

No. 1-13-0992

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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. 11 CR 4191
)	
TYRONE BETHEA,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction is affirmed because the testimony of a store owner who worked with defendant for three years was sufficient to establish defendant's identity as one of two men captured in a surveillance video robbing the owner's store.

¶ 2 Following a bench trial, defendant, Tyrone Bethea, was convicted of robbery and sentenced to six years in prison. He appeals, arguing the evidence was insufficient to sustain his conviction because the State failed to prove he was one of the two offenders shown in a surveillance video. For the following reasons, we affirm.

¶ 3 At trial, Abdoulla Sousan testified that from 2007 until 2011 he owned a grocery store at 408 East 63rd Street called Abdoulla Food. The store contained three aisles of food, chip racks, and a freezer. It also contained an area protected by bullet-proof glass that could be accessed through two entrances and that held the cash register. The bullet-proof glass area had a three-foot by three-foot window through which Sousan could serve customers. Sousan was working alone behind the bullet-proof glass at around 11:20 a.m. on June 16, 2010. One of the doors to the area was unlocked. Sousan was resetting the store's surveillance cameras, a process that could take up to five minutes. The cameras stopped during the reset process and automatically started recording again when the process was over.

¶ 4 As Sousan was using his laptop and waiting for the system to reboot, a man who Sousan did not recognize entered the store alone and told Sousan to hold up his hands. The man was holding a gun and wearing a baseball hat and a bandana across his face. Sousan put his hands up, and the man asked him to come closer to the window and lean down. Sousan complied, and the man pulled Sousan's shirt halfway over his head. Someone inside the bullet-proof glass area then pushed Sousan to the ground behind the cash register. Sousan could not see anything and could only hear footsteps around him, although he acknowledged that he testified at a preliminary hearing that he heard two voices. The footsteps stopped after about 30 or 45 seconds, and Sousan pulled his shirt over his head, looked around the store, and called the police. Sousan's laptop and some cigarettes had been taken.

¶ 5 Sousan watched the surveillance video with the police and identified defendant as one of the two people in the video. Defendant worked for Sousan as a stock boy between 2007 and 2010. Sousan typically worked at the store six days a week, and defendant was there about 85%

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of the time, so Sousan was familiar with defendant's physical appearance. Sousan also explained that at one point in the video, defendant's face "came right into the camera" and he could "actually see it." Sousan later identified defendant from a photo array and a line-up.

¶ 6 The State published the surveillance video, which is about 30 seconds long and consists of four frames. When the footage begins, Sousan is on the floor behind the cash register. A man wearing a t-shirt over his head, who Sousan identified as defendant, is standing over Sousan and reaching onto the counter in front of Sousan with his back to the camera. Defendant is wearing a sleeveless t-shirt and jean shorts. A second man who is wearing a baseball hat and bandana can then be seen walking around the counter and standing behind the cash register. Defendant walks away from the register and off of the screen while the man in the hat continues to stand near the cash register. The men then walk toward the front door of the store, with one frame capturing them from the front and one capturing them from the back. Defendant has his t-shirt over his head, but his face is visible. The men walk to the door, and the one with the baseball hat is still wearing a hat.

¶ 7 Sousan never saw the second person enter the store. After the incident, police officers recovered a baseball hat from the store, and Sousan told them that one of the two offenders must have left the hat there. Sousan acknowledged the surveillance video showed that the man wearing a baseball hat when he entered the store was still wearing one when he left, and that man was not wearing two hats. Sousan told a police officer that defendant dropped a baseball hat behind the counter. According to Sousan, the men were unsuccessful in trying to open the cash register. Although defendant worked at the store, he never operated the cash register or saw

Sousan operate the cash register. Sousan acknowledged that the video does not show anybody holding a gun.

