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SECOND DIVISION
MARCH 15, 2011

1-08-1169

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. 06 CR 5878
)	
GREGORY DICKERSON,)	Honorable
)	James M. Obbish,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Karnezis and Connors concurred in the judgment.

ORDER

Held: Where victim of robbery accurately described defendant's clothing and identified defendant in a police photographic array and lineup, evidence sufficient to support armed robbery conviction; the trial court's judgment was affirmed.

Following a jury trial, defendant Gregory Dickerson was convicted of armed robbery and was sentenced to seven years in prison. On appeal, the defendant contends that the State did not prove his guilt beyond a reasonable doubt because the victim's description of the offender did not match his physical characteristics. We affirm the judgment of the circuit court of Cook County.

The defendant was convicted of robbing an auto parts store at 6331 South Western Avenue in Chicago. At trial, Manuel Gomez (Gomez) testified that at about 2 p.m. on February 5, 2006, he was emptying change into a cash register when the defendant approached him and said, "Give me all your f----- money." When Gomez laughed, the defendant repeated the demand and said he was

"not playing." The defendant lifted his shirt to reveal a gun tucked in his waistband. The defendant pointed the gun at Gomez and told him to get a bag. Gomez put about \$200 in a bag and put it on the counter. Gomez said he "pushed [the] bag back a little so [Gomez] could take *** a good glimpse at him, 20 seconds." The defendant told Gomez to turn around and count to 10 while he left the store.

Gomez reported the robbery to Victor Garcia (Garcia), the store manager, who then called the police. Gomez described the defendant to police as a black male wearing black shoes, dirty blue jeans, a soiled maroon sweater, and a dark Timberland "skully hat." He said that the defendant was 5 feet 6 inches or 5 feet 7 inches tall and weighed "about 195, 98 pounds." Gomez also said that the defendant "had a scruffy beard, like real, he had, like a big beard, kind of like dirty beard." On February 9, 2006, Gomez identified the defendant in a police photographic array. Gomez said that the defendant had a "semi-beard" when he appeared in the lineup on February 13, 2006.

On cross-examination, Gomez stated that when the defendant approached the counter and before he demanded money, he looked at the defendant for about 5 to 10 seconds. The defendant was two feet away from him. Gomez saw the defendant's jeans and shoes as the defendant left the store.

Garcia, the store manager, testified that he saw a man speaking to Gomez at a cash register. Garcia identified the defendant in court as that individual. Garcia saw a bag on the counter and heard the defendant counting. After the defendant left, Gomez informed Garcia that he was robbed, at which point Garcia called the police. Two days later, Garcia viewed a police photographic array but did not select anyone. On cross-examination, Garcia said he could not hear the conversation between the defendant and Gomez at the time of the robbery. Garcia stated that the defendant had a "small beard."

Chicago police detective David Roberts (Detective Roberts) testified that he responded to Garcia's call and interviewed Gomez and Garcia. Gomez described the offender as a black male

between 40 and 45 years old who stood 5 feet 6 inches to 5 feet 8 inches tall and weighed about 190 pounds. Gomez said the offender had a "grayish, dirty beard" and wore a maroon sweatshirt, dirty blue jeans, black gym shoes and a beige Timberland hat. Detective Roberts performed a computer search of individuals between 40 and 45 years old who were recently arrested in the area of the auto parts store. On February 13, 2006, the defendant was arrested and placed in a police lineup, where Gomez and Garcia separately identified him.

The defendant testified that he became homeless in October 2005. The defendant stated that from the time he left his home until his arrest, he wore the same clothing each day: blue jeans, blue and white Nike sneakers, a plaid shirt, a gray jacket with a hood, and a black windbreaker. The defendant stated that he weighed 150 pounds when he was arrested.

On appeal, the defendant asserts that his conviction should be reversed because Gomez's description of the robber conflicted with his physical features. When reviewing the sufficiency of the evidence of a criminal conviction, the task of a reviewing court is to determine whether, 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. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *People v. Ward*, 215 Ill. 2d 317, 322 (2005). Under this standard, this court will not substitute its judgment for that of the trier of fact on the weight of the evidence or the credibility of witnesses. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000). A conviction will only be reversed when "the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *People v. Gabriel*, 398 Ill. App. 3d 332, 341 (2010).

