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No. 3-08-0922

Order filed January 11, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the Tenth Judicial Circuit
Plaintiff-Appellee,	)	Peoria County, Illinois,
	)	
v.	)	No. 08-CF-0124
	)	
ALLEN BROWN,	)	The Honorable
	)	James E. Shadid,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Justice Wright specially concurred in the judgment.  
Justice O'Brien dissented.

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**ORDER**

*Held:* Where the State's DNA evidence failed to exclude potential suspects with same alleged motive as defendant as contributors of unknown DNA recovered from clothing associated with murder, evidence failed to prove defendant guilty beyond a reasonable doubt.

The State indicted defendant, Allen Brown, with two counts of first degree murder, for allegedly knowingly killing a victim over the age of 60 and felony murder, and for residential burglary. The State dismissed the charges for felony murder and residential burglary and

proceeded to trial on the charge of first degree murder of a victim over the age of 60. Following a trial, a jury found defendant guilty of first degree murder and the circuit court of Peoria County sentenced him to 100 years' imprisonment. For the following reasons, we reverse.

#### BACKGROUND

The indictment against defendant arose from the death of Hung Tien. The killer murdered Tien in Tien's home. Defendant lived in the home immediately to the north of Tien's. Tien was defendant's landlord at the time of the murder in November 2007. Defendant's residency in Tien's property was to end on December 1, 2007. At the time of the murder defendant had secured a lease at a new residence and was preparing to move.

The victim's daughter, Ahn Tien, lived with the victim. She testified that on the morning of the killing, November 26, 2007, her father called her cellular telephone at approximately 1:00 a.m. and told her that someone was banging on the door to their home. Ahn told her father she would call back as she drove home. She tried to call as she began to drive home but Hung failed to answer. When she arrived at the home, she found the lock broken. Once inside, she found her father lying on the floor bleeding. At defendant's trial, a forensic pathologist opined that the victim was struck twice with a hammer and four to six times with a pry bar, eventually dying from injuries to the head and skull resulting from blunt force trauma. Officer Eric Ellis testified that the walls at the scene had large amounts of blood on them extending as high as eight feet above the victim's head. Ellis described the blood on the walls as "cast-off" blood. Ellis explained this meant that the blood was cast off the weapon used to strike the victim. The scene also carried "splatter blood."

Ahn testified that defendant lived next door as a tenant in one of her father's rental

properties. She testified that problems had arisen in the past between defendant and her father because defendant either failed to pay his rent or failed to pay in full. Later, however, she testified that defendant paid his rent in full every month but had failed to pay the full security deposit her father required on defendant's six-month lease. Defendant agreed that he had failed to pay the full security deposit but that he was current on his rent. Another neighbor, Julie Raabe, opined that defendant and Hung did not get along. Raabe testified that defendant told her that he did not like the victim and that he and Hung frequently argued. Raabe testified that defendant told her that Hung frequently "got smart" with him. Raabe admitted that Hung had a temper. Raab testified that defendant once said he would "kick his ass" in reference to Hung. Defendant testified that he never made that statement to Raab.

In October 2007 defendant complained to Ahn about sewage backing up in the basement of the rental house. The jury heard testimony that defendant later complained to code enforcement officials about the sewage as well as debris in his yard. Defendant complained that the person his landlords hired to repair those problems had not done a good job.

Ahn had informed defendant he needed to find a new place to live. Ahn testified that defendant's lease ended December 1, 2007, and that they did not renew defendant's lease because she wanted to fix-up the property. The jury heard testimony that defendant did not want to move. The jury also heard testimony that defendant had found new quarters and had signed a new lease on November 16, 2007. Defendant moved out a few days after the murder and defendant's new landlord permitted him to move in a few days before the December 1 start of the parties' lease. No problems arose from defendant's move except that he neglected to return his key to Ahn.

