2017 IL App (1st) 152327-U

No. 1-15-2327

Order filed November 29, 2017

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 12733
	)	
DARELL CRAWFORD,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Cobbs and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant did not receive ineffective assistance of trial counsel and the evidence presented at trial was sufficient to sustain defendant's conviction for possession of a stolen motor vehicle.

¶ 2 Following a bench trial, defendant Darell Crawford was convicted of possession of a stolen motor vehicle and sentenced to six years in prison. On appeal, defendant contends that his trial counsel was ineffective for failing to impeach a police officer's identification testimony with testimony she gave at the hearing on his motion to quash arrest and suppress evidence.

Defendant further contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt. For the reasons that follow, we affirm.

¶ 3 Defendant's conviction arose from the events of July 9, 2014. Following his arrest, defendant was charged with one count of possession of a stolen motor vehicle and one count of aggravated fleeing or attempt to elude a peace officer.

¶ 4 Prior to trial, defendant filed a motion to quash arrest and suppress evidence. Three police officers and defendant testified at the hearing on the motion. As relevant to this appeal, Chicago police officer Jennifer Molda testified that around 11 a.m. on the day in question, she saw a dark gray Dodge Charger male driver, the lone occupant, was not wearing a seatbelt. After Molda activated her lights, the car turned a corner but then stopped. As Molda and her partner walked up to the car, it took off. The officers followed the car but lost sight of it during their pursuit. Molda agreed that she was not "able to see who the driver of the stopped vehicle was." She stated, "I just saw a black T-shirt and a side profile," and agreed that at the time she saw the driver not wearing a seatbelt, she "did not get a good enough look at that time to make a positive identification of the driver of that car."

¶ 5 Following the testimony of two other officers and defendant, the State made a motion for a directed finding on the motion to quash arrest and suppress evidence. The trial court granted the State's motion and denied defendant's motion.

¶ 6 At trial, Officer Molda testified that at 11:33 a.m. on the day in question, she was in her squad car with her partner when she observed a dark gray Dodge vehicle with the driver's side tail light out. The car was being driven by a man in a black T-shirt who was not wearing a seat belt. In court, she identified defendant as the driver and sole occupant of the car. Molda testified

that she turned on her lights and siren and followed the car as it turned onto the next street and stopped. When Molda and her partner got out of their squad car and approached, the car took off. The officers returned to their squad car and began pursuing the Dodge as it sped through two red lights. During the pursuit, Molda's partner sent out a flash message with a description of the car and its license plate number, 3738019. Molda and her partner were unable to catch up with the Dodge. However, Molda saw it again that afternoon, parked in a cul-de-sac. She searched the car and found a license plate on the back floorboard. Molda ran that plate's number, L291133, as well as the Dodge's vehicle identification number (VIN), determined that they matched, and learned the car had been stolen. The man the car was registered to, Demetrius Weatherall, met Molda at the police station later that afternoon.

¶ 7 On cross-examination, Molda clarified that when she first saw the Dodge, it was going through an intersection in front of her. She answered the following questions:

"Q. And you looked through the passenger window of this gray Dodge to see there was no seatbelt being worn by the driver; correct?

A. Yes.

Q. At that time, could you see the driver's face?

A. Just the side.

Q. Had you seen that person before?

A. I'm not sure.

Q. Was he wearing a hat?

A. No.

Q. But you could tell he was wearing a black tee-shirt?

A. Yes.

Q. You could see that from where you were?

A. Yes.

Q. Did the individual that was driving look in your direction? By that, did he turn right? Did he turn his head to the right so you had a frontal view of his face?

A. I just saw the side view."

Molda further testified on cross-examination that she was not able to see the driver's face as she followed the car, and that she did not see his face when she approached the car on foot. She agreed that she only saw the driver's face for "seconds" when he drove past her at the intersection. When asked whether, when she later saw defendant at the police station, she told anyone that he was the driver of the car, she answered, "I don't remember."

¶ 8 Chicago police officer Bjornn Millan testified that he and his partner were on Pulaski Road near the intersection with Grenshaw Street around 11:30 a.m. on the day in question when they received a flash message that a dark gray Dodge Charger "took off from other officers." Millan then saw a dark gray Dodge Charger driving westbound in the north alley of Grenshaw. He could see that the car was occupied by only its driver, and in court, he identified defendant as that driver. Millan testified that he activated his lights and siren and pursued the car for two to three minutes. Defendant stopped at 3110 West 15th Street, got out of the Dodge, looked at the officers, and fled on foot into an alley. Millan, who was 10 to 15 feet from defendant, was able to see his face and his clothing: a black hat, black shirt, camouflage shorts, and a brown backpack. Millan pursued defendant but lost sight of him.

