

No. 1-12-2961

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 CR 20965
)	
RAMON RAMIREZ,)	Honorable
)	Noreen V. Love,
Defendant-Appellant.)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Palmer and Justice Gordon concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Defendant's convictions for attempted aggravated robbery and unlawful restraint affirmed over claim of insufficient evidence to sustain them.
- ¶ 2 Following a bench trial, defendant Ramon Ramirez was found guilty of attempted aggravated robbery (720 ILCS 5/8-4, 18-5(A) (West 2010)) and unlawful restraint (720 ILCS 5/10-3 (West 2010)). He was sentenced to concurrent, respective terms of six and three years'

imprisonment. On appeal, defendant contends that the evidence was insufficient to sustain those convictions. For the reasons that follow, we affirm.

¶ 3

BACKGROUND

¶ 4 At trial, the victim, Michelle Moran, testified that on November 7, 2011, at 5:08 p.m. she exited a CTA Pink Line train at the 54th and Cermak stop in Cicero and began walking home south on Laramie Avenue. While walking on Laramie Avenue, a man, who Moran identified at trial as defendant, approached her on a bicycle and asked her a question in Spanish. Moran testified she replied, "What?" and defendant asked in English whether she had any cigarettes. Moran told him that she did not. Moran further testified defendant then positioned himself in front of her, blocking her path, dismounted his bicycle, and said, "Give me your purse then." Defendant grabbed Moran's purse, which she was wearing with a strap across her body, and "yanked" the strap, pulling Moran towards him so that she and defendant were "face to face." Defendant then told Moran, "Don't move, don't say anything. I'll stab you." Moran also testified that defendant had one hand in his pocket, which he moved in a way to indicate that he was in possession of a knife.

¶ 5 Moran further testified she was able to get away from defendant and ran towards a restaurant at the northeast corner of Laramie Avenue and 24th Street. She looked back to see if defendant was behind her, but she did not see him. Moran also testified she also did not observe him on Laramie Avenue, or coming in her direction, so she believed that defendant had gone west down 24th Street. Moran stated the streetlights on Laramie Avenue were bright, but dark on residential 24th Street where the streetlights had not yet come on.

¶ 6 Moran also testified that once inside the restaurant, she spoke to the manager, who went outside with her and waved down a patrolling community officer. She then spoke to a Cicero police officer who arrived on the scene shortly thereafter.

¶ 7 Moran testified that on November 12, 2011, she went to the Cicero Police Department and viewed a photographic array in which she identified defendant as the individual who had attempted to rob her. The following day, she returned to the police department, and identified defendant in a physical lineup. During this portion of Moran's testimony the State entered the photographic array and a photograph taken of the physical lineup into evidence. When asked if the photograph of the physical lineup was "similar to how you saw the defendant" on the date she identified him, Moran replied, "That's exactly it." Moran further testified that she was given advisory forms for both the photographic array and lineup, and explained that Detective Wojtowicz "described them, and then [she] read them over [herself]" before signing the forms.

¶ 8 On cross-examination, Moran testified that she did not look at her watch when she exited the train, but knew it was 5:08 p.m. because she takes the same scheduled train home every day, and always gets off at the same time. She described the offender to police as having a ponytail and wearing a dark jacket, but denied telling police that the man who attacked her was wearing glasses. She also denied telling the detective, after seeing the photographic array, that she was not "100% sure" that defendant was the man who attacked her, then stated that she was 99% sure, but wanted to see him in person.

¶ 9 Robert Drain testified he monitors certain individuals through electronic monitoring and had the opportunity to monitor defendant. Drain testified that he reviewed defendant's November 7, 2011, report, which indicated that defendant left his home at 9:44 a.m. and returned

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at 5:25 p.m. Drain further testified that defendant lived at 5408 West 24th Place, approximately two blocks west and one block south of where the incident occurred.

¶ 10 Cicero police officer Anthony Lewandowski testified that he was on duty at 5:28 p.m. on November 7, 2011, when a 911 call was generated and he was dispatched to 24th Street and Laramie Avenue. When he arrived there, he spoke to Moran who indicated that a man had attempted to rob her. Officer Lewandowski testified he indicated in his report that that the incident had occurred at "approximately 5:25 p.m." On cross-examination, Officer Lewandowski testified that Moran described the offender as a male Hispanic with a ponytail, eyeglasses, and wearing a leather jacket. On redirect, Officer Lewandowski clarified that the time of the robbery as indicated in his report was not an exact time, but that the robbery occurred at an "approximate time."

