

No. 1-10-0264

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 07 CR 7971
)	
RASHEED MUHAMMED,)	Honorable
)	John A. Wasilewski,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* Identification testimony of two eyewitnesses suffices to establish defendant's guilt beyond a reasonable doubt. Twenty-seven year prison term for home invasion, which included a mandatory firearm enhancement, is not excessive. Conviction for residential burglary is vacated, as it merges into the crime of home invasion.
- ¶ 2 Following a bench trial, defendant Rasheed Muhammed was convicted of home invasion, armed robbery, and residential burglary and was sentenced to concurrent terms of 27 years, 12 years, and 8 years for those respective offenses. On appeal defendant challenges the sufficiency of the evidence, the length of his 27-year sentence for home invasion, and his conviction for

residential burglary, which he argues was based on the same acts as his conviction for home invasion.

¶ 3 At trial, Angela McGowan testified that on March 29, 2007, at about 10:55 p.m. she was watching television in the front bedroom of her apartment at 8752 South Manistee in Chicago. She heard the sound of her door being kicked in and three men came into her apartment. They had a rifle and they ordered her to stay on the floor with her head down. According to the witness, she had since learned that one of these three men was Tyree Pryor. She identified defendant in court as the man with the rifle, but subsequently stated that Pryor first had the rifle and then handed it to defendant, telling him to watch her. Defendant pointed the rifle at her and made her move to her back bedroom, which was next to her kitchen. Defendant continued to point the rifle at her face, from a distance of about four feet, while a third, unidentified man went through her belongings. The third man took at least one ring from her person. The men asked her where her money was and she told them she did not have any.

¶ 4 At that time police officers entered her apartment and seized Tyree Pryor. McGowan screamed and ran from the bedroom. Defendant dropped the rifle and escaped through the back door and the third man escaped through her back bedroom window. Defendant was wearing jeans and Air Force One tennis shoes, with a dark blue do-rag covering all of his face except for his mouth. According to McGowan, defendant was still wearing the do-rag when he fled the apartment. The third man was also wearing a do-rag. This entire incident lasted about six to seven minutes. About three minutes later McGowan saw defendant again after he had been apprehended by the police and placed in a police car. She identified defendant to the police as the man who had the rifle. McGowan testified that she recognized defendant by his jeans, his Air Force One gym shoes, and the bottom of his mouth. At trial McGowan identified

photographs of the rifle, her damaged front door, and a bag containing items which had been taken by the men.

¶ 5 When asked about lighting conditions in the apartment, McGowan stated that there was light from the television and also her kitchen and bedroom had lights on. Although ordered to keep her head down she occasionally looked up at the men. She was impeached with a prior conviction for retail theft.

¶ 6 Chicago police officer Robert McHale, on the force for 18 years, testified that at the time in question he went to McGowan's apartment in response to a report of a woman being robbed. At the scene he observed that the front door to her apartment had been kicked in, with the woodwork and framing knocked to the ground and the lock ajar. When he and his partner entered the apartment they heard a woman screaming "Oh my God, Oh my God, thank God you're here." With their flashlights on they saw a man standing in the apartment hallway with a long-barrel blue steel .22 rifle in his hand. McHale testified that he was able to get a "good look" at this man, whom he identified in court as defendant. He had a scarf "hanging off of him" but it did not cover his face. When they saw defendant, he threw the rifle down and fled into the bedroom. He was able to escape because at the same time Tyree Pryor was approaching McHale, and he apprehended that man. When the police entered the bedroom into which defendant had fled it was empty but the window was open. McHale asked Pryor where his "friends" were running to and Pryor told him 85th and Escanaba, which was three blocks away. McHale reported this on the police radio, along with an unspecified description, and within several minutes a marked police car drove up with defendant in the back seat. Both McHale and McGowan identified defendant at that time as one of the offenders. McHale could see that defendant was sweating.

¶ 7 When asked about lighting conditions in the apartment, McHale also stated that there was light from the television and that the rear of the apartment, including the kitchen, had lights on. He did not recall seeing a third man in the apartment.

