2018 IL App (1st) 153559-U

SIXTH DIVISION
Order filed: July 20, 2018

No. 1-15-3559

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. 15 CR 04116
	)	
TAVARIS JACKSON,	)	Honorable
	)	Mary M. Brosnahan,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Connors and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for armed robbery is affirmed over his contention that the State failed to prove that he was the offender and that he committed the offense with a dangerous weapon.

¶ 2 Following a bench trial, defendant, Tavaris Jackson, was convicted of armed robbery (720 ILCS 5/18-2(a)(1) (West 2014)), and sentenced to eight years' imprisonment. On appeal, defendant contends that his armed robbery conviction should be: (1) reversed because the

victim's identification of him as the offender was not reliable; or (2) reduced to robbery because the State failed to prove beyond a reasonable doubt that he committed the offense with a dangerous weapon. For the following reasons, we affirm.

¶ 3 Defendant was charged by information with two counts of armed robbery (720 ILCS 5/18-2(a)(1) and (a)(2) (West 2014)) and two counts of aggravated unlawful restraint (720 ILCS 5/10-3.1 (West 2014)). The armed robbery counts alleged that defendant, knowingly took property, to wit: a cell phone, from the person or presence of Talyte Davis, by the use of force, or by threatening the imminent use of force and that defendant carried on or about his person or was otherwise armed with a firearm (count 1); and a dangerous weapon other than a firearm, to wit: bludgeon (count 2). The aggravated unlawful restraint counts alleged defendant knowingly and without legal authority detained Davis while using a firearm (count 3) and a bludgeon (count 4).

¶ 4 At trial, Davis testified that, at about 6:30 p.m. on January 29, 2014, she was walking westbound on the north side of 93rd Street when she saw defendant walking in the same direction on the opposite side of the street. Davis described the area as residential and well lit with street lamps. Defendant, who was dressed in a "hoodie" that did not cover his face or his entire head, crossed the street and approached Davis on her left side. Davis saw a portion of defendant's hair and testified that was the first time she had "ever seen his face, and [she] will never forget it."

¶ 5 Defendant, who was carrying a gun, placed it against Davis's rib cage. Davis described the gun as a small, heavy, metal object and that she saw the "little circle." She testified that the gun felt "cold, heavy and metal" against her ribs. Defendant demanded Davis's iPhone and she gave it to him. She then tried to run away, but had difficulty due to snow on the ground. When

Davis was about two feet away from defendant, he called her back and demanded that she unlock the phone. Davis entered her four-digit passcode and gave the phone back to defendant. She tried to run away again, but defendant called her back a second time. Defendant, still holding the gun, demanded that Davis completely remove the passcode lock from her phone. After thinking about it for a few seconds, Davis disengaged the passcode feature from her phone and handed it back to defendant. Defendant then asked Davis what high school she attended and she told him. As Davis began to run away again, she turned and asked defendant if she could have her phone back. Defendant replied, "[n]o you can't have your phone back b**** now get the f*** out of my face." Davis ran home, crying. She testified that her encounter with defendant lasted about five minutes.

¶ 6 When Davis arrived home, she called her mother and told her about the robbery. Her mother instructed her to call the police and she did. A police officer subsequently arrived at Davis's home and she relayed the details of the robbery to the officer. Davis described defendant as a "male black, 5'9"-5'10", 145-155 lbs." Davis testified that defendant did not have a "fade" hairstyle, which she described as "not completely bald but some hair[,]" and denied telling the police officer that he had such a hairstyle.

¶ 7 Chicago police detective John Climack was assigned the case and phoned Davis at her home. After speaking to Davis, Detective Climack suspended the case.

¶ 8 About three or four weeks later, Davis accessed her iCloud account from home using her iPad. Inside the account, there was a folder containing photos she had previously stored on her stolen phone. The account also contained a new folder with photos she had not taken. Davis

viewed the new photos and recognized defendant in several of them. Davis informed her mother, who called Chicago police detective Donavan Jackson, a friend of the family.

