2019 IL App (1st) 162637-U

No. 1-16-2637

Order filed May 2, 2019

Fourth Division

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. 12 CR 7941
	)	
JOEY CHAVEZ,	)	Honorable
	)	Lawrence E. Flood,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice McBride and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions are affirmed over his contention that the State failed to prove, beyond a reasonable doubt, that he was the driver of a vehicle involved in an accident.

¶ 2 Following a bench trial, defendant Joey Chavez was found guilty of six counts of aggravated driving under the influence (DUI) causing death (625 ILCS 5/11-501(a), (d)(1)(F), (d)(2)(g) (West 2012)), two counts of reckless homicide (720 ILCS 5/9-3(a) (West 2012)), six counts of aggravated DUI causing great bodily harm (625 ILCS 5/11-501(a), (d)(1)(C), (d)(2)(F)

(West 2012)), and three counts of aggravated DUI without a valid driver's license (625 ILCS 5/11-501(a), (d)(1)(H) (West 2012)). After merging certain counts at sentencing, the trial court sentenced defendant to two 26-year prison terms for aggravated DUI causing death, two 10-year prison terms for aggravated DUI causing great bodily harm, and one 4-year prison term for aggravated DUI without a valid driver's license. All sentences were to be served concurrently. On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt of any offense because the evidence at trial was "substantially conflicted" as to who was in physical control of the vehicle at the time of the crash. We affirm.

¶ 3 Defendant's arrest and prosecution arose out of a March 24, 2012 motor vehicle accident which resulted in the deaths of Julissa and Eric Ochoa, Jr. (Junior), and injuries to Bernice Cabrera and Eric Ochoa, Sr. Defendant was in the SUV which crashed into a green Dodge Neon driven by Cabrera. Defendant's bench trial commenced on April 22, 2015.

¶ 4 On appeal, defendant does not challenge the fact that the collision occurred; rather, he contends that the State failed to establish beyond a reasonable doubt that he was driving the SUV at the time of the collision. Accordingly, our disposition will focus on the testimony and evidence relating to the identity of the driver.

¶ 5 The evidence at trial established, through the testimony of Bernice Cabrera and Eric Ochoa, Sr., that in March 2012, Cabrera and Ochoa were the parents of five-year-old Junior and 10-month-old Julissa. On March 24, 2012, the family ran errands in a green Dodge. Cabrera was in the driver's seat, Ochoa was in the front passenger seat, and Junior was in the rear driver's seat. All three were wearing seatbelts. Julissa was in a car seat in the rear passenger seat. At one point, they were involved in a motor vehicle accident and Cabrera "blacked out." Cabrera next

remembered standing outside the vehicle, removing Julissa's car seat from the vehicle and trying to remove Julissa from the car seat. Junior and Julissa died as a result of the accident, Cabrera suffered broken clavicles, and Ochoa suffered a spine fracture and a broken rib and jaw. Cabrera identified a video recording that showed the collision. This video was offered into evidence and then published to the trial court. This court reviewed the video, which shows the collision.

¶ 6 Roberto Herrera testified that, after observing the collision between a green car and a white SUV, he looked inside the SUV and saw a man in the driver's seat trying to exit the vehicle. Herrera later saw this man on the curb. He did not see who was driving the SUV.

¶ 7 Terrence Griffin, who also observed the crash, testified that when he looked inside the SUV, he saw "pretty much just arms and legs kind of intertwined" because the passengers "had flipped and they probably didn't have their seat belts on."

¶ 8 Akilah King testified that she was driving with her family, including Griffin in the passenger seat, when she noticed a white SUV approach in the rearview mirror. King observed a man with "straight, short hair" driving the SUV. King noticed the driver again on her right as the SUV passed her vehicle. She explained that she could see the man because Griffin's seat was leaned back. The SUV "flew" through a red light, hit a green Neon, and "flipped several times." After the accident, King observed "a slender gentleman with short hair" sitting by the driver's side of the white SUV and a woman "entangled" inside the vehicle. During cross-examination, King acknowledged that she had not previously stated that she could see the SUV's driver because Griffin was leaned back. She did, however, remember telling a 911 operator that "he was driving." She also used "he" before the grand jury. King only "told a snippet" in her March 2012 interviews and written statement, as she "did not know that this was going to go this far" or

that she "had to be specific about the car, about what happened in detail." During re-direct, King agreed that during her grand jury testimony, she referred to the SUV's driver as "he."

