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2018 IL App (3d) 150729-U

Order filed February 21, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiff-Appellee,)	
v.)	Appeal No. 3-15-0729
MARC J. GRESKA,)	Circuit No. 14-CF-604
Defendant-Appellant.)	Honorable Carmen Goodman, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

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

FACTS

¶ 3

¶ 4 The State charged defendant with two counts of aggravated battery (720 ILCS 5/12-3.05(c) (West 2014)). The charges alleged that defendant made contact of an insulting or provoking nature by grabbing the arm of the victim, Tamica Smith, and rubbing his penis against her body.

¶ 5 At the bench trial, Smith testified that around 9 a.m. on March 20, 2015, she walked her children to school. On her way home, an individual approached her from behind, wrapped his arms around her, and grabbed her breast and arms. Smith felt the individual's penis make contact with her body. The incident lasted approximately four minutes, until Smith turned around and saw the individual who she described as unclothed except for boots and a black winter hat. Smith described the man as a light-skinned African-American male, and she stated that she saw the man's face.

¶ 6 Smith met with Park Forest Police Detective John DeCault six days after the incident. DeCault showed Smith a photographic lineup of possible suspects and Smith circled the photograph of the individual that grabbed her. Two days later, Smith viewed a physical lineup of possible suspects at the Park Forrest Police Department. Smith identified one of the individuals as the person who grabbed her. In both the photographic and physical lineup, Smith identified defendant as the person who grabbed her.

¶ 7 On cross-examination, Smith testified that she saw defendant's face and made eye contact with him as he ran away from her. Smith explained that she chased after the man and then called the police. Officer Mitchell Greer arrived on the scene, and Smith described the individual to Greer as a light-skinned, African-American male about six feet tall with a medium build and a beard. Smith denied telling Greer that she would not be able to identify the man

again. According to Smith, she told Greer that she would be able to identify the individual that attacked her. When Smith met with DeCault six days after the incident, she told DeCault that the man who attacked her had a small amount of hair near the middle of his back. Smith also testified that she told DeCault that she would be able to identify the man again.

¶ 8 On cross-examination, DeCault testified that when he first met with Smith, she told him that she “may” be able to identify the person that grabbed her. DeCault also testified that during the investigation in this case, he investigated another series of assaults that involved a defendant named Monroe Atkins. One of the assaults involving Atkins occurred near the area of the instant offense.

¶ 9 On redirect examination, DeCault stated that the other cases involved eight or nine incidents in which a clothed black male with a dark complexion would run up to women, grope them, smile and run away. At the time DeCault showed Smith the photographic and physical lineup, Atkins had not been identified as the suspect in the other incidents.

¶ 10 In the defendant’s case-in-chief, the parties stipulated that unlike Smith’s testimony, Officer Greer would testify that when he met Smith on the day of the incident, she told him that “she would not be able to identify the man who grabbed her if she saw him again.” The parties also stipulated to the admission of four photographs taken of defendant five months after the incident. Unlike Smith’s testimony that she saw a small patch of hair on defendant’s back, the photographs show no hair on defendant’s back.

¶ 11 Ultimately, the circuit court found defendant guilty of both charges of aggravated battery. In coming to this conclusion, the court found Smith’s testimony credible. The court noted that while Smith may have initially stated that she would not be able to identify the offender, she did identify defendant in close proximity of time to the incident. In addition, the court stated that the

evidence of other similar incidents involving a different defendant did not change the decision, because those incidents were committed by a fully clothed, dark-skinned individual at least a mile away from the incident in this case. Further, the court also commented that defendant did not match the description Smith provided to the officers. The court acknowledged the photographs of defendant's back that showed no hair, but noted that the photographs were taken several months after the incident, and defendant had clothes covering parts of his body in the photographs. The court sentenced defendant to two years' probation and time served.

¶ 12

ANALYSIS

¶ 13

On appeal, defendant argues the State failed to prove him guilty beyond a reasonable doubt where the State based its case upon Smith's identification of defendant as the perpetrator. Specifically, defendant contends that Smith unreliably identified defendant. Viewing the evidence in the light most favorable to the State, we find that a rational trier of fact could have found defendant to be the individual Smith identified as the attacker.

¶ 14

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). In performing this review, 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).

¶ 15

The prosecution has the burden of proving the identity of the person who committed the crime beyond a reasonable doubt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). 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’s degree of attention; (3) the accuracy of the witness’s 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.” *Slim*, 127 Ill. 2d at 307-08.

We discuss each circumstance in turn.

¶ 16 The first circumstance, the opportunity the victim had to view the criminal at the time of the crime, supports a finding that Smith reliably identified defendant as the attacker. Smith testified that the incident occurred during the day. She saw defendant’s face and made eye contact with him as he ran from the scene. Because Smith had the opportunity to observe defendant’s face during the day time, she had sufficient opportunity to observe defendant.

¶ 17 The second circumstance, the witness’s degree of attention, also supports a finding that Smith reliably identified defendant. Smith observed defendant at a short distance and saw his face while he ran from her. Additionally, Smith observed defendant’s face after the attack occurred, a time that defendant no longer posed a threat. Smith, therefore, had the opportunity to observe defendant’s face in the absence of distraction.

¶ 18 As to the third circumstance, the accuracy of the witness’s prior description of the criminal, Smith consistently described her attacker as a light-skinned African-American male, with a medium build, facial hair, and a small patch of hair on his back. Although defendant

presented photographs of his body that show no hair on his back, those photographs were taken several months after the attack. Given defendant's physical characteristics are consistent with Smith's description, this factor supports the finding that Smith reliably identified defendant.

¶ 19 Regarding the fourth circumstance, the level of certainty demonstrated by the victim at the identification confrontation, Smith identified defendant as her attacker on three different occasions. Smith identified defendant from the photographic lineup as her attacker. She later identified defendant from the physical lineup as her attacker, and she testified at trial that defendant attacked her. As such, Smith's prior identifications and her trial testimony establish that Smith was certain as to her identification of the attacker.

¶ 20 As to the fifth circumstance, the length of time between the crime and the identification confrontation, Smith identified defendant only six days after the incident. This short period of time supports the finding that her identification was reliable. *People v. Jaimes*, 2014 IL App (2d) 121368, ¶ 35 (finding that a witness's identification one day after a shooting strongly supports a reliable identification).

¶ 21 In viewing the above circumstances in the light most favorable to the State, we conclude a rational trier of fact could have found Smith'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. 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).

¶ 22 In reaching this conclusion we reject defendant's assertion that Smith's "very limited view" of defendant and her purported statement to the first responding officer that she would not be able to identify her attacker "strongly suggest[s]" that she unreliably identified defendant.

Defendant also notes that the police were investigating and later arrested another individual that committed similar crimes in the area. In addition, defendant argues that Smith’s description of defendant as having hair on his back was materially inaccurate because at trial defendant presented photographs of his body (taken five months after the incident) that showed no hair on his back.

¶ 23 The above arguments amount to a request to reweigh the credibility of the witnesses. This we cannot 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, defendant presented and argued the alleged inconsistencies in the evidence at trial. See *Evans*, 209 Ill. 2d at 211-12 (function of trier of fact to assess credibility and resolve inconsistencies in testimony).

¶ 24 CONCLUSION

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 26 Affirmed.