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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08—CF—2991
)	
JARVIS S. GORDON,)	Honorable
)	Allen M. Anderson,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Bowman and Hutchinson concurred in the judgment.

ORDER

Held: The State proved defendant guilty beyond a reasonable doubt of armed violence (specifically defendant's identity): after running from the police, defendant was apprehended near the scene of the offense and shortly after, wearing distinctive clothing that the victims had seen on one of the offenders; although the trial court mischaracterized a victim's testimony as it was questioning her, we could not say that the mischaracterization had any effect on the outcome.

At issue in this appeal is whether defendant, Jarvis S. Gordon, was proved guilty beyond a reasonable doubt of armed violence (720 ILCS 5/33A—2(a) (West 2008)), two counts of attempted armed robbery (720 ILCS 5/8—4(a), 18—2(a)(2) (West 2008)), and residential burglary (720 ILCS

5/19—3(a) (West 2008)). More specifically, defendant argues that the evidence failed to establish that he was one of the offenders. For the reasons that follow, we affirm.

The facts relevant to resolving this appeal are as follows. Easter Miller testified that, on October 20, 2008, she was living at 724 North May Street in Aurora. Between 11 p.m. and midnight that night, she was sleeping in her bedroom. Her 10-year-old daughter, Jaslyn Miller, was sleeping on the couch in the living room. The only light on in the house at that time was a nightlight Easter kept in her room.

At around midnight, Easter heard a noise coming from the kitchen. When she investigated the noise, she saw two masked men standing in her kitchen. Although Easter could not identify the race of either man, she saw that one of the men was tall, and the other man was short. The tall man was wearing a gray hooded sweatshirt with black jeans. The short man was wearing dark-blue jeans with a unique jacket that was multicolored. Easter further described the jacket, which she saw only from the back, as having blue and yellow on it.

After Easter saw the men for a couple of seconds, she screamed and ran to her bedroom, where she called 911. Easter stood by her bedroom door pushing against it while she talked to the 911 dispatcher. Easter did this because the men were trying to force their way into Easter's room. As Easter was doing this, the tall man reached his hand into her room. In the tall man's hand was a gun. After less than one minute, the two men left her home. Easter estimated that the men were in her house for no longer than two minutes.

Easter did not tell the responding officers that night that the jacket had different colors on it, and she never told anyone about the design on the jacket. Several hours later, after Easter comforted

her daughter, who was very scared by the incident, Easter told officers that the black jacket had blue, yellow, and white on it.

At trial, Easter was shown a jacket,¹ and she indicated that, based on the colors, it looked like the jacket that the shorter man was wearing, but she could not “guarantee for sure.” Easter elaborated that she recognized the “blackness” on the jacket in addition to the “blue strip” at the top of the jacket. But, she did not remember some of the details at the bottom of the jacket.

Easter also was shown a pair of jeans, and she indicated that those were the jeans that the shorter man was wearing that night. She knew that those were the jeans “[be]cause of the color and [she] remember[ed] the redness and the green on the pocket.”²

¹Photographs of the front and back of the jacket, included in the record, reveal that the black waist-length jacket has yellow piping on the shoulders and around the neck. The front of the jacket says “Sacred Ground” in blue and has a primarily white graveyard scene depicted at the bottom. A yellow and blue skeleton with sunglasses and a top hat is also on the front of the jacket, and there is white lettering down the left sleeve. From the back of the jacket, one can see the yellow piping on the shoulders and the white graveyard scene at the bottom. “[I]mmortal” appears in blue at the back of the neck, “West side” is printed on a blue piece of canvas that is tacked to the upper part of the back and “spirit” is printed in white just below the “West side” canvas patch.

²A photograph of the back of the jeans, also included in the record on appeal, reveals that the jeans are a dark-acid-washed blue. The stitching on the jeans is yellow, black, and green, with a little bit of red accented at the pockets and the belt loops. One back pocket has a heavy-stitched squiggly-line design in yellow, green, and black, and the other pocket has a fabric patch depicting an island scene. Colors in the patch include green, yellow, black, light blue, and red. At the waist are an

Before Easter finished testifying, the trial court asked her a few questions. During that time, the following exchange occurred:

“THE COURT: [Easter], I have a question on your earlier testimony and make sure my notes are correct.

You were asked by the prosecutor when you saw the two black males in the kitchen, the taller man had [a] gray sweatshirt, hooded gray sweatshirt, or a gray sweatshirt with a hood, hood was up and jeans, I did not get your description, what you said of the shorter person.

THE WITNESS: Shorter person had the black jacket on, with blue jeans on, the lighter colored jeans on.”

Jaslyn testified that, as she was sleeping on the couch, she heard her mother scream. Jaslyn drifted in and out of sleep for a little bit until she saw two boys run out of the house. Although Jaslyn did not see what the taller boy was wearing, she saw that the shorter boy had on dark-colored jeans and a unique black jacket with white, blue, and green or yellow on it. Jaslyn saw that the jacket had writing on it in addition to some type of drawing. Jaslyn was shown a picture of the jacket that Easter had been shown, and she indicated that that was the jacket the shorter boy was wearing. Jaslyn recognized the jacket because of the writing on the top of the jacket and the colors.

