

THIRD DIVISION
March 2, 2011

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No. 1-09-0671

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. 05 CR 27675
)	
CLYDE JAMISON,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Murphy and Steele concurred in the judgment.

O R D E R

HELD: The trial court's denial of defendant's motion to suppress identification was not manifestly erroneous where the lineup was not impermissibly suggestive. Viewed in the light most favorable to the prosecution, the evidence was sufficient to convict defendant of armed robbery.

Following a jury trial, defendant Clyde Jamison was convicted of armed robbery and, based on his criminal history, sentenced to natural life in prison. On appeal, defendant contends that his lineup identification should have been

suppressed because it was the product of an impermissibly suggestive procedure. Defendant also challenges the sufficiency of the evidence. He argues that his conviction rested on an unreliable visual identification, and that absent the visual identification, the balance of the evidence is insufficient to establish identity. For the reasons that follow, we affirm.

Defendant's conviction arose from the 2005 robbery of a Chicago convenience store. In brief, two men wearing nylon stocking masks entered the store and, at gunpoint, took money from the cash register and money and other property from Savita Patel, Jovan Skaricki, and Daniel Newberry. A time slip bearing defendant's name was recovered at the scene. Less than four weeks later, Patel identified defendant in a visual lineup and Skaricki identified him in a voice lineup.

Defendant filed a *pro se* motion to suppress identification, asserting that the visual lineup was suggestive because he was the only participant who had a scar on his face under his eye. Defendant argued the motion *pro se*, calling as a witness Chicago police detective Steve Tanaka. Tanaka testified that Patel had indicated to him she would be able to identify one of the robbers if she saw him again, as she had been able to see through his stocking mask. After viewing a lineup, she positively identified defendant. Then, Patel informed Detective Tanaka that the robber had a scar under one eye. In addition to noting the scar, Patel

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told Detective Tanaka that defendant had the same build, height, and approximate weight as the robber. Detective Tanaka testified that he did not remember whether any of the other men in the lineup had scars on their faces.

The trial court examined a photograph of the lineup and an individual photograph of defendant. The court opined that the mark on defendant's face looked like a "discoloration" under his left eye, but stated it would take defendant's word that it was a scar. Noting that the law did not require that the participants in a lineup look identical or have the same marks, clothing, or build, the trial court found that the lineup was not suggestive. Accordingly, the court denied defendant's motion to suppress identification.

A jury trial commenced, with defendant representing himself *pro se*.

At trial, Daniel Newberry testified that on the evening in question, he was stocking the walk-in cooler in the back of the convenience store. When he walked out of the cooler around 8:30 p.m., he saw a man near the front of the store pointing a gun at him. Newberry could not see the man's face because he was wearing a fishnet nylon mask. Newberry followed the man's order that he lie face-down on the ground, at which point, the man came over, took Newberry's wristwatch, and went through his wallet. Newberry kept his face on the ground and did not look at the man.

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He could hear a second offender at the front of the store going through the cash register and taking lottery tickets. At some point, Jovan Skaricki, who had also been in the back of the store, came out of the store room. The gunman said, "[G]et down mother fucker, don't move," and asked, "[H]ow much money you got, where is the money at[?]" Skaricki lay on the floor a few feet from Newberry. After the gunman went through Skaricki's pockets, he walked to the front of the store and left with the second robber.

Newberry testified that when the robbers left, he went to the back door and looked out to see if the men had gone through the gangway to the alley. Not finding the men there, Newberry went out the back door and ran along the gangway to the street in front of the store, where Patel was. From there, he saw a car leaving the scene.

Shortly thereafter, police arrived at the store. Back inside, Newberry picked up his wallet, which was on the floor a few feet from where he had lain, and noticed his identification was missing. As he looked around for it, he noticed a piece of paper on the floor near the doorway to the store room. The paper, which looked like a time slip card from a day labor company and had the name "Clyde Jamison" on it, had not been there when Newberry swept the floor around 6 p.m. Newberry

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testified that he picked up his identification and the paper, and that he gave the paper to the nearest police officer.

Savita Patel testified that she was the owner of the store in question. Around 8:30 p.m., she was behind the cash register with two of her family members when two men in black fishnet masks entered the store. Patel stated, "The first one guy coming, and show up me gun and other guy coming. And one guy come in he's going to straight in the back room and another guy come in behind my cashier." Patel stated that the first man looked at her and she saw his face through the mask. She noticed that his nationality was "black" and that he had a scar on his face. Patel called out to her husband, Skaricki, who was in the back of the store with Newberry. While the first man went to the back of the store, the second man ordered Patel to open the cash register, which she did. Patel heard the first man at the back of store saying, "[G]et down mother fucker, don't move." After the second man took the money from the register, both men left through the front door.

