2018 IL App (1st) 161695-U

No. 1-16-1695

Order filed November 2, 2018

Fifth Division

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. 14 CR 14360
	)	
JONATHAN PENA,	)	Honorable
	)	Jeffrey L. Warnick,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: Trial evidence was sufficient to convict defendant of robbery.

¶ 2 Following a 2016 bench trial, defendant Jonathan Pena was convicted of robbery (720 ILCS 5/18-1(a) (West 2014)) and sentenced to 11 years' imprisonment. He contends that the trial evidence was insufficient to convict him beyond a reasonable doubt. We affirm.

¶ 3 Defendant was charged in relevant part with armed robbery (720 ILCS 5/18-2(a)(2) (West 2014)) for allegedly, on or about July 16, 2014, knowingly taking currency from Juan

Zerafin by use of force, or by threatening the imminent use of force, while armed with a firearm.[1]

¶ 4 At trial, Juan Zerafin testified that he was attending university but occasionally worked for his father's landscaping business. His father paid him about $100 to $120 per day of work, or about $400 to 700 per week, in cash. On July 16, his father paid him about $750 cash for his work. That afternoon, he and two friends were at the home of Xavier and Alberto Rodriguez, both of whom Zerafin knew. He had been to the Rodriguez home previously, but not often. Zerafin still had the $750 on his person as he intended to go to a shopping mall to buy an expensive pair of shoes. At some point, Zerafin mentioned this to Xavier. The entire time Zerafin was at the Rodriguez home, playing basketball, Alberto was typing on his cellphone. Zerafin did not consider this unusual at the time, and did not see the screen of Alberto's cellphone.

¶ 5 After Zerafin's friends left to eat dinner and Xavier went inside, only Zerafin and Alberto were outside the Rodriguez home sitting in seats in the front driveway. It was still daylight when a black Jeep Patriot stopped in front of the home. Shortly before the Jeep arrived, Alberto remarked to Zerafin that "my guy's gonna come." Defendant exited the Jeep, with his hands apparently empty.

¶ 6 As defendant approached Zerafin and Alberto, Zerafin saw that he was now holding a gun in his right hand. Zerafin described the gun only as "all black," but he believed it to be a real gun and was afraid of being shot. His belief that the gun was real was reinforced by his belief that defendant was a "gang banger" who would carry a real gun. Defendant took Alberto's cellphone, saying "some gang stuff" to Alberto that Zerafin did not understand because "I'm not

[1] His name was given as Zefrain in the indictment, but he spelled his own name at trial as Zerafin.

gang related at all." Defendant then took Zerafin's money, still holding his gun but not pointing it at Zerafin. Defendant said to Zerafin and Alberto that he would kill them if they told anyone. Defendant re-entered the Jeep, which drove away. Defendant never touched Zerafin with the gun, so Zerafin did not feel if the object was metal or plastic.

¶ 7 After defendant left, Zerafin and Alberto had a conversation in which Alberto "started telling me a bunch of stories." The conversation led Zerafin to believe that Alberto knew the robber and that the robbery was planned. Zerafin did not report the incident to police, but instead went home to discuss the incident with his parents, because he was intimidated by the robber's threat. He went to the police station the next day. In the meantime, Zerafin returned to the Rodriguez home unsuccessfully seeking Alberto, who Xavier said had left. Zerafin also looked at Alberto's Facebook page to see if he could see the robber, based on Alberto's admission that he knew the robber. Zerafin saw "gang related stuff" on the page and then saw defendant's photograph, recognizing him as the robber.

¶ 8 When Zerafin went to the police station, he showed police his screenshots of Alberto's Facebook page and defendant's Facebook page. He told police officer Michael Oppegard that the man depicted therein was the man who robbed him and was in the same gang as Alberto. Zerafin then signed a photographic array form and was shown an array of six photographs from which he identified defendant as the robber. Zerafin reiterated that defendant in court was the man in the photograph. The record on appeal does not include the photographic array or form.

