

No. 1-11-1323

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	Nos. 10 CR 14018
	)	10 CR 14019
	)	
JAMES MURRY,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE EPSTEIN delivered the judgment of the court.  
Presiding Justice Howse and Justice Lavin concurred in the judgment.

**O R D E R**

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of delivery of a controlled substance where the “buy officer’s” identification of defendant was credible and reliable.

¶ 2 Following a bench trial defendant James Murry was found guilty of two counts of delivery of a controlled substance and sentenced to concurrent seven-year prison terms.

Defendant appeals, contending the State failed to prove him guilty beyond a reasonable doubt

where defendant had a visible mole on his face and the “buy officer’s” failure to mention it casts doubt on the officer’s identification of defendant.

¶ 3 Officer Mason testified that on December 22, 2009, near 4759 North Sheridan, at about 12:25 in the afternoon, he was working with other officers on a narcotics investigation. As the buy officer, Mason signed out "1505" prerecorded funds and was dressed in plain clothes. He saw defendant standing on the corner, approached defendant and engaged him in conversation, attempting to purchase narcotics. Mason asked defendant whether he was “good today,” which is street terminology for whether defendant was selling narcotics that day. In response, defendant asked what Mason wanted. Mason told defendant he wanted “rocks,” which is street terminology for crack cocaine. Defendant only had cannabis but stated he could take Mason to someone who had crack cocaine. The two went to another location where Mason met another Black male. Defendant approached the man and asked whether he could take care of Mason. The man asked whether Mason was the police and defendant replied that Mason was not.

¶ 4 The man then told Mason to walk with him, and they went to a nearby store on that block. Mason gave the man \$20 in prerecorded bills and in return, the man gave Mason suspected crack cocaine. After the transaction, Mason returned to his undercover vehicle. The suspected narcotics were then inventoried under inventory number 11881102.

¶ 5 Mason saw defendant again on December 30, 2009 in the afternoon. Defendant was standing alone on a corner when Mason approached him and asked whether defendant was “good” today. Defendant asked “how many” did Mason want and Mason told him “four,” meaning four rocks. Defendant then said he had to use Mason’s cellular telephone to make a call, and called an unknown Black male nicknamed “Money.”

¶ 6 Defendant and Mason then walked to an apartment building located at 1001/1003 Sunnyside. When they arrived, they were buzzed into the building and met by Money. Money told Mason to give defendant his cash, and Mason gave defendant \$60 in prerecorded bills. Defendant and Money walked up to the second floor while Mason remained in the lobby. Less than a minute later, defendant returned to the lobby and handed Mason four small plastic bags containing suspected crack cocaine. Mason and defendant left the building together and then Mason returned to his vehicle. The suspected narcotics were then inventoried under number 11886315.

¶ 7 On January 3, 2010, Mason saw defendant a third time when other officers detained defendant and Mason drove by the detention and confirmed to the officers that defendant was the person Mason met with on the two previous occasions. Mason saw defendant again the next day, on January 4, when Mason approached him and asked whether defendant had a “working female” known as Wilma. Mason also picked defendant out of a photo array on January 4.

¶ 8 Mason approached defendant again on January 12, 2010, as defendant stood on the corner of Sheridan and Sunnyside. Mason asked whether defendant had a working telephone number for “Little Mama,” and defendant asked whether he could use Mason’s phone. Defendant called Little Mama, and then they walked to 1001/1003 Sunnyside. Defendant again called Little Mama and told her that Mason wanted four bags of rocks. The door was buzzed open, and defendant and Mason walked up to the second floor where they met Little Mama in front of her apartment. She told Mason to give defendant the money and Mason complied, handing defendant \$60 in prerecorded bills. Defendant gave Little Mama the cash, she handed defendant four bags containing suspected crack cocaine, which defendant gave to Mason. After

receiving the suspected narcotics, Mason left the building and the suspected narcotics were subsequently inventoried under number 11897146.

¶ 9 After unsuccessfully attempting to locate defendant following the three buy operations, the police obtained a warrant for defendant's arrest. Mason later learned that defendant was arrested on July 14, 2010.

