2019 IL App (1st) 160115-U
No. 1-16-0115
Order filed July 23, 2019

Second Division

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. 11 CR 5838
	)	
JOHN LIPSCOMB-BEY,	)	Honorable
	)	Timothy J. Joyce,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to sustain defendant's conviction for aggravated battery with a firearm. Defendant was not prejudiced by the admission of a bullet removed from the victim's head that had an allegedly deficient chain of custody.

¶ 2 Following a bench trial, John Lipscomb-Bey was convicted of aggravated battery with a firearm and sentenced to 21 years in prison. He appeals, arguing that (i) the State failed to prove him guilty beyond a reasonable doubt, and (ii) the trial court abused its discretion in allowing the State to enter a .38-caliber bullet into evidence without establishing a sufficient chain of custody. We affirm. The evidence supports the finding of aggravated battery with a firearm beyond a

reasonable doubt. Regarding the chain of custody, nothing in the record would justify reversal on that basis.

¶ 3 Background

¶ 4 An indictment charged Lipscomb-Bey with, among other offenses, attempt first degree murder (720 ILCS 8-4(a), 9-1(a)(1) (West 2008)) and aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West Supp. 2009)) in the shooting of Reginald Chatmon.

¶ 5 At trial, Chatmon acknowledged a 2004 conviction for delivery of a controlled substance, and a 2006 conviction for possession of a controlled substance. He testified that he did not know Lipscomb-Bey, but had become familiar with him by 2009 "[t]hrough friends and family," including Lipscomb-Bey's brother, Van. Chatmon had known Van about 10 years, but, before the day of the shooting, had never spoken to Lipscomb-Bey.

¶ 6 In the early morning hours of September 19, 2009, Chatmon drove to a house near the corner of 69th Street and Justine Street, Chicago, where loose cigarettes were sold. A "young guy," later identified as Lamont Larke, Lipscomb-Bey's nephew, was standing on the front porch. Chatmon, on foot, approached Larke, and had a verbal "altercation" with him. Chatmon "snatched" a case of cigarettes out of Larke's hand. The day before the two had an argument.

¶ 7 Chatmon then drove to the house of Shamona Goings, the mother of his child, which was located "[r]ight around the corner" at 69th and Laflin Street. (Throughout the proceedings, Shamona's last name was given Goings, Gum, or Gunn. For consistency, we refer to her as Goings.) A woman, later identified as Laura Carter, Larke's mother and Lipscomb-Bey's sister, went to Goings's house and started screaming Chatmon's name. After Carter yelled at him for five minutes, he agreed to return the cigarettes.

¶ 8 Chatmon walked the cigarettes back to the house on Justine. When he arrived, Larke and Carter sat in a truck in front of the house. As Chatmon approached and handed Carter the cigarettes, Lipscomb-Bey, whom Chatmon identified in court, came up and punched him in the side of the face. Chatmon, Lipscomb-Bey, and Larke engaged in a fistfight for "a good 15, 20 minutes." At some point, Chatmon's cousin, Randy Frazier, arrived and joined in. Lipscomb-Bey told Larke to "go get that," and Larke went inside and emerged with an ax minutes later. Larke swung the ax "wild[ly]" towards Chatmon and Frazier. Chatmon retrieved a baseball bat from the trunk of his car, and swung it around for about five minutes to fend off Larke and Lipscomb-Bey. When they retreated, Chatmon and Frazier each drove away. Chatmon did not hit anyone with the bat.

¶ 9 Chatmon parked at his grandmother's house at 70th Street and Marshfield Avenue and walked back to Goings's house. He told Goings, her brother, and the mother of her brother's child about the fight. About 10 minutes later, Chatmon went for a walk with Goings and the mother of her brother's child. After a short walk, Chatmon decided to part ways and "calm [him]self down."

