

No. 1-10-2200

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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. 09 CR 15619
)	
JUAREZ MERCHANT,)	Honorable
)	Thaddeus L. Wilson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Steele and Justice Murphy concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment on residential burglary conviction affirmed because evidence found sufficient to prove defendant guilty beyond a reasonable doubt.

¶ 2 Following a bench trial, Juarez Merchant, the defendant, was convicted of residential burglary, sentenced to Cook County boot camp, and ordered to pay \$3,069.55 in restitution. On appeal, defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt because the single eyewitness' testimony was inaccurate, impeached, overly general, and inconsistent, and he presented a plausible alibi defense.

¶ 3 The record shows that defendant was arrested for the residential burglary of the home of Clayre Blanco, which occurred on May 7, 2009. At the bench trial, Blanco, who speaks Spanish and very little English, testified through an interpreter that in May 2009, she lived in a two flat apartment building at 6814 South Hermitage Avenue in Chicago, Illinois, owned by her husband, Edwardo Guarenros. The second floor apartment was rented to the defendant and his mother who lived there for 18 months. During that time, Blanco saw defendant every day. Four months before the incident, defendant and his mother stopped living there.

¶ 4 Blanco also testified that on May 7, 2009, she ran some errands, and when she returned to her apartment at 1 p.m., she heard footsteps which she believed belonged to her husband. As she opened the front door, she saw defendant and two other men. She had no problem seeing defendant, who she observed for about 50 seconds, and immediately recognized the defendant as her former tenant. Blanco identified defendant in court as one of the three offenders she saw in her apartment.

¶ 5 Blanco testified that she did not notice anything in defendant's hands, but then testified that she did see something in his hand. She further stated that the three offenders ran towards her with defendant raising his hand to throw something. Blanco screamed, closed the door, and ran outside. As she fled, she did not see what defendant threw but heard something break. Blanco later testified that she saw defendant throw a screwdriver, but then stated that she did not see what was thrown because she had shut the door when fleeing.

¶ 6 Once outside, Blanco called police. When they arrived, Blanco went with them into her apartment where she noticed that the locks on her back doors were broken. She also observed that the screen on her television set had been smashed in. Blanco assumed the object defendant threw hit the television set based on what she heard as she fled. Blanco stated that the police recovered a screwdriver in her apartment that did not belong to her.

¶ 7 Blanco testified that the officers did not speak Spanish, and she had trouble communicating with them. She told them there were two offenders, but when her friend interpreted for her, she told them she saw two people and then a third person coming from the bedroom. She told police that one of the offenders, defendant, was a black male, tall, thin, and had a short hairstyle and a medium complexion. She also showed police the lease she had with defendant's name on it. She did not give an exact weight and height for the offenders. Blanco admitted that she had testified on another date that she saw between two and three people in her apartment, but believed there were three people.

¶ 8 Blanco testified that she later spoke to police on the phone with her husband interpreting. During this conversation, she told police that defendant threw an unknown object at her which hit the television set.

¶ 9 A week after the incident, Blanco met with Detective Sipchen who showed her an array of photographs, and she identified defendant in one of them. Blanco stated that defendant's hair in the photo was very short and was a little longer on May 7th. Blanco stated that all three offenders had short hair, but then stated that defendant's hair was a medium length. Blanco further stated that although she did not recall what defendant wore, she was 100% certain that he was one of the offenders.

¶ 10 Officer John O'Donnell testified that on May 7, 2009, he responded to the residential burglary at 6814 South Hermitage Avenue. While there, he spoke to Blanco who was shaken up. Blanco spoke Spanish, and did not speak English fluently. Officer O'Donnell did not speak Spanish, and asked Blanco how many offenders there were. Blanco told him in English that there were two offenders. When an interpreter arrived, the officer was able to get some more details from Blanco, who informed him that defendant was one of the offenders.

¶ 11 Arnetta Rodgers testified that her nephew, defendant, lived with her in May 2009, and worked at the Popeye's at 183rd Street and Kedzie Avenue in Hazel Crest, Illinois. On the morning

of May 7, 2009, someone from defendant's workplace called, and Rodgers gave the phone to defendant, who told her that his employer asked him to come in early. Rodgers dropped defendant off at work at 12:45 p.m., then drove to her 1 p.m. arbitration appointment which lasted 30 minutes. When Rodgers was shown her phone records which reflected that calls were made on her cellular phone on May 7, 2009, at 1:02 p.m., 1:06 p.m. and 1:49 p.m., she responded that she had given her phone to her boyfriend who had met her at the meeting. She did not know if her boyfriend drove there, but she drove him home. Rodgers stated that she did not have any documentation regarding her arbitration appointment because it was her personal business.

¶ 12 LaDonna Washington testified that she is the manager of the Popeye's where defendant works. According to the employee worksheet schedule, defendant was scheduled to come in on May 7, 2009, at 3 p.m. Washington, however, called him to come in earlier since an employee had quit. She did not speak directly with defendant but to a woman who had answered the phone. Washington stated that defendant worked from 12:45 p.m. to 10 p.m. on the date in question, but she did not have any documentation to show that defendant came in early, and did not recall what number she had dialed to reach him.

