2016 IL App (2d) 140415-U
No. 2-14-0415
Order filed September 30, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. QUINTIN MULLEN, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 13-CF-409 Honorable M. Karen Simpson, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Schostok and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt, specifically his identity as the offender: despite the complainants' initial lies to the police, and despite certain tangential weaknesses in their testimony, the trial court was entitled to credit their identifications of defendant.

¶ 2 Defendant, Quintin Mullen, appeals from his convictions of multiple offenses arising out of a home invasion in which the victims' dog was fatally shot. Defendant argues that the identification witnesses were discredited to the extent that their testimony could not support a conviction. We disagree, and thus affirm the convictions.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by indictment with a count of armed violence predicated on accountability for the death of a companion animal (720 ILCS 5/33A-2(a) (West 2012), 510 ILCS 70/3.02(a) (West 2012)), a count of home invasion (720 ILCS 5/19-6(a)(3) (West 2012)), a count of armed robbery (720 ILCS 5/18-2(a)(2) (West 2012)), two counts of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2012)), two counts of aggravated unlawful restraint (720 ILCS 5/10-3.1(a) (West 2012)), one count of aggravated cruelty to an animal (510 ILCS 70/3.02(a) (West 2012)), and one count of criminal damage to property (720 ILCS 5/21-1(a)(1) (West 2012)). The State nol-prossed the criminal-damage-to-property count.

¶ 5 Defendant had a bench trial. Two witnesses, Thodhoraq (Todd) Zguri and Sabrina Saranella, identified defendant as one of two people who, on March 1, 2013, forced their way into the North Aurora duplex where Zguri lived and Saranella, who was Zguri's girlfriend, stayed part-time. The first intruder threatened Zguri and Saranella and shot one of their dogs, Sunny, while the second intruder took a safe from Zguri's upstairs bedroom. Before leaving, the first intruder threatened to return and shoot Zguri and Saranella if they told anyone "who had done this or who they were."

¶ 6 Both Zguri and Saranella testified that they recognized defendant, the second intruder, as an associate of Zguri's whom they knew as "Q" or "Q-tip." Zguri had met defendant when they both lived in the same apartment complex in Aurora. Later, defendant had helped Zguri move from Aurora to the North Aurora duplex. Zguri testified that defendant had frequently been in the room where Zguri had kept the safe in Aurora and that defendant had seen where most of Zguri's possessions were in the North Aurora duplex. Zguri and defendant had smoked marijuana together regularly. Zguri had occasionally sold marijuana to defendant. Defendant had sold Zguri

the credit on his Link card—that is, Zguri and defendant had been engaged in what is commonly called food stamp fraud.

¶ 7 Saranella did not intentionally associate with defendant, but she nevertheless encountered him regularly. She admitted that she had never liked him.

¶ 8 Zguri and Saranella both admitted that they had lied to the police beginning with the 911 call that Saranella made within minutes of the intruders' departure. Zguri told Saranella to report that they had not been at home during the break-in. Saranella told the 911 operator a confused story about a trip to a 7-Eleven. They persisted in that version of events when the police arrived and when an officer interviewed them at a veterinary clinic to which they had taken Sunny. In those contacts, they both told the police that they could identify *neither* intruder. Both were consistent at all times in saying that they did not recognize the gunman.

¶ 9 Zguri testified that the gunman's threats had made him afraid to identify defendant, but that, when Sunny died at the veterinary clinic, he had decided to tell the police everything that he knew. When the two got home from the veterinary clinic, Zguri called the police and left a message that he needed to talk to them. As defendant pointed out, at that time, Zguri had also become aware that his attempt to hide several bags of marijuana behind a water heater had been unsuccessful. Zguri knew that the total weight of the marijuana was a little more than 50 grams. Even after Zguri and Saranella's identifications of defendant, their descriptions of the events still contained inconsistencies.

