2017 IL App (1st) 152248-U
Order filed: July 7, 2017

SIXTH DIVISION

No. 1-15-2248

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. 13 CR 4052
	)	
LEONARD DANIELS,	)	Honorable
	)	Thomas M. Davy,
Defendant-Appellant	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed defendant's conviction where the victim's identification of him was reliable; the circuit court's inquiry into defendant's *pro se* posttrial claim of ineffective assistance of counsel was sufficient under *Krankel* and the finding that counsel was not ineffective was not manifestly erroneous.

¶ 2 Defendant-appellant, Leonard Daniels, was found guilty of robbery and unlawful restraint and, based on his criminal history, was sentenced as a Class X offender to eight years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because the victim's identification of him was unreliable and the trial court erred when it failed to appoint new counsel or conduct a sufficient hearing on his *pro se* posttrial claims of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984).

We affirm.

¶ 3 Defendant was charged by information with one count of robbery and one count of unlawful restraint of the victim, Gloria Johnson.

¶ 4 At defendant's bench trial, Ms. Johnson testified that, on February 2, 2013, at about 5:35 p.m., she left a Family Dollar store located at 1210 West 87th Street in Chicago, accompanied by her nine-year-old daughter. Ms. Johnson testified that street lights and lights from the parking lot next to the store illuminated the area and that "[i]t wasn't that dark. It was turning into evening." Ms. Johnson carried two bags and held her daughter's hand with her right hand. Ms. Johnson's purse was on her left shoulder. As they walked toward the parking lot located next to the store, Ms. Johnson felt someone pull her purse from behind. She turned around and was "face-to-face" with a male offender for "maybe a couple of seconds." In court, Ms. Johnson identified defendant as the offender. Even though defendant wore a hood, Ms. Johnson was able to clearly view his face because he was "right in front of [her]." She did not know defendant and had never seen him before. Ms. Johnson struggled with defendant over possession of her purse for approximately two seconds. She told defendant: "no, no," and her daughter hollered: "No, no let it go, please no." Defendant then forcibly yanked the purse away from Ms. Johnson and fled. Ms. Johnson called the police. When the police arrived, approximately 10 minutes later, Ms. Johnson described defendant as being 5 feet, 9 inches tall, weighing around 140 to 150 pounds, and wearing blue jeans and an over-sized gray hooded jacket.

¶ 5 On February 12, 2013, at around 1 p.m., Ms. Johnson was driving with her husband and stepson in the vicinity of 87th Street and Racine Avenue. She saw defendant standing on the corner about 10 to 15 feet away. Defendant was wearing the same gray hooded sweatshirt and blue jeans he wore on the day of the offense. Ms. Johnson told her husband to call the police and

she sat in the car until the police arrived. Defendant was then arrested.

¶ 6 Ms. Johnson acknowledged that, at the time of the offense, she was concerned about protecting her daughter. As Ms. Johnson struggled with defendant, her daughter was screaming and frantic. When the prosecutor asked Ms. Johnson: "Are you sure this is the man that robbed you?", Ms. Johnson answered: "Yes."

¶ 7 Chicago police detective, Christopher Nelligan, testified for the defense that, following his arrest, the police searched defendant and none of the "proceeds from the robbery" were recovered from defendant's person.

¶ 8 In reviewing the evidence, the court noted that, although Ms. Johnson's opportunity to view the offender was brief, it was "a very close face-to-face opportunity as they struggled with the purse" and that she identified him 10 days later with "absolutely no suggestiveness." The court found Ms. Johnson's testimony to be clear and credible. The trial court remarked that, because defendant was arrested several days after the robbery, it was to be expected that he would not still be in possession of the stolen items. Accordingly, the trial court found defendant guilty of robbery and unlawful restraint.

¶ 9 Trial counsel, on October 25, 2013, filed a motion to reconsider the decision and for a new trial.

¶ 10 On December 17, 2013, defendant filed a *pro se* motion for a new trial and "Withdrawal of Counsel." In his motion, defendant alleged, *inter alia*, that trial counsel had misadvised him of the applicable sentencing range and, generally, was ineffective in his representation. The *pro se* posttrial motion was before the court on December 20, 2013; defendant, but not his trial counsel, was present. The court stated that defendant "had raised some issues that would be by way of a *Krankel* hearing," which required the presence of trial counsel. The court continued defendant's

pro se posttrial motion for hearing on January 8, 2014.

