

No. 1-15-2605

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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. 13 CR 5354
)	
ANTHONY ROBINSON,)	Honorable
)	James M. Obbish,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt of first degree murder.

¶ 2 Following a bench trial, defendant, Anthony “BA” Robinson, was found guilty of first degree murder and sentenced to 55 years in prison. On appeal, he contends that the State did not prove him guilty of murder, beyond a reasonable doubt, because the State’s case rested upon the “unreliable” testimony of a witness who recanted his prior identifications of defendant at trial.

We affirm.

¶ 3 Defendant's arrest and prosecution arose out of the January 1, 2013 shooting death of the victim, Kelvin Jemison. The matter proceeded to a joint bench trial with codefendants Antwoine Hill and Clyde Jackson.

¶ 4 Dwayne Rolle, who acknowledged that he had previously been convicted of burglary, testified that Jemison was one of his "homies." On the afternoon of January 1, 2013, he and Jemison were walking together when he noticed a car. Although Rolle did not remember any details about the car, he saw it "[l]ike two or three times." At one point, the car stopped and someone got out and started shooting. The State then asked Rolle to look around the courtroom to see if he saw the person who exited the car. Rolle did not identify anyone and stated that he "never looked back when they started shooting." Although he "never looked at them," he knew "they" started shooting because he heard the shots. He ran to the side of a building and then went to his friend Terrick's "crib." He later learned that Jemison was dead. Rolle did not speak to the police that day because he "had a warrant." Rolle testified that he reviewed a video of the shooting prior to trial and that it truly and accurately showed what happened. The State then admitted the video into evidence and played certain segments for the court.

¶ 5 Rolle then testified that on January 8, 2013, he met with Detectives Murphy and Carr at a police station and viewed certain photo arrays. Although he identified people that he "knew" in the arrays, at the time of trial he no longer remembered who those people were. The State then showed Rolle a line-up advisory form and a photographic array. Rolle identified his signature on the line-up advisory form and marks that he made on two photographs. He identified defendant and codefendant Jackson as the people in the marked photographs. Although Rolle initially testified that the detectives "made it seem" like defendant and codefendant Jackson were the

shooters so he “went along with them,” he then testified that he told the detectives that defendant was the shooter and that codefendant Jackson was “the lookout.” Rolle next identified a second line-up advisory form and photographic array with one marked photograph. He identified codefendant Hill in court as the subject in the photograph and testified that he told the detectives that codefendant Hill was also a “lookout.”

¶ 6 Rolle testified that he went to a police station on February 13, 2013. However, he did not remember signing line-up advisory forms or viewing two line-ups. Although he then identified his signature on two line-up advisory forms, he reiterated that he did not remember the line-ups. Rolle did remember speaking to an assistant State’s Attorney (ASA), and agreeing to make a videotaped statement about Jemison’s death. He did not remember whether he identified the shooter or the individuals with the shooter. Although he remembered that he spoke about what happened immediately prior to the shooting, he did not remember what he said, as it had been “two years.” Rolle then testified that he remembered saying someone shot Jemison, and identifying “BA” as the shooter and codefendants as “lookouts.” However, Rolle next testified that as of trial, he did not know who shot Jemison. Ultimately, the parties agreed that Rolle’s videotaped statement would be played for the court. In the videotaped statement, Rolle identified defendant as the shooter.

¶ 7 Rolle then testified that he viewed a line-up on February 24, 2013, and identified someone. Although he initially testified that he identified defendant, he then testified that he forgot who he identified. The State then asked Rolle whether he testified before the grand jury that after the car stopped, defendant and codefendants “ ‘hopped out,’ ” and that defendant was the shooter. Rolle answered in the affirmative.

¶ 8 During cross-examination, Rolle denied that he earlier testified that he did not see who exited the car; rather, he testified that he remembered who exited. He identified defendant and codefendants because he knew them and because the police officers told him what they wanted him to say. Although Rolle had an active warrant when he spoke to detectives, they “said it wasn’t they [*sic*] business.” Although he told the detectives that he did not know who shot at him, the detectives “picked” defendant and codefendants “out” because he knew them and he was too nervous to correct the detectives. Prior to his testimony at the grand jury, Rolle thought that a detective told him to “[j]ust say yes or no.” Rolle testified that he “couldn’t even tell the truth before” and had lied to the ASA in his videotaped statement, but was trying to tell the truth at trial. Rolle testified that the shooting took place two years before and he did not remember the details. The “only thing” he knew for a fact was that “they didn’t kill him.” He further testified “You know what I’m saying.” Rolle then testified that he did not see the shooter, and only ever identified defendant as someone he “knew.”

¶ 9 During redirect, the State impeached Rolle with prior inconsistent statements that he made during his grand jury testimony. Specifically, during his grand jury testimony, Rolle stated that: (1) defendant exited from the passenger seat of the vehicle; (2) he could clearly see that defendant was holding a gun; and (3) defendant pointed the gun at Rolle and Jemison and started shooting.