Officer Walden of the Peoria Police Department described the physical relationship between the victim's residence and defendant's residence. Walden testified that a fence separated the backyards of the two residences. Walden also testified that the lock on the back door to the victim's residence was broken open and that he found pieces of the lock on the floor. Based on what he found, Officer Walden directed a canine unit to track the area of the backyard. Canine officer Brad Hutchinson testified that his canine began tracking the backyard from the victim's back door because police believed the killer left the victim's residence through the back door. The canine tracked to the gate in the fence between the victim's and defendant's backyards. Police found the gate ajar. The other gates to the victim's residence were all closed. The canine identified a scent at the gate.

The canine then lead police to a nearby ditch. In the ditch, police found two shirts--a long-sleeved buttoned shirt and a t-shirt--and a towel under a concrete block. The canine continued tracking and lead police to a waste disposal unit behind a business. In the waste container, police found a hammer, a crow bar, gloves, and a cellular telephone. Police identified the cellular telephone in the waste container as one that was taken from the Tien residence. The hammer and gloves had blood on them. The crow bar had blood splattered across its entire surface. Police could not locate any fingerprints on any of the items.

The buttoned shirt had blood on it. Ann Yeagle, a forensic scientist for the State, testified that she examined the long-sleeved shirt. She found blood on the right sleeve of the shirt and a small amount on the collar. Officer Ellis testified that, given the amount of blood at the scene of the killing, he would expect to find blood on the front of the shirt unless the killer wore another shirt over the shirt police found in the ditch. Yeagle opined that the blood on the sleeve was a

contact stain or splatter. The shirt was in close proximity to the source of the blood when it became stained by contact or splatter. She also found smear stains on the shirt.

Debra Minton, also a forensic scientist for the State, testified that the blood on the shirt found in the ditch, and the blood on the hammer and gloves found in the waste container, was Hung's blood. Minton searched the inside of the shirt, where the tag would rub the skin of the person wearing the shirt, for DNA. She found DNA from more than one person on the shirt's collar. Minton identified major and minor contributors of the DNA on the shirt. Defendant was the major contributor of DNA on the shirt stained with Hung's blood. The minor contributors were neither defendant or Hung. Minton also tested the gloves police found in the waste container for DNA. She found DNA from two to three individuals and possibly more. Defendant was the major contributor of DNA found on the gloves police retrieved from the waste container. Minton had DNA standards of two other suspects in the case. She was able to eliminate the two other suspects as contributors of the DNA found on the gloves.

A Peoria police detective testified that police initially believed two killers were involved because two weapons were used. Police asked Ahn to provide the names of anyone she believed may have been angry with Hung. Ahn initially gave police some names, but did not include defendant as a possible suspect until months later. Police spoke to defendant and his roommate the morning Ahn discovered her father murdered. Defendant told police that he finished work at approximately 11:00 p.m. the previous night and that although his dog usually barks at everything it had not barked the night of the murder.

At trial, defendant's roommate, Ronald Kitson, testified that on the night of the murder, defendant returned home at approximately 11:00 p.m., they talked until approximately 12:30

a.m., then Kitson went to bed. Kitson woke at 3 a.m. when police arrived at their home. Kitson testified that he did not see defendant leave the residence any time between 12:30 and 3:00 a.m. Police also spoke to another neighbor, Devon Lyons. Lyons testified that his dogs normally bark whenever anyone comes to his home. Lyons did not recall any barking on the night of the murder until police arrived at his home.

Defendant's girlfriend, Annette Edwards, testified that she lived with defendant at the time of the murder, and that she, defendant, and Kitson had begun packing for the move to the new rental unit approximately one week before defendant moved out of the residence. Defendant testified that they had begun preparations to move on November 23rd or 24th. Edwards testified that as part of their packing and preparing to move, they discarded many items. Two additional witnesses testified that they assisted defendant with his move and that in the process they discarded many items, including clothing and, specifically, shirts. One witness testified that he had kept a couple of defendant's shirts. The evidence revealed that the last garbage collection from defendant's residence prior to the murder would have occurred on November 21. The garbage was not scheduled for collection from the residence again until after the murder.

