2013 IL App (5th) 110203-U

NO. 5-11-0203

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jefferson County.
	)	
v.	)	No. 10-CF-362
	)	
	)	
MARLIN L. EDWARDS,	)	Honorable
	)	Terry H. Gamber,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Welch and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant was not denied effective assistance of counsel and he was proven guilty beyond a reasonable doubt of aggravated battery with a firearm.

¶ 2 Following a jury trial in the circuit court of Jefferson County, defendant, Marlin L. Edwards, was found guilty of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2008)) and aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2008)). He was sentenced to eight years in the Department of Corrections on the aggravated battery conviction, but no conviction was entered and no sentence was imposed on the aggravated discharge of a firearm offense. Defendant appeals, arguing as follows: (1) he was denied effective assistance of counsel because (a) defense counsel failed to object to evidence of other crimes allegedly committed by defendant, (b) defense counsel failed to object to inadmissible hearsay evidence, (c) the prosecutor misstated the law in closing argument, and (d) defense counsel failed to object to the State's elicitation of an inadmissible prior

inconsistent statement by the victim, Tylone Edwards; and (2) he was not proven guilty beyond a reasonable doubt of aggravated battery. We affirm.

¶ 3 FACTS

¶ 4 At trial, Tylone Edwards, age 20, testified that he is a distant cousin of defendant and that defendant shot him in the groin on August 7, 2010. Earlier that spring, defendant and Tylone got into a dispute over defendant's girlfriend, Hannah Wachtel, after Hannah and Tylone went to a party one evening. Defendant saw them together and became confrontational. Defendant later came to Tylone's house and banged on his door and screamed. Tylone saw defendant on another occasion after the dispute, and defendant did not harass him or cause any problems.

¶ 5 At approximately 2:30 a.m. on August 7, 2010, Tylone was with a friend, Theodore Jefferson, and they were going to a house party in Mt. Vernon. On their way to the party, they came upon some signs that said the road was closed. Tylone testified that defendant and his friends put the signs in the street. Theodore was driving Tylone's car and they drove over the signs. The signs were a couple of streets away from the party, and after they ran over the signs defendant yelled at him, saying things such as: "Ya'll niggers. Some Ho's. Some you bitches. I remember you." Theodore wanted to fight defendant and his friends, but they continued on to the house party. Once they got to the party, they realized they did not know anyone, so they left and were going to drive back to Theodore's car. On the way, they encountered defendant again and he was yelling at them, "Ya'll some Ho's." Tylone testified they drove past defendant, and he dropped Theodore off at his car.

¶ 6 On his way home, Tylone encountered defendant and his friends again. Tylone stopped his car in front of his brother's girlfriend's house. Defendant and four other people walked toward him. Tylone was mad because of what defendant said to him earlier and admitted he yelled at defendant and asked, "[W]hat's all that bull shit ya'll talking[?]" One

of defendant's friends, Deon Feggins, then waved a gun at Tylone and said, "Man, you better get your bitch ass back in the car because, if I pull it, I'm going to use it." Then Deon said: "No, wait. Got nothing to do with me. You two go ahead and fight." Deon was talking about defendant and Tylone. Defendant and Tylone were prepared to fight when defendant asked Deon to give him his gun. Deon refused.

¶ 7 At some point, Tylone's brother's girlfriend, Michelle, came out of her house because she heard the argument that was taking place. Defendant's friends kept encouraging defendant to fight Tylone. Tylone did not think defendant really wanted to fight. Defendant kept asking Deon to give him the gun and Deon kept refusing. Another man, Cortez, arrived and he ultimately gave defendant a gun. Tylone testified he did not want to fight due to all the guns and defendant's friends being present. Once defendant had the gun, he got more aggressive and started talking about smacking Tylone with the gun. Defendant started inching closer to Tylone and said, "I kill your bitch ass." Defendant started talking about Tylone dancing with his girlfriend and he was mad. Tylone charged him and tried to grab the gun. Tylone pushed defendant, who stumbled backwards, and fired a shot, which hit Tylone in the groin area. Tylone thought he lost his penis. Tylone walked back to his car and then asked Michelle to give him a ride to the hospital.

¶ 8 Tylone could not recall how long he was at the hospital before the police arrived, but said he started going into shock and was shaking and in a lot of pain. Tylone initially would not tell the police who shot him because he feared defendant would not be charged and would be an even greater threat to him. All he told the police is that there were a group of four or five people involved in the incident. However, about two days later Tylone was at home recovering when his house was shot up with several bullets. Tylone could see "wood flying, hitting the floor *** and dust in the air." It was then he decided that "they got to go to jail." Tylone believed he had to tell the police that defendant was the person who shot him

because "that's the only way to–for it to be over with, without me either being dead or in jail."

