

No. 1-13-0906

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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 10420
	)	
ALBERT LUCAS,	)	Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice HOFFMAN and Justice ROCHFORD concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Defendant's conviction for home invasion is affirmed where the State proved him guilty beyond a reasonable doubt despite his claims that the State's witnesses lacked credibility and that his conviction should be reduced to match his codefendant's conviction. However, the DNA analysis fee is vacated.

¶ 2 Following a bench trial, defendant, Albert Lucas, was convicted of home invasion, sentenced to seven years in prison, and ordered to pay various assessments including a \$200 deoxyribonucleic acid (DNA) analysis fee. He appeals, asserting his conviction should either be reversed, because the State's witnesses lacked credibility, or reduced to aggravated battery, to

match his codefendant's conviction. He also argues the DNA analysis fee should be vacated. For the following reasons, we affirm defendant's conviction and vacate the DNA analysis fee.

¶ 3 Following a joint trial, defendant and Malinda Sparks were both found guilty of two counts of home invasion and one count of aggravated battery. The charges were based on defendant and Sparks entering the home of Yvette Williams and, using a bat, threatening the use of force against and striking Yvette's daughter, 13-year-old Ebony.

¶ 4 At trial, Yvette Williams testified that as she was leaving her apartment during the afternoon of April 30, 2011, she noticed defendant and Sparks standing at the back door. The two resided above Yvette, and Yvette and Sparks had been having disputes for the past month over noise caused by Sparks' children. When Yvette opened her door, defendant yelled, "bitch, what you opening your door for?" Sparks then hit Yvette in the head with a two-by-four stick, and the three started fighting for at least 10 or 15 minutes. Defendant went downstairs to retrieve an aluminum bat from his trunk, but Yvette's boyfriend and son blocked him from returning to Yvette's apartment. Sparks and Yvette each went back into their respective apartments. Yvette first stated that she called the police after the incident; however, she later denied calling the police.

¶ 5 According to Yvette, at around 5:15 that evening, somebody started beating and kicking on her front door, yelling, "bitch, open the door." Yvette and her boyfriend were in the living room, located to the right of the front door. Her 13-year-old daughter, Ebony, was watching TV in a back room of the house. Yvette got up to look through the peephole and saw defendant, Sparks, and three other men, one of whom was Yvette's brother. When Yvette did not open the door, the group forced it open by kicking off the lock panel. As Yvette and her boyfriend held

the door to prevent the three men from going to the right of the house, defendant and Sparks entered and went to the left of the house in the direction of Ebony's bedroom.

¶ 6 Yvette testified that defendant, Sparks, and the three men eventually left her home about 10 or 15 minutes after they broke down the door. Yvette found Ebony in her other daughter's bedroom and noticed her face was swollen on the left side and she had bruises on her arms and legs. Yvette immediately called an ambulance to take Ebony to the hospital. The trial court admitted into evidence photographs depicting the injuries Ebony sustained and the condition of Yvette's front door. Yvette acknowledged she had been convicted of felony retail theft in 2005 and misdemeanor and felony retail theft in 2010.

¶ 7 Ebony Williams testified that at around 5:15 p.m. on April 30, she was at home with Yvette and Yvette's boyfriend. Ebony was in her sister's bedroom, located at the back of the apartment and accessible by turning to the left after entering the front door. She heard beating on the door and, when she started walking to the front of the apartment, "the door flew open." Defendant and Sparks entered and approached Ebony. When they reached Ebony's location in the hallway, defendant punched Ebony in the face with his fist. Sparks used a bat to hit Ebony's arms and legs a total of six to eight times. Although Ebony's mother was only a couple feet away, she was behind the front door and was not watching the events transpiring in the hallway. Afterward, Ebony heard defendant and Sparks running down the stairs and Ebony returned to the back room, where her mother later found her. Ebony acknowledged that she had prior altercations with Sparks and that she did not like Sparks or defendant. Later, however, she clarified that she did not dislike Sparks until after the incident on April 30. Ebony said she saw her mother and Sparks fighting earlier that day, at around 12:30 or 1 p.m., in the back of the

1-13-0906

house. During that fight, Sparks hit Yvette with a two-by-four. Ebony broke up the fight by grabbing her mother. She stated that police did not come to talk to Yvette after the earlier altercation.

