

NOTICE  
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2015 IL App (5th) 130093-U

NO. 5-13-0093

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Marion County.
	)	
v.	)	No. 11-CF-234
	)	
PETER J. PHILLIPS,	)	Honorable
	)	Sherri L. E. Tungate,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.  
Justices Welch and Schwarm concurred in the judgment.

**ORDER**

¶ 1 *Held:* In driving with revoked license case, where police officer testified, without contradiction, that he clearly recognized the defendant as the individual who exited the driver's side of the vehicle and fled from the officer, there is no merit to the defendant's contention that there was not sufficient evidence to sustain his conviction.

¶ 2 The defendant, Peter J. Phillips, appeals his conviction and sentence, following a bench trial in the circuit court of Marion County, for driving with revoked license. For the following reasons, we affirm.

¶ 3 **FACTS**

¶ 4 The facts necessary to our disposition of this appeal follow. At the defendant's

bench trial, which was held on December 5, 2012, Junction City police officer Matthew Akes testified that he was on duty during the early morning hours of June 4, 2011, and was stationary in a parking lot adjacent to the intersection of two public streets when he observed a green Volvo make a left turn at the intersection without first using a turn signal. Officer Akes testified that he began to follow the vehicle, and soon thereafter initiated a traffic stop. He testified that after the vehicle pulled into a driveway, and while Officer Akes was calling in information to the Marion County sheriff's department, the driver of the vehicle exited the vehicle and "took off on foot." When asked if he recognized the driver, Officer Akes testified that he did, and that the driver was the defendant. When asked how he knew the defendant, Officer Akes testified that he had "seen him around town several times prior with his daughter riding his bicycle." He testified that he did not recall a streetlight in that area, and that the vehicle was lit only by the spotlight from his squad car. He was then asked if he "clearly recognized" the driver. He testified that he did. Officer Akes also testified that he was informed by radio that the vehicle was registered to Jessica Phillips, whom he knew to be the defendant's wife. He testified that after the defendant fled, he secured the vehicle and waited for backup officers to arrive. There was a passenger in the passenger seat of the vehicle. Officer Akes testified that at no time did he observe anyone shift between the driver's side and the passenger's side of the vehicle. He later made contact with the defendant at the sheriff's department, after two other officers brought him there.

¶ 5 Prior to the commencement of cross-examination, the defendant stipulated that his driving privileges were revoked at the time of the incident in question. On cross-

examination, Officer Akes testified that even before receiving radio information, he knew that the green Volvo belonged to the defendant's wife. He testified that he did not know that there was a passenger in the car until after he stopped it. With regard to the sequence of events leading to the flight of the defendant, Officer Akes testified that first he called his information in to the sheriff's department, then the driver's side door was opened and a person fled the vehicle, then Officer Akes exited his squad car. He testified that his spotlight was illuminating the inside of the vehicle and that he observed the driver of the vehicle for "10 seconds." He was then asked, "What physical characteristics can you tell the Court that made you believe it was my client?" He testified "[b]lack male, approximately six-foot." He could not recall any additional physical characteristics.

¶ 6 On redirect examination, Officer Akes was asked if he had "any doubt" that the defendant was the driver of the vehicle. He testified that he did not. He testified that although he did not recall seeing the defendant's face, he was able to identify the defendant by "the physical description I'd seen when he exited the vehicle."

¶ 7 Officer Beau Frazier of the Junction City police department testified that on the night in question, he was called to assist in the "search for a male that fled after a traffic stop." He was asked if he knew who the male was at the time he went to assist with the search. He testified that he did, and that it was the defendant. He testified that he eventually observed the defendant outside of a garage, and that the defendant fled when Officer Frazier called out to him. He knew it was the defendant because he was able to observe him due to a streetlight and a light on the garage, and because he recognized the defendant from previous contacts with him. Officer Frazier testified that he apprehended

the defendant, who was then arrested and taken to the sheriff's department.

¶ 8 Following Officer Frazier's testimony, the State rested. The defendant did not present any evidence. Following argument by the parties, the trial judge recounted the evidence presented before her, and found the defendant guilty of driving while license revoked. At a subsequent proceeding, the defendant's posttrial motion was denied and he was sentenced to 18 months in the Department of Corrections, plus one year of mandatory supervised release. This timely appeal followed.

