

NOTICE

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FILED

July 15, 2016

Carla Bender

4th District Appellate Court, IL

2016 IL App (4th) 140525-U

NO. 4-14-0525

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
DAVID R. RICHARDSON,)	No. 14CF24
Defendant-Appellant.)	
)	Honorable
)	Robert M. Travers,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The State's evidence was sufficient for the circuit court to find defendant guilty of armed robbery, and the circuit court did not improperly apply the law of accomplice testimony or shift the burden of proof.

¶ 2 In January 2014, the State charged defendant, David R. Richardson, by information with one count of armed robbery (720 ILCS 5/18-2(a)(1) (West 2014)). After an April 2014 bench trial, the Livingston County circuit court found defendant guilty of the charge. Thereafter, defendant filed a motion for a new trial. At a joint June 2014 hearing, the court denied defendant's posttrial motion and sentenced him to six years' imprisonment. Defendant filed a motion to reconsider his sentence, which he later amended. After a June 2014 hearing, the court denied defendant's amended motion to reconsider his sentence.

¶ 3 Defendant appeals, asserting (1) the State's evidence was insufficient to prove him guilty beyond a reasonable doubt of armed robbery and (2) the circuit court improperly applied

legal standards. We affirm.

¶ 4

I. BACKGROUND

¶ 5 The State's information asserted that, on January 6, 2014, defendant committed the offense of armed robbery, in that he, while armed with a dangerous weapon, a baseball bat, knowingly took a pizza from Erick Davis by the use of force. At the April 2014 bench trial, the State presented the testimony of Davis; Pontiac police sergeant Robin William Bohm; and codefendant Dakota Mullings. Defendant testified on his own behalf and presented the testimony of Storm Hartigan, Mullings' brother; and Kelly Daugherty, a neighbor of Mullings and Hartigan.

¶ 6 Davis testified that, on January 6, 2014, he was working at Pizza Hut and received a call with an order for the name "Junior" for three pizzas to be delivered to 218 Payson Street in Pontiac, Illinois. Davis arrived at 218 Payson Street at around 7 p.m. The house at that address was dark and looked vacant. After confirming the house was 218 Payson Street, Davis knocked on the house's front door. A person came around from the west side of the home and approached the front of the home. The person said his cousin lived at the back of the house. The person was wearing dark clothing, and Davis could only see his eyes and nose. Davis could tell the person was white. Davis and the person walked to the back of the house. Both Davis and the person knocked on the back door, and no one answered. Davis then called the number given with the order, and no one answered. At that point another person appeared from behind a shed in the backyard. Like the first person, the second person was wearing dark clothes, and Davis could only observe the person was white. Davis estimated the ages of the two individuals as between 16 and 20 years old. Davis turned to leave, and he was struck twice with a hard object on the back of his head. Davis believed it was the second person who struck him in the head. He

immediately dropped to the ground, where he was kicked twice in the leg. Davis did not lose consciousness, but he was dazed and his head was ringing. Davis assumed they wanted money, and he took the money out of his pocket. They took it out of his hands and ran away in a southeasterly direction. Davis did not know what happened to the pizzas. He made his way back to his car and called his manager at Pizza Hut. The manager called the police. After speaking with the police, Davis went to the hospital for treatment of his injuries.

