

No. 1-12-2629

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 16064
	)	
WANDA JONES,	)	Honorable
	)	Diane Gordon Cannon,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Justices Lavin and Epstein concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Defendant's conviction of attempted armed robbery is affirmed where the trial court found the testimony of the State's witnesses to be clear and credible and rejected defendant's testimony as incredible.

¶ 2 Following a bench trial, defendant Wanda Jones was convicted of attempted armed robbery and sentenced to four years in prison. On appeal, defendant contends she was not proven guilty beyond a reasonable doubt where the State failed to prove the requisite intent to commit the crime. We affirm.

¶ 3 Defendant was charged with attempted armed robbery, aggravated battery, and aggravated unlawful restraint. The main State witnesses at defendant's bench trial were 60-year-old Jesus Gomez who did maintenance in buildings that he owned and his friend, 44-year-old Indalecio Olvera, who worked in real estate investment. The incident in question occurred on property at 6054 South Troy in Chicago that was owned by Olvera. At about 2 p.m. on September 3, 2011, Gomez and Olvera were moving a door and windows onto Olvera's property from Gomez's truck which was parked in the alley next to Olvera's building. As the two men were moving a large, heavy glass sliding door, they saw defendant urinating in the alley. The men said nothing to her. They set the glass door down in the gangway of Olvera's property.

¶ 4 Gomez testified that "all of a sudden [defendant] was right behind me asking for money." Defendant had come through the open gate onto Olvera's property behind the two men. She told the men three or four times to give her a dollar because they had seen her "pussy." Both men told defendant to get off the property, but she continued to demand money. Defendant told Gomez, "give me your money." When he said he had no money, she grabbed his left breast pocket. Within that pocket was an envelope containing money. Defendant tried to grab the envelope and struck him on the bridge of his nose with a knife. Gomez pushed her or hit her with his hand to protect himself. At that time the window was leaning against the wall with only Olvera holding it. Gomez pushed defendant outside the gate and he saw the knife fall to the ground. Gomez described the knife as having a hook at the end of it; Olvera described it as having a utility blade, like a roofer's blade. Gomez had blood dripping down his face, and Olvera told him to go inside and wash his face. As Olvera tried to enter his building, defendant told him that "she was going to call her daddy." Olvera believed defendant was referring to a

pimp. When Gomez came back outside, he saw defendant hitting his truck with a brick, so he moved his truck. Olvera called the police, who came and arrested defendant. Neither Gomez nor Olvera invited defendant onto Olvera's property nor propositioned or paid defendant for a sexual act. Gomez denied that the envelope in his pocket contained a \$20 bill that he had removed earlier to pay defendant for oral sex; the envelope contained only \$100 bills that he had received as a rent payment.

¶ 5 Officer Steven Cortesi testified that on the date and time in question, he responded to a call of a battery at 6054 South Troy where Gomez and Olvera pointed out defendant, who was at the intersection of 61<sup>st</sup> and Kedzie. Cortesi approached defendant and observed that she was extremely intoxicated. She was staggering and smelled of alcohol, and she was very loud and abusive. Gomez identified defendant as the person who had cut and attempted to rob him. Gomez turned over a box cutter to Cortesi.

¶ 6 Defendant testified in her own behalf. She had engaged in prostitution for more than 20 years and had been arrested for prostitution "in about 20, 30 different states." On the date and time in question, she had been drinking with a few friends at 60<sup>th</sup> and Kedzie and went in the alley beside the 7-Eleven to use the bathroom; her back was turned away from the alley. When she stood up and turned around, she saw two men in a gangway. She did not see a big glass sliding door or a truck. The older man (Gomez) called her over. "He wanted me to give him a blow job and I told him 20, and he said okay." He took the \$20 from his shirt pocket. While the other man (Olvera) stood guard, defendant gave Gomez a blow job and "he came real quick. So he asked me for his money back and I told him no. He said well at least do my friend." She replied that she refused to do it for the same \$20. Gomez got mad and wanted his money back.

She responded that she would not return his money. Gomez hit her with his fists. She fell onto the ground, and "that's when I took my cut out and I got him." She took the knife from the pocket of her shorts. Then she walked away and phoned her pimp, telling him a guy just hit her in the face because he wanted his money back. Defendant went back to 7-Eleven, got another beer, and went to her corner at 61<sup>st</sup> and Kedzie – "that's where I normally be at." She was still in the area when the police came because she did not feel that she had done anything wrong. "He got what he asked for, and I got my money. So it wasn't no problem." She had had three 16-ounce cans of beer that day. She denied throwing bricks at Gomez's truck; there were "no bricks around." She was belligerent with the police officer (Cortesi) because she was upset.

¶ 7 At the police station later that day, she was interviewed by a police detective and an assistant State's Attorney. After they advised her of her rights, she had an opportunity to tell them what had happened. She never told them that the two men paid her for oral sex. She told the detective she did not cut the man (Gomez) and that, if he were cut, it must have been from the silver bracelet she was wearing. She did remember telling the detective that the box cutter must have fallen out of her purse when Gomez pushed her. She did not tell them what really happened because she had just caught a prostitution conviction not long before that and was afraid that if she was convicted of prostitution again, she would have to do some time.

¶ 8 The court found defendant guilty of attempted armed robbery and not guilty of aggravated battery and aggravated unlawful restraint. The court concluded it was "wholly incredible" that two people would ask a woman "who is urinating in the alley, for oral sex." The court also concluded it was "wholly incredible" that defendant would admit under oath at trial that she had lied to the police in order to avoid a prostitution charge and instead rather be

charged with armed robbery and aggravated battery. The court found that the State had met its burden of proof beyond a reasonable doubt. Defendant was sentenced to four years in prison.

¶ 9 On appeal, defendant contends the State failed to prove beyond a reasonable doubt that she had the intent to take Gomez's property by use or threat of force. Defendant claims the testimony of Gomez and Olvera was not credible and denies that the incident in question was a robbery attempt, instead portraying it as a prostitution transaction turned acrimonious and violent.

¶ 10 Dissatisfied with the trial court's findings, defendant essentially is asking us to retry the case to find the evidence was insufficient to convict her. It is not the prerogative of this court to do so. *People v. Castillo*, 372 Ill. App. 3d 11, 20 (2007). The critical inquiry on review is whether, after considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Rowell*, 229 Ill. 2d 82, 98 (2008). The trier of fact is responsible for determining the credibility of witnesses and the weight to be given their testimony, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In reviewing the trial evidence, we will not substitute our judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009).

¶ 11 Defendant argues that the court failed to make a finding that either Gomez or Olvera was credible. However, that determination of credibility was implicit in the court's finding that the State had met its burden of proof beyond a reasonable doubt. Defendant also offers differences in the State's version of events and her own version to show that her version was more likely. It

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is not our function to resolve any conflict in the testimony where the trial court was in a superior position to do so. *People v. Jordan*, 218 Ill. 2d 255, 269 (2006). Where the trial court chose to believe the version of events as presented by the State's witnesses over that of defendant, we will not substitute our judgment for that of the trier of fact. *People v. Lee*, 376 Ill. App. 3d 951, 955 (2007).

¶ 12 We conclude that defendant's attack on the credibility of Gomez and Olvera does not raise a reasonable doubt of her guilt, and we find no basis for reversing the trial court's credibility determination. Accordingly, we affirm defendant's conviction for attempted armed robbery.

¶ 13 Affirmed.