

No. 1-14-1246

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 22947
)	
BRENTEZ DAVIS,)	Honorable
)	Frank G. Zelezinski,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for robbery affirmed where the victim's identification of defendant was sufficient to prove him guilty beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Brentez Davis was convicted of robbery and sentenced to three years' imprisonment. On appeal, Mr. Davis contends that the State failed to prove him guilty beyond a reasonable doubt because the victim's identification of him was unreliable. We affirm.

¶ 3

BACKGROUND

¶ 4 Mr. Davis was charged with one count of armed robbery. At trial, Hector Munoz testified that at approximately 7:45 p.m. on October 9, 2008, he was riding his bicycle home from his friend's house on Peggy Lane in Chicago Heights. It was dark outside, but there was a streetlight at the corner. Mr. Munoz observed an SUV parked in a driveway. As soon as he rode past the vehicle, it pulled out of the driveway and stopped in the middle of the street directly behind him. Mr. Munoz then felt someone grab the handlebars of his bicycle from the left side. Mr. Munoz was "face to face" with the man and had a clear view of him with only a couple of inches between them. In court, Mr. Munoz identified Mr. Davis as that man.

¶ 5 Mr. Davis continued holding onto the bicycle and pointed a gun directly at Mr. Munoz's face. Mr. Davis told Mr. Munoz to give him his wallet and anything else he had. Mr. Munoz was holding his cell phone in his hand, and Mr. Davis grabbed it and tossed it to the ground behind him. As Mr. Munoz reached back for his wallet, Mr. Davis also reached for it. Mr. Munoz flinched and took a step back. Mr. Davis then hit Mr. Munoz hard in the head with the gun, causing a large lump and bruise, and a small scrape that was bleeding. Mr. Davis removed the wallet from Mr. Munoz's pocket and ran back to the SUV. He entered a rear door of the vehicle and it sped away.

¶ 6 The robbery lasted approximately five minutes. Mr. Munoz observed that Mr. Davis was wearing a blue hoodie, black pants, and braids with beads in his hair. Although Mr. Davis wore the hood over his head, at some point during the robbery Mr. Munoz dropped his bicycle to the ground and Mr. Davis's hood fell down.

¶ 7 Mr. Munoz notified the police about the robbery and gave them a description of Mr. Davis. He told police that Mr. Davis was about five feet five inches tall and 25 to 35 years old.

He described Mr. Davis as light-skinned with a goatee, and said he wore braids with beads in his hair. Mr. Munoz denied telling police that Mr. Davis weighed 130 pounds (which Lieutenant Applequist later testified was the weight listed in the original incident report), and testified that he told them that Mr. Davis weighed between 150 and 185 pounds. Mr. Munoz acknowledged that he did not tell police that Mr. Davis was missing teeth or wearing wire-rimmed glasses.

¶ 8 Two days after the robbery, Mr. Munoz viewed a photo array at the police station. Of the six men pictured in the array, four of them wore braids and at least one man had beads in his hair. Mr. Davis's photograph was not included in the array, and Mr. Munoz did not identify anyone as the assailant.

¶ 9 Three days later, on October 14, 2008, the police asked Mr. Munoz to come to the police station to view someone whom they suspected committed the armed robbery in a physical lineup. Prior to viewing the lineup, Mr. Munoz signed an advisory form which stated that he understood that "the suspect may or may not be in the lineup" and that he was "not required to make an identification." Out of the seven men in the lineup, two wore braids, and Mr. Davis was the only man wearing braids with beads. Mr. Munoz described Mr. Davis's height in the lineup as being around the "area" of five feet five inches and five feet eight inches. Mr. Munoz further explained that he himself was about five feet eight or nine inches tall, and that Mr. Davis was "[a] little bit shorter" than him. The other man in the lineup wearing braids was about six feet tall and had a dark complexion. Mr. Munoz identified Mr. Davis in the lineup. He testified that he did so because he was able to identify Mr. Davis by his face, and no one told him who to choose.

