

2018 IL App (1st) 153039-U

No. 1-15-3039

January 30, 2018

Second 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-Appellant,)	Cook County.
)	
v.)	No. 13 CR 15206
)	
TORON VANCE,)	Honorable
)	Nicholas R. Ford,
Defendant-Appellee.)	Judge, presiding.

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant’s challenge to the sufficiency of the evidence based on the credibility of the witnesses fails. When the trial court did not make a factual finding of severe bodily injury, defendant’s consecutive sentences must be vacated and the cause remanded so that the trial court may determine whether defendant inflicted severe bodily injury such that consecutive sentences may be imposed.

¶ 2 Following a simultaneous severed bench trial with codefendant Michael “Red” Williams, defendant Toron Vance was found guilty of two counts of aggravated battery with firearm, and sentenced to two consecutive six-year prison terms. On appeal, defendant contends that he was

not proven guilty beyond a reasonable doubt because the State's witnesses were not credible. He further contends that he was improperly subject to consecutive sentences when the trial court did not make a finding that severe bodily injury had occurred, and no medical records or expert testimony was introduced at trial regarding the severity of the victims' injuries. We affirm defendant's convictions, vacate the imposition of consecutive sentences and remand so that the trial court may make a finding as to whether defendant inflicted severe bodily harm.

¶ 3 The evidence at defendant's trial established that an argument between defendant's sister Jerissa Giles and Crystal Milton became physical and that both women's friends and family became involved in the brawl. Specifically, defendant pulled out a gun and began shooting. Toya Jarrett, LaTonya Jefferson, and Shawnika Jackson suffered gunshot wounds. After the trial court found defendant guilty of three counts of aggravated battery with firearm, defendant filed a motion for a new trial. The trial court granted the motion as to count 9, the aggravated battery with a firearm of Jefferson, and sentenced defendant to two consecutive six-year prison terms for the aggravated battery with a firearm of Jarrett and Jackson.

¶ 4 At trial, Toya Jarrett testified that on April 14, 2012, she hosted a family party. Some guests stayed inside and others, including her daughter, Crystal Milton, and her niece, Jurnae Robinson, went outside. Around 10 p.m., Jarrett looked out the front door and saw a fight involving members of her family. She saw defendant try "to swing on [her] little cousin" LaTonya. However, Jarrett's brother hit defendant and defendant "flipped over the garbage can *** or something." Jarrett went to the middle of the street and told everyone to "break it up." Although she thought "everything had died down," she heard "get down" and "gun." When she turned her head, she "saw a ball of fire coming [her] way," so she turned and tried to run away.

However, she was hit by a bullet in the left buttock. Blood began “squirting from [her] butt.” Jarrett was taken to a hospital. There, she was told that the bullet was too large and “too far up in there to do surgery,” and that everything would “heal on its own.” At trial, Jarrett testified that she could feel the bullet and that whenever it rained, her “butt cramps up.” She continued to have pain in the “butt” and leg as a result of the bullet.

¶ 5 During cross-examination, Jarrett testified that her cousin, Jazmine Brown, came into the house and said that a girl had said something. Jarrett told Brown not to say anything back and to come and get her if the girl said something else. When Jarrett was asked whether she spoke with Officer O’Brian at the hospital, she replied, “They said I did,” but at the time I was “doped up” on pain medication. Jarrett denied saying that she saw eight men shooting.

¶ 6 Crystal Milton testified that she was outside with her cousin when a group including defendant’s sister, Jerissa Giles, stopped by. Milton “had words” with Giles. The group returned later that evening with “more girls” and guys, including defendant and codefendant. This group said that Milton’s family was “fitting to leave,” and Milton’s family “got mad” because the group wanted “to get” her when she was alone. At one point, defendant approached the front door and tried to get inside. However, Milton’s father refused to let him in. Defendant walked away. Milton and Giles exchanged words and then got into a physical altercation. Milton’s cousins Jurnae Robinson and Jazmine Brown were also present, “defending” her. The fight ended when “they” started shooting. Milton observed defendant holding a gun in his right hand. As defendant fired the gun, he said “Ya’all need to clear this court” and “this is my land.” Giles also stated “ya’all need to kill this big girl here.” Milton heard “more than three gunshots.” Codefendant was also holding a gun but she did not see him fire it. Milton lay on the ground

until the gunfire stopped. Before the shooting, she observed an unknown woman walk up to defendant and hand him a gun. At the time of the shooting, she did not know defendant's name. Milton later identified defendant as the shooter in a photographic array and in a line-up.

