

No. 1-11-0594

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 3967
)	
DESHAWN HUGHES,)	Honorable
)	Evelyn B. Clay,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Quinn and Connors concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where victim had clear view of defendant as he took money from her purse, another witness had seen defendant in neighborhood previously several times, and defendant and his co-offender were apprehended and identified by victim and witness within 45 minutes of robbery, evidence was sufficient to establish defendant's guilt; the judgment of the trial court was affirmed.
- ¶ 2 Following a jury trial, defendant Deshawn Hughes was convicted of robbery and sentenced to six years in prison. On appeal, defendant contends the State failed to prove his guilt beyond a reasonable doubt because he did not match the description of either offender and the currency in his possession was inconsistent with the denominations taken from the victim.

Defendant also argues he was detained and arrested in a location different from where the offenders fled, and he contends the identification of him by the victim constituted an impermissibly suggestive showup procedure. We affirm.

¶ 3 Defendant and Terrance Brown were charged with armed robbery in connection with an incident involving Vanessa Rogers on January 29, 2010. Defendant's jury trial was held simultaneously to Brown's bench trial.

¶ 4 Rogers testified that on the day in question, Fred Robinson, her boyfriend, picked her up from work and drove her to an office where she picked up her tax return check. After stopping to cash her check, they proceeded to see Rogers' landlord and pay her rent, for which she received receipts. Rogers placed the remaining \$500 and her rent receipts in an envelope in an outer section of her purse. Rogers said the \$500 was made up of three \$100 bills and ten \$20 bills.

¶ 5 After completing those errands, Robinson drove them to Rogers' residence in a multi-unit building at 3942 West 21st Street at about 5 p.m. Robinson parked across the street from the building's main entrance and waited in the car while Rogers went inside. Rogers testified she saw defendant and Brown standing in front of the building.

¶ 6 Defendant and Brown asked Rogers if a person named Joanne lived there, and Rogers thought they might be referring to a woman who had recently moved into a third-floor unit. Rogers admitted the men into the building, and they ascended the stairs in front of her. Rogers walked to her residence, which required her to follow the men up the stairs.

¶ 7 Defendant and Brown turned around towards Rogers, and defendant walked past her. Brown put a gun to Rogers' head and demanded her money. Defendant opened Rogers' purse, removed the envelope containing the cash and went down the stairs. Brown struck Rogers in the head and pushed her to the floor. Rogers testified that defendant told Brown to get her purse, and defendant and Brown ran out the door.

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¶ 8 Rogers followed the men out the door, shouting that she had been robbed and that they had her purse. Rogers said defendant and Brown ran west on 21st Street toward Pulaski and split up. Robinson, who was still in his car, drove west on 21st Street. Rogers ran into traffic, and a police officer stopped and picked her up. They drove to a nearby alley, where they saw Robinson with another officer and Brown. The officer at the scene asked her if Brown was the guy that "stuck [her] up," and Rogers responded yes.

¶ 9 Rogers was examined by medical personnel at an ambulance on the scene and then waited in a nearby car. She testified that an officer "came and showed me the other young man that they had, in the [police squadrol]." Rogers identified that person as defendant and as the person who took the money from her purse. Rogers' purse was not returned to her. Rogers identified photographs of her building and the surrounding streets and the stairwell where she was attacked. Rogers said the stairwell was brightly lit by artificial lights and "day light."

¶ 10 On cross-examination, Rogers said she spoke to Detective Finuckne after the incident occurred and told him defendant had walked past her and Brown put a gun to her head. Rogers did not see the offenders dispose of a gun or a purse as they ran away. When Rogers arrived at her building, it was about 5:14 p.m. and getting dark. Rogers did not view a physical lineup or photo array. Rogers said about 25 seconds elapsed from the time the men demanded her money until she was pushed to the ground.

¶ 11 On redirect examination, Rogers said her face was about two feet from defendant's face when he reached into her purse. Rogers said defendant wore a caramel brown-colored Carhartt-brand jacket with the hood up and a red baseball hat. Brown wore a black jacket and a black skull cap. Rogers said between 20 and 30 minutes elapsed from the attack to when she identified Brown in the alley and that she identified defendant 5 minutes after Brown. Rogers said she did not have the offenders in sight for the entire time until they were apprehended.

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¶ 12 Robinson, Rogers' male companion, testified at trial that two men were standing in front of the door as Rogers approached the entrance. Robinson remained in his car across the street. Because Robinson thought one of the men looked like his grandson, he lowered his car window and called his grandson's name. Both men turned and looked at Robinson. He identified defendant and Brown in court and gave descriptions of their clothing consistent with those offered by Rogers.

¶ 13 Robinson said that after Rogers and the men spoke outside the building, she let them in, and the men emerged from the building shortly thereafter. Brown was "tucking something in his waist" and had a purse in his hand. Both men fled west on 21st Street. When Rogers emerged from the building, Robinson backed up his car and drove west on 21st Street and north through an alley in pursuit of Brown. Robinson encountered Brown coming through a fence and pinned him against a pole using his car. Police caught up with and detained Brown, and an officer brought Rogers to the scene. Photographs of the area where Brown was apprehended were entered into evidence.