¶ 9 On April 11, 2014, Detective Jackson took Davis's new phone to the Regional Forensics Computer Lab (RFCL), and downloaded the contents of the phone and received an extraction report. Detective Jackson gave the extraction report to Detective Climack, who input a photo recovered from Davis's phone into a "facial recognition system," which generated a photo of defendant. Detective Climack compiled a photo array, which included the photo of defendant. Detective Climack could not recall if he used defendant's photo from the facial recognition system or if he retrieved another photo of defendant. Davis viewed the photo array and identified defendant. In doing so, she circled defendant's photo and wrote "that's the man that robbed me at gun point." Detective Climack issued an "investigative alert" for defendant and he was arrested on February 27, 2015. The State then rested.

¶ 10 Defendant testified that he was a twice-convicted felon and was placed under arrest for this case after Detective Climack showed him a photo of himself taken from a phone. According to defendant, he took the photo in March 2014, using an iPhone he received from one of his customers. He explained that he was a drug dealer and he often exchanged narcotics for merchandise. Defendant received a call from a person named "Tony," one of his regular customers, who wanted to purchase narcotics. Defendant described Tony as "kind of dark, *** his hair was kind of nappy too. He was kind of dark, fat." Defendant met Tony and another person he did not know at 79th Street and Marquette Avenue. Defendant stated that he received two cellular phones in exchange for narcotics. He then went to an electronics store that caters to people with stolen phones and purchased two "red dot chips." He explained that these chips

allow the phone to make calls, write texts, and take pictures for six months. Defendant testified that, on January 29, 2014, he had a "fro" hairstyle that was "tapered all the way around." He denied robbing Davis and stated that the first time he saw her was at the preliminary hearing.

¶ 11 The parties stipulated that, if called to testify, Chicago police officer Scott Rooney would state that he interviewed Davis and that she told him defendant had a "fade" hairstyle. The parties also stipulated that, if called, John Dziedzic, the director of the RCFL, would testify that, on April 11, 2014, Detective Jackson requested to extract information from an iPhone and an extraction report was generated on the same date. The report included the date a photograph was actually taken. The earliest photo depicting defendant had a creation date of March 28, 2014. Defendant rested.

¶ 12 After hearing closing arguments, the court found defendant guilty of armed robbery with a bludgeon (count 2) and aggravated unlawful restraint with a bludgeon (count 4), but not guilty of armed robbery with a firearm (count 1) and aggravated unlawful restraint with a firearm (count 3). In announcing its ruling, the court noted that this case "come[s] down to a question of credibility." The court found Davis "very credible" where she had "plenty of opportunity to observe the defendant." The court pointed out that, unlike a "stereotypical one finger identification, one eye witness case alone," in this case there was corroborating evidence in the form of photos. However, because the gun was not recovered, the court found that the State failed to prove beyond a reasonable doubt that defendant was armed with a firearm during the offense. Defendant's motion for new trial was denied.

¶ 13 After hearing arguments in aggravation and mitigation, the court merged the aggravated unlawful restraint count into the armed robbery count and sentenced defendant to eight years' imprisonment. Defendant's motion to reconsider sentence was denied.

¶ 14 On appeal, defendant challenges the sufficiency of the evidence to sustain his conviction for armed robbery. Specifically, he argues that Davis's identification of him as the offender was unreliable and that the State failed to prove he committed the offense with a dangerous weapon.

¶ 15 In considering a challenge to the sufficiency of the evidence to sustain a conviction, Illinois courts have adopted the standard set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979). Under that standard, our duty is to determine 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 (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). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). 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).

¶ 16 After reviewing the evidence in the light most favorable to the State, we find that a rational trier of fact could have concluded that defendant was the offender. It is well-established that the testimony of a single witness, if positive and credible, is sufficient to convict if the witness "was able to view the defendant under conditions permitting a positive identification." *People v. Thompson*, 2016 IL App (1st) 133648, ¶ 34; *People v. Petermon*, 2014 IL App (1st) 113536 ¶ 30. 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.

