

2017 IL App (1st) 152709-U

No. 1-15-2709

Order filed December 6, 2017

Third Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 CR 10088
)	
EDDIE BRANTLEY,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE COBBS delivered the judgment of the court.
Justices Howse and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for aggravated fleeing or attempt to elude a peace officer is affirmed over his contention that the State failed to prove beyond a reasonable doubt that he was the driver of the minivan fleeing from the police.

¶ 2 Following a bench trial, defendant Eddie Brantley was found guilty of two counts of aggravated fleeing or attempt to elude a peace officer (625 ILCS 5/11-204.1 (a)(1), (a)(4) (West 2012)) and sentenced to two years' felony probation. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he was the driver of the vehicle involved in

the police chase because the identification testimony of the State's primary witness, Officer Terry Smith, was unreliable. We affirm.

¶ 3 Defendant was charged by indictment with two counts of aggravated fleeing or attempt to elude a peace officer (625 ILCS 5/11-204.1 (West 2012)). Count one alleged that defendant was the driver or operator of a motor vehicle, who having been given a visual or audible signal by a peace officer directing him to bring his vehicle to a stop, willfully failed or refused to obey such direction, and otherwise fled or attempted to elude the officer at a rate of speed at least 21 miles per hour (mph) over the legal speed limit (625 ILCS 5/11-204.1(a)(1) (West 2012)). Count two alleged that defendant was the driver or operator of a motor vehicle, who having been given a visual or audible signal by a peace officer directing him to bring his vehicle to a stop, willfully failed or refused to obey such direction, and otherwise fled or attempted to elude the officer and such flight or attempt to elude involved disobedience of two or more official traffic control devices (625 ILCS 5/11-204.1(a)(4) (West 2012)).

¶ 4 At trial, Chicago Police Officer Terry Smith testified that on April 25, 2013, he and his partner, Officer Lynch, were working a patrol detail in the 7th District. Smith was in uniform and driving a marked squad car. At the time, the 7th District was experiencing problems with juveniles stealing Dodge Caravan, Chrysler Town and Country, and Plymouth Voyager minivans. The officers were instructed to be on the lookout for these types of vehicles being driven by juveniles.

¶ 5 At approximately 5:30 p.m., Smith was in the vicinity of the 6700 block of South Ashland Avenue and observed a red Dodge Caravan minivan travelling northbound on Ashland. Smith noticed that the vehicle did not have license plates and there was no visible vehicle registration. Smith, who was travelling southbound on Ashland, did a "U-turn" and followed the

van into a McDonald's drive-thru located at 64th Street and Ashland. Smith activated his flashing lights and siren. The van stopped and Smith exited his vehicle and approached the van from the driver's side. Lynch approached the van from the passenger side. Smith testified that he stood outside the driver's side window and was less than a foot away from the driver, whom he identified in open court as defendant. There was also a passenger inside the van.

¶ 6 Smith asked defendant for his driver's license and proof of insurance. Defendant "fumbled around, acting like he was looking for his wallet." Defendant then put the van into gear and sped off leaving the McDonald's and heading west on 64th Street. Smith estimated the time that he spent with defendant to be anywhere from 10 to 15 seconds. Smith ran back to his vehicle, activated his lights and siren, and gave chase. As he did so, he put out a flash message describing the minivan and the driver. Smith described the driver as a male black in his early 20's, approximately 5'7" tall with a shaved head, wearing a gray "hoody" and a black jacket. Smith defined a shaved head as meaning a short hair style.

¶ 7 Smith pursued defendant on 64th Street. Smith testified that, during the course of the pursuit, defendant committed numerous traffic violations. Defendant failed to stop for multiple stop signs, travelled in the opposite direction of traffic at least three times, and used an alley as a thoroughfare in violation of the traffic code. When defendant exited the alley, he turned onto 63rd Street, heading eastbound to Wood Street. Defendant drove northbound on Wood to 62nd Street and then east onto Ashland. Smith estimated that defendant was travelling at a speed of 70 mph on Ashland. The posted speed limit on Ashland is 30 mph. Eventually, the sergeant on duty in the 7th District called for a termination of the chase at 59th Street and Racine Avenue. Smith testified that he never lost sight of the van during the course of the pursuit.

