2019 IL App (1st) 162008-U

No. 1-16-2008

Order filed February 13, 2019.

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 7633
	)	
SAMUEL WALTON,	)	The Honorable
	)	Clayton Jay Crane and
Defendant-Appellant.	)	Alfredo Maldonado,
	)	Judges Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to prove defendant guilty of robbery and aggravated battery beyond a reasonable doubt. Minor inconsistencies in the testimony of two eyewitnesses did not render it unbelievable.

¶ 2 Defendant Samuel Walton and codefendant Rapheal Hall were charged by indictment with, *inter alia*, two counts of aggravated robbery and two counts of aggravated battery. Following a bench trial, defendant was found guilty on two counts of the lesser-included offense

of robbery and both counts of aggravated battery, and sentenced as a Class X offender to concurrent terms of seven years' and five years' imprisonment, respectively. On appeal, defendant contends that the evidence was insufficient to find him guilty of either offense beyond a reasonable doubt because the testimony of two eyewitnesses was unbelievable. We affirm, and correct the mittimus.

¶ 3 Defendant and codefendant were each charged in a 13-count indictment with multiple offenses arising from an incident in Chicago on March 30, 2014, involving two victims, Jementae Johnson and J.J. The indictment alleged: three counts of aggravated criminal sexual assault of J.J. (720 ILCS 5/11-1.30(a) (West 2014)) (counts I-III); three counts of aggravated kidnaping of J.J. (720 ILCS 5/10-2(a)(3) (West 2014)) (counts IV-VI); one count of aggravated robbery of Johnson (720 ILCS 5/18-1(b)(1) (West 2014)) (count VII), one count of aggravated robbery of J.J. (720 ILCS 5/18-1(b)(1) (West 2014)) (count VIII); three counts of aggravated criminal sexual abuse of J.J. (720 ILCS 5/11-1.60(a)(6) (West 2014)) (counts IX-XI); one count of aggravated battery against J.J. (720 ILCS 5/12-3.05(c) (West Supp. 2013)) (count XII); and one count of aggravated battery against Johnson (720 ILCS 5/12-3.05(c) (West Supp. 2013)) (count XIII). The case proceeded to simultaneous, but separate, bench trials.[1]

¶ 4 At trial, Johnson testified that he picked up J.J. from her house around 9:30 or 10 p.m. on March 29, 2014, and drove to 66th Street and Albany Avenue, where his friend Brian Harris was hosting a party. Johnson testified that, after leaving Harris's party, he thought they stopped at a gas station to purchase snacks. Johnson and J.J. then drove to a house on 57th Street and Laflin Street where Johnson's friend, Mishon Washington, was throwing a party. They arrived at

[1]At trial, except as noted in this order, defendant adopted the cross-examination of the witnesses by codefendant's counsel. Codefendant's appeal is pending before this court in case number 1-16-2006. He is not a party to this appeal.

approximately 10:30 or 11 p.m. Johnson initially testified that nobody was drinking alcohol at the party, but later stated that alcohol was served.

¶ 5 J.J. and Johnson left the party at approximately 2 a.m. on March 30 and walked to Johnson's car parked on the same block. Johnson was in the driver's seat and J.J. was in the passenger's seat when two men in hoodies approached the passenger side of the car. One of the men asked to borrow a cigarette lighter, and J.J. gave him one. After Johnson told the men that he was going east, they also asked for a ride. J.J. and Johnson agreed to drop them off along the way. Johnson identified defendant as the man who sat behind him, and codefendant as the man who sat behind J.J. Johnson drove to Throop, pulled over, and said, "Okay." Codefendant said, "Give me all that shit," and Johnson saw J.J.'s head move forward "as if it was pushed." Codefendant repeated, "Give us all that shit," and Johnson saw codefendant push J.J.'s head again. Johnson grabbed his cell phone, removed the keys from the ignition, and exited the car, followed by all three passengers.