¶ 9 Tylone further explained the police responded to the scene after his house was shot because everybody on the block reported the shooting. After he told police defendant shot him in the groin, he told the police not to let defendant know he was the one who identified defendant as the person who shot him. The police ultimately brought in a detective who assured Tylone that if he identified defendant as the person who shot him in the groin the police would pick up defendant immediately and neither Tylone nor his house would get shot again. On cross-examination Tylone admitted he did not actually see anyone shoot his house.

¶ 10 Theodore Jefferson, age 20, testified that he was with Tylone at approximately 2:30 a.m. on August 7, 2010. Theodore was driving Tylone's girlfriend's car and ran over a road sign. He saw defendant with a group of people in that area. Theodore and Tylone went to a party, but left after a short while. Tylone took Theodore to get his car and the two went their separate ways. As a result, Theodore did not witness Tylone getting shot, but Theodore testified he received a phone call from Tylone who told him he had been shot by defendant. Tylone asked him to tell his mother that he had been shot.

¶ 11 Dr. Thurman Phemister was the emergency room physician who treated Tylone for "a gunshot wound to the medial side of the thigh on the right leg." Dr. Phemister explained the area as being "close to the groin." Dr. Phemister testified Tylone "was pretty well shooken up" but his vital signs were stable. A CT scan showed that the bullet was within a few millimeters of hitting the major artery and vein. Because it was so close to the main artery and vein, the bullet was not removed and remains in Tylone's thigh. Tylone told Dr. Phemister he did not know who shot him.

¶ 12 Patrolman Brian Huff was dispatched to the hospital after the hospital called to advise the police a gunshot victim was being treated at the hospital. Upon Huff's arrival, Tylone was "in distress." Tylone gave Huff the location of the shooting, but did not say who shot

him. Huff also interviewed Michelle who gave a better location of where the shooting occurred, but no indication as to who shot Tylone. Officer Ryan McKee went to the scene of the shooting and retrieved a .22-caliber shell casing.

¶ 13 Detective Marty Terry interviewed defendant on August 11, 2010, after Tylone identified him as the person who shot him. Defendant told Terry that he and Tylone were cousins and that he had not seen Tylone for a while. Defendant said he did not have any problems with Tylone and did not have any reason to shoot him. Defendant was perplexed as to why Tylone would accuse him of such a crime. Defendant told Detective Terry he was at Lexi Flota's residence at the time of the shooting. Defendant said Desmond Eggleston was also at Flota's residence.

¶ 14 Detective Brands testified that he did some followup investigation into the matter and tried to contact occurrence witnesses to the shooting. He testified that on August 17, 2010, he tried to make contact with Jaquez Gardner, Cortez Pickett, and Desmond Eggleston without success. He also tried to interview Curtis Devan at his home, but Devan refused to speak to him about the case. On August 20, 2010, he spoke to Terence Jones after Jones came to the police department because he knew Brands was looking for him. Brands told him he did not know anything about the case. On August 24, 2010, Brands spoke to Lexi Flota. He tried on numerous occasions to speak to Desmond Eggleston, but was unable to make contact with him.

¶ 15 On August 9, 2010, Detective Kevin Jackson was on patrol with Detective Ronnie Almaroad and Detective Scott Burge when they noticed defendant in a vehicle in front of a residence. They believed there was a warrant for defendant's arrest. They circled the block and got confirmation that there was a warrant for his arrest for the shooting of Tylone. When they came back around the block, defendant was on the front porch of the house, which belonged to Wanda Feggins. As the detectives exited the vehicle, defendant "fled into the

residence." They ordered defendant to stop, but he went into the house. Defendant was eventually apprehended at the residence and taken into custody. Cannabis was found in the area where defendant fled.

¶ 16 Desmond Eggleston, age 21, testified for the defense that he has known defendant since elementary school. He said he "knows of" Tylone, but does not really know him. Desmond heard about the shooting after the fact. Desmond testified people were texting about the shooting over the weekend. He knew the shooting occurred on a Saturday morning. Desmond testified that defendant was with him at Desmond's girlfriend's house at the time Tylone was shot. He said they all spent the night at her house and defendant never left. They were all together until they went to the Feggins' residence on August 9, 2010, where defendant was arrested. On cross-examination, Desmond admitted he has a felony conviction for obstruction of justice. He also admitted that even though defendant had been in jail since August 9, 2010, awaiting trial, he never went to the police and told them that defendant did not commit the crime. The trial took place on November 9, 2010.

