

2019 IL App (1st) 170369-U
Nos. 1-17-0369 and 17-0370 consolidated
Order filed July 26, 2019

Sixth Division

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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.)	Nos. 15 CR 19345
)	15 CR 19346
)	
JAVONTE WILLIAMS,)	Honorable
)	Paula M. Daleo,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm defendant's convictions for attempt vehicular hijacking, aggravated robbery, and attempt aggravated robbery over his contentions that the State failed to prove him guilty beyond a reasonable doubt.
- ¶ 2 Following a consolidated bench trial, defendant Javonte Williams was found guilty of attempt vehicular hijacking in case number 15 CR 19345, and aggravated robbery and attempt aggravated robbery in case number 15 CR 19346. He was sentenced to concurrent terms of four

years for attempt vehicular hijacking, four years for aggravated robbery, and three years for attempt aggravated robbery, with a boot camp recommendation. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 Defendant, along with codefendant Dashon Wright¹, was charged by indictment with attempt vehicular hijacking (720 ILCS 5/8-4 and 720 ILCS 5/18-3(a) (West 2014)) in case number 15 CR 19345. Both codefendants were also charged with aggravated robbery (720 ILCS 5/18-1 (b)(1) (West 2014)) and attempt aggravated robbery (720 ILCS 5/8-4/18-1(b)(1) (West 2014)) in case number 15 CR 19346. Before trial, the State moved to consolidate the two cases and defendant waived his right to a jury trial. The cases proceeded to a bench trial.

¶ 4 At trial, Jacqueline Ulloa testified that on November 1, 2015 at approximately 12:45 a.m., she returned home after an evening out with a friend. Ulloa drove down her alley and was backing her Honda CR-V into her two-car garage located in the 1900 block of South 51st Street in Cicero. The light was on inside the garage. As Ulloa pulled her car out of the garage to straighten it, she saw two men walking southbound down the alley. Ulloa backed her car into the garage to allow the men to pass. As she was backing into the garage, the two men ran inside her garage. One of the men stood in front of her car and the second man stood next to her driver's side window. Ulloa testified that the height of her CR-V enabled her to see the face of the man standing next to her window. She made note of his hair and what he was wearing. She explained that she did so, "in case, you know, I was able to flee and like call the cops so I could identify them." Ulloa saw that the man next to her window was wearing a black "track suit" with a white zipper and had "chin length" dreadlocks with "light-colored like bleached tips on the bottom."

¹ Codefendant Dashon Wright pleaded guilty in both cases and is not a party to this appeal.

Ulloa identified defendant in court as the man standing next to her car window. She testified that, during the encounter, defendant's face was about a foot away from her.

¶ 5 As Ulloa was seated behind the steering wheel, defendant pulled out a gun and pointed it against the glass. Defendant banged on the glass and told her to get out of the car. Ulloa noticed that the gun was pointed at her. She looked toward the front of her car and saw that Wright started "shifting" toward the driver's side of her car. Ulloa placed the car into drive and "pushed the gas pedal." She pulled out of her garage and drove northbound down the alley. As Ulloa was pulling out of her garage she heard a "banging" on her car and thought defendant and Wright had thrown a rock. She saw defendant and Wright in her rearview mirror running out of her garage and heading southbound down the alley.

¶ 6 Ulloa drove to a municipal park and called the police. She eventually saw a police car and flagged it down. She told the officer what happened and gave the officer a description of the offenders. Ulloa went home and, about two or three minutes later, received a call from the police. She went with an officer to 19th Street and Cicero Avenue where she identified defendant as the person with the gun in her garage. Defendant was wearing the same black track suit with the white zipper. She also identified Wright who was standing with a police officer outside a carwash. In court, Ulloa identified defendant from a photograph as the person with the gun in her garage on November 1, 2015.

¶ 7 On cross-examination, Ulloa testified that when she drove her car into the alley, she did not see defendant or co-defendant. She acknowledged that the incident in the garage occurred within a minute's time but "seemed like an eternity." Neither defendant nor Wright was wearing

a hood during the encounter. Ulloa identified defendant approximately 20 minutes after she saw him in her garage and about four blocks from her home.

