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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10 CR 8503
	)	
NOCTURNE WATSON,	)	The Honorable
	)	Arthur F. Hill, Jr.,
Defendant-Appellant.	)	Judge, presiding.
	)	

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JUSTICE HYMAN delivered the judgment of the court.  
Justices Neville and Simon concurred in the judgment.

**ORDER**

¶ 1 *Held:* There was sufficient evidence to convict defendant of aggravated battery with a firearm and unlawful use or possession of a weapon by a felon. Trial counsel did not render ineffective assistance of counsel by failing to move to quash his arrest or suppress evidence. The trial court did not abuse its discretion in admitting evidence of defendant's earlier argument with the victim. We vacate several of Watson's conviction pursuant to *People v. Aguilar*, 2013 IL 112116, but this does not affect Watson's sentence.

¶ 2 Nocturne Watson was convicted of aggravated battery with a firearm and unlawful use or possession of a weapon by a felon, following an incident where he shot Tyrone Scott twice in the

arm. This shooting itself followed an earlier confrontation where Watson had punched Scott in the face. Watson appeals his convictions on three grounds:

¶ 3 (i) the evidence was insufficient to support his convictions, because the physical evidence conflicted with witness testimony;

¶ 4 (ii) his counsel rendered ineffective assistance by not moving to quash his arrest and suppress evidence obtained as a result of his arrest; and

¶ 5 (iii) the trial court admitted impermissible evidence of a prior crime or bad act, namely, the earlier altercation with Scott.

¶ 6 We find that the trial court had sufficient evidence to reach guilty verdicts; that Watson was not prejudiced by his trial counsel's strategic decision to refrain from filing a motion to quash and suppress; and that testimony about Watson's earlier altercation with Scott was admissible as part of the continuing narrative, or to show motive and identification.

¶ 7 Watson was convicted on 21 counts for violating seven separate statutes, but for purposes of sentencing the court merged his convictions into two separate counts: unlawful use or possession of a weapon by a felon, 720 ILCS 5/24-1.1 (West 2010) and aggravated battery with a firearm, 720 ILCS 5/12 4.2(a)(1) (West 2010). Of those 21 counts, six were for a Class 4 felony, aggravated unlawful use of a weapon under 720 ILCS 5/24-1.6(a)(1), (3)(A) (West 2010). But while this appeal was pending, our supreme court found the Class 4 felony form of this statute facially unconstitutional. Accordingly, we vacate Watson's six convictions under this statute. Because the court's sentence would not have been affected by vacatur of these convictions, we affirm the trial court's sentence.

¶ 8 BACKGROUND

¶ 9 This case began as a conflict between the defendant, Nocturne Watson, and Tyrone Scott. On the evening of April 20, 2010 around 6:30 p.m., Scott was driving alone in his Chevy Avalanche on 66th Street toward Ogden Park. He saw a group of men walking down the street. One of these men signaled for Scott to pull over, which he did.

¶ 10 Watson then approached Scott's car. Scott and Watson had had a discussion a year and half earlier regarding Watson's wife; Watson now asked if Scott remembered him. Scott told Watson that he did remember him.

¶ 11 While Watson was standing at the driver's side window, Scott talked with another man on the other side of the car; when Scott turned his head around, Watson struck him in the face with a hand closed around an unopened beer can. Scott went home and called police to report the incident. He described Watson to the police, who told him they would pick up Watson.

¶ 12 Scott then left home in his truck, and picked up his friend Walter "Buddy" Garland to go to a funeral at 62nd Street and Artesian. After picking Garland up, Scott received a call from his sister, Belinda Scott, at around 7:30 p.m., informing him that his nephew, Jerome "DJ" McCambry, was in a fight with another young man at 66th Street and Hermitage. Belinda asked Scott to break up the fight.

¶ 13 Scott drove to the location and parked on the east side of Hermitage, south of 66th Street and facing southbound. He saw his nephew fighting, with "probably about 50 people out there." Belinda was also there, and she heard, and then saw, a gold-colored car "racing down the street," northbound on Hermitage. The car stopped in front of Scott's truck.

¶ 14 Scott, Garland, and Belinda saw Watson get out of the car, go to Scott's driver side window, and point two guns at Scott, one in each hand. Scott testified that Watson said, "you want to call the police huh[?]" Watson pointed one gun at Scott's face, and the other at the back

of Scott's head. After some yelling, Scott pushed his arm out of the window, striking Watson in the neck. Belinda heard two gunshots before seeing Scott's truck drive away southbound. McCambry turned around from his scuffle after hearing three gunshots, and saw Watson standing in the street, shooting at Scott's truck, a gun in each hand.