¶ 17 Defendant, age 22, admitted he has been convicted of unlawful possession with intent to deliver for which he was still on probation at the time of trial. He testified he was unaware that Tylone had been shot until the police arrested him for the shooting. He said that at the time of Tylone's shooting he was with Desmond Eggleston at 612 Strawberry Lane. He said he was with Desmond from Friday evening until Monday when he was arrested. He said he was "playing games" and drinking at the time Tylone was shot. He said he was not in the area where the shooting occurred. He testified he has known Tylone since junior high and there is no bad blood between them. He admitted his ex-girlfriend was Hannah Wachtel, but denied that there was an incident between Tylone and him about her. He said Tylone is mistaken as to who shot him. He testified that he fled from the detectives into the house because he had a small amount of marijuana on him.

¶ 18 Tylone Edwards was called by the defense and admitted that in April 2009, he was convicted of unlawful possession with intent to deliver a controlled substance for which he was still on probation. Theodore Jefferson was also called as a witness and admitted that in March of 2009 he was convicted of unlawful delivery of a controlled substance for which he was still on probation.

¶ 19 After hearing all the evidence, the jury found defendant guilty on both charges. He was later sentenced to eight years in the Department of Corrections on the charge of aggravated battery with a firearm. The trial court did not enter judgment of conviction on the aggravated discharge of a weapon count and imposed no sentence on that count because it was based upon the same act which formed the basis for aggravated battery with a firearm. Defendant now appeals.

¶ 20 ANALYSIS

¶ 21 The first issue we are asked to address is whether defendant was denied effective assistance of counsel. Defendant makes four arguments in regard to this issue. We begin by addressing defendant's contention that he was denied effective assistance of counsel because defense counsel failed to object to inadmissible evidence of other crimes allegedly committed by defendant. The State responds that there was no need to object to other-crimes evidence because the State did not actually introduce another crime specifically implicating defendant. We agree with the State.

¶ 22 To prove ineffective assistance of counsel, a defendant must show (1) his lawyer's performance fell below an objective standard of reasonableness, and (2) but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-89 (1984); *People v. Albanese*, 104 Ill. 2d 504, 525-27, 473 N.E.2d 1246, 1255 (1984). A reviewing court must consider the totality of the evidence before the fact finder in determining whether a defendant has established his attorney's

unreasonable errors and the reasonable probability of a different result. *Strickland*, 466 U.S. at 695. The prejudice prong of the *Strickland* test may be satisfied if a defendant can show that counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair. *People v. Evans*, 209 Ill. 2d 194, 220, 808 N.E.2d 939, 953-54 (2004). Failure to satisfy either the performance or the prejudice prong of the *Strickland* test will preclude a finding of ineffective assistance of counsel. *People v. Johnson*, 368 Ill. App. 3d 1146, 1161, 859 N.E.2d 290, 304 (2006). In reviewing an attorney's actions, we show deference to the attorney's decisions, and the defendant must overcome a strong presumption that counsel's performance was adequate. *Albanese*, 104 Ill. 2d at 525-26, 473 N.E.2d at 1255.

¶ 23 Defendant specifically argues that Tylone's testimony describing an incident in which his house was shot up a few days after he had been shot in the groin constituted inadmissible other-crimes evidence to which defense counsel should have objected; however, our review of the record shows there was no need for defense counsel to object to this alleged "other-crimes evidence" because Tylone did not testify that defendant shot at his house. The alleged other-crimes evidence was elicited during direct examination of Tylone when the prosecutor was seeking to have Tylone explain why he ultimately chose to reveal defendant as the shooter. The prosecutor asked defendant whether there was something which occurred after Tylone was released from the hospital which caused him to change his mind about not identifying his assailant. Tylone replied:

> "Yes, I got out of the hospital. I want to say like the 9th, two days or so after, I got out the afternoon and later that night about 3:00 or so my house got shot at 20 times or whatever. I mean, I could–I can't walk. You know I'm in the bed shot or whatever. My girlfriend's asleep. She got to go to work at 4:00 and my daughter's in the room asleep. She's three. And, I mean, I–we just–I just laid down. Everybody came to see

me. Everybody just leave [*sic*] to go. It's [*sic*] seems like they waited until everybody was gone but they shot the house up bad. I see the wood flying, hitting the floor. The mold–the wall busting and dust all in the air."