¶ 9 Millan testified that eventually, other officers found defendant and called Millan to the gangway of 1511 South Kedzie Avenue, where defendant was behind a metal fence. Millan testified, "I was looking through the fence, and the officers were detaining him and walking him towards me. And I said, that's the guy." When asked for clarification in court, Millan explained that when he said "that's the guy," he meant that the man with the officers was the one who had exited the dark gray Dodge Charger. Millan stated that about 5 to 10 minutes elapsed between the time defendant got out of the Dodge and the time Millan identified him. When Millan identified defendant, defendant was wearing a black shirt and camouflage shorts, but no hat. Millan agreed that "it was the same face" he had seen minutes earlier.

¶ 10 On cross-examination, Millan stated that he could not identify the car's driver when he initially saw the car driving through the north alley of Grenshaw. He testified that he never lost sight of the car during the vehicle pursuit and was directly behind it when it stopped in the cul-de-sac at 3110 West 15th Street. Millan related that he lost sight of defendant when defendant was about 35 to 50 feet from the car, and said that while defendant was running away, defendant looked back to see where the officers were.

¶ 11 On redirect, Millan testified that he never lost sight of the car from the time he first saw it in the alley to the time it stopped at 3110 West 15th Street, and that no one else got in or out of the car. Millan stated that when he first spotted the car, he could see the driver's face, "but it was kind of far." However, when defendant stopped at 3110 West 15th Street, got out of the car, and looked directly at Millan and his partner, Millan saw the front of defendant's face. In addition, Millan saw defendant's face multiple times as defendant ran from the officers and repeatedly

looked back in their direction. Finally, Millan testified that when he identified defendant on the scene, he recognized him from his face and clothing.

¶ 12 Chicago police officer Alphonsus O'Connor testified that on the date in question, he and his partner received information that brought them to the area of 1511 South Kedzie Avenue. Upon arrival, O'Connor started searching yards for a suspect described over the radio as a black man wearing a black hat, black shirt, and camouflage shorts. About 11:30 a.m., O'Connor "came in contact" with a man matching that description, identified in court as defendant. Defendant was crouching in a gangway behind a building at 1511 South Kedzie Avenue. O'Connor handcuffed defendant and alerted other officers that he had found someone hiding. Several officers, including Officer Millan, came over, and Millan said, "[T]hat's the guy that jumped out of the car." O'Connor thereafter placed defendant into custody.

¶ 13 O'Connor stated that he advised defendant of his *Miranda* rights in a processing room in the police station. Thereafter, defendant told O'Connor that he did not steal the car, but got it from a girl named "Thickness," who had directed defendant "to take the small streets when he was taking her to and from work because the car was stolen."

¶ 14 On cross-examination, O'Connor testified that when he was searching yards and arrived at the gangway in question, he thought he saw movement. Accordingly, he hopped the fence, and that was when he saw defendant. When asked to describe the gangway, O'Connor explained that it was a parking lot next to a fenced-in cutout of the building, and said he called it a gangway because he did not "know what else you would call it." O'Connor further stated that when he came upon defendant, defendant was crouching, facing away from him, sweating and out of breath, and not picking something up. After defendant was handcuffed, O'Connor and other

officers lifted him up and over the fence. O'Connor further testified that Officer Vivanco was present when defendant made his statement at the police station. Although one of the officers wrote out the statement, defendant did not review it or sign it, and no voice or video recording was made. On redirect, O'Connor stated that he interviewed defendant at about 1 p.m.

¶ 15 The parties stipulated that if called as a witness, Demetrius Weatherall would have testified that he was the owner of a 2007 Dodge Charger with the VIN 2V3KA43R578671825 and registered license plate number L291233, that he did not know defendant, and that he never gave defendant permission to be in possession of his car. The parties further stipulated that police officers would testify that those VIN and license plate numbers were registered to the Dodge Charger at issue.

¶ 16 Defendant made a motion for a directed finding, which the trial court denied.

