2026 IL App (3d) 250296-U
No. 3-25-0296
Order filed November 4, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

THOMAS J. BOTTS JR., Defendant-Appellant.

Appeal from the Circuit Court of Will County.
Honorable Thomas Slazyk, Judge, Presiding.
No. 24-CF-1488

JUSTICE DAVENPORT delivered the judgment of the court.
Presiding Justice Hettel and Justice Peterson concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The evidence was insufficient to convict defendant of robbery. (2) The issue of defendant's assessment waiver must first be raised in the trial court under Illinois Supreme Court Rule 472.

¶ 2 Defendant, Thomas J. Botts Jr., appeals his conviction for robbery, arguing the State failed to present sufficient evidence to establish a connection between defendant's use of force and the taking of property. Additionally, defendant alleges counsel was ineffective for failing to file the appropriate assessment waiver and challenge the court's imposition of fees. We reverse and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 On August 22, 2024, the State charged defendant, by indictment, with home invasion (720 ILCS 5/19-6(a)(2) (West 2024)), robbery (*id.* § 18-1(a)), aggravated domestic battery (*id.* § 12-3.3(a-5)), interfering with the reporting of domestic violence (*id.* § 12-3.5(a)), three counts of domestic battery (*id.* § 12-3.2(a)(2)), and two counts of theft (*id.* § 16-1(a)(1)(A)). The case proceeded to a bench trial. Defendant was represented by the public defender's office throughout the proceedings.

¶ 5 At trial, the State's evidence established the following. Angelica Gutierrez testified she was previously in a relationship with defendant and they shared a child, G.G., who was an infant at the time of the incident. On August 11, 2024, Gutierrez was living at her parents' residence with G.G. Gutierrez was in a relationship with Jamie Boyzo and coparenting with defendant. Gutierrez did not invite defendant to the residence, and he did not indicate he planned to visit. Gutierrez became nervous when defendant suddenly arrived. Defendant assured her he would not cause a problem, and Gutierrez allowed defendant to enter the residence to briefly visit G.G. An argument ensued and Gutierrez explained to defendant they could not be in a relationship, but they could coparent G.G. Defendant continued to argue and eventually the police were called around 1 p.m.

¶ 6 Officers arrived and left, without ordering defendant to leave. When officers returned a short time later, Gutierrez asked that defendant be removed. Officers ordered defendant to leave, and Gutierrez observed them give defendant his book bag. Gutierrez denied giving defendant any personal items that day. At approximately 3:45 p.m., Gutierrez heard the back door to the residence open. Gutierrez described the layout of the home as having two living rooms. The front door opened into the front living room and dining room area. The kitchen, back living room, and bedrooms were located beyond the front living room. Gutierrez was in the front living room by

the front door, and defendant entered through the back door. Defendant approached Gutierrez, grabbed her face near her throat, and ordered her to call Boyzo and end their relationship. When Gutierrez attempted to call 911, defendant took Gutierrez's phone, became physically violent, and expressed his anger regarding Gutierrez and Boyzo's relationship. Gutierrez yelled for help and tried to reach the door. Defendant held Gutierrez against a wall, grabbing her neck so she could not move. Defendant then called Boyzo on Gutierrez's phone, and she screamed for help. Defendant fled out of the back door, and Gutierrez ran out the front door. Later that night, Gutierrez noticed her wallet was missing, which contained money and her credit cards. Officers located defendant at a nearby store with a book bag containing Gutierrez's wallet and credit cards. Gutierrez indicated she typically kept her wallet in the living room by the kitchen. On cross-examination, Gutierrez did not observe defendant take her wallet and defendant did not "threaten[ ] violence towards" her to take her wallet. She denied having sexual intercourse with defendant on August 11.

¶ 7 Defendant testified he planned to visit G.G. on August 11, and Gutierrez paid for his ride to her residence. After arriving, he and Gutierrez had sexual relations. When they returned to the living room, defendant began arguing with Gutierrez's sister. The police arrived and left shortly after. When officers returned to the residence a short time later, defendant was asked to leave. Defendant left and did not return. Instead, defendant walked to a nearby store and stayed there for two hours, talking to Gutierrez on the phone. Defendant was at the store when the police located him. On cross-examination, defendant stated he did not want Boyzo around G.G. and agreed Boyzo's presence "made [him] angry." Defendant conveyed his threats to Boyzo through Gutierrez.

¶ 8 At the conclusion of trial, the court granted the State's motion to dismiss one count of theft. The court found defendant guilty of the remaining charges. Specifically, the court found Gutierrez's account of the incident "very credible." The court believed the wallet was taken during the final encounter. At sentencing, the misdemeanor offenses for domestic battery and theft merged with aggravated domestic battery and robbery, respectively. The court sentenced defendant to 180 days in jail for interfering with the reporting of domestic violence. It sentenced him to 5 years' imprisonment for aggravated domestic battery, 5 years' imprisonment for robbery, and 10 years' imprisonment for home invasion, to be served concurrently. The court ordered defendant to pay fees and conditional assessments. Counsel did not file an Illinois Supreme Court Rule 404 (eff. Sept. 1, 2023) certification for waiver of defendant's assessed fees. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, defendant contends (1) the State failed to present sufficient evidence to sustain his conviction for robbery, in that it did not establish a connection between defendant's use of force and the taking of property, and (2) counsel provided ineffective assistance by failing to file the appropriate assessment waiver or otherwise challenge the court's imposition of fees. We address each argument in turn.

