

No. 1-12-3154

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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 19447
	)	
DARIUS FIELDS,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LIU delivered the judgment of the court.  
Presiding Justice Simon and Justice Pierce concurred in the judgment.

**O R D E R**

- ¶ 1 **Held:** Defendant's conviction for attempted aggravated robbery is affirmed where the State presented sufficient evidence establishing he indicated he was armed with a dangerous weapon and he intended to use or threaten the use of force. However, defendant's conviction for unlawful restraint is vacated because it violates the one-act, one-crime doctrine.
- ¶ 2 Following a bench trial, defendant, Darius Fields, was convicted of attempted aggravated robbery and unlawful restraint and sentenced to six and three years in prison, respectively. He

appeals, arguing the evidence at trial was insufficient to sustain his attempted aggravated robbery conviction. In the alternative, he asserts his unlawful restraint conviction should be vacated under the one-act, one-crime doctrine. For the reasons that follow, we affirm defendant's attempted aggravated robbery conviction and vacate his unlawful restraint conviction.

¶ 3 At trial, Zachary Pino testified that he walked to a 7-Eleven on 33 East Adams after he finished teaching a class at the School of the Art Institute of Chicago at approximately 10:15 p.m. on November 8, 2011. He made a purchase at the 7-Eleven and was placing his debit card back into his wallet when he looked up to see defendant standing by the door, holding it open and looking down at Pino's wallet. The door was immediately adjacent to the cash register. Pino retreated back into the store, explaining he felt "uncomfortable" and "uneasy" and thought he "would be safer within the" 7-Eleven store, which was well-lit and occupied by other people.

¶ 4 Pino placed his wallet in his back left pocket and started to walk through the store's trail mix section. Defendant followed him, approached "at a very close proximity," and told Pino "you're going to help me out of with some of that." Interpreting this to mean defendant was demanding money or his debit card, Pino shook his head and said no. Defendant "continued asking that same sentence a few times," and Pino continued to respond, "no." Defendant then moved closer and starting leaning in, "kind of lunging forward," and said to Pino "you're going to help me out with that, you're going to help me out with that, you're going to help me get some cigarettes, you're going to help me, you know, get some food here." Eventually, while lunging in, defendant said, "you're going to help me out with that because I have this[.]" Defendant had his hand inside of his pocket, and Pino believed he had a weapon. Defendant did not try to grab the wallet out of Pino's pocket, but he made contact with Pino's messenger bag. After Pino continued repeating, "no," the cashier "kind of" looked over at them. Defendant then walked to the cashier

and "asked for change for a dollar or something." Afterward, he exited the store, where he remained out front, smoking a cigarette and staring at Pino through the glass door. Pino did not call out for help or tell anyone in the store that defendant was armed because he was afraid.

¶ 5 After defendant left the 7-Eleven, Pino called 9-1-1 and remained inside, explaining he felt "very unsafe, like someone was waiting outside to beat [him] up or something." Chicago police officers responded shortly thereafter. Pino was "reasonably certain" he told a responding officer he believed defendant had a knife, but he could not remember and "may have said weapon."

¶ 6 Chicago police officer Vertis Holmes testified that when he arrived at the 7-Eleven in response to Pino's call, defendant was standing in front of the store, about two feet from the door. Holmes described the 7-Eleven as "pretty small," with a cash register about six feet from the door and a section in the back "not far" from the register. Holmes' partner detained defendant and Pino identified him. Holmes denied that Pino told him defendant had a gun, stating Pino used the word "weapon." In his incident report, however, Holmes wrote that Pino said defendant twice implied he had a gun. When the officers searched defendant, they found no weapons.

¶ 7 Detective Alan Lee testified that he interviewed Pino, who acted "[v]ery nervous." Pino told Lee "he felt threatened by [defendant]," defendant pushed his shoulder back, "and at some point defendant placed his hand in his pocket as though he was armed with a weapon," which made Pino even more apprehensive. Pino never told Lee he saw a weapon, and he did not know the type of weapon defendant supposedly had.

¶ 8 The parties stipulated that People's exhibit No. 1 was a true and accurate copy of a video taken at the 7-Eleven on November 8, 2011. They further stipulated that Kaushik Patel, the manager of that 7-Eleven, would testify he viewed a copy of the video and it was a true and

accurate video from that night but the time on the video was "a little off" from the real time. The State played the surveillance video in court. Pino testified that the video showed him making his purchase and defendant standing by the door. The video then depicted Pino going "off the screen," during which time Pino explained he went back to browse the store. According to Pino, the video showed defendant following him toward the back. He acknowledged, after seeing the video, that defendant was initially standing behind him but he first saw him at the door. He also said the video did not show defendant pushing his bag or lunging at him, explaining that defendant lunged at him and reached toward his bag when he was in the back of the store, which was not shown on the video.

