2019 IL App (2d) 160902-U
No. 2-16-0902
Order filed April 15, 2019



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court of Du Page County. |
| Plaintiff-Appellee, | ) | |
| v. | ) | No. 14-CF-939 |
| JAMES F. HAUBRICH, | ) | Honorable Brian F. Telander, |
| Defendant-Appellant. | ) | Judge, Presiding. |

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JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Birkett and Justice Burke concurred in the judgment.

**ORDER**

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of armed violence, specifically the predicate offense of intimidation, as the jury could rationally find that when defendant pointed a gun at the victim and discharged it while questioning him, defendant intended to cause the victim to give him information.

¶ 2 After a jury trial, defendant, James Haubrich, was convicted of armed violence (720 ILCS 5/33A-2(a) (West 2014)) based on intimidation (*id.* § 12-6(a)); reckless discharge of a firearm (*id.* § 24-1.5(a)); and two counts of unlawful possession or use of a weapon by a felon (*id.* § 24-1..1(a))). The armed-violence count alleged that defendant, "with the intent to cause Marteze Nelson to provide *** defendant with information, personally discharged [a] firearm[.]"

¶ 3 The trial court sentenced defendant to concurrent prison terms of 25 years for armed violence, 3 years for reckless discharge of a firearm and 10 years for each weapons count. On appeal, defendant contends that his conviction of armed violence must be reversed because there was insufficient evidence that he committed intimidation. We affirm.

¶ 4 At trial, Nelson testified on direct examination as follows. On April 20, 2014, he resided in an apartment at 161 Elk Trail in Carol Stream. He was addicted to crack cocaine. That day, he awoke at about 6 p.m. About an hour later, some friends came over and had money to spend on crack. Nelson called defendant, from whom he had bought cocaine several times before. Defendant answered, and they arranged a time to meet. At the arranged time, Nelson went to defendant's apartment at 131 Elk Trail. He bought a "40 bag" of crack from defendant and returned to his apartment. There, he and his friends consumed the bag and wanted more. Nelson called defendant several times but got no answer, so he walked over to defendant's apartment and knocked on the door. Defendant, who was on the phone, let him in.

¶ 5 Nelson testified that, after defendant got off the phone, Nelson told defendant what he wanted. Nelson continued as follows:

> "When he got off the phone, before I could even approach to ask him if I could get another, you know, 40 from him, he proceeded to say: What the fuck. You tricking on, [*sic*] mother fucker.
>
> When he said that, he proceeded to go in his pocket and pull out, as I can see, a revolver wrapped in a sock, down in a sock, tied on the end.
>
> He proceeded to put his hand in [*sic*] the gun and shoot.
>
> When he shot, he went to shoot at my leg.
>
> I instantly grabbed the gun.

He proceeded, take one round.

When I grabbed the gun, he proceeded [*sic*] a second round.

The first round missed my thigh. The second round missed my foot."

¶ 6 Nelson testified that, the first time defendant pointed the gun at him, he felt that his life was threatened. After the second shot, he grabbed the gun, and he and defendant fought for it. Nelson yelled at defendant, asking what he was doing. Defendant said, "Oh! Oh! Oh, man, you know, it's cool. It ain't nothing like that." Nelson was "historical" [*sic*] and would not let the gun go. Defendant kept his grip on the gun. Nelson then told defendant that they would walk to the door together and that defendant would open the door and let him out. Defendant complied. Nelson exited, and defendant closed the door.

¶ 7 The prosecutor asked Nelson again about what defendant had said before pulling the gun on him. Nelson testified that the "only thing" that defendant said was, "Hey man. What the fuck? You know, I heard you tricking on mother fuck [*sic*]? You tricking on mother fuckers?"

¶ 8 Nelson continued his testimony as follows. Defendant pulled out the gun with one hand and held it with that hand. When he fired, Nelson was not touching him and was two or three feet away. Nelson had no weapons at the time.

