

2015 IL App (2d) 130744-U
No. 2-13-0744
Order filed September 14, 2015

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-3126
)	
KENNETH TURNER,)	Honorable
)	Rosemary D. Collins,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Birkett and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to sustain defendant's armed robbery convictions; however, one of them had to be vacated on one-act, one-crime principles.

¶ 2 I. INTRODUCTION

¶ 3 Defendant, Kenneth Turner, appeals his convictions of two counts of armed robbery and one count of aggravated battery to a senior citizen. 720 ILCS 5/18-2(a)(2-3) (West 2008); 720 ILCS 5/12-4.6(a)(West 2008). On appeal, he raises two issues. First, he contends that he was not proven guilty beyond a reasonable doubt, as the evidence purportedly does not establish that

he was the perpetrator. Second, he contends one of his two armed robbery convictions must be vacated based on one-act, one-crime principles. See *People v. King*, 66 Ill. 2d 551, 566 (1977).

¶ 4

II. BACKGROUND

¶ 5 On May 7, 2013, defendant's jury trial commenced. Kenneth Sims, the owner of Sims Jewelry in Rockford, testified that on March 7, 2009, his store was robbed. Kenneth testified that a man entered the store wearing a ski mask. The man jumped over a counter, breaking it, and hit his brother and business partner, Curtis Sims, with a gun three times. The man took Curtis' wallet, a shotgun kept in an open safe, and a garbage bag that he filled with jewelry. After unsuccessfully trying to put the shotgun in the bag, the man left it on the floor in the jewelry store. During the robbery, Kenneth was able to trigger the silent alarm and call 911 from his cell phone. Kenneth was also able to lock the front door of the store, causing the man to shoot out the window of the door to escape. At trial, Kenneth described the offender as 5'9" tall and 170 pounds. Kenneth testified that he did not see the man's face because he was wearing a mask. Kenneth stated that he did not believe that he had seen the man before.

¶ 6 Prior to the trial, Curtis Sims died from causes unrelated to the robbery. His deposition was presented to the jury. Curtis stated that he was 73 years old at the time of the crime, and he worked with his younger brother, Kenneth, at Sims Jewelry. Curtis stated that around noon on March 7, 2009, both he and his brother were working when a man burst into the store wearing a ski mask and wielding a gun. The man attempted to jump over a glass display case full of jewelry, but broke the glass when he landed on it. The man then hit Curtis with the gun, knocking him unconscious. Curtis stated that he did not regain consciousness until after the man had left. Curtis could not identify the man who robbed the store, but was able to tell detectives

that the perpetrator was black. Curtis also stated that about \$60,000 worth of jewelry was taken during the robbery.

¶ 7 The State next called, Ryan Rawhoof, who testified that on March 7, 2009, he and Moses Williams were standing outside of Sacred Art Tattoo, which was two buildings away from Sims Jewelry. Rawhoof heard two loud bangs and saw a man emerge from Sims Jewelry. Rawhoof described the man as wearing a black hoodie, dark blue jeans, a black baseball cap, and pantyhose over his head. Rawhoof and Williams chased the man through an alley behind Sims, until the man pointed a gun at them, at which point they stopped. Subsequently, Rawhoof and Williams retrieved the baseball cap and the pantyhose, which the man had discarded during the chase. Rawhoof gave these items to the police when they arrived on scene. In January 2010, Rawhoof viewed a photo array of suspects. He tentatively identified photographs of defendant and another man as resembling the man he chased. After further consideration, Rawhoof selected defendant's picture as that of the perpetrator based upon skin complexion, hairline, beard, lips, and age. At trial, Rawhoof viewed defendant, but was unable to identify him as the offender.

¶ 8 Detective Torrey Regez, of the violent crimes unit of the City of Rockford Police Department, testified that he interviewed several witnesses at the scene of the crime. Based upon the testimony of several eyewitnesses and the video footage taken in the alley, he determined the suspect was either a light-skinned black man, a white man, or Hispanic man. Accordingly, he put together a photo lineup of people that resembled defendant for witnesses to compare and make an identification of the robber.