¶ 11 Cicero Police Department detective Chris Wojtowicz testified that he was assigned to investigate the attempted robbery of Moran, and, on November 12, 2011, he asked Moran to come to the police station to view a photographic array. The detective explained that he decided to put defendant in the photo array because Moran was able to give a "pretty good description" of the offender in the interview he had with her. The detective looked through a recent list of those who were on parole for similar crimes, and found defendant, who lived in close proximity to the crime scene and matched the description given by Moran. Upon seeing the photographic array, Moran identified defendant as the offender, and the next day, Moran identified defendant again in a physical lineup. Detective Wojtowicz provided Moran with advisory forms for both the photographic array and physical lineup. For the photo array, Detective Wojtowicz asked her to

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read the form, and "asked her if she understood what she read." For the physical lineup, he "review[ed]" the document with her.

¶ 12 On cross-examination, the defense showed the detective a series of photographs of buildings with security cameras on the block where the incident occurred. The detective acknowledged that he had not recovered video footage from those security cameras. Because none of the video footage was recovered, no footage from those security cameras was presented as evidence at trial. The detective also testified that Moran indicated that the offender was wearing glasses and had a ponytail. He acknowledged that defendant was the only person in the physical lineup who had a ponytail, but testified that the photograph of the lineup, which was taken from a side view, was not an accurate representation of how the victim viewed the lineup. Detective Wojtowicz further testified that, after viewing the photographic array, Moran indicated that she was 80% sure that defendant was the offender but that she wanted to see him in person to be certain.

¶ 13 On redirect, the detective testified that none of the photos of security cameras on the block where the incident occurred were on the specific building where the incident took place. The detective also testified that at the physical lineup, Moran immediately identified defendant without hesitation, explaining that Moran did not "even get all the way into the room" before she was able to identify him.

¶ 14 At the close of evidence and argument, the trial court found defendant guilty of attempted aggravated robbery and unlawful restraint. Defendant was sentenced to concurrent, respective terms of six and three years' imprisonment. This appeal followed.

¶ 15 ANALYSIS

¶ 16 In this appeal, defendant challenges the sufficiency of the evidence to sustain his convictions, claiming that the evidence was insufficient to establish that he was the offender. Specifically, defendant asserts (1) Moran's identification of him as the offender was unreliable; (2) inconsistencies in Moran's testimony demonstrate her testimony was unreliable; (3) the electronic monitoring evidence indicating that defendant was home at 5:25 p.m. introduced doubt regarding Moran's testimony; and (4) the evidence was insufficient because no physical evidence was recovered.

¶ 17 The standard of review on a challenge to the sufficiency of the evidence is whether, after considering all of 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. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). We will not reverse a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of defendant's guilt. *People v. Carodine*, 374 Ill. App. 3d 16, 24 (2007). In reviewing a challenge to the sufficiency of the evidence, it is not the function of a reviewing court to retry defendant. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). "Rather, in a bench trial, it is for the trial judge, sitting as the trier of fact, to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence." *Siguenza-Brito*, 235 Ill. 2d at 228. A reviewing court will not substitute its judgment for that of the trier of fact. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

¶ 18 Generally, identification by a single witness is sufficient to support a conviction if the defendant is viewed under circumstances permitting a positive identification. *People v. Gabriel*, 398 Ill. App. 3d 332, 341 (2010). The reliability of a witness' identification testimony is a matter

for the trier of fact. *Siguenza-Brito*, 235 Ill. 2d at 228. In assessing a witness's identification testimony, our courts employ the steps set out by the Supreme Court in *Neil v. Biggers*, 409 U.S. 188 (1972), and adopted by our supreme court in *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989). The circumstances to be considered in evaluating an identification include: (1) the opportunity the victim had to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the victim at the identification confrontation; and (5) the length of time between the crime and the identification confrontation. *Slim*, 127 Ill. 2d at 307-08.

