

No. 1-14-3388

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

<i>In re</i> STEPHONE B., A Minor)	
)	
)	Appeal from the
(The People of the State of Illinois,)	Circuit Court of
)	Cook County.
Petitioner-Appellee,)	
)	No. 14 JD 3025
v.)	
)	Honorable
Stephone B.,)	Stuart P. Katz,
)	Judge Presiding.
Respondent-Appellant).)	
)	

PRESIDING JUSTICE PALMER delivered the judgment of the court.
Justices McBride and Reyes concurred in the judgment.

ORDER

¶1 *Held:* Affirming the judgment of the circuit court of Cook County where the identification evidence was sufficiently reliable and there was sufficient evidence to prove beyond a reasonable doubt that respondent discharged a firearm in the direction of the complainants.

¶2 Respondent, Stephone B., appeals from his adjudication of delinquency and dispositional order following the trial court's findings of guilt for the offenses of aggravated discharge of a

firearm, reckless discharge of a firearm, aggravated assault, and assault. On appeal, respondent alleges that he was not proven guilty beyond a reasonable doubt and that the identification evidence was unreliable. For the reasons set forth herein, we affirm.

¶3

I. BACKGROUND

¶4 The State charged respondent, who was aged 17 at the time, with aggravated discharge of a firearm, reckless discharge of a firearm, two counts of aggravated unlawful use of a weapon, unlawful possession of a weapon, aggravated assault, and assault, for a shooting incident that occurred on August 2, 2014.

¶5 At a hearing before the trial court on October 2, 2014, Brandon Archibald, who was 17 years of age at the time of the hearing, testified that he was with his friend, Curtis Edgleston, along with other friends, sitting on a porch of a house near 67th and Sangamon in Chicago on August 2, 2014. At approximately 7:45 p.m., Archibald and Edgleston and four friends decided to walk to a restaurant. While walking along the 6700 block of South Sangamon, Archibald observed respondent, whom he knew from TEAM Englewood high school, where they used to attend school together. He and respondent had an argument a year prior, and he also knew respondent from the neighborhood. Respondent was at the corner with a group of three young men; some of them wore white T-shirts. Respondent was looking at Archibald and Edgleston, and he asked them "Who was that?" No one responded. Archibald and Edgleston stopped walking. Archibald testified that respondent again yelled, "Who was that." Archibald told Edgleston to get ready to run; Archibald believed that respondent had a gun, although he never actually saw him with a gun. Archibald testified that he and Edgleston started running. As Archibald ran, he heard three gun shots fired in his direction.

¶6 Archibald testified that the police stopped him and Edgleston shortly after and asked if

they heard any shooting. Archibald told the police that the shooter wore a white shirt and he gave them respondent's name. Archibald testified that although he never turned around to see who actually shot the gun, he told police that respondent shot the gun because Edgleston did not want to tell police that respondent had shot the gun. According to Archibald, the police drove them around for approximately 35 minutes to see if they could find respondent. At some point, the police brought them to where a group of individuals had been detained by another officer. Archibald identified respondent among the individuals.

¶7 Edgleston, who was 14 years of age at the time of the hearing, similarly testified that he started walking to a restaurant with Archibald and his friends when he saw respondent. He did not know respondent prior to this incident. Edgleston testified that respondent asked "[w]ho we are" and Edgleston and his friends "froze." Edgleston was 35 to 40 feet from respondent when respondent yelled at them. Edgleston testified that he was standing behind a tree next to one of Archibald's friends, and Archibald was standing next to another friend. Edgleston testified that respondent repeated his question a few times, but no one responded. Edgleston testified that respondent then pulled a black gun from his pocket. Edgleston turned around and ran. As he ran, he heard three gunshots coming from the area where respondent was, and the shots went toward the direction Edgleston was running.

¶8 Edgleston testified that he ran for about two minutes and he caught up with Archibald at the end of a block. They were then stopped by the police and asked about hearing gunshots. Archibald gave them a description of the shooter. Edgleston testified that he told police he saw respondent with a gun. Edgleston testified that the police eventually drove them to where a group of five young men were being held by police, he saw the individual who had shot at him and Archibald. He testified that Archibald identified respondent. Edgleston agreed with Archibald's

identification.

