

No. 1-12-2622

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 19915
)	
BILLY ANDERSON,)	Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Evidence sufficient to convict defendant of two counts of attempted first degree murder. Mittimus corrected to properly reflect felony class of offenses.
- ¶ 2 Following a bench trial, defendant Billy Anderson was found guilty of two counts of attempted first degree murder and sentenced to consecutive 30-year prison terms. On appeal, defendant contends that the evidence was insufficient to convict him beyond a reasonable doubt.

Also, the parties agree that defendant's mittimus must be corrected to properly reflect the felony class of his convictions.

¶ 3 Defendant was charged with multiple counts of attempted first degree murder and aggravated battery of a firearm for allegedly, on or about September 21, 2009, shooting Barron and Alphonso Hall "about the body" with a firearm. Codefendant Reginald Owens was separately charged for the same incident, and defendant's bench trial was held simultaneously with codefendant's jury trial in December 2011.

¶ 4 Barron Hall testified that he and his brother Alphonso were outside Barron's home drinking liquor on the day in question. He did not fully recall being outside after dark, though he did recall hearing an argument outside between Alphonso and others that caused him to go outside. He did not remember being shot, but awoke in the hospital with gunshot wounds to the head, chest, and back, the latter rendering him a paraplegic. Barron admitted to convictions for controlled substance offenses in 2001, 2003, 2005, and 2006 and for unlawful use of a weapon by a felon in 2008.

¶ 5 Alphonso Hall testified that he went to Barron's apartment in the afternoon of the day in question and they "hung out," with Alphonso smoking marijuana. (Alphonso opined that the marijuana made him paranoid but did not affect his perception or recall.) Around 9 p.m., he was outside Barron's building with Barron when "some guys approached me with an issue they had with my brother" in that he was selling narcotics in the area though "he's one of the Stones." Alphonso denied being involved, and Barron walked about a half-block away with one of the men to converse. While Alphonso could not hear them, "I could see the look on my brother's face and on the other guy's face [and] they didn't see eye-to-eye on the situation." They parted

without incident, and Barron went with Alphonso to a nearby liquor store before returning to sit outside Barron's home. As they sat, a group of 9-10 men (who Alphonso did not recognize) congregated across the street. Alphonso advised Barron to "pack up," then went inside and phoned 911 because he feared some in the group were armed (though he did not see any weapons). Barron, still drinking outside, briefly argued with police; the group had dispersed by then. When the police left, Alphonso went back outside to sit with Barron. Alphonso argued with a man in the window of an upstairs apartment in Barron's building, including taunting the man to "shoot" because he referred to himself as "the shooter" (Alphonso did not see him with a gun), and the man "called some guys back" by phone.

¶ 6 A short time later, defendant and codefendant approached and "in a split-second" Alphonso heard gunshots and saw Barron being shot in the head before he felt multiple gunshot wounds himself. Codefendant fired first at Barron, then defendant began firing at Alphonso. Alphonso ran into Barron's apartment and "blanked out." While it was night at the time and generally dark, it was bright near Barron's building due to streetlights and a light on the building; Alphonso recalled bugs being attracted by the building light as he sat outside. Neither defendant nor codefendant was obscuring his face with a hood or the like. Broken glass by the entry to Barron's building was intact before the shooting. While in the hospital after the shooting, Alphonso was interviewed by police; he admitted to stating at the time that he did not see who shot him. However, the day after the shooting, police showed Alphonso two photographic arrays, from which he identified codefendant as one of the shooters but was unable to identify anyone else. Alphonso explained that he was medicated in the hospital for his wounds, while afterwards he "sat there thinking about it over and over" and "my memory came back."

Alphonso viewed lineups on October 1 and 26, 2009, from which he identified codefendant and defendant, respectively, as the shooters. Alphonso admitted to a 2006 controlled substance conviction. He also admitted to having a contempt-of-court charge, for not appearing in court as subpoenaed, pending as of trial. He denied that the State made any promises or threats regarding testifying in the instant case, and he denied that he was reluctant to testify but merely forgot what day he was supposed to attend court.

