

2011 IL App (1st) 101260-U

FIRST DIVISION
DATE 12/27/11

No. 1-10-1260

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 2623
)	
JAVON PORTER,)	Honorable
)	Nicholas R. Ford,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justices KARNEZIS and ROCHFORD concurred in the judgment.

ORDER

¶ 1 *Held:* Identification testimony of victim of shooting sufficed to establish defendant's guilt beyond a reasonable doubt despite impeachment of part of victim's account of his identification of defendant.

¶ 2 Following a bench trial, defendant Javon Porter was convicted of aggravated battery with a firearm and sentenced to 10 years in prison. On appeal defendant challenges the sufficiency of the evidence.

¶ 3 At trial, Jermaine Brown testified that at about 7:40 p.m. on October 13, 2008 he was walking down 57th Street in Chicago with a female friend, when defendant Javon Porter drove

by. Brown knew defendant as "Big Boy." Defendant had lived down the street from Brown, and Brown had known him for four or five years. Brown had last seen defendant two weeks earlier. They had spoken to each other on the street and then both continued their separate ways. As the car drove by on October 13, defendant said "Jermaine, your bitch ass." There were three people in the car. Defendant was in the passenger seat, another man was driving, and a third man was in the back seat.

¶ 4 The car kept going but then it turned around and pulled up next to Brown. By this time Brown's female companion had left him. Defendant again said "Jermaine, your bitch ass." Brown turned around to see who was calling him names. He testified that there were streetlights directly above the car. Defendant's car window was rolled all the way down. Defendant said "What's up." and Brown replied "What's up." Defendant stuck a blue steel or black revolver out the window and Brown began to run. Defendant said "You motherfucker" and continued to talk to Brown as he fired the gun at Brown from a distance of five to seven feet. Six bullets struck Brown; in the thigh, the hip, the kidney, twice in the stomach, and once in the testicles. Brown attempted to hobble away. He saw that defendant began to get out of the car, but then said "Fuck it," closed the car door, and the car pulled away. Brown sat on the ground and waited until an ambulance arrived. The police also came and Brown testified that he told a uniformed officer that Big Boy had shot him, as he did not then know Big Boy's real name. He also testified that he gave the police officers a description of defendant as dark-skinned with braids.

¶ 5 Brown was then transferred to Stroger Hospital where he remained for six weeks. As the result of the shooting he lost his left kidney, had damage to his small intestines and had a total of 11 surgeries.

¶ 6 On October 22, 2008, nine days after the shooting, Brown was shown a photo array by Detective Darren Crowder. He identified defendant from that set of photographs as the person who had shot him. Brown also identified defendant in court as the shooter.

¶ 7 Brown admitted that at the time of the shooting he was on parole for a drug conviction, had two prior drug convictions, and received another drug conviction after the shooting. On cross-examination Brown admitted that for a significant portion of his adult life he was a drug dealer. He also admitted that he was an "addict" and had been smoking marijuana daily for about 15 years.

¶ 8 According to Brown, it was Chicago police officers Pedraza and Torres who responded to the shooting. He described the shooter's car as a blue four-door 2000 Chevy Cobalt. At the time he also described defendant's weapon as a blue steel .357 revolver. He also claimed to have told the officers that it was Big Boy who shot him, but he said because he did not then know Big Boy's real name the officers wrote down "unknown" in their report.

¶ 9 That evening at the hospital Brown spoke to Detective Crowder. He told Crowder he was about to die, but did not tell Crowder that the shooter was Big Boy. Brown also testified that at the hospital "about eight doctors" were asking him questions. One doctor took his medical history, including the fact that he had been shot before, in 2001. He also told the doctor that he had a history of marijuana use. Brown denied telling the doctor that he did not recognize the shooter. He testified that he told the doctor that he did not recognize the driver of the car but he did know the shooter, and he told the doctor the shooter's nickname, but nobody wrote it down. According to Brown, when he again saw Detective Crowder on October 22, he immediately told Crowder that the shooter was Big Boy.