After the boys fled, Jaslyn went to her mother’s room. Jaslyn was crying and very upset. When Jaslyn spoke to the police that night, she did not tell them about the blue writing on the jacket, but she did tell them about the white writing. Jaslyn also indicated that, a few months before October 2008, she saw a boy wearing a jacket similar to the jacket she saw on the shorter boy.

American flag patch and a Jamaican flag patch.

Officer Todd Fancsali testified that, on October 20, 2008, at approximately 11:50 p.m., he received a call about a disturbance at 724 May. As Fancsali was headed in that direction in his marked squad car, he saw a car, which was traveling at a high rate of speed, approximately half a block away from 724 May. The car turned off of May and Fancsali followed it.

Forty-five seconds later, Fancsali found the car parked in the side yard of a home that was four blocks away from May Street. The driver's door to the car was ajar. When Fancsali approached the car, he heard the chain-link fence in the backyard rattling. Fancsali stated that it sounded like someone climbing over the fence.

As additional backup surrounded the area, Fancsali and another officer walked through the backyard and over the fence until they reached the street that ran behind the house. There, they saw a man walking his dog. That man told the officers that he had seen two subjects who were apparently fleeing the police.

More police were called to further secure a perimeter, and Fancsali received a call that defendant was found on a neighboring street. Fancsali found the codefendant, Chavez Meeks, who was wearing a gray hooded sweatshirt and jeans. Meeks was located one block away from the car that Fancsali followed from May Street.

In Meeks' pocket were the keys to the car involved in the chase. Running the vehicle identification number on the car, Fancsali learned that defendant owned the car and that the license plate number was registered to the car. In the car, Fancsali found a credit card belonging to Meeks and a job application with defendant's name on it in addition to other personal information. A gun was found in the area where Fancsali heard the fence rattling.

When Fancsali searched the area, the only civilians he saw were Meeks and the man who was out walking his dog.

Officer Chad Kubis testified that he was one of the officers who helped set up a perimeter around the area where defendant's car was found. Kubis located defendant, who was wearing a black jacket and blue jeans, three blocks away from where Kubis was responsible for maintaining a perimeter. Defendant was walking between houses on one side of the street, crossed the street, and then proceeded to walk between houses on the other side of the street.

When defendant saw Kubis in his marked squad car, he took off running. Kubis exited his car and proceeded to chase defendant on foot. Kubis located defendant by a fence whose gate he was unable to open. Kubis, who had his weapon drawn and flashlight on, ordered defendant to stop, defendant complied, and defendant was taken into custody.

In court, Kubis was shown the black jacket that was shown to Easter and Jaslyn and the jeans that were shown to Easter. Kubis indicated that defendant was wearing those clothes when Kubis arrested him.

Jennifer Endres, a forensic scientist, examined the several prints that were taken from Easter's home. The one fingerprint that was suitable for comparison did not match defendant. Endres did not know whether that print belonged to any of the people living in Easter's home, because Endres did not compare that print to fingerprints taken from any who lived there.

The trial court found defendant not guilty of home invasion, but guilty of armed violence, two counts of attempted armed robbery, and residential burglary. In reaching that conclusion, the court relied on the unique clothing that defendant was seen wearing, the fact that defendant's car was seen speeding on May Street, and the fact that defendant was found soon after the men left Easter's

home and in an area not that far away from May Street. Moreover, the court observed that defendant's flight from Kubis established defendant's consciousness of guilt.

Defendant filed two posttrial motions, arguing, among other things, that he was not proved guilty beyond a reasonable doubt. The trial court denied the motions, and sentenced defendant to 16 years' imprisonment on the armed violence charge, noting that the two counts of attempted armed robbery and the one count of residential burglary merged with the armed violence count for sentencing purposes. Following the denial of defendant's motion to reconsider, defendant timely appealed.

At issue in this appeal is whether the identification testimony provided by Easter and Jaslyn, coupled with the circumstantial evidence suggesting that defendant was the shorter man Easter and Jaslyn saw in their home, was sufficient to establish defendant's guilt beyond a reasonable doubt. A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). When reviewing a challenge to the sufficiency of the evidence, “ ‘the relevant question 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.’ ” (Emphasis in original.) *Id.* at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

A criminal conviction may be sustained solely on the basis of circumstantial evidence. *People v. Saxon*, 374 Ill. App. 3d 409, 417 (2007). “Circumstantial evidence is ‘proof of facts and circumstances from which the trier of fact may infer other connected facts which reasonably and usually follow according to common experience.’ ” *People v. McPeak*, 399 Ill. App. 3d 799, 801 (2010) (quoting *People v. Stokes*, 95 Ill. App. 3d 62, 68 (1981)). The choice of inferences to be

drawn from the evidence belongs to the trier of fact. *People v. Hay*, 362 Ill. App. 3d 459, 465 (2005). Thus, the trier of fact is not required to draw those inferences most favorable to the defendant. See *People v. Martin*, 401 Ill. App. 3d 315, 323 (2010) (whether or not it was reasonable to infer that caps on natural gas lines had simply fallen off, it was also reasonable to infer that the caps had been removed intentionally, and trier of fact in reckless-conduct prosecution was entitled to draw the latter inference).

