

No. 1-11-1663

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).

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. 10 CR 11865
)	
JOHN McMICHAELS,)	Honorable
)	Clayton J. Crane,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice McBride and Justice Taylor concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant demanded money from store employee and moved his hand into his pants, evidence was sufficient to sustain conviction for aggravated robbery; defendant's conviction and sentence were affirmed.

¶ 2 Following a bench trial, defendant John McMichaels was convicted of aggravated robbery and sentenced to 10 years in prison. On appeal, defendant contends that his conviction should be reduced to theft because the evidence was insufficient to prove that he used or threatened the imminent use of force and that he indicated he was armed. We affirm.

¶ 3 At trial, 25-year-old Patricia Gonzalez testified that on the morning of June 6, 2010, she was working at the Dunkin Donuts located at 100 West Randolph Street in Chicago. Her co-worker, Mayra Cernas, was also working that day and was in the back of the store. At around 11:30 a.m., 64-year-old defendant entered the Dunkin Donuts and approached Gonzalez. He told Gonzalez he wanted some ice cream. Gonzalez told defendant to select a flavor from where the ice cream was kept and then come back to let her know his choice. Defendant stayed put, looked at Gonzalez, and told her to give him money from the register. Gonzalez panicked and asked defendant to repeat himself. Defendant said, "Give me the money from the register. If not, I am going to go back and get it myself." Then, defendant put his right hand in his pants and "initialed" to her "as if he had a weapon or something." Gonzalez yelled out for Cernas. Cernas came to the front of the store and asked defendant what he wanted. Defendant repeated that he wanted money from the register. Cernas gave defendant the money. Gonzalez was not sure of the exact amount, but believed defendant was given \$250 from the register. Then, defendant left the store.

¶ 4 The State's other witnesses testified about apprehending defendant. Jeffrey Miles, a security guard at 205 West Randolph, directed police officers to a taxi that a person matching the offender's description had entered. Officer Roman found defendant counting a large sum of money in the back seat of the taxi identified by Miles. Officer Roman brought defendant to the Dunkin Donuts that had been robbed and Gonzalez identified him as the offender. After his arrest, one inventory sheet showed that \$420 was recovered from defendant and a second sheet showed the amount as \$240.

¶ 5 The trial court found defendant guilty of aggravated robbery. It found that Gonzalez's testimony was "absolutely unshaken." The trial court also stated:

"It is a tried and true expression of an individual committing a

robbery when they slip the hand in the pocket to indicate in fact they are armed."

Defendant was sentenced to 10 years in prison as a Class X offender.

¶ 6 On appeal, defendant contends the State failed to prove that he used or threatened the imminent use of force and that he indicated to Gonzalez he was armed. In particular, defendant argues that defendant did not make any physical contact with Gonzalez or Cernas or make any verbal threats of violence or harm. In addition, defendant argues that neither his words nor his actions indicated that he had a weapon because defendant did not make repeated motions with his hand, made no verbal mention of a weapon, and Gonzalez did not see any bulges or items coming out of defendant's pocket.

¶ 7 When a defendant challenges the sufficiency of the evidence, the reviewing court determines "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.) *Jackson v. Virginia*, 443 U.S. 307, 319, *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is not the reviewing court's function to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). The determination of the weight to be given to the witnesses' testimony, the credibility of the witnesses, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact. *Id.* Where the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether a fact finder could reasonably accept the testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). The trial court's verdict will not be overturned unless it is so unreasonable, improbable, and unsatisfactory as to leave a reasonable doubt as to the defendant's guilt. *People v. Brown*, 169 Ill. 2d 132, 152 (1996).

¶ 8 A person commits aggravated robbery when he takes property from the person or presence of another by the use of force or by threatening the imminent use of force while indicating verbally or by his actions that he is armed. 720 ILCS 5/18-5(a) (West 2010). Proof of a threat of the imminent use of force is established by evidence that the victim's fear was of such a nature as in reason and common experience is likely to induce a person to part with property for the sake of his person. *People v. Grengler*, 247 Ill. App. 3d 1006, 1012 (1993). A victim's subjective feeling of fear is insufficient. *Id.* However, a robbery conviction may be based on facts from which the victim reasonably concluded that the defendant was armed with a deadly weapon when he took property from the victim's person or presence. *People v. Hollingsworth*, 120 Ill. App. 3d 177, 179-80 (1983). These facts can include a "menacing gesture" of reaching into a place where a weapon could be kept. *Id.* at 180. Further, a finding that a defendant indicated he was armed must be supported by objective criteria. *People v. Hall*, 352 Ill. App. 3d 537, 543 (2004) (citing *People v. Williams*, 329 Ill. App. 3d 846 (2002)).

¶ 9 Here, the evidence sufficiently supports the trial court's finding that defendant threatened the imminent use of force. Defendant stated, "Give me the money from the register. If not, I am going to go back and get it myself," and then put his hand in his pants in a manner that suggested to Gonzalez he had a weapon. It was reasonable to find the combination of defendant's demand for money and gesture toward a place where a weapon could be found would induce Gonzalez to part with the money for the sake of her safety. See *People v. Bradford*, 78 Ill. App. 869, 874-75 (1979) (finding that the defendant threatened the imminent use of force when he gave a store cashier a note which read, "Put all the money in a cash drawer in a bag" and then put his hand entirely inside a shoulder bag).

¶ 10 Further, defendant's demand and gesture provide objective criteria to find that defendant indicated he was armed. Objective criteria have included hand gestures in places where weapons

could be kept, along with words either announcing a robbery or implying harm. See *People v. Brackett*, 288 Ill. App. 3d 12, 14, 18 (1997) (finding that defendant's conduct fell within the aggravated robbery statute where she announced a robbery, had a coat draped over her arm, and underneath her coat, her finger was pointed like there was a gun), *People v. Woods*, 373 Ill. App. 3d 171, 173, 177 (2007) (finding that a rational trier of fact could conclude that defendant indicated he was armed where defendant raised his hand with his index finger extended and gestured to his waist), and *Hall*, 352 Ill. App. 3d at 539, 544 (objective criteria found where defendant made veiled threats and grabbed at his own waist two or three times). Rather than setting out a standard to meet, *Brackett*, *Woods*, and *Hall* describe examples of where objective reasons supported a finding that a defendant indicated he was armed. Defendant's conduct here also provided objective reasons to find he indicated he was armed. Defendant had just announced his intention to take money from the register, with or without Gonzalez's cooperation, and then moved his hand to a place where it is reasonable to believe a weapon could be kept.

¶ 11 Defendant contends that his conviction should be reduced to theft or robbery. Theft is a simple deprivation of property. *People v. Washington*, 375 Ill. App. 3d 243, 249 (2007). This was more than a theft. A rational fact finder could find all three elements of aggravated robbery present here—including a threat of the imminent use of force and that defendant indicated he was armed. As such, we reject defendant's argument that his conviction should be reduced to theft or robbery.

¶ 12 The trial court's ruling was not so unreasonable, improbable, and unsatisfactory as to leave a reasonable doubt of defendant's guilt. For the foregoing reasons, we affirm the judgment of the trial court.

¶ 13 Affirmed.