

2018 IL App (1st) 152491-U
No. 1-15-2491
Order filed January 31, 2018

Third 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. 12 CR 3535
)	
JEFFERY BRADLEY,)	Honorable
)	Lawrence E. Flood,
Defendant-Appellant.)	Judge, presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Cobbs and Justice Howse concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's convictions for aggravated battery with a firearm and aggravated discharge of a firearm are affirmed where the evidence, viewed in the light most favorable to the State, could lead any rational trier of fact to determine that he personally discharged a firearm toward the victims.
- ¶ 2 Following a bench trial, defendant Jeffery Bradley was convicted of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2012)) and aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2012)), and was sentenced to respective, concurrent terms of

seven and four years' imprisonment. Defendant appeals, arguing that the State failed to prove beyond a reasonable doubt that he was involved in the aggravated battery with a firearm or, alternatively, that he personally discharged a firearm. For the reason set forth herein, we affirm the judgment of the trial court.

¶ 3 Defendant was charged with multiple counts of attempt first degree murder, aggravated battery, aggravated discharge of a firearm, and aggravated unlawful use of a weapon in relation to a shooting which resulted in the injury of Talanda Williams and Nahgeyana James. Prior to trial, the State nol-prossed multiple counts, and proceeded to trial on the attempt first degree murder of Williams, the attempt first degree murder of James, aggravated battery with a firearm of Williams, aggravated battery with a firearm of James, aggravated discharge of a firearm toward Nijia Malone, and aggravated discharge of a firearm toward Martasia Barney.

¶ 4 Talanda Williams testified that, on January 24, 2012, she was 16 years old and resided in the area of 35th Street and Rhodes Avenue near the Lawless Gardens apartment complex. Shortly before 7 p.m., Williams and Nijia Malone were walking to a store. Williams testified that her friends Martasia Barney and Nahgeyana James were in the area, but she could not remember if they were walking with her and Malone. While walking westbound on the south side of 35th Street, she heard multiple gunshots emanating from the direction of Lawless Gardens. When they heard the shots, Williams and Malone ran across 35th Street toward a row of stores that were on the north side of the street. Williams did not make it all the way across the street because she felt a hot, burning sensation on her calf and fell down in the median. Paramedics transported Williams to the hospital, where she was treated for a gunshot wound.

¶ 5 Williams did not remember going to a police station after the shooting, but identified a line-up advisory form that she signed on the night of the shooting. She testified that, while viewing a photo-array, a police officer told her to “[m]ark which one is Jeffery,” and she placed an X over the photograph of defendant. On January 25, 2012, Williams returned to the police station to view a physical line-up. Williams stated that, after she signed a line-up advisory form, an officer asked her “[w]hich one is Jeffery,” and she pointed to defendant. She testified that she did not remember seeing the person who shot her on January 24, 2012, and that she did not remember seeing anyone with a gun on that date. Williams did not remember telling Detectives Carr and Murphy that she saw defendant shoot toward her group of friends after a boy named Vell ran across 35th Street.

¶ 6 Nijia Malone testified that, on January 24, 2012, she and Williams were walking toward Martin Luther King Drive to go to a grocery store. As they did so, Malone saw Barney and James walking in the area, but stated that they were not walking with her and Williams. Shortly thereafter, Malone heard gunshots and started running. Malone rode in an ambulance to the hospital with Williams and James, who had been injured in the shooting. She denied that, on the night of the shooting, she told police who shot toward her, or that she saw defendant with a gun.

¶ 7 That night, Malone went to a police station to view a photographic line-up. She testified that the police officers asked her if she knew a person named Jeffery, and she pointed at defendant’s picture. The officers then placed an X over defendant’s picture. She acknowledged signing a line-up advisory form on January 26, 2012, but denied viewing a physical line-up. She identified a five-page, type-written statement which had her signature on each page and her initials next to hand-written corrections, but denied participating in the creation of the statement.

Malone denied telling the Assistant State's Attorney (ASA) that she met with James and "Lay-Lay" before the shooting and did not tell the ASA that she saw a person named Vell run across the street before the shooting.

