

NOTICE

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2016 IL App (4th) 140615-U

NO. 4-14-0615

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 10, 2016

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
JAMES E. HILLIARD,)	No. 13CF69
Defendant-Appellant.)	
)	Honorable
)	Timothy J. Steadman,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction is reversed where the evidence was insufficient to prove him guilty of aggravated discharge of a firearm beyond a reasonable doubt.

¶ 2 In January 2014, a jury convicted defendant, James E. Hilliard, of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(1) (West 2010)). In March 2014, the trial court sentenced defendant, then nearly 80 years old, to four years' imprisonment.

¶ 3 Defendant appeals, arguing (1) the evidence was insufficient to prove him guilty of aggravated discharge of a firearm beyond a reasonable doubt; (2) reversible error occurred when (a) the State's witness narrated what occurred on a surveillance video, (b) the trial court failed to instruct the jury not to consider defendant's request for counsel during his interrogation, and (c)

trial counsel rendered ineffective assistance; and (3) the cumulative errors deprived him of a fair trial. We reverse.

¶ 4

I. BACKGROUND

¶ 5 On December 14, 2012, at approximately 10:30 p.m., Sherea James, an investigator for the Department of Children and Family Services (DCFS), returned home from investigating a hotline call. Her husband, Lindzy James, a prison guard employed by the Department of Corrections (DOC), was standing in the garage smoking a cigarette when Sherea got home. As the garage door was closing, Lindzy noticed "red lights hesitate at the end of the driveway." Because the garage door was almost down, he did not see the actual vehicle. He looked out the window but did not see any vehicles outside. Lindzy and Sherea then retired to the bedroom. Sherea went to sleep and Lindzy watched television. At approximately 11 or 11:30 p.m., Lindzy heard what he thought was the sound of a glass falling off the kitchen counter or a glass ornament falling off the Christmas tree. Sherea also heard the sound of glass breaking but assumed an ornament had fallen off the tree. Lindzy got up and looked around but did not find anything and returned to bed.

¶ 6 The next morning, Sherea found glass on the living room floor near the couch and the Christmas tree. She followed the glass to the window and noticed the blinds were disturbed. Behind the blinds she observed a hole in the window. Lindzy thought it was a bullet hole and called the police. City of Decatur police officer Cory Barrows searched the house with Lindzy. Barrows placed a pencil in the hole to attempt to estimate the bullet's trajectory and was led to the area around the television in the living room. However, no holes or marks were discovered there. Around 30 to 45 minutes later, they discovered an object approximately 15 feet away

from the television inside a heating vent in the dining room floor. They believed the object was a spent bullet. It was flat and misshapen.

¶ 7 On December 19, 2012, Decatur police detective Jeremy Appenzeller contacted Sherea to develop information about potential suspects. Sherea reported having an angry confrontation with an upset individual named Eric Cramer on December 14, 2012, regarding a DCFS case. The police interviewed Cramer, who owned a gun, but determined he had an alibi for the night in question and the gun was not currently in his possession. They did not search his car or house.

¶ 8 On December 21, 2012, Sherea contacted Appenzeller and told him about the hotline call she investigated the evening of December 14, 2012. The call was placed by defendant, who reported he had been previously engaged in a sexual relationship with his neighbor, Kristy K. Defendant's concern revolved around his belief Kristy was prostituting herself and her son was exhibiting sexualized behavior. Sherea investigated the complaint that same evening but found no indications of abuse or neglect. Sherea left Kristy's home around 10 p.m. Kristy lived three houses away from defendant and told police she saw him leave in his vehicle shortly after Sherea drove away.

¶ 9 During a December 22, 2012, interview, Appenzeller confronted defendant with pictures from surveillance video obtained from a Huck's gas station located on Sherea's route home. Appenzeller told defendant his car was shown in that video. Defendant denied he had been at Huck's that night. Defendant admitting leaving home that night but stated he went to Steak 'n Shake and not anywhere else.

