

2017 IL App (1st) 152047-U

No. 1-15-2047

Order filed September 14, 2017

Fourth Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 14 CR 12850
)	
JOVANY SARABIA,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the judgment of the circuit court where the evidence presented was sufficient to sustain defendant's conviction for aggravated battery and we find that defendant is not entitled to a new sentencing hearing under section 5-4.5-105 where that section applies prospectively only.

¶ 2 Following a bench trial, defendant Jovany Sarabia was found guilty of aggravated battery with a firearm, then sentenced to 14 years' imprisonment. On appeal, he contests the sufficiency of the evidence to sustain his conviction. He further contends that we should remand for a new sentencing hearing under the recently enacted juvenile sentencing statute (730 ILCS 5/5-4.5-105

(West 2016)), which he contends applies retroactively to his sentence. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3

I. BACKGROUND

¶ 4 Defendant was tried together with co-defendant Carlos Andrade. Prior to trial, the court granted defendant's motion for severance. At trial, Cynthia Delgado testified that on June 28, 2014, she attended a party on 30th Street in Chicago, Illinois. She testified that she was invited to the party by Andrade who she knew as "Poker" and arrived after midnight in her red Chevrolet Cavalier. At the party, she met defendant who she identified as "Shyster." She testified that she met defendant for the first time that night and learned his name from a detective. Delgado left the party with Andrade for 30 minutes to go to a garage where they had sexual intercourse. Andrade drove her red Cavalier back to the party and, after they arrived, defendant and another male Delgado did not know got into the backseat of the vehicle.

¶ 5 Andrade drove the vehicle to Karlov Avenue, which Delgado testified was Two-Six gang territory. Delgado testified that defendant had Latin Kings tattoos on his body and that the Two-Six gang and the Latin Kings were rivals. As they drove down Karlov Avenue, Delgado saw two men walking down the street. Andrade drove past the men, made a right turn off of Karlov Avenue, and defendant got out of the vehicle. Delgado heard Andrade tell defendant, who was wearing a white shirt and a black hat, to go through the alley. Andrade then made a U-turn and drove back down Karlov Avenue. As they drove by the two men in the street again, Delgado heard Andrade yell "gang stuff." Andrade then turned left into an alley and stopped the vehicle.

¶ 6 Moments later, Delgado heard gunshots. After the gunshots stopped, Delgado saw defendant running toward the vehicle and when he got into the vehicle, she saw he was holding a black object. Andrade started to drive down the alley, but then stopped and told defendant to hide

the gun. Defendant got out of the vehicle and put the gun on the ground, but Andrade told him to put it in the trashcan. Defendant put the gun in the trashcan, got back into the vehicle, and Andrade drove to Spaulding Avenue. Defendant got out of the vehicle and Andrade drove back to 30th Street and told Delgado not to tell anyone what happened.

¶ 7 At 30th Street, Anthony Schaok, who had also been attending the party, got into the vehicle with Andrade and Delgado and Andrade drove back to the alley near Karlov Avenue. When they entered the alley, Delgado saw police, and Andrade tried to exit the alley by driving in reverse, but the police officers stopped the vehicle. Delgado was taken to the police station where she talked to detectives.

¶ 8 Daniel Camarena testified that at 4:30 a.m. on June 28, 2014, he was walking north on Karlov Avenue with Vincente Martinez. He heard a vehicle and then heard a car door open and close. He then saw a red Cavalier heading south on Karlov Avenue, but he could not see the faces of any of the occupants in the vehicle. He did not hear any of the occupants yell anything and he did not yell anything at the people in the vehicle. He stated that he thought the driver of the vehicle had long hair and a “female shape.” Camarena testified that the vehicle stopped in an alley behind him and Martinez. Camarena then saw a short person wearing a dark hat approaching them, but Camarena could not see the person’s face.

¶ 9 While the person was approximately 15 feet away, the person raised a gun and started firing at them. Camarena heard five or six gunshots and was hit with a bullet in the upper part of his right arm. Camarena saw the shooter run toward an alley and Camarena ran home to call police. Camarena gave the police a description of the vehicle as a red Cavalier. Camarena was taken to the hospital, but was released and returned to 24th Place and Karlov Avenue where he saw the red Cavalier being held by police. An officer on the scene showed him a photograph

array, but Camarena was unable to identify anyone. In court, Camarena could not identify either defendant or Andrade as people he had seen on the night of the shooting.