¶ 9 The trial court found defendant guilty of attempted aggravated robbery and unlawful restraint. The court reasoned that although he "may have been a nervous nellie," Pino "was a credible nervous nellie when he testified in the case" despite some minor, collateral impeachment. It noted that Pino testified "defendant made a gesture and put his hand in the vicinity of his pocket implying that he was armed with a gun or other dangerous weapon." The court rejected the idea that defendant asked Pino for help, noting defendant stated, "'You're going to help me out with getting some food and cigarettes,' as he made a gesture." The court found defendant implied he had a weapon and Pino thought defendant had a weapon. It also found the exchange between Pino and defendant "was long enough to constitute a detention for purposes of the unlawful restraint statute," stating as follows. "The victim did not feel free to go. The defendant put his hands on him, and accordingly, the video clearly corroborates the victim." Finally, the court found defendant's act of remaining at the door after the incident supported an inference that he was waiting for Pino.

¶ 10 Defendant filed a motion for new trial but did not include therein his contention that his convictions violated the one-act, one-crime doctrine. At a later hearing, the trial court denied defendant's motion and sentenced him to six years in prison for attempted aggravated robbery and three years in prison for unlawful restraint. This appeal followed.

¶ 11 On appeal, defendant contends the evidence was insufficient to sustain his attempted aggravated robbery conviction. Specifically, defendant asserts that the evidence did not show he was armed with a weapon because no weapon was recovered and no objective evidence supported Pino's subjective impression that defendant indicated he was armed. Defendant also contends that the State did not show any actual use of force where Pino's testimony only showed that defendant was crowding Pino and touched Pino's messenger bag. Defendant further asserts that the evidence failed to demonstrate that he intended to use or threaten the imminent use of force against Pino because when Pino declined to help defendant, he immediately walked out of the store. Defendant characterizes Pino's testimony as revealing, at worst, defendant was just soliciting food and cigarettes too aggressively or defendant only urged, perhaps impolitely, for help with some food or cigarettes. Defendant observes that the video did not cover the encounter in the back of the store, which was well lit, monitored and occupied by several patrons. We disagree with defendant and find the evidence was sufficient to sustain his attempted aggravated robbery conviction.

¶ 12 In considering a challenge to the sufficiency of the evidence, this court must determine whether, viewing the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). We will not substitute our judgment for that of the trier of fact on issues relating to the weight of the

evidence or witness credibility, and we will reverse only where "the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48.

¶ 13 To prove defendant guilty of attempted aggravated robbery, the State was required to show he performed an act constituting a substantial step toward committing aggravated robbery with the intent of committing that offense. 720 ILCS 5/8-4(a), 18-5(a) (West 2010). A defendant commits aggravated robbery when he takes property from another, by the use of force or threatening the imminent use of force, while indicating verbally or by his actions to the victim that he is presently armed with a firearm or other dangerous weapon. 720 ILCS 5/18-5(a) (West 2010). Proof of a threat of the imminent use of force is established by evidence that the victim's fear was of such a nature that in reason and common experience is likely to induce a person to part with his property for his sake. *People v. Grengler*, 247 Ill. App. 3d 1006, 1012 (1993). A defendant does not commit robbery where he merely instructs a victim to hand over money or property but does not take any other action that would reasonably lead the victim to believe he was armed or threatening force. *Id.*; see also *People v. Hollingsworth*, 120 Ill. App. 3d 177, 179 (1983). A finding that a defendant indicated he was armed must be supported by objective criteria. *People v. Hall*, 352 Ill. App. 3d 537, 543 (2004).

¶ 14 The State provided sufficient objective criteria to support Pino's subjective belief that defendant indicated he was armed. Pino testified that defendant looked at his wallet then followed him to the back of the store, where he told Pino "you're going to help me out with that," mentioning food and cigarettes. He then lunged toward Pino with his hand in his pocket and stated, "you're going to help me out with that because I have this." Defendant's statements, combined with his positioning of his hand in a place where a weapon could be hidden, could lead

a reasonable person to believe he was armed. See *People v. Woods*, 373 Ill. App. 3d 171, 177 (2007) (evidence established the defendant indicated he was armed with a firearm or other dangerous weapon where he gestured to his waist and the cashier saw "something wooden" in his waistband); *Hall*, 352 Ill. App. 3d at 544 (the defendant's conduct fell within the aggravated robbery statute's proscription where he approached a store clerk after all customers had left, "moved his hand to his waist in a grabbing motion two or three times," and asked the clerk if he was wearing a bullet proof vest and if he had ever been or wanted to be shot); *People v. Brackett*, 288 Ill. App. 3d 12, 18 (1997) (the defendant's conduct fell within the aggravated robbery's statutory proscription where she held a coat draped over her arm and held her finger pointed like a gun under the coat). In addition, viewing the evidence in the light most favorable to the prosecution, we cannot say Pino's refusal to give defendant money showed Pino had doubts that defendant was armed, particularly in light of the rest of Pino's testimony that he felt scared and believed defendant had a weapon.