¶ 7 Sergeant Bohm testified that, at around 7:30 p.m. on the night in question, he received a call about a pizza delivery driver being robbed at an unknown location. Just before that call, he had received a call about two suspicious subjects on a porch on Pinckney Street, which was the street directly south of Payson Street. Bohm located the victim, Davis, at 218 Payson Street, and he learned from him that two people were involved in the robbery. Sergeant Bohm went to the back of the home at 218 Payson Street and observed three sets of footprints in the 10 inches of snow, as well as the place where Davis was attacked. One of the sets of footprints led back to Davis's car. Sergeant Bohm and Officer Ryan Bradshaw followed the other two sets of tracks. Initially, the two sets of footprints were together and went into an alley behind the residences on Payson and Pinckney Streets. After a short distance in the alley, one set of footprints turned around and went back to the west, and the other set continued east. Eventually, Officer Bradshaw ended up at the back of 204 Payson Street. Sergeant Bohm explained a home existed between 218 and 208 Payson Street and a driveway separated 208 and 204 Payson Street. Officer Bradshaw found Hartigan standing alone in front of 204 Payson Street. Sergeant Bohm observed a reddish brown mark on Hartigan's boots that appeared to be a drop of blood. One of the residents at 204 Payson Street called Hartigan's mother, Teri McConaghy, to let her know what was happening. The footprints that Sergeant Bohm followed

went east down the alley, over a fence, through a backyard, over another fence, cut back to the southwest, and entered Pickney Street, where he could no longer follow them.

¶ 8 After speaking with the residents of 204 Payson Street, Sergeant Bohm went to 208 Payson Street because the tracks led to both residences and the shoe pattern from Hartigan's boots was also on the back steps of 208 Payson Street. Sergeant Bohm testified there were a lot of tracks back and forth between 204 and 208 Payson Street. The police gained permission to enter the residence at 208 Payson Street. McConaghy immediately noticed someone had been in her basement. Sergeant Bohm found a black Pizza Hut bag containing three pizzas in the basement stairwell, but no one was in the basement. After the police did not find anyone on the home's main floor, they proceeded upstairs. In one of the bedrooms, they found Mullings and defendant lying on a mattress, which was lying on the floor. Sergeant Bohm identified defendant in court as being one of the males lying on the mattress. Both of them were wearing just boxers and acted like they were sleeping. Mullings admitted they had struck the pizza delivery driver with a bat and the bat was in the garage of 204 Payson Street. The police recovered the bat just inside the door of the garage at 204 Payson Street. The garage was about 65 feet away from the front of the home at 204 Payson Street.

¶ 9 The police decided to take Hartigan, Mullings, and defendant to the police station. Defendant said his shoes were a black and blue pair of Nikes. The first pair of black and blue Nikes the police found were a size 10 1/2, and Mullings claimed they were his. Before transporting defendant to the station, Dave McConaghy, who also resided at 208 Payson Street, notified Sergeant Bohm of some things in the upstairs bathroom. Sergeant Bohm went to the upstairs bathroom, which was next to the bedroom where they found defendant and Mullings. There, he found a variety of dark clothing, including ski masks, gloves, shirts, pants, and another

set of blue and black Nikes. The second set was a size 12, and like the first set, the shoes were wet. Mullings identified the size 12 shoes as defendant's shoes. Defendant gave the police permission to look at his cellular telephone (cell phone), and no telephone calls to Pizza Hut were found. Mullings told the police he had used defendant's cell phone and called Pizza Hut through a calling and texting app, which he deleted after making the telephone call.

¶ 10 Mullings testified he was 16 years old and Hartigan's younger brother. He too had been charged with armed robbery, and the State's Attorney was trying to get his case transferred to adult court. Mullings had not been promised anything for his testimony at defendant's trial, but he hoped for favorable treatment. Mullings testified that, on January 6, 2014, he, defendant, and Hartigan slept until 4 p.m. at 208 Payson Street, where he and Hartigan lived. Defendant was sleeping in Hartigan's upstairs bedroom, and Mullings was sleeping next door in his sister's bedroom. After waking up, he and defendant began drinking malt liquor left over from the night before, while Hartigan continued to sleep. Defendant proposed calling Pizza Hut, ordering pizza for delivery, hitting the driver once in the head with a bat to knock the person unconscious, and then running away after they got everything. Before they made the call, he and defendant went down to 218 Payson Street to make sure the home was vacant. Mullings wore his black and blue Nikes when they went to check out the house. Upon returning from 218 Payson Street, they went to Mullings's sister's room and watched for a car to pull up in front of 218 Payson Street. When they saw it, they left 208 Payson Street. Mullings slipped on his brother's boots, which were near the front door, before exiting.