¶ 10 Chicago police officer Romero Alvarez testified that on June 28, 2014, he responded to a report of shots fired at 2433 South Karlov Avenue. Once he arrived on the scene, he went into an alley and found a revolver in a garbage can. While waiting for the evidence technician to arrive and recover the revolver, a vehicle drove into the alley heading toward him. Officer Alvarez stopped the vehicle after the driver attempted to drive in reverse out of the alley. Officer Alvarez ordered all of the occupants out of the vehicle and observed that Andrade was driving, Delgado was in the passenger seat, and Schaok was in the backseat. Camarena arrived on the scene and identified the vehicle as the one he saw before the shooting. Chicago police officer Michael Mazurski testified that he was an evidence technician for the Chicago Police Department and he recovered the revolver from the trashcan in the alley on Karlov Avenue and observed that the revolver had six spent shell casings.

¶ 11 Chicago police detective Wilborn testified that he was assigned to investigate the shooting at issue in this case. Detective Wilborn testified that he spoke to Camarena at the scene and showed him photographs, but Camarena was unable to identify anyone in the photographs. Detective Wilborn then spoke to Delgado and Schaok who were in custody. Detective Wilborn testified that Schaok showed him a Facebook profile of defendant and told him that defendant's nickname was "Shyster." Schaok testified that Detective Wilborn was the one who showed him a photograph of defendant and denied showing the detective defendant's Facebook profile. He further testified that Detective Wilborn brought up the name "Shyster." Schaok also testified that he was "pretty sure" Delgado was driving the vehicle when defendant left the party, but was not

sure if Andrade was also in the vehicle because he was partying and “wasn’t really paying attention.”

¶ 12 Following closing argument, the court recognized that, in some circumstances, “witnesses are reluctant to share information with law enforcement an[d] later with the Courts.” The court noted that Schaok was a reluctant witness and that there was “quite a bit of impeachment that took place throughout the course of the trial with all the witnesses.” The court then recounted Delgado’s testimony and concluded that:

“[L]ooking at all the totality, there’s not a question in my mind that a shooting happened; that the shooters [*sic*] came out of this red Cavalier, that it happened the way Ms. Delgado, albeit in a circumstantial manner, described it, that Mr. Sarabia was the shooter.”

The court therefore found that the State had proved defendant guilty of the offense of aggravated battery with a firearm beyond a reasonable doubt. At the subsequent sentencing hearing, the court sentenced defendant to a term of 14 years’ imprisonment.

¶ 13

II. ANALYSIS

¶ 14 In this appeal from that judgment, defendant contests the sufficiency of the evidence to prove him guilty beyond a reasonable doubt. He maintains that Delgado, the only witness to implicate defendant in the shooting, was not a credible witness. He asserts that Delgado had a motive to lie about her involvement both to avoid implicating herself in the offense and to protect Andrade, with whom she had a sexual relationship. Defendant also contends that we should remand his case for a new sentencing hearing under the recently enacted Section 5-4.5-105(a) of the Illinois Code of Corrections. Defendant asserts that although this section was made effective after his sentencing hearing, the provision should apply to his case retroactively

because the law is procedural in nature and there was no explicit statement from the legislature preventing it from being applied retroactively.

¶ 15 A. Sufficiency of the Evidence

¶ 16 Where defendant challenges the sufficiency of the evidence to sustain his conviction, the reviewing court must consider whether, after viewing the evidence in a 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. Cunningham*, 212 Ill. 2d 274, 278 (2004). This standard recognizes the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any conflicts and inconsistencies in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court must allow all reasonable inferences from the record in favor of the prosecution, and will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Smith*, 185 Ill. 2d 532, 542 (1999). In order to prove defendant guilty of aggravated battery with a firearm beyond a reasonable doubt, the State was required to show that defendant, in committing a battery, knowingly discharged a firearm and caused injury to another person. 720 ILCS 5/12-3.05(e)(1) (West 2014).