¶ 7 During cross-examination, Milton testified that on March 14, 2013, she told Detective Forberg that defendant had a gun and that codefendant just held a gun. She denied telling the detective that codefendant shot the gun. She acknowledged that she told the detective that codefendant got a gun from a girl. However, she then testified that she told the detective that defendant got a gun from a girl and that "somebody else" gave codefendant a gun. Milton explained that she and Giles argued over a boy. She denied that she had earlier testified that she did not know defendant's name at the time of the shooting.

¶ 8 Jurnae Robinson testified that at one point, Milton and "some girl named Ree-Ree" had words. Ree-Ree is defendant's sister. Robinson also observed a "Black boy" trying to get into the party. She identified defendant in court as that person. Defendant was accompanied by codefendant. Robinson's uncle stopped defendant and told him that he had to pay to come in. After being refused entry, defendant and codefendant "stood at the gate." At this point, Milton and Ree-Ree began fighting and all the women joined in. As everyone was fighting, a girl handed defendant a gun. Defendant began firing the gun and everyone "took off running." Codefendant also had a gun. Robinson did not initially run because the gun looked like a toy. However, once she saw "fire" come out of the gun she realized it was real. When Ree-Ree said "shoot the big girl," she ran inside. She later identified defendant and codefendant in a photographic array and in separate line-ups.

¶ 9 During cross-examination, Robinson testified that she spoke with Detective Forberg on the night of the shooting. She testified that Ree-Ree started the fight and denied telling the detective that one of Crystal's friends started the fight. When counsel asked if she told the detective that defendant went to the door of the house, she replied that the detective did not ask her that question. She testified that she only spoke to detectives once and did not remember speaking to an assistant State's Attorney on March 14, 2013.

¶ 10 Jazmine Brown testified that she was outside with Milton when a "female" said something to Milton, so she went inside and told Jarrett. When she went outside to leave, Milton and Robinson were outside the gate and there was talk about fighting. A fight then started between Milton and the girl she had been arguing with. At one point, a girl handed someone a gun. She identified defendant in court as that person. Defendant then "opened fire," and Brown ran away. Brown later identified defendant and codefendant in a photographic array and in separate line-ups. During cross-examination, Brown testified that she did not recall telling police that she saw a girl hit Jefferson or that codefendant shot a gun.

¶ 11 LaTonya Jefferson testified that as she was leaving the party she observed Milton and a girl fighting. The fight then became a "family fight" as everyone jumped in. Jarrett came out to break it up. As everyone "was going their separate ways" someone yelled "he got a gun." Jefferson saw a black "guy" shooting a gun. As she ran away, she felt a sharp pain in her foot. When she got inside, she realized she had been shot in the ankle and was bleeding. Jefferson was taken by ambulance to the hospital. There, she was told she needed a "bone specialist" and transferred to another hospital where she underwent surgery and a pin was placed in her ankle. She received pain medication and spent three days in the hospital.

¶ 12 During cross-examination, Jefferson testified that she did not see who started the fight. She did not recall telling a detective that when she went outside to leave, her sister was arguing with some girls, but recalled saying that she heard the girls say they were going to jump Milton. She spoke to a detective in March 2013, but she did not recall telling him that she confronted the girls outside and became involved in the argument or that one of the girls tried to hit her.

¶ 13 Shawnika Jackson testified that she was outside when she saw a “bunch of females fighting.” A man was also involved. At one point, this man reached to his waist, pulled out a gun and began shooting. Jackson did not know the man with the gun and had never seen him before. She ran away and did not realize she had been shot until she got into the house and her legs “went out.” When she looked down, she saw that she had been shot in both legs and her arm. Jackson was later transported to a hospital where her wounds were cleaned. The bullets in her legs were not removed. Her arm suffered a “deep glaze [*sic*].” She described the wound as “kind of a scoop” and that one could still see the damage to the “meat” of her arm. She received Vicodin. Jackson testified that she continued to feel pain “now and then” and that her legs would go out as she walked such that she had to sit down or she would fall.

¶ 14 The parties stipulated that evidence technician Joseph Scumaci recovered both 9-millimeter expended shells and .40-caliber fired cartridges from the scene.

