2016 IL App (4th) 140346-U

NO. 4-14-0346

FILED
June 7, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
ROSS JOHNSON,	)	No. 12CF1085
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence presented at trial was sufficient to prove defendant guilty of attempt (murder).

¶ 2 In October 2013, a jury convicted defendant, Ross Johnson, of four counts of attempt (first degree murder), one count of home invasion, and four counts of aggravated battery with a firearm. In January 2014, the trial court sentenced defendant to a total of 120 years in the Illinois Department of Corrections (DOC). On appeal, defendant argues the State failed to prove he possessed the intent to kill beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In October 2012, defendant was charged with four counts of attempt (first degree murder) (720 ILCS 5/8-4, 9-1 (West 2012)) (counts I, II, III, and IV), one count of home invasion (720 ILCS 5/12-11(a)(3) (West 2012)) (count V), and four counts of aggravated battery

with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2012)) (counts VI, VII, VIII and IX). These charges stemmed from an incident in which Jonathan (Johnnie) Lipscomb, Preston Bellamy, Kwaan Mason, and Shanieca Mack were shot at a party.

¶ 5 In October 2013, the case proceeded to a jury trial involving four days of testimony. Frequently, the witnesses who attended the party claimed they could not remember anything about the incident. Their testimony was impeached by prior recorded statements (which were also admitted as substantive evidence) they had made shortly after the shooting incident and/or their testimony at the trial of Malcolm Johnson regarding what occurred and who was the actual shooter. At trial, the defense argued defendant was not at the party or involved in the shooting. However, on appeal, defendant challenges only the sufficiency of the State's evidence regarding his intent to kill. Therefore, we limit our recitation of the evidence accordingly.

¶ 6 Chris Lipscomb testified on October 14, 2012, he was living in an apartment with Artize Gant. The front door off the parking lot opened directly into the living room, which was approximately 10 feet by 10 feet. That evening, Chris threw a party. He estimated 50 people were in attendance. At some point in time, Chris saw Gant in an argument with a man who used to date Gant's sister. Shortly after the argument, that man and three or four people with him left the apartment and went out to the parking lot. Gant, Chris, and Chris's cousin, Johnnie Lipscomb, went out on the porch. An argument ensued with the other group and fighting words were exchanged. Chris admitted during a police interview he said he told the group to leave. Chris, Gant, and Johnnie went back inside and turned on the music.

¶ 7 Chris stayed by the door to monitor who came in and out and basically keep the door shut. Chris opened the door a couple times to admit some people. Then he went back to

the party. During his police interview, Chris stated after he walked away from the door to mingle, the door opened a third time and "the three dudes" walked in. Chris was about three feet away from the door and a crowd of people from the party were near the door. Although Chris did not personally remember being punched in the face, he agreed he told the police on November 2, 2012, he was hit. Johnnie pushed the men out the door and slammed it. Johnnie yelled they had a gun. Everyone started screaming. Shots were fired and Chris heard someone say, "I'm hit, I'm hit."

¶ 8 Artize Gant testified Chris had a party at their apartment on October 13, 2012. Gant claimed he did not recall anything about who attended the party or what occurred at the party because he was drunk. During a police interview, Gant said, "we [were] just having a little good time and then these dudes come [*sic*] in. One of them happened to be the one who beat up my little sister, so I'm like, [']you can't be here,['] and I guess they get [*sic*] mad." Gant told the police he told the men to leave. Gant was upstairs in the bathroom when the shots were fired. He knew people were shot but did not witness the shooting.

¶ 9 Jonathan Lipscomb testified he attended a party on October 13, 2012, hosted by his cousin, Chris. He guessed 50 people were at the party when he arrived around 11 p.m. At some point, Jonathan noticed Gant in a verbal argument with someone. Jonathan and Chris went outside and Chris got into an argument with a group of seven or eight people. Fighting words were exchanged. After the argument, Chris and Jonathan went back inside. Sometime later, three or four people walked through the door. Jonathan was standing nearby, in the doorway of the kitchen. Chris was punched. Jonathan agreed, during the police interview, he stated:

> "[A]ll of a sudden one dude comes to the door. He was looking around, looking around, whatever. All of a sudden another one

> comes to the door. He's looking around. Another one comes to the door. The third one that came through the door turns to the side and punches somebody, bam. And then I kind of wrap my arms out like this and grabbed like everybody that was right at the door, and I grabbed the handle of the door, and they're like this, boom. So everybody falls. I'm slamming the door shut on peoples' feet and everything, slamming the door shut. All of a sudden I hear a shot. Bam. That's the one. That was before the door was even shut all the way. Bam, it's one shot. I get the door shut, like it's, bam. I step back like this, turned away, another shot, bam, and that's the one that hit my shoulder."