¶ 8 About 10 minutes after terminating the chase, Smith learned that a traffic accident, involving a red minivan, had occurred in the vicinity of 5235 South Green Street. Smith relocated to the area and saw the same red Dodge Caravan minivan that he had been pursuing. The van had crashed into a parked vehicle and there was no one inside the minivan. Smith met with Officer Salvador Mondragon, who was investigating the traffic accident. Mondragon gave Smith several documents he recovered from the glove compartment of the minivan. One document was a Chicago Police Department traffic citation bearing the name “Eddie Brantley.” The second document was a written warning from the Illinois State Police, the third was a bond slip, and the fourth was a temporary insurance card all bearing the name Eddie Brantley. Smith ran the name “Eddie Brantley” using the “I-Clear system” and recognized the person in the photo as the same person he saw driving the minivan. Smith identified defendant from the photo. The officers were unable to locate defendant that evening.

¶ 9 The next day, April 26, 2013, at approximately 4:50 p.m., Smith was on duty and on the 900 block of south 54th Street. Smith observed defendant standing on the sidewalk in front of a residence. Smith recognized defendant as the driver of the red Dodge Caravan minivan. Defendant was subsequently issued several traffic citations as a result of the pursuit. Smith identified defendant in court as the driver of the red minivan he had been pursuing on April 25, 2013.

¶ 10 On cross-examination, Smith acknowledged that he was not present when Officer Mondragon searched the van. Smith testified that he looked at multiple pictures of defendant from the I-Clear system.

¶ 11 Officer Mondragon testified regarding his investigation of the traffic accident and his involvement in the recovery of the items from the van. At the conclusion of Mondragon's testimony, the State rested. Defendant rested without presenting any evidence.

¶ 12 After hearing arguments, the court found defendant guilty of the charged offenses. In doing so, the court noted that "it is correct that this is a single identification case, a single finger identification case by a Chicago Police Officer." The court stated that it found Officer Smith to be a credible witness, whose "testimony was clear, concise and not impeached in any significant matter." The court recounted the evidence presented and observed that, prior to the pursuit, Smith "was able to see the defendant for 10 to 15 seconds. Now, this is not hours, but it is a decent amount of time to get a good look at somebody while you are conducting a street stop. At which time he identified the defendant as fleeing from the scene." The court found the documents recovered from the van to be relevant because they had defendant's name on them and were found in the van involved in the chase. The court noted that once Smith had defendant's name, he was able to get a picture from I-Clear and identified defendant "immediately the same day the chase occurred." On the very next day, Smith was able to see defendant on the street and made a second identification. The court sentenced defendant to two years of felony probation.

¶ 13 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt. Defendant does not dispute that the State proved all the elements for the offense of aggravated fleeing or attempting to elude a peace officer beyond a reasonable doubt. Rather, he argues that the evidence failed to show that he was the driver of the red minivan involved in the pursuit. Defendant maintains that the Officer Smith's identification of him as the

driver of the minivan was not reliable where Smith only had 10 to 15 seconds to observe him during the traffic stop.

¶ 14 The standard of review on a challenge to the sufficiency of the evidence 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. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases regardless whether the evidence is direct or circumstantial. *People v. Herring*, 324 Ill.App.3d 458, 460 (2001); *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson*, 2013 IL App (1st) 102332 ¶ 27; *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not the reviewing court's duty to retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). A reviewing court will only reverse a criminal conviction when the evidence is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8; *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 15 After viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found beyond a reasonable doubt that defendant was the driver of the minivan. Although there was no direct physical evidence presented against defendant, there was Smith's eyewitness identification of defendant as the driver. Contrary to defendant's argument, we cannot say that Smith's identification was so improbable or unsatisfactory that a reasonable doubt as to defendant's guilt exists.

¶ 16 It is well-settled that the testimony of one identification witness, if positive and credible is sufficient to sustain a conviction. *People v. Herron*, 2012 IL. App (1st) 090663, ¶ 15; *People v. Slim*, 127 Ill.2d 302, 307 (1989). When a conviction depends on eyewitness testimony alone, the reviewing court may find the testimony to be insufficient “only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.” *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001). A reviewing court will not reverse a conviction based on eyewitness testimony unless that testimony is “improbable, unconvincing, or contrary to human experience.” *Id.*

¶ 17 When assessing identification testimony, this court relies on the factors set forth in *Neil v. Biggers*, 409 U.S.188, 199-200 (1972). These factors include (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 crime and the identification confrontation. *People v. White*, 2017 IL. App (1st) 142358, ¶ 15.