¶ 10 Chatmon sat alone on the porch of an abandoned house near the alley between 68th Street and Justine. Lipscomb-Bey emerged from the alley about 15 minutes later. When Chatmon asked him "what's up," Lipscomb-Bey looked at him, drew a silver .38-caliber revolver from his waistband, and fired two shots. Chatmon, who starting running when Lipscomb-Bey drew the gun, fell down after one of the shots hit his spine. As Chatmon lay on the ground, he raised his right hand to protect himself. Lipscomb-Bey stood over him and fired a shot that hit him in the right thumb and went into the left side of his head. Chatmon stated that the whole encounter

happened "so quick," between five to ten seconds. But, he was able to see Lipscomb-Bey's entire face and body.

¶ 11 Lipscomb-Bey fled. Chatmon called an ambulance from his cell phone, and then his cousin, Tameka Frazier, and various relatives to come to him. When the police arrived, Chatmon told Officer Jeffrey Smith that "Van's brother," by which he meant Lipscomb-Bey, shot him.

¶ 12 An ambulance took Chatmon to Christ Hospital. On September 22, 2009, he met with Detectives Richard Blackburn and Caroline Keating at the hospital and tried to tell them what happened, but was "[f]eeling bad" from being shot and paralyzed. The detectives returned the next day, and Chatmon identified Lipscomb-Bey as the shooter from a photo array. On April 11, 2011, Chatmon identified Lipscomb-Bey in a physical lineup.

¶ 13 Chatmon learned that one bullet had lodged in his head, and another in his back, rendering him paralyzed. He had surgery to remove the bullet from his head. Later that same day, his doctor gave him a bullet wrapped in gauze. Chatmon testified that this bullet was the same one that was removed from his head. Defense counsel objected "as to where the bullet came from." The court stated that, "presum[ing] *** that [Chatmon] was unconscious when the bullet was removed from his head," his testimony "seems to be based on hearsay." In response, the State noted that "[w]e have a stipulation as to the fact that that bullet is the one [Chatmon] gave the police. We also have a stipulation that that bullet was the one that was analyzed and found to be a 38-caliber bullet."

¶ 14 Defense counsel countered that "[t]he only problem is judge, [Chatmon] can't say where that came from." The State requested a continuance to bring the doctor before the court, and defense counsel replied "[t]he stipulation is that he received the bullets [*sic*] from the doctor.

And we're stipulating to the chain of custody that he received from the doctor." The court ultimately overruled Lipscomb-Bey's objection, and stated that it would not consider any hearsay statements from the doctor concerning the origin of the bullet. Chatmon explained that doctors used a local anesthetic so he remained conscious during the surgery. Nurses showed him the bullet during the procedure.

¶ 15 After receiving the gauze-wrapped bullet, Chatmon put it in a plastic pill bottle and gave it to Keating on April 1, 2011, a few weeks after the surgery. Chatmon identified the pill bottle and bullet at trial, and stated they were in the same condition as when he gave them to Keating.

¶ 16 On cross-examination, Chatmon testified that he had known Van for years, but had never been to his house and "didn't know he even had no brothers." Chatmon also stated that he knew Lipscomb-Bey's name was "John Lee," which was Lipscomb-Bey's nickname, and recognized his face "so so" before encountering him on the day of the shooting. Defense counsel asked, "So you knew Van's brother was John Lee. And that's the gentleman who's in court today. Right?" Chatmon responded, "Yeah." Chatmon acknowledged that he knew that some of Van's family members lived in the house on Justine, but did not know if Van lived there as well.

¶ 17 Chatmon explained that, the day before he stole the cigarettes, he and Larke had gotten into a "little disagreement" after he jokingly tried to take Larke's wallet from his pocket. He acknowledged that he did not tell detectives about this "disagreement," but denied punching Larke.

¶ 18 Defense counsel questioned Chatmon about how he traveled to return the cigarettes. Chatmon reiterated several times that he walked from Goings's house to Justine. He explained that his car was not in front of the house on Justine, but further down on the same street.

Chatmon did not sustain any injuries during the fight, and neither Frazier nor Lipscomb-Bey wielded a bat.

