2016 IL App (1st) 141498-U

SIXTH DIVISION
DATE: October 7, 2016

No. 1-14-1498

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. 12 CR 15219
	)	
BRIAN HAYNES,	)	Honorable
	)	Nicholas R. Ford,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's convictions for home invasion and aggravated discharge of a firearm are affirmed over his contentions that the State failed to prove beyond a reasonable doubt that he personally discharged a firearm during the invasion and that he did so in the direction of another person. The trial court did not err in failing to conduct a *Krankel* hearing (*People v. Krankel*, 102 Ill. 2d 181 (1984)) where the defendant's post-trial statements did not set forth a colorable claim of ineffective assistance of counsel.

¶ 2 Following a bench trial, the defendant, Brian Haynes, was convicted of home invasion and aggravated discharge of a firearm, and sentenced to concurrent, respective terms of 27 and

15 years' imprisonment. On appeal, the defendant: (1) contends that the State failed to prove beyond a reasonable doubt that he personally discharged a firearm during the home invasion; (2) challenges the sufficiency of the evidence to sustain his aggravated discharge of a firearm conviction; and (3) contends that we should remand the matter for a *Krankel* hearing (*People v. Krankel*, 102 Ill. 2d 181 (1984)) because the trial court failed to conduct any inquiry into the factual basis supporting his post-trial allegation of ineffective assistance of trial counsel. For the following reasons, we affirm.

¶ 3 The defendant was arrested on July 26, 2012, in connection with a shooting inside of a house that occurred on the same date. He was subsequently charged by indictment with four counts of home invasion and one count of aggravated discharge of a firearm. The evidence adduced at trial showed that, at about 6 p.m. on the date in question, the defendant broke through the front door of a house located at 11635 South Vincennes Avenue in Chicago and discharged a handgun. The State presented the testimony of four witnesses, Aleka Lee, Precious Griffin, Willie Lee Smith and Gianni Lee, who were inside the house at the time of the invasion and provided similar accounts of the incident.

¶ 4 Aleka testified that, on the date in question, she resided at the house with her uncle, Willie, and brother, Gianni. About 6 p.m., Aleka was walking to the house with her cousin, Precious, and saw the defendant and two other men standing near the intersection of 117th Street and Vincennes. Aleka testified that she was familiar with the defendant "since the 5th grade" and that he was her date to the high school prom dance. Precious testified that she was familiar with the defendant for "years" from the neighborhood. When Aleka and Precious arrived at the

house, Gianni opened the door and they all went inside. About three minutes later, Willie entered the house.

¶ 5 As Aleka, Precious, Gianni and Willie were talking near the living room, Aleka heard a "bang" on a window located next to the front door. Aleka ran up the stairs of the house and heard "the door kick in." From the top of the stairs, she looked towards the front door and saw the defendant holding a gun and pointing it in between the upper and lower level of the house. She stated that, although Precious and Gianni were behind her on the stairs, she could see the defendant holding a gun in the living room. She then ran into the bathroom and called 9-1-1. As she did so, she heard a gunshot. When police arrived on the scene, Aleka told the responding officers what she saw and provided them with the defendant's name. A few hours later, she spoke to a detective and provided the detective with the defendant's name and identified the defendant from a photograph. She also identified the defendant in open court. When asked to describe the gun that the defendant was holding, Aleka stated that "all [she] saw was black." Aleka testified that the defendant did not have permission to enter the house.

¶ 6 On cross-examination, Aleka acknowledged that she did not see the defendant shoot the gun. She also acknowledged that, when she called 9-1-1, she did not provide the dispatcher with the defendant's name. Aleka further acknowledged that, after the shooting, police searched the house and did not find a bullet or bullet holes inside the house. On re-direct examination, Aleka stated that, when she called the police, she did not provide them with the defendant's name because she was "nervous at the time" and only told them that "someone kicked in [the] door and shot."

