2020 IL App (1st) 190213-U

No. 1-19-0213

Order filed December 24, 2020

Fifth 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. 15 CR 5549
	)	
AARON CARROLL,	)	Honorable
	)	Carl B. Boyd,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Cunningham concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated battery with a firearm is affirmed over his contentions that the State failed to prove his guilt beyond a reasonable doubt and that a merged count of aggravated discharge of a firearm violated the one-act, one-crime doctrine.

¶ 2 Following a bench trial, defendant Aaron Carroll was found guilty of one count of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2014)) and one count of

aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2014)).[1] The trial court merged the latter count into the former and sentenced defendant to six years' imprisonment for aggravated battery with a firearm. Defendant appeals, arguing that the State failed to prove his identity as the shooter beyond a reasonable doubt and that the merged count of aggravated discharge of a firearm violated the one-act, one-crime doctrine. We affirm.

¶ 3 Defendant was charged by indictment with attempt first degree murder of Aereeon Frederick (counts I-VI), aggravated battery with a firearm predicated on shooting Aereeon (count VII), and one count of aggravated discharge of a firearm in that he "knowingly discharged a firearm in the direction of another person, to wit: individuals in the vicinity of [the 15000 block of] S Champlain, Dolton, Cook County, Illinois" (count VIII).[2]

¶ 4 At trial, Dannie Fearence testified that on March 13, 2015, he was at Aereeon's home on the 15000 block of South Champlain Avenue in Dolton. That afternoon, Fearence received a phone call from a number he did not recognize. Aereeon had the number saved in his phone as that of "Chavez," who attended high school with Fearence and Aereeon.[3] The caller asked Fearence for a belt and $250. Fearence told the caller he did not have the belt or $250 and ended the call. Fearence received three more phone calls from the number. Around 8 or 9 p.m., Fearence had a video conversation with Shatez Wiggins, who connected to the call using the same number. They discussed the belt and money, and Fearence told Wiggins to meet him at the high school across

[1] The parties' briefs name defendant as "Aaron D. Carroll Jr.," as do some documents in the record. The notice of appeal identifies defendant as "Aaron Carroll," and we use that name here.

[2] Various spellings of Aereeon Frederick's first name appear in the record. We adopt the spelling from his testimony, and refer to him by his first name because another witness, Gajuan Frederick, has the same last name. For the same reason, we also refer to Gajuan by his first name.

[3] When asked Chavez's last name, Fearence responded, "Bailey, I think." However, other witnesses testified that Chavez's last name is Bradley. We will refer to Chavez by his first name.

the street from the Frederick house. Fearence and Wiggins met at the school 15 or 20 minutes later and fought. When another person jumped in, Fearence stopped the fight because he had only agreed to fight one-on-one.

¶ 5 Fearence returned to the Frederick house. As he and others were entering the house, a gold vehicle made a U-turn and stopped outside. Fearance variously testified that the vehicle arrived 30 minutes, 10 minutes, and 5 minutes after the fight, and stated that everything happened quickly. Once the vehicle arrived, Fearence and the vehicle's driver spoke for 10 minutes before the driver began shooting.

¶ 6 Fearence identified the driver in court as defendant. Defendant asked for the money and belt, and when Fearence told defendant he would not get either, defendant "started shooting." Fearence ducked while defendant fired four or five shots. Defendant drove away. When Fearence got up, he learned that Aereeon had been shot. Fearence had not seen anyone else with a firearm.

¶ 7 On March 18, 2015, Fearence viewed an in-person lineup at the police station and identified defendant as the shooter. The State showed Fearence People's Exhibit No. 1, which Fearence stated was a photograph of the lineup he viewed. However, Fearence denied that defendant was in the photograph. The State then showed Fearence People's Exhibit No. 2, which Fearence stated was a close-up photograph of person Number 3 from the lineup depicted in People's Exhibit No. 1. Fearence stated that the photograph depicted defendant.[4] Fearence acknowledged giving a written statement to an assistant State's Attorney (ASA) and a detective.

