



the circumstantial evidence was insufficient and the eyewitness' in-court identification was made under suggestive circumstances and unreliable.

¶ 3 This appeal arises from the July 3, 2011 attempted residential burglary of a home in Chicago in which a single eyewitness positively identified respondent as the person who attempted to pry his way into Yolanda Hampton's home located at 6002 South Justine.

¶ 4 At the adjudicatory hearing, Daphne Newsome testified that she was the next-door neighbor of Hampton and resided at 6008 South Justine. At about 6:20 p.m. on July 3, 2011, she heard someone walking through her neighbor's backyard. Through her bathroom window, Newsome observed the individual walk the length of the yard, from the front to the back, and then return to the front. She did not see this person in court. After the person walked to the front of the house, he returned to the backyard with respondent. Newsome identified respondent in court without being asked or prompted by the State. The two walked to the window and respondent used a pry object to pry at the back window of the house. Newsome could not identify the object that respondent used, but she saw that it was sharp. Newsome observed the prying attempts through her bathroom window, which was covered only by a screen. Respondent did not have anything covering his face.

¶ 5 After respondent was unable to pry open the window, he proceeded to the security door, a wrought-iron door with glass. After unsuccessfully attempting to pry open the window and door, respondent and the other person walked to the front of the house and Newsome followed them while in her home and observed them from her front window. While at the front of the house, two additional young men appeared.

¶ 6 Newsome observed the young men on the side of Hampton's house, and for approximately one to two minutes, they switched positions, as though they were taking turns being "watch outs." Newsome then left the front window to retrieve her telephone and called the

police. When she returned, Newsome could no longer see the young men. However, she heard a kick at her neighbor's door and within five minutes, police officers arrived. When they arrived, Newsome spoke to the police as they were in Hampton's backyard and she was in her own backyard. Newsome and the police spoke over the fence separating the backyards.

¶ 7 Newsome testified that respondent was wearing a "dirty, dingy white t-shirt and jeans." He had an afro hair cut and a larger physical build than the first young man that went into the backyard. All four wore white shirts; the first to arrive wore a white tank top, while respondent and the other two wore white t-shirts. Newsome described the first two to arrive in her neighbor's backyard as follows: "The first one that walked on the property had on a tank top, low fade, small frame. The second one was the individual that I am looking at right now who had on a t-shirt and an afro." The two young men that arrived after respondent both wore fade-style haircuts and had darker skin complexions than respondent. She observed respondent in her neighbor's backyard for seven to eight minutes before he moved to the front of the house. There was approximately six feet between Newsome and respondent when she observed from her bathroom window as respondent attempted to pry open her neighbor's window. She was able to see over the fence separating their yards, because the fence was about 36 inches tall. Respondent and the three other young men were also about six feet away from Newsome when she observed them from her front window. Newsome testified that she never identified the alleged perpetrators to the police. Her first identification occurred during the adjudicatory hearing.

¶ 8 Officer Blackman testified that he responded to the burglary-in-progress call at 6002 South Justine. Blackman and his two partners were in an unmarked police vehicle traveling northbound. As he approached, Blackman observed four young males running. Two of them stopped directly in front of the house, and the other two continued eastbound. Blackman did not stop respondent, but he identified respondent in court as one of the young men he observed

running away, eastbound on 60th Street. He observed other officers stop respondent a half of a block down from 60th Street, where Blackman stopped the other two young men. Blackman described the subject house as located on the corner and when he observed respondent, respondent was located on the side of the house, on the sidewalk of 60th Street. Blackman also testified that he spoke to Newsome over the chain-link fence separating the homes' backyards. He was able to see Newsome while speaking to her.

¶ 9 Officer Cummings testified that he also responded to the call and when he arrived, Cummings observed four young men attempting to enter a door. Also, he first observed respondent on the corner "right by the [house]." When he saw the young men, Cummings circled the block and saw respondent walking quickly, almost jogging, eastbound on 60th Street with another young man, and Cummings detained them. When he told respondent to stop, Cummings believed that respondent was going to continue walking despite the officer telling him to stop. When Cummings' partner grabbed his taser, respondent stopped. Cummings initially testified that he recovered a screwdriver from respondent but was impeached by defense counsel with the police report. Cummings then acknowledged that he recovered the screwdriver from the young man that he stopped with respondent, later identified as Brian M.