¶ 11 Mullings and defendant went to the back of 218 Payson Street. The plan was for Mullings to hit the driver in front of the house, but Mullings changed his mind. Instead, he told the driver the residents only used the back door. When Mullings got to the back of the home

with the pizza delivery driver, defendant was standing right next to him. The driver knocked on the door and then asked what they were doing there. Mullings said, "there's a party here." The driver noted there were no lights on and started to walk away. At that point, Mullings hit the driver with a baseball bat on the head, and the driver hit the ground. Mullings had taken the bat from a shed at 204 Payson Street and hid it in his sweatpants. Once the driver was on the ground, defendant started searching his pockets. The driver woke up, and defendant hit the driver with his fists two or three times. The driver then started moving and yelling, so Mullings hit him with the bat again. Mullings then grabbed the Pizza Hut box, and he and defendant ran. During the attack, Mullings was wearing a ski mask, his "stepdad's Carhartt," and sweatpants. Defendant was wearing a ski mask, a "black Carhartt," and jeans. Mullings first testified he ran through someone's yard, back through someone else's yard, onto someone's porch, and then to his back door; and he went onto a street at some point. He later testified that, when he was done with the bat, he returned it to the garage where he had obtained it.

¶ 12 When they returned to 208 Payson Street, defendant went upstairs and was "freaking out, saying we're going to jail." Hartigan was not at home when they first got back to the house. Mullings assumed he was at the "old hospital" because that was where he and his friends usually met. Shortly thereafter, Hartigan returned, and Mullings told Hartigan what they did. Hartigan started "freaking out" and ran next door for a cigarette. Mullings threw the Pizza Hut bag in the basement and then went upstairs. He and defendant stuffed their clothes under the sink in the bathroom. Mullings left the boots outside the bathroom. After they hid their clothes, Mullings and defendant lay down and acted like they were sleeping. About four to five minutes later, the police found them. Mullings initially told the police they put their clothes under the ice in the river because he did not want the police to take his Nikes since they were expensive and he

believed he would receive another charge for wearing the ski mask.

¶ 13 Mullings admitted he lied to the police, and he was a thief. However, he denied telling the police he was the one who called Pizza Hut. Mullings testified his 19-year-old brother, Hartigan, was not involved in the attack on the driver. He did not think Hartigan was at home when the pizzas were ordered. Mullings stated they were in Hartigan's room when they placed the pizza order. Mullings had no idea where Hartigan was during the attack.

¶ 14 Daugherty testified that, on June 6, 2014, she lived at 204 Payson Street and knew defendant, Hartigan, and Mullings. Hartigan came over to her house more than once that day. During the first time he came over, they had a confrontation, and Hartigan left. Then, at around 6 p.m., she saw Mullings, Hartigan, and defendant out in front of 208 Payson Street smoking cigarettes. Sometime between 8 and 8:30 p.m., Hartigan came over to her house, and he was holding the right side of his face near his eye and his face was red. Daugherty asked Hartigan what was wrong with him, and Hartigan stated he had just woken up. Daugherty testified Hartigan appeared a little shaken up and was breathing a little heavier than normal. He appeared to have been in an altercation. Hartigan stated he needed a cigarette. He got one and then went outside.