¶ 8 Malinda Sparks testified that she had lived above Yvette for about four months prior to the incident on April 30. She recalled Yvette and her children beating on her door "all the time," using "real bad, foul, cussing words" while instructing Sparks to tell her four children "to shut up." At around 12:30 p.m. on April 30, Sparks was walking down the stairs when Yvette came out of her door, made some statements, and struck Sparks. Ebony also struck Sparks with a two-by-four. When the two-by-four "came loose," Sparks started "just swinging it," trying to protect herself. Yvette's other daughter, her son, and her boyfriend were also present during the altercation. Everybody subsequently "just stopped" fighting, and Sparks called the police. After speaking to the police, Sparks went to the store. She denied entering Yvette's home, having an aluminum baseball bat, or striking Ebony with a baseball bat.

¶ 9 The trial court found both defendant and Sparks guilty of two counts of home invasion and one count of aggravated battery. In doing so, the court stated it found Ebony was injured inside of her home, reasoning the photographs clearly showed Ebony sustained injuries. It also found credible Ebony's testimony that defendant and Sparks entered into her home. In addition, the court noted the photographs showed the door to Ebony and Yvette's home appeared to be damaged, "which corroborate[d] the violent nature" of Sparks' and defendant's entry into the apartment.

¶ 10 In September 2012, defendant and Sparks each filed separate post-trial motions to reconsider the court's rulings. Subsequently, the court held separate hearings for defendant and Sparks on each respective post-trial motion and for sentencing.

¶ 11 On October 3, 2012, the trial court denied Sparks' post-trial motion, stating as follows: "I do recall the facts and circumstances of this case. I recall I had to make some credibility findings. I had to decide who I was going to believe. I've considered my rulings then. I think my rulings were right then and they're right now." The court then indicated it intended to merge one count of home invasion and the aggravated battery count into the other home invasion count so that it would be sentencing Sparks on a single count of home invasion. Next, Sparks made a lengthy statement expressing her desire not to be removed from her family. The court stated that it had considered her plea for mercy and "under the law," it had "the ability, notwithstanding the evidence, to apply mercy in a situation." Accordingly, it stated it would "still merge the counts for purposes of sentencing," but it would merge the home invasion counts with the aggravated battery count and "vacate the findings" on the two home invasion counts. The court then sentenced Sparks to 30 months in prison.

¶ 12 On October 16, 2012, the court denied defendant's post-trial motion. At the hearing, defense counsel argued for the same result the court had given Sparks. Counsel stated that "based on [the trial court's] reconsideration of the facts and the codefendant," it was requesting the trial court "do the same as it applie[d]" to defendant and "reconsider on home invasion, finding [defendant] guilty of the aggravated battery." The court denied defendant's motion, stating as follows: "Well, I denied the motion for a new trial as to Ms. Sparks. And likewise, I think my rulings were correct then and are correct now. The motion to reconsider is denied."

¶ 13 In November 2012, defendant's sentencing hearing began. Ebony Williams testified and read her victim impact statement. The hearing was then continued.

¶ 14 On December 10, 2012, the parties appeared for defendant's sentencing hearing, at which defense counsel again argued for the same result given to Sparks. Defendant then made the following statement:

"I would like to say that I'm sorry for—I'm sorry for everything that happened. I never meant for any of this to happen. You know I will never hit a child because me myself you know I have two kids myself, and I always tried to you know provide for my family. And you know when I was younger you know I always made you know I tried to steal from (inaudible) to support my family and it was a dumb mistake and I'm just sorry for everything that happened. And I've never, I'm very remorseful, sorry for everything that happened. I will never do anything like that again."

¶ 15 The trial court merged one home invasion count and the aggravated battery count into the other home invasion count and sentenced defendant to seven years in prison. In doing so, the court stated it found defendant's situation different than Sparks' because Sparks had been involved in prior altercations with the Williams' family but no evidence was presented that defendant was ever involved in any of the prior combat. The court assessed various fines and fees, including a \$200 "State DNA ID System" fee. Defendant filed a motion to reconsider sentence, which was denied in February 2013. This appeal followed.

