No. 1-19-0652

Order filed December 20, 2019.

Modified upon denial of rehearing February 25, 2020.

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re R.C., a Minor,	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 16 JD 2891
	)	
R.C., a Minor,	)	The Honorable
	)	Patricia Mendoza,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Coghlan concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient for a rational trier of fact to have found respondent R.C. delinquent beyond a reasonable doubt of first-degree murder.

¶ 2 Following a bench trial, respondent R.C., who was then age 19, was adjudged delinquent of first-degree murder and committed to the Illinois Department of Juvenile Justice until his 21st birthday. On appeal, respondent contends the State failed to prove him guilty beyond a

reasonable doubt because he did not knowingly or voluntarily shoot the victim, and alternatively, he acted in self-defense. We affirm.

¶ 3 BACKGROUND

¶ 4 The combined testimony of the State's two occurrence witnesses, Jasmine Reveles, then age 18, and Walter Webber, then in his late 40s, revealed the following. On August 1, 2014, around 11:30 p.m., Reveles was on the corner of 24th Street and Washtenaw Avenue in Chicago waiting for her 16-year-old boyfriend, Ramon Breceda, a Satan Disciple and the eventual victim in this case. Breceda said goodbye to his friend "Tweets" and fellow Satan Disciples "Chocolate" and Miguel.

¶ 5 Meanwhile, she saw three boys pass nearby; two were on foot and one on a bike. Among them, she recognized one whom she knew as "Scarface." As the boys turned onto 24th, one declared, "we're neutron," meaning the group was not gang-affiliated, a statement that was unusual to simply volunteer. The group continued westward, and Breceda ordered Reveles to remain where she was while he and Tweets approached them. Upon meeting, an argument and then fighting ensued. Webber, who had long known Breceda from the neighborhood, was nearby when he observed the conflict. Specifically, Webber saw Breceda move within several feet of the boy on the bike, later identified as respondent, then age 15, and point his finger in respondent's face. Shortly thereafter, Webber observed the two "wrestling" or "scuffling," meaning they were holding each other's hands and/or arms.[1] As Webber turned his back to the fracas, he then heard a gunshot. Reveles heard arguing, and then Breceda said "move" just as she heard a gunshot. She then saw Breceda run past her.

[1]Webber testified on direct that "scuffling" meant both respondent and Webber had their "hands on each other." On cross, Webber stated that "scuffling" meant they were "holding each other's arms something like that." From his total testimony, it's clear that respondent and Breceda, who were only a foot or two from each other, were wrestling in close contact.

¶ 6 When Webber looked up, he also observed Breceda running back across the street. The victim's friend Tweets wrestled with respondent and eventually gained control over the weapon, and then shot respondent and others in the group as they all fled westward on 24th.

¶ 7 Breceda was found lying face-down near the street corner, and he later died from the gunshot wound. A police evidence technician collected one fired cartridge case near the corner of 24th and Washtenaw by a bicycle, and several other fired cartridge cases were found further west on 24th. The cartridge cases, all 9 millimeter, thus reflected the general area where the shots were fired. Respondent was found lying on the ground with a bullet wound in his right buttocks. The State showed each of the witnesses a surveillance videotape of the scene, which corroborated their testimony in certain respects. The tape, however, does not show the confrontation or the shooting.

¶ 8 Police interviewed respondent at the hospital as to the events that evening. At first, respondent said he was playing soccer in the street when he was shot suddenly. Respondent then he said he in fact had a gun, which fired, at which point the police placed him in custody, *Mirandized* him, and videotaped the subsequent interviews with respondent's mother also present. Following this, respondent then elaborated that on the night in question, he and his two Latin King friends were at 24th and Washtenaw, with respondent walking his bike. Five to ten minutes prior to that, respondent's friend Andrew Anania, known as Scarface, had given him a gun because respondent was the least likely to get searched. This was perhaps because, as respondent claimed, he was not in a gang. While there was no specific plan, respondent admitted that Scarface likely wanted to shoot someone and had ordered respondent, "don't give [the gun] to me until I tell you to." Respondent further acknowledged the area was controlled by a rival gang, the Satan's Disciples.