¶ 8 On cross-examination, Fearence stated that he did not know defendant prior to the shooting. When he viewed the lineup on March 18, 2015, he identified person Number 1 as the shooter.

[4] None of the exhibits for the State or defense are in the record on appeal.

¶ 9 Gajuan Frederick, Aereeon's cousin, testified that he also lived at the home and was there on March 13, 2015, with "a lot" of other people, including Fearence, Aereeon, George Lee, and Dajon Torrence. Gajuan saw Fearence video-chatting with Wiggins. Fifteen to twenty minutes later, Wiggins, Kyle Grant, and two other people were waiting outside for Fearence.

¶ 10 When Gajuan went outside, he saw Wiggins and defendant, whom he identified in court. Defendant was near a gold Ford, wearing a hood. Defendant stayed near the vehicle while Fearence and Wiggins fought at the school across the street. Gajuan was standing near the house, 30 or 40 feet from the fight and about 10 feet from defendant, whom he had never seen before. Gajuan spoke with defendant and observed him for two or three minutes.

¶ 11 After the fight, while everyone returned to the Frederick house, Gajuan saw the gold vehicle do a U-turn. Defendant was driving, Wiggins was in the back seat, and Grant was in the front passenger's seat. Thirty seconds or a minute passed between the vehicle driving away and turning around at the end of the block. Gajuan was about 15 feet from the vehicle when it arrived at the house. Defendant and Fearence yelled at each other for one or two minutes.

¶ 12 It was dark, but Gajuan could see defendant through the vehicle's open window because there was light in front of the house and from the school. Defendant fired four or five shots into the crowd. Gajuan did not see the weapon, but saw a muzzle flash and dropped to the ground. The vehicle drove away. Gajuan heard that someone had been shot, saw that it was Aereeon, and called 911. No one else had a firearm.

¶ 13 On March 15, 2015, at the hospital, Gajuan viewed a photo array and identified defendant. Gajuan identified People's Exhibit No. 3B as the photo array, and stated that defendant was in the array. Gajuan had circled the photograph of defendant to indicate that he was the shooter. On

March 18, 2015, Gajuan viewed an in-person lineup at the police station and identified defendant. Gajuan identified People's Exhibit No. 1 as a photograph of the lineup he viewed, with defendant in position Number 3, and People's Exhibit No. 2 as a photo of defendant. Gajuan identified defendant as the driver and shooter.

¶ 14 On cross-examination, Gajuan testified that 10 or 15 people were at the Frederick home on March 13, 2015. Five or six people went outside 15 or 20 minutes after Fearence's video conversation with Wiggins, and the rest followed 1 or 2 minutes later. Defendant wore a raised hood and, during the fight, stood across the street near the vehicle, away from everyone else. Defendant faced away from Gajuan. Five or six people arrived with Wiggins; after the fight, two entered a blue minivan, and the others entered the gold, four-door sedan. Everyone else returned to the Frederick house. Gajuan was "checking [the] surroundings" when he saw the gold sedan do a U-turn. The Frederick home is on the west side of the street, and the vehicle was driving north, so the driver's side faced the house. When defendant started shooting, Gajuan was standing near Fearence, 10 to 15 feet from the gold vehicle. Defendant did not shoot towards Gajuan and Fearence but towards a group of people standing in the driveway, who were closer to the vehicle. Defendant wore a black hoodie the entire time. Gajuan agreed that he had "no idea if there were other guns" at the scene.

¶ 15 On redirect examination, Gajuan testified that, while the hoodie covered defendant's face up to his nose, Gajuan focused on defendant's face when they spoke and saw his entire face and hair. Gajuan gave a written statement to a detective and ASA on March 18, 2015, stating that the firearm was small and he could not see its color. On recross examination, Gajuan noted that it had

been three years since the shooting so he did not remember what he had told the detectives until prompted by the State.

¶ 16 Aereeon testified that on March 13, 2015, he went outside after Fearence left to fight Wiggins and saw Grant, Chavez, Wiggins, and others arrive in two vehicles. Aereeon did not remember the types of the vehicles. Fearence and Wiggins fought at the school across the street while Aereeon stood on the sidewalk in front of his house. Aereeon testified that he was "far" from the fight and would have had to run to reach the location.

