

NOTICE
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2012 IL App (4th) 100535-U

Filed 3/1/12

NO. 4-10-0535

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
CASEY MASON,)	No. 07CF736
Defendant-Appellant.)	
)	Honorable
)	Michael D. Clary,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

- ¶ 1 *Held:* Evidence was sufficient to support conviction for aggravated battery; and defendant failed to establish *Brady* claim.
- ¶ 2 On March 26, 2010, a jury found defendant, Casey Mason, guilty of two counts of aggravated battery (720 ILCS 5/12-4(a), (b)(8) (West 2006)). On June 21, 2010, the trial court sentenced him to four years in prison for one aggravated-battery conviction (since the two aggravated-battery convictions merged).
- ¶ 3 Defendant appeals, arguing (1) the State failed to prove him guilty beyond a reasonable doubt of aggravated battery, and (2) the trial court erred in refusing to dismiss the charges when the State committed a *Brady* violation. We affirm.
- ¶ 4 On September 9, 2008, the State charged defendant (and a codefendant) by amended information with two counts of aggravated battery (720 ILCS 5/12-4(a), (b)(8) (West

2006)). The two aggravated-battery charges asserted that on June 10, 2007, defendant knowingly (1) caused bodily harm to Keith Tolson, or (2) caused bodily harm to Keith Tolson while on a public way.

¶ 5 On June 10, 2007, verbal exchanges escalated into a neighborhood brawl. When Danville police officer Joseph Blew was dispatched to the scene, there were 20 to 30 individuals standing in the street. Keith Tolson was taken by ambulance to the hospital where he required reconstructive surgery for a fractured knee and treatment for a fractured ankle, broken nose, and injury to his left jaw. On March 26, 2010, the trial court held a jury trial on the two charges. Many individuals present on June 10, 2007, testified concerning the day's events. We discuss only those facts to the extent necessary for the resolution of the issues raised on appeal.

¶ 6 Defendant first argues the State failed to prove him guilty beyond a reasonable doubt of aggravated battery. We disagree.

¶ 7 When presented with a challenge to the sufficiency of the evidence, a reviewing court's function is not to retry the defendant. *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010). Rather, we consider " '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.' " (Emphasis in original.) *People v. Davison*, 233 Ill. 2d 30, 43, 906 N.E.2d 545, 553 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 573, 99 S. Ct. 2781, 2789 (1979)). Under that standard, a reviewing court must draw all reasonable inferences from the record in the prosecution's favor. *Davison*, 233 Ill. 2d at 43, 906 N.E.2d at 553.

¶ 8 It is the jury's function to weigh the evidence, assess the credibility of the

witnesses, resolve conflicts in the evidence, and draw reasonable inferences therefrom. *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009). A reviewing court will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Givens*, 237 Ill. 2d at 334, 934 N.E.2d at 484.

¶ 9 "A person who, in committing a battery, intentionally or knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated battery." 720 ILCS 5/12-4(a) (West 2006). Defendant contends "he never touched Keith Tolson."

¶ 10 "The State bears the burden of proving beyond a reasonable doubt the identity of the person who committed the charged offense." *People v. Lewis*, 165 Ill. 2d 305, 356, 651 N.E.2d 72, 96 (1995). Although an identification that is vague or doubtful is insufficient to support a conviction, "a single witness'[s] identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification." *Lewis*, 165 Ill. 2d at 356, 651 N.E.2d at 96.

¶ 11 "In evaluating identification testimony, Illinois courts consider the factors set forth in *Neil v. Biggers*, 409 U.S. 188, 199-200, 34 L. Ed. 2d 401, 411, 93 S. Ct. 375, 382 (1972), which are (1) the witness's opportunity to view the criminal 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." *People v. Standley*, 364 Ill. App. 3d 1008, 1014, 848 N.E.2d 195, 200 (2006) (citing *People v. Slim*, 127 Ill. 2d 302, 307-08, 537 N.E.2d 317, 319 (1989)).

¶ 12 Here, three individuals testified they observed defendant (and his codefendant)

attack Keith Tolson in James Row's yard, headbutting him and drop-kicking his leg. The two men dragged Keith from one side of the street to the other as they continued the beating. The incident occurred on the afternoon of June 10, 2007, when it was still light outside. Spencer Tolson witnessed the attack on his father from Row's front porch. Erin Liles saw the incident from her front porch, which was next to Row's house. The houses were "very close together." Ryan Hill testified that he was standing in Row's yard and that he had an "unobstructed view" of the fight.

¶ 13 Spencer testified that he saw a black male with "two big braids" kick Keith's knee and continue to kick, beat, and jump on Keith, along with 10 or more people, after Keith had fallen to the ground. Spencer stated that he saw the man who kicked Keith's knee "quite well" from where he stood. Spencer's description of the man who kicked and beat Keith matched defendant's physical appearance. Spencer described defendant as a light-skinned black male with two big braids, one on each side of his head.

¶ 14 Liles recognized defendant on June 10, 2007, because she had seen him "all the time" in the neighborhood. Liles description of defendant to Detective Wilson matched Spencer's description. Liles testified that she saw defendant "drop kick" Keith after a man in a blue striped shirt headbutted Keith. Liles observed the black male in the striped shirt and defendant dragging Keith from one side of the street to the other.