¶ 16 On appeal, defendant first asserts the State failed to prove him guilty beyond a reasonable doubt because the testimony of its two witnesses, Yvette and Ebony, lacked credibility. In particular, defendant observes Yvette had prior retail theft convictions, Yvette's testimony differed with Ebony's as to where Ebony was attacked, and Yvette had a history of disputes with Sparks' and defendant's family. In the alternative, defendant argues his conviction should be reduced to make it consistent with Sparks' aggravated battery conviction, as defendant and Sparks were tried jointly and the State presented identical evidence as to each.

¶ 17 When a defendant challenges the sufficiency of the evidence, we must determine whether, when 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)). Pursuant to this standard, where a finding of guilt depends on eyewitness testimony, this court must decide whether, based on the record, a trier of fact could reasonably accept the testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). However, our function is not to retry the defendant. *Id.* Rather, in a bench trial, it is for the trial court to determine the credibility of witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any evidentiary conflicts. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will reverse a defendant's conviction 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.

¶ 18 A person commits home invasion when he knowingly enters the dwelling place of another, knowing one or more persons is present, and while armed with a dangerous weapon

other than a firearm, uses force or threatens the imminent use of force upon any person within the dwelling place. 720 ILCS 5/12-11(a)(1) (West 2010).

¶ 19 The evidence in this case was sufficient to prove defendant guilty of home invasion. First, the trial court could have found defendant guilty solely based on Ebony's testimony. See *Siguenza-Brito*, 235 Ill. 2d at 228 (the testimony of a single witness, if positive and credible, is sufficient to sustain a conviction). Specifically, Ebony testified the front door "flew open," defendant and Sparks entered, defendant punched her, and Sparks hit her with a baseball bat. The trial court explicitly found credible Ebony's testimony concerning defendant's and Sparks' entry, noting the photographs corroborated the violent nature with which they entered into the home. The court also found Ebony was injured in her home, stating the photographs clearly showed she sustained injuries. Defendant challenges the veracity of the photographs, claiming that the door could have been damaged and Ebony could have been injured prior to the incident. However, it was for the trial court to weigh the evidence. *Siguenza-Brito*, 235 Ill. 2d at 228. Moreover, although Yvette and Ebony provided differing testimony as to where inside the apartment Ebony was attacked, our supreme court has recognized that minor variations in the testimony of witnesses are "to be expected anytime several persons witness the same event under traumatic circumstances." *People v. Brooks*, 187 Ill. 2d 91, 133 (1999). The trial court had the duty of resolving any inconsistencies, and it is not our function to retry defendant. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 20 In addition, despite Yvette's prior retail theft convictions and the history of fights between Yvette and Sparks, the trial court could have found Yvette's testimony credible. First, the existence of a "motive to lie does not render testimony unconvincing." *People v. Sullivan*,

366 Ill. App. 3d 770, 782 (2006). In addition, although theft-related offenses involve dishonesty and arguably reflect on a person's likelihood of providing truthful testimony (*People v. Paul*, 304 Ill. App. 3d 404, 410 (1999)), the trial court was aware of Yvette's prior convictions.

Nonetheless, based on its finding of guilt, the trial court apparently found her credible. We will not substitute our judgment for that of the trier of fact on questions involving the credibility of witnesses. *Siguenza-Brito*, 235 Ill. 2d at 224-25. Finally, because it is distinguishable, we find unpersuasive defendant's citation to *People v. Schott*, 145 Ill. 2d 188 (1991). There, defendant's conviction was reversed where the victim not only possessed a motive to lie but also admitted she lied "a lot," acknowledged she previously falsely accused her uncle of committing the same act for which the defendant was accused, was impeached numerous times, and, according to other witnesses, recanted the allegation she made against the defendant. *Schott*, 145 Ill. 2d at 206-09. Such additional evidence was not present in defendant's case.

¶ 21 Defendant alternatively asserts that if his conviction is not reversed, it should be reduced to a conviction for aggravated battery, as the State presented identical evidence as to Sparks and defendant but the trial court acquitted Sparks of home invasion and instead convicted her of aggravated battery. The State responds that the court did not acquit Sparks of home invasion, but rather, merged the home invasion counts into the aggravated battery count and sentenced Sparks for aggravated battery.

