

SIXTH DIVISION
August 25, 2016

No. 1-16-0825

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

IN THE INTEREST OF:)	Appeal from the Circuit Court of
D.M., a minor,)	Cook County, Illinois
)	
(The People of the State of Illinois)	No. 15 JD 60214
)	
Petitioner-Appellee,)	
)	
v.)	
)	
D.M., a minor,)	Honorable
)	Donna L. Cooper,
Respondent-Appellant).)	Judge Presiding

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

HELD: Under the totality of the circumstances of this case, the victim's voice identification of respondent was reliable and sufficient to support respondent's adjudication of delinquency based on aggravated robbery.

¶ 1 Following a joint delinquency hearing, respondent D.M. was adjudicated a delinquent

minor for the aggravated robbery and aggravated battery of J.H. The trial court sentenced respondent to 30 days in the Cook County juvenile temporary detention center, time considered served. Respondent filed a timely notice of appeal.

¶ 2 In this appeal, respondent argues the State failed to prove him guilty of the aggravated robbery of J.H. beyond a reasonable doubt because J.H.'s voice identification of him was unreliable. We disagree and therefore affirm.

¶ 3 BACKGROUND

¶ 4 This cause concerns a joint hearing in juvenile court on petitions of delinquency for minor respondents D.M. and T.K. Both respondents were found delinquent. However, this appeal only concerns respondent D.M.

¶ 5 At the joint delinquency hearing, J.H., testified that on July 20, 2015, at approximately 11:00 p.m., he walked his girlfriend two blocks from his aunt's house to his girlfriend's home. The homes are located in Park Forest, Illinois. J.H. watched his girlfriend go inside her home and then he began walking back to his aunt's house. As he was walking along the sidewalk, he heard footsteps running up behind him. He did not turn around but instead kept walking until a person ran up behind him and pressed a gun to the back of his neck. A second person ran up in front of him and pointed a handgun to his chest.

¶ 6 J.H. would later learn that the second person was a young man named Trevor, who went by the nickname T.K. The assailants patted down J.H.'s outer clothing and then the person behind J.H. noticed he was holding a cell phone in his left hand. The person behind J.H. told him to "give up his phone." J.H. testified that he never saw the face of the person standing behind him, but he recognized the person's voice as belonging to respondent. Respondent snatched the phone from J.H.'s hand and told him to "take off the pass code." After J.H.

complied, T.K. told him to run. J.H. limped back to his aunt's home because his foot was in an air cast.

¶ 7 When J.H. arrived back at his aunt's house, he told her about the robbery. The aunt did not call the police. A few days later, J.H. went to his friend's house and told him about the robbery and described the assailants. The friend showed J.H. Facebook photographs of various individuals. J.H. recognized a young man named Trevor in a group photo and in an individual photo. He learned that Trevor's nickname was T.K. He also recognized respondent in a group photo.

¶ 8 J.H. testified that he recognized respondent's voice because five years before the robbery he and respondent attended the 7th grade together at Forest Trail Junior High. J.H. was a student at the school for three years while respondent attended the school for only the 7th grade. J.H. testified that he and respondent talked on a weekly basis whenever they passed each other in the hallway at school and often at lunch. J.H. further testified that a week or two before the robbery he saw respondent at a community memorial service and he heard the respondent's voice once again when the respondent asked him, "What's up?"

¶ 9 Three days after the robbery, J.H.'s mother compelled his father to take him to the Park Forest police station to report the robbery. At the police station, they spoke with Officer Bona. Officer Bona testified that J.H. gave her physical descriptions of the assailants and identified respondent by the nickname "Lil Mo," and identified his accomplice Trevor, by his nickname "T.K." The officer testified that J.H. told her he recognized "Lil Mo" and "T.K." because he had previously seen them in the area near his girlfriend's home. Officer Bona searched the I-Clear database using the nicknames provided by J.H. and obtained results.

¶ 10 The next day, J.H. returned to the police station with his mother. He was shown three photo arrays of possible suspects. He identified photos of respondent and T.K. as the two individuals who robbed him of his cell phone.

