

No. 1-15-1996

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> INTEREST OF BRUCE G.,)	Appeal from the
(THE PEOPLE OF THE STATE OF)	Circuit Court of
ILLINOIS,)	Cook County.
)	
Petitioner-Appellant,)	No. 14 JD 3897
v.)	
)	
Bruce G., a Minor,)	Honorable
)	Terrence V. Sharkey,
Respondent-Appellant).)	Judge, presiding.
)	

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

ORDER

¶ 1 *Held:* Adjudication of delinquency affirmed, where identifications of respondent were sufficiently reliable.

¶ 2 Following a bench trial, minor respondent Bruce G. was adjudicated delinquent of attempted robbery (720 ILCS 5/8-4(a), 18-1(a) (West 2012)) and aggravated battery (720 ILCS 5/12-3.05(c) (West 2012)) and sentenced to four years of probation. On appeal, respondent contends that the State failed to prove him guilty beyond a reasonable doubt because it failed to present sufficient identification evidence connecting him to the crime. For the following reasons,

we affirm. The two eyewitness identifications of defendant bore sufficient indicia of reliability to support respondent's adjudications.

¶ 3

I. BACKGROUND

¶ 4 On October 20, 2014, the State filed a petition for adjudication of wardship charging respondent with one count of attempted robbery, two counts of aggravated battery, and other counts not relevant to this appeal. The State also filed a petition for adjudication of wardship against co-respondent Ryan S.,¹ who was tried simultaneously with defendant. The following evidence was adduced at trial.

¶ 5 Mara Martinez testified through a Spanish interpreter. She said that, around 2 p.m. on August 20, 2014, she was walking to a bank at 47th Street and Ashland Avenue in Chicago. Mara was accompanied by her mother and Mara's four children, Israel, Idallys, Hadded, and Carla. Mara held her one-year-old daughter, Carla, as her other children walked beside her and their grandmother, Mara's mother.

¶ 6 As Mara and the others were walking toward the bank, she saw three boys walking toward her. Mara noticed that one boy with braided hair, whom she identified in court as co-respondent, "kept looking at [her]."

¶ 7 As the two groups approached each other, co-respondent approached Mara and tried to take her purse and cell phone. Mara held onto the property because she did not want him to take her daughter. As she struggled with co-respondent, her 12-year-old son Israel "was helping [her] with the one who ha[d] a white shirt on," whom she identified as respondent. (Mara's reference to the white shirt was to the clothing respondent was wearing at trial, not on the day in question). Mara's mother was grabbing a third, unidentified boy.

¹ Ryan S. was found guilty of attempted robbery and attempted theft of a person, but he was found not guilty of aggravated battery. He is not a party to this appeal.

¶ 8 Mara's seven-year-old daughter took the infant Carla from Mara's arms so that the boys could not hurt her. After her arms were free, Mara threw her cell phone away so that the boys could not grab it. She then kned co-respondent in his "intimate parts," and he fell to the pavement. When co-respondent got back to his feet, he ran away.

¶ 9 According to Mara, after co-respondent fled, respondent "stayed there," standing about two feet from her, for "a minute and a half or two." Mara testified that she and Israel grabbed respondent "so he couldn't get away," but respondent turned and hit Israel in the face. Respondent then ran off in the same direction as co-respondent. Mara estimated that the struggle lasted about three to five minutes.

¶ 10 Mara proceeded to the bank after the attempted robbery. She testified that the incident took place in broad daylight, on a relatively busy street, and in front of an open business.

¶ 11 Mara testified that she eventually made a police report but did not recall exactly when. She denied telling the police that four boys were involved in the attempted robbery and noted that the description that she gave to officers was limited to gender and hair type. Mara also told the police that the boys were high school students. She did not describe their height, weight, or skin complexion. She testified that she did not go to the police station to participate in a photo array or a physical line up and did not view any mug shots of potential offenders.

¶ 12 Mara testified that, around 6 p.m. on August 28, 2014, she was at a laundromat near 48th and Ashland with Israel and two of her other children. As she was doing laundry, Mara overheard an employee say "they're robbing." Because the laundromat was in the same area the boys had tried to mug Mara eight days earlier, she went outside to look. Mara testified that she saw four boys walking with bicycles, including respondent and co-respondent. She noticed that police on bicycles were "going after" the boys and she saw the officers handcuff them.

¶ 13 Mara said that she approached the police and asked them if they were detaining the boys because she "had called the police a while earlier." The police responded that they were detaining the boys because they looked "suspicious," not because of Mara's previous call. Mara told the police that respondent and co-respondent tried to rob her on August 20, 2014 and showed the officers a copy of her police report.

¶ 14 Mara testified that she was "sure" that respondent and co-respondent were the boys who attempted to rob her. Mara had never seen the boys prior to August 20, 2014, the day of the mugging.

¶ 15 Mara's son Israel Martinez, who as noted was 12 years old on the day of the attempted robbery, generally described the incident in the same way as his mother. Israel testified that, as he and Mara were walking to the bank, he observed three "guys" walking toward them. Israel noted that "the main guy," whom he identified as co-respondent, made eye contact with his mother and "looked suspicious," and that he was wearing a "bright orange shirt."