¶ 17 In considering the *Biggers* factors in relation to Davis's identification of defendant, we conclude that they weigh in the State's favor. First, the record demonstrates that Davis had sufficient opportunity to view defendant. The record shows that the robbery occurred about 6:30 p.m. in a residential area that was well lit by street lamps. Davis initially observed defendant when he was walking directly across the street from her. He remained in her sight as he approached her and placed a gun against her left side ribcage. Davis explained that she was able to see defendant's face even though he was wearing a "hoodie" because the hood did not completely cover his head. She testified that she would never forget his face. After handing her

phone to defendant, Davis tried to run away. Defendant called her back to disable the passcode on the phone. Davis did so, and gave the phone back to defendant. She turned to run away again, but defendant called her back a second time to permanently disable the passcode. This took her a few seconds because she could not remember how to disengage the passcode feature. Defendant then had a brief conversation with Davis and asked her where she went to high school. As Davis ran away a third time, she asked defendant if she could have her phone back. Davis testified the entire encounter lasted about five minutes.

¶ 18 This court has found 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); see also *People v. Parks*, 50 Ill. App. 3d 929, 933 (1977); *People v. Herrett*, 137 Ill. 2d 195, 204 (1990) (finding the witness had sufficient opportunity to view the defendant where he observed "the assailant's face for several seconds when the robber reached down to cover his eyes with duct tape"). Here, Davis had several opportunities to observe defendant. Thus, the first *Biggers* factor weighs in favor of the reliability of Davis's identification of defendant.

¶ 19 The second factor, Davis's degree of attention, also weighs in favor of a reliable identification. Davis testified to numerous details about her encounter with defendant that show she exhibited a high degree of attention. Davis initially observed defendant as she was walking home in the same direction as defendant, but on the opposite side of the street. Defendant eventually crossed the street and approached Davis from her left side. As he did so, Davis saw that he was wearing a "hoodie" that was not covering his face or entire head. Davis was focused on defendant and the gun that he placed against her ribcage. She described the gun as a small, heavy, metal object and that she saw the "little circle." Davis spoke to defendant several times

during their encounter. She gave defendant her phone three times and spoke to him about where she went to school. Accordingly, Davis's degree of attention weighs in favor of the reliability of her identification.

¶ 20 Davis's prior description of defendant also weighs in favor of the State. On the date of the robbery, Davis described defendant to a responding officer as a "male black, 5'9"-5'10", 145-155 lbs." Although Davis testified that she did not tell the officer defendant had a "fade" hairstyle, the court noted in its ruling that defendant was not identified by his hairstyle.

¶ 21 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 Davis's identification. The record shows that Davis identified defendant within three to four weeks after the robbery. She saw a photo of defendant on her iPad and contacted police. She also positively identified defendant in a photo array after the robbery. 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). Davis circled defendant's photo from the array and wrote "this is the man that robbed me." She testified that she was positive that defendant was the person who robbed her and stated "she would never forget his face." See *People v. Magee*, 374 Ill. App. 3d 1024, 1032-33 (2007) ("[t]he presence of discrepancies or omissions in a witness' description of the accused do not in and of themselves generate a reasonable doubt as long as a positive identification has been made.").

¶ 22 The *Biggers* factors also weigh in the State's favor where circumstantial evidence corroborates Davis's identification of defendant. See *People v. Dereadt*, 2013 IL App (2d)

120323, ¶ 24 ("In addition to the *Biggers* factors, courts also consider the totality of the circumstances when reviewing the reliability of an identification"). The photos in Davis's iCloud account were of defendant. Defendant admitted he had taken the "selfies," albeit while using a phone he contended he exchanged for narcotics. These photos in conjunction with the *Biggers* factors further strengthen Davis's identification of defendant as the offender.

¶ 23 In sum, after reviewing the *Biggers* factors, we cannot say that Davis's identification of defendant 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 armed robbery and aggravated unlawful restraint.