¶ 11 On that date, trial counsel, an Assistant Cook County Public Defender, was present in court. The trial court initially observed that defendant's motion appeared to be based on a form motion that may have been "floating around" the jail as it raised several issues which had no basis or relation to the case. The court then allowed defendant to specify in court his claims of ineffectiveness. Defendant stated that videos from surveillance cameras in the parking lot and the street near the store would have exonerated him. A member of defendant's family worked at the Family Dollar store and could have assisted in obtaining those surveillance videos. Defendant asked trial counsel to obtain the videos, but he did not attempt to do so.

¶ 12 Trial counsel responded that, prior to the bench trial, he was in the process of investigating defendant's case, when defendant insisted on going to trial. He further explained:

> "We were in the course of investigation in Mr. Daniels' case. I begged him to allow me to complete my investigations. He indicated that he was so confident in his innocence that he would not allow me to delay his case. I asked him on several occasions to allow me to complete my investigations. He said I am ready to go to trial. I am innocent. I don't want to wait any longer, so we proceeded to trial and he did that against my advice, so Judge, I think Mr. Daniels is frustrated. I understand his frustration, however, you know, I think that his motion is primarily out of frustration with losing the trial."

¶ 13 Defendant then acknowledged that he had not raised the surveillance videos in his written *pro se* posttrial motion and declined to present further oral argument.

¶ 14 The court found that defendant's ineffectiveness claims in his *pro se* motion and in his argument did not require the appointment of new counsel. The court accepted trial counsel's explanation that defendant had insisted on proceeding to trial without completion of counsel's

investigation.

¶ 15 However, the court asked trial counsel about a representation that his investigation was complete which was made three months prior to the bench trial. Trial counsel explained:

> "[Trial Counsel]: Yes, Judge. Well, there were a couple of investigations. I went by there and took photographs and we tried to identify the City cameras as well as the cameras attached to the business. It may have been that investigation. I was still trying to make personal contact with [defendant's] cousin before trial and I explained that to [defendant] and I figured that he would like that if that's evidence for his trial. There were other issues that were outstanding and I explained to him the seriousness of this case and why we should have all of the 'I's' dotted and the 'T's' crossed, but Judge, he wanted to proceed to trial despite my advice to wait until we were done."

Additionally, trial counsel confirmed that he was aware of defendant's criminal history and the applicable mandatory sentencing range, and that he had discussed that information with defendant several times. The court denied defendant's *pro se* posttrial motion.

¶ 16 On March 31, 2014, a hearing was held on trial counsel's motion to reconsider the findings of guilt. Trial counsel argued that Ms. Johnson's identification of defendant was unreliable.

¶ 17 In assessing Ms. Johnson's identification testimony, the court found that all five factors announced in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972), supported Ms. Johnson's identification of defendant. As to the length of time Ms. Johnson had to view defendant during the offense, the court said:

> "[Ms. Johnson's] two second estimate of time is, was one done without any consultation of a stopwatch or any type of watch. For there to be even any sort of a tussle, that clearly would have had to have been a longer time period than just two seconds. That would not

> be enough time for Ms. Johnson to say no, no, and the individual to say, let it go."

The court acknowledged that this was a "close case," but concluded that defendant had been proven guilty beyond a reasonable doubt. Consequently, the court denied the motion to reconsider.

¶ 18 On August 10, 2014, the date set for a sentencing hearing, the court informed trial counsel that it had received a letter from defendant and allowed counsel to review the letter. After a recess, trial counsel informed the court that the letter again raised issues of ineffectiveness. The court read the letter for the first time and found that it contained many of the same arguments which defendant had raised in relation to his *pro se* posttrial motion, *i.e.,* trial counsel failed to: obtain the surveillance videos; call any of defendant's suggested witnesses; or advise defendant of the mandatory Class X sentencing range. Defendant again argued in court that counsel should have obtained the surveillance videos from the scene which would have exonerated him.