¶ 10 On cross-examination, Mason testified that defendant identified himself as "Kenny Mack" and "Jay." When the enforcement officers stopped defendant on January 3, 2010, Officer Hughes made a contact card for him, and Mason completed a supplemental report for the identification.

¶ 11 Officer Ricky Hughes testified that he worked as an enforcement officer on the narcotics investigation. On January 3, 2010, he went to the area of 4600 North Broadway and when other officers observed a person matching the description of the person that Mason bought narcotics from, Hughes was told to stop that person. Hughes observed defendant standing on the corner of Broadway and Wilson. He conducted a field interview and defendant provided his name, address, date of birth, and Social Security number, which Hughes recorded on the contact card. Mason then drove by and confirmed that the person detained was in fact the person he bought narcotics from. Hughes testified that he noted on the contact card that defendant had a mole on the right side of his face. The next day, Mason identified defendant in a photo array.

¶ 12 Hughes attempted at least five times to locate defendant following Mason's identification, and then obtained an arrest warrant on July 12, 2010. Defendant was arrested on July 14, 2010. When asked about the difference in the intensity of the ink used to complete the

contact card, Hughes testified that the card was completed on the same day that defendant was stopped and interviewed.

¶ 13 By stipulation, forensic chemist Elaine Harris would have testified that for case 10 CR 14018, the recovered substance testified positive as 0.4 grams of cocaine. Forensic chemist Pat Junious-Hawkins would have testified that in case 10 CR 14019, the substances testified positive for 0.4 grams of cocaine. Forensic chemist Clotilda Fulcher would have testified that in case 10 CR 14016, the substance tested positive for 0.1 gram of cocaine.

¶ 14 The trial court made its findings:

“I find Officer Mason and Hughes to be very compelling about their identifications. I’m particularly mindful of the fact that Officer Hughes made a contact card on Mr. Murry. Even to describe the mole, which is very visible on his face. There is no question about who they were dealing with.”

Defendant was found not guilty of the first case, 10 CR 14016 because the evidence did not prove that defendant “had control of those drugs or got profit from it[.]” Defendant was found guilty as to the second two transactions of delivery of a controlled substance.

¶ 15 The court denied defendant’s written posttrial motion for reconsideration or in the alternative, for a new trial. Defendant was sentenced to concurrent sentences of seven years’ imprisonment. Defendant appeals.

¶ 16 On appeal, defendant contends the State failed to prove him guilty beyond a reasonable doubt where Officer Mason’s identification of defendant was unreliable because Mason failed to mention that defendant had a mole on his face.

¶ 17 “When a defendant challenges 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, 319 (1979); *People v. Ross*, 29 Ill. 2d 255, 272 (2008). The reviewing court does not retry the defendant. *Ross*, 229 Ill. 2d at 272. Rather the trier of fact determines witness credibility, weighs testimony, and draws reasonable inferences from the evidence. *Id.* “A conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant’s guilt.” *Id.*; see also *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

¶ 18 The State must prove beyond a reasonable doubt the identity of the person who committed the crime. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). An identification is not sufficient if it is vague or doubtful. *People v. Rodriguez*, 312 Ill. App. 3d 920, 933 (2000); citing *People v. Ash*, 102 Ill. 2d 485, 494 (1984). In assessing identification testimony, we use the factors outlined in *Neil v. Biggers*, 409 U.S. 188 (1972). In *Biggers*, the Supreme Court held that, under the totality of the circumstances, the factors to be considered in determining whether an identification is reliable include: (1) the opportunity the victim had to view the criminal at the time of the crime; (2) the witness’ degree of attention; (3) the accuracy of the witness’ prior description of the criminal; (4) the level of certainty demonstrated by the victim at the identification confrontation; and (5) the length of time between the crime and identification confrontation. *Id.* at 199-200.