¶ 7 Precious testified that, while she was talking to Aleka, Gianni and Willie near the living room of the house, she heard two bangs on the front window. She stated that, after she saw "something black banged against the door," she ran to an upstairs bedroom of the house. Before going into the bedroom, Precious saw the defendant kick open the front door of the house. She then ran inside a closet in the bedroom. From inside the closet, Precious saw the defendant holding a gun. She explained that the headboard of the bed inside the bedroom was a mirror and that, in the reflection, she was able to "see straight downstairs to the door where [the defendant] was standing." She stated that the defendant was wearing a green shirt, light blue jeans, white sneakers and holding a gun. From inside the closet, she heard Willie pleading for his life and then heard a gunshot. Precious testified that she did not see the defendant fire the gun. After hearing the gunshot, she buried herself deeper in the closet and waited for the defendant to leave the house. The next morning, Precious spoke with a detective at Area 2 Police Headquarters and provided the detective with the defendant's name and identified the defendant from a photograph. She also identified the defendant in open court.

¶ 8 On cross-examination, Precious acknowledged that, at Area 2, she spoke with an assistant State's Attorney (ASA), who reduced her statement to writing. Precious denied that she did not tell the ASA that she saw the defendant kick down the door. Precious acknowledged that the defendant did not demand money, jewelry or other valuable items. He also did not go to the upstairs level of the house.

¶ 9 Gianni testified that, as soon as he, Aleka, Precious and Willie entered the house, he heard a bang on the front window and saw a black gun through the window. After he saw a leg

kick through the front door, he ran up the stairs of the house. From the top of the stairs, Gianni saw the defendant inside the house holding a black gun. Gianni then ran into an upstairs bedroom and heard a gunshot. The next day, Gianni spoke to a detective and provided the detective with the defendant's name and identified the defendant from a photograph. He also identified the defendant in open court.

¶ 10 On cross-examination, Gianni acknowledged that he did not know in what direction the defendant was pointing the gun. He also acknowledged that the defendant did not pursue him up the stairs or demand money and other valuable items.

¶ 11 Willie testified that, when he entered the house, he started talking to Aleka, Precious and Gianni in the front room. As he did so, he heard two "taps" on the front window and then "somebody kicked the door in." Willie ran to the stairs and saw the defendant and another man enter the house. The defendant was holding a gun and crying. The other man did not have a gun. When asked to describe the gun that the defendant was holding, Willie stated "I guess it was black." The defendant asked Willie where Willie's nephew was. Willie responded that his nephew was not in the house and begged for his life because he thought the defendant was going to shoot him. The defendant then "started shooting the house up." As he did so, Willie ran down the stairs and into a laundry room in the basement. The next day, Willie spoke with detectives at Area 2 and identified the defendant from a lineup. Willie also identified the defendant in open court.

¶ 12 On cross-examination, Willie acknowledged that he did not remember the color of the gun. He testified that he saw the defendant fire two or three shots and that there were two or

three bullet shells on the floor of the house. Willie stated that "he was standing right in front of [the defendant]" when the defendant started shooting and that "[the defendant] could have shot [him] if he wanted to." Willie testified that he did not see anyone touch the shells before police arrived on the scene. He also acknowledged that, at Area 2, he spoke with a detective and an ASA, who reduced his statement to writing. Willie stated that he did not remember if he read the statement, but acknowledged that he signed every page. He admitted that, in the statement, he stated that, "as he turned to run into the basement, he heard one or two shots fired." Willie testified that he did not see the other man with a gun, but acknowledged that he told the ASA that he was "unsure" about whether the other man had a gun.

¶ 13 Detective Steve Wojcik testified that one expended bullet casing was recovered from the house. He acknowledged that no fired bullets or bullet holes were found inside the house. The State then rested.

¶ 14 Defense counsel moved for a directed finding. After denying the motion, the court admonished the defendant about his right to testify and asked him if he was satisfied with counsel's representation. The defendant responded, "yes." The court also asked the defendant if there were any witnesses that he would have liked to call to testify that have not been called. The defendant responded "yes." The court then took a brief recess so defense counsel could confer with the defendant.

