

2018 IL App (1st) 161416-U

No. 1-16-1416

Order filed July 26, 2018

Fourth Division

**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. 14 CR 19097
	)	
NATHANIEL HENRY,	)	Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge, presiding.

---

JUSTICE McBRIDE delivered the judgment of the court.  
Presiding Justice Burke and Justice Ellis concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's convictions for robbery and unlawful restraint affirmed over his contention that the State failed to prove him guilty beyond a reasonable doubt.

¶ 2 Defendant Nathaniel Henry was found guilty of robbery (720 ILCS 5/18-1(a) (West 2014)) and unlawful restraint (720 ILCS 5/10-3 (West 2014)) after a bench trial. The court merged the convictions and sentenced defendant to 10 years' imprisonment on the robbery conviction. Defendant argues that the State failed to prove his guilt beyond a reasonable doubt

where the victim's testimony was not credible and defendant's "vague and unmemorialized statement" was unreliable. We affirm.<sup>1</sup>

¶ 3 Defendant was charged with one count each of armed robbery (720 ILCS 5/18-2(a)(2) (West 2014)) and aggravated unlawful restraint (720 ILCS 5/10-3.1 (West 2014)) for knowingly taking Alaa Mohammad's money by force or threat of force while armed with a firearm and detaining Mohammad without legal authority while using a firearm.

¶ 4 At trial, Mohammad testified that, at around 12:40 a.m. on September 9, 2014, he drove to a discount tobacco wholesale store at 71st and State Streets and parked in the back. The lighting in front of the store was on and the streetlights were lit. Mohammad exited the store and was walking to his car when a man approached him, holding a gun at eye-level. Mohammad put his hands up and turned his back to the man. He then realized that a second man was going through his pockets.

¶ 5 Mohammad looked down at the man going through his pockets and the man looked up at him. They were face to face, less than two feet apart, for about 10 seconds. Mohammad recognized the man, whom he identified in court as defendant, as someone he had seen three or four times before standing outside the store. Although Mohammad recognized defendant, he did not know him by name. When Mohammad looked down at defendant, the man with the gun pushed the gun into the back of his head. Mohammad saw a police squad car on the corner of the intersection, but was unable to flag it down.

¶ 6 When Mohammad lifted his head, he realized the men were running from the scene, east on 71st Street. He noticed that defendant had a limp. Defendant had taken \$600 from

---

<sup>1</sup> Pursuant to Supreme Court Rule 352(a) (eff. July 1, 2018), this case was taken for consideration without oral argument by separate order.

Mohammad's pockets. Mohammad got into his vehicle, saw another police officer, and told him what happened. The officer suggested he go to the Seventh District police station and file a report, which Mohammad did.

¶ 7 On September 13, 2014, Mohammad was in the area of the robbery when he saw a man wearing the same outfit as the gunman had worn. He called 911 to report the man and waited a few blocks away until police brought the man there for identification. Mohammad told police he was 99 percent sure it was the gunman, but the man was ultimately released without being charged.

¶ 8 On October 10, 2014, Mohammad saw defendant standing outside a fish market at 72nd and State Streets. Mohammad called 911 and a sergeant called him back. Mohammad drove around the block to get a second look defendant and told the sergeant he was "one hundred percent" sure it was the man who robbed him. The police arrived and "caught" defendant fleeing. Mohammad had been directed to a gas station, where police eventually brought defendant for identification. There, Mohammad identified defendant to police as the man who robbed him. Mohammad then went to the police station to speak with a detective and an assistant State's Attorney. The detective showed him photos, but Mohammad could not identify the gunman in the array.

¶ 9 On cross-examination, Mohammad acknowledged that, when he made his police report, he did not tell police that he "knew" one of the men who robbed him. He clarified that he did not "know [defendant] to say that I knew him," and he did not remember whether he reported that he had seen one of the robbers at the same store three or four times before. He did report that one of the offenders had a limp.

¶ 10 Mohammad did not think that the officers in the squad car he saw 60 feet away during the robbery knew what was happening, as their windows were up and it was “dark out.” He acknowledged that, on October 10, 2014, he did not see the police apprehend defendant. Instead, he witnessed them remove defendant from the back of their squad car.

¶ 11 On redirect, Mohammad testified he told Detective Smith on October 10, 2014, that he had seen defendant before in the neighborhood and remembered him because he had a limp. He looked “right into” defendant’s face for “about” 10 seconds during the robbery. He did not know defendant’s name, but had seen “his face” at least two or three times before the day defendant robbed him. The police never told Mohammad he had to identify defendant. Rather, when Mohammad saw defendant come out of the police car, he identified him as the man who robbed him.