¶ 13 At the close of evidence, the court found defendant guilty of residential burglary. In doing so, the court noted that the victim saw defendant make a forward motion with his hand as she closed the door, and heard a breaking sound, which was probably the screwdriver going into the television set. The court further noted that the victim's testimony was all over the place as to whether she saw something in defendant's hands, but she probably thought she saw something in his hands but did not see it thrown and hit the television set. The court found that the logical conclusion was that the screwdriver was thrown into the television set. The court then stated that it did not find defendant's witnesses "to be credible in any regard." The court further stated that the victim was "clear the entire time all the way through *** that it was the defendant."

¶ 14 Defendant filed a motion for a new trial alleging, in relevant part, that he was not proved guilty beyond a reasonable doubt, and that the victim was impeached and therefore could not accurately identify him as an offender. Defendant also alleged that since he was found guilty, a newly discovered eyewitness, Demetric Rule, has come to light who had exculpatory information. In support, he attached Rule's affidavit attesting that he saw someone flee from the scene of the crime who was not defendant.

¶ 15 At the hearing on defendant's post-trial motion, Rule testified that he had previously been convicted of delivery of a controlled substance, and has known defendant for six years. Rule stated that at 1 p.m. on May 7, 2009, he was walking home from a visit with his probation officer when he saw police cars stop at 68th Street and Hermitage Avenue. The officers ran up to a house there, and Rule heard a female scream. He kept walking, and as he approached his house, he saw a young man running down the alley who was not defendant. Rule did not know if this person came out of the house the police were investigating. Rule testified that he did not tell police about this person because he did not know if he was connected to the incident.

¶ 16 The court denied defendant's motion for a new trial. The court found that Rule's testimony was not helpful to defendant because it did not exonerate him. The court noted that there were three people involved in the burglary, but Rule only testified to seeing one person running, and did not even know if that person was connected to the crime. The court also noted that regardless of the language barrier with the victim, she was clear that she knew defendant was one of the offenders. The court found that the victim was credible, and the defense witnesses were not credible.

¶ 17 On appeal, defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt. He maintains that the single eyewitness' testimony was inaccurate, impeached, overly general, and inconsistent, and he presented a plausible alibi defense.

¶ 18 When a defendant challenges the sufficiency of the evidence to sustain his conviction, the proper standard of review is 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. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). This standard recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence and to draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of guilt. *Campbell*, 146 Ill. 2d at 375. For the reasons that follow, we do not find this to be such a case.

¶ 19 Defendant maintains that the victim's identification of him as the offender was unreliable as evidenced by the factors set forth in *People v. Slim*, 127 Ill. 2d 302 (1989). We disagree, and find that the *Slim* factors, (1) victim's opportunity to view offender at the time of the crime, (2) victim's degree of attention, (3) accuracy of victim's prior description of the criminal, (4) level of certainty of the victim at the identification confrontation, and (5) length of time between the crime and identification, weigh in favor of the reliability of the victim's identification of defendant as an offender. See *Slim*, 127 Ill. 2d at 308.

¶ 20 The record shows that the victim had a sufficient opportunity to view defendant. She testified that she observed him for 50 seconds in her apartment, and immediately recognized him as her former tenant who she had seen every day for 18 months. The victim's degree of attention was high where she indicated that she looked at defendant for almost a minute and immediately recognized him. This evidence clearly satisfies the first and second factors of *Slim*.

¶ 21 The evidence also shows that the victim demonstrated a high level of certainty that one of the offenders was defendant. She stated that she was 100% certain that it was him, and identified him in a photograph a week after the incident. Moreover, the credibility of her identification was

enhanced by the fact that she had seen defendant every day for 18 months while he lived at her apartment building. *People v. Sutton*, 252 Ill. App. 3d 172, 181 (1993).

¶22 Defendant, however, claims that the inconsistencies in the victim's testimony and statements to police regarding how many offenders there were, and whether she saw defendant throw something, and the inaccuracy of her description of defendant call into question her identification. We note, however, that the trial court, the trier of fact, was responsible for resolving any inconsistencies in the testimony, which it fully explored at trial and found not to create a reasonable doubt as to defendant's identification. *People v. Aguilar*, 396 Ill. App. 3d 43, 58 (2009).

¶23 Furthermore, Blanco spoke Spanish, had problems communicating in English, and testified and spoke to police through interpreters. In addition, she was clearly confused during the trial by some of the questions, but was positive and unshaken in her identification of defendant. We find that any discrepancies or omissions in the victim's description of defendant and the incident were inconsequential given her previous acquaintance with defendant, the excellent opportunity she had to view him during the burglary and her unwavering positive identifications of the defendant before and at the trial, and the discrepancies or omissions did not render her identification of defendant unreliable. *Slim*, 127 Ill. 2d at 307; *People v. Willis*, 126 Ill. App. 2d 348, 354-55 (1970). Moreover, the victim's description of defendant as a tall, thin, black male, with either short or medium length hair and a medium complexion was not far off where the record shows that he was six feet two inches tall, 190 pounds, and had short hair, a medium black complexion, and some facial hair.

¶24 Defendant, however, further claims that he presented a plausible alibi defense which made the victim's testimony seem all the more incredible and created a reasonable doubt. This argument concerns the credibility of the witnesses, a matter within the province of the trier of fact. *People v. Berland*, 74 Ill. 2d 286, 305-06 (1978). The trial court here specifically found the victim credible

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and the defense witnesses incredible, and the record before us provides no reason to disturb that finding. *People v. Hernandez*, 278 Ill. App. 3d 545, 552-53 (1996).

¶ 25 According, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.