

THIS APPEAL INVOLVES A DELINQUENT MINOR PROCEEDING
UNDER THE JUVENILE COURT ACT

2018 IL App (1st) 172208-U

FIRST DIVISION
August 6, 2018

No. 1-17-2208

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 JUDICIAL DISTRICT

IN THE INTEREST OF JOSE A.,)	Appeal from the
)	Circuit Court of
PEOPLE OF THE STATE OF ILLINOIS,)	Cook County.
)	
Petitioner-Appellee,)	
)	No. 17 JD 836
v.)	
)	
JOSE A., a minor,)	Honorable
)	Terrence V. Sharkey,
Respondent-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Pierce and Justice Griffin concurred in the judgment.

ORDER

Held: We affirm respondent-appellant's conviction for armed robbery.

¶ 1 Respondent-appellant, Jose A., was arrested by the Chicago police on suspicion of armed robbery and aggravated battery stemming from the robbery of an individual on the north side of Chicago. The victim was walking home late one night after work when two individuals

approached him from behind. One of the perpetrators produced a gun and demanded the victim's wallet. After lying down on the sidewalk, the two individuals beat the victim and took a backpack along with the wallet.

¶ 2 Minor respondent proceeded to a bench trial where he was found guilty of armed robbery, robbery, and aggravated battery. He was adjudicated delinquent, made a ward of the court, and sentenced to three years' probation.

¶ 3 He raises two issues on appeal. He argues (1) the State failed to prove beyond a reasonable doubt that he was one of the offenders in the robbery and (2) his armed robbery adjudication should be reduced to robbery because the State failed to prove beyond a reasonable doubt that he possessed a firearm during the incident. He does not challenge his conviction for aggravated battery.

¶ 4 After reviewing the record and relevant case law, we affirm minor respondent's armed robbery adjudication.

¶ 5 **JURISDICTION**

¶ 6 On July 6, 2017, a judge, sitting as the finder of fact, found minor respondent guilty on all three counts. On August 9, 2017, the trial court sentenced minor respondent to three years' probation. A notice of appeal was filed on September 1, 2017. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603, 606, and 660 governing appeals from a final judgment of conviction in a criminal case entered below involving a minor. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013); Ill. S. Ct. R. 660 (eff. Oct. 1, 2001).

¶ 7 **BACKGROUND**

¶ 8 Respondent-appellant, Jose A., was 14 when he was charged with armed robbery, robbery, and aggravated battery in connection with the robbery and beating of Bradford Seaman the night of April 19, 2017. Minor Respondent proceeded to a bench trial.

¶ 9 At trial, the State called two witnesses to testify in support of the allegations against minor respondent. The victim, Bradford Seaman, testified that on the night of April 19, 2017, he had finished work as a bartender around 2:00 a.m. and began to walk home. While he walked, he listened to music with his headphones attached to his cell phone. He had a messenger bag strapped over his body with his cell phone in his front left pocket.

¶ 10 As he walked in the 1700 block of North Leavitt Street in Chicago, he noticed two individuals approaching behind him. He had never seen either individual before and while both individuals were behind him, “one individual was more to the left” of him. Both individuals were wearing hooded sweatshirts, but one of the individuals was wearing “camouflage jean pants.” Then, “the one on [his] left started to walk even with me as we passed where the security cameras had been on a fence in front of a couple of buildings.” Seaman identified minor respondent as the individual walking to his left that night.

¶ 11 After drawing even with Seaman, minor respondent produced a gun and Seaman reacted by putting his hand out and saying “whoa, whoa.” At this point minor respondent was only a few feet from Seaman with his hood up, but nothing covering his face. Seaman testified that he “got a very good look at [minor respondent’s] face.” Minor respondent held the gun up to Seaman’s chest, “to show me the gun to let me know to not – that he had one.” Seaman described the gun as a silver handgun. He could see the barrel of the gun and that minor respondent’s finger was on the trigger. The handgun was able to fit into minor respondent’s hand. Seaman “had a clear view of [minor respondent’s] face.” Minor respondent “made a very aggressive face” after Seaman

shouted “whoa, whoa.” He admitted he did not touch the gun and it was never fired during the incident. He could not remember if any streetlights were on.

¶ 12 After seeing minor respondent make this face, Seaman got down on his hand and knees. He was no longer making eye contact and was instead looking at the ground. He could feel the pair going through his pockets and then minor respondent asked, “where’s your wallet?” Seaman reached inside his bag, retrieved his wallet, and handed over the money inside. After handing over the money, the pair began to beat Seaman. He testified that the blows felt like he was being kicked or beat with the gun. He described one of the hits as coming from “either a very heavy shoe or it could have been metal.” He did not see either offender remove their shoes. The beating lasted between 20-30 seconds before the gunman took his wallet and the other individual grabbed his messenger bag. The pair then took off down an alley and fled in a waiting car. Seaman used his cell phone to call police. Despite bleeding from the head and month, he declined medical treatment.