¶ 15 Hartigan testified that, on January 6, 2014, he lived at 208 Payson Street with his mother, stepfather, sister, and brother, and his stepbrother and stepsister were there every other weekend. Hartigan recalled being questioned by the police at the police station and giving several different stories about what occurred and what he knew. Hartigan explained he was afraid of losing his brother and was going to take the blame for both Mullings and defendant. He lied to the police to protect his brother, not himself. However, Hartigan never told the police he did it. Hartigan further testified he did not do it. He stated he did not make the telephone call to

Pizza Hut but heard defendant make it. Defendant made the call in Hartigan's sister's room. When he was interviewed by the police, he said he did not know who made the call. Hartigan was in his room sleeping at the time. When he did get out of bed, he put on his boots, went next door for a cigarette, and then he was standing at home getting "slammed" into handcuffs. Hartigan had told the police Mullings and defendant were gone about an hour and a half. Hartigan had been up about 5 to 10 minutes when they returned home. He left not long after they got back. He had a conversation with Mullings before he left, and Mullings said he had hit a guy with a bat two times and defendant had got on top of the guy and beat him up. Hartigan believed he saw the pizza bag, but he did not have any pizza. Hartigan further testified he had been to 204 Payson Street a handful of times that day to get cigarettes. Hartigan had not wanted to go to the store to get cigarettes because of the cold weather. He also testified he did not wear the boots on a regular basis because they were his old work boots for his roofing job.

¶ 16 Defendant testified he was 17 years old on January 6, 2014. He had gone to Hartigan and Mullings' home for the weekend and stayed on Monday, January 6, 2014, because school had been cancelled. He was at their house for three or more days. Hartigan and Mullings' sister was gone that weekend, so her room was vacant. On January 5, 2014, the three stayed up until around midnight drinking alcohol. Defendant woke up the next morning and threw up due to his drinking the night before. Defendant then went back to bed. He stayed in bed the whole day. He got up a few times but did not get dressed and did not leave the property. Defendant was sleeping when the police came. Mullings was not in the room when he went to sleep, and he did not know when Mullings came in the room. Defendant denied any involvement in the beating of the Pizza Hut driver. He denied knowing what Mullings was going to do and his cell phone was not used to call Pizza Hut. He did not remember going outside at all that day.

Defendant offered to have the police look at his cell phone to see no such call was made from his cell phone. Defendant admitted he smoked cigarettes.

¶ 17 The circuit court made many oral findings before finding defendant guilty. The findings challenged by defendant follow.

"I would also point out that the defendant's statement, and here we're talking about proof of guilt in this particular instance, the defendant's statement is inconsistent with the statement of Kelly Daugherty. If you recall Ms. Daugherty's testimony, whether she has a dog in this fight or not, she testified that she had seen the defendant on the porch, next door with Mr. Hartigan, with Mr. Mullings about 6 p.m., on the evening of this occurrence, in other words, right about the time that, if we believe Mr. Mullings, the offense was being planned; that they were discussing what they were going to do in relation to calling the Pizza Hut, getting somebody out there.

I also believe, and this is coming from the judge having viewed the evidence, that the defendant's testimony in relation to him being asleep through the day, not having any discussions with Mr. Mullings, not knowing what was going on, never getting dressed to go outside, never remembering going outside in an instance where the temperature was certainly freezing, I think Bohm testified it was 40 below with wind-chill, but that is inconsistent with the defendant's testimony that was offered today.

If I am to believe the defendant's testimony, on the evening before, he had been drinking, didn't hear any testimony as to whether he was intoxicated or not, but he was drinking and went to bed at midnight. Indicated that he did not wake

up or get up until the following day when the police arrived and took him into custody. That would be a period of 19 to 20 hours where he had just gotten up from time to time to, apparently, throw up; and that's what he said.

* * *

The defense also argues that Mr. Mullings had multiple inconsistencies in his statements, and there were inconsistencies, without any question, as far as his testimony is concerned; but the Court, in this instance, accepts his explanation. We have to remember his age, we have to remember the circumstances of his questioning, we have to remember his relationship to the respective individuals involved; and I believe that most of his, well, I believe that all of his inconsistencies relate primarily to spin on his misconception of the law.

So, where does that leave the Court? The Court believes that the State has proven, beyond a reasonable doubt, each and every element of the charge alleged; and the Court finds the defendant guilty of this offense."