¶ 17 When the fight ended, people gathered outside the house. Aereeon denied seeing any of those people in the courtroom. Aereeon stood in his driveway and focused on his younger cousins, one of whom had run into the street. Aereeon retrieved his cousin and was returning to the house when he was shot on the left side of his lower back. His back was to the street and he heard around five shots. Aereeon fell facedown to the ground and could not move his lower half. An ambulance took him to the hospital and the bullet was removed. Aereeon was hospitalized for around three days and bedridden for a month. On March 14, 2015, Aereeon spoke to a detective at the hospital and told him what happened. On March 15, 2015, Aereeon viewed a photo array but could not identify the shooter because Aereeon was facing the other direction when he was shot.

¶ 18 On cross-examination, Aereeon stated that, during the fight, he and two others were standing in his driveway. Aereeon could see the fight although the school was not directly across the street from his house. Aereeon told the detectives that he did not see who shot him because his head was turned, but saw the driver of the vehicle when it arrived at his house. He observed "details" of the driver and described him as dark-skinned with dreadlocks. Aereeon had also noticed him down the street near the fight, but did not know who he was.

¶ 19 George Lee testified that he went to the Frederick house after the fight and stood beside Aereeon in the driveway. A vehicle was parked in front of the house, and the driver and Fearence spoke loudly to each other. Lee had not seen the vehicle or driver before. Lee saw the driver move as if he were looking and reaching for something in the vehicle, but could not see the object. Aereeon pushed Lee to the ground and Lee heard around three gunshots. The vehicle left. The driver never exited the vehicle. Aereeon told Lee he had been shot, and Lee raised Aereeon's shirt and saw a gunshot wound. Aereeon's parents and family members ran over, and Lee left.

¶ 20 On March 18, 2015, Lee went to the police station and viewed an in-person lineup. Lee identified People's Exhibit No. 4 as a photograph of the lineup, and stated that he identified person Number 4 as the driver of the vehicle. Lee gave an oral statement to ASA Becky Walters, who typed it and had Lee sign each page. People's Exhibit No. 5 was a copy of the statement. A photo of a person was included in the statement, which Lee signed to signify it depicted the person he identified as the driver. Lee had never seen him before.

¶ 21 Lee further testified that the person he identified in the lineup and statement was not in the courtroom, and that he only told Walters that the person he identified was the driver. Lee did not see a firearm during the incident and denied telling Walters that he had. Lee admitted that his statement reflected that he told Walters the driver drew a small firearm and fired into the crowd, and that he did not see anyone else with a firearm. The statement reflected that Lee told Walters that the person he identified in the lineup was both the shooter and the driver.

¶ 22 On cross-examination, Lee testified that he did not remember the color, make, or model of the vehicle that pulled in front of the Frederick house or whether the vehicle's windows were tinted. Lee could not see how many people were inside but observed a driver and passengers. He

saw the driver's face, but could not distinguish details of the driver's face or hair because the driver was wearing a hood and it was dark. Lee could not see the object the driver grabbed and thought it may have been a phone, but realized it was likely a firearm when he was pushed to the ground and heard gunshots. He did not see the firearm or see anyone fire, so he could not tell if the shots came from the driver's or passenger's side of the vehicle. Lee did not remember taking an oath before giving his statement to Walters, and denied telling Walters that he identified the shooter in the lineup.

¶ 23 On redirect examination, Lee testified that he told Walters the truth and that everything in the statement was true. Walters reviewed the statement with him and he signed each page to signify its accuracy.

¶ 24 Officer Remus[5] testified that he served as a lineup administrator on March 18, 2015. Remus did not know anything about the case. He administered the lineup that Lee viewed and read to Lee an advisory form explaining that the perpetrator may not be in the lineup and that Lee was not compelled to make an identification. Lee identified person Number 4, whom Remus subsequently learned was defendant. Remus identified defendant in court. Remus identified People's Exhibit No. 4 as a photograph of the lineup that Lee viewed, with defendant in position Number 4.