Jonathan was shot in the shoulder, which he described as a "graze."

¶ 10 Donnell Taylor testified he attended the party along with Dartaveon Miles. Taylor denied he was with defendant (also known as Ball Head) and Malcolm Johnson or that he saw them at the party, even though he told the police he was with Malcolm, Ball Head, and "Lil E." (Eric Clark Pfeifer). Taylor claimed he was lying when he told the police he saw defendant fire an automatic weapon while standing " 'right in front of the door' " or " 'like 10 feet away.' " He said he fabricated the story because the police were threatening to lock him up for something he did not do. (His taped statements implicating defendant as the shooter were admitted as substantive evidence.)

¶ 11 Deonte Harris agreed he told the police, " 'I'm, like, they start firing at the door. I mean I don't know how big the caliber of the bullet is it can go through this damned door and tear us all up, so I'm trying to shut the door and lock it so they just don't run back in here and

start shooting the party.' " Harris also testified he could not recall telling the police, " 'The door like cracked open, so the guy just shoots inside the door. I can see like basically—I don't know if it was his arm or the barrel of a gun, you know, just the light just flashing from it.' " Harris testified there were a lot of people attending the party. While he did not give a number, he stated there were people "[u]pstairs, downstairs, packed" and people inside were shoulder-to-shoulder. At the police station, Harris picked defendant's photograph out of a photo lineup as being with the group responsible for shooting the gun into the party.

¶ 12 Jonathan Reddington testified he had been incarcerated at the McLean County jail since June 2013 on two open criminal cases and had a history of criminal convictions. He and defendant had been housed together in the jail for nearly two months. As Reddington and defendant discussed their pending cases, defendant said he and a couple other people had been at a party where there were people he did not get along with over a gang dispute. Defendant said he left the party and returned to "do it to 'em or do 'em in." He told Reddington he shot them. Reddington testified, on another occasion after defendant had received a visit from his attorney, defendant said he was pretty sure he was going to beat the case, and, if he got out, he was going to find the victims and finish what he started. Following this conversation, Reddington wrote a letter to his mother disclosing defendant's statements. Apparently, Reddington's mother turned the letter over to the police, who then interviewed Reddington.

¶ 13 The State presented a recording of an outgoing call from the jail on October 18, 2012. Detective Steven Fanelli testified he recognized the voice as that of defendant. In the recording, defendant states, "I need them to step on toes for me," "I just need mother fuckers to step on toes," and "just step on mother fucker toes for me that's it." The caller referred to himself as the "boss" and stated, "I just need everybody to like stick together right now and everything."

¶ 14 Police officer Scott Mathewson testified four nine-millimeter shell casings were found outside the front door and one unfired nine-millimeter round was found on the living room carpet right inside the door. The door had four bullet holes through it. A closet door in the living room had a projectile hole in it. A projectile was found behind the drywall in the ceiling cavity. Drywall in the kitchen area had a projectile hole in it. A television in the living room had a small indentation in it, as did the drywall behind the television. A partial fragment was found in the drywall behind the television. Using trajectory rods, the police traced the path of the bullets and determined the door was "shut or mostly shut" or "just barely" open when the shots were fired.

¶ 15 In addition to Jonathan, three other people were injured during the shooting—Shanieca Mack, Kwaan Mason, and Preston Bellamy. Mack testified she was standing in front of the television. She saw Malcolm punch Chris and then she heard four or more shots fired. Mack was shot three times in the chest and once in the left leg near her hip. Mason testified he had his back turned to the door and was facing the television. He was shot in the right side of the hip, which went through his back and exited the left buttock.

¶ 16 Preston Bellamy testified he was standing between the living room and kitchen when he saw Malcolm punch Chris. He turned around, heard a gunshot, and was shot. Bellamy was shot in the back. The bullet traveled out the right side of his face. Bellamy had to have his mouth wired shut, a tracheotomy, and a tube in his stomach. He stated he nearly died.

¶ 17 Bellamy testified Malcolm and the people he was with were kicked out of the party. A little later, Malcolm and his group forced their way back in. There was an argument between Malcolm and Chris and he saw Malcolm punch Chris. He knew Malcom had a brother called "Ball Head." Although he claimed at trial he did not know defendant, he was impeached

with his recorded statement that he first met defendant in July 2012. Bellamy testified he was not sure if he saw defendant at the party but he "didn't think so."