¶ 17 Viewed in a light most favorable to the State, the evidence in this case shows that defendant, Delgado, Andrade, and Schaok were at a party when defendant, Andrade, and Delgado left in Delgado's vehicle, a red Cavalier. Andrade, who was driving, drove past Camarena and Martinez on Karlov Avenue and then defendant got out of the vehicle. Andrade drove back past Camarena and Martinez and parked the vehicle in a nearby alley. Defendant approached Camarena and Martinez and shot at them, hitting Camarena in the upper part of his

right arm. Defendant returned to the vehicle and disposed of the gun in a trashcan in the alley where it was eventually recovered by Chicago police officers. Based on this evidence, a reasonable trier of fact could find that defendant was proved guilty of aggravated battery with a firearm beyond a reasonable doubt. See 720 ILCS 5/12-3.05(e)(1) (West 2014); *Cunningham*, 212 Ill. 2d at 278.

¶ 18 Nonetheless, defendant asserts that Delgado and Schaok were coerced by Detective Wilborn to implicate defendant in the offense and had motivation to downplay their own involvement. Defendant contends that Schaok's testimony contradicts Delgado's account of who was driving the red Cavalier when defendant left the party and that Delgado lacked credibility because she sought to protect Andrade out of affection and minimize her own involvement in the shooting. In essence, defendant questions the credibility determination of the witnesses made by the trial court. This, however, is a matter within the province of the trial court (*Sutherland*, 223 Ill. 2d at 242), and we will not substitute our judgment for that of the trial court unless the proof is so unsatisfactory that a reasonable doubt of guilt appears (*People v. Berland*, 74 Ill. 2d 286, 305-06 (1978)). The weight to be given the witnesses' testimony, the credibility of the witnesses, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact. *Sutherland*, 223 Ill. 2d at 242.

¶ 19 Although the trial court noted that Delgado was not particularly "educated or experienced," it relied on her version of the events in issuing its ruling. The court also noted that some impeachment had taken place with regard to all of the witnesses, but the court determined that such impeachment did not render the entirety of Delgado's testimony unbelievable. Defendant correctly points out that Schaok testified that Delgado was driving the red Cavalier when defendant left the party in contrast to Delgado's testimony that Andrade was driving, but

Schaok also testified that he was not paying attention because he was partying. Even so, this minor discrepancy is insufficient to create a reasonable doubt as to defendant's guilt. Here, the court relied on the testimony from Delgado and Camarena, both of whom the court found credible, in determining that the State had proved beyond a reasonable doubt that defendant was the person who shot Camarena. We find no basis to disturb that finding.

¶ 20 Defendant points out that Camarena was unable to identify the shooter and neither Delgado nor Schaok actually saw defendant fire the gun. We observe, however, that the trier of fact is permitted to draw reasonable inferences based on the evidence presented. Here, it was reasonable for the trier of fact to conclude that defendant was the shooter where Delgado testified that defendant, who was wearing a black hat, was in the red Cavalier, got out of the vehicle after Andrade drove past two men on Karlov Avenue, and returned to the vehicle holding a black object after Delgado heard gunshots. This testimony, coupled with Camarena's testimony that the red Cavalier drove past him and Martinez just before a person wearing a dark hat approached and started shooting at them and Detective Alvarez's testimony that he found a revolver in the trashcan precisely where Delgado testified Andrade told defendant to put the gun, was sufficient such that a reasonable trier of fact could find that defendant had been proved guilty of the offense of aggravated battery beyond a reasonable doubt.

¶ 21 Furthermore, we find the cases cited by defendant inapplicable to the case at bar. In *People v. Coulson*, 13 Ill. 2d 290, 293 (1958), the victim of an armed robbery testified that after he came out of a tavern, the defendants took his wallet and threatened to shoot him. The victim told the defendants that he had more money at home and would give it to them and not inform the police. *Id.* The victim testified that the defendants drove him to his house, that he got out of the car alone, that he went into the house alone, called police, returned to the vehicle, told

defendants he would come back, and then reentered the house. *Id.* Police officers arrived and arrested defendants, but did not recover any guns or money from the defendants' vehicle. *Id.* Two of the defendants testified that the victim, who appeared to be intoxicated, asked for a ride home and offered to pay the defendants for gas. *Id.* at 294-95. The jury found the defendants guilty of armed robbery, but the supreme court reversed finding that the evidence presented was "improbable, unconvincing, and completely unsatisfactory." *Id.* at 291, 298. The supreme court found that the victim's testimony that the defendants agreed to wait outside while the victim went into the house alone "taxe[d] the gullibility of the credulous" and further found that his testimony was contradicted by the testimony of his aunt and a police officer. *Id.* at 296-98.