¶ 16 Israel testified that, as co-respondent approached his mother, he attempted to grab Mara's phone and purse. As co-respondent lunged toward Mara, "[t]he two guys by his side, they just kept walking like they didn't know what was happening." Then, "when they saw [co-respondent] trying to rob [Mara], *** they just followed what he was doing."

¶ 17 According to Israel, the two other boys tried to push both him and his grandmother away from Mara so that they could not help her. One of the boys, whom Israel identified as respondent, grabbed Israel by his waist and pulled him backwards. Israel turned around and punched respondent.

¶ 18 Israel testified that he got a good look at respondent when he turned around to hit him, as respondent was not wearing a mask or a hat, and was not covering his face. After Israel punched

respondent, he noticed that a third boy was trying to take his grandmother away, so Israel went to help her. Israel then saw co-respondent fall to the pavement after Mara kneed him. Co-respondent got up and ran away with the third, unidentified boy.

¶ 19 Israel testified that respondent did not immediately run with the other two boys, but instead "just stood there like in shock." Israel went up to respondent and pulled the back of his shirt. Respondent turned and punched Israel in the eye with his right hand. When asked to elaborate on how he punched respondent, Israel stated, "So when I pulled his back, I was right behind him. He was facing forward. I pulled his back shirt, and he just turned around to his left. And that's when he got me in the left eye." Israel noted that respondent did not turn all the way around when he punched him. Respondent then walked away in a fast pace in the same direction as the other boys. After the boys left, his mother was in shock, but the family proceeded to the bank.

¶ 20 Israel testified that, around August 23, 2014, he and his mother called the police to report the incident. Initially, a Spanish-speaking officer answered the phone but he passed the phone to a detective who only spoke English. Israel's mother then gave him the phone, and he spoke to the detective.

¶ 21 Israel testified that he did not remember telling the detective that he could not identify the offender because he was focused on protecting his mother. He also denied telling the detective that his mother could not identify the offenders because she was fending off two subjects at once and did not pay much attention to their faces. Israel denied telling the detective that four boys (as opposed to three) were in the group that attempted to rob his mother. Israel recalled telling the detective that the "main one" was tall and was wearing "a bright orange shirt," and he also recalled describing the boy's hairstyle. He could not remember what the other boys were wearing

and denied telling the detective that the other boys had shaved heads. He did not recall telling the detective that the boys were African American. He remembered telling the detective that the perpetrators were "maybe 16; but [he] didn't know for sure." Israel testified that, after he reported the incident, the detective told him to "just forget about it right now" and to call the police if he or his mother ever saw the boys again.

¶ 22 Israel also testified that, around 6 p.m. on August 28, 2014, he was at the laundromat with his mother, when he heard someone say "they're robbing." Israel looked out the window and observed four boys on bicycles, two of whom were respondent and co-respondent. Mara said that she remembered the boys from the August 20, 2014 attempted robbery. Israel testified that he recognized the boys as well.

¶ 23 Israel testified that he went outside when his mother started running toward a police car. Israel then saw another set of police officers arrive on bicycles. Israel observed the officers question the boys. Israel and his mother told the officers about the attempted robbery, and his mother showed them the police report that she had made. After both Israel and his mother identified respondent and co-respondent as the offenders in the attempted robbery, the boys were handcuffed and placed under arrest. Israel had never seen the boys prior to August 20, 2014.

¶ 24 Chicago police officer Georgi Mavrov testified that, on August 28, 2014, he was on a bike patrol with a partner around 47th and Ashland. Around 6 p.m., he and his partner were flagged down by a victim of a strong-arm robbery that had just occurred. The victim gave a description of the group of offenders. Mavrov, his partner, and two other officers toured the area, located a group of possible suspects, and conducted a field interview. Mavrov testified that respondent and co-respondent were among the individuals stopped.

¶ 25 As Mavrov was conducting the interview, he saw Mara Martinez cross the street and speak to another officer. He later learned that Mara told the officer that two of the boys had previously attempted to rob her. Mavrov testified that Mara identified respondent and co-respondent as the perpetrators, but he did not recall whether Israel identified them as well. A caged squad car eventually arrived and transported respondent and co-respondent to the police station. Mavrov testified that co-respondent and respondent were not arrested for the crime he was originally investigating.

¶ 26 Respondent called Chicago police detective Ray Verta to testify. Verta said that he called the Martinez household around 3 p.m. on August 28, 2014 to follow-up on a report of robbery involving four offenders, which occurred on August 20, 2014. Israel answered the phone, told Verta his name, and said that he was 12 years old. Upon learning that Israel was a minor, Verta asked to speak with his mother. Israel informed him that his mother did not speak English, so the detective continued the conversation with Israel.

¶ 27 According to Verta, Israel said that, on August 20, 2014, he was walking with his mother when a group of black males approached them and tried to take his mother's purse. When Israel tried to intervene, one of the subjects approached him and punched him in the face. Detective Verta did not recall the remainder of his conversation with Israel and was permitted to use his supplementary report to refresh his recollection. Verta acknowledged that he did not draft the original case incident report relating to the case. But he did draft a supplemental report after his conversation with Israel.