¶ 19 Defendant concedes that an identification by a single witness can be sufficient to sustain a conviction, but further contends (relying on *People v. Allen*, 376 Ill. App. 3d 511, 535 (2007) and two law review articles) that Moran's identification is suspect given her "fleeting" opportunity to observe the offender and her testimony as to "some 'weapons focus' as she described the offender's hands in his pocket indicating he may have had a knife."¹ He also contends, citing no authority, that the unduly suggestive nature of the physical lineup must be considered in evaluating Moran's identification, as he was the only participant with long hair.

¶ 20 Here, we find the identifications of defendant by Moran to be sufficiently reliable. Moran testified that as she was walking south on Laramie Avenue, defendant approached her on his bicycle and asked if she had a cigarette. When she informed him she did not, defendant dismounted his bicycle in front of her and blocked her path on the sidewalk. Defendant then

¹ The two law review articles relied on by defendant are: Elizabeth F. Loftus et al., *Some Facts About Weapons Focus*, 11 L. & Hum. Behav. 55, 55 (1987) and Connie Mayer, *Due Process Challenges to Eyewitness Identification Based on Pretrial Photographic Arrays*, 13 Pace L. Rev. 815, 849-50 (1994).

demanded Moran give him her purse. Defendant grabbed the strap of Moran's purse, effectively pulling her towards him so they were "face to face." At this time in the early evening, the street lights were illuminated on Laramie Avenue and Moran described the lighting as "bright." Under these circumstances, the trial court could reasonably conclude that Moran had a sufficient opportunity to view the offender and that her level of attention was sufficiently focused on the offender, thus satisfying the first two factors.

¶ 21 In reaching this conclusion, we observe that defendant suggests that Moran may have been suffering from "weapons focus," *i.e.*, the idea that "[w]eapons divert the witness's focus away from the perpetrator's identifying characteristics," citing a number of articles in support. These materials, however, do not qualify as citation of relevant authority on appeal (*People v. Heaton*, 266 Ill. App. 3d 469, 477 (1994)), nor were they brought to the attention of, or considered by, the trial court, or subjected to cross-examination by the State (*People v. Mehlberg*, 249 Ill. App. 3d 499, 532 (1993)). A reviewing court must determine the issues before it on appeal solely on the basis of the record made in the trial court, and since the evidence in the secondary materials cited is not contained therein, we will not consider these materials in our review of this matter. *Id.* at 532.

¶ 22 Further, despite defendant's claim of "weapons focus," the evidence does not demonstrate that Moran's attention was distracted by the implied movement of a knife within defendant's pocket. Moran was able to provide a description of defendant to the officer who responded to the call and the officer was able to locate a photograph of defendant matching the description. That photograph of defendant was then utilized in the photographic array. Although there is conflicting testimony as to whether Moran described the offender as wearing eyeglasses, the

presence of discrepancies or omissions in a witness's description of the offender do not in and of themselves generate reasonable doubt as long as a positive identification has been made. *Slim*, 127 Ill. 2d at 309. Here, the remainder of Moran's description, including the offender's race and hairstyle, was consistent with defendant's appearance, and she later made multiple positive identifications of defendant. Accordingly, the third factor is satisfied.

¶ 23 Moran also portrayed a high level of certainty in her identifications of defendant, the first of which occurred only five days after the offense, thus sufficiently satisfying the fourth and fifth factors. Moran identified defendant in a photographic array, indicating to the detective that she was either 99% or 80% sure, but that she wanted to confirm her identification by seeing the individual from the photograph in person. The next day, Moran viewed a physical lineup where she, without hesitation, identified defendant before she "even [got] all the way into the room." Moran confirmed her identification of defendant again at trial. Although defendant contends that Moran's identification is unreliable due to the suggestiveness of the physical lineup, we note that this matter was presented to the trial court, which observed that there was some conflict in the testimony as to where Moran was standing as she viewed the lineup, and whether she would have been able to tell that defendant had a ponytail and that the other participants in the lineup did not. The court then resolved this discrepancy in favor of the State, determining that it did not affect the credibility of her positive identifications of defendant as the offender, and it is not our prerogative to substitute our judgment for that of the trial court on such issues. *Sutherland*, 223 Ill. 2d at 242; *Bannister*, 378 Ill. App. 3d at 39.

¶ 24 Based on our review of the relevant factors and viewing the evidence in the light most favorable to the prosecution, we find that the trial court could have reasonably concluded that the evidence was sufficient to prove defendant's identity as the offender beyond a reasonable doubt.