¶ 15 After driving away, Scott pulled over on to Marquette Road, believing that he "was out of the shooting range." Scott was later transported by ambulance, and treated at Mount Sinai Hospital for bullet wounds.

¶ 16 Around the same time as the shooting incident, Chicago police officers McWilliams and McGuire were driving south on Ashland near 66th Street in a marked police vehicle. Officer McWilliams testified that he saw a gold Chrysler Sebring speed through a stop sign while driving eastbound on 66th Street. The officers activated their lights, signaling the driver to stop. The gold car continued and a brief chase ensued, ending at a dead end in an alley, where the driver got out of the gold Sebring. Officer McWilliams identified the driver in court as Watson, and evidence at trial indicated that the car was registered to Watson.

¶ 17 Officer Brown testified that he received information over radio that Officers McWilliams and McGuire were pursuing the gold Sebring. Brown testified that McWilliams described the fleeing driver as a "male black with a white shirt." Officer McWilliams radioed that the individual was fleeing southbound toward the 6600 block of Justine Street. Officer Brown testified that he and his partner, Officer Upshaw, canvassed the area described by McWilliams. He saw an individual matching the "male black with a white shirt" description behind a bush to the side of 6626 South Justine. Officer Brown detained the man, who turned out to be Watson. The police transported Watson to the scene of the shooting, where he was identified by Belinda

and McCambry as the shooter. The next night, Scott identified Watson, from a lineup, as the shooter.

¶ 18 Officer McWilliams recovered two guns from a vacant lot near where the driver of the gold Sebring came to a stop and where Officer Brown took Watson into custody. Eleven fired shell casings and four metal fragments were recovered near 66th Street and South Hermitage Avenue, and two fired metal bullet fragments were recovered from Scott's truck. The firearm and ammunition recovered from the lot had no latent fingerprints that would have been suitable for comparison. The parties stipulated that a forensic scientist would have testified that the bullet fragments and fired cartridge casings recovered by police were fired by one of the recovered handguns. At trial, Belinda, McCambry, Scott, and Garland all identified Watson as the shooter.

¶ 19 Watson was charged with 26 counts, ranging from aggravated battery to attempt murder. Watson filed a pre-trial motion in limine to exclude evidence of his 6:30 p.m altercation with Scott as inadmissible "other crimes" evidence. The State argued that this evidence was admissible because it was part of a continuing narrative that included the shooting, and went to Watson's motive. The court denied Watson's motion.

¶ 20 The trial court acquitted Watson of five counts of attempt murder, but found that the State had satisfied its burden of proof on the remaining counts. Watson filed a pro se post-trial motion alleging ineffective assistance of counsel. After an informal *Krankel* hearing, the trial court found that defense counsel had been effective, and denied Watson's pro se motion. At sentencing, the court merged Watson's convictions into two counts, one for unlawful use of a weapon by a felon, and the other for aggravated battery with a firearm. The court sentenced Watson to 18 years on the aggravated battery charge, and five years on the unlawful use of a weapon charge, to run concurrently.

¶ 21

## ANALYSIS

¶ 22

## Void Convictions

¶ 23

Of Watson's 21 convictions, six were for violating the aggravated unlawful use of a weapon statute, 720 ILCS 5/24-1.6 (a) (1), (a) (3) (A), a Class 4 felony. While Watson's appeal was pending, this statute was found facially unconstitutional in *People v. Aguilar*, 2013 IL 112116, as violating the Second Amendment.

¶ 24

A statute held facially unconstitutional is void *ab initio*, meaning it is as though the statute was never enacted. *People v. Dunmore*, 2013 IL App (1st) 121170, ¶ 9. A court hearing an action under a void statute is without jurisdiction to impose a criminal conviction under that statute; and, this court has "an independent duty to vacate void orders." *Id.* (citing *People v. Thompson*, 209 Ill. 2d 19 (2004)). This is true even where appellate counsel fails to raise the issue. *Thompson*, 209 Ill. 2d at 27 (courts "may *sua sponte* declare an order void.").

¶ 25

In *Dunmore*, we considered a pre-Aguilar conviction on this precise statutory provision and vacated the conviction because the statute was void under Aguilar. We must do the same here, and vacate those six convictions.

