2014 IL App (1st) 130144-U

FIFTH DIVISION
NOVEMBER 21, 2014

No. 1-13-0144

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

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 11594
	)	
PAUL TURNER,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's residential burglary conviction affirmed over his challenge to the sufficiency of the evidence.

¶ 2 Following a bench trial, defendant, Paul Turner, was found guilty of residential burglary, then sentenced to eight years' imprisonment as a Class X offender. On appeal, defendant challenges the sufficiency of the evidence to sustain his conviction.

¶ 3 At trial, the State presented the testimony of 20-year-old Kenneth Franklin, who testified that he lived in the basement apartment of the three-flat located at 2709 West Congress Parkway

in Chicago with his mother, sister and niece. On July 8, 2011, he left the apartment around 9 a.m., and, when he returned shortly before 3 p.m., he noticed that the front door was slightly ajar. He opened the screen door, and observed defendant, who he identified in open court, inside his home. Kenneth was able to see defendant's face and white shirt through a six-inch opening in the doorway before defendant slammed the door in his face. Kenneth called 911, and described defendant as an older male wearing a white t-shirt.

¶ 4 Kenneth then called his mother, Taronda Franklin,[1] and walked through the gangway to the backyard where he observed defendant heading towards the alley. Defendant said, "It wasn't me" and Kenneth followed him as he walked at a fast pace down the alley. Kenneth observed defendant walk over to a backpack that was on the ground about two houses down from his home, pick it up, and placed it on his back. He followed defendant for about two more blocks until the police arrived. The officers searched the backpack that defendant was carrying and recovered a remote control device, television cords, and an electronic bracelet. Kenneth testified that the cords and remote belonged to his family, but the electronic monitoring bracelet did not.

¶ 5 Taronda Franklin testified that she lived in the apartment at 2709 West Congress Parkway, and, around 3 p.m. on July 8, 2011, she left work after receiving a phone call from Kenneth. She arrived home to find the front door damaged, the bolt hanging off the door, and wood on the floor. No one was at home when she entered, but the back door was open. Taronda walked to the back door and observed a television set lying face down in the grass in the backyard. She then proceeded to her daughter's bedroom and observed that her television, cable

[1] Ms. Franklin is referred to by both "Taronda" and "Yolanda" in the record. For the sake of consistency, we will refer to her as "Taronda," the name used in the charging instrument.

cords and remote were missing. Taronda also noticed that her bedroom door—which she had locked earlier that morning—was open, wood from the door had been broken off, and the doorknob was broken. Taronda did not give defendant permission to enter her home or remove items from within.

¶ 6 Chicago police officer Anderson testified that she and her partner, Officer Bilkey, responded to a call regarding a burglary shortly after 3 p.m. on July 8, 2011. After speaking with Taronda, who was on the phone with Kenneth, the officers relocated to Washtenaw Avenue and Harrison Street, where Kenneth flagged them down and told them that defendant was the man who broke into his home. Officer Anderson detained defendant, and conducted a custodial search of his person and the backpack he was carrying. Inside the backpack, the officer recovered television cables, a remote, and an electronic monitoring bracelet. Kenneth identified the cables and remote as belonging to his sister, and defendant stated that the electronic monitoring bracelet was his and that he had become tired of wearing it.

¶ 7 Detective Thomas Karpinski testified that he was assigned to investigate the burglary at 2709 West Congress Parkway. When the detective interviewed Kenneth, he told him that he observed defendant exit his backyard, enter the alley and pick up a backpack. When questioned about a notation in his report reading "saw other guy down alley," Detective Karpinski clarified that he meant that defendant had indicated to Kenneth that there was "another guy" in the alley, but that Kenneth, who was following defendant, did not observe the other person.

¶ 8 Defendant testified that about 3 p.m. on July 8, 2011, he was in the alley behind 2709 West Congress Parkway "relieving [himself] and getting high." He was homeless at the time and on his way to a nearby shelter. Defendant was wearing a white undershirt with a red shirt over it,

and blue jogging pants with white stripes. He was in the alley for four or five minutes when a black male ran by him and dropped a backpack. Defendant then observed Kenneth come into the alley and ask him if he had seen anyone "go past here." Defendant responded affirmatively, and pointed in the direction that he observed the man running. Kenneth paused for a minute, then accused defendant of being "the lookout man." They began to argue and defendant picked up the backpack and walked out of the alley. He claimed that the backpack was not his, and he did not know what was inside of it.

