

FOURTH DIVISION
December 31, 2015

No. 1-14-0229

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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. 11 CR 17148
)	
HENRY JOHNSON,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice McBride and Justice Cobbs concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's convictions for home invasion, residential burglary, and armed robbery affirmed. Evidence established that defendant was part of group of men armed with guns that entered building, rounded up residents, and beat and stole certain items from one man.

¶ 2 Following a bench trial, defendant Henry Johnson was found guilty of six counts of home invasion, two counts of residential burglary, and one count of armed robbery. Defendant was sentenced to nine concurrent 25-year prison terms. On appeal, defendant contends that the evidence at trial was too unsatisfactory and improbable to prove him guilty beyond a reasonable

doubt, because the conditions under which the only witness to identify him at trial allegedly saw his face were "questionable and chaotic," and no physical evidence linked him to the offense. We affirm.

¶ 3 The evidence at trial established that, on the evening of September 27, 2011, defendant, along with codefendants Karl Lowery and Samuel Elam, and several other unidentified men, entered an apartment building at 448 West 116th Street in Chicago armed with guns.¹ The armed men rounded up Dante Young, Theresa Harper, Christopher Travis and Maria Kennedy-Perkins. They also beat and took items from Rubin Bridges.

¶ 4 First-floor resident Dante Young testified that he was outside when he was approached by three men and told to get into the house. The men wore masks and had guns. Although Young got inside and tried to close the door, someone blocked his attempt with a pistol, and the men were able to enter the building. One man went upstairs. Another hit Young on the head with a pistol several times and told him to put his nose on the ground. Young was forced to "strip naked" and lie on the floor. When Young's roommate Rubin Bridges arrived 30 minutes later, he was beaten by the intruders.

¶ 5 Theresa Harper, Rubin Bridges' girlfriend, testified she was in bed alone when she heard "some commotion." An unidentified co-offender wearing a black hoodie and holding a gun entered the bedroom. Harper asked this man not to kill her, and he told her to "get *** on the floor." She complied. Eventually, Harper was taken downstairs and was told to sit in a corner of the foyer. There, the armed men repeatedly asked where the "shit [was] at" and whom Harper

¹ The case against defendant and codefendants proceeded to a severed simultaneous bench trial. Codefendants' appeals are currently pending before this court. See *People v. Lowery*, No. 1-14-0227, *People v. Elam*, No. 1-14-0228.

had seen with drugs. The men, including defendant, pulled their bandanas down to talk to her, and she was able to see their faces. Codefendant Lowery and defendant had firearms. When Bridges returned home, codefendant Lowery pulled him inside. Bridges was "slammed" to the floor and pistol-whipped.

¶ 6 On September 28, 2011, Harper made a statement to police and identified defendant and codefendants in a lineup. At trial, Harper identified defendant and codefendants as the men with guns who spoke to her on the first floor of the building. The man who kicked in the door was not present in court.

¶ 7 During cross-examination, Harper testified that she saw defendant and codefendant Elam for the first time downstairs. Codefendant Elam had a gun. Defendant told her to tell him where the "shit" was. But she could not understand him, so defendant pulled down the bandana to speak to her. Codefendant Elam also pulled down his mask to ask questions. She saw defendant run out of the back door. During these events, Harper was very nervous and in tears.

¶ 8 Maria Perkins-Kennedy and Christopher Travis, who were also on the second floor that night, testified that, after armed men entered their apartment, the men hit Travis on the head with a gun and took Perkins-Kennedy and Travis downstairs. Perkins-Kennedy counted five or six men with guns. Travis saw five men with guns. They saw these men beat Bridges.

¶ 9 Rubin Bridges testified that when he came home around 11:30 p.m., his basement neighbor told him not to go inside. When Bridges opened the door, he was "snatched" inside by codefendant Lowery, who pointed a gun at his face. Bridges saw Harper in the hallway and Young on the floor. Codefendants Lowery and Elam then beat Bridges with their guns. During the beating, codefendant Elam told Bridges to give up the keys, so Bridges gave codefendant

Elam his car keys. Someone also removed his paycheck from his pocket. Bridges passed out, and codefendant Lowery sprayed Windex in Bridges' face to wake him up. At some point, codefendants Elam and Lowery dragged Bridges upstairs. There, they beat him "some more." Although they asked where "it" was, Bridges denied living "that kind of life." He passed out and regained consciousness as the police arrived. His injuries included internal bleeding and bleeding on the brain.