¶ 10 There was no physical or circumstantial evidence of defendant's guilt. The testimony of Zguri and Saranella was partially corroborated by the testimony of a friend of Zguri's who had driven by Zguri's home and had seen two men, with appearances largely consistent with Zguri and Saranella's descriptions and defendant's appearance, running in the street. One of these

men—the one whose appearance was consistent with defendant's—was carrying a box with dimensions consistent with Zguri's description of the safe. The friend testified that, as he drove by, Zguri seemed to wave him away. However, Zguri, who agreed at trial that he had seen his friend, had not told the police that his friend was a witness; he claimed that he did not think that that would be part of their investigation.

¶ 11 Evidence collected by a police technician showed that three shots had been fired toward the floor in the front room of the duplex. Evidence from a veterinarian showed that Sunny's death had been the result of three gunshot wounds.

¶ 12 The court found defendant guilty on all counts. It summarized all the evidence in detail, but its ruling focused on Zguri and Saranella's credibility:

> "It was clear from the testimony and the evidence that Todd and Sabrina both in fact were traumatized. They just witnessed their dog, Sunny, shot ***. This later resulted in the death of the dog that they apparently loved or were certainly very fond of. ***
>
> How did they react to the situation? Well, they basically, in a very lame way, I suppose, tried to comply with the gunman's demand. They tried not to tell or say who the intruders were. They did a botched job of it. They told a lot of lies. They revealed an incredible sense of immaturity and poor judgment. They admitted giving the facts to the police. They made stuff up. Todd even told Sabrina to lie.
>
> However, within a relatively reasonable period of time, they decided to come forward. *** I think the gravity of the death of the dog maybe was what finally got their attention.
>
> ***

This is a case about credibility and not identity. These two individuals, Sabrina and Todd, they knew this defendant. They knew him well. He was a friend of theirs. This is a question about whether or not they lied about his involvement in this case. Did they just decide out of the blue, after 11 or 12 hours, to randomly select their friend as the fall guy to pin this on him? Why? It's incredible to think why, and there's nothing really to support this in the evidence that was presented to the Court.

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*** The totality of the events that they experienced, I believe, prompted and explains the omissions and lies.

As far as their testimony, the Court considered Todd's testimony to be very credible. He admitted his own inappropriate relationships with his girlfriend [who was underage when she started staying with him], his—certainly a lot of questionable actions of his and a lot of illegality. ***

*** All of this exposes him to criminal charges, even as we sit here today.

The defense suggests he did it to keep himself from being charged, that somehow or other this was going to keep him out of trouble with the police by giving them a name. Well, first of all, as has been pointed out by both counsel, I don't really think he's smart enough to have figured that out, and more importantly, there really isn't any evidence to support this.

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There's nothing to show that at any time during the course of all of this interviewing and conversations with the police on March 1st, that they felt in any way

that they were under threat of being investigated or charged with anything or that they were on the receiving end of this investigation.

Sabrina, in her testimony—and Sabrina is obviously still having a very difficult time with what happened on March 1, 2013. Her tearful testimony to the Court was very credible. She also admitted her lies.

She testified that she wasn't able to identify the defendant initially and that she was not able to identify him and didn't identify him until she noticed the jeans, and then when he directly glanced at her. And then she didn't see the dog get shot. She heard it. Certainly if she was going to make up these things, she would have observed and seen a lot more than what she testified to." (Emphasis added.)

¶ 13 Defendant raised the sufficiency of the identifications—and thus of the evidence—in a posttrial motion. The court denied the motion, reasserting its finding that Zguri and Saranella were credible. After a sentencing hearing whose outcome defendant does not challenge, the court entered sentence on the first three counts: armed violence, home invasion, and armed robbery. It sentenced defendant to 23 years' imprisonment; defendant timely appealed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant again asserts that, because Zguri and Saranella were largely discredited, the evidence was insufficient to support the findings of guilt. He argues that the evidence of Zguri's uncharged offenses shows that Zguri, and through Zguri, Saranella, had a strong motivation to give the police an identification. He points to the change between Zguri and Saranella's initial statements to the police and their later statements identifying defendant. By his reasoning, the pair's claim that the gunman's threats frightened them was belied by their consistent descriptions of the gunman, which were essentially similar before and after their

professed decision to stop lying. He further reasons that, had the pair's motivations really changed, their descriptions of the gunman should have changed as well. He also points to specific oddities in their testimony.

