

No. 1-10-2319

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. 09 CR 16556
)	
RONALD DILLARD,)	Honorable
)	James D. Egan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Howse and Justice Lavin concurred in the judgment.

ORDER

- ¶ 1 *Held:* Witnesses' identification testimony was sufficient to identify defendant as one of the robbers and sustain his robbery conviction.
- ¶ 2 Following a joint bench trial with codefendant Anthony Ousley, who is not a party to this appeal, defendant Ronald Dillard was found guilty of robbery and sentenced to eight years' imprisonment, consecutive to a six-year sentence for an unrelated robbery conviction (09 CR 16124). On appeal, defendant contends that the identification evidence provided by the State's witnesses was insufficient to establish his guilt beyond a reasonable doubt.

¶ 3 At trial, Sami Mohiudin, the manager of VIP Wireless, located at 3206 North Pulaski Road in Chicago, testified that at 5:30 p.m. on July 22, 2009, he was working with Yosselin Hernandez when defendant and codefendant, whom he identified in court, entered the store and, for about 10 minutes, asked questions about various Boost Mobile phones and prepaid service plans. Sami was suspicious of the long time defendant spent looking at a packaged cell phone so he returned it to the Boost Mobile display case and gave defendant a display unit to examine. Defendant seemed upset, but continued to ask questions about the phone.

¶ 4 Shortly thereafter, codefendant pulled a gun from a white plastic bag, pointed it at Sami and announced a robbery. Codefendant then ordered him to open the cash register, and when Sami complied, defendant took all the money. Defendant then put on latex gloves, placed the packaged phones from the Boost Mobile display case into another white plastic bag and left the store. Before codefendant left, he demanded more money from Sami, who gave up the money in his wallet, then directed Sami and Yosselin into the back room and ordered them not to come out.

¶ 5 Sami further testified that on August 22, 2009, two police officers came to the store with a photo array of six individuals from which he identified codefendant as "the one that put the gun on me." On August 28, 2009, he viewed a lineup at Chicago police Area 5 headquarters and identified defendant as "the one that came around the display cases and he took the money and he took the phones." On September 24, 2009, he viewed another lineup at Area 5 headquarters and identified codefendant as "the one that took the gun out of the bag and pointed it at me."

¶ 6 On cross-examination, Sami maintained that he had a clear view of the individuals and, specifically, that "Ronald Dillard he had scars on his face." He stated that the "first individual, the individual with the gun" was in his thirties, about six feet, two inches tall, 230 pounds, wearing a do-rag, sunglasses and a yellow short-sleeve shirt. He stated that the second

individual, "the individual who went in who did not have a weapon" was also in his thirties, about six feet, one inch tall, 235 pounds, wearing a red baseball cap. He further stated that he observed both individuals from the back of the store, then clarified on redirect examination that he was "at the desk right by the cash register," not in the back room. Sami added that he recognized defendant when he viewed the photo array, but did not pick him out because he was not 100 percent sure and, notwithstanding, he was able to identify defendant in a subsequent lineup.

¶ 7 Yosselin Hernandez testified to a similar sequence of events as Sami, and she identified codefendant in court as the first individual who came into the store and defendant as the second individual who came in minutes later. Yosselin further testified that on August 22, 2009, police officers came to the store with a photo array of six individuals from which she identified codefendant as the person who "pulled out the gun" and defendant as the other person. On August 28, 2009, she viewed a lineup at Area 5 headquarters and identified defendant as the person who "took everything from the store." On September 24, 2009, she viewed another lineup at Area 5 headquarters and identified codefendant as the person who "pulled out the gun." Yosselin then testified as to the events as they unfolded on the surveillance video recording of the incident, while it was played for the court.

¶ 8 On cross-examination, Yosselin gave physical descriptions of defendant and codefendant that matched those given by Sami except as to defendant's weight, which she estimated at 205 pounds. She also specified that defendant "had scars on his face."

¶ 9 Thereafter, the State rested its case-in-chief. The trial court admitted all of the State's exhibits into evidence, then denied the motions of defendant and codefendant for a directed finding. Neither defendant, nor codefendant testified, and they rested without presenting any evidence.

¶ 10 After closing arguments, the trial court found defendant and codefendant guilty of robbery. In so finding, the trial court credited the testimony of the State's witnesses "who had a very ample chance" to observe defendant and codefendant within a "very short distance."

¶ 11 In this court, defendant contends that the State failed to prove beyond a reasonable doubt that he was one of the robbers where the State's witnesses testified that he was the one with scars on his face, but photographs admitted into evidence show that he did not have such marks. Defendant acknowledges that both witnesses testified that he was the robber wearing a red baseball cap, as depicted in the surveillance video recording, but he complains that the video recording does not show the face of the man wearing the red baseball cap to a degree that permits identification. He further complains that both witnesses described him as heavier than what he reported in the presentence investigation report.

¶ 12 When defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question on review is whether, after considering 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. *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). In a bench trial, it is for the trial judge to determine the credibility of the witnesses' identification testimony, weigh the evidence and draw reasonable inferences therefrom. *People v. Jefferson*, 183 Ill. App. 3d 497, 503-04 (1989). The trial court's judgment will not be set aside on review unless the evidence is so unsatisfactory, improbable or implausible as to justify a reasonable doubt as to defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 13 The State bears the burden of proving beyond a reasonable doubt the identity of the person who committed the crime. *Slim*, 127 Ill. 2d at 306. An identification of the accused by a single witness is sufficient to sustain a conviction, even in the presence of contradicting alibi

testimony, provided that the witness had an adequate opportunity to view the accused and that the in-court identification is positive and credible. *Slim*, 127 Ill. 2d at 307. We generally evaluate the reliability of identification testimony using the factors set forth by the Supreme Court in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972): (1) the opportunity the victim had to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's 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.