¶ 17 Defendant testified that on the day in question, he was helping his aunt move out of an apartment in the building at 1511 South Kedzie Avenue. Specifically, he was moving boxes and small miscellaneous things in his cousin's tan Buick sedan. After one trip to his aunt's new apartment, defendant returned to 1511 South Kedzie Avenue, parked in front of the building, turned on the hazard lights, and went upstairs. He took a vase with marbles in it, a picture, and a brown bookbag / backpack with his aunt's keys dangling from it and proceeded downstairs.

¶ 18 Before defendant was able to unlock the gate, he saw a plainclothes officer in a bulletproof vest approaching. The officer told defendant to stop, which he did. The officer then jumped over the fence and told defendant to get down on the ground. After defendant complied, more officers approached. Defendant testified that one officer "gave a signal as in, is this the guy, and the other officer that approached, he gave, like, a shoulder shrug, like I don't know, like

one of those shrugs." Defendant's aunt came outside and talked to the police. When the plainclothes officer asked her for keys to the gate, she indicated that they were hanging from defendant's bookbag. The officer turned defendant around, grabbed the bookbag, saw the keys, uncuffed one of defendant's hands, slid the bookbag off the free arm, and gave the bookbag to defendant's aunt, who unlocked the gate and let them out. Defendant denied crouching down in the rear of the building and stated that no one picked him up and lifted him over the gate.

¶ 19 Defendant testified that he was taken to the police station, but denied that he spoke with any officer while he was there. According to defendant, he asked for a lawyer "as soon as [he] got in" and did not give the police his name. Defendant stated that he was never read his rights, never waived his rights, never met a woman named Thickness, had never driven or seen the car in question, never drove a stolen car or fled from the police, and never told the police he was driving a car down small streets because he knew it was stolen. Defendant acknowledged that he had been convicted of theft in 2006 and 2014 and residential burglary in 2008. On cross-examination, defendant stated that when the arresting officer told him to get down, he set the vase and picture he was carrying on the ground.

¶ 20 In rebuttal, Officer O'Connor testified that when he arrested defendant at 1511 South Kedzie Avenue, defendant did not have a brown backpack with him. O'Connor further stated that he did not see any vases or picture frames lying in the area where defendant was arrested, and that he did not use any keys to open the gate. On cross-examination, O'Connor testified that when he was at 1511 South Kedzie Avenue, no one came downstairs and explained to him that she had some knowledge of or affiliation with defendant.

¶ 21 Following closing arguments, the trial court found defendant guilty of possession of a stolen motor vehicle but not guilty of aggravated fleeing or attempt to elude a peace officer. In the course of announcing its decision, the court stated that "the real linchpin" in the case was Officer Millan, and observed that defendant made an admission at the police station. With regard to its acquittal on the charge of aggravated fleeing or attempt to elude a peace officer, the court stated, "I give the defendant the benefit of the doubt in this matter. The officers did get a side facial view when they started the chase. As unlikely as it might seem, there might have been another 2007 gray Dodge Charger out there."

¶ 22 Defendant filed a motion for a new trial, which the trial court denied. The court subsequently sentenced defendant to six years in prison. Defendant appealed.

¶ 23 On appeal, defendant's first contention is that his trial counsel was ineffective for failing to impeach Officer Molda's in-court identification of him with prior inconsistent statements, *i.e.*, her testimony from the hearing on the motion to quash arrest and suppress evidence, during which she agreed that she was not "able to see who the driver of the stopped vehicle was," stated, "I just saw a black T-shirt and a side profile," and agreed that she "did not get a good enough look at that time to make a positive identification of the driver of that car." Defendant asserts that the failure to impeach Molda cannot be excused as trial strategy, as his defense at trial was mistaken identity. He further argues that he was prejudiced because the evidence was closely balanced and Molda's trial testimony greatly bolstered the prosecution's case by providing a second eyewitness identifying him as the driver of the Dodge Charger.

¶ 24 The standard for a claim of ineffective assistance of counsel has two prongs: deficient performance and prejudice. *Strickland v. Washington*, 466 U.S. 668, 685 (1984). First, a

defendant must demonstrate that counsel's representation fell below an objective standard of reasonableness. *Id.* at 688. Second, a defendant must establish prejudice by showing "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id*. at 694. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. *Id*. If a case may be disposed of on one *Strickland* prong, this court need not review the other. *People v. Irvine*, 379 Ill. App. 3d 116, 129-30 (2008). In the instant case, we need not determine whether counsel's performance fell below an objective standard of reasonableness, as he cannot establish prejudice. See *Strickland*, 466 U.S. at 697.

