

No. 1-16-0092

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the
) Circuit Court of
 Plaintiff-Appellee,) Cook County.
)
 v.) No. 14 CR 13388
)
 URIEL RIOS,) Honorable
) Kenneth J. Wadas,
 Defendant-Appellant.) Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Pierce and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held:* The State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt of aggravated battery and aggravated discharge of a firearm.

¶ 2 After a bench trial, defendant Uriel Rios was found guilty of aggravated battery and aggravated discharge of a firearm, and sentenced to two concurrent terms of eight years' imprisonment. On appeal, Mr. Rios contends that the State presented insufficient evidence to support his convictions. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 At trial, Jose Perdomo testified that, at around 6:30 p.m. on July 18, 2014, he was near the 4900 block of South Paulina Street with his friend, Epimenio Huerta, who was standing behind him on the pegs of his bicycle. According to Mr. Perdomo, the two were riding southbound on Paulina Street to 51st Street to buy marijuana. As they rode, Mr. Perdomo saw Mr. Rios, whom he knew by name and identified in court, “[i]n front of his steps inside the gate with another young man,” an African-American. Mr. Perdomo knew Mr. Rios from the neighborhood but had never spoken to him. Mr. Rios called out to Mr. Huerta to come over and have a conversation about something. Mr. Huerta told Mr. Perdomo to “keep going because [Mr. Rios] started like reaching for his waist.”

¶ 5 When Mr. Perdomo and Mr. Huerta were about 15 feet past the bridge at 49th and South Paulina Streets, Mr. Perdomo heard five or six gunshots hitting the ground and then felt pain in his right foot. Although Mr. Perdomo thought he had been shot, he told Mr. Huerta to take the bicycle and “go get the weed first and then come back and we’ll see what happens.” Mr. Perdomo stayed where he was, took off his shoe, and saw that he was bleeding.

¶ 6 Police and paramedics arrived. Mr. Perdomo told the police “that the person [who shot him] was standing three houses from the corner by the bridge” and “that his name was Uriel.” Mr. Perdomo was taken to the hospital and Mr. Huerta, who had returned by this time, stayed at the scene. Mr. Perdomo was treated, but the bullet was never taken out because removing it would further damage his foot. Detectives questioned Mr. Perdomo at the hospital, presented him with a photo array, and asked him if he recognized the shooter. Mr. Perdomo identified Mr. Rios as the shooter.

¶ 7 On cross-examination, Mr. Perdomo testified that he looked back only once, after he

passed Mr. Rios but before he reached the bridge, and saw Mr. Rios standing on the porch, “like grabbing his pants.” Mr. Perdomo did not look back after the shooting started and acknowledged that he did not know who the shooter was “for sure.”

¶ 8 Mr. Huerta testified that, on July 18, 2014, he and Mr. Perdomo were bicycling down Paulina Street to 51st Street to “go get some weed to smoke.” Mr. Perdomo pedaled while Mr. Huerta stood on the back pegs of the bicycle. As they rode, Mr. Huerta saw Mr. Rios, whom he identified in court, standing on his front porch area with an unknown “African-American guy.”

¶ 9 Mr. Huerta had seen Mr. Rios around the neighborhood before but “didn’t know his last name or anything.” Mr. Rios called Mr. Huerta over to talk to him but Mr. Huerta responded that they had nothing to talk about. When Mr. Rios called to him a second time, Mr. Huerta looked over and saw that Mr. Rios had “picked up his shirt,” revealing the black handle of a gun sticking out of his waistband, and was “grabbing the handle.” Mr. Huerta told Mr. Perdomo not to stop because, if they did, “something [wa]s going to happen.”

