

No. 1-13-3465

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).

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 1842
)	
MARLON MINTER,)	Honorable
)	Timothy J. Joyce,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Defendant's conviction for aggravated battery of a peace officer affirmed where the evidence sufficiently established that it was defendant, not his cellmate, who threw liquid on the correctional officer; mittimus amended to reflect the correct offense.
- ¶ 2 Following a bench trial, defendant Marlon Minter was convicted of aggravated battery of a peace officer and sentenced to three years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because it failed to prove that it

was him, and not his cellmate, who threw the liquid on the correctional officer. Defendant also contends, and the State agrees, that his mittimus should be amended to reflect the correct offense of which he was convicted. We affirm and correct the mittimus.

¶ 3 At trial, Cook County correctional officer Gregory McCulloch testified that about 8 p.m. on December 21, 2009, he and his partner, Officer Rocca, approached cell number 2235 on Tier 2F of Division 9 in the Cook County Department of Corrections to collect the food trays from defendant and his cellmate, Tory Adams. The food trays are collected through chuckholes, which are slits in the steel door of the cell. The chuckholes are about three feet above the floor, four inches in height, and 12 inches wide. The chuckholes are large enough to slide the food trays in and out of the cell door, and also large enough for the detainees to put their hands out to be handcuffed. There is also a second opening in the door about two feet above the chuckhole.

¶ 4 Officer McCulloch testified that when he opened the chuckhole, he bent over slightly to retrieve the food tray and saw defendant at the chuckhole. Defendant's cellmate, Adams, was "all the way at the back of the cell," which was approximately eight feet from the door, and he "was not at the chuckhole." Officer McCulloch further testified, "I was told we don't have any trays in here by Marlon Minter. He was right at the chuckhole and then came around with a bottle of yellow substance which appeared and smelled to be urine and threw it at me. Hit me in the face and chest area." The officer testified that he was approximately a foot and a half away from defendant when defendant threw the urine at him, and at that time, saw him through the chuckhole. Adams had no part in the liquid being thrown on him. Officer McCulloch left the deck and radioed his supervisor, then went to the infirmary. He was not present when defendant and Adams were removed from the cell.

¶ 5 Officer McCulloch acknowledged that he signed a disciplinary report stating that he wished to pursue internal disciplinary charges against both defendant and Adams, and that Adams' name appears first on that report. The disciplinary report contained the officer's account of what happened during the incident. He further acknowledged that he was aware that there were "issues" with Adams after defendant left the cell.

¶ 6 Cook County correctional officer Rocca testified substantially the same as Officer McCulloch regarding their approach to defendant's cell to collect the food trays, and the location and dimensions of the chuckhole. Officer McCulloch was standing directly in front of the chuckhole, and Officer Rocca was standing on Officer McCulloch's left side, about two feet to the left of the door and one foot back. As Officer McCulloch collected the food trays from the cell doors, Officer Rocca carried them. When they went to defendant's cell, Officer McCulloch asked for the trays. Officer Rocca then saw defendant throw a yellow liquid that looked and smelled like urine in Officer McCulloch's face. Officer Rocca further testified that through the chuckhole, he saw defendant and Adams kneeling down, and Adams was behind defendant's left shoulder. Officer Rocca denied that the tier had dim lighting. The officers then left the tier and reported the incident.

¶ 7 Officer Rocca further testified that their lieutenant organized an extraction team which planned how they were going to extract defendant and Adams from the cell. Officer Rocca was on the team that extracted Adams. Both detainees were then removed from the cell.

¶ 8 Officer Rocca explained that incident reports must be written within one hour of the incident, and because Officer McCulloch was at the hospital, the lieutenant asked Officer Rocca to write the report. Officer Rocca wrote the incident report and the disciplinary report, which both stated that Officer McCulloch wanted defendant and Adams formally charged. Officer

Rocca signed the incident report and submitted it before Officer McCulloch returned from the hospital, but he did not sign the disciplinary report. Officer McCulloch signed the disciplinary report when he returned, but did not write that report. Officer Rocca acknowledged that he include the names of both inmates in the incident report because he was instructed to do so by the lieutenant.

¶ 9 Torey Adams testified for the defense that shortly after 8 p.m., some officers entered the cell he shared with defendant and accused both of them of throwing urine. The officers beat Adams and defendant, told them to stop resisting, handcuffed them, removed them from the cell, and gave each of them a disciplinary ticket. The officers picked Adams up by a chain, dragged him down the stairs, and continued beating him and defendant. Correctional officer Crock repeatedly asked them "who threw the urine?" Adams testified that he was injured and taken to the hospital with boot prints all over his body and handcuff prints on his ankles and wrists. Adams further testified that no one, including defendant, threw any urine, he did not see defendant throw any substance at any officer, nor did he see defendant throw anything out of the chuckhole, or at Officer McCulloch. Adams also testified that no officers came to their chuckhole to collect the food trays. Adams acknowledged that he had a 2010 conviction for aggravated robbery and a 2008 conviction for residential burglary.