¶ 19 Smith testified that at about 2:55 a.m. on September 19, 2009, he responded to a shooting in the 6800 block of South Justine. He and his partner found Chatmon lying face up in the grass next to a house. Chatmon told Smith that "Van's brother-in-law" shot him. On cross-examination, Smith stated that he only asked Chatmon "who shot him," and did not request any additional information.

¶ 20 Blackburn testified that he and Keating went to the hospital on September 19, 2009, and to interview Chatmon. They were unable to do so. The detectives returned a couple days later. After the interview, they spoke to Frazier. Blackburn identified Lipscomb-Bey as a suspect. On September 23, Blackburn and Keating assembled a photo array and showed it to Chatmon, who identified Lipscomb-Bey as the shooter.

¶ 21 On September 25, the detectives met with Carter. After speaking to her, they searched for Lipscomb-Bey. They spoke to Lipscomb-Bey's mother and decided to look for Larke as well. Blackburn and Keating interviewed Larke. The detectives eventually learned Lipscomb-Bey's whereabouts "late in 2010," and arrested him in April 2011.

¶ 22 On cross-examination, Blackburn said Chatmon told them he drove to the 6900 block of Justine, where he argued with Larke "over stolen cigarettes." The argument turned into a fistfight involving Chatmon, Frazier, Lipscomb-Bey, and Larke, as Carter looked on. Later, Lipscomb-Bey emerged from an alley, drew a silver .38-caliber revolver, and shot Chatmon as he tried to flee.

¶ 23 Chatmon did not mention that (i) he argued with Larke the day before stealing the cigarettes, (ii) he argued with Carter outside Goings's house, and (iii) Carter was in a truck, rather than on foot, during the fistfight. Chatmon also did not mention that Larke retrieved an ax during the fight, or that he asked Lipscomb-Bey "what's up" just before the shooting. Blackburn acknowledged that Chatmon also failed to provide these details on September 23, the day of the photo array, but explained that he and Keating did not interview Chatmon then.

¶ 24 The State entered two stipulations regarding the chain of custody for the bullet-. First, on April 1, 2011, Chatmon gave Keating a pill bottle containing a fired bullet, which she inventoried in accordance with "proper Chicago police department inventory procedures." Keating submitted a request for the Illinois State Police Crime Lab to analyze the fired bullet, and "[a] proper chain of custody was maintained at all times." She would identify the pill bottle and bullet in court, and testify that they were in the same condition as when they left her custody.

¶ 25 Second, John Flaskamp, a forensic analyst for the Illinois State Police, received the pill bottle and bullet "in a properly sealed and preserved condition." He examined the bullet and concluded that it came from a .38-caliber firearm. Flaskamp would identify the bottle and bullet as being in the same condition as when they left his custody. The parties stipulated that "a proper chain of custody was maintained at all times" Keating and Flaskamp possessed the bullet. Later, the State sought to admit the bullet into evidence. The court asked defense counsel if he had "[a]ny objection," and counsel replied, "[n]o objection." The bullet was admitted.

¶ 26 The parties also stipulated that an evidence technician took photographs of the crime scene early on September 19, 2009, but did not recover any physical evidence.

¶ 27 The State rested, and the defense moved for a directed finding, arguing that Chatmon's testimony was not credible because he contradicted himself, hid unfavorable details from detectives, and did not identify Lipscomb-Bey as the shooter by name. The court denied the motion.

¶ 28 The defense called Larke, who acknowledged that he was convicted of a felony for manufacturing and delivering cannabis. Larke was outside a store on September 18, 2009, when Chatmon, whom he did not know at the time, grabbed his front pocket containing his money and identification. Larke told Chatmon not to touch him. Chatmon replied, "You must not know who I am" and punched him in the jaw. The two argued before going their separate ways.