¶ 9 When respondent and his Latin King friends turned on 24th, heading westward, two boys approached them and ordered that they lift their shirts (presumably, so as to check for weapons). Respondent stated he believed the boys had guns based on how they held their pants[2], but then acknowledged he did not see either with a gun, and there was no evidence that they were armed. Respondent was scared to lift his shirt, and instead pulled out the gun, attempting to hand it to Scarface. During the handoff, respondent said Breceda reached for it and a struggle ensued. At first, respondent said he dropped the gun because he didn't "want to get into more problems," and then started "running for his life." Respondent, however, then acknowledged that the gun discharged once, but claimed it did not hit anyone. Rather, he said the gun was aimed "toward the bottom," as he motioned towards the ground. Later, he also claimed the gun discharged when Breceda was "grabbing it." Regardless, upon firing the weapon, respondent said he dropped everything and fled but was himself subsequently shot. While respondent at first denied pointing the gun at Breceda, he then admitted he did point the gun Breceda "before he passed it off." However, he ultimately denied shooting Breceda.

¶ 10 Respondent's hands were dusted for the presence of gun-shot residue, but the samples tested negative. A forensic scientist explained that was not necessarily conclusive given that there are many ways to remove gun-shot residue.

¶ 11 At trial, the parties also stipulated that the medical examiner, Dr. James Filkins, was an expert in forensic pathology and that, if called, he would testify that Breceda died of a single gun-shot wound to the back and his manner of death was a homicide. The bullet's trajectory coursed back to front and slightly downward. He would also testify that he found no evidence of close-range firing, which is indicated by "stippling" or skin discoloration from the bullet. While

[2]Respondent did not specifically say the word, "pants," but made a motion indicating such.

stippling could occur within a fire range of about 18 inches, shooting through clothing or objects could prevent stippling.

¶ 12 The State rested, and respondent rested without presenting any evidence. In closing, respondent argued that no one really saw who shot the gun and emphasized that Breceda and his friend were the aggressors who approached respondent in the first place.

¶ 13 In adjudging respondent delinquent of murder, the trial court found that respondent was on his bike and carrying the gun that he was to pass to Scarface who intended to shoot someone. Webber, whom the court found to be credible and unbiased, observed a subsequent struggle over the gun first between respondent and Breceda, and then between respondent and Tweets. The fact that respondent, according to Webber, still had the gun even after shooting Breceda discredited respondent's claim that he dropped the gun just before or after it discharged. In addition, the court noted that the medical examiner's determination that Breceda was shot in the back absent stippling contradicted respondent's claim that the gun discharged during the initial struggle with Breceda. Had the gun discharged then, the court implied, Breceda would have been shot in his frontside at close range. Accordingly, based on the total evidence, recounted at length, the court found that respondent intended to kill or do great bodily harm to Breceda or knew his actions created a strong possibility of death or great bodily harm. The court thus found respondent guilty of all six charges and merged them into Count 1, which was intentional murder.

¶ 14 Respondent filed a motion for a new trial in which he argued for a second-degree murder finding, but it was denied. As set forth, respondent was subsequently made a ward of the court and committed to the Illinois Department of Juvenile Justice until his 21st birthday. Respondent appealed.

¶ 15 ANALYSIS

¶ 16 Respondent now argues the State failed to prove him guilty of murder beyond a reasonable doubt. When presented with a challenge to the sufficiency of the State's evidence, a reviewing court must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Wright*, 2017 IL 119561, ¶ 70. Under this standard a reviewing court does not retry the defendant, and the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence. *Id*. A conviction will not be set aside on appeal unless the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Id*.

¶ 17 Here, to prove respondent guilty of the charged offense of first degree murder, the State was required to establish that respondent either intended to kill or do great bodily harm to Breceda or knew that his acts would cause death, or alternatively, respondent knew his acts created a strong probability of death or great bodily harm to Breceda or another. See 720 ILCS 5/9-1(a)(1), (2) (West 2014). As such, the State needed only prove that respondent voluntarily and wilfully committed an act which had the natural tendency to take Breceda's life or inflict great bodily harm. *People v. Jennings*, 268 Ill. App. 3d 439, 446 (1994). It was not necessary to show that respondent had a specific intent to kill or do great bodily harm, or that he knew with certainty that his acts would achieve those results. *Id*.

¶ 18 Respondent claims the evidence established that the shooting was a mere accident and that the so-called plan did not provide "proof beyond a reasonable doubt that R.C. deliberately and voluntarily fired the shot that killed Breceda." We disagree.

