

No. 1-12-2204

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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. 12 CR 2956
)	
MORRIS WOODS,)	Honorable
)	Maura Slattery-Boyle,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

O R D E R

¶ 1 **Held:** Judgment entered on defendant's delivery of a controlled substance conviction affirmed over claims that evidence was insufficient to sustain his conviction and that the trial court erred in failing to conduct a *sua sponte Krankel* inquiry; fines and fees order corrected.

¶ 2 Following a bench trial, defendant Morris Woods was found guilty of delivery of a controlled substance and sentenced as a Class X offender to six years' imprisonment. On appeal, defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable

doubt where the identifications of him were unreliable. He further contends that the trial court erred in failing to conduct a *sua sponte Krankel*¹ inquiry to determine whether defense counsel rendered ineffective assistance, and questions the propriety of a particular fine and the failure of the court to award the presentence credit to which he is entitled.

¶ 3 Defendant's conviction arose from events that transpired on December 15, 2011. On that day, officers conducting an undercover narcotics operation purchased heroin from him, and identified him in a photo array five days later. Defendant was arrested and charged approximately a month thereafter.

¶ 4 At trial, Chicago police officer David Torres testified that he has spent the last 6 of his 18 years as an officer conducting undercover operations within the narcotics unit. On December 15, 2011, he and Officer John Gonzalez were assigned to make an undercover purchase of narcotics near Superior Street and Lavergne Avenue in Chicago, Illinois, in response to complaints regarding narcotics activity in that area. Officer Gonzalez was driving their unmarked vehicle, and Officer Torres was in the front passenger seat. When they reached their destination about 12:15 p.m., they saw several men loitering on the corner of Superior and Lavergne. Officer Torres yelled "blows," a street term for heroin, out of his open window. One of the men, who Officer Torres identified in court as defendant, asked "how many," and Officer Torres responded, "four." Defendant was standing about 50 to 60 feet away from the officers at that time and told them to "go around to Superior."

¶ 5 Officer Torres testified that they followed defendant's instruction and next saw him when they pulled over near 4925 West Superior Street. Defendant walked up to the driver's side window alone and said, "four." Officer Torres said "yes," and handed \$40 in prerecorded funds

¹ *People v. Krankel*, 102 Ill. 2d 181 (1984).

to Officer Gonzalez, who then handed them to defendant. Defendant, in turn, handed Officer Torres four ziplock bags of suspect heroin. Defendant was approximately three to four feet away from Officer Torres at that time and nothing was obstructing his view of him. When Officer Torres asked defendant for his name and number, defendant responded "Steve," and "708," but then told him to "just ask for Steve when you come back." The officers returned to the police station and Officer Torres inventoried the four bags of suspect heroin under inventory number 12492040. Officer Torres further testified that on December 20, 2011, Officer Emerico Gonzalez showed him a photo array containing five photos and he identified a photograph of defendant as that of the seller in this case.

¶ 6 On cross-examination, Officer Torres stated that his initial conversation with defendant lasted "just a matter of moments," and that the drug transaction itself lasted approximately 15 to 20 seconds. He acknowledged that he described the seller as a black male with a dark complexion, in his twenties, 5'7" to 5'9" tall, weighing approximately 150 to 170 pounds, and wearing a skull cap. He also acknowledged that the report he wrote does not reflect that the seller had any facial hair, and that the photograph of defendant that was in the array he viewed was taken the day after the incident and reflected that defendant had facial hair.

¶ 7 Chicago police officer John Gonzalez testified that he has spent the last 6 of his 14 years as an officer working in the narcotics division. He corroborated Officer Torres' chronology of events, and also identified defendant in court as the seller in this case. He further added that when Officer Gonzalez asked defendant for his name and number, defendant responded "Steve" and "708," then told them to "just come back over this way, he would be out there." He testified that it was daylight and nothing was obstructing his view of defendant, who was "bundled up pretty good." Officer Gonzalez further testified that on December 20, 2011, Officer Emerico

Gonzalez showed him a photo array containing five photographs, and he identified the picture of defendant as that of the seller in this case.