¶ 10 Respondent testified that he never had a screwdriver and he never tried to enter the house at 6002 South Justine. Rather, respondent was visiting with friends and left the friend's house to walk to a gas station to purchase cigars used for making marijuana "blunts." After an unsuccessful attempt to purchase the cigars, respondent and his friend Raheem walked toward a second gas station located at 61st and Ashland, when the police arrived. Respondent was crossing 60th Street when the police arrived and he observed the police exit their vehicle with a taser and detain Brian and another young man, Terrence. He testified the police did not try to stop him with a taser. The police then stopped respondent and Raheem, searched them, and then

walked them to Brian and Terrence's location. He never ran from the police. Respondent overheard the police discussing recovering a screwdriver from Brian's back pocket.

¶ 11 The trial court found respondent guilty of attempted residential burglary. It found that Newsome testified clearly and credibly that she observed respondent attempting to break into her neighbor's home. It also found that Newsome did not simply identify respondent by his t-shirt, but that she "got a good look at his face and made a clear and credible identification of him in open court." In addressing the testimony that police recovered the screwdriver from Brian and not respondent, the trial court stated: "There is, I mean, I don't care who had the screwdriver. The reality is by accountability, it doesn't matter, and it's a minor point as to who had the screwdriver." The trial court did not have a "shred of doubt" that respondent attempted to break into the house at 6002 South Justine, and found respondent guilty. Respondent appeals, contending the circumstantial evidence against him was insufficient to prove him guilty beyond a reasonable doubt and that Newsome's in-court identification was made under suggestive circumstances and was unreliable.

¶ 12 In reviewing respondent's claim, we determine 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. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Maggette*, 195 Ill. 2d 336, 353 (2001). This court must carefully examine the record and only reverse if the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of respondent's guilt. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). As the trier of fact in the instant case, it is the trial court's responsibility to determine witness credibility, weigh evidence, and resolve conflicts therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). The trier of fact also draws reasonable inferences from the evidence in order to resolve conflicting inferences. *People v. Moore*, 365 Ill. App. 3d 53, 58 (2006).

¶ 13 In order to sustain a conviction for attempted residential burglary, the State must prove that, with the intent to commit the offense, respondent did an act which constituted a substantial step toward knowingly entering the house at 6002 South Justine with the intent to commit a felony or theft therein. 720 ILCS 5/19-3 (West 2010); and 720 ILCS 5/8-4(a) (West 2010).

¶ 14 The parties do not dispute that the acts described by Newsome constituted attempted residential burglary. Rather, the resolution of this case rests upon the identification of respondent as the individual attempting to burglarize the subject home. Identification of an accused by a single credible eyewitness is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification. *People v. Malone*, 2012 IL App (1st) 110517, ¶ 27. This is true even if there is contradicting alibi testimony, "provided that the witness had an adequate opportunity to view the accused and that the in-court identification is positive and credible." *Id.*, quoting *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 15 Here, Newsome testified that she observed respondent attempting to pry open her neighbor's windows and doors. Newsome described respondent as having an afro hair cut, wearing a "dirty, dingy white t-shirt and jeans," and distinguished between the physical appearances of respondent and the other young men. Newsome testified that respondent had a larger stature than the first male that entered the backyard, and that the first male wore a low "fade" haircut. Newsome had an unobstructed view of respondent and the others as they attempted to pry open the windows and door. She observed respondent in the backyard for six to seven minutes. Therefore, we find that Newsome identified respondent as the perpetrator attempting to burglarize the house located at 6002 South Justine under circumstances permitting such a positive identification.

¶ 16 Respondent contends, essentially, that he was innocently walking down the street after trying to purchase "blunts" from an area gas station when he was stopped by the police. The

trial court rejected respondent's version of the events leading up to his arrest, and it is the trier of fact that resolves conflicts in the evidence. We will not reverse its determination of credibility where the trial court's findings are not so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of respondent's guilt. *Smith*, 185 Ill. 2d at 541.

¶ 17 Respondent further argues that the evidence against him was insufficient because the screwdriver was not found on his person when he was arrested and consequently, he cannot be held accountable for Brian's actions. The trial court commented upon the issue of accountability while issuing its findings, stating it did not care who had the screwdriver, "[t]he reality is by accountability, it doesn't matter[.]" We need not address whether respondent may be held accountable for Brian's possession of the screwdriver because there was sufficient evidence to find defendant guilty as a principal, based on Newsome's identification testimony. The fact that respondent was not arrested with the screwdriver affects only the weight to be given Newsome's identification testimony, and the trial court found Newsome's identification sufficient. We will not disturb that finding.

