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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. 10 CR 7978
)	
RICHARD RAMSEY,)	Honorable
)	Domenica A. Stephenson,
Defendant-Appellant.)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Neville and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held:* The State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt of aggravated vehicular hijacking over his arguments that the victim's identification of defendant was unreliable and that her car was not taken from her immediate presence.

¶ 2 The State charged defendant Richard Ramsey with three counts of aggravated vehicular hijacking while armed with a firearm and three counts of aggravated unlawful restraint arising from events on December 6, 2009. After a bench trial, Ramsey was found guilty of one count of aggravated vehicular hijacking and two counts of aggravated unlawful restraint. The trial court

merged the unlawful restraint counts into the aggravated vehicular hijacking count and sentenced Ramsey to 21 years' imprisonment. On appeal, he argues that the State failed to prove him guilty of aggravated vehicular hijacking while armed with a firearm beyond a reasonable doubt.

¶ 3 We affirm. After a careful review of the evidence in the light most favorable to the State, we find that a rational trier of fact could find Ramsey guilty of aggravated vehicular hijacking. In addition, we cannot say that under the five factors for assessing identification testimony outlined in *Neil v. Biggers*, 409 U.S. 188 (1972), the victim's eyewitness testimony was so deficient that no rational trier could accept her identification of Ramsey as the man with the gun. And finally, contrary to Ramsey's contention, the State presented sufficient evidence that the hijacked car was in the victim's "immediate presence" when Ramsey took it, an essential element of the offense.

¶ 4 Background

¶ 5 At trial, Christina Fisher testified that at about 7 p.m. on December 6, 2009, she drove her silver 2009 Honda Accord to drop off food at her friend Dina Carr's house on South Prairie Avenue, Chicago. Fisher parked in Carr's driveway, left her car running, and stood six to eight inches from her driver's side door. Carr came out to meet Fisher and stopped on the sidewalk, about four feet away from Fisher.

¶ 6 As Fisher and Carr talked, three men approached on the sidewalk and Carr stepped back. The first man passed between Carr and Fisher and then turned around. A second man, identified in court as Ramsey, crossed in front of Fisher and got in between her and her car. Ramsey grabbed Fisher's arm, told her not to move, and pointed a six-inch, black revolver at her side.

¶ 7 Ramsey wore a hoodie with its hood up, but his face was inches from Fisher's face and she got a good look at his face. There were twists or braids sticking out from underneath his

hood. One of the other men stood on the sidewalk and another man walked toward Carr, who walked backward into her garage and yelled for help. Samuel Moore came out of the house and into the garage. The man on the sidewalk pointed a gun at Moore who dropped to the ground.

¶ 8 Ramsey let go of Fisher's arm and she ran to the north side of a car parked in front of hers in the driveway. Moore and Carr ran inside the house. Fisher looked through the car's windows and saw the three men meet at the sidewalk. Fisher, about six to eight inches from her car, saw the three men enter her car and drive away. Fisher could not see who was getting into which door of her car. She never gave permission to any of the men to drive her car.

¶ 9 Carr called the police and Fisher gave the police a description of the man who held her at gunpoint. She described him as a dark-skinned African-American male with light facial hair. She also told the police that the man wore a black hoodie, its hood up, and that twists or braids stuck out of the hoodie. Fisher could not recall if she included a description of the height or weight.

¶ 10 On December 7, 2009, the police called Fisher and informed her that her car had been recovered. She went to 59th Street and Princeton Avenue and saw her car had hit a fire hydrant. Her gym bag was inside along with items that did not belong to her, including a purple jacket on the front passenger's seat.

¶ 11 On March 4, 2010, Fisher viewed a six-photograph array and identified Ramsey as the man who held her at gunpoint. She circled Ramsey's photo in the array and wrote "60%" on it. Fisher explained that she wrote "60%" because the photo only showed the man's face and that, without seeing his stature or build, she was only 60% sure that the man had held her at gunpoint. On April 16, 2010, Fisher viewed a lineup at the police station and identified Ramsey as the man

who held her at gunpoint. When Fisher identified Ramsey in the lineup and in court, she was 100% certain he was the man who held her at gunpoint.

