2019 IL App (1st) 162559-U

No. 1-16-2559

Order filed May 14, 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. 13 CR 17908
	)	
LAMONT GRANT,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: Evidence was sufficient to convict defendant of first degree murder, attempted first degree murder, and aggravated discharge of a firearm over his self-defense claim. Aggravated discharge convictions are not vacated under the one-act-one-crime rule because it does not apply to offenses with different victims, as here.

¶ 2 Following a 2016 bench trial, defendant Lamont Grant was convicted of first degree murder, attempted first degree murder, and three counts of aggravated discharge of a firearm. He was sentenced to consecutive prison terms of 75 and 55 years for murder and attempted murder,

and concurrent prison terms of 10 years for the aggravated discharge counts, for a total of 130 years' imprisonment. Grant contends that the evidence was insufficient to convict him as the State did not disprove that he acted in self-defense. He also contends that his convictions for aggravated discharge of a firearm should be vacated under the one-act-one-crime rule, and the State agrees. We affirm.

¶ 3 Grant was charged with 92 counts arising out of offenses committed on August 10, 2013. He was charged with multiple counts of the first degree murder (720 ILCS 5/9-1(a)(1) (West 2012)) of Ralph McNeal by personal discharge of a firearm proximately causing death. He was charged with multiple counts of the attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2012)) of George Williams, including by personal discharge of a firearm proximately causing great bodily harm, and with aggravated battery (720 ILCS 5/12-3.05(e)(1) (West 2012)) of Williams. He was also charged with multiple counts of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2012)) for firing in the direction of Wayne Tibbs, Chris Walton, and Patricia Lipscomb. Some first degree murder counts alleged that Grant shot McNeal in the course of committing aggravated discharge against Tibbs, Walton, and Lipscomb. The charges did not distinguish between the shots that Grant allegedly fired, but did allege that he shot McNeal and Williams but shot *at* Tibbs, Walton, and Lipscomb.

¶ 4 Shortly after 6 p.m. on August 10, 2013, Patricia Lipscomb was in front of her apartment building with a group of people: Tibbs, Walton, Williams, McNeal, and Lipscomb's husband. Grant, who Lipscomb knew from the building, drove up in a green car, parked in front of the building, opened the driver's door, pointed a gun through the open car door at the group including Lipscomb, and fired the gun. He did not say anything, and nobody said anything to

him. Lipscomb had not heard anyone threaten Grant that day. Lipscomb, who denied being under the influence of alcohol or narcotics at the time, heard about two shots before taking cover. Williams and McNeal fell to the ground, and the rest of the group fled. Grant exited his car, walked up to Williams, and "emptied the clip on him" while standing over him. Grant, who was holding the gun in his left hand, fired no shots between the initial two shots and the shots he fired while standing over Williams. Lipscomb knew that Grant had emptied his gun firing at Williams because she "heard the gun click. Pop. You know what I'm saying? It popped." Grant then returned to his car and left, again without saying a word. Lipscomb saw that McNeal had also been shot and was unable to move. An ambulance came and removed McNeal and Williams. McNeal died of a single gunshot would to the back. Later that day, Lipscomb told police that Grant fired the first shots while standing instead of while seated in his car.

¶ 5 Williams was a convicted felon, a daily marijuana user, and had physically attacked and made threatening phone calls to Jocelyn Richardson, the mother of his child, resulting in an order of protection. On August 10, 2013, when Williams came outside the building, he saw McNeal and a small group of men, with Grant close by. When Williams approached McNeal, Grant left. Williams and Grant did not exchange words before Grant left. Williams saw Grant return in his car and point a gun out the passenger side window, shooting into the group. Williams heard four shots and was struck in the leg. He then saw Grant standing over him, pointing a gun at his face. As Williams covered his face, Grant fired "a couple more times" before he left. Williams was later hospitalized for eight days and was treated for multiple gunshot wounds, broken arms, and a broken leg. When interviewed at the hospital, Williams told police Grant fired from the driver's side window.

¶ 6 Other members of the group standing outside the building gave similar accounts of the shooting. Specifically, Walton and Tibbs, both of whom knew Grant, confirmed that Grant pulled up in a car and began firing into the crowd, hitting both Williams and McNeal. Before the shooting, Tibbs noticed McNeal and Grant standing nearby, conversing "about the incident that had happened" between Grant and Williams, who had a relationship with Grant's ex-wife, Luevinia Johnson. McNeal and Grant were not arguing, and McNeal suggested that Grant "leave it alone" or "[f]orget it." As McNeal walked towards Tibbs, Williams appeared and Grant ran away, returning a few minutes later in his car. Tibbs did not hear Williams threaten Grant. Another of the building's residents, Thomas Wordlaw, also saw Grant shoot Williams as he lay on the ground.