¶ 10 Detective Crowder testified that he first saw Brown in the hospital emergency room on the evening of the shooting. Brown was complaining of severe pain and saying that he was

going to die. According to Crowder, Brown was not really answering his questions, however he did have a very brief conversation with him. Brown told Crowder that his assailant was a dark-skinned male with braids. Brown's color then turned "ashy gray" and he was placed on life support and rushed to the operating room. Crowder was unable to communicate with him further that day.

¶ 11 In the ensuing days Crowder canvassed the neighborhood and learned the possible identity of Brown's shooter. From that information he compiled a photo array. On October 22 he showed the photo array to Brown, who was still in the hospital. Brown immediately identified a photograph of defendant as the person who had shot him. Crowder testified that he had learned of two nicknames used by defendant; "Black" and "Big Boy." Brown told him it was Big Boy who had shot him. Brown also told him he did not know why Big Boy shot him, because they had never had a "beef" or quarrel.

¶ 12 Defendant was arrested on January 20, 2009. Crowder questioned him that same day. Defendant first said he had been in Springfield from August of 2008 until January 2009. Then he changed his story and said that although he had been living in Springfield he would travel back and forth from Chicago and he could not recall what days those were. Crowder also testified that in Chicago defendant lived two or three blocks from where Brown was shot. Defendant denied being the person who shot Brown and said he was afraid of guns.

¶ 13 According to Crowder, his conversation with Brown at the hospital on October 13 lasted at most three minutes. The only physical description he was able to get from Brown was of a black male with braids. At that time Brown did not tell him that he knew defendant's nickname. In fact, according to Crowder, Brown told him that he did not recognize the person who shot him. Crowder recalled that he spoke to Brown preliminarily on the 22nd of October before showing him the photo array. He could not recall if defendant at that time told him that he knew

the shooter's nickname. He also did not write in any of his reports of this interview that he was told the shooter's name by Brown.

¶ 14 The parties stipulated to the testimony of Dr. Roxanne Roberts, one of the physicians who treated Brown at Stroger hospital. She would testify that Brown was admitted on October 13, 2008, with multiple gunshot wounds and was not discharged until November 27, 2008 after undergoing at least 11 surgeries. In these surgeries they found two duodenal injuries and two colon injuries which had to be repaired. He had an injury to his scrotum which required surgery. His abdomen required a skin graft in order to be closed, and his left kidney had to be removed.

¶ 15 Chicago police officer Louis Torres testified for the defense that he interviewed Brown at the hospital on the day he was shot. He testified that he was able to speak with Brown although Brown was complaining of a lot of pain. Brown described the shooter's vehicle as a blue four-door 2007 Chevrolet Cobalt. He described the gun used as a .357 blue steel revolver. He also told the officer that he was walking along 57th Street when an "unknown offender" drove along side of him and began shooting. He described the offender as a male black with braids. As far as the officer knew, the shooter was a stranger to Brown. Torres also testified that he did not speak with the first officers who responded to the scene of the shooting and he did not know if they had spoken to Brown. Furthermore he did not know to whom Brown had spoken at the shooting scene.

¶ 16 The parties stipulated that Steven Radzik, a Chicago fire department paramedic would testify that he responded to the shooting and saw Brown, who had been shot four times and who mainly complained of thigh pain. Brown was oriented and alert and his speech was normal. The parties also stipulated to the testimony of an unnamed attending physician who took a trauma and physical history from Brown. According to the physician, Brown stated that he was shot at least four times by someone who knew his name but Brown did not recognize the shooter.

