

No. 1-10-1214

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 1057
)	
ANDRE MAMON,)	Honorable
)	Stanley Sacks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held:* Evidence sufficient to sustain defendant's conviction for first degree murder over claim that witness identifications were unreliable; sentence affirmed.

¶ 2 Following a jury trial, defendant Andre Mamon was found guilty of first degree murder, then sentenced to an aggregate term of 52 years' imprisonment. On appeal, he contends that the State failed to prove beyond a reasonable doubt his guilt of that offense or the propriety of the 15-year sentencing enhancement.

¶ 3 The charges in this case arose from a shooting incident on December 5, 2007, which followed an altercation between two groups of individuals at the Marathon gas station at 79th

Street and Crandon Avenue, in Chicago. The victim, Leon Henry, was part of a group which initially included Mashica Lowe, her sister Dominique Jones, Enice Lyons, and Anthony Smith (collectively, the Group). Defendant, aka Dre, was part of a group of individuals which included, among others, Larnell "Grump" Mensah and Myles Swift (collectively, the Assailants). The following testimony, as pertinent to this appeal, was elicited at trial.

¶ 4 Martese Harris testified that about 4 a.m. on December 5, 2007, he was driving eastbound on 79th Street near Crandon Avenue when he observed an argument between some men and women in front of the cashier's booth at the gas station to his left. He drove around the block to see that they were "okay," but because they were still arguing when he came around, he circled the block again. Harris testified that he was not from the area and did not recognize anyone at the gas station, and wanted to make sure that he was safe before attempting to help.

¶ 5 When Harris came back and turned onto Crandon Avenue, he saw two women and a man walking north on the sidewalk about half a block away. Meanwhile, the driver of the car behind him was "riding" his bumper and flashing his bright lights at him. He pulled over to let this car, a black Kia SUV (Kia), pass, then pulled back into the street. The driver of the Kia stopped three to four car lengths ahead of him in the middle of the street, and a passenger jumped out, ran behind the back of the car towards the three individuals on the sidewalk, raised his arm, and started shooting in their direction. The women ran north, screaming, into a yard, and Leon ran back toward 79th Street. The driver then jumped out and began chasing and shooting at Leon. Harris did not see the guns of the driver or the passenger, but did see sparks from the gunfire. The two shooters chased Leon toward 79th Street into a lot next to the building behind the gas station, at which point Harris lost sight of them. He subsequently heard three or four gunshots.

¶ 6 Harris then saw the driver run back to the Kia, get in, and drive up to the passenger, who ran around the front and entered on the passenger's side. As they tried to take off, the tires spun

in the snow, and Harris drove up to get the license plate number of the vehicle. By the time he made it to the Kia, however, the car had regained traction and the driver sped off across 79th Street, running a stop sign in the process. Harris pulled up to Leon's location and asked him if he was okay. Leon, who was kneeling and holding himself up with his hands, responded that he was not. While Harris called the police, Leon crawled toward a building and leaned up against the door, and from where Harris stood on the sidewalk, he was able to see Leon's face. He had never seen Leon before.

¶ 7 Harris noted that the driver was a few inches shorter than the passenger, that both were wearing dark coats and blue jeans, and that the passenger was wearing a black skullcap. He could not tell how many people were in the Kia because the car had tinted windows, and he was unable to see the face of either the driver or the passenger.

¶ 8 On cross-examination, Harris stated that there were streetlights on Crandon Avenue so it was not dark that morning, and that the women ran into someone's yard before the driver got out of the vehicle. He described the driver and passenger as having medium complexions, but stated that he could not make out what "kind" of hair they had. On redirect, Harris testified that both the driver and passenger were black males.

