

No. 1-13-0551

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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.	)	No. 11 CR 11505
	)	
DARREN HAYES,	)	Honorable
	)	William G. Lacy,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CUNNINGHAM delivered the judgment of the court.  
Justices Connors and Harris concurred in the judgment.

**ORDER**

- ¶ 1 **Held:** Defendant was proven guilty beyond a reasonable doubt of aggravated battery on a public way where the victim identified defendant as the person who punched him.
- ¶ 2 Following a bench trial, defendant Darren Hayes was convicted of aggravated battery on a public way pursuant to section 12-3.05 of the Criminal Code of 1961(the Code) (720 ILCS 5/12-3.05)(2010)) and sentenced to three years in prison. On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt because the State's evidence was insufficient to establish defendant's identity as the man who first struck the victim. We affirm.

¶ 3 Defendant was charged with one count of attempted first degree murder, five counts of aggravated battery, one count of aggravated unlawful restraint, and two counts of mob action.

¶ 4 At trial, Rubin Robinson testified that around midnight on July 3, 2011 he and two friends attended the Black Pride celebration on the south side of Chicago. He had three cocktails at the celebration. Robinson and his friends then moved north to the "Boystown" area of Chicago, and stopped at a 7-Eleven at Halsted and Roscoe where Robinson bought a 12-ounce can of malt liquor. While walking on the west side of the street, they passed a crowd of people and Robinson heard someone say, "Ru." Robinson, assuming the person was talking to him, responded "[w]hat did you say?" The individual replied, "I was singing a song." Robinson said he "shrugged it off," and began to walk away, but a circle of about 10 to 12 people formed around him. As he tried to walk out of the circle, defendant approached Robinson and "jumped in the circle and jumped in my face and said, '[y]ou talk a lot of shit.' " Defendant struck Robinson in the ear with a closed fist. Robinson then grabbed defendant's shirt and lowered his head to shield himself. Other individuals joined in and began punching Robinson. At this point, Robinson could not see defendant or the other individuals beating him because his eyes were closed. The beating stopped, and his friends helped him from the ground. Robinson walked away clutching a black shirt that he assumed he had pulled off of defendant. He was then hit again in the ear, and stumbled into the wall of a Sherwin Williams paint store on the opposite side of the street. It was then that Robinson felt blood running down his body and realized he had been stabbed. Another friend of Robinson's happened to be walking by and helped him lie down on the ground while they waited for help. Robinson spent four days in Illinois Masonic Hospital with stab wounds to his rib cage, shoulder, and back. He also had lacerations on his chest and left

arm. As a result of the chest wounds, Robinson had a collapsed lung, and a chest tube was inserted into the side of his chest.

¶ 5 On July 7, 2011, Robinson viewed a line up and identified defendant as the individual who "threw the first punch." There was also video footage of the beating, which was posted to YouTube and collected by members of the Chicago Police Department. Robinson identified defendant in the video as one of the men who hit him, stating "there he is without a shirt." Robinson acknowledged that he had been drinking, but stated that the alcohol did not affect his memory of what happened.

¶ 6 Robert Sall recorded the beating. Sall was at home with his roommate John Cunningham, at 3310 North Halsted. Both men received text messages from a friend about one block away and then went to a window to look outside. They went out on a balcony and saw a small group of people and another larger group walking toward each other. Some words were exchanged between the two groups, but Sall "couldn't really hear it." He then went inside his apartment and grabbed his video camera as the argument was "getting more heated." Sall noted that there was some missing footage from the video, but identified defendant as one of the people who was making physical contact with Robinson. Sall noted that he was shirtless and "was either trying to find a shirt or something off the ground."

¶ 7 Cunningham testified consistently with Sall, and stated that he saw someone get shoved and spill a drink, but did not recall who the aggressor was during the altercation. After the fight began, he ran downstairs to help Robinson, but the crowd dispersed by the time he got outside. Cunningham witnessed defendant walk away shirtless from where the beating had taken place. He also saw defendant pick up what appeared to be sunglasses from the ground then walk back toward Cunningham's apartment building.

