SIXTH DIVISION
September 30, 2015

No. 1-11-2519

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. 03 CR 5600
	)	
SHAUN HENDERSON,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice ROCHFORD and Justice HOFFMAN concurred in the judgment.

O R D E R

¶ 1 *Held*: The State presented sufficient evidence to prove beyond a reasonable doubt that defendant was the individual who shot and killed the victim based upon the identification of two witnesses despite defendant's claim that they were unreliable because they only observed the individual who shot the victim for a brief period of time and their testimony was inconsistent.

¶ 2 Following a bench trial, defendant Shaun Henderson was convicted of first-degree murder and three counts of attempted first-degree murder. He was sentenced to 60 years in prison for first-degree murder and a consecutive term of 30 years in prison for one of the convictions of attempted first-degree murder. He also received 30 years in prison for each of the

other two convictions of attempted first-degree murder, which were to run concurrent to one another but consecutive to the other sentences, for an aggregate sentence of 120 years in prison. On appeal, defendant contends that the State's identification witnesses, Steven Hunt and Darius Ballard, provided unreliable testimony that could not be the basis for finding defendant guilty beyond a reasonable doubt. Additionally, defendant argues that the testimony of two other State witnesses, Jermaine Felton and Adrienne Coleman, also was unreliable and irrelevant, respectively.

¶ 3 At trial, Gregory Becton, Jr., testified that in the afternoon of July 7, 2002, he received a call from his best friend, Terrell Williams, who is the victim in this case. Williams wanted Becton to pick him up from a location near a friend's home where a Grand Prix had been set on fire. Williams wanted to take the tires from the burned car and give them to his uncle whose car needed tires. Becton drove to a house near East 63rd Street and South Langley Avenue in Chicago and saw Williams standing outside. Williams told Becton that the car was near the house in an abandoned lot and wanted his help because Becton had the tools necessary to remove the tires from the car. Becton went with Williams to the car, but did not want to help remove the tires because the burned car was dirty with soot. While Williams attempted to remove the tires by himself, a couple claiming to be the owners of the car came to the abandoned lot. However, after a brief conversation with Williams, they left and did not stop Williams from removing the tires.

¶ 4 Williams eventually removed the tires from the car. Williams and Becton then put the tires in Becton's car and drove back to Williams's house near East 67th Street and South Evans Avenue. Becton and Williams began bringing the tires into Williams's home. A neighbor named

Michelle, who lived one house away from Williams, saw them bringing the tires inside Williams's home.

¶ 5 Later in the day, Becton and Williams had a couple of drinks in honor of Williams's birthday, which was July 7. As the time neared 10:45 p.m., Becton decided to go home – just a few houses down from Williams's home on the same street. Williams then went across the street and a couple houses down to continue celebrating his birthday at Nathaniel Holt's house, along with friends Darius Ballard and Steven Hunt.

¶ 6 As Becton was getting ready for bed, he heard gunshots. He immediately ran outside his home and saw Ballard crying and screaming. He then saw Williams, who was gurgling blood, and held him, waiting for paramedics to arrive. By the time paramedics arrived, Williams had died.

¶ 7 Steven Hunt testified that at approximately 11:15 p.m. on July 7, 2002, he was on the front porch of Holt's house, getting ready to leave. As he was exiting the front gate of the house, he saw three men coming toward the gate, which was approximately five feet from the bottom stair of the porch. Hunt stated that defendant was one of the three men and asked him if he knew "something about some rims." Hunt did not, but told defendant that maybe the men on the porch did. Hunt did not leave and heard the group ask his friends if they knew "anything about some rims." Everyone on the porch, including Williams, stated that they did not. Simultaneously, Hunt heard a woman yell from directly across the street. Immediately after, he saw defendant take a gun out, point it at Williams's head and shoot him from two to three feet away. Williams fell backward and began to cough up blood. Defendant continued to shoot at others on the porch. The

other two men also took out guns and began shooting while all three men retreated from the property.