¶ 28 Based off of his supplemental report, Verta testified that Israel informed him, "that one of the subjects was a male black between 18 and 20 years old with dreadlock hairstyle, and the other two offenders were male black subjects with shaved heads." Israel also told Verta that he

could not identify the offenders because he was focused on protecting his mother. Verta asked Israel if his mother could identify a suspect in a photo array, and Israel responded that his mother could not identify the offenders because she was "fending off two subjects at once and did not pay much attention to faces."

¶ 29 On cross-examination, Verta acknowledged that he did not remember Israel telling him how many people approached him on August 20, 2014. When the State asked whether he remembered writing how many offenders there were in his supplementary report, Verta said, "I went off the general offense case report."

¶ 30 Following closing arguments, the trial court weighed the evidence, noting that the disposition of the case "comes down to the identification process that took place." In weighing the identification evidence, the court relied on the six factors of a positive identification articulated in *People v. Brooks*, 187 Ill. 2d 91, 129-30 (1999).

¶ 31 As to the first factor, "the opportunity of the witness to view the assailant," the court noted that:

"[Mara] made eye contact with the person she identified as [co-respondent.] He comes to within arm's length of her, and there's a struggle for her purse. *** She sees the other individuals by her other family members. She eventually throws her cell phone away or down, and then she's close enough that she can strike the offender in the intimate area so that he tumbles to the ground and takes off. There's a period of time – a long enough period of time I believe for [Mara] to get a good look at the offenders."

The court also noted that, after co-respondent fled, "the person [Mara] identified as [respondent] stayed for a period of time," but when Mara and Israel tried to detain him, respondent hit Israel and fled.

¶ 32 With respect to the second factor, "the witness' degree of attention," the court found that Mara's "attention was clearly drawn on the person trying to take the purse."

¶ 33 As to the third factor, "the accuracy of the witness' prior description of the offenders," the court stated, "[Mara] says they're high school age. One had long hair. *** That's the information that she gave to the police when she originally contacted *** law enforcement." The court also noted that Israel "indicated also that he told the officer that *** one of the offenders had a bright orange shirt and the longer hair and gave an approximate age group." The court also noted Verta's testimony that Israel told him that he and Mara did not get a good look at the offenders.

¶ 34 As to the fourth factor, "the level of certainty demonstrated by the witnesses," the court found that, when Mara identified respondent and co-respondent on August 28th, she was on "heightened alert," but found that she was certain of her identification despite "the suggestive confrontation." The court also discussed whether Mara's certainty could have tainted Israel's identification:

"Does that certainty taint the younger child's *** identification? I don't think so. I think Israel testified very credibly and believably; and I found him to be *** probably a better witness than his mother. And he was testifying very clearly in my mind, even testifying to stuff that maybe hurt the case. But I found him very convincing, and I think he would truthfully testify if these were not the individuals."

The court concluded that "the level of certainty demonstrated by the witnesses [was] very good."

¶ 35 With respect to the fifth factor, "the length of time between the offense and the suggestive confrontation," the court noted that eight days "is not a telling factor to me that it's so long a time between the time that the offense took place and the time of the confrontation as to forget."

¶ 36 Finally, as to the sixth factor, "whether or not the victims were familiar with the offenders prior to this incident," the court stated that "clearly, both witnesses testified they had never seen *** [the] offenders prior to this."

¶ 37 The court found respondent guilty of attempted robbery, attempted theft from a person, two counts of aggravated battery against Mara and Israel, and battery. Following a dispositional hearing, the court made respondent a ward of the court, entered disposition on attempted robbery and aggravated battery only, and sentenced respondent to four years of probation, with certain conditions of probation.

¶ 38 II. ANALYSIS

¶ 39 Respondent argues that the State failed to prove him guilty beyond a reasonable doubt because the complaining witnesses' identifications of him were unreliable, given that they waited three or four days to report the incident, they initially gave vague descriptions of the offenders, they initially told the detective that they could not identify their attackers, and their identifications occurred under suggestive circumstances. The State responds that both Mara and Israel provided objectively reliable and credible identification testimony, which was also credited by the trial court, which proved that respondent was one of the perpetrators.

¶ 40 When considering a challenge to the sufficiency of the evidence in a criminal case, it is not the task of the reviewing court to retry the defendant. *People v. Lloyd*, 2013 IL 113510, ¶ 42. Instead, our inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found each element of the offense beyond a reasonable doubt. *Id.* Where inconsistencies and conflicts exist in the evidence, the trier of fact has the responsibility of weighing the credibility of the witnesses and resolving these conflicts and inconsistencies. *People v. Byron*, 164 Ill. 2d 279, 299 (1995). A reviewing court will not

substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or on the credibility of witnesses unless the evidence is " 'so palpably contrary to the verdict or so unreasonable, improbable or unsatisfactory as to create a reasonable doubt of [the defendant's] guilt.' " *People v. Rodriguez*, 312 Ill. App. 3d 920, 932 (2000) (quoting *People v. Abdullah*, 220 Ill. App. 3d 687, 693 (1991)).