¶ 10 On January 9, 2013, the police executed a search warrant for defendant's home and

found two rounds of 9-millimeter ammunition, an empty box for .22-caliber long rifle ammunition, and an empty box for a .22-caliber revolver in a dresser drawer. In the closet of another bedroom, police found a box containing "50 rounds of 22 ammunition." In a dining room drawer, police found a wooden pistol grip for a revolver-type firearm. No firearms were recovered.

¶ 11 Police also found various notes, some incomplete, to and about Kristy, as well as a 2012 pocket calendar. One note had the heading, "Kristy & Me Sex" and listed various dates. According to the December 7, 2012, calendar entry, defendant had asked Kristy to marry him. The calendar also contained a scratched-out entry for December 14, 2012. That entry indicated Kristy left her home in a white Cadillac with a license plate number matching that of Sherea's Chrysler 300. Police also found Freedom of Information Act requests to the Illinois State Police for vehicle information based on license plate numbers. One of the requests was for information about Sherea's vehicle. However, law enforcement declined to give information about the owner to defendant.

¶ 12 Thereafter, the State charged defendant with (1) aggravated unlawful use of a weapon (count I) for knowingly carrying a loaded, uncased, and immediately accessible .22-caliber firearm in his vehicle (720 ILCS 5/24-1.6(a)(1)(3)(A) (West 2010)); (2) aggravated unlawful use of a weapon (count II) for knowingly carrying a loaded, uncased, and immediately accessible .22-caliber firearm "on or about his person in a vehicle" without a currently valid firearm owner's identification card (FOID) (720 ILCS 5/24-1.6(a)(1)(3)(C) (West 2010)); (3) aggravated discharge of a firearm (count III) for knowingly discharging a firearm in the direction

of an occupied building (720 ILCS 5/24-1.2(a)(1) (West 2010)); and (4) possession of a firearm with a revoked FOID card (count IV) (430 ILCS 65/14(c)(1) (West 2010)).

¶ 13 Prior to trial, defendant's counsel filed a motion *in limine* seeking to exclude testimony regarding the Huck's surveillance video. The motion requested the trial court prohibit the State's witnesses from positively identifying the vehicles shown in the video as those belonging to Sherea or defendant. According to defendant, it was up to the jury to determine for itself what the video shows. The court ruled the State's witnesses could not identify the vehicles but could state the vehicles were similar to those owned by Sherea and defendant.

¶ 14 After jury selection concluded, but before opening statements, the State notified the trial court it intended to proceed only on the aggravated discharge of a firearm count (count III). (The State's decision was at least partially based on its discovery defendant had a valid FOID card at the time of the alleged offenses.) The court then dismissed counts I, II, and IV.

¶ 15 During its opening statement, the State theorized defendant had become obsessed with Kristy. The State proposed defendant mistakenly thought (1) Sherea was a man and (2) Kristy left her house in Sherea's car the night of the DCFS visit. According to the State, as a result of his obsession, defendant followed Sherea home and shot at her house with his .22-caliber pistol in order to scare Kristy into leaving.

¶ 16 A. Barrows' Testimony

¶ 17 Decatur police officer Cory Barrows testified he responded to the call at Lindzy and Sherea's house. According to Barrows, in his experience, the hole in the window was consistent with a bullet hole. Barrows testified he was not immediately able to find the bullet and it took 30 to 45 minutes to locate the projectile. Barrows found what he referred to as a

bullet "[a]ll the way across [the floor] on the other side of the house in a floor heating vent *** between *** the slats." The State introduced into evidence People's exhibit No. 1, which Barrows identified as the piece of bullet he located in the heating vent. Barrows testified, based on his experience, he thought it was "about a .22 caliber spent bullet." When asked on cross-examination, whether he could actually tell what caliber it was, Barrows responded, "No. That's just a guess on my part. I'm not an expert. Just based on the size of it."

¶ 18 B. Lindzy's Testimony

¶ 19 According to Lindzy, based on his law enforcement and military experience, he knew the hole in the window was a bullet hole because it did not shatter the whole window. Lindzy testified, "because *** I qualify in weapons all the time *** I know what bullet holes look like and plus if it was a brick or rock, it would have broke the whole window out and it was just a little small hole in the window and nothing else shattered." On cross-examination, Lindzy testified he could not identify what specific caliber the fragment was because it was "not in [his] field of studies."

