

2018 IL App (1st) 153345-U

No. 1-15-3345

Order filed June 13, 2018

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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 C2 20083
	)	
JAQUSSE CANTRELL,	)	Honorable
	)	Lauren Gottainer Edidin,
Defendant-Appellant.	)	Judge, presiding.

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

**ORDER**

¶ 1 *Held:* Defendant's conviction for retail theft is affirmed where store manager's identification of her in a police photo array was sufficiently reliable.

¶ 2 Following a bench trial, defendant Jaqusse Cantrell was convicted of the retail theft of two cell phones whose value exceeded \$300 (720 ILCS 5/16-25(a)(1) (West 2012)). The circuit court sentenced defendant to two years of second chance probation and 30 hours of community service. On appeal, defendant contends her conviction should be reversed because the AT&T

store manager's identification of her in a police photo array was unreliable and insufficient to establish her guilt beyond a reasonable doubt.

¶ 3 At trial, Sean Reilly testified that on October 24, 2014, he was working as the manager of the AT&T retail store at 1620 Chicago Avenue in Evanston. At about 6:45 p.m., a woman entered the store through the front door which was about six feet away from where Reilly was standing at a counter assisting a customer.

¶ 4 Reilly looked up when the woman entered the store because a bell would chime upon the opening of the store's front door. The woman wore a gray hooded shirt and black pants. An employee standing near Reilly asked the woman if she needed assistance, and the woman replied that she was just looking. The woman walked directly to the iPhone display which was about 3 feet from the front door and between 8 and 10 feet away from where Reilly was standing. Two iPhones were on display: an iPhone 6 and an iPhone 6 Plus, which were valued at \$650 and \$750, respectively.

¶ 5 Reilly continued to assist the customer who was standing at the counter. At that point, an alarm sounded at the iPhone display indicating a security cable affixing the phones to the table had been removed or detached. Reilly looked at the display and saw the woman run from the store. The security cables broke as the woman fled. Reilly testified the woman was in the store for "less than 30 seconds."

¶ 6 Reilly ran out of the store and pursued the woman for about 20 yards. The woman got into a car that was parked at Church Street and Chicago Avenue. The car drove away but stopped at a red light at Davis Street and Chicago Avenue, where Reilly caught up to it. After Reilly photographed the car's license plate with his phone, he walked to the passenger side of the car

and looked at the passenger and driver. Both of them looked at Reilly, and he looked at the passenger's face for between 5 and 10 seconds. Reilly testified he was "a few feet away" from the car and that it was "dusk" but the area was illuminated by overhead street lights and light from other stores. Reilly contacted Evanston police and gave them the license plate number.

¶ 7 On November 13, 2014, Evanston Police Sergeant Joe Bush contacted Reilly and asked him to view a photo array. Reilly identified defendant's picture in the photo array as the woman who took the phones from the store. The photo array was entered into evidence.

¶ 8 Video from the store's surveillance camera was played at trial. While viewing that footage, which spanned 25 seconds, Reilly noted that defendant entered the store with the hood of her sweatshirt up but put the hood down after entering.

¶ 9 On cross-examination, Reilly stated the car he viewed was driven by a man. The cell phones were not recovered. Reilly acknowledged describing the women as having a lighter complexion and having blue eyes or wearing blue contact lenses.

¶ 10 When asked if he described the woman to police as being 20 to 25 years old, between 5 feet 6 inches and 5 feet 10 inches tall and weighing between 155 and 180 pounds, Reilly said he did not "remember exactly." When Reilly was asked if he "indicated the person was a heavy build," he responded: "What's your definition of heavy, I guess" and "If you consider 155 to 180 [pounds] heavy, then I guess yes." Reilly did not remember if he told a police officer that the offender was heavy but recalled giving a "weight approximation." Reilly agreed that in the photo array, defendant's picture was the only photo with a blue background.

¶ 11 Reilly was asked if defendant, seated in court, appeared heavy, and he replied, "Not necessarily." The defense asked if defendant was light skinned, to which Reilly replied: "I mean,

she's not very dark skinned. She's not very light skinned," adding it "[f]alls somewhere \*\*\* in the middle of the spectrum." When the question was repeated, Reilly responded, "Not necessarily." On redirect examination, Reilly said he only described the offender as wearing colored contact lenses and had not said she had blue eyes. Reilly said defendant has the same approximate skin tone as when he saw her during the offense.

¶ 12 Evanston police officer Deitrich<sup>1</sup> testified that he and a partner were dispatched to the AT&T store at approximately 6:48 p.m. Reilly described the offender as a black female with white skin<sup>2</sup> and hair worn in a ponytail, wearing a gray hooded shirt and black leggings or jeans. Reilly described the driver of the vehicle as a black male between 20 and 25 years old. Using the license plate number recorded by Reilly, Officer Deitrich determined that the vehicle was an Enterprise car share vehicle.