¶ 41 The prosecution has the burden of proving beyond a reasonable doubt the identity of the person who committed the crime. 720 ILCS 5/3-1 (West 2012); *People v. Slim*, 127 Ill. 2d 302, 307 (1989). An identification of the accused by one credible witness may be sufficient to sustain a conviction. *Slim*, 127 Ill. 2d at 307. Conversely, an identification will not be deemed sufficient to support a conviction if it is vague or doubtful. *People v. Tatum*, 389 Ill. App. 3d 656, 661 (2009). The reliability of a witness's identification is a question for the trier of fact. *In re Keith C.*, 378 Ill. App. 3d 252, 258 (2007).

¶ 42 In assessing identification testimony, our courts have looked to the factors set out by the United States Supreme Court in *Neil v. Biggers*, 409 U.S. 188, 200-01 (1972). In *Biggers*, the Court held that circumstances to be considered in evaluating an identification include: (1) the opportunity the witness had 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 at the identification confrontation; and (5) the length of time between the crime and the identification. *Id.*; *Slim*, 127 Ill. 2d at 307-08. Our courts also consider whether the witness was acquainted with the suspect before the crime, and whether there was any pressure on the witness to make a certain identification. *Brooks*, 187 Ill. 2d at 130; *People v. Bryant*, 94 Ill. 2d 514, 521 (1983)). No single factor is dispositive; the identification's reliability is based on the totality of the circumstances. *Biggers*, 409 U.S. at 199.

¶ 42 After viewing the evidence in the light most favorable to the prosecution, we find that Mara's and Israel's identifications were sufficiently reliable to support defendant's adjudication. The trial court carefully considered the testimony of each witness, thoughtfully summarized the strengths and weaknesses of each one, and appropriately applied each of the *Biggers* factors. The court specifically credited the testimony Mara Martinez and her son, Israel. It found Mara "to be a very credible witness" and "found young Israel, if possible, to be even a better witness."

¶ 43 It is the province of the trial court to make credibility determinations, and we defer to those determinations. *People v. Berland*, 74 Ill. 2d 286, 305-06 (1978). The trial judge heard all the arguments from the defense about the identification testimony, weighed the evidence, and ultimately favored the testimony of Israel and Mara over any contradictory evidence or argument. And the evidence of their identifications, when evaluated according to the *Biggers* factors, supported the trial court's findings.

¶ 44 The first *Biggers* factor—whether the witnesses had an adequate opportunity to view the offender—has often been deemed "the most important factor." *People v. Wehrwein*, 190 Ill. App. 3d 35, 39 (1989). In this case, both Mara and Israel testified to three distinct opportunities to view respondent.

¶ 45 Starting with the third opportunity: the last time Mara and Israel saw respondent was after Mara had kneed co-respondent in the groin, and co-respondent collapsed to the ground. Co-respondent got up and ran away, and the third, unidentified thief then ran away, too. Both Mara and Israel testified to these facts.

¶ 46 That left respondent. According to Israel, after the other boys fled the scene, respondent "just stood there like in shock." Mara also testified that "[respondent] stayed there" after his cohorts had fled. The prosecutor asked her how close she was to respondent at that time, to

which she replied, "About two feet." When asked what respondent was doing at that time, she said, "He stayed there watching what was going on, what had happened, and then we grabbed him so he couldn't run away." She testified that Israel grabbed respondent, and respondent turned and struck Israel. When later asked how long respondent remained at the scene after the other two boys had fled, she testified, "Maybe a minute and a half or two." While Mara's estimation of the length of the struggle may not have been precise, she certainly had ample time to view respondent, from a short distance, in broad daylight, after the threat of the robbery had ended.

¶ 47 It is true that, when respondent started to walk away after his moment of "shock," Israel tried to stop him, pulling on respondent's shirt from behind. No question, respondent was standing behind respondent at *that* moment. But nothing in the record indicates that respondent had his back to Israel during the entire "minute and a half or two" that respondent loitered at the scene.

¶ 48 And whatever may be said about Israel, the record flatly contradicts that respondent had his back to *Mara* during this "minute and a half or two" that respondent remained at the scene. As detailed above, Mara said that after his two cohorts fled the scene, respondent "stayed there," watching everything unfold, about two feet away from her. And however and wherever Israel might have been positioned while he attempted to stop respondent from leaving, and respondent turned and punched Israel, there is nothing in the record to conclude that Mara had anything but a clear view of respondent during that altercation.

¶ 49 Drawing all reasonable inferences in favor of the State, the record supports the notion that each occurrence witness had a clear opportunity to view respondent, for a rather extended period of time, after co-respondent and the third boy had fled.

¶ 50 The second opportunity to view respondent came before the mugging even began, as respondent and the two other boys walked—not ran—toward the Martinez family as the Martinez family walked toward them. Neither group was moving quickly. It was a clear afternoon. Respondent, according to Israel, did not wear a mask or otherwise obscure his face.

