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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-291
)	
ENRIQUE L. TORRES,)	Honorable
)	James C. Hallock,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of attempted first-degree murder: due to the nature of the shooting (for which defendant was accountable), the jury could infer that the shooting was done with the intent to kill.

¶ 2 Defendant, Enrique L. Torres, appeals his convictions of two counts of attempted first-degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2006)). He contends that the State failed to prove beyond a reasonable doubt that he or another occupant of a car had a specific intent to kill when one of them fired gunshots into another car. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on multiple counts, including two counts of attempted first-degree murder, in connection with gunshots fired into a car occupied by Ashley Rowzee and Michael Lake. In August 2014, a jury trial was held.

¶ 5 Evidence at trial showed that, at around 11 p.m. on April 14, 2007, Lake drove himself and Rowzee to the east side of Aurora. Lake stopped the car at an intersection and saw a silver car turn left in front of them. That car was driven by a female with a Hispanic male in the front passenger seat and another person in the back seat. According to Rowzee, after the car completed the turn, it stopped, and its front-seat passenger jumped out and began firing a gun. Rowzee heard seven or eight shots, and he was hit in the left thigh. His jacket sleeve and pant leg were also damaged from the shots. Rowzee testified that the shooter stood behind the silver car and, after the back driver's-side window was shot out, Rowzee immediately crouched down. Rowzee stated that Lake must have been shocked, because Rowzee had to tell him to start driving. As a result of the shooting, the driver's side was full of bullet holes. There were also bullet holes in the front-seat headrests. It was dark, and the shooting happened quickly. Rowzee was intoxicated at the time, having drunk alcohol, smoked marijuana, and used cocaine, but he said that his memory of the event was clear. He did not recall telling a police officer that the silver car had three Hispanic passengers.

¶ 6 After the shooting, Rowzee and Lake returned to Lake's home. Rowzee delayed seeking medical attention and, two days later, went to the hospital, where a bullet was removed from his knee. Rowzee was unable to identify the shooter from a photo array.

¶ 7 Lake generally corroborated Rowzee's testimony, though with some inconsistencies. He testified that a male exited the silver car, approached Lake's car, and began to shoot. He said that it seemed that the person exited out of the back seat. The rear driver's-side window was

shot out, and he heard 14 or 15 shots in a brief period of time. He testified that he immediately hit the accelerator and slouched down in his seat such that he could barely see over the dashboard. But Lake also said that it was the first time he had been shot at and he might have been somewhat shocked after the first shots were fired. Lake admitted that he had smoked crack cocaine that evening and drunk alcohol, but he did not consider himself to be intoxicated and he remembered what had occurred. Like Rowzee, Lake was unable to identify the shooter in a photo lineup, and both gave some inconsistent testimony in regard to the appearance of the shooter. Neither Rowzee nor Lake was a gang member, they did not have a gun in the car, and there was no evidence that they did anything to provoke the shooting.

¶ 8 Sergeant Thomas McNamara of the Aurora police department spoke to Rowzee at the hospital. Rowzee told him details about the shooting but said that the silver car had a female driver and three Hispanic male passengers. Meanwhile, Officer James Brown of the Aurora police department located Lake and spoke with him. Lake followed Brown to the police station so that his car could be processed for evidence. While there, Lake noticed a silver Dodge car and stated that it looked like the silver car at the shooting.

¶ 9 Elvia Portillo testified under an agreement with the State. She stated that, at the time of the shooting, she was defendant's girlfriend and was driving her silver Dodge car. She was also associated with the Latin Kings gang. Defendant was a gang member and held the rank of enforcer. On the date of the shooting, Portillo celebrated her birthday at a restaurant with defendant and they decided to get a hotel room. Because Portillo was under 21 and defendant lacked identification, they picked up fellow Latin Kings member Ezekiel Rivera to assist them in getting a room. As they drove to the hotel, defendant sat in the front passenger seat and Rivera sat behind Portillo. As they approached an intersection in Aurora, defendant said

something about “flakes,” referring to members of rival gangs. Defendant told Portillo to stop the car, and she stopped after making a turn. Portillo then heard several gunshots and ducked down in her seat. She testified that Rivera did not get out of the car, but when asked how she knew that, she responded that she did not know. She could not remember whether she could see who did the shooting. After the shooting, defendant told her to drive away. The group drove to a motel, where defendant fired the gun several times in the parking lot. They then drove to the home of one of defendant’s family members, and Portillo never saw the gun again. The next morning Portillo was in an accident with her car, and it was impounded.

¶ 10 Rivera also testified under an agreement with the State. He stated that, at the time of the shooting, he was a member of the Latin Kings gang but held no rank and that, to attain membership, a person was required to commit crimes. Defendant, as an enforcer in the gang, would order gang members to commit crimes, and members were expected to follow those orders. Disobedience would result in punishment such as a physical assault. The enforcer also kept track of guns and provided guns to members. On the date of the shooting, defendant came to Rivera’s home and told him to bring a .380 semiautomatic pistol that belonged to the gang. Rivera stated that the area where they encountered Rowzee and Lake was the territory of a rival gang and that Latin King members would go into rival territory to hunt for rivals and shoot them. Defendant directed Portillo to drive through the area, and he pointed out Rowzee and Lake as “flakes” when he saw them. According to Rivera, defendant told Rivera to give him the pistol. Defendant then exited the car, approached the other car in an aggressive manner, and opened fire. The shooting lasted about 30 seconds and defendant was still shooting as the victims’ car fled. Defendant reloaded the gun after the shooting. When the group arrived at the motel, Rivera had a confrontation with another man and called defendant to help. Defendant shot the

other man, and they fled in Portillo's car. Rivera testified that he had never killed anyone, but had been the driver in several murders. In 2004 he shot a person with the intent to kill, but the person survived the shooting.

