

No. 1-13-1168

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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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. 12 CR 11285
	)	
TERRY STEPTORE,	)	Honorable
	)	Noreen Valeria-Love,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

**O R D E R**

- ¶ 1 *Held:* Defendant was proven guilty of armed robbery beyond a reasonable doubt. Because the trial court did not make and enter a finding that the conduct leading to defendant's conviction for armed robbery resulted in great bodily harm to the victim, defendant is entitled to day-for-day credit on his sentence.
- ¶ 2 Following a bench trial, defendant Terry Steptore was found guilty of armed robbery and sentenced to 40 years in prison. On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt because the victim's description of the person who robbed her did not include, *inter alia*, defendant's "very unique and obvious facial features." He also contends that

the trial court's order that he serve 85% of his sentence is void because the court did not make and enter a finding that his conduct resulted in great bodily harm to the victim. Defendant finally contends that the order assessing fines and fees must be corrected. We affirm defendant's conviction, vacate the trial court's order that he must serve 85% of his sentence, and correct the fines and fees order.

¶ 3 At trial, the victim, Alameda Daniel, testified that she had worked as an armed security officer at a bank for 15 years. As part of her job, she carried a revolver and a semi-automatic, and had received firearms training. On May 21, 2012, at around 6:30 p.m., she saw defendant on the street as she stopped at a liquor store on the way home from work. Two to three minutes later when she left the store, she saw a bus coming, so she ran across the street to the bus shelter. Initially, she sat down, but when defendant came over and sat down, she stood up. Defendant asked the victim a question, and after she answered, he stood up, walked toward her and pulled out a ".38 small weapon." The victim described the gun as a silver revolver. Defendant put the gun to the side of the victim's stomach. He then asked for the money she put in her purse as she left the store. She "shoved" \$15 at him. Defendant put the gun in a pocket and asked if she had any more money. The victim said no and asked him to let her go because she was pregnant. She was not actually pregnant, but lied because she did not want to be shot. Defendant apologized and said that the economy was bad. At this point the bus arrived, so the victim got on the bus and defendant ran off. The victim told the bus driver that she had been robbed, got off the bus and called the police.

¶ 4 Two days later, the victim saw defendant when she was at a convenience store with her family. The victim did not say anything because she was afraid how her husband, who was upset

that she had been robbed, would react. She contacted the police. Two days after that, she saw defendant again, this time as she and her husband were getting off a bus. She told her husband, and called the police again. She later identified defendant from two photographs. She also identified defendant in a photographic array and a line-up as the person who robbed her.

¶ 5 During cross-examination, the victim testified that when defendant stood up in the bus shelter, he was facing her. When she spoke to officers that night, she described defendant as an "Afro-American" man wearing a black jacket with a hood, jeans, black shoes and a hat. During re-direct, the victim clarified that she told police that defendant was wearing a baseball cap, a black jacket or sweater, gray or tan pants, and had a medium build. She also told detectives that the man who robbed her was between 5'5" and 5'6" and weighed "maybe" 170 or 180 pounds. She further described the man as middle-aged, that is, between 30 and 32 years old.

¶ 6 Marcos Cardenas, the liquor store's owner, testified that defendant was a regular customer and on May 21, 2012, defendant came into the store to purchase alcohol a "few times." He spoke to police the following day and made a copy of video from the surveillance system. Police officers later showed Cardenas certain still photos that had been taken from that video, and he identified defendant, whose name he did not know. He also stated that defendant had "faded" tattoos, one under each eye.

¶ 7 Detective Christopher Wojtowicz testified that after speaking with the victim, he obtained certain video surveillance. He then used the description provided by the victim to identify possible suspects and made still photographs from the video in order to obtain an identification. Defendant, who is 5'9" and has tattoos on his face and neck, was subsequently arrested.

¶ 8 In finding defendant guilty, the trial court stated that the victim "never said she starred [sic] into his face," but did say that they were face to face and "appeared to be very sure of herself" when testifying. In denying defendant's amended motion for acquittal or in the alternative for a new trial, the trial court acknowledged that one of the issues at trial was "no description of any type of facial hairs or anything of that nature." However, the court stated that when a person is asked for a description it does not mean that "every single detail comes to mind" and that there are "various reasons for that." The court found the victim credible as she was "right there." In sentencing defendant, the court stated that "no one was hurt," but that because a firearm was involved, there was "an additional period of time that one has to spend behind bars and [that was] why it's 85 percent." The trial court sentenced defendant to 25 years in prison for the armed robbery. The court also imposed a 15-year sentencing enhancement because a gun was used in the commission of the offense, for a total of 40 years in prison.

¶ 9 On appeal, defendant first contends that he was not proven guilty beyond a reasonable doubt because he was "much taller" than the person described by the victim. He also argues that the victim failed to mention his "very unique" facial features, that is, a tattoo and a mustache.

¶ 10 When considering a challenge to the sufficiency of the evidence in a criminal case, it is not the task of the reviewing court to retry the defendant. *People v. Lloyd*, 2013 IL 113510, ¶ 42. Instead, our inquiry is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found each element of the offense beyond a reasonable doubt. *Id.* We do not substitute our judgment for that of the fact finder on issues involving the weight of evidence or witness credibility because the fact finder resolves conflicts in the testimony, weighs the evidence, and draws reasonable inferences from the evidence presented at

trial. *People v. Brown*, 2013 IL 114196, ¶ 48. A trier of fact is not required to disregard inferences that flow normally from the evidence nor to seek all possible explanations consistent with a defendant's innocence and elevate them to reasonable doubt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. A defendant's conviction will be reversed only where the evidence is so unreasonable or improbable that a reasonable doubt remains regarding his guilt. *Brown*, 2013 IL 114196, ¶ 48.