¶ 10 Mr. Huerta testified that, “when [they] hit the bridge, that’s when *** [he] heard the gunshots just go off.” He looked back to see where the shots were coming from and saw Mr. Rios shooting at them. He heard “at least five or six” gunshots and heard and saw bullets hitting things. Mr. Perdomo told Mr. Huerta that he had been shot, got off the bicycle, and was jumping on one leg. Mr. Perdomo told Mr. Huerta to “go get the weed and come back so [they] can smoke and that’s what [Mr. Huerta] did. [He] left the scene and then [he] came back.”

¶ 11 Mr. Huerta came back and found that the police and paramedics had arrived. He told the police “we got shot, like they were shooting from the third house from the corner” and named Mr. Rios as the shooter. When the police brought Mr. Rios to Mr. Huerta where he was waiting in a police car, he told them, “that’s the dude that shot at us.”

¶ 12 On cross-examination, Mr. Huerta acknowledged that, on a prior occasion, he had said that he and Mr. Perdomo were “three car lengths south of the railroad bridge” when the shooting occurred. When confronted with his prior statement at trial, he stated, “that means like passing the bridge or before the bridge.” When asked if he was sure that he saw Mr. Rios firing the gun, Mr. Huerta said, “Yes. I just saw him go like this [indicating with his hands] with his both hands just pointing the gun towards our side of the bridge.” Mr. Huerta said on cross-examination that he did not remember testifying on direct examination that “they,” *i.e.*, more than one person, shot at him and Mr. Perdomo.

¶ 13 Arturo Arteaga testified that, on July 18, 2014, he was watching his niece and nephew bicycling on the sidewalk in front of his mother’s house on Paulina Street. Two teenagers on a bicycle passed by going southbound on Paulina Street. Mr. Rios, whom Mr. Arteaga knew from growing up on that block and identified in court, and an unknown African-American man were standing outside of Mr. Rios’s home, which was “maybe five to eight” houses to the south of Mr. Arteaga’s mother’s house. Mr. Arteaga heard two to three gunshots. At that point, Mr. Arteaga, who was already looking south as his niece and nephew rode back toward the house, saw Mr. Rios with his right arm extended “toward the viaduct.” According to Mr. Arteaga, the African-American man was “already, like running” and did not have his arm extended in any way. Mr. Rios then ran into his house. Mr. Arteaga never saw the African-American man shooting and there was nothing obstructing Mr. Arteaga’s view of Mr. Rios or the street.

¶ 14 On cross-examination, Mr. Arteaga testified that although he was standing on his staircase when the teenagers passed on the bicycle, he witnessed the remaining events unfold while standing outside the gate on the sidewalk. Mr. Arteaga acknowledged that he had previously stated that he was on the porch of his mother’s house the entire time. He explained

No. 1-16-0092

that “the porch is two feet away from the staircase coming into [his] mom’s house, and there’s a gate there” and that if he took “[o]ne step forward [he would be] in a city sidewalk. One step back, [he would be] inside the property.” Both Mr. Arteaga’s mother’s house and Mr. Rios’s house were set back from the sidewalk, but some houses on the block were closer to the sidewalk than others.

¶ 15 Chicago police officer D. Enriquez testified that he responded to a call on Paulina Street where he found a man, Mr. Perdomo, lying on the ground with a gunshot wound. Mr. Perdomo told Officer Enriquez repeatedly that the shooter was “Uriel.” Mr. Huerta told Officer Enriquez that he would take the officer to “where Uriel lives.” Mr. Huerta took Officer Enriquez to a residence at 4853 South Paulina Street, where Officer Enriquez observed two men through a basement window, one of whom was a young black male. Officer Enriquez identified the other man in court as Mr. Rios.

¶ 16 Officer Enriquez and other officers entered the house through the rear door. Inside was a landing with steps to the first floor on the left and steps to the basement on the right. Officer Enriquez observed an opening to the attic above the steps leading to the first floor which was partially covered by a board.

¶ 17 Officer Enriquez went to the basement, where he saw Mr. Rios and the black male, and took Mr. Rios outside for a show-up with Mr. Huerta, who identified Mr. Rios as the shooter. Officer Enriquez spoke with the black male and then instructed Officer Kevin Killen to enter the attic. Officer Killen returned with a revolver, three live rounds of ammunition, and six spent shell casings, all of which were .38 caliber.