¶ 8 On cross-examination, Officer Gonzalez stated that when they first encountered defendant on Superior and Lavergne, he was approximately 10 to 15 feet away from the officers and their verbal exchange with him lasted "just a matter of seconds." Their next conversation with defendant, during the drug transaction, lasted less than a minute. He acknowledged that he described defendant as a black male in his twenties, 5'7" to 5'9" tall, weighing 150 to 170 pounds, with a dark complexion. Because defendant was wearing a hat, he was unable to see his hair, but he did see that defendant had a little facial hair. Officer Gonzalez acknowledged that the supplementary report listed "hair unknown," and that they could have included facial hair in the report. He further acknowledged that the photograph of defendant that was included in the photo array he viewed was taken the day after the incident and reflected that defendant had a goatee. The prerecorded funds that they gave to defendant were never recovered, and defendant was arrested in relation to this case on January 20, 2012.

¶ 9 The parties then stipulated that if called, Lenetta Watson, a forensic chemist at the Illinois State Police Crime Lab, would testify that she received inventory number 12492040, containing four plastic baggies of a white powdery substance, in a heat-sealed condition. Upon testing the contents of one of those baggies, which weighed .1 gram, it was her expert opinion that it was positive for heroin. The total estimated weight of all four baggies was .6 gram. The State rested and defendant elected not to testify or to present any witnesses or evidence.

¶ 10 Following closing arguments, the trial court found defendant guilty of delivery of a controlled substance. In doing so, the court stated that "the court will recognize that the facial hair issue is not in there, but that does not overcome the eight separate identifications that

occurred. Once when the blows was stated. Two on Superior. Three in the photo array, and four in court here today."

¶ 11 Defendant filed a motion to reconsider, which the trial court denied. During the hearing on that motion, the State clarified that Officers Torres and Gonzalez did not view the photo array together, and that a separate photo array was shown to each officer individually. Prior to announcing its ruling, the trial court stated, "[t]hey think he could be in his 20s, he's 38. You know, he looks very good for his age." The court also stated that the officers' failure to note defendant's facial hair in their description of him was not fatal in this case.

¶ 12 The parties then proceeded to sentencing, where the State noted, *inter alia*, that due to his criminal history, defendant is Class X mandatory. Defense counsel interjected, "I don't believe he's Class X eligible. I might want to actually pull those convictions and make sure that that is not the case. *** I do want to have an opportunity to check it because it was my impression that he was not Class X mandatory. Previous discussions and previous offers didn't indicate that." The case was twice continued at defense counsel's request, and, when the sentencing hearing resumed, counsel acknowledged that defendant is Class X eligible. At the conclusion of the sentencing hearing, the trial court sentenced defendant to the minimum term of six years' imprisonment.

¶ 13 On appeal, defendant first contends that the evidence was insufficient to prove that he was the seller in this case because the case hinged on the vague and doubtful identifications of him made by Officers Torres and Gonzalez. He specifically argues that the officers' descriptions of the seller did not match his appearance in terms of age and facial hair, and were too general in all other respects; that too much time passed between the incident and the photo array and his

arrest; that the seller's clothing impacted the officer's ability to observe him, and that no evidence corroborated the officers' identifications.

¶ 14 The standard of review on a challenge to the sufficiency of the evidence 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. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies to all criminal cases, whether the evidence is direct or circumstantial, and acknowledges the responsibility of the trier of fact to determine the credibility of the witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). A reviewing court will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 15 Proof of an offense requires proof that a crime occurred, and that it was committed by the person charged. *People v. Ehlert*, 211 Ill. 2d 192, 202 (2004). In this case, defendant was found guilty of delivery of a controlled substance. 720 ILCS 570/401(d) (West 2010). On appeal, he does not question that a crime was committed, but challenges the sufficiency of the evidence to establish that he was the perpetrator.

¶ 16 A positive identification of the accused by a single witness is sufficient to sustain a conviction provided that the witness had an adequate opportunity to view the accused under conditions permitting a positive identification. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). In evaluating the reliability of an identification, we look to the following five factors: (1) the witness' opportunity to view the offender, (2) the witness' degree of attention, (3) the accuracy of the witness' prior description of the criminal, (4) the witness' degree of certainty, and (5) the

length of time between the crime and the confrontation. *Slim*, 127 Ill. 2d at 307-08, citing *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972).