¶ 19 Although there are five *Biggers* factors, the one most in dispute between the parties involves the third factor, the accuracy of prior identification, and Mason’s alleged failure to

describe defendant's facial mole. This factor is inapposite because although defendant argues Mason had reason to mention the mole, there was no prior identification described during trial, and Mason was never asked a question that reasonably called for him to mention the mole.

Additionally, there was no testimony detailing the description Mason provided to the enforcement officers, only that a description was given, defendant was detained, and Mason drove by and confirmed that the enforcement officers had the right suspect.

¶ 20 Addressing the rest of the *Biggers* factors, the first and second factors weigh in the State's favor because Officer Mason had ample opportunity to view defendant over the course of the investigation. Mason met with defendant four times over two weeks, and during three of those encounters, Mason and defendant conversed, walked to a second location, and defendant even used Mason's cellular phone. Because this was an ongoing narcotics investigation, it is more than reasonable to presume that Mason paid a high level of attention to defendant. This is evidenced by the fact that time and again, Mason went to a street corner in the same area over four different occasions and discussed the purchase of narcotics with defendant.

¶ 21 Regarding the fourth factor, nothing in the records suggests that Mason demonstrated any uncertainty in identifying defendant as the person who sold him suspected crack cocaine, despite the fact that defendant gave two different names during their various interactions. Thus, this factor also weighs in the State's favor.

¶ 22 For the fifth and final factor, considering that Mason was involved in an ongoing narcotics investigation that involved three different buys, on December 22, December 30, and January 12, and another interaction wherein Mason inquired about Little Mama on January 4, and a fifth interaction wherein Mason drove by and confirmed defendant's identity to other

officers, so many significant encounters with defendant over less than a two-week period also weighs in the State's favor. When considering the *Biggers* factors, we find that Mason's identification of defendant was credible and reliable. Although the trial court stated during its findings that defendant's mole was noticeable on the right side of his face, the presence of this mole does not make Mason's identification of defendant unreliable where there is no evidence in the trial record of Mason's description of defendant, and certainly there is no inconsistency in Mason's identification.

¶ 23 Defendant's reliance on *People v. Ford*, 195 Ill. App. 3d 673, 676 (1990), as an analogous case is misplaced where, in that case, the witness failed to mention defendant's severely scarred face and bandages in identifying defendant, and there were a number of other discrepancies in the description of the suspect. Here, defendant only takes issue with the absence of a mole in Mason's description of defendant during Mason's identification of defendant at the show-up, the photo array, and at trial. Again, we emphasize that the record is devoid of *any* description of defendant, and that Mason simply and unequivocally identified defendant as the person who sold him suspected narcotics.

¶ 24 Defendant also relies on *People v. Danielly*, 274 Ill. App. 3d 358, 368 (1995), and argues that the absence of the contact card, State's trial Exhibit 3, creates an inference that the mole was included at a later time in order to "cement Mason's identification" of defendant, and to bolster Mason's identification of defendant. *Danielly* involved the loss or destruction of evidence before trial. Here, we are faced with the loss of an exhibit between trial and appeal after the trier of fact had the opportunity to examine the exhibit and consider the parties' arguments regarding its authenticity. Defendant's argument is not well-founded where the trial court's assessment of

witness credibility was not so unreasonable, improbable, or unsatisfactory that it created a reasonable doubt of defendant's guilt. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

Moreover, it is a significant leap from inferring that evidence would have been unfavorable to the State, to inferring that a State's witness committed forgery and/or perjury. This inference has no basis in the evidence and it is one that we are unwilling to make. Further, even if we were to infer that the contact card was altered, this would not change our finding that Mason's identification of defendant was credible and reliable under the *Biggers* factors.

¶ 26 Finally, while defendant takes issue with the failure of the police to recover the 1505 prerecorded funds used for the controlled narcotics purchases, there is no reason to believe that defendant would still be carrying such a small amount of cash months after the transaction, and carrying the same bills he received during the controlled buys. Therefore, this argument also is not well-founded.

¶ 27 Based on the foregoing, we affirm the judgment of the circuit of court of Cook County finding defendant guilty of delivery of a controlled substance.

¶ 28 Affirmed.