¶ 8 As to case 15 CR 19346, Aniceto Rodriguez testified that on November 1, 2015, in the early morning, he went to pick up his son, also named Aniceto, from a friend's house at 4900 West 19th Street. Rodriguez took his 23-year-old son Carlos along with him. Rodriguez explained that Carlos suffers from autism and is unable to speak or communicate to strangers. Rodriguez and Carlos picked up Aniceto about 1 a.m. and the three began walking back toward their home. As they walked on 19th Street toward Cicero, Rodriguez saw a young man approaching him. The man was holding a gun and "wearing black with a—something white, white stripe." He explained the man with the gun had a black jacket with something white on the sleeve. The man pointed the gun at Rodriguez and his two sons and demanded their wallets. Another man came up to them and started collecting money from Rodriguez and his sons. Rodriguez testified it was dark outside. He identified the person collecting money as having long hair "with a braiding thing" and the man with the gun was wearing a "hoodie."

¶ 9 Rodriguez and Aniceto turned over their money to defendant while Carlos did not respond. Wright demanded Carlos give his money to defendant or he would shoot him in the leg. Rodriguez told defendant "[P]lease please. Tell your friend not to shoot my—not to shoot my son. My son is sick. He don't understand." Defendant responded "oh is he cool, is he cool?" Rodriguez replied, "yeah he's cool." Defendant and Wright took Rodriguez and Aniceto's money and began walking toward Cicero. While defendant and Wright were on the corner of 19th and Cicero, Rodriguez flagged down a police car and told the police officer that he and his sons "had just been robbed by two guys over there." Rodriguez saw the police officer drive

slowly behind defendant and Wright. After a few moments, Wright started running with the police officer in pursuit.

¶ 10 During the pursuit, Rodriguez noticed that defendant was trying to “blend” with the other people on the street and started walking toward Cermak. A police officer went after defendant but stopped the “wrong guy.” Rodriguez then directed the officer to defendant. After the police officer detained defendant, Rodriguez took his two sons back home. Within about five minutes, he returned to identify the men. Wright was with police officers by “Ducky’s Car Wash” and defendant was in a police car. In court, Rodriguez was shown two photographs and he identified the photo of defendant as the person the officer stopped, and the person who took his money. Rodriguez identified the photo of Wright as the person who had the gun and the person with the officers at the car wash. Rodriguez also identified a photo of the gun that co-defendant was pointing at him and his sons. Rodriguez was not able to identify defendant in court.

¶ 11 On cross-examination, Rodriguez described one of the men as wearing a jacket with a white logo of “North Pole or South Pole” on the chest and on the pants. He remembered that defendant was wearing a brown jacket and brown or gold sweater, but had nothing covering his head. Defendant also wore “braids” and had white in his hair. After being robbed, Rodriguez followed his assailants at a distance of about twenty feet. He did not see either the defendant or Wright dispose of a gun. He saw both defendant and Wright start walking south on Cicero Avenue, but Wright turned and started to run north towards the car wash. Rodriguez did not tell the police that co-defendant had a white stripe on his jacket.

¶ 12 On redirect examination, Rodriguez was shown the photo of defendant and pointed out the “white tips and braids.” On re-cross examination, he testified Wright had the black jacket

with white in it and he identified defendant by the white in his hair and his brown jacket. On re-direct examination, Rodriguez testified that when he saw defendant in the police car, he recognized his face, hair and jacket, and that is the same person as he identified in the photograph.

¶ 13 Cicero police officer Marcelino Soto testified that on November 1, 2015, at approximately 1 a.m., he was on duty and in the vicinity of Cermak Road and Cicero Avenue. There, he monitored a call of a man with a gun. Soto drove to 19th and Cicero and was flagged down by Rodriguez, who told him that he had just been “stuck up” at gunpoint. Rodriguez told Soto that one of the men that robbed him had “dreads or curly hair, long curly hair.” Soto stopped a man on the block, but Rodriguez informed him that was the “wrong person” and pointed to defendant. Soto went further down the block and stopped defendant. Soto identified defendant in court as the person he stopped on November 1, 2015. Soto testified that, later that morning, Rodriguez identified defendant near the scene. A short time later, a woman arrived on the scene and identified defendant.

¶ 14 On cross-examination, Soto testified that defendant did not try to run when he went after him. After he detained defendant, Rodriguez arrived about two minutes later. The woman arrived in a police car and Soto was told over the radio that she identified defendant. Soto did not see the woman make the identification.