¶ 19 The evidence in this case established that moments before respondent and his cohort entered known rival gang territory, respondent's friend Scarface handed him a loaded gun, since the weapon was most likely to remain undetected on respondent's person. While there was no specific plan, respondent admitted that Scarface likely wanted to shoot someone and ordered, "don't give [the gun] to me until I tell you to." See *People v. Phillips*, 392 Ill. App. 3d 243, 259 (2009) (intent may be inferred from the defendant's conduct surrounding the act and the act itself). However, on encountering the unarmed rival gang members and when ordered to lift his shirt for a weapons-check, respondent instead took out the gun, struggled with the victim Breceda, and then shot him in the back. There was no evidence it was a close-range shot, and Breceda then ran away. Respondent ultimately admitted he pointed the gun at Breceda "before he passed it off." Following the shooting, Webber observed that respondent only relinquished the gun when it was wrested from him by the rival gang member, Tweets.

¶ 20 The total evidence, including respondent's own statements and the testimony of Webber, Reveles, and the medical examiner, established that respondent voluntarily and wilfully shot his gun at or near Breceda, and this had the natural tendency to take Breceda's life or inflict great bodily harm on him. See *Jennings*, 268 Ill. App. 3d at 446. At the very least, the evidence established that respondent knew his acts created a strong probability of death or great bodily harm. See 720 ILCS 5/9-1(a)(2) (West 2014); *People v. Davis*, 233 Ill. 2d 244, 263 (2009) (defining knowing murder); see also *People v. Weeks*, 2012 IL App (1st) 102613, ¶ 35 (a person has knowledge when he is consciously aware that his conduct is practically certain to cause a particular result). As the trial court found, the inferences taken from the evidence contradicted respondent's self-serving statements that the gun accidentally discharged in the midst of (what can be inferred from Webber's testimony was) the arm-to-arm struggle with Breceda. The trial

court, as the trier of fact, was entitled to make credibility determinations, weigh the evidence, and draw reasonable inferences therefrom. *Wright*, 2017 IL 119561, ¶ 70. We cannot say the trial court's determination that respondent was delinquent of first-degree murder was so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of respondent's guilt.

¶ 21 In reaching this conclusion, we reject respondent's argument that the court was required to believe the portion of respondent's statements exonerating him of the crime.[3] Respondent stated first that he was playing soccer in the street when he was shot suddenly, taking absolutely no responsibility for the shooting. Respondent then admitted that he in fact had a gun, "and the gun fired." Then again, respondent stated he simply dropped the gun and started running while subsequently acknowledging that the gun discharged; respondent, however, claimed it didn't hit anyone and was fired towards the ground, a fact contradicted by the medical evidence. Respondent ultimately stated that when the gun discharged, he dropped everything and fled, a fact contradicted by Webber's observation that respondent still had the gun after the shot fired and grappled over it with Tweets. A trier of fact is not required to accept all or even any part of a defendant's statements but may consider the reasonableness of the defense offered, assess its probabilities, if any, and reject that evidence which it finds contradictory, unlikely, or improbable in light of the other facts before it. *People v. Brooks*, 203 Ill. App. 3d 493, 501 (1990). In fact, a trier of fact may disregard exculpatory accounts or other evidence that tends to support or be consistent with a defendant's innocence and rest its decision instead on the circumstantial evidence of guilt presented by the State. *Id.* As set forth above, the trial court in

[3]Respondent at several points in his brief suggests that his videotaped statements are suspect because they were made while he, as a 15-year-old, lay in a hospital bed surrounded by police. Respondent filed a motion to suppress arguing these points, and the motion to suppress was denied. He did not raise an argument as to the motion to suppress on appeal.

this case did just that in considering respondent's shifting statements against the evidence from both occurrence witnesses and the medical examiner.

¶ 22 To that end, we also find respondent's claim that the trial judge engaged in speculation about the forensic evidence to be belied by the record. Here, the stipulated medical evidence established that Breceda died of a single gun-shot wound to the back and his manner of death was a homicide. The medical report stated that "examination of the skin surrounding the wound of entrance shows no evidence of close range [*sic*] firing." It also stated that "evidence of close range [*sic*] firing is noted when a person is shot at a close range and burning and unburned powder from the fired bullet causes discoloring of the skin, called stippling, around the wound of entrance." The stippling could be affected by clothing, per the report.