¶ 7 Vivian Pettigrew testified that she lived across the street from Barron's building on the day in question. She fell asleep in her living room at about 7 p.m. but was awakened around 10 p.m. by a man repeating "shoot!" She "peeked out the blinds" of her living room window into the well-lit street; she did not put on glasses, but her glasses are only for reading. The Halls¹ were in front of Barron's apartment building and Alphonso was repeating "shoot" while looking up at a third-floor apartment in the same building. Another man approached the Halls and spoke briefly with Barron before leaving. Pettigrew then saw defendant and codefendant crouching in the alley with guns in hand; their faces were not covered though they wore hooded sweatshirts, and Pettigrew knew them from the neighborhood. Defendant and codefendant approached the Halls, "stood in front of them" at "very close" range, and "shot them up;" defendant shot Barron while codefendant shot Alphonso. Barron fell wounded where he had stood, while Alphonso ran into the building before collapsing. When examined on how long the incident took and how far the shooters stood from the Halls, Pettigrew admitted that "I can't do the minutes and the inches and the pounds and all that."

¹ Though Pettigrew did not refer to either man by name, one man lived in the building across the street and was familiar from the neighborhood, while she had not seen the other man before that day.

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¶ 8 As the attackers fled, now wearing their hoods up so their faces were obscured, Pettigrew saw a woman phone the police so she did not. She also did not report what she had seen to the police that night because she was "scared for my life" and had to be at work early that morning, but she changed her mind and went to the police station the next day. She did not describe either shooter because she was not asked to provide a description. However, she had seen codefendant driving recklessly on an earlier day and noted his license plate number; she gave the police a piece of paper with three plate numbers. She was shown a photographic array from which she identified codefendant as one of the shooters; she could not identify anyone in a second array. When Pettigrew went home from the police station, she saw defendant and codefendant on her block "with the rest of their friends" and phoned the police. When officers interviewed defendant in the street but did not arrest him, Pettigrew did not phone again to inform police that the man they were interviewing was one of the shooters. On October 8, she went to the police station and viewed a lineup from which she identified codefendant as one of the shooters and, after reporting seeing defendant on the 22nd, a photographic array from which she identified defendant as the other shooter. On October 26, she saw a lineup from which she identified defendant as one of the shooters. The State provided Pettigrew financial assistance in moving from the apartment she was living in at the time of the shooting but she denied that she was promised anything in exchange for that assistance.

¶ 9 Police officer Beluso testified to conducting the field interview of defendant on September 22, recording his identity on a contact card and confirming that there were no warrants or orders for his arrest before allowing him to leave.

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¶ 10 Detective Devin Jones testified to seeing blood, ten spent shell casings, and a bullet fragment outside Barron's apartment building, a bullet fragment inside the building, and broken glass in the front door. He was able to examine the outdoor scene without using a flashlight. There was also blood inside the building leading to a first-floor apartment that also contained blood. Detective Jones could not interview either of the Halls after the shooting because they were both in surgery. Detective Jones saw Alphonso and Pettigrew view and identify codefendant in lineups on October 1 and 8 respectively. Based on Pettigrew's report of seeing defendant on September 22 and the contact card, Detective Jones prepared a photographic array on October 8 from which Pettigrew identified defendant. On October 26, Detective Jones saw Alphonso and Pettigrew separately view a lineup from which each identified defendant.

¶ 11 Detective Sylvia VanWitzenburg testified that, when she interviewed Pettigrew on the 22nd, Pettigrew provided a list of license plate numbers; one plate was registered to codefendant. She prepared a photographic array including codefendant, from which Pettigrew identified codefendant. Detective VanWitzenburg interviewed Alphonso in the hospital while he was still receiving intravenous medication, and he identified codefendant from a photographic array while he could not identify anyone in another array. Alphonso did not mention in his interview that he had smoked marijuana that day, nor that he argued with the man in the upstairs apartment window, nor that the dispute with Barron concerned drugs, and he stated that he did not know whether defendant or codefendant shot him.

¶ 12 The parties stipulated to the chain of custody for the ten shell casings and two bullet fragments mentioned above, and forensic scientist Marc Pomerance testified that he examined them and concluded that the casings were fired from two guns; that is, five from each gun.

¶ 13 Following closing arguments, the court found defendant guilty of attempted first degree murder and aggravated battery with a firearm. The court first found based on the number of shots fired that the shooters emptied their guns into the Halls at close range and thus committed attempted first degree murder as well as aggravated battery, and based on their acting together are accountable for each other's actions. The court noted that Barron could not identify the shooters, that Alphonso "is never going to get a citizen of the year award in his neighborhood," and that Pettigrew "knew everything about what was going on in the neighborhood" in the manner of a busy-body. That said, the court found Pettigrew credible, noted that she had a better opportunity to see the shooters than Alphonso, found her familiarity with defendant and codefendant from the neighborhood strengthened her identification, and found that she corroborated her identification by reporting her sighting of defendant. The court refused to fault or discount Pettigrew for not following up on that call by further identifying defendant as he was interviewed. The court also found that, whether Alphonso's identification would "stand on his own," it corroborated Pettigrew's identification.