¶ 9 ANALYSIS

¶ 10 On appeal, the defendant contends his conviction cannot be sustained because the identification of him as the driver of the vehicle "rested on the doubtful, vague and unreliable testimony of a sole witness who did not see the face of the driver, lacked sufficient opportunity to view the driver and was distracted at the fleeting moment he viewed the driver." Where, as here, a defendant challenges the sufficiency of the evidence used to convict the defendant, this court determines 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. See, *e.g.*, *People v. Smith*, 185 Ill. 2d 532, 541 (1999). The specific issue raised in this case by the defendant is whether the trial judge correctly found that the State satisfied its burden of proving, beyond a reasonable doubt, that the defendant was the individual driving the vehicle. "A single witness' identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification." *People v. Slim*, 127 Ill. 2d 302, 307 (1989). The *Slim* court noted the

"circumstances to be considered in evaluating an identification." *Id.* These include: (1) the opportunity the witness had to view the accused; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the accused; (4) the level of certainty demonstrated by the witness; and (5) the length of time between the event and the identification. *Id.* at 308. The most important of these factors is the first: the opportunity the witness had to view the accused. *People v. Wehrwein*, 190 Ill. App. 3d 35, 39 (1989). "An identification may be positive even though the witness viewed the accused for a short period of time." *Id.*

¶ 11 In the case at bar, the defendant contends "the general circumstances of the incident did not provide Akes with an adequate opportunity to identify" the defendant. We do not agree. We begin by noting that the defendant's protestations to the contrary notwithstanding, there was nothing doubtful or vague about the identification by Officer Akes of the defendant as the driver of the vehicle. Officer Akes testified on direct examination that he was familiar with the defendant and that he clearly recognized him. He testified on redirect examination that he had no doubt that the defendant was the driver of the vehicle. There was nothing doubtful or vague about this testimony, and Officer Akes did not equivocate about it on cross-examination or at any other time.

¶ 12 With regard to the reliability of Officer Akes' identification, it is true that at the time the defendant exited the vehicle and fled, it was dark outside and within the vehicle. However, Officer Akes testified that he used his spotlight to illuminate the inside of the vehicle and that he observed the driver of the vehicle for "10 seconds." Although the defendant claims that 10 seconds is not much time, we note that this was not a case in

which a witness was observing an individual for the first time and then trying to remember that individual. Officer Akes was familiar with the defendant and testified that he "clearly recognized" him and that he had no doubt that the defendant was the driver of the vehicle. As the *Slim* court reiterated with regard to the way recognition works, "[o]rdinarily all features are viewed at once and the recognition made instantaneously or not at all." 127 Ill. 2d at 309 (quoting *People v. Ervine*, 64 Ill. App. 2d 82, 87 (1965)).

¶ 13 With regard to the fact that Officer Akes testified that he did not recall seeing the defendant's face, we note that immediately thereafter he testified that he was able to identify the defendant by "the physical description I'd seen when he exited the vehicle." He did not equivocate about this at all. As the *Slim* court held, "discrepancies and omissions as to facial and other physical characteristics are not fatal, but simply affect the weight to be given the identification testimony." 127 Ill. 2d at 308. That is because "a witness is not expected or required to distinguish individual and separate features of a suspect in making an identification." *Id.* at 308-09. Indeed, "omissions in a witness' description of the accused do not in and of themselves generate a reasonable doubt as long as a positive identification has been made." *Id.* at 309. As explained above, there was nothing equivocal about Officer Akes' positive identification of the defendant.

¶ 14 The defendant also posits that Officer Akes' "degree of attention was questionable," because he was calling in information to the sheriff's department at the same time the defendant was fleeing. However, as detailed above, on cross-examination, Officer Akes testified with regard to the sequence of events leading to the flight of the defendant, stating that first he called his information in to the sheriff's department, then

the driver's side door was opened and a person fled the vehicle, then Officer Akes exited his squad car. Although the events no doubt happened in rather quick succession, this issue, like all the issues the defendant raises, goes to the weight to be accorded the testimony of Officer Akes. Having reviewed that testimony in the light most favorable to the prosecution, we do not conclude that no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt (see, *e.g.*, *People v. Smith*, 185 Ill. 2d 532, 541 (1999)), and therefore we do not conclude that the trial judge erred when she found the defendant was the driver of the vehicle and was guilty of driving while license revoked.

¶ 15 Although we need not rely upon its existence to support our decision to affirm the trial court, we note that the State is correct that circumstantial evidence, such as the fact the green Volvo was owned by the defendant's wife, also supports the trial court's belief that the State had adequately proven the identity of the defendant as the driver of the vehicle.

¶ 16 **CONCLUSION**

¶ 17 For the foregoing reasons, we affirm the defendant's conviction and sentence.

¶ 18 Affirmed.