¶ 9 The prosecutor asked Nelson whether he had understood defendant to be asking him a question. Nelson said yes. He added that he had taken defendant to mean that "something was about to go down." To Nelson, "tricking" meant "[r]atting out, snitching, telling." Asked whether before April 20, 2014, he had ever snitched on anyone, Nelson said he had.

¶ 10 Nelson testified that early the next morning he met with police officers who were on patrol outside his building. Later that day, defendant and another man approached his apartment's patio and knocked on the window. Nelson called the police, who came over and

spoke with him. Defendant and the other man passed by again. The officers recognized defendant and went outside and spoke with him.

¶ 11 Nelson testified on cross-examination that he spoke with Officer Fry (not further identified) at about 1 a.m. on April 21, 2014. Defendant's attorney asked Nelson, "Did you tell Officer Fry that [defendant] made some kind of threat to you to make you give [defendant] information?" Nelson testified, "No." Defendant's attorney then asked him, "Did [defendant] make any kind of threat to get information from you?" Nelson testified, "No."

¶ 12 Nelson testified that, when he came over to defendant's apartment, defendant appeared intoxicated. Just before defendant fired, the gun had been pointed in his direction. One shot had been aimed at Nelson's thigh and the other at his foot, but both shots hit the floor.

¶ 13 Detective John Grey testified as follows. At about 11:15 a.m. on April 21, 2014, he went to Nelson's apartment, where he and another officer spoke with Nelson. The officers then went to defendant's apartment and spoke with him briefly on the sidewalk. They let him go after he gave them the keys to his apartment. When they opened the door, Grey saw a spent bullet fragment on the foyer floor. The police obtained a warrant to search the apartment. They recovered another bullet fragment. Commander Tom Miller testified that the search recovered a projectile from the floor and a bullet from a hole in the wall.

¶ 14 Defendant put on no evidence.

¶ 15 We turn to closing argument. For guidance, we note the following. A person commits armed violence when, while armed with a dangerous weapon, he commits a felony, such as intimidation. *Id.* §§ 33A-2(a), 12-6(b). As pertinent here, a person commits intimidation when, with the intent to cause another to perform or to omit the performance of an act, he communicates to another, directly or indirectly by any means, a threat to perform without lawful

authority any of a number of acts. See *id.* § 12-6(a). Here, the indictment alleged that defendant intended to cause Nelson to provide him with information.

¶ 16 The prosecutor told the jury that the evidence showed that, when Nelson entered defendant's apartment the second time, defendant believed that he was an informant. Angry and scared, defendant asked whether he was "trickin" on him. Defendant produced the gun and showed it to Nelson. Defendant then fired twice, making Nelson fear for his life. Thus, defendant communicated to Nelson a threat to inflict unlawful harm on him. "The threat was when this defendant pulled out a gun and pointed it at [Nelson]."

¶ 17 The prosecutor then turned to the second element of intimidation as charged:

> "Second proposition *** is that the defendant then intended to cause *** Nelson to perform an act. Again, we have to look at the words of the defendant ***. [Nelson] told what you [*sic*] those words mean. They seem a little ambiguous on their face, but he told you what that means, trickin'. It means to be a snitch, to be a rat, to be an informant.
>
> So what was the defendant really saying to [Nelson]? He was saying are you a snitch? Who are you snitching on? Are you going to snitch on me? He asked that question because he was worried that [Nelson] was going to get him in trouble for what they were doing in that apartment. *** The act is tell me you are a snitch. Tell me why you are here. Give me that information. He backed up that threat with [Nelson] by shooting him and shooting him again.
>
> Ladies and gentlemen, it's just like in the movies, defendant is demanding to know if [Nelson] is an informant. He is threatening with a gun and telling him to tell him if he is an informant. He follows up that threat, folks, with his two shots at [Nelson]."

¶ 18 Defendant argued that the evidence did not prove beyond a reasonable doubt that he had committed intimidation. He noted that, on the stand, Nelson himself had "said no, no threat to make me tell him anything or give him any information."

