

No. 1-14-2891

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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. 08 CR 11519
)	
WILLIAM BALDWIN,)	Honorable
)	Noreen V. Love,
Defendant-Appellant.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held:* Evidence was sufficient to prove beyond a reasonable doubt that defendant committed armed robbery and unlawful use of a weapon by a felon where multiple witnesses identified defendant as the robber. Trial court did not abuse its discretion at sentencing when it considered in aggravation a prior charge of armed robbery of which defendant was acquitted.

¶ 2 Defendant William Baldwin was found guilty of armed robbery and unlawful use of a weapon by a felon and sentenced to a term of 35 years' incarceration and a concurrent term of 7 years, respectively. On appeal, defendant contends that the State failed to present sufficient

evidence to prove him guilty of both crimes beyond a reasonable doubt because the State's witnesses were incredible and it failed to present physical evidence linking defendant to the crime. He also contends that the trial court abused its discretion by considering evidence of a prior charge of armed robbery in aggravation at sentencing, where defendant was acquitted of that charge. We affirm.

¶ 3 The evidence at trial established Rena Winston was the sole employee working at a Hillside currency exchange on May 16, 2008. According to Winston at some point during the afternoon, defendant entered the exchange wearing braids, a black shirt, and a security badge. He approached Winston and bought a stamped envelope and some paper. Gary Bodenchak subsequently entered the exchange. According to Bodenchak, when he entered, defendant was moving a large fan out of a blind-spot between a security door and the teller windows. Bodenchak left the exchange and stood at the bus stop 15 feet away. Sometime later, according to Winston, another customer mentioned defendant and she noticed for the first time that he had remained in the exchange. Winston left the teller windows to do paperwork.

¶ 4 As it neared closing time, Winston looked through the security door's small window to check if any customers were still in the exchange. Believing the lobby to be empty, Winston began to open the security door. Defendant, who had been standing in the blind-spot, pulled the door fully open and placed a black gun to her head. He told Winston to "get down" and she dropped to the floor. When defendant asked where the money was kept, Winston pointed to the safe. He told her to move to the corner of the secured area and walked towards the safe. Defendant eventually walked back out into the lobby and Winston heard him again say "get down." She stood up and saw defendant holding a gun to an unidentified customer's head. Winston ran to the security door and shut it. Defendant fled the currency exchange and Winston

asked the customer to close the front door so that she could lock it remotely. The customer pulled the door closed as he left, but defendant returned and caught the door. As Winston called the police and others, defendant circled the lobby searching the floor. Eventually, defendant kicked out the glass of the locked front door and left. According to Bodenchak, he heard the breaking glass from the bus stop and turned to see defendant run out of the exchange. When police arrived, Winston noted that a bundle of 1,000 single dollar bills, "some hundreds, some fifties, tens, and fives" were missing from a drawer, but was unable to quantify what had been taken from the safe. She also found a set of car keys on the floor of the secured area that did not belong to her or any other employee. Several packs of money were also strewn around the secured area's floor.

¶ 5 Around this time, Michael Reynolds was walking in a nearby cemetery. He saw defendant enter the cemetery carrying a satchel which he thought "had some red or white" in it. He looked at defendant's face and made eye contact for a couple seconds because he thought he might know him. Defendant had braids and was wearing black, though Reynolds could not remember at trial whether his shirt or pants were black. Reynolds later saw defendant standing in the stairwell area of the cemetery's mausoleum. Shortly thereafter, police officer Robert Verber approached Reynolds while searching for defendant. Reynolds directed the officer towards the mausoleum. According to Verber, he then drove to the building where he found a small bag near the mausoleum's entrance. Hillside police detective Daniel Murphy looked through the bag, which he described as "blue and black," and found over \$5,000 in cash banded with paper wraps and receipts like those used by the currency exchange. At trial Reynolds testified that the bag "look[ed] very similar" to the bag he had seen.

¶ 6 Westchester police officer Russel Newton also searched the cemetery following the robbery. While driving through the area, he saw a head "pop up and go right back down" behind a bush. Approaching the bush, Newton found defendant lying on the ground. As he arrested defendant, defendant stated that he was there visiting his girlfriend's grave and was doing pushups. Defendant was arrested and Winston, Bodenchak, and Reynolds were each brought to the scene. According to police officer Carlo Visioni, all three witnesses separately identified defendant as the man they had seen. While the officer noted that defendant wore a black shirt during the show-up, both Winston and Bodenchek indicated at trial that he had worn a white shirt. Winston, Bodenchek, Reynolds, Visioni, and Newton all identified defendant at trial.