¶ 8 Hunt described defendant as having a chipped tooth, cornrows and wearing a black hoodie. He also stated that the other two men were wearing black hoodies. He believed that one of the shooters had a "dark" complexion, one had a "medium complexion" and the other had a "little lighter" complexion. He recalled telling the police that the individual with the "dark" complexion was the one who killed Williams and identified defendant as that individual.

¶ 9 On February 3, 2003, Hunt went to the police station, viewed a photo array, and identified an individual who had been shooting at him and his friends. On February 5, 2003, Hunt again went to the police station, viewed another photo array, and identified defendant as the individual who killed Williams and the one who initially asked him about the "rims" at the front gate of Holt's house. On April 19, 2003, Hunt viewed a lineup and identified an individual who he stated had been "shooting at us too."

¶ 10 Darius Ballard testified that at approximately 11:15 p.m. on July 7, 2002, a car pulled up in front of Holt's house, and three men and a woman exited the car. The woman went to a house across the street and the men came toward him and his group of friends. The men asked Ballard and his friends if they "knew anything about somebody selling some rims or tires." When he and his friends said no, the three men began shooting. Ballard saw Williams get shot and grabbed him, trying to keep him breathing while the men continued to shoot. When they finished shooting, he saw the three men run from the scene.

¶ 11 On February 3, 2003, Ballard viewed a photo array at the police station and stated he identified an individual that was one of the shooters. However, at trial, he could not remember

which one he identified. On April 20, 2003, Ballard viewed another lineup and was again able to identify an individual who was one of the shooters. At trial, he thought he identified the first person in the lineup. Ballard never identified defendant at trial as the individual who shot Williams. On cross-examination, Ballard stated that the individual who asked about the "rims" and shot Williams was "light-skinned *** with braids" that looked like a ponytail. Ballard also described defendant at trial as having "dark skin."

¶ 12 Nathaniel Holt testified that between 10 and 11 p.m. on July 7, 2002, he was standing outside his home near East 67th Street and South Evans Avenue celebrating Williams's birthday. He stated a group of three or four men came up to him and his friends "asking about some rims." Williams told the men that they did not know anything about "rims," and then the men began shooting at Holt and his friends. Holt stated that he never had "a good sight on all of the guys" and could not identify anything specific about the shooters. He also was not entirely sure if all three to four men had guns because when he heard the gunshots, he "hit the ground and tried to protect [himself]." During the shooting, Holt was shot in buttocks.

¶ 13 Jermaine Felton testified that he was an acquaintance of defendant. In the evening of July 7, 2002, Felton was driving near East 81st Street and South Escanaba Avenue with a friend when he saw defendant trying to wave him down. Felton pulled over and defendant asked Felton if he could have a ride to his girlfriend's house because his car had been stolen. Defendant was with his own friend, David Bey, and offered gas money in exchange for the ride. Felton needed gas, so he agreed to give defendant a ride. Felton dropped his friend off at his house and then went back to the area near East 81st Street and South Escanaba Avenue to pick up defendant's girlfriend, Michelle. When Michelle entered the car, Felton heard her ask defendant "do you

have a mask for Trevor?" On cross-examination, Felton admitted this comment was the only one he remembered from the car ride, and he did not find it strange. He also admitted he had a problem with his memory.

¶ 14 Next, Felton picked up Trevor Jackson on the same corner of East 81st Street and South Escanaba Avenue. Felton dropped the group off in the middle of the block at a house near East 67th Street and South Evans Avenue where he assumed Michelle lived. After everyone exited the car, Felton left and went to his friend's house.

¶ 15 About a week later, Felton saw defendant and they began to talk. Shortly into their conversation, defendant stated "[w]e shouldn't have done it; we shouldn't have done it; we shouldn't have shot somebody." Felton admitted that he was not really paying attention to what defendant was saying. However, on cross-examination, Felton stated that he and defendant were talking about "drinking" before defendant brought up the shooting. Felton was not sure how the conversation switched ~~from~~ drinking to shooting nor was he aware of any shooting involving defendant. Felton did not follow up with defendant in regard to the shooting. He did not know how long after July 7, 2002, he talked to police about defendant because he had his "own problems," referring to his own criminal charges. He stated that he did not tell the police that defendant expressed regret about a shooting or that defendant asked Michelle if she had "a mask for Trevor" to help his own problems and no deal was ever discussed with the police.