¶ 14 On cross-examination, Robinson said he had seen defendant at least 15 times previously in the neighborhood, though he acknowledged he did not tell police that at the scene. He did not see either man holding a gun upon leaving Rogers' building. Robinson lost sight of defendant while pursuing Brown. Robinson viewed defendant as he sat handcuffed in a police squadrol.

¶ 15 Chicago police officer Mike Marozas testified that on the night of the robbery, he was working as a surveillance officer for a narcotics unit in the area and saw Rogers approach her building and speak to two men. Marozas identified defendant and Brown in court as those men, and he described the clothing they were wearing consistently with the descriptions given by Rogers and Robinson. He observed Rogers and the men enter the building and saw the men run west before Rogers emerged from the front door shouting for help.

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¶ 16 Marozas reported the robbery on his police radio, along with a description of the offenders and the direction in which they had run. Marozas pursued the men in his car but lost sight of them. After hearing a report from another officer, Marozas returned to the scene and picked up Rogers. Near Rogers' building, he noticed a red baseball cap on the ground. Upon arriving to the alley, Rogers got out of Marozas's car, pointed to Brown, who was seated in the back of a police vehicle, and said he was the person who robbed her. On cross-examination, Marozas acknowledged he did not see a gun, purse or money in either offender's hand as they fled the scene.

¶ 17 Chicago police officer Sal DiFranco testified he was on the narcotics surveillance team and heard Marozas' radio report while seated in a car. DiFranco saw Brown wearing a black jacket and hat running north on Pulaski, and he pursued Brown into the alley. There, DiFranco saw Robinson confronting Brown, and Brown fled as DiFranco approached and announced his office. Brown was apprehended by additional officers, and Rogers was brought to the scene to view Brown. The officers backtracked through the offenders' route but did not recover a discarded weapon or purse. DiFranco testified he was present when Brown was searched, and Brown had in his possession \$63 in cash, including three \$20 bills and three \$1 bills, and rent receipts bearing Rogers' name.

¶ 18 Chicago police officer David Granado testified he responded to the radio call of a robbery. Searching the area near Rogers' building, Granado went into a nearby gangway, where he observed defendant crouching behind a garage and holding a brown coat. When Granado announced his presence, defendant fled into an alley and was detained by Granado's partner. Granado did not see defendant drop anything during the pursuit.

¶ 19 Defendant was placed in a police car and driven to Rogers' location. Granado testified that he "asked [Rogers] if she would be able to identify a possible offender that we had in custody." Rogers replied she could, and Granado flashed a light into defendant's face so

defendant would not be able to see Rogers. Rogers identified defendant at about 5:50 p.m. Defendant was carrying \$508 in cash, in denominations of \$20 and smaller.

¶ 20 For the defense, Chicago police detective Patrick Finuckne testified he interviewed Rogers in the early morning hours of January 30. He stated that Rogers' account at that time differed from her trial testimony in that she did not say that defendant walked past her in the hallway or took \$500 from her purse. Rogers told him Brown put a gun to her head. The detective stated that Rogers did not view a lineup because that process is not usually done when the victim has already identified the offender in a showup procedure.

¶ 21 Paramedic Brian Miskell testified that he observed Rogers at the scene while his partner examined her. He did not see any bleeding, swelling or redness on Rogers' face or head.

¶ 22 The jury was instructed on armed robbery and the lesser included offense of robbery, and the jury found defendant guilty of robbery. The trial court denied defendant's motion for a new trial and his motion to reconsider his six-year sentence.

¶ 23 On appeal, defendant contends the State failed to prove his guilt of the crime of robbery beyond a reasonable doubt. To establish the offense of robbery, the State was required to show that the accused took property from the person or presence of another by the use of force or by threatening the use of force. 720 ILCS 5/18-1 (West 2008).

¶ 24 In considering challenges to the sufficiency of the evidence, our inquiry 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. *People v. Stanley*, 397 Ill. App. 3d 598, 603-04 (2009), citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). This court is not permitted to substitute its judgment for that of the trier of fact on matters concerning the weight of the evidence or the credibility of the witnesses (*People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009)), and we will not set aside a conviction unless the evidence presented was so unsatisfactory or improbable that a reasonable doubt remains of the

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defendant's guilt. *Stanley*, 397 Ill. App. 3d at 604. Positive testimony from a single credible witness is sufficient to support a conviction, even if it is challenged by the defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999).

¶ 25 Defendant asserts he did not match the description of the offender as wearing a red baseball hat because he was not wearing a hat when he was arrested and because the cash in his possession did not correspond with the denominations taken from Rogers. He also points out that although he was arrested east of Rogers' building, the witnesses reported the suspects fled to the west when they left the building.