¶ 15 Defendant then called Sergeant Brian Forberg, who testified that he investigated the shooting. He testified that when he spoke to Milton the night of the shooting, she stated that codefendant got a gun from a girl. During one of his two interviews with Milton, she stated the codefendant pulled out a gun, looked at her and started shooting. During a conversation with Jefferson, she stated that a man tried to hit her. During a conversation on the night of the

shooting, Brown stated that codefendant pointed and shot a gun, and that the fight started when a girl hit Jefferson. Robinson also told him, on the night of the shooting, that one of Milton's friends started the fight. During cross-examination, Forberg testified Milton and Brown also stated that defendant shot a gun.

¶ 16 The parties then stipulated that Officer M. O'Brien, if called to testify, would state under oath that on April 14, 2012, he interviewed Jarrett at a hospital and that during that interview Jarrett stated that "eight unknown black males in dark hoodys started shooting at the crowd in front of her house."

¶ 17 Following closing argument, the trial court found codefendant not guilty. In finding defendant guilty of three counts of aggravated battery with a firearm, the trial court noted that three witness identified defendant as the shooter. The court acknowledged that there was "impeachment," but that after considering the "demeanor and the perspective of the witnesses," that impeachment was "fairly tangential as to who actually shot." The court determined that although the witnesses were "wrong" about certain facts and dates, "they were not wrong when they were very assertive in their identification of [defendant] having shot in their direction during the course of that evening." Defendant filed a motion to reconsider. After hearing argument, the trial court granted the motion to reconsider as to the aggravated battery with a firearm as to Jefferson, and entered a finding of not guilty as to that charge.

¶ 18 At sentencing, the State noted in aggravation the injuries suffered, and the trial court stated that it agreed with the State's contention that the injuries suffered were "[s]ignificant." The State further argued that the women had "significant injuries," including bullets that remained "lodged" in their bodies. The State also noted a "through and through" injury which the

State characterized as severe bodily injury. The State concluded that defendant was found guilty of two counts and requested consecutive sentences as both counts constituted severe bodily injury. The trial court then stated that it would “find there was—the harm was such, the two injuries, I will be sentencing him consecutively as to each.” Defendant was sentenced to two consecutive six-year prison terms.

¶ 19 On appeal, defendant first contends that he was not proven guilty beyond a reasonable doubt when the witnesses gave inconsistent trial testimony and were contradicted by prior statements made to police officers.

¶ 20 When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. Where a guilty finding depends on eyewitness testimony, a reviewing court, keeping in mind that it was the fact finder who saw and heard the witnesses, must decide whether any fact finder could reasonably accept the witnesses’ testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *People v. Bradford*, 2016 IL 118674, ¶ 12. A reviewing court will not substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses. *Id.* This court reverses a defendant’s conviction only where the evidence is so unreasonable, improbable or unsatisfactory that a reasonable doubt of his guilt remains. *Id.*

¶ 21 In the case at bar, three witnesses, Milton, Robinson and Brown, testified that defendant was present, and fired a gun. Viewing the evidence in the light most favorable to the State, we cannot say that no rational trier of fact could have found that defendant fired a handgun. *Brown*, 2013 IL 114196, ¶ 48; see also *People v. Slim*, 127 Ill. 2d 302, 307 (1989) (a positive identification of the defendant by a single witness is sufficient to sustain a conviction).

¶ 22 Defendant, however, contends that the women’s testimony was too inconsistent and unbelievable to prove him guilty beyond a reasonable doubt. He further argues that the witnesses’ prior statements were inconsistent with their trial testimony and that they gave conflicting testimony regarding the events leading up to the shooting. He notes, in pertinent part, that the witnesses were inconsistent about the “origin” of his involvement in this incident, that is, whether he was denied entry to the party or he merely joined the fight between the women. Defendant also notes that the witnesses were inconsistent with regard to the “catalyst of the shooting,” as the testimony differed as to how the fight started.

¶ 23 Although defendant is certainly correct that the witnesses gave differing testimony regarding whether he tried to get into the party and who punched whom when, they all identified defendant as present holding a gun that he later fired. In finding defendant guilty, the trial court recognized that there had been “impeachment” of the witnesses but that the impeachment was “tangential” to the issue of the shooter’s identity and that the witnesses were “assertive” in their identification of defendant as the shooter. The record reflects that although Milton, Robinson, and Brown gave different descriptions of the events leading up the shooting, they consistently identified defendant as the shooter. It is the function of the trier of fact to assess the credibility of witnesses, resolve conflicts in the testimony and draw reasonable inferences from the facts.

