

No. 1-10-1388

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 20791
	)	
KARL DUKE,	)	Honorable
	)	Nicholas R. Ford,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CONNORS delivered the judgment of the court.  
Justices Cunningham and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant was properly found guilty of burglary beyond a reasonable doubt where victim described him by his distinctive combination of clothing and an item taken in the burglary was found 10 feet from where he was arrested.

¶ 2 Following a bench trial, defendant Karl Duke was convicted of burglary and sentenced to six years in prison. On appeal he contends that his guilt was not proven beyond a reasonable doubt.

¶ 3 The State's evidence was based upon the testimony of a single eyewitness who was the victim of the burglary, Lovette Walker. On November 5, 2009, she was in her single-family

home at 9355 South Forest Avenue in Chicago when, at 6:45 a.m., her burglar alarm sounded, indicating that someone had broken into her garage. She went to her back door, looked through the window, and saw a man in a black jacket with red lettering and a red hoodie, thin and about six feet tall, emerging from the side door of her detached garage. She could not see his face from her vantage point. Walker immediately got in her car and began driving around the neighborhood looking for the man. She also called the police on her cell phone. Within five minutes and about 2 ½ blocks from her home she saw defendant, who was a man of similar height and build, wearing the same black jacket with red writing and a red hoodie, in the parking lot of a Popeye's Chicken store, standing next to a pay phone. According to Walker, there were no other people out on the street in the area at that time. Walker flagged down a police car and told them defendant had just broken into her garage. Defendant was arrested. When Walker went back to her garage she found signs of forced entry and noticed that her black and orange Ryobi edger was missing. She returned to the Popeye's store and found her edger in a dumpster about 10 feet from where defendant was arrested. On cross-examination Walker testified that the jacket in question was available for purchase in many stores in Chicago.

¶ 4 Defendant testified on his own behalf, first stating that he was currently on probation for a Class 2 drug case. On the morning in question, at 6:45 a.m., he had just gotten off the bus and was walking to a construction job when he was arrested by the police for no reason. Defendant denied going into Walker's garage and denied taking her edger. He stated that the work he was going to do was for a friend named Michael Lewis.

¶ 5 The court found defendant guilty of burglary and sentenced him to a minimum term of six years in prison under Class X sentencing, which was mandatory because of two prior Class 2 convictions on his record. This appeal ensued.

¶ 6 On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt where the victim did not describe the offender's face, hair, age or race, but instead identified defendant solely on the basis of a black jacket commonly available in the area. The State responds that the identification was sufficient because defendant was identified by his combination of clothing, height and build; he was found a few blocks from the victim's garage less than five minutes after the burglary occurred; and an item stolen from the garage was found in a dumpster 10 feet from where defendant was arrested.

¶ 7 Mindful that the sufficiency of identification evidence is a question for the trier of fact, we will not set aside a conviction unless the evidence is so unsatisfactory that a reasonable doubt of the defendant's guilt remains. *People v. Killingsworth*, 314 Ill. App. 3d 506, 510 (2000). The identification of the defendant by a single witness is sufficient to sustain a conviction where the witness viewed the defendant under circumstances that would permit a positive identification. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Defendant cites to the factors set forth by the supreme court in *Slim* to support his claim that the identification in this case was unreliable. Under *Slim*, we consider whether the witness had a sufficient opportunity to observe the offender, showed an adequate degree of attention to the offender's characteristics, described the offender with a reasonable degree of accuracy, displayed a sufficient amount of certainty in identifying the offender and made the identification within a reasonable period of time following the incident. *Slim*, 127 Ill. 2d at 307-08. We acknowledge those identification factors, but also observe that all circumstantial facts should be considered to determine the sufficiency of the identification. *People v. Rojas*, 359 Ill. App. 3d 392, 397 (2005).