¶ 29 After sunset that day, Larke and Carter were selling loose cigarettes from the front porch of a house on Justine. A purple Cadillac drove by and parked near a vacant lot down the block. When Carter went inside, Chatmon got out of the Cadillac and approached. He "snatched" the cigarettes from Larke, walked back to the Cadillac, and drove away. Larke told Carter what happened, and they circled the neighborhood in search of Chatmon. Unable to locate him, they returned to the porch. They saw the purple Cadillac drive by again, and later found it parked on Laflin. As they approached, Chatmon was out of the car, standing hunched forward with his hands crossed "like he was holding *** a weapon" in his waistband. Chatmon spoke to them, but walked away after Carter asked him to return her cigarettes. Carter talked to "some people" on Laflin before driving back to the house on Justine. When Carter and Larke parked in front of the house, Chatmon parked by the same vacant lot as before, reversed his car, and threw the cigarettes at them. At this time, Larke also saw a green van parked across the street.

¶ 30 Carter got out of her car and argued with Chatmon while Larke sat in the passenger's seat. Lipscomb-Bey came out of the house and fought with Chatmon while Carter watched from the sidewalk. When a man got out of the green van holding a baseball bat, Chatmon said, "That's what the f*** I'm talking about," and retrieved his own bat from his car. Carter told Larke to "[f]ind something to help [Lipscomb-Bey]," so he got an ax from the house. When he returned, Chatmon and the other man were already retreating to their cars because Lipscomb-Bey had taken one of their baseball bats.

¶ 31 Later that night, around 11 or 11:30 p.m., Larke was drinking on the porch with Carter, Lipscomb-Bey, Tijuana Wilson, and "a bunch" of others when he heard gunshots. They went inside the house and heard an ambulance a few minutes later. Lipscomb-Bey did not leave Larke's presence from the time the fight ended to the time he heard the ambulance.

¶ 32 On cross-examination, Larke acknowledged that he spoke to police at Branch 48 in March 2010, but did not recall telling them that he and Carter searched for Chatmon, that Chatmon drove a purple Cadillac, or that he said "That's what I'm talking about" when Frazier entered the fight with a bat. Larke also acknowledged that he did not tell police that Chatmon acted like he was armed at Goings's house, that Chatmon threw the cigarettes at him, or that Wilson was present when he heard the gunshots. Larke did not talk to either Carter or Lipscomb-Bey about the shooting, and had not spoken to Lipscomb-Bey since that night.

¶ 33 Carter testified that she and Larke were selling loose cigarettes from the porch of her in-laws' house on Justine in the early hours of September 19. Carter went inside, and Larke later told her that Chatmon had stolen their cigarettes. At that time, she was aware of "a previous incident" between Larke and Chatmon. She and Larke drove around the block in search of

Chatmon, but returned home because they were unable to find him. As they got out of the car, Larke spotted Chatmon driving by. They reentered and found Chatmon on the next block. He approached on foot "with his hand tucked up under this arm like he had something." Carter asked for the cigarettes back, but Chatmon walked away without returning them.

¶ 34 Carter drove away, but stopped to talk with "some people" she knew for five to ten minutes. When she returned to Justine, Chatmon's car was "blocking the street." Carter backed up and parked in front of her in-laws' house. Chatmon parked and approached on foot, screaming "Mama, ain't nobody scared of you. I don't know why you screaming my name out all over this block." Lipscomb-Bey came out of the house, explained to Chatmon that he was Carter's brother, and asked him what was going on. Chatmon replied that he "didn't give an 'F' who he was," and punched him in the face. Chatmon then retrieved a baseball bat from his trunk, and Frazier also got out of his car with a bat. Carter told Larke to "find something to help" Lipscomb-Bey, and he went inside the house. While Larke was inside, Chatmon and Frazier swung their bats at Lipscomb-Bey for two to three minutes until one of them hit Lipscomb-Bey and Lipscomb-Bey took one of the bats. Lark emerged from the house and "started swinging the ax," but the fight had ended. Chatmon and Frazier then drove off.