¶ 24 Defendant nevertheless argues that the *Biggers* factors do not weigh in favor of a reliable identification. He maintains that: Davis did not have sufficient opportunity to view the offender given the brief and limited nature of the robbery; her degree of attention was insufficient to yield a reliable identification given the highly stressful encounter; and, Davis's focus was on the weapon and not on him. Defendant also points out that, aside from Davis's identification testimony, there was no other evidence connecting him to the robbery.

¶ 25 We note that defendant's arguments are, essentially, asking us to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact. This we cannot do. It was the responsibility of the trier of fact to determine Davis's credibility, the weight to be given to her testimony, and to resolve any inconsistencies and conflicts in the evidence. See *Hutchinson*, 2013 IL App (1st) 102332, ¶ 27; *Ortiz*, 196 Ill. 2d 236, 259 (2001). Moreover, as noted by the trial court in announcing its ruling, the reliability of Davis's testimony and the circumstances impacting her opportunity to view defendant were fully explored at trial. The court found

Davis's identification credible and reliable where she had "plenty of opportunity to observe the defendant." In reaching its conclusion, the trier of fact is not required to disregard inferences that flow from the evidence or search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 71 (citing *Wheeler*, 226 Ill. 2d at 117). We will not reverse a conviction simply because defendant claims that a witness was not credible. *People v. Evans*, 209 Ill. 2d 194, 211-12 (2004).

¶ 26 Defendant next contends that his conviction for armed robbery should be reduced to robbery because the State failed to prove beyond a reasonable doubt that he committed the offense with a dangerous weapon. In support of this argument, defendant points out that the object used by defendant was never recovered and the State did not introduce evidence that the object was used in a dangerous manner or that it was capable of being used in a dangerous manner.

¶ 27 Initially, we note that the parties disagree about the proper standard of review to apply in this case. Defendant argues that we should apply a *de novo* standard of review because he is not questioning the credibility of the witnesses, but is instead disputing whether the uncontested facts were sufficient to convict. As such, he maintains that his guilt is a question of law. The State responds that we should follow the aforementioned standard of review from *Jackson v. Virginia* to determine 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 offense beyond a reasonable doubt. We agree with the State.

¶ 28 Although defendant claims that the facts of the case are uncontested, he is essentially arguing that Davis's testimony describing the gun was insufficient to support the inference that

he was armed with a dangerous weapon. See *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 35-36 (citing *People v. Stewart*, 406 Ill. App. 3d 518, 525 (2010)) (no *de novo* review where defendant challenged "the inferences that can be drawn from the evidence" by claiming the evidence failed to establish he acted "knowingly."). Moreover, the question of whether an object constitutes a dangerous weapon is generally a question of fact. See *People v. Hernandez*, 2016 IL 118672, ¶ 12; see also *People v. Dwyer*, 324 Ill. 363, 365 (1927) ("[W]hen the character of the weapon is doubtful or the question depends upon the manner of its use, it is a question for the jury to determine from a description of the weapon, from the manner of its use, and the circumstances of the case."). Therefore, we will employ the familiar *Jackson v. Virginia* standard.

¶ 29 In this case, defendant was found guilty of armed robbery as alleged in count 2. In order to sustain defendant's conviction for this offense, the State was required to prove that defendant, in committing a robbery, was armed with a dangerous weapon other than a firearm, to wit: a bludgeon. 720 ILCS 5/18-2(a)(1) (West 2014). A defendant commits the offense of robbery when he knowingly takes property from the person or presence of another by the use of force or by threatening the imminent use of force. 720 ILCS 5/18-1(a) (West 2014). A defendant commits the offense of armed robbery when, in committing a robbery, he carries on or about his person or is otherwise armed with a dangerous weapon other than a firearm. 720 ILCS 5/18-2(a)(1) (West 2014).