¶ 19 Trial counsel informed the court:

> "[Trial Counsel]: Judge, there were no witnesses at the time. The issue with [defendant] and his case, Judge, once discovery was closed, we went into the investigation of this case. First step in my investigation was to identify cameras which I did. We went and took photographs and I showed [defendant] the photographs and we identified the camera that was the [City of Chicago] camera and the camera that may be either a shopping center camera or the camera at the Family Dollar and I explained to him that I would have to send subpoenas and wait on responses to those subpoenas and that I would need to do that with – prior to setting his case for trial. [Defendant] expressed frustration to me that he was ready to go to trial because he was innocent and that's what he wanted to do. I suggested to [defendant] *** then we should go to a jury trial because, you know,

> we haven't finished our investigations. [Defendant] indicated to me that he was tired of waiting. He wanted a quick trial as possible. I indicated to him that would be a bench trial. He indicated to me that's what he wanted to do, so we went to bench trial, Judge, and unfortunately it didn't work out for [defendant] and here we are."

¶ 20 The trial court explained to defendant that, when counsel told him there was additional discovery to be completed and defendant, instead, insisted on going to trial immediately, there was "not much" more that counsel could do. When the court asked him if he had anything further to add, defendant, again, insisted that he wanted the surveillance videos because they would exonerate him. After further discussion, and with defendant's expressed agreement, the sentencing hearing was delayed for trial counsel to subpoena the surveillance videos. The court then stated that it had considered defendant's *pro se* letter pursuant to *Krankel*, and found that counsel did not render ineffective assistance.

¶ 21 The case was continued several times over a nine-month period for trial counsel to obtain any surveillance videos. Trial counsel, ultimately, informed the court that the Family Dollar store and the City no longer possessed video footage for the date of the offense.

¶ 22 Thereafter, during the sentencing hearing, defendant again raised the issue of trial counsel's failure to obtain the surveillance videos. In response, trial counsel stated:

> "[Trial Counsel]: We have crossed this bridge, I believe, with [defendant] before. And, Judge, in representing [defendant], Judge, I explained to him prior to going to trial that his case was very - - I needed to complete the investigation request on his witness as well sent subpoenas for the surveillance tapes that he requested. I told him we could do those things. In fact, I think I told him we should do those things. I also told him that it would be my recommendation to go to jury trial, especially if he didn't want to wait on these

things to be completed. He opted to go - - it was his desire at that time to go to trial without these materials and so I tried his case and it didn't work out, Judge."

¶ 23 In sentencing defendant, the trial court found that unlawful restraint "was an element of the robbery," and sentenced defendant, on the robbery count only, to eight years' imprisonment as a Class X offender based upon his criminal history. Defendant has appealed.

¶ 24 On appeal, defendant first argues that the State failed to prove him guilty, beyond a reasonable doubt, because Ms. Johnson's identification of him was unreliable in that: (1) she had a limited opportunity to view him; (2) her degree of attention was compromised because of her concern with protecting her daughter; (3) her description of the offender to the police was general; and (4) her identification of him, 10 days after the robbery, was made merely because he was wearing similar clothing as the offender. We disagree.

¶ 25 To prove defendant guilty of robbery, the State was required to demonstrate that he knowingly took Ms. Johnson's purse from her by the use of force or by threatening the imminent use of force. 720 ILCS 5/18-1(a) (West 2012).

¶ 26 During 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). When a defendant claims that the evidence is insufficient to sustain a conviction, 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)). Under this standard, a court may not 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)), and all reasonable inferences from the evidence must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 27 We will reverse a criminal conviction only where the evidence is so improbable or unsatisfactory that there is reasonable doubt as to a defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011).

¶ 28 Identification of a defendant by a single witness is sufficient to sustain a conviction where the witness viewed the defendant under circumstances that permitted a positive identification. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 29 In determining whether an identification is reliable, we consider: "(1) the opportunity the victim had to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the victim at the identification confrontation; and (5) the length of time between the crime and the identification confrontation." *People v. Lewis*, 165 Ill. 2d 305, 356 (1995) (citing *Biggers*, 409 U.S. at 199-200; see also *Slim*, 127 Ill. 2d at 307-08).

