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FIRST DIVISION
March 31, 2017

2017 IL App (1st) 141201-U
No. 1-14-1201

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 10 CR 9649 |
| | ) | |
| LEONARDO MONCADA, | ) | Honorable |
| | ) | Angela Munari Petrone, |
| Defendant-Appellant. | ) | Judge, presiding. |

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

**ORDER**

¶ 1 *Held*: The evidence was sufficient to prove defendant guilty beyond a reasonable doubt of armed robbery.

¶ 2 Defendant, Leonardo Moncada, and codefendant, Antonio Cortez, who is not a party to this appeal, were charged with one count of attempted first degree murder, one count of armed robbery, and four counts of aggravated battery. Following a simultaneous but severed bench trial, defendant and Cortez were both found guilty of one count of armed robbery and one count of aggravated battery. Defendant was sentenced to concurrent terms of 16 years in prison for the armed robbery offense and 5 years in prison for the aggravated battery offense. On appeal,

defendant contends that the State failed to prove beyond a reasonable doubt that he committed the offense of armed robbery. For the reasons below, we affirm defendant's conviction.

¶ 3 Defendant's conviction arose from an incident that took place on January 23, 2009. At trial, the victim, Guillermo Paez, testified that, at about 8:30 p.m. on the night in question, he went to a gas station located at 3035 West 63rd Street, in Chicago. When he arrived, he walked to the outside window to order cigarettes and soda. After the clerk gave him his change, defendant and Cortez approached him.

¶ 4 Defendant asked him if he "was an Ambrose." After Paez responded, "No," defendant started punching him in the face with a closed fist. Paez punched defendant back to defend himself. Then, Paez testified that defendant and Cortez, who had a knife, "attacked" him by punching and kicking his whole body. Defendant grabbed Paez, spun him around, and threw him to the ground. When Paez fell to the ground, defendant took his jacket off of him and threw it to the side. While Paez was on the ground, defendant and Cortez continued to punch and kick him. At one point, defendant went into Paez's vehicle. After Paez was able to get himself up from the ground, Cortez tried to stab him in the face. Paez put his hand in front of his face to block the knife and was stabbed in his wrist. Then, defendant got out of Paez's vehicle and started punching Paez again. Paez tried to defend himself. At one point, when defendant slipped and fell, Paez was able to get inside his vehicle and lock the doors. As Paez was looking for his keys, defendant and Cortez approached the driver's side door, and defendant banged on the window with a knife. Defendant cut himself, which left blood on the window. Paez started his vehicle and drove home. He left his jacket at the gas station.

¶ 5 The State showed Paez various photographs of the incident. Paez testified that one picture showed defendant "dragging, pulling my jacket off of me, throwing me on the floor." He testified that another photograph showed defendant "taking my jacket off while I am on the floor." The State played video footage of the incident at trial, which included footage taken from two camera angles. Paez pointed out when in the first angle's video footage defendant pulled his jacket off of him. Paez further testified that the footage from the second angle showed that, after defendant and Cortez got into their own vehicle, they drove around the station's lot and stopped at the jacket, and then defendant took the jacket off the ground before driving off. When defendant took Paez's jacket off the ground, Paez was not present, as he had already left the scene.

¶ 6 After the incident, an ambulance came to Paez's residence and took him to the hospital. Paez testified that, at the hospital, he learned that he had been stabbed six times. He received 16 staples for the stab wounds on his side and stitches for the stab wounds on his back. Paez testified that, on the subject day, he did not have any weapons on him, display anything, or say anything other than "No" when he was asked if he "were Ambrose." He acknowledged that in 2006, he was in the Ambrose gang, but stated that he had not been in a gang since 2006 and was not a member of the gang on the subject day.

¶ 7 Sergeant Jose Lopez from the Chicago Police Department testified as an expert in gangs. Sergeant Lopez testified that the address 3035 West 63rd Street is in an area where different gangs "bump up against each other." The State showed Sergeant Lopez photographs of defendant and tattoos depicted on various areas of his body. Sergeant Lopez testified that the tattoos were generally seen on members of the Latin Kings gang and that, based his experience,

he had "no doubt" that defendant was a member of the Latin Kings on the day in question. Sergeant Lopez testified that, on the subject day, the Latin Kings and Ambrose were rival gangs, that when a person asks about gang membership, that person is "asking for a reason," and that, if that person does not get an answer, or gets an answer that he does not like, some type of violence will generally follow.

¶ 8 The State offered a stipulation between the parties that Jamie Bartolotta, a forensic scientist with the Illinois State Police would have testified that DNA recovered from the exterior driver's side window of Paez's vehicle matched defendant's DNA profile.