¶ 9 Arturo Salgado testified that he observed a white SUV coming toward the vehicle he was riding in at a "high rate of speed" and that it did not stop or slow down at a red light.[1] The SUV hit a silver car and did not stop. He noticed a Latino individual with a light complexion and short hair in the driver's seat. Shortly thereafter, Arturo heard a "big explosion" and went toward it. When he arrived, he saw the same SUV, which appeared to have flipped over, and a green Dodge Neon "wrapped around a pole." He also saw a man on the grass. Arturo went to a police officer and informed him that the man on the grass had been driving the SUV. He later viewed a photographic array containing defendant's picture, but identified someone else. During cross-examination, Arturo agreed that he testified before the grand jury on April 17, 2012. Defense counsel then asked whether he testified that he "saw the same vehicle and the driver of that vehicle because I took a glance when he passed," and Arturo agreed that he did.

¶ 10 Melissa Reyes testified that when she arrived at the scene of the crash, she saw a man sitting behind the wheel of a white SUV. The man then tried to exit the SUV. She later noticed the man sitting on the ground.

¶ 11 Juan Salgado testified through a Spanish interpreter that, as he approached the damaged vehicles, he saw a man trying to exit the driver's side of a SUV. During cross-examination, Juan agreed that he "never saw who was driving that white SUV." Juan spoke to representatives from the Office of the Cook County Public Defender on July 9, 2013, but denied telling them that he did not see anyone exit the truck; rather, he said "[n]ot outside *** they were at the window." At

[1] As Arturo Salgado shares a last name with fellow witness Juan Salgado, we will refer to each man by his first name.

the time of trial, he had a pending license suspension case. During re-direct, Juan testified that the State had not offered him a deal in order to secure his testimony.

¶ 12 Michelle Rodriguez, the owner of the SUV, testified that, after she picked defendant up at his house, she drove them to Target, to obtain his paycheck, and then to Walgreens. Defendant drove when they left Walgreens as Rodriguez was tired and did not feel well. She was seated in the front passenger seat. At one point, defendant began to drive faster and Rodriguez took off her seatbelt to check the speedometer. She "guess[ed]" that she hit the windshield when defendant "crashed" the SUV. She remembered waking up in the back of the SUV. After she was removed from the SUV, she noticed defendant on the curb. Rodriguez denied doing any drugs on the day of the accident. She did not see defendant taking any drugs. She later spoke to detectives. Defendant's hair was short that day, and Rodriguez was wearing her long hair down at the time of the crash.

¶ 13 During cross-examination, Rodriguez testified that her "drug of choice" was PCP, and that she been addicted to PCP since 2010. She never drove when she was high. She did not use PCP the day of the accident and was not high. Rodriguez denied stating in an "intake interview" on October 7, 2014, that she had used drugs while putting herself and others in danger, as in driving. She picked defendant up around 5:30 p.m. on March 24, 2012, after calling him to ask for money. She remembered telling a police officer at the hospital that she picked defendant up at 4:30 p.m. She denied that their "next stop" after Walgreens was to buy PCP. She denied stating in an interview at Haymarket Center in December 2014 that she "was getting high with a friend in a car and killed two kids."

¶ 14 Rodriguez recalled telling a police officer that defendant drove "the whole time" but denied telling emergency medical technicians that she was in the rear passenger seat the entire time. She also denied telling a police officer on March 26, 2012, that "[w]e left and we started driving." Rather, she stated that defendant was driving. She had observed defendant under the influence of drugs and denied telling police officers the opposite. On October 5, 2012, Rodriguez was arrested for theft and had PCP on her. She went to "drug school" and the case was dismissed. She did not recall being arrested for theft on December 24, 2012, a plea offer of "theft school," or that case's dismissal. On February 19, 2014, she was arrested for possession of a stolen motor vehicle, but was not indicted for that offense.

¶ 15 During re-direct, Rodriguez agreed that she said that "we" left and "we" started driving in an interview, but that she and defendant were not both driving at the same time. During the interview at the hospital, she stated that she picked defendant up "around 4:30 or so," and that they went to Target. She told the police on March 24, 2012, that defendant was driving the SUV when it crashed and testified to that fact before the grand jury in April 2012.