¶ 13 On cross-examination, Officer Deitrich said that although his written report memorializing Reilly's description of the suspect included the word "heavy," Reilly did not describe the offender as "heavy" but rather gave a weight range of 155 to 180 pounds. The officer also stated Reilly described the offender as wearing blue contacts, even though the report indicated the offender had blue eyes. The report described the offender's complexion as light brown.

¶ 14 Sergeant Bush ran the license plate of the Enterprise vehicle and spoke to an employee at the Enterprise car rental office in Evanston. The Enterprise employee reported the vehicle was rented by Antonio Beals and provided a phone number. Sergeant Bush spoke with Beals by

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<sup>1</sup> No first name for the officer was given at trial.

<sup>2</sup> Defendant asserts in his brief, and we agree, that it is likely the word "white" was a transcription error by the court reporter and that it can be presumed that the officer said "light."

phone and obtained a photograph of a person he believed to be Beals via the Law Enforcement Agencies Data System (LEADS). Sergeant Bush searched Facebook for a person with the same name and appearance as Beals. He found a photograph on a Facebook page of “Tony Troy City Beals” of Chicago that “appeared to match the physical description of the female” provided by Reilly. Three screen shots from that Facebook page were entered into evidence. One of the screen shots included a photograph of a light-skinned black female in her 20s with long, dark hair.

¶ 15 Sergeant Bush obtained a LEADS identification from that photograph and obtained defendant’s Illinois identification (ID) card photograph from a State database. He included that photograph in the photo array viewed by Reilly. Before Reilly viewed the array, he signed a form acknowledging that the person who committed the offense may not be pictured in the array. Reilly identified defendant’s ID card photograph in the array.

¶ 16 On cross-examination, Sergeant Bush stated that Beals told him he was in Evanston and had picked up a woman named Jasmine and drove her to Chicago. The State database listed Jasmine as one of defendant’s aliases.

¶ 17 Sergeant Bush viewed a defense exhibit displaying the picture in the photo array and a still image from the surveillance video, and he stated the still image was “very pixilated” and he could only see the person’s clothing and not her facial features. Sergeant Bush stated the woman pictured in the still image had a light complexion but he would describe defendant as having a light to medium complexion.

¶ 18 The defense presented no testimony. In finding the evidence sufficient to convict defendant beyond a reasonable doubt, the court noted the video image was “kind of grainy.” The

court stated, however, that the identification of defendant as the offender was based not only on the video but also on Reilly's testimony and observation of her in the store and seated in the car. The court sentenced defendant to two years of second chance probation and 30 hours of community service.

¶ 19 On appeal, defendant contends the State did not prove beyond a reasonable doubt that she was the person who entered the AT&T store and took the phones. She asserts Reilly's identification was unreliable based on the brief amount of time he saw the offender. She also argues the photo array was suggestive because her State ID photo was the only picture in the array that featured a blue background.

¶ 20 When considering a challenge to a criminal conviction based on the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the required elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Bradford*, 2016 IL 118674, ¶ 12. It is the responsibility of the trier of fact, which was the trial court in this bench trial, to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *Bradford*, 2016 IL 118674, ¶ 12. As a reviewing court, we will not substitute our judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses. *Id.* On appeal from a criminal conviction, this court will not reverse the judgment of the trial court unless the evidence is so unreasonable, improbable or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt. *Id.*

¶ 21 Where identification is the main issue, the State must prove beyond a reasonable doubt the identity of the individual who committed the charged offense. *People v. White*, 2017 IL App

(1st) 142358, ¶ 15. The identification of the accused by a single witness is sufficient to sustain a conviction if it is not vague or doubtful and if the witness viewed the accused under circumstances that permitted a positive identification. *People v. Green*, 2017 IL App (1st) 152513, ¶ 107; *People v. Simmons*, 2016 IL App (1st) 131300, ¶ 88.

¶ 22 In assessing the reliability of a witness's identification, this court considers the following five factors: (1) the opportunity the witness had to view the offender at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the offender; (4) the level of certainty demonstrated by the witness at the subsequent identification; and (5) the length of time between the crime and the identification. *People v. Slim*, 127 Ill. 2d 302, 307 (1989) (citing *Neil v. Biggers*, 409 U.S. 188, 199 (1972)). Even though, as defendant points out, this court has deemed the first factor as the "most important" (*People v. Wehrwein*, 190 Ill. App. 3d 35, 39 (1989)), the trier of fact is to take all of the factors into consideration, as no single factor conclusively establishes the reliability of identification testimony. *Biggers*, 409 U.S. at 199-200.