¶ 20 C. Sherea's Testimony

¶ 21 During trial, Sherea testified she responded to a DCFS hotline call from defendant on December 14, 2012. Defendant reported Kristy was prostituting herself and he was concerned about her son exhibiting sexualized behavior. At approximately 9:30 p.m., Sherea went to Kristy's home to investigate the complaint. She was driving a white Chrysler 300. Upon meeting with Kristy, Sherea determined no further investigation was necessary. Sherea left Kristy's home "[s]omewhere around" 10 p.m. Sherea drove east on Eldorado Street, which turns into William Street. She then took William Street to North Lake Shore Drive. From there she

turned left on East Lake Shore Drive and took that road to her home. Sherea testified there was a Huck's gas station on the corner of William Street and North Lake Shore Drive. Sherea arrived home at approximately 10:30 p.m. While Sherea notified defendant regarding the result of her investigation pursuant to DCFS procedure, she did not do so that night. Sherea did not identify her vehicle on the Huck's surveillance video.

¶ 22

D. Appenzeller's Testimony

¶ 23

Decatur police detective Jeremy Appenzeller testified, during his investigation, Sherea provided him with additional details regarding defendant. Sherea told him "[t]here had been a relationship reported between [Kristy and defendant] to the point where it was possibly an obsessive relationship [and] it was reported [defendant] followed people from [Kristy's] house and [he] has been known to possibly have guns in the house." Appenzeller explained he then interviewed Kristy, who told him defendant was "basically obsessed with her." Kristy then reported defendant left his house soon after Sherea left on the night of the shooting and traveled in the same direction as Sherea.

¶ 24

Appenzeller obtained video surveillance footage from a Huck's convenience store he knew was located along Sherea's route home. Before the footage was played for the jury, Appenzeller testified as follows:

"[Sherea] had indicated to me that she drove a white 2011 Chrysler 300. It's a 4 door vehicle. When I was observing the video footage, I saw a white vehicle consistent with the description of [Sherea's] travel southbound on to Lake Shore Drive as she was going home. Soon after that, within seconds, I observed a tan or gold

vehicle with black rims and black tires travel directly behind the white vehicle. The gold, tan vehicle with the black rims and tires is consistent with the vehicle that is owned and operated by [defendant]."

The video was then played for the jury. While it was playing, the following colloquy took place between the assistant State's Attorney and Appenzeller regarding what the video depicted:

"Q. First of all, is this the first surveillance footage that you just described?

A. Yes, it is.

* * *

Q. Now, Detective, at the very end of that kind of grainy video footage there's a vehicle that comes through the parking lot and kind of, it looks like it comes off North Lake Shore Drive through the parking lot then on out onto William Street. How does the appearance of that vehicle compare to your knowledge of what [defendant's] vehicle looks like?

A. The vehicle depicted in the video is very similar and very consistent to the vehicle owned and operated by [defendant]."

¶ 25 The assistant State's Attorney then inquired about a second surveillance camera angle that faced northward toward East William Street Road as follows:

"Q. And we just saw a vehicle drive through the parking lot.

Do we see that vehicle drive through the parking lot on that surveillance [camera angle]?

A. Yes.

Q. On that angle. And you've had the opportunity to review that portion that is contained within the People's [PowerPoint] presentation, is that correct?

A. Yes.

* * *

Q. I'm showing you People's [PowerPoint] Slide [No.] 18.

Do you recognize what is contained within this slide?

A. Yes.

Q. And what is that?

A. That is a tan or gold vehicle with black rims consistent with the description of the vehicle owned and operated by [defendant].

Q. And do you know where this photograph came from?

A. Yes. It came from the DVD still, from the video footage.

It was a still image from the video footage."

