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2012 IL App (3d) 100658-U

Order filed May 22, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 10th Judicial Circuit,
)	Peoria County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-10-0658
v.)	Circuit No. 09-CF-370
)	
TYRONE HOPKINS,)	Honorable
)	Glenn H. Collier,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) Defendant was proven guilty beyond a reasonable doubt of first degree murder and unlawful possession of a weapon by a felon where eyewitnesses identified defendant as the shooter.
(2) The trial court properly excluded hearsay evidence that a third party admitted that he shot the victim where defendant failed to establish that the declarations were made under circumstances that provided "considerable assurance" of trustworthiness as set forth in *Chambers*.
- ¶ 2 Following a bench trial, defendant Tyrone Hopkins was found guilty of first degree

murder (720 ILCS 5/9-1(a)(1) (West 2008)) and unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)) and was sentenced to concurrent terms of 65 and 10 years in prison. On appeal, he claims that (1) the State failed to prove his guilt beyond a reasonable doubt, and (2) the trial court erred in barring hearsay testimony that another person admitted that he committed the murder. We affirm.

¶ 3 At trial, Officer Robert McMillen testified that at 12:04 a.m. on March 31, 2009, he responded to a dispatch that reported two people had been shot at 2113 West Starr Street. When he arrived, he saw a large group of people standing in front of the house, some were yelling and others were crying. He found a man lying just inside a wire fence in the front yard who had been shot in the head and was unresponsive. Inside the house, McMillen discovered another man, John Thomas, in the kitchen area, bleeding but conscious. Emergency personnel arrived and loaded Thomas into an ambulance. McMillen followed the ambulance to the hospital.

¶ 4 Several witnesses testified that they were present at the scene when the shooting began. Robert Williams testified that he was in the front yard when defendant shot his cousin, Lonnie Williams. Williams explained that he was involved in a relationship with Lakeisha Brown. At the time, Brown was also living with defendant, with whom she was raising five children. On March 30, 2009, Robert and Lakeisha had an argument, and Lakeisha cut Robert's thumb with a knife. Robert was upset and drove to his cousin's, Margaret William's, house. A group of his friends decided to return to Lakeisha's. At Lakeisha's apartment, Margaret's sister, Chanel, started a fight with Lakeisha. Robert eventually grabbed Chanel and pulled her away, and the group left.

¶ 5 Later that day, Robert argued with defendant on the phone. Robert assumed a fight would follow. After a short time, he heard a knock at the door and saw a large group of people standing outside. Defendant was holding a golf club or a bat. Robert walked outside and told defendant to drop the object. As defendant approached the house, a gun was fired. Robert turned and ran toward the porch and heard several more shots. Once inside the house, he saw John Thomas lying on the kitchen floor, telling everyone that he had been shot. Robert then went outside and saw Lonnie lying on the ground.

¶ 6 Margaret testified that Robert was involved with Lakeisha, who was also in a relationship with a man called "Bees." She identified defendant as Bees. When the large crowd gathered in front of her house, she took lighter fluid outside and poured it on the group to make them leave. As she came back inside the fence, her brother, Lonnie, walked outside with his hands in the air calling for peace. Someone from the crowd came up and confronted Lonnie. Defendant was standing near the person fighting with Lonnie. As Margaret approached, Lonnie pushed her aside. Margaret then saw defendant shoot Lonnie in the head. She pulled Lonnie inside the fence and ran in the house to call for help. She did not see anyone other than defendant holding or shooting a gun. Police took Margaret to the station for questioning. At the station, she identified defendant as the shooter in a photo line-up.

¶ 7 On cross-examination, she admitted making a statement to detectives that Lonnie "must have seen it because I didn't." She testified that defendant was standing "a couple of feet" away when he shot her brother. She could not recall exactly how many feet, but stated that he "wasn't too far."

¶ 8 John Thomas testified that he was a friend of the Williams family and was at Margaret's house that day. He knew Margaret as "Nece." When defendant arrived at Nece's house, Thomas heard voices outside and stepped out to see what was going on. He saw people holding sticks. Then, he saw a man he didn't recognize get into a fight with Lonnie. Thomas testified that just after the fight started, he heard gunshots. He turned and ran inside. When he reached the kitchen, he felt short of breath, like he had been shot in the head. He later realized that he had been shot in the chest.