¶ 17 Here, Officers Torres and Gonzalez both testified that they first saw defendant when they arrived at Superior and Lavergne and briefly spoke with him regarding their desire to make a drug purchase. At this time, the officers observed defendant from across the street in daylight for "a matter of seconds," with nothing obstructing their view of him. The officers then drove to the location designated by defendant and there observed him under similar lighting conditions for a longer period of time during the actual drug transaction. At that time, defendant stood three to four feet from the officers for 15 to 20 seconds, with nothing obstructing the officers' view of him. Although the officers' observations of defendant were brief, ranging from a few seconds during their initial encounter with him, to approximately 20 seconds for the actual drug transaction, they viewed defendant for an adequate time (*People v. Reed*, 80 Ill. App. 3d 771, 778 (1980)) to permit a reliable identification (*People v. Herrett*, 137 Ill. 2d 195, 200, 204 (1990)).

¶ 18 In reaching that conclusion, we find that the officers had a good opportunity to view defendant during the two observations² that occurred on the street, and reject defendant's argument that the officers' opportunity to view the seller was negatively impacted by the fact

² We observe that the record shows that the trial court, the State, and defense counsel interchangeably used the words "identifications" and "observations" in referring to both the officers' observations of defendant and their photo array and in-court identifications of him, thereby causing some confusion. However, it is clear from the record that on the day of the incident, the officers twice observed defendant, and that each officer identified defendant in a photo array and again at trial. To the extent that the trial court's reference to "eight identifications" implies that it was working under the premise that each officer identified defendant on four separate occasions, we note that we may affirm the circuit court on any basis supported by the record. *People v. Dinelli*, 217 Ill. 2d 387, 403 (2005).

that, as Officer Gonzalez testified, "[h]e was bundled up pretty good." The record shows that neither officer testified that their ability to see defendant's face was in any way diminished by any of the clothing he was wearing. Further, because the officers were engaged in an undercover assignment to purchase narcotics, the trier of fact could reasonably assume that their degree of attention was high. *People v. Stanley*, 397 Ill. App. 3d 598, 611 (2009), *People v. Ford*, 195 Ill. App. 3d 673, 676 (1990).

¶ 19 In addition, Officers Torres and Gonzalez both described defendant as a black male in his twenties, 5'7" to 5'9" tall, weighing 150 to 170 pounds, with a dark complexion. Defendant argues that these descriptions do not match his likeness in that he was 37 and wore a goatee at the time of the incident. Discrepancies or omissions in a witness' description of the accused do not in and of themselves generate reasonable doubt as long as a positive identification has been made (*Slim*, 127 Ill. 2d at 309), as in the case at bar (see *e.g.*, *People v. Rodgers*, 53 Ill. 2d 207, 211, 213-14 (1972) (13-to-18-year age discrepancy), *People v. Chatman*, 32 Ill. App. 3d 506, 510-11 (1975) (5-to-15-year age discrepancy)).

¶ 20 Further, we have the benefit of the photograph of defendant that was included in the photo array, and find that the officers' estimate of defendant's age was not unreasonable. *People v. Rosa*, 93 Ill. App. 3d 1010, 1016 (1981). This conclusion is strengthened by the comment of the trial judge, who had the opportunity to view defendant and was thus in a better position to assess the significance of any discrepancies in defendant's description (*Slim*, 127 Ill. 2d at 312-13), that defendant looked very good for his age. Under these circumstances, we find that the age discrepancy and the failure of the officers to mention defendant's facial hair in their description of the offender were factors that affected the weight to be given to their identification

testimony, but did not destroy their identifications of defendant as the offender. *Slim*, 127 Ill. 2d at 308.

¶ 21 Defendant further maintains that the descriptions were too vague and general to bolster the officers' identifications of him. However, a witness's positive identification can be sufficient even though a witness gives only a general description based on the total impression the accused's appearance made. *Slim*, 127 Ill. 2d at 309. Here, Officers Torres and Gonzalez both positively identified defendant in separate photo arrays, and, although defendant argues that no evidence was presented regarding the degree of the officers' certainty at the time of those arrays, we observe that no evidence was presented that either officer hesitated in any way in positively identifying defendant at that time. The record also reflects that both officers were certain of their identification of defendant at trial, providing unwavering testimony that he was the offender. *Reed*, 80 Ill. App. 3d at 780. Notwithstanding defendant's assertion regarding the limited value of courtroom identifications, the fact remains that we may properly consider them in reaching our determination.