¶ 35 Afterwards, Carter stayed out in the yard with her family. Wilson, who is not a relative, joined them. "[S]ome time later," Carter was still out in the yard with Lipscomb-Bey when she heard gunshots. Lipscomb-Bey did not have a gun and did not leave the yard. They went inside after hearing the gunshots, and later heard sirens.

¶ 36 On cross-examination, Carter stated that she did not remember discussing "what happened the night of that shooting" with Larke. She acknowledged that she spoke with

detectives a few days after the shooting, but did not recall telling them that she searched for Chatmon, that Chatmon approached her car as if he were carrying something in his waistband, or that Wilson was present when she heard the gunshots.

¶ 37 Wilson testified that she and her girlfriend, Cynthia, went to "drink and kick it" at the house on Justine between 11 p.m. and midnight on September 18. Lipscomb-Bey was present. Wilson was at the house on Justine for five or ten minutes when she heard gunshots. The partygoers, including Lipscomb-Bey, ran inside.

¶ 38 The defense rested, and the State recalled Blackburn in rebuttal. He testified that neither Larke nor Carter told him that Wilson was present when they heard the gunshots, and that Carter did not tell him that Lipscomb-Bey was present.

¶ 39 In closing, defense counsel argued that Chatmon was incredible and inconsistent for various reasons. The court nonetheless found Lipscomb-Bey guilty of aggravated battery with a firearm, but not guilty of attempt murder. In so finding, the trial court stated, "this case turns ultimately on whether the court can credit beyond a reasonable doubt the testimony of Reginald Chatmon." More specifically, the court stated that the key issue was "[w]hether [Chatmon] can identify the person who he claims shot him," rather than, for example, "[w]hether he can identify how long a dispute on the street takes."

¶ 40 In addressing Chatmon's ability to identify Lipscomb-Bey, the court noted that the defense benefitted from the facts that (i) Lipscomb-Bey is Van's brother, not his brother-in-law; (ii) Chatmon knew Lipscomb-Bey's name before the shooting, but did not use it to identify him; and (iii) Chatmon admitted that he "forcibly sought to steal something" from Larke hours before the shooting and later "did steal something from [Larke's] presence by force or otherwise."

¶ 41 Nevertheless, the trial court found Chatmon's identification credible, stating that the "potential problems" with how he referred to Lipscomb-Bey were "ultimately irrelevant" because he knew Lipscomb-Bey's face from their encounter earlier that day. The court also credited Smith and Blackburn, stating that their testimony corroborated Chatmon's account.

¶ 42 In rejecting Lipscomb-Bey's argument that Chatmon could not have seen the shooter because he was shot in the back, the court found that Chatmon fell onto his back after the first shot because "he suffer[ed] a wound to the hand which is consistent with a defensive wound that would be sustained when you put your hands up in front of your face."

¶ 43 The court also found a sufficient chain of custody to for the .38 caliber bullet, which was "important" because it corroborated Chatmon's claim that the firearm was a revolver, rather than "a semi-automatic pistol," which would have expelled shell casings.

¶ 44 Turning to the defense witnesses, the court found Carter, Larke, and Wilson not credible, in part because "you could almost see the wheels spinning in their head[s]" while they were "hesitating and trying to figure out how they should answer" whether they talked to each other about the shooting.

¶ 45 Based on these findings, the court found Lipscomb-Bey guilty of aggravated battery with a firearm, but not guilty of attempt murder because it was not convinced beyond a reasonable doubt that Lipscomb-Bey had the specific intent to kill Chatmon.

¶ 46 Lipscomb-Bey filed a motion for a new trial, emphasizing "the weakness in the evidence of the reliability of the identification" because Chatmon identified Lipscomb-Bey as Van's brother-in-law, rather than as Van's brother or by name. The court denied the motion, and following a hearing, sentenced Lipscomb-Bey to 21 years in prison.

