

2011 IL App (1st) 091531-U
No. 1-09-1531

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SIXTH DIVISION
JULY 15, 2011

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 8871
)	
DEON ROSS,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROBERT E. GORDON delivered the judgment of the court.

Presiding Justice Garcia and Justice McBride concurred in the judgment.

O R D E R

HELD: Where the victim testified that defendant and a co-offender took money and earrings from him, the evidence was sufficient to convict despite flaws in the victim's testimony and credibility.

¶ 1 Following a bench trial, defendant Deon Ross was convicted of armed robbery and attempted first degree murder. He was sentenced to consecutive terms of 14 and 6 years in prison, respectively. On appeal, defendant contends that his conviction for armed robbery must be reduced to attempted armed robbery because the State failed to prove that property was actually taken from the victim. Specifically, he argues that the State's only evidence of this element came from the robbery victim, who was repeatedly impeached and was contradicted by his own prior statements, the testimony of his then-girlfriend, and the lack of physical evidence. For the reasons that follow, we affirm.

¶ 2 Defendant's conviction arose from the events of February 15, 2007. On that day, defendant, Yvette Jarvis, and Bryant Neal formulated a plan to rob Jason Smith, whom they did not know but had been told had drugs and thousands of dollars in his apartment. While Jarvis waited in the getaway car, defendant and Neal forced Smith into his second-floor apartment at gunpoint and beat him. According to Smith, defendant and Neal took money from him, and Neal took his earrings. Smith then retrieved his own gun, and he and Neal shot each other. Neal died from his gunshot wounds; Smith survived but was shot in the mouth, legs, and hand. After the shooting, defendant and Smith struggled on a stairwell outside the apartment, but defendant got away and fled the scene with Jarvis.

¶ 3 The police recovered a gun and a plastic bag containing 50 grams of marijuana from an area near the bottom of the outdoor stairwell. Defendant was eventually arrested in Iowa. As relevant to this appeal, he was charged with attempted first degree murder and armed robbery. The armed robbery charge alleged that defendant knowingly took "United States currency and jewelry" from Smith.

¶ 4 At trial, Smith testified that he did carpentry work, but also sold marijuana to earn money. He had a prior conviction for delivery of cannabis and also kept marijuana at home for "personal use." On the day in question, he was at home with his 15-month-old son. Around 3:40 p.m., he went outside to warm up his car in anticipation of picking up his older son at school. After running the engine for a few minutes, Smith headed back inside. As he got to the doorway, two men he did not know, later identified as defendant and Neal, appeared and hit him in the head with a gun. Smith fell into a chair near the door. The men hit him with the gun several times and then walked him through the apartment. Smith testified that as they walked, he gave the two men "everything [he] owned," including \$6,000 or \$7,000. Smith explained that he had this amount of cash at home because he had received his tax refund. During the robbery, Neal also took the earrings Smith was wearing and a package of marijuana that Smith said weighed over a pound.

¶ 5 Smith testified that defendant stayed in the kitchen area while Neal forced him to the bedroom at gunpoint. Neal searched the room, knocking things off shelves, including a box that contained Smith's loaded handgun. Smith heard defendant say, "He think we playing. Grab the baby." Neal grabbed Smith's son, cocked the gun back, and put it to the child's head. Smith testified that at the time, he was on his knees, near the box containing his gun. As he jumped toward the box and grabbed his gun, Neal shot him in the mouth. Neal continued shooting at Smith, and Smith fired three shots at Neal.

¶ 6 After shooting Neal, Smith saw defendant in the hallway and went after him. Smith testified that he and defendant "tussled" in the doorway and down the stairs outside the apartment. When Smith dropped his gun, defendant picked it up and hit him with it. Smith went back upstairs and found his son lying under Neal's body.

¶ 7 The police arrived shortly thereafter and interviewed Smith. The parties stipulated that if called, the officers who interviewed Smith would have testified that Smith told them, among other things, that he and Neal tussled after Neal pointed the gun at his son; that the tussling caused the gun to fire; that he fired several shots at Neal; that he tossed his gun out of the apartment; and that defendant fled the scene on

foot in an unknown direction. However, Smith testified that he did not tell the officers these things.

¶ 8 Smith was then taken to the hospital, where he realized he had been shot not only in the mouth, but also in the hand, both legs, and his buttocks. While at the hospital, Smith was interviewed by Chicago police detectives Dan Stover and Tim Murphy. Smith testified that among other things, he told the detectives that defendant had yelled, "point the gun at the baby"; that money and earrings were taken from him; that he struggled with defendant in the outside stairwell; and that defendant grabbed Smith's gun and hit him in the head with it. However, the parties stipulated that the detectives would have testified Smith never told them these things.

¶ 9 On cross-examination, Smith testified that the money in his apartment was a combination of his and his then-girlfriend's tax refunds. He explained that his girlfriend, Alexis Joy, had deposited her tax refund check at the bank, but then took money out to buy furniture for the apartment. Smith stated that at the time of the robbery, he had money in his pocket, on top of the refrigerator, and in his top dresser drawer, while his girlfriend's money was in a drawer in her dresser. He agreed that he saw Neal "stick" money in his pockets. Smith also stated that when he took out his earrings, Neal snatched them from him. However, he did not know what Neal

did with the earrings, and he never saw them again. Smith also testified that his gun was a gift from a family friend known as "J-mow," and explained that he had a loaded gun at home because his car had been broken into a couple of days earlier.

¶ 10 Alexis Joy testified that on the date in question, she was living with Smith, who was her boyfriend at the time. Around 4 p.m., the police called her at work to inform her that Smith had been shot and she needed to get her son. Joy arrived at the apartment about 5 p.m. She did not notice that anything was missing.