¶ 23 Respondent argues the absence of evidence, however, is *not evidence*. He asserts the medical examiner's report "offers no opinion whatsoever on whether the shot at issue could have been fired at close range or on whether it could have been the result of a struggle." Respondent makes a similar argument as to the course of the wound, which entered Breceda's right backside and exited his left frontside. Respondent maintains the report did not necessarily contradict his account of an accidental shooting.

¶ 24 From the medical examiner's unchallenged findings, a trier of fact could reasonably infer that the physical evidence was more consistent with the State's theory than with respondent's theory. Respondent did not take advantage of the opportunity to challenge the inferences before the trial court. *People v. Durgan*, 346 Ill. App. 3d 1121, 1131 (2004) (a defendant forfeits any issue as to the impropriety of evidence if he procures, invites, or acquiesces in the admission of that evidence); *People v. Polk*, 115 Ill. App. 3d 1011, 1014 (1983) (parties will not be relieved from a stipulation in the absence of a clear showing that the matter stipulated is untrue, and then

only when the application is seasonably made). Regardless, the trial court principally relied on the fact that, according to the medical examiner, respondent was shot in the back. That would have been unlikely had the gun simply discharged when, as respondent asserted in his videotaped statement, Breceda grabbed for the gun during their struggle.[4] As set forth, that struggle, per Webber's account, was hand-to-hand or arm-to-arm. We decline respondent's invitation to reweigh the evidence or retry the respondent.

¶ 25 Respondent alternatively argues on appeal that he was acting in self-defense. The State replies that respondent did not testify as to self-defense, nor did he expressly argue this theory before the trial court. See *People v. Bardsley*, 2017 IL App (2d) 150209, ¶ 17 (noting, a defendant may forfeit the affirmative defense of self-defense if he does not raise it in the trial court). We disagree that respondent forfeited this argument. Respondent raised it as a defense in answer to the State's motion for pretrial discovery and argued self-defense, albeit tentatively, in closing argument. The State does not cite any legal authority that requires a defendant to himself testify in self-defense, where his videotaped statements are submitted as evidence. See Ill. S. Ct. 341(h)(7), (i) (eff. May 25, 2018).

¶ 26 Regardless, respondent's self-defense argument holds no water. In order to raise self-defense, a defendant must establish some evidence of each of the following elements: (1) force is threatened against a person; (2) the person threatened is not the aggressor; (3) the danger of harm was imminent; (4) the threatened force was unlawful; (5) he actually and subjectively believed a danger existed which required the use of the force applied; and (6) his beliefs were objectively

[4]Respondent urges this court to draw a "lay inference" that Breceda was shot while turning to his side based on the medical examiner's report indicating the bullet entered Breceda's right backside and exited the right frontside. Yet, the medical examiner concluded that Breceda was shot in the back, and the total evidence does not coincide with respondent's theory. Moreover, respondent's videotaped statements did not specify that Breceda turned or was shot in the side and thus also do not support his theory.

reasonable. *People v. Spiller*, 2016 IL App (1st) 133389, ¶ 22. Here, there is no evidence that Breceda or his friend Tweets was armed. Even crediting respondent's statement that he believed the two were armed initially based on how they held their pants, respondent ultimately acknowledged he did not see either with a gun, and there is no evidence they had one. There is also no evidence that Breceda had gained control of the gun during the struggle, let alone that respondent needed to shoot Breceda in the back in order to protect himself. Respondent was not in danger of imminent harm, and as the State argued, he had no reasonable or unreasonable belief in self-defense. As a result, his self-defense claim fails. See *People v. Castellano*, 2015 IL App (1st) 133874, ¶ 149 (noting, to sustain a first-degree murder charge after the defendant raises self-defense, the State must prove beyond a reasonable doubt at least one of the six factors was not present).

¶ 27 Last, respondent takes issue with the court's finding that "had it been Scarface who shot and killed the victim, the minor would clearly be guilty of murder under the theory of accountability." Here, the court emphasized this point so as to show respondent's plan and intent in the shooting. That respondent was the shooter did not make him less guilty. However, it was not the court's principal finding of guilt and was clearly stated as an aside.

¶ 28 CONCLUSION

¶ 29 Based on the foregoing, we affirm the judgment of the trial court.

¶ 30 Affirmed.