¶ 16 The testimony of Chicago Fire Department emergency medical technician Larry Sindelar and paramedic Brian Nanak established that, when emergency personnel arrived, defendant was sitting on the ground approximately 15 to 20 feet away from the driver's side of the SUV. Defendant, who had a bloody nose and face, was transported to a hospital accompanied by a police officer. Rodriguez was removed from the rear passenger seat of the SUV.

¶ 17 Chicago Police Officer Kenneth Hiatt testified that, when he arrived at the scene, he observed a woman standing next to a car seat containing a "lifeless" baby. During cross-examination, Hiatt testified that he arrested defendant for, *inter alia*, driving under the influence

and for being the driver of a vehicle involved in a crash. He was told by witnesses at the accident scene that defendant was the driver, but did not remember who told him that. Hiatt agreed that the arrest report he authored indicated that he did not take any statements at the scene. However, Hiatt testified that other officers collected information from witnesses which he put in the report, and that he did not "recall the details" as the accident was three years prior.

¶ 18 Nurse Christina Ong testified that when she asked defendant why he was being admitted to the hospital, defendant answered, "I was driving and had a car accident." During cross-examination, Ong testified that she received information that defendant was the driver from another nurse and would have learned that defendant was believed to be under the influence of drugs from the report compiled in the emergency room. Ong knew that defendant was in police custody because police arrived with him. When she asked defendant whether he smoked or took street drugs, he answered no. The emergency room report also indicated that defendant did not remember the accident and admitted to the use of PCP.

¶ 19 Testimony from a forensic scientist established that tests on the "DUI kit" taken from defendant revealed the presence of PCP, morphine, codeine, diazepam, and nordiazepam in his urine and PCP in his blood. Testimony from other forensic scientists indicated that both defendant and Rodriguez's DNA were found on the SUV's driver's side airbag.

¶ 20 At the close of the State's case, the defense made a motion for a directed finding, which the trial court denied.

¶ 21 The defense then presented the testimony of Chicago Fire Department paramedic officer James Gray, who testified that when he treated Rodriguez on March 24, 2012, she informed him that she was a rear seat passenger. During cross-examination, Gray agreed that his question to

Rodriguez was not "specific" as to where she was in the car at the time of the crash as opposed to her location when she was extricated from the vehicle. When Rodriguez was extricated from the rear of the vehicle, he noticed that Rodriguez's hair was long and flowing on the day of the crash.

¶ 22 Chicago police officer Roman Czygyn testified that he interviewed Arturo Salgado on March 25, 2012, and that Arturo stated that the driver of the SUV had "slicked back hair" rather than short hair. During cross-examination, Czygyn agreed that Arturo stated that " 'The guy I saw driving at 43rd was the same guy when [*sic*] was seated in the grass after the 45th Street crash. I can identify him.' "

¶ 23 Czygyn also testified on direct examination that when he spoke to Michelle Rodriguez on March 26, 2012, she stated " 'We left and we started driving.' " Rodriguez further stated that she had never seen defendant under the influence of drugs. During cross-examination, Czygyn agreed that Rodriguez also stated " 'He kept on going, driving faster and faster,' " and " 'He was pressing the gas pedal hard. He never tried to hit the brakes.' "

¶ 24 Manuel Barocio, who was in jail at the time of trial, testified that he had a prior conviction for aggravated unlawful use of a weapon and that he knew both defendant and Rodriguez. Barocio and Rodriguez had previously used PCP together and he had observed her drive after using PCP. In the summer of 2013, he "randomly bumped" into Rodriguez. When he entered her car, she was "intoxicated on PCP" and "emotional." Rodriguez told him that she felt "bad" because defendant was "in jail for something that he didn't commit, and she was the one driving that day the accident occurred." In November 2015, he saw defendant on his way to court

from jail, and told defendant what Rodriguez said. Barocio explained that he did not want to see "an innocent man get sent to jail for something he didn't do."

¶ 25 During cross-examination, Barocio testified that he did not think that he told assistant state's attorneys (ASAs) that he was better friends with defendant than Rodriguez. When he entered Rodriguez's car, they went to buy PCP. However, he did not use PCP that day; he went with her because she was a "good friend" and he liked to be around her. He did not remember what they spoke about before Rodriguez stated that she felt bad defendant was in jail or what she said "after that." Barocio and defendant were both members of the Latin Kings gang and he had known defendant for eight years. He knew that defendant and Rodriguez were friends, but he did not remember the three of them "hanging out" together. He also knew that defendant was in the vehicle that caused the crash and that defendant had been arrested, but he did not know the reason for the arrest.