Edwards identified the two shirts police seized from the ditch and the gloves seized from the waste container. Edwards purchased the long-sleeved shirt for defendant. She saw him wear it a couple of times. The t-shirt and gloves were hers. The gloves had been her work gloves, but she did not like them so she brought them home. Edwards testified that defendant tried on the gloves and liked them. Edwards opined that defendant and Hung got along together.

Defendant admitted having owned the shirt. Defendant testified that he discarded the shirt in preparation for the move because it did not fit him correctly. He estimated he had worn

the shirt three times, but he never washed it. He identified the other shirt as Edwards' and testified that he had never worn it. Defendant testified that he had tried on Edwards' work gloves. He also threw them away in preparation for the move because he had no use for them. On the night of the murder, defendant finished work at 10:45 p.m. and arrived home at 11:00. He talked with his roommate until midnight or 12:15 a.m., bathed, took his medication, and went to sleep. Defendant testified that he slept until 3:00 a.m. when police arrived at his home. Defendant had to put his dog in a back room because it started barking when police arrived. Defendant testified the dog had not barked all night until police arrived. Defendant woke Kitson after police arrived.

Defendant admitted he had a prior conviction for vehicular invasion with robbery. Defendant testified that he and Hung never had any trouble and just said "Hi" to one another. On the night of the murder he never left his home after returning from work. He was not aware of the murder until police arrived. The State played a videotape recording of an interrogation in which police asked defendant if there was any reason clothing with his DNA on it would also have the victim's blood on it. Defendant stated to police that he had no idea why his DNA would be on any evidence. At trial, defendant explained that when he made that statement to police the officer was not specific with regard to the clothing. The officer merely stated that there was clothing with defendant's DNA on it and he asked defendant if there were any reason clothing with his DNA on it would have the victim's blood on it as well. Defendant testified that he did not know the officer was referring specifically to his discarded clothing when he stated he had no idea why his DNA would be on the clothing.

In February 2008 police searched the residence where defendant lived at the time of the

murder. Police used a reagent that reveals the presence of blood. Police searched the kitchen sink, bathroom sink, bathtub, and basement sink with the reagent. Police also tested other areas of the property for blood. Police did not find any blood in defendant's former residence.

The trial court denied defendant's motion for a directed verdict. Following deliberations, the jury found defendant guilty of first degree murder of a victim over the age of 60. The court sentenced defendant to 100 years' imprisonment. The trial court denied defendant's motion to reconsider sentence.

This appeal followed.

#### ANALYSIS

Defendant's sole argument on appeal is that the State failed to prove him guilty beyond a reasonable doubt of first degree murder, because the evidence fails to connect him to Hung's murder. Defendant argues that the DNA evidence fails to connect him to Hung's murder because "there was an innocent and credible explanation for how [his] DNA got onto the items."

"When presented with a sufficiency-of-the-evidence challenge, it is not the function of this court to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Instead, 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. [Citation.] We 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. [Citation.] The

critical inquiry on review of the sufficiency of the evidence is to determine whether the record evidence could reasonably support a finding of guilty beyond a reasonable doubt. [Citations.] This standard of review applies whether the evidence is direct or circumstantial and whether the defendant receives a bench trial or jury trial. [Citation.] The trier of fact is best equipped to judge the credibility of witnesses, and the fact finder's determinations are entitled to great deference. [Citation.]” (Emphasis in original.) *People v. Ostrowski*, 394 Ill. App. 3d 82, 91 (2009).