¶ 26 Appenzeller also testified about his interview with defendant. The video of the interview was played for the jury. Appenzeller explained he initially misled defendant into thinking they were investigating Kristy because defendant was very fond of her and would do

anything to protect her. According to Appenzeller, he wanted to blame Kristy in order "to strike an emotional point with [defendant], maybe to get him to acknowledge that this incident happened and to deflect the investigation from Kristy. That way *** we could have some acknowledgment the incident did happen." Appenzeller eventually confronted defendant with still pictures from the Huck's surveillance video and told defendant it was his car in the video. Defendant responded, "Huck's? I haven't been to Huck's in a long time." Defendant admitted leaving his home that night but stated he went to the Steak 'n Shake. Defendant denied going anywhere else that night. When Appenzeller told defendant he had him on video and they needed to talk about it, defendant responded, "No we don't, we need a lawyer," and stated their conversation was over. Despite a prior agreement not to play that portion of the interview for the jury, the assistant State's Attorney failed to stop the video in time and the jury heard defendant's request for counsel. (Defendant's trial counsel did not move for a mistrial or request a limiting instruction to disregard defendant's request for an attorney. The State did not comment on defendant's request for counsel during closing arguments.)

¶ 27 On cross-examination, Appenzeller admitted they were not able to connect any of the ammunition collected during the search of defendant's house to the fragment found in Sherea's house. Appenzeller explained police did not do any tests on the fragment because it was flattened and deformed. Appenzeller also admitted the police did not attempt to discern if the recovered fragment was even made of lead. Appenzeller testified they did not find any evidence a gun had been fired from inside defendant's vehicle, nor were any shell casings found in the vicinity of Sherea's home. Further, Appenzeller admitted he could not determine the make or model of either vehicle in the Huck's surveillance video. No driver is visible in either vehicle.

¶ 28

E. Kristy's Testimony

¶ 29

Kristy testified defendant lived three houses down from her on the same side of the street. She met him through her parents, who knew defendant "for a while." Kristy and defendant played bingo together about twice a week. She noticed the nature of their relationship had changed from defendant's perspective, but she did not know when that happened. Kristy testified she said no when defendant asked her to marry him. Kristy maintained they did not have a dating relationship prior to defendant's proposal. According to Kristy, she and defendant were just friends and she considered defendant "an adoptive grandfather." Kristy was surprised when Sherea showed up at her house. Kristy was outside when Sherea left and testified she observed defendant leaving in his vehicle 20 minutes later. Kristy later testified it could have been less than 20 minutes. Kristy also agreed she told Appenzeller she saw defendant leave "almost right after" Sherea left. According to Kristy, she could not remember exactly "because it's been so long." Kristy testified she did not see defendant follow Sherea. Kristy explained she sought an order of protection against defendant after Sherea investigated the complaint but dropped it shortly thereafter. Kristy did not state why she sought the order.

¶ 30

F. Vicky Wiggington's Testimony

¶ 31

Vicky Wiggington testified she had known defendant for approximately 25 years. She used to sit with defendant at bingo. Kristy would also play bingo with them. Defendant told Vicky he was in love with Kristy and they had sex. Vicky did not know whether they actually had sex. According to Vicky, defendant proposed marriage to Kristy on December 7, 2012. Defendant also expressed to Vicky concerns he had about Kristy being involved with other men. Defendant thought Kristy was having sex with older men for money. Vicky testified defendant

told her one time he followed Kristy and another woman to Pana. We note, during Kristy's testimony, she clarified defendant did not follow her to Pana. Instead, Kristy testified defendant drove her to Pana and dropped her off at a friend's house. However, Kristy maintained defendant later followed her from her friend's house to a Dairy Queen in Pana. Defendant told Vicky, who was a licensed foster parent, he would like to see her get Kristy's son if he were removed from Kristy's custody. While Vicky testified defendant once mentioned to her he had a gun, Vicky clarified defendant told her that at a time when his wife was still alive, *i.e.*, prior to April 2011.

¶ 32 At the close of the State's case, defendant moved for a directed verdict, which the trial court denied.

¶ 33 G. Defendant's Testimony

¶ 34 Defendant testified he and his wife divorced in 1988. He moved back into his current house to take care of his ex-wife, who had a bad heart and was dying. She died on April 27, 2011. Defendant testified he met Kristy seven or eight years prior to trial through their church. Thereafter, Kristy would come over and help defendant around the house. Defendant tried to get her a job as his caregiver through the Veteran's Administration, but she did not want a job and would not take any money for her work.