¶ 6 Outside the car, Johnson called the police. Defendant came towards him, motioning towards his waistband area "as if he ha[d] a gun." After backing Johnson about 15 feet away, defendant began "going through" the front of the car via the driver's door. Johnson reapproached the car and defendant again came at him "as if he had a gun," this time chasing Johnson down the street. Johnson fled and eventually flagged down a police car. He identified a photograph of his iPhone 4 charger and adapter that were missing from his car after the incident, as well as a photograph of J.J.'s cell phone in a Winnie the Pooh case that was in his car that night.

¶ 7 On cross-examination, Johnson acknowledged that J.J. lived south of 57th and Laflin. He explained that, in order to drive south from the street where he had parked, he had to briefly

travel north, turn right to head east, and then make another right to go south. He denied that he and J.J. were driving to buy Ecstasy pills, and stated that giving defendant and codefendant a ride was "just a dumb mistake that we made."

¶ 8 J.J. testified that Johnson sent her a text message around 11:50 or 12 p.m. and asked her to go to a party with him. He picked her up around 12:30 a.m. on March 30 and drove her to a party around Laflin, where they arrived at approximately 12:50 or 1 a.m. J.J. later said that she and Johnson left her house around 12 or 12:15 a.m. She testified that they went straight to the party on Laflin after Johnson picked her up. J.J. did not mention going to Harris's house and did not recall stopping for snacks. Johnson told her that he did not have any money on him that night.

¶ 9 They left the party at approximately 2 a.m. and walked to Johnson's car, intending to drive back to J.J.'s house. She plugged her cell phone, a Samsung Galaxy 4 in a Winnie the Pooh case, into a charger in Johnson's car and used it to play music. They drove down the street, and two men "flagged" them down. The men approached the driver's side of the car and asked to borrow a cigarette lighter, but she did not give one to them. J.J. stated that, although the men were strangers, she offered them a ride because she was just "being nice." She identified defendant as the man who sat behind Johnson, and codefendant as the man who sat behind her. When Johnson stopped the car a few blocks later, one of the men said, "Take all that shit," and codefendant grabbed J.J.'s hair from behind and twice pushed her head into the dashboard. All four people exited the car. Codefendant hit J.J. in the face while on the sidewalk and dragged her by her hair into a nearby alley. As she was being dragged, J.J. observed defendant motion toward

Johnson as if he had a gun. She also saw defendant rummaging through the front of Johnson's car and holding her illuminated cell phone.

¶ 10 In the alley, codefendant choked J.J. and she scratched the back of his neck. Codefendant told J.J., "I'm thinking about raping you." He threw her to the ground, ripped her hoody and broke the zipper on her pants. Codefendant felt under J.J.'s bra and put one of his fingers in her vagina. Then, he pulled J.J. off the ground and threw her towards defendant, who had entered the alley behind them, and said, "Cuz, finish it." Defendant hit J.J. on the right side of her cheek and knocked her to the ground. Defendant and codefendant then fled in opposite directions as the police arrived.

¶ 11 J.J. identified photographs of her swollen and bruised face, her bruised hands, her ripped hoody, and her pants with a broken zipper. She also identified photographs of her money, cell phone, and charger, which the police returned to her at the police station after the incident. Throughout her testimony, J.J. referred to defendant and codefendant by their first names. She explained that she did not know their names during the incident, but learned them at the police station.

¶ 12 On cross-examination, J.J. identified a photograph of her cell phone showing an outgoing text message to the phone number 1-773-800-6854. The text message was time-stamped 1:54 a.m. and read "Ma, I'm pulling up." Defense counsel asked J.J. if the message "came to your phone," and she responded that it had. J.J. immediately clarified that the message was sent from her phone. J.J. did not recognize the number and had never messaged the number before. J.J. testified that defendant was "the only one that had the phone" and that he sent the message before the phone's 30-minute lock activated, although she did not see defendant send the

message. She did not give defendant or codefendant her cell phone, and denied asking defendant to contact somebody to sell them pills.