¶ 26 Barocio acknowledged that he did not tell anyone what Rodriguez told him in 2013 until he saw defendant in 2015. When he did see defendant, after they greeted each other, he told defendant that Rodriguez "admitted to the crime." After he told defendant what Rodriguez said, defendant spoke about the case. Barocio could not remember whether defendant stated that he was not driving the car and Rodriguez was. However, he then remembered defendant said Rodriguez was driving. Barocio agreed that he told ASAs on January 5, 2016, that defendant stated "we were driving and we were both f*** up" and that after defendant told him about the trial, he told defendant what Rodriguez said. He also agreed that he said he had known defendant longer than Rodriguez and was better friends with defendant. During re-direct, Barocio testified

that Rodriguez was affiliated with the Latin Kings and that he did not report what Rodriguez told him because he did not want her to get into trouble.

¶ 27 Christene Narikkattu testified that, in December 2014, she was a therapy extern at Haymarket Center. She identified a "Psychological Services Screening Form" that she filled out for Rodriguez. Narikkattu did not remember Rodriguez stating that "in 2012 she was getting high with a friend in a car and killed two kids" but agreed that this was what the document stated.

¶ 28 Defendant testified that around 4 p.m. on March 24, 2012, he was at a "temp agency" trying to pick up his paycheck when he received a phone call from Rodriguez, someone he knew from the "neighborhood." Rodriguez then arrived in her vehicle. After defendant cashed his check, Rodriguez drove them to a T-Mobile store, a Walgreens, a Target, a gas station, and to a location where she purchased PCP. When Rodriguez got back in the driver's seat, she handed defendant two packages of PCP and "rolling papers," and asked him to "roll it." She began to drive defendant home. When the "stick" was ready, Rodriguez lit it. They "passed it back and forth," and were "high" when they reached defendant's house. Defendant exited the vehicle, but Rodriguez told him to get back in as he had the other stick. He complied, and she began to drive him to a family gathering. As she drove, they smoked the second stick of PCP. Defendant felt like he was in a "dream," put on his headphones, and listened to music. He did not recall the accident or how he exited Rodriguez's car, but did recall "laying [*sic*] down in the grass." Neither defendant nor Rodriguez was wearing a seat belt. He denied telling the nurse who treated him at a hospital that he drove the SUV and caused an accident.

¶ 29 During cross-examination, defendant testified that, in 2012, he and Rodriguez would meet each weekday on her lunch break and get high. Defendant worked the night shift three

times a week at a chocolate factory so Rodriguez would call to wake him up, pick him up and they would get high. She also came by at 5:05 p.m. every weekday night. Rodriguez always purchased the PCP they used and, as a "gentleman," defendant always let her light the stick. He admitted that he lit the second stick the day of the accident as Rodriguez was driving. He did not remember the accident and was not paying attention to how Rodriguez was driving because he was "messed up." Defendant was a Latin King from 1989 until 1996, and although he still socialized with gang members, he no longer yelled gang slogans or flashed gang signs. Defendant "guess[ed]" one could say that Barocio was lying when he said that defendant was a Latin King. He denied being on the street flashing gang signs and yelling on the evening of September 1, 2009, but admitted "that's what they say happened." The morphine in his system at time of the accident was from a few days earlier but he did not know where the codeine came from, as he had ingested something that was supposed to be heroin.

¶ 30 In rebuttal, Chicago police officer Anthony Ceja testified that, on the evening of September 1, 2009, he observed defendant on the side of the street "shouting gang slogans and making hand gestures of the Latin [K]ing street gang." During the subsequent field interview, defendant said "why you f*** with me. I am an old school king." Although defendant was arrested, the case was later dismissed.

¶ 31 When making its findings, the court noted that it was undisputed that the SUV (1) hit the Dodge resulting in the deaths of two children and injury to two adults, (2) was traveling "at a high rate of speed and erratically" immediately prior to the crash, and (3) contained defendant and Rodriguez at the time of the crash. The court concluded that the question was whether the State established beyond a reasonable doubt that defendant was the driver of the SUV at the time

of the crash. The court had "problems with the credibility of [Barocio's] testimony" and found "it hard to believe" that he was "such good friends" with defendant but did not tell anyone about his conversation with Rodriguez until 2015. The court also found that defendant remembered "in detail" the day of the collision except "immediately" prior to the collision because "he was so high" and that his "memory does not return until after the collision."