¶ 11 The police found four bullet holes on the driver's side of Lake's car, and the rear passenger window was shattered. There were three bullet holes in the driver's headrest. A bullet and bullet fragments were found in the interior of the car. An evidence technician with the Aurora police department collected three shell casings at the scene. Five shell casings were collected at the motel parking lot. The items were all fired from the same .380 semiautomatic pistol.

¶ 12 Jeff Hahn, an investigator and expert in gang intelligence, testified that defendant was a member of the Latin Kings. Lake and Rowzee were not known gang members. The area of the shooting was the territory of two other gangs, both of which were rivals of the Latin Kings. Hahn stated that gang members would enter rival territory to hunt for rival members with the intent to commit violence against them. The shooting of a rival member would typically demonstrate dominance within the gang. Hahn opined that the shooting at Rowzee and Lake was gang-motivated.

¶ 13 The jury was given an accountability instruction that defendant could be found guilty if he aided another in the commission of the offense. The jury found defendant guilty but found that the State did not prove that defendant personally fired the shots. Defendant was sentenced to concurrent 25-year terms of incarceration to be served consecutively to a murder sentence in another county. He appeals.

¶ 14

II. ANALYSIS

¶ 15 Defendant's sole contention is that the State failed to prove beyond a reasonable doubt that he or an occupant of the car he was riding in had a specific intent to kill when the shots were fired at Lake's car.

¶ 16 When a defendant challenges on appeal the sufficiency of the evidence to convict him, we ask whether any rational jury could have found the elements of the offense beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is the function of the trier of fact to assess the credibility of the witnesses and the weight to give their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). “[W]e will not substitute our judgment for that of the trier of fact on these matters.” *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001).

¶ 17 To obtain a conviction of attempted murder, the State must prove that the defendant intended to kill the victim. *People v. Ephraim*, 323 Ill. App. 3d 1097, 1110 (2001). The specific intent to kill may be inferred from the circumstances, such as the character of the assault or the use of a deadly weapon. *People v. Jones*, 184 Ill. App. 3d 412, 429 (1989). Such intent may be inferred where the defendant does an act that has a direct and natural tendency to kill. *People v. Migliore*, 170 Ill. App. 3d 581, 586 (1988). The existence of such intent is a question for the trier of fact. *Id.*

¶ 18 Generally, the act of firing a gun, with nothing more, is not sufficient to prove an intent to kill. *Ephraim*, 323 Ill. App. 3d at 1110. However, an intent to kill may be inferred where the surrounding circumstances show that the defendant “ ‘fir[ed a] gun at or towards another person with either malice or a total disregard for human life.’ ” *Id.* (quoting *People v. Homes*, 274 Ill. App.3d 612, 623 (1995)). Thus, “ ‘[t]he very fact of firing a gun at a person supports the conclusion that the person doing so acted with an intent to kill.’ ” *Id.* (quoting *People v. Thorns*,

62 Ill. App.3d 1028, 1031 (1978)). Further, poor marksmanship is not a defense to attempted murder, and it is a question of fact for the jury as to whether a defendant lacked intent or was simply unskilled with his weapon and missed his targets. *People v. Teague*, 2013 IL App (1st) 110349, ¶ 27.

¶ 19 In *Ephraim*, intent to kill was inferred from the surrounding circumstances when the defendant used his own car to chase another one while firing three shots at it after he was ordered by a fellow gang member to get “ ‘on that car.’ ” *Ephraim*, 323 Ill. App. 3d at 1110. There, the court held that chasing a rival gang member coupled with the defendant’s act of firing a gun made it feasible for the jury to conclude that the defendant had an intent to kill. *Id.* at 1110-11. Likewise, in *Teague*, intent to kill was sufficiently proven when the defendant fired a semiautomatic assault rifle 5 times at police officers from 40 feet away. *Teague*, 2013 IL App (1st) 110349, ¶¶ 25, 29; see also *People v. Green*, 339 Ill. App. 3d 443, 451-52 (2003) (intent to kill shown in a classic drive-by shooting in which defendant fired 4 to 5 shots from a moving vehicle).

¶ 20 Here, an intent to kill was reasonably inferred from the circumstances. The evidence was that the shooting was aggressive and gang-motivated. Multiple shots were fired from a semiautomatic weapon toward Lake’s car, hitting it, shattering a window, and leaving bullet holes in the headrests. Indeed, Rowzee was hit in the leg during the shooting. As in *Ephraim* and *Teague*, such circumstances were sufficient to allow the jury to infer that the gun was fired with an intent to kill. Defendant attempts to distinguish *Ephraim* and *Teague*, noting that, in his case, the jury found that the State failed to prove that defendant personally fired the gun. But that distinction makes no difference, as the nature of the shooting itself, in terms of the gang motivation, the weapon used, the number of shots, and the damage done by the shots, was

sufficient to infer that whoever shot the gun did so with either malice or a total disregard for human life. That is sufficient to infer an intent to kill. Thus, defendant was properly found guilty based on an accountability theory. See *People v. Torres*, 283 Ill. App. 3d 281, 293 (1996) (defendant legally responsible for the consequences of the acts performed by another who performed acts evincing an intent to kill in the furtherance of a common criminal design).

¶ 21

III. CONCLUSION

¶ 22 The evidence was sufficient to prove defendant guilty of attempted murder beyond a reasonable doubt. Accordingly, the judgment of the circuit court of Kane County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 23 Affirmed.