

2015 IL App (1st) 131488-U
Rule 23 Order filed June 5, 2015
Modified Upon Denial of Rehearing December 11, 2015

FIFTH DIVISION

No. 1-13-1488

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).

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 12294
)	
BRIAN HALL,)	Honorable
)	Joseph G. Kazmierski, Jr.,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

O R D E R

¶ 1 *Held:* Judgment entered on defendant's robbery conviction affirmed over claims that the evidence was insufficient to sustain his conviction due to unreliable witness identification and that he received an unfair trial because the trial court misapprehended facts and failed to consider the crux of his defense; fines and fees order corrected.

¶ 2 Following a bench trial, defendant Brian Hall was found guilty of robbery and sentenced as a Class X offender to seven years' imprisonment. On appeal, defendant contends that the

evidence was insufficient to prove him guilty beyond a reasonable doubt where the identification of him was unreliable. He further contends that he was deprived of due process because the trial court misapprehended the facts presented and failed to consider the crux of his defense in reaching its decision. Defendant finally contends that his fines and fees order should be corrected because he was improperly assessed a particular fine and was not awarded the presentence credit to which he is entitled.

¶ 3 Defendant was charged with robbery and unlawful restraint in relation to an incident that occurred on June 12, 2012, at a Family Dollar store in Chicago, Illinois. During the incident, which was captured on surveillance footage, a man took \$84 from a store register. Keisha Williams, a store employee, subsequently identified defendant as the perpetrator in a photo array and in a lineup. Defendant was arrested and charged one week after the incident.

¶ 4 At trial, Williams testified that around 10:30 a.m. on June 12, 2012, she was on duty as store manager at the Family Dollar store located at 5410 West Chicago Avenue. At that time, a man, who she identified in court as defendant, entered the store and asked her if the store sold braid grease. Defendant walked in front of Williams as the two proceeded to the health and beauty section of the store to check. After Williams confirmed that the store did not sell that product, she walked back to the register. Approximately 30-to-40 seconds elapsed from the time defendant first approached her to the time she returned to the register, and during that period of time Williams was able to observe defendant's face. Nothing was covering defendant's face or head and the lighting in the store was bright.

¶ 5 Williams further testified that defendant followed her back to the register, picked up a piece of candy and entered the line to purchase it. At that time the telephone rang, and Williams

answered it while continuing to look at defendant. Williams had never observed defendant in the store before, which she found unusual, and she wanted him to leave the store. Williams held the telephone in one hand, told defendant to step up to the register and accepted the dollar bill he gave her to pay for the candy. When the register opened, defendant said "don't mother-fucking move," pushed Williams' hands away and reached into the register. Defendant then took all of the money from the register and left the store. Williams called the store's security company in order to notify the police. Williams subsequently calculated that defendant took a total of \$84 from the register.

¶ 6 Williams further testified that the incident was captured on the store's surveillance video and she tendered the footage to the police. Williams described the perpetrator to police as an African American male with an approximate age, weight and height of 30-to-48 years, 170-to-175 pounds, and 5'8"-to-5'9". She further described him as wearing a white t-shirt and blue jeans, having braids in his hair, and gray in his mustache and braids. Williams testified that she identified defendant as the perpetrator in a photo array that was conducted on June 16, 2012, as well as in a lineup that was conducted on June 19, 2012. The State then played the surveillance video for the court. On cross-examination, Williams testified that on the day of the incident, defendant had approximately nine braids "going straight back with a part in between each one of them." By "straight back," she meant that the braids were "fashioned to the head," in rows and were not "flopping around freely."

¶ 7 Officer Kevin Quinn testified that he compiled the photo array that Williams viewed, and that defendant's demographics from that array indicate that he is 5'8" tall and weighed 175 pounds. At the time of his arrest, defendant was 38 years old and did not have braids. At that

time, defendant stated that he was 5'10" tall and weighed 205 pounds, which Officer Quinn believed to be an accurate description. Williams described the perpetrator to Officer Quinn as being approximately 47 years old.