¶ 8 The parties stipulated that forensic testing on a portion of the recovered baseball cap revealed a mixture of deoxyribonucleic acid (DNA) profiles consistent with having come from two people. A major male DNA profile was identified and searched in a database, which indicated a man named Marshone Copeland could be the donor of the male DNA profile. No known confirmatory sample had been submitted. A minor male profile was also identified and searched in a DNA database, but no associations were made to that DNA profile. Defendant was excluded as having contributed to either the major or minor DNA profiles.

¶ 9 The trial court found defendant guilty of robbery. The court noted that Sousan testified defendant worked for him for three years and that Sousan spent 85% of his work time with defendant. The court also noted that although Sousan did not identify defendant until he saw the store video, Sousan could clearly see defendant's face in the video and knew it was defendant, who used to work for him. The court found Sousan's testimony to be "clear, concise and convincing and credible." The court further found the baseball hat was a "non-issue" because nobody ever saw, and the video did not show, defendant wearing a hat. In sum, the court found "the defendant was one of the robbers beyond a reasonable doubt." However, the court found the State failed to establish that either man was armed with a weapon; accordingly, it found defendant not guilty of armed robbery.¹ At a later hearing, the court denied defendant's posttrial

¹ The trial court also initially found defendant guilty of aggravated unlawful restraint; however, the court later *sua sponte* entered a not guilty finding as to the unlawful restraint count based on its prior finding that the State failed to prove that defendant had a weapon.

motion, sentenced him to six years in prison, and denied his oral motion to reconsider sentence.

This appeal followed.

¶ 10 On appeal, defendant argues the evidence was insufficient to sustain his conviction because the State failed to establish that he was one of the two offenders shown in the surveillance video. He contends Sousan's identification of him was unreliable because it was based solely on the surveillance video, which is of such poor quality that the offenders' faces are unrecognizable. He also observes Sousan did not explain how he could recognize defendant in the video. Defendant further notes that the baseball hat recovered from the store after the robbery did not contain his DNA.

¶ 11 Initially, we must address our standard of review. Defendant asserts that because this court is in the same position as the trial court to review the surveillance video, we should adopt a less deferential standard of review regarding the conclusions to be drawn from the video. In support of this contention, defendant cites *Addison Insurance Co. v. Fay*, 232 Ill. 2d 446, 453 (2009). However, our court has made clear that the rule set forth in *Addison Insurance* is inapplicable where live testimony had a role in resolving a disputed issue of fact. *People v. Span*, 2011 IL App (1st) 083037, ¶ 27. Because the evidence in this case consisted of both the surveillance video and Sousan's live testimony, defendant's reliance on *Addison Insurance* is misplaced.

¶ 12 Therefore, we review defendant's challenge to the sufficiency of the evidence by determining whether, when viewing the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307,

318-19 (1979)). We will not substitute our judgment for that of the trier of fact on issues relating to the weight of the evidence or witness credibility, and we will reverse only where "the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48. Identification by a single witness is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Ultimately, the reliability of a witness's identification testimony is a question for the trier of fact. *In re Keith C.*, 378 Ill. App. 3d 252, 258 (2007).

¶ 13 The State proved beyond a reasonable doubt that defendant was one of the two people that robbed Sousan. Although Sousan could not see defendant during the robbery, he had the opportunity to view the surveillance video in an unhurried manner afterward. In the video, defendant's face is uncovered and visible at one point, and he can be seen from the back as he stands over Sousan and from both the front and back as he walks out of the store. Sousan identified defendant to the police as soon as he saw the video. Most notably, Sousan knew defendant because defendant was his prior employee for three years and Sousan was familiar with his physical appearance, a factor that strongly supported the reliability of Sousan's identification. See *People v. Brooks*, 187 Ill. 2d 91, 131-32 (1999) (finding an eyewitness's identification was reliable primarily because the witness had known the defendant for approximately four years before the crime). Based on all of the foregoing, a reasonable trier of fact could have found defendant was one of the two robbers in the video. See *People v. Reed*, 80 Ill. App. 3d 771, 777-78 (1980) (a witness's identification testimony was sufficient to support the defendant's attempted robbery conviction where the witness observed the defendant under street

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lights for a total of 10 seconds, first when he drove by and later from 15 to 20 feet away, and he recognized the defendant as a man he had seen occasionally in the neighborhood). The circumstances of the robbery further supported Sousan's identification of defendant as someone that he knew, as the man that Sousan did not recognize entered the store first and defendant entered only after Sousan was already on the ground with his shirt covering his eyes.

