

FIFTH DIVISION
AUGUST 12, 2016

No. 1-13-3880

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

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 14620
)	
NIKKO HENDERSON,)	Honorable
)	Thaddeus L. Wilson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Reyes and Justice Burke concurred in the judgment.

O R D E R

¶ 1 *Held:* There was sufficient evidence to convict defendant of armed robbery. Fines and fees order is corrected.

¶ 2 Following a bench trial, defendant Nikko Henderson was convicted of armed robbery and sentenced to six years' imprisonment with fines and fees. On appeal, he contends that there was insufficient evidence to convict him of armed robbery because his identification by a single eyewitness was not sufficiently reliable and there was insufficient evidence that defendant was armed with a knife as charged. He also contends that a certain fee was erroneously assessed and

he is entitled to presentencing detention credit against other fines. The State agrees that we must correct the order assessing fines and fees but not on all points raised by defendant. For the reasons stated below, we affirm the conviction but correct the order assessing fines and fees to vacate an erroneous fee and include the requisite credit.

¶ 3 Defendant was charged with the armed robbery of Charlie Harris for allegedly taking a "motor bike" from him by force or imminent threat of force while armed with a dangerous weapon—a knife—on or about July 25, 2012.

¶ 4 At the September 2013 trial, Charlie Harris testified that he was 11 years old at the time of trial. Shortly before nightfall on July 25, 2012, Harris and a friend were taking turns riding Harris's motorbike near Harris's home. As Harris was making a turn at the corner, which had streetlights, defendant "came out *** and took my bike away." Defendant was holding a pocketknife in his hand, with about two inches of the blade protruding beyond his fist, and Harris was certain that it was a knife. Defendant grabbed Harris's motorbike with the other hand, so Harris dismounted from the motorbike and tried to pull it away from defendant. As they struggled for the motorbike, Harris was facing defendant and observed his face. Defendant was wearing a black hooded sweatshirt—the hood covered the top of his head but not his face—and black pants. Defendant shoved the motorbike at Harris, who lost his grip of it and fell backwards. Defendant rode away on the motorbike. Harris walked back home and was met by his mother, who called the police. Harris came into contact with his grandmother, who lives nearby, on the street shortly after the robbery. The day after the robbery, Harris observed defendant exiting a store, so Harris went home and reported this to his mother. She phoned the police, and officers

later took Harris to a home where he observed defendant being detained and confirmed for the officers that he was the offender.

¶ 5 On cross-examination, Harris testified that the robbery occurred in the nighttime, as his mother reported it around 9 p.m. and it is night at 9 p.m. even in the summer. Harris did not know defendant before the robbery. He observed defendant on the corner before the robbery, when he did not have on the hooded sweatshirt and thus Harris could observe his hair. Harris denied that defendant's hair was in dreadlocks or braids, and denied that his description of the robber to police included dreadlocked hair. There were four other men on the corner during the robbery, and Harris described two of them, but denied that any of them was the offender and denied that he was looking at them during the robbery. Some of them told Harris after the robbery who the robber was, naming him as "Nikko," and Harris denied that they mentioned another participant called "Quan." Harris did not know who Nikko was until his friend, who had been riding the motorbike with him, told him; the friend had not observed the robbery occur. When Harris saw defendant leaving the store the next day, Harris asked the store clerk who that was, and the clerk told him he was Nikko.

¶ 6 On redirect examination, Harris clarified that he recognized defendant as the offender as he exited the store, before asking the clerk who he was. On recross examination, Harris admitted that defendant did not have the motorbike or a visible knife when he observed him at the store. When asked if the robber rode away on the motorbike after taking it or passed it to another person who rode away, Harris was uncertain. On the night of the robbery, police brought Harris to Quan as he had a motorbike similar to Harris's, but Harris said that Quan was not the robber. Quan had dreadlocks.

¶ 7 Brenda Hayes, Harris's grandmother, testified that she was walking from her home to Harris's nearby home before 9 p.m. on the night in question when she observed Harris ride by on his motorbike. When Harris stopped at the corner to turn, "somebody [took] him off the bike." She was not facing the young man who took the bike but was facing his back and side, so she could not view the front of his body. Harris and the robber both grabbed the motorbike by the handlebars. Harris dismounted, then the man who took the motorbike handed it to somebody else who rode it away from the scene as Harris walked towards home. Hayes at first focused on the person on the motorbike rather than the man who took it, but she lost track of the motorbike due to its speed. Hayes observed the man who took the motorbike from Harris walk away, and now had a chance to look at him; she identified defendant at trial as that man.

¶ 8 On cross-examination, Hayes added that the person who rode away on the motorbike had dreadlocks and that she did not observe the man who took the motorbike holding a knife. (On redirect examination, she added that she could not observe his hands during the robbery.) When she observed defendant walking away after the robbery, he was not holding a knife. When she was interviewed by the police after the robbery, Hayes told them that two men were involved in the robbery, only one with dreadlocks who she otherwise could not describe. She did not tell the police that she observed the man who took the motorbike afterwards and could identify him. As Hayes and Harris's mother were walking from Quan's home after the robbery, defendant approached them and "threatened us," which Hayes reported to the police the next day.