¶ 7 At the currency exchange, officers found a red vehicle in the building's parking lot. Hillsdale police officer Michael Duffek observed several items on the driver's seat, including a pair of handcuffs and "a money wrap *** that the bank or currency exchanges use." There was also a black handgun wedged between the seat and the console. Several dollar bills were visible between the seat and the door. The next day, Detective Murphy used the car keys Winston had found in the exchange to open the vehicle. According to the evidence technicians who searched the car, they found a loaded handgun, a \$100 bill, an empty paper money wrap, 13 \$1 bills, duct tape, and other items inside the vehicle. In the trunk, they found a Glenbrook security jacket. At trial, Winston identified the recovered handgun as the one used by defendant. The technicians also took fingerprints from the vehicle's interior and exterior, as well as from inside the currency exchange. A forensic scientist found several of defendant's fingerprints on the passenger side and the passenger side door of the vehicle. None of the testable fingerprints found within the car or in the currency exchange belonged to defendant.

¶ 8 At trial, the State presented a certified copy of defendant's prior conviction for aggravated vehicular hijacking. Defendant did not testify, but presented a stipulation that an expert had tested hairs found in the parked vehicle. All of the testable hairs were microscopically dissimilar from defendant's hair.

¶ 9 The trial court found defendant guilty of armed robbery and unlawful use of a weapon by a felon, explaining that it found "the circumstantial evidence here *** is absolutely overwhelming."

¶ 10 At defendant's sentencing hearing, the trial court allowed the State, over defendant's objection, to introduce testimony regarding a prior charge of armed robbery of which defendant had been acquitted. Prior to trial, the court had granted defendant's motion to bar the same testimony as other crimes evidence. Cynthia Erno, an assistant state's attorney, testified that she had prosecuted defendant's previous armed robbery trial. According to Erno, the victim in the prior case testified that while closing a different currency exchange on March 11, 2008, she believed she closed the store's front door and began to walk back to the secured area. However, after she turned, defendant and another individual managed to pull the door open and enter the exchange. Defendant had a handgun and held it to the victim's temple. Defendant told her "[s]omething to the effect of shut the [expletive] up. Let's move." The two men then walked the victim to the exchange's secured area where they directed her to get on the floor. The victim's ankles and wrists were bound and she was told to keep her face down. After defendant and the other men left, the victim freed herself and found that a cash drawer in the safe had been emptied except for its singles. A black garbage bag had also been left in the secured area which was not present before the men arrived. The victim later identified defendant in a line-up. Erno further testified that a fingerprint expert testified that defendant's fingerprints were found on the black

garbage bag. On cross-examination, Erno stated that a video of the previous armed robbery had been entered at trial. According to Erno, the trial court in the previous case indicated in its finding that it did not believe defendant "was portrayed in the video."

¶ 11 The State further argued in aggravation that at the time of the robbery of the Hillside currency exchange defendant was serving a term of mandatory supervised release for a prior vehicular hijacking conviction. It noted that defendant had four other felony convictions, multiple probation violations, and unsatisfactorily terminated probations. The State asked for a 45-year sentence, the maximum under the statute.

¶ 12 In mitigation, defense counsel presented letters from defendant's family and friends indicating that he was a good role model and many individuals relied upon him. Counsel noted that defendant had started a trucking company which hired convicted felons who struggled to find employment. He also noted that defendant was engaged and the father of six children. Counsel further argued that while defendant had prior convictions, he had a more recent six-year period without convictions. Finally, defense counsel argued that the previous armed robbery charge was not relevant because the previous trial court had acquitted defendant based on a finding that defendant was not the man in the videotape. Defense counsel asked for a 21-year sentence, the minimum under the statute. In allocution, defendant apologized to the court and his family.

¶ 13 Following arguments, the trial court noted that defendant was on parole at the time of the offense and that his six year period without a conviction was due to his incarceration. After noting that it had reviewed defendant's presentence investigation and the letters presented in mitigation, the court stated:

"I do recall the testimony in this case quite vividly. I do also see that there are extreme similarities in this case and the [previous robbery case].

If I'm not mistaken, I believe that the vehicle that had his fingerprints on it, on the outside, that there was duct tape involved in the back of that. That there was a security jacket that was in the back of that.

I recall that the testimony of the women [sic] who was robbed in the Hillside Currency Exchange with a gun to her temple. Told her to lie on the floor in the security area. Very, very similar situations. The one difference is that in the Hillside case, [defendant] was interrupted because someone else came in and became witness to what was going on in that particular matter."

The court sentenced defendant to 35 year's incarceration for armed robbery and 7 years' incarceration for unlawful use of a weapon by a felon, to run concurrently. Defendant raised the court's consideration of the prior armed robbery acquittal in a supplement to his motion to reconsider sentence, which the trial court denied. Defendant appeals.