Here, we determine that, from the evidence presented to the trial court, a rational trier of fact could have found defendant guilty beyond a reasonable doubt. First, although neither Easter nor Jaslyn described the shorter man's clothing in detail on the night of the incident, and the conditions under which they observed him were anything but ideal, they both identified the clothing defendant was wearing when he was apprehended as the clothing that the shorter man was wearing. The trial court, as the trier of fact, found that the fact that neither witness could describe the clothing in greater detail, that neither witness observed the man for a great period of time, and that both witnesses saw the man only in a dark house late at night did not warrant discrediting their testimony. We, as a court of review, may disturb the trial court's credibility determinations only if no rational trier of fact would have come to the same conclusion. See *People v. Rincon*, 387 Ill. App. 3d 708, 724 (2008). That threshold is not met here.

Moreover, in addition to the fact that Easter and Jaslyn identified the clothing found on defendant as the clothing the shorter man was wearing is all the other circumstantial evidence linking defendant to the crimes. Within seconds after the police were called, Fancsali saw defendant's car speeding down May Street, only half a block away from Easter's home. Fancsali followed defendant's car and found it 45 seconds later abandoned in the side yard of a home. The only

civilians observed in the small area around May Street were the man walking his dog, Meeks, and defendant. Defendant was apprehended a short distance away from May Street, and he was wearing the clothing that Easter and Jaslyn identified in court as belonging to the shorter man. Given all of that evidence, in addition to the fact that defendant ran from Kubis when he saw his squad car approaching (*People v. Harris*, 225 Ill. 2d 1, 23 (2007)) a rational trier of fact certainly could infer that defendant was the shorter man who broke into Easter's home. See *People v. Ward*, 66 Ill. App. 3d 690, 693 (1978) ("The identification of distinctive clothing worn by a defendant may be sufficient to sustain his conviction, particularly when other evidence of guilt exists, and a positive facial identification is not required.").

Defendant notes that both Easter and Jaslyn saw the two men for a brief period of time in a place in their home where no lights were on. Neither of these witnesses initially described defendant's unique clothing with any detail, and Easter even said that the jacket she was shown only looked like the one the shorter man was wearing. From that, defendant questions the strength of the State's case. We do not.

A case that we believe is similar to this one is *People v. Dailey*, 15 Ill. App. 3d 214 (1973). There, a victim who briefly saw a burglar in her home positively identified the defendant at trial, but, when she was asked at the scene if the defendant was the burglar, she only told the police that the defendant looked like the burglar. *Id.* at 218. While that identification testimony was perhaps weak, supporting the conclusion that the defendant was the burglar were the facts that an unusual flashlight that looked like a flashlight the defendant owned was found in the victim's garage, glass panes on a door in the victim's garage were broken and glass was found on the sweatshirt the defendant was wearing, the defendant's car was parked in front of the victim's home, the defendant was

apprehended by his car, and the burglar and the defendant were both wearing hooded blue sweatshirts. *Id.* Based on that evidence, the trial court found the defendant guilty of burglary, and the reviewing court affirmed. *Id.*

As in *Dailey*, although the testimony from Easter and Jaslyn leading to the conclusion that defendant was the shorter man who broke into their home was perhaps weak by itself, the circumstantial evidence establishing that defendant was the shorter man was quite strong. Based on that strong circumstantial evidence, the trial court found defendant guilty. We, like the court in *Dailey*, see no sound basis for disturbing that finding.

Moreover, defendant takes issue with the fact that the trial court asked Easter about the two “black” men in her home. As defendant correctly notes, Easter testified that she could not tell the race of either of the intruders. Based on this erroneous recitation of the evidence, defendant urges that “the court *** believe[d that] the eyewitness testimony was stronger than it really was.” Although it was error for the court to mischaracterize Easter’s testimony in this way, we cannot conclude that that error, in light of all of the evidence, supports finding that the trial court somehow believed that the eyewitness testimony was stronger than it actually was. Not only has defendant failed to cite any authority to support this position, but, also, reaching such a conclusion would require this court to speculate about why the court made that statement and what effect it had on the court’s ultimate ruling. For example, it could very well be that the court mistakenly indicated that the men were “black,” but, when the court reviewed its notes (which note-taking the court referred to numerous times during the proceedings), the court realized that Easter did not testify about either man’s race. If that was the case, the court certainly did not enhance the credibility of Easter’s identification testimony in finding defendant guilty.

For these reasons, the judgment of the circuit court of Kane County is affirmed.

Affirmed.