¶ 19 In rebuttal, the prosecutor noted that defendant had pulled out a gun, pointed it at Nelson, and threatened Nelson with it. The act scared Nelson and made him feel intimidated. Defendant was "demanding information." Admittedly, "no one ever said, you know, yes, I am a snitch." But that was what defendant had wanted.

¶ 20 The jury convicted defendant and he was sentenced as noted. He timely appealed.

¶ 21 On appeal, defendant contends solely that his conviction of armed violence must be reversed because the evidence did not allow a reasonable jury to find that, when he pointed the gun at Nelson and spoke to him, he had the specific intent to cause Nelson to provide information. Defendant reasons that it is inherently implausible that he would have believed that Nelson would admit to being an informant, as that would be inconsistent with common sense and human nature. Defendant also notes that Nelson himself testified that he did not perceive defendant as trying to force him to give defendant any information. We hold that the evidence of intent was sufficient for a jury reasonably to conclude that defendant's threat of violence was intended to cause Nelson to provide him with information.

¶ 22 When confronted with a challenge to the sufficiency of the evidence, we ask only whether, after viewing all of the evidence in the light most favorable to the State, any rational fact finder could have found the elements of the offense beyond a reasonable doubt. *People v. Ward,* 154 Ill. 2d 272, 326 (1992). The fact finder is responsible for determining the witnesses' credibility, weighing their testimony, and deciding on the reasonable inferences to be drawn

from the evidence. *People v. Hill*, 272 Ill. App. 3d 597, 603-04 (1995). It is not our function to retry the defendant. *People v. Lamon*, 346 Ill. App. 3d 1082, 1089 (2004).

¶ 23 Intimidation is a specific-intent crime. *People v. Verkruysse*, 261 Ill. App. 3d 972, 975 (1994). Here, the State alleged that defendant intended to cause Nelson to provide him with information, specifically an answer of some sort to the question of whether Nelson was "trickin" on defendant. Nelson testified that to "trick" is to "snitch," *i.e.*, to work as an informant.

¶ 24 We acknowledge that as a general proposition it might be unusual to hope that someone will answer the question "Are you a snitch?" with "Yes." But a reasonable fact finder could infer that *this* defendant, under these particular circumstances, intended to have Nelson answer his question one way or the other. Context was all-important.

¶ 25 We note the following. Defendant was angry and suspicious when he posed his questions to Nelson. According to Nelson, defendant appeared intoxicated as well. And the jury could have inferred that defendant was not always a rigorously logical thinker even in calmer moments. The jury could infer that defendant wanted a straight answer to his forceful questioning. Whether he was reasonable in expecting meaningful clarification from Nelson was not crucial: in the heat of anger and fear, defendant might not have been thinking realistically. Of course, he might have intended to deter Nelson from "tricking" on him later. But this intention was not exclusive of the intention to force information from Nelson immediately

¶ 26 We recognize that Nelson himself testified that he did not perceive defendant as trying to extract information from him. There is authority that the target's perception of the defendant's intent is relevant to the strength of the evidence. See *People v. Peterson*, 306 Ill. App. 3d 1091, 1103 (1999). *Peterson* is distinguishable in that it states that the victim's perception is pertinent to whether the defendant's allegedly threatening action(s) had a reasonable tendency to coerce or

create apprehension. *Id.* Here, the issue is not whether the alleged threat, defendant's showing and firing the gun, tended to coerce or create apprehension. Instead, the issue is what conduct defendant intended to coerce by an act that he does not dispute had a reasonable tendency to coerce Nelson or cause him apprehension.

¶ 27 In any event, the victim's subjective perception of the threat and its purpose is not an element of the offense. The crucial inquiry is into the specific intent of the defendant. That defendant intended to coerce information out of Nelson was an inference well within the jury's prerogative. Thus, defendant was proved guilty beyond a reasonable doubt of armed violence based on intimidation. As he challenges no other aspect of the judgment, it must be affirmed.

¶ 28 As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 29 Affirmed.