¶ 11 A. Sufficiency of Evidence

¶ 12 When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found defendant guilty beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). "This standard of review does not allow the reviewing court to substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses." *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). The trier of fact is responsible for

assessing the credibility of the witnesses, assigning the appropriate weight to testimony, and resolving discrepancies in the evidence. *People v. Evans*, 209 Ill. 2d 194, 211 (2004). We will not retry a defendant and must allow all reasonable inferences from the evidence in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. A conviction will only be reversed "where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt." *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 13 Defendant was found guilty of robbery, which required the State to prove defendant knowingly took property from a person by the use of force or by threatening the use of imminent force. See 720 ILCS 5/18-1(a) (West 2024). The two elements of robbery are "taking" and "force." *People v. Dennis*, 181 Ill. 2d 87, 103 (1998); *People v. Cooksey*, 309 Ill. App. 3d 839, 849 (1999) ("the gravamen of robbery is the use of force or intimidation in the taking from a person against his will"). "[T]he force sufficient to sustain the crime of robbery is force administered at any time during the criminal act." *People v. Robinson*, 206 Ill. App. 3d 1046, 1053 (1990). "The force or threatened force need not transpire before or during the time the property is taken; the force may be used as part of a series of events constituting a single incident." *Id.* While the State does not need to establish force was used "for the purpose of taking the property," the State must establish there was "some concurrence between the defendant's use of force and the taking." *People v. Runge*, 346 Ill. App. 3d 500, 505 (2004). "The offense of robbery is complete when force or threat of force causes the victim to part with possession or custody of property against his will." (Internal quotation marks omitted.) *People v. Smallwood*, 102 Ill. 2d 190, 194-95 (1984).

¶ 14 Here, the evidence showed defendant was present at Gutierrez's residence for a significant period, left the residence, and when he returned, committed a domestic battery. There was limited evidence presented regarding defendant's location in the residence for the duration of his visit and

indefinite information on the wallet's location. In other words, the evidence showed defendant was present at the residence with an unknown number of opportunities to take possession of Gutierrez's property. Notably, there was no evidence presented in which a trier of fact could reasonably infer the taking immediately preceded or was contemporaneous with the domestic battery. See *Dennis*, 181 Ill. 2d at 101 ("the required force or threat of force must either precede or be contemporaneous with the taking of the victim's property"); *People v. Brooks*, 202 Ill. App. 3d 164, 170 (1990) ("courts have found an offense to constitute robbery where the perpetrator defends against a challenge immediately upon the taking or where the perpetrator's departure is accomplished by the use of force"). To find that defendant took Gutierrez's property with *any* relation, let alone, immediately preceding or contemporaneous with perpetrating the domestic battery, would require pure speculation, which we are prohibited from doing. See *id.*; *People v. Ehlert*, 211 Ill. 2d 192, 215 (2004) ("This court cannot affirm a conviction based on speculation and conjecture.").

¶ 15 Where the evidence of immediate force in connection with defendant's taking was lacking, the evidence was insufficient to support a conviction for robbery. See *cf. Robinson*, 206 Ill. App. 3d at 1054 (defendant beat and sexually assaulted the victim while he searched her for money, establishing sufficient evidence of the use of force for robbery); see also *cf. People v. Aguilar*, 286 Ill. App. 3d 493, 497-98 (1997) (defendant's attack of the victim, causing the victim to flee and allowing the unimpeded taking of his vehicle, established a sufficient concurrence between the use of force and taking); *People v. Merchant*, 361 Ill. App. 3d 69, 74-75 (2005) (force used immediately following the taking to effectuate an escape was sufficient to satisfy force used for robbery). As a result, the State failed to present sufficient evidence of force in relation to the theft offense to sustain a conviction for robbery. Our disposition does not disturb defendant's theft conviction, which merged into his robbery conviction at sentencing, and which defendant has not appealed.

Therefore, we reverse defendant's robbery conviction and remand for resentencing on defendant's theft conviction. See *People v. Henry*, 2025 IL App (3d) 230137, ¶ 51.

¶ 16 B. Assessment Waiver

¶ 17 Defendant asserts counsel was ineffective for failing to file an assessment waiver under Illinois Supreme Court Rule 404(e) (eff. Sept. 1, 2023). The State asserts defendant's claim must be raised in the trial court under Illinois Supreme Court Rule 472 (eff. Feb. 1, 2024). We agree.

¶ 18 Illinois Supreme Court Rule 472 (eff. Feb. 1, 2024) governs sentencing errors, including errors in the imposition of assessments and the waiver of court assessments. See Ill. S. Ct. R. 404 (eff. Sept. 1, 2023) (criminal defendants are permitted to apply for a waiver of court assessments); *People v. Nibbelin*, 2026 IL 131825, ¶ 21. Rule 472 provides that the trial court retains jurisdiction to correct sentencing errors at any time following judgment. Ill. S. Ct. R. 472(a) (eff. Feb. 1, 2024). Accordingly, sentencing errors controlled by Rule 472 must first be raised in the trial court, regardless of whether the error is attributable to the court or to counsel. *Nibbelin*, 2026 IL 131825, ¶ 27.

¶ 19 Here, defendant's ineffective assistance of counsel claim alleges errors in the application of an assessment waiver, subject to the provisions of Rule 472. See *id.* ¶ 21. Therefore, we cannot consider the issue, and remand the matter to provide defendant an opportunity to file a motion in the trial court pursuant to Rule 472. See *id.* ¶¶ 21, 27.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we reverse the judgment of the circuit court of Will County and remand with directions.

¶ 22 Reversed and remanded with directions.