¶ 12 On recross-examination, Fisher testified that the entire encounter on December 6, lasted five to ten minutes and that she was physically detained for two to three minutes. Defense counsel confronted Fisher with her statement from a preliminary hearing where she said Ramsey held her for 30 to 45 seconds. Fisher did not remember making that statement, but acknowledged it was different from her testimony at trial.

¶ 13 Chicago police officer Anthony Davis testified that, at about 1 p.m. on December 7, 2009, he responded to a call and found a silver car that had crashed into a fire hydrant. There was a blue jacket on the passenger's seat. Davis "ran" the car's license plate number and learned that it was stolen the day before. He called for a detective and evidence technician.

¶ 14 Chicago police detective Socrates Mabry testified that he saw a blue jacket on the front passenger's seat, which was found to contain a toothbrush. The jacket and toothbrush were inventoried and another detective submitted the toothbrush to the Illinois State Police Crime Lab. The jacket was destroyed, but Mabry did not know why the jacket had been destroyed and had not authorized it. Evidence Technician Wayne Frisbie attempted to recover fingerprints from the car, but found none.

¶ 15 Tera Kubin testified that she was a forensic scientist with the Illinois State Police and was assigned to analyze evidence submitted in this case, including a toothbrush. Kubin swabbed the toothbrush head for genetic material and stored the swab for DNA analysis. Another forensic scientist, Laura Schubert, testified that she analyzed the swab obtained by Kubin for DNA and found DNA from a human male. Schubert ran the DNA profile through the CODIS database and

found the profile was associated with Ramsey. Comparing the DNA profile obtained from the swab and the profile in CODIS, Schubert determined that the profiles matched at 13 of the 13 locations tested and requested a confirmatory standard. The parties stipulated to testimony establishing that a buccal swab was obtained from Ramsey and submitted to the Illinois State Police Crime Lab. A third forensic scientist, Ruben Ramos, testified that he received Ramsey's buccal swab and verified the association made by Schubert. Ramos compared the DNA profile from the buccal swab to the DNA profile Schubert had found on the toothbrush and found that the DNA profile would be expected to occur in about 1 in 200 quadrillion black, 1 in 290 quintillion white, or 1 in 570 quintillion Hispanic and unrelated individuals.

¶ 16 The State rested. Ramsey moved for a directed finding, which the trial court denied. Ramsey did not present evidence.

¶ 17 The trial court found Ramsey guilty of one count of aggravated vehicular hijacking and two counts of aggravated unlawful restraint. It found Ramsey not guilty of the two counts of aggravated vehicular hijacking involving Carr and Moore and the one count of aggravated unlawful restraint involving Moore. The court denied a motion for a new trial. The court merged the two unlawful restraint counts into the one vehicular hijacking count and sentenced Ramsey to 21 years' imprisonment: 6 years' imprisonment for aggravated vehicular hijacking and 15 years' imprisonment for the firearm enhancement.

¶ 18 Analysis

¶ 19 On appeal, Ramsey challenges the sufficiency of the evidence to sustain his aggravated vehicular hijacking conviction. On a claim of insufficiency of the evidence, we determine whether, after taking 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. Brown*, 2013 IL 114196, ¶ 48. Due process protects an accused against conviction except on proof beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970). It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from, the testimony and other evidence. *Brown*, 2013 IL 114196, ¶ 48. The weight of the evidence and credibility of witnesses are matters for the trier of fact, who may accept or reject as much or little of a witness's testimony as it chooses. *People v. Rouse*, 2014 IL App (1st) 121462, ¶¶ 43, 46.

¶ 20 This court does not retry the defendant, substituting our judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses and we accept all reasonable inferences from the record in the State's favor. *Brown*, 2013 IL 114196, ¶ 48. To sustain a conviction "[t]he trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances, *** [i]t is sufficient if all the evidence taken together satisfied the trier of fact beyond a reasonable doubt of the defendant's guilt." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60.

¶ 21 To prove Ramsey guilty of aggravated vehicular hijacking, the State had to prove that Ramsey knowingly took a motor vehicle from a person or the immediate presence of the person by using force or by threatening the imminent use of force and he carried on or about his person or was otherwise armed with a firearm. 720 ILCS 5/18-4(a)(4) (West 2008).

