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2012 IL App (3d) 110203-U

Order filed December 31, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-11-0203
	)	Circuit No. 10-CF-1481
	)	
CHARLES CAMPBELL,	)	Honorable
	)	Amy Bertani-Tomczak,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE SCHMIDT delivered the judgment of the court.  
Justices Holdridge and Lytton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The evidence, when examined in the light most favorable to the State, was sufficient to convict defendant of robbery and aggravated battery.

¶ 2 Following a bench trial, defendant, Charles Campbell, was convicted of robbery (720 ILCS 5/18-1(a) (West 2010)) and aggravated battery (720 ILCS 5/12-4(b)(8) (West 2010)).

Defendant filed a motion for new trial, which was denied. The trial court sentenced defendant to concurrent terms of 11 and 3 years of imprisonment, respectively. Defendant filed a motion to reduce sentence, which was also denied.

¶ 3 Defendant appeals, arguing: (1) the trial court erred in finding him guilty because the court relied on the testimony of "highly inebriated witnesses"; and (2) the State of Illinois should "promulgate a rule of law restricting the use of eyewitness testimony in certain situations in which the testimony is likely to be unreliable[.]" We affirm.

¶ 4 **FACTS**

¶ 5 On July 15, 2010, the victim, a homeless man, was severely beaten. Earlier that day, the victim had cashed his paycheck, bought beer, and had approximately \$90 remaining. The victim went to "where [he] was staying" behind a warehouse. Dave Kuzminski was also staying behind the warehouse. The victim and Kuzminski were drinking behind the warehouse, as were defendant and his codefendant, Robert Hale.

¶ 6 The victim testified that on July 15, 2010, defendant and Hale threatened to beat him up if he did not give them his money. Defendant and Hale badgered him for at least an hour while the men were all drinking behind a warehouse. As Hale began to attack the victim, the victim warned Hale that he had a knife. The victim drew the knife and slashed Hale in the back of the neck. Defendant grabbed the victim's hand that held the knife. Both defendant and Hale started punching the victim, and the victim went unconscious. The victim testified that he was drunk at the time of the incident.

¶ 7 The next morning, the victim awoke and decided to go to the hospital because "something was wrong with [his] jaw and the blood was everywhere." He also noticed that his wallet had been gone through and money was missing. His cellular phone, knife, and Sony walkman had also been taken. At the hospital, the victim was diagnosed with a broken jaw, fractured skull, and fractured eye socket. The victim spoke with detectives and identified Hale and defendant in

photograph lineups as the persons who attacked him.

¶ 8 Detective Jim Voudrie testified that on July 17, 2010, Hale and defendant were located together. Police found the victim's knife on Hale's person.

¶ 9 Defendant gave police a statement in which he admitted to being behind the warehouse drinking with Hale, the victim, and Kuzminski. Defendant indicated that the victim was drunk and could barely stand. The victim made a racial slur to defendant, and Hale and the victim engaged in an altercation. The victim struck Hale with a knife and then dropped the knife. Defendant picked up the knife and handed it to Kuzminski. After the fight, everyone left, and defendant went to his mother's house.

¶ 10 Hale gave a statement to police similar to that of defendant, except Hale indicated that defendant took the knife out of the victim's hand. Hale indicated that he did not see defendant harm the victim or take anything from him. He also indicated that Kuzminski was the most sober witness and would be the person to talk to regarding the extent of defendant's involvement.

¶ 11 At the trial, Kuzminski testified that on the evening of the incident he was drinking beer behind the warehouse with the victim, defendant, and Hale. After some time passed, Hale began "picking on [the victim] for some reason trying to start a fight." Defendant stated that it appeared as if the victim did not want him and Hale around. The victim was drunk. He could barely keep his head up or stay awake and wanted to go to sleep. Hale attacked the victim and "just kept beating and beating" him. The victim drew a knife. Defendant intervened and took the knife out of the victim's hand. Defendant "commenced hitting him, too." Defendant and Hale "dragged [the victim] down to the ground," and each of them kicked the victim until he was unconscious. They took the victim's knife, cellular phone, and money and left. The next morning, defendant

gave Kuzminski the victim's cellular phone and asked that Kuzminski return the phone to the victim.

¶ 12 Following the bench trial, defendant and Hale were found guilty. Defendant filed a motion for new trial, which was denied. He was sentenced to 11 years of imprisonment for robbery and 6 years of imprisonment for aggravated battery. Defendant appealed.

¶ 13 ANALYSIS

¶ 14 On appeal, defendant argues that the evidence was insufficient to convict him of robbery and aggravated battery. Specifically, he contends that the trial court erred in relying on the testimony of "highly inebriated witnesses." Defendant also claims that the State of Illinois should restrict the use of eyewitness testimony where the witness's testimony is likely unreliable.

¶ 15 I. Sufficiency of the Evidence

¶ 16 When a defendant challenges the sufficiency of the evidence supporting his conviction, a reviewing court must determine whether, when viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274 (2004). Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *Id.* The reviewing court does not retry the defendant, and the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from their testimony. *People v. Emerson*, 189 Ill. 2d 436 (2000). However, a conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532 (1999).

¶ 17 In this case, viewed in the light most favorable to the prosecution, the evidence was sufficient to support a guilty verdict. Kuzminski testified that defendant grabbed the knife out of the victim's hand. Both the victim and Kuzminski testified that defendant struck the victim. Kuzminski additionally indicated that defendant kicked the victim. Kuzminski also testified that Hale and defendant took the victim's belongings and that defendant gave him the victim's cellular phone the following morning. Hale told police that Kuzminski would have been the most sober witness available to describe the extent of defendant's involvement.

¶ 18 Based on the evidence presented at trial, we disagree with defendant that the evidence of the victim being drunk and Kuzminski having some beers on the night of the incident made their testimony so incredible and inconsistent so as to support a reasonable doubt as to defendant's guilt. It was for the trial judge, as the trier of fact, to determine the witnesses's credibility and the weight to be given to their testimony. Thus, in reviewing the evidence in the light most favorable to the State, we find that a rational fact finder could have found defendant guilty of robbery and aggravated battery.

¶ 19 II. Promulgating a Rule of Law Restricting Eyewitness Testimony

¶ 20 Additionally, defendant suggests that the State of Illinois should "promulgate a rule of law restricting the use of eyewitness testimony in certain situations in which the testimony is likely to be unreliable[.]" Here, there was evidence presented indicating that the victim was drunk and Kuzminski had been drinking. The law is well settled that the trier of fact is to determine the weight to be given to a witness's testimony and to determine whether the testimony was unreliable. Defendant's implied suggestion that the testimony of a witness who had been drinking or was intoxicated should be, as a matter of law, inadmissible would have obvious

unintended consequences. Such a rule might open the season on inebriated persons if their attackers knew that those victims could not testify against them. To the extent that defendant suggests that a rule should be promulgated to allow pretrial determinations of any alleged inherent unreliability of any given testimony, the procedure already exists. Motions *in limine* are routinely employed to challenge evidence before trial.

¶ 21

#### CONCLUSION

¶ 22 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 23 Affirmed.