

2013 IL App (1st) 112358-U

FIRST DIVISION
April 29, 2013

No. 1-11-2358

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 14705
)	
DAVID GUERRERO,)	The Honorable
)	Carol A. Kipperman,
Defendant-Appellant.)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's burglary and criminal damage to property convictions affirmed over his challenge to the sufficiency of the evidence.
- ¶ 2 Following a bench trial, defendant David Guerrero was found guilty of burglary (720

No. 1-11-2358

ILCS 5/19-1(a) (West 2008)) and criminal damage to property (720 ILCS 5/21-1(a) (West 2008)), then sentenced to 18 months' probation and ordered to pay restitution in the amount of \$2,155.50. On appeal, defendant contests the sufficiency of the evidence to sustain his convictions.

¶ 3 At trial, the State presented the testimony of Rafael Munoz, the owner of Aloha Travel Agency, a business located on the 5800 block of Cermak Road in Cicero. Munoz testified that he arrived at his business about 3 a.m. on July 18, 2010, and found the front window broken, plants and papers strewn on the floor, and the doors open. He did not know defendant and had not given him or anyone else permission to break the window or to enter his business that night. Munoz also testified that it cost him \$2,155.50 to fix the broken window. The State then entered into evidence three photographs depicting the inside and outside of the business after the front window had been broken. On cross-examination, Munoz testified that nothing was taken from inside the store.

¶ 4 Steven Mohica testified that on the night of July 17 and into the early morning hours of July 18, 2010, he was attending a rooftop party at a building in the 5800 block of Cermak Road in Cicero. About 3 a.m., Mohica heard glass break and feared that his car, which was parked on Cermak Road, was being broken into. He ran down the stairs of the building and saw defendant, wearing a gray vest and gray hat, hopping out of a broken storefront window. He asked defendant "what the f*** are you doing?" and defendant replied "it's none of your concern." Mohica's friend called the police, and Mohica remained at the scene until police arrived less than 10 minutes later. Mohica testified that he never lost sight of defendant from the time he saw him

No. 1-11-2358

climbing out of the window until the police arrested him, and that defendant "pretty much" stayed at the scene until police arrived. On cross-examination, Mohica admitted that there was liquor at the party and that he had been drinking prior to his encounter with defendant.

¶ 5 Cicero police officer Carlos Vasquez testified that he was dispatched to Aloha Travel in the early morning hours of July 18, 2012. He examined the inside of the business and observed the broken front window, a plant tipped over, papers scattered, and drawers opened. Defendant, who was wearing a gray vest and gray hat, was detained approximately a block away. On cross-examination, Officer Vasquez testified that defendant did not resist arrest and cooperated with the responding police officers. He did not observe any injuries on defendant and defendant was not wearing gloves. Officer Vasquez saw a garbage can lid outside the business and believed that the lid had been used to break the window.

¶ 6 Defendant's girlfriend, Amy Zhen, testified for the defense that she met defendant at approximately 12:30 a.m. on July 18, 2010, at a restaurant in Cicero. At the restaurant, Zhen began to question defendant about his interactions with another female earlier in the evening. Defendant became annoyed with Zhen, paid the restaurant bill and walked out. Zhen finished her meal, and then went to her car to pick up defendant. As she was driving, Zhen saw defendant getting arrested. She did not see defendant break a window or enter Aloha Travel, and she did not see any injuries on defendant. On cross-examination, Zhen stated that defendant was upset when he left the restaurant, and acknowledged that she did not know what defendant did between that time and when she saw him being arrested.

¶ 7 Defendant testified that soon after midnight on July 18, 2010, he met Zhen at a restaurant,

No. 1-11-2358

and she began to question him about a female he had been talking to earlier that night.

Defendant paid for the dinner and left the restaurant, but knowing that Zhen would have to drive in a particular direction because of where she had parked, he began to walk toward a corner to make it easier for her to pick him up. While he was walking, he was approached by Mohica, who asked, "what the f*** are you doing?" Defendant responded "none of your concern," because he did not know Mohica. He denied throwing a garbage can through the Aloha Travel window, or entering or taking anything from the business. On cross examination, defendant admitted he was wearing a gray hat and gray vest on the night in question, and that Zhen was not with him when he was walking down the street.