Patel called 911, giving the operator a description of the robbers as two black men, one with a scar under his eye and the other with a limp. After hanging up, Patel went outside and saw three men get in a white car and speed away. When the police arrived shortly thereafter, she again described the robbers as two black men. Patel testified that she told the police the

second man had a limp, but she did not remember whether she told the police about the first man's scar. She also stated that she and the police were present in the store when Newberry found the time slip on the floor and picked it up.

Patel testified that a few weeks after the robbery, she identified defendant in a lineup as the first man, the robber who went straight to the back of the store. In court, Patel viewed a photograph of the lineup and again identified defendant. In response to a question asked by defendant on cross-examination, Patel agreed that the scar was the reason she picked him out of the lineup. However, on redirect, Patel also agreed that she identified defendant in the lineup because she recognized his scar, face, and build.

Jovan Skaricki, Patel's husband, testified that he was in the back of the store, watching baseball in the stock room, when he heard someone calling him from the front of the store. Skaricki started toward the front of the store, but when he got to the area of the walk-in cooler, just inside the door to the back room, he "ran into the gun." Skaricki saw Newberry lying on the ground and a man wearing a dark mask holding a gun. The man said, "[G]et down mother fucker and don't you fucking move." When Skaricki complied, the man took Skaricki's wallet from his back pocket, looked through it, and threw it. The man flipped Skaricki onto his back and went through his other pockets, taking

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about \$370. The man then moved on to Newberry. As the man took Newberry's wallet and watch, Skaricki saw a pink piece of paper fall from his jacket pocket and land on the floor. The man ran to the front of the store, where he was joined by another man who came from the area of the cash register, and both men ran out the front door.

Skaricki testified that he saw Newberry pick up the pink piece of paper the robber had dropped. He and Newberry then went to the front of the store to find out what had happened there. The police arrived a few minutes later.

A few weeks later, Skaricki viewed a lineup. He was unable to identify anyone in the visual lineup, but indicated to the police that he could recognize a voice. Skaricki then listened to four or five different people speak the words the robber had said to him. Skaricki recognized one of the voices and identified the voice as that of the man who had robbed him. He noted that on one word, the voice "kind of stutter[ed] a little bit."

Chicago police detective Steve Tanaka testified that about three weeks after the robbery, he conducted a lineup consisting of defendant and four "fillers" of the same sex, race, and approximate age. Defendant chose his own position in the lineup, which was viewed separately by Skaricki, Patel, and Patel's two relatives who had been at the cash register with her during the

robbery. Only Patel made an identification. Detective Tanaka testified that Patel identified defendant as the robber who entered the store first. Patel told him she was positive and said, "Yes, he's got the same build, and also I notice the scar under his eye." Tanaka did not recall Patel mentioning a scar before he conducted the lineup, and to his knowledge, none of the fillers had scars on their faces. Detective Tanaka answered affirmatively when defendant asked, "Do you think that would be important to be a sufficient lineup for [defendant] being that he had a scar?"

Detective Tanaka testified that after Skaricki was unable to identify anyone in the visual lineup, he said he remembered what the robber had said to him and would be able to recognize his voice. Based on Skaricki's suggestion, Tanaka conducted a voice lineup during which defendant and the four fillers each said the words the robber had spoken to Skaricki. Again, defendant chose his own position in the lineup, moving from third to second. Skaricki, who could hear but not see the lineup participants, identified defendant's voice as that of the man who robbed him.

Detective Tanaka identified defendant in court. He agreed that defendant looked "a little bit different" than he had at the time of the lineup. In court, defendant was "[j]ust a little heavier." Tanaka also stated that while it was not normal procedure to conduct a lineup when an offender wore a mask, in

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this case, a lineup was conducted because the offender wore a nylon, see-through mask, as opposed to a mask that was not see-through.

Defendant called as a witness Chicago police officer Delmar Jones. Jones testified that he responded to the call of the robbery at the convenience store and spoke with the store owner and other victims at the scene. While at the scene, Newberry gave him a pink "payroll slip time card" with the name "Clyde Jamison" on it. Officer Jones did not recall Patel giving him information about one of the robbers having a scar near his eye. In his report of the incident, he marked "none visible" in the space for describing the offender's marks and scars.