Defendant’s premise in support of his conclusion that the evidence fails to legally identify him as Hung’s murderer is *factually* correct. An innocent and credible explanation does exist for the presence of his DNA on the shirt and gloves stained with the victim’s blood. Defendant admitted having owned and having worn both items. Further, defendant’s girlfriend testified that she purchased the shirt in late October or early November and that defendant wore the shirt a few times before the murder. She also provided evidence that defendant wore the gloves before the murder. This is important testimony because the ultimate questions are not when and how defendant deposited his DNA on the items, but when and how those items became stained with the victim’s blood, whether the defendant, or someone else, was the *last* person to wear the blood splattered shirt before hiding it and the other shirt under a brick in the alley, and whether defendant was the last person to wear his fiance’s gloves before placing them with the murder weapon in a waste container.

No direct evidence explains the presence of Hung’s blood on defendant’s shirt. That is,

no witnesses saw the shirt become stained with Hung's blood or testified how and when it happened. The dissent is wrong to accuse us of finding that "the DNA evidence was insufficient for a rational juror to connect the defendant to Hung's murder." Slip dissent at 3. The innocent explanation for the presence of defendant's DNA on the shirt does not lead to the legal conclusion that *no* evidence ties defendant to Hung's murder. It is obvious that the jury reasonably inferred that the shirt and gloves became stained with the victim's blood during his murder. We accept that inference in deference to the jury's verdict and because it is supported by facts. The State's forensic scientist testified that the shirt was in close proximity to the source of the blood when it became stained by contact or splatter. The innocent explanation for the presence of the DNA does not break the connection between defendant, the items, and the murder. The link between the three is established by the presence of the blood and the reasonable, factually supported inference that the blood was deposited on the shirt during the murder.

We recognize, however, that the inquiry does not end there. The question is whether the "tie" between defendant and the murder is sufficient to prove, beyond a reasonable doubt, that defendant committed the murder. Nor is our decision based on the fact that the evidence adduced by the State to prove this "tie" is "predominantly circumstantial" (slip dissent at 4) or, for that reason, doubtful. See slip dissent at 4 ("The majority assigns doubt to the evidence in part *because* it is predominantly circumstantial") (emphasis added). Regardless of whether the evidence is direct or circumstantial, the evidence must establish more than the presence of defendant's shirt at the scene of a murder to prove that defendant committed the murder. The State failed to produce evidence of anything more than that. Instead, the State asked the jury to

simply infer, from circumstantial evidence, that it was defendant who wore the shirt while the murder was being committed.

To sustain a conviction based on circumstantial evidence alone, the evidence must exclude all reasonable hypotheses of innocence. Indeed, it has been noted that:

"Such an approach is supported by a long line of Illinois cases dating back to *People v. Johnson*, 317 Ill. 430 (1925), where the court said

'If the evidence is capable of a reasonable explanation consistent with the innocence of the defendant there can be no theory on which a verdict of guilty can be based, because if the evidence is consistent with innocence it cannot be said that guilt is proved beyond a reasonable doubt.' [Citation.]"

*People v. Russell*, 29 Ill. App. 3d 59, 67-68 (1975).

Again, the State's direct evidence stops with defendant's one-time ownership of the shirt and gloves. Defendant, by contrast, presented testimony from multiple witnesses that he discarded both items before the murder. There is no direct evidence that defendant possessed the items at the time the murder was committed. That conclusion is only an inference the jury could, reasonably, draw from defendant's admitted ownership in the past. That is, the jury could infer

that defendant's admitted possession continued until shortly after the murder. However, there is both direct and circumstantial evidence that defendant discarded the items in question before the murder.

The victim's daughter explained why defendant was preparing to move before the murder and defendant's new landlord testified that defendant secured new housing before the murder. The direct evidence that defendant discarded the items in question before the murder is the undisputed evidence that defendant was in fact preparing to move and defendant's own undisputed testimony that he threw out the exact shirt and gloves in question. Defendant's witnesses did not describe the shirt and gloves in evidence as ones they specifically saw defendant discard. Nonetheless, the testimony from three other witnesses that defendant discarded many items of clothing in preparation for his move, and that those items included some shirts, is circumstantial evidence that defendant discarded the shirt and gloves in question.