¶ 35 Defendant testified he and Kristy became romantically involved in June 2012. Defendant explained Kristy "would come to my home and, you know, wear a skirt and lay around on the couch and this and that. Kind of expose herself and things. One thing led to another." Defendant testified Kristy would also come to his house to take showers and he would joke with her about washing her back. Defendant maintained one day he just got into the shower with her and their relationship developed from there.

¶ 36 Defendant testified he asked Kristy to marry him in June or July 2012. According to defendant, Kristy agreed to marry him as long as he would agree to certain "stipulations." Kristy had just started to receive Social Security disability benefits and did not want to lose them. Kristy wanted to live with defendant part-time and also live with her parents, "where she could do as she wanted to do." Kristy's terms were not acceptable to defendant. After that, they continued their relationship, but "it wasn't the same." Defendant eventually asked her to leave, which she did, but she came back and their relationship continued for about two more months. At that point, defendant asked her to leave again because he thought she wanted to be with other men.

¶ 37 Defendant testified he was concerned about Kristy being physically abused by other men. Defendant reported taking Kristy to the hospital because the father of her son burned her with a sparkler. Defendant got to know Kristy's four-year-old son and was also worried about him. Defendant indicated he called DCFS because his daughter came over earlier that day and told him she saw Kristy in front of her house dragging her son around by his hair.

¶ 38 After he ended the relationship the second time, defendant continued to give Kristy rides to church. One of the churches was located in Pana. During a drive with Kristy to Pana in December, defendant determined she was not going to change. During that drive, Kristy told him "she was selling her body for a pack of cigarettes and some money from a gentleman named James." Defendant testified he had met James but denied he ever followed him. Defendant acknowledged following Kristy one time in Pana but testified it was only to see if she needed a ride back to Decatur before he left town.

¶ 39 Defendant denied his vehicle was depicted in the surveillance video. Defendant

explained his vehicle does not have any hubcaps, just plain black rims. According to defendant, there are many cars in Decatur of the same color with the same black rims as his. (We note a vehicle in the background of one of the State's exhibits showing defendant's vehicle in his driveway also has black rims and no hubcaps.) Defendant also denied shooting at Sherea's house. Defendant maintained he had not had any guns in his home since 2011. Defendant testified his ex-wife's nephew, who collected firearms, had the gun which would have gone with the empty box found in his house. Defendant testified he had not seen that gun for seven or eight years.

¶ 40 On cross-examination, defendant testified he asked Kristy to marry him for a second time on December 7, 2012. Defendant testified he scratched out the December 14, 2012, entry because he contacted the state police, who would not give him any information about the vehicle. As a result, it was no longer a concern of his. Defendant testified he would frequently contact the Illinois State Police seeking vehicle information because a lot of vehicles would come to Kristy's house and she "was going to be awful lucky if she [doesn't] get herself killed because you cannot keep running out here with different men selling your body." The assistant State's Attorney asked defendant about an undated, incomplete letter to Kristy in which defendant indicated he had taken a picture of Kristy and a pastor at the Orlando Apartments in Decatur. While defendant denied ever following anyone from her home, defendant testified he followed Kristy on that occasion because he did not think a pastor should be taking a woman there.

¶ 41 Defendant admitted he left his home on the night in question but denied following Sherea's vehicle. Instead, defendant testified he went to get a decaffeinated coffee at Steak 'n

Shake. Defendant explained, for six or seven years, he and his ex-wife used to frequently go there after bingo. Defendant testified he went to Steak 'n Shake two or three times a week between 10 and 11 p.m.