Defendant admits that Tylone did not identify or mention defendant as the person who shot up his house, but insists that the prosecutor's purpose in eliciting this evidence was to show that defendant was the person who shot up Tylone's house. We disagree.

¶ 24 Tylone was consistent from the time he was shot in the groin until the time of trial that the person who shot him was in a group of people. In the quotation cited above, Tylone never identifies defendant as the shooter, but states "*they* waited until everybody was gone but *they* shot the house up bad." (Emphasis added.)

¶ 25 Evidence of other crimes is inadmissible where that evidence is relevant solely to establish a defendant's propensity to commit a crime. *People v. Robinson*, 167 Ill. 2d 53, 62, 656 N.E.2d 1090, 1094 (1995). However, evidence of other crimes is admissible if relevant for any purpose other than to show the propensity to commit crime. *Robinson*, 167 Ill. 2d at 62, 656 N.E.2d at 1094. Here, Tylone never actually named defendant as the person who shot up his house, but used the term "they." It is a stretch to call this "other-crimes evidence." Even assuming *arguendo* that it does constitute "other-crimes evidence," it is clear that it was elicited for the purpose of having Tylone explain why he changed his mind about cooperating with the police and identifying his assailant; therefore, Tylone's testimony constituted admissible evidence because it was relevant for a purpose other than showing the propensity of defendant to commit crime. Accordingly, there was no reason for defense counsel to object, and defendant has failed to show that his counsel's failure to object fell below an objective standard of reasonableness.

¶ 26 Defendant also asserts he was denied effective assistance of counsel because defense counsel failed to object to inadmissible hearsay evidence elicited by the prosecutor during

Theodore Jefferson's testimony. Theodore was with Tylone prior to the time he was shot. Theodore testified that after Tylone was shot, Tylone called him and told him he had been shot and to call Tylone's mother and let her know. Defendant insists this was hearsay testimony improperly admitted to bolster Tylone's testimony and contributed to his conviction. The State responds that even if defense counsel objected to this testimony, it would have been admitted as an excited utterance exception to the hearsay rule.

¶ 27 Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. *People v. Sims*, 143 Ill. 2d 154, 173, 572 N.E.2d 947, 954 (1991). Hearsay exists if a third party testifies to statements made to him by another nontestifying party that identify the accused as the perpetrator of a crime. *People v. Yancy*, 368 Ill. App. 3d 381, 384-85, 858 N.E.2d 454, 457 (2005). A spontaneous declaration or excited utterance is recognized as an exception to the hearsay rule. *People v. Williams*, 193 Ill. 2d 306, 352, 739 N.E.2d 455, 479 (2000). For a hearsay statement to be admissible as an excited utterance exception there must be (1) an occurrence so startling it produces a spontaneous and unreflecting statement, (2) there must be an absence of time for the declarant to fabricate the statement, and (3) the statement must relate to the circumstances of the occurrence. *Williams*, 193 Ill. 2d at 352, 739 N.E.2d at 479. In making the determination whether a statement is an excited utterance, we are to consider the totality of the circumstances, including the time elapsed between the event and the utterance, the nature of the event, the declarant's mental and physical condition, and the presence of self-interest. *People v. Georgakapoulos*, 303 Ill. App. 3d 1001, 1012, 708 N.E.2d 1196, 1206 (1999).

¶ 28 In the instant case, Tylone's statement to Theodore was made after he had been shot and before he was at the hospital. At this point, Tylone was bleeding and he believed his penis had been hit by the bullet. It is important to note that the call was made prior to Tylone being examined by a physician in the emergency room. The doctor who examined Tylone

testified that Tylone was shot near the groin and was "pretty well shooken up." The fact that Tylone made the call so soon after he was shot, the nature of the injury caused by the bullet, Tylone's condition as described by the doctor, and the fact that Tylone did not have any self-interest in making the statement leads us to conclude that it was an excited utterance and, thus, admissible as an exception to the hearsay rule. Defense counsel was not ineffective for failing to object where the statement falls within the excited utterance hearsay exception.

¶ 29 Even assuming *arguendo* it was not an excited utterance, its admission did not constitute reversible error. Admission of hearsay identification testimony is harmless if it is merely cumulative or supported by a positive identification and other corroborative circumstances. *Yancy*, 368 Ill. App. 3d at 385, 858 N.E.2d at 458. Here, Tylone positively identified defendant at trial as the person who shot him and Theodore corroborated Tylone's identification by placing defendant in the vicinity of the shooting, *albeit* earlier in the evening. Theodore also testified that defendant and his friends attempted to stir up trouble earlier in the evening by placing road closure signs on the street.

