license.

¶ 9 Evidence technician, Cara Kuprianczyk, testified to recovering two fired shell casings behind the front passenger seat of the white Explorer.

¶ 10 A police detective testified to swabbing defendant's hands for gunshot residue at about 1 a.m. on June 3. The detective did not take defendant to a washroom while he was in custody, and recorded a "no" to the question of whether defendant had washed his hands. The detective had also shown a photographic array to Woelke at the hospital, when he seemed "in good condition."

¶ 11 Robert Berk, the forensic scientist who tested the swabs for gunshot residue, testified that he found no relevant particles from the back of defendant's right or left hand, and an insignificant amount of particles elsewhere, so that "in general, it's a negative gunshot residue kit." Berk's report stated that "[i]f [defendant] did discharge a firearm, then the particles were removed by activity, were not deposited, or were not detected by the procedure." When asked if a breeze through an open car window could result in gunshot residue not being deposited, Berk answered that the residue would follow the breeze and would not be deposited on the shooter if the breeze flowed away from him. Berk explained removal by activity: "an individual going through normal hand activity over a period of time will remove sufficient residue so that they no longer test positive." Hand-washing, placing one's hands in one's pockets, and the breeze from being in a vehicle at a high rate of speed with an open window could remove residue. Berk was "at a loss for words" why defendant's swabs were not taken until more than five hours after the shooting. The rate of particle loss is "difficult to calculate" but could be 90 percent per hour (that is, 1000 particles reduced to 100 particles an hour later, and 10 another hour later) so that the recommendation is to take swabs within six hours of a shooting.

¶ 12 On cross-examination, Berk testified that rubbing one's hands together would move gunshot residue to the non-firing hand and remove some but not all the particles, and placing one's hands in one's pockets would similarly not remove all residue. On redirect examination, Berk testified that an accumulation of such activities would eventually remove all residue.

¶ 13 The parties stipulated that the surgeon who treated Woelke would testify that he had a gunshot to his right lower back requiring surgery to remove the bullet from his abdominal wall, the gunshot damage to his liver and gallbladder required the removal of his gallbladder, and he was in the hospital June 2-12 with surgeries on the 2nd and 9th.

¶ 14 Defendant made a motion for directed finding, and the court denied it without findings.

¶ 15 Defendant testified that he drove his father's white Explorer on June 2, 2014, despite not having a driver's license or his father's permission. He had visited his girlfriend's home and was driving home alone when he stopped in an alley to urinate. He stopped near, but not in front of, a driveway where some men were standing. Because there was another vehicle behind his SUV, he immediately returned to the SUV and drove on. He could not see how many people were in the car, and he had never seen it before. As he reached an intersection, he heard several gunshots from behind him. He "took off" due to the gunshots, noticing that the car he saw earlier followed him for a while before going its own way. He went home, and was stopped by police shortly after leaving his home again. After his arrest, he agreed to the gunshot residue test because he had not touched a firearm that day.

¶ 16 Following arguments, the court found defendant guilty of the attempted murder and aggravated battery of Woelke and not guilty of attempted murder or aggravated discharge regarding Mantinan. The court found Woelke and Mantinan credible and consistent, and found that the other State evidence – including Strickley's disinterested testimony and the shell casings

in the white Explorer – was consistent with their account. The court noted that defendant admitted to being in the alley in question. Regarding the gunshot residue testing, the court noted that Berk testified to "the limitations of that test" and found that defendant had "plenty of time to clean up, plenty of time to wash or wipe away evidence of" gunshot residue, so that the negative test results did not impeach the credibility of the eyewitnesses. The court found that Woelke suffered great bodily harm and permanent disfigurement as alleged. Lastly, the court found that there was no evidence that defendant was trying to shoot Mantinan, as defendant had a short distance from which to shoot him but did not strike him. "The target was Mr. Woelke."

¶ 17 In his posttrial motion, defendant argued that the evidence was insufficient to convict him beyond a reasonable doubt, including that the court failed to give sufficient weight to the forensic evidence that no identifiable gunshot residue was found on defendant's hands. In denying the motion, the court reiterated its finding that the eyewitnesses were credible, noting that Woelke's identification was separate from Mantinan's showup identification, defendant placed himself in the alley around the time of the shooting, and Strickley's testimony placed the Navarro family's white Explorer fleeing the scene. The court was "not bowled over by the fact that there was no gunshot residue recovered from the defendant" because his whereabouts were unknown from the time of the shooting until he was detained and because his account that he did not wash, urinate on, or wipe his hands was self-serving. The court then held a sentencing hearing and sentenced defendant on one count of attempted murder to 45 years' imprisonment. 720 ILCS 5/8-4; 9-1(a)(1) (West 2014).

¶ 18 On appeal, defendant contends that the evidence was insufficient to convict him beyond a reasonable doubt and that the trial court ignored or misunderstood key forensic evidence.

¶ 19 On a claim of insufficiency of the evidence, we 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. The trier of fact must weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and 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 evidence or witness credibility. *Bradford*, 2016 IL 118674, ¶ 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.*, 2011 IL 107750, ¶ 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 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*, 2016 IL 118674, ¶ 12.

¶ 20 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. Woelke and Mantinan clearly identified defendant at trial as the man who stopped a white Explorer a few feet away from them and pointed a gun at them before shooting erupted. They made separate pretrial identifications of defendant, Mantinan in a showup within hours of the shooting and Woelke from a photographic array. Strickley, the disinterested witness, placed the white Explorer which was owned by defendant's father fleeing the scene of the shooting, and after defendant's arrest

two spent shell casings were found in the Explorer. The court was thus not obligated to find defendant's exculpatory account, provided to the detaining police officer or at trial, credible.

¶ 21 As to the negative gunshot residue test result, the trial evidence including forensic scientist Berk's testimony indeed established the limitations of such testing as the trial court found. The court may have misrecalled at the hearing on the posttrial motion that defendant himself gave a self-serving account of not washing or wiping his hands. However, we find that misstatement insignificant in light of the evidence supporting the court's findings, at trial and the posttrial motion hearing, that defendant had ample time between the shooting and his detention to wash, wipe, or otherwise clean his hands. "[T]his minor misstatement had no affect on the basis of the trial court's ruling and did not result in a mistake in the decision-making process." *People v. Schuit*, 2016 IL App (1st) 150312, ¶ 107. "The trial court's statement does not constitute affirmative evidence that it failed to consider 'the crux' of defendant's case or failed to consider evidence when entering judgment. [Citation] Instead, we agree with the State that the trial judge's findings indicate it considered and rejected the defense theory." *Id.*, ¶ 109.

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

¶ 23 Affirmed.