¶ 22 Here, by contrast, the fact pattern presented by the State was not "improbable, unconvincing, and completely unsatisfactory" as the supreme court found in *Coulson*. Moreover, the testimony of the State's witnesses did not suffer from major contradictions as in *Coulson*. The minor discrepancies defendant identifies are not material to the offense charged and it was the province of the trial court, as the trier of fact, to resolve these discrepancies based on its determination of the credibility of the witnesses. *Coulson* does not alter our decision.

¶ 23 Similarly, we find *People v. Gonzalez*, 2015 IL App (1st) 132452 unpersuasive. In *Gonzalez*, this court found the evidence presented was insufficient to prove defendant guilty of reckless conduct beyond a reasonable doubt where a police officer testified that he observed the defendants throwing bricks at two passing vehicles, but on cross-examination, stated that he did not observe the defendant throw bricks at the vehicle. *Id.* ¶¶ 4, 6, 25. This court reversed defendant's conviction noting that there were 10 men who were allegedly throwing bricks, four of whom were defendants, and the State failed to elicit any testimony about the individual

defendant's involvement in the offense. *Id.* ¶ 17. The court found that the inconsistency and vagueness of the officer's testimony created a reasonable doubt as to defendant's guilt. *Id.* ¶ 18.

¶ 24 Here, there was no such inconsistency and vagueness in the evidence presented by the State. Rather, the fact pattern presented by the State created a consistent narrative whereby Delgado, Andrade, and defendant left a party at 30th Street, drove to Karlov Avenue where defendant got out of the vehicle, shot at Camarena and Martinez, and then returned to the vehicle in the alley where he placed the revolver in the trashcan. Thus, there was no such inconsistency or vagueness as to the material elements of the charged offense as were present in *Gonzalez*.

¶ 25 Finally, in *People v. Shaw*, 2015 IL App (1st) 123157, this court reversed defendant's conviction for robbery where the court found that a surveillance video submitted into evidence contradicted the witness's testimony. *Id.* ¶¶ 29, 31. The court observed that "we give less deference to a trial court's determinations of fact when they are based on evidence other than live witness testimony." *Id.* ¶ 29 (citing *People v. Radojcic*, 2013 IL 114197, ¶ 34). Here, there was no other evidence presented other than live testimony, and we find *Shaw* inapposite. Accordingly, we find that the evidence presented was sufficient such that a reasonable trier of fact could find that defendant had been proved guilty of the offense of aggravated battery with a firearm beyond a reasonable doubt.

¶ 26 B. Section 5-4.5-105 of the Unified Code of Corrections

¶ 27 Defendant next contends that we should remand for a new sentencing hearing pursuant to section 5-4.5-105 of the Unified Code of Corrections (Code) (730 ILCS 5/5-4.5-105 (West 2016)). Defendant acknowledges that this section of the Code went into effect after his sentencing hearing, but contends that it should apply retroactively because the law is procedural in nature and there is no language expressly limiting its temporal reach.

¶ 28 The Illinois legislature added section 5-4.5-105 to the Code through Public Act 99-69, which became effective on January 1, 2016, during the pendency of defendant's appeal. Section 5-4.5-105(a) of the Code provides:

“On or after the effective date of this amendatory Act of the 99th General Assembly, when a person commits an offense and the person is under 18 years of age at the time of the commission of the offense, the court, at the sentencing hearing conducted under Section 5-4-1, shall consider the following additional factors in mitigation in determining the appropriate sentence.” 730 ILCS 5/5-4.5-105(a) (West 2016).

The statute provides nine additional mitigating factors for the trial court to consider, including defendant's “age, impetuosity, and level of maturity at the time of the offense,” whether he “was subjected to outside pressure, including peer pressure, familial pressure, or negative influences,” his “family, home environment, educational and social background, including any history of parental neglect, physical abuse, or other childhood trauma,” and a catch-all provision of “any other information the court finds relevant and reliable.” 730 ILCS 5/5-4.5-105(a) (West 2016).