¶ 22 After viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could find Ramsey guilty of aggravated vehicular hijacking. Fisher testified that she was inches from her car when Ramsey grabbed her and held her at gunpoint. Fisher got a good look at Ramsey's face and, even after she took cover behind the car in front of hers, she

kept watching Ramsey and the two other offenders. Fisher was six to eight inches from her car when she saw the three men enter it and drive off. Fisher gave a description of the man who held her at gunpoint immediately after the offense and identified Ramsey in a photo array, a lineup, and at trial as the man who held her a gunpoint. Further, when the police recovered Fisher's car, there was a jacket on the passenger's seat that did not belong to Fisher and a toothbrush. Forensic scientists with the State Police obtained DNA from the toothbrush and matched it to Ramsey's DNA. After viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could find Ramsey guilty of aggravated vehicular hijacking.

¶ 23 Nevertheless, Ramsey advances two arguments that the evidence was insufficient to prove him guilty beyond a reasonable doubt: (i) that Fisher's identification of him is unreliable and (ii) that insufficient evidence exists that the car was in her "presence" when it was taken.

¶ 24 "It is well established that a single witness's identification is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification." *People v. Starks*, 2014 IL App (1st) 121169, ¶ 48. When assessing identification testimony, this court relies on the factors set out by the U. S. Supreme Court in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). *Id.* Those factors are: (i) the opportunity the witness had to view the offender at the time of the offense, (ii) the witness's degree of attention, (iii) the accuracy of the witness's prior description of the offender, (iv) the level of certainty demonstrated by the witness at the identification confrontation, and (v) the length of time between the crime and the identification confrontation. *Id.* (citing *Biggers*, 409 U.S. at 199-200).

¶ 25 In considering the *Biggers* factors in relation to Fisher's identification of Ramsey, we conclude that they weigh in the State's favor. First, Fisher had ample opportunity to observe

Ramsey. Fisher saw three men approaching on the sidewalk and was inches from the man who held her at gunpoint. The man's face and Fisher's face were inches from each other; she could see the man's face clearly. Fisher's opportunity to see the man's face is demonstrated by her description of him to police afterward, which included that he was a dark-complected African-African man with twists or braids and light facial hair. Accordingly, this factor, which has been described as "the most important factor" in determining the reliability of identification, weighs in favor of the reliability of Fisher's identification of Ramsey as the man who held her at gunpoint. See *People v. Wehrwein*, 190 Ill. App. 3d 35, 39 (1989) ("The most important factor is whether the witness had an adequate opportunity to view the offender at the time of the crime").

¶ 26 Any inconsistency between Fisher's statement at a preliminary hearing that she was detained for 30 to 45 seconds and her trial testimony that Ramsey held her at gunpoint for 2 to 3 minutes was fully explored at trial during cross-examination. Although Fisher's credibility may have been affected by this alleged inconsistency, it was the responsibility of the trier of fact to determine her credibility, to determine the weight to be given to her testimony, and to resolve any inconsistencies and conflicts in the evidence. *Starks*, 2014 IL App (1st) 121169 ¶ 51; *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). We will not substitute our judgment for that of the trier of fact on these matters. *Sutherland*, 223 Ill. 2d at 242.

¶ 27 Second, Fisher exhibited a high degree of attention to Ramsey's conduct. The detail of her testimony demonstrated that she paid a high degree of attention to the movements of all three offenders before, during, and after the offense. Her testimony showed that she paid particularly close attention to Ramsey where, as discussed, she described his physical appearance and described the revolver he carried. Even after she ran for cover behind another car, she continued to watch the three offenders, including Ramsey, as they got into her car and drove away.

¶ 28 To the extent Ramsey contends that Fisher’s attention to the man holding her at gunpoint was diminished by her attention to everything else going on during the offense, Fisher demonstrated that the attention she paid to other occurrences did not detract from the attention she paid to the man holding her. While Fisher testified she observed several things during the offense, including the movements of the two other offenders and Ramsey’s gun, her detailed testimony regarding Ramsey demonstrated that she paid a particularly high degree of attention to Ramsey. The trial court found the victim's testimony reliable, and “[t]he sufficiency of the opportunity to observe is for the trier of fact to determine.” *Wehrwein*, 190 Ill. App. 3d at 39-40. Accordingly, a rational trier of fact could have found the Fisher’s degree of attention weighs in favor of the reliability of her identification.

