

No. 1-12-1614

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 09 CR 5970
)	
SHEILA FERGUSON,)	Honorable
)	Neera Lall Walsh,
Defendant-Appellant.)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Justices McBride and Palmer concurred in the judgment.

O R D E R

¶ 1 **Held:** Judgment entered on defendant's convictions for armed robbery, aggravated battery, and unlawful vehicular invasion affirmed over claim that evidence was insufficient to sustain them.

¶ 2 Following a bench trial, defendant Sheila Ferguson was found guilty of armed robbery, aggravated battery, and unlawful vehicular invasion, then sentenced to concurrent, respective terms of six and one half, three, and five years' imprisonment. On appeal, defendant contends that the evidence was insufficient to prove her guilty of those offenses beyond a reasonable

doubt where the testimony of the complaining witness was contrary to human experience and substantially impeached by prior inconsistent statements.

¶ 3 Defendant's convictions arose from events that transpired on the evening of August 25, 2007, and the early morning hours of the next day, in which Tiffany Slater was sprayed with mace while sitting in her car at a gas station, and the offender took her cell phone and purse. Three days after the incident, Slater identified defendant as her attacker in a photo array, and defendant was charged in relation thereto approximately 18 months later.

¶ 4 At trial, Slater testified that on the night of August 25, 2007, she attended a house party on Springfield Avenue and Fillmore Street in Chicago, Illinois, with her friend Alisa Albea, who arrived there separately. Slater stayed at the party for about two hours, drank "a couple" of alcoholic beverages, then left with Albea sometime after midnight. At that time, Slater saw a woman nicknamed "Little Sheila," who she identified in court as defendant, standing in front of the house where the party was being held. Slater lived near the same neighborhood as defendant, and had known her for over 10 years, but did not know her last name. That night, defendant was pregnant and had a "big baby belly," and was wearing brown stretch pants, gym shoes and a cream colored t-shirt. Defendant was talking to a man nicknamed "Red," who Slater knew, and, when Slater said hello to them, Red hugged Slater and picked her up. Defendant then said "in my face, Red," to which he responded, "yeah, bitch, in your face." Defendant told Slater, whose nickname is also "Red," "not tonight Red," and Slater responded, "don't want him, never have, and never will," then walked to her car, which was parked nearby, with Albea.

¶ 5 Slater further testified that she drove Albea to her car, then began to drive away alone. As she did so, she saw defendant run to her car with her sister, a girl named "Dada," and a girl Slater did not recognize. Slater drove to a gas station on Independence Boulevard and Roosevelt

Road, parked near a gas pump, and bought cigarettes there. She then returned to her car and sat in the driver's seat with her window rolled down, placed her purse directly to her right, put the keys into the ignition and held her cell phone in her left hand as she spoke with a friend. At that point, she heard someone yell "bitch," and when she turned to the left, she saw defendant standing at her car window. Defendant, who was wearing the same clothes she had on at the party, sprayed Slater in the face with mace, causing her to drop the phone onto her lap. Slater's eyes began to burn, but she was able to see defendant reach into the car and take the phone. Defendant continued to spray mace into the car and Slater could hear the occupants of defendant's car yelling, "Sheila, that's enough!" Slater began choking from the fumes, but she was able to drive away from the gas station. At this time she could see "a little bit," but "stuff was blurry," and she drove onto a curb and almost hit a tree with her car.

¶ 6 Slater further testified that she drove to her grandmother's home, which was nearby, and upon arriving, jumped out of her car without her belongings. After she entered the home, she asked her uncle to retrieve her purse and car keys from her car. Slater had not looked for or seen her purse since she was sprayed with mace, but she believed it was still in her car. Her uncle was unable to find her purse, which contained her money, credit cards and identification, and she never saw that purse again. Slater also testified that she went on to Mount Sinai Hospital, where she was treated for approximately five hours. Later that day, she went to the police station and reported the incident, and received a copy of the report.

¶ 7 Later that week, Slater saw defendant driving on Halsted Street and wrote down her license plate number. She gave that number and the police report to an officer at a nearby police station, and with that information, the officer was able to tell her defendant's last name. On August 29, 2007, Slater spoke with Detective Mok, who showed her an array of six photographs.

Slater identified the photograph of defendant as the person who had robbed her and sprayed mace in her face, and identified People's Exhibits 4 and 5 as photographs depicting stains that developed in her car due to the mace defendant sprayed inside of it.