¶ 8 Mark Manning testified on behalf of the defense that defendant began working for him in May 2012, and that defendant did not have braids during the entirety of that employment, which included June 12, 2012. Defendant's employee badge photo, which accurately reflects his appearance from May through June of 2012, shows that defendant did not have braids in his hair. On cross-examination, Manning testified that although defendant has been a family friend for 15 years, he could not recall whether defendant has ever worn braids in the past.

¶ 9 Immediately following closing arguments, the trial court viewed the surveillance video in chambers, along with the other exhibits, including the various photos of defendant that were introduced into evidence. Following a short recess for that purpose, the trial court found defendant not guilty of unlawful restraint and guilty of robbery. In doing so, the court stated:

"It is true that the hair of the defendant is a little bit different from each of the photographs that was his exhibit, from the time of the lineup photograph, but looking at the description of the braids or cornrows, if you want to say it, in one of the exhibits that was identified as the defendant in the photo array, you can see that the hair the defendant is showing in the photograph appears to match and is close to the hair in the description that was given, the description by the victim as shown in the video, the video you can see the person identified as the offender that was leaving the store.

The identification, given the identification [] Miss Williams made on the stand, I had a chance to examine her credibility, I looked at her demeanor while testifying, I don't

believe the State proved count 2 of the information beyond a reasonable doubt. There will be a finding of not guilty as to that charge. However, I believe they did prove the offense of robbery beyond a reasonable doubt. There'll be a finding as to that charge."

¶ 10 Defendant filed a motion to reconsider, which the trial court denied. The trial court then sentenced defendant to a seven-year term of imprisonment. On appeal, defendant first contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt because Williams' identification of him was not reliable.

¶ 11 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).

¶ 12 Defendant, however, maintains that in this case there are no disputed issues of fact, and thus our review should be *de novo*. In so arguing, he relies upon *People v. Rivera*, 409 Ill. App. 3d 122, 139 (2011), in which this court found that because the primary evidence pertaining to a child pornography offense consisted of a video, and thus did not involve credibility determinations or observations of demeanor, the deference afforded to the trier of fact was

"logically less." *Id.* Here, in contrast, the trial court did not rely solely upon the surveillance video and photographs in arriving at its decision, but rather, also considered Williams' identification of defendant as the perpetrator, as illustrated by the court's reference to Williams' credibility and demeanor. Accordingly, because Williams' live testimony played a role in resolving a disputed issue of fact, *de novo* review is inapplicable here. See *People v. Span*, 2011 IL App (1st) 083037, ¶¶ 26-28.

¶ 13 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 robbery. 720 ILCS 5/18-1(a) (West 2012). On appeal, he does not question that a crime was committed, or that the surveillance video depicts the crime, but challenges the sufficiency of the evidence to establish that he was the perpetrator. We first address defendant's contention that Williams' identification of him was not reliable. In relation thereto, defendant argues that because the surveillance video depicted an offender with braided hair, Williams' identification of him must be mistaken because other photos taken of him depict him with a different hairstyle and it would have been physically impossible for him to change his hairstyle in such a manner.

¶ 14 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. *Id.* at 307-08, citing *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). Here, defendant only takes issue with factors one through three.

¶ 15 In this case, Williams testified that defendant approached her and asked her a question, after which he walked in front of her on their way to a certain section of the store. After that first encounter, which lasted approximately 30-to-40 seconds, Williams had an additional opportunity to view defendant. Williams did not state how long this second encounter lasted, but testified that during this time defendant was in line to purchase a piece of candy, then leaned forward and pushed her hands out of the way when the register opened. During the entirety of both encounters, the store was brightly lit and nothing was obscuring defendant's head or face. It is true, as defendant points out, that it is not likely that Williams looked directly at his face for the entire 30-to-40 seconds of the initial encounter, given that he walked in front of her for a portion of that time. However, observations lasting merely five seconds have been held to be sufficient (*People v. Reed*, 80 Ill. App. 3d 771, 778 (1980), and cases cited therein), and here we find that to be the case where Williams had an opportunity to view defendant's face for at least that amount of time, and likely for significantly longer. This is particularly so where in addition to the initial encounter, Williams had an opportunity to view defendant from a short distance when he was standing in front of the register which she was operating.