¶ 18 Bellamy agreed he told the police when he was interviewed in November 2012 "Ball Head" was behind Malcolm. Bellamy testified he saw a flash and heard a gunshot. He was hit in the back. He said he did not see who fired the gun because his back was turned; however, he agreed he told the police, after the first gunshot, he turned around and saw "Ball Head" shooting. He testified he did not recall saying, "Yeah," when the police asked him, "Okay, so 'Ball Head' shot you." He also said he did not recall telling the police he turned around and saw "Ball Head" shoot him, nor did he remember telling the police, "[Ball Head] was still shooting, and I just looked at him and then I just turned back around." During his interview with police, Bellamy said the door was open when "Ball Head" was shooting. At trial, Bellamy agreed his statement the door was open when the shooting started was accurate. Bellamy's statements during his police interview were recorded and admitted as substantive evidence at trial.

¶ 19 Dr. Aruna Mittapalli saw Mack in the emergency room at St. Joseph Hospital in Bloomington, Illinois. Mack suffered an "injury to her chest that caused her also to have [a] pneumothorax, and the blood fragments look[ed] like they traveled into the chest, into the abdomen just largely on the right side." She also had "a peripheral fragment" and rib fractures. These were determined to be gunshot wounds. Mack also suffered a bullet wound to the leg in the hip area. Because the bullet lodged in the leg near blood vessels and nerves, Mack needed the care of a neurosurgeon, which was not available at St. Joseph Hospital. Mack had to be "life-flighted" to St. Francis Hospital in Peoria, Illinois. Dr. Mittapalli also saw Preston Bellamy in the emergency room. He suffered a wound which traveled down the face, toward the neck and into the chest. He sustained a comminuted fracture of the right interior mandible, meaning his

lower jaw was broken in multiple places. Bellamy also had subcutaneous emphysema, which was very serious because it could compromise the airway, as well as a pneumothorax, which caused a collapsed lung. These injuries were caused by a gunshot. They were life-threatening injuries and also required Bellamy be "life-flighted" to another hospital.

¶ 20 By stipulation, the jury was informed, if Dr. Karen Gaber-Patel were to testify, she would state she saw Mason in the emergency room at Advocate BroMenn Hospital in Bloomington, Illinois. Mason suffered three gunshot wounds to the right and left buttock and the left flank. He had a "subcutaneous emphysema along the right gluteus muscle and the right buttocks consistent with a gunshot wound above the S-side spinal vertebral, resulting in a fracture with multiple bony fragments and a hematoma (blood collection)[] around the fracture site *** that was pushing the rectum forward" and was actively bleeding.

¶ 21 The jury found defendant guilty of all charges.

¶ 22 In January 2014, defendant filed a motion for new trial. The trial court denied the motion. At sentencing, defendant maintained his innocence. The court found the four counts of aggravated battery with a firearm merged with the four counts of attempt (first degree murder). The court sentenced defendant to three 40-year consecutive sentences in DOC and one 40-year concurrent sentence in DOC for the four attempt (first degree murder) counts and a concurrent sentence of 15 years in DOC for the home invasion count, for a total of 120 years in DOC. In February 2014, defendant filed a motion to reconsider his sentence, which the trial court denied in April 2014.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, defendant argues his attempt (first degree murder) convictions must be

reversed because the State failed to prove beyond a reasonable doubt he acted with the requisite intent to kill when he fired a gun at the door of Chris's apartment and injured four people. Therefore, he asks this court to reinstate the aggravated-battery-with-a-firearm convictions and remand for sentencing on those offenses. We affirm.

¶ 26 When a defendant appeals based on the sufficiency of the evidence, the standard of review is " 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Beauchamp*, 241 Ill. 2d 1, 8, 944 N.E.2d 319, 322 (2011). A conviction will only be reversed if "the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217, 824 N.E.2d 262, 267-68 (2005).

¶ 27 As the trier of fact, it is the jury's responsibility to judge the credibility of the witnesses and decide what weight to afford such testimony, to resolve any conflicts in evidence, and to draw reasonable inferences from the evidence. *People v. Ortiz*, 196 Ill. 2d 236, 259, 752 N.E.2d 410, 425 (2001). Great weight must be given to the jury's findings, and we will not retry the defendant when considering the sufficiency of the evidence. *People v. Wheeler*, 226 Ill. 2d 92, 114-15, 871 N.E.2d 728, 740 (2007).

¶ 28 "To prove defendant guilty of attempted murder, the prosecution must prove that defendant intended to kill and he took a substantial step toward killing his intended victim." *People v. Smith*, 402 Ill. App. 3d 538, 547, 931 N.E.2d 864, 872 (2010). "Intent is a state of mind and thus is usually difficult to establish by direct evidence. [Citation.] Accordingly, specific intent to kill may be, and normally is, inferred from the surrounding circumstances, such as the character of the attack, the use of a deadly weapon [citation], and the nature and extent of

the victim's injuries [citation]." *People v. Parker*, 311 Ill. App. 3d 80, 89, 724 N.E.2d 203, 210 (1999). Further, "[s]uch intent may be inferred when it has been demonstrated that the defendant voluntarily and willingly committed an act, the natural tendency of which is to destroy another's life." *People v. Winters*, 151 Ill. App. 3d 402, 405, 502 N.E.2d 841, 843 (1986).