¶ 25 Remus also administered a lineup to Fearence, and gave him the same admonishments as Lee. Fearence agreed to be videotaped while he viewed the lineup and identified defendant, who was then in position Number 1. Fearence told Remus that person Number 1 fired from the vehicle. The State published the video of Fearence viewing the lineup.

[5] Remus's first name is not the transcript.

¶ 26 On cross-examination, Remus admitted that the video did not show the individuals in the lineup. Defense counsel showed Remus People's Exhibit No. 1, and Remus believed that it did not depict the lineup that Fearence viewed because it had defendant in position Number 3 and Fearence told him the shooter was in position Number 1. Remus did not recall who, if anyone, viewed that lineup. Three people besides Fearence and Lee viewed lineups that day, but Remus did not remember their names.

¶ 27 On redirect examination, Remus explained that different people viewed different lineups; the same individuals were in the lineup, but they switched positions. Remus remembered that defendant was in position Number 1 in the lineup Fearence viewed, and Number 4 in the lineup Lee viewed.

¶ 28 Detective Price[6] testified that Fearence, Dawayne Davis, and Torrence provided him with defendant's name. After "[s]everal witnesses" identified defendant as the shooter in in-person lineups on March 18, 2015, Price arrested defendant. Price identified defendant in court. Price was present when Lee gave the statement in People's Exhibit No. 5, and stated that the photograph in Lee's statement of the person Lee identified in the lineup depicted defendant.

¶ 29 On cross-examination, Price stated that he was present for some in-person lineups and believed that People's Exhibit No. 1 was the lineup Fearence viewed. Neither the gold vehicle nor the weapon were recovered. No gold vehicle was registered to anyone in defendant's family, and Price never obtained a search warrant for defendant's home.

¶ 30 Price testified that he interviewed Aereeon at the hospital and showed him a photo array. Price identified Defense Exhibit No. 3 as the photo array advisory form presented to Aereeon, and

[6] Price's first name is not in the transcript.

stated that Aereeon did not recognize anyone in the photo array. Price also investigated two other suspects, one whose name defendant provided and another whom Daquarius Wilson identified in a photo array. Counsel showed Price Defense Exhibit No. 1, the advisory form and photo array shown to Wilson, and Price stated that defendant was pictured in the array.

¶ 31 On redirect examination, Price stated that Aereeon could not identify the shooter because Aereeon's back was turned. Although Price previously stated he was present for some lineups, Price then stated that he did not participate in the lineups and was not in the room with the individuals who viewed the lineup or the room with the individuals in the lineup. On recross, Price testified that nothing on the photo array advisory form indicated that Aereeon could not identify someone because his back was turned, only that Aereeon did not recognize anyone in the photo array.

¶ 32 ASA Walters testified that she spoke with Fearence and Lee, separately, at the Dolton police department on March 18, 2015. Both agreed to memorialize their conversations with her. The State showed Walters People's Exhibit No. 5, the written statement Walters took from Lee. Lee told Walters that the man whose photograph was in the statement drew a firearm and fired into the crowd of people outside Aereeon's house. The photograph depicted defendant. Lee stated that the firearm was "little," but could not describe it in more detail. He told Walters that the person he identified from the in-person lineup and whose photograph was in the statement was the shooter. Walters typed Lee's statement and allowed him to make corrections. Lee told Walters that everything in his statement was true and correct.

¶ 33 Fearence also gave Walters a written statement. The State showed Walters People's Exhibit No. 7, and Walters testified that it was a copy of the written statement she took from Fearence.

The statement contained a picture of defendant, whom Fearence told Walters was the shooter. Fearence did not see the photograph until after he viewed the lineup.

¶ 34 On cross-examination, Walters stated that she reviewed Fearence's statement just before testifying. Walters denied that Lee told her and Price that he "assumed" there was a firearm, "assumed" that the driver was the shooter, could not see the person's face in detail, and never actually saw the firearm. Walters also interviewed Chavez and Wilson, but did not remember any details from their interviews; seeing pictures of Lee and Fearence before she testified had jogged Walters' memory of Lee's and Fearence's statements. She also recalled Lee's and Fearence's statements more clearly than Chavez's and Wilson's because she took Lee's and Fearence's written statements. On redirect examination, Walters confirmed that Lee and Fearence "at all times" told her that defendant was the shooter.