¶ 8 Artis Hill, a friend of Robinson, was also walking near the 3300 block of Halsted Street when he noticed a "big commotion" ahead of him. As Hill was walking north, he recognized defendant as someone he had seen at underground dance competitions in the past. Defendant, who was shirtless and holding onto a black shirt, was about 12 feet away from Hill when Hill heard defendant say, "I got that bitch." Hill did not know who defendant was referring to. Hill continued walking north and noticed Robinson on the sidewalk bleeding. He waited with him until police and an ambulance arrived. Hill did not tell police what he heard defendant say. A few days later, Hill spoke with a detective and shared a photograph of defendant that he found on Facebook from a dance competition at which he had seen defendant. He also identified defendant in a lineup.

¶ 9 Chicago police officer Evita Cortes responded to the incident. She testified that when she arrived, there were a lot of people in the street and a lot of screaming and yelling. She found Robinson lying against the paint store, hunched over and bloodied, with a trail of blood around him on the sidewalk and along the street.

¶ 10 Detective Demetrios Kolliopoulos was assigned to the case and on July 4, 2011, he met with Robinson at Illinois Masonic Hospital. He spoke with Artis Hill over the telephone, and began looking for defendant. Detective Kolliopoulos printed out a Facebook photo of defendant, found a police department database photo of him, and compared the pictures to the video of the incident. He concluded that defendant was the person in the Facebook photo and in the video. Detective Kolliopoulos testified that he could see defendant pick up a knife in the video, but admitted on cross-examination that it could have been any shiny object that defendant picked up.

¶ 11 Detective Neal Francis was also assigned to the case. On July 8, 2011, he went to defendant's grandmother's house twice. On his first visit, defendant's grandmother gave Francis a set of keys. On his second visit, defendant's grandmother gave Francis a paper bag containing a folding knife and multi-tool knife, similar to a Swiss Army knife. Francis showed photographs of the knives to defendant. Defendant was cooperative and identified the knives as his own, the same knives that were attached to his keychain. He stated that they were on the sidewalk during the fight.

¶ 12 The court found defendant not guilty of all counts, except for aggravated battery on a public way. The court reasoned that although Robinson was "impeached in some minimal fashion, that no way ineffectuated [*sic*] his credibility" and found his testimony to be "extremely, extremely credible." The court also noted that, although the scene of the incident was "chaotic, boisterous, [and] loud," Sall and Cunningham were "highly credible" witnesses who also identified defendant "as being present at the scene." It concluded that it was proven beyond a reasonable doubt that defendant struck Robinson at least once. The court sentenced defendant to three years in prison and one year mandatory supervised release.

¶ 13 On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt of aggravated battery on a public way where only the victim, who admittedly had been drinking on the night of the incident, identified defendant as the person who punched him and other witnesses gave differing versions of the initial confrontation that began a chaotic melee.

¶ 14 Due process requires proof beyond a reasonable doubt to convict a criminal defendant. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). In reviewing a challenge to the sufficiency of the evidence, it is not a reviewing court's role to retry the defendant; rather, we must view the evidence in the light most favorable to the prosecution and determine whether any rational trier

of fact could have found each of the essential elements of the crime beyond a reasonable doubt. *People v. Ward*, 215 Ill. 2d 317, 322 (2005); *People v. Hayashi*, 386 Ill. App. 3d 113, 122 (2008). The trier of fact is responsible for evaluating the credibility of the witnesses, drawing reasonable inferences from the evidence, and resolving any inconsistencies in the evidence (*People v. Bannister*, 378 Ill. App. 3d 19, 39 (2007)), and a reviewing court should not substitute its judgment for that of the trier of fact (*People v. Sutherland*, 223 Ill. 2d 187, 242 (2006)). Ultimately, a reviewing court will not reverse a defendant's conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt. *People v. Carodine*, 374 Ill. App. 3d 16, 24 (2007).