¶ 8 In the case at bar, defendant primarily attacks the victim's opportunity to view the offender and her inability to describe him other than by the clothing he wore. However, the identification of an offender's distinctive clothing, when coupled with other evidence of guilt,

may suffice for a conviction even when there is no facial identification. *People v. Ward*, 66 Ill. App. 3d 690, 693 (1978). In *Ward*, two men burglarized an apartment and robbed the occupants, a man and his wife. According to the male victim, one offender, who was armed with a shotgun, was wearing a ski mask over his face and had on a midi-length denim coat with no shirt, dark trousers, and distinctive shoes, which had black and white layered soles. He was described as five feet, eight inches tall with a slim build. According to the victim's wife, this same offender had braids. Both offenders were followed to another apartment by one of the victims and the police were summoned. When the police entered the premises they found two men and several women inside. They also found items subsequently identified by the victims as having been taken from the victims' apartment. The male victim identified defendant Ward, "due to his distinctive shoes" as the man who confronted him with a gun. *Ward*, 66 Ill. App. 3d at 692. This court also noted that defendant Ward's hair had many parts in it as if it had recently been braided. This identification evidence, together with the evidence of the recently stolen items from the apartment, was held by this court to suffice to uphold defendant Ward's convictions, even though neither victim was able to describe any of Ward's facial features because he was wearing a ski mask during the incident. *Ward*, 66 Ill. App. 3d at 693. Defendant Ward's alleged accomplice was acquitted in a simultaneous bench trial.

¶ 9 We note that defendant is incorrect in asserting that the clothing description here was only of "a black jacket widely available in the City of Chicago." The victim described the offender as wearing a black jacket with red lettering on the back in combination with a red hoodie. Although the victim testified that the jacket could be commonly purchased in Chicago, she also testified that there was nobody else in the area where she spotted defendant just five minutes after the offense and within a few blocks of the burglary. The victim further testified that although she was only able to see the offender from behind as he left her garage, she

observed that he was thin and about six feet tall, and defendant was a man of similar height and build. Finally, an item taken in the burglary, a black and orange Ryobi edger, was found by the victim shortly after the offense and only 10 feet from where defendant was arrested after she pointed him out to the police. The distinctive clothing combination described by the victim, together with the above-stated circumstantial evidence of guilt, was sufficient to allow the trial court to conclude that defendant was the offender.

¶ 10 In reaching this conclusion, we are not persuaded by defendant's reliance on a line of cases in which he contends convictions were reversed on similar grounds. Our review of those cases establishes that in each instance there were either additional factors which contributed to the reversals or the clothing description was purely generic. In *People v. McGee*, 21 Ill. 2d 440, 441-43 (1961), one eyewitness described the defendant as wearing a plaid shirt, the other described a red, almost plaid jacket. The defendant was seen only by the light of a night light and he was not arrested until two days later as he returned to work from his home, wearing a plaid jacket. Although both eyewitnesses identified him in a lineup, one only did so after being shown the plaid jacket belonging to the defendant. Furthermore, the defendant introduced the alibi testimony of eight witnesses who saw him working as a bartender at the time of the crime. In *People v. Hughes*, 59 Ill. App. 3d 860, 861 (1978), the victim did not see her assailants' faces and described them only by common clothing (beige jacket and slacks and a brown shirt on one in addition to a "Super Fly" hat in this 1970's case, and a blue jean jacket, a dark blue shirt, blue jeans, and a navy wool cap on the other) but the victim had also been briefly knocked unconscious by her assailants just before she saw them running away. In *People v. Versher*, 52 Ill. App. 3d 148, 149 (1977), the victim described the defendant only as short and wearing a black leather jacket. He was also carrying a large paper bag and there were indications that a sharp object was used on the victim's door. Although the defendant was arrested within 10

minutes of this sighting, neither a bag nor a sharp object was found on his person. In *People v. Moore*, 6 Ill. App. 3d 932, 936 (1972), eyewitnesses described the defendant only by commonly worn clothing; a white t-shirt, khaki pants and white gym shoes. But in addition, items taken in this rape, a portion of panty hose and a jacket belonging to the victim's husband, were found in locations which the court found it unlikely the defendant could have left them given his location after the crime as described by one of the eyewitnesses. In *People v. Reed*, 103 Ill. App. 2d 342, 348 (1968), this court found the evidence insufficient where the victim identified the defendant solely by his "dark coat." Finally, in *People v. Kincy*, 72 Ill. App. 2d 419, 421-28 (1966), the victim of a robbery identified the defendant solely by his coat although he also had a large moustache. He had an uncontradicted alibi and the money recovered from him was less than that which he had allegedly taken from the cash register. Furthermore, the State failed to produce a witness who the police asserted had followed the defendant from the crime scene for many blocks before identifying him to the police as the robber.

¶ 11 Our review of defendant's cases provides no cause to disturb the trial court's determination that defendant was sufficiently identified as the offender in this case. Accordingly, the judgment of the circuit court is affirmed.

¶ 12 Affirmed.