¶ 47 Lipscomb-Bey on appeal argues: (i) the State failed to prove him guilty beyond a reasonable doubt as Chatmon's testimony was unbelievable, and (ii) the trial court erred in admitting the .38-caliber bullet into evidence as the State failed to establish a proper chain of custody.

¶ 48 Analysis

¶ 49 On a challenge to the sufficiency of the evidence, a reviewing court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the charged offense beyond a reasonable doubt. *People v. Harris*, 2018 IL 121932, ¶ 26. Having observed the witnesses testify, the trier of fact is in a superior position to decide witness credibility, resolve conflicts in the testimony, and weigh the evidence. See *People v. Gray*, 2017 IL 120958, ¶ 35; *People v. Jordan*, 218 Ill. 2d 255, 278 (2006). Accordingly, a reviewing court must not retry the defendant or substitute its own judgment on witness credibility for that of the trier of fact. *Harris*, 2018 IL 121932, ¶ 26.

¶ 50 When a case depends on eyewitness testimony, a reviewing court will uphold the conviction unless no reasonable trier of fact could accept the testimony as true. *Gray*, 2017 IL 120958, ¶ 36. The positive testimony of a single credible witness suffices to sustain a conviction. *Id.* A conviction will not be reversed merely because there is conflicting evidence or because the defendant asserts that the witness was not credible. *Id*. Instead, a conviction will be set aside only where the evidence appears "so improbable or unsatisfactory that a reasonable doubt remains as to the defendant's guilt." *Harris*, 2018 IL 121932, ¶ 26.

¶ 51 A person commits aggravated battery with a firearm when, in the course of committing a battery, he or she intentionally or knowingly discharges a firearm and injures another person. 720

ILCS 5/12-4.2(a)(1) (West Supp. 2009). A person commits a battery when, without lawful justification, he or she intentionally causes bodily harm to another person. 720 ILCS 5/12-3(a) (West 2008).

¶ 52 Sufficient evidence exists to find Lipscomb-Bey guilty of aggravated battery with a firearm beyond a reasonable doubt. Chatmon, whom the trial court found credible, testified that he was sitting on the porch of an abandoned house when Lipscomb-Bey emerged from a nearby alley. Chatmon was familiar with Lipscomb-Bey's face from the neighborhood, his friendship with Lipscomb-Bey's brother, and his fight with the brother hours before. As Lipscomb-Bey came out of the alley, Chatmon saw his entire face and body, and saw him draw a silver, .38-caliber revolver from his waistband. Chatmon attempted to flee, and Lipscomb-Bey shot him in the back, causing him to fall to the ground. Then, Chatmon saw Lipscomb-Bey's face again as Lipscomb-Bey stood over him and fired a shot that struck him in the thumb and head. When Officer Smith responded, he found Chatmon, who was paralyzed by the first shot, lying face up in the grass near the alley. Chatmon told Smith "Van's brother," by which he meant Lipscomb-Bey, shot him. Smith testified that Chatmon referred to the shooter as "Van's brother-in-law." Several days after the shooting, Chatmon told detectives that Lipscomb-Bey shot him, and identified Lipscomb-Bey in a photo array. Later, Chatmon identified Lipscomb-Bey in a physical lineup and at trial.

¶ 53 Thus, the evidence established that Chatmon had the opportunity to view the shooter and positively identify Lipscomb-Bey as the offender on multiple occasions. His testimony was sufficient to convict Lipscomb-Bey of aggravated battery with a firearm beyond a reasonable

doubt. See *Gray*, 2017 IL 120958, ¶ 36 (positive testimony of single eyewitness sufficient to sustain conviction).