¶ 14 Defendant first contends that the State failed to prove him guilty of either charge beyond a reasonable doubt because it presented no physical evidence and the witnesses' identifications were unreliable. Due process requires the State to prove each element of a criminal offense beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004), citing *In re Winship*, 397 U.S. 358, 364 (1970). When reviewing the sufficiency of evidence, a reviewing court must decide "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, 313 (1979); See also *Cunningham*, 212 Ill. 2d at 278. A reviewing court will not overturn a guilty

verdict unless the evidence is "so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 15 This court may not retry a defendant on appeal. *People v. Milka*, 211 Ill. 2d 150, 178 (2004). A reviewing court must resolve all reasonable inferences in favor of the prosecution. *Cunningham*, 212 Ill. 2d at 280. It is the duty of the trier of fact to resolve any minor discrepancies and inconsistencies presented by the evidence. See *id.* at 283.

¶ 16 The State is not required to produce physical evidence. *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23. The positive and credible testimony of a single witness is sufficient to support a criminal conviction. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). A reviewing court must give due consideration to the fact that a trial court is able to see and hear the witnesses. *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001). A fact finder's determination of a witness's credibility "is entitled to great deference but is not conclusive." *Cunningham*, 212 Ill. 2d at 279. Where a conviction depends on eyewitness testimony, the reviewing court may find testimony insufficient "only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *Id.*

¶ 17 As charged, a person commits armed robbery when he or she (1) knowingly takes property from the person or presence of another (2) by the use of force or threatening the imminent use of force, (3) while armed with a firearm. 720 ILCS 5/18-2(A)(2) (West 2008); see also 720 ILCS 5/18-1 (West 2008). Unlawful use of a weapon by a felon as charged occurs when (1) an individual who has been previously convicted of a felony (2) knowingly possesses on or about his or her person (3) any of numerous enumerated weapons or any firearm or firearm ammunition. 720 ILCS 5/24-1.1 (West 2008).

¶ 18 Defendant does not contest that the State proved that an armed robbery took place on May 16, 2008, or that it proved that he was previously convicted of a felony. He solely argues that the State failed to prove that he was the man who robbed the currency exchange or that possessed the weapon. Winston testified that defendant was the man who held a gun to her head, entered the secured area of the currency exchange, and fled the store by kicking out its door. Bodenchak heard breaking glass and identified defendant as the man he saw fleeing from the exchange, thus corroborating Winston's testimony. Reynolds identified defendant as the man he saw with a satchel, who later stood near the mausoleum. Shortly thereafter, police officers found a "very similar" satchel near the mausoleum and discovered proceeds from the robbery inside. Winston, Bodenchak, and Reynolds all positively identified defendant in a show up and at trial. Furthermore, Officer Newton found defendant hiding beside a bush in the cemetery near the exchange. Defendant tried to explain his presence by stating that he was visiting his girlfriend's grave when he decided to start doing push-ups. His efforts to hide from the searching police and his incredible excuse for his presence indicate a consciousness of guilt and support the inference that defendant was the man who had fled the currency exchange. Additionally, evidence technicians found defendant's fingerprints on a vehicle parked in the exchange's parking lot. Inside the car, they found several items connecting the vehicle to the robbery, including cash, a money band used by the exchange, and a handgun which Winston identified as the firearm used during the robbery. The keys which unlocked the vehicle were found in the currency exchange's secured area, further connecting the vehicle, and thus defendant, to the robbery. Clearly the evidence supports a finding that defendant was the man who robbed the Hillside currency exchange with a handgun.

¶ 19 Defendant argues that we must reject all three witnesses' testimony as incredible because of various inconsistencies. The determination of what weight to give a witness's testimony and the resolution of any discrepancies between witness accounts is a question best suited for the fact-finder. See *People v. Peoples*, 2015 IL App (1st) 121717, ¶ 67; see also *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51. The minor discrepancies defendant cites, like the color of his shirt at the show-ups or that of the recovered bag, are not so significant that the trial court was unreasonable in accepting the witnesses' accounts.

¶ 20 Defendant also argues that the witnesses' identifications are unreliable because "one man show-ups" are highly suggestive and disfavored, citing *People v. Johnson*, 97 Ill. App. 3d 1055, 1214 (1981). In his citation, defendant fails to include the context of this court's statement. In *Johnson*, this court noted "[w]hile one-man showups are not favored, they are justified in various circumstances including where the witness had an excellent opportunity to observe the defendant during the commission of the crime, and prompt identification was necessary for the police to determine whether or not to continue their search." *Id.* Here, all three witnesses had excellent opportunities to view defendant. Winston had a face to face transaction with defendant, Bodenchak saw defendant when he entered the currency exchange and when defendant left, and Reynolds looked closely at defendant because he thought he might know him. All three witnesses gave similar descriptions. There is nothing in the record to suggest that the show-ups were unduly suggestive or that the identification of defendant by each witness was unreliable.

