

No. 1-13-1839

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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. 10 C 660327
)	
ANTONIO BOONE,)	Honorable
)	Luciano Panici,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Justices Neville and Pierce concurred in the judgment.

O R D E R

¶1 **Held:** The judgment of the trial court is affirmed where the State presented sufficient evidence of defendant's identity to prove him guilty of theft beyond a reasonable, and where the trial court's questioning of a witness was not prejudicial so as to deny defendant his right to due process.

¶2 Following a bench trial, defendant Antonio Boone was convicted of two counts of theft and sentenced to two years' probation and 130 hours of community service. On appeal, defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt and

that he was denied his right to a fair trial when the trial court assumed the role of the prosecutor in questioning a witness.

¶3 The evidence at trial showed that on January 29, 2010, several pieces of jewelry along with other household items were stolen from the home of Ms. Carrie Elliott. The Elliotts were not at home during the incident. Approximately two to two-and-a-half hours later, several pieces of Elliott's jewelry were pawned at a local pawnshop. The owner of the pawnshop testified that in the normal course of business he requires anyone selling jewelry to provide him with some form of identification. The owner then checks the identification to ensure the picture on the identification matches the person selling the jewelry. The owner writes a purchase receipt itemizing each piece of jewelry he buys that is signed by both the seller and the owner. The owner also makes a copy of the identification, attaches it to the purchase receipt, files it for his records, and sends a copy of the same to the police to review. The police review the purchase receipts looking for suspicious transactions involving a high dollar amount of jewelry associated with someone who is younger in age. Following this procedure, the police were able to match the January 29, 2010 transaction at the pawnshop with the jewelry stolen from Elliott's home. Elliott was able to identify several pieces of jewelry involved in this transaction as jewelry previously stolen from her home.

¶4 The pawnshop owner, Edwin Torres, testified at trial that he followed this same procedure on January 29, 2010 when he purchased Ms. Elliott's jewelry, but he did not directly recollect the specific transaction. The owner remembered that the person who sold him the jewelry that day looked slightly different than the identification presented to him because the

seller had a moustache. Other than the moustache, however, the seller looked like the person on the identification. Besides the comment about the seller's moustache, the owner concluded the transaction with no further questions. The owner conducted a similar transaction with the seller four days prior to the date of the offense, on January 25, 2010. The owner remembered that the seller had a nice personality during the first transaction. At trial, the owner was unable to unequivocally state that the person in the courtroom was the same person who conducted the transaction with him on the date of the offense three years earlier. An investigating officer testified that the document attached to the purchase receipt was a state identification card bearing the defendant's name.

¶5 After direct and cross-examination of the owner concluded, the court asked the owner three questions regarding the identification of defendant. Specifically, the court asked:

"Q: Other than the shaving, is that the person that came into the store? The person that came into the store, other than the shaving, the person on the I.D. was the person that came into the store?

A: I can't say [one] hundred percent, no. It [was] three years ago. I can't lie to you and tell you that was the person that came in my store.

[Q]: But you said the practice is the person –

A: I looked at the I.D. –

THE COURT: Let me finish.

A: I'm sorry. It's your turn.

[Q]: You also said that if the person didn't match the I.D., you would not buy the jewelry?

A: Yes

[Q]: So that goes to say that person match[ed] the I.D.?

A: The person match[ed] the I.D. It just look[ed] a little different that's all."

¶6 Other evidence at trial showed that the signature on the January 29, 2010 purchase receipt did not match defendant's signature on his identification or the signature from the previous purchase receipt.

¶7 Defendant testified that he did not sell Elliott's jewelry to the pawnshop owner on January 29, 2010. He denied that his signature was on the January 29, 2010 purchase receipt. Defendant admitted to pawning a different piece of jewelry at the same pawnshop four days prior to the offense. He testified that he never reported his identification stolen.

¶8 After reviewing all of the evidence presented, the trial court concluded that the State met its burden of proof. The court dismissed the fact that the signature on the purchase receipt of January 29, 2010 did not match the signature on defendant's identification or the previous purchase receipt as a "red herring," finding that it reasonably flowed that the defendant would not want his real name or signature attached to a transaction involving stolen jewelry.

¶9 Defendant contends that the State failed to prove him guilty of theft beyond a reasonable doubt. He argues that there is insufficient evidence to show that he was, in fact, the person in possession of the stolen jewelry, noting that the State's only eyewitness in this case could not

conclusively identify him at trial. Defendant claims that the corroborating evidence that the State presented at trial was not reliable enough to confirm his identity as the seller of the stolen jewelry. Accordingly, he requests that this court to reverse his conviction.