¶ 7 Yvette McClellan, Luevenia's mother, lived with Luevenia and was in their fifth floor apartment when she heard two or three gunshots. She looked out a window and saw Grant walk from his car, shoot McNeal in the back as McNeal was on the ground, empty his gun shooting at Williams, and then leave. Earlier that day, around 3 a.m., Grant had entered the apartment and argued or fought with Luevenia. McClellan had pulled Grant from the apartment and called building security and 911. Luevenia was separated from Grant at the time, but she was not "seeing someone new." Although Luevinia and Williams were acquaintances, McClellan denied they were in a romantic relationship. But she did tell police that Luevinia "had been seeing" Williams, and that Grant was angry at her for being friends with Williams.

¶ 8 Luevenia had been married to Grant but they were divorced and had been legally separated since 2005. Grant would occasionally spend the night in her apartment. Two days before the shooting, Luevenia had her building security put Grant on the list of persons not

allowed on the premises but he still had a key to her apartment. Although Grant still kept some of his work uniforms at her apartment, he did not say anything about retrieving them when he arrived in the early morning hours of August 10th. After Grant was removed from the apartment that morning, he stood outside the building for many hours, calling up to her window, and phoned her numerous times. Luevenia kept telling Grant to calm down, eat, relax, take his medication, and leave her alone, but he refused to leave. At 2 p.m. she went outside to tell him to go rest and that they could talk later, but he still would not leave.

¶ 9 Later that afternoon, Luevenia's "very close" friend Williams was at her apartment where he had been for much of the day. When Grant's sister arrived to talk with Luevenia, Williams stepped outside. Within about two minutes, Luevenia heard between four and nine gunshots. She looked out a window and saw Grant exiting his car as Williams and McNeal were lying on the ground. Grant walked over to Williams and shot him two or three times before leaving the scene. Luevenia was aware that Grant had been attacked in July 2012 near her building, but denied that Williams was present on that occasion.

¶ 10 Lipscomb, Walton, Tibbs, and Wordlaw did not hear Grant say anything before or while he shot Williams. Neither they nor McClellan or Luevinia saw anyone but Grant with a weapon that evening.

¶ 11 Six spent shell casings were recovered at the scene. All the casings were fired from one semi-automatic weapon. Generally, semiautomatic weapons do not click when the trigger is pulled after the last shot is fired because the slide locks, but all weapons are different.

¶ 12 Grant offered a different version of events. In August 2013, he was married to Luevenia, lived in her apartment, and kept his work uniforms there. Williams did not live in the apartment complex but was there "quite often."

¶ 13 In July 2012, Grant had just left the building when he was attacked by a group of men who were "associates" of Williams. Grant did not name any of his assailants after the attack and although four people were arrested for that offense, no connection with Williams was established.

¶ 14 Around midnight on August 9, 2013, Grant was returning to the building when he saw Williams "staring at me *** with a mean look, a threatening look." When he got inside, the security guard told him that Luevenia had barred him from the building. Grant left the building and returned to his car by a different route because he was afraid of Williams and did not want to meet him again. As he sat in his car phoning and texting Luevenia repeatedly, a group of about 10 men including Williams approached. He believed they were looking for him to harm him, so he left.

¶ 15 Grant "never had an issue with" Williams, who frequently visited Luevinia's apartment, but he feared him "[b]ecause he had tendencies to be violent" and had threatened Grant on various occasions. Grant had been shot before in incidents not involving Williams and so tried to avoid situations that could get out of hand.

¶ 16 At about 3 a.m., Grant, who had entered Luevinia's apartment by the back door using his key, was leaving the building with Luevenia when he saw Williams and another man lurking in the bushes. Grant denied that he had argued with Luevinia, but McClellan had called the police to report a domestic battery. As Luevinia and Grant left the building, Williams approached

Grant, punched him, pointed a gun at him, and said that he would "erase" him. Grant ran away, calling 911 as he ran. Williams then told two men to "get" Grant. By the time police arrived, Williams and the other three men were gone. Grant told the police Williams had punched him, but did not mention anything about Williams threatening his life or having a gun. The police walked Grant to his car, where he spent the rest of the night, the next morning, and the early afternoon calling Luevenia over 200 times. At about 3 p.m., Grant saw Williams and again called 911, but nobody responded. Grant left at about 5:30 p.m. to meet his sister, and they returned to the building. As his sister went to Luevenia's apartment to speak with her, Grant was outside talking with Tibbs and McNeal. When he saw Williams approaching with another man, Grant walked away and returned to his car. He later drove back to the building to pick up his sister.