¶ 15 When the case was recalled, the court again asked the defendant if he was happy with counsel's representation. The defendant responded, "yes." The court then asked defense counsel if he wished to call any witnesses. Counsel informed the court that he had just learned about the

witness that the defendant wished to call and, as such, did not inform the State about the witness as he would have been required to do given the purpose for which that witness would be called. The court then found that the defendant knowingly and intelligently waived his right to testify, and the case proceeded to closing arguments.

¶ 16 Following closing arguments, the court found the defendant guilty of all charges. In announcing its decision, the court stated that it observed and listened to the testimony of the witnesses closely and believed beyond a reasonable doubt that the defendant, with whom the witnesses were familiar, forcefully entered the house and discharged a firearm. The court also stated that the most troubling inconsistency was that Aleka did not name the defendant in the 9-1-1 call, but ultimately found this fact insignificant where she had provided a good reason for not doing so and the defendant was named as soon as police arrived on the scene.

¶ 17 At sentencing, the State argued for a "significant" sentence given the seriousness of the offense. In mitigation, the defendant presented the testimony of his father, fiancée and uncle, who each testified that the defendant's brother was shot and killed on the same date as the home invasion and that Cinque Lee, Aleka's brother, who resided at the house in question, was arrested for the murder. In allocution, the defendant asked for sympathy from the court. The following colloquy then took place:

> "THE DEFENDANT: *** And then I also have witnesses that my lawyer refused to call that could have helped me beat this case. But since that didn't happen, I would like to ask for the minimum also.
>
> THE COURT: Okay.

[DEFENSE COUNSEL]: Your Honor, I think I need to indicate for the record that --

THE COURT: I wasn't going to pierce whatever relationship you had with your client, but if you want to spread of record. Certainly, you had the opportunity to call any witnesses you wanted.

[DEFENSE COUNSEL]: Judge, I did not refuse to call anybody."

The court then merged the defendant's four counts of home invasion, and sentenced him to 27 years' imprisonment for that offense and a concurrent term of 15 years' imprisonment for aggravated discharge of a firearm.

¶ 18 On appeal, the defendant first contends that the State failed to prove beyond a reasonable doubt that he personally discharged a firearm during the home invasion because three of the State's four witnesses, Aleka, Precious and Gianni, testified that they did not see the defendant fire the gun. The defendant argues that Willie's testimony that he saw the defendant fire the gun was contradicted by his written statement to police in which he said he "heard one or two shots fired." The defendant also argues that the physical evidence presented, one expanded shell casing, contradicts Willie's testimony that he heard multiple shots.

¶ 19 The defendant's argument presents a challenge to the sufficiency of the evidence to prove every element of the offense for which he was convicted and sentenced. When 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 essential elements of the crime beyond a reasonable doubt. *People v.*

Austin M., 2012 IL 111194, ¶ 107. Under this standard, a reviewing court does not retry the defendant or substitute its judgment for that of the trier of fact with regard to the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *Id.*; *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A criminal conviction will be reversed only if the evidence is so improbable or unsatisfactory that there exists a reasonable doubt of the defendant's guilt. *People v. Sigenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 20 As relevant to this appeal, a person, who is not a peace officer acting in the line of duty, commits the offense of home invasion when:

> "(a) *** without authority he or she knowingly enters the dwelling place of another when he or she knows or has reason to know that one or more persons is present *** and
>
> * * *
>
> (4) Uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs and during the commission of the offense personally discharges a firearm[.]" 720 ILCS 5/12-11(a)(4) (West 2012) renumbered as 720 ILCS 5/19-6(a)(4) (West 2014).

¶ 21 A violation of section 19-6(a)(4) is a Class X felony for which 20 years are added to the term of imprisonment imposed by the court. 720 ILCS 5/12-11(c) (West 2012).