¶ 14 Defendant acknowledges this analytical standard, but claims that the State has overlooked the "corollary fact" that the more favorable a witness's opportunity to observe the accused, the more reasonable it is to expect more detail in the identification of the accused. Thus, in challenging the reliability of the identification testimony, defendant points to various weaknesses and inconsistencies in the general descriptions of the offenders given by the State's witnesses, which, he maintains, reveal a weight discrepancy and the presence of facial scars, "which is not true of the photographs in evidence of Mr. Dillard."

¶ 15 Although defendant faults the witnesses' inability to "recall obvious detail," we observe that our supreme court has recognized that "[i]t has consistently been held that a witness is not expected or required to distinguish individual and separate features of a suspect in making an identification." *Slim*, 127 Ill. 2d at 308-09. Discrepancies between a witness's description of the accused and defendant's physical appearance do not, alone create a reasonable doubt as long as a positive identification has been made. *Slim*, 127 Ill. 2d at 309. Rather, any discrepancies concerning physical characteristics are not fatal but merely affect the weight to be given the identification testimony. *People v. McAfee*, 332 Ill. App. 3d 1091, 1096 (2002). These principles reflect the reality of the human condition recognized by the supreme court in stating:

"Considering that very few persons are trained or keen observers and considering the stress under which, in criminal cases particularly, impressions of witnesses have been formed, discrepancies of this character are not uncommon." *Slim*, 127 Ill. 2d at 311 (and cases cited therein).

¶ 16 Here, the trial court credited the identification testimony provided by the witnesses, and noted their ample opportunity to view the offenders at a short distance. In addition, the photographs of defendant that are included in the record were used as visual aids during the trial testimony (*People v. Flores*, 406 Ill. App. 3d 566, 573 (2010)) and reveal that defendant has scars or marks on his face, and to which both witnesses specifically testified.

¶ 17 Likewise, defendant's assertion that the surveillance video recording does not show the face of the man wearing the red baseball cap to a degree that permits his identification, ignores the clear identification testimony that the trial court credited. A positive identification by a witness can be sufficient even though the witness provides only a general description based on the total impression the accused's appearance made. *Slim*, 127 Ill. 2d at 309; accord *People v. Nims*, 156 Ill. App. 3d 115, 121 (1986). Both witnesses testified that they observed defendant's face during the incident and identified him in court as one of the robbers. Notwithstanding defendant's issue with the witnesses' general descriptions, the trial court found the witnesses to be credible in their identification of defendant, and we will not substitute our judgment for that of the trial court. *People v. Tomei*, 2013 IL App (1st) 112632, ¶¶ 51-52.

¶ 18 Defendant makes much of the 65-pound difference in Sami's estimation of defendant's weight, but the significant issue is not whether there is a discrepancy between Sami's estimate and defendant's actual weight, but whether, under the facts and circumstances, an adequate opportunity existed for a definite identification of the accused. *People v. Nichols*, 32 Ill. App. 3d 265, 268 (1975). Here, where the circumstances permitted that opportunity, and the witnesses made consistent positive identifications of the offenders, we find that the weight discrepancy did

not destroy the credibility of the identification. *People v. Chatman*, 32 Ill. App. 3d 506, 510 (1975).

¶ 19 Lastly, the cases cited by defendant are factually distinguishable and have no application here. For example, *People v. Allen*, 376 Ill. App. 3d 511, 524 (2007), involved proffered expert testimony regarding the reliability of eyewitness testimony, which is not at issue here. *Tomei*, 2013 IL App (1st) 112632, ¶ 55. In *People v. Williams*, 52 Ill. 2d 455, 463 (1972), a lineup was viewed simultaneously by several witnesses, but in this case, nothing in the record supports defendant's position that the photo arrays were suggestive for the same reason. In fact, our examination of the photo arrays that are included in the record shows that Sami and Yosselin made their respective observations on the same date, but at different times.

¶ 20 Defendant also cites *People v. Holiday*, 47 Ill. 2d 300, 307 (1970), for the general proposition that photographic lineups are not favored when other methods of identification, such as in-person lineups, are feasible. However, after *People v. Curtis*, 113 Ill. 2d 136 (1986), a *per se* rule no longer exists against the use of photographic lineups when a defendant is in custody and an in-person lineup may be feasible. *People v. Seesengood*, 266 Ill. App. 3d 351, 356 (1994). Thus, *Holiday* provides no support for defendant's suggestion that the use of the photo array method played a part in his alleged misidentification.

¶ 21 Also, the fact that Sami did not initially pick defendant out of the photo array because he was not entirely sure, does not cast doubt on his subsequent positive identification (*People v. Thomas*, 72 Ill. App. 3d 186, 196 (1979)), but reflects his conscientiousness in viewing the photographs to make certain that he identified the correct individual as one of the robbers (*Jefferson*, 183 Ill. App. 3d at 501). We are further unpersuaded by defendant's attempt to analogize his case to *People v. Ford*, 195 Ill. App. 3d 673, 676-77 (1990), involving a conviction which the court made clear it would not reverse based on any single *Biggers* factor, but would, in

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view of the collective weaknesses and discrepancies, *e.g.*, general clothing descriptions by a veteran undercover narcotics officer, who provided height and weight differences, and omitted any mention of defendant's severe facial scarring. The facts there are readily distinguishable from those in the case at bar.

¶ 22 After considering the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found defendant guilty beyond a reasonable doubt of robbery based on the identification testimony of the witnesses, and we affirm the judgment of the circuit court of Cook County to that effect. *Tomei*, 2013 IL App (1st) 112632, ¶ 61.

¶ 23 Affirmed.