FOURTH DIVISION
November 25, 2015

No. 1-13-3807

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 13218
	)	
CORY CUNNINGHAM,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

O R D E R

¶ 1 *Held:* There was sufficient evidence to convict defendant of attempted armed robbery and aggravated discharge of a firearm.

¶ 2 Following a 2013 bench trial, defendant Cory Cunningham was convicted of aggravated discharge of a firearm and two counts of attempted armed robbery and was sentenced to concurrent prison terms of five years. On appeal, he contends that there was insufficient evidence

to convict him because his identification by the single testifying eyewitness was not sufficiently reliable. For the reasons stated below, we affirm.

¶ 3 Defendant was charged with attempted first degree murder and aggravated battery for allegedly shooting Curtis James, causing him great bodily harm and permanent disfigurement, and with attempted first degree murder and aggravated discharge of a firearm for allegedly shooting at Courtney Shannon. He was also charged with the attempted armed robbery of James and Shannon for allegedly demanding money from them by force or imminent threat of force while armed with a firearm. All offenses were allegedly committed on or about July 24, 2011.

¶ 4 At trial, Courtney Shannon testified that he was walking along a main street and talking with Curtis James, his brother, at about 9:15 p.m. on July 24, 2011. Shannon heard footsteps approaching them from behind and turned around to see defendant running towards them with an object in his hand that Shannon first believed to be a phone but realized was a gun. Defendant pointed the gun at Shannon and James and was face-to-face with Shannon from about a foot away. The street lights were lit and Shannon could see that, while defendant was wearing a hood, neither his face nor the ends of his dreadlocks were covered; he was about about 5 feet, 3 inches tall. Shannon had never seen defendant previously. Defendant told Shannon and James to get on the ground and empty their pockets, but they fled in different directions. Shannon described the time that he looked at defendant before fleeing as "a couple minutes." Defendant fired two shots towards Shannon, which he heard flying past him. As Shannon looked back over his shoulder to see if defendant was pursuing him, he saw defendant shoot James in the leg and then flee in a dark car. Shannon returned to James and helped him limp across the street until James could walk no farther and sat down; Shannon then saw blood under his leg. Shannon went to a nearby restaurant for someone to call 911, and the police and an ambulance arrived.

¶ 5 Shannon spoke with Officer Bradley at the scene. On July 30, Shannon went to the police station and viewed for "two to three minutes" a lineup of five men, from which he identified defendant as the assailant, and also gave a statement. Shannon's description of the assailant did not mention tattoos, eye color, facial hair, or unusual facial features. Before showing Shannon the lineup, Detective Dwyer told him that he did not have to identify anyone. The men in the lineup were seated and under different lighting than at the scene. They were not wearing hoods or asked to speak, nor did Shannon ask for any to approach the window. Shannon admitted to a 2007 conviction for possession of a controlled substance. He also stated that James had died since the incident.

¶ 6 Officer Carlos testified that he and his partner arrested defendant on July 29, 2011, after speaking with Curtis James. Defendant did not flee, and Officer Carlos's arrest report stated that defendant was 5 feet, 8 inches tall with a medium complexion and braided hair. On cross-examination, Officer Carlos admitted that he could not tell the difference between dreadlocks and braids. The parties stipulated that a certain paramedic would testify to treating James on the evening of July 24, 2011, for a gunshot wound to his leg and that James told him that he had been shot once.

¶ 7 Defendant unsuccessfully sought a directed finding.

¶ 8 Officer Bradley testified for the defense that she was patrolling on the night in question when Shannon flagged her down and reported that his brother had been shot. Officer Bradley then spoke with Shannon and James. Shannon described the assailant as a black man about 20-25 years old and 5 feet, 3 inches tall with his hair in cornrows. Officer Bradley opined that cornrows are braided to the scalp while braids are loose and dreadlocks are matted. She did not recall if Shannon mentioned hearing gunshots flying past him, and her report did not so reflect.

¶ 9 Detective Kevin Dwyer testified that he spoke with Shannon on the night of the incident on July 24 and again on July 30. He could not recall Shannon mentioning how close defendant stood to him before he ran, but he also could not recall asking Shannon such a question. He did not recall Shannon mentioning that he heard shots flying past him, and neither Detective Dwyer's report nor Shannon's handwritten statement so stated. However, Shannon told Detective Dwyer and included in his statement that defendant shot at him twice.

¶ 10 Josette Cunningham (Josette) testified that defendant, her son, was home at the time of the incident of July 24, 2011. He was playing video games with Christopher Miller from when they all ate dinner at about 6 p.m. until about 10:30 p.m. when defendant asked Josette for the keys to her tan car so he could drive Miller home. Defendant did so and returned home at about 11 p.m. While defendant and Miller were playing video games in the back room of Josette and defendant's apartment, Josette was in the living room but could hear defendant and Miller. On cross-examination, Josette clarified that defendant owned a black car but on redirect examination added that his car was undriveable at the time. Josette gave a statement on July 30 to Detective Dwyer and an ASA, and she signed the document summarizing her interview. In the written statement, Josette stated that defendant left at some point after dinner but was back home by 11 p.m. Josette testified that she did not have an opportunity to read her entire statement and edit before she signed it, while the statement included corrections and an assertion that Josette read aloud the first page of the statement and then the remainder of the statement was read to her.