¶ 8 Robert Vogt testified that on January 24, 2017, he was working as a paramedic for the Chicago fire department. At 6:45 p.m., he responded to a dispatch call near the Lawless Gardens apartment complex at 35th street and Rhodes Avenue. There, he came into contact with Talanda Williams and Nahgeyana James. Williams had a graze wound on her calf and James had a gunshot wound to the left foot. Vogt then transported Williams and James to a hospital.

¶ 9 Chicago police officer Leigha Wilson testified that, on January 24, 2012, she was off-duty and sitting in her personal vehicle in the parking lot of the Lawless Gardens apartment complex. At 6:40 p.m., she observed a short man and a tall man walking 10 feet from her vehicle. The parking lot was illuminated by a streetlight, and there were no objects obstructing her view of the men. She observed the tall man hand the short man a handgun, and called 911 to report what she had seen. Five to ten seconds later, Wilson heard "two or three" gunshots and observed the tall and short man running toward her vehicle. She observed the short man hand the tall man a firearm. Wilson followed the men in her vehicle, and eventually chased the men on foot, but was unable to catch them.

¶ 10 On January 25, 2012, Wilson went to a police station to view a physical line-up. After signing a line-up advisory form, she tentatively identified defendant as the short man she had seen with the firearm. On cross-examination, Wilson testified that she used the word "tentative" to describe her identification of defendant because she "[was not] positive."

¶ 11 Detective Thomas Carr testified that on January 24, 2012, he and his partner, Detective Roger Murphy, were assigned to investigate a shooting that had taken place at 501 East 35th Street. When they arrived at the scene, Carr and Murphy spoke to police officers and witnesses who were still on the scene. During these conversations, Carr learned that defendant was the suspected shooter. Carr and Murphy then relocated to the hospital to speak with the victims of the shooting. At the hospital, Malone told Carr that she had seen a person she knew as Jeff or Jeffery shoot at her and her friends. Williams also implicated defendant in the shooting. Nahgeyana James was not able to identify anyone as the shooter.

¶ 12 Based on these statements, Carr created a photo-array containing defendant's picture. At 10:00 p.m. on January 24, 2012, Malone viewed the photo-array and identified defendant as the person who pointed a gun toward her and shot. Carr testified that he did not tell Malone to identify the person she knew to be Jeffery. At 10:03 p.m., Williams also identified a photograph of defendant as the person who shot a gun in her direction. Defendant was arrested. On January 25, 2012, and January 26, 2012, respectively, Williams and Malone viewed physical line-ups and both identified defendant as the shooter.

¶ 13 After these identifications, Carr was present for an interview between Malone and ASA Tom Sianis. Malone agreed to memorialize her statement in writing. During the interview, Sianis asked Malone questions and typed her responses. Sianis then printed a copy of the statement and allowed Malone to make handwritten corrections to it, which were initialed by Malone, Carr, and Sianis. Malone, Carr, and Sianis signed each page of the statement, as well as photographs of defendant and Malone which were attached to the statement. The statement was admitted into evidence.

¶ 14 In the statement, Malone related that, on the night in question, after a boy named “Vell” ran out of the Lawless Gardens apartment complex and past her and her friends, she turned toward the apartment complex and saw defendant run through the gate of the complex with a gun in his hands. Defendant then fired the gun 3-6 times in her direction and ran back into the apartment complex. After the trial court read the statement, the State rested its case-in-chief.

¶ 15 Defendant filed a motion for a directed finding. The trial court granted the motion as it pertained to the count of aggravated discharge of a weapon toward Martasia Barney, but denied the motion as it pertained to all other counts. The defense rested its case without presenting any evidence.

¶ 16 After argument, the court took the case under advisement. On the next court date, the court found defendant guilty of aggravated battery with a firearm of Williams and aggravated discharge of a firearm toward Malone. In explaining its findings the court stated, in pertinent part:

THE COURT: The basis of the Court’s finding is the testimony of these two witnesses along with the other witnesses whose testimony I will comment on. But principally, their testimony was that they were on the street at around 35th and Rhodes at the date and time of this occurrence. They met up with several other women who were also with them and they were standing there talking. At that particular time, they saw from across the street a person they knew as [Vell] run across the street towards them, he was yelling. At that particular time, they then said that they saw the defendant and another person, they testified that they knew the defendant from the area. Miss Williams

testified that she identified [defendant], but she did not identify him as the shooter, but she said he was there and knew him.