¶ 10 Later, at a hospital, Bridges spoke to police officers. At trial, Bridges did not recall whether the officers asked him to sign a document before looking at certain photographs, but he acknowledged that he looked at the photographs in order to determine if anyone in the photographs was involved in the beating. Bridges did not recognize the "lineup/photo spread advisory form," but recognized his signature on the form and admitted that he was given this document by the police at the same time that he was shown the photographs. At trial, Bridges identified the photographic arrays that he was shown in the hospital, and the photograph of defendant, in one of the arrays, which was circled.

¶ 11 During cross-examination, Bridges testified that he was hit in the head a "lot" that night and was being medicated for pain at the time he identified defendant in the photographic array. At trial, he could not identify defendant as being present at the house on September 27, 2011, and he did not know whether defendant was one of the men who beat him.

¶ 12 On redirect examination, Bridges admitted that he was "reluctant" to testify at trial and that he was approached by "a group of guys" on the street and told to "let it go," *i.e.*, drop the charges and not come to court. Bridges believed that the men were acting on behalf of "all three individuals," that is, defendant and codefendants. The trial court stated that it would consider this

particular line of testimony only as it affected Bridges's "interest, bias, motive, [and] credibility" and would not attribute anything that happened "on the street" to defendants "directly." However, the court noted that this testimony was relevant as it went to Bridges's credibility "to explain in context his testimony and some things he may have said prior to testifying" at trial.

¶ 13 Officer Corey Pierce testified that when he and his partner arrived at the building in response to a dispatch of a burglary in progress, he saw defendant and two other individuals running from the rear of the building. Pierce chased defendant for approximately a block before taking defendant into custody. He never lost sight of defendant and did not see a gun. During cross-examination, Pierce testified that he did not recall recovering a bandana from defendant or seeing any blood on defendant's clothes.

¶ 14 Detective Brian Cunningham testified that Theresa Harper identified defendant and codefendants Elam and Lowery in a lineup. He also met with Rubin Bridges at a hospital and showed Bridges two photographic arrays. Although Bridges was hospitalized, he acknowledged that he understood that the photographic arrays might not contain photographs of the suspects and signed the advisory form. Bridges identified defendant and codefendant Lowery in the photographic arrays by circling each man's photograph.

¶ 15 The trial court found defendant guilty of guilty of six counts of home invasion, two counts of residential burglary, and one count of armed robbery. He was sentenced to nine concurrent 25-year prison terms.

¶ 16 When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing 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. *People v.*

Brown, 2013 IL 114196, ¶ 48. The trier of fact is responsible for evaluating the credibility of the witnesses, weighing witness testimony, and determining what inferences to draw from the evidence. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). A reviewing court will not retry the defendant (*People v. Lloyd*, 2013 IL 113510, ¶ 42) or substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of witnesses. *Brown*, 2013 IL 114196, ¶ 48. This court will reverse a defendant's conviction only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of his guilt remains. *Id.*

¶ 17 Here, the evidence at trial established, through the testimony of Harper and Officer Pierce, that defendant was part of a group of armed men that entered the building, rounded up the residents and beat Bridges, and that defendant was taken into custody as he ran from the building. Although Bridges could not identify defendant at trial, his testimony corroborated that of the other building residents, and he did identify defendant two days after the incident in a photo array at the hospital. It was for the trial court, as the trier of fact, to determine each witness's credibility and what weight to afford to each witness's testimony; we will not substitute our judgment for that of the trial court on these issues. *Id.* Ultimately, viewing the evidence at trial in the light most favorable to the State, we conclude that there was sufficient evidence to find defendant guilty beyond a reasonable doubt.

¶ 18 Defendant argues that Harper's identification is incredible because of the "chaotic" circumstances at the building that night, and because she only saw defendant for a handful of seconds. He also argues that Harper was the only witness to identify him at trial and that Bridges's testimony actually "detracts" from the evidence against him. Defendant further argues that no physical evidence connected him to the offense—that neither a gun nor a bandana was

recovered when he was taken into custody and there was no indication that his clothing was bloody.