¶ 13 During his testimony, the State entered into evidence surveillance footage taken the night of the incident. The video depicts Seaman walking into the view of the camera followed by two individuals. Seaman identified minor respondent as the one in the “camouflage jean pants” just to his left as they exit the frame. The second portion of the video showed the nearby alley and depicted the pair as they fled to a waiting car. Seaman then enters the frame and can be seen staggering and talking on his phone before the clip ends. He testified that he was calling the police at this point.

¶ 14 Within an hour of the attack, Seaman spoke with a member of the Chicago Police Department and provided a description of the offenders. He described one of the offenders as a “black male” and “[o]ne of them was stockier and much skinnier.” He explained in court that it

was “just his facial features” that made him think minor respondent was black. He further testified that “with the hoodie on, I couldn’t see his hair so – again, I was trying to cooperate with the police report as best I could.”

¶ 15 On April 25, 2017, Seaman went to the police station to potentially identify the individuals who robbed him. He viewed six photographs and identified minor respondent as the individual holding the gun. In court, he again identified minor respondent as the gunman. He also identified from a picture a pair of jeans recovered from minor respondent’s room as the same pair the gunman wore that night.

¶ 16 Next, the State called Chicago Police officer Richard Robles. He testified that on April 24, 2017, he viewed a surveillance video in order to possibly identify the offender in a robbery.¹ After watching the video, officer Robles identified minor respondent as one of the two offenders. He identified minor respondent as the individual wearing a light colored sweatshirt and multicolored jeans. Officer Robles had previously seen minor respondent in the neighborhood where he works and on two other occasions. He explained that minor respondent’s stature and walk were “familiar to [him]” and readily identifiable from the video.

¶ 17 The next day officer Robles and his partner traveled to minor respondent’s grandmother’s house to arrest him. The grandmother let the officer’s into the house and directed them to minor respondent’s room. After arresting him, the officers searched the bedroom and recovered a pair of multicolor jeans that matched what officer Robles had seen in the video. Neither the gun nor Seaman’s possessions were recovered. The State entered a picture of the jeans and several still frames from the surveillance video into evidence.

¹ The video was the same one entered into evidence during the testimony of the victim.

¶ 18 After officer Robles's testimony, the State rested. Minor respondent made a motion for a directed finding, which the trial court denied. Minor respondent rested his case without putting on any evidence. The court then reviewed the surveillance footage before hearing closing arguments.

¶ 19 Before issuing its decision, the court made several findings of fact. The court reviewed the identification factors set forth in *People v. Graham* (179 Ill. App. 3d 496 (1989)) to determine the weight to give to Seaman's identification. The court concluded Seaman had an opportunity to observe minor respondent since Seaman saw the two individuals approaching from behind him. The second factor also weighed in favor of the identification because Seaman testified that he and the minor respondent were face to face. The court noted Seaman had given an inaccurate prior description, which weighed against his credibility. Seaman's level of certainty at the photo lineup weighed in favor of a credible identification because he picked minor respondent out of the array almost immediately. Moreover, the six days between the crime and the identification was not unreasonable. Finally, the court noted Seaman and minor respondent were not acquainted.

¶ 20 After weighing each factor, the court concluded Seaman gave a credible identification of minor respondent as the individual holding the gun during the robbery. The court found the identification supported by the jeans the Chicago Police found in minor respondent's bedroom. The pants recovered matched the pants seen worn by the individual Seaman identified as minor respondent in the surveillance video. The court specifically noted the rhinestones on the back of the jeans can be seen as minor respondent runs down the alley. The court found Seaman's testimony also established the minor respondent utilized a firearm to carry out the robbery and beating.

¶ 21 It concluded the State proved minor respondent's guilt beyond a reasonable doubt and entered findings of guilty on each count. After weighing the factors in aggravation and mitigation, the court made minor respondent a ward of "both this court and the Department of Child and Family Services." The court then sentenced him to three years' probation.

¶ 22 Minor respondent timely filed his notice of appeal.

¶ 23 ANALYSIS

¶ 24 In his first issue, he argues the State failed to prove he was one of the offenders in the armed robbery. This raises a challenge to the sufficiency of the evidence used to obtain his conviction.