¶ 8 The parties stipulated that a do-rag found at the scene was found to contain the DNA of three individuals but defendant was not one of them. It was also stipulated that Detective Hackett investigated the crime and spoke to McHale; Hackett's report of this conversation did not state that McHale saw defendant with a rifle.

¶ 9 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. Cox*, 195 Ill. 2d 378, 387 (2001).

¶ 10 The issue here is solely one of identification; there is no question that the crimes at issue were committed. Factors set out by our supreme court as aids in evaluating identification testimony include: (1) the witness' opportunity to view the offender at the time of the crime; (2) the degree of attention demonstrated by the witness; (3) the accuracy of any prior description of the offender by the witness; (4) the witness' level of certainty at the time of the identification; and (5) the amount of time which passed between the crime and the identification of the offender. *Slim*, 127 Ill. 2d at 307-308.

¶ 11 Here both witnesses had a limited opportunity to view the offender, but they both indicated that their attention was focused on him. McGowan had a rifle pointed at her face for most of the six to seven minutes in which these crimes occurred. Although ordered to put her

head down, she testified that she periodically looked up at the offender. McHale saw the offender holding the rifle and then throwing it down before fleeing. McHale testified that he had a "good look" at him. McHale also testified that the offender's do-rag had slipped off his face, so he had an opportunity to view the offender's face. McGowan testified she was able to identify defendant as the offender from his mouth as well as from the jeans and the brand of shoes he was wearing. Both witnesses testified that there was illumination of the scene from lights on in the back of the apartment and McHale testified that he was using his flashlight when he saw the offender.

¶ 12 The record does not disclose the nature of the description put out over the police radio by McHale, but we do know that defendant was apprehended within minutes of McHale circulating this description, along with the intersection where defendant's accomplice said he was headed, which was only three blocks from the scene. As for the certainty of the identifications, it would appear that both witnesses immediately identified defendant in the back seat of the squad car when the police pulled up. Although this type of show-up identification is to be viewed with caution, it has also been approved as an appropriate method of immediately determining whether the police need to resume their search for the offender. *People v. Rodriguez*, 387 Ill. App. 3d 812, 830 (2008). Finally, the record establishes that these identifications came only several minutes after the crimes occurred. Defendant notes that the DNA found on the one do-rag which was recovered did not match his DNA, but it is just as likely that this article of clothing belonged to the offender who was not captured, as McGowan testified that he also wore a do-rag. Based upon all of these circumstances, and bearing in mind that it was the function of the trial court as the finder of fact to assess the credibility of these witnesses (*People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)), we find no basis for disturbing defendant's convictions on grounds of reasonable doubt.

¶ 13 Defendant, who was 23 years old at the time of sentencing, also challenges the 27-year sentence imposed on him for home invasion. We will reverse a trial court's sentence only when a clear abuse of discretion is established. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). In allocution defendant apologized to the court and stated that he wished he could apologize to the victim. He also stated that he was sorry for "this incident happening." But the evidence establishes that it was defendant who was the primary offender brandishing the weapon during this incident. It was defendant who aimed the weapon at the victim's face during the encounter. Furthermore, it is not our function to substitute our judgment as to sentencing for that of the trial court. *People v. James*, 118 Ill. 2d 214, 228 (1987); *People v. Jones*, 376 Ill. App. 3d 372, 394 (2007). Defendant's sentence was 18 years less than the maximum possible sentence and 6 years above the minimum. We find no abuse of discretion in the 27-year prison term imposed, which included a mandatory 15-year sentence for committing the offense of home invasion while armed with a firearm (720 ILCS 5/12-11(a)(3) (West 2006)) in addition to the regular Class X sentencing range of 6 to 30 years (730 ILCS 5/5-8-1(a)(3) (West 2006)) .

¶ 14 Finally, defendant correctly notes, and the State concedes, that the crime of residential burglary merges into the crime of home invasion under one act, one crime principles. *People v. McLaurin*, 184 Ill. 2d 58, 106 (1998). Accordingly, we vacate defendant's conviction for residential burglary, but affirm his convictions and sentences for home invasion and armed robbery.

¶ 15 Affirmed in part and vacated in part.