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2017 IL App (3d) 140779-U

Order filed March 2, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-14-0779
DARELL C. BOOKER,)	Circuit No. 13-CF-903
Defendant-Appellant.)	Honorable David A. Brown, Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State presented sufficient evidence of defendant's guilt beyond a reasonable doubt.
- ¶ 2 Defendant, Darell C. Booker, appeals his convictions and sentences arguing that the State failed to prove him guilty beyond a reasonable doubt. Specifically, defendant argues that the basis for his convictions rested upon a single witness' identification testimony, which defendant argues is not credible. We affirm.

attempted to assist Duff. Duff was transported to the hospital where he stayed for a few days and required several surgeries.

¶ 8 The day after the shooting, Detective Sherell Stinson visited Duff at the hospital. Although Duff was still recovering from his injuries, he told Stinson that he was able to look at a photographic lineup to identify the shooter. Duff identified defendant as the shooter.

¶ 9 According to Duff, he had seen defendant prior to the shooting, but did not know his name. Approximately one month before the shooting, Duff saw defendant walking in the street. Defendant asked Duff if they were members of the Bomb Squad gang. Duff told defendant “no,” and defendant walked away. On a second occasion, Duff observed his friends, who were members of the Bomb Squad gang, fighting members of the Zone 4 gang. Duff saw defendant also watching the fight.

¶ 10 On cross-examination, Duff acknowledged that when he was initially shot and awaiting transportation to the hospital, he told police he did not know who had shot him. Duff stated that he said this because he wanted to get to the hospital faster. Duff also acknowledged telling police he could not see what the men were wearing that night.

¶ 11 On redirect examination, Duff stated he was sure defendant was the individual who shot him and that he could see defendant’s face at the time of the shooting.

¶ 12 Damion Burnett, Duff’s friend who was present at the shooting, also testified. According to Burnett, he and Duff both rode a bicycle to Manual High School and started walking when they arrived at the parking lot. When Burnett and Duff walked behind the school, they saw two men walking ahead of them. One of the men asked Duff and Burnett “[w]ho’s that?” The individual then asked them where they were from. Burnett responded by asking, “where y’all from?” Burnett denied the question meant any more than asking what side of town they were

from. In response, the man asking the questions began shooting. Burnett stated that the gun used was a revolver.

¶ 13 Once the shooting started, Burnett began running and Duff followed behind. Burnett stopped when Duff collapsed after being shot. Burnett waived at a nearby police officer for help. Burnett stated that he did not get a good look at the shooter's face. Unlike Duff, who identified the shooter as defendant, Burnett told police he thought an individual named "Freaky" had been the shooter. However, Burnett stated that he did not get a good look at the shooter's face. Police later showed Burnett a photograph of "Freaky," but Burnett was not certain he was the shooter.

¶ 14 On cross-examination, Burnett stated that he told the police he saw the shooter and thought that it was "Freaky." Burnett had seen Freaky prior to the shooting at the juvenile detention center. Burnett described the shooter to the police as being about 16 years old, short with a medium build, dark complexion, and having dual pigtail or ponytail dreads. Burnett had seen defendant prior to the shooting. Burnett stated that he knew "Freaky" and defendant were not the same person.

¶ 15 Officer Patrick Jordan testified that he was on patrol at Manual High School at the time of the shooting. Jordan heard the gunshots and drove his squad car in that direction. Jordan was flagged down by Burnett. Jordan saw Duff lying on the ground, and called for an ambulance. At the time Jordan arrived, Duff was having difficulty speaking and repeated that he had been shot. Jordan did not ask Duff who had shot him.

¶ 16 Detective Stinson arrived at the scene next. When he arrived, Duff was still on the ground. Stinson spoke with Burnett later at the Peoria police department. Stinson showed Burnett a photograph of Isaiah "Freaky" Wilson, which Burnett identified as the shooter.

Stinson later learned that Wilson had been in the juvenile detention center at the time of the shooting.

¶ 17 The day after the shooting (September 25, 2013), Stinson spoke with Duff while Duff was being treated at the hospital. Stinson showed Duff a photographic lineup. Before showing the lineup, Stinson spoke with Duff and the medical staff to make sure Duff had not taken any medication. When the two spoke, Duff appeared alert. Stinson showed Duff six photographs and asked Duff if any of the individuals in the photographs were the shooter. While Duff was examining the fourth photograph, he asked Stinson what the individual's name was. Stinson did not tell Duff the individual's name, and told Duff to identify the shooter. Duff identified the individual in photograph number four as the shooter. The fourth photograph was a picture of defendant.

¶ 18 Officer Demario Boone, the resource officer assigned to Manual High School, retrieved the surveillance footage near the area of the shooting. The surveillance video was played for the jury. The video shows two unknown individuals walking through a parking lot. The two unknown persons then walk through a hole in the fence and disappear around a corner behind the school into an area not covered by cameras. Moments later, Duff and Burnett also appear in the footage. Duff and Burnett follow the two unknown individuals through the hole in the fence. About 30 seconds later, Duff and Burnett disappear from view. The two unknown persons run back into view of another camera and are shown fleeing the area. The video switches to a view of the fence, and shows Duff and Burnett running. At the end of the video, a police officer approaches and assists Duff, who had fallen to the ground.