THE COURT: Miss Williams had testified that after these gunshots, she said she felt pain in her leg, a burning sensation and realized that she had been shot. She went to the hospital for treatment. The doctor described the wound as – of some type of abrasion to the right ankle area.

¶ 17 Defendant filed a motion for a new trial, arguing, *inter alia*, that trial court misstated the evidence when it said that Williams testified that she saw defendant. Defendant also argued that the remainder of the evidence was not sufficient to sustain his conviction. The court denied the motion, stating that it had reviewed the testimony before reaching its verdict. After a hearing, the trial court sentenced defendant to concurrent terms of seven and four years' imprisonment for aggravated battery with a firearm and aggravated discharge of a firearm, respectively.

¶ 18 On appeal, defendant first contends that the State failed to prove beyond a reasonable doubt that he was in anyway involved in the shooting.

¶ 19 The due process clause of the fourteenth amendment protects defendants against conviction in state courts except upon proof beyond a reasonable doubt of every fact necessary to constitute the charged crime. *People v. Brown*, 2013 IL 114196, ¶ 48; *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979). When ruling on a challenge to the sufficiency of the evidence, a reviewing court “ ‘is not required to search out all possible explanations consistent with innocence or be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. On the contrary, we must ask, after considering all of the evidence in the light

most favorable to the prosecution, whether the * * * evidence [in the record] could reasonably support a finding of guilt beyond a reasonable doubt.’ ” *People v. Grant*, 2014 IL App (1st) 100174-B, ¶ 24 (quoting *People v. Wheeler*, 226 Ill. 2d 92, 116-17 (2007)). In doing so, we must draw all reasonable inferences from the record in favor of the prosecution, and “ ‘[w]e will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant’s guilt.’ ” *People v. Lloyd*, 2013 IL 113510, ¶ 42 (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)).

¶ 20 As relevant here, a person commits aggravated battery with a firearm when, in committing a battery, he discharges a firearm and causes any injury to another person. 720 ILCS 5/12-3.05(e)(1) (West 2012). A person commits aggravated discharge of a firearm when he knowingly and intentionally discharges a firearm in the direction of another person or in the direction of a vehicle he or she knows or reasonably should know to be occupied by a person. 720 ILCS 5/24-1.2(a)(2) (West 2012). A person is considered to have “personally discharged a firearm” when he or she, while armed with a firearm, knowingly and intentionally fires a firearm causing the ammunition projectile to be forcefully expelled from the firearm. 720 ILCS 5/2-15.5 (West 2012).

¶ 21 Here, we conclude that the evidence presented at trial, viewed in light most favorable to the State, could have led any rational trier of fact to find that defendant personally discharged a firearm and committed the offenses of aggravated battery with a firearm and aggravated discharge of a firearm. Malone’s written statement identifies defendant as the person who shot the gun which injured Williams and James. In the statement, Malone related that she saw defendant, with a gun in his hands, run through the gate of the Lawless Gardens apartment

complex and fire the gun three to six times in her direction. Defendant then ran back into the apartment complex. Malone's written statement was corroborated by Officer Wilson's tentative identification of defendant. Wilson testified that, shortly before the shooting, she saw defendant, with a gun, at the Lawless Gardens apartment complex. She also saw defendant running away from the scene after the shooting.

¶ 22 Detective Carr testified that both Malone and Williams identified defendant as the shooter from both photographic and physical line-ups. Although Malone and Williams both testified that they only identified defendant because Carr asked them to pick out the person named Jeffery, Carr stated that he asked them to identify the person who shot at them. It was the trial court's responsibility, as the finder of fact, to make credibility determinations and to resolve discrepancies or conflicts in testimony. See *People v. Fields*, 2017 IL App (1st) 110311-B, ¶ 30 (determinations of the credibility of witnesses are the responsibility of the trier of fact); *People v. Rudell*, 2017 IL App (1st) 152772, ¶ 24 (a reviewing court will not substitute its judgment for that of the trier of fact on questions of the credibility of witnesses). This evidence, and the reasonable inferences therefrom, was sufficient to sustain defendant's convictions.