¶ 9 Defendant called Nancy Bojan, a paramedic from the Chicago Fire Department, to testify about what she had written in her report after she was dispatched to Paez's residence on the subject day. She testified that when she found Paez, he had complained of lacerations, which he said were caused by a box cutter. Bojan testified that, during her general assessment, she found Paez's injuries to be "superficial and nonpenetrating in nature." Bojan transported Paez to a hospital.

¶ 10 Defendant called Officer Folliard from the Chicago Police Department to testify regarding a conversation he had with Paez after the incident. Paez told Officer Folliard that after he was attacked, Paez attempted to defend himself and that " 'they began to fight with each other.' " Paez never told Officer Folliard that his jacket had been taken during the incident.

¶ 11 Defendant presented a stipulation between the parties that Detective Nicole Price would have testified that she was present when Paez viewed a lineup that included Cortez, identified Cortez as the person who beat him up, said that Cortez had the knife, and stated that Cortez was the individual who stabbed him during the attack. The parties further stipulated that Detective

Robert Burns would have testified that, on January 27, 2010, Paez informed Detective Burns that he had information about the incident but that Paez never told him that his jacket, or that any property, had been taken from him.

¶ 12 In rebuttal, the State offered a stipulation between the parties that Paez was admitted to the hospital on January 23, 2009, that he was diagnosed with multiple stab wounds, that because of his stab wounds, he was transferred to another hospital, and that the admitting physician's diagnosis and chief complaint provided in the medical records at the admitting hospital was "trauma stabbing."

¶ 13 After closing argument, the trial court issued a written ruling and read the ruling on the record. Specifically, the trial court found defendant guilty of one count of armed robbery and one count of aggravated battery, and not guilty of attempted first degree murder and the three other aggravated battery charges. With respect to the trial court's finding of guilt on the armed robbery offense, the trial court stated, among other things, as follows:

> "[I]n the case at bar, the taking of Paez' jacket was part of [a] single incident of the attack on him, during which Paez was punched and kicked by both defendants and during which both defendants at some point held the knife used to stab him. The element and force in the armed robbery has been proven as to each defendant."

¶ 14 The trial court denied defendant's motion to reconsider. In doing so, the trial court noted as follows:

> "The attack on Mr. Guillermo Paez was unprovoked. He was simply in a gas station making a purchase on his way home. The taking the coat off of him was done

during the robbery. It wasn't inadvertent. It was pulled off of him during the robbery. It was left laying in the gas station area on the sidewalk.

The evidence is on video of both Defendants in the vehicle, then pulling around the gas station, coming back, a car door opening, the coat being scooped up and then the car pulling off without the coat. I believe that the taking of the coat was part of the continuing course of the criminal behavior of the attack, that being the aggravated battery committed on Mr. Paez."

¶ 15 The trial court sentenced defendant to concurrent terms of 16 years in prison for the offense of armed robbery and 5 years in prison for the offense of aggravated battery.

¶ 16 On appeal, defendant argues that the State did not prove beyond a reasonable doubt that he committed the offense of armed robbery. He contends that the State did not prove that there was concurrence between his use of force and his action of taking Paez's jacket. Defendant argues that his conduct did not constitute a single series of continuous acts and that there was a break in the chain of causation between the aggravated battery and picking the jacket up from the ground after Paez had driven away from the scene. Defendant asserts that, when he approached Paez, his intent was to "beat up a person he thought was a rival gang member," that he had no intent to permanently deprive Paez of his jacket, and that his act of removing the jacket occurred "only incidentally to the fight" and as an "afterthought" after the fight had ended. Because defendant admits he picked up Paez's jacket after the fight ended, he concedes that there was sufficient evidence to convict him of the offense of theft and requests that we reduce his conviction accordingly.

¶ 17 When reviewing the sufficiency of the evidence, the 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). When the evidence supporting a criminal conviction is challenged on appeal, a reviewing court does not retry the defendant. *People v. Kent*, 2016 IL App (2d) 140340, ¶ 18. Rather, it is the fact finder's responsibility to determine the credibility of the witnesses and draw reasonable inferences from the evidence. *People v. Robinson*, 167 Ill. 2d 397, 413 (1995). On review, all reasonable inferences from the record must be drawn in favor of the prosecution (*People v. Saxon*, 374 Ill. App. 3d 409, 416 (2007)) and we will only reverse a conviction if the evidence is "so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt" (*People v. Green*, 256 Ill. App. 3d 496, 500 (1993)).