¶ 16 Adrienne Coleman testified that she knew defendant and his friends, Jackson and Bey, from living in the same neighborhood. In the early morning hours of July 3, 2002, Coleman was at a party on East 81st Street along with an individual named Michelle. Jackson arrived at the party and then took Coleman and Michelle back to Michelle's house near East 67th Street and

South Evans Avenue because she had to pick something up. As Michelle went inside her home, two men approached Jackson's car from behind and demanded the keys at gunpoint. Jackson gave the men the keys, and they drove off with Jackson's car, which Coleman believed was a Grand Prix. Coleman also had seen defendant driving the same car, but did not see defendant that day.

¶ 17 Sergeant Robert Myers of the Chicago Police Department testified that on February 6, 2003, he conducted a lineup at the police station with Ballard. According to Myers, Ballard identified defendant and Bey as two of the individuals who shot and killed Williams. On April 20, 2003, Myers conducted another lineup in which Ballard identified Jackson as one of the individuals who had shot and killed Williams.

¶ 18 The parties stipulated that an autopsy revealed Williams died of a gunshot wound to the face and that his manner of death was homicide. The parties also stipulated that no fingerprints suitable for comparison were found and that based on the cartridge casings recovered, two guns were used.

¶ 19 After ~~the~~ State rested, defendant made a motion for a directed finding, which was denied. Defendant rested without presenting any evidence. The transcript of the parties' closing arguments and the trial court's discussion of finding defendant guilty was unavailable due to the court reporter's equipment failure. The parties, however, prepared an agreed statement of facts of the trial court's ruling. The court stated that "the State had presented an enormous amount of evidence and that the court found the State's witnesses credible." Defendant was subsequently sentenced to 60 years in prison for first-degree murder and a consecutive term of 30 years in prison for one of the convictions of attempted first-degree murder. He also received 30 years in

prison for each of the other two convictions of attempted first-degree murder, which were to run concurrent to one another but consecutive to the other sentences, for an aggregate sentence of 120 years in prison.

¶ 20 After trial, defendant filed a *pro se* motion alleging that his trial counsel was ineffective. As a result, the public defender was appointed to examine the ineffectiveness of his trial counsel and subsequently filed a motion for a *Krankel* hearing. See *People v. Krankel*, 102 Ill. 2d 181 (1984). In the motion, the public defender argued, *inter alia*, that defendant's trial counsel was ineffective prior to trial when he failed to file a motion to suppress a lineup identification and ineffective during trial when he failed to object multiple times when the State's witnesses were testifying. In denying the motion for a *Krankel* hearing, the trial court stated its finding of guilt was "based upon a finger put on the defendant by the group of witnesses who were up on that porch on the night in question." The court stated that the distance between defendant and the witnesses was "minimal at best," the witnesses had an opportunity to view defendant and they "were very clear in their testimony."

¶ 21 Defendant contends that the testimony of the State's identification witnesses, Hunt and Ballard, was unreliable, and their testimony could not be the basis for finding defendant guilty beyond a reasonable doubt considering the discrepancies in each witness's testimony and the fact that both only observed the alleged shooters for a brief period of time. Defendant further argues that the testimony of two other State witnesses, Felton and Coleman, was also unreliable and irrelevant, respectively. The State responds arguing that both Hunt and Ballard had ample time to view defendant on the night in question and had a reason to pay close attention to him. With regard to Felton and Coleman, the State argues that Felton's testimony was reliable and placed

defendant at the scene of the crime at the time in question, and Coleman's testimony gave defendant a reason to think Williams was involved in the hijacking of his Grand Prix.

