

2017 IL App (1st) 141614-U

No. 1-14-1614

Order filed June 16, 2017

Fifth Division

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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. 13 CR 12887
)	
PHILLIP BAGLEY,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for burglary is affirmed over his contention that the State failed to prove him guilty beyond a reasonable doubt because the State's sole witness did not reliably identify him from a surveillance video.

¶ 2 Following a bench trial, defendant Phillip Bagley was found guilty of burglary and sentenced to four years imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because the State's primary witness did not reliably identify him from a surveillance video of the burglary. We affirm.

¶ 3 Defendant was arrested on June 24, 2013, and subsequently charged by information with burglary. In the information, the State alleged that on June 18, 2013, defendant knowingly and without authority entered a motor vehicle, the property of Harold Lee, with the intent to commit a theft therein (720 ILCS 5/19-1(a) (West 2012)). The following evidence was adduced at trial.

¶ 4 Lee testified that about 11:45 p.m. on June 18, 2013, he drove his silver Hyundai Sonata to a Mobil gas station at 66th Street and Halsted Avenue. There, he removed his credit card from his wallet, placed the wallet on the floor of the car, and exited the car to prepay for the gas. After he pumped gas, Lee entered the car and discovered that his wallet was gone. He spoke with Sam Rahman, the gas station attendant on duty, then drove to the police station to make a complaint. Lee stated that he was not familiar with defendant and did not give him permission to enter his vehicle or remove anything from it.

¶ 5 Rahman testified that the gas station had about 24 surveillance cameras located inside and outside of the station. The cameras were always running and the video footage they recorded was stored for 30 days. Rahman stated that about 11:30 p.m., on the evening in question, a customer entered the gas station, prepaid for gas and exited the station. A short time later, the customer returned and told Rahman that his wallet was missing. Rahman viewed the surveillance video immediately and recognized the burglar as “Phillip,” a customer who had been at the station earlier that day and was wearing “everything tan,” including a hat, a “tan hood[ie],” and tan pants. Rahman stated that, prior to the burglary, he had been familiar with Phillip for about a year and a half because Phillip came to the gas station every day.

¶ 6 Rahman testified that, the day after the burglary, he showed the video to a police officer, who came to the gas station. Rahman identified defendant in the video, and told the officer

defendant's name and that defendant was one of his customers. Rahman stated that, while he was speaking with the officer, "Phillip walked into the store and I pointed him out" to the officer. Rahman also identified defendant in open court.

¶ 7 On cross-examination, Rahman acknowledged that, a few hours after the burglary, he spoke to Officer Marilyn Soto on the telephone and did not tell her that he recognized the person in the video as Phillip, one of his customers. He also acknowledged that he told Officer Soto that another employee at the station knew the burglar's identity.

¶ 8 The parties stipulated that, if called, Detective Lazaro would testify that, on June 24, 2013, he went to the gas station to review and possibly retrieve the surveillance video of the robbery. As the detective attempted to review the video, Rahman alerted him that defendant was at the station. Detective Lazaro and another detective approached defendant. As they did so, defendant fled. A short time later, defendant was arrested at 716 West 66th Place. The State rested.

¶ 9 Officer Soto testified for the defense. She stated that at 1:50 a.m., on June 19, 2013, Lee came to the police station to file a report for an item that had been stolen from him at a gas station. Officer Soto telephoned the gas station and spoke with Rahman, who told her that there was a surveillance video of the burglary. Rahman did not tell the officer that he recognized the burglar in the video or provide her with a name of the burglary suspect. He told the officer that "someone at the station might" be able to identify the offender.

¶ 10 At the close of evidence, the court found defendant guilty of burglary. In doing so, the court stated "I find Sam Rahman to be a credible and compelling witness." Subsequently, in denying defendant's posttrial motion, the court stated: "I saw the crime committed on the tape.

[Defendant] was in that video. He was identified by the person working in the gas station who knew him as a frequent customer every day. He told the police all about him, [and] identified him in court as [the] person that he knew.”