¶ 30 Here, the record reveals that all five *Biggers-Slim* factors support the court's finding that Ms. Johnson's identification of defendant was reliable. Ms. Johnson testified that defendant was standing "right in front of me," and that she was "face to face" with him as they struggled over her purse. It was dusk, there were streetlights on, as well as lighting in the parking lot. Ms. Johnson observed that defendant was wearing a gray hooded sweatshirt that was too large for him and blue jeans. Defendant was wearing the hood up, but she was able to see his face clearly. Ms. Johnson testified that the struggle over her purse lasted for about two seconds, but the trial court found that it must have lasted longer, based on the entirety of her testimony relating to the offense. We conclude that Ms. Johnson, at the time of the offense, had a sufficient opportunity to

view defendant's face at an extremely close range, and that her degree of attention was high.

¶ 31 Further, Ms. Johnson's prior description of defendant was sufficient to support her subsequent identification of him. At the scene, Ms. Johnson described defendant's clothing, stated that he was around five feet, nine inches tall, and that he weighed 140 to 150 pounds. Defendant does not challenge the accuracy of Ms. Johnson's description to the police, but claims that it was too general because she did not mention any particular facial features or physical characteristics. However, "[i]t has consistently been held that a witness is not expected or required to distinguish individual and separate features of a suspect in making an identification." *Slim*, 127 Ill. 2d at 308-09. In accordance with the nature of human observation, a positive identification is sufficient even when the witness provides only a general description based on her total impression of the assailant's appearance. *Id.* at 309. Consequently, Ms. Johnson's general description of defendant was sufficient to support her identification.

¶ 32 And the record shows that Ms. Johnson positively identified defendant 10 days after the robbery. At that time, defendant was standing on the street in the same area of where the offense occurred, only 10 to 15 feet away from her, and wearing the same clothing he wore during the robbery. Upon seeing defendant, Ms. Johnson immediately told her husband: "That's the guy." At trial, the prosecutor directly asked Ms. Johnson: "Are you sure this is the man that robbed you?" and she answered: "Yes." The evidence thereby established that the length of time between the offense and identification was minimal, and that Ms. Johnson was absolutely certain that defendant was the assailant. Based on this record, we conclude that the evidence was sufficient to support the trial court's findings that Ms. Johnson's identification of defendant was reliable, and that defendant was proved guilty of robbery beyond a reasonable doubt.

¶ 33 Defendant next contends that the trial court erred when it failed to appoint new counsel and

failed to conduct a sufficient *Krankel* hearing on his *pro se* posttrial claim of ineffective assistance of counsel. Defendant argues that: his relative who worked at the Family Dollar store was a potential alibi witness; the surveillance videos were critically important; and it was counsel's duty to investigate and present the potentially exonerating evidence. Defendant contends that trial counsel's explanation, that defendant wanted to go to trial before the investigations were completed, did not eliminate possible neglect by counsel. He, therefore, claims that the circuit court's finding, that counsel did not render ineffective assistance, was manifestly erroneous, and that this case should be remanded for the appointment of new counsel and a *Krankel* hearing. We do not agree.

¶ 34 Where a defendant raises a *pro se* posttrial claim of ineffective assistance, the trial court should examine the factual basis of the claim to determine if it has any merit. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). A court may evaluate a defendant's *pro se* claim by: (1) discussing the allegations with the defendant and asking for more specific details; (2) questioning trial counsel regarding the facts and circumstances surrounding the defendant's allegations; or (3) rely on its own knowledge of counsel's performance at trial and determine whether the allegations are facially insufficient. *Id*. at 78-79. If the court finds that the claims reveal possible ineffectiveness of counsel, then it should appoint new counsel to represent the defendant at a hearing on his *pro se* motion. *Id*. at 78. However, if the trial court finds that the defendant's allegations are without merit or pertain only to matters of trial strategy, new counsel should not be appointed, and the court may deny the *pro se* motion without further inquiry. *Id.*

¶ 35 In this case, this court's primary concern is whether the trial court conducted an adequate inquiry into defendant's *pro se* claims of ineffective assistance of counsel. *Id.* Where, as here, the circuit court reached a decision on the merits of a defendant's ineffective assistance of counsel

claim, that ruling will not be disturbed on review unless there was manifest error. *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 25. "Manifest error" is error which is clearly plain, evident, and indisputable. *Id.*

¶ 36 Here, we find that the trial court's inquiries into defendant's *pro se* claim of ineffective assistance of counsel were adequate, and its determination that his claims were without merit was not manifestly erroneous.

