

¶ 5 While standing on the lot talking to Wathan and her friend, Sheina Flowers, Westman saw a man exit the bar and start running in his direction. Westman squared up toward the running man, who proceeded to push Westman in his run towards the two women and Wathan's boyfriend, Ryan Gambill, who was also standing nearby. When Westman tried to grab the man on his charge at the party, the man shoved Westman backward. The man overran the party and, as he lunged back to his mark, Westman again attempted to grab the man and was pushed back. Defendant was the man who was running.

¶ 6 Off-duty Sandoval Officer Joseph Lyons was also at Crossroads. When defendant lunged back towards Westman, Lyons was able to get hold of defendant and force him to the ground.

¶ 7 Lyons testified that he had been socializing at Crossroads that evening when the owner of the bar asked him to help separate people who had been fighting on the dance floor. Lyons was familiar with defendant and Gambill, separated them, and escorted defendant out of the building. Lyons described escorting defendant out of the building:

"Q. [Attorney for State:] Were you saying anything to him as you were trying to escort him out?

A. Well, I just advised him that Andy Westman was outside talking to Brittany Wathan.

Q. Why did you advise him of that?

A. Because of the actions that was going on inside the bar with the fight and everything, I was just trying to calm him down.

Q. Okay. Now, I know it probably seems insignificant to you, but it could actually be important based on some of the arguments that could be made, as best as you can tell when you were telling Mr. Weiss that Westman was outside, did you say Andy Westman or Officer Westman?

A. I believe I said Andy Westman."

¶ 8 Lyons testified that, once escorted outside, defendant kicked a vehicle and took off running towards Wathan, calling her expletives and threatening to kill her. Lyons described trying to warn Westman:

"A. I told Officer Westman, I said, you need to OC spray him, he is out of control, and by the time he heard me, you know, he just had enough time to turn around to see what was actually going on, and [defendant] was already on top of him."

According to Lyons, defendant ran up to Westman, put both hands on Westman's chest, and shoved him. After pushing through Westman, defendant turned around and was pushing at Westman again, when Lyons jumped on defendant's back and took him to the ground.

¶ 9 At trial, a portion of Westman's testimony addressed defendant's claim that he did not know Westman was a police officer. When called in front of the jury, Westman stated, "I was wearing this same color clothes, the pants, black boots, a duty belt, and I was wearing a polo that had the badge in yellow and then my name in yellow." Westman testified that his duty belt had a flashlight, a walkie-talkie, and a sidearm. On redirect, Westman testified that the emblem on his shirt was about the same shape and size as the badge he wore in front of the jury. According to Westman, the lighting on the lot was sufficient to allow him to see the faces of others and take a report.

¶ 10 When asked on cross-examination whether he had time to tell defendant that he was a police officer, Westman admitted he did not. Westman was pushed back a few feet when defendant initially ran into him, but was not knocked to the ground at that time or when defendant lunged back at him.

¶ 11 Wathan, Flowers, and Gambill testified at trial that when they met with Westman on the parking lot they knew he was a police officer—variously noting Westman's clothing, duty belt, and unmarked police car.

¶ 12 The jury found defendant guilty of aggravated battery. The circuit court entered judgment on the verdict. Defendant appeals.

¶ 13

ANALYSIS

¶ 14 Defendant was charged with aggravated battery of a peace officer under the Criminal Code of 1961 (720 ILCS 5/12-4(b)(18) (West 2010) (now 720 ILCS 5/12-3.05 (West 2012))). In order to prove the commission of this offense, the State was required to prove beyond a reasonable doubt the elements of a knowing physical contact to a person that defendant knew to be a peace officer, knowing that the officer was engaged in the execution of his official duties. Defendant does not contest that the jury was properly instructed on each of the elements for this form of aggravated battery. Rather, defendant contends that the State failed to prove beyond a reasonable doubt the element that he knew Westman to be a peace officer.