¶ 11 The court sentenced defendant to four years’ imprisonment.

¶ 12 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because Rahman’s identification testimony was incredible, unreliable and contradicted.

¶ 13 When a defendant challenges the sufficiency of the evidence to sustain his conviction, the standard of review is whether after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Austin M.*, 2012 IL 111194, ¶ 107. Under this standard, a reviewing court does not retry the defendant or substitute its judgment for that of the trier of fact with regard to the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *Id.*; *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A criminal conviction will be reversed only if the evidence is so improbable or unsatisfactory that there exists a reasonable doubt of the defendant’s guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 14 In setting forth his argument, defendant acknowledges this deferential standard of review, but contends that it is not applicable to the case at bar because the surveillance video, which constituted the entirety of the State’s case, is just as available to this court as it was to the trial court. As such, defendant argues that we should grant less deference to the trier of fact regarding any conclusions drawn from the video and cites caselaw in support of this proposition. See

People v. Shaw, 2015 IL App (1st) 123157, ¶ 29, citing *People v. Radojcic*, 2013 IL 114197, ¶ 34 (“a trial court does not occupy a position superior to the appellate courts in evaluating evidence that is not live testimony”); see also *Addison Insurance Co. v. Fay*, 232 Ill 2d 446, 453 (declining to apply a more deferential standard of review where the trial court did not hear live testimony and made its findings based upon the exact same record presented to the reviewing court).

¶ 15 However, contrary to defendant’s argument and the cases in support thereof, the record in this case shows that the trial court considered the surveillance video in conjunction with Rahman’s live testimony regarding his identification of defendant from the video. In finding defendant guilty of burglary, the court specifically noted that it found Rahman to be “a credible and compelling witness.” Given that the trial court heard live testimony and that it was required to gauge Rahman’s demeanor and credibility in making its findings, we cannot say that we are in the same position as the trial court to evaluate this evidence. Accordingly, we decline defendant’s invitation to grant less deference to the trier of fact in this case. Rather, as mentioned, we will consider the evidence in the light most favorable to the State and we will not substitute our judgment for that of the trier of fact with regard to the credibility of witnesses and the weight to be given to their testimony.

¶ 16 That said, we initially note that defendant’s argument is not a *per se* challenge to the sufficiency of the evidence to sustain his conviction. Defendant points out that there was no physical evidence presented against him because the basis of the State’s prosecution was Rahman’s identification of him as the burglar from the surveillance video. Defendant acknowledges the authorities holding that the identification of an accused by a single credible

witness is sufficient to sustain a conviction, but contends that this principle is applicable only if the witness viewed the accused under circumstances permitting a positive identification. He argues that the quality of the surveillance video in this case was so poor that Rahman could not have recognized and identified the burglary suspect. Defendant alleges that the video “shows only a ghostly figure, apparently a man, in a light-colored hoody and pants, with an unremarkable build. One cannot discern his eyes, skin tone, or even facial hair or lack thereof.”

¶ 17 As such, defendant maintains that, given the quality of the video, there was nothing distinguishable about the burglary suspect such that it would help anyone identify the offender beyond a reasonable doubt. In support of his argument, defendant’s brief contains reproductions of photographic stills from the video. Defendant also requests this court to review the video in order to determine whether its poor quality would have prevented Rahman from recognizing him as the offender.

¶ 18 That said, although defendant frames his argument as a challenge to the sufficiency of the evidence, he seems to actually be challenging the trial court’s admissibility of lay opinion identification testimony. See *People v. Thompson*, 2016 IL 118667, ¶ 41 (Lay opinion identification testimony is helpful to a determination of whether the person depicted in a surveillance recording is the defendant where there is some basis for concluding that the witness is more likely to correctly identify the defendant from the recording than the trier of fact). A number of factors have been identified as relevant to a determination of whether a lay witness is more likely than the trier of fact to identify the defendant correctly. One of these factors, is the quality of the surveillance recording. See *Thompson*, 2016 IL 118667, ¶ 48 (“many courts have

held that lay opinion identification testimony is more likely to be admissible where the surveillance recording is of poor or grainy quality”).