¶ 9 Kanisha Clements testified that she and Lakeisha were friends. She had a conversation with Lakeisha before the shooting in which Lakeisha told her that "it's going to be the Browns versus the Williams and my man Bees had a gun."

¶ 10 Debra Guyton stated that she was working at a local store on the day of the shooting when defendant came in and said that "your girls jumped my girl" and "it's not going to be over with." Defendant also stated that, after he left the store, he was "going out with a bang." Later that night, Guyton was at Margaret's house and witnessed defendant pull a gun and fire the first shot.

¶ 11 Lakeisha testified that she and defendant had been in a relationship for 13 years. She said that a group of her family and friends drove to Nece's house after she and Chanel had a fight. Some of them had golf clubs and ball bats. Nece came out of the house and said she wanted to fight with her. Nece's brother, Lonnie, tried to break it up. At that point, defendant grabbed a bat and challenged Robert. Lakeisha testified that she did not see Robert or defendant with a gun. Robert started to come toward the street, and Lakeisha heard gunshots. She never saw who fired the shots.

¶ 12 Melagra Sanchez and Reggie Coleman were also called as State witnesses but neither identified defendant as the shooter. Both admitted on cross-examination that they had talked to police shortly after the shooting. Sanchez acknowledged that on the morning of March 31, 2009, he told investigators that he saw defendant raise his hand toward Lonnie and shoot a gun approximately four or five times. The next day, he again told police that he witnessed defendant shoot the victim in the head. Sanchez testified that he told the investigators that defendant fired the shots because the officers made threats to have his kids removed from the custody of their mother. Coleman also admitted that he gave a videotaped statement to police within hours of the shooting in which he stated that he saw defendant shoot Lonnie. In the video, Coleman demonstrated where defendant was standing in relation to the victim and how defendant fired the gun.

¶ 13 Sherry Williams, Margaret's cousin, testified that she saw defendant fire the shots at Lonnie. On direct examination, she testified that she saw defendant firing the shots as she walked to her car to retrieve a baseball bat. On cross-examination, counsel questioned how she saw the shooting if she was walking back to her car. Sherry testified that, actually, she had already retrieved the bat and was walking back to Margaret's house when the first shot was fired.

¶ 14 The physical evidence demonstrated that all of the bullets recovered from the scene and the victims were fired from the same gun. Dr. Scott Denton conducted the autopsy and testified that evidence of close range firing, or stippling, would normally exist if the gun was fired within 18 to 24 inches from the point of entry. Here, there was no evidence that the shot that caused Lonnie's death was fired at close range.

¶ 15 Forensic scientist Ellen Chapman testified that defendant was tested for gunshot residue and that the test was inconclusive. Less than all three chemicals used to identify a firearm discharge were present on defendant's hands. Chapman explained that residue particles are small and easily removed by activities such as wiping and washing. Given that three and a half hours passed between discharge of the firearm and testing, she opined that the particles could have been removed or brushed away.

¶ 16 The defendant called police detective Katherine Burwell who testified that she interviewed Margaret on March 31, 2009. During the interview, Margaret circled the photo of defendant, but stated that there was a second person who fired shots that day.

¶ 17 Detective Shawn Curry was also called to testify on defendant's behalf. He testified that Guyton told him that she "watched everything unfold while she was inside the residence."

¶ 18 Defendant's son, Tyrone, Jr., was eleven years old at the time of trial. He testified that he went with other family members to Nece's house. He saw a man that he knew as "Sneeze" run from the side of the house next door and fire a gun. Defendant's stepson, Darrell Brown, also testified that he witnessed a man named "Sneeze" come from the side of the neighboring house with a gun. Darrell stated that as soon as the shooting began, defendant grabbed him and Tyrone, Jr., and they started running.

¶ 19 Brian Cleary testified that he was the one who fought with Lonnie. When he heard the shots, he and others ran away. When defense counsel asked him if he had a conversation with Sam Trapps about a month after the shooting, the State objected, citing inadmissible hearsay, and the objection was sustained.

¶ 20 Defendant testified that when he stepped toward Robert, Brian Cleary stepped toward Lonnie and started fighting. Defendant grabbed a baseball bat and was about to swing it at Lonnie when Lonnie headed toward the house. He heard the first shots as he was leaning over to help Cleary. He grabbed his son, Darrell, and ran across the street. When he turned around, he saw Samuel Trapps, otherwise known as "Sneeze," shooting the gun. He did not tell investigators that Trapps was the shooter because Trapps went to defendant's mother's house shortly after the shooting and told everyone not to mention his name.