¶ 22 The defendant does not dispute that he entered the house without authority or that he was armed and used force while doing so. Rather, he argues that the State failed to prove beyond a reasonable doubt that he personally discharged a firearm during the invasion. He maintains that

we should vacate his conviction under section 19-6(a)(4) of the statute, enter judgment under section 12-11(a)(3), finding that he was armed with a firearm during the invasion, and reduce his 27-year sentence by 5 years pursuant to section 12-11(c). See 720 ILCS 5/12-11(a)(3), (c) (West 2012) (a violation of subsection (a)(3) is a Class X felony for which 15 years are added to the term of imprisonment imposed by the court).

¶ 23 After examining the evidence, we conclude that a rational trier of fact could have found beyond a reasonable doubt that the defendant personally discharged a firearm during the home invasion. Three witnesses testified that they saw the defendant holding a gun inside the house. As the witnesses fled from the defendant, they heard a gunshot. Willie testified that he was standing right in front of the defendant, who was holding a gun, and saw him fire two or three shots. This evidence, when viewed in the light most favorable to the State, shows that the defendant personally discharged a firearm during the home invasion. Accordingly, we conclude that the evidence was not so unsatisfactory as to raise a reasonable doubt of the defendant's guilt.

¶ 24 Contrary to the defendant's argument, the State was not required to adduce eyewitness testimony that he personally discharged the firearm. See *People v. Dunmore*, 389 Ill. App. 3d 1095, 1103 (2009) (eyewitness testimony or some other direct evidence of the fatal blow is not required to sustain a conviction provided that circumstantial evidence satisfies proof beyond a reasonable doubt of the elements of the crime charged). That said, Willie's eyewitness testimony was direct evidence that the defendant discharged the gun. Willie testified that he was standing in front of the defendant and saw the defendant fire two or three shots. Moreover, in addition to Willie's testimony, the State presented sufficient circumstantial evidence for a reasonable trier of

fact to find that the defendant personally discharged a firearm during the commission of the home invasion. As mentioned, three other witnesses testified that they saw the defendant holding a gun and heard a gunshot.

¶ 25 The defendant nevertheless argues that the inference that he personally discharged the gun was not reasonable where Willie testified that he saw another man enter the house with the defendant and acknowledged that he told an ASA that he was unsure whether this man had a gun. Contrary to the defendant's argument, however, Willie also testified that he did not see the other man with a gun. We will not substitute our judgment for the trier of fact regarding witness credibility. See *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007) (the trier of fact is best equipped to judge the credibility of witnesses, having seen and heard their testimony).

¶ 26 The defendant also argues that, given the lack of physical evidence presented, such as a gunshot residue test, it was just as likely that this other man discharged the gun. The defendant further argues that there was no physical evidence presented to corroborate the inference that a gun was fired where police did not find bullets or bullet holes inside the house.

¶ 27 The defendant's contentions are essentially asking us to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact, which is not the role of this court. See *People v. Abdullah*, 220 Ill. App. 3d 687, 693 (1991) ("A reviewing court has neither the duty nor the privilege to substitute its judgment for that of the trier of fact"). A reviewing court will not reverse a conviction simply because the defendant claims that a witness was not credible. *People v. Evans*, 209 Ill. 2d 194, 211-12 (2004). Moreover, where the trial court found that Aleka, Precious, Gianni and Willie were credible and that their testimony was sufficient to

convict the defendant, the State was not required to present additional physical evidence that linked the defendant to the shooting to establish his guilt beyond a reasonable doubt. *People v. Daheya*, 2013 IL App (1st) 122333, ¶ 76.