¶ 10 The parties stipulated that Tikiea Poa would testify, if called to testify, that on the day of the shooting, she saw a black car with three occupants and later heard gunshots. The parties next stipulated that Poa identified defendant as the car’s driver in a photographic array. The parties further stipulated that when Poa viewed a line-up, “she could not identify anyone with certainty”

because two of the men looked “so much alike,” but indicated it was “either No. 2 or No. 3.” The parties finally stipulated that defendant was in the “No. 3 position” in the line-up.

¶ 11 Detective Roger Murphy testified that he first spoke to Rolle on January 8, 2013. Following that conversation, Murphy showed Rolle a photographic array. Rolle identified defendant and stated that defendant shot and killed Jemison. Rolle also identified codefendant Jackson as being present. Later that day, Murphy showed Rolle a second photographic array. Rolle identified codefendant Hill as being present at the shooting. Murphy testified that he was present on February 13, 2013 when Rolle identified codefendant Jackson in a line-up. He was present the following day when Rolle identified defendant in a line-up as the shooter. Murphy was also present on February 24, 2013, when Rolle identified codefendant Hill in a line-up. Murphy testified that Rolle never said that he did not know who shot Jemison, and that Rolle never indicated that he identified defendant and codefendants because he knew them.

¶ 12 After the State rested its case-in-chief, each defendant made a motion for a directed verdict. The trial court granted codefendants’ motions, but denied defendant’s motion.

¶ 13 Defendant then presented the testimony of Tameka Mingo. Mingo testified that she was in a parking lot on the afternoon of January 1, 2013, when she heard gunshots. She observed two men running toward her. One man was holding a gun. Mingo did not see anyone in the courtroom who was present on January 1, 2013.

¶ 14 Lakesha Joseph testified that when she opened her door to go outside she saw a man chasing and shooting another man. Joseph testified that she did not see the shooter in the courtroom. When defense counsel asked if defendant looked like the shooter, she answered “No, not at all.”

¶ 15 In finding defendant guilty of first degree murder, the trial court noted that Rolle, “the main” witness, “said just about every version of the events” at trial. The court then noted that Rolle did not “sway” or “wobble” in his videotaped statement or before the grand jury. In other words, at the grand jury, he consistently identified defendant as the shooter. The court found Rolle’s testimony at trial “incredibly unbelievable.” Defendant was subsequently sentenced to 55 years in prison.

¶ 16 On appeal, defendant contends that he was not proven guilty beyond reasonable doubt when the State’s case relied on the disavowed prior inconsistent statements of Rolle, a witness the trial court “in so many words called *** a liar.”

¶ 17 “A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates reasonable doubt of the defendant’s guilt.” *People v. Collins*, 106 Ill. 2d 237, 261 (1985). When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. *Id.* Rather, “ ‘the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard applies to all evidence, including prior inconsistent statements. *People v. Williams*, 332 Ill. App. 3d 693, 696 (2002). “The trier of fact is best equipped to judge the credibility of witnesses, and due consideration must be given to the fact that it was the trial court *** that saw and heard the witnesses.” *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007).

¶ 18 Under section 115-10.1 of the Code of Criminal Procedure (725 ILCS 5/115-10.1 (West 2012)), a prior inconsistent statement made by a witness may be admitted as substantive

evidence. “Prior inconsistent statements alone may be sufficient to support a conviction,” and it is the duty of the trier of fact to weigh the conflicting statements and determine which is more credible. *Williams*, 332 Ill. App. 3d at 696-97.

¶ 19 Here, the trial court was required to weigh the credibility of Rolle’s prior inconsistent statements in which he identified defendant as the shooter against his testimony at trial during which he both admitted that he had previously identified defendant as the shooter and disavowed those prior identifications. In finding defendant guilty, the court found Rolle’s prior inconsistent statements more credible than his trial testimony, noting that Rolle did not “wobble” in his identification of defendant as the shooter. See *id.* (the trier of fact must weigh the conflicting statements and determine which one is more credible). The court characterized Rolle’s trial testimony, during which he testified that he remembered the acts of speaking to police and testifying before the grand jury but not what he said, as “incredibly unbelievable.” It was for the trial court, as the trier of fact, to make credibility determinations; we will not substitute our judgment for that of the trial court on this issue. See *People v. Bradford*, 2016 IL 118674, ¶ 12.

¶ 20 Defendant, on the other hand, contends that his conviction cannot be sustained as it is solely supported by the uncorroborated prior inconsistent statements of a witness. Defendant relies upon *People v. Arcos*, 282 Ill. App. 3d 870 (1996), and *People v. Parker*, 234 Ill. App. 3d 273 (1992). Defendant concedes, however, that these cases do not establish, as a matter of law, that an uncorroborated, recanted, prior inconsistent statement cannot support a conviction.

¶ 21 Our supreme court has held that “regardless of the nature of the evidence,” in cases where the evidence is claimed to be insufficient on appeal, the same standard of review applies. *People v. Schott*, 145 Ill. 2d 188, 203 (1991). Thus, when a defendant is convicted on the basis of a

recanted prior inconsistent statement, the question for the reviewing court is not whether any evidence existed to corroborate the statement; rather, the inquiry is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Zizzo*, 301 Ill. App. 3d 481, 489 (1998).