¶ 15 The State bears the burden of proving beyond a reasonable doubt the identity of the person who committed a crime. 720 ILCS 5/3-1 (West 2006); *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Vague and doubtful identification testimony is insufficient to sustain a criminal conviction; however, the identification testimony of a single witness is sufficient to sustain a conviction if the witness viewed the accused under circumstances that allowed for a positive identification. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995); *Slim*, 127 Ill. 2d at 307. Ultimately, the reliability of a witness's identification testimony is a question for the trier of fact. *People v. Gabriel*, 398 Ill. App. 3d 332, 341 (2010). The test of a positive identification is whether the witness had the opportunity to view the offender for a sufficient length of time under adequate conditions for observation. The conditions need not be perfect and the observation need not be prolonged. *People v. Benson*, 266 Ill. App. 3d 994, 1005 (1994).

¶ 16 We find that Robinson's positive identification of defendant as the person who "threw the first punch" is sufficient to convict defendant. According to Robinson's detailed testimony, on the night of the altercation he had three drinks at a celebration, and then headed to North Halsted

Street. Robinson purchased another drink before being confronted by defendant. He stated that he talked "just briefly with one person in the other group after he heard someone say [his name]." Defendant then punched Robinson in the ear, and a beating of Robinson ensued that included 10 to 12 other individuals who formed a circle around Robinson. During the altercation, Robinson grabbed defendant's shirt and held it balled up in his hand while being beaten. A few days later, Robinson viewed a line up and identified defendant as the one who started the fight. He also identified him from a video of the fight, noting that defendant was shirtless in the video. Although Robinson had been drinking, he stated that the alcohol did not affect his memory of what happened to him. The court determined that Robinson's testimony was "extremely, extremely credible." Viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could have found each of the essential elements of the crime beyond a reasonable doubt based on Robinson's testimony alone. See *Lewis*, 165 Ill. 2d at 356.

¶ 17 Nonetheless, defendant argues that Robinson's identification is not sufficiently reliable given the chaotic circumstances and "all that happened to Robinson," along with the fact that Robinson had been drinking. We disagree. Although Robinson drank alcohol prior to the incident, it does not appear from the record that it impaired his ability to identify defendant as one of his attackers. The trial court noted that Robinson was minimally impeached; however, the court found that his identification of defendant was sufficient. The record shows that prior to the altercation, Robinson and defendant exchanged words and Robinson had an opportunity to view defendant for a sufficient length of time under adequate conditions for observation. See *Benson*, 266 Ill. App. 3d at 1005. Thus, we find his identification sufficient.

¶ 18 Defendant next argues that he was not proven guilty beyond a reasonable doubt because Sall and Cunningham's version of events leading up to, and including the initial physical

altercation is inconsistent with Robinson's story, and raises doubts as to Robinson's reliability and identification of defendant as the one who threw the first punch. We disagree. Although Robinson testified that defendant started the altercation, neither Sall nor Cunningham were able to identify defendant as the man who threw the first punch. Nonetheless, they both identified defendant as being one of the men involved in the altercation. In fact, Robinson noted that he pulled defendant's black shirt off during the altercation, and this was corroborated by Sall and Cunningham who both testified that they saw defendant leave the scene shirtless. Furthermore, Hill, who knew defendant prior to the incident, also identified defendant as being at the scene of the fight and noted that he was shirtless and holding a black shirt in his hand when he first saw him. Although it is not clear from the testimony of Sall, Cunningham, and Hill who initiated the altercation, all the witnesses placed defendant at the scene of the fight and from the State's evidence the court surmised that defendant was one of the men who struck defendant. Further, it was Robinson's unequivocal testimony that defendant threw the first punch.

¶ 19 Additionally, the record on appeal contains a copy of the video of the fight. Although the scene depicted is chaotic and it is difficult to determine which offender struck which blow, it contains an image of defendant sufficiently clear to allow identification and defendant does not dispute that he was at the scene of the crime. Moreover, although Robinson would be unlikely to be able to identify each of the multiple attackers in the mob that beat him, the chaos of the fight does not necessarily demonstrate that Robinson would be unable to identify the person who initially confronted and struck him. Thus, we find that, contrary to defendant's assertion, the evidence in this case was not so improbable or unsatisfactory as to create a reasonable doubt of defendant's guilt. See *Gabriel*, 398 Ill. App. 3d at 341.

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¶ 20 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.