¶ 29 Repeatedly firing an automatic or semiautomatic weapon into a crowd may reasonably imply an intent to kill. See *People v. Garcia*, 407 Ill. App. 3d 195, 201-02, 942 N.E.2d 700, 707 (2011) (intent to kill reasonably inferred from the defendant discharging a firearm into a crowded street in the direction of a car occupied by rival gang members), *People v. Bailey*, 265 Ill. App. 3d 262, 273, 638 N.E.2d 192, 199 (1994) (intent to kill reasonably inferred from the defendant shooting down a breezeway in which several people were running), *People v. Loera*, 250 Ill. App. 3d 31, 44, 619 N.E.2d 1300, 1310 (1993), and *People v. Carvajal*, 241 Ill. App. 3d 886, 896, 609 N.E.2d 408, 416 (1993) (intent to kill reasonably inferred when the codefendants fired automatic or semiautomatic weapons into a crowd of rival gang members at a street party).

¶ 30 Here, the State introduced evidence showing defendant fired several shots from an automatic weapon through a "shut or mostly shut" or "barely open" door into a 10 x 10 foot room in which defendant knew were "shoulder-to-shoulder" partygoers.

¶ 31 Additionally, the nature and extent of the injuries may reasonably imply the intent to kill. *People v. Teague*, 2013 IL App (1st) 110349, ¶ 24, 986 N.E.2d 149. In the case *sub judice*, four people received gunshot injuries, two of whom sustained life-threatening injuries. Mack suffered a gunshot wound to her chest, which resulted in a pneumothorax. She also suffered a gunshot wound to the hip which required her to be "life-flighted" to another hospital for treatment by a neurosurgeon. Bellamy suffered a gunshot wound that traveled down his face,

toward his neck, and into his chest. He suffered multiple fractures of the lower jaw and had to have his mouth wired shut. His injuries caused a pneumothorax, resulting in a collapsed lung, which threatened his breathing and thus his life. He also had to be "life-flighted" to another hospital for treatment. Mason was shot in the back and buttocks. He was also treated at a hospital. Jonathan sustained a gunshot wound to the shoulder, which he described as a "graze."

¶ 32 Additionally, defendant admitted to Reddington he returned to the party to "do it to 'em or do' em in." He also told Reddington, if he beat the case, he intended to finish what he started.

¶ 33 Defendant relies on *People v. Trinkle*, 40 Ill. App. 3d 730, 353 N.E.2d 18 (1976), *aff'd*, 68 Ill. 2d 198, 369 N.E.2d 888 (1977), to support the argument his actions did not prove intent to kill. In *Trinkle*, the defendant drank 20 to 30 beers at a bar. The bartender, believing the defendant was intoxicated, refused him further service. The defendant left. After consuming more drinks in another bar, the defendant purchased a handgun, returned to the area of the original bar, and fired a shot at the building. The shot went inside and wounded a patron in the bar. The defendant was convicted of attempt (first degree murder). *Id.* at 731-32, 353 N.E.2d at 20. This court vacated the defendant's attempt (first degree murder) conviction because the State's indictment erroneously replaced "intent to kill" with "strong probability of death or great bodily harm," and because the defendant fired his weapon at a building without knowledge of who was inside. *Id.* at 734, 353 N.E.2d at 21-22. The case *sub judice* is factually distinguishable from *Trinkle*. In the present case, the jury was not confused over the required mental state for attempt (first degree murder). More important, unlike in *Trinkle*, defendant knew the room was full of people when he shot through an open door and then fired several bullets directly at the door, which penetrated it, traveled into the room, and hit four people.

¶ 34 Defendant's intent to kill was readily inferred from the surrounding circumstances. Defendant intentionally fired multiple shots into a room full of partygoers, the natural tendency of which was to destroy another's life. He stated he planned to finish what he started once he beat the charges. Moreover, he instructed his cohorts to "step on toes," *i.e.*, intimidate witnesses, which also shows consciousness of guilt. Viewing the evidence in the light most favorable to the prosecution and allowing all reasonable inferences from the record, we find the evidence raises no reasonable doubt defendant possessed the requisite intent to kill.

¶ 35 III. CONCLUSION

¶ 36 For the foregoing reasons, we affirm the trial court's judgment. As a part of our judgment, we grant the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2014).

¶ 37 Affirmed.