¶ 54 Lipscomb-Bey offers several reasons why he was not proven guilty beyond a reasonable doubt, all of which essentially amount to attacks on Chatmon's credibility. In particular, Lipscomb-Bey contends that Chatmon could not reasonably be believed because he (i) testified that he saw Lipscomb-Bey's face despite being shot from behind; (ii) did not identify Lipscomb-Bey to police by name; (iii) inaccurately described Lipscomb-Bey to Smith as "Van's brother-in-law," rather than Van's brother; (iv) omitted his own misdeeds and certain minor details in his interviews with police; (v) failed to identify Lipscomb-Bey in his first meeting with detectives; (vi) had a criminal history; and (vii) contradicted himself at trial in various minor ways. In contrast, Lipscomb-Bey emphasizes that no physical evidence connected him to the crime, and three alibi witnesses—including his sister and nephew—testified that he was with them at the time of the shooting.

¶ 55 The trial court addressed many of these points in announcing its finding of guilt. As a reviewing court, we cannot retry a defendant or substitute our own assessment of witness credibility for that of the trial court. *Harris*, 2018 IL 121932, ¶ 26. We also note that most of Lipscomb-Bey's arguments involve minor details or collateral matters irrelevant to the shooting itself. For example, whether Chatmon walked or drove to return the cigarettes or how long Chatmon fought with Lipscomb-Bey hours before the shooting. The trial court was not required to discredit Chatmon on these bases. *Gray*, 2017 IL 120958, ¶ 47 (minor discrepancies or inconsistencies related to collateral matters need not render witness's testimony unworthy of belief).

¶ 56 Lipscomb-Bey's arguments that implicate the material question of the shooter's identity do not warrant reversal. First, the trier of fact was not required to credit Lipscomb-Bey's alibi witnesses over the State's witnesses. See *id*. ¶ 35 (trier of fact's responsibility to resolve conflicts in testimony and decide witness credibility). Second, the State was not required to present physical evidence to corroborate Chatmon's otherwise credible identification testimony. See *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23 ("Because the trial court found [an eyewitness's] identification and testimony credible, the lack of physical evidence had no bearing on [the defendant's] conviction.").

¶ 57 Third, the trial court considered and rejected Lipscomb-Bey's argument that because the shot entered Chatmon from behind, he could not have seen the shooter. This contention relies on the premise that Chatmon fell forward onto his stomach after being shot from behind. But, the trial evidence established that Chatmon saw Lipscomb-Bey before the shooting, and only turned his back to run when Lipscomb-Bey drew a firearm. Lipscomb-Bey then shot Chatmon from behind, causing him to fall onto his back. As the trial court noted, this comports with Chatmon's testimony, the "defensive wound" on Chatmon's hand, and Smith's testimony that Chatmon, who was paralyzed by the first shot, was laying face-up when he arrived. Thus, it was reasonable for the trial court to believe that Chatmon had a sufficient opportunity to view Lipscomb-Bey. Consequently, the evidence was sufficient to convict Lipscomb-Bey of aggravated battery with a firearm beyond a reasonable doubt.

¶ 58 Admission of bullet

¶ 59 Lipscomb-Bey next contends that the trial court erred in admitting the .38-caliber bullet into evidence because the State did not establish a proper chain of custody. In particular,

Lipscomb-Bey argues that (1) "no direct evidence established" the bullet Chatmon received from his doctor was the same one removed from his head, and (2) "there is no evidence that Chatmon took any reasonable protective measures to establish that the bullet he gave to the police was the same bullet he supposedly received from his doctor."

¶ 60 Lipscomb-Bey acknowledges that he did not include a chain of custody challenge in his posttrial motion. Nevertheless, he argues that he did not forfeit the issue because defense counsel objected to the chain of custody at trial. We disagree, as "a challenge to the chain of custody is an evidentiary issue that is generally subject to waiver on review if not preserved by defendant's making a specific objection at trial and including this specific claim in his or her posttrial motion." *People v. Woods*, 214 Ill. 2d 455, 471 (2005).