¶ 22 Due process mandates that a defendant may not be convicted of a crime unless each element constituting that crime is proven beyond a reasonable doubt, (*People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) quoting *In re Winship*, 397 U.S. 358, 364 (1970)), and that burden is on the State (*People v. Diaz*, 377 Ill. App. 3d 339, 345 (2007)). When assessing the sufficiency of the evidence in a criminal case, the reviewing court must view the evidence in the light most favorable to the prosecution and then decide if any rational trier of fact could find all the elements of the crime proven beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. All reasonable inferences must be allowed in favor of the prosecution. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). We will not overturn a conviction unless the evidence is "so improbable or unsatisfactory that it creates" reasonable doubt of guilt. *Id.* Finally, while we must carefully examine the evidence before us, we must give the proper deference to the trial court who saw the witnesses testify (*People v. Smith*, 185 Ill. 2d 532, 541 (1999)) because it was in the "superior position to assess the credibility of witnesses, resolve inconsistencies, determine the weight to assign the testimony, and draw reasonable inferences therefrom." *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24.

¶ 23 Where identification is the main issue, the State must prove beyond a reasonable doubt the identity of the individual who committed the charged crime. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). Identification testimony that is "vague or doubtful" does not satisfy the requisite burden of proof. *People v. Stanley*, 397 Ill. App. 3d 598, 610-11 (2009). However, the testimony

of a single, credible witness identifying a defendant as the one who committed the crime is sufficient to satisfy the requisite burden of proof. *Smith*, 185 Ill. 2d at 541.

¶ 24 Illinois courts utilize a five-factor test in assessing identification testimony, which was identified in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). See *Lewis*, 165 Ill. 2d at 356: The factors are:

> "(1) the opportunity the victim had to view the criminal at the time of the crime;
>
> (2) the witness' degree of attention;
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> (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 the identification confrontation." *Id.* citing *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989).

¶ 25 Defendant argues that when examining all of the *Biggers* factors, the record demonstrates that the identification testimony of Hunt and Ballard was not sufficient to prove beyond a reasonable doubt that defendant killed Williams.

¶ 26 Addressing the first *Biggers* factor, both witnesses had the opportunity to view defendant at the time of the crime. Defendant came up to the witnesses within feet of where they were located, and there was no evidence that anything prevented the witnesses from having a clear, unobstructed view of defendant. Even though Hunt and Ballard only saw defendant for a few seconds at night, these factors do not automatically make their identification suspect. See, *e.g.*, *People v. Herrett*, 137 Ill. 2d 195, 204 (1990) (finding a sufficient opportunity for a witness to view a defendant where the witness testified that he viewed the defendant's face for only "several

seconds” in a dimly lit store); *People v. Negron*, 297 Ill. App. 3d 519, 530 (1998) (stating witnesses' identification testimony was sufficient even though they “did not have more than several seconds to identify their attackers”).

¶ 27 In addressing the second *Biggers* factor, defendant distinguishes the "opportunity" to observe the criminal with the "actual" observation, stating that neither witness had a reason to pay special attention to the shooter. While we agree with defendant that the opportunity to observe must be distinguished from the actual observation – precisely why the first two *Biggers* factors are separated – we reject defendant's notion that the witnesses had no reason to pay special attention to the shooter. The record indicates that defendant and the other two men initially confronted Hunt by the front gate of Holt's house and asked him a question about "rims." This inquiry was not an ordinary occurrence akin to daily interactions with strangers in Chicago as defendant argues. Here, Hunt was face to face with defendant and clearly had a reason to pay special attention to a stranger asking him about "rims" at night at the gate of his friend's house. Similarly, Ballard was in close quarters with defendant when he asked Ballard and his friends about the "rims" shortly after asking Hunt. Ballard had the same reason to pay particular attention to defendant.