¶ 15 Defendant points out that unlike the defendant in *Hall*, he did not say somebody would be "shot," and his alleged attack occurred in a busy store. Defendant also notes that his case is distinguishable from *People v. Williams*, 329 Ill. App. 3d 846, 849 (2002), in which the defendant approached a husband and wife away from customers, held his hand under his shirt, demanded money, pushed the wife's head into a desk as she tried to call the police, and stated "I just got out of jail, lady. I'm not going back. I'll kill somebody up in here." Defendant's reliance on both *Hall* and *Williams* is misplaced because neither case purported to set out the minimum conduct necessary to create an impression that a defendant had a weapon. For this same reason, the factual distinctions defendant points out in *Brackett* and *Woods* also do not lead us to conclude reversal is warranted here. The decisions in *Hall*, *Williams*, *Brackett*, and *Woods* each

provided an example of evidence supporting a finding that a defendant indicated he was armed. Similarly, the combination of defendant's verbal statements and placement of his hand in his pocket constituted sufficient objective evidence to support Pino's subjective belief that defendant was armed.

¶ 16 The absence of surveillance video covering the back area of the store does not warrant a different outcome. The evidence at trial clearly and indisputably established that the video did not cover the back area of the store where the dispositive interaction occurred. At trial, the video itself was published, in conjunction with the corresponding testimony of Pino, and the State's acknowledgement that Pino and defendant were "off camera" at the time they were in the back of the store. Not only was the video unable to capture the encounter, a video is not necessary to establish the elements of an offense because the testimony of a single credible witness is sufficient to establish the commission of an offense and here, the trial court specifically found that Pino was credible. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Notably, the trial court observed after the incident in the back area of the store, defendant remained at the door of the store, inferring he was waiting for Pino.

¶ 17 The State also presented sufficient evidence to establish that defendant intended to use or threaten the imminent use of force. While defendant asserts that he merely crowded and "impolitely" urged Pino to help him, the trial court explicitly found "defendant did not ask the victim" but instead told Pino he was "going to help [him] out" while making a gesture. Indeed, Pino testified that defendant followed him to the back of the store, approached "at a very close proximity," lunged in, made contact with Pino's bag, and with his hand in his pocket, told Pino he was going to "help [him] out with that" because he had "this." The court could reasonably find defendant's statement and actions were likely to induce Pino to part with his money for the sake

of his safety. See *People v. Bradford*, 78 Ill. App. 3d 869, 874 (1979) (the defendants threatened the imminent use of force where they gave the cashier a note that read "Put all the money in the cash drawer in a bag" and one defendant put his right hand in a bag hanging from his shoulder.). In addition, although defendant left the 7-Eleven after Pino declined to give him money, he subsequently remained outside, which the trial court found supported an inference that defendant was waiting for Pino. It was for the trial court to weigh Pino's testimony and draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

¶ 18 In sum, viewing the evidence in the light most favorable to the prosecution, a reasonable trier of fact could have found defendant guilty of attempted aggravated robbery.

¶ 19 Defendant alternatively contends, and the State concedes, that his unlawful restraint conviction must be vacated pursuant to the one-act, one-crime doctrine because it was based on the same physical act as his attempted aggravated robbery conviction. We accept the State's concession and agree.

¶ 20 A defendant cannot be convicted of multiple offenses that are based on the same single physical act. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). Where a defendant is convicted of two offenses based on the same physical act, we must vacate his conviction for the less serious offense. *Id.* Although defendant forfeited review of his one-act, one-crime argument by failing to raise it at trial or in his post-trial motion, we may consider his claim under the second prong of the plain-error doctrine. *People v. Artis*, 232 Ill. 2d 156, 165 (2009).

¶ 21 The only restraint that occurred in this case was defendant's restraint of Pino from the beginning of the attempted robbery until the end of the attempted robbery. Accordingly, we agree with the parties that defendant's unlawful restraint conviction violates the one-act, one-crime doctrine, as it was carved from the same physical act as his attempted aggravated robbery

conviction. See *People v. Daniel*, 2014 IL App (1st) 121171, ¶¶ 54-55 (the defendant's aggravated unlawful restraint conviction was carved from the same physical act as his armed robbery conviction where he restrained the victim from the beginning until the end of the armed robbery). We therefore vacate defendant's unlawful restraint conviction.

¶ 22 For the reasons stated, we affirm defendant's attempted aggravated robbery conviction and vacate his unlawful restraint conviction.

¶ 23 Affirmed in part, vacated in part.