As to the reasonable inferences from the facts, the State elicited scientific evidence that both items in question contained DNA from more than one person but the other persons were minor contributors to the DNA found. Again, it is important to recognize that the fact that defendant was the major contributor of DNA found on the blood-stained items is circumstantial evidence of defendant's guilt but is not *conclusive* of whether defendant killed Hung while wearing those items. See *People v. Beauchamp*, 389 Ill. App. 3d 11, 16 (2009) ("conjecture \*\*\* is not proof beyond a reasonable doubt"). Indeed, the DNA evidence failed to exclude defendant's fiancé as the murderer because the State's scientific evidence did not inform the jury whether her DNA was also present on both the gloves and the discarded shirt or shirts. There was no cross-comparison showing the defendant's DNA was the only DNA common to both the

gloves and the shirt.

The fact that those other persons were minor contributors to the DNA found on the items is not inconsistent with the reasonable inference that someone else with access to the shirts either before or after defendant discarded them retrieved the items before and possibly for the purpose of murdering Hung. There is also direct evidence that others had access to the shirts. One frequent visitor, Anthony Hugilli, testified that he helped defendant to pack for the upcoming move, and his brother, Dennis Shirley, who also helped defendant to pack, even admitted keeping some of defendant's shirts. A reasonable trier of fact could infer that someone who had never worn either item before wore them only briefly to murder Hung and deposited DNA in an amount less than the amount the former owner, who admitted wearing the shirt three times, deposited.

The State did not attempt to exclude the other two roommates or frequent visitors as the sources of the DNA on either the bloody shirt's tag or the blood stained gloves although they shared both access and the same alleged motive for killing Hung. The State suggests the jury reasonably inferred that defendant discarded the shirt found in the ditch after he killed Hung and, presumably, also discarded an over-shirt. Viewed in totality, the facts are inconsistent with the State's premise that defendant attempted to hide the shirt in the ditch because it had the victim's blood on it after defendant killed the victim. Walden's direct testimony was to expect to find more blood on the shirt if the shirt was the actual killer's outermost layer of clothing. But police did not find another blood-soaked shirt in the ditch, waste container, or defendant's backyard. Police searched defendant's home but failed to find evidence that a blood-soaked shirt had ever been in the residence or any evidence that defendant had washed blood from either clothing or

his person after Hung was killed.

The facts are that the victim died from being repeatedly struck with a hammer and pry bar resulting in massive blood splattering across the room, one shirt was found but the shirt in evidence is *not* covered in blood, and both murder weapons were found. Those facts do not reasonably support the inference that defendant succeeded in hiding one shirt from police but not 1) the other shirt, 2) either murder weapon, 3) the gloves, or 4) an item taken from the home (the cellular telephone).

"When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant.

As the United States Supreme Court observed in *Jackson v.*

*Virginia*, 443 U.S. 307, 319 (1979), '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.'

[Citation.]" (Emphasis in original.) *People v. Collins*, 106 Ill. 2d

237, 261 (1985).

Thus, while we agree with defendant's argument that there is an innocent and credible explanation for how his DNA got onto the blood-stained shirt and gloves, the basis of our judgment is not that this creates a reasonable doubt "sufficient to overturn the defendant's conviction" as the dissent accuses. Slip dissent at 1. We recognize the dissent's concern that "it is not the function of this court to retry the defendant" (slip dissent at 1), and we did not "reweigh the evidence to determine if the defendant's argument could create an inkling of doubt

in a rational juror's mind." Slip dissent at 1-2, quoting *Collins*, 106 Ill. 2d at 261.