¶ 25 When an individual challenges the sufficiency of the evidence used to obtain a conviction, this court applies the same standard even in cases where the convicted individual is a minor. When a defendant argues the evidence was insufficient to sustain his conviction, the inquiry is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 26 In reviewing the sufficiency of the evidence, the appellate court will not retry the defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). It is the trier of fact's function to assess witness credibility, weigh and resolve conflicts in the evidence, and draw reasonable inferences from the evidence. *People v. Williams*, 193 Ill. 2d 306, 338 (2000). While the trier of fact's findings regarding witness credibility are entitled to great weight, the determination is not conclusive. *Smith*, 185 Ill. 2d at 542. The fact that the finder of fact accepted testimony as true does not guarantee that it was reasonable to do so. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). However, an appellate court will only reverse a conviction where no "rational tier of fact

could have found the essential elements of the crime beyond a reasonable doubt.” *Smith*, 185 Ill. 2d at 541.

¶ 27 “A person commits robbery when he or she knowingly takes property, except a motor vehicle covered by Section 18-3 or 18-4, 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 2016). The armed robbery statute states, “[a] person commits armed robbery when he or she violates Section 18-1; and *** he or she carries on or about his or her person or [was] otherwise armed with a firearm.” *Id.* ¶ 18-2(a)(2). This issue here is one of identification.

¶ 28 Minor respondent contends several aspects of Seaman’s testimony are incredible and contrary to human experience. He argues Seaman’s testimony that he stood face to face with minor respondent for 15 to 20 seconds “without speaking is unbelievable.” He further argues Seaman’s ability to observe the offender was further obscured by the lack of streetlights and the fact the offender wore a hooded sweatshirt. He argues the initial description given by Seaman of a black male with short hair further undermines the testimony. He contends the identification is unreliable in light of the factors found in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972).² He asserts no weight should be given to officer Robles’s testimony and the pants were not sufficiently unique to identify him.

¶ 29 Upon review of the testimony and relevant case law, we conclude the trial court could find minor respondent was the individual holding the firearm during the robbery of Seaman. In a bench trial, it is the province of the trial court to weigh the evidence and make credibility determinations, and reviewing courts should not lightly substitute its own view (or that of defendant’s) for that of the finder of fact unless the finder of facts conclusions are unreasonable.

² The *Biggers* factors are the same factors listed in *Graham*. Compare 179 Ill. App. 3d at 504-05 with 409 U.S. at 199-200.

People v. Collins, 106 Ill. 2d 237, 261-62 (1985). Here, we disagree with minor respondent that the findings of trial court were unreasonable.

¶ 30 We reject minor respondent's interpretation of Seaman's testimony because it impermissibly seeks to substitute his own view and weight of the evidence in place of the trial court's determinations. The trial court's conclusion to believe Seaman's identification of minor respondent as the individual holding the firearm during the armed robbery was not unreasonable. The trial court heard Seaman's testimony and ultimately concluded that Seaman gave a credible identification of minor respondent when presented with a photo array. The court heard how Seaman observed the pair approach him from behind and that he stood face-to-face with the minor respondent.

¶ 31 The court was aware of the initial identification. While Seaman admitted he initially described one of the robbers as a black male with short hair, when the police presented a photo array of potential offenders he immediately identified minor respondent as the individual holding gun during the robbery. After hearing this testimony, the trial court reviewed each *Graham/Biggers* factor and determined the factors weighed in favor of finding the identification credible. The court found the initial identification inconsistent with minor respondent's appearance but also vague and not enough to outweigh the other factors which did support a credible identification. We decline to reweigh the factors based on minor respondent's interpretation of the evidence. The trial court's conclusion to rely on Seaman's identification was not unreasonable and we decline to set it aside.

¶ 32 We also reject minor respondent's argument that the trial court erred in relying on the testimony of officer Robles or the pants entered into evidence. While the trial court found officer Robles testified credibly, the court did not give it much weight. The court noted that it was

officer Robles's identification of minor respondent that led to the police recovering a unique pair of jeans. The court concluded the jeans recovered from minor respondent's room were extremely similar to a pair seen in the surveillance video and supported Seaman's testimony.

¶ 33 It was not unreasonable for the trial court to rely on the jeans as a key piece of evidence given its unique characteristics. The jeans are not a uniform blue jean, but instead have countless white and brown splotches all over. It would not be unreasonable to describe them as forming a camouflage type pattern. The rear pockets also have dozens of silver and gold rhinestones attached. The trial judge specifically noted that these rhinestones are visible as a perpetrator runs down the alley in the surveillance video. Based on all the evidence it heard, the trial court's conclusion that this individual was minor respondent was not unreasonable.