¶ 9 Defendant further testified that Kenneth was still walking with him when the police arrived. Officer Anderson handcuffed him and placed him in the police vehicle, then searched the backpack and found the cables and remote. The officer removed him from the vehicle, searched his person, and found the electronic monitoring bracelet in his pocket, which the officer then placed into the backpack. After defendant's testimony, the court admitted evidence of his 2004 felony conviction for attempted residential burglary.

¶ 10 At the close of evidence and argument, the trial court found defendant guilty of residential burglary, concluding that the State's witnesses testified "credibly and truthfully." Defendant now appeals the propriety of the trial court's judgment, contending that the evidence was insufficient to support his conviction.

¶ 11 When reviewing a challenge to the sufficiency of the evidence, " 'the relevant question is 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.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A reviewing court may not substitute its judgment for that

of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses (*People v. Young*, 128 Ill. 2d 1, 51 (1989)), and will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of a defendant's guilt (*Collins*, 106 Ill. 2d at 261).

¶ 12 In this case, defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt because Kenneth's testimony identifying him as the individual inside the home was unreliable, and because the evidence supports his, and not Kenneth's, version of events. The State responds that Kenneth's identification was not unreliable and that the evidence adduced at trial established defendant's guilt beyond a reasonable doubt.

¶ 13 To sustain a conviction for residential burglary, the State must prove that defendant knowingly and without authority entered someone else's dwelling with the intent to commit a theft therein. 720 ILCS 5/19-3(a) (West 2010). In addition to the elements of the crime, the State bears the burden of proving beyond a reasonable doubt the identity of the person who committed it. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Vague and doubtful identification testimony is insufficient to sustain a criminal conviction; however, the identification testimony of a single witness is sufficient to sustain a conviction if the witness viewed the accused under circumstances that allowed for a positive identification. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995); *Slim*, 127 Ill. 2d at 307. Ultimately, the reliability of a witness's identification testimony is a question for the trier of fact. *In re Keith C.*, 378 Ill. App. 3d 252, 258 (2007).

¶ 14 In assessing a witness's identification testimony, courts employ the factors set forth by the United States Supreme Court in *Neil v. Biggers*, 409 U.S. 188 (1972), which include: (1) the opportunity the witness had to view the perpetrator 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 certainty of the witness's identification; and (5) the length of time between the offense and the witness's identification. *Lewis*, 165 Ill. 2d at 356; *Slim*, 127 Ill. 2d at 307-08.

¶ 15 With respect to the first factor, defendant argues that Kenneth's opportunity to view the offender was poor, noting that his observations were made in "a basement vestibule which would not have been well lit," and that he observed defendant through a six-inch cracked doorway for only a "couple seconds." We note that defendant's comments about the lighting was speculative, and the record reflects that Kenneth observed defendant in his home around 3 p.m. and did not indicate any problem with the lighting conditions which would have interfered with his ability to observe defendant. To the contrary, Kenneth testified that he was able to observe defendant's face and clothing before the door was slammed in his face. However, even if the lighting and length of observation were less than ideal, these conditions do not necessarily undermine a witness's identification testimony. See, *e.g.*, *People v. Moore*, 264 Ill. App. 3d 901, 911 (1994) (finding that witness had sufficient opportunity to view the offender when he viewed his face for a "few seconds" in a dark viaduct); *People v. Herrett*, 137 Ill. 2d 195, 201, 204 (1990) (finding that the witness had sufficient opportunity to view the offender when he saw him for "several seconds" in a "dim[ly]" lit shop). Here, the circumstances surrounding Kenneth's ability to view defendant were not so unreliable that they undermined his identification testimony.

¶ 16 Defendant asserts that the second factor also weighs against the reliability of Kenneth's identification. He claims that Kenneth's attention to the offender was "compromised" by the surprise of finding someone in his home and having the door slammed in his face. However, as the State notes, the record shows that Kenneth opened the screen door and noticed that the front

door was ajar. Under these circumstances, it would be reasonable to assume that Kenneth was on high alert as he looked into the house. Kenneth testified that he observed defendant's face and white shirt, and was able to describe him when he called the police immediately thereafter. Under these circumstances, the second factor weighs in favor of the reliability of Kenneth's identification.