¶ 23 As to the first factor, Reilly's opportunity to view the offender, defendant asserts that Reilly "only briefly looked up" at the woman who entered the store and that the surveillance video depicts Reilly focusing on the customer he was assisting. Defendant contends that because Reilly only saw the offender's back as she fled the store and only viewed the woman seated in the car for between 5 and 10 seconds, his opportunity to view the perpetrator was brief and does not support the identification's reliability.

¶ 24 Defendant contrasts Reilly's opportunity to observe the suspect here to that of the home invasion victim in *People v. Smith*, 299 Ill. App. 3d 1056, 1061 (1998), where this court found

reliable the victim's identification of the men whom he viewed in his apartment for 10 to 12 minutes. Defendant also cites *Slim*, in which the robbery victim viewed the defendant's face from one or two feet away while being robbed at gunpoint. See *Slim*, 127 Ill. 2d at 305.

¶ 25 Although the facts at bar clearly differ from those in *Smith* or *Slim*, we do not find Reilly's identification of defendant fails under the first factor in *Biggers*. Here, Reilly first observed the offender in the store and then saw her face for between 5 and 10 seconds as she sat in the car. The opportunity of a witness to view an offender has been deemed sufficient even when the witness has only observed the offender for several seconds. See, e.g., *People v. Aguilar*, 396 Ill. App. 3d 43, 57 (2009) (identification testimony sufficient even though witnesses observed shooting that only lasted for several seconds); *People v. Ramos*, 339 Ill. App. 3d 891, 902 (2003) (witness who observed offender for three or four seconds had adequate opportunity to view); *People v. Negron*, 297 Ill. App. 3d 519, 530-31 (1998) (identification was reliable even though perpetrator's face was seen for "not \*\*\* more than several seconds"); *People v. Jackson*, 234 Ill. App. 3d 81, 87 (1992) (identification of gunman by store cashier reliable even though it lasted for less than one minute); *People v. Herrett*, 137 Ill. 2d 195, 204 (1990) (witness had sufficient opportunity to view offender when offender's face was seen for "several seconds"); *People v. Reed*, 80 Ill. App. 3d 771, 778 (1980) (witness's observation of offender for 10 seconds was sufficient; such observations need not be "of a prolonged nature"). Given that authority, we do not find, as defendant urges, Reilly's ability to view the offender here was "so brief" as to weaken the reliability of his identification.

¶ 26 As to the second factor, the degree of attention at the time of the offense, defendant points out that Reilly was occupied with a customer at the counter while the offender was in the



store. Although defendant contends that Reilly's head "did not turn or move when the suspect entered the store," our review of the video establishes that when the offender entered the store, she walked into Reilly's view from the counter. Moreover, after the store alarm alerted Reilly to the theft in progress, Reilly followed the offender from the store and saw her get into a car that stopped at a red light a short time later. Reilly looked at the woman through the passenger window, thus affording him a clear, close view. It can reasonably be assumed Reilly's degree of attention at this point was high because he waved at the couple and was trying to obtain a good look at the offender before the traffic light changed and the car drove away.

¶ 27 In regard to the third *Biggers* factor, defendant contends that Reilly's prior description of the offender weighs against a finding that his identification was reliable. She asserts Reilly's estimation of her height (between 5 feet 6 inches and 5 feet 10 inches tall) and weight (155 to 180 pounds) and his description of her skin tone (light) were inaccurate. She points out that she has a medium complexion, in contrast to Reilly's description of her as having a lighter skin tone. The State responds that defendant's height and weight at the time of her arrest were listed as 5 feet 5 inches tall and 136 pounds, and her complexion was listed as light.

¶ 28 Differences between the physical description given by a witness and the defendant's actual appearance do not render an identification unreliable. *People v. Petermon*, 2014 IL App (1st) 113536, ¶ 34 (citing *Slim*, 127 Ill. 2d at 312) (25-pound weight difference acceptable); *People v. Smith*, 160 Ill. App. 3d 89, 94 (1987) ("[p]recise accuracy in describing the accused is not necessary when the identification" of the defendant is positive). When the lowest weight in Reilly's description is considered, Reilly's estimation of the offender's height and weight varied from defendant's physical attributes by one inch in height and by 19 pounds in weight. Errors in

a complainant's description of an offender's height and weight affect the credibility of the witness and the weight to be given their testimony. *People v. Brown*, 110 Ill. App. 3d 1125, 1128-29 (1982) (7-inch, 30-pound discrepancy between victim's description of offender and offender's actual height and weight did not render victim's testimony unreliable). Moreover, Reilly testified that he did not recall referring to the suspect as "heavy," and Officer Deitrich's testimony supported that recollection.