¶ 26 The testimony of Rogers and Robinson established one of the two offenders wore a red hat when they entered the building. Both of those witnesses identified the person wearing the red hat as defendant. Officer Marozas testified that he observed a red hat on the ground near Rogers' building while picking her up after the offenders fled. Even if the red hat on the ground was not defendant's, a hat is easily donned and removed, and thus, its absence does not cast impenetrable doubt on the identification. See, e.g., *People v. Coleman*, 168 Ill. 2d 509, 531-32 (1995) (even though witness described offender as wearing hat, the fact that defendant was seen not wearing a hat at some points did not create reasonable doubt).

¶ 27 Rogers, who was in close proximity to her assailants and had a clear look at their faces, testified as to the color and style of their clothing, and her detailed descriptions were consistent with those of Robinson, who viewed defendant's face when he called out to defendant, mistaking him for a relative. Robinson testified that Brown was tucking something into his waistband when he left the building and that he had a purse in his hand. Defendant was apprehended after being spotted hiding behind a garage holding a brown coat, which was consistent with the description of one offender.

¶ 28 Defendant next points out that the currency in his possession did not match the denominations taken from Rogers' purse. She testified the envelope in her purse contained \$500

in cash, made up of three \$100 bills and ten \$20 bills, while he and Brown were only found to be carrying denominations of \$20 or smaller. He further argues he was arrested in a different direction from the way in which the offenders fled from the building. As to these discrepancies, this court has observed on numerous occasions that the trier of fact "is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt." See, e.g., *People v. Jackson*, 2012 IL App (1st) 092833, ¶ 31, quoting *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009). Defendant and Brown were apprehended after a brief chase, during which police lost sight of one or both offenders; therefore, both defendant and Brown had the opportunity to discard Rogers' purse and other items. Given those circumstances and the fact that Rogers' rent receipts were recovered from Brown, the absence of \$100 bills in defendant's possession does not rise to the level of establishing reasonable doubt. Moreover, the fact that the offenders were detained in a direction other than that in which they fled does not create a reasonable doubt of defendant's guilt, given the testimony about a foot chase and the fact that defendant and Rogers were not apprehended simultaneously.

¶ 29 Defendant's remaining assertion is that Rogers' identification of him constituted an impermissibly suggestive showup procedure. Defendant was seated in a police squadrol when Rogers arrived nearby after she had identified Brown.

¶ 30 The State responds defendant's claim that the show-up process was unduly suggestive has been forfeited because he failed to raise that argument before the trial court in a motion to suppress evidence, by objecting to the testimony when presented, or by including the issue in his post-trial motion. However, even had that issue been preserved for our review, we would not be persuaded of the existence of an error. See *People v. Cameron*, 2012 IL App (3d) 110020, ¶ 26 (the first step in plain-error analysis of a forfeited issue is to conduct a substantive review of the issue to determine whether an error occurred).

¶ 31 Although a showup identification, or an identification process that includes only a single person, can carry "a dangerous degree of improper suggestion," (*People v. Allen*, 376 Ill. App. 3d 511, 520 (2007), quoting *People v. Blumenshine*, 42 Ill. 2d 508, 512 (1969)), an immediate showup identification near the scene of the crime is proper police procedure. *People v. Ramos*, 339 Ill. App. 3d 891, 897 (2003), citing *People v. Lippert*, 89 Ill. 2d 171, 188 (1992).

¶ 32 Defendant contends the identifications of him as one of the robbers by Rogers and Robinson were unreliable because those witnesses did not describe his facial features to police. He also argues that because neither Rogers nor Officer Marozas had ever seen him previously, their identifications of him were not trustworthy.

¶ 33 To prevail on this argument, a defendant must show that the process was so unnecessarily suggestive that he was denied due process of law. If the defendant can meet that test, the State has the burden of showing the identification is independently reliable. *Ramos*, 339 Ill. App. 3d at 897. The factors to be weighed in determining the independent reliability of the identification include: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of his prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. *Id.* at 897-98; *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989). The identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under circumstances that would permit a positive identification. *Id.* at 306. The reliability of a witness's identification of a defendant is a question for the trier of fact. *In re Keith C.*, 378 Ill. App. 3d 252, 258 (2007).

¶ 34 Even assuming *arguendo* that the defendant met his burden of showing a suggestive procedure, an analysis of the *Slim* factors supports a conclusion that the identification of defendant by Rogers was independently reliable. Rogers viewed the faces of defendant and Brown in a lit hallway from a distance of approximately two feet. Rogers' degree of attention

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was likely heightened because she was being robbed and defendant was reaching into her purse. Rogers described defendant as wearing a brown coat and a red hat, and defendant was spotted by police hiding behind a garage holding a brown coat, and a red hat was seen on the ground near Rogers' building. Rogers unequivocally identified defendant within 40 minutes of the crime. Therefore, even had defendant properly preserved this argument for review, we cannot conclude that error occurred.

¶ 35 In conclusion, the evidence presented by the State was sufficient to support defendant's robbery conviction. Accordingly, the judgment of the trial court is affirmed.

¶ 36 Affirmed.