¶ 9 Mashica Lowe, who had two prior felony narcotics convictions, testified that on December 5, 2007, the Group was "out having a good time smoking and drinking." She explained that "smoking" referred to marijuana and cigarettes, and, further, that she had been drinking, but was not "falling down drunk." She testified that Leon, who was an intimate friend of 15 years, was driving the Group in his black Acura, and that about 4 a.m., he pulled into a Marathon gas station near 79th Street and Crandon Avenue where the Kia was parked. Mashica stepped out to purchase two "swishers," *i.e.*, cigars which they emptied to roll marijuana in, and

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Dominique got out to purchase a bottle of water. Leon also got out of the car, which he left running with music playing, and Mashica and Leon started to dance.

¶ 10 As Mashica made her way to the cashier's window to buy the "swishers," someone in the Kia said to her, "These are the type of niggers that ya'll fuck with?" She walked up to the window to buy the "swishers," but by the time she was headed back, the Assailants were fist-fighting with Leon. While Dominique was talking to one of the Assailants, Mashica exhorted Anthony and Enice to help with the fight, and soon everyone, except Dominique, was involved. Mashica testified that among the Assailants, she recognized defendant, Enice's godbrother "Grump," and defendant's brother Swift, and noted that she had seen defendant before when taking Enice over to her godmother's house.

¶ 11 After the fight broke up, someone in the Kia tried to run over them twice, and one of the Assailants took Leon's Acura. The Assailants then got back into their car and drove off, leaving the Group at the gas station. Mashica began exchanging words and physically fighting with Enice, whom she thought should have broken up the fight since the Assailants were "her people." Anthony intervened and slapped Mashica, and she responded by hitting him with a garbage can. Anthony and Enice then left the gas station on foot heading northbound on Crandon Avenue towards 78th Street, and Mashica, Dominique, and Leon remained at the gas station for a minute before walking off in the same direction. Mashica was angry, but did not feel under the influence of alcohol at the time.

¶ 12 As Mashica, Dominique, and Leon proceeded on the sidewalk, the Kia driver pulled the car up 10 to 15 feet in front of them with the driver's side facing their direction, and several individuals, including defendant, jumped out. Defendant, who exited from the driver's side holding a black gun, said to Leon, "Bitch, I got you by yourself." Leon then told the two sisters, "Ya'll run towards 78th, and I will run towards 79th Street." Dominique pulled Mashica away

because she was "stuck and shocked," and as soon as they took their first step, defendant began firing at Leon. Mashica looked back as they were running and saw defendant chasing Leon with the gun.

¶ 13 Mashica kicked in a fence about two houses away, broke into the basement, woke the residents, and asked them to call police. She then ran back outside onto Crandon Avenue to check on Leon. She found him on the ground suffering from bullet wounds, and attended by a police officer and Harris. That same day, Mashica identified defendant as the person who was "fighting and shooting," both in a photo array and in a lineup. She could not remember what the lighting was like when the Kia was stopped in front of them, but testified that the streetlights were on. She also did not recognize the other two individuals who jumped out of the Kia, but noted that one of the passengers had a silver gun.

¶ 14 On cross-examination, Mashica stated that on December 5, 2007, she only knew defendant as Dre, and that he was a friend of Enice's godmother. She also described the two individuals who got out of the Kia on the driver's side as young black men "with black on," but could not describe the one individual who got out on the passenger's side other than recalling that he had a silver gun. On redirect, Mashica testified that she had seen defendant a few times before, but that he was not one of her friends or associates.

¶ 15 Dominique Jones testified that in the early morning hours of December 5, 2007, Leon was driving the Group around in his black Acura and that everyone in the car was drinking, but that she only had about two beers and was not drunk. They pulled into the Marathon gas station at 79th Street and Crandon Avenue about 3 a.m., and she got out of the car to get water for Leon, and her sister got out to get the "blunts." Leon also got out, leaving the doors to the car open with music playing inside, and Mashica and Leon began dancing.