But if the court were to follow the dissent's view and admit that the evidence "could create reasonable doubt in a rational juror" (slip dissent at 1), yet affirm because, in a particular case, "the evidence \*\*\* did not cause the jury to doubt the defendant's guilt" (slip dissent at 1), we would abdicate our role as a court of review in criminal cases and render criminal appeals challenging the sufficiency of the evidence either wholly superfluous or matters of rote. Under the approach advocated in the dissent, we would be forced to affirm a criminal conviction if there is some evidence which might point generally in the direction of the defendant's guilt. But conviction requires not just some proof, but proof beyond a reasonable doubt. It has been said that, too often, "appellate courts mention only the first statement from [*Collins*] and emphasize the word 'any.' The implication is that if one person in a hundred could have seen the facts the way the [trier of fact] did, we cannot interfere, although we strongly disagree with the finding." *People v. Minniweather*, 301 Ill. App. 3d 574, 577 (1998). That implication is false.

Although, in this case, "the defendant's argument, combined with the evidence presented, did not cause the jury to doubt the defendant's guilt" (slip dissent at 1), this court cannot allow a criminal conviction to stand where the evidence is objectively insufficient to remove all reasonable doubt of a defendant's guilt. While the police properly collected and preserved the evidence for analysis, the State's forensic analysis fell short of extinguishing reasonable doubt. The evidence established that defendant was one of three persons who may have worn the shirt and/or gloves at the time of the victim's murder. A 33% possibility is not enough to survive reasonable doubt when two other tenants of the house shared the same motive for murder. This court recognizes that:

“a fact finder's decision is ‘neither conclusive nor binding,’ and a conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt. [Citation.] Appellate review of the sufficiency of the evidence must include consideration of *all* of the evidence, not just the evidence convenient to the State's theory of the case. [Citation.] Although we are not required to search out all possible explanations consistent with innocence or be satisfied beyond a reasonable doubt as to each link in the chain of circumstances, we must ask, after considering all of the evidence in the light most favorable to the State, whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.” (Emphasis in original.) *Ostrowski*, 394 Ill. App. 3d at 91.

The dissent repeatedly states that the evidence in this case did not cause this jury to doubt the defendant’s guilt. Slip dissent at 1, 4. It is not the role of this court to determine simply whether any rational trier of fact could have found the essential elements of the crime. We respectfully believe that the dissent’s analysis stops with that determination and holds that, because this trier of fact *did* find the essential elements of the crime proved, it necessarily did so beyond any objectively reasonable doubt. We disagree. We have not retried the defendant and found, in our own subjective view, a reasonable doubt of guilt. Rather, we have objectively viewed the evidence, with an eye toward determining whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”

In sum, without more definitive DNA, direct, or circumstantial evidence, the evidence adduced by the State in this case, even viewed in the light most favorable to the State, is so improbable and unsatisfactory that it creates a reasonable doubt of defendant's guilt. The evidence and reasonable inferences therefrom do not support the conclusion that defendant is guilty of first degree murder beyond a reasonable doubt. Accordingly, the defendant's conviction must be reversed.

### CONCLUSION

The circuit court of Peoria County's order convicting defendant of first degree murder and sentencing him to 100 years' imprisonment is reversed.

Reversed.

JUSTICE WRIGHT, specially concurring:

I share the author's conclusion that the evidence in this case did not support a conviction beyond a reasonable doubt. This was not a crime easily solved with a singular DNA analysis since the initial DNA testing indicated at least *three* persons could be the murderer based on the presence of their DNA on clothing that was splattered with the victim's blood. It is undisputed that defendant was one of those three persons.

The difficulty in this case is that once the lab concluded that some of the DNA on the shirt collar and gloves belonged to defendant, there was no attempt to conduct a second round of DNA tests to identify the other persons whose DNA was also found on the gloves and/or the striped shirt. It is undisputed that the State lab tests in this case scientifically established defendant was the largest contributor of DNA on the striped shirt and gloves. However, this

evidence did not extinguish the very reasonable possibility that the smallest contributor of the DNA may have been the last person wearing the striped shirt and work gloves together, on a single abbreviated occasion, after burglarizing the victim's residence on the night of the murder.