¶ 12 Chicago police officer Arturo Mena testified that he was working on October 10, 2014, when he responded to a call of a wanted person. He drove to 71st and State Streets, where he saw defendant, who matched the description of the person Mena was looking for. Mena and his partner, Officer Sanchez, detained defendant. Sergeant Paz arrived on scene, while speaking to the victim by phone. The victim then arrived, pointed at defendant, and identified him as the man who robbed him. Mena transported defendant to the Third District police station, where he spoke with defendant in the presence of Paz and Sanchez. Mena advised defendant of his *Miranda* rights, which defendant acknowledged he understood, and informed defendant that he was under arrest for a robbery that took place a month earlier. Defendant stated “we robbed that Arab because we were dope sick and we wanted to get high.” He stated that he never had a gun, although his accomplice did, and all defendant did was go through the victim’s pockets.

¶ 13 Detective Amanda Smith testified she met with defendant on October 10, 2014. She advised defendant of his *Miranda* rights. Defendant acknowledged he understood them and agreed to discuss the case. Smith asked defendant about an armed robbery that took place at 12:40 a.m. on September 9, 2014, in the area of 50 East 71st Street. Defendant stated he “remembered the incident with the Arab.” He stated a man named Sam Field approached him, pointed to Mohammad, and said “let’s get this lick,” which is street terminology for “let’s do this robbery.” Defendant told Smith that he and “Sam” approached the victim, Sam pointed a gun, and defendant emptied the victim’s pockets, taking all his money. Defendant then ran behind the store where he and Sam split the \$500 taken from the victim. Defendant stated he was “doped,” meaning that he needed the money to get high. He told Smith he remembered seeing “the Arab” on previous occasions.

¶ 14 Smith attempted to located defendant’s accomplice and searched for contact cards in the area of the robbery. She located one for Jamil Ware, who had previously used the aliases Sam and Little Sam. Smith showed defendant a photo of Ware and he identified Ware as the man with the gun. Assistant State’s Attorney (“ASA”) April Gonzalez then arrived, advised defendant of his *Miranda* rights, and had a conversation with him in which he related essentially the same facts as he had told Smith. Gonzalez offered to memorialize defendant’s statement in writing, but defendant refused the offer. He also refused to sign the photo of Ware, stating “he knew he would be in jail and would not be able to protect his family.”

¶ 15 On cross-examination, Smith acknowledged that defendant was not the first person arrested in connection with this case. Jonathan O’Neill had been arrested when Mohammad identified him as the man who robbed him with a gun, but O’Neill was released. Smith showed

defendant a picture of O'Neill, but defendant stated he had never seen him before. Smith showed Mohammad a photo array including Ware's photo, but Mohammad did not identify anyone in the array as the second robber. Police never recovered a gun.

¶ 16 After Smith's testimony, the State rested and the court denied defendant's motion for a directed finding.

¶ 17 Officer Kurrin Beamon testified that she was working the desk at the Seventh District station at approximately 12:40 a.m. on September 9, 2014, when Mohammad came in to report a robbery. He gave Beamon his story, which she summarized in a four-line narrative in a report. The report did not reflect that Mohammad told her he had seen one of the men three or four times before at a tobacco shop. Beamon did not remember whether he told her that, or whether he told her one of the men walked with a limp. Mohammad told Beamon he was robbed as he was exiting his vehicle and the men fled southbound.

¶ 18 In closing, defendant argued that Mohammad was not a credible witness because he did not have an ability to observe his robbers as it was dark outside. Defendant contended that Mohammad was impeached in his testimony because he failed to tell Beamon about defendant's limp and that he had seen defendant three or four times before. He also argued that Mohammad's false identification of another man prior to defendant's arrest showed he did not have an opportunity to properly observe defendant.

¶ 19 The trial court found defendant guilty of the lesser included offenses of robbery and unlawful restraint. It stated that Mohammad identified defendant as someone he had seen before around the area and his testimony was very credible and not impeached. The court noted that all the witnesses testified very credibly. The court subsequently denied defendant's motion to

reconsider or for a new trial, finding the witnesses credible, reliable, and unimpeached and “the identification was spot on. He knows this person.” The court merged the counts and sentenced defendant as a Class X offender based on his criminal background to 10 years in prison on the robbery conviction.<sup>2</sup>

¶ 20 Defendant appeals his convictions, arguing the State failed to prove his guilt beyond a reasonable doubt because Mohammad’s testimony was not credible and defendant’s vague and unmemorialized statement was unreliable. We disagree.