¶ 11 On August 20, 2015, using the nickname "J. Gambino," J.H. posted a Facebook photo of himself holding a cell phone along with a caption which read, "Got my shit back." J.H. explained he was referring to the fact that he had obtained a replacement cell phone and not that the stolen phone had been returned to him.

¶ 12 After the State rested, respondent moved for a directed finding on all counts. The trial court granted the defense's motion for a directed finding on the theft counts on the ground that the State failed to introduce evidence of the stolen cell phone's value. The court found respondent and T.K delinquent after finding them guilty of aggravated robbery and aggravated battery. The court sentenced respondent to 30 days in the Cook County juvenile temporary detention center, time considered served. Respondent filed a timely notice of appeal and this appeal followed.

¶ 13 ANALYSIS

¶ 14 Respondent argues on appeal that the evidence was insufficient to support his adjudication of delinquency based on aggravated robbery. In delinquency proceedings, as in criminal cases, when analyzing a challenge to the sufficiency of the evidence the relevant question we must determine 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. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 47. In reviewing a challenge to the sufficiency of the evidence, it is not a reviewing court's role to retry the defendant; rather, it is for the trier of fact to determine the credibility of the witnesses, the weight

to be given their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Enis*, 163 Ill. 2d 367, 393 (1994).

¶ 15 Respondent argues the evidence failed to establish beyond a reasonable doubt that he committed the offense of aggravated robbery because the victim's voice identification of him was implausible. We disagree.

¶ 16 "It is well established that the identification testimony of a single witness is sufficient to convict if the identification is positive and the witness found to be credible." *People v. Bonds*, 87 Ill. App. 3d 805, 810 (1980). Attacks on the manner and accuracy of the identification go to the weight of the evidence, which is evaluated by the trier of fact. *People v. Nunn*, 101 Ill. App. 3d 983, 989 (1981). Voice identification is a recognized and proper method of identifying a defendant. *People v. Bradley*, 12 Ill. App. 3d 783, 788 (1973); *People v. Williams*, 313 Ill. App. 3d 849, 859 (2000). "A proper foundation is laid that a witness can identify a defendant's voice if the witness states how she is acquainted with the defendant's voice." *People v. Howell*, 358 Ill. App. 3d 512, 520 (2005).

¶ 17 Respondent contends that J.H.'s voice identification of him was unreliable because J.H. "relied on a paucity of aural information – about nine spoken words – to identify a voice he had heard only once in the prior five years." We must disagree. Although five years had passed between the time J.H. heard respondent's voice at their elementary school and the time he heard respondent's voice during the robbery, this passage of time did not render his voice identification unreliable, especially where a week or two before the robbery he heard the respondent's voice once again when the respondent asked him, "What's up?"

¶ 18 Such passage of time merely goes to the weight to be afforded the voice identification. See, e.g., *Buzbee v. State*, 58 Md. App. 599, 617, 473 A. 2d 1315, 1324 (1984); *Williams*, 313 Ill.

App. 3d at 859-60. We believe that J.H.'s voice identification of the respondent was reliable due to their past interaction at elementary school, which provided an opportunity for J.H. to become familiar with the respondent's voice. See *Nunn*, 101 Ill. App. 3d at 989-90 (stabbing victim's voice identification of assailant reliable due to his past relationship with assailant). Moreover, J.H. was able to hear the respondent's voice for a considerable period of time during the commission of the robbery. J.H. had to pay close attention to the respondent's voice and commands at the risk of his life.

¶ 19 Under the totality of the circumstances of this case, we find that the victim's voice identification of respondent was reliable. The manner of identification was not so improbable as to raise a reasonable doubt of the respondent's guilt and the evidence was sufficient to support respondent's adjudication of delinquency based on aggravated robbery.

¶ 20 For the reasons stated above, we affirm the trial court's judgment finding respondent delinquent based on aggravated robbery and aggravated battery.

¶ 21 Affirmed.