¶ 26

But this does not affect Watson's sentence. The court merged these six convictions (which were Class 4 felonies), and nine others, into one count of unlawful use or possession of a weapon by a felon, a Class 2 felony. 720 ILCS 5/24-1.1 (West 2010). The Class 2 felony form of the statute calls for "a term of imprisonment of not less than 3 years and not more than 14 years." 720 ILCS 5/24-1.1(e) (West 2010). The court sentenced Watson to five years' imprisonment on the merged count (to run concurrent to an 18-year sentence on another count). This sentence being at the low end of the spectrum for even a single conviction under the statute,

we see no need to remand for re-sentencing despite the voidness of Watson's convictions under 5/24-1.6(a)(1), (a)(3)(A).

¶ 27 Sufficiency of the Evidence

¶ 28 Watson argues that the State failed to prove beyond a reasonable doubt that he was guilty of aggravated battery with a firearm or unlawful use or possession of a weapon by a felon. Specifically, he points to the following: (i) negative gunshot residue (GSR) test results on his hands; (ii) the unsuitability of the fingerprints on the handguns for lab testing; and (iii) the failure of the police to recover cartridges or shell casings from Watson or his car. He also argues that the witnesses' recollection of the handguns used in the shooting differed from the condition of the seized handguns shown at trial.

¶ 29 We test the sufficiency of evidence for a criminal conviction by determining whether any rational trier of fact could have found that the essential elements of the crime proven beyond a reasonable doubt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). We view the evidence in the light most favorable to the State, and draw all reasonable inferences in the State's favor. *Id.* We will only reverse a conviction when the evidence is so improbable, unsatisfactory, or inconclusive that it introduces reasonable doubt as to the defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). In reviewing the record, we recognize that the trial court must weigh the evidence, determine the credibility of witnesses, draw any reasonable inferences, and resolve any apparent conflicts in the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009); *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004) (trial court's determinations of witness credibility given "great deference").

¶ 30 A person is guilty of aggravated battery with a firearm when he or she, "in committing a battery, knowingly causes any injury to another by means of the discharging of a firearm." 720

ILCS 5/12-4.2 (a) (1) (a) (West 2010). “A person acts knowingly if he or she is consciously aware that his or her conduct is practically certain to cause great bodily harm.” *People v. Steele*, 2014 IL App (1st) 121452, ¶ 23. The defendant’s intent may be “inferred from the surrounding circumstances,” as well as by his or her own words or choice of weapon. *Id.* The State may prove the defendant’s intentional state of mind by purely circumstantial evidence. *Id.* (Since Watson’s 2013 trial, the aggravated battery with a firearm statute has been reworded and moved to 720 ILCS 4/12-3.05 (e) (West 2014). The elements of the crime that are relevant to Watson’s convictions remain the same under the revised statute.)

¶ 31 The crime of unlawful use or possession of a weapon by a felon has self-explanatory elements. A person is guilty under the statute when he or she is a person who, subsequent to being convicted of any felony, knowingly possesses any firearm or ammunition. 720 ILCS 5/24-1.1(a) (West 2010). Watson, having been previously convicted of felonies, is guilty under the statute if he knowingly possessed firearms, regardless of whether those arms were used to shoot Scott.

¶ 32 The State introduced sufficient evidence to prove Watson shot Scott and that evidence supported an inference that he acted with knowing intent. Belinda, Garland, McCambry, and Scott all testified that Watson fired multiple rounds at Scott. This evidence was supported by testimony that Scott suffered multiple gunshot wounds to his arm. According to these witnesses, Watson had pulled two weapons on Scott, and only fired – in Scott’s direction – once Scott drove away from Watson. Additionally, Scott testified that Watson had earlier the same evening threatened and hit him. This testimony also brought out a motive for Watson to shoot Scott, jealousy over a possible affair between Watson’s wife and Scott.



¶ 33 This evidence supports the State’s contention that Watson fired at Scott, and that he did so with the conscious awareness his conduct was “practically certain” to cause the resulting injuries to Scott. Further, the record evidence, taken as true and viewed in the light most favorable to the State, leads to the conclusion that Watson possessed firearms in violation of the UUW by a felon statute.