¶ 37 The record shows that, when defendant initially presented his *pro se* posttrial motion, the trial court acknowledged that, pursuant to *Krankel*, it was required to conduct a preliminary inquiry into his claims. The court continued the matter so that trial counsel could be present and be examined.

¶ 38 On the next court date, the trial court allowed defendant to present his arguments regarding counsel's ineffectiveness. Defendant argued that he had asked trial counsel to obtain the surveillance videos, which would have exonerated him, but counsel never attempted to obtain them. In response, counsel explained that he was in the course of his investigation of the case when defendant stated that he was ready and wished to proceed to trial. Defendant was confident of his innocence and would not allow counsel to delay his case. Trial counsel stated that he "begged" defendant on several occasions to allow him to complete his investigation. Defendant, however, refused to wait any longer and insisted on going to trial against counsel's advice.

¶ 39 At this initial hearing, the trial court asked trial counsel additional questions about his investigation and counsel explained in more detail the various actions he had taken. Counsel again explained that he tried to persuade defendant to wait for the investigation to be completed but, despite that advice, defendant wanted to go to trial. Defendant rejected trial counsel's advice to wait to proceed to trial after counsel warned him of the importance of further investigation

and, in light of the fact defendant was facing a stiff sentencing scheme. Counsel also confirmed that he had discussed the applicable sentencing range with defendant several times. Defendant did not contradict any of these assertions. Defendant cannot claim ineffectiveness under such circumstances. See *People v. Velez*, 388 Ill. App. 3d 493, 503 (2009) (citing *People v. Carter*, 208 Ill. 2d 309, 319 (2003) ("The doctrine of invited error provides that 'an accused may not request to proceed in one manner and then later contend on appeal that the course of action was in error.' ")).

¶ 40 The trial court properly conducted the required preliminary inquiry into defendant's claims by allowing defendant to argue his motion and provide details, and by questioning trial counsel. Based on this inquiry, the trial court found that defendant's claims of ineffectiveness were without merit, concluded that the appointment of new counsel was not warranted, and denied defendant's motion. Based on this record, we find that the trial court's ruling was not manifestly erroneous.

¶ 41 Moreover, the court allowed defendant a second opportunity to present his ineffectiveness claims after he submitted a *pro se* letter to the court prior to sentencing. In response to defendant's claims that trial counsel had failed to contact suggested witnesses and obtain the videos, trial counsel stated that there were no witnesses and, again, explained that he was in the process of his investigation, including the investigation as to the surveillance cameras, when defendant demanded to go to trial. Defendant, again, did not contradict those statements and the trial court, once more, found that counsel did not render ineffective assistance. The court explained to defendant that, when he pressured counsel to go to trial, there was "not much" counsel could do.

¶ 42 Again, at the sentencing hearing, defendant was allowed to voice his complaints about the

surveillance videos. Trial counsel, without contradiction from defendant, asserted that he had specifically recommended that defendant wait for discovery to be completed and the videos to be subpoenaed before going to trial, but defendant rejected this advice.

¶ 43 We conclude that the trial court, on each occasion, conducted adequate inquiries into defendant's *pro se* claims of ineffective assistance of counsel, and its determination that his claims were without merit, was not manifestly erroneous.

¶ 44 In reaching this conclusion, we agree with the State that there is no indication in the record that defendant argued before the trial court that counsel was ineffective because he failed to contact defendant's relative who was employed at the Family Dollar store as an alibi witness. Defendant argued to the trial court that he had a relative who worked at the Family Dollar store from whom he was attempting to obtain videos from the nearby surveillance cameras and that those videos would exonerate him. Defendant presented no argument that his relative was an alibi witness. " 'It is well settled that issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal.' " *People v. Krinitsky*, 2012 IL App (1st) 120016, ¶ 26 (quoting *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996)). Consequently, we find that defendant's argument that counsel was ineffective for failing to contact his relative as an alibi witness is waived.

¶ 45 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 46 Affirmed.