¶ 19 In this court, defendant is essentially arguing that, given the poor quality of the video, there was no basis for concluding that Rahman, or anyone for that matter, was more likely to correctly identify defendant than the trier of fact and thus the trial court erred in admitting Rahman’s identification testimony. However, the record shows that, although defendant challenged the reliability of Rahman’s testimony at trial, he did not contest the quality of the surveillance video itself. As such, defendant has forfeited review of this issue because he failed to raise it in the trial court. See *People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007); *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (in order to preserve an alleged error for review, a defendant must, both, specifically object at trial and raise the specific issue again in a posttrial motion).

¶ 20 Forfeiture aside, the video is not of such poor quality so as to raise a reasonable doubt of defendant’s guilt. Here, there was a strong basis for Rahman being able to identify defendant from the video. Rahman, who was familiar with defendant by name, testified that defendant was one of his customers and that, prior to the burglary, he had seen defendant on a daily basis for a year and a half. Defendant was at the gas station “earlier” in the day, on the date of the burglary, and Rahman described him as wearing “everything tan,” including a hat, a “tan hood[ie],” and tan pants. The person in the surveillance video, who is seen opening the door to Lee’s car and removing something from inside the car, matches that description. Rahman viewed the video shortly after the burglary and immediately identified defendant by his first name. See *People v. Sutton*, 252 Ill. App. 3d 172, 181 (1993), citing *People v. Pietruszynski*, 189 Ill. App. 3d 1071,

1076 (1989) (When a witness knows the defendant prior to the event, the credibility of that witness's identification is enhanced).

¶ 21 A few days after the burglary, police visited Rahman at the gas station. Rahman again identified defendant in the video, and told the officer defendant's name and that defendant was one of his customers. Rahman stated that, while he was speaking with the officer, "Phillip walked into the store and I pointed him out" to the officer. As the officer approached defendant, defendant fled. See *People v. Hart*, 214 Ill. 2d 490, 518-19 (2005) (the defendant's flight demonstrates his consciousness of guilt). Rahman also identified defendant in open court. After examining this evidence in the light most favorable to the State, we conclude that a rational trier of fact could have found beyond a reasonable doubt that defendant was the burglar.

¶ 22 In reaching this conclusion, we note that although there was no direct physical evidence presented against defendant, there was Rahman's surveillance-video identification of defendant as the burglar. As conceded by defendant, it is well-settled that the testimony of a single, credible witness who had ample opportunity to make a positive identification is sufficient evidence to convict. *People v. Morales*, 339 Ill. App. 3d 554, 563 (2003).

¶ 23 Defendant nevertheless argues that Rahman's identification is unreliable because: (1) he failed to tell Officer Sotto, during their phone conversation, which occurred within hours of the burglary, that he recognized the burglar and knew the man by his first name; and (2) he was contradicted by Detective Lazaro's stipulated-to testimony regarding the date that the detective viewed the video and about whether defendant was outside or inside the gas station when Rahman pointed him out to the detective.

¶ 24 However, these alleged inconsistencies were fully explored at trial during cross-examination. Although Rahman's credibility may have been affected by these inconsistencies, it was the responsibility of the trier of fact to determine Rahman's credibility, the weight to be given to his testimony and to resolve any inconsistencies and conflicts in the evidence. See *People v. Starks*, 2014 IL App (1st) 121169, ¶ 51; *Sutherland*, 223 Ill. 2d at 242. Based on the court's verdict and oral pronouncements, it resolved these inconsistencies in favor of the State. In doing so, the court was not required to disregard the inferences that flow from the evidence or search out all possible explanations consistent with a defendant's innocence and raise them to a level of reasonable doubt. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51. We will not substitute our judgment for that of the trier of fact on these matters. *Sutherland*, 223 Ill. 2d at 242. As mentioned, this court will reverse a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *Siguenza-Brito*, 235 Ill. 2d at 225. This is not one of those cases.

¶ 25 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.