¶ 15 Hill testified that he was on Row's porch when Shannon Lucas accused the men of making sexual remarks to her daughter. Hill had an unobstructed view of the ensuing altercation from the yard. Hill had seen defendant "around the neighborhood."

¶ 16 Approximately two months after the incident, Spencer, Liles, and Hill separately

viewed a photographic array and positively identified defendant as the man who kicked and punched Keith. At trial, the same three individuals made in-court identifications of defendant.

¶ 17 Based on the evidence presented, a rational trier of fact could have found the State proved the offense of aggravated battery beyond a reasonable doubt.

¶ 18 Defendant next argues the trial court erred in refusing to dismiss the charges when the State committed a *Brady* violation. Specifically, defendant argues he was denied due process by the State's delayed disclosure of evidence on March 16, 2010, following jury selection and prior to opening statements, that a witness, Donald Nord, was shown a photographic array and identified Credell Smith as one of the men who battered Keith Tolson. Defendant argues he was prejudiced by the delayed disclosure because he would have used a different strategy in selecting a jury had he known that Nord had identified Smith, as that evidence "cast doubt as to whether the defendant was even at the scene of the fight." Defendant claims that he selected a jury under the assumption that he "would have to testify, to dispute the State's version of the events," which meant that the jury would necessarily learn that he "was involved in the fight" and that he had a "prior criminal record."

¶ 19 The trial court denied defendant's motion to dismiss the charges and reasoned that the "best remedy" would be to continue the trial to give defendant time to investigate and possibly alter his trial strategy. The court continued the trial for nine days, to March 25, 2010. The court noted that Nord was disclosed as a possible witness two years earlier, and that he could have been interviewed by either party. On March 25, 2010, defendant renewed his motion to dismiss the charges and the court denied the motion.

¶ 20 Detective Phillip Wilson testified that Spencer Tolan, Erin Liles, and Ryan Hill

separately viewed a photographic array and identified defendant as the man who kicked Keith Tolson's leg and continued to beat Keith when he was dragged into the street. On cross-examination, Wilson testified that on August 7, 2007, Donald Nord identified a man other than defendant from a photographic lineup. Neither the State nor defendant called Nord as a witness.

¶ 21 Defendant testified that he tried to break up the fight between Shannon Lucas and Keith and that he did not have any physical contact with Keith because he was "on adult probation and juvenile parole," and his codefendant was adequately defending himself against Keith. Defendant said he lied to Detective Wilson on August 6, 2007, when he denied being at the scene of the fight because of his parole status.

¶ 22 "When a defendant argues that his due process rights were violated by the State's failure to disclose certain evidence in discovery, we review the trial court's ruling on the matter for an abuse of discretion." *People v. Bridgewater*, 388 Ill. App. 3d 787, 793, 904 N.E.2d 171, 177 (2009) (quoting *People v. Matthews*, 299 Ill. App. 3d 914, 918, 702 N.E.2d 291 (1998)).

¶ 23 In *Brady v. Maryland*, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963), the United States Supreme Court held that due process requires that a state disclose to a criminal defendant evidence that could negate guilt. *People v. Buckner*, 376 Ill. App. 3d 251, 258, 876 N.E.2d 87, 93 (2007). This rule was codified by the Illinois Supreme Court in Supreme Court Rule 412. *Buckner*, 376 Ill. App. 3d at 258, 876 N.E.2d at 93. To succeed on a *Brady* claim, a defendant must demonstrate (1) that the evidence that was withheld is favorable to the defendant in that it is either exculpatory or impeaching, (2) that the evidence was either wilfully or inadvertently suppressed by the State, and (3) that prejudice to the defendant ensued. *People v. Williams*, 329 Ill. App. 3d 846, 857, 769 N.E.2d 518, 526-27 (2002). More specifically,

concerning the third factor, in order to constitute a *Brady* violation:

"[T]he evidence must be material to guilt or punishment. [Citation.] Evidence is material only if there is a reasonable probability that, had it been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome."

People v. Rish, 344 Ill. App. 3d 1105, 1111, 802 N.E.2d 826 (2003).

¶ 24 Because defendant was not prejudiced by the State's delayed disclosure of evidence, which indicated that Nord was shown a photographic array and identified Credell Smith as one of the men who battered Keith Tolson, we find defendant has failed to state a *Brady* or Rule 412 violation. Defendant does not explain how his selection of the jury would have differed had he known this information. "Resolution of questions of mistaken identity depends upon the credibility of the witnesses and the weight of evidence, rather than upon a juror's predisposition toward a defense." *People v. Bowel*, 111 Ill. 2d 58, 65, 488 N.E.2d 995, 999 (1986). We note the trial court provided defendant nine days in which to assimilate the information and to investigate Credell Smith's background. Further, the jury was made aware that Nord had identified someone other than defendant or his codefendant. In this case, the trial court did not abuse its discretion in continuing the trial for nine days to allow defendant to effectively use the disclosed information.

¶ 25 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this

appeal.

¶ 26

Affirmed.