¶ 21 The DVD of defendant's interview was also played for the court. The interview lasts for about 25 minutes. In it, defendant denies that he was the person who shot Lonnie and repeatedly states that he does not know the identity of the shooter.

¶ 22

ANALYSIS

¶ 23

I. Sufficiency of the Evidence

¶ 24

Defendant claims that the State did not present sufficient evidence to prove he was guilty beyond a reasonable doubt.

¶ 25

Where a defendant challenges the sufficiency of the evidence to sustain a conviction, 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 elements of the crime proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237 (1985). This standard of review applies whether the defendant receives a bench or jury trial. *People v. Cooper*, 194 Ill. 2d 419 (2000). A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Wesley*, 382 Ill. App. 3d 588 (2008).

¶ 26 It is not our role to retry the defendant or substitute our judgment for that of the trier of fact, since the trier of fact assesses the credibility of the witnesses, determines the appropriate weight of the testimony, and resolves conflicts in the evidence. *People v. Evans*, 209 Ill. 2d 194 (2004). Rather, it is our duty to carefully examine the evidence while giving due deference to the trial judge who saw and heard the witnesses. *People v. Smith*, 185 Ill. 2d 532 (1999).

¶ 27 When defendant's identification forms the central question in a prosecution, the testimony of a single witness is sufficient to convict if the witness is credible and if the witness viewed defendant under conditions permitting a positive identification. *People v. Slim*, 127 Ill. 2d 302 (1989); *People v. Richardson*, 123 Ill. 2d 322 (1988). Minor discrepancies in the eyewitnesses' identification testimony only go to the weight to be given the testimony. *People v. Morgan*, 28 Ill. 2d 55 (1963).

¶ 28 Contrary to defendant's assertion, the evidence in this case was not so improbable or unsatisfactory as to create a reasonable doubt of defendant's guilt where several eyewitnesses positively identified defendant as the shooter. Three witnesses, Margaret Williams, Sherry Williams and Debra Guyton, testified that they had a clear view of defendant firing shots at Lonnie. Margaret was standing within a few feet of the victim. Later that morning, she positively identified defendant as the shooter from a group of photos and again at trial. Sherry Williams saw defendant shoot Lonnie when she went to her car to retrieve a baseball bat. On cross-examination, she clarified that she was actually returning from her car when she witnessed the shooting. Debra Guyton was standing on the front porch, several feet away, when she saw defendant shoot Lonnie. Guyton's interview statement to police that

she witnessed the shooting from inside the house did not alter her identification of defendant.

¶ 29 Sanchez and Coleman also told investigators that they saw defendant shoot the victim during the fight in interviews conducted within hours of the shooting. They recanted their statements at trial, but their testimony was impeached with their prior statements in which they unequivocally identified defendant.

¶ 30 Defendant argues that eyewitness testimony revealing another shooter should have been considered. Although defendant's two sons testified that they saw someone else fire the gun, both witnesses had a personal motive to falsely implicate someone other than defendant. Moreover, they did not name other shooter until trial.

¶ 31 Defendant also testified that someone else shot Lonnie and identified the shooter as Sam Trapps. However, defendant failed to reveal this person during his police interview, emphatically telling investigators that he did not know who shot Lonnie. At trial, defendant testified that he did not tell investigators who the real shooter was because he did not know it was Trapps until after his interview. His testimony does not support that claim. On direct examination, he testified that he ran back to get his son and saw Trapps firing a gun. His delay in identifying the shooter affects the credibility of his testimony, which is to be determined by the trier of fact. In this case, the trial court considered the testimony of the witnesses and reasonably inferred that defendant shot the victim.

¶ 32 Defendant claims that the lack of evidence of close range firing on Lonnie's skin contradicted evidence that defendant shot him from two feet away. The pathologist testified that stippling may not occur if the shooter is standing more than 24 inches from the victim.

Margaret's testimony that defendant was standing a "couple of feet" or more from the victim when he fired the gun provides a reasonable explanation why there was no evidence of stippling on Lonnie's body.