¶ 22 "[I]n joint trials before the same triers of fact, the acquittal of a codefendant may raise a reasonable doubt as to the culpability of the defendant," particularly where the same evidence is presented as to both defendants. *People v. Torres*, 306 Ill. App. 3d 301, 312 (1999). Evidence has been deemed identical where the same transaction is involved and the evidence of guilt of the

codefendant/principal was at least as great as the evidence presented against the defendant who was tried on an accountability theory. *People v. Wehmeyer*, 155 Ill. App. 3d 931, 943 (1987).

¶ 23 Here, the home invasion count on which defendant was sentenced was based on defendant and Sparks entering Yvette's home while armed with a bat and using or threatening to use force upon Ebony. Ebony's testimony established defendant punched her, but at no point did she testify defendant was armed with the bat. Thus, defendant's conviction for home invasion was based on Sparks' possession of the bat, and the evidence presented against Sparks, who actually possessed the bat, was at least as great as that presented against defendant.

¶ 24 However, we disagree that the trial court acquitted Sparks of home invasion. Our review of the record leads us to conclude, as the State asserts, that the trial court in fact merged the home invasion counts into the aggravated battery count and sentenced Sparks for aggravated battery. Specifically, we note that although the court stated it would "vacate" its home invasion findings, it first denied Sparks' post-trial motion, expressly stating it recalled making credibility assessments and its "rulings were right then and they're right now," and indicated it intended to merge the aggravated battery count and one home invasion count into the other home invasion count. The court again stated, after Sparks' lengthy statement, that it would "still merge the counts for purposes of sentencing" but would instead merge the home invasion counts into aggravated battery and vacate its home invasion findings. Finally, at a later hearing on defendant's motion to reconsider, the court stated it had "denied the motion for a new trial as to Ms. Sparks."

¶ 25 Moreover, even if the trial court vacated the home invasion counts and acquitted Sparks of home invasion as defendant suggests, it is clear the court did so for reasons completely

unrelated to the sufficiency of the evidence. It was not until Sparks made a lengthy plea for mercy that the court elected not to sentence her for home invasion. At that point, the court stated it had "the ability, *notwithstanding the evidence*, to apply mercy in a situation" (emphasis added). Later, at defendant's post-trial motion hearing, the court reasoned defendant's situation was different than Sparks' because Sparks had been involved in prior altercations with the Williams' family. Thus, the trial court's decision not to sentence Sparks for home invasion was premised on Sparks' plea for mercy and the court's recognition of the hostile relationship between Sparks and Williams, not on a finding that the evidence was insufficient to sustain Sparks' home invasion convictions. Given the unique circumstances of this case, we are not persuaded that the court's treatment with respect to Sparks requires defendant's home invasion conviction to be reduced to an aggravated battery conviction where, for the reasons previously stated, the evidence was sufficient to sustain his conviction.

¶ 26 Finally, defendant contends that he is entitled to a \$200 reduction in the assessments imposed by the trial court because the court ordered him to submit a DNA sample and pay a corresponding analysis fee when his DNA sample was already on file. The State concedes defendant is entitled to a \$200 fee reduction. We accept the State's concession and agree.

¶ 27 A person convicted of a felony is required to submit a specimen of blood, saliva, or tissue to the Illinois Department of State Police for DNA testing and pay a corresponding analysis fee. 730 ILCS 5/5-4-3(a), 5-4-3(j) (West 2012). However, a trial court may only order a defendant to submit a DNA sample and pay the analysis fee when the defendant is not already registered in the DNA database. *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). The DNA requirement was added by a 1997 amendment to the Unified Code of Corrections, which went into effect on

1-13-0906

January 1, 1998. *People v. Leach*, 2011 IL App (1st) 090339, ¶ 38 (citing Public Act 90-130 (eff. Jan. 1, 1998)). Thus, where a defendant has been convicted of a felony after January 1, 1998, we may presume he has already submitted a DNA sample and paid the corresponding fee. *Leach*, 2011 IL App (1st) 090339, ¶ 38.

¶ 28 In this case, the parties agree defendant was convicted of felonies after the DNA requirement went into effect. Accordingly, we presume the trial court already ordered defendant to submit a DNA sample following one of his prior convictions. We therefore vacate the DNA analysis fee imposed in this case.

¶ 29 For the reasons stated, we affirm the trial court's judgment and vacate the \$200 DNA analysis fee.

¶ 30 Affirmed; fee vacated.