¶ 17 In ruling on guilt or innocence the trial court noted the discrepancies in Brown's testimony, including the fact that nobody who attended to him or spoke to him recalled or wrote down that he had named the shooter as "Big Boy" or in fact had named the shooter at all. But the trial court also noted that at that time Brown was in a very stressful situation, having just been shot six times. The court also noted that the first time when Brown was confronted with defendant, through a photo array, he was "unequivocal; that's the person that shot me, just as unequivocal as he was in court a few moments ago." With respect to the allegation that Brown failed to give the nickname of the shooter on the day he was shot, the court had the following to say:

"[F]or some reason, either by way of oversight on the part of the police or because he was so critically injured he didn't provide that information***."

However, in conclusion the court stated:

"In this court's view, the valid impeachment that's often the failure to include the name or the nickname of the person that shot [Brown] during those early phases could easily be understood in light of the injuries that he suffered; and for that reason, it's not impeachment of the sort that would cause me to indicate that he is not to be believed.

And, in fact, when he's first confronted with the photograph of the victim, [sic] he's unequivocal. I mean, if there had been some sort of indication at that juncture that that wasn't the shooter in this case, I think it would have come forth at that time, and there wasn't.

***[W]hat it comes down to is my observations of [Brown], my understanding based on the evidence that I've heard of how critically injured he was on the date that this happened, what that says about any impeachment he suffers as a result of—and obviously the nature of the police interactions with him at that time and what that means about that valid impeachment in that area.

And in this court's view, it detracts from what might otherwise be valid impeachment. The victim was hurt too profoundly. The situation was too fluid. Information was provided, and at some points it contained facts which were relevant, like the car and other factors.

But as he's rolling or spinning around, a six time shot person, I don't know how I can hold it against him or hold the police's failure to write this thing down against him as it relates to my view of the evidence in this case.

I believe Mr. Brown when he said that he was shot by [defendant], and for that reason there will be a finding of guilt."

The court initially convicted defendant of attempted first degree murder and aggravated battery with a firearm, sentencing him to 31 years in prison. But then the court ruled, on defendant's motion for reconsideration, that there was insufficient evidence of the specific intent to kill, stating:

"[A]s I looked at the location of the injuries to the victim, as I looked at the fact that the defendant never exited the vehicle, as I looked to the fact that the opportunity did exist to complete the

task, if that was his desire at the time he pulled off the street, I came to the conclusion that the evidence was insufficient for the specific intent of intent to kill. And as a result, I will at this time do something I haven't done, I don't know if I have ever done this as a judge, but I'm going to reconsider my original ruling finding of guilty first degree murder and today find [defendant] guilty of aggravated battery with a handgun."

Accordingly, the court vacated its finding of guilty of attempted first degree murder and found the defendant guilty of aggravated battery with a firearm and sentenced defendant to 10 years in prison. This appeal ensued.

¶ 18 The defendant does not challenge Brown's opportunity to view the person who shot him or his ability to identify his shooter. Instead it is defendant's contention that for unknown reasons Brown was lying about who shot him, as evidenced by his failure to name defendant even by his nickname on the day of the shooting, as related by police and medical personnel. We are guided by a number of principles in evaluating defendant's challenge to the sufficiency of the evidence. Most broadly, we will not set aside the trial court's determination unless it is so improbable, unsatisfactory, or unreasonable as to create a reasonable doubt of guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). We must determine whether when viewing all the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the crime to have been proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The issue here is solely one of identification; there is no question that the crime at issue was committed. In this case the key factor we bear in mind upon review is that it is the function of the trial court as the finder of fact to assess the credibility of witnesses. *People v. Bannister*, 236 Ill. 2d 1, 17 (2009). We have quoted at length from the trial court's deliberations

concerning the credibility of the State's key witness and its evaluation of the omissions he may have made in his initial conversations with the authorities and medical personnel. It is clear that the trial court thoroughly analyzed the evidence presented at trial, including the impeachment of the State's key witness, Jermaine Brown. The trial court's ultimate decision to credit Brown's testimony was not so improbable or unsatisfactory as to create a reasonable doubt concerning guilt. Accordingly, we affirm defendant's conviction and sentence.

¶ 19 Affirmed.