¶ 18 The offense of armed robbery is committed when a defendant uses force or the threat of force to cause another to give up possession of property against his will. *People v. Cackler*, 317 Ill. App. 3d 645, 647 (2000). A defendant's use or threat of force need not occur before or during the time the property is taken; "rather the force may be used as part of a series of events constituting a single incident." *Cackler*, 317 Ill. App. 3d at 647. Further, when a defendant uses a dangerous weapon at any point during a robbery, it will be considered armed robbery, "as long as it reasonably can be said to be a part of a single occurrence." *People v. Foster*, 198 Ill. App. 3d 986, 994-95 (1990). Finally, while the State does not need to establish that force was used "for the purpose of taking the property," the State must establish that there was "some concurrence between the defendant's use of force and the taking." *People v. Runge*, 346 Ill. App. 3d 500, 505 (2004).

¶ 19 We find that the evidence was sufficient to support defendant's conviction. Here, after defendant approached Paez at the gas station window, defendant and Cortez, who was armed with a knife, punched and kicked him. Defendant grabbed Paez, spun him around, and threw him to the ground. While throwing Paez to the ground, defendant pulled Paez's jacket off of him and threw it to the side. Defendant and Cortez continued to punch and kick Paez, and Cortez stabbed him. After Paez was able to get inside his car and lock the doors, defendant banged on the car's window with a knife. Following Paez's departure from the scene, defendant got in a second car with Cortez, drove around to the jacket, picked it up off the ground, and drove away.

¶ 20 Viewed as a whole and in the light most favorable to the State, we conclude that this evidence sufficiently supports a conclusion that defendant committed armed robbery when he took Paez's jacket off of Paez by force and then picked up the jacket before he drove away. *People v. Lewis*, 165 Ill. 2d 305, 338 (1995) ("The gist of armed robbery is simply the taking of another's property by force or threat of force."). While we acknowledge defendant took Paez's jacket off the ground after Paez had fled, we find that the evidence described above establishes that the aggravated battery and the taking of the jacket were part of a single incident and that there was concurrence between these events. See *People v. Foster*, 198 Ill. App. 3d 986, 990-91, 995 (1990) (where the evidence showed that the defendant fled and hid after shooting two victims in a car, then returned to the car a few minutes later, reached inside, and took money belonging to one of the dead victims, the court upheld the defendant's armed robbery conviction and found that this evidence was "sufficient to support a conclusion that the shootings and the taking of money were all part of a single occurrence"); *People v. Williams*, 118 Ill. 2d 407, 416 (1987) (where the defendant was convicted of rape and armed robbery, the court upheld the

defendant's armed robbery conviction, stating "[w]hether the defendant took the necklace from the victim's person or whether he picked it up off the floor after committing the assault, we believe that in this case there was the necessary concurrence between the defendant's use or threat of force and his taking of the necklace to give rise to the offense of armed robbery under the statute").

¶ 21 Finally, we disagree with defendant's contention that we should reduce his conviction for armed robbery to theft because he never intended to rob Paez and only took his jacket as an "afterthought to the commission of the aggravated battery." In *People v. Strickland*, 154 Ill. 2d 489, 498 (1992), after the defendant shot and killed a police officer, the defendant took the police officer's gun. On appeal, the defendant argued that his conviction for armed robbery should be reversed because the evidence did not establish that he shot the officer for the purpose of taking the gun from him. *Strickland*, 154 Ill. 2d at 523. The court upheld this particular armed robbery conviction and quoted the following from its ruling in *People v. Jordan*, 303 Ill. 316 (1922): " 'If, as the result of a quarrel, a fight occurs in which one of the parties is overcome, and the other then, without having formed the intention before the fight began, takes the money of the vanquished one, the offense committed is robbery.' " *Strickland*, 154 Ill. 2d at 524 (quoting *Jordan*, 303 Ill. at 319). The court in *Strickland* concluded:

> "Although *Jordan* was decided under former law, we do not believe that the language of the current statute compels a different result. Section 18–1 of the Criminal Code requires that the taking be accomplished by force or the threat of force. Such was obviously the case here, regardless of whether the defendant had previously formulated an intent to take the slain officer's weapon or other property." *Id.*

Accordingly, following the reasoning of *Strickland*, defendant's argument that we should reverse his armed robbery conviction because he only intended to beat up a rival gang member, did not intend to rob Paez of his jacket, and did not take the jacket until after the fight ended fails.

¶ 22 For the reasons explained above, we affirm defendant's conviction.

¶ 23 Affirmed.