¶ 16 Further, the record shows that Williams' degree of attention at the time of the incident was high. Williams testified that before the robbery, she was assisting defendant in ascertaining whether the store sold a particular product, and interacted one-on-one with him in doing so. It is fair to infer that under these circumstances, Williams' attention was focused upon defendant. Additionally, Williams testified that she continued to focus on defendant once back at the

register because she had never observed him in the store before, which she found to be unusual. Defendant argues that Williams' attention was compromised because she was on the telephone during a portion of the incident. However, Williams was not on the telephone during her initial encounter with defendant. Further, issues of witness reliability are for the fact finder to determine, and here the trial court could rationally find that Williams' degree of attention was sufficient to make a positive identification of defendant. See *People v. Tomei*, 2013 IL App (1st) 112632, ¶ 47 (reaching this conclusion where the identifying witness observed the defendant while simultaneously speaking on the telephone and putting on his clothes).

¶ 17 With regard to the final factor at issue, Williams testified that she described the perpetrator to police as an African American male with an approximate age, weight and height of 30- to-48 years, 170-to-175 pounds, and 5'8"-to-5'9", and with braids in his hair. Officer Quinn testified that Williams described the perpetrator as being approximately 47 years old. Defendant maintains that this description differs from his appearance, given that at the time of his arrest, he did not have braids in his hair, was 38 years old, weighed 205 pounds and was 5'10" tall. However, discrepancies or omissions as to facial physical characteristics are not fatal, but rather, merely affect the weight to be given the identification testimony. *Slim*, 127 Ill. 2d at 308. In this case, although Williams' estimation of defendant's height was off by one inch and her estimation of his weight was off by 30 pounds, 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 and weight discrepancies of up to 60 pounds. *Id.* at 311-12, and cases cited therein. Further, although Officer Quinn testified that Williams reported to him that the perpetrator was approximately nine years older than defendant's actual age,

identifications have been held to be sufficient in spite of larger age discrepancies. 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).

¶ 18 Additionally, although defendant is correct that the perpetrator wore braids, as is apparent on the video surveillance footage, and that he did not have braids on the date of his arrest, we do not find this to be fatal to William's identification of him as the perpetrator. In *People v. Herrett*, 137 Ill. 2d 195, 205 (1990), the supreme court found that where the identifying witness described the perpetrator's hair as "bushy" and the defendant's hair was tightly braided in corn rows at the time of his arrest, the trier of fact could rationally conclude that defendant had braided his hair in the time between the robbery and his arrest. Notably, the defendant in *Herrett* was arrested within hours of when the robbery at issue took place. *Id.* at 199-202. The same rationale can be applied here where defendant was not arrested until a week after the robbery. Although Manning testified that defendant never wore braids during his employment, it was the role of the trial court to resolve conflicts in the testimony and there is no basis in the record for overturning the court's inherent finding that Manning was not credible. *Campbell*, 146 Ill. 2d at 374-75, 389. We thus find that the trial court, as trier of fact, could rationally conclude that although defendant had short braids at the time of the robbery, he had changed his hairstyle in the week that followed.

¶ 19 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 Williams 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 perpetrator in this case was proved beyond a reasonable doubt.¹

¶ 20 Defendant next contends that he did not receive a fair trial because of errors committed by the trial court. He acknowledges that he failed to raise these issues at trial, but maintains that because the conduct of the trial court was at issue, he was not required to do so and thus his claims are not waived. In the alternative, he argues that even if he did not properly preserve these claims, that we may review them pursuant to the plain error doctrine. For the reasons stated below, we find that even assuming that defendant did not waive these issues, they have no merit.

¶ 21 Defendant contends that the trial court erred in that it misapprehended the facts presented, as well as failed to consider the crux of his defense. Specifically, defendant contends that the trial court failed to consider evidence he presented in support of his contention that he did not have braids at the time of the offense.