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¶ 16 After Leon went up to the Kia that was parked at the gas station and started dancing, a group of black men in their early 20's jumped out and began fighting with him. Mashica, Enice, and Anthony eventually joined the fight. Dominique attempted to break up the fight but could not do so, and then she and Larnell, one of the individuals who was in the Kia, began urging each other to break it up. Despite their efforts, they could not stop the fight and eventually one of the Assailants got into the Kia and tried running over the Group. About five minutes later, Larnell got into Leon's car and drove off with it, and, a few minutes after that, the Assailants got back into the Kia and also drove off.

¶ 17 Mashica subsequently asked Enice, who is Larnell's godsister, "Why didn't you try to stop it?" A fight then ensued with Mashica hitting Enice, Enice hitting her back, Anthony hitting Mashica, and Mashica throwing a garbage can at him. Thereafter, Anthony and Enice left the gas station, and Dominique, Mashica, and Leon left about five minutes later, walking north on the sidewalk on Crandon Avenue towards 78th Street. Dominique testified that there were streetlights on Crandon Avenue, but that it was a "dark street," and not as bright as 79th Street.

¶ 18 About two minutes later, before they were even halfway down the block, the driver of the Kia pulled the car up on their side of the street with the passenger side facing Leon, who was closest to the curb. Two or three men jumped out, including defendant, who was armed with a gun pointed at Leon, and Leon told the girls to run. Dominique grabbed Mashica's arm and took off with Mashica looking back. After taking a few steps, she heard three or four shots. She continued running toward some houses as her sister, but not her, looked back. They kicked down a gate, ran into someone's house, and told the residents to call the police. She remained in the house for 10 to 15 minutes until police arrived and spoke with her. Dominique identified defendant as the shooter out of a photo array that morning and out of a lineup later that night.

¶ 19 On cross-examination, Dominique stated that she had never seen the person she identified as the shooter prior to that morning, and did not see him at the gas station. She also stated that she was not smoking that morning, but was a little intoxicated from drinking. She noticed that one of the individuals who jumped out of the Kia had braids and described the shooter's clothing as "black," but she could not describe the clothing worn by the others who got out of the car. She told an officer on the scene that one individual was male with dark skin and braids.

¶ 20 On redirect, Dominique testified that she gave only a basic description of the shooter, but that she recognized him in the photo array as the person who had the gun. On re-cross, she stated that the person she picked out as the shooter was dark-skinned.

¶ 21 The State presented additional testimony showing that on December 5, 2007, Chicago police officers recovered the Kia at 8409 South Phillips Avenue and an Acura at 8641 South Essex Avenue. They arrested defendant at 8424 South Kingston Avenue, though a search of that residence was fruitless. The Kia was found two blocks west of the location where defendant was arrested, and the Acura one block west and two blocks south of that spot. Although three latent fingerprints were recovered from inside the Kia, only one was a suitable print, and it was not a match to defendant. The parties also stipulated that the forensic pathologist who examined Leon's body concluded that he died from multiple gunshot wounds, and that the manner of death was a homicide.

¶ 22 Defendant called Chicago police officer Garay who testified that in the early morning hours of December 5, 2007, he received a flash message directing him to a gas station, and followed tracks in the snow northbound to 7817 South Crandon Avenue where he spoke with Dominique. When Dominique told him that she had fled the scene where the call of shots fired had originated, she was taken into custody and placed in the squad car. He did not recall her

giving the name of anyone involved in the shooting, any clothing or physical descriptions, how many people were involved in the shooting, or how many guns she witnessed during the shooting, nor was there any mention of this information in his supplemental report. There was also nothing in the report regarding a fight at the gas station before the shooting.

¶ 23 On cross-examination, Officer Garay stated that he did not ask Dominique to describe the individuals involved in the shooting, to give any names, or to describe any weapons. He also stated that another person was assigned to interview Dominique.

¶ 24 On redirect, Officer Garay testified that as a police officer, it is his job to investigate crime, and that he had a conversation with Dominique regarding what happened. On re-cross, he stated that he was a preliminary investigator whose duties were to ensure the integrity of the scene and maintain contact with the parties involved. He also stated that detectives normally interview event witnesses.