¶ 9 Illinois State Police forensic scientists Christopher Webb and Lori Lee each testified that both the pantyhose and the baseball cap contained two DNA profiles. The major DNA profile on

the pantyhose matched defendant at 13 loci. Webb could not tell the gender or the contributor of the second DNA profile because there was not enough DNA from that source. The major DNA profile on the baseball cap matched defendant at 7 loci. Webb testified that the one major profile found on the cap was consistent with the major profile found on the pantyhose. Lee testified that the match on the pantyhose to defendant would be expected to occur in approximately 1 in 110 quadrillion black, 1 in 1.4 quintillion white, and 1 in 460 quadrillion Hispanic unrelated individuals. She further testified that the match from the cap to defendant would be expected to occur in approximately 1 in 460 million black, 1 in 2.5 billion white, and 1 in 4.6 billion Hispanic unrelated individuals. She explained that the lower statistical probability for the cap as compared to the pantyhose was due to the lower number of locations tested on the cap (7), as compared to the higher number of locations tested on the pantyhose (13).

¶ 10 The State's final witness, Terry Yoho, testified that he was in custody with defendant in January and February of 2010. Yoho testified that defendant told him that he had been planning to rob Sims Jewelry and "finally got the nerve to do it." At trial, Yoho related the details of the robbery, including the fact that defendant was armed, that he "pistol whipped" an "old guy," and that defendant had to shoot his way out of the store because the door was locked. Yoho acknowledged that he was in custody for residential burglary, had charges of residential burglary pending against him in another county, and had previously been convicted of felony theft, felony retail theft, and three counts of burglary. Yoho also conceded that he told police about the conversation between him and defendant because he wanted to "get a deal" on his case. Regardless, Yoho received no consideration for his testimony against defendant.

¶ 11 Defendant's witness, Linda Zitzke, testified she was also standing outside of Sacred Art Tattoo. Zitzke stated that, on March 7, 2009, she saw an individual emerge from Sims Jewelry

and run off. She went inside the tattoo parlor to ask someone to call 911. Zitzke testified that she believed the perpetrator was a white male, carrying a duffle bag.

¶ 12 After considering all the evidence presented at trial, the jury found defendant guilty of two counts of armed robbery and one count of aggravated battery of a senior citizen. Following a sentencing hearing, the trial judge sentenced defendant to 40 years' imprisonment on the first count of armed robbery, a concurrent sentence of 35 years' imprisonment on the second count of armed robbery, and a consecutive sentence of 20 years' imprisonment for aggravated battery of a senior citizen. Defendant now appeals.

¶ 13 III. ANALYSIS

¶ 14 Defendant first argues that the State failed to establish beyond a reasonable doubt that he was the perpetrator. The standard of review of criminal convictions is well established. A 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. *People v. Roy*, 172 Ill. App. 3d 16, 21 (1988), quoting *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The reasonable-doubt test is the test applied when reviewing the sufficiency of the evidence in all criminal cases, whether the evidence is direct or circumstantial. *People v. Pintos*, 133 Ill. 2d 286, 291 (1989). It is not the function of a reviewing court to retry the defendant. *People v. McDonald*, 168 Ill. 2d 420, 443 (1995). The relevant question for the reviewing court is "whether after viewing the evidence in the light most favorable to the prosecution, *any* reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original). *People v. Wallace*, 210 Ill. App. 3d 325, 345 (1991) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). When determining whether a defendant is guilty beyond a reasonable doubt, the jury

need only be satisfied that all the evidence, taken together, shows defendant committed the crime charged beyond a reasonable doubt. *People v. Pelo*, 404 Ill. App. 3d 839, 881 (2010).

¶ 15 Proof of an offense, requires proof not only that the crime occurred, but also that it was committed by the person charged. *People v. Mister*, 2015 IL App (4th) 130180, ¶ 98. The testimony of a single witness, if it is positive and the witness credible, is sufficient to convict a defendant. *Id.* It is primarily the function of the trier of fact to assess the credibility of witnesses and to resolve conflicts in testimony. *People v. Crespo*, 118 Ill. App. 3d 815, 818 (1983). Our review of the record shows that a reasonable trier of fact could have found defendant guilty of armed robbery beyond a reasonable doubt. The evidence presented at trial combined with the testimony of Yoho and eyewitnesses was not so improbable or unsatisfactory as to create a reasonable doubt of defendant's guilt.