¶ 21 When reviewing the sufficiency of the evidence, this court will not retry the defendant. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, we must consider “ ‘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.’ ” (Emphasis in original.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A reviewing court must draw all reasonable inferences from the record in favor of the State. *Davison*, 233 Ill. 2d at 43. This standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *People v. Howery*, 178 Ill. 2d 1, 38 (1997). Accordingly, a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *People v. Cooper*, 194 Ill. 2d 419, 430-31 (2000). A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

---

<sup>2</sup> The court also sentenced defendant to five years’ imprisonment on the unlawful restraint conviction but, as noted, merged that conviction with the robbery conviction.

¶ 22 To prove defendant guilty of robbery, the State had to prove that defendant knowingly took Mohammad's property by the use of force or by threatening the imminent use of force. 720 ILCS 5/18-1(a) (West 2014). To prove defendant guilty of unlawful restraint, the State had to prove defendant knowingly, without legal authority, detained Mohammad. 720 ILCS 5/10-3 (West 2014).

¶ 23 We find the evidence sufficient to prove defendant guilty of the offenses beyond a reasonable doubt. The positive testimony of a single credible witness is sufficient to support a conviction. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Here, Mohammad positively identified defendant as the man who went through his pockets and took his money while an accomplice detained Mohammad at what Mohammad thought to be gunpoint, pressing a hard object into the back of Mohammad's head and threatening Mohammad with the gun as the men ran away. The trial court found Mohammad "very credible" and "not impeached," and that his identification of defendant was "spot on." The court was in the "superior position to assess the credibility of witnesses," and we must give proper deference to its determination that Mohammad's positive identification of defendant as one of the robbers was credible. See *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24.

¶ 24 Further, Mohammad's testimony was corroborated by the statements defendant made to Detective Smith and Officer Mena regarding the robbery. Smith and Mena testified that defendant told them that he and his accomplice robbed "the Arab" because they were "dope sick" and wanted to get high. Defendant confessed his participation in the robbery, and the version of the events he told Smith corroborated Mohammad's: defendant's male accomplice approached "the Arab" with a gun, defendant went through the victim's pockets and took all his



money, defendant and his accomplice ran away, and defendant recognized the victim from seeing him at the store on previous occasions. The trial court found Mena and Smith testified “very credibly,” and we defer to that determination. See *People v. Soler*, 228 Ill. App. 3d 183, 199 (1992) (in a bench trial, it is for the trial court to judge the credibility of witnesses, determine the weight to be accorded their testimony, and draw inferences from the testimony). Accordingly, viewing the evidence in the light most favorable to the State, we find a rational trier of fact could have found the essential elements of the crimes beyond a reasonable doubt.

¶ 25 Nevertheless, defendant contends the State failed to prove him guilty beyond a reasonable doubt because Mohammad was not a credible witness. He argues Mohammad’s testimony was “riddled with inconsistencies” casting doubt on his identification of defendant. Defendant points to Mohammad’s failure to provide police with a physical description of either offender or to report defendant’s limp and that he had seen defendant before. He asserts Mohammad gave contradictory statements that the area was lit by street and store lights but was too dark for the officers 60 feet away to see the robbery. Defendant claims Mohammad was incredible because he was impeached regarding his claim that defendant fled when police detained him and that the officers met him at a gas station to conduct a show-up, he identified the wrong man as the robber with the gun, and he could not identify Ware in a photo array even though defendant claimed Ware was the man with the gun.

¶ 26 The State must prove beyond a reasonable doubt the identity of the person who committed the charged offense. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). Vague and doubtful identification testimony is insufficient to sustain a conviction. *Id.* However, the identification testimony of a single witness is sufficient to sustain a conviction if the witness viewed the

accused under circumstances that allowed for a positive identification. *Id.* When examining a witness's identification testimony, courts utilize the following factors established by the Supreme Court in *Neil v. Biggers*, 409 U.S. 188 (1972): (1) the opportunity the witness had to view the perpetrator at the time of the offense, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the offender, (4) the certainty of the witness's identification, and (5) the length of time between the offense and witness's identification. *Lewis*, 165 Ill. 2d at 356.