¶ 25 The parties stipulated that Chicago police officer Webb would testify that on the morning of December 5, 2007, he interviewed Dominique and Mashica and prepared a report in connection with the interview.¹ The offenders were not named in the report, and the report does not contain any descriptions of them.

¶ 26 In rebuttal, Chicago police officer Robinson testified that about 4 a.m. on December 5, 2007, he reported to 79th Street and Crandon Avenue in response to a call of shots fired, and interviewed Mashica and Dominique separately in his police car. Mashica told him that Dre was involved in the shooting, gave him a description of his clothing, and told him the area where Dre lived. Mashica and Dominique also separately identified defendant as the shooter from an array of four to six photos.

¹ The stipulation contains the following statement: "The parties stipulate that they were told by this individual that they know of the offenders ***." It is unclear who "they" refers to, and who the "individual" was.

¶ 27 On cross-examination, Officer Robinson stated that four individuals were named in his report as being involved in the shooting, and on redirect, he testified that only defendant was identified as the shooter.

¶ 28 Following deliberations, the jury found defendant guilty of first degree murder. At sentencing, the court stated its belief that, "under the statute," a person accountable for a murder committed with a firearm receives a 15-year sentence enhancement, then sentenced defendant to 37 years' imprisonment plus a 15-year enhancement for a total of 52 years' imprisonment. The court subsequently denied defendant's motion to reconsider his sentence as excessive.

¶ 29 In this appeal from that judgment, defendant first contends that the State failed to prove him guilty of first degree murder beyond a reasonable doubt. He claims that the testimony of the eyewitnesses, who were under the influence of alcohol and drugs when making their observations, was unreliable, and that their observations were contradicted by the "more reliable" testimony of Harris.

¶ 30 In a criminal prosecution, the State has the burden of proving the identity of the offender beyond a reasonable doubt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). The identification by a single witness is sufficient to sustain a conviction if that witness viewed the accused under circumstances permitting a positive identification. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995).

¶ 31 It is the responsibility of the jury, as the trier of fact, to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 32 In this case, the jury clearly found that Mashica and Dominique reliably identified defendant as one of the shooters in finding him guilty of first degree murder. When assessing the reliability of an identification, we consider: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the witness' level of certainty at the identification confrontation; and (5) the length of time between the crime and the identification confrontation. *Lewis*, 165 Ill. 2d at 356.

¶ 33 The record here shows that there were streetlights on Crandon Avenue where Mashica and Dominique observed defendant get out of the Kia. The distance between the two sisters and defendant was also minimal where Mashica testified that the Kia was 10 to 15 feet in front of them, and Dominique testified that the passenger side of the car was facing the curb next to the sidewalk on which they were walking. Furthermore, Mashica had seen defendant a few times before and recognized him as one of the Assailants involved in the fight at the gas station. Considering the lighting conditions, proximity of defendant to the eyewitnesses, and Mashica's familiarity with defendant, we find that there was sufficient opportunity to view the offender to support the reliability of the identifications. *People v. Reed*, 80 Ill. App. 3d 771, 778 (1980).

¶ 34 The record further shows that the attention of Mashica and Dominique was drawn to the Kia as it neared them because they knew it was connected with the individuals who had recently fought with them and tried to run them over at the gas station. At that point, they observed defendant get out with a gun, which Mashica described as "a black gun," and Mashica heard defendant say to Leon, "Bitch, I got you by yourself." As the two sisters began running, they heard gunshots, and Mashica looked back and saw defendant chasing Leon with the gun. These circumstances reflect a high degree of attention by these witnesses, particularly in light of the

sisters' obvious concern for Leon's safety, as well as their own. *People v. Gabriel*, 398 Ill. App. 3d 332, 342 (2010).