¶ 28 This aside, the alleged inconsistencies in Willie's testimony regarding whether he saw or heard the defendant fire the gun, and the lack of physical evidence presented, such as bullet holes and shell casings, were fully explored at trial during cross-examination. Although Willie's credibility may have been affected by his written statement to police, as mentioned, it was the responsibility of the trier of fact to determine his credibility, the weight to be given to his testimony and to resolve any inconsistencies and conflicts in the evidence. *Sutherland*, 223 Ill. 2d at 242. Based on its ruling, the court resolved these inconsistencies in favor of the State. In doing so, the court was not required to disregard the inferences that flow from the evidence or search out all possible explanations consistent with a defendant's innocence and raise them to a level of reasonable doubt. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51. We will not substitute our judgment for that of the trier of fact on these matters. *Sutherland*, 223 Ill. 2d at 242. As mentioned, this court will reverse a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *Siguenza-Brito*, 235 Ill. 2d at 225. This is not one of those cases.

¶ 29 The defendant next contends that the State failed to prove him guilty of aggravated discharge of a firearm beyond a reasonable doubt. In order to sustain the defendant's conviction for this offense, the State was required to prove beyond a reasonable doubt that the defendant knowingly or intentionally discharged a firearm in the direction of another person. 720 ILCS

5/24-1.2(a)(2) (West 2012). An essential element of aggravated discharge of a firearm is the defendant's awareness of the presence of an individual in the direction in which he fires a weapon. *Daheya*, 2013 IL App (1st) 122333, ¶ 64.

¶ 30 The defendant argues that the State failed to present any evidence of the direction in which he fired the gun, and therefore we must reverse his conviction outright. In setting forth his argument, the defendant contends that, because the underlying facts are not in dispute, we should apply a *de novo* standard of review. However, as mentioned, when 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 essential elements of the crime beyond a reasonable doubt. *Austin M.*, 2012 IL 111194, ¶ 107.

¶ 31 After examining the evidence, we conclude that a rational trier of fact could have found beyond a reasonable doubt that the defendant discharged a firearm in the direction of another person. Willie testified that he was "standing right in front of" the defendant, who was holding a gun, and that the defendant could have shot him if he wanted to. Willie stated that he was "begging for his life" and that he thought the defendant was going to shoot him. The defendant asked Willie for the whereabouts of his nephew and then the defendant "started shooting the house up." This evidence, and the reasonable inferences therefrom, when viewed in the light most favorable to the State, shows that the defendant was aware of the presence of an individual in the direction in which he discharged the gun. Accordingly, we conclude that the evidence was not so unsatisfactory as to raise a reasonable doubt of the defendant's guilt.

¶ 32 In reaching this conclusion, we are not persuaded by the defendant's reliance on *People v. Hartfield*, 266 Ill. App. 3d 607 (1994). In *Hartfield*, this court reversed the defendant's conviction for aggravated discharge of a firearm, finding that the State failed to present any evidence whatsoever that the defendant aimed his weapon at a detective where the detective specifically testified that he never saw the defendant fire his gun during a foot chase. *Hartfield*, 266 Ill. App. 3d at 609. Here, unlike *Hartfield*, Willie testified that he was standing right in front of the defendant and begging for his life because he thought the defendant was going to shoot him. The defendant then started shooting as Willie ran into the basement. As mentioned, this evidence was sufficient to establish that the defendant was aware of Willie's presence in the direction in which he fired the gun and to sustain his conviction for aggravated discharge of a firearm.

¶ 33 We are likewise not persuaded by the defendant's argument that the fact that Willie was not shot, despite "standing right in front of" the defendant, suggests that he was not aiming at Willie. In support of this argument, the defendant claims that Willie's testimony that the defendant was "shooting up the house" indicates that he was not shooting at any particular person in the house. However, poor marksmanship is not an affirmative defense, and the trial court was free, as it did here, to reject that argument. See *Daheya*, 2103 IL App (1st) 122333 ¶ 78, and cases cited therein.

¶ 34 The defendant finally contends that we should remand the matter for a *Krankel* hearing because the trial court failed to conduct any inquiry into the factual basis supporting his post-trial allegation that trial counsel was ineffective for failing to call a witness. The State responds that

the trial court was not required to conduct a *Krankel* hearing because the defendant failed to set forth a colorable claim of ineffective assistance of counsel. We agree with the State.