¶ 18 Respondent next contends that the evidence against him was insufficient because Newsome's in-court identification of him was made under suggestive circumstances and unreliable. We disagree. First, respondent argues that Newsome's in-court identification of him was automatically suggestive because he was seated at counsel's table when the identification occurred. Our supreme court has held that an in-court identification of an accused, on its own, does not violate due process. *People v. Calderon*, 369 Ill. App. 3d 221, 231 (2006). Moreover, the "prosecution is not required to fill the courtroom with individuals who resemble the defendant in order to insure a proper identification." *People v. Patterson*, 88 Ill. App. 3d 168, 176 (1980).

¶ 19 As stated above, direct testimony of a single eyewitness may be sufficient to sustain a conviction where that testimony is positive and the witness is credible. *People v. Smith*, 185 Ill. 2d 532, 545 (1999). An identification is considered positive and reliable where (1) the witness had a sufficient opportunity to view the accused, (2) showed an adequate degree of attention to the characteristics of the accused, (3) described the accused with a reasonable degree of accuracy, (4) displayed a sufficient amount of certainty in identifying the accused and (5) identified the accused within a reasonable period of time following the crime. *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972); and *People v. Malone*, 2012 IL App (1st) 110517, ¶ 27.

¶ 20 Applying the factors to the instant case, we observe that Newsome had more than ample opportunity to observe respondent. She testified that she watched respondent pry at the rear window and door for six or seven minutes before respondent and his companion walked to the front of the house. Newsome then observed respondent and three other companions on the side of her neighbor's house for an additional one to two minutes before Newsome left her window to call the police. There was only about six feet between Newsome and respondent when she observed him in the backyard. Although there was a fence separating their yards, Newsome testified the fence was about 36 inches tall, she was able to see over the fence, and her view was unobstructed.

¶ 21 Newsome also showed an adequate degree of attention when describing respondent as wearing a soiled white t-shirt, having an afro hair cut, and having a larger stature than the first young man that went into the backyard. Further, she testified that the two males that arrived after respondent had darker skin complexions and different haircuts than respondent.

¶ 22 Regarding the third factor, there was no evidence that, prior to her testimony, Newsome made a statement describing respondent's physical characteristics to the police and no evidence

regarding whether that statement, if made, was accurate. This factor neither adds or detracts from the reliability of the identification.

¶ 23 The fourth factor also weighs in favor of a positive and credible identification because Newsome showed no hesitation in making an in-court identification of respondent, and in fact she identified him before the State prompted her to do so during direct examination. Respondent relies heavily upon the fact that Newsome's first identification of him occurred at trial while he sat at counsel's table. However, there is no requirement that a witness to a crime make a pre-trial identification of the accused. *In re Johnson*, 43 Ill. App. 3d 549 (1976) (finding that witness' in-court identification of respondent was positive and credible despite the in-court identification being the first time the witness identified the accused).

¶ 24 Finally, Newsome identified respondent within six weeks of the incident, which we find to be a reasonable amount of time. See also *Calderon*, 369 Ill. App. 3d at 232 (five months between the incident and the in-court identification was reasonable); and *Malone*, 2012 IL App (1st) 110517 at ¶ 36 (one year and four months was not a negative factor in the *Biggers* analysis). Our analysis of the *Biggers* factors requires the finding that Newsome's identification of respondent was positive and credible.

¶ 25 Respondent was able to cross-examine Newsom regarding her identification. We also note again that it is the trier of fact's duty to determine the weight to give identification evidence. *Siguenza-Brito*, 235 Ill. 2d at 224. We will not disturb the trial court's finding that Newsome's testimony was clear and credible where it has not been shown that the trial court's finding was "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt" of respondent's guilt. *Smith*, 185 Ill. 2d at 541. Based upon the positive and credible identification of Newsome, we find that her identification of respondent was not the result of suggestive procedures or

1-11-3022

unreliable and conclude that the State proved respondent guilty of attempted residential burglary beyond a reasonable doubt.

¶ 26 Accordingly, we affirm the judgment of the circuit court of Cook County adjudicating respondent delinquent for attempted residential burglary.

¶ 27 Affirmed.