¶ 35 With respect to the final three factors, even though Mashica and Dominique gave only general descriptions of the offender, such discrepancies or omissions in a witness' description of the offender do not create a reasonable doubt where, as here, they made a positive identification of defendant based on their view of him at the time and remained consistent with that identification throughout the trial. *Slim*, 127 Ill. 2d at 309. Moreover, both Mashica and Dominique identified defendant as the shooter in a photo array and in a lineup on the day of the shooting, then affirmed their pretrial identifications through their respective testimonies, thus indicating a high level of certainty in the identifications made shortly after the incident and through trial. *People v. Godinez*, 191 Ill. App. 3d 6, 11-12 (1989). We therefore do not find that the identification evidence was so unsatisfactory as to raise a reasonable doubt of defendant's identity as the shooter. *Lewis*, 165 Ill. 2d at 357; *Slim*, 127 Ill. 2d at 315.

¶ 36 Defendant nonetheless compares the case at bar to *People v. Pellegrino*, 30 Ill. 2d 331 (1964). In that case, defendant was convicted of murder based on the testimony of two prostitutes. *Pellegrino*, 30 Ill. 2d at 332-34. One of the prostitutes separately accused two individuals of the fatal beating before finally naming defendant, and the other was in week four of a seven-week period of drunkenness, and, as a result, could not walk five feet without holding onto the wall or recognize a person three feet away from her. *Pellegrino*, 30 Ill. 2d at 334. Under these circumstances, the supreme court found the evidence against defendant so unsatisfactory that it reversed his conviction. *Pellegrino*, 30 Ill. 2d at 334-35.

¶ 37 Defendant, likewise, claims that his conviction must be reversed where the eyewitnesses had been smoking marijuana and drinking alcohol, that their observations were contradicted by the "more reliable evidence" of Harris, and where Mashica is a "two-time convicted felon." We

initially note that the instant case clearly differs from *Pellegrino* in that both Mashica and Dominique consistently identified defendant as the shooter, and that there was testimony from Mashica that she was not feeling under the influence of alcohol, as well as from Dominique that she was neither smoking nor drunk. We also note that the testimony of Harris was largely consistent with the testimonies of Mashica and Dominique regarding the sequence of events and the parties involved.

¶ 38 Moreover, defendant's claims regarding the physical condition of the witnesses are questions related to the credibility of the witnesses and conflicts in the evidence which were the responsibility of the jury, as the trier of fact, to resolve. *Sutherland*, 223 Ill. 2d at 242. After reviewing the record, we find nothing so unreasonable, improbable, or unsatisfactory with the jury's determination on those matters to raise a reasonable doubt of defendant's guilt. *Smith*, 185 Ill. 2d at 542. Accordingly, we find that the evidence was sufficient to establish his identity as the offender beyond a reasonable doubt, and affirm his conviction for first degree murder.

¶ 39 Defendant next challenges the trial court's imposition of a 15-year sentencing enhancement based on his use of a firearm to commit murder. He acknowledges that he did not raise this issue in his motion to reconsider sentence, but claims that the enhanced sentence imposed by the trial court violated the principles of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and asks this court to reduce his sentence to 37 years' imprisonment.

¶ 40 The State responds that defendant waived his *Apprendi* challenge by failing to object at the sentencing hearing, tender an alternative verdict form, or raise the issue in a post-trial motion. The State further claims that the plain error doctrine should not be invoked to salvage his procedural default.

¶ 41 Here, because defendant failed to raise the alleged *Apprendi* violation in his motion to reconsider sentence, as required, the issue is forfeited. *People v. Hillier*, 237 Ill. 2d 539, 544-45

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(2010). Defendant has also forfeited plain error review on appeal by failing to advance any argument on how either of the two prongs of the plain-error doctrine is satisfied. *Hillier*, 237 Ill. 2d at 545-46.

¶ 42 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 43 Affirmed.