¶ 25 As detailed above, when the trial court announced its decision in the instant case, it specifically noted that Molda and her partner had a "side facial view" of the driver of the gray Dodge Charger when they started their pursuit. Nevertheless, the court apparently found that this view was insufficient to establish the identity of that driver, as it acquitted defendant of the charge of aggravated fleeing or attempt to elude a peace officer. The court also explicitly stated that its finding of guilt on the charge of possession of a stolen motor vehicle was based on Officer Millan's eyewitness testimony and defendant's confession to Officer O'Connor. Given the trial court's rejection of Molda's identification of defendant, there is no reasonable probability that but for counsel's failure to impeach Molda's in-court identification with her testimony from the hearing on the motion to quash arrest and suppress evidence, the outcome of the trial would have been different. See *id*. at 694. For these reasons, we reject defendant's claim of ineffectiveness.

¶ 26 Defendant's second contention on appeal is that he was not proved guilty beyond a reasonable doubt. He argues that the "brief moment" when Officer Millan saw the driver of the

Dodge Charger get out of the car and run into an alley was insufficient for Millan to adequately perceive and conclusively identify defendant as that driver, "considering the lack of evidence in support of [Millan's] testimony." Defendant suggests that Millan's identification of him was unreliable because Millan only saw the driver for the duration of a 35-to-50-foot chase and because Millan identified him in a show-up on scene, a procedure which defendant characterizes as a "suggestive confrontation[ ] *** disapproved because they increase the likelihood of misidentification." Defendant maintains that the State's case against him was weak because Millan saw the driver for only a brief period of time before losing sight of him; the situation was one of extreme stress; the description O'Connor received was "bare-bones" and could have matched many people anywhere in the vicinity; the driver was wearing a hat and defendant was hatless when O'Connor saw him in the gangway; Millan testified that he recognized defendant by both his clothes and face, but facial descriptions were lacking in the original description broadcast; and defendant's confession was "bare-bones," unsigned, and denied by defendant.

¶ 27 When reviewing the sufficiency of the evidence, the relevant inquiry 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. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). The testimony of a single witness, if positive and credible, is sufficient to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). A reviewing court will not reverse a conviction simply because the defendant claims that

a witness was not credible. *Id*. Reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 28 In this appeal, identity is the paramount issue. Identification of a defendant by a single witness is sufficient to sustain a conviction where the witness viewed the defendant under circumstances that permitted a positive identification. *Slim*, 127 Ill. 2d at 307. Such identification is sufficient even where the defendant presents contradictory testimony, as long as the witness had an adequate opportunity to view the offender and provided a positive and credible identification in court. *Id*. The resolution of a question of mistaken identity depends upon the credibility of the witnesses and the weight of the evidence. *People v. Bowel*, 111 Ill. 2d 58, 65 (1986).

¶ 29 Here, Officer Millan testified that he was 10 to 15 feet behind the Dodge Charger when its driver got out and fled into the alley. The driver looked directly at Millan and his partner upon getting out the car, and then also looked back at the officers multiple times during his flight. This allowed Millan to observe the driver's face and clothing – a black hat, black shirt, and camouflage shorts – before losing sight of the driver about 35 to 50 feet from the car. A few minutes later, Millan went to 1511 South Kedzie Avenue and positively identified defendant, whom he recognized because he had "the same face" as the driver and was wearing a black shirt and camouflage shorts. Officer O'Connor testified that defendant thereafter made a statement that he got the car from a girl who had informed him the car was stolen. In contrast, defendant testified that he was doing nothing but taking his aunt's belongings to his cousin's car when he was mistakenly arrested, and he denied confessing to the police.

¶ 30 The trial court rejected defendant's version of events in favor of the State's, specifically finding Millan and O'Connor credible, which was its prerogative in its role as the trier of fact. See *People v. Moody*, 2016 IL App (1st) 130071, ¶ 52. While the version of events defendant presented is not beyond the realm of possibility, "the trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Hall*, 194 Ill. 2d 305, 332 (2000). We find that the evidence, viewed in the light most favorable to the prosecution, was sufficient to establish that defendant possessed a stolen motor vehicle. The evidence was not "so unsatisfactory, improbable or implausible" to raise a reasonable doubt as to defendant's guilt. *Slim*, 127 Ill. 2d at 307. Accordingly, defendant's challenge to the sufficiency of the evidence fails.

¶ 31 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 32 Affirmed.