¶ 13 Chicago police officer Schultz[2] testified that he and his partner, Officer Bochenek, were patrolling on March 30, 2014, when they were dispatched to the 5500 block of South Throop Street at approximately 2:31 a.m. A man flagged down Officer Margolis, who was in another vehicle ahead of Schultz, and directed the officers to an alley on Throop. In the alley, Schultz saw a woman lying on the ground with defendant, whom he identified in court, standing over her. Schultz exited his vehicle and defendant fled. Schultz chased and apprehended defendant. He searched defendant and found a cell phone, two chargers, and an adapter in defendant's jacket pocket. Schultz identified photographs of these items in court.

¶ 14 Chicago police officer Margolis[3] testified that he and his partner, Officer Torres, were on patrol around 2:30 a.m. on March 30 when they responded to a call in the 5500 block of South Throop.[4] They met Johnson, who told them that two people had dragged his friend out of a car and into an alley. Margolis drove to the alley on Throop, where he heard screaming and saw defendant standing over a woman who was lying on the ground. Schultz and Bochenek chased and apprehended defendant. Margolis and his partner then patrolled the area for a second offender and detained codefendant two blocks from the alley about 20 minutes later.

¶ 15 The State entered a stipulation between the parties that evidence technician Dennis Rosinski would testify that he processed Johnson's car for fingerprints on the morning of March 30, 2014, and the only areas where suitable latent fingerprints were found were the outside of the

[2]Officer Schultz's testimony did not include his first name.

[3]Officer Margolis's testimony did not include his first name.

[4]Defense counsel cross-examined Margolis, but did not adopt the cross-examination by codefendant's counsel.

driver's and rear passenger's side door frames. Rosinski would also state that he photographed J.J., and the cell phone and charger that were recovered from defendant's jacket. The parties further stipulated that evidence technician Sandra Mendiola-Kunis would identify photographs of codefendant that she took after the incident. Finally, the parties stipulated that Julie Wessel, a latent fingerprint expert, would testify that neither defendant nor codefendant left one of the fingerprints lifted from the outside of Johnson's car, and that a second fingerprint was unsuitable for comparison.

¶ 16 The State rested and defendant moved for acquittal, which the trial court denied. For his case-in-chief, defendant introduced into evidence the photograph of J.J.'s cell phone showing the 1:54 a.m. text message, which is not included in the record on appeal, and then rested.

¶ 17 Following closing arguments, the court found defendant guilty of the lesser-included offense of robbery and aggravated battery of Johnson (counts VII and XIII, respectively) and the lesser-included offense of robbery and aggravated battery of J.J. (counts VIII and XII, respectively), and not guilty on the remaining counts.[5] The court stated that, although J.J. and Johnson's testimony "wasn't perfect," it was convinced of defendant's guilt beyond a reasonable doubt because police saw defendant in the alley and he subsequently fled.

¶ 18 Defendant filed a motion for new trial, which the trial court denied. After a sentencing hearing, the court merged counts VII and VIII, and counts XII and XIII, and based on his criminal history, sentenced defendant as a Class X offender to concurrent terms of seven years' imprisonment for the robbery of Johnson (count VII) and five years' imprisonment for he aggravated battery of J.J. (count XII).

[5]The trial court found codefendant guilty of aggravated criminal sexual assault, aggravated kidnaping, robbery, aggravated criminal sexual abuse, and aggravated battery.

¶ 19 On appeal, defendant contends that the evidence was insufficient to prove him guilty of robbery and aggravated battery beyond a reasonable doubt. He challenges the sufficiency of the evidence only with respect to the credibility of witnesses, not on the elements of any of the charges. In particular, he contends that J.J. and Johnson's testimony was unbelievable because they contradicted each other regarding the events before and during their encounter with defendant and codefendant. The State responds that the evidence adduced at trial was sufficient to establish defendant's guilt, and that the trial court did not err in crediting J.J. and Johnson's testimony.