¶ 9 Police officer Michael Oppegard testified to speaking with Zerafin on July 17, 2014. Zerafin showed him screenshots of a Facebook page depicting a man that Zerafin described as the man who robbed him. Oppegard printed the screenshot, which was from the Facebook page

of the Milwaukee Kings streetgang. The record on appeal does not include the printout. Because Oppegard did not have a name from this photograph, he searched police records to find a person affiliated with that gang who matched the photograph. He found defendant, and generated an array of five other photographs to place with defendant's picture. Oppegard showed the array to Zerafin, who identified defendant as the robber. Defendant was arrested on July 22. He asked Oppegard to tell his girlfriend about his arrest, directing Oppegard to a nearby black Jeep Patriot with a woman inside. Oppegard did not recover a gun, nor find $750 cash on defendant's person.

¶ 10 Following closing arguments, the court found defendant guilty of robbery, as the lesser-included offense of armed robbery. It found him not guilty of all other charges, including various weapons charges. The court believed that Zerafin "had money on him" and was "clearly" robbed by defendant. It found that Zerafin's failure to immediately report the robbery was understandable, given his credible testimony that he conducted his own investigation and was afraid to implicate an apparent gang member in a crime. Noting defendant's unique appearance including tattoos, the court expressly found Zerafin's identification of defendant to be credible. The court noted that Zerafin testified to being afraid because he was threatened with an object he believed to be a gun. However, Zerafin did not give a detailed description of the object. Moreover, he did not touch it and thus could not provide evidence as to its material composition.

¶ 11 In his posttrial motion, defendant challenged the sufficiency of the evidence. The court denied the motion and, following a sentencing hearing, sentenced defendant to an extended prison term of 11 years.

¶ 12 On appeal, defendant contends that the trial evidence was insufficient to convict him of robbery beyond a reasonable doubt.

¶ 13 A person commits robbery when he knowingly takes property from another by the use of force or by threatening imminent use of force. 720 ILCS 5/18-1(a) (West 2014).

¶ 14 On a claim of insufficient evidence, we must determine whether, taking 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. Gray*, 2017 IL 120958, ¶ 35. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and it is better equipped than this court to do so as it heard the evidence. *Id.*; *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. We do not retry a defendant; that is, we do not substitute our judgment for that of the trier of fact on witness credibility or the weight of evidence. *Gray*, 2017 IL 120958, ¶ 35.

¶ 15 The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. *Jonathon C.B.*, 2011 IL 107750, ¶ 60. It is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Id*. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt, nor to find a witness not credible merely because a defendant says so. *Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Gray*, 2017 IL 120958, ¶ 35.

¶ 16 A conviction will not be reversed merely because there was contradictory evidence, as the task of the trier of fact is determining if and when a witness testified truthfully, and minor or collateral discrepancies in testimony need not render a witness's entire testimony incredible. *Id.* ¶¶ 36, 47. When a finding of guilt depends on eyewitness testimony, we must decide whether a

trier of fact could reasonably accept the testimony as true beyond a reasonable doubt. *Id*. ¶ 36. We find eyewitness testimony insufficient only when the evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *Id*.

¶ 17 Our supreme court has repeatedly stated that a valid conviction may be based on a positive identification by a single eyewitness who had ample opportunity to observe. *In re M.W.*, 232 Ill. 2d 408, 435 (2009). A trier of fact assesses the reliability of identification testimony in light of all the facts and circumstances including (1) the witness's opportunity to view the offender at the time of the offense, (2) the witness's degree of attention at the time of the offense, (3) the accuracy of any previous description of the offender by the witness, (4) the degree of certainty shown by the witness in identifying the defendant, and (5) the length of time between the offense and the identification. *Id.*; *People v. Joiner*, 2018 IL App (1st) 150343, ¶ 47. These are often referred to as the *Biggers* factors. *Joiner*, 2018 IL App (1st) 150343, ¶ 47 (citing *Neil v. Biggers*, 409 U.S. 188 (1972)). No single *Biggers* factor by itself conclusively establishes the reliability of identification testimony; instead, the trier of fact must consider all the factors. *Id.*

¶ 18 Here, taking the trial evidence in the light most favorable to the State as we must, we cannot conclude that no rational trier of fact would convict defendant of robbery. Zerafin testified clearly that defendant took about $750 cash from him while defendant held a gun in his hand, after which defendant threatened to kill defendant if he reported the crime. The positive and credible testimony of a single witness is sufficient to convict. *Gray*, 2017 IL 120958, ¶ 36. The trial court found Zerafin credible, and we therefore find his testimony sufficient to convict defendant of robbery for taking property from him by threat of force.