¶ 19 Ultimately, the jury found defendant guilty on all counts (aggravated battery, aggravated discharge of a firearm, and unlawful possession of a firearm). The trial court sentenced

defendant to 18 years' imprisonment for aggravated battery, to be served consecutively to 7 years' imprisonment for aggravated discharge of a firearm. The conviction for unlawful possession of a firearm merged into the other offenses.

¶ 20

ANALYSIS

¶ 21

On appeal, defendant argues that the State failed to prove him guilty beyond a reasonable doubt where the State's case was based upon Duff's identification of defendant as the shooter. Specifically, defendant contends that Duff's identification testimony was unreliable. Viewing the evidence in the light most favorable to the State, we find that a rational trier of fact could have found that defendant was the individual who shot Duff.

¶ 22

When analyzing the sufficiency of the evidence, this court must review the evidence in the light most favorable to the prosecution and consider whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Howell*, 358 Ill. App. 3d 512, 528 (2005). It is not our function to retry defendant or substitute our judgment for that of the trier of fact. *People v. Evans*, 209 Ill. 2d 194, 211 (2004).

¶ 23

While vague or doubtful identifications are insufficient to support a conviction, identification of the accused by just one eyewitness can support a conviction where the witness viewed the accused under circumstances permitting a positive identification. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). "[C]ircumstances to be considered in evaluating an identification include: (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. Slim*, 127 Ill. 2d 302, 307-08 (1989).

¶ 24 As to the first circumstance, the opportunity the victim had to view the criminal at the time of the crime, Duff testified that he had encountered defendant prior to the shooting and knew what defendant looked like. Duff also saw defendant stop and turn around prior to defendant drawing the gun and shooting him. Although the time between defendant turning around and shooting Duff was short, it was long enough for there to be an exchange of words between defendant and Duff. Specifically, defendant had enough time to ask Duff where he was from and for Duff to reply. Because Duff had seen defendant previously, and had an opportunity to observe defendant's face before he drew the gun, Duff had a sufficient opportunity to observe defendant.

¶ 25 As to the second circumstance, the witness' degree of attention, Duff and defendant engaged in a brief conversation prior to the distraction created by defendant drawing his gun. Duff therefore had the opportunity to observe defendant's face in the absence of distraction.

¶ 26 As to the third circumstance, the accuracy of the witness' prior description of the criminal, Duff was unable to tell police who had shot him at the scene of the crime. However, Duff testified that he did not tell the police who had shot him at the scene because he was more interested in receiving medical treatment for his injuries rather than discussing the incident with police. In addition, Officer Jordan testified that Duff was having difficulty speaking at the scene. Duff did identify the photograph of defendant as the shooter the day after the shooting. Duff testified at trial that he was sure that defendant was the shooter. Thus, Duff's failure to identify the shooter at the scene was based on his desire to receive medical attention, and not Duff's inability to observe the shooter.

¶ 27 As to the fourth circumstance, the level of certainty demonstrated by the victim at the identification confrontation, Duff identified defendant one day after the shooting and again at

trial. The day after the shooting, Duff identified the photograph of defendant as the shooter. At trial, Duff testified that defendant was the person who shot him. On redirect examination, Duff stated that he was sure defendant was the person who shot him and that he could see defendant's face at the time of the shooting. Duff also testified that he had seen defendant prior to the shooting, but did not know his name. Duff described two occasions in which he had previously seen defendant. As such, Duff's prior statements and trial testimony establish that Duff was certain as to the shooter's identification.

¶ 28 As to the final circumstance, the length of time between the crime and the identification confrontation, Duff identified defendant only one day after the shooting. This factor strongly supports that the identification was valid. *People v. Jaimes*, 2014 IL App (2d) 121368, ¶ 35 (finding that a witness' identification one day after a shooting strongly supports a reliable identification).

¶ 29 In viewing the above circumstances in the light most favorable to the State, we conclude that a rational trier of fact could have found Duff's identification testimony credible. This credible identification is sufficient to support the trier of fact's verdict that defendant committed the acts of aggravated battery, aggravated discharge of a firearm, and unlawful possession of a firearm beyond a reasonable doubt. See *Lewis*, 165 Ill. 2d at 356 (identification of the accused by just one eyewitness can support a conviction where the witness viewed the accused under circumstances permitting a positive identification).

¶ 30 The majority of defendant's brief challenges the credibility of Duff's identification. Specifically, defendant calls our attention to the fact that the incident was short in duration, Duff had a low level of attention because of the presence of a gun, Duff failed to provide a description at the scene of the shooting, Duff's certainty was diminished because he did not immediately

acknowledge seeing the shooter, and there was a lapse of time between the shooting and Duff's identification. Defendant also argues that because Burnett identified a different individual as the shooter, Duff's identification testimony was also flawed. In addition, defendant argues that Duff was a biased witness because defendant was a member of a rival gang.

¶ 31 The above arguments, however, are nothing more than a request to reweigh the evidence and the credibility of the witnesses. This we will not do. "When evidence is merely conflicting, a reviewing court will not substitute its judgment for the judgment of the trier of fact." *People v. Downin*, 357 Ill. App. 3d 193, 202 (2005). Here, the imperfections cited by defendant were presented at trial and argued to the court. See *Evans*, 209 Ill. 2d at 211-12 (function of trier of fact to assess credibility and resolve inconsistencies in testimony).

¶ 32 CONCLUSION

¶ 33 The judgment of the circuit court of Peoria County is affirmed.

¶ 34 Affirmed.