¶ 22 Defendant finally argues that the five-day delay between the incident and the officers' identifications of him in the photo array casts doubt on their identifications because the officers' ability to remember the offender's appearance after that amount of time would have "diminished significantly." We disagree, and observe that this court has upheld identifications made well after a year had elapsed after the incident. *People v. Malone*, 2012 IL App (1st) 110517, ¶ 36.

¶ 23 In sum, after weighing the *Slim/Biggers* factors, and viewing the evidence in the light most favorable to the prosecution (*Siguenza-Brito*, 235 Ill. 2d at 224), we find that Officers Torres and Gonzalez had sufficient opportunity to view defendant under circumstances

permitting a reliable identification (*Herrett*, 137 Ill. 2d at 204), and that defendant's identification as the seller in this case was proved beyond a reasonable doubt.

¶ 24 In reaching this decision, we have considered *People v. Ford*, 195 Ill. App. 3d 673 (1990), relied upon by defendant, and find it distinguishable. In *Ford*, defendant was convicted of delivery of a controlled substance based largely on the testimony of an undercover narcotics officer, who, in his initial report, failed to note the fact that defendant had severe scarring on the entire left side of his face. *Ford*, 195 Ill. App. 3d at 674-76. At trial, the same officer gave conflicting testimony regarding the type of drug he purchased from defendant, as well as testimony that conflicted with the grand jury testimony of another officer. *Ford*, 195 Ill. App. 3d at 674-75. On appeal, this court found that the officer's identification testimony was vague and doubtful, and reversed defendant's conviction. *Ford*, 195 Ill. App. 3d at 678. In doing so, we reasoned that in addition to the officer's failure to note defendant's severe facial scarring, his credibility suffered for other reasons, including the abovementioned conflicting testimony. *Ford*, 195 Ill. App. 3d at 676-78. We also underscored that we would not reverse defendant's conviction based on any single one of those factors. *Ford*, 195 Ill. App. 3d at 678.

¶ 25 Here, unlike *Ford*, the officers did not fail to describe such a unique facial characteristic such as severe facial scarring covering the entire left side of his face, but rather, a goatee. Further, as we noted in *Ford*, even the failure to describe the severe facial scarring, alone, would have been insufficient to reverse defendant's conviction. Moreover, unlike *Ford*, the officers' testimony here did not suffer from the infirmities noted in that case, and accordingly, we find *Ford* factually distinguishable from the case at bar.

¶ 26 Defendant also makes much of the lack of any physical corroborating evidence to support his conviction. However, the identification of a single eyewitness is sufficient to sustain a

conviction, and the State was not required to present physical corroborating evidence at trial.

People v. Herron, 2012 IL App (1st) 090663, ¶ 23, citing *People v. Negron*, 297 Ill. App. 3d 519, 529-30 (1998).

¶ 27 Defendant next contends that the trial court erred in failing to conduct a *sua sponte Krankel* inquiry into whether defense counsel provided ineffective assistance, "after [defense] counsel disclosed that he did not know that [defendant] was eligible for a mandatory Class X sentence, and [that] the State had offered [defendant] a plea bargain that included a sentence below the Class X range."

¶ 28 According to defendant, counsel's statement that "previous offers didn't indicate" that defendant was Class X mandatory "shows that the State offered a sentence below the statutory minimum for a Class X offense, leading defense counsel to believe that [defendant] was ineligible for a Class X sentence." We note, however, that the record is silent as to the details of any offers the State may have extended to defendant, and defendant's assertion that the State in fact extended offers which included a sentence below the Class X statutory minimum is based on conjecture and surmise.

¶ 29 That said, we observe that the supreme court's decision in *Krankel* has led to the rule that when a defendant raises a *pro se* post-trial claim of ineffective assistance of counsel, the trial court should examine the factual basis of that claim. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). Here, it is uncontested that defendant made no such complaint, leading the State to respond that no such inquiry was required, citing the supreme court ruling in *People v. Taylor*, 237 Ill. 2d 68, 77 (2010), that no clear basis can exist for an allegation of ineffective assistance of counsel in the absence of a specific complaint from the defendant about his attorney's representation.