¶ 15 Cicero police officer Edgar Lara testified he responded to a call of a man with a gun and proceeded to 19th Street and 51st Avenue. There, he saw two officers and Ulloa. Lara then drove to 19th Street and observed as Rodriguez identified defendant. He testified Rodriguez was about ten feet away from defendant when he made his identification. Lara remembered that defendant

had “dreads with coloring.” He identified defendant in court and testified that he appeared different in court because he no longer had “dreads” and there was no coloring in his hair. On cross-examination, Lara acknowledged that while defendant’s hair was different in court, his face had not changed.

¶ 16 Cicero police officer Sanchez testified that he searched the area near 19th Street and Cicero Avenue. At the mouth of an alley, just west of Cicero Avenue and 19th Street, he found a black BB gun in a grassy area. Sanchez identified the BB gun in court. Sanchez did not know if the gun was tested for fingerprints. The State rested.

¶ 17 Defendant testified that on October 31, 2015, he was with his brother in Cicero. He left his brother’s house and began walking toward the Pink Line, heading toward a liquor store. Along the way, the police stopped him, punched him in the face, and threw him into a police car. Defendant testified he never saw Ulloa or Rodriguez and did not rob anyone. On November 1, 2015, defendant wore his hair in dreadlocks that were dyed on the tips.

¶ 18 On cross-examination, defendant testified that he withdrew \$40 from his debit card before he left home. He was going to the liquor store because his brother was a minor. Defendant was shown a photo and he identified himself in the photo. On redirect examination, defendant testified that he spent two dollars on “loose squares” and found his way to his brother’s house using “google maps and a GPS.” Defendant used a pre-paid Ventra card to get on the train.

¶ 19 In finding defendant guilty in case number 15 CR 19345, the court recounted in great detail that Ulloa had “good lighting conditions in the garage” and that “she had sufficient opportunity to view this [defendant], to view what appeared to be a handgun.” The court noted that she was threatened with the use of force and that defendant verbally commanded her to get

out of the car in anticipation of taking the vehicle. The court found “there was a substantial step taken by the defendant and his codefendant to take the vehicle from her” and found defendant guilty of attempted vehicular hijacking.

¶ 20 In addressing the charges in case number 15 CR 19346, the court stated regarding Rodriguez: “when it came time to identifying the person that he saw on the night in question, he clearly identified in court here the photographs taken of defendant.” The court noted that although Rodriguez could not make an in-court identification, that did not “destroy any identification he made that night.” The court further addressed Rodriguez’s identification of defendant at the scene:

“[A]t some point he pointed out to another police officer that this defendant was walking down the street, and when the police officer stopped one individual or they were within a short distance of each other, Mr. Rodriguez said no, that’s not him. It is the other guy down there. I think this makes his identification even stronger. He did not misidentify the first person.”

¶ 21 The court found defendant guilty of the aggravated robbery of Rodriguez and attempt aggravated robbery of Carlos Rodriguez. Defendant filed a motion for new trial, which was denied.

¶ 22 In case number 15 CR 19345, the court sentenced defendant to four years’ imprisonment for the attempt vehicular hijacking. In case number 15 CR 19346, the court sentenced defendant to four years for the aggravated robbery and three years for the attempt aggravated robbery, with all sentences to be served concurrently. The court also recommended defendant for boot camp.

¶ 23 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt of all three offenses. The standard of review on a challenge to the sufficiency of the evidence is 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. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases regardless whether the evidence is direct or circumstantial. *People v. Herring*, 324 Ill. App. 3d 458, 460 (2001); *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson*, 2013 IL App (1st) 102332 ¶ 27; *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not the reviewing court's duty to retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). A reviewing court will only reverse a criminal conviction when the evidence is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8; *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 24 In case 15 CR 19345, defendant was convicted of attempt vehicular hijacking. To sustain a conviction for attempt vehicular hijacking, the State must first show attempt in that, with the intent to commit a specific offense, a person does any act that constitutes a substantial step toward the commission of that offense. 720 ILCS 5/8-4(a) (West 2014). A person commits vehicular hijacking when he or she knowingly takes a motor vehicle from the person or the

immediate presence of another by the use of force or by threatening the imminent use of force. 720 ILCS 5/18-3(a) (West 2014).