¶ 29 Third, Fisher gave an accurate description of Ramsey after the offense. She described him as a dark-complected African-American with twists or braids. Although Fisher’s description of her assailant was not exhaustive, discrepancies or omissions in a description do not by themselves generate a reasonable doubt regarding a positive identification. *People v. Tomei*, 2013 IL App (1st) 112632, ¶ 50. “ ‘[A] witness'[s] positive identification can be sufficient even though the witness gives only a general description based on the total impression the accused's appearance made.’ ” *Id.* ¶ 52 (quoting *Slim*, 127 Ill. 2d at 308-09). The trial court, as trier of fact, occupies the best position to determine the victim's credibility and the weight to be given testimony. *Jackson*, 232 Ill. 2d at 281. The third *Biggers* factor weighs in favor of the reliability of Fisher’s identification of Ramsey

¶ 30 Finally, the fourth and fifth *Biggers* factors—the level of certainty demonstrated by the witness at the identification and the length of time between the crime and the identification—also

weigh in favor of finding Fisher's identification testimony credible. Fisher identified Ramsey in a photo array approximately three months after the man held her at gunpoint. She testified that she was only 60% sure of her identification but explained that it was because the photo only showed his face. But, she testified she was 100% sure Ramsey was the man who had held her at gunpoint when she identified him in a lineup four months after the offense and when she identified him at trial. The trial court as the trier of fact heard the circumstances of Fisher's identification of Ramsey and observed her demeanor when identifying him in court and testifying as to her prior identifications. The weight to be given to Fisher's testimony based on their level of certainty was for the trier of fact to determine and we will not substitute our judgment for the trial court's. *Sutherland*, 223 Ill. 2d at 242.

¶ 31 After reviewing the *Biggers* factors, we cannot say that Fisher's eyewitness testimony was so deficient that no rational trier of fact could accept her identification. Her identification testimony and the DNA evidence were sufficient to prove beyond a reasonable doubt that Ramsey was the man who held Fisher at gunpoint and was one of the men who got into her car.

¶ 32 Next, Ramsey argues that even taking Fisher's testimony as true, the State presented insufficient evidence on an essential element—that Fisher's car was in her "immediate presence" when Ramsey took it. Ramsey relies on *People v. Cooksey*, 309 Ill. App. 3d 839 (1999), and *People v. McGee*, 326 Ill. App. 3d 165 (2001), and he disagrees to the applicability of *In re Ricardo A.*, 356 Ill. App. 3d 980 (2005), *overruled on other grounds*, *In re Samantha V.*, 234 Ill. 2d 359 (2009).

¶ 33 In *Cooksey*, this court concluded that the State failed to prove the defendant guilty of vehicular hijacking because the evidence showed that the victim had her keys taken when she was 25 feet away from her car and got farther away from her car when she fled. *Cooksey*, 309 Ill. App. 3d at 848. In *McGee*, this court concluded that the State failed to prove the defendant guilty

of aggravated vehicular hijacking where the victim remained inside her house after her keys were taken and the attackers took her car from outside of the house. *McGee*, 326 Ill. App. 3d at 170.

¶ 34 The State urges us to follow *Ricardo A.* There, this court found a reasonable trier of fact could have the defendant guilty of aggravated vehicular hijacking and vehicular hijacking where the victim testified that he was about 20 to 25 feet away from the car when the defendants started it, 5 to 10 feet away when the car was taken, and one foot away as it drove past him. *Id.* at 991.

¶ 35 We find the evidence concerning “immediate presence” to be most analogous to the circumstances in *Ricardo A.* Here, Fisher’s testimony established that she was inches away from the driver’s side door when Ramsey held her at gunpoint and was about six to eight inches from her car when she saw the three men get in and drive away. Like the *Ricardo A.* victim—and unlike the victims in *Cooksey* and *McGee*—Fisher was within inches of her car when it was taken, both when the hijacking began and when the car was driven away. Hence, we cannot hold that no rational trier of fact could have found that Fisher was in the “immediate presence” of her car when Ramsey took it.

¶ 36 Affirmed.