¶ 9 Police officer Mendez testified to responding at about 9:30 p.m. to a 9:01 p.m. report of an armed robbery, interviewing Harris and his mother but not Hayes, then going to defendant's home nearby. However, nobody answered when Officer Mendez knocked on the door

repeatedly, and it appeared that nobody was home. Officer Mendez added on cross-examination that he went to the home looking for a single suspect, with dreadlocked hair and wearing a black hooded sweatshirt and black pants. Police officer Ochoa testified to going to the same home the next day and observing defendant outside the home. Defendant was detained, and Officer Ochoa went to Harris's home to bring him for an identification. Harris and his mother accompanied Officer Ochoa to defendant, and Harris identified defendant as the robber.

¶ 10 Defendant's motion for a directed finding was denied. The court expressly noted that Hayes had a different perspective than Harris so that her testimony to not observing a knife did not contradict his testimony to observing a knife.

¶ 11 Police detective Ronald Romano testified to interviewing Hayes, who told him that she did not observe the face of the man who took the motorbike from Harris but did observe the face of the man who rode away on it. She did not mention observing the first man walk away after the robbery.

¶ 12 Cyrus Boyce, defendant's brother, testified that he and defendant were home, with several others, from 7 p.m. on the day in question onwards. At the time, defendant was subject to a curfew from 7 p.m. to 7 a.m. due to pending charges. Officers checked defendant's compliance most nights, but not on the night in question. Boyce observed a young man being detained across the street between 9 and 10 p.m. that night, but defendant stayed inside. (On cross-examination, Boyce testified that the young man was arrested and removed, along with the motorbike, by the police. He also testified that the police did not come to his home that night.) Hayes later came to Boyce's home and accused defendant (to Boyce) of stealing a motorbike. Defendant was home during this confrontation but did not come outside. Defendant was arrested in front of his home

the next day. The police did not search the house, nor did Boyce observe them recover a weapon or motorbike. Boyce admitted to a prior conviction for possession of a controlled substance.

¶ 13 The court found defendant guilty of armed robbery. The court found that it had "no doubt" that Harris's motorbike was taken at knifepoint so the issue at trial was whether defendant was the offender. The court noted the defense arguments that Harris's identification was influenced by information he received from others, and that Hayes's testimony contradicted Harris's as she described two perpetrators and he described only one. The court found Harris credible and resolved the discrepancy thus: "Charlie was pushed down. The person that push[ed] him down gave the bike to a second person who rode off on the bike. Charlie says he 'gets up.' He observes a person riding the bike down the street. The person [who] took the bike from him was brandishing the knife, struggling with him for the bike, [and] did not have dreadlocks." The court noted that, while others in the neighborhood identified "Nikko" as the robber, nobody pointed out defendant as Nikko to Harris. Instead, Harris identified defendant by appearance, recognizing him as the offender, and then confirmed that he was Nikko.

¶ 14 In his posttrial motion, defendant challenged the sufficiency of the State's evidence. The court denied the posttrial motion, reiterating its finding that Harris was credible and characterizing the discrepancies argued by defendant as minor and unpersuasive. The court proceeded to a sentencing hearing, where it sentenced defendant to six years in the Illinois Department of Corrections with fines and fees. This appeal followed.

¶ 15 On appeal, defendant contends that there was insufficient evidence to convict him, in that Harris's identification of him as the robber is insufficiently reliable to prove his guilt beyond a

reasonable doubt. He alternatively contends that there was insufficient evidence that he was armed with a knife so we should reduce his conviction to robbery and remand for resentencing.

¶ 16 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. Peoples*, 2015 IL App (1st) 121717, ¶ 67. 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. *Jonathon C.B.*, 2011 IL 107750, ¶ 60. 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.

¶ 17 The testimony of a single witness may be sufficient to convict, and the fact that there are contradictions or conflicts between the accounts of State witnesses does not render their testimony incredible. *Peoples*, 2015 IL App (1st) 121717, ¶¶ 65, 67. Child witnesses do not constitute an exception to these principles. *People v. Van Brocklin*, 293 Ill. App. 3d 156, 165 (1997); *People v. Miller*, 222 Ill. App. 3d 1081, 1086 (1991); see also 725 ILCS 5/115-14 (West 2014)("Every person, irrespective of age, is qualified to be a witness" unless incapable of expressing himself or understanding the duty to tell the truth); *People v. Jackson*, 2015 IL App (3d) 140300, ¶¶ 42-49 (four-year-old victim of, and sole eyewitness to, aggravated battery was competent witness). In assessing the reliability of a witness identification, we consider the (1) witness's opportunity to view the offender 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 offender, (4) witness's level of certainty at the subsequent identification, and (5) length of time between the offense and the identification. *People v. Moore*, 2015 IL App (1st) 141451, ¶ 22 (citing *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989)). "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 required to accept alibi testimony over a 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.