¶ 18 Defendant filed a motion for a new trial, raising numerous contentions of error. At a joint June 4, 2014, hearing, the circuit court denied defendant's posttrial motion and sentenced him to six years' imprisonment. That same day, defendant filed a motion to reconsider his sentence, which he later amended. After a June 11, 2014, hearing, the court denied defendant's amended motion to reconsider his sentence. On June 13, 2014, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Feb. 6, 2013). Thus, this court has jurisdiction of this cause under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 19

II. ANALYSIS

¶ 20

A. Sufficiency of the Evidence

¶ 21 Defendant argues the evidence was insufficient to prove him guilty beyond a reasonable doubt of armed robbery because Mullings' testimony was questionable and uncorroborated. The State asserts the circuit court could have found Mullings' testimony credible.

¶ 22 When presented with a challenge to the sufficiency of the evidence, a reviewing court's function is not to retry the defendant. *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010). Rather, we consider " '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.) *People v. Davison*, 233 Ill. 2d 30, 43, 906 N.E.2d 545, 553 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "Under this standard, the reviewing court does not retry the defendant, and the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence." "*People v. Washington*, 2012 IL 107993, ¶ 33, 969 N.E.2d 349 (quoting *People v. Ross*, 229 Ill. 2d 255, 272, 891 N.E.2d 865, 876 (2008)). Further, we note a reviewing court will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Givens*, 237 Ill. 2d at 334, 934 N.E.2d at 484.

¶ 23 Defendant asserts it is impossible to reconcile Mullings' testimony with Sergeant Bohm's testimony about the boot prints. We disagree. First, Sergeant Bohm testified the footprints that Officer Bradshaw followed led to the *back* of 204 Payson Street and those prints matched the boots Hartigan was wearing when the police arrived. Hartigan was found standing outside in *front* of 204 Payson Street. Sergeant Bohm estimated Hartigan was about 65 feet from

the garage at 204 Payson Street. Thus, defendant's assertion Officer Bradshaw found Hartigan at the tail end of the tracks he followed is not supported by the evidence at trial. Moreover, while Mullings first testified he ran through several yards, onto someone's porch, and then to his back door, Mullings also testified about how he got and returned the bat used in the attack. Mullings testified he took the bat from the shed (also referred to as the garage) behind 204 Payson Street and returned it there when he was done with it. This comports with what he told the police on the night of his arrest, and Sergeant Bohm testified the police did find the bat inside the garage at 204 Payson Street. Sergeant Bohm also testified boot prints were found at the back door of 208 Payson Street. Thus, Mullings' testimony he wore his brother's boots during the attack and returned the bat to the garage at 204 Payson Street after he used it on Davis would be consistent with the boot prints found by Officer Bradshaw.

¶ 24 Some physical evidence also existed of defendant's participation in the attack. When the police found defendant's Nikes, they were wet, indicating he had been out in the snow. They were also located near the ski mask and dark clothing that was hidden under the bathroom sink. Additionally, Mullings testified defendant wore jeans during the incident, and the police found a pair of jeans under the sink that were also wet to the touch.

¶ 25 In addition to the physical evidence indicating defendant's participation in the attack on Davis, circumstantial evidence existed as well. Defendant was the person who was fake sleeping, wearing only boxers, lying near Mullings, and in close proximity to the hidden clothes when the police arrived. Mullings' testimony one of the ski masks under the bathroom sink belonged to defendant was unrefuted.