¶ 34 Watson attacks the reliability of the witnesses’ testimony, arguing their accounts are incompatible with the physical evidence. First, he points to the results of a GSR test performed by the Chicago Police Department after his arrest. As the State pointed out in closing, a lapse in time occurred between Officer McWilliams seeing Watson flee from the site where the handguns were recovered and when a GSR test was run on Watson’s hands. The record evidence indicates that, at the very least, Watson had ample opportunity to wipe his hands clean. The judge observed the testimony of the witnesses, including Watson’s own testimony, and weighed the evidence accordingly. It is not so improbable that Watson could have fired the guns, yet tested negative for GSR.

¶ 35 Next, Scott points to a purported conflict between Scott’s description of the guns and the condition of the guns at trial. Watson describes “[t]he seized handguns identified as being the weapons were dirty and not shiny like described by the Tyrone Scott [sic].” He additionally points to no shell casings or cartridges having been retrieved from his person or car. We accept Watson’s factual contentions as true. We disagree, however, with Watson’s contention that these facts undermine the sufficiency of the evidence.

¶ 36 The court did not need to receive any physical evidence to find Watson guilty, and could have convicted him on testimony alone. *In re M.I.*, 2011 IL App (1st) 100865, ¶ 43. Where a witness testifies to having seen a shooting, but no “weapons, bullets, or casings” are found, the

fact-finder may, after weighing the evidence, find the witness's testimony credible enough that no physical evidence is needed to corroborate the witness's account. *People v. Montes*, 2013 IL App (2d) 111132, ¶ 81; *People v. Daheya*, 2013 IL App (1st) 122333 ¶ 76.

¶ 37 In *Daheya*, we found that the testimony of multiple witnesses sufficient to support a conviction for aggravated discharge of a firearm, despite the lack of any physical evidence, including bullet wounds to the victim or holes in a car. *Daheya*, 2013 IL App (1st) 122333, ¶¶ 75-76. Here, the evidence shows that Scott suffered a number of bullet wounds and that bullets struck the back of his truck, as well as a parked car. Moreover, guns and spent ammunition, which were tied to each other by forensic analysis, were recovered near an area to which Watson had access. This is significantly more evidence than presented in *Daheya*.

¶ 38 The State presented ample evidence for a reasonable fact-finder to reach a verdict of guilty on the various aggravated firearms and battery charges of which Watson was convicted. It was not necessary to secure a conviction that the State recover and present shell casings or cartridges, or fingerprint evidence. Even if the handguns displayed at trial were not reliable evidence of Watson's guilt, the credible testimony of multiple witnesses, that Watson fired at and shot Scott, was more than sufficient evidence to find Watson guilty. See *People v. Starks*, 2014 IL App (1st) 121169, ¶ 48 ("It is well established that a single witness's identification is sufficient to sustain a conviction"); see also *People v. Eppinger*, 293 Ill. App. 3d 306, 310 (1997) (discrepancies among testimony and evidence are "matters of credibility to be weighed and resolved by the trier of fact").

¶ 39 Accordingly, we find the evidence sufficient to sustain Watson's convictions for aggravated battery with a firearm and for unlawful use or possession of a weapon by a felon.

¶ 40 Ineffective Assistance of Counsel

¶ 41 Watson next argues that his attorney’s failure to file “any motion to quash or suppress evidence” deprived him the effective assistance of counsel. According to Watson, Officer Brown’s arrest was unconstitutional because Brown had no articulable suspicion that Watson was engaged in criminal activity. He argues his counsel had a “reasonable chance” of succeeding in bringing a motion to suppress evidence resulting from his arrest, and this prejudiced him.

¶ 42 To prove that counsel provided ineffective assistance, a defendant must establish deficient performance and prejudice due to those deficiencies. *Strickland v. Washington*, 466 U.S. 668, 696 (1984). The trial court observed, in adjudicating Watson’s post-trial motion for a ruling of ineffective assistance of counsel that Watson’s trial counsel performed well in representing Watson.

¶ 43 We may start with the second prong of Strickland analysis—whether the alleged errors of counsel prejudiced Watson. *Strickland*, 466 U.S. at 697. To establish prejudice with regard to not filing a motion to suppress, “the defendant must demonstrate that the unargued suppression motion is meritorious, and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed.” *People v. Henderson*, 2013 IL 114040, ¶ 15.