¶ 35 The State rested, and the court admitted all of the State's exhibits into evidence. The defense moved for a directed finding, which was denied.

¶ 36 The defense called Draonia Wells, who testified that she and defendant have a child and were in a romantic relationship on March 13, 2015. That day was Wells' birthday, and defendant was at her home with her and her family. Defendant's sister dropped him off around 1 p.m. and picked him up around midnight, and defendant did not leave before then.

¶ 37 On cross-examination, Wells stated that the high school was a long walk from her home. Wells was with defendant from 1 p.m. to midnight. She denied that defendant drove a four-door gold vehicle. Wells confirmed that she cared about defendant and did not want anything to happen to him.

¶ 38 During argument, the State contended that Fearence identified defendant as the shooter in open court and when viewing a lineup, as confirmed by Remus. Gajuan also identified defendant as the shooter, as did Lee when viewing the lineup and in his statement to Walters, but Aereeon could not because his back was turned. The State argued that Wells' testimony was not credible. Defense counsel posited that the identifications of defendant were unreliable and that Fearence stated the person he identified in the lineup was not in the courtroom. In rebuttal, the State conceded that it showed Fearence the wrong lineup photograph at trial, but argued that Fearence identified defendant as the shooter in open court before being shown that picture and Remus confirmed that Fearence identified defendant at the lineup.

¶ 39 The court found defendant guilty of aggravated battery with a firearm (count VII) and aggravated discharge of a firearm (count VIII), and not guilty of attempt murder. In so holding, the court noted that three witnesses identified defendant as the shooter. First, Fearence identified defendant in a lineup on March 18, 2015, which Remus confirmed, and again identified defendant in court. Second, Gajuan observed defendant from 10 feet during a two- or three-minute conversation, later saw defendant shoot four or five times into the crowd from the gold vehicle, and identified defendant as the driver and shooter in a lineup and photo array. Third, Lee identified defendant as the shooter in a lineup, as verified by Walters, and in Lee's written statement. While Lee "hesitated" and did not identify defendant at trial, he identified defendant as the shooter on March 18, 2015, much closer to the date of the shooting. Aereeon could not identify the shooter because he had his back to the vehicle when he was shot, but the court found Aereeon, Fearence, Remus, Gajuan, and Walters all credible. Wells, on the other hand, lacked credibility.

¶ 40 Defendant filed a motion to reconsider, arguing that inconsistencies in the witnesses' identification testimony made their evidence incredible. At a hearing, defense counsel further requested a new trial on the same basis. The court denied the motion, stating that Fearence's, Gajuan's, and Lee's independent identifications of defendant as the shooter, days after the shooting occurred, were "overwhelming" and proved defendant's guilt beyond a reasonable doubt.

¶ 41 Following a hearing, the court sentenced defendant to the statutory minimum of six years' imprisonment. The court then stated: "And that is on Count 7. Count 8 will merge into Count 7 and will be served concurrently with the same six years followed by three years of mandatory supervised release." The mittimus reflects a finding of guilt and a six-year sentence on count VII, and states that "Count 8 merges into Count 7." The mittimus does not reflect a sentence imposed on count VIII. Likewise, the half-sheet and electronic docket reflect a six-year sentence on count VII and that count VIII merged into count VII, with no independent sentence imposed on count VIII.[7]

¶ 42 Defendant appeals, first arguing that the State failed to prove his guilt beyond a reasonable doubt. Defendant contends that Gajuan's, Fearence's, and Lee's identifications of him as the shooter were unreliable because it was dark, the person they identified was wearing a hood, and their testimony was inconsistent. Defendant further notes that no physical evidence connected him to the crime and that Wells testified defendant was at her home at the time of the shooting.