¶9 Chicago police officers Jack Miller and Mike Pfeiffer were patrolling the 7th District in a marked police vehicle around 8 p.m. that evening. Miller testified that they received a call of "shots fired" in the 6700 block of South Sangamon. While driving to the scene, the officers observed Edgleston and Archibald running on 69th Street and Peoria, and stopped them. The boys explained that they were running because they had just been shot at by respondent. Archibald gave the officers respondent's name and description. Miller testified that Archibald did not state that he saw the gun; Archibald told Miller that he was approached by five African-American male teenagers and asked what his gang affiliation was, that Archibald and Edgleston turned and tried to run away, and that he knew respondent from school. The officers sent out a flash message containing respondent's description as the shooter and indicating that there were three to four young African-American males in white T-shirts. Miller testified that they remained at that location trying to get more information from Archibald and Edgleston, and within five minutes he received notification that a group had been detained at 6551 South Green Street. Miller brought Archibald and Edgleston to that location for a showup, and the complainants identified respondent as the person who shot at them. There were five individuals in the showup. Miller indicated that all were wearing white T-shirts, except one individual who had his shirt off. Pfeiffer provided similar testimony to Miller regarding the events of that evening.

¶10 Respondent moved for a directed finding as to all counts. The trial court granted the motion as to the charges of aggravated unlawful use of a weapon and unlawful possession of a firearm because there had been no evidence presented regarding a FOID card, respondent's age, or the size of firearm.

¶11 Respondent presented the testimony of Byron Daniels, who was 14 years old at the time

of the hearing and was respondent's friend and neighbor. Daniels testified that he lives at 6551 South Green. Daniels testified that he, respondent, and some friends were asked by Daniels' mother to lay woodchips in the backyard that day for a playground set. Daniels testified that Clint Baker (respondent's cousin) and Devonte Williams were also helping. They started working at approximately 12 p.m.; they had to dig up the grass before laying the woodchips. They took a break at some point to play video games in Daniels' house. The police arrived at approximately 4 or 5 p.m. while they were working in the backyard. Daniels testified that the police placed all of them against a fence during the show-up.

¶12 Daniels' mother, Rachel Andrews, testified that at 4 p.m. that day, she asked her son, respondent, and two other boys to do yard work. She then went to Home Depot. She returned from Home Depot at 5:30 p.m. and supervised the boys until the police arrived a little after 7 p.m. She showed the police her receipt from Home Depot, the empty bags of wood chips in her yard, and the work that the boys had done.

¶13 Respondent testified that he went to Daniels' house at 12 p.m. that day and played video games until 2 p.m., when three friends arrived. He testified that Andrews asked them to do yard work at 2:30 p.m. Respondent went home for 15 minutes to change his clothes, and then he, Daniels, and two other boys worked in the yard digging up grass and laying woodchips. He did not leave the property at any other time other than to change his clothes. He testified that he and Daniels were good friends and had known each other since they were "little."

¶14 In rebuttal, Chicago police officer Ricky Page testified that he was on bike patrol at approximately 7:45 p.m. that evening when he heard the flash message regarding shots being fired and the description of four or five young black males in white T-shirts. He traveled east on 66th Street and saw a group matching this description near the alley at Halsted and Green Street.

Page testified that he headed toward the group, but once the boys saw him, they walked into the backyard of 6551 South Green Street, four or five houses from the entrance to the alley. Page detained the group. They were not carrying shovels or other yard tools or supplies. Miller and Pfeiffer brought Archibald and Edgleston to the scene and the two boys identified respondent.

¶15 The trial court held that respondent's witnesses were not credible as their testimony was inconsistent, "all over the place on times and where they were and what they were doing," and contradicted Page's testimony. The court found that Archibald's and Edgleston's testimony was "quite credible" as it contained only "some minor discrepancies." The court noted that one of them knew respondent, and one of them saw respondent with a gun. Accordingly, the trial court adjudicated respondent delinquent of the offenses of aggravated discharge of a firearm, reckless discharge of a firearm, aggravated assault, and assault. At the sentencing hearing, the court merged the counts and sentenced respondent on the aggravated discharge of a firearm offense to two years' probation.

¶16

ANALYSIS

¶17 On appeal, respondent challenges the sufficiency of the evidence supporting his delinquency adjudications. "In delinquency proceedings, as in criminal cases, when evaluating a challenge to the sufficiency of the evidence, the relevant question 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." (Internal quotation marks omitted.) *People v. Austin M.*, 2012 IL 111194, ¶ 107. "[I]n a bench trial, it is for the trial judge, sitting as the trier of fact, to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). "A reviewing court will not reverse a conviction

simply because the evidence is contradictory ([citation]) or because the defendant claims that a witness was not credible." *Id.* In reviewing the evidence on appeal, we must not substitute our judgment for that of the trier of fact (*People v. Collins*, 214 Ill. 2d 206, 217 (2005)), and we afford great weight to the fact finder's credibility determinations (*People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007)). We must also draw all reasonable inferences from the evidence in favor of the State. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). Reversal is appropriate only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt regarding the respondent's guilt remains. *Austin M.*, 2012 IL 111194, ¶ 107.