¶ 42

H. John Hilliard's Testimony

¶ 43

John Hilliard, defendant's son, testified he knew Kristy as his father's girlfriend. John first learned about their relationship in December 2011, when he moved in with defendant to help take care of him. John and his wife were there for about two weeks when Kristy wanted to move in. John testified Kristy did not want them there. Kristy lived with defendant for two or three months after that. While John testified he never discussed the relationship with defendant because he did not believe it was any of his business, John warned defendant Kristy was only after his money. While defendant did not currently own any firearms that John knew of, he testified defendant previously owned two of them. Defendant had "a 22 Marlin rifle," which he gave to John in 2011. Defendant also owned a handgun. However, according to John, "a guy named Mark Reed kind of stole a 22[-caliber] derringer from [defendant] that [defendant] never [got] back." John did not think defendant owned any other firearms.

¶ 44

I. Angela Hilliard's Testimony

¶ 45

Angela Hilliard, John's wife, testified she knew Kristy for approximately one year. Kristy would come to defendant's home "quite a bit." Angela observed Kristy giving defendant hugs and kisses on the cheek. Angela maintained Kristy "would get kind of nervous when she [would see] me." The last time Angela saw Kristy in defendant's house was in December 2012. Angela believed defendant had given away all of his guns, and she never saw any guns in the house.

¶ 46

J. State's Closing Argument

¶ 47

During its closing argument, the State contended defendant's obsession with Kristy escalated to violence when he followed Sherea and shot at her home. The State argued the empty revolver box found in defendant's home proved defendant possessed a .22-caliber revolver. However, the State also noted the box of .22-caliber ammunition was complete and intact. While the State characterized the surveillance video as "hard to see," it argued it showed Sherea being followed home by a vehicle matching the description of defendant's vehicle.

¶ 48

Following deliberations, the jury found defendant guilty of aggravated discharge of a firearm.

¶ 49

K. Sentencing

¶ 50

On March 3, 2014, defendant filed a posttrial motion, arguing, *inter alia*, (1) the evidence was insufficient to convict him and (2) the trial court erred in failing to declare a mistrial when the part of the videotaped interview showing defendant invoking his right to counsel was played for the jury.

¶ 51

On March 19, 2014, the trial court denied defendant's posttrial motion and sentenced him to four years' imprisonment. Because of the nature of the offense, defendant was statutorily required to serve at least 85% of his sentence. (According to DOC, defendant's projected release date is October 2016.)

¶ 52

This appeal followed.

¶ 53

II. ANALYSIS

¶ 54

On appeal, defendant argues (1) the evidence was insufficient to prove him guilty of aggravated discharge of a firearm beyond a reasonable doubt; (2) reversible error occurred

when (a) the State's witness narrated what occurred on a surveillance video, (b) the trial court failed to instruct the jury not to consider his request for counsel, and (c) his trial counsel rendered ineffective assistance; and (3) the cumulative errors deprived defendant of a fair trial.

¶ 55 A. Sufficiency of the Evidence

¶ 56 Defendant argues the State presented insufficient evidence for the jury to find him guilty of aggravated discharge of a firearm beyond a reasonable doubt. The State, on the other hand, argues the evidence of defendant's guilt was overwhelming.

¶ 57 In a jury trial, the State bears the burden of proving the defendant guilty of every element of the offense beyond a reasonable doubt. *People v. Maggette*, 195 Ill. 2d 336, 353, 747 N.E.2d 339, 349 (2001). "A reviewing court will not set aside a criminal conviction on grounds of insufficient evidence unless the proof is so improbable or unsatisfactory that there exists a reasonable doubt of the defendant's guilt." *Maggette*, 195 Ill. 2d at 353, 747 N.E.2d at 349. In other words, where a jury finds a defendant guilty, our inquiry is whether, in viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found all of the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278, 818 N.E.2d 304, 307 (2004). For the reasons that follow, we find the evidence relied on by the State was insufficient to prove defendant guilty beyond a reasonable doubt of the charged offense.

¶ 58 To convict a defendant of aggravated discharge of a firearm, the State must prove the defendant knowingly or intentionally discharged a firearm at or into a building he knew or reasonably should have known was occupied from a place or position outside that building. 720 ILCS 5/24-1.2(a)(1) (West 2010).