¶ 32 The court noted that the defense presented testimony about Rodriguez's screening at Haymarket in which she stated she was "getting high with a friend in the car, and killed two kids," but that Rodriguez testified that defendant was driving at the time of the collision and Nurse Ong testified that defendant said he was driving and was in a car accident. Additionally, Arturo and King both testified that a man was driving the SUV immediately prior to the collision, and Herrera, Reyes, and Juan observed a man in the driver's seat of the SUV immediately following the collision. The court concluded that the testimony of defendant and Barocio was incredible and found defendant guilty of all counts.

¶ 33 At sentencing, the trial court merged certain counts and sentenced defendant to two 26-year prison terms for aggravated DUI causing death, two 10-year prison terms for aggravated DUI causing bodily harm, and one 4-year prison term for aggravated DUI without a valid driver's license. All sentences were to be served concurrently.

¶ 34 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt when there was "seriously conflicting evidence" as to who was driving the SUV at the time of the collision. He notes that the case was "largely a credibility contest" between two admitted drug addicts, that is, himself and Rodriguez. He also argues that the

identification testimony of Arturo and King is "problematic" when they only saw the SUV's driver briefly because the vehicle was driving so fast.

¶ 35 When a defendant challenges his conviction based upon the sufficiency of the evidence presented against him, we must ask 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. Brown*, 2013 IL 114196, ¶ 48. All reasonable inferences from the record must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. It is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Brown*, 2013 IL 114196, ¶ 48. 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. *Id*. A defendant's conviction will not be overturned unless the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of his guilt. *Id.*

¶ 36 To prove defendant guilty of aggravated DUI, as charged in this case, the State must demonstrate that defendant was in physical control of a motor vehicle while under the influence of drugs. See 625 ILCS 5/11-501(a) (West 2012). A person commits reckless homicide when "his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual and he performs them recklessly" and "the cause of death consists of the driving of a motor vehicle." See 720 ILCS 5/9-3(a) (West 2012). Here, defendant challenges whether the State established beyond a reasonable doubt that he was in physical control of the SUV at the time of the collision.

¶ 37 After viewing the 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 in physical control of the SUV at the time of the collision. Here, Rodriguez testified that defendant was driving at the time of the collision and Nurse Ong testified that defendant stated that he "was driving and had a car accident." King and Arturo both testified that a man, with short hair, was driving the SUV immediately prior to the collision. Rodriguez's hair was long at the time of the crash. Moreover, Herrera and Reyes testified that they saw a man in the driver's seat of the SUV immediately after the collision, and Juan testified that he saw a man trying to exit from the driver's side of the SUV. Although defendant testified that he was not driving, and Barocio testified that Rodriguez told him she was driving, the trial court found their testimony incredible, noting in pertinent part that it was "hard to believe" that Barocio would not tell anyone what Rodriguez told him for several years even though he and defendant were friends and he knew defendant had been arrested. Given this evidence, we cannot say that no rational trier of fact could have found that defendant was driving the SUV at the time of the accident. *Brown*, 2013 IL 114196, ¶ 48.

¶ 38 Defendant, however, contends that Rodriguez is not worthy of belief because of her self-admitted drug use, and that the identifications of Arturo and King are "problematic" because they only saw the driver of the SUV briefly due to the speed at which the SUV was traveling.

¶ 39 Initially, we note that Rodriguez and defendant both admitted that they were drug users and, therefore, the trial court was able to consider this fact when weighing their credibility. Drug use does not make a witness's testimony inherently unbelievable. See *People v. Larry*, 30 Ill. 2d 533, 536 (1964). Our supreme court has found that a "trier of fact is best equipped to judge the

credibility of witnesses, and due consideration must be given to the fact that it was the trial court *** that saw and heard the witnesses." *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). In the case at bar, the trial court found Rodriguez credible and defendant incredible, as evidenced by its finding. See *People v. Armstrong*, 183 Ill. 2d 130, 146-47 (1998) (holding that the unreliability of testimony by narcotics addicts is a function for the jury to determine). This court will not substitute its judgment for that of the trier of fact on this issue. See *Brown*, 2013 IL 114196, ¶ 48.