¶ 29 As to the fourth *Biggers* factor, defendant acknowledges that Reilly "expressed no uncertainty regarding his identification." Defendant nevertheless argues this factor should be afforded no weight because there is no connection between "witness confidence and witness accuracy." In *People v. Allen*, 376 Ill. App. 3d 511, 524 (2007), the case she cites for that assertion, this court discussed the relevance of expert testimony regarding the reliability of an eyewitness identification and reversed the defendant's conviction because the expert's proposed testimony was not fully considered. We do not read *Allen* to remove the fourth *Biggers* factor from the analysis of identification testimony.

¶ 30 The final *Biggers* factor is the length of the time between the crime and the identification. Here, Reilly identified defendant in a police photo array three weeks after the offense. That period is not unduly long in this analysis. *Jackson*, 234 Ill. App. 3d at 86-87 (three weeks between crime and police photo array). Indeed, identification testimony has been found reliable even where months or years had elapsed between the crime and the identification, when all of the *Biggers* factors were considered together. See, e.g., *People v. Rodgers*, 53 Ill. 2d 207, 214 (1972) (identification was made two years after the crime); *People v. Malone*, 2012 IL App (1st) 110517, ¶ 36 (upholding identification made 16 months after the crime). In conclusion, we find

all of the factors in *Biggers* indicate that Reilly viewed the offender under circumstances that permitted a positive identification.

¶ 31 Defendant points out that in *Malone*, *Slim* and other cases, the State presented corroborating evidence of the defendant's guilt, such as DNA or his possession of the stolen property. She argues that her conviction here was based only on Reilly's identification because the phones were not recovered and no physical evidence connected her to the crime. As stated earlier, an identification of the defendant by one witness is sufficient to sustain a conviction. *Green*, 2017 IL App (1st) 152513, ¶ 107; *Simmons*, 2016 IL App (1st) 131300, ¶ 88.

¶ 32 Defendant's next contention on appeal is that the photo array viewed by Reilly was suggestive because her picture had a "distinctive" blue background. The State responds that defendant cannot now raise that argument because she did not file a motion to suppress the identification procedure on that basis.

¶ 33 Even had defendant not waived this issue for our review, we reject her assertion that the photo array in this case was so impermissibly suggestive that the outcome of this case would be different, given our analysis of the *Biggers* factors set out above. Our review of the photo array establishes that the five other photos in the six-photo array have backdrops of varying shades of gray or brown. This court has upheld identifications as not unduly suggestive even where the photo of the defendant was markedly different from the other photos included in the array. See, e.g., *People v. Calvillo*, 170 Ill. App. 3d 1070, 1079-80 (1988) (defendant's photo was "twice as large" as other photos in array); *People v. Harrell*, 104 Ill. App. 3d 138, 144-45 (1982) (photos had various backgrounds); *People v. Johnson*, 43 Ill. App. 3d 649, 656-58 (1976) (defendant was

only person pictured on wearing a shirt); *People v. Hudson*, 7 Ill. App. 3d 333, 335-36 (1972) (defendant's was only color photograph in the array).

¶ 34 Defendant's last argument is that the manner in which the photo array was administered in this case prompted Reilly to select her photo. Defendant makes the bare assertion that Sergeant Bush "may have inadvertently influenced" Reilly's selection of her in the photo array because the sergeant was aware which photograph depicted defendant. She also points out that Sergeant Bush presented the photos to Reilly together, or simultaneously, as opposed to showing the photos to Reilly one after the other, or sequentially. In support of that contention, defendant cites *State v. Henderson*, 208 N.J. 208, 256-57 (2011), which the Supreme Court of New Jersey notes studies that have found photos presented in sequence can result in more reliable identifications than those where photos are presented simultaneously. Defendant also refers to scientific studies and articles that are outside the trial record. However, defendant provides no support for her claim that the presentation of this photo array affected Reilly's identification. The mere suggestion of unreliability does not counterweigh our analysis using the specific factors from *Biggers* that are well-recognized by Illinois courts.

¶ 35 In conclusion, when the evidence surrounding Reilly's identification of defendant is viewed in the light most favorable to the State, it is sufficient to support defendant's conviction. Reilly pursued the offender as she left the store, watched her get into a car, and viewed her face through a car window from several feet away for between 5 and 10 seconds. Reilly identified defendant without hesitation in a photo array three weeks after the theft. Moreover, although defendant's photo in the photo array had a different colored background than the other five

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images, we do not find that rendered the array suggestive or weakened the reliability of Reilly's identification.

¶ 36 Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 37 Affirmed.