¶ 10 The defense presented a video of defendant and Adams being extracted from their cell by a group of correctional officers. After the video was viewed by the court, it was admitted into evidence. The parties did not discuss or describe the video on the record. This court viewed the video, which began with a group of correctional officers ascending the stairwell to the cell occupied by defendant and Adams. There appear to be eight officers in dark uniforms, and two officers wearing white shirts. The sergeant recording the video states "We had an incident in

upper 2235." He then states "One or both of the inmates threw urine on Officer McCulloch. We're getting [inaudible] to take the inmates out of the cell."

¶ 11 The video then shows the officers standing in a group outside the cell. An officer in a white shirt unlocks the cell door with a key, then opens the cell door and yells "Now! Take them down now!" All of the officers rush into the cell, which appears to have no lights on inside. However, the hallway, deck and remainder of the tier are very well lit. Several officers are holding the inmate closest to the cell door on the ground, and repeatedly yelling "Stop resisting. Stop fighting the officers." Both defendant and Adams are shown shackled and carried out of the cell and down the stairwell by the officers. After they have been removed from the cell, an officer is heard asking "You got the bottle?" While watching the video, this court also noted that there is a rectangular vertical window on the cell door several inches above the chuckhole.

¶ 12 In rebuttal, Officer Rocca again testified that he was on the team that extracted Adams from the cell. He explained that both inmates were extracted so that the officers could search the cell to find the bottle that was used to throw the liquid onto Officer McCulloch. The officers recovered a plastic juice bottle that contained yellow residue that smelled and looked like urine.

¶ 13 The trial court summarized the evidence presented and found that Officer Rocca's testimony "confirmed" Officer McCulloch's testimony that it was defendant who threw the urine at Officer McCulloch. The court further found that Adams' testimony that nothing happened was "absolutely incapable of being believed." The court then expressly considered "whether the State's evidence has presented proof beyond a reasonable doubt that it was Mr. Minter as opposed to perhaps Mr. Adams." The court again stated that the officers' testimony was clear and that they did not hesitate to state that it was defendant who threw the liquid.

¶ 14 The court acknowledged that some of the officers' testimony was "impeached in certain respects," noting that Officer McCulloch testified that Adams was standing at the back of the cell while Officer Rocca testified that Adams was behind defendant's shoulder. The court also pointed out that the disciplinary report stated that both inmates were to be charged with the incident, and found that was a factor to be considered in making the credibility determination. The court further found that Officer McCulloch had an obvious reason for being focused on the chuckhole because he was looking to collect the food trays, and thus, would be able to see who was at the chuckhole. The court stated that it believed the officers' testimony that it was defendant who threw the urine on Office McCulloch, and therefore, found that defendant was proved guilty beyond a reasonable doubt of aggravated battery of a peace officer. The trial court subsequently sentenced defendant to three years' imprisonment, to be served consecutive to the sentence in his other case.

¶ 15 On appeal, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt because it failed to prove that it was him, and not his cellmate, Adams, who threw the urine on Officer McCulloch. Defendant argues that the officers' identification of defendant was too doubtful to sustain his conviction where they had almost no opportunity to observe defendant and Adams through the small opening in the steel door of the dark cell. Defendant points out that the officers' testimony about Adams' location inside the cell was inconsistent, and that the video shows that there were no lights on inside the cell shortly after the incident. He further claims that the fact that Officer McCulloch wanted to press charges against both men shows that he was uncertain that defendant was the offender.

¶ 16 The State responds that both officers positively identified defendant as the man who threw the urine, and although they testified that Adams was in different locations, both testified

that defendant was closest to the door. The State argues that the names of both defendant and Adams were included on the disciplinary report at the lieutenant's request, and the fact that the lieutenant may have wanted to investigate potential charges against both men does not make the officers' identification of defendant as the offender any less certain. The State further asserts that, although the lights inside the cell were turned off during the extraction, there is no evidence that the lights were off during the offense.

¶ 17 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *Baskerville*, 2012 IL 111056, ¶ 31.

¶ 18 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt (*People v. Givens*, 237 Ill. 2d 311, 334 (2010)), nor simply because defendant claims that a witness was not credible or that the evidence was contradictory (*Siguenza-Brito*, 235 Ill. 2d at 228).