¶ 26 Defendant also contends that, because Mullings hoped for favorable treatment in his case, the circuit court could not accept his testimony unless it carried within it an "absolute

conviction of its truth.' " *People v. Ash*, 102 Ill. 2d 485, 493, 468 N.E.2d 1153, 1156 (1984) (quoting *People v. Williams*, 65 Ill. 2d 258, 267, 357 N.E.2d 525, 530 (1976)). However, *Ash* is distinguishable from this case because, in that case, no evidence corroborated the accomplice's testimony the defendant committed the offense. *Ash*, 102 Ill. 2d at 493-94, 468 N.E.2d at 1157 ("In addition, testimony which supposedly corroborated [the accomplice's] described only certain events surrounding the crime but not who committed it."). As noted in the previous paragraphs, both physical and circumstantial evidence indicated defendant was the second person involved in the attack on Davis.

¶ 27 Defendant further argues Mullings' testimony contained multiple inconsistencies with Hartigan's testimony and Mullings had a motive to implicate defendant to protect Hartigan. In his contention regarding the inconsistencies between Mullings and Hartigan, defendant cites cases addressing inconsistencies in the testimony of State witnesses. See *People v. Lindsey*, 73 Ill. App. 3d 436, 447, 392 N.E.2d 278, 287 (1979) (where the testimony of the State's eyewitnesses were contradictory and impeached by other evidence); *People v. Poltrack*, 18 Ill. App. 3d 847, 850, 310 N.E.2d 770, 772 (1974) (involving contradictions within and between the complainants' testimony). Here, Hartigan was a defense witness, not a State witness. Regardless, even if defendant did not make the call to Pizza Hut, other evidence was presented indicating he was Mullings' accomplice.

¶ 28 Additionally, "[i]nconsistencies in the testimony of the witnesses, bias or interest affecting their credibility, and the weight to be given to the testimony of witnesses are for the trier of fact to determine." *People v. Hernandez*, 319 Ill. App. 3d 520, 533, 745 N.E.2d 673, 684-85 (2001). Moreover, "[a]n assertion that another person committed the offense does not necessarily raise a reasonable doubt as to the guilt of the accused." *People v. Tenney*, 205 Ill. 2d

411, 429, 793 N.E.2d 571, 582 (2002). Likewise, a trier of fact is "not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt." *Tenney*, 205 Ill. 2d at 429, 793 N.E.2d at 582. As to accomplice testimony, the circuit court expressly and properly recognized it had to view the testimony of Mullings, as a codefendant, with suspicion. *Tenney*, 205 Ill. 2d at 429, 793 N.E.2d at 583.

¶ 29 Here, the court recognized the inconsistencies in Mullings' testimony but believed "his inconsistencies relate[d] primarily to spin on his misconception of the law." The court also noted Mullings' age, the circumstance of his questioning, and his relationship to the other individuals involved explained some of the inconsistencies. The court expressly found Mullings' version of the events on the evening of January 6, 2014, more credible than defendant's. Our supreme court has recognized "the testimony of an accomplice witness, whether corroborated or uncorroborated, is sufficient to sustain a criminal conviction if it convinces the [trier of fact] of the defendant's guilt beyond a reasonable doubt." *Tenney*, 205 Ill. 2d at 429, 793 N.E.2d at 583. Accordingly, we find the evidence was sufficient for the circuit court to find beyond a reasonable doubt defendant was Mullings' accomplice in the attack on Davis.

¶ 30 B. Burden of Proof

¶ 31 Defendant also asserts the circuit court improperly shifted the burden of proof onto the defense. He argues the court (1) misapplied the established law on accomplice testimony by accepting Mullings' testimony despite his inconsistencies and questionable motives and (2) imposed on defendant the burden of disproving his participation in the crime. A question exists as to whether defendant properly preserved this issue for review, and defendant requests plain-error review if he did forfeit the issue. Since defendant has asserted plain error, we need not initially address forfeiture because our first step is the same regardless, *i.e.*, determining

whether any error occurred at all. See *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1059 (2010) (noting the first step in conducting a plain-error analysis is determining whether any error occurred). Whether the circuit court applied the correct legal standard presents a question of law, and thus we apply the *de novo* standard of review. *People v. Cameron*, 2012 IL App (3d) 110020, ¶ 26, 977 N.E.2d 909.