¶ 16 The issue here is the sufficiency of the evidence, so the standard of review is the familiar one from *Jackson v. Virginia*, 443 U.S. 307, 319 (1979), as adopted by *People v. Collins*, 106 Ill. 2d 237, 261 (1985): when a reviewing court decides a challenge to the sufficiency of the evidence, " 'the relevant question 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.' " (Emphasis in original.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson*, 443 U.S. at 319). "[W]here the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether, in light of the record, a fact finder could reasonably accept the testimony as true beyond a reasonable doubt," but, "[i]n conducting this inquiry, the reviewing court must not retry the defendant." *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). "Testimony may be found insufficient under the *Jackson* standard, but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *Cunningham*, 212 Ill. 2d at 280. Although we must accord great deference to the fact finder's decision to accept testimony, and must view the evidence in the light most favorable to the prosecution, the fact finder's decision is not conclusive. *Cunningham*, 212 Ill. 2d at 280.

¶ 17 We conclude that, despite the obvious issues associated with Zguri and Saranella as the sole identification witnesses, the record provides no basis for us to reject the court's conclusion that their testimony was credible. As the court noted, the issue was not one of identification as such but of credibility. Zguri testified to an identification based on a clear view of someone he

knew well. That kind of identification could be a lie, but it is unlikely to be a mistake. Saranella's identification testimony was a bit more uncertain; she testified that she was hiding her face for much of the incident and did not recognize defendant until she noticed that the second intruder was wearing "True Religion" jeans of the kind that she had known defendant to wear. However, although Saranella's identification was not as strong as Zguri's, if that identification was not deceptive, it was a valuable corroboration of Zguri's identification. Thus, as the court reasoned, the question was not the reliability of Zguri and Saranella's observations, it was their honesty.

¶ 18 The court recognized Zguri and Saranella's initial willingness to lie, but concluded that, because that willingness was understandable, the admitted lies were not cause for it to discredit Zguri and Saranella's testimony. The court's choice here was one that a reasonable fact finder could make. A reasonable fact finder may sometimes accept the testimony of a witness who has not always told the truth. Even when a fact finder is aware that a witness has *knowingly given false testimony*, a reasonable fact finder need not reject that witness's entire testimony. *Cunningham*, 212 Ill. 2d at 283. *A fortiori*, a reasonable fact finder may sometimes accept the testimony of a witness who has made prior false statements while not under oath. Here, the court concluded that Zguri and Saranella made decisions to lie in their moments of extreme emotion, but that they rather quickly thought better of it. That is a reasonable conclusion. We have no difficulty accepting that the emotions and pressures of the incident might have led Zguri and Saranella to do exactly as the court concluded they did.

¶ 19 We now turn to defendant's claim that specific difficulties with Zguri and Saranella's testimony rendered their testimony implausible. Defendant argues generally that, even aside from Zguri and Saranella's inconsistent reports to the police, the inconsistencies in their

testimony made their identifications of defendant incapable of supporting a conviction. In particular, he suggests that certain inconsistencies that continued into their testimony made Zguri and Saranella not credible as witnesses. We conclude that these difficulties are not such that they render unreasonable the court's decision to credit Zguri and Saranella.

¶ 20 We address six specific claims. Defendant first argues that Zguri and Saranella's testimony that the intruders kicked in the door was implausible. He points to the evidence photographs, which showed that the door was undamaged. He further suggests that the cold weather at the time of the offenses rendered implausible Zguri and Saranella's testimony that they failed to notice that the door was not fully closed. He suggests that Zguri and Saranella were lying to disguise the fact that one or the other had voluntarily opened the door. We do not agree. Zguri's testimony in particular was very clear on this point. He explained that the door stuck in a way that meant that force was needed to make it close tightly enough for it to latch. Thus, it was plausible that they could have left the door ajar and that that an intruder could kick it open without damaging it.