¶ 51 Admittedly, the record is not specific as to the precise length of time that passed as the Martinez family walked toward the muggers, and the muggers toward the Martinezes, on that sidewalk. But Mara testified that, as the three boys approached, co-respondent "kept looking at [her]." If co-respondent "kept" looking at Mara, it is entirely reasonable to infer that *some* amount of time passed, at least a handful of seconds. Israel likewise testified that co-respondent seemed to be eyeing his mother as the groups drew closer to each other, which is consistent with the notion that some amount of time passed as the two groups approached each other.

¶ 52 We recognize that Mara seemed to be paying more attention to co-respondent than the other boys, but there is nothing in the record to indicate that she focused so exclusively on co-respondent that she did not get even *one* clear look at respondent, too. The more reasonable interpretation, particularly when viewing the evidence in the light most favorable to the State, is that, as she walked toward the group of boys and they walked toward her, she saw the boy she later identified as respondent—especially because that is exactly what this "very credible witness" said under oath.

¶ 53 And Israel did not testify that *his* view was focused on co-respondent only. He not only testified that he saw respondent among the group of boys approaching; he also testified that, as co-respondent lunged toward his mother, "[t]he two guys by his side, they just kept walking like they didn't know what was happening. So when they saw [co-respondent] trying to rob [Mara], then they just followed what he was doing." That is not the testimony of someone who was

looking exclusively at co-respondent. Rather, it shows that Israel had an opportunity to see respondent's actions as co-respondent went for his mother's purse. Taken in the light most favorable to the State, the evidence shows that Israel had a sufficient opportunity to see respondent during this second window of time.

¶ 54 As to the third of the three relevant time periods—during the attempted mugging and resulting scuffle—Israel likewise said that he saw respondent. Israel testified that he and his grandmother tried to come to Mara's aid when the other two boys "tried to push [him] and [his] grandma away so [they] couldn't help [Mara]." When asked by the prosecutor, "Did one of them approach you?", he replied, "Yeah," and identified co-respondent. Israel said that respondent "grabbed [him] by *** [his] waist; and he just pulled [Israel] backwards." Upon further questioning, Israel testified as follows:

"Q: Now, was [respondent] in front of you or behind you?

A: He was behind me *when I tried to go to my mom.*

Q: *And did you get a good look at his face?*

A: *Yeah, I did.*

Q: So after he was pulling you, what happened after he was pulling you?

A: Then I just turned around and punched him back too." (Emphases added.)

¶ 55 Israel thus testified that, during the scuffle, he saw respondent and the unidentified third boy break towards him and his grandmother, he got a "good look at [respondent's] face," and he turned around and punched respondent. While he did not specify at what particular moment he "got a good look" at respondent's face, by no means did Israel testify that respondent was always behind him—he specified that respondent was behind him when respondent tried to separate

Israel from his mother. Given his rather detailed description of how respondent initially did not participate in the mugging, but then broke towards Israel when Israel tried to intervene on his mother's behalf, it is a reasonable inference that Israel had a sufficient opportunity to get a good look at respondent before respondent was positioned behind him, trying to pull him away from his mother, as well as when Israel punched respondent to fight him off. Viewed in the light most favorable to the State, the evidence shows that Israel was able to identify respondent during this third window of time, as well.

¶ 56 The record thus discloses that Israel's opportunities to view respondent included (1) as respondent walked toward him before the mugging; (2) as respondent approached him and tried to detain him during the mugging; (3) as Israel turned and punched respondent; and (4) as respondent loitered at the scene after co-respondent fled. Mara's opportunities to view respondent included (1) as respondent walked toward her before the mugging; (2) as respondent grabbed Israel during the mugging; and (3) during the interval after co-respondent and the third mugger had left the scene and respondent "stayed there."

¶ 57 It is fair to say that the testimony did not fully recount every step of the struggle. But viewing the evidence—and drawing reasonable inferences therefrom—in the light most favorable to the State, Israel and Mara had an adequate opportunity to view respondent. The first factor favors a positive identification of respondent by each occurrence witness.

¶ 58 The second *Biggers* factor—the witnesses' degree of attention—also favors the State. Both Mara and Israel were clearly attentive to respondent after the other two muggers had fled, leaving only respondent, standing there as if in shock. Mara and Israel were no longer under a threat to their person or property, no other offender was present to distract them, and most significantly, they actually tried to subdue respondent. And while it may be true that, during the

initial approach of each group toward the other, Mara was more attentive to co-respondent than respondent, Israel testified that he observed respondent, too, even going so far as to describe his movements after the mugging began. While it may be true that, during the chaos and drama of the robbery itself, the occurrence witnesses were probably not fixated on respondent's face, the significant length of time each of them saw respondent after the attempted robbery, and to some extent at least Israel's degree of attention to respondent before the mugging, was sufficient for us to conclude that this second factor favored a positive identification of respondent.

¶ 59 We recognize that the third factor—the prior descriptions of the offenders—favors respondent. Neither Mara nor Israel gave detailed descriptions of the muggers initially. The trial court recognized as much in its analysis.