¶ 20 The standard of review on a claim of insufficient evidence is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Gray*, 2017 IL 120958, ¶ 35. It is the trier of fact's responsibility to weigh the evidence, resolve any conflicts in testimony, and draw reasonable inferences from the evidence, and it is better equipped than a reviewing court to do so because it heard and observed the witnesses testify. *Id.*; *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. The trier of fact need not be satisfied beyond a reasonable doubt with respect to each link in the chain of circumstances; rather it is enough that the trier of fact is convinced of the defendant's guilt beyond a reasonable doubt after taking the evidence as a whole. *Jonathon C.B.*, 2011 IL 107750, ¶ 60. We will not substitute our own judgment for that of the trier of fact on questions of witness credibility and weight of the evidence. *Gray*, 2017 IL 210958, ¶ 35. A conviction will be reversed based on insufficient evidence only if the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of defendant's guilt remains. *Id.*

¶ 21 The trier of fact is not required to ignore reasonable inferences that flow from the evidence, nor is a reviewing court required to find that the evidence was insufficient to sustain a conviction simply because the defendant claims that a witness was not credible. *Jonathon C.B.*, 2011 IL 107750, ¶ 60. The positive testimony of a single credible witness is sufficient to convict. *Gray*, 2017 IL 120958, ¶ 36. Contradictory testimony does not necessarily destroy a witness's credibility; the trier of fact must still determine when, if ever, the witness was telling the truth. *Id.* ¶ 47. Minor discrepancies related to collateral matters do not render a witness's testimony on material questions incredible, but only affect its weight. *Id.* A person commits robbery when he knowingly takes property, other than a motor vehicle, from the person or presence of another through the use of force or by threatening the imminent use of force. 720 ILCS 5/18-1(a) (West 2014). Relevant here, a person commits aggravated battery by committing a battery while either he or the victim is on a public way. 720 ILCS 5/12-3.05(c) (West Supp. 2013). Battery is knowingly causing bodily harm to, or making insulting or provoking physical contact with, another person. 720 ILCS 5/12-3(a) (West 2014).

¶ 22 Here, taking the evidence in the light most favorable to the State, we find that a rational trier of fact could find defendant guilty of robbery and aggravated battery beyond a reasonable doubt. Testimony from J.J. and Johnson established that they gave defendant and codefendant a ride at around 2 a.m. on March 30, 2014. Johnson pulled over on Throop, where codefendant demanded their property and pushed J.J.'s head into the dashboard. Everyone exited the car, and defendant chased Johnson away by motioning toward his waistband, according to Johnson, "as if he had a gun." Defendant then rummaged through the front of Johnson's car, and J.J. saw him in possession of her cell phone without her permission. J.J. also testified that codefendant attacked

her on the sidewalk and dragged her into a nearby alley, where he ripped her hoody, broke the zipper on her pants, and touched her breasts and vagina. Defendant entered the alley, knocked J.J. to the ground, and fled.

¶ 23 Evidence outside of J.J. and Johnson's testimony corroborates their accounts and supports the trial court's findings of guilt. Officers Schultz and Margolis both testified that, when they arrived at the alley on Throop around 2:30 a.m., they saw defendant standing over J.J. Defendant fled, and when Schultz apprehended defendant, he found two cell phone chargers, a cell phone, and an adapter in defendant's jacket pocket. J.J. and Johnson identified these items as their property that was in the car during the incident. The State introduced photographs that showed J.J.'s injuries, the damage to her clothes, and the scratches on the back of codefendant's neck that she claimed to have made while he was choking her in the alley.

¶ 24 As noted, defendant does not contest that J.J. was injured during the incident or that the property Schultz found in defendant's jacket did not belong to him. Rather, defendant contends only that J.J. and Johnson's testimony was too incredible to establish how J.J. was injured and how he came to possess the cell phone, chargers, and adapter. However, the trial court, as the trier of fact, was charged with judging J.J. and Johnson's credibility and deciding which of competing inferences to draw from the evidence, and, based on the foregoing, could have determined that defendant committed robbery and aggravated battery.