¶ 25 Here, defendant solely argues that the State failed to prove that he specifically intended to take Ulloa's car. "Absent direct evidence, intent must be proven circumstantially, and a conviction may be sustained on circumstantial evidence alone." *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 10 citing *People v. Johnson*, 28 Ill. 2d 441, 443 (1963). "Intent is usually proven through circumstantial evidence, that is, inferences based upon defendant's conduct." *Murphy*, at ¶ 10 citing *People v. Ybarra*, 156 Ill. App. 3d 996, 1002-03 (1987). "The intent to commit a criminal offense need not be expressed, but may be inferred from the conduct of the defendant and the surrounding circumstances." *People v. Terrell*, 99 Ill. 2d 427, 431-32 (1984).

¶ 26 After reviewing the evidence in the light most favorable to the State, we find that a rational trier of fact could have concluded that defendant intended to take Ulloa's car. The record shows that at about 1 a.m., defendant, while armed, entered Ulloa's garage as she was parking her car. Defendant stood beside Ulloa's driver's side door while Wright stood in front of her car. Defendant pointed the gun at Ulloa, banged on the glass, and told her to get out of the car. After he did, Wright started "shifting" towards the driver's side of the car. A reasonable trier of fact could have concluded, based on this evidence and the reasonable inferences therefrom that defendant intended to take Ulloa's car. Consequently, the evidence was sufficient to sustain his conviction for attempt vehicular hijacking. See *People v. Murray*, 194 Ill. App. 3d 653, 657 (1990) (affirming a conviction for attempt armed robbery because "a specific demand for money by the defendant is not required if the circumstances are sufficient to establish intent to commit a robbery.").

¶ 27 In reaching this conclusion, we note that, in weighing the evidence, a trier of fact is not required to disregard inferences which flow normally from the evidence presented, and seek all possible explanations consistent with innocence and elevate them to reasonable doubt. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of defendant's guilt remains. *Beauchamp*, 241 Ill. 2d, at 8. This is not one of those cases.

¶ 28 Defendant also contends that the State failed to prove him guilty beyond a reasonable doubt of aggravated robbery and attempt aggravated robbery in case 15 CR 19346. In setting forth this argument, defendant does not challenge any of the elements of those offenses. Rather, he argues that he was not the offender because Rodriguez did not identify him in court and he did not have adequate opportunity to view the offender.

¶ 29 After reviewing the evidence in the light most favorable to the State, we find that a rational trier of fact could have concluded that defendant was the offender. The testimony of a single witness, if positive and credible, is sufficient to convict "if the witness was able to view the defendant under conditions permitting a positive identification." *People v Thompson*, 2016 IL App (1st) 133648, ¶ 34; *People v. Petermon*, 2014 IL App (1st) 113536 ¶ 30. When assessing identification testimony, this court relies on the factors set forth in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). These factors include (1) the opportunity the witness had to view the offender 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 level of certainty demonstrated by the witness at the identification confrontation; and (5) the length of time between the crime and the identification confrontation. *People v. White*, 2017 IL App (1st) 142358, ¶ 15.

¶ 30 The *Biggers* factors relating to Rodriguez’s identification of defendant, weigh in the State’s favor. The record demonstrates that Rodriguez had sufficient opportunity to view defendant. The robbery occurred about 1 a.m. in a residential area. Rodriguez initially observed Wright, who was holding a gun, approach him and his sons. Wright demanded Rodriguez’s wallet. Defendant approached Rodriguez and demanded his wallet. When Carlos Rodriguez failed to comply with the order to turn over his wallet, Rodriguez had a conversation with defendant and explained to him that his son was sick and did not understand. Rodriguez handed over his wallet to defendant and defendant removed the money and gave back the wallet. Rodriguez continued to observe defendant and Wright as they walked away.