¶ 61 When an issue has been forfeited, however, the plain error doctrine "allows a reviewing court to address defects affecting substantial rights if the evidence is closely balanced or if fundamental fairness so requires." *Id.* at 471-72. Our supreme court has stated that reviewing the admission of evidence for plain error is appropriate in "those rare instances where a complete breakdown in the chain of custody occurs." *Id.*; see also *People v. Alsup*, 241 Ill. 2d 266, 276 (2011). The defendant bears the burden of demonstrating prejudice by the trial court's error. *Woods*, 214 Ill. 2d at 257. Our analysis begins by determining whether a "clear or obvious" error occurred. *People v. Eppinger*, 2013 IL 114121, ¶ 19.

¶ 62 Initially, the State maintains that no error occurred because Lipscomb-Bey waived any challenge to the chain of custody through stipulations and his failure to object when the State moved to admit the bullet into evidence at the close of its case-in-chief. The record shows that defense counsel objected to Chatmon's statement regarding the origin of the bullet he received

from his doctor, but did not object to the chain of custody for the bullet between Chatmon and the police or between the police and the analyst. Even accepting that Lipscomb-Bey did not waive his challenge to the chain of custody at trial, it is not clear that a "complete breakdown" in the chain of custody occurred.

¶ 63 Although, as Lipscomb-Bey notes, the doctor who removed a bullet from Chatmon's head did not testify that it was the same one he gave to Chatmon later that day, Chatmon himself testified that he retained consciousness throughout the surgery and viewed the bullet at that time. Thus, Chatmon's personal knowledge supports the link in the chain of custody, and the doctor's testimony was unnecessary. See *Woods*, 214 Ill. 2d at 255 (every person in chain of custody is not required to testify). Chatmon further stated that he placed the bullet in a plastic pill bottle and gave it to Keating about three weeks later. The parties stipulated that "a proper chain of custody was maintained at all times" afterwards.

¶ 64 Lipscomb-Bey maintains that insufficient evidence exists concerning what **"**procedures" Chatmon performed to ensure that the bullet was not tampered with while it was in his custody. Chatmon, however, testified that the bullet and pill bottle were in substantially the same condition at trial as when he gave them to Keating. Moreover, the State was not required to "exclude every possibility of tampering or contamination," and "[i]t is not erroneous to admit evidence even where the chain of custody has a missing link if there was testimony which sufficiently described the condition of the evidence when delivered which matched the description of the evidence when examined." *Alsup*, 241 Ill. 2d at 275. Absent evidence of actual tampering, the State need only show that the police took "reasonable protective measures" that rendered it improbable that the evidence had been tampered with or accidentally substituted. *Id.*

at 274-75. Applying these principles, we cannot say that a "complete breakdown" in the chain of custody occurred.

¶ 65 Even assuming that the court erred in admitting the bullet, any error would be harmless in light of the overwhelming evidence of Lipscomb-Bey's guilt. As noted, Chatmon had the opportunity to view Lipscomb-Bey during the shooting and consistently identified him as the gunman afterwards. *Gray*, 2017 IL 120958, ¶ 36 (positive testimony of single witness sufficient to sustain conviction). As Chatmon's injuries were not in dispute, the usefulness of the bullet to the State's case merely corroborated his claim that Lipscomb-Bey wielded a .38-caliber firearm. Indeed, the trial court's crediting of Chatmon's testimony did not hinge on the caliber of the bullet. For instance, the trial court noted that the defensive wounds to hands Chatmon's hands and the testimony of Smith and Blackburn supported Chatmon's account. Additionally, as the trial court stated, Chatmon's claim that Lipscomb-Bey had a revolver rather than a semiautomatic handgun comports with no shell casing having been found at the scene. Thus, there is no reasonable probability that Lipscomb-Bey would have been acquitted but for the admission of the bullet.

¶ 66 In the alternative, Lipscomb-Bey argues that his trial counsel failed to preserve the chain of custody issue for appeal. To establish ineffective assistance of counsel, a defendant must prove counsel performed deficiently and prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). As explained, any error regarding the chain of custody was harmless. Thus, counsel's failure to preserve the issue for appeal would not satisfy the prejudice requirement.

¶ 67 Affirmed.