¶ 30 Defendant next contends defense counsel was ineffective for failing to object when the prosecutor misstated the law during closing argument. The State responds that the statement of which defendant now complains did not prejudice defendant and, therefore, defense counsel was not ineffective for failing to object.

¶ 31 During closing, the prosecutor stated that Tylone's claim that defendant shot him should be considered truthful because Tylone made a "statement against penal interest" which added credibility to Tylone's claim as to who shot him. The prosecutor specifically stated:

> "We've given you this case, warts and all. I mean, Tylone's exposing himself to some possible considerable light by saying, hey, I was out in the middle of the street getting ready to start a fight with a guy who had been yelling at me whenever he pulled this

gun on me.

I would offer that as another reason. You know, it's legally called a statement against a penile [*sic*] interest. That is something for you to consider in considering the truthfulness of Tylone and his version of events."

We fail to see how this incorrect statement of the law so prejudiced defendant that it denied him a fair trial. While defendant insists that the improper remarks were highly prejudicial because they bolstered Tylone's credibility and addressed the ultimate issue in the case, namely who shot Tylone, we do not agree that this statement made the difference in the State's case.

¶ 32 Prosecutors are generally accorded wide latitude during closing arguments. *People v. Perry*, 224 Ill. 2d 312, 347, 864 N.E.2d 196, 217 (2007). They may comment on the evidence, along with any fair and reasonable inference the evidence may yield. *Perry*, 224 Ill. 2d at 347, 864 N.E.2d at 217-18. We are to consider the argument as a whole rather than focusing on selected phrases and remarks. *Perry*, 224 Ill. 2d at 347, 864 N.E.2d at 218. In order to constitute reversible error, an error in closing argument must result in substantial prejudice such that the result would have been different absent the comments of which the defendant complains. *People v. Cloutier*, 156 Ill. 2d 483, 507, 622 N.E.2d 774, 787 (1993).

¶ 33 Our review of the record in the instant case shows that it is highly unlikely the jury even knew what the prosecutor meant by these remarks. Even the court reporter was not sure what the prosecutor was referring to as the court reporter erroneously transcribed it as a statement against "penile" rather than penal interest, which is rather apt given the facts of the case. After careful consideration we disagree with defendant that he is entitled to a new trial because of his counsel's failure to object to these confusing comments made by the prosecutor during closing argument.

¶ 34 Defendant raises one further argument in regard to his claim of ineffective assistance.

In a supplemental brief, defendant contends he was denied effective assistance because his counsel failed to object to the State's elicitation of an inadmissible prior consistent statement made by Tylone which bolstered his credibility. Defendant contends he was denied effective assistance of counsel when his counsel did not object to testimony elicited from Tylone that just after the shooting he called his friend Theodore and reported he had just been shot by defendant and to let defendant's mother know about the shooting. As previously discussed, Tylone's statement to Theodore constituted an excited utterance, and, thus, defense counsel was not ineffective for failing to object and defendant did not suffer any prejudice as a result of defense counsel's failure to object.

¶ 35 Defendant contends that these statements do not qualify as an excited utterance because Tylone had intervening conversations with Michelle and his brother prior to calling his mother. However, our review of the record indicates that all these conversations occurred almost simultaneously. Michelle and Tylone's brother were at the scene and Tylone placed a call to Theodore shortly after being shot. Given the nature of the injury and the doctor's testimony that Tylone was basically in shock when he arrived at the hospital, we conclude that Tylone's statement that defendant shot him was admissible as an excited utterance and, therefore, defense counsel was not ineffective for failing to object. Moreover, as previously discussed, even assuming it was not an excited utterance, we find any error in its admission or defense counsel's failure to object harmless.

¶ 36 The other issue raised on appeal is whether defendant was proven guilty beyond a reasonable doubt of aggravated battery with a firearm. Defendant insists he was not proven guilty beyond a reasonable doubt because (1) there was no evidence to corroborate Tylone's assertion that defendant was the shooter, (2) Tylone failed to tell the police on the night of the shooting that defendant was the assailant, and (3) defendant presented an alibi defense. The State replies that the evidence, when viewed in the light most favorable to the State, was

sufficient for a rational trier of fact to find defendant guilty of aggravated battery with a firearm. We agree with the State.