¶ 11 Joy testified that when she received her income tax refund that year, she had used the money to buy a car. The refund, which was around \$4,000, had been directly deposited into her bank account. Joy stated that she did not keep large amounts of cash in the apartment, but did not know whether Smith did so. She also did not know whether Smith had received his tax refund by the time the robbery took place. Finally, Joy testified that she had heard Smith's friends call him "J-mow."

¶ 12 The State called as a witness Yvette Jarvis, who had pleaded guilty to armed robbery and home invasion and was expecting the State to recommend a sentence of 10 years' imprisonment. Jarvis testified that on the date in question, she, Neal, and defendant, who was her boyfriend at the time, made a plan to rob Smith based on information they had received that

Smith had drugs and \$10,000 or \$11,000 at his apartment. The person who provided the information also said that Smith was stupid and called Smith "Jay-Mo."

¶ 13 That afternoon, the group drove to Smith's neighborhood and parked about a block from Smith's building. As defendant and Neal got out of the car, Jarvis saw Neal put a gun in his pocket. Jarvis moved to the driver's seat and waited. Some time later, defendant came back to the car. He had blood on his clothes, was throwing up and gagging, and said they had to find Neal. Jarvis circled the block looking for Neal, then drove defendant to his mother's house.

¶ 14 Some time later, Jarvis and defendant drove to Indiana. The next day, Jarvis returned to Chicago, met with Detective Stover and Detective Murphy, and told them about the robbery.

¶ 15 The medical examiner who performed the autopsy on Neal testified that Neal had been shot in the abdomen and the leg and that he died as a result of multiple gunshot wounds. She stated that neither she nor anyone in her office recovered earrings or money from Neal's clothing.

¶ 16 Following arguments, the trial court found defendant guilty of armed robbery and attempted first degree murder. As discussed in more detail below, the trial court commented on Smith's credibility in the course of stating its findings. The

court subsequently sentenced defendant to consecutive terms of imprisonment of 14 years for armed robbery and 6 years for attempted murder.

¶ 17 On appeal, defendant contends that his conviction for armed robbery must be reduced to attempted armed robbery because the State failed to prove beyond a reasonable doubt that any property was actually taken from Smith or Smith's presence. Defendant argues that the State's sole evidence on this element came from Smith, a witness he describes as "completely incredible." He notes that no earrings or cash were ever recovered, and that Smith failed to tell the police officers or detectives about the alleged loss of property. Defendant argues that Smith's testimony was impeached, vague, inconsistent, contradicted by his own prior statements, and lacking in detail. He asserts that the cumulative effect of the deficiencies in Smith's testimony render the evidence insufficient to convict him of armed robbery.

¶ 18 When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the

evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 132 (1999). Reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 19 Where a guilty finding depends on eyewitness testimony, a reviewing court, keeping in mind that it was the fact finder who saw and heard the witness, must decide whether any fact finder could reasonably accept the witness's testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). It is for the finder of fact to judge how flaws in a witness's testimony affect the credibility of the whole. *Cunningham*, 212 Ill. 2d at 283. Accordingly, when a witness is found to have given false testimony on a material point, the fact finder may reject the entire testimony of that witness, but is not required to do so. *Cunningham*, 212 Ill. 2d at 283. Rather, the finder of fact may "accept or reject as much or as little of a witness's testimony as it pleases." *People v. Sullivan*, 366 Ill. App. 3d 770,782 (2006).

¶ 20 In announcing its findings in this case, the trial court specifically addressed Smith's credibility. The trial court characterized Smith as "slippery" and observed that he was

a drug dealer who kept drugs, money, and a weapon at his home, in the presence of a 15-month-old child. The court noted that Smith's testimony was not entirely consistent, and acknowledged the discrepancies between Smith's testimony and his earlier statements to the police, stating as follows:

"I know that Jason Smith carries baggage in this case, and I acknowledge that there were things that he said and things he didn't say to the police after being shot 14 times and that as his wounds have healed and he is in court being examined carefully by counsels that his answers are perhaps more complete, more detailed than they were when he was talking to the police right after having been shot. I acknowledge that."

¶ 21 The trial court's comments make clear that it was well aware of Smith's infirmities as a witness and demonstrate that it took these imperfections into account when assessing Smith's credibility and resolving conflicts in the evidence. We, like the trial court, are mindful that no earrings or cash were recovered by the police or the medical examiner, that Joy testified she was not missing anything from the apartment, that

Smith did not initially report any loss of property to the police or detectives, and that Smith's testimony regarding what he did or did not tell authorities was inconsistent. Nevertheless, Smith positively testified that he gave defendant and Neal \$6,000 or \$7,000 and that Neal took his earrings. Despite the doubts about parts of Smith's testimony, the statements that directly support a finding that property was taken could reasonably be accepted by the fact finder who saw him testify. See *Cunningham*, 212 Ill. 2d at 285.

¶ 22 Keeping in mind that it was the trial court who observed Smith's demeanor in court and heard his testimony, we find that the trial court reasonably could have accepted Smith's trial testimony regarding the taking of money and earrings as true beyond a reasonable doubt. See *Cunningham*, 212 Ill. 2d at 279-80. We cannot find that the only reasonable inference to be taken from the record is that the questionable parts of Smith's testimony make his entire testimony unworthy of belief. See *Cunningham*, 212 Ill. 2d at 284. The trial court heard the testimony and the parties' stipulations, and chose to believe that cash and earrings were taken from Smith. We decline to disturb the trial court's decision. After reviewing the evidence in the light most favorable to the prosecution, we conclude that the evidence was not "so unsatisfactory, improbable or implausible" to raise a reasonable doubt as to defendant's guilt.

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Slim, 127 Ill. 2d at 307. Defendant's challenge to the sufficiency of the evidence fails.

¶ 23 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.