¶10 When a defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question on review is whether, after considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). A conviction will only be overturned where the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8.

¶11 The offense of theft is committed when a person knowingly obtains or exerts unauthorized control over property they do not own with the intent to permanently deprive the owner of the use or benefit of the property or where the person knowingly uses, conceals or abandons the property in a manner that permanently deprives the owner of the use of the property. 720 ILCS 5/16-1(a)(1)(A)-(B) (West 2010).

¶12 The prosecution has the burden of proving beyond a reasonable doubt the identity of the person who committed the crime. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). The testimony of a single witness is sufficient to convict a defendant, even if the identification testimony is contradicted by the accused, if the witness is credible and the accused is viewed under circumstances which would permit a positive identification. *People v. Smith*, 185 Ill. 2d 532, 541 (1999); *People v. Johnson*, 94 Ill. App. 3d 200, 206 (1980). In a bench trial, the trial court is

responsible for determining the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶13 Here, we find that the owner of the pawnshop viewed defendant under circumstances permitting a positive identification, and that a rational trier of fact would find the identification credible and reasonable. At the time defendant pawned Elliott's jewelry, the owner and defendant were engaged in direct face-to-face communication, lasting the entire duration of the transaction. The owner matched the facial features of the person standing in front of him to the person depicted on the identification provided to him. The owner also paid enough attention to defendant's facial features to comment on his moustache. He testified that, during the sale transaction, he told defendant, "[Y]ou know, you look a little different***his moustache just look a little different," as he compared defendant's appearance at the time of the transaction to the identification presented to him. Notably, the owner testified that he recognized the person conducting the January 29, 2010 transaction as the same person who conducted the prior transaction. He stated:

"I know the young man was in my store before. So he was [a] nice person that came in and talked to me the first time. He['s] been to my store more than once. The second time I had more clientele waiting in line."

The owner once more confirmed the identification of defendant during the State's questioning. He was asked, "He look[ed] like the person that handed you the I.D.***besides the moustache?" and the owner responded affirmatively. The owner testified that he would not purchase jewelry if

the identification did not look like the seller. Taking the evidence in the light most favorable to the State, we cannot conclude that the identification of defendant was improbable or unreliable; in other words, a rational trier of fact could have found the identification sufficient to prove defendant guilty beyond a reasonable doubt. See *Beauchamp*, 241 Ill. 2d at 8.

¶14 The record shows that the owner could not identify the defendant, as he sat in the courtroom, as the same person who conducted the transaction in question with him three years prior. Contrary to defendant's claim, however, this fact alone does not destroy the credibility of the owner's testimony. It is simply a factor to be weighed by the trier of fact when considering the reliability of the testimony. See *People v. Herrett*, 137 Ill. 2d 195, 204 (1990). Defendant cites the "*Biggers* factors" to support his argument that the State's identification testimony is unreliable. (See generally *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972) (where the issue on review was the reliability of the witness' in-court identification of the defendant given the likelihood of misidentification due to the suggestive nature of the previous out-of-court identifications). However, the parties agree that no in-court identification of defendant was ever made, and defendant does not contend that the witness' failure to make an in-court identification necessarily destroys credibility. We do not find *Biggers* particularly helpful when assessing the reliability of the witness' identification testimony in this particular instance.

¶15 Even if we applied *Biggers* to the identification made during the transaction, we cannot say that a rational trier of fact could not have found the identification reliable. There are multiple facts to support a finding of reliability in this case. First, the out-of-court identification of defendant was made simultaneous with the offense (*i.e.*, the witness checked defendant's

appearance against the picture identification defendant himself presented to the witness at the time of the transaction). Second, the observations of the defendant were during face-to-face communication. Third, the witness viewed defendant's facial features on more than one occasion. And finally, an exact copy of the picture identification and purchase receipt linking defendant to the stolen jewelry was kept on file and forwarded to police within a short amount of time.

¶16 Defendant claims that there was a lack of corroborating evidence to support the trial court's finding regarding his identity. Specifically, he claims that his identity was not proven because the signature on the January 29, 2010 purchase receipt did not match his signature on his identification or on the purchase receipt from four days earlier. In making this argument, defendant assume that the witness testimony is not reliable. We have already concluded, however, that a rational trier of fact could have found that the owner was a credible witness and that he made a positive identification of defendant as the seller of Elliott's jewelry. Under these circumstances, there was no need for additional corroborating evidence to establish defendant's guilt. *Smith*, 185 Ill. 2d at 541 (testimony of a single witness is sufficient to convict a defendant if the witness is credible and the accused is viewed under circumstances which would permit a positive identification). While the lack of matching signatures is certainly relevant to the credibility of the eyewitness testimony, this fact, like the lack of an in-court identification, merely goes to the weight of the eyewitness' testimony. As noted, we cannot say that it was unreasonable for the trial court to accept the owner's testimony as credible.

