

FIFTH DIVISION  
JULY 17, 2015

No. 1-13-1980

**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 MC1 250800
	)	
OLAJUWAN CLAIBORNE,	)	Honorable
	)	Peggy Chiampas,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE GORDON delivered the judgment of the court.  
Presiding Justice Palmer and Justice McBride concurred in the judgment.

**O R D E R**

- ¶ 1 *Held:* The judgment of the trial court is affirmed where the victim's testimony and supporting video surveillance sufficiently established defendant's identity beyond a reasonable doubt.
- ¶ 2 Following a bench trial, defendant Olajuwon Claiborne was convicted of one count of battery and sentenced to 364 days in jail. On appeal, defendant contends the evidence was insufficient to prove defendant's identity as the offender beyond a reasonable doubt.

¶ 3 Prior to trial, defendant filed a motion to suppress the identification testimony, arguing that the photo array used by police officers to establish defendant's identity was unnecessarily suggestive. The trial court ruled, after a hearing, that the photo array was not unduly suggestive.

¶ 4 The evidence at trial showed that on October 11, 2012, around 5 p.m., the victim Jerome Crockrom was working at a liquor store affixing signage to an adjacent fence, when two males approached from across the street. According to Crockrom, one of the males approached him from behind on his left side at a 45-degree angle and hit him on the head just above his left eyebrow with a black unidentifiable object, then ran away. Immediately thereafter, Crockrom ran into the liquor store bathroom, called the police, and took a picture with his cell phone of the damage caused by the blow. Crockrom explained that he fell into the fence and immediately turned his head towards the entrance of the liquor store when his attacker ran by him and passed approximately five to six inches away from him.

¶ 5 When police arrived on scene approximately 20 to 25 minutes later, Crockrom provided them a description of the attacker as a black male, between 18 to 22 years old, wearing a silver sweatshirt with a hood, blue jeans, and white tennis shoes. Crockrom explained that although the defendant's forehead was covered by his hood, he could clearly see his attacker's face because he passed by him in close proximity.

¶ 6 Detective Rempas testified that he contacted the victim and asked him to come to the station to view a photo array eight days after the incident occurred. Detective Rempas created the photo array based upon information from other detectives that identified defendant as a suspect for this crime as well as for another crime in the area. He also confirmed that the victim "immediately" selected defendant from the photo array.

¶ 7 A surveillance video taken of the liquor store's entrance on the day of the incident was also played for the trial court. The video shows a male in a gray sweatshirt with a hood striking the victim over the head with a black object before running away from the scene in a brief encounter that lasts a matter of seconds.

¶ 8 Ultimately, the trial court found defendant guilty of battery and sentenced him to 364 days in jail. In so finding, the trial court confirmed it found the victim testified credibly and that the surveillance video substantially corroborated the victim's live testimony. Defendant appeals from the trial court's finding of guilt.

¶ 9 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.

¶ 10 The offense of battery is committed when a person knowingly without legal justification causes bodily harm to another individual. 720 ILCS 5/12-3(a)(1) (West 2012). 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).

¶ 11 Defendant argues that the victim's identification testimony was not reliable because defendant was not viewed under circumstances which would allow a positive identification, citing the Supreme Court's decision in *Neil v. Biggers*, 409 U.S. 188 (1972) (outlining several factors used to determine the credibility of the out-of-court identification and its effect on subsequent in-court identification testimony).

¶ 12 In *Biggers*, the Supreme Court outlined five factors (The "*Biggers*" factors) finders of fact should consider when determining the reliability of out-of-court identification and the likelihood of misidentification including: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal, (4) the level of certainty demonstrated by the witness during the identification, and (5) the length of time between the crime and the confrontation. *Biggers*, 409 U.S. at 199-200.

¶ 13 Defendant argues that we cannot rely on the victim's level of certainty when identifying defendant because this factor has been discredited. In support, defendant cites several cases recognizing the same and argues that the accuracy is often inversely related to confidence level. However, defendant provides no citation to any Supreme Court case which stands for the position he now asserts, nor any that expressly discredits the Supreme Court's reliance on this factor. As such, we continue to follow applicable precedent and include this factor in our

analysis. See *Biggers*, 409 U.S. at 199 (central question is whether identification was reliable under a totality of the circumstances).

¶ 14 Defendant argues that because the victim was attacked from behind, suffered a head injury prior to allegedly viewing the attacker's face, had no prior personal relationship with his attacker, had only a second or two to view his attacker's face, and where the identification took place eight days after the offense occurred, that according to the *Biggers* factors, the victim's out-of-court and subsequent in-court identification of defendant as his attacker are unreliable. We disagree.

¶ 15 When viewing the evidence in the light most favorable to the State, we find that the victim positively identified defendant as his attacker. Taking each of the *Biggers* factors in turn, the victim testified that he viewed defendant's face from a distance of five to six inches, and despite defendant's forehead being covered, had an unobstructed view of defendant's face. Furthermore, the identification the victim gave to police officers when they arrived at the liquor store shortly after the incident occurred was substantially accurate, including defendant's age and race. In addition, the trial court found that the victim's description of defendant's clothing at the time of the offense matched that of the victim's attacker on the surveillance video. There is no evidence in the record that suggests the victim gave an opinion with regard to his level of certainty, and therefore, our decision is primarily based upon the presence of the other factors and little weight, if any, is accorded to the victim's degree of certainty.

¶ 16 In addition, the victim was able to pick defendant from the photo array after only eight days' lapse between the incident and the identification at the police station, which is substantially less than the time lapse in *Biggers* and other cases where we have upheld the identification and

found the lapse of time between the initial identification and subsequent confrontation did not create a substantial likelihood of misidentification. See *Biggers*, 409 U.S. at 201 (seven month time lapse between initial incident and subsequent confrontation not substantial to create likelihood of misidentification under totality of circumstances); see also *Slim*, 127 Ill. 2d at 313 (finding identification credible where there was 11 days between initial incident and subsequent confrontation). Moreover, although the victim had no prior relationship with defendant and was only able to view his face for two or maybe three seconds, it appears the victim was highly alert and able to provide an overall substantially accurate description of defendant, and also able to choose him from a photo array when defendant's image was still fresh in his mind.

¶ 17 Admittedly, with regard to the victim's degree of attention and opportunity to view defendant, the victim did appear to sustain a minor head injury, and had his back turned to his attacker when he approached. However, this evidence was heard by the trial court and also highlighted by defendant when the trial court was called upon to make its credibility determination, which it did in favor of the State. Moreover, not only did the trial court find that the victim testified credibly, it also determined the video surveillance corroborated the victim's version of events. This court has also viewed the video and we determine it does not refute the victim's statements or impeach his testimony. Furthermore, it is not the province of this court to reweigh the evidence on appeal. See *People v. Young*, 128 Ill. 2d 1, 49 (1989) (it is not the practice of the reviewing court to reweigh the evidence presented at trial).

¶ 18 As such, when viewing the evidence in the light most favorable to the State, we cannot find that no rational trier of fact could find that defendant was the offender, and accordingly guilty of battery.

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

¶ 20 Affirmed.