¶ 14 Defendant argues the quality of the surveillance video is so poor that the robbers' faces are unrecognizable, and he claims that Sousan provided no explanation for how he identified defendant as one of the "faceless" individuals. Defendant's argument discounts the significance of Sousan's testimony that defendant worked with him as a stock boy for about three years. During this time, defendant was at the store 85% of the time that Sousan was there, and the store was small and contained only three aisles and some chip racks. While defendant's face is somewhat grainy in the video, it is not so grainy that it would be unrecognizable to somebody who worked in close quarters with defendant, particularly because the video also shows the rest of defendant's body. The back of defendant can be seen as he stands over Sousan during the first few seconds of the video, and his entire body, including his uncovered face, can be seen from both the front and back as he walks out of the store. Defendant is wearing a sleeveless t-shirt and jean shorts, not bulky clothing that obscures his body. Given their history, Sousan would no doubt be familiar with defendant's mannerisms and physical features, like his height and weight, which are clearly shown in the video.

¶ 15 Sousan's failure to list the factors that led him to identify defendant, other than defendant's face, is of no moment. Our supreme court has recognized that "a witness is not expected or required to distinguish individual and separate features of a suspect in making an

identification. Instead, a witness' positive identification can be sufficient even though the witness gives only a general description based on the total impression the accused's appearance made." *Slim*, 127 Ill. 2d at 309-10. Sousan explained that he could see defendant's face in the video at one point and that he had worked with defendant and was familiar with his physical appearance. While defendant contends that Sousan's prior familiarity with defendant actually makes his identification more suspect, he supports his argument only with a citation to a journal article and an unrelated case seeking admission of expert testimony. Notwithstanding the current trend to subject eyewitness identification to scientific study, the reliability of such an identification still remains in the province of the trier of fact. See, e.g., *People v. McGhee*, 2012 IL App (1st) 093404, ¶¶ 53-54. We find defendant's argument unpersuasive, especially because the trial court had the opportunity to view the quality of the video and to observe Sousan testify and it found Sousan's testimony was "clear, concise and convincing and credible." We will not substitute our judgment for that of the trial court. *Brown*, 2013 IL 114196, ¶ 48. Although defendant speculates the court did not find Sousan "entirely credible" because it found insufficient proof that anyone was armed, the court was free to accept as much or as little of Sousan's testimony as it pleased. *People v. Logan*, 352 Ill. App. 3d 73, 80-81 (2004). Thus, the court's finding that neither robber was armed does not somehow render the rest of Sousan's testimony unbelievable where the court expressly stated such testimony was credible and convincing. The video, which does not show a gun, supports the trial court.

¶ 16 Finally, defendant's attempt to suggest that the baseball hat found in the store creates a reasonable doubt of his identity is meritless. Defendant theorizes that because the person that entered the store first is seen wearing a hat when he exits the store, the hat found in the store may

have belonged to the second person (who Sousan identified as defendant), yet defendant's DNA was not found on the hat. However, the trial court found the lack of DNA to be a "non-issue," and it was for the trial court to weigh the evidence. *Brown*, 2013 IL 114196, ¶ 48. Moreover, as the State points out, other explanations exist for why defendant's DNA was not on the hat, such as defendant did not wear the hat or did not wear it long enough to leave genetic material on it. Defendant may also have worn the hat only on top of the shirt that he is seen wearing over his head in the surveillance video. In short, the lack of defendant's DNA on the hat fails to exonerate him as one of the robbers.

¶ 17 For the reasons stated, we affirm the trial court's judgment.

¶ 18 Affirmed.