¶ 8 At the close of evidence and argument, the trial court found defendant guilty of burglary and criminal damage to property. The court based its finding on the evidence showing that defendant "was coming out of the building with the broken glass," "the condition of the store on the inside," and that "drawers were open [and] plants and papers strewn all over[.]" The trial court found that Mohica was a credible witness; his testimony was corroborated by the testimony of Officer Vasquez, and that there was no showing that Mohica was drunk or that he was biased or had reason to lie about what had happened. Defendant now appeals the propriety of the trial court's judgment, contending that the evidence was insufficient to support his convictions.

¶ 9 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 defendants 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

No. 1-11-2358

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.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A reviewing court may not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses. *People v. Young*, 128 Ill. 2d 1, 51 (1989).

¶ 10 Defendant claims that Mohica's testimony identifying him as the individual coming out of the broken store window was unreliable because Mohica had been drinking alcohol before he identified defendant, and regardless of his level of intoxication, his testimony was unbelievable. We disagree. Defendant's contention is premised on a broad assertion that Mohica was impaired. Although evidence was presented at trial that Mohica had been at a rooftop party where alcohol was served and where he had been drinking, no evidence was presented about how much alcohol Mohica had consumed or to show that Mohica was impaired in any way. To the contrary, the evidence showed that Mohica was attentive to his surroundings, and responded to hearing glass break on the street below, thinking that someone was breaking into his car. He immediately ran down the stairs, and encountered defendant coming out of the store window. These actions are inconsistent with an impaired witness whose ability to observe is questionable.

¶ 11 Evidence that a witness was drinking near the time of an event is relevant and probative of his sensory capacity (*People v. Di Maso*, 100 Ill. App. 3d 338, 343 (1981)), however, the fact that a witness had been drinking alcohol, or was drunk, does not preclude the trier of fact from finding the witness credible. *Bradford*, 194 Ill. App. 3d at 1046-47. The assessment of Mohica's credibility in this case was properly made by the trial court which had the opportunity to view,

No. 1-11-2358

first hand, the testimony at trial. *People v. Bradford*, 194 Ill. App. 3d 1043, 1046 (1990). In announcing its decision, the trial court explicitly found Mohica's testimony credible, and observed that that he had no bias or reason to lie about what had happened. The trial court also noted that Mohica's testimony was substantially corroborated by the testimony of Officer Vasquez, who testified that he arrived on the scene, observed the damage to the business, and concluded that a garbage can lid was likely used to break the window. After reviewing the evidence in the light most favorable to the prosecution, we cannot say that the trial court's determination that Mohica's testimony was credible was so unreasonable or improbable as to raise a reasonable doubt of defendant's guilt. *Bradford*, 194 Ill. App. 3d at 1047.

¶ 12 Defendant further contends that even if Mohica was not intoxicated, this court should still find his testimony unconvincing because it was "contrary to human experience." He maintains that the testimony showing that he remained on the scene and cooperated with police is inconsistent with behaviors one would expect from a guilty individual.

¶ 13 A conviction based upon testimony that is "contrary to human experience" requires reversal. *People v. Vasquez*, 233 Ill. App. 3d 517, 527 (1992). However, this court has held that the fact that a defendant did not flee and cooperated with police can properly be viewed as consistent with human nature (*People v. Zarate*, 264 Ill. App. 3d 667, 675-76 (1994)). Although consciousness of guilt can be inferred from flight, the converse, that failure to flee is indicative of innocence, is not a necessary corollary. *Zarate*, 264 Ill. App. 3d at 675. As this court observed in *Zarate*, "[d]efendant would not be the first criminal, nor will he be the last, to conduct himself as though he were unaware of what happened, confident in the belief that he could thereby escape

No. 1-11-2358

suspicion." 264 Ill. App. 3d at 675-76.

¶ 14 Our function as a reviewing court is not to retry defendant, but rather to inquire whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt. *Zarate*, 264 Ill. App. 3d at 676. The evidence in this case met that standard.

¶ 15 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.