¶ 18 In considering the *Biggers* factors in relation to Officer Smith’s identification of defendant at the time of the traffic stop, we conclude that they weigh in the State’s favor. First, the record demonstrates that Smith had sufficient opportunity to view defendant. Smith testified that he observed defendant for 10 to 15 seconds in the McDonald’s drive-thru from “less than a foot away.” This court has held that “an encounter as abbreviated as five to ten seconds” is sufficient to support a conviction. *People v. Barnes*, 364 Ill. App. 3d 888, 894 (2006); *People v. Parks*, 50 Ill. App. 3d 929, 933 (1977). Thus, the first *Biggers* factor weighs in favor of Smith’s identification of defendant.

¶ 19 The second factor, Smith's degree of attention, also weighs in favor of a reliable identification. Smith was on patrol and observed a minivan with no license plates or visible registration. The make and model of the van was consistent with the type of vehicle that Smith was instructed to be on the lookout for because these vehicles were being stolen by juveniles in the 7th District. Upon seeing the van, Smith activated his emergency equipment and performed a traffic stop. During the stop, Smith asked defendant for his license and proof of insurance. Smith explained that defendant "fumbled around, acting like he was looking for his wallet" and then put the van into gear and sped away. This court has previously found that, when a police officer is responding to a call, his degree of attention is high "and in all likelihood greater than that of an average citizen witnessing a crime or being victimized by a crime." See *People v. Stanley*, 397 Ill. App. 3d 598, 611 (2009).

¶ 20 Third, the accuracy of the witness's prior description of the offender, also supports the reliability of Smith's identification. The record shows that, when defendant fled the drive-thru, Smith immediately broadcast a description of the van and defendant. Smith described him as male black in his early 20's, approximately 5'7" tall with a shaved head, wearing a gray "hoody" and a black jacket. Defendant did not challenge this description in the trial court. In this court, defendant argues that Smith's description was general and could have fit many people even the passenger, who was described by Smith's partner. However, contrary to defendant's assertion, the record is devoid of any description given by Smith's partner of the passenger in the van. Moreover, "a witness's identification can be sufficient even though the witness provided only a general description based on the overall appearance of the offender." *People v. Slim*, 127 Ill. 2d 302, 308-09 (1989).

¶ 21 Finally, the last two *Biggers* factors—the level of certainty demonstrated by the witness at the identification confrontation and the length of time between the crime and the identification confrontation—further support the reliability of Smith’s identification. The record shows that Smith identified defendant from an I-Clear photo on the same day as the chase. We note that significantly longer lengths of time have not rendered identifications unreliable. See *People v. Malone*, 2012 IL. App. (1st) 110517, ¶ 36 (one year and four month delay between crime and positive identification). The next day, Smith saw defendant on the 900 block of south 54th Street, recognized him as the driver of the van and placed him under arrest. Smith also made a positive in-court identification of defendant as the driver. See *People v. Magee*, 374 Ill. App. 3d 1024, 1032-33 (2007) (a witness’s identification was sufficient when it was made without hesitation).

¶ 22 In sum, we cannot say that Officer Smith’s identification was so unreliable that there exists a reasonable doubt as to defendant’s guilt. Therefore, we will not disturb the trial court’s finding that defendant was guilty of aggravated fleeing or attempt to elude a peace officer.

¶ 23 In reaching this conclusion, we are not persuaded by defendant’s argument that Smith’s viewing of the I-Clear photo was unduly suggestive and akin to an improper one-person show-up during which he was predisposed to name defendant as the offender. Contrary to defendant’s argument, Smith’s prompt viewing of the I-Clear photo was not a show up. Rather, the record shows that Smith viewed the photo during the course of his police investigation and after having received documents recovered from the van bearing the name “Eddie Brantley.”

¶ 24 We are likewise not persuaded by defendant’s argument that evidence was insufficient to sustain his conviction because there was no physical evidence, such as fingerprints or DNA, to connect him to the van. As mentioned, there was Officer Smith’s positive identification of

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defendant as the driver of the van. See *People v. Herron*, 2012 IL. App. (1st) 090663, ¶ 23 (where eyewitness testimony is credible, the State is not required to produce physical evidence).

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

¶ 26 Affirmed.