Among the exhibits admitted into evidence were the pink time slip, a surveillance video of the incident, and a photograph of the lineup participants.

Following closing arguments, the trial court instructed the jury, which deliberated. The jury found defendant guilty of the armed robberies of Newberry, Skaricki, and Patel. Subsequently, the trial court denied defendant's posttrial motions. Based on defendant's criminal history, the trial court sentenced him to natural life in prison.

On appeal, defendant contends that Patel's lineup identification of him should have been suppressed. He argues that the lineup was impermissibly suggestive because he was the

only participant with a prominent facial scar and a dark jacket. Noting that Patel agreed she picked out defendant "because of the scar under his eye" and that the surveillance video showed that the robbers wore dark jackets, defendant argues that "[i]dentifying a lineup member with both a dark jacket and a prominent facial scar would have been irresistible" and "all but inevitable." Defendant further argues that the State cannot prove Patel's identification of him did not result from the suggestive lineup and asserts that Patel's identification cannot be considered reliable.

The State argues that defendant has waived this issue because he failed to ask the court to reconsider its ruling on the motion to suppress at the time the identification evidence was introduced at trial. There may be merit to the State's argument. See *People v. Prince*, 362 Ill. App. 3d 762, 771 (2005). Waiver notwithstanding, defendant's contention fails.

On a motion to suppress identification, the defendant bears the initial burden of proving that, within the totality of the circumstances, the identification procedure used by the police was so unnecessarily suggestive as to give rise to a substantial likelihood of irreparable misidentification. *Prince*, 362 Ill. App. 3d at 771. If the defendant meets this initial burden, then the State must show an independent basis of reliability by clear and convincing evidence. *Prince*, 362 Ill. App. 3d at 771. A

trial court's ruling on a motion to suppress identification will not be disturbed on appeal unless it is manifestly erroneous.

People v. Allen, 376 Ill. App. 3d 511, 520 (2007).

The record in this case includes a photograph of the lineup participants. The five men pictured are of the same approximate age, race, and physical build, and have similar hairstyles and amounts of facial hair. Defendant is wearing a black jacket, another man is wearing a tan jacket, and the remaining three men are wearing long-sleeved shirts. Close inspection of the photograph reveals that defendant has a scar beneath his left eye. The scar is more visible in a separate close-up photograph of defendant.

The law does not require that lineup participants be look-alikes or be nearly identical to a witness's description. *People v. Johnson*, 149 Ill. 2d 118, 147 (1992). "That some [participants] may be dressed differently, or fail to have one or more of the characteristics described by the witnesses, is relevant only within the context of the totality of the circumstances." *Johnson*, 149 Ill. 2d at 147. Here, while defendant is the only man wearing a dark-colored jacket and appears to be the only man with a scar on his face, these factors must be considered within the context of the totality of the circumstances. *Johnson*, 149 Ill. 2d at 147; *People v. Gabriel*, 398 Ill. App. 3d 332, 348 (2010). The totality of the

circumstances in this case are that the lineup participants share many similar features. We cannot agree with defendant that he stands out in the lineup in such a way as to suggest the police attempted to "spotlight" him. See *Johnson*, 149 Ill. 2d at 147 (prejudicial lineups occur when, "[t]hrough some specific activity on the part of the police, the witness is shown an individual who is more or less spotlighted by the authorities").

Moreover, we find no evidence that the police exerted improper influence that resulted in defendant being the only lineup participant having a facial scar or wearing a dark jacket. As defendant acknowledges, Detective Tanaka was unaware that defendant's facial scar had any significance until after Patel viewed the lineup and identified him. We cannot see how the police could have taken specific actions to spotlight a feature they did not know was relevant. Additionally, the record is devoid of any indication that it was by police design that defendant came to be wearing a dark jacket during the lineup or that he was the only participant dressed that way. See *Gabriel*, 398 Ill. App. 3d at 349 (finding no improper police influence where the defendant wore his own clothing in the lineup).

Taking into consideration the totality of the circumstances surrounding the lineup procedure in this case, we find no improper influence and no evidence of an attempt to focus Patel's attention on defendant. Defendant has not met his initial burden

of proving that the lineup was improperly suggestive. Accordingly, in the context of the motion to suppress, we need not address whether the State showed that Patel's identification of defendant had an independent basis of reliability. The trial court's denial of the motion to suppress was not manifestly erroneous.