¶ 8 Slater further testified that she obtained a cell phone after the incident which had the same telephone number as the one that was stolen from her and began receiving frequent calls on that phone from people requesting to speak with "Sheila." On August 29, 2007, Slater was at the police station speaking with Detective Mok, when she received a call on that phone. She answered, and although the caller did not identify herself, Slater recognized defendant's voice. Defendant began to curse and yelled, "I should have cut you!" Slater handed the phone to Detective Mok and told her that it was defendant, then heard Detective Mok identify herself and also heard defendant continue to scream.

¶ 9 On cross-examination, Slater testified that she had two drinks at the party on the night of the incident. She denied telling Detective Mok that defendant sprayed her in the face with mace until she fell over, that she was taking money out of her purse at the time she was sprayed with mace, or that the offenders took her cell phone from her hand. Slater acknowledged that she never saw anyone take her purse from her car and testified that she did not remember whether she mentioned defendant's pregnancy to the officer when she reported the incident. On August 29, 2007, she told Detective Mok that she believed defendant's sister, who she knew as Denise, was in the car with defendant on the night of the incident. On January 18, 2009, a detective called Slater and informed her that they had caught one of the girls who had been in defendant's car on the night of the incident. Slater went to the police station and signed a criminal complaint against Elanda Johnson, defendant's sister.

¶ 10 On re-direct examination, Slater testified that on the night of the incident, defendant's car was parked one pump over from her car. Johnson was in the driver's seat of defendant's car at the time defendant sprayed Slater with mace. When she signed the complaint against Johnson, Slater told police that Johnson drove the car and defendant sprayed the mace. On re-cross, Slater testified that defendant's car was black with tinted windows.

¶ 11 Chicago police officer Brian Peete testified that about 12:37 p.m. on August 26, 2007, he was on duty at the 11th district police station when Slater arrived and filed a report with him. Slater's eyes were flushed, her face was red and he could smell pepper spray on her. Slater showed him documentation of her treatment at Mount Sinai Hospital. In relating the incident to him, he stated that Slater was "all over the board," and he acknowledged that he did not include all of the details she provided in the general offense case report which is a summary of an incident.

¶ 12 Slater told Officer Peete that she was sprayed with mace while sitting in her car at a gas station, and that the offender took her cell phone and purse, which contained \$200. Slater also told him that the offender was a black female named Sheila who she knew from growing up in the same neighborhood, but did not know her last name. Slater described her as 5'4" to 5'5" tall, wearing a blonde weave or wig, and having a lot of tattoos on her wrist, arms and neck. Slater had seen Sheila earlier that night at a party, and Sheila had gotten angry with Slater because she spoke to a particular man. Officer Peete could not recall if Slater told him that Sheila was pregnant, but she did state that other people had been present during the attack. Without Sheila's last name or birth date, he was unable to obtain photos for Slater to view, but he instructed her to file a supplemental report if she obtained any additional information.

¶ 13 On cross-examination, Officer Peete acknowledged that his case report does not indicate that Slater told him Sheila was pregnant or that other people were present for the attack. He could not recall if Slater told him what defendant was wearing, but in his opinion, the offender was already identified because Slater knew her. Officer Peete could not recall if Slater told him that she was on her cell phone when she was maced, and the report he wrote does not include that information; however Slater did tell him that the offender took her purse from the car.

¶ 14 Chicago police detective Jacqueline Mok testified that on August 29, 2007, she was on duty and showed a photo array to Slater, who identified the photograph of defendant as the person who sprayed her with mace and took her purse. Slater told her that defendant also took her cell phone, credit cards and money. At that time, Detective Mok heard Slater's cell phone ring, and after Slater answered it, she handed the phone to Detective Mok and said, "here she is," meaning defendant. Detective Mok picked up the phone and heard a female voice yelling profanities. Detective Mok identified herself to the woman, who continued to yell into the phone, then told the woman that she was under investigation for Slater's robbery, to which the woman responded, "you have to find me." Detective Mok placed an investigative alert on defendant, and, in March 2009, defendant was brought into the police station on that investigative alert. Detective Mok identified People's Exhibit 5 as photographs depicting stains in the interior of the car Slater drove on the night of the incident.

¶ 15 On cross-examination, Detective Mok acknowledged that she did not include her conversation with defendant on Slater's cell phone in her written report, and that Slater told her that she was getting money out of her purse when she was sprayed with mace, and did not state that she was talking on her cell phone at that time. Slater also told Detective Mok that defendant continued spraying her with mace until she, Slater, fell over, and that her cell phone was taken

from her hand. Slater did not tell her that defendant was pregnant, or that more than one person took her cell phone, but in her report, Detective Mok wrote that Slater told her that the "offenders" took her cell phone. Detective Mok also placed an investigative alert on Johnson, defendant's sister, who Slater knew as Denise, and claimed had been driving defendant's vehicle on the night of the incident.