¶ 16 First, DNA matching that of defendant was found on both the baseball cap and pantyhose recovered at the scene by Rawhoof. Defendant argues that because there were two DNA profiles found on both the baseball cap and pantyhose, there was only a 50% chance that he was guilty. As far as the two DNA profiles found on both the baseball cap and pantyhose, the jury was made aware of the multiple contributors. Initially, we find it unlikely that DNA profiles are typically recovered from sterile environments where no other DNA evidence is present, so the fact that some other DNA was present on these items does not strike us as particularly surprising. Moreover, accepting defendant's premise at face value, the DNA evidence established that defendant was one of two people who had worn the cap that was worn by the perpetrator of the robbery. Tellingly, none of the other evidence presented in this case points to the other wearer of the cap as the perpetrator. Regarding defendant's insinuation that someone else committed the robbery, we note that speculation that another person might have committed the crime does not

necessarily raise a reasonable doubt of the guilt of the person accused. *People v. Herrett*, 137 Ill. 2d 195, 206 (1990). Furthermore, it is not necessary for the jury to be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. It is sufficient if all the evidence taken together satisfies the jury beyond a reasonable doubt of the accused's guilt. *People v. Campbell*, 146 Ill. 2d 363, 380 (1992). In light of the other evidence in this case, the evidence is clearly sufficient to sustain defendant's conviction.

¶ 17 Defendant next contends that none of the eyewitness testimony made it any more likely that he was the perpetrator. It is the responsibility of the trier of fact to determine the credibility of witnesses and the weight to be given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *McDonald*, 168 Ill. 2d at 420, 448-9. A reviewing court will not substitute its judgment for that of the trier of fact on these matters. *Id.* The jury's findings are entitled to great weight, given that it is in the best position to judge the credibility and demeanor of the witnesses. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). In the instant case, the jury was presented with the testimony of various witnesses and apparently decided to accept the testimony of Curtis, Kenneth, and Rawhoof when it found defendant was guilty.

¶ 18 Despite some discrepancies in the eyewitnesses' descriptions of the robber, there was sufficient evidence for a reasonable trier of fact to find defendant guilty beyond a reasonable doubt. Any discrepancies and omissions as to facial and other physical characteristics are not fatal, but merely affect the weight to be given to identification testimony. *Mister*, 2015 IL App (4th) 130180, ¶ 104. Furthermore, a reasonable jury could have concluded that during a robbery, a witness might not notice distinct features of the robbery suspect, especially if the perpetrator was wearing a mask. *Cf. People v. Hemphill*, 62 Ill. App. 3d 977, 982 (1978) (where defendant

has no abnormal or distinguishing physical characteristics, omission of description of facial features from victim's preliminary description of defendant does not raise a reasonable doubt of defendant's guilt). In any event, defendant points to nothing so significant that would provide a basis for us to override the jury regarding the assessment of this testimony.

¶ 19 Defendant asserts that the testimony of Yoho, a jailhouse informant, was so lacking in credibility that the jury could not have reasonably accepted it. However, it is well established that the credibility of an informant, as with any other witness, is primarily a question for the jury. *People v. Manning*, 182 Ill. 2d 193, 210 (1998). The jury was well aware of the factors that would allow it to adequately judge the credibility of Yoho. At the outset of Yoho's testimony, the jury was informed of his current charges of residential burglary in multiple counties and his previous convictions of felony theft, retail theft, and three counts of burglary. The jury also knew that Yoho testified against defendant in hopes of getting a reduction in any sentence on his pending cases. Knowing this information, the jury nevertheless found Yoho credible. We, as a reviewing court, cannot simply substitute our judgment for that of the jury. While there may have been reasons to question Yoho's credibility, none were so significant that the jury was required to reject his testimony. In sum, a reasonable trier of fact could have found defendant guilty beyond a reasonable doubt based on eyewitness testimony, considered in conjunction with DNA evidence and the testimony of Yoho. As such, the evidence is sufficient to sustain defendant's conviction.

¶ 20 Finally, defendant argues, and the State agrees, that his conviction pursuant to Count III of the indictment (armed robbery with aggravating factors of defendant being armed with a handgun and the victim being over the age of 60) must be vacated on one-act, one-crime

principles. See *King*, 66 Ill. 2d at 566. We agree and vacate that count. The trial court's judgment is otherwise affirmed.

¶ 21 Vacated in part; affirmed in part.