¶ 30 Notwithstanding, defendant maintains that even where a defendant has not raised a claim of ineffectiveness, a trial court has a duty to act *sua sponte* where the record provides a clear basis for an allegation of ineffectiveness. In making that argument, defendant relies on *People v. Williams*, 224 Ill. App. 3d 517, 524 (1992). In that case defendant was found guilty of murder, and defense counsel filed a motion for a new trial, informing the court of two witnesses who would have supported defendant's alibi defense, but were not called at trial in spite of his knowledge of their existence. *Williams*, 224 Ill. App. 3d at 521-23. The trial court denied the motion, and, in doing so, rejected defense counsel's claim that those witnesses constituted new evidence, referring to counsel's argument as "ridiculous." *Williams*, 224 Ill. App. 3d at 522. On appeal, defendant argued that the trial court erred in failing to conduct a *sua sponte Krankel* inquiry into defense counsel's ineffectiveness, which was readily apparent from counsel's statements regarding the alibi witnesses he did not call at trial. *Williams*, 224 Ill. App. 3d at 523. This court noted that the two witnesses would have provided critical support of defendant's alibi defense and that the trial court's strong comments to counsel indicated that it was made aware of counsel's possible neglect. *Williams*, 224 Ill. App. 3d at 524. We thus held that where there is a clear basis in the record for an allegation of ineffectiveness of counsel, a defendant's failure in explicitly making such an allegation does not result in waiver, and remanded the case to the trial court for a preliminary investigation into defense counsel's performance. *Williams*, 224 Ill. App. 3d at 524.

¶ 31 Here, unlike *Williams*, counsel's statements did not concern defendant's guilt or innocence of the charged offense, and the court was not presented with evidence that defense counsel was neglectful in presenting witnesses or putting on a defense (*People v. Henney*, 334 Ill. App. 3d 175, 190 (2002)). Further, as the State points out, defense counsel in *Williams*

essentially acknowledged his ineffectiveness by informing the court that he had failed to call two critical alibi witnesses at trial in spite of his knowledge of their existence. Here, there were no such admissions and the trial court made no comments indicating that it was made aware of any possible neglect of defendant's case by counsel. To the contrary, the record shows that the trial court readily gave defense counsel additional time to look into the issue of defendant's Class X status, and a further continuance for the same purpose. After reviewing defendant's lengthy record of convictions which included misdemeanors and Class 4 felonies, as well as the qualifying felonies for Class X sentencing, counsel acknowledged the reality of defendant's eligibility. Counsel then presented witnesses and other mitigating evidence on defendant's behalf at the sentencing hearing. Defendant spoke in allocution asking the court for mercy, and made no reference to his counsel or any plea negotiations.

¶ 32 Under these circumstances, we find no clear basis for an allegation of ineffectiveness of defense counsel in the record, and, accordingly, no error by the trial court in failing to conduct a *sua sponte Krankel* inquiry.

¶ 33 Defendant finally challenges the imposition of certain fines and fees, as reflected in the order showing a total amount of \$1,500. Our review is *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 34 Defendant first contends, and the State concedes, that he was improperly assessed the \$5 Electronic Citation Fee because he was not convicted of any traffic, misdemeanor, municipal ordinance, or conservation case. 705 ILCS 105/27.3e (West 2010). We agree and order that this fee be vacated.

¶ 35 Defendant further contends, and the State concedes, that he is entitled to a \$5 credit for each day he spent in presentence custody. The State maintains that defendant's presentence

credit is already reflected in the fines and fees order, which shows that defendant spent 151 days in custody. We note, however, that the fines and fees order does not reflect the amount of presentence credit to which defendant is entitled, but rather, merely states that "allowable credit toward fine will be calculated." Further, the circuit court's records, of which we may take judicial notice (*People v. Jimerson*, 404 Ill. App. 3d 621, 634 (2010)), reflect that defendant owes \$1,500 in fines and fees; a total which does not include his presentence credit. Because defendant spent 151 days in presentence custody, he is entitled to a total presentence credit of \$755, which he may apply in its entirety against the \$1,000 Controlled Substance Fine. *People v. Fort*, 373 Ill. App. 3d 882, 889 (2007).

¶ 36 Pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), and our authority to correct a mittimus without remand (*People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008)), we order the fines and fees order to be corrected to reflect the vacation of the \$5 Electronic Citation Fee and the offset of \$755 of the \$1,000 Controlled Substance Fine, for a corrected total amount of \$740.

¶ 37 Affirmed, fines and fees order corrected.