¶ 17 As Grant was waiting in front of the building, Williams and another man approached his car. Williams said "didn't I tell you what was going to happen to you if you come back over here?" He then reached under his shirt and Grant saw a silver or shiny gun there. Grant believed he was about to be shot and so he shot Williams with a gun he kept in his car "for [his] safety." Williams dropped his gun, the other man picked it up, and Grant shot at him but missed. Grant believed that this shot killed McNeal, who he was not aiming at. Grant could not recall how many shots he fired, as he was reacting in fear. Grant exited his car and walked up to Williams as he lay on the ground, but did not point his gun at Williams or shoot him again. His gun could not fire at that point because the "slide was all the way back" since all the bullets had been fired, and he did not try to fire it. Grant testified that he left the scene rather than staying for the police because he "was nervous" and a crowd was forming.

¶ 18 Grant went to the police station on August 13. He told detective Roger Murphy that it bothered him that Williams was in Luevinia's apartment, and described Williams as an "enemy." Williams and his friends were known to carry guns and Grant told Murphy that Williams had threatened his life. Grant said that on August 10th he left the group in front of the building after Williams approached and went to retrieve his gun that he kept at a building, not in his car. He explained to Murphy that he shot Williams because Williams had punched him earlier and did not mention that Williams had a gun when Grant returned to the building in his car. Grant told Murphy that he stood over Williams and shot him, but, at trial, attributed that statement to "answering the question *** too fast."

¶ 19 After the close of the State's case, Grant moved for a directed finding, which the court granted on the charges of attempted first degree murder of Tibbs, Walton, and Lipscomb and the charges of first degree murder of McNeal based on the attempted murder of Tibbs, Walton, and Lipscomb.

¶ 20 Following closing arguments, the court found Grant guilty of 51 counts of first degree murder, four counts of attempted first degree murder, one count of aggravated battery, and three counts of aggravated discharge.

¶ 21 In the course of its oral findings, considering the altercation in the early morning hours between Grant and Williams and Grant's displeasure at Williams' relationship with his ex-wife, the court believed Grant did not, as he claimed, shoot Williams in self-defense or act in the unreasonable belief in the need to defend himself. Rather, when Grant saw Williams outside the building, the latter having just come from Luevinia's apartment, the court concluded that Grant quickly left the area to retrieve his gun so that he could return and shoot Williams.

¶ 22 The court found immaterial any discrepancies regarding from which side of the car Grant fired, how many shots were fired from the car, or whether Grant, in fact, shot Williams as he lay on the ground or had instead run out of bullets by then. Grant "was so intent on killing [Williams] *** that he didn't even care about all those other people out there. He clearly shot [into] the group," fatally wounding McNeal.

¶ 23 Grant's amended posttrial motion challenged the sufficiency of the trial evidence, arguing that the court should set aside its finding of guilt on first degree murder charge and either enter a guilty finding for second degree murder or grant a new trial. The motion argued that the State's witnesses were not credible while Grant testified credibly that he acted in self-defense and corroborated that testimony with Richardson's testimony regarding Williams's capability for violence. Grant's posttrial motion was denied.

¶ 24 At sentencing, after merging various counts, the court sentenced Grant to consecutive prison terms of 75 and 55 years for murder and attempted murder, and concurrent terms of 10 years for the three aggravated discharge counts. Grant's unsuccessful postsentencing motion challenged his 75- and 55-year sentences but did not mention his aggravated discharge convictions or sentences.

¶ 25 On appeal, Grant primarily contends that the evidence was insufficient to convict as the State did not disprove that he acted in self-defense.

¶ 26 On a claim of insufficient evidence, we must determine whether, taking 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. Harris*, 2018 IL 121932, ¶ 26. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable

inferences from the testimony and other evidence, and, because it heard the evidence, the trier of fact is better equipped than this court to do so. *Id.*; *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. Thus, we do not retry a defendant. *Harris*, 2018 IL 121932, ¶ 26.

¶ 27 The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *People v. Newton*, 2018 IL 122958, ¶ 24. Stated another way, it is not the State's burden at trial to disprove or rule out all possible factual scenarios. *Id.* ¶ 27. If the evidence as a whole establishes defendant's guilt fact beyond a reasonable doubt, the trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. *Id.*; *Jonathon C.B.*, 2011 IL 107750, ¶ 60. A conviction will be reversed only if the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Harris*, 2018 IL 121932, ¶ 26.