¶ 17 Defendant also asserts that the third factor, the accuracy of Kenneth's prior description of the offender, weakens the reliability of his identification. At trial, Kenneth testified that he provided a description of defendant as an older male wearing a white shirt. Defendant contends that he, by contrast, was wearing a red shirt and was 38 years of age. Although defendant claims that this description in inconsistent with his appearance, the record shows that Kenneth was a teenager at the time of the incident, and defendant was wearing a red shirt over a white shirt. On this record, we do not find Kenneth's description inconsistent with defendant's appearance. Moreover, courts have consistently recognized that vague or discrepant descriptions do not necessarily render identifications unreliable because very few witnesses are trained to be keen observers. See, *e.g.*, *People v. Williams*, 118 Ill. 2d 407, 413-14 (1987); *People v. Nims*, 156 Ill. App. 3d 115, 121 (1986); *People v. Bias*, 131 Ill. App. 3d 98, 104-05 (1985). The presence of discrepancies or omissions in a witness's description of the offender do not, in and of themselves, generate a reasonable doubt as long as a positive identification has been made. *Slim*, 127 Ill. 2d at 309. Here, Kenneth's description was consistent with defendant's appearance, and he later made multiple positive identifications of defendant, including one identification just minutes after initially observing him. There is no reasonable doubt arising from Kenneth's initial description of the offender.

¶ 18 Defendant apparently concedes that the fourth *Neil* factor supports the reliability of Kenneth's identification testimony, but contends that it is "the least important factor by far." In support of his claim that this factor has been "discredited," defendant cites *People v. Allen*, 376 Ill. App. 3d 511, 524 (2007); *People v. Tisdel*, 338 Ill. App. 3d 465, 467 (2003); a number of foreign and federal cases; and an article. We are unpersuaded by defendant's citation to federal and foreign jurisdictions (*People v. Reatherford*, 345 Ill. App. 3d 327, 340 (2003)), and to secondary source material (*People v. Heaton*, 266 Ill. App. 3d 469, 477 (1994)). The remaining authority—*Allen*, 376 Ill. App. 3d at 524, and *Tisdel*, 338 Ill. App. 3d at 467—both concern whether the court improperly excluded proposed expert witness testimony regarding the reliability of eyewitness identifications. Defendant never attempted to elicit such expert testimony at trial here, and the cases cited are thus distinguishable and inapplicable to the case at bar. This factor weighs in favor of the reliability of the identification made by Kenneth, who demonstrated a high level of certainty when he identified defendant, testified that he recognized him as the man who had been inside his home minutes before, and reiterated his positive identification of defendant at trial.

¶ 19 The fifth factor, the length of time between the offense and the witness's identification, also supports the reliability of Kenneth's identification. Kenneth observed defendant initially in the doorway of his home, then observed him again and identified him minutes later. Defendant contends that this identification was "not based on who Kenneth observed at the door, rather it was based on [defendant's] proximity to the offense." This claim was rejected by the trial court, which was in the best position to resolve conflicts in the testimony. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 20 After reviewing the relevant factors, we cannot conclude that Kenneth's identification testimony was insufficient to prove defendant's guilt beyond a reasonable doubt; rather, a reasonable jury could have found Kenneth's testimony sufficient to establish his identity as the offender. Under these circumstances, we may not substitute our judgment for that of the trier of fact. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009).

¶ 21 Defendant further contends that the evidence supports his version of events, pointing out that Detective Karpinski wrote "saw other guy down the alley" in his report and that defendant was observed in the backyard while the backpack was a couple houses away from the scene. He claims that in these circumstances, it is more logical that another offender ran by him and dropped the backpack. The trial court, however, is not obligated to accept any possible explanation compatible with defendant's innocence and elevate it to the status of reasonable doubt. *Siguenza-Brito*, 235 Ill. 2d at 229. Here, the court rejected defendant's version of events, and we do not find its judgment so unreasonable or improbable as to raise a reasonable doubt of defendant's guilt.

¶ 22 Defendant finally contends that the testimony showing that he did not run, and instead engaged in conversation with Kenneth before the police arrived, is inconsistent with behaviors one would expect from a guilty individual. This court has held that, although consciousness of guilt can be inferred from flight, the converse, that failure to flee is indicative of innocence, is not a necessary corollary. *People v. Zarate*, 264 Ill. App. 3d 667, 675 (1994). As this court observed in *Zarate*, 264 Ill. App. 3d at 675-76, "[d]efendant would not be the first criminal, nor will he be the last, to conduct himself as though he were unaware of what happened, confident in

the belief that he could thereby escape suspicion." On the record before us, there is no reasonable doubt of defendant's guilt arising solely from his failure to flee.

¶ 23 Moreover, our function as a reviewing court is not to retry defendant, but rather to inquire 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 a crime beyond a reasonable doubt. *Zarate*, 264 Ill. App. 3d at 676. After reviewing the evidence in that light, we cannot say that the trial court's determination was so unreasonable or improbable as to raise a reasonable doubt of defendant's guilt. *Collins*, 106 Ill. 2d at 261. We therefore affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.