¶ 43 When considering a challenge to the sufficiency of the evidence, reviewing courts view the evidence in the light most favorable to the State to determine whether any rational trier of fact

[7] The electronic docket references a motion to reduce sentence filed on January 1, 2019, with a notation "D." However, the transcript from that date does not include discussion of a motion to reduce sentence, and no such motion appears in the record on appeal.

could have found the essential elements of the offense beyond a reasonable doubt. *People v. Swenson*, 2020 IL 124688, ¶ 35. A conviction will only be set aside "where the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Id.* The trier of fact determines the credibility of the witnesses, and its determinations are given great weight. *Id.* ¶ 36. The trier of fact also resolves conflicts in the evidence and draws reasonable inferences therefrom. *Id.* "[I]t is for the fact finder to judge how flaws or contradictions on the part of a witness's testimony affect the credibility of the testimony in its totality." *In re O.F.*, 2020 IL App (1st) 190662, ¶ 25. A reviewing court will not retry a defendant. *Swenson*, 2020 IL 124688, ¶ 35.

¶ 44 As charged here, a person commits aggravated battery with a firearm when, in committing a battery, he knowingly without legal justification discharges a firearm and injures another individual. 720 ILCS 5/12-3.05(e)(1) (West 2014). Defendant only challenges his identity as the shooter.

¶ 45 "A single witness' identification of the accused *** is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification." *People v. Joiner*, 2018 IL App (1st) 150343, ¶ 47. When considering identification testimony, Illinois courts rely on the factors discussed in *Neil v. Biggers*, 409 U.S. 188 (1972). *O.F.*, 2020 IL App (1st) 190662, ¶ 31. Those include:

> "(1) the opportunity the [witness] had to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the [witness] at the identification

> confrontation; and (5) the length of time between the crime and the identification confrontation." (Internal quotation marks omitted; alterations in original.) *Id.*

While the first factor is most important, each factor is considered and no single factor conclusively establishes the identification's reliability. *Id.* ¶ 32. Still, "[e]yewitness testimony is insufficient only if the record compels the conclusion that no reasonable person could accept the testimony beyond a reasonable doubt." *People v. Charles*, 2018 IL App (1st) 153625, ¶ 25. Further, "if witnesses' testimony is otherwise credible, the State [is] not required to present additional physical evidence." (Internal quotation marks omitted; alteration in original.) *People v. Campbell*, 2019 IL App (1st) 161640, ¶ 33.

¶ 46 Applying the above framework, we find the trial court could accept Gajuan's identification as reliable. First, he had the opportunity to view the shooter when, during the fight that preceded the shooting, he spoke with and observed the person near the gold vehicle for two or three minutes from about 10 feet away. While part of the person's face was covered, Gajuan saw his entire face and hair. Gajuan then saw the same person driving the gold vehicle when it did a U-turn back to the house, and could also observe Wiggins in the back seat and Grant in the front passenger seat. Gajuan was about 15 feet from the vehicle when it parked at the house and the driver argued with Fearence, and although it was dark, there were lights outside the house and from the school. See *People v. Williams*, 143 Ill. App. 3d 658, 662 (1986) (positive identification does not require observation to be prolonged or made under perfect conditions).

¶ 47 Second, Gajuan stated that he focused on the person's face while they spoke during the fight. Third, although Gajuan did not offer a detailed physical description of the shooter, one was not required for the trier of fact to credit his testimony. See *People v. Tomei*, 2013 IL App (1st)

112632, ¶ 52 (third factor satisfied when witness made positive identification and "recognized defendant's face"). Fourth and fifth, Gajuan, without wavering, positively identified defendant in a photo array two days after the shooting, in a physical lineup five days after the shooting, and at trial. See *People v. Green*, 2017 IL App (1st) 152513, ¶ 112 (noting that witness "never wavered" and consistently identified defendant in photo array and physical lineup). Accordingly, a rational trier of fact could credit Gajuan's identification of defendant as the shooter as reliable and therefore sufficient to sustain defendant's convictions. *Joiner*, 2018 IL App (1st) 150343, ¶ 47 (single eyewitness can sustain conviction if identification made under circumstances permitting positive identification).