¶ 37 When a court reviews the sufficiency of the evidence, the issue 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. Taylor*, 381 Ill. App. 3d 251, 257, 886 N.E.2d 523, 528 (2008). A conviction will not be reversed on appeal unless the evidence is so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt regarding the defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209, 808 N.E.2d 939, 947 (2004). A reviewing court will not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses unless the evidence is so palpably contrary to the judgment or so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Ramos*, 339 Ill. App. 3d 891, 901, 791 N.E.2d 592, 600 (2003).

¶ 38 There is no question that Tylone suffered a gunshot wound in his groin area. The only issue is who shot him. Tylone testified that defendant was the shooter. Tylone and defendant are distant cousins. According to Tylone, defendant harbored a grudge against Tylone because he went to a party with defendant's girlfriend some months prior to the shooting. Defendant saw Tylone dancing with his girlfriend and became upset and even came to his house and beat on the door and yelled and screamed at him. On the night of the shooting, Tylone was with his friend Theodore. Both Theodore and Tylone testified that prior to the shooting defendant and his friends were trying to stir up trouble by putting up signs blocking the road, and then when they drove over the signs, defendant and his friends yelled at them. While Theodore did not witness the shooting, his testimony was important as it corroborated Tylone's testimony that defendant had an axe to grind with Tylone and defendant was in the vicinity where the shooting occurred.

¶ 39 Tylone did not initially identify defendant as the shooter, but he explained his hesitation in identifying defendant was due to the fear of retribution by defendant and defendant's friends. Defendant argues that Tylone's explanation for failing to immediately tell police who shot him was neither credible or believable. We disagree.

¶ 40 From the outset, Tylone was clear that whoever shot him was accompanied by a group. Even if the police arrested defendant upon Tylone's identification of him as the shooter, the arrest might not completely eradicate the threat against Tylone, as defendant's friends might seek retribution. Tylone only sought to identify the shooter after his house was shot several times. Defendant claims there was insufficient evidence to prove that Tylone's house was shot, but there is nothing in the record to indicate that it did not occur.

¶ 41 Furthermore, defendant appears to want it both ways. As previously discussed, defendant objects to the presentation of evidence of the house shooting as impermissible other-crimes evidence, but also asserts that there was "insufficient evidence" concerning the house shooting. The record is clear that Tylone testified he came forward with the name of the shooter after his house was shot. His testimony that his house was shot was unrebutted. If defendant thought Tylone's testimony about the house shooting was false, he should have rebutted it at trial. We are unpersuaded by defendant's argument that Tylone's testimony that his house was shot is not credible because the State failed to try defendant for that shooting. As previously discussed, Tylone never identified defendant as the person who shot his house; Tylone only identified defendant as the person who shot him in the groin. Contrary to defendant's assertion, we find Tylone gave a credible explanation as to why he did not immediately identify defendant as the shooter.

¶ 42 Finally, defendant asserts he gave a credible alibi defense that he was at Lexi Flota's residence with his friend Desmond Eggleston at the time Tylone was shot until his arrest on Monday morning. Defendant claims there was no evidence impeaching or discrediting his

alibi defense. However, defendant's sole alibi witness was his friend since grade school, Desmond Eggleston, a convicted felon. Eggleston was aware defendant was in jail awaiting trial on the instant charge, but did not feel the need to come forward until trial. Even Eggleston admitted that there was a lot of "texting" about the shooting during the weekend after the shooting, yet somehow defendant failed to know anything about his cousin's shooting until he was arrested for the offense.

¶ 43 "When the identification of a defendant is an issue, the testimony of one witness is sufficient to support a conviction, even in the face of contradictory alibi testimony, provided the witness is credible and viewed the defendant under circumstances that would permit a positive identification." *People v. Liner*, 356 Ill. App. 3d 284, 298-99, 826 N.E.2d 1274, 1288 (2005). Tylone and defendant were distant cousins who obviously were aware of each other's identity. Tylone testified to a simmering feud over defendant's girlfriend, while defendant denied any such feud. There is nothing in the record to indicate Tylone had a reason to lie about who shot him, whereas the record shows that there were holes in defendant's alibi defense, and the jury could properly reject it. When viewed in the light most favorable to the State, the evidence is not so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt as to defendant's guilt.

¶ 44 For the foregoing reasons, we hereby affirm defendant's conviction for aggravated battery with a firearm and the circuit court's judgment thereon.

¶ 45 Affirmed.