¶ 35 Generally, a trial court cannot consider a *pro se* motion filed by a defendant who is represented by counsel. *People v. Rucker*, 346 Ill. App. 3d 873, 882 (2004). However, represented defendants are allowed to raise *pro se* claims of ineffective assistance of counsel, but such a motion only requires inquiry if it includes supporting facts and specific claims. *Id.* at 883. Under *Krankel* and its progeny, when a defendant files a colorable *pro se* post-trial motion alleging claims of ineffective assistance of counsel, the trial court must conduct an inquiry into the defendant's allegations to determine whether appointment of new counsel is warranted. *Krankel*, 102 Ill. 2d at 189; *People v. Johnson*, 159 Ill. 2d 97, 126 (1994); *People v. Moore*, 207 Ill. 2d 68, 77-8 (2003). The trial court's preliminary inquiry may be done either by talking to defense counsel or defendant (*Moore*, 207 Ill. 2d at 78), or by relying on its knowledge of counsel's performance and the insufficiency of the defendant's allegations on their face (*People v. Milton*, 354 Ill. App. 3d 283, 292 (2004)). Whether the trial court conducted a proper *Krankel* inquiry is a question of law, which is subject to *de novo* review. *People v. Jolly*, 2014 IL 117142, ¶ 28.

¶ 36 Here, the record shows that the defendant did not bring forth a colorable claim of ineffective assistance of trial counsel to the court's attention; rather, he orally alluded that there was a witness who did not testify on his behalf. At the close of the State's case, the trial court admonished the defendant about his right to testify and asked him if he was happy with counsel's representation. The defendant responded "yes." The trial court then asked the defendant if there

were any witnesses that he would have liked to call to testify that have not been called. The defendant responded "yes." The court then took a brief recess so defense counsel could confer with the defendant. When the case was recalled, the court asked the defendant if he was happy with counsel's representation. The defendant again responded "yes." Defense counsel then informed the court why this witness was not called and the case proceeded to closing arguments.

¶ 37 Following trial, the defendant did not file a *pro se* motion with supporting facts and specific claims of ineffective assistance of trial counsel. Rather, at the sentencing hearing, the defendant stated in allocution that he had "witnesses that [his] lawyer refused to call that could have helped [him] beat this case." The defendant's allegation was oral, set forth in a conclusory manner (*Rucker*, 346 Ill. App. 3d at 883), and concerned a claim that the trial court had previously inquired about. As such, we find this comment insufficient on its face to bring to the trial court's attention a colorable claim of ineffective assistance of counsel, and thus the court was excused from further inquiry. See *Johnson*, 159 Ill. 2d at 126 (where a defendant's claims are conclusory, misleading, or legally immaterial, or do not bring to the trial court's attention a colorable claim of ineffective assistance of counsel, the trial court may be excused from further inquiry); *People v. Ford*, 368 Ill. App. 3d 271, 276 (2006) (remand for further inquiry was not necessary where the defendant's allegations were facially insufficient, set forth in a general and conclusory manner; and contradicted by other allegations and facts on record).

¶ 38 In reaching this conclusion, we are not persuaded by the defendant's argument that, because he did not specifically name the witnesses he wished to call, it was all the more important for the court to conduct an inquiry. The defendant's less-is-more argument is

contradicted by the above-mentioned case law. While we recognize and are mindful of the relaxed pleading requirements for *pro se* allegations of ineffective assistance of counsel, a defendant still must meet minimum requirements in order to trigger a preliminary inquiry by the trial court. See *Moore*, 207 Ill. 2d at 79 (to trigger an inquiry under *Krankel*, a *pro se* defendant is not required to do any more than bring his claim to the trial court's attention); *Ward*, 371 Ill. App. 3d at 382. However, a bald allegation of ineffective assistance is insufficient; a defendant must raise specific claims with supporting facts before the trial court must consider his allegations. *People v. Radford*, 359 Ill. App. 3d 411, 418 (2005).

¶ 39 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 40 Affirmed.