¶ 22 We are unpersuaded by defendant's reliance on *People v. Arcos*, 282 Ill. App. 3d 870 (1996). In that case, a trial witness disavowed his prior written statement and grand jury testimony implicating the defendant in a murder. Although the trial court found the witness to be a " 'thoroughly disreputable person who cannot be believed' " the court found his written statement and grand jury testimony more credible than his disavowal at trial. *Id.* at 871. In finding the defendant guilty, the court noted that the witness's prior inconsistent statements were "bolstered by clear and convincing corroborative evidence." *Id.* at 874-75. The appellate court reversed, however, finding that the trial court had clearly rejected the witness's credibility and that the corroborative evidence relied on was "wanting." *Id.* at 875-76.

¶ 23 Here, unlike *Arcos*, the trial court did not find Rolle to be an entirely incredible witness. Rather, it believed that he was truthful in his police interview, video statement, and grand jury testimony but not in his trial testimony. Unlike *Arcos*, the trial court in this case did not look to corroborating evidence to bolster Rolle's prior inconsistent statements; rather, the court found the prior inconsistent statements were sufficient to convict defendant.

¶ 24 Similarly, in *People v. Parker*, 234 Ill. App. 3d 273 (1992), the defendant was convicted of murder based on the prior inconsistent statements of three witnesses. At trial, the witnesses disavowed their prior identifications of the defendant. One witness testified that he never read his

prior statement before signing it because he was recovering from surgery and in pain, and just wanted the detectives to leave his hospital room. *Id.* at 276. A second witness, a teenager recently released from juvenile detention, testified that a detective threatened him with arrest if he did not sign a prepared statement. *Id.* at 277. The third witness testified that the police beat him and forced him to sign a statement. *Id.* at 278. The appellate court determined that the three prior statements “were severely impeached by the witnesses’ trial testimony, which exculpated defendant and cast doubt on the authenticity of the statements.” *Id.* at 280.

¶ 25 Here, unlike the disavowals in *Parker*, Rolle’s disavowal at trial was not a coherent recantation of his prior statements identifying defendant as the shooter. Rather, during his trial testimony, Rolle both affirmed and recanted his prior statements. Accordingly, his prior statements, were, unlike those of the witnesses in *Parker*, not “severely impeached” by his trial testimony.

¶ 26 Defendant further contends that Rolle’s prior inconsistent statements bore the hallmarks of unreliability and should have been discounted by the trial court. However, this court has consistently held that the identification of a defendant by one credible witness is sufficient to sustain a conviction. See, *e.g.*, *People v. Simmons*, 2016 IL App (1st) 131300, ¶ 88 (citing *People v. Slim*, 127 Ill. 2d 302, 307 (1989)). The reliability of a witness’s identification is a question for the trier of fact. *Id.* ¶ 88. In assessing the reliability of identification testimony, Illinois courts use the factors set out by the United States Supreme Court in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). *Id.* ¶ 89. The *Biggers* factors are: (1) the opportunity the witness had to view the offender at the time of the offense; (2) the witness’s degree of attention; (3) the accuracy of the witness’s prior description of the offender; (4) the level of certainty demonstrated

by the witness at the identification confrontation; and (5) the length of time between the offense and the identification confrontation. *Slim*, 127 Ill. 2d at 307-08; *Biggers*, 409 U.S. at 199-200.

¶ 27 In regard to the first two *Biggers* factors, Rolle had ample opportunity to view the shooter at the time of the shooting and was paying close attention, as he noticed the car “[l]ike two of three times.” Moreover, the shooting took place during the day. The fourth *Biggers* factor, the certainty of the Rolle’s identification of defendant, further weighs in favor of the reliability of identification. Rolle recognized defendant, and consistently identified defendant as the shooter in a photo array, a line-up, a video statement and before the grand jury. The final *Biggers* factor, the length of time between the offense and the identification confrontation, also weighs in favor of the reliability of the identification. Only one week had elapsed between the shooting on January 1, 2013, and Rolle’s identification of defendant in a photo array on January 8, 2013. Illinois courts have held that significantly longer lengths of time have not rendered identifications unreliable. See *People v. Malone*, 2012 IL App (1st) 110517, ¶ 36 (a one-year-and-four-month delay); *People v. Bennett*, 9 Ill. App. 3d 1021, 1025-26 (1973) (a one-month delay); *People v. Rodgers*, 53 Ill. 2d 207, 213-14 (1972) (two-year delay).

¶ 28 Therefore, the circumstances of Rolle’s identification of defendant as the shooter were such that the trial court could reasonably find the identification reliable. Positive identification by a single witness will support a conviction when the identification is not vague or doubtful. *Simmons*, 2016 IL App (1st) 131300, ¶ 88. Accordingly, we reject defendant’s argument that Rolle’s identification was unreliable.

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

¶ 30 Affirmed.