¶ 59 Circumstantial evidence is sufficient to sustain a criminal conviction if the elements of the charged crime have been proved beyond a reasonable doubt. *People v. Sutherland*, 223 Ill. 2d 187, 242-43, 860 N.E.2d 178, 217 (2006). "Circumstantial evidence is proof of facts or circumstances that give rise to reasonable inferences of other facts that tend to establish the guilt or innocence of the defendant." *People v. Dent*, 230 Ill. App. 3d 238, 243, 595 N.E.2d 18, 21 (1992). However, the inferences drawn from the circumstantial evidence must be reasonable. *In re Gregory G.*, 396 Ill. App. 3d 923, 929, 920 N.E.2d 1096, 1101 (2009). A reviewing court is justified in reversing a defendant's conviction where the circumstantial evidence raises little more than a suspicion the defendant committed the charged crime. See *People v. Dougard*, 16 Ill. 2d 603, 607, 158 N.E.2d 596, 598 (1959).

¶ 60 Here, the evidence presented failed to definitively establish the object found in Sherea's house was in fact a spent .22-caliber bullet. Instead, Barrows testified he was guessing when he said he thought it was a .22-caliber bullet. Barrows based his guess on the object's size. The State presented nothing to connect the bullet fragment to the ammunition found in defendant's house. Indeed, Appenzeller admitted on cross-examination the police were not able to connect the ammunition collected during the search of defendant's house to the fragment. Notably, the State did not argue any of the 50 rounds from the box of .22-caliber ammunition they found were missing; rather, the State told the jury the box was complete and intact.

¶ 61 The State also failed to present any evidence placing defendant at Sherea's house on the night of the shooting. 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, 27 N.E.3d 97. It is undisputed no one saw defendant in the vicinity of Sherea's

house. The only evidence the State offered in that regard was the Huck's surveillance video, which we have reviewed. The video is dark, grainy, and in black and white. The roadway is in the distance and at the very top of the frame. The video does not show the drivers or license plates of either vehicle. The video depicts a vehicle driving along the roadway, followed shortly thereafter by another vehicle driving along with the flow of traffic. In our view of the video, there is no way to discern if the white vehicle in the video is Sherea's. The car that passes through the video after the white car is unidentifiable. The Huck's video does not show Sherea's house—the Huck's is blocks away. Appenzeller admitted he was unable to determine the make or model of the vehicles on the surveillance video.

¶ 62 No evidence was presented to show defendant possessed a gun on the day of the shooting. In fact, defendant was never observed with a firearm by anyone. The uncontradicted evidence established defendant had not possessed any firearms since 2011. Defendant's son's testimony corroborated defendant's testimony in that regard. Appenzeller testified no firearm was recovered. While the State implied defendant shot at Sherea's house from his vehicle, Appenzeller testified police did not find any evidence a firearm was discharged from inside defendant's vehicle, nor were any spent shell casings recovered from the scene. We note, neither Sherea nor Lindzy testified to hearing the sound of a gun firing, despite it being quiet enough for them to hear what both of them described as an ornament falling off their Christmas tree.

¶ 63 Finally, the State's theory defendant's behavior escalated into violence is unsupported by the record. No evidence was presented to show defendant ever threatened Kristy or anyone associated with her. In fact, nothing was presented to demonstrate any history of violence on defendant's part.

¶ 64 In sum, the evidence presented by the State does not support an inference defendant discharged a firearm into Sherea's house. The State's proof defendant committed the charged act is so unsatisfactory there exists reasonable doubt as to his guilt. As such, we are left with no choice but to reverse defendant's conviction.

¶ 65 B. Double Jeopardy

¶ 66 Because the State failed to prove the essential elements of the charged offense, the evidence was insufficient to prove defendant guilty beyond a reasonable doubt. "When a conviction is reversed based on evidentiary insufficiency, the double jeopardy clause precludes the State from retrying the defendant, and the only proper remedy is a judgment of acquittal." *People v. Williams*, 239 Ill. 2d 119, 133, 940 N.E.2d 50, 59 (2010). Accordingly, we reverse defendant's conviction and enter a judgment of acquittal. Given our holding in this case, we need not address defendant's remaining claims.

¶ 67 III. CONCLUSION

¶ 68 For the foregoing reasons, we reverse defendant's conviction.

¶ 69 Reversed.