¶ 21 Defendant second argues that Zguri and, to a lesser extent, Saranella had a strong incentive to provide testimony helpful to the State to discourage the State from prosecuting Zguri for marijuana offenses or for his sexual relations with Saranella while she was underage. He points out that Zguri and Saranella's decision to identify defendant came shortly after they learned that the police had found Zguri's marijuana—an event that roughly coincided with their learning of Sunny's death. The court concluded that Zguri was not smart enough to think that identifying defendant might save him from prosecution. We hold that the record supports the general sense of the court's ruling. The record suggests that neither Zguri nor Saranella was calculating in their interactions with the police. To be sure, Zguri made an ineffectual attempt to

hide his marijuana. Still, overall, his and Saranella's actions appeared to be artless and emotion-driven. Further, as the court noted, there was no evidence that Zguri had received any suggestion of leniency in exchange for his testimony.

¶ 22 For the same reason, although we agree with defendant that Zguri and Saranella's initial partial answers to the police were not a logical response to fear based on the gunman's threats, we conclude that illogical responses were in keeping with their highly emotional state, as described by the officers at the scene.

¶ 23 Defendant third argues that Zguri and Saranella must have lied about their marijuana use on March 1. He notes that both denied use of marijuana that day despite evidence that the living area had what he claims an investigating officer characterized as a "strong odor of cannabis." That argument mischaracterizes the evidence. The officer in question testified that the air had an odor of marijuana that was "strong enough to notice," not unqualifiedly "strong." That description suggests that the use had not been as recent as defendant argues it was.

¶ 24 Defendant fourth points out one curious element of Zguri's behavior: in Zguri's March 2 interview with the police, he told them that he tried to call defendant the night of the robbery. When asked what he was going to say to defendant, he said he was going to ask him to "hang out." Zguri said that he would do this because he wanted to try to make defendant think that Zguri and Saranella had failed to identify him. We agree that this was an odd plan, but we conclude that the court might have rationally concluded that this was merely another example artless behavior by Zguri. It does not establish that his identification of defendant was unworthy of belief.

¶ 25 Defendant fifth argues that, if Sunny's death were, as Zguri implied, Zguri's motivation for deciding to implicate defendant, one would have expected Zguri to make a statement to the

detective who was present at the veterinary clinic when Sunny died rather than calling the police later that night. Defendant assumes that the effect of Sunny's death on Zguri's intentions should have been like the flipping of a switch. We deem that a delay in response would be more typical. Defendant is correct that the delay placed Zguri's change of heart at about the time that he must have recognized that the police had found his marijuana. However, our deference to the trial court's findings of fact requires us to accept the trial court's conclusion that Zguri did not seem to recognize any likely personal benefit from his implicating defendant.

¶ 26 Defendant sixth and finally asserts that the result in *People v. Smith*, 185 Ill. 2d 532 (1999), requires us to reverse here. The facts in *Smith* were too different for the case to have much direct application here. In *Smith*, the State had a single witness—Debrah—who identified the defendant as the person who fatally shot the victim. Debrah's testimony was materially inconsistent with that of several other witnesses with no apparent bias (*Smith*, 185 Ill. 2d at 542-44), whereas here the identifications of defendant by Zguri and Saranella were uncontradicted. To be sure, in *Smith*, some evidence suggested that Debrah might have been motivated to implicate the defendant by a desire to draw police attention from her sister (*Smith*, 185 Ill. 2d at 544), a circumstance that has something of a parallel here in Zguri and Saranella's possible interest in giving the police a suspect. However, *Smith* does not contain anything to suggest that Debrah had a plausible reason to start telling the truth. The holding in *Smith* carries a strong reminder of the rule that a reviewing court cannot assume the reasonableness of every trier-of-fact credibility determination. However, that rule does not require a court to reject the credibility of less-than-ideal witnesses. Here, the court plainly had given much thought to deciding the credibility of Zguri and Saranella's testimony. We cannot conclude that the results were unreasonable.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm defendant's conviction. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 29 Affirmed.