Defendant's second contention on appeal is that the State failed to prove him guilty beyond a reasonable doubt. He argues that his conviction "primarily rests on an unreliable visual lineup identification" and that the balance of the evidence is insufficient to convict. Defendant asserts that Patel's identification of him is unreliable because she had a very limited opportunity to view the offender, her degree of attention on the offender was low, her initial description of the offender was vague, her level of certainty at the time of identification was high, and there was a substantial gap in time between the offense and the lineup identification. Defendant further argues that Skaricki's "mere voice identification is not sufficient to support a Class X felony conviction and a natural life sentence, particularly where none of the other four eyewitnesses made a voice identification." Finally, with regard to the time slip bearing his name, defendant argues that Skaricki's report of seeing it fall from the robber's pocket is not credible, and that

any number of lawful customers could have dropped the slip before or after the robbery occurred.

When reviewing the sufficiency of the evidence, the relevant inquiry 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. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). Reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

The State carries the burden of proving beyond a reasonable doubt the identity of the person who committed the crime. *Slim*, 127 Ill. 2d at 306. An identification of the accused by a single witness is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification, but not if the identification is vague and doubtful. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). The reliability of an eyewitness identification of a defendant is

a question for the trier of fact. *People v. Cosme*, 247 Ill. App. 3d 420, 428 (1993). Among the circumstances to be considered in evaluating a witness's identification are (1) the witness's opportunity to view the perpetrator at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the witness's level of certainty at the identification confrontation; and (5) the length of time between the crime and the identification confrontation. *Slim*, 127 Ill. 2d at 307-08.

In the instant case, Patel testified that the first robber looked at her when he entered the store and pointed a gun at her. She stated that she was able to see through his mask, observe a scar on his face, and note his nationality as "black." Less than a month after the robbery, Patel identified defendant in a lineup based on recognition of his scar, face, and build. According to Detective Tanaka, Patel stated that she was positive defendant was the first robber.

Based on these circumstances, we find that Patel's opportunity to view the robber, though brief, was nevertheless sufficient to discern his facial features; that her degree of attention was high, given the gun pointed at her; that her level of certainty regarding the identification was high; and that the length of time between the robbery and the lineup was not significant (see *People v. Cox*, 377 Ill. App. 3d 690, 699 (2007))

("Where two-year lapses of time between the crime and the identification have been upheld [citations], the passage of two months between the date of the crime and the date of the lineup does not adversely affect the identification.")). Given the sum of this evidence, the jury could reasonably believe Patel's lineup identification of defendant to be positive, credible, and reliable. We cannot agree with defendant that her identification should be rejected.

With regard to defendant's challenge to Skaricki's identification of his voice, we note that defendant has cited no authority for the proposition that a "mere voice identification is not sufficient to support a Class X felony conviction and a natural life sentence." In fact, authority exists for the opposite proposition, *i.e.*, that voice identification alone may establish identity and even guilt. See, *e.g.*, *People v. Hicks*, 134 Ill. App. 3d 1031, 1038 (1985) (an accused can properly be identified by his voice); *People v. Nunn*, 101 Ill. App. 3d 983, 989 (1981) (an identification by voice is permissible and may establish the defendant's guilt beyond a reasonable doubt). We also disagree with defendant's assertion that because the voice lineup was conducted after Patel had identified him, "Skaricki would have concluded that one of the voices in his lineup corresponded with one of the offenders, significantly diminishing the reliability of an already weak form of evidence." Nothing in

the record indicates that Skaricki knew of Patel's visual identification prior to listening to the voice lineup. Moreover, the curtains were closed during the voice lineup and defendant chose a different position for the voice lineup. In these circumstances, the jury could reasonably believe Skaricki's voice identification was reliable.

Finally, defendant challenges the importance of the time slip, arguing that any number of lawful customers could have dropped it on the floor either before or after the robbery. He also questions the credibility of Skaricki's testimony that he saw the time slip fall out of the robber's pocket. The issues raised by defendant with regard to the time slip are of the sort properly resolved by the jury in the role of fact-finder. We will not substitute our judgment for the jury's on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131

After reviewing the evidence in the light most favorable to the prosecution, we conclude that the evidence was not "so unsatisfactory, improbable or implausible" to raise a reasonable doubt as to defendant's guilt. *Slim*, 127 Ill. 2d at 307. A time slip bearing defendant's name was found at the scene. Skaricki testified that he saw the slip fall from the offender's pocket. Within one month of the robbery, Patel identified defendant in a visual lineup. Then, after defendant switched positions, Skaricki identified him in a voice lineup. This evidence was

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sufficient to establish defendant's identity. Defendant's challenge to the sufficiency of the evidence fails.

For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

Affirmed.