¶ 31 This court has found that “an encounter as abbreviated as five to ten seconds” is sufficient to support a conviction. *People v. Barnes*, 364 Ill. App. 3d 888, 894 (2006); *People v. Parks*, 50 Ill. App. 3d 929, 933 (1977); see also *People v. Herrett*, 137 Ill. 2d 195, 204 (1990) (sufficient opportunity to view the defendant found where witness testified he observed “the assailant’s face for several seconds when the robber reached down to cover his eyes with duct tape”). Here, Rodriguez had several opportunities to observe defendant over a period of time from the initial first encounter up to defendant being detained by the police. Thus, the first *Biggers* factor weighs in favor of the reliability of Rodriguez’s identification of defendant.

¶ 32 The second factor, Rodriguez’s degree of attention, also weighs in favor of a reliable identification. Rodriguez testified to numerous details about his encounter with defendant that show he exhibited a high degree of attention. He initially observed Wright with a gun demanding money from him and his sons. Rodriguez then saw defendant as he approached and demanded his wallet. Rodriguez gave his wallet to defendant, who took his money and gave back his wallet.

Rodriguez had a conversation with defendant about his son Carlos. Rodriguez was able to observe that defendant was wearing a brown jacket and had a brown or gold sweater on but had nothing covering his head. Rodriguez also saw that defendant wore “braids” and had white in his hair. Rodriguez explained that, after the robbery, defendant tried to “blend” with the other people on the street. He continued to observe defendant, who started walking toward Cermak Road, while Wright went in a separate direction. Accordingly, Rodriguez’s degree of attention weighs in favor of the reliability of his identification.

¶ 33 Rodriguez’s prior description of defendant also weighs in favor of the State. On the date of the robbery, Rodriguez described defendant to a responding officer as having “dreads or curly hair.” Also, Rodriguez watched as the police officer initially stopped the wrong person and directed the officer to defendant.

¶ 34 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 Rodriguez’s identification. The record shows that Rodriguez identified defendant within several minutes of the robbery. Rodriguez watched as the police officer detained defendant, then took his sons home and returned to identify defendant by a police car. We note that significantly longer lengths of time have not rendered identifications unreliable. See *People v. Malone*, 2012 IL App (1st) 110517, ¶ 36 (one year and four month delay between crime and positive identification). The record does not indicate that Rodriguez ever lost sight of defendant from the moment defendant demanded his wallet up to the point where Officer Soto detained him. Although Rodriguez did not identify defendant in court, he did identify a photo of defendant and identified the hairstyle and his face. See *People v.*

Magee, 374 Ill. App. 3d 1024, 1032-33 (2007) (“[t]he presence of discrepancies or omissions in a witness’ description of the accused do not in and of themselves generate a reasonable doubt as long as a positive identification has been made.”). The recovery of the BB gun in the area where the robbery occurred also supports Rodriguez’s version of events.

¶ 35 In sum, after reviewing the *Biggers* factors, we cannot say that Rodriguez’s identification of defendant was so unreliable that there exists a reasonable doubt as to defendant’s guilt. Therefore, we will not disturb the circuit court’s finding that defendant was guilty of aggravated robbery and attempt aggravated robbery.

¶ 36 Defendant nevertheless argues that the *Biggers* factors do not weigh in favor of a reliable identification. He maintains that the circuit court expressed an erroneous belief that Rodriguez “testified there were lighting conditions available to him” when Rodriguez testified that it was dark at the time of the robbery.

¶ 37 Essentially, defendant asks us to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact. This we cannot do. It was the responsibility of the trier of fact to determine Rodriguez’s credibility, the weight to be given to his testimony, and to resolve any inconsistencies and conflicts in the evidence. See *Hutchinson*, 2013 IL App (1st) 102332, ¶ 27; *Ortiz*, 196 Ill. 2d 236, 259 (2001). Moreover, as noted by the trial court in announcing its ruling, the reliability of Rodriguez’s testimony and the circumstances impacting his opportunity to view defendant were fully explored at trial. The court found Rodriguez’s identification credible and reliable. In doing so, the court explained that Rodriguez “at some point he pointed out to another police officer that this defendant was walking down the street, and when the police officer stopped one individual or they were within a short distance of each other, Mr. Rodriguez

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said no, that's not him. It is the other guy down there. I think this makes his identification even stronger. He did not misidentify the first person.” We will not reverse a conviction simply because defendant claims that a witness was not credible. *People v. Evans*, 209 Ill. 2d 194, 211-12 (2004).

¶ 38 We affirm the judgment of the circuit court of Cook County.

¶ 39 Affirmed.