¶ 32

1. Mullings' Testimony

¶ 33

Defendant contends the circuit court misapplied the law of accomplice testimony. However, as we explained in our analysis of the sufficiency of the evidence, *Ash* is distinguishable from this case because, here, the State did present corroborating evidence. Moreover, the court stated Mullings' relation to Hartigan was one of several reasons why Mullings' inconsistencies did not render his testimony unbelievable. As previously stated, bias or interest affecting a witness's credibility is a matter for the trier of fact to determine. See *Hernandez*, 319 Ill. App. 3d at 533, 745 N.E.2d at 684-85. Accordingly, we find the circuit court did not apply an improper standard.

¶ 34

2. Defendant's Testimony

¶ 35

Defendant notes the circuit court found three weaknesses in his testimony and concluded his theory of the case was unacceptable. Defendant argues the court's aforementioned findings indicate the court imposed a burden on him that is only applicable to the State. We disagree.

¶ 36

Due process mandates the State bear the burden of proving all of the elements of the charged offense beyond a reasonable doubt. *Cameron*, 2012 IL App (3d) 110020, ¶ 27, 977 N.E.2d 909. "That burden of proof remains on the State throughout the entire trial and never shifts to the defendant." *Cameron*, 2012 IL App (3d) 110020, ¶ 27, 977 N.E.2d 909. Moreover,

the defendant maintains the presumption of innocence throughout the trial and does not have to prove his innocence, testify, or present any evidence. *Cameron*, 2012 IL App (3d) 110020, ¶ 27, 977 N.E.2d 909. We presume the circuit court knew the law regarding the burden of proof and applied it properly. *Cameron*, 2012 IL App (3d) 110020, ¶ 28, 977 N.E.2d 909. However, the presumption may be rebutted when the record contains strong affirmative evidence to the contrary. *Cameron*, 2012 IL App (3d) 110020, ¶ 28, 977 N.E.2d 909. Thus, in reviewing a burden-shifting claim, we must determine whether the record contains strong affirmative evidence the circuit court incorrectly allocated the burden of proof to the defendant. *Cameron*, 2012 IL App (3d) 110020, ¶ 28, 977 N.E.2d 909.

¶ 37 In support of his argument, defendant notes the circuit court's findings about his testimony. A circuit court's efforts to test, support, or sustain the defense's theories cannot be viewed as improperly diluting the State's burden of proof or improperly shifting that burden to the defendant. *Cameron*, 2012 IL App (3d) 110020, ¶ 28, 977 N.E.2d 909. Moreover, the circuit court is free to comment on the implausibility of the defense's theories, as long as it is clear from the record the circuit court applied the proper burden of proof in finding the defendant guilty. *Cameron*, 2012 IL App (3d) 110020, ¶ 28, 977 N.E.2d 909.

¶ 38 In this case, the circuit court noted several times during its oral findings that the State bore the burden of proving every element of the charged offense beyond a reasonable doubt. The three weaknesses in defendant's testimony found by the court indicate the court considered and tested defendant's theory of innocence but found that theory implausible. A circuit court is not required to accept the exculpatory testimony of a defendant. *People v. Ellis*, 269 Ill. App. 3d 784, 789, 646 N.E.2d 1321, 1324 (1995). The court considers the defendant's testimony along with all of the evidence in the case to assess the plausibility of a defendant's

testimony. *Ellis*, 269 Ill. App. 3d at 789, 646 N.E.2d at 1324-25. The court's findings indicate that was what it was doing in this case. The fact the court did not find defendant's theory plausible does not mean the court then found defendant guilty because he was not believable. Based on the totality of the court's statements, we do not find the circuit court improperly shifted the burden of proof to defendant.

¶ 39

III. CONCLUSION

¶ 40

For the reasons stated, we affirm the Livingston County circuit court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 41

Affirmed.