¶ 25 Although J.J. and Johnson gave different accounts of their evening before leaving Washington's party, the trial court was not required to find all their testimony incredible. *Gray*, 2017 IL 120958, ¶ 47 ("Minor discrepancies in testimony affect only its weight and will not render it unworthy of belief."). Rather, the trial court could decide how flaws in their testimony

impacted their credibility, and could find that inconsistencies on collateral matters did not impact the weight of their testimony on material issues. *Id.* Unlike *People v. Shaw*, 2015 IL App (1st) 123157, ¶ 29, relied on by defendant, this is not a case where video evidence contradicted witness testimony on matters material to the elements of the charged offenses. The time Johnson picked up J.J., whether they went to Harris's party, whether they stopped to purchase snacks, and whether alcohol was served at Washington's party are minor, collateral matters that need not render their testimony unbelievable as to material questions. Likewise, whether J.J. and Johnson were driving or stationary when defendant and codefendant approached, whether they came to the driver's side or passenger's side of the vehicle, and whether J.J. lent them a cigarette lighter are inconsequential to whether defendant committed robbery and aggravated battery. Further, neither J.J. nor Johnson's testimony is unbelievable on its face because they testified that they gave two strangers a ride at around 2 a.m. J.J. explained that she was just "being nice," and Johnson admitted that offering the ride was "just a dumb mistake that we made," and that he had to travel in the direction that defendant and codefendant wanted to go in order to take J.J. home. A rational trier of fact could conclude that neither explanation rendered J.J. and Johnson's entire testimony unbelievable.

¶ 26 Defendant argues, however, that J.J.'s testimony as to the text message sent from her cell phone was implausible because she contradicted herself about whether the message was sent or received by her cell phone. Defendant also questions how J.J. "knew" that he sent the message, as it was time-stamped at 1:54 a.m., but she claimed to have left the party at 2 a.m. and Schultz and Margolis did not see defendant flee the alley until approximately 2:30 a.m. We disagree.

¶ 27 Initially, we note that the exhibit containing the photograph of the text message is not included in the record on appeal. As the appellant, it is defendant's burden to present a complete record for review, and we will construe any doubts arising from the incomplete record against him. See *People v. Smith*, 406 Ill. App. 3d 879, 886 (2010). Moreover, J.J.'s testimony shows that she immediately clarified that the text message was outgoing. While J.J. did not see defendant send the message, it was not unreasonable for her to testify that he sent it because she did not recognize the recipient, she saw defendant holding her phone during the attack, and she knew that her phone was found in his pocket after the incident. The fact that the message was sent minutes before J.J. claimed that she left Washington's party, and that police arrived in the alley approximately 36 minutes after the text message was sent, does not compel the conclusion that J.J. gave false testimony. The trial court could reasonably infer that J.J. misremembered the exact time she left the party, and as J.J. explained, her cell phone's lock required 30 minutes to activate. As the trier of fact, it was the trial court's role to resolve conflicts in the evidence and decide which inferences to draw from it. *Gray*, 2017 IL 120958, ¶ 35. Under these circumstances, we cannot say that no rational trier of fact would accept J.J.'s testimony, and despite its inconsistencies, conclude that her evidence supported a finding that defendant was guilty of robbery and aggravated battery. Accordingly, the judgment of the trial court is affirmed.

¶ 28 As a final matter, although the parties did not raise the issue on appeal, we note that the defendant's mittmus states that sentence was imposed for one count of aggravated robbery (count VII). The transcript, however, clearly shows that the trial court stated that, as to counts VII and VIII, which alleged aggravated robbery of Johnson and J.J,, respectively, defendant was found guilty only of the lesser-included offense of robbery. "When the oral pronouncement of

the court and the written order are in conflict, the oral pronouncement controls." *People v. Jones*, 376 Ill. App. 3d 372, 395 (2007). As we may amend the mittimus without remanding the cause to the trial court (*People v. Smith*, 2016 IL App (1st) 140039, ¶ 19), we direct the clerk of the circuit court to correct the mittimus to reflect that, as to count VII, defendant was convicted of robbery.

¶ 29 Affirmed; mittimus corrected.