¶ 48 We also conclude that a rational fact finder could find Fearence's and Lee's identifications of defendant as the shooter reliable. Fearence had the opportunity to view the shooter, as he argued from 10 to 15 feet away with the gold vehicle's driver, who he testified fired the shots. Fearence testified that the argument lasted about 10 minutes and Gajuan testified that it lasted one or two minutes, but irrespective of the duration, Fearence's testimony showed that he had opportunity to observe defendant and focus on him. Although, like Gajuan, Fearence did not offer a detailed physical description of defendant, he was not required to do so. See *Tomei*, 2013 IL App (1st) 112632, ¶ 52 (third factor satisfied when witness made positive identification and "recognized defendant's face").

¶ 49 Fearence testified that People's Exhibit No. 1 was a photograph of the lineup he viewed and that defendant was not in the photograph. However, Remus testified that People's Exhibit No. 1 was not the lineup that Fearence viewed, and the State conceded that it showed Fearence the wrong photograph. Because the photographs at issue are not in the record on appeal, we must

construe any doubts arising from Fearence's statement that defendant is not in the photograph shown to him at trial against defendant and in favor of the trial court's finding of guilt. See *People v. Henderson*, 2011 IL App (1st) 090923, ¶ 45 (burden is on appellant to complete record on appeal and "[a]ny doubts" arising from record's incompleteness are construed against appellant and in favor of judgment below).

¶ 50 Notwithstanding, Fearence identified defendant in court as the shooter before being shown People's Exhibit No. 1. Moreover, he testified that he identified defendant as the shooter when viewing the in-person lineup five days after the shooting. Nothing in the record suggests Fearance was uncertain while identifying defendant at trial or in the lineup.

¶ 51 Lee testified that he could not see details of the driver's face or hair because it was dark and the person wore a hood. Lee did not identify defendant as the shooter at trial and disputed that he told Walters that defendant was the shooter, not just the driver. However, that testimony was inconsistent with Lee's written statement, introduced as People's Exhibit No. 5, which the trial court admitted as a prior inconsistent statement. See 725 ILCS 5/115-10.1(c)(2)(A) (West 2014); *People v. Sangster*, 2014 IL App (1st) 113457, ¶ 61 ("[U]nder section 115-10.1, *** a statement concerning a matter within the witness's personal knowledge proved to have been written or signed by the witness can be used as substantive evidence."). The written statement reflected that, five days after the shooting, Lee identified defendant as the shooter in an in-person lineup and when viewing a picture of defendant. Lee could see the driver of the vehicle reach for something, and while he stated at trial that he could not identify the object, he told Walters it was a small firearm. Lee's written statement was given much closer in time to the shooting than his trial testimony, and

there was no suggestion that Lee wavered in his more contemporaneous identification of defendant as the shooter.

¶ 52 Moreover, unlike *People v. Rodriguez*, 312 Ill. App. 3d 920 (2000), relied on by defendant, this is not a case where witnesses provided conflicting evidence about the description and identity of the offender. There, an eyewitness to a shooting described the offender to police minutes after the shooting and reported seeing him one week later at a store with a snowblower. *Id.* at 923. An employee of the store, however, denied that the man with the snowblower was defendant and stated that the composite sketch generated by the eyewitness's description was inaccurate in that the man with the snowblower had a different nose and did not have a mustache. *Id.* at 923, 934. Here, in contrast, there is no conflicting testimony about the identity or description of the shooter.

¶ 53 While Wells testified that defendant was at her home at the time of the shooting and no physical evidence was introduced at trial, the trial court found Wells' testimony incredible and the State was not required to produce physical evidence connecting defendant to the firearm or the vehicle. See *Campbell*, 2019 IL App (1st) 161640, ¶ 33 (physical evidence unnecessary if witnesses' testimony credible). Moreover, the trial court accepted Gajuan's, Fearence's, and Lee's identifications of defendant as the shooter, and for the reasons we have explained, we will not overturn the trial court's credibility determination. See *People v. Brown*, 2013 IL 114196, ¶ 48 ("[A] reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses."). Accordingly, we conclude that, viewing the evidence in the light most favorable to the prosecution, the testimony identifying defendant as the shooter was sufficient to prove his guilt beyond a reasonable doubt.