The defendant argues that Gomez's testimony was not credible because he described the defendant as having a full beard and weighing about 190 pounds, when the defendant asserts that he had a thin beard and weighed "at the most" 160 pounds at the time of the robbery. The credible testimony of a single witness with ample opportunity to make a positive identification is sufficient to support a conviction, even if that testimony is contradicted by the accused. *People v. Siguenza-*

Brito, 235 Ill. 2d 213, 228 (2009); *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

The inability of a witness to precisely describe a suspect's physical characteristics is not fatal to an identification but simply affects the weight to be given that testimony, and discrepancies between a witness' description of the accused and the defendant's physical appearance do not, in and of themselves, generate a reasonable doubt as long as a positive identification had been made. *People v. Holmes*, 141 Ill. 2d 204, 240-41 (1990). Gomez testified that the defendant was two feet away from him when the robbery occurred and that he had observed the defendant for 5 or 10 seconds before the defendant spoke, and had looked at the defendant again for 20 seconds when giving the defendant the bag of money. Gomez viewed the defendant's face long enough to read the logo printed on the defendant's hat. Gomez's description of the defendant's clothing and appearance was detailed and unequivocal.

The failure to accurately describe an offender's facial hair, weight or any other single characteristic is not fatal to an otherwise positive and credible identification. *Slim*, 127 Ill. 2d at 310; *People v. Sutton*, 252 Ill. App. 3d 172, 181 (1993) (victim's identification testimony sufficient even when she initially described offender as having a beard but later said his face was "scruffy" and "unshaven"). In his testimony and statements to police, Gomez described the defendant's beard as "scruffy," "big," "dirty," and as a "grayish, dirty beard." Garcia stated that the defendant had a "small beard." The majority of those descriptions accurately depicted the defendant's facial hair.

Moreover, Gomez's estimation of the defendant's weight at 190 pounds, as opposed to the defendant's claim that he weighed at the most 160 pounds, was likely affected by the amount of clothing defendant wore, which, by the defendant's own description, included a shirt and two jackets. See *People v. Winston*, 160 Ill. App. 3d 623, 628 (1987) (identification not invalidated when victim misjudged defendant's weight by 40 pounds). "Identifications are normally based on the witness' total impression and recollections of the offender, not on particular facial features or physical characteristics." *Winston*, 160 Ill. App. 3d at 628.

The defendant next contends that the photographic array viewed by Gomez was suggestive because he was the only person pictured with a beard. All members of a police photographic array or a lineup need not be physically identical. *People v. Peterson*, 311 Ill. App. 3d 38, 48-49 (1999); see also *People v. Johnson*, 104 Ill. App. 3d 572, 578 (1982) (lineup not unduly suggestive where defendant was only person with braids and beard). Although the defendant further points out that Garcia, the store manager, was unable to identify anyone in the photographic array, Garcia identified the defendant in a physical lineup, and his testimony regarding the robbery was consistent with that of Gomez.

The defendant further points out that no weapon was recovered from him when he was arrested several days after the robbery. A person commits armed robbery when he takes property from another by the use of force and is armed with a firearm. 720 ILCS 5/18-2(a)(2) (West 2004). Gomez testified that the defendant pointed a weapon at him while demanding money. A more complete description or, as defendant asserts, the recovery of the actual gun used, is not required to uphold defendant's armed robbery conviction in light of Gomez's testimony. See *People v. Lee*, 376 Ill. App. 3d 951, 955 (2007) (testimony of armed robbery victim that defendant displayed weapon sufficient to establish defendant's possession of gun).

In summary, Gomez identified the defendant in a police photographic array and lineup. Garcia witnessed the robbery and identified the defendant in a police lineup and in court as the offender. The testimony presented by the State was more than sufficient to identify and convict the defendant.

Accordingly, the judgment of the circuit court of Cook County is affirmed.

Affirmed.