¶17 Furthermore, we find no basis in the record for defendant's argument that the pawnshop owner violated section 5 of the Pawnbroker Regulation Act (205 ILCS 510/5 (West 2012)) and

do not find this argument compelling with respect to the reliability of his testimony. Ultimately, we find that the evidence was not so unreasonable or improbable in this case as to warrant a reversal of defendant's conviction.

¶18 Defendant next contends that he was denied due process where the judge assumed the role of the prosecutor and elicited inculpatory identification testimony from the State's witness. Specifically, defendant objects to the three questions asked by the trial judge of the pawnshop owner after the defense completed its cross-examination. Defendant alternatively requests that the court reverse his conviction and remand for a new trial.

¶19 A fair trial is a fundamental right in all criminal prosecutions and denial of this right is a denial of the procedural due process guaranteed under the United States and Illinois Constitution. *People v. Hattery*, 183 Ill. App. 3d 785, 801 (1989). In fact, "the right of a defendant to an unbiased, open-minded trier of fact is so fundamental to our system of jurisprudence that it should not require either citation or explanation." *People v. Eckert*, 194 Ill. App. 3d 667, 673 (1990). A criminal defendant tried in a bench trial is as entitled to the same fair, patient, and impartial fact-finder as he would be in a jury trial. *People v. Trefonas*, 9 Ill. 2d 92, 100 (1956). Prejudice is shown in a bench trial when the court's questioning indicates the court has prejudged the outcome before they have heard all of the evidence presented. *People v. White*, 249 Ill. App. 3d 57, 64 (1993). It is well-established, however, that a trial judge is allowed discretion to question a witness to "elicit the truth or to bring enlightenment on material issues which seem obscure" as long as this questioning is conducted in a manner that is fair and impartial, without

showing prejudice or bias against either party. *People v. Smith*, 299 Ill. App. 3d 1056, 1062 (1998); *Id.* quoting *People v. Wesley*, 18 Ill. 2d 138, 154-55 (1959).

¶20 Here, the trial court allowed both the State and the defense to question the witness before proceeding with his own set of questions. Three questions were asked about the material issue of the case – the witness' level of certainty regarding the identity of the defendant. When the trial court's first question did not elicit a concrete response, the court followed up with two clarifying questions, none of which suggested a predetermined outcome. Although defendant claims this was necessarily prejudicial because the trial court elicited the most compelling identification testimony from the witness, this argument fails because we cannot assume based solely on the testimony elicited from the questioning that the trial court was prejudiced. *People v. Sutton*, 260 Ill. App. 3d 949, 959-60 (1994) (trial court does not "assume the role of prosecutor merely because his questions solicit evidence material to the State's case"). In addition, the testimony elicited by the trial court was also elicited from the witness during the State's examination.

¶21 Defendant argues that *People v. Cofield*, 9 Ill. App. 3d 1048, 1051 (1973), and other similar cases are instructive. Defendant contends that, like *Cofield*, the trial court asked the pawnshop owner a question which he had already answered numerous times and impeached him with his own testimony. However, this is an improper analysis as to the holdings in these cases because it only focuses on the subject matter of the questions asked by the trial court. The prejudice in *Cofield* stemmed from the manner in which the questioning itself was conducted, like the language used to question a witness ("Why are you lying to me?"), not the responses elicited from such testimony. *Id.*

¶22 There is also no merit to defendant's argument that the trial court questioned the witness like a "seasoned prosecutor" and attempted to threaten the witness by directing the defendant not to interrupt him. In *Cofield*, this court found that the trial court acted as both prosecutor and judge when it recalled its own witness and threatened to take the witness into custody if she refused to tell the truth and even asked the witness why she was lying. *Id.* In the present case, there is no indication that the trial court threatened the witness to respond to his questions. The trial court also did not call its own witness and did not use suggestive language during questioning. The trial court was well within its discretion to question the witness regarding the material issue of defendant's identity. Accordingly, we find no due process violation and decline to reverse defendant's conviction and remand the cause for a new trial.

¶23 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶24 Affirmed.