¶18 Respondent asks this court to reverse his delinquency adjudications on grounds that the showup identifications were doubtful and unreliable. Respondent contends that Archibald and Edgleston did not have an adequate ability to view the offender, were not paying sufficient attention to the offender, did not provide accurate prior descriptions or any prior description of the offender, and did not demonstrate certainty in their identifications.

¶19 We consider five factors when evaluating the reliability of an eyewitness identification: "the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation." *Neil v. Biggers*, 409 U.S. 188, 199–200 (1972). See also *People v. Slim*, 127 Ill. 2d 302, 307–08 (1989). The testimony of a single witness can be sufficient to support a conviction where the witness is credible and had the opportunity to positively identify the defendant under the circumstances. *People v. Young*, 46 Ill. App. 3d 798, 801 (1977).

¶20 Our review of the record evidence leads us to conclude that the trial evidence supported the reliability of both Archibald's and Edgleston's identifications of respondent. The record

evidence showed that, prior to the incident, Archibald knew respondent from school and the neighborhood. Archibald testified that he saw respondent at the corner and Archibald stopped walking and looked at respondent as respondent was yelling "who was that" at Archibald, Edgleston, and their friends. Archibald testified that he believed respondent had a gun, and although Archibald did not wait to see if respondent actually produced one, he heard three gunshots fired in his direction as he and Edgleston ran away. Shortly after the incident, Archibald identified respondent from among the group of young men and he identified him at trial. Consistent with Archibald's testimony, Officer Miller testified that Archibald provided him with respondent's name and description shortly after the shooting and, within a short period of time, the showup occurred and Archibald and Edgleston identified respondent as the person who shot at them.

¶21 Similarly, with respect to Edgleston's identification, the record demonstrates that although he did not know respondent before the incident, he had an opportunity to observe respondent as respondent was approximately 35 or 40 feet away while respondent yelled at them repeatedly to identify themselves. Edgleston testified that he saw respondent pull a black gun from his pocket, and Edgleston heard three gunshots coming toward him as he ran away. Edgleston testified that he told Officers Miller and Pfeiffer shortly after the shooting that he saw respondent with a gun and he then identified respondent in the showup within minutes of the shooting. Edgleston also identified respondent at trial.

¶22 Based on this record, we find that the trial evidence supported the reliability of both Archibald's and Edgleston's identifications of respondent. Both young men had a sufficient opportunity to view respondent as he shouted "who was that" a few times at them from the street corner. Both young men's testimony showed that they were paying close attention to respondent

as Archibald testified that he had a feeling that respondent had a gun, and Edgleston testified that he saw respondent remove a gun from his pocket. "An identification may be positive even though the witness viewed the accused for a short period of time." *People v. Wehrwein*, 190 Ill. App. 3d 35, 39 (1989). See *People v. Herrett*, 137 Ill. 2d 195, 200, 204-05 (1990) (eyewitness had a sufficient opportunity to observe the robber where he saw the robber's face for "a few seconds" in a dimly lit room before his eyes were covered); *People v. Rodriguez*, 134 Ill. App. 3d 582, 589-90 (1985) (eyewitness's identification was sufficiently reliable where he saw suspect's face for a few seconds from a second-story window). We further observe that the showup in the present case involved five individuals, a consideration which enhances the reliability of Archibald's and Edgleston's identifications. See *People v. Broadnax*, 177 Ill. App. 3d 818, 833 (1988) (holding that a two-man showup was more reliable than a one-man showup, and the resulting identification was therefore reliable). Additionally, Archibald was previously familiar with respondent and Archibald did not hesitate or waiver in his identification of respondent by name to the police, or in his identification of respondent at the showup or at trial. Similarly, there is also no indication from the record evidence that Edgleston hesitated in his identification of respondent at the showup or at trial. Adding to these indications of reliability, only a very short time elapsed between the shooting incident and the showup identification. *Biggers*, 409 U.S. at 199–200.