¶ 60 As to the fourth factor—the level of certainty of the witnesses—both Mara and Israel expressed their certainty in their identification of respondent at trial. While the identifications on August 28, 2014 certainly occurred in a suggestive manner—Mara saw respondent being detained by police after hearing that there was a robbery in progress—the trial court recognized the suggestiveness but still credited Mara's certainty. And the court rejected the notion that Mara's certainty could have any impact on the reliability of Israel's identification. In doing so, the court found that Israel was an even better witness than Mara. We see no reason to depart from the trial court's findings, as it had an opportunity to weigh these considerations and observe the witnesses. The fourth factor also favored the State.

¶ 61 With respect to the fifth factor—the degree of time between the initial encounter and the identifications—just eight days passed from the mugging to the identifications. That amount of time is by no means alarming or concerning by itself, and compared to other cases, it is a relatively short lapse of time. See, *e.g.*, *People v. Rodgers*, 53 Ill. 2d 207, 213-14 (1972)

(upholding identification made after two years); *People v. Malone*, 2012 IL App (1st) 110517, ¶ 36 (upholding identification made after one year and four months).

¶ 62 There is also no question that Mara and Israel did not know respondent before the incident, which favors respondent. But there was also no evidence that Mara and Israel were under any pressure to identify respondent, which favors the State. As we noted above, the trial court rejected the notion that Mara's identification would place any pressure on Israel to make the same identification. In fact, the trial court went so far as to conclude that Israel would not have identified respondent unless he was sure respondent was one of the muggers.

¶ 63 Thus, taken as a whole, the *Biggers* factors weigh in favor of the State, particularly the witnesses' opportunity to view respondent. Certainly, the factors do not so heavily favor respondent that we could conclude that no reasonable trier of fact would have credited the identifications.

¶ 64 We also note that, in this case, the identifications of Mara and Israel corroborated one another. It is well-established that the testimony of a single eyewitness may be sufficient to sustain a conviction. *People v. Piatkowski*, 225 Ill. 2d 551, 566 (2007); *People v. Vriner*, 74 Ill. 2d 329, 343 (1978). Here, there were two identifications, each of which bore several indicia of reliability under *Biggers*.

¶ 65 We acknowledge that Mara's and Israel's testimony conflicted with Detective Verta's assertion that Israel told him that they could not identify the muggers. But it is the responsibility of the trier of fact—not this court—to judge the credibility of the witnesses and resolve conflicts in their testimony. *People v. Coleman*, 301 Ill. App. 3d 37, 42 (1998). Here, the trial court carefully reviewed the evidence and determined that Mara and Israel were credible despite the contradictions with Verta. We may not upset that determination, as the trial court did not act

unreasonably in crediting them over Verta—as discussed above, Mara's and Israel's testimony bore sufficient indicia of reliability.

¶ 66 Moreover, Verta appeared to remember very little of his interactions with Mara and Israel. He had to rely on his report, portions of which he had written while relying on a report authored by a different officer, in order to recall them. This further supports the trial court's decision to credit Mara and Israel over Verta.

¶ 67 Finally, we recognize that the trial court's findings focused more heavily on the evidence against co-respondent rather than the evidence against respondent. But during a bench trial, the trial court is not required to mention everything—or anything—that contributed to its findings. *People v. Curtis*, 296 Ill. App. 3d 991, 1000 (1998). "In a bench trial, even though it may be desirable for the trial court to explain its decision, the court's election not to comment or its failure to specifically mention certain portions of the testimony does not permit a defendant on appeal to claim that those portions not mentioned played no role in the court's determination." *Id.* Accordingly, "[i]f the record contains facts which support an affirmance of the trial court's finding, the reviewing court may take those facts into account even if the trial court did not state it explicitly relied upon them." *Id.* Regardless of the court's focus on co-respondent, the record supports affirmance of the trial court's ruling.

¶ 68 For all of these reasons, we cannot find that the trial court's ruling was so palpably contrary to the evidence that it must be overturned. The record supports the trial court's finding that Mara and Israel reliably identified respondent.

¶ 69 III. CONCLUSION

¶ 70 We affirm the judgment of the circuit court.

¶ 71 Affirmed.

¶ 72 Justice Cobbs, dissenting.

¶ 73 I respectfully dissent. As the majority notes, a reviewing court will not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or on the credibility of witnesses *unless* the evidence is "so palpably contrary to the verdict or so unreasonable, improbable or unsatisfactory as to create a reasonable doubt of [the defendant's] guilt." *People v. Rodriguez*, 312 Ill. App. 3d 920, 932 (2000) (citing *People v. Abdullah*, 220 Ill. App. 3d 687, 693 (1991)). With this principle in mind, I disagree with the majority's finding that respondent was proven guilty beyond a reasonable doubt because a review of the record reveals little evidence that actually supports the trial court's finding that respondent was adequately identified as the second offender.