¶ 11 A positive identification of a defendant by a single witness is sufficient to sustain a conviction provided that the witness had an adequate opportunity to view the defendant under conditions permitting a positive identification. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). In evaluating the reliability of an identification, this court considers 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. *Id.* at 307-08, citing *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972).

¶ 12 Here, the victim testified that she first noticed defendant as she approached the liquor store, that defendant faced her when he stood up in the bus shelter, and that she saw him two more times in the neighborhood following the offense. Although the victim did not mention defendant's moustache or facial tattoo in her description, the victim indicated that he was wearing a hat and she consistently identified defendant, in still photographs taken from the surveillance system, in a photographic array and in a line-up, as the person who robbed her.

¶ 13 Although defendant argues that the victim's description must be of another person, because he is 5'9" and has "unique" facial features, discrepancies or omissions as to facial and

physical characteristics are not fatal to an identification; rather, they merely affect the weight to be given the identification testimony. *Slim*, 127 Ill. 2d at 308. In this case, although the victim's estimate as to defendant's height was off by three to four inches, our supreme court has noted that such discrepancies are not uncommon and that witness identifications have been held to be sufficient in spite of height discrepancies of up to seven inches. See *Id.* at 311-12 (collecting cases). With regard to defendant's mustache and facial tattoo, which Cardenas characterized as "faded," a victim's failure to mention a distinctive physical characteristic affects the credibility of the description, which is an issue to be evaluated by the trier of fact; it does not automatically raise a reasonable doubt as to the defendant's guilt. See *Id.* ("The presence of discrepancies or omissions in a witness' description of the accused do not in and of themselves generate a reasonable doubt as long as a positive identification has been made."). Rather, a witness' identification can be sufficient although the witness gives only a "general description" based upon a "total impression" of the defendant. *Id.*

¶ 14 Here, the trial court acknowledged that the victim did not describe defendant's "facial hairs or anything of that nature," but nonetheless found the victim, and her general description of defendant, credible; we will not substitute our judgment for that of the trier of fact on this issue. See *Brown*, 2013 IL 114196, ¶ 48 (issues of witness credibility are for the fact finder to determine). The discrepancies in the victim's description of the person who robbed her are not sufficiently glaring to render her identification of defendant unreliable; a fact finder is not required to disregard the inferences that flow from the evidence nor is it required to seek any possible explanation consistent with a defendant's innocence and elevate it to the level of reasonable doubt. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60.

¶ 15 Ultimately, after weighing the *Slim-Biggers* factors, and viewing the evidence in the light most favorable to the State, we cannot say that no rational trier of fact could have found the elements of the offense beyond a reasonable doubt, and consequently, we affirm defendant's conviction. *Lloyd*, 2013 IL 113510, ¶ 42.

¶ 16 Defendant next contends that the trial court's order that he must serve 85% of his sentence is void because the trial court did not make a specific finding that his conduct resulted in great bodily harm to the victim.

¶ 17 The State concedes, and we agree, that because the trial court did not make and enter a finding that the conduct leading to defendant's conviction for armed robbery resulted in great bodily harm to the victim, defendant is not required to serve 85% of his sentence. See 730 ILCS 5/3-6-3(a)(2)(iii) (West 2010) (a defendant sentenced for armed robbery "shall receive no more than 4.5 days of good conduct credit for each month" of imprisonment when the trial court has made and entered a finding "that the conduct leading to conviction for the enumerated offense resulted in great bodily harm to a victim"). Therefore, in the absence of a finding of great bodily harm to the victim, defendant is entitled to receive day-for-day credit on his sentence. See 730 ILCS 5/3-6-3(a)(2.1) (West 2010).

¶ 18 Defendant finally contends that the fines and fees order must be corrected. We review the imposition of fines and fees *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 19 Defendant contends, and the State agrees, that pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2010)), he is entitled to a \$1,585 credit based on 317 days of presentence custody. The parties agree that defendant was assessed certain fines that may be offset by the presentence custody credit: the \$10 Mental Health Court

fine (55 ILCS 5/5-1101(d-5) (West 2010)); the \$5 Youth Diversion/Peer Court fine (55 ILCS 5/5-1101(e) (West 2010)); the \$5 Drug Court fine (55 ILCS 5/5-1101(f) (West 2010)); the \$30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2010)); and the \$15 State Police Operations Fee (705 ILCS 105/27.3a (West 2010)). Therefore, pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order that the \$10 Mental Health Court fine, the \$5 Youth Diversion/Peer Court fine, the \$5 Drug Court fine, the \$30 Children's Advocacy Center fine, and the \$15 State Police Operations Fee be offset by defendant's presentence custody credit.

¶ 20 Pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct defendant's mittimus to reflect (1) that defendant is entitled to day-for-day credit on his sentence, (2) 317 days of presentence custody credit, (3) a \$1,585 credit based on 317 days of presentence custody credit, and (4) that the \$10 Mental Health Court fine, the \$5 Youth Diversion/Peer Court fine, the \$5 Drug Court fine, the \$30 Children's Advocacy Center fine, and the \$15 State Police Operations Fee are offset by defendant's presentence custody credit for a new total due of \$374. We affirm the judgment of the circuit court of Cook County in all other aspects.

¶ 21 Affirmed; mittimus corrected.