¶23 Respondent focuses on the fact that Archibald did not see respondent pull the gun out and shoot. We acknowledge Edgleston's somewhat contradictory testimony that he told the police that respondent had a gun and Archibald's testimony that although he did not see respondent with the gun, he told police that respondent shot the gun because Edgleston did not want to come forward with this information. However, in the context of the other evidence presented, this does

not diminish Archibald's identification of respondent. Indeed, Archibald was candid about the fact that he did not turn around to see who was shooting the gun as he ran away, and about the fact that he told police that respondent shot the gun because Edgleston did not want to come forward with this information. If anything, Archibald's frankness only serves to boost his credibility. As noted, out of the group of young men gathered at the corner, respondent was the individual with whom Archibald had a prior argument and he the only individual yelling at Archibald and Edgleston to identify themselves.

¶24 Respondent also emphasizes that Edgleston testified that he was standing behind a tree. However, there was no evidence or testimony regarding the size or exact location of the tree with respect to respondent or that the tree actually blocked Edgleston's view of respondent. According to Edgleston's testimony, he was nevertheless able to observe, from his vantage point, respondent pull the gun from his pocket.

¶25 Respondent asserts on appeal that eyewitness identifications are inherently unreliable. Despite this contention, we observe that respondent did not offer an expert witness to testify regarding the reliability of eyewitness identifications or any facts pertinent to this case which would detract from the reliability of Archibald's and Edgleston's identifications. In any event, we note that the factors which this court must consider under *Biggers* otherwise support the reliability of the eyewitness identifications in this case. Considering the five *Biggers* factors as a whole, we cannot say that the evidence was so unreasonable, improbable, or unsatisfactory that a reasonable doubt regarding respondent's guilt remains. *Austin M.*, 2012 IL 111194, ¶ 107.

¶26 Alternatively, respondent argues on appeal that his adjudications of aggravated discharge of a firearm, aggravated assault, and assault offenses should be reversed because there was insufficient evidence that respondent discharged a weapon "in the direction of" the complainants.

¶27 Aggravated discharge of a firearm requires the State to prove that respondent knowingly or intentionally discharged a firearm in the direction of the complainants. 720 ILCS 5/24-1.2 (West 2012). See *People v. Hartfield*, 266 Ill. App. 3d 607, 608-09 (1994). For the offense of assault, the State must show that respondent, without lawful authority, knowingly engaged in conduct that placed the victims in reasonable apprehension of receiving a battery. 720 ILCS 5/12-1 (West 2012). Similarly, aggravated assault is an assault committed with a deadly weapon. 720 ILCS 5/12-2(c) (West 2012).

¶28 Here, the evidence demonstrated that Edgleston saw respondent pull out the gun before he and Archibald turned and began to run away. Both Archibald and Edgleston testified that they heard the gunshots as they were running away from respondent and that the gunshots sounded like they were fired in their direction. In addition, Edgleston testified that the gunshots sounded like they originated from the area where respondent was located. In reviewing the evidence, we are mindful that we must draw all reasonable inferences in favor of the State. *Austin M.*, 2012 IL 111194, ¶ 107; *Givens*, 237 Ill. 2d at 334 (2010). Considering this evidence in light of the additional evidence that respondent was shouting at Archibald and Edgleston to identify themselves shortly before shooting and that respondent and Archibald had a previous argument, it was reasonable to infer that respondent was shooting in the direction of the two complainants. As this court has previously recognized, circumstantial evidence, standing alone, may support a criminal conviction. *People v. Brown*, 2013 IL 114196, ¶ 49. We decline to disturb the trial court's assessment of this evidence and the reasonable inferences it drew therefrom. *Siguenza–Brito*, 235 Ill. at 228.

¶29 Although respondent likens this case to *Hartfield*, 266 Ill. App. 3d at 608-09, we find that case distinguishable. In *Hartfield*, the court found insufficient evidence to prove that the

defendant aimed his weapon at a detective where the defendant ran into a gangway between two buildings, the detective hid behind his squad car before pursuing the defendant, the detective ducked whenever he heard gunshots and went onto the ground, and he never saw the defendant fire his weapon. *Id.* at 608-09. In contrast, the State presented evidence in the instant case from which the trier of fact could conclude that respondent fired in the direction of the complainants. Edgleston saw respondent pull out the gun and testified that it sounded like the gunshots originated near respondent, and both Edgleston and Archibald testified that it sounded like the gunshots were coming toward them.

¶30

CONCLUSION

¶31 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶32 Affirmed.