Bradford, 2016 IL 118674, ¶ 12. “The trier of fact is best equipped to judge the credibility of witnesses, and due consideration must be given to the fact that it was the trial court *** that saw and heard the witnesses.” *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). Here, the trial court heard the witnesses’ testimony and was aware of the conflicts and inconsistencies between and among the various versions of events as detailed by the witnesses. The trial court found Milton, Robinson and Brown to be credible as evidenced by its verdict while recognizing the inconsistencies in their testimony as to “tangential” matters; we will not substitute our judgment for the trial court on this issue. *Id.*

¶ 24 Despite the inconsistencies and impeachment defendant has identified, we find that the witnesses’ statements that directly support defendant’s conviction could reasonably be accepted by the fact finder who saw and heard the witnesses testify. See *Cunningham*, 212 Ill. 2d at 279-80. The trial court was not required to disregard the inferences that flow from the evidence or search out all possible explanations consistent with defendant’s innocence and raise them to a level of reasonable doubt. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. This court reverses a defendant’s conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt (*Bradford*, 2016 IL 118674, ¶ 12), and this is not one of those cases. Accordingly, defendant’s challenge to the sufficiency of the evidence fails.

¶ 25 Defendant next contends that he was improperly sentenced to consecutive sentences because the trial court did not make a finding of severe bodily injury. He further argues that no medical records or expert testimony were offered at trial regarding the victims’ injuries and that the victims’ “vague” testimony and brief course of treatment were insufficient to establish that they suffered severe bodily injury. The State responds that the trial court was not required to set

forth the basis for its determination that the victims' suffered severe bodily injury, and, furthermore, the record supports the trial court's determination that the severe bodily injury occurred.

¶ 26 Defendant admits that he failed to raise the issue regarding the imposition of improper consecutive sentences in the trial court and, thus, it is forfeited on appeal. See, *e.g.*, *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (to preserve an issue for review, a defendant must make a contemporaneous objection and raise the issue in a posttrial motion). He argues we should review the issue pursuant to the plain error doctrine. Improperly imposing consecutive sentences may violate a defendant's fundamental rights and we therefore may review whether the imposition of consecutive sentences constitutes plain error. *People v. Murray*, 312 Ill. App. 3d 685, 692 (2000). The first step of plain-error review is to determine whether an error occurred. *In re M.W.*, 232 Ill. 2d 408, 431 (2009).

¶ 27 Section 5-8-4(d)(1) of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-4(d)(1) (West 2012)), provides that the court shall impose consecutive sentences when “[o]ne of the offenses for which defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury.”

¶ 28 We will reverse the trial court's factual finding of severe bodily injury for purposes of consecutive sentencing only if it is against the manifest weight of the evidence. *People v. Deleon*, 227 Ill. 2d 322, 332 (2008). “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.” *Id.* This court has previously held that not all gunshot wounds are severe simply because they are gunshot wounds. *People v. Austin*, 328 Ill. App. 3d

798, 808 (2002). Rather, we “look at the extent of the harm done by the gunshot in the particular case.” *People v. Williams*, 335 Ill. App. 3d 596, 599 (2002).

¶ 29 In the case at bar, the record reveals that the trial court did not make a factual finding that Jarrett and Jackson suffered severe bodily injury. See *Deleon*, 227 Ill. 2d at 332 (a reviewing court will “give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and witnesses,” and it “will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn”); *Williams*, 335 Ill. App. 3d at 601 (“the trial judge is in the best position to determine the appropriate sentence, severity of injury being factual in nature.”). Rather, at sentencing the trial court stated that it agreed with the State that the injuries were “[s]ignificant” and when imposing consecutive sentences, the trial court found “there was—the harm was such, the two injuries, I will be sentencing him consecutively as to each.” Without findings to review, this court “must not engage in our own assessment of the facts and the evidence to determine whether consecutive sentences were required under section 5-8-4(d)(1) of the Code.” *People v. Alvarez*, 2016 IL App (2d) 140364, ¶ 28.

¶ 30 We find *People v. Williams*, 335 Ill. App. 3d 596 (2002), and *People v. Alvarez*, 2016 IL App (2d) 140364, to be instructive. In *Williams*, the defendant was convicted of first degree murder and three counts of aggravated battery with a firearm. *Williams*, 335 Ill. App. 3d at 597. At sentencing, the trial court imposed consecutive sentences on the aggravated battery with a firearm counts, but did not make any findings or observations about the aggravated battery victims’ gunshot wounds. *Id.* at 599.