¶ 28 It is axiomatic that the testimony of even a single witness, even if it is contradicted by the defendant, is sufficient to sustain a conviction if the testimony is positive and credible. *Id.* ¶ 27.

We will not reverse a conviction merely because there was contradictory evidence; the task of a trier of fact is determining if and when a witness testified truthfully, and minor or collateral discrepancies in testimony need not render a witness's entire testimony incredible. *People v. Gray*, 2017 IL 120958, ¶¶ 36, 47. Even when a witness knowingly gives false testimony on a material point, a trier of fact is not obligated to reject his testimony as a whole. *People v. Wilkinson*, 2018 IL App (3d) 160173, ¶ 40. When a finding of guilt depends on eyewitness testimony, we must decide whether the factfinder could reasonably accept the testimony as true beyond a reasonable doubt. *Gray*, 2017 IL 120958, ¶ 36. We find eyewitness

testimony insufficient only when the evidence compels the conclusion that no reasonable person could accept it. *Id.*

¶ 29 Section 7-1 of the Criminal Code provides for the affirmative defense of self-defense. 720 ILCS 5/7-1, 7-14 (West 2012). "A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force." 720 ILCS 5/7-1(a) (West 2012). However, the use of force "intended or likely to cause death or great bodily harm" is justified "only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony." *Id.*

¶ 30 Because self-defense is an affirmative defense, once it is raised, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. *Gray*, 2017 IL 120958, ¶ 50. The elements of self-defense are: (1) unlawful force threatened against a person, (2) who was not the aggressor, when (3) the danger of harm was imminent, (4) the use of force was necessary, (5) the person threatened actually and subjectively believed a danger existed requiring use of the force applied, and (6) that belief was objectively reasonable. *Id.* If the State negates any one of these elements, a claim of self-defense fails. *Id.* A self-defense claim does not alter that the function of the trier of fact is to assess witness credibility, the weight of evidence, and the inferences to be drawn from evidence, including resolving conflicts or inconsistencies in the evidence. *Id.* ¶ 51. This court reviews whether, considering the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt that the defendant did not act in self-defense. *Id.*

¶ 31 Here, Grant did not dispute that he fired the shots in the direction of Williams, but testified that he did so in self-defense because Williams displayed a gun and threatened his life. He therefore raised a claim of self-defense and placed the burden on the State to disprove or negate that claim. Taking the evidence in the light most favorable to the State as we must, it is clear that a reasonable trier of fact could have found that the State sustained its burden to negate or disprove beyond a reasonable doubt at least one or more elements of Grant's claim of self-defense.

¶ 32 A reasonable factfinder could conclude from the State's evidence that Grant was in front of Luevenia's apartment building on August 10, 2013, immediately and quickly left the area when he saw Williams exit the building, returned a few minutes later by car, and, without saying anything or anyone saying anything to him, immediately began shooting from his car. Various witnesses testified to not seeing anyone but Grant in possession of a gun that day and not hearing anyone threaten Grant. And Grant told a police detective after the incident that, between leaving the building on foot and returning by car, he retrieved a gun that he kept in a building, not his car.

¶ 33 A reasonable trier of fact could conclude from this evidence that the State successfully negated various elements of self-defense, *i.e.*, that (i) unlawful force was not threatened against Grant, and that his use of force was not necessary; (ii) Grant was the aggressor in the shooting because he quickly returned to the building where he had just seen Williams, after going elsewhere to arm himself, and immediately fired at Williams and others upon arriving; (iii) the danger of harm to Grant was not imminent, when he had left the area where he saw Williams but

returned a short time later and fired immediately upon returning; and (iv) any belief that Grant had that a danger existed requiring use of deadly force was objectively unreasonable.

¶ 34 Grant disputes that self-defense was disproven. He argues that evidence recovered by police – six spent shell casings on the street and curb and evidentiary photographs showing that Williams fell wounded well away from the curb – contradicts testimony by various witnesses that he shot Williams as he stood over him. He correctly notes that the "trial court acknowledged that the physical evidence was inconsistent with the State's witnesses testimony, but still found [him] guilty." Specifically, the court found that Grant " likely made all of the shots from a position either inside the car or just outside of the car," but it also found "whether or not he shot someone outside the car and then went up closer" was immaterial.

¶ 35 Similarly, Grant argues that "[m]ost of the State's witnesses were longtime friends of McNeal and their testimony exhibited a bias to testify in a way that ensured [defendant] paid for killing their friend." He argues that the trial court did not expressly question the motive of the State's witnesses to testify falsely.