¶ 11 Detective Dwyer testified in rebuttal that when he and the ASA interviewed Josette, the ASA read the statement aloud to Josette before she signed it on each page.

¶ 12 Following closing arguments, the court found defendant guilty of attempted armed robbery of James and Shannon and of aggravated discharge of a firearm while finding him not

guilty of attempted first degree murder of James or Shannon or of aggravated battery. The court found Shannon's testimony credible, in particular that the assailant's hood did not obscure his hair or face so that Shannon could make an identification in the lineup. The court noted that age, height, weight and the like in identifications are "guesstimates" and found the discrepancy between defendant's height and Shannon's description of the assailant's height to be insignificant. The court also found Josette to not be credible due to her parental bias and inconsistent statement, and found that no evidence was introduced as to the severity of James's wound.

¶ 13 In his post-trial motion, defendant challenged the sufficiency of the State's evidence and the denial of his motion to suppress identification testimony. The court denied the post-trial motion without further findings and proceeded to sentencing, where it sentenced defendant to concurrent prison terms of five years and defendant immediately filed this notice of appeal.

¶ 14 On appeal, defendant contends that there was insufficient evidence to convict him, in that Shannon's identification of him as the assailant is insufficiently reliable to prove his guilt beyond a reasonable doubt.

¶ 15 On a claim of insufficiency of the evidence, we must determine whether, taking the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *In re Q.P.*, 2015 IL 118569, ¶ 24. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and it is better equipped than this court to do so as it heard the evidence. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. We do not retry the defendant – we do not substitute our judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses – and we accept all reasonable inferences from the record in favor of the State. *Q.P.*, 2015 IL 118569, ¶ 24. As witness credibility is a matter for the trier of

fact, it may accept or reject as much or little of a witness's testimony as it chooses. *People v. Johnson*, 2014 IL App (1st) 122459-B, ¶ 131. The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Jonathon C.B.*, 2011 IL 107750, ¶ 60. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt, nor to find a witness was not credible merely because the defendant says so. *Id*. A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Q.P.*, 2015 IL 118569, ¶ 24.

¶ 16 The testimony of a single witness, if positive and credible, is sufficient to convict. *People v. Mister*, 2015 IL App (4th) 130180, ¶ 98, citing *People v. Smith*, 185 Ill. 2d 532, 541 (1999). In assessing the reliability of a witness identification, we consider the (1) witness's opportunity to view the defendant during the offense, (2) witness's degree of attention at the time of the offense, (3) accuracy of the witness's prior descriptions of the defendant, (4) witness's level of certainty at the subsequent identification, and (5) length of time between the offense and the identification. *Id.*, citing *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989), citing *Neil v. Biggers*, 409 U.S. 188 (1972). The observation need not be prolonged or under perfect conditions, discrepancies in witness descriptions do not necessarily generate reasonable doubt, and the lapse of time from the offense is not fatal to an identification but goes to its weight. *Id*., ¶¶ 98, 103, 104, citing *People v. Rodgers*, 53 Ill. 2d 207, 213-14 (1972)(identification two years after offense upheld).

> "It has consistently been held 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 308-09.

A trier of fact is not obligated to accept alibi testimony over positive identification of a defendant, as the weight of alibi evidence is a matter of credibility to be decided by the trier of fact. *Slim*, 127 Ill. 2d at 315.

¶ 17 Here, taking the evidence in the light most favorable to the State as we must, we conclude that a reasonable finder of fact could find defendant guilty of the attempted armed robbery of James and Shannon and of aggravated discharge of a firearm. Shannon testified to standing face-to-face with defendant at least long enough for him to tell Shannon and James to get to the ground and empty their pockets; while it was night, there were streetlights, and while the assailant wore a hood, his face and the ends of his hair were visible. With a gun pointed at him, Shannon had ample reason to pay attention, and he continued to pay attention as he fled; that is, he looked back to determine if defendant was pursuing him. Shannon made a positive or certain identification of defendant in a lineup less than a week after the incident. While Shannon testified that he looked at the lineup for two to three minutes before identifying defendant, he also testified that he looked at defendant with a gun pointed at him for a "couple minutes" before fleeing; it is reasonable to infer that Shannon may describe the passage of time imprecisely without necessarily impugning his observational skills. Similarly, while his description of the assailant did not fit defendant precisely, including underestimating his height by a few inches, the court was well-aware of the discrepancies and did not find them fatal or impeaching. (On this point, we note defendant's argument that Shannon described an assailant with cornrows while defendant had braids, but we also note that Officer Bradley described a cornrow as a type of

braiding.) On this evidence, the court found Shannon's pre-trial and trial identifications of defendant as the assailant were credible and reliable while defendant's alibi from his mother was not. That conclusion is not so improbable or unsatisfactory as to leave us a reasonable doubt of defendant's guilt.

¶ 18 Accordingly, the judgment of the circuit court is affirmed.

¶ 19 Affirmed.