¶ 18 Officer Killen testified that he responded to a call at the location on Paulina Street, where he met with Officer Enriquez. Officer Killen then climbed into the attic, which was being used as

a storage space. He found a .38-caliber blue steel revolver next to a bag containing three rounds of live ammunition and six spent shell casings. There were no spent shell casings inside the revolver itself. Officer Killen gave the gun and related evidence to Officer Enriquez after exiting the attic.

¶ 19 The parties stipulated that a Chicago police detective would testify that he took gunshot residue samples from Mr. Rios's hands. A forensic scientist would testify that she tested the samples and the results indicated that Mr. Rios "discharged a firearm, contacted a [primer gunshot residue] related item, or had both hands in the environment of a discharged firearm."

¶ 20 Mr. Rios moved for a directed finding at the close of the State's case, but the trial court denied his motion.

¶ 21 Hector Bue testified on behalf of Mr. Rios, who he had known since he moved to the neighborhood seven years earlier. Mr. Bue said that on July 18, 2014, he was at his house on Paulina Street, which was next to Mr. Rios's house, when he heard "screams," looked out his window, and observed Mr. Rios on the porch with a black male. Mr. Bue testified that it was the black male who "took out the gun and he shot." Mr. Bue "went in[side], closed the window, and then didn't come out." He did not open his door for anyone when there was knocking on the door and stayed home until the next day. Mr. Bue testified that he never reported what he witnessed to the police.

¶ 22 The parties stipulated that Mr. Rios's private investigator would testify that there were eight houses between Mr. Rios's home and the home of Mr. Arteaga's mother.

¶ 23 The trial court found Mr. Rios not guilty of attempted murder, on the grounds that the State failed to establish that he intended to kill anyone. However, it found Mr. Rios guilty of aggravated battery with a firearm and the aggravated discharge of a firearm. Announcing its

findings, the court stated the following:

“The issue becomes, who’s the shooter? I have no doubt in my mind that [Mr. Rios] is the shooter. The defense witness, I don’t believe a word he said. He tried to put it on the black man as the shooter, but, of course, he didn’t tell the police that on that day. He refused to answer the door when the police were there banging on the door. There were 20 police officers out there.

They notice a cubbyhole in the ceiling with the access paneling that keeps that closed ajar, drawing that officer’s attention to that. Ultimately, they have to send an officer up there to see if they can find a weapon. Of course, he comes down with the weapon, and ammunition, and expended cartridge casings. It’s [Mr. Rios]’s house. He’s there. He has knowledge. He’s tested for GSR. And on both hands, low [*sic*] and behold, it comes up positive.

Circumstantial evidence corroborates the two eye witnesses to the case.

And accordingly, there’s a finding of guilty as to Count 1 and Count 8.”

¶ 24 The trial court denied Mr. Rios’s motion for a new trial and sentenced him to two concurrent terms of eight years’ imprisonment. This timely appeal followed.

¶ 25 JURISDICTION

¶ 26 Mr. Rios was sentenced on January 4, 2016, and filed his notice of appeal that same day. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 27

ANALYSIS

¶ 28 On appeal, Mr. Rios contends that there was insufficient evidence to prove him guilty beyond a reasonable doubt of aggravated battery or aggravated discharge of a firearm. On a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution, and must affirm if “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *People v. Davison*, 233 Ill. 2d 30, 43 (2009). We are required to draw “all reasonable inferences in favor of the State.” *Id.* We are not permitted to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is within the exclusive province of the trier of fact “to determine the credibility of witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence.” *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). We will not overturn a criminal conviction “unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt.” *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 29 To prove the offense of battery, the State must establish that the defendant “knowingly without legal justification by any means (1) cause[d] bodily harm to an individual or (2) ma[d]e [] physical contact of an insulting or provoking nature with an individual.” 720 ILCS 5/12-3 (West 2014). To prove the offense of aggravated battery, as charged in this case, the State must prove that “in committing a battery,” the defendant knowingly caused “great bodily harm or permanent disability or disfigurement.” 720 ILCS 5/12-3.05(a)(1) (West 2014). To prove aggravated discharge of a firearm, the State must only prove that the defendant discharged a firearm in the direction of another person. 720 ILCS 5/24-1.2(a)(2) (West 2014).