¶ 44 Even assuming that the motion would have been granted, we have no basis to conclude that the outcome of the trial would have been different had defense counsel filed a motion to quash the arrest or to suppress evidence flowing from the arrest. Watson was identified by no less than four witnesses as having fired multiple shots at Scott in broad daylight. Moreover, Officer McWilliams testified to seeing Watson flee from a lawful stop made with probable cause, and to recovering two guns from a vacant lot where he saw a person, identified in court as Watson, running away. The testimony of the various witnesses corroborated the others’, that Watson had fired shots at Scott, and Officer McWilliams would have been able to give his

testimony identifying Watson, even had Officer Brown not arrested Watson or if his arrest turned out to be unlawful.

¶ 45 We add that the trial court, which observed counsel’s conduct from pre-trial hearings through trial, and in post-trial hearings, praised Watson’s counsel as “extremely prepared” and found no deficiency in how counsel handled the case. Although the trial court’s determination as to whether counsel was ineffective does not determine the issue, our review of the record accords with the court’s description of Watson’s representation, and gives weight to a view that counsel made a sound discretionary judgment to not pursue a motion to suppress.

¶ 46 Because Watson has made no showing that he was prejudiced by his counsel’s decision to not bring a motion to suppress evidence of the arrest, we do not reach the question of whether he has overcome the “strong presumption” that counsel’s decision was one of sound trial strategy. We agree with the trial court’s post-trial determination that Watson was not deprived the effective assistance of counsel.

¶ 47 Other Crimes Evidence

¶ 48 Watson argues that the trial court erred in admitting evidence of the earlier altercation between Scott and Watson, because it was impermissible “other crimes” evidence. We a review a trial court’s decision about whether to admit evidence of other crimes for an abuse of discretion. *People v. Heard*, 187 Ill. 2d 36, 58 (1999). An abuse of discretion is one which is “arbitrary, fanciful, or unreasonable.” *People v. Illgen*, 145 Ill. 2d 353, 364 (1991).

¶ 49 Evidence of a crime other than the one for which the defendant is on trial is not admissible if it is relevant only for its tendency to establish a propensity toward criminal behavior. *Heard*, 187 Ill. 2d at 58. But it may be permissible if admitted to prove any other issue. *People v. Clark*, 2015 IL App (1st) 131678, ¶ 28. Before admitting evidence of prior

criminal acts, the trial court must weigh the prejudicial effect of the other-crimes evidence against its probative value. *People v. Pikes*, 2013 IL 115171, ¶ 11. As we have noted, it is “not all prejudicial evidence that must be excluded but, rather, only that which is *unfairly* prejudicial.” *People v. Rutledge*, 409 Ill. App. 3d 22, 25 (2011) (emphasis in original). Permissible purposes for use of “other crimes” evidence include, amongst others, motive, intent, preparation, plan, knowledge, identity, and absence of mistake. *Clark*, 2015 IL App (1st) 131678, ¶ 28.

¶ 50           Additionally, if evidence of a crime is part of a continuing narrative of events leading up to the event that resulted in the criminal charge, then that crime is not an “other crime” for purposes of the rule. *Rutledge*, 409 Ill. App. 3d at 25. For a crime to constitute an “other crime,” rather than an event in a continuing narrative, that crime must be “separate, distinct, and disconnected” from the charged crime. *Pikes*, 2013 IL 115171, ¶ 20.

¶ 51           The trial court did not abuse its discretion in admitting this evidence. Scott’s initial altercation with Watson was part of a continuing narrative that culminated in Watson’s shooting of Scott. The altercation during which Watson punched Scott in the face took place little more than an hour before the shooting and only a few blocks over. According to witness testimony, Scott fled after being punched by Watson and, when seen by Watson shortly thereafter, was threatened with two guns and shot. These events tie together, having run in a nearly continuous sequence. The only fact tending toward the conclusion Watson’s punch of Scott was an “other crime” is that the State did not file a count for battery stemming from it.

¶ 52           Even if we did not accept that these events comprise a continuing narrative, evidence of the earlier altercation satisfies other established exceptions to the rule against evidence of other crimes: (i) probative of motive in that the evidence of Scott’s discussion with Watson about Watson’s wife, and that Watson punched Scott in the face, are probative of Watson’s potential

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jealousy of Scott with regard to Watson's wife; and (ii) identification in that the altercation establishes the context to Scott's identification of Watson as the person who shot at him about an hour later, particularly given that Scott testified that he did not know Watson's name before the incident.

¶ 53            Affirmed in part; vacated in part.