¶ 16 On re-direct examination, Detective Mok testified that on August 29, 2007, she showed Slater a picture of Johnson, who Slater identified as defendant's sister, Denise. Slater told her that other women were present at the gas station, but never told her that anyone but defendant took her cell phone. Detective Mok wrote "offenders" in the plural form in the report because, as the driver of the vehicle, defendant's sister could also be charged.

¶ 17 Defendant testified that she was pregnant the night of the incident and attended a party with Red, the father of her unborn child. About 8:30 p.m., Slater and Albea approached them and Slater was staggering, slurring her words, and appeared to be drunk. A verbal argument ensued between defendant and Slater, which led to a physical altercation when Slater and Albea charged at her. Defendant struck Slater and tried to push the women off of her, at which point Red and several of defendant's friends intervened. Slater then said, "Red, oh , so you taking her side, you taking her side. You won't hear the last of this," then left the party and defendant did not see her again that night. Defendant denied that she followed Slater after she left the party, sprayed her with mace, or took her cell phone and purse.

¶ 18 On cross-examination, defendant acknowledged that she knew Slater prior to the incident and stated that she went to community college with her in 2002 and 2003. When Slater approached her and Red, they were standing in the backyard, where the party was being held. Defendant acknowledged that in 2009 she spoke with Detective Mok about the incident, but

denied telling her that she and six other girls jumped on Slater at the party, that defendant's cousin Monique took Slater's phone, and that some other girls followed Slater to a gas station. Defendant denied calling Slater on August 29, 2007, and denied speaking with Detective Mok on the telephone on that date. Defendant entered a certified copy of her child's birth certificate, reflecting a birth date of October 18, 2007, then rested.

¶ 19 In rebuttal, the State entered a certified copy of defendant's 2009 felony theft conviction, and Detective Mok testified that she interviewed defendant on March 14, 2009, after first advising her of her *Miranda* rights, which defendant indicated she understood. Defendant told her that on the night of the incident, she and six other girls jumped on Slater while at the party and that defendant's cousin Monique took Slater's cell phone. Defendant also told her that she hit Slater, but did not spray her with mace, and that some other girls followed Slater to a gas station.

¶ 20 Slater testified in rebuttal that when she encountered defendant on the night of the incident, they were in front of the house, not in the backyard. Slater denied that she was slurring her words and stumbling at the party and denied charging at defendant. She also testified that defendant and six females did not jump on her at the party, nor did Monique take her cell phone there. On cross-examination Slater related that before she drove away from the gas station, she saw defendant run to her car and get into the front passenger seat.

¶ 21 During closing argument, defense counsel argued, *inter alia*, that Slater's testimony was not credible because it contained contradictions. Following closing argument, the trial court found defendant guilty of armed robbery, aggravated battery, and unlawful vehicular invasion. In doing so, the court noted that Slater did not include defendant's pregnancy in her description to police, and acknowledged that there were credibility issues and inconsistencies, but concluded that "the inconsistencies were minor and they fall in favor of the State."

¶ 22 On appeal, defendant contends that the evidence was insufficient to prove her guilt of these offenses beyond a reasonable doubt. She maintains that the case depended on Slater's testimony, which was substantially impeached by prior inconsistent statements, and contrary to human experience.

¶ 23 The standard of review on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies to all criminal cases, whether the evidence is direct or circumstantial, and acknowledges the responsibility of the trier of fact to determine the credibility of the witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). A reviewing court will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 24 Here, defendant was convicted of armed robbery, aggravated battery, and unlawful vehicular invasion. Armed robbery occurs when defendant knowingly takes property from the person or presence of another by use of force or by threatening the imminent use of force, and, in doing so, carries on or about her person or is otherwise armed with a dangerous weapon other than a firearm. 720 ILCS 5/18-2(a)(1) (West 2006). Aggravated battery, as charged here, occurs when defendant, in committing a battery, knowingly causes bodily harm to another and they were on or about a public place of accommodation. 720 ILCS 5/12-4(b)(8) (West 2006). Finally, unlawful vehicular invasion occurs when defendant knowingly, by force and without lawful justification, enters or reaches into the interior of a motor vehicle while such vehicle is

occupied by another person, with the intent to commit a theft or felony. 720 ILCS 5/12-11.1 (West 2006).

