

THIRD DIVISION  
November 9, 2011

No. 1-10-0785

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 5572
	)	
FRANK THOMAS,	)	Honorable
	)	Steven J. Goebel,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE MURPHY delivered the judgment of the court.  
Justices Neville and Salone concurred in the judgment.

**ORDER**

- ¶ 1 Held: Where victim of home invasion and residential burglary had clear opportunity to view offender's face and identified defendant via an ID card, photo array and police lineup, evidence was sufficient to establish defendant's guilt; defendant's convictions were affirmed.
- ¶ 2 Following a bench trial, defendant Frank Thomas was convicted of home invasion, armed robbery, residential burglary and aggravated unlawful restraint. Defendant was sentenced to 13 years in prison for each of the first two offenses and 10 years and 5 years for the remaining convictions, respectively, with all of those sentences to be served concurrently. On appeal, defendant contends the State failed to establish his guilt beyond a reasonable doubt because his identification as the offender resulted from two suggestive procedures, the victim gave an incomplete description of the offender, no physical evidence connected him to the offenses, and

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he presented evidence of an alibi. We affirm.

¶ 3 Defendant was charged with several offenses in connection with his entry of the home of Michael Dean at 7245 South Wood Street in Chicago when Dean was present. Before trial, defendant moved to suppress Dean's identification of him as the offender, and that motion was denied.

¶ 4 At trial, Dean testified that at about 10:30 a.m. on January 20, 2007, he was talking to his wife on the phone when he heard a knock at the door. Dean went to the door, where defendant was standing, and defendant asked to use Dean's phone because his car had broken down. Dean told him he could not and closed the door. About five minutes later, Dean left his residence. Defendant was waiting outside the door and struck Dean in the face with his fist as Dean walked outside.

¶ 5 Defendant ordered Dean back in the house at gunpoint, threatening to shoot him. After defendant made a phone call, two men came to the door and defendant told Dean to let them in. Dean tried to leave while letting the men inside, and the men pushed Dean into the basement and followed him.

¶ 6 Defendant and one of the other men returned upstairs while the third man stood at the top of the stairs with the gun, watching Dean. Defendant returned to the basement with a knife and told Dean that "if he didn't find the money, he was going to kill me." Dean testified the knife was five or six inches away from his face when defendant spoke to him. Defendant took Dean's watch, wallet and money from Dean's pocket. As the men continued to search the residence, Dean ran outside and eventually encountered police who investigated the crimes. About 30 minutes later, police showed Dean an Illinois identification card, from which Dean identified defendant as one of the offenders. Dean identified a second ID card as belonging to one of the other men who entered his home.

¶ 7 On February 2, 2007, Dean viewed a police photo array and identified defendant as the person who came to his door. Dean testified he recognized defendant's face. Dean also

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identified defendant in court. Dean said he did not know defendant's name at the time of the crimes. On February 26, 2007, Dean viewed a police lineup and identified defendant.

¶ 8 On cross-examination, Dean said that when he encountered the police near his home, he pointed down the alley in the direction in which the offenders fled from the house. Dean identified a second offender in the photo array in which he identified defendant. Dean was lying on the basement floor when defendant threatened him with a knife but said defendant squatted down next to him and was inches from his face.

¶ 9 On redirect, Dean said he viewed defendant's face for between 5 and 10 seconds when defendant first arrived at the door. Dean looked directly at defendant as defendant made a phone call after entering the residence; however, Dean acknowledged he did not describe defendant's features to police. Dean was later called as a witness in the defense case and denied that the men told him they were searching his home for money. Dean also denied telling detectives that he owed the intruders \$10,000.

¶ 10 Chicago police officer Lucas Sopcak testified that after Dean approached him and his partner, the officers went to Dean's residence to secure it and then "toured the area." Officer Sopcak said they became aware that a car was parked near Dean's home with keys inside it. In searching that vehicle, the officers found two identification cards, one of which was defendant's. Both identification cards were shown to Dean, who identified defendant as the man who held him at gunpoint.

¶ 11 Chicago police detective Michael Filbin testified as to the photo array and physical lineup in which Dean identified defendant. Detective Filbin testified that when defendant was transported from Cook County jail to stand in the lineup, he wore a tan-colored Cook County Department of Corrections (CCDOC) outfit. The detective offered defendant civilian clothes to wear in the lineup, but defendant refused to wear them. Defendant took off the tan outer shirt and stood in the lineup wearing green pants and a white T-shirt he had turned inside out. Detective Filbin said Dean identified defendant "almost immediately" in both the photo array

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and the lineup.

¶ 12 On cross-examination, Detective Filbin stated he did not notice if defendant had a limp and could not recall if Dean identified a suspect as having a limp. The detective stated that a handgun was not recovered.

¶ 13 The defense presented the testimony of Marion Harris, the mother of defendant's child, who provided defendant with an alibi. Harris stated that on January 19, 2007, she and defendant drove to Peoria, where they stayed for three days while visiting a friend, Darnell Payton. Harris also said defendant walked with a limp because he had previously been shot. On cross-examination, Harris acknowledged that while defendant was in jail awaiting trial on these offenses, she visited him 33 times and on some of those visits, they discussed his case. She also admitted that she did not give Payton's name to investigators because she did not know the name until defendant advised her of it prior to trial.