¶ 54 Next, defendant argues that his "conviction" for aggravated discharge of a firearm (count VIII), which merged into his conviction for aggravated battery with a firearm (count VII), should be vacated under the one-act, one-crime doctrine. While the State agrees with defendant's position, we are not bound by that concession. *People v. Horrell*, 235 Ill. 2d 235, 241 (2009). Instead, we find that no violation of the one-act, one-crime doctrine occurred because defendant was not convicted on count VIII.

¶ 55 First, we note that defendant did not raise this argument in a contemporaneous objection and, although the electronic docket shows that a motion to reduce sentence was before the court, no discussion of that motion appears in the transcript from that date and the motion is not in the record on appeal. See *People v. McGuire*, 2016 IL App (1st) 133410, ¶ 12 (errors forfeited if not raised via contemporaneous objection or postsentencing motion). However, although he does not request plain-error review in his opening brief, defendant raises a plain error argument in his reply brief, which is sufficient to allow our review. *People v. Ramsey*, 239 Ill. 2d 342, 412 (2010).

¶ 56 Under the plain-error doctrine, reviewing courts may consider an unpreserved issue when a clear or obvious error occurred and (1) "the evidence was so closely balanced that the error alone threatened to tip the scales of justice against the defendant," or (2) "the error is so serious that it affected the fairness of the defendant's trial and the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Jones*, 2016 IL 119391, ¶ 10. Violations of the one-act, one-crime rule implicate the second prong of the plain-error doctrine. *People v. Harvey*, 211 Ill. 2d 368, 389 (2004). The first step of plain-error review is to consider whether an error occurred. *Jones*, 2016 IL 119391, ¶ 10.

¶ 57 The one-act, one-crime doctrine prohibits convictions for multiple offenses based on the same physical act. *People v. Cathey*, 2019 IL App (1st) 153118, ¶ 23. The doctrine applies, specifically, to convictions. As our supreme court explained in *People v. King*, 66 Ill. 2d 551 (1977), "[p]rejudice, with regard to multiple acts, exists only when the defendant is *convicted* of more than one offense." (Emphasis added.) *King*, 66 Ill. 2d at 566.

¶ 58 In turn, a conviction requires both a finding of guilt and a sentence. See 730 ILCS 5/5-1-5 (West 2018) (" '[c]onviction' means a judgment of conviction or sentence entered upon a *** finding of guilty of an offense, rendered by *** a court of competent jurisdiction authorized to try the case"). "In the absence of a judgment formerly entered or sentence imposed, there is no 'conviction.' " *People v. Cruz*, 196 Ill. App. 3d 1047, 1052 (1990). If one finding of guilt merges into another, no sentence has been imposed on the merged offense. See, *e.g.*, *People v. Shannon*, 149 Ill. App. 3d 525, 527 (1986) ("No sentence was entered ******* *nor was a sentence imposed as to the two counts of aggravated battery, since these two counts were held to merge with the attempted murder charge*." (emphasis added)).

¶ 59 Here, the trial court imposed a minimum six-year sentence on count VII, the aggravated battery charge, and stated that "[c]ount 8 will merge into Count 7 and will be served concurrently with the same six years followed by three years of mandatory supervised release." However, the mittimus, half-sheet, and electronic docket all reflect that a six-year sentence was imposed only on count VII, and that count VIII merged therein. Thus, despite the court's phrasing at the sentencing hearing, no sentence was imposed on count VIII. See *People v. Smith*, 242 Ill. App. 3d 399, 402 (1993) (while oral pronouncement generally controls, inconsistencies may be resolved by examining entire record, and written order will be enforced if consistent with "intent, sense and

meaning" of oral pronouncement). Therefore, while defendant was found guilty of aggravated discharge of a firearm, he was not convicted of that offense, no sentence was imposed thereon, and no violation of the one-act, one-crime doctrine occurred.

¶ 60 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 61 Affirmed.