¶ 14 Defendant's post-trial motion was denied, with the court reiterating that Pettigrew was a credible witness whose testimony as corroborated was sufficient to convict. Following arguments in aggravation and mitigation, the court sentenced defendant on two counts of attempted first degree murder to consecutive prison terms of 30 years. His post-sentencing motion was denied, and this appeal timely followed.

¶ 15 On appeal, defendant primarily contends that the evidence was insufficient to convict him beyond a reasonable doubt.

¶ 16 When presented with a challenge to the sufficiency of the evidence, this court must determine whether, after taking 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. Brown*, 2013 IL 114196, ¶ 48. Because it is the role of the trier of fact to fairly resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences, we will not substitute our judgment for that of the trier of fact on issues involving the weight of evidence or witness credibility. *Id.* 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. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Similarly, 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. *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. *Brown*, 2013 IL 114196, ¶ 48.

¶ 17 Identification of a defendant by even one eyewitness can be sufficient to sustain a conviction. *People v. Tomei*, 2013 IL App (1st) 112632, ¶ 36. The five factors routinely used to evaluate the reliability of an identification are (1) the witness's opportunity to view the suspect during the offense; (2) the witness's degree of attention; (3) the accuracy of any prior descriptions provided; (4) the witness's level of certainty at the time of the identification procedure; and (5) the length of time between the crime and the identification. *Id.*, ¶ 37, citing *People v. Piatkowski*, 225 Ill. 2d 551, 567 (2007).

¶ 18 Here, Pettigrew and Alphonso identified defendant and codefendant as the shooters, repeatedly and with certainty. They identified codefendant on the day after the shooting, and both had identified defendant by October 8 from the September 21 shooting. While Pettigrew gave no description against which to compare her identifications, she explained that she was not asked to provide any. Pettigrew was clearly paying attention to the shooting, including seeing the shooters crouching in the alley before Alphonso saw them and seeing them flee after Alphonso ran indoors. Moreover, while the shooting clearly affected her emotionally, she did not share Alphonso's degree of emotional involvement from being shot himself and seeing his brother shot. While defendant notes the lack of specificity in Pettigrew's account, she explained that she is unable to reliably estimate measurements. That she cannot give specific numbers on how close she was to the shooters or they were to the Halls, nor for how long she saw the shooters, does not render her testimony incredible. There were discrepancies between the accounts of Alphonso and Pettigrew, most notably that Alphonso testified that defendant shot him while Pettigrew testified that codefendant shot him. However, they had different vantage points and the shooting began and ended quickly, so that the question of who shot first and at whom is a very close matter and the discrepancies are within the proverbial margin of error. Moreover, as the shooters clearly acted in concert, it is of absolutely no *legal* importance who shot whom nor who fired first. Taking the evidence in the light most favorable to the State as we must, we do not find any of the issues noted by defendant fatal to the credibility of the identifications by Pettigrew (nor the corroborating identifications by Alphonso) of defendant and codefendant as the shooters.

¶ 19 Defendant argues that it is implausible that he or codefendant would not cover their faces during the shooting, especially if they had hoods as Pettigrew testified, and that it is contrary to human experience that he would return to the scene of the crime if he was the shooter. However, human experience is broad and includes the performance of acts that, especially with physical and temporal distance, seem imprudent or even irrational. Stated another way, what is plausible is not limited to what is wholly logical. Moreover, it is reasonable to infer from Alphonso's testimony that the shooting was gang-related as Barron was warned not to sell drugs because "he's one of the Stones," and that the man in the upstairs apartment had called defendant and codefendant to the scene for the shooting. Under such circumstances, and with defendant residing in or frequenting the neighborhood, it is not at all incredible that defendant would be near the same building later. In sum, we cannot conclude that no reasonable finder of fact could convict defendant of the attempted first degree murders of Barron and Alphonso Hall.

¶ 20 Defendant also contends, and the State correctly agrees, that the mittimus must be corrected. He was convicted of two counts of attempted first degree murder, a Class X felony (720 ILCS 5/8-4(c)(1) (West 2012)), but the mittimus erroneously states that the class of these offenses is "M," the *sui generis* class for first degree murder.

¶ 21 Accordingly, pursuant to Supreme Court Rule 615(b)(2) (eff. Aug. 27, 1999), the clerk of the circuit court is directed to correct the mittimus to reflect that attempted first degree murder is a Class X felony. The judgment of the circuit court is otherwise affirmed.

¶ 22 Affirmed; mittimus corrected.