¶ 27 Here, Mohammad had ample opportunity to view the man going through his pockets. Although it was dark outside, the streetlights were lit up and the tobacco store had lights on in front of it. Mohammad testified the man looked up at him and he looked at the man's face "a couple of seconds," "face to face," less than two feet apart. The brevity of the encounter does not render Mohammad's identification of defendant as that man unreliable. See *People v. Petermon*, 2014 IL App (1st) 113536, ¶ 32 (upholding an identification where victims had less than a minute to observe offender); *People v. Barnes*, 364 Ill. App. 3d 888, 894 (rejecting defendant's argument that identification testimony was unreliable due to the brevity of the witness' observation). Mohammad had a high degree of attention when he came face to face with defendant while defendant was emptying his pockets. He testified at trial that he recognized defendant during the commission of the offense, that the gunman pointed the gun at him as the offenders ran away, and that defendant had a limp while running. These details establish Mohammad was attentive to the offenders during and after the robbery.

¶ 28 The record does not establish that Mohammad described his assailants when he made his police report. He stated that he told Beamon about defendant's limp, but Beamon did not recall being told about a limp. However, discrepancies and omissions as to physical characteristics are

not fatal to identification; rather, they affect the weight to be given to the identification testimony. *People v. Slim*, 127 Ill. 2d 302, 308 (1989). This factor does not weigh in favor of either party.

¶ 29 With respect to Mohammad's certainty of identification, his identification was consistent and certain. During the robbery, he recognized defendant as someone he had seen several times before. A month after the robbery, when he saw defendant on the street, he called police because he recognized defendant as the man who robbed him. While speaking on the phone with the sergeant, after driving around the block for a second, and after taking a closer look at defendant to make sure he was the man who robbed him, Mohammad was 100% certain defendant was the man who went through his pockets. When defendant was in police custody, Mohammad immediately pointed at him and identified him as the man who robbed him and, subsequently, identified him as such at trial. Mohammad's identification of defendant was immediate, consistent, and unwavering. The fact that he misidentified O'Neill as the robber with the gun based solely on his clothing does not render his identification of defendant, who he recognized "face to face," unreliable.

¶ 30 The length of time between the crime and Mohammad's identification of defendant supports an inference of reliability in his testimony. Mohammad was robbed on September 9, 2014, identified defendant to police on October 10, 2014, and identified defendant in court on September 2, 2015. This court has upheld identifications that have occurred after vastly longer periods following the crime. See *People v. Malone*, 2012 IL App (1st) 110517, ¶ 36 (16-month delay between crime and identification); *People v. Smith*, 215 Ill. App. 3d 1029, 1036 (1991) (2-

year delay between crime and identification); *People v. Rodgers*, 53 Ill. 2d 207, 213-14 (1972) (same).

¶ 31 Weighing the *Bigger* factors and taking the evidence in the light most favorable to the prosecution, a rational trier of fact could have found that Mohammad's identification was reliable. Although Mohammad could have informed police he had seen defendant before and that defendant had a limp, we do not find his apparent failure to do so renders his identification so unreliable as to raise a doubt of his guilt.

¶ 32 Defendant also argues the State failed to prove him guilty beyond a reasonable doubt because his statement to law enforcement that he and "Sam" robbed "the Arab" was vague and unmemorialized. Defendant argues that, because he did not specifically identify Mohammad as "the Arab", did not indicate the location of the robbery, and refused to sign his statement, the statement was vague and unmemorialized and therefore not credible. But defendant did identify the location of the robbery in his statement to Smith. When Smith asked defendant about a robbery that occurred at "50 East 71st Street" at 12:40 a.m. on September 9, 2014, defendant admitted he committed a robbery there that night and ran behind the store at that location to divide the proceeds of the robbery. Mohammad testified the robbery occurred at that same time, on that same date, at a tobacco store at 71st and State Streets. The trial court could reasonably conclude that the store mentioned by defendant was the same tobacco shop outside which Mohammad was robbed. Similarly, since defendant admitted he robbed "the Arab" at the same time and location that Mohammad was robbed, the court could reasonably conclude that Mohammad was that "Arab," especially given that both men recognized the other from previous

No. 1-16-1416

encounters at the store. See *Howery*, 178 Ill. 2d at 38 (it is for the trier of fact to weigh the evidence and draw reasonable inferences therefrom).

¶ 33 For the forgoing reasons, we find the State's evidence was not so improbable or unsatisfactory as to create reasonable doubt of defendant's guilt. The judgment of the trial court is affirmed.

¶ 34 Affirmed.