¶ 74 During the trial court's discussion of the *Biggers* factors, it primarily focused its analysis on whether the evidence supported a finding of a reliable identification of co-respondent; however, the court scarcely mentions how the factors similarly supported respondent's identification. The majority notes that the trial court was not required to explain its decision. Agreed. However, in this case, when the dispositive issue is identification; and when the court's comments regarding identification are focused entirely on someone other than the respondent, the absence of comment about the respondent becomes significant.

¶ 75 A review of the court's comments are sufficient to make the point. Specifically, the court explained that Mara "made eye contact" with co-respondent and he "[came] within arm's length of her" before finding that she had an adequate opportunity to view him at the time of the crime. It also stated that Mara's "degree of attention was clearly drawn" on co-respondent. The court further found that both Mara and Israel gave a prior description regarding co-respondent's hairstyle and what he was wearing during the attack. However, there were no similar findings

regarding respondent. I reject the majority's assertion that "regardless of the court's focus on co-respondent, the record supports affirmance of the trial court's ruling." On the contrary, in this case, where identification is critical, the absence of specific findings as it relates to respondent's identification during the court's *Biggers* analysis simply elucidates the fact that there was a lack of evidence to support respondent's adjudication. It is for this reason that I take issue with the majority's *Biggers* analysis.

¶ 76 In regards to the first and most important *Biggers* factor, the opportunity to view the offender at the time of the offense, the majority holds that each occurrence witness "had a clear opportunity to view respondent" before, during, and after the attempted robbery. However, I cannot agree that the opportunity to observe the respondent was adequate in light of the circumstances. See *People v. Tomei*, 2013 IL App (1st) 112632, ¶ 40 (quoting *People v. Carlton*, 78 Ill. App. 3d 1098, 1105 (1979)). ("When considering whether a witness had an opportunity to view the offender at the time of the offense, courts look at 'whether the witness was close enough to the accused for a sufficient period of time *under conditions adequate for observation*.' " (Emphasis added.)) Both Israel and Mara were undoubtedly in close proximity with the offender at the time of the offense, yet I am not convinced that the conditions in which they viewed respondent were adequate for identification.

¶ 77 The majority contends that Israel had four distinctive opportunities to view respondent: (1) as respondent walked toward him before the mugging; (2) as respondent approached him and tried to detain him during the mugging; (3) as Israel turned and punched respondent; and (4) as respondent loitered at the scene after co-respondent fled. Having considered Israel's testimony, I do not believe that the conditions in this case were adequate for identification, and thus I am doubtful that it sufficiently supports a finding of a positive identification of respondent.

¶ 78 Israel testified that before the attack he observed three guys walking toward him, and observed that the main guy, who he identified as co-respondent, made eye contact with his mother and "looked suspicious." He does not note that he similarly observed the face of respondent neither did he provide any details which indicate that he got a good look at him during the approach.

¶ 79 Israel testified that during the attack respondent approached him from "behind" and "grabbed [him] by [his] waist; and just pulled [him] backwards." The record does not indicate that Israel was facing respondent at this point. Additionally, although Israel turned and punched respondent during the scuffle, contrary to the majority's assertion, he never testified that he got a good look at respondent "*when he turned around to hit him.*" It simply is not clear from the record whether Israel observed respondent's face when he punched respondent.

¶ 80 Furthermore, after co-respondent fled, Israel testified that he went up to respondent and pulled his "back shirt," and explained that he was "right behind" respondent and that respondent was "facing forward." Israel stated that respondent then turned to his left and punched him in the eye, but Israel admitted that the boy did not turn all the way around.

¶ 81 The majority also states that Mara had three opportunities to view respondent: (1) as respondent walked toward her before the mugging; (2) as respondent grabbed Israel during the mugging; and (3) during the interval after co-respondent and the third mugger had left the scene and respondent "stayed there." However, I find her testimony even less compelling.

¶ 82 Mara stated that before the attack she noticed three boys walking toward her. She testified that co-respondent, who had braided hair, kept looking at her and eventually tried to grab her purse and cell phone. Similar to Israel, she only provided testimony regarding co-respondent, but never testified that she observed respondent's face.

¶ 83 Next, Mara only briefly mentioned that during the attack she looked over and saw her mother and son struggling with respondent, but again, she never testified that she had a view of respondent's face during the commotion; however, she did testify that at that time she was struggling with co-respondent, a circumstance which would seemingly make it difficult for her to get an adequate view of respondent.

¶ 84 Although Mara testified that after the attack she grabbed respondent, she did not indicate which direction respondent was facing at that point, and whether she could observe his face. Additionally, the testimony that she grabbed respondent is inconsistent with Israel's testimony as he never indicated that his mother approached respondent at any point during the altercation.

¶ 85 Therefore, I believe that the absence of testimony which indicates that either Mara or Israel observed the second offender's face at any point before, during or after the attempted robbery supports a finding that neither had an adequate opportunity to view respondent at the time of the crime.

¶ 86 In regards to the remaining *Biggers* factors, I believe only two of them (*i.e.*, the level of certainty regarding the identification and the length of time between the crime and the confrontation) potentially weigh in favor of a positive identification of respondent.