¶ 22 A trial court need not give all, or even any, of the reasons for arriving at its verdict. *People v. Curtis*, 296 Ill. App. 3d 991, 1000 (1998). That said, where the record affirmatively indicates that the trial court did not consider or remember the crux of the defense in rendering its judgment, the defendant did not receive a fair trial. *People v. Bowie*, 36 Ill. App. 3d 177, 180 (1976).

¹ We note that defendant raises a separate argument that the evidence was insufficient in that the State failed to show that he was the man depicted in the surveillance video. We find that this argument is subsumed within his argument pertaining to Williams' identification of him. As discussed above, Williams testified that defendant was the perpetrator of the offense at issue, which identification testimony was sufficient to sustain defendant's conviction. *Slim*, 127 Ill. 2d at 307

¶ 23 In *Bowie*, upon which defendant relies, this court held that such affirmative evidence was present where the defendant testified that an officer struck him in the head, causing him to bleed, but the trial court subsequently commented that no evidence had been presented that defendant had bled, and struck defense counsel's argument to the contrary. *Id.* at 179-80. Here, in contrast, there is no such affirmative evidence that the trial court failed to consider the crux of defendant's defense or misapprehended the evidence. Nowhere in the record does the trial court state that defendant had braids in his hair at the time of his arrest. To the contrary, the court noted that defendant's hair was "a little bit different" than that of the perpetrator's hair. This shows that the trial court was aware that defendant's defense hinged greatly on the fact that he did not have braids in his hair at the time of his arrest.

¶ 24 Defendant, however, contends that the court misapprehended the facts because it made a finding of guilt based on the photograph of him that was used in the photo array, which was not the "best representation" of his appearance at the time of the offense. Although the trial court referred to defendant's hair as depicted in that photograph, we do not find that this constituted a misapprehension of evidence. That photograph was admitted into evidence and properly considered by the court. The record shows that the trial court considered this photograph, along with all of the other photographs presented, as well as Williams' testimony in reaching its decision. Further, although the court did not specifically mention Manning's testimony in rendering its ruling, we reject defendant's contention that this means that the court ignored the crux of his defense. As previously stated, a trial court need not give its reasons for arriving at its verdict. *Curtis*, 296 Ill. App. 3d at 1000. In sum, we find that nothing in the record shows that the

trial court misunderstood, forgot or misstated the evidence in reaching its decision. Accordingly, defendant's argument fails.

¶ 25 Finally, defendant contends that his fines and fees order should be corrected, and our review is *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 26 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. See 705 ILCS 105/27.3e (West 2012). We agree and order that this fee be vacated.

¶ 27 Defendant also contends, and the State concedes, that he is entitled to a \$5 credit for each day he spent in presentence custody toward \$30 in fines which he was assessed. Pursuant to section 5/110-14(a) of the Code of Criminal Procedure (725 ILCS 5/110-14(a) (West 2012), a defendant who is incarcerated on aailable offense and who, upon conviction, is assessed a fine, is entitled to a \$5 credit toward that fine for each day spent in presentence custody. Here, defendant spent 312 days in presentence custody, and is thus entitled to \$1,560 in credit, to be applied toward applicable fines. In turn, because the \$30 Children's Advocacy Center fee (55 ILCS 5/5-1101(f-5) (West 2012)) which was imposed upon defendant has been held to constitute a fine, he is entitled to \$30 in credit from his presentence custody credit. *People v. Williams*, 2011 IL App (1st) 091667-B, ¶ 19.

¶ 28 Pursuant to our authority under Supreme Court Rule 615(b) (eff. Aug. 27, 1999), and our authority to correct a mittimus without remand (*People v. Magee*, 374 Ill. App. 3d 1024, 1035 (2007)), we direct the clerk of the circuit court to correct the fines and fees order to reflect that defendant's presentence custody credit satisfies his \$30 Children's Advocacy Center fee in its

1-13-1488

entirety, and the vacation of defendant's \$5 Electronic Citation Fee, resulting in a corrected assessment amount of \$394 which has been satisfied based on time served. We affirm the judgment of the circuit court of Cook County in all other respects.

¶ 29 Affirmed; fines and fees order corrected.