¶ 21 Defendant's argument that the State failed to present physical evidence is similarly unpersuasive. First and foremost, the State is not required to produce physical evidence, and as previously discussed, the eyewitness testimony was sufficient to prove defendant guilty. See *Herron*, 2012 IL App (1st) 090663, ¶ 23. Moreover, the State presented physical evidence of

defendant's involvement. Defendant's fingerprints were found on a vehicle in the currency exchange's parking lot. Inside that vehicle, investigators found the handgun from the robbery, a money band like those used by the currency exchange, and cash. The keys that unlocked the car were found in the currency exchange's secured area. Given the eyewitness testimony and the physical evidence presented by the State, a rational fact-finder could find beyond a reasonable doubt that defendant was the individual who robbed the currency exchange while using a firearm. Accordingly, the State proved beyond a reasonable doubt that defendant committed armed robbery and unlawful use of a weapon by a felon.

¶ 22 Defendant next contends that the trial court improperly considered the March 11, 2008, robbery in aggravation at sentencing because he was acquitted and the trial court in that case found that defendant was not depicted on a videotape of the incident. Our supreme court has recognized that "[i]t is well established that 'evidence of criminal conduct can be considered at sentencing even if the defendant previously had been acquitted of that conduct.'" *People v. Deleon*, 227 Ill. 2d 322, 340 (2008), quoting *People v. Jackson*, 149 Ill. 2d 540, 549-50 (1992). Such evidence is admissible because the evidentiary burden at sentencing is lower than that of the guilt-phase of a trial and the rules of evidence are more relaxed. *Jackson*, 149 Ill. 2d at 547-48.

¶ 23 While evidence of prior acquitted charges is not categorically inadmissible at sentencing, it still must be relevant and reliable. See *id.* at 549; see also *People v. Null*, 2013 IL App (2d) 110189, ¶ 56. The evidence must also be presented by witnesses who may be cross-examined by a defendant, giving him or her the opportunity to rebut the allegations. *Jackson*, 149 Ill. 2d at 548. In considering whether evidence offered in mitigation or aggravation was reliable and relevant, we review for an abuse of discretion. See *People v. Rose*, 384 Ill. App. 3d 937, 946

(2008). We will find that a trial court abused its discretion only where the trial court's ruling was "arbitrary, fanciful or unreasonable or where no reasonable man would take the view adopted by the trial court." *People v. Chambers*, 2016 IL 117911, ¶ 68.

¶ 24 We cannot find that the trial court abused its discretion in considering the March 11, 2008 robbery. If reliably accurate, the testimony was clearly relevant because it provided information on defendant's previous conduct, and thus provided information about his character. See *Rose*, 384 Ill. App. 3d at 941 ("Highly relevant-if not essential-to [trial court's] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics.") The question then remains whether the evidence from the prior trial was sufficiently reliable. Defendant was able to cross-examine Erno and given the opportunity to rebut her claims. Thus, he was able to test the evidence's reliability before the trial court. Moreover, the evidence of defendant's prior conduct was not merely circumstantial or sparse. The previous victim positively identified defendant and his fingerprints were found near the exchange's safe. The numerous similarities with the May 16, 2008 robbery exhibit a common method practiced by defendant which supports the conclusion that defendant was involved in the earlier robbery. While there were also several differences between the robberies, we do not find that they were so great that the trial court's determination that the evidence was reliable and relevant was arbitrary, fanciful or unreasonable.

¶ 25 Defendant argues that the evidence was unreliable and irrelevant because the previous trial court determined that defendant was not the robber. Evidence of charges that end in acquittal are admissible at sentencing because "a finding of not guilty is not a conclusive finding that the defendant did not commit the crime, but rather means that the State was unable to offer proof beyond a reasonable doubt that he did." *Rose*, 384 Ill. App. 3d at 941. The prior trial court

was considering evidence under a more onerous standard than a court during the sentencing stage. See *Jackson*, 149 Ill. 2d at 550. Given the stricter standard and the fact that the record is silent on what the video actually depicted, the earlier court's single statement that it believed defendant was not portrayed in the video does not clearly establish that it affirmatively found that defendant was innocent. We therefore cannot find that the sentencing court's decision to consider the evidence was so arbitrary or fanciful that no reasonable person would so decide. Accordingly, we hold that the sentencing court did not abuse its discretion in considering evidence of the prior charge of armed robbery.

¶ 26 For the foregoing reasons we find that the State proved defendant guilty of armed robbery and unlawful use of a weapon by a felon beyond a reasonable doubt. We also find that the trial court did not abuse its discretion during sentencing when it considered in aggravation evidence of a prior charge of armed robbery of which defendant was acquitted. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 27 Affirmed.