¶ 30 Mr. Perdomo, Mr. Huerta, and Mr. Arteaga all identified Mr. Rios as the person who shot at Mr. Perdomo and Mr. Huerta. Before they reached the bridge, Mr. Perdomo saw Mr. Rios grabbing

his pants. When they “hit the bridge,” Mr. Huerta saw Mr. Rios reveal a black gun in his waistband and saw him shooting. Mr. Perdomo and Mr. Huerta both testified that they heard five to six shots. Mr. Perdomo testified that he was hit in the foot. Mr. Arteaga testified that he was on the sidewalk in front of his mother’s house on the same block and that he heard gunshots and observed Mr. Rios with his arm stretched out toward the viaduct, where Mr. Perdomo and Mr. Huerta were. Once police arrived, Mr. Huerta told them that Mr. Rios was the shooter and led them to Mr. Rios’s location, where they found Mr. Rios and where they retrieved a .38-caliber revolver, three rounds of live ammunition, and six spent shell casings from the attic. Mr. Perdomo identified Mr. Rios as the shooter in a photo array and Mr. Huerta identified him as the shooter in a show-up at the scene. Both men identified Mr. Rios as the shooter in court. Mr. Arteaga, who led police officers to Mr. Rios’s location, knew him from growing up on the block with him. Mr. Rios’s hands also tested positive for gunshot residue. This evidence, viewed in the light most favorable to the State, was more than sufficient for a rational trier of fact to find that Mr. Rios was the shooter.

¶ 31 Mr. Rios argues that there was no factual basis for the trial court to conclude that the gun found in the attic of Mr. Rios’s house was the gun used to shoot Mr. Perdomo. He asserts that, without this improper inference to corroborate the testimony of the State’s witnesses, the evidence against him was insufficient. We disagree. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and it is better equipped than this court to do so, as it heard the evidence. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. The trial court’s inference that the gun recovered in Mr. Rios’s attic was the gun used in the shooting is a rational one. The gun, together with ammunition and six expended cartridge casings, was found concealed in the ceiling of Mr. Rios’s home where three eyewitnesses testified that, immediately prior, they had seen Mr. Rios shooting

a gun. Moreover, this inference was not necessary to the verdict. Even without it, three eyewitnesses identified Mr. Rios as the shooter and gunshot residue was found on his hands.

¶ 32 Mr. Rios also argues that the trial court improperly disregarded Mr. Bue’s testimony. But it is within the province of the trier of fact to determine the credibility of witnesses and the weight to assign to their testimony. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). “Because the trial judge is in a superior position to weigh the evidence and decide on the credibility of the witnesses, we may not reverse the judgment merely because we might have reached a different conclusion.” *People v. Love*, 404 Ill. App. 3d 784, 787 (2010).

¶ 33 Here, the trial court explained that it discounted Mr. Bue’s testimony because he had not come forward—at the time of the crime or after—to report what he saw during the shooting. This is not an unreasonable basis on which to discredit Mr. Bue’s testimony, and we will not reweigh the evidence that was before the trial court. *Sutherland*, 223 Ill. 2d at 242.

¶ 34 In sum, after viewing the evidence in the light most favorable to the State, we conclude that the evidence was sufficient to establish beyond a reasonable doubt that Mr. Rios committed aggravated battery and aggravated discharge of a firearm.

¶ 35 **CONCLUSION**

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

¶ 37 Affirmed.