¶ 10 Chicago Heights police lieutenant Keith Applequist testified that the original police incident report contained a general description of Mr. Davis that indicated that he was five feet five inches tall, weighed 130 pounds, and wore braids. There was no facial description and no

indication of missing teeth or wire-rimmed glasses in that report.

¶ 11 Lieutenant Applequist showed Mr. Munoz the photo array that included four men wearing braids, two of whom also wore beads. Mr. Davis was not included in the photo array, and Mr. Munoz did not identify anyone therein. Two latent prints which Lieutenant Applequist lifted from Mr. Munoz's cell phone did not belong to Mr. Davis.

¶ 12 Mr. Davis testified that at the time of the robbery he was at his grandmother's house in Ford Heights. Mr. Davis is five feet eight or nine inches tall, and at the time of trial weighed 185 pounds. He is near-sighted and has worn glasses all of his life. He is also missing a front tooth. Mr. Davis acknowledged that on the date of the robbery he had facial hair.

¶ 13 Mr. Davis stated that during the physical lineup, there was only one other person with a braided hairstyle, and that man was dark-skinned with dreads. He was also much taller than Mr. Davis, approximately six feet six or eight inches tall.

¶ 14 The trial court expressly found that "Mr. Munoz was a very credible witness in the sense of the identification." The court further found that Mr. Munoz "was very honest and very direct that he, in fact, did, in fact, pick out the one who robbed him." The trial court questioned the evidence regarding the weapon, and thus found Mr. Davis guilty of the lesser included offense of robbery rather than armed robbery.

¶ 15 In his motion for a new trial, Mr. Davis argued that too much deference had been given to Mr. Munoz's identification. Mr. Davis argued that there were discrepancies between him and the alleged assailant regarding height and that there were important facial characteristics that Mr. Munoz did not include when he described his attacker on the night of the offense. The trial court stated that it had "no problem" with the identification and denied Mr. Davis's motion. It then sentenced Mr. Davis to three years' imprisonment.

¶ 16

JURISDICTION

¶ 17 Mr. Davis was sentenced on April 18, 2014, and timely filed a notice of appeal on April 29, 2014. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 18

ANALYSIS

¶ 19 On appeal, Mr. Davis contends that the State failed to prove him guilty beyond a reasonable doubt because Mr. Munoz's identification of him was unreliable. Mr. Davis argues that Mr. Munoz had a limited opportunity to view the offender because it was dark outside with only one light at the corner, the offender wore a hood over his head for most of the robbery, and the gun pointed at Mr. Munoz's face would have distracted him. He argues that the lineup was suggestive because the police told Mr. Munoz in advance that a suspect would be in the lineup and thus could have led to a mistaken identification. Mr. Davis also claims that the composition of the lineup was overly suggestive because only one other person wore braids, and that man was taller and bigger than Mr. Davis with a dark complexion and no beads in his hair. Finally, Mr. Davis argues that there are discrepancies between his appearance and Mr. Munoz's description of the offender regarding complexion, height, and weight, and because Mr. Davis wears glasses and is missing a front tooth, which Mr. Munoz did not note.

¶ 20 The State responds that the identification testimony from Mr. Munoz was credible and sufficient to support Mr. Davis's conviction. It further asserts that all five of the factors considered when evaluating identification testimony weigh in favor of the State and thereby show that Mr. Munoz's identification of Mr. Davis was sufficiently reliable to sustain the

conviction.

¶ 21 When a defendant claims that the evidence is insufficient, this court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48, citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). 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. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 22 Identification of a defendant by a single witness is sufficient to sustain a conviction if the witness viewed the defendant under circumstances that permitted a positive identification. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). In assessing identification testimony, the court considers (1) the witness's opportunity to view the offender at the time of the offense; (2) his degree of attention; (3) the accuracy of the witness's prior description of the offender; (4) the witness's 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).