¶ 34 Minor respondent analogizes his case to that of *People v. Barney*. 60 Ill. App. 2d 79 (1965). In *Barney*, officer Hemphill purchased drugs from an individual in October 1963 named Paul Bonner and described him in an official report as "a[n] [African American] male about twenty-six years old, five feet six inches tall, and 170 pounds in weight, with a stooped manner of walking." 60 Ill. App. 3d at 80. Bonner was not arrested after the purchase. *Id.* In April 1964, officer Hemphill arrested an individual named Napoleon P. Barney for Bonner's crime. *Id.* In an official report he claimed Barney was Bonner. *Id.* The same report described Barney as "a[n] [African American] male about thirtyfive [sic] years old, five feet eleven inches tall, 210-220 pounds in weight, and had an erect posture." *Id.* In reversing the conviction of Barney, this court found the State failed to prove beyond a reasonable doubt that Barney was Bonner because the descriptions provided in each report were divergent as to almost every physical characteristic: age, weight, height, and posture. *Id.* at 81.

¶ 35 We find the facts of this case distinguishable from those found in *Barney*. At the trial in *Barney* the officer “was positive that Barney was Bonner and that he had just gained weight.” *Id.* at 80. The officer believed the descriptions were of the same individual. *Id.* Moreover, this identification represented the only evidence against Barney. *Id.* Seaman admitted his initial description was inaccurate, but was adamant the individual he identified in the photo array, minor respondent, was the individual holding the gun during the robbery. The trial court found Seaman’s identification from the photo array credible. The trial court in this case had the surveillance video and jeans which supported Seaman’s identification. *Barney* is too distinguishable from the facts of the current case and we decline to set aside minor respondent’s conviction based on it.

¶ 36 When viewing the evidence in a light most favorable to the State, a rational trier of fact could conclude beyond a reasonable doubt that minor respondent was the individual in the camouflaged jeans who robbed Seaman in April 2017.

¶ 37 In his second issue, minor respondent argues that the State failed to present sufficient evidence to establish the presence of a firearm. Minor respondent argues that this failure requires a reduction in his conviction from armed robbery to robbery. This argument presents a question regarding the sufficiency of the evidence.

¶ 38 For the purposes of the armed robbery statute, a firearm is defined in section 1.1 of the Firearm Owners Identification Card Act (FOID Act) and in relevant part states, “any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas” but specifically excludes certain items including a pneumatic gun, spring gun, paint ball gun, or BB gun. 430 ILCS 65/1.1 (West 2016).

¶ 39 In this case, the State did not produce the firearm and the trial court's finding that the item utilized in the robbery met the required statutory definition was based solely on the testimony of Seaman. Minor respondent argues that Seaman's testimony lacked the specificity necessary for a finder of fact to conclude the item displayed during the robbery met the statutory definition. He points to Seaman's testimony that it was dark and he did not remember any illumination from street lights. Seaman denied owning a gun and did not place his hands on the item during the robbery. He could not recall a make or model and it was not fired during the event. Finally, no gun can be seen in the videos produced by the State.

¶ 40 In *People v. Washington*, our supreme court held the testimony of a single eye witness could be enough for a trier of fact to reasonable conclude that a defendant possessed a "real gun." 2012 IL 107993, ¶ 36. The supreme court recently reaffirmed this position in *People v. Wright*. 2017 IL 119561, ¶ 76. Minor respondent contends that *Washington* and *Wright* were wrongly decided and asks us not to follow them. Our supreme court cases must be followed and appellate courts have no authority to overrule those decisions. *People v. Artis*, 232 Ill. 2d 156, 164 (2009). We decline minor respondent's invitation to disregard *Washington* and *Wright*.

¶ 41 This case is similar to both *Washington* and *Wright*. Like the testimony in those two cases, the only testimony in this case was that the item produced was a "real" gun. *Washington*, 2012 IL 107993, ¶¶ 35-36; *Wright*, 2017 IL 119561, ¶ 76. Seaman testified that after minor respondent approached him from behind, minor respondent produced a silver handgun. Minor respondent pointed it at Seaman's chest while having his hand on the trigger. Seaman could see the barrel of the firearm. After getting down on his hands and knees, Seaman was beat with a heavy object that he believed was either the firearm or a shoe. The beating left Seaman bleeding from the back of his and head and his mouth. The trial court concluded the minor respondent

beat Seaman with the firearm. This is not an unreasonable conclusion. While Seaman admitted he did not own a gun that does not mean he could not recognize one when it was pointed at him.

¶ 42 In viewing the evidence in a light most favorable to the State, it was not so unreasonable, improbable, or unsatisfactory so as to call into question the trial court's reliance on it. Based on the testimony of Seaman, the trial court could reasonably conclude the silver handgun presented and used by minor respondent during robbery was a "firearm" within the required statutory definition. We affirm minor respondent's conviction for armed robbery.

¶ 43

CONCLUSION

¶ 44 For the foregoing reasons, we affirm minor respondent's conviction for armed robbery and the adjudication of delinquency.

¶ 45 Affirmed.