The prosecutor argued to the jury that defendant acted alone in this case. Thus, the state had to convince the jury beyond a reasonable doubt that defendant was the *only* person wearing *both* the gloves and the shirt at the time of the homicide. In this regard, the State's forensic evidence failed to eliminate the reasonable possibility that a minor contributor, someone other than defendant, could have been wearing *both* the striped shirt and the gloves at the time of the murder. Significantly, the lab technician did not testify to conducting a cross-comparison which conclusively proved a minor contributor of the detected DNA was *not* common to both the gloves and the striped shirt. Based on the record, the jury was not informed that a minor contributor was an unlikely murderer and could not have been the last person to wear both the striped shirt and gloves before discarding the evidence.

I acknowledge that the State offered circumstantial evidence that defendant had a purported motive to murder because the victim and his adult daughter would not agree to renew defendant's six-month lease as he had hoped. However, this purported motive was equally applicable to the other occupants of defendant's rental home, and their frequent household guests, who would all be forced to find other accommodations, such as defendant's fiancée and a male roommate. In addition, defendant's cousin, Anthony Hugilli, previously lived with defendant, next door to the victim, during the six month lease and continued to be a frequent visitor at that location. Hugilli was impeached with a certified copy of his felony conviction for residential burglary, but testified that he and his brother, Dennis Shirley, helped defendant pack

for the upcoming move. Shirley admitted keeping “a couple of shirts” from defendant while helping with the relocation. Again, the State’s evidence did not advise the jury that either defendant’s fiancée, current roommate, Hugilli, or Shirley could not be the murderer because each person had been excluded as the second source of DNA on the striped shirt’s collar with a second round of DNA comparisons.

Viewing the evidence in the light most favorable to the State as required by *People v. Collins*, 106 Ill. 2d 237 (1985), the undisputed scientific evidence established defendant was one of three persons who may have been wearing the work gloves at the time of the victim’s murder. A 33% possibility is not enough to survive reasonable doubt. Additionally, the DNA evidence established defendant was one of two people who may have been wearing the striped shirt at the time of the victim’s murder. A 50/50 possibility is not sufficient as proof beyond a reasonable doubt, especially when other past and present tenants of the rental house had equal access to the work gloves and defendant’s shirt, shared the same professed motive, and were not excluded by the forensic evidence and circumstantial evidence.

For these reasons, I specially concur.

JUSTICE O’BRIEN, dissenting:

Because the totality of the evidence presented at trial provides a sufficient evidentiary connection for a rational juror to convict defendant Allen Brown of Hung Tien’s murder, I respectfully dissent from the majority’s holding.

The majority finds the defendant’s argument that there was “an innocent and credible explanation for how [his] DNA got onto the [blood-stained shirt and gloves]” as creating

reasonable doubt sufficient to overturn the defendant's conviction. I disagree. Although the defendant's argument could create reasonable doubt in a rational juror, in this case, the defendant's argument, combined with the evidence presented, did not cause the jury to doubt the defendant's guilt. Because "it is not the function of this court to retry the defendant," we should not reweigh the evidence to determine if the defendant's argument could create an inkling of doubt in a rational juror's mind. *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985). Rather, we should not overturn such cases on sufficiency-of-the-evidence grounds when "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." *People v. Evans*, 209 Ill. 2d 194, 209, 808 N.E.2d 939, 947 (2004). As the evidence presented at trial was neither improbable nor unsatisfactory, we should not overturn this case. *See Collins*, 106 Ill. 2d at 261, 478 N.E.2d at 276 (stating "a criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt").