¶ 36 However, in finding that Grant likely did not shoot Williams as he stood over him, the court implicitly acknowledged that not all of the witnesses' testimony was truthful. And it is the prerogative of the finder of fact to resolve inconsistencies in the evidence by believing some aspects of a witness's testimony and disbelieving others. See *Wilkinson*, 2018 IL App (3d) 160173, ¶ 40. Here, the court found incredible Grant's testimony that he parked in front of the building merely because he was waiting for his sister, despite having left immediately upon seeing Williams there a few minutes earlier. As the court noted, had Grant feared Williams, he could have phoned his sister to meet him nearby rather than in front of the building where

Williams spent much of his time and had exited a short time earlier. The testimony of multiple eyewitnesses that Grant immediately fired from his car after parking in front of the building, without Williams saying anything to him, was consistent with and corroborative of the court's skepticism of Grant's assertion of self-defense. Thus, the court had reason to believe (or at least not reject) the testimony of multiple witnesses that Grant fired from the car immediately after arriving, as it was consistent with the lack of credibility of Grant's account that he returned to Williams's location merely to pick up his sister.

¶ 37 Finally, Grant argues that he could not have fired at Williams until his gun clicked more than once because a semi-automatic pistol – which ejects spent shell casings as were recovered here – does not click repeatedly when empty but instead the slide locks back. However, the technician who so testified also testified that he was speaking generally and guns are "all different." Moreover, only one witness, Tibbs, testified to hearing more than one click. Lipscomb testified to a click or pop, which is not inconsistent with the slide locking back. Moreover, as stated above, the court discounted the testimony of the State's witnesses that Grant fired at Williams as he stood over him. Because that evidence played no role in Grant's convictions, any further impeachment on that point would not cast doubt on his convictions.

¶ 38 In sum, the evidence of Grant's guilt was not so unreasonable, improbable, or unsatisfactory that we harbor a reasonable doubt regarding his guilt.

¶ 39 Grant also contends that his convictions for aggravated discharge should be vacated under the one-act-one-crime rule. The State agrees. While Grant did not raise this claim below, we consider otherwise-forfeited one-act-one-crime claims as a matter of plain error. *People v. Coats*, 2018 IL 121926, ¶ 10.

¶ 40 Generally, a defendant may not receive convictions for multiple offenses arising out of the same physical act. *Id*. ¶ 11. However, "it is well settled that separate victims require separate convictions and sentences." *People v. Shum*, 117 Ill. 2d 317, 363 (1987). Thus, the one-act-one-crime rule applies only to offenses against a single victim, and offenses with separate victims are separate criminal acts. *People v. Avelar*, 2017 IL App (4th) 150442, ¶ 25; *People v. Leach*, 2011 IL App (1st) 090339, ¶¶ 33-34. As we stated in *Leach*, "even if we assume that defendant's action of firing his gun three times constitutes only a single act, the evidence shows that he committed a criminal act against at least two different victims: Nicole White and either Anthony White or one of the people who were standing with him." *Leach*, 2011 IL App (1st) 090339, ¶ 33. "Because the evidence shows that defendant did not commit multiple acts against a single victim, the one-act, one-crime rule does not apply to defendant's convictions for second-degree murder and aggravated discharge of a firearm." *Id*. ¶ 34.

¶ 41 Here, despite the State's concession of error, we conclude that the three aggravated discharge convictions stand. The charging instrument identified three victims of aggravated discharge – Tibbs, Walton, and Lipscomb – distinct from each other and from McNeal and Williams. The evidence supports the finding that Grant shot in the direction of all five individuals. We conclude that the trial court did not err in sentencing Grant on the three counts of aggravated discharge rather than merging them as it merged various other counts relating to the same victim.

¶ 42 Grant cites *People v. Green*, 339 Ill. App. 3d 443, 459 (2003), where this court reversed an aggravated discharge conviction by relying upon *People v. Crespo*, 203 Ill. 2d 335 (2001), which held that multiple acts will not support multiple convictions where the charging

instrument did not apportion them into separate acts. "Here, as in *Crespo*, Green committed a series of closely related but separate acts when he fired four or five shots with a pistol. And, as in *Crespo*, the State in this case did not apportion those shots in its charging instrument so that each formed the basis for separate crimes." *Green*, 339 Ill. App. 3d at 459. However, the charging instrument here identified a distinct victim for each of the three aggravated discharge counts at issue "so that each formed the basis for separate crimes" (*Id*.) because separate victims support separate offenses as stated above.

¶ 43 Accordingly, the judgment of the circuit court is affirmed.

¶ 44 Affirmed.