¶ 23 In reaching this conclusion, we are not persuaded by defendant's argument that the trial court's findings and credibility determinations were based on the court's mis-recollection of the evidence. Specifically, defendant argues that, in finding him guilty, the trial court incorrectly stated that: (1) Malone and Williams testified that they saw defendant in the area of the shooting, even though both witnesses testified that they did not see him on the night of the shooting; (2) Malone and Williams both testified that they saw someone named Vell prior to the shooting, even though neither witness testified that they saw him, and Malone specifically testified that she

did not see him; and (3) a doctor testified regarding Williams' injuries, even though no doctor testified at trial.

¶ 24 Insofar as the trial court misstated the record, we find that these misstatements were minor and do not cast doubt on the court's findings. *People v. Burnette*, 325 Ill. App. 3d 792, 803 (upholding conviction despite trial court's misstatement of the evidence, where the misstatements were not of a "sufficient magnitude" to merit reversal). Although neither Malone nor Williams testified that they saw defendant on the night of the shooting, Carr testified that both witness identified defendant as the person who shot a gun at them. Similarly, while neither of the occurrence witnesses testified that they saw a person named Vell on the night of the shooting, this fact is inconsequential to the determination of defendant's guilt. Finally, while a doctor did not testify regarding Williams's injuries, a paramedic with the Chicago fire department stated that she was shot in the leg. As such, this misstatement is inconsequential, as the specific job title of the witness who testified regarding Williams's injuries does not impact the determination that she was shot in the leg.

¶ 25 We are likewise not persuaded by defendant's arguments, citing scientific studies, that Malone's and Williams's identifications of him may have been the result of a miscommunication with Carr or subtle, unconscious hints on the part of Carr, who was fueled by confirmation bias. We initially note that these studies were not presented to the trial court. As such, we will not now substitute our judgment and find that the identification procedures employed by Detective Carr were somehow improper or suggestive. See *People v. Heaton*, 266 Ill. App 3d 469, 477 (1994) ("Judicial notice cannot be extended to permit the introduction of new factual evidence not presented to the trial court"); *People v. Mehlberg*, 249 Ill. App. 3d 499, 531-32 (1993) (citations

to such studies on appeal constituted “an attempt to interject expert-opinion evidence into the record” that was neither subject to cross-examination by the State nor considered by the trial court).

¶ 26 Defendant next contends that the State failed to prove beyond a reasonable doubt that he personally discharged a firearm, a fact which resulted in his mandatory transfer to adult court. He requests that we remand the case to the trial court so that the State has the opportunity to request a discretionary transfer to adult court or, if the State does not request such a transfer or the trial court denies the State’s motion, that the proceedings against him be discharged, as he is 21 years of age. See 705 ILCS 405/5-130 (West 2012) (excluding from the jurisdiction of the Juvenile Court Act defendants who are charged with personally discharging a firearm during an aggravated battery); *People v. Fort*, 2017 IL 118966, ¶¶ 31, 41 (remanding to trial court to give the State an opportunity to move for adult sentencing or discharge after our supreme court determined that defendant was convicted of an offense not subject to exclusion under the Juvenile Court Act.)

¶ 27 However, as we found above, the evidence presented at trial was sufficient for any rational trier of fact to determine that defendant personally discharged a firearm in committing the offense of aggravated battery with a firearm. Specifically, Detective Carr testified that both Malone and Williams identified defendant as the person who shot at them. Further, Malone’s written statement describes how defendant was holding a gun and shot at them from 15 feet away. As mentioned, we will not reverse a conviction unless the evidence is so improbable, unsatisfactory or inconclusive that it creates a reasonable doubt of defendant’s guilt. *Lloyd*, 2013 IL 113510, ¶ 42. This is not one of those cases.

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¶ 28 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.