¶ 40 Moreover, contrary to defendant's argument, we cannot say that the identification of defendant by Arturo and King was so improbable or unsatisfactory that a reasonable doubt exists as to defendant's guilt.

¶ 41 It is well settled that the testimony of one identification witness, if positive and credible, is sufficient to sustain a conviction. *People v. Herron*, 2012 IL App (1st) 090663, ¶ 15; *People v. Slim*, 127 Ill. 2d 302, 307 (1989). When assessing identification testimony, we rely upon the factors set forth in *Neil v. Biggers*, 409 U.S. 188 (1972). "[T]he factors to be considered in evaluating the likelihood of misidentification include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation." *Id*. at 199-200.

¶ 42 When considering the *Biggers* factors in relation to Arturo and King's testimony that a man was driving the SUV immediately prior to the accident, that is, the identification of defendant as the driver of the SUV, we conclude that these factors weigh in the State's favor.

¶ 43 First, the record demonstrates that both witnesses had the opportunity to view the driver of the SUV immediately prior to the crash. King testified that she observed a white SUV

approach in rearview mirror and that a man with "straight, short hair was driving." She noticed the driver again as the SUV passed her vehicle on the right. She explained that she was able to see the driver of the SUV because the passenger seat in her vehicle was leaned back. Arturo testified that he observed a white SUV driving at a high rate of speed toward his vehicle and that a Latino with short hair was driving. We are not persuaded by defendant's argument that the facts that SUV was traveling at a high rate of speed or that the witnesses had only a "glimpse" of the SUV's driver were fatal to the witnesses' identification of the driver as male. See *People v. Barnes*, 364 Ill. App. 3d 888, 894 (2006) (quoting *People v. Parks*, 50 Ill. App. 3d 929, 930 (1977) ("an encounter as abbreviated as 'five to ten seconds' *** [is] sufficient to support a conviction")). Thus, the first *Biggers* factor weighs in favor of the witnesses' identification that defendant was driving the SUV immediately prior to the crash.

¶ 44 The second factor, the degree of attention of the witnesses, also weighs in favor of a reliable identification. Arturo testified that he observed the white SUV coming toward the vehicle he was in at a "high rate of speed," and King testified that she watched the SUV approach in her rearview mirror. Both were paying attention, presumably due to the SUV's speed, as it approached their vehicles. In fact, King testified that, the SUV was approaching her vehicle at a high rate of speed and that she continued to watch it in her rearview mirror.

¶ 45 Third, the accuracy of a witness's prior description of the offender also supports the reliability of the identification of a male driver of the SUV. The record reveals that when Arturo arrived at the collision, he noticed a man on the grass. He then went to a police officer and stated to him that the man on the grass had been driving the SUV. King testified that, when she called 911, she used the pronoun "he" to describe the driver. Each witness indicated that the SUV's

driver was male, and "a witness'[s] positive identification can be sufficient even though the witness gives only a general description based on the total impression the accused's appearance made." *Slim*, 127 Ill. 2d at 309.

¶ 46 Finally, the last two *Biggers* factors, the level of certainty demonstrated by the witness at the identification confrontation and the length of time between the crime and the identification confrontation, further support the reliability of the identification of the SUV's driver as male. The record reveals that Arturo approached a police officer at the crash site, before defendant was removed by an ambulance, and told him that the man on the grass had been driving the SUV. King called 911 at the scene of the crash and indicated that "he was driving." Thus, both witnesses identified the driver as male immediately after the crash. This court has found that significantly greater lengths of time have not rendered identifications as unreliable. See *People v. Malone*, 2012 IL App (1st) 110517, ¶ 36 (16-month delay between crime and positive identification). Additionally, both witnesses testified before the grand jury and at trial that the driver of the SUV was male. See *People v. Magee*, 374 Ill. App. 3d 1024, 1032-33 (2007) (a witness's identification was reliable when, in pertinent part, it was made without hesitation). Accordingly, we cannot say that either Arturo or King's identification of the driver of the SUV as male was so unreliable that there exists a reasonable doubt as to defendant's guilt. *Brown*, 2013 IL 114196, ¶ 48. We therefore affirm defendant's convictions.

¶ 47 For the aforementioned reasons, we affirm the judgment of the circuit court of Cook County.

¶ 48 Affirmed.