¶ 30 In analyzing whether an object constitutes a dangerous weapon, Illinois courts have defined three categories of dangerous objects: (1) objects that are dangerous *per se*, such as loaded guns, (2) objects that are not necessarily dangerous, but were actually used in a dangerous

manner during the offense, and (3) objects that are not necessarily dangerous but may become dangerous when used in a dangerous manner. *People v. Ross*, 229 Ill. 2d 255, 275 (2008); *People v. McBride*, 2012 IL App (1st) 100375, ¶ 42. Our supreme court has stated that "[t]his effort at categorization is nothing more than a recognition of the proper role for the trier of fact" to determine whether an object is sufficiently susceptible to use in a manner likely to cause serious injury. *Ross*, 229 Ill. 2d at 275. Our supreme court further noted that a bludgeon may be considered a deadly weapon. *Id*. (citing *People v. Skelton*, 83 Ill. 2d 58, 64-66. (1980)). In determining whether a defendant is armed with a dangerous weapon, the trier of fact may make an inference of dangerousness based upon the evidence. *Ross*, 229 Ill. 2d at 276.

¶ 31 Here, we find that the evidence, viewed in the light most favorable to the State, was sufficient for the trial court to determine that defendant was armed with a dangerous weapon. Davis testified that defendant was carrying a gun and approached her from her left side. Davis described the gun as a small, heavy, metal object and she saw the "little circle." Davis also described how the gun felt against her ribs—"cold, heavy and metal." Although defendant did not use the gun as a bludgeon, the circumstances described by Davis support the inference that defendant was armed with a dangerous weapon based on its weight and metallic nature. See *Skelton*, 83 Ill. 2d at 66 (finding that "[m]ost, if not all, unloaded real guns and many toy guns, because of their size and weight, could be used in deadly fashion as a bludgeons" and "can properly be classified as dangerous weapons although they were not in fact used in that manner during the commission of the particular offense"). Accordingly, we find that the State sufficiently proved defendant committed armed robbery while armed with a dangerous weapon.

¶ 32 In reaching this conclusion, we are not persuaded by defendant's reliance on *People v. Harris*, 2015 IL App (1st) 133892. In *Harris*, the victim observed defendants enter his store with one defendant waving a gun over his head. Defendants began taking lottery tickets and medicine from behind the counter. When the police officers arrived, the victim was unsure that he had actually seen a gun, and only confirmed that he saw a gun after viewing the surveillance video. This court found that because the victim only realized it was a gun after he observed the surveillance video and the fact that he did not testify about the weapon's weight or composition (metallic) the trial court's findings were not based on witness testimony, but, rather, on his viewing of the surveillance video. *Id.* ¶ 28. Here, unlike *Harris*, the State presented evidence regarding the physical characteristics of the gun, *i.e.*, its weight and metallic composition. As mentioned, Davis testified that she saw the gun—a small, heavy, metal object—and felt its hardness and weight against her ribs.

¶ 33 We are likewise not persuaded by defendant's argument that the State's failure to recover the gun requires a reversal of his conviction. The State need not present a firearm in order for the trier of fact to find the defendant possessed one. Courts have consistently held that eyewitness testimony that the offender possessed a firearm, combined with circumstances under which the witness was able to view the weapon is sufficient to allow a reasonable inference that the weapon was actually a firearm. *People v. Jackson*, 2016 IL App (1st) 141448, ¶ 15; *People v. Davis*, 2015 IL App (1st) 121867, ¶ 12. "Consequently, the State need not present a firearm in order for the trier of fact to find the defendant possessed one." *Jackson*, 2016 IL App (1st) 141448, ¶ 15; see also *People v. Clark*, 2015, IL App (3d) 140036, ¶ 24 (holding that, in the absence of a

recovered firearm, the witnesses' unequivocal testimony that they observed the defendant carrying a firearm was sufficient).

¶ 34 Here, although the court found that the State failed to prove beyond a reasonable doubt that defendant was armed with a firearm, the evidence was sufficient for the trial court to find that defendant was armed with a dangerous weapon based Davis's testimony regarding the weight and metallic nature of the gun. As mentioned, a defendant's conviction will be overturned only if the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8. This is not one of those cases.

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

¶ 36 Affirmed.