¶ 19 Defendant places great emphasis on the fact that Zerafin did not report the incident immediately. However, Zerafin explained the delay: intimidated by defendant's threat and apparent gang affiliation, he went home to seek his parents' advice before going to the police station the next day. We find that a reasonable trier of fact could accept Zerafin's explanation.

¶ 20 Defendant also argues that the State failed to corroborate that Zerafin received, and was carrying, $750 on the day in question. However, defendant cites no law for the proposition that the State must corroborate a robbery victim's testimony that he had possessed the property that was unlawfully taken. Indeed, Illinois courts have stated that corroboration of a complaining witness's testimony is not required. *People v. Parker*, 2016 IL App (1st) 141597, ¶ 29-30 (citing *People v. Schott*, 145 Ill. 2d 188, 202-03 (1991)). Also, $750 does not strike us as so unreasonable or improbable an amount of cash to be carrying as to create reasonable doubt. Zerafin gave a reasonable explanation for carrying such a sum: his father had just paid him a week's wages for landscaping work. The trial court stated that it believed that Zerafin was carrying the money, and the record supports that finding.

¶ 21 Defendant notes that the proceeds of the robbery were not recovered. However, we do not find Zerafin's testimony to be impeached thereby, especially in light of the several days that passed between the robbery and defendant's arrest. Defendant similarly notes that the gun was not recovered, but the trial court accounted for that fact in finding defendant guilty of robbery rather than armed robbery. Lastly, defendant argues that Zerafin's testimony regarding Alberto Rodriguez's role in the incident is "incredible on its face." However, this testimony does not strike us as so implausible or improbable as to create reasonable doubt. That is especially so

since Zerafin's investigation of Alberto's online affiliations following his conversation with Alberto led him to defendant, who he recognized as the robber.

¶ 22 In sum, the trial evidence does not compel the conclusion that no reasonable person could accept Zerafin's account beyond a reasonable doubt.

¶ 23 Turning to Zerafin's identification of defendant as the robber, we do not find his identification testimony unreliable upon applying the *Biggers* factors. Regarding his opportunity to view the offender at the time of the offense, it was daylight and Zerafin saw the robber from his exiting the Jeep to taking Zerafin's money directly from him to leaving the scene. As to Zerafin's degree of attention at the time of the offense, he testified to seeing the Jeep arrive and defendant exit the Jeep empty-handed before he produced a gun. We find that he had sufficient reason to pay attention to the sudden new arrival before the gun appeared and arguably became the focus of his attention. There was no testimony as to any description of the robber, nor any particular testimony as to Zerafin's degree of certainty, so neither factor is of much weight for or against reliability. Lastly, as to the length of time between the offense and the identification, Zerafin identified defendant in his own online investigation on the day of the robbery, and identified defendant from a photographic array the next day. On balance, the *Biggers* factors support the reliability of Zerafin's identification of defendant as the robber.

¶ 24 Beyond the *Biggers* factors, Zerafin's identification of defendant is at least partially corroborated. He testified that defendant came to and left the robbery in a black Jeep Patriot. Officer Oppegard testified that defendant linked himself to a black Jeep Patriot at his arrest. The reliability of Zerafin's identification is strengthened thereby.

¶ 25 In sum, we do not find the evidence of defendant's guilt to be so unreasonable, improbable, or unsatisfactory that a reasonable doubt remains. Accordingly, the judgment of the circuit court is affirmed.

¶ 26 Affirmed.