¶ 25 Defendant, however, contends that a number of discrepancies in Moran's testimony combine to demonstrate that her testimony was unreliable. He specifically refers to her testimony of exiting the train at 5:08 p.m. daily, when "anyone with experience in Chicago" knows that "CTA trains are not on time every single day." He also points out that Moran testified the photograph of the physical lineup, which was taken from a side view, was "exactly" how she viewed the lineup, while Detective Wojtowicz testified "more reasonably" that the photo did not accurately present how Moran viewed the lineup. Finally, defendant asserts that Moran testified that the photographic array and lineup advisory forms were described to her before she read them herself, while Detective Wojtowicz explained that he merely handed the forms to her to review before asking if she understood them.

¶ 26 Defendant maintains that the combination of these discrepancies indicates that Moran was "imprecise with the truth" and was merely "seek[ing] to provide the prosecution and judge with what she thinks will help secure a conviction." We disagree. In our view, none of these minor discrepancies, nor their combination, destroy the credibility of Moran's positive identification of defendant in the photographic array, at the physical lineup, or at trial, nor do they raise a reasonable doubt of defendant's guilt of the charged offenses. See *People v. Reed*, 80 Ill. App. 3d 771, 779-80 (1980) ("Minor discrepancies in the testimony of an eye witness do not destroy his credibility."). The alleged discrepancies, including the precise minute that Moran exited the train and the manner in which the advisory forms were presented to Moran, are

collateral in nature and do not destroy her credibility as a witness. See *id.* at 780. Although defendant attempts to discredit Moran's identification with the testimony indicating that she was not absolutely sure that defendant was the offender upon seeing the photographic array, "courts explicitly sanction care in identification[s]" and here, we note that Moran provided no inconsistent identifications, and later identified defendant without hesitation in the lineup and at trial. *People v. Thomas*, 72 Ill. App. 3d 186, 196 (1979).

¶ 27 Defendant additionally contends that the electronic monitoring evidence introduced some doubt as to Moran's identification because it demonstrated that defendant arrived at home at 5:25 p.m., while Officer Lewandowski testified that Moran had informed him the incident occurred at 5:25 p.m. We note, however, that the officer explained that 5:25 p.m. was not an exact, but rather an "approximate time," and no evidence was introduced as to how Moran knew or estimated the time of the incident, other than its relationship to the time she regularly exits the train. As such, we find this discrepancy on a collateral matter insufficient to destroy Moran's credibility and positive identification of defendant as the offender. *Reed*, 80 Ill. App. 3d at 779-80.

¶ 28 Further, given the evidence that defendant's home was in close proximity to the location of the offense, his use of a bicycle, and Moran's belief that the offender fled west on 24th Street, the trier of fact could have reasonably concluded that defendant could have reached his home in a short period of time after the incident. In any event, the significance of the timing of the incident and defendant's proximity to the scene when the crime was committed was fully explored at trial and resolved by the trial court in favor of the State. Where the trier of fact, who has the opportunity to observe the demeanor of the witnesses, renders a decision based upon

credible and substantial evidence which is sufficient to convict, we may not set aside the finding of guilt merely because the trier of fact chose to resolve the minor inconsistencies in favor of the State. *Id.* at 781-82.

¶ 29 Defendant finally asserts that the evidence was insufficient because the police did not recover a bicycle, leather jacket, or glasses from defendant, nor did they obtain any video footage from the area in which the incident occurred. We note, however, that defendant presents no authority requiring such evidence. Indeed, the absence of physical evidence corroborating an eyewitness's identification is not in itself a reason for reversal, since, as previously stated, a single eyewitness identification can sustain a conviction. *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23. Thus, where, as here, the trier of fact finds identification testimony credible, a lack of physical evidence has no bearing on defendant's conviction, and does not raise a reasonable doubt as to defendant's guilt. *Id.*

¶ 30 We therefore conclude that the evidence, viewed in a light most favorable to the State, was not so "unsatisfactory, improbable or implausible" to raise a reasonable doubt as to defendant's guilt and we affirm the judgment of the circuit court of Cook County. *Slim*, 127 Ill. 2d at 307.

¶ 31

CONCLUSION

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

¶ 33 Affirmed.