¶ 29 Defendant contends that where he was under the age of 18 at the time of the offense at issue in this case, and the statute does not include a savings clause indicating that it should apply only to offenses occurring after the effective date, the statute could apply to offenses, such as his, that took place before the January 1, 2016. This court has addressed and rejected the same arguments defendant now raises as to the retroactive application of section 5-4.5-105(a) in *People v. Hunter*, 2016 IL App (1st) 141904, ¶¶ 41-48, *appeal allowed*, No. 121306 (Nov. 23, 2016) (consolidated appeal with *People v. Wilson*, 2016 IL App (1st) 141500, *appeal allowed*, No. 121345 (Nov. 23, 2016)).

¶ 30 In *Hunter*, this court used the test set forth by the United States Supreme Court in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). Under the first step of the *Landgraf* analysis, “if the legislature has clearly indicated the temporal reach of the amended statute, that expression of legislative intent must be given effect, absent a constitutional prohibition.” *People ex rel. Madigan v. J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 29. “The best indicator of such intent is the language of the statute, which is to be given its plain and ordinary meaning.” *People v. Goossens*, 2015 IL 118347, ¶ 9. If there is no express provision from the legislature, the second step under *Landgraf* is “to determine whether applying the statute would have a retroactive impact, ‘keeping in mind the general principle that prospectively is the appropriate default rule.’ ” *J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 29 (quoting *Allegis Realty Investors v. Novak*, 223 Ill. 2d 318, 330-31 (2006)). As noted in *Hunter*, however, “Illinois courts rarely look beyond the first step of the *Landgraf* analysis” because Section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2010)) “represents a clear legislative directive as to the temporal reach of statutory amendments and repeals: those that are procedural in nature may be applied retroactively, while those that are substantive may not.” *Hunter*, 2016 IL App (1st) 141904, ¶ 38 (quoting *Caveney v. Bower*, 207 Ill. 2d 82, 92, 94 (2003)).

¶ 31 Applying the *Landgraf* analysis, the court in *Hunter* found that section 5-4.5-105(a) provides that it applies “only at sentencing hearings held ‘[o]n or after the effective date’ of Public Act 99-69, *i.e.*, January 1, 2016.” *Hunter*, 2016 IL App (1st) 141904, ¶ 43. We found this language plainly demonstrated that a trial court must apply the section’s requirements at a sentencing hearing on or after January 1, 2016, the legislation’s effective date. *Id.* Therefore, we held the plain language of the statute showed a legislative intent to apply it prospectively only. *Id.* The *Hunter* court further noted that in light of that clear expression of the temporal reach of

the statute, it need not address defendant's remaining arguments regarding retroactivity. *Id.* ¶¶ 44-48; see also *People v. Wilson*, 2016 IL App (1st) 141500, ¶ 17, *appeal allowed*, No. 121345 (Nov. 23, 2016) (consolidated appeal with *Hunter*).

¶ 32 We agree with the reasoning of *Hunter* and observe that this court has reached the same conclusion with regard to section 5-4.5-105(a) in *Wilson*, 2016 IL App (1st) 141500, ¶ 16 and *People v. Jackson*, 2016 IL App (1st) 141448, ¶¶ 29-31. Moreover, we find defendant's reliance on *People ex rel. Alvarez v. Howard*, 2016 IL 120729 unpersuasive. We observe that *Howard* considered amendments to section 705 ILCS 405/5-130(1)(a) (Public Act 99-258 (eff. Jan. 1, 2016)), which changed the age of automatic adult prosecution from 15 to 16 years old and reduced the number of offenses that qualified for automatic transfer. *Howard*, 2016 IL 120729, ¶¶ 7, 22. The court in *Howard* made no determination regarding the temporal reach of Public Act 99-69 or section 5-4.5-105 and did not cast doubt upon the holdings in *Hunter*, *Wilson*, and *Jackson*. Accordingly, we find no basis to depart from this well-established precedent and hold that section 5-4.5-105 applies prospectively only and defendant is not entitled to a new sentencing hearing.

¶ 33

III. CONCLUSION

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

¶ 35 Affirmed.