¶ 18 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 armed robbery of Harris. Harris

was face-to-face with defendant for several seconds as they struggled for the motorbike, when defendant's hair was covered by a hood but his face was not. As defendant had a knife in one hand—Harris was certain that it was a knife and described it, albeit not in great detail—and Harris's motorbike gripped by the other, Harris had ample reason to pay attention. He showed no uncertainty in his trial identification of defendant, nor was there any evidence of uncertainty in his pretrial identification. Lastly, Harris made that pretrial identification the day after the robbery, when he recognized defendant as he exited a store and then identified him to officers later that day.

¶ 19 Two matters corroborate Harris's identifications of defendant. Firstly, Harris did not identify Quan as the robber when the police presented him as a suspect. Secondly, Hayes testified to observing the face of the robber who took the motorbike from Harris—albeit not during the robbery but as he walked away—and identified defendant as that offender. While defendant argues that Harris is inherently an unreliable witness because he was a child immersed in a robbery as the victim, we find neither factor fatal to Harris's identifications and further note that Hayes was neither a child nor the victim of the instant offense.

¶ 20 We do not consider the discrepancies and issues argued by defendant to be impeaching of Harris's testimony. While Harris had the name Nikko after the robbery, nobody identified defendant as Nikko to Harris—that is, connected defendant's name to his face—before Harris recognized him at the store. The court gave a reasonable explanation of why Harris testified to observing only one robber while Hayes described two robbers. Similarly, the court's explanation and Hayes's testimony elucidate the discrepancy in Harris's description of the robber—dreadlocked hair—as defendant did not have dreadlocks but the accomplice who rode away on the

motorbike did. Hayes's different perspective also reasonably explains why she did not observe a knife in defendant's hand during the robbery. Moreover, Hayes did not testify that "she saw that the offender had his hands on the handlebar of the bike" as defendant argues in impeachment, but that "I seen him with the handlebar and [Harris] had the other part of the handlebar," which does not contradict Harris's account that defendant had one hand on the motorbike as he held a knife in the other. That Hayes did not observe a knife in defendant's hand as he passed the motorbike to another man and later walked away is reasonably explained by Harris's testimony that it was a pocketknife; that is, it is reasonable to infer that defendant took a moment to fold the blade once he no longer needed it to threaten Harris.

¶ 21 In sum, the court found Harris's pretrial and trial identifications of defendant as the offender, armed with a knife, were credible and reliable while defendant's alibi from his brother Boyce was not. That conclusion is not so improbable or unsatisfactory as to leave us a reasonable doubt of defendant's guilt.

¶ 22 Lastly, defendant contends that his \$5 electronic citation fee should be vacated and he should receive presentencing detention credit against various fines.

¶ 23 A defendant is entitled to \$5 credit against his fines for each day of presentencing detention. 725 ILCS 5/110-14(a) (West 2014). Our supreme court has held that a charge labeled a fee may be a fine because a fee is a charge meant to compensate the State for any cost incurred as the result of prosecuting a defendant. *People v. Graves*, 235 Ill. 2d 244, 250-51 (2009).

¶ 24 The parties correctly agree that the \$5 electronic citation fee is inapplicable here, as this is not a "traffic, misdemeanor, municipal ordinance, or conservation case." 705 ILCS 105/27.3e (West 2014). They also agree that the order assessing fines and fees does not reflect a credit

though it lists \$50 in fines subject to credit: \$30 for the children's advocacy center, \$10 for mental health court, \$5 for youth diversion/peer court, and \$5 for drug court. 55 ILCS 5/5-1101(d-5) - (f-5) (West 2014). Lastly, the parties correctly agree that an additional \$65 of defendant's charges are fines subject to credit: \$50 for the court system and \$15 for State Police operations. 55 ILCS 5/5-1101(c) (West 2014); 705 ILCS 105/27.3a(1.5) (West 2014); *People v. Reed*, 2016 IL App (1st) 140498, ¶ 15; *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 31.

¶ 25 However, the parties dispute whether the \$2 charge for State's Attorney records automation (55 ILCS 5/4-2002.1(c) (West 2014)) is a fine or fee. We have held that this charge is a fee, and see no reason to hold otherwise here. *People v. Maxey*, 2016 IL App (1st) 130698, ¶¶ 142-144; *Reed*, 2016 IL App (1st) 140498, ¶ 16; *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65; *Rogers*, 2014 IL App (4th) 121088, ¶ 30.

¶ 26 Accordingly, we vacate defendant's \$5 electronic citation fee. Pursuant to Illinois Supreme Court Rule 615(b)(2) (eff. Aug. 27, 1999), we direct the clerk of the circuit court to correct the order assessing fines and fees to reflect said vacatur and \$115 in presentencing detention credit. The judgment of the circuit court is otherwise affirmed.

¶ 27 Affirmed in part, vacated in part, and order corrected.