¶ 31 On appeal, the court found that one victim suffered severe bodily injury where her gunshot wound required emergency surgery and a hospital stay of 19 days. *Id.* at 601. However, the court characterized the evidence concerning the other two victims' gunshot wounds as "problematic." *Id.* One victim was shot in the leg, with the bullet exiting the back of the thigh and was hospitalized for five or six hours. The other victim was also shot in the leg and was released immediately after the wound was cleaned. The court noted that trial court was in the best position to determine the severity of the injury suffered by those two victims and that it did not make any factual findings, *Id.* Thus, in that case, the court did not know why the trial court determined that consecutive sentences were required. *Id.* The court therefore vacated the consecutive sentences and remanded for the determination of whether the defendant inflicted severe bodily injury on those two victims. *Id.* at 601-02.

¶ 32 *Alvarez*, which relied on *Williams*, also analyzed whether there was a factual finding of severe bodily injury. In that case, the trial court found, beyond a reasonable doubt, that the defendant had caused "great bodily harm and permanent disfigurement" to the victim. *Alvarez*, 2016 IL App (2d) 140364, ¶ 12. The court sentenced the defendant to mandatory consecutive prison terms following its statement that "as previously found" the defendant had discharged a firearm and the resulting injuries constituted "severe bodily injury." *Id.* ¶ 14.

¶ 33 On appeal, the court noted that "great bodily harm" and "severe bodily injury" are different concepts, such that the trial court could not have relied on its earlier determination of "great bodily harm" in finding "severe bodily injury" for purposes of consecutive sentencing. *Id.* ¶ 24. Further, the court noted that the trial court never made "an explicit finding" of "severe bodily injury." *Id.* ¶ 20. Relying on *Williams*, the court concluded that because the trial court

never made any findings or observations regarding the victim's wounds, there were no factual findings to review on appeal, and thus, the case had to be remanded for a determination whether the defendant inflicted "severe bodily injury." *Id.* ¶¶ 26-29.

¶ 34 Here, as in *Williams* and *Alvarez*, the trial court did not make a factual finding of severe bodily injury, and, therefore, there is no finding for this court to review pursuant to the standard set forth in *Deleon*. In the case at bar, the trial court agreed with the State the injuries suffered were significant, and found "there was—the harm was such, the two injuries" that consecutive sentences were warranted. However, there was no factual finding or observation by the trial court regarding the wounds suffered by Jarrett and Jackson. See *Alvarez*, 2016 IL App (2d) 140364, ¶ 27 (the trial court's "isolated comment about the 'seriousness' of [the victim's] injuries cannot serve as the basis for upholding the court's imposition of consecutive sentences"). "Without findings to review, we must not engage in our own assessment of the facts and the evidence to determine whether consecutive sentences were required under section 5-8-4(d)(1) of the Code." *Id.* ¶ 28 (relying on *Deleon* for the proposition that great deference should be given to the trial court as finder of fact and the reviewing court will not substitute its judgment for the trial court's on issues regarding witness credibility, the weight given to evidence, or the inferences to be drawn). Accordingly, because the trial court did not make a factual finding regarding severe bodily injury, we will not provide our own determination. *Id.* We are unpersuaded by the State's argument that because the trial court imposed consecutive sentences it must have made the requisite finding of severe bodily injury. See *Id.* (absent a finding of severe bodily harm to review, a reviewing court must not engage in its own assessment of the facts and evidence to determine whether consecutive sentences were required).

¶ 35 Because the trial court did not make a factual finding of severe bodily injury as required by section 5-8-4(d)(1) of the Code to impose consecutive sentences, defendant has established plain error under the second prong. Accordingly, we vacate the consecutive sentences imposed and remand for the determination of whether defendant inflicted severe bodily injury on Jarrett and Jackson. See *Williams*, 355 Ill. App. 3d at 601; *Alvarez*, 2016 IL App (2d) 140364, ¶ 29. See *People v. Lashley*, 2016 IL App (1st) 133401, ¶¶ 68-69.

¶ 36 For the reasons stated above, we affirm defendant's convictions for aggravated battery with a firearm. As defendant does not challenge the length of his sentences, we affirm the length of each sentence. We vacate the imposition of consecutive sentences and remand the case to the trial court for a determination of whether defendant inflicted severe bodily injury as to require the imposition of mandatory consecutive sentences.

¶ 37 Affirmed in part; vacated in part; remanded with directions.