¶ 25 On appeal, defendant does not appear to question the commission of these crimes, but challenges the sufficiency of the evidence to establish that she was the perpetrator. When viewed in the light most favorable to the State (*Siguenza-Brito*, 235 Ill. 2d at 224), we find that the evidence presented at trial was sufficient to allow the trial court to conclude that the elements of the offenses were proved beyond a reasonable doubt. That evidence shows that Slater was intentionally sprayed with mace while sitting in her car at a gas station, a public place of accommodation, and that her cell phone, purse and the contents thereof were taken from inside her car. The evidence further shows that Slater sustained bodily harm during this incident.

¶ 26 Proof of an offense, however, requires proof not only that the crime occurred, but also that it was committed by the person charged. *People v. Ehlert*, 211 Ill. 2d 192, 202 (2004). Slater identified defendant as her attacker both at trial, and upon viewing a photo array three days after the incident. In addition, the evidence shows that Slater had known defendant from the neighborhood for a number of years and had even attended school with her for a period of time.

¶ 27 Notwithstanding, defendant contends that Slater's testimony is incredible, and that she purposefully and falsely accused her of the crimes. In doing so, she maintains that Slater's testimony was contradictory, impeached by the prior inconsistent statements she gave to police, and was contrary to human experience. Defendant specifically points to inconsistencies between Slater's testimony at trial and her statements to Detective Mok and Officer Peete regarding (1) whether she was taking money out of her purse or talking on her cell phone when she got sprayed with mace, (2) whether she was sprayed with mace until she fell over, (3) whether she

was immediately sprayed with mace, (4) whether her phone was taken from her lap or from her hands, (5) her failure to mention defendant's pregnancy to police, and (6) details on when she realized her purse was missing.

¶ 28 After examining these claims, we find that they do not raise a reasonable doubt of defendant's identity as the perpetrator of these offenses. *People v. Reed*, 80 Ill. App. 3d 771, 778 (1980). The testimony of a single witness, if positive and credible, is sufficient to convict, even if it is contradicted by the defendant. *People v. Loferski*, 235 Ill. App. 3d 675, 682 (1992). Here, the matters raised by defendant are collateral and immaterial to Slater's identification of defendant, which remained positive and unwavering throughout. *Reed*, 80 Ill. App. 3d at 780.

¶ 29 We also find unpersuasive defendant's further argument that it is contrary to human experience (1) that defendant would happen to call Slater's cell phone while Slater was having her initial meeting with Detective Mok, (2) that defendant would continue to curse and then state "you have to find me" after Detective Mok identified herself on the telephone, and (3) that Slater would be able to see at certain points after being sprayed with mace, such as when defendant allegedly took her cell phone, but not at other points, such as when she almost hit a tree.

Defendant claims that Slater was upset that Red took defendant's side at the party on the night of the incident, and thus deliberately named her as the attacker. According to defendant, this interpretation is far more reasonable than Slater's version of events that is riddled with instances of fortuitous selective blindness and inconsistencies.

¶ 30 As the State points out, defendant's arguments relating to the inconsistencies on several matters and alleged weaknesses in the sufficiency of the evidence were presented to and rejected by the trial court. *People v. Baugh*, 358 Ill. App. 3d 718, 737 (2005). Mere possibilities or speculation are insufficient to raise a reasonable doubt of guilt (*People v. Phillips*, 215 Ill. 2d

554, 574 (2005)), and it is not our function to speculate as to why defendant would continue to use profanity or state "you have to find me" after Detective Mok identified herself on the telephone. Defendant's argument that Slater intentionally accused her of the attack in retaliation for their encounter at the party is also mere speculation, and the trial court was not obliged to accept any proffered explanation compatible with defendant's innocence. *People v. Evans*, 209 Ill. 2d 194, 212 (2004).

¶ 31 Here, Slater testified that defendant, whom she had known for over 10 years on the night of the incident, was the person who sprayed her with mace and took her cell phone, purse and its contents. The trial court noted the credibility issues and inconsistencies in Slater's testimony, but resolved them in favor of the State. We have no basis for substituting our judgment for that of the trial court in this regard. *Campbell*, 146 Ill. 2d at 389.

¶ 32 In sum, viewing the evidence presented in the light most favorable to the State (*Siguenza-Brito*, 235 Ill. 2d at 224), we conclude that it was sufficient to allow the trial court to find that defendant was the person who sprayed Slater with mace as she sat in her car in the gas station, then took her cell phone, purse and contents thereof, and was thus properly found guilty of armed robbery, aggravated battery, and unlawful vehicular invasion beyond a reasonable doubt.

¶ 33 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 34 Affirmed.