¶ 19 In this case, the identity of the man who threw the urine was the paramount issue, and was resolved here in favor of the State's witnesses. Identification of defendant by a single

witness is sufficient to sustain a conviction where the witness viewed defendant under circumstances that permitted a positive identification. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Such identification is sufficient even where defendant presents contradictory testimony, as long as the witness had an adequate opportunity to view the offender and provided a positive and credible identification in court. *Id.*

¶ 20 In assessing identification testimony, the court considers: (1) the witness' opportunity to view the offender at the time of the offense; (2) his degree of attention; (3) the accuracy of the witness' prior description of the offender; (4) the witness' level of certainty at the identification confrontation; and (5) the length of time between the offense and the identification confrontation. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995).

¶ 21 In this case, the record reveals that both Officer McCulloch and Officer Rocca positively identified defendant as the man who threw the urine on Officer McCulloch. Officer McCulloch testified that when he opened the chuckhole to retrieve the food tray, he saw defendant at the chuckhole, and saw Adams at the back of the cell, about eight feet away. Officer McCulloch expressly testified that Adams "was not at the chuckhole." He further testified that defendant "was right at the chuckhole and then came around with a bottle of yellow substance which appeared and smelled to be urine and threw it at me." Officer McCulloch also testified that he was only a foot and a half away from defendant when defendant threw the urine at him, that he saw him throw the urine through the chuckhole, and that Adams had no part in throwing the liquid. We find that Officer McCulloch's testimony establishes that he had a sufficient opportunity to view both defendant and Adams at the time of the offense, that his degree of attention was high, and that he was absolutely certain that it was defendant, and not Adams, who threw the urine at him.

¶ 22 The record further shows that Officer McCulloch's identification of defendant was corroborated by Officer Rocca. Officer Rocca testified that he saw defendant throw a yellow liquid that looked and smelled like urine in Officer McCulloch's face. He further testified that Officer McCulloch was standing directly in front of the chuckhole, and he was standing on Officer McCulloch's left side, two feet to the left of the door and one foot back. The record thus shows that Officer Rocca also had a sufficient opportunity to view defendant at the time of the offense, that his degree of attention was high, and that he was certain that it was defendant who threw the urine. Based on the positive identifications by both officers, we find that the evidence was sufficient to prove defendant guilty beyond a reasonable doubt.

¶ 23 We acknowledge that there was a discrepancy in the officers' testimony regarding Adams' location during the offense; however, we find that this discrepancy provides no basis for reversal. Variations in witness testimony are to be expected. *People v. Howard*, 376 Ill. App. 3d 322, 329 (2007). "It is not the role of this court to reevaluate the credibility of witnesses in light of inconsistent testimony and ostensibly retry the defendant on appeal." *Id.*, citing *People v. Milka*, 211 Ill. 2d 150, 178 (2004). As the trier of fact in this case, the trial court was in the superior position to assess the credibility of the witnesses, weigh their testimony, and resolve any conflicts therein. *People v. Austin*, 349 Ill. App. 3d 766, 769 (2004). Here, the trial court expressly recognized the discrepancy, but found that both officers clearly, and without hesitation, identified defendant, and not Adams, as the offender.

¶ 24 In addition, we reject defendant's claim that it would have been too dark for the officers to see the men inside the cell at the time of the incident. The video shows that the lights were turned off during the extraction. However, there is no evidence that the lights were off at the time of the offense. Officer Rocca testified that the lieutenant organized an extraction team that

planned how they were going to extract defendant and Adams from the cell. The video depicts a well-organized extraction, and it is possible that the lights were turned off at that time for that purpose. Nevertheless, the video also shows that the hallway, deck and tier were all very well lit. We therefore find that the fact that the cell was dark during the extraction does not diminish the officers' identification of defendant at the time of the offense.

¶ 25 Based on the record before us, we conclude that the evidence was sufficient to support the trial court's determination that the officers' identification of defendant was credible, and that he was proved guilty of aggravated battery of a peace officer beyond a reasonable doubt.

¶ 26 Defendant next contends, and the State agrees, that his mittimus should be amended to reflect the correct offense of which he was convicted. The mittimus incorrectly indicates that defendant's conviction was for aggravated battery for harming a peace officer when, in fact, he was convicted of aggravated battery for making insulting or provoking contact with a peace officer. Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)), we direct the clerk of the circuit court to amend the mittimus to reflect that defendant was convicted of the offense of aggravated battery for making insulting or provoking contact with a peace officer.

¶ 27 Accordingly, we affirm the judgment of the circuit court of Cook County and amend the mittimus.

¶ 28 Affirmed; mittimus amended.