¶ 15 The State had the burden of proving each element of the charge against defendant beyond a reasonable doubt. A conviction will not be set aside for insufficient evidence unless the proof is so improbable or unsatisfactory as to raise a reasonable doubt. *People v. Armstrong*, 2013 IL App (3d) 110388, ¶ 19, 987 N.E.2d 1040. This court recognizes that the jury was in a better position to evaluate the credibility of the witnesses and weigh the evidence presented at trial. *People v. Jackson*, 232 Ill. 2d 246, 280, 903 N.E.2d 388, 406 (2009). In reviewing the sufficiency of the evidence for a conviction, the critical inquiry 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.' " *People v. Pollock*, 202 Ill. 2d 189, 217, 780 N.E.2d 669, 685 (2002) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The record supports the finding of the jury.

¶ 16 At most, the arguments defendant presents against his conviction raise factual questions for determination by the jury. Defendant questions the markings on Westman's

clothing and car and points out that Westman's car was unmarked. Furthermore, Westman did not wear the same type of shirt to court that he wore on the night of the arrest. Instead, Westman wore a short sleeved polo with a sewn-in emblem. Defendant contends that this, along with Westman's wearing a sidearm, was insufficient *indicia* that he was a law enforcement officer. Indeed, defendant argues that badges are not unique to police officers or law enforcement and that security guards wear badges and private detectives may lawfully carry sidearms.

¶ 17 In support of his claim, defendant presents several arguments based in surmise and conjecture. For instance, defendant contends that his civility toward Officer Lyons implies his lack of knowledge of Westman's status as an officer. After all, Westman was the town's new officer. Moreover, defendant asserts that his yelling at numerous other people, but not Lyons, as he was being escorted out of the bar, implies his respect for law enforcement. On the other hand, defendant imputes a different character to Lyons as a witness. Defendant contends that Lyons was "careful" not to testify that police were waiting on the lot, that it was only "Andy Westman"—ignoring Lyons' testimony that he was attempting to calm defendant.

¶ 18 The jury heard arguments regarding defendant's assertion that he did not know Westman was a police officer, and rejected defendant's claim. Several witnesses, including Westman, were examined regarding the *indicia* of Westman's status. Defense counsel raised the issue in opening statements and contested the matter in closing argument. Defendant's asserted ignorance is inconsistent with much of the evidence presented at trial. Any claim defendant would have that he would have been surprised by on-duty police being on the parking lot is incongruous with Lyons' description of escorting defendant from the bar after a fight. Defendant further claims that an awareness on his part cannot be imputed from the knowledge of others on the parking lot. Nonetheless, the testimony by Wathan, Flowers, and Gambill on how they readily observed Westman to be a police officer is strong evidence that

defendant also was aware of Westman's status.

¶ 19 The jury was presented with substantial evidence indicating that defendant was aware that Westman was a police officer. The jury heard several witnesses testify about the incident. The jury also observed Westman in his duty belt and heard his description of the uniform he was wearing the night of the incident. The record need not be viewed in a light most favorable to the prosecution in order for it to support the jury's determination.

¶ 20 The State is also able to point to case law where similar *indicia* of an officer's status was sufficient to support the finding of a jury. *In re Joel L.*, 345 Ill. App. 3d 830, 834, 803 N.E.2d 592, 595 (2004). In *In re Joel L.*, a police officer was hired as security for a special education school. *In re Joel L.* addressed each of the elements of aggravated battery against a police officer, including whether the defendant knew the harmed individual was a peace officer. The officer did not wear a uniform when working security, but wore a polo shirt with a logo on it and carried a badge, firearm, and handcuffs. In *In re Joel L.*, the officer had worked at the special education school for over three years, but the evidence was arguably weaker as the court noted that "no testimony in the record shows whether Joel knew Lewis was a peace officer." *In re Joel L.*, 345 Ill. App. 3d at 834, 803 N.E.2d at 595. In the case at hand, the State presented substantial evidence on Westman's attire and the circumstances surrounding the battery. As in *In re Joel L.*, when viewed in a light favorable to the prosecution, the evidence establishes defendant's knowledge of Westman's status as a police officer beyond a reasonable doubt.

¶ 21 Accordingly, the judgment of the circuit court is hereby affirmed.

¶ 22 Affirmed.