First, the majority begins its analysis by pointing out that this case is primarily about DNA. While I agree that DNA plays the predominate role in our decision, it was not the sole evidentiary basis weighed by the jury in its conviction. In rendering its guilty verdict, the jury also considered evidence of the defendant's motive. Such evidence begins the factual discussion in the majority's decision but is ignored in its analysis. At trial, the prosecution opened its case with testimonial evidence from Anh Tien, Hung Tien's daughter, and Julie Raabe, Hung's neighbor. Both witnesses testified that Hung and the defendant did not get along well. Specifically, Anh testified that Hung and the defendant had some problems in the past because the defendant would sometimes not pay his rent or paid it late and he had not paid the entire

security deposit. However, Anh stated there were no problems when the defendant began moving out prior to Hung's murder. Raabe testified that the defendant did not get along with Hung and once said he would "kick his ass." Additionally, Raabe stated that Hung had a temper. In the defendant's case, Anh and Raabe's testimony was contradicted by the defendant's testimony that he had not threatened Hung and that he and Hung never had any problems. This evidence provided the first basis for a rational juror to be persuaded beyond a reasonable doubt to convict the defendant. Although this evidence is conflicting, it is ultimately within the discretion of the jury to decide whose story to believe.

Second, I disagree with the majority's analysis that the DNA evidence was insufficient for a rational juror to connect the defendant to Hung's murder. The majority reaches this conclusion by re-examining the evidence in search of a link between the defendant and Hung's murder. However, such an in-depth reweighing of the facts is unnecessary because the relevant evidence was neither improbable nor unsatisfactory. *See Collins*, 106 Ill. 2d at 261, 478 N.E.2d at 276 (stating "a criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt").

The DNA connection between the defendant and Hung's murder is rooted in two pieces of evidence, a blood-stained shirt and pair of gloves. Officer Brad Hutchinson testified that he found a blood stained shirt underneath a concrete block in a ditch near the defendant's and victim's homes. Officer Eric Ellis then testified that he found a pair of blood stained gloves in a nearby dumpster along with a hammer, pry bar, and cell phone that each had blood on them. Forensic scientist Debra Minton testified that she received the button down shirt and gloves from the investigating officers. Minton's DNA tests found that the blood stains on the shirt and gloves

matched Hung's DNA. Further, DNA tests on the shirt, where the tag rubs against the wearer's neck, indicated that the defendant was the major contributor of the DNA on the inside of the shirt, although there was a second unidentified minor contributor. DNA analysis of the inside of the blood stained gloves contained a mixture of two or more individuals' DNA but the majority of the DNA matched the defendant. The defendant contradicted this evidence with testimony that he had owned the shirt and gloves, but he disposed of them prior to his move and Hung's murder. The defendant's ex-girlfriend, Annette Edwards, corroborated this statement. Edwards testified that she purchased the shirt for the defendant and saw him wear it on several occasions. The defendant explained that he wore the shirt three times before disposing of it because it did not fit. Further, the defendant stated that he tried on the gloves a few times but got rid of them before the move because he had no use for them.

During the police investigation and trial, the collection and introduction of the evidence was not disputed by the defense or prosecution. Additionally, the defendant provided no direct evidence indicating that he permanently disposed of the blood-stained shirt and gloves prior to Hung's murder. Instead, the defendant testified that he disposed of these items prior to beginning his move, a statement which was never specifically corroborated by the defendant's testimony or that of his other witnesses. Consequently, the evidence presented was conflicting, raising questions of fact for the jury to decide, but was neither improbable nor unsatisfactory. In these situations, we must give great deference to the trier of fact's decision because all the evidence "taken together, satisfie[d] the jury beyond a reasonable doubt of the accused's guilt." *People v. Fletcher*, 72 Ill. 2d 66, 71, 377 N.E.2d 809, 812 (1978).

The majority assigns doubt to the evidence in part because it is predominantly

circumstantial. However, the commission of an offense may be established entirely by circumstantial evidence, provided it is of a conclusive nature and tends to lead to the reasonable and moral certainty that the accused and no one else committed the crime. *Fletcher*, 72 Ill. 2d at 71, 377 N.E.2d at 812 (1978). Although the evidence permits alternative probable explanations, we are not in a position to reweigh the evidence. Further, we are without grounds to overturn this case on sufficiency-of-the-evidence grounds because the evidence was neither improbable nor unsatisfactory. I, therefore, respectfully dissent from the majority's holding.