¶ 14 The defense also called Detective Filbin, who said that Dean told him the men who entered his residence were looking for \$10,000 in cash. The detective also stated that a fingerprint analysis of a knife recovered from the crime scene was inconclusive.

¶ 15 At the close of evidence, the trial court stated that this case "comes down to a matter of credibility." The court stated it found Dean's testimony to be credible, noting that Dean "had ample opportunity" to see defendant's face and therefore make an accurate identification of him as the main offender. The court found that Dean's identification was "bolstered" by the ID card found in the vehicle parked nearby. The court further noted that it did not find Harris's testimony credible. The court found defendant guilty of home invasion, armed robbery, residential burglary and aggravated unlawful restraint.

¶ 16 On appeal, defendant contends the State failed to prove his guilt beyond a reasonable doubt. Specifically, he argues that: (1) Dean's identification of him resulted from two suggestive procedures; (2) Dean's description of the offender was vague and did not mention a limp; (3) Dean's testimony was impeached in several respects; (4) no physical evidence connected

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defendant to the offense; and (5) he presented an alibi.

¶ 17 Where a defendant challenges the sufficiency of the evidence to sustain a conviction, the standard of review 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. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This court will only reverse a conviction where the evidence is so unreasonable, improbable or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008).

¶ 18 First, as to defendant's contentions that no physical evidence tied him to the crime, it is well-settled that the credible testimony of a single witness is sufficient to convict, even if it is contradicted by the defendant, provided the witness viewed the accused in circumstances that permitted a positive identification. *Siguenza-Brito*, 235 Ill. 2d at 228; see also *People v. Slim*, 127 Ill. 2d 302, 307 (1989). No evidence was needed to bolster Dean's testimony. See *People v. Rincon*, 387 Ill. App. 3d 708, 723 (2008) (testimony of a complainant requires no corroboration and need not be unequivocal).

¶ 19 Identification testimony is assessed pursuant to these factors: (1) the opportunity the witness had to view the offender at the time of the crime; (2) the degree of attention given by the witness; (3) the accuracy of the witness' prior description of the offender; (4) the level of certainty the witness demonstrated when identifying the perpetrator in person; and (5) the amount of time that lapsed between the crime and the in-person identification. *Slim*, 127 Ill. 2d at 307-08. Dean viewed defendant's face for 5 to 10 seconds when he answered defendant's knock at the door. Defendant forced his way into the residence while displaying a gun to Dean, and Dean then observed defendant as defendant made a phone call. Defendant also threatened Dean while holding a knife several inches from Dean's face. Given those facts, Dean had the opportunity to view defendant's face using a high degree of attention and for a relatively prolonged period of time. Dean's attention to defendant's features likely was heightened given

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that defendant had just assaulted Dean and forced his way into the residence.

¶ 20 Moreover, Dean's identified defendant without hesitation in both the photo array and the lineup, according to Detective Filbin. Dean identified defendant from one of the two identification cards police retrieved from a nearby vehicle about 30 minutes after the crime. Although defendant argues that method was suggestive, the record does not indicate, as defendant posits, that the police told Dean the source of the two pieces of identification.

¶ 21 Defendant further contends the lineup in which Dean identified him also was suggestive because he was the only lineup participant who wore tan-colored CCDOC clothing. Defendant wore the tan pants and turned the white T-shirt inside out to disguise the letters "CCDOC" printed on its front. The picture of the lineup that was entered into evidence shows that no lettering was visible on defendant's T-shirt or pants. Therefore, defendant's assertion that the lineup was suggestive due to his clothing is rejected.

¶ 22 Dean's failure to specify that the offender had a limp also does not weaken the reliability of Dean's identification of defendant. Omissions of detail by an identifying witness do not destroy an identification's validity but instead go to the weight of the testimony and are to be evaluated by the trier of fact. *People v. Bibbs*, 101 Ill. App. 3d 892, 897 (1981).

¶ 23 Lastly, defendant points to the alibi testimony presented by his former girlfriend as evidence of a reasonable doubt of his guilt. That evidence was presented to the trial court, as the trier of fact in this case, and the court was free to consider that testimony in conjunction with the rest of the evidence. The trial court was not required to lend more weight to defendant's alibi than to the testimony of the crime victim. See *People v. Singleton*, 367 Ill. App. 3d 182, 189 (2006), citing *People v. Garza*, 92 Ill. App. 3d 723, 729 (1981) (trier of fact may reject testimony of alibi witness and also may consider familial ties of such witnesses to defendant).

¶ 24 In summary, the evidence, considered in the light most favorable to the State, was sufficient to establish defendant's guilt. Dean viewed defendant's face over the course of several interactions and at close range, including a period when defendant threatened him with a knife.

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Dean identified defendant in a photo array and a police lineup, in addition to viewing a ID card belonging to defendant.

¶ 25 Accordingly, the judgment of the trial court is affirmed.

¶ 26 Affirmed.