¶ 23 Here, the evidence in the record on these five factors supports the trial court's finding that Mr. Munoz's identification of Mr. Davis was "very credible." Mr. Munoz was riding his bicycle when Mr. Davis grabbed the handlebars and continued holding onto them. Mr. Munoz testified that he had a clear view of Mr. Davis at this time as they stood "face to face" with only a couple of inches between them. Although it was dark outside, there was a streetlight at the corner. The robbery lasted approximately five minutes. During this time, Mr. Munoz observed that Mr. Davis

was wearing a blue hoodie, black pants, and braids with beads in his hair. Although Mr. Davis initially wore the hood over his head, the hood fell down at some point during the robbery. This testimony established that, at the time of the offense, Mr. Munoz had an opportunity to view Mr. Davis's face at close range, and his degree of attention was high.

¶ 24 The record further shows that Mr. Munoz positively identified Mr. Davis in a lineup five days after the robbery. Mr. Munoz testified that he identified Mr. Davis because he recognized his face. Moreover, when Mr. Munoz viewed the photo array two days after the robbery, Mr. Davis was not included in that array, and Mr. Munoz did not identify anyone. Four of the six men in the photo array wore braids, and two of those men also had beads in their hair. This evidence supports the State's argument that Mr. Munoz did not identify Mr. Davis based solely on hairstyle, but instead, as he testified, because he recognized Mr. Davis's face.

¶ 25 The record also shows that Mr. Munoz gave police a reasonably accurate description of Mr. Davis. Mr. Munoz testified that he told police that Mr. Davis was 25 to 35 years old, about five feet five inches tall, and weighed between 150 and 185 pounds. Mr. Munoz also described Mr. Davis as light-skinned with a goatee and said that he wore braids with beads in his hair. The description of Mr. Davis on the police incident report indicated that he weighed 130 pounds, but Mr. Munoz denied telling police that weight. Mr. Davis acknowledged, and the photograph of the lineup confirms, that he had facial hair and wore braids with beads at the time of the lineup, which was five days after the robbery. Mr. Davis also acknowledged that at the time of trial he weighed 185 pounds, which was at the outside edge of the range given by Mr. Munoz.

¶ 26 Mr. Munoz acknowledged that he did not tell police that Mr. Davis was missing a tooth or that he was wearing wire-rimmed glasses. Although Mr. Davis testified that he always wears his glasses, his credibility on that statement was a matter for the trial court. Mr. Davis is not

wearing his glasses in the photograph of the lineup that is included in the record. We also recognize that there is a discrepancy as to Mr. Davis's height, as Mr. Munoz initially told police that the offender was five feet five inches tall, but later testified that Mr. Davis's height in the lineup was around the "area" of five feet five inches to five feet eight inches. We do not find these discrepancies to be fatal to Mr. Munoz's identification of Mr. Davis. Generally, discrepancies and omissions regarding facial and physical characteristics are not fatal, but instead affect the weight given to the identification testimony. *Slim*, 127 Ill. 2d at 308. Sitting as the trier of fact, it was the trial court's duty to weigh the evidence and resolve any conflicts. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). The trial court found that Mr. Munoz's identification testimony was "very credible," and the record can be read to support that determination.

¶ 27 In reaching this conclusion, we reject Mr. Davis's argument that the composition of the lineup undermined any reliability of the identification because only one other person wore braids, and that man was taller and bigger than Mr. Davis with a dark complexion and no beads in his hair. Mr. Munoz testified that he identified Mr. Davis in the lineup because he recognized his face and, again, the trial court found Mr. Munoz to be "very credible" as to the identification.

¶ 28 Finally, we reject Mr. Davis's argument that Mr. Munoz's identification is undermined by the police telling Mr. Munoz that they had a suspect they wanted him to view when asking him to come to the police station to observe the lineup. While Mr. Munoz signed an advisory form that stated that "the suspect may or may not be in the lineup" and Mr. Munoz was "not required to make an identification," this form obviously did not negate that the police had informed Mr. Munoz that they had a suspect. But as the State rightly points out, the police would not generally hold a lineup unless they had a suspect. This does not render Mr. Munoz's

identification of Mr. Davis as unreliable.

¶ 29 In short, we conclude that the record sufficiently supported the trial court's finding that Mr. Davis was proved guilty of robbery beyond a reasonable doubt.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 32 Affirmed.