¶ 87 I disagree with the majority that the second *Biggers* factor, the witnesses' degree of attention, weighs in favor of the State. During its *Biggers* analysis, the trial court noted that Mara's attention was "clearly drawn on the person trying to take the purse." I agree. Mara's testimony reveals that her attention was focused on co-respondent and protecting her one year old daughter, who was in her arms at the time of the attack, as well as trying to dispose of her property so that co-respondent would not take it. Therefore, I do not believe that her attention was adequately focused on respondent and the other offender to establish a positive

identification. Similarly, Israel's testimony reveals that his focus during the struggle was on protecting himself, his mother, and grandmother from the offenders.

¶ 88 Although the majority offers that both Mara and Israel were focused on respondent for "approximately 90 to 120 seconds" after the attempted robbery as he just "stood there," Mara does not testify in which direction respondent was facing and Israel's testimony reveals that respondent was not facing him, as he testified that respondent was in front of him and did not turn around completely when he punched him. Moreover, I find it highly doubtful that an individual who was just involved in an attempted robbery "in broad daylight, on a relatively busy street, and in front of an open business" would continue to remain on the scene with his victim and her family for nearly two minutes after participating in the crime. I also note Detective Verta's unimpeached testimony in which he stated that he did not conduct a photo array because Israel told him that his mother could not identify the offenders because she was "fending off two subjects at once and did not pay much attention to faces." Israel also told the detective that he could not identify the offender because he was focused on "protecting his mother." This testimony is corroborated by both Mara and Israel's version of events on the day of the attempted robbery. Viewing this evidence, I find that this factor weighs against a finding of a reliable identification of respondent as the second offender.

¶ 89 The majority readily concedes that the third factor favors respondent. I agree. The record reveals that the prior description of respondent as the second offender is extremely limited. Mara testified that the prior description she gave to the officers was limited to gender, hair type, and that the boys were high school students; however, she did not describe any other physical attributes, including height, weight, or skin complexion. Israel testified that he told the police that the "main one" was tall and was wearing a bright orange shirt, and that he also described the

boy's hairstyle, but did not reveal details regarding the other two offenders besides the fact that the boys were "maybe 16; but we didn't know for sure." Israel denied telling the police that the second offender had a shaved head or that he was African American. Thus, because any prior description of the second offender is absent in this case, I believe that this factor does not support a finding of a reliable identification of respondent.

¶ 90 Fourth, in regard to the level of certainty of the witness, Mara testified that she was "sure" that respondent and co-respondent were the boys that attempted to rob her on August 20, 2014, and Israel testified that he recognized the boys from the robbery. At first blush, their certainty appears to weigh in favor of a reliable identification. However, their level of certainty is strongly rebutted by the fact that only three days after the robbery, neither Mara nor Israel could give a useful physical description or provide any other significant details regarding the second or third offenders other than their age. Therefore, I believe that both of the witnesses' inability to provide even a basic physical description of the two other offenders just days after the attempted robbery places doubt on whether the two could accurately identify respondent as one of the offenders.

¶ 91 In regards to the fifth factor, the length of time between the crime and the identification confrontation, the attempted robbery took place on August 20, 2014, and Mara and Israel identified respondent and co-respondent on August 28, 2014. The short amount of time between the crime and confrontation weighs in favor of a positive identification. However, the fact remains that neither Mara nor Israel gave any substantial details regarding respondent as the second offender. Additionally, I note that Mara did not contact the police for days after the attack.

¶ 92 As for the last factor, the trial court considered whether the witnesses had ever seen the offenders prior to the August 20, 2014, incident. Although our supreme court has found that prior acquaintance with the identified assailant renders the other factors less relevant (see *Brooks*, 187 Ill. 2d at 130) neither Mara nor Israel had seen the offenders prior to the incident. This factor does not overcome the weaknesses that I have pointed out above in regards to the other factors.

¶ 93 Thus, applying the factors set forth in *Biggers*, I do not believe that respondent was proven guilty beyond a reasonable doubt.

¶ 94 As a final note, I agree with respondent that the circumstances surrounding his identification were highly suggestive. In this case, immediately prior to her identification Mara heard that a robbery was occurring outside the laundromat in the area that she was previously attacked, saw that the police were pursuing co-respondent and respondent as possible suspects, and observed that the boys were detained and handcuffed when she approached them. I believe that this evidence supports a finding that the identification of the offenders occurred under highly suggestive circumstances, and as such, casts even more doubt on the reliability of respondent's identification.

¶ 95 Although it is well established that deference should be given to trial judges when they hear the evidence and observe the witnesses, (See *People v. Furby*, 138 Ill. 2d 434, 455 (1990)), this court has also recognized that "this deference does not require a mindless rubber-stamp on every bench trial guilty verdict we address." *People v. Hernandez*, 312 Ill. App. 3d 1032, 1037 (2000). Here, considering the totality of the circumstances, including the reliability factors enunciated in *Biggers* as well as the suggestive identification of respondent as the second offender, I believe that the evidence that supported respondent's identification was so unsatisfactory that it created a reasonable doubt of his guilt.