¶ 28 In addressing the third *Biggers* factor, defendant argues that Hunt and Ballard gave "inconsistent descriptions of the primary shooter." The record reveals that Hunt described defendant as having the darkest complexion of the three shooters while Ballard indicated the primary shooter had the lightest complexion of the three shooters. Additionally, neither witness's description of the primary shooter was particularly detailed. Hunt described defendant as having a chipped tooth and cornrows while wearing a black hoodie while Ballard described the primary

shooter as having "braids" that looked like a ponytail. However, omissions and discrepancies as to a defendant's facial features or other physical characteristics are not fatal to the State's case, but rather affect the weight to be given to such testimony. See *Slim*, 127 Ill. 2d at 308; *People v. Robinson*, 206 Ill. App. 3d 1046, 1051 (1990) (stating that the credibility of an identification does not rely upon the physical or facial characteristics of the defendant, but rather "whether the witness had a full and adequate opportunity to observe the defendant").

¶ 29 Furthermore, our supreme court has stated that variations in the testimony of witnesses are "to be expected anytime several persons witness the same event under traumatic circumstances." *People v. Brooks*, 187 Ill. 2d 91, 133 (1999). Similarly, while Ballard failed to identify defendant at trial as Williams' murderer, this fact does not render Ballard's testimony unreliable; it, too, merely affects the weight the trier of fact will give to his testimony. See *Herrett*, 137 Ill. 2d at 204. The trial court found both Hunt and Ballard's testimony to be credible and clear despite their inconsistencies and lack of detail, and we will not substitute our judgment for that of the trial court on such factual issues. See *People v. Jackson*, 232 Ill. 2d 246, 281 (2009); *People v. Baugh*, 358 Ill. App. 3d 718, 737 (2005) (stating "[d]efendant's argument regarding the sufficiency of the evidence is unpersuasive because the weaknesses in the evidence that defendant cite[d] on appeal were all presented to, and rejected by, the [trier of fact]").

¶ 30 In addressing the fourth *Biggers* factor, defendant admits that neither "witness was particularly tentative or uncertain in their identifications." We agree. Hunt identified defendant in a photo array at the police station on February 5, 2003. While Ballard had trouble at trial remembering the details of his various identifications, Sergeant Myers testified that Ballard identified defendant in a February 6, 2003, lineup.

¶ 31 Finally, in regard to the fifth *Biggers* factor, defendant states that the witnesses' initial identifications of defendant occurred approximately half a year after the crime. However, defendant does not expound on the fifth factor. Nothing in the record indicates that the approximate half-year gap between the crime and the initial identifications by Ballard and Hunt diminished the reliability of their identifications. See *People v. Rodgers,* 53 Ill. 2d 207, 213-14 (1972) (upholding a conviction despite identification made two years after the crime).

¶ 32 When we view all the *Biggers* factors together, we conclude that Hunt and Ballard were reliable identification witnesses. Because we conclude Hunt and Ballard were reliable, and when viewing the identification evidence in the light most favorable to the State, we cannot say no rational trier of fact could have found that defendant was the individual who killed Williams and shot at his friends on July 7, 2002. Accordingly, the identification testimony of Hunt and Ballard alone was sufficient to convict defendant of first-degree murder and attempted first-degree murder.

¶ 33 Finally, defendant contends that the testimony of State's witnesses Felton and Coleman was unreliable and irrelevant, respectively. Even if we were to accept defendant's arguments regarding the unreliability of Felton's testimony, who placed defendant at the scene of the crime and testified to incriminating statements that defendant made, reversal would be unwarranted because we have found a rational trier of fact could have found defendant guilty based upon Hunt and Ballard's testimony alone.

¶ 34 Likewise, a discussion about the relevancy of Coleman's testimony concerning a possible motive for defendant is largely unnecessary. First, the State need not produce, let alone prove, a motive in a murder prosecution because motive is not an essential element of the crime of

murder. *People v. Smith*, 141 Ill. 2d 40, 56 (1990). And second, even if we accept defendant's argument that Coleman's testimony concerning defendant's motive was irrelevant, because defendant was tried in a bench trial, we presume the trial court can adequately vet irrelevant or prejudicial evidence. See *People v. Smith*, 278 Ill. App. 3d 343, 354 (1996). Nothing in the record indicates that presumption is invalid.

¶ 35 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 36 Affirmed.