¶ 19 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); see also *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009) ("It remains the firm holding of this court that the testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant."). In evaluating the reliability of an identification, this court considers: (1) the witness' opportunity to view the offender, (2) the witness' degree of attention, (3) the accuracy of the witness' prior description of the offender, (4) the witness' degree of certainty, and (5) the length of time between the crime and the confrontation. *Slim*, 127 Ill. 2d at 307-08; see also *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972).

¶ 20 Harper testified that she saw defendant's face when he pulled down his bandana to ask her questions. And though the verbal exchange between the two only lasted about five seconds, she also testified that when she was moved down to the first floor, she spent approximately 25 to 30 minutes in the same room with defendant. She also saw defendant as he ran past her, fleeing from the apartment, when the police arrived. The testimony shows that she had ample opportunity to view defendant, even if much of that time a bandanna covered his face below his nose.

¶ 21 Though defendant argues that there was insufficient evidence at trial regarding the lighting in the building that night, the fact that it may have been dim in the foyer is not fatal to Harper's identification of defendant. See, e.g., *People v. Herrett*, 137 Ill. 2d 195, 200-01, 204

(1990) (finding sufficient opportunity for witness to view defendant when witness testified that he saw defendant's face for only "several seconds" in dimly lit store). And while Harper acknowledged that she was nervous and in tears during this incident, she certainly had reason to pay attention to the armed men asking her questions and beating her boyfriend. Her testimony was quite detailed regarding the assailants' clothing, build, and skin tone, as well as the sequence of events and the details of their crimes. The record also indicates that Harper made a statement to police and positively identified defendant in a lineup shortly after the incident. And there is nothing in the record to indicate that Harper was the least bit hesitant or unsure of her identification. When we view all the *Biggers* factors together, we easily conclude that Harper was a reliable identification witness. Her identification alone would be sufficient to sustain defendant's conviction.

¶ 22 And the evidence went beyond Harper's identification. Most significantly, Harper's testimony that defendant and two other men fled from the house was significantly bolstered by Officer Pierce's testimony that the police apprehended defendant as he fled the scene of the crime with two other men. Finally, as we have noted, another individual, Bridges, positively identified defendant in a photo array at the hospital only days after the incident. It is true that Bridges did not make such a positive identification at trial, but the trial court could have reasonably concluded, as it suggested, that recent threats and intimidation against Bridges explained his change in testimony. (See *supra*, ¶ 12.) The trial court was not required to disregard Bridges's earlier positive identification, only two days after the incident, in favor of his trial testimony, as the weighing of the evidence was within its province. See *Ross*, 229 Ill. 2d at 272.

¶ 23 Nor are we persuaded by defendant's complaint that no physical evidence connected him to the offense, even though "it is clear that physical evidence *** should have been found." On cross-examination, Officer Pierce testified that he did not recover a gun or bandana from defendant, nor did he recall seeing blood on defendant's clothes. But this evidence, while potentially exculpatory, by no means so clearly outweighed the evidence of guilt that the court's verdict was irrational and must be set aside. The trial court was not required to seek out all possible explanations consistent with a defendant's innocence and elevate them to reasonable doubt. See *In re Jonathan C.B.*, 2011 IL 107750, ¶ 60. The trial court could have rationally concluded that an individual fleeing a crime scene upon the police's arrival might consider discarding or handing off some of the incriminating evidence, such as a murder weapon or a memorable piece of clothing. And the lack of blood is consistent with Harper's testimony that defendant did not materially participate in the brutal beating of any victims, most notably the extended portion that took place upstairs with Bridges. The balancing of the evidence and the reasonable inferences to be drawn from that evidence are the province of the factfinder, and we do not find the inferences drawn by the trial court to be unreasonable.

¶ 24 In light of the testimony of Harper and Pierce, and to a lesser extent the identification by Bridges at the hospital, we cannot say that no rational trier of fact could have found defendant guilty beyond a reasonable doubt of the charged offenses. *Brown*, 2013 IL 114196, ¶ 48. We affirm defendant's convictions for home invasion, residential burglary, and armed robbery.

¶ 25 Affirmed.