¶ 33 Defendant also maintains that the lack of gunshot residue on his hands demonstrates that he did not fire the gun involved in the murder. The evidence, again, provides a plausible explanation. The forensic scientist explained that defendant may not have fired the gun but that gunshot residue is easily removed within a few hours. In this case, several hours elapsed between the time of the shooting and defendant's arrest. Thus, a rational trier of fact could have found that defendant fired a gun without conclusive evidence of gunshot residue.

¶ 34 We agree with defendant that the eyewitness testimony and physical evidence was not perfect. However, those imperfections were presented at trial and argued to the trial court. See *Evans*, 209 Ill. 2d 211-12 (function of trier of fact to assess credibility and weigh the testimony). After considering all of the evidence in a light most favorable to the State, we conclude that a rational trier of fact could have found defendant guilty of first degree murder and unlawful possession of a weapon by a felon beyond a reasonable doubt.

¶ 35 II. *Chambers* Criteria

¶ 36 Generally, an out-of-court statement by a declarant that he committed the crime is inadmissible as hearsay, even though it is a statement against the declarant's penal interest. *People v. House*, 141 Ill. 2d 323 (1990). This rule acknowledges that to allow such statements at trial would "tempt [] everyone accused of a crime to introduce perjured testimony that a third party, then deceased or beyond the jurisdiction of the court, had

declared that he, and not the accused, had committed the crime." *People v. Lettrich*, 413 Ill. 172, 178 (1952).

¶ 37 If sufficient assurances of trustworthiness exists, the out-of-court statement may be admitted under the statement-against-penal-interest exception to the hearsay rule. *People v. Thomas*, 171 Ill. 2d 207 (1996). Illinois courts have adopted and applied the four criteria set forth in *Chambers v. Mississippi*, 410 U.S. 284 (1973), to determine trustworthiness: (1) whether the statement was spontaneously made to a close acquaintance shortly after the crime occurred; (2) whether it was corroborated by other evidence; (3) whether it was self-incriminating and against the declarant's interest; and (4) whether there is adequate opportunity for cross-examination of the declarant. *Chambers*, 410 U.S. at 300-01.

¶ 38 All four *Chambers* factors are not required for a statement to be admissible at trial. *People v. Tenney*, 205 Ill. 2d 411 (2002). However, where only one or two factors are met, courts have generally held that the hearsay statements are insufficiently trustworthy. *People v. Jones*, 2012 IL App (1st) 093180; *People v. Gallano*, 354 Ill. App. 3d 941 (2004); *Thomas*, 171 Ill. 2d 207. The key to admissibility is whether the declaration was made under circumstances which provide "considerable assurance of its reliability by objective indicia of trustworthiness." *Thomas*, 171 Ill. 2d at 216.

¶ 39 Here, defendant admits that the fourth factor has not been met; there was no opportunity, adequate or otherwise, to cross-examine Trapps. Nevertheless, he claims that the statements purportedly made by Trapps satisfy the three remaining factors in *Chambers*'s indicia of trustworthiness. We disagree.

¶ 40 Initially, we note that the third factor has been satisfied. Both the State and defendant

agree that the alleged statements were self-incriminating and against Trapps's penal interest.

¶ 41 However, the first factor has not been established because Trapps's alleged statements were not spontaneously made to a close acquaintance. It appears from the record that Trapps allegedly made a statement to Cleary about a month after the shooting and made other statements on April 11, April 12, and August of 2009, to witnesses listed in an offer of proof. Nothing in the record suggests that these statements were made with spontaneity during a conversation with Cleary or the other witnesses. Moreover, the evidence does not demonstrate that any of them had a close relationship with Trapps or that Trapps confided in them.

¶ 42 Defendant's testimony also suggests that Trapps made a statement at defendant's mother's house within a day or two of the shooting. However, upon further examination at trial, defendant admitted that he was not present when that statement was made. Defendant's failure to witness the conversation diminishes any indicia of trustworthiness. Thus, the first factor was not satisfied.

¶ 43 The record also fails to satisfy the second factor. The defendant argues that the statements were corroborated by the testimony of several witnesses at trial who claimed to have seen Sam Trapps firing a gun near Margaret's house. However, the testimony of these witnesses lacks credibility. All of them had reason to fabricate a statement suggesting that someone else shot the victim. None of them mentioned the name, Sam Trapps, or "Sneeze" to investigators or to defense counsel in the months prior to trial. Accordingly, the trial court's conclusion that such testimony was incredible and untrustworthy was reasonable.

