2013 IL App (1st) 111993-U

SIXTH DIVISION
JUNE 28, 2013

No. 1-11-1993

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 re EDGAR M., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinios,	)	Cook County.
	)	
Petitioner-Appellee,	)	No. 11 JD 700
	)	
v.	)	Honorable
	)	Lori Wolfson,
	)	Judge Presiding.
Edgar M.,	)	
Respondent-Appellant).	)	

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* Where a victim positively identified respondent near the scene of the offense, only a few minutes after the offense occurred, and where the victim had a sufficient opportunity to view respondent during the offense, we find that there was sufficient evidence to find the victim's identification reliable. Where defense counsel did not indicate a witness would testify to anything outside of her affidavit at a posttrial hearing, we find that it was not error to accept the affidavit in place of live testimony. Where respondent was sentenced to an indeterminate term in juvenile detention, we find it was within the trial court's discretion not to give respondent credit for time served on electronic monitoring at home.

¶ 2 Respondent Edgar M., a 16-year old minor, was found to be delinquent and adjudicated a

ward of the State. Following a bench trial on May 3, 2011, the trial court found respondent guilty of the four counts alleged in the State's petition for wardship: (1) robbery, (2) theft from a person, (3) aggravated battery, and (4) battery.

¶ 3 On June 16, 2011, at a post-adjudication hearing, the trial court sentenced the 16-year-old respondent to the Illinois Department of Juvenile Justice for an indeterminate term not to extend past the respondent attaining age 21.

¶ 4 On this direct appeal, respondent argues that: (1) his adjudication was based on insufficient evidence that he was actually the perpetrator, (2) the trial court violated his due process rights by preventing him from presenting live testimony at his post-adjudication hearing; and (3) he is entitled to credit for time considered served, including time spent on electronic monitoring at home.

¶ 5 For the following reasons, we affirm.

¶ 6 BACKGROUND

¶ 7 This case concerns the attack and robbery by three young men of the victim, Kyle Brandner, as he was walking through Warren Park at night in February 2011. Respondent is alleged to be one of the attackers. The details of the attack are provided below, in the section describing the State's evidence.

¶ 8 I. Pretrial Proceedings

¶ 9 On February 22, 2011, the State brought a petition for adjudication of wardship against respondent which alleged that respondent was delinquent and charged him with: (1) robbery for knowingly taking Kyle Brandner's property with force or the threat of force (720 ILCS 5/18-1

West 2008); (2) theft from a person with intent to permanently deprive Brandner of property not exceeding $500, including his cell phone and keys (720 ILCS 5/16-1(a) West 2008); (3) battery for knowingly making physical contact with Brandner in an insulting or provoking way, namely, by kicking and stomping Brandner (720 ILCS 5/ 12-3 West 2008); (4) aggravated battery for committing a battery against Brandner on public property in Warren Park in Chicago (720 ILCS 5/12-4(b)(8) West 2008).

¶ 10 No written pretrial motions were filed. However, at a pretrial hearing on February 22, 2011, the defense moved to dismiss the petition for lack of probable cause, and after a hearing the trial court found probable cause. The State then moved to place respondent on electronic monitoring claiming that the electronic monitoring was an urgent and immediate necessity to protect the public. After a hearing, the trial court found that there was an urgent and immediate necessity, and placed respondent on electronic monitoring until the next hearing. After a pretrial hearing on March 29, 2011, the trial court vacated respondent's electronic monitoring order based on a positive report of his conduct.

¶ 11 II. Evidence at Trial

¶ 12 The State's evidence consisted of testimony from two witnesses: Kyle Brandner, the victim; and the arresting police officer, Officer Michael Kumiga of the Chicago Police Department.

¶ 13 Brandner testified that, as he was walking home around 10 p.m. on the night of February 18, 2011, three individuals approached him in Warren Park. There were small lights in the park, as well as lights in a nearby parking lot and some streetlights in the alley behind the park that

illuminated the scene. The three individuals who approached him said, "King Love," and he replied he was not in a gang and did not have anything to do with gangs. At this point, the group "seemed friendly for a minute," but he was nervous and decided he better leave. Before he left, he asked them if they had a light, but none of them did.

¶ 14 Brandner testified that, during this conversation, the group stood about two to three feet from him, and he was able to observe each of their faces clearly. Respondent was wearing a hoodie sweatshirt and blue pants. At first, respondent had the hood over his head, but Brandner could still observe his face clearly because "the light had illuminated their faces."

¶ 15 Brandner testified that, when he attempted to leave, one of the group said, "Hey, wait," and, when he turned around, this person punched him in the face. Respondent then also punched him in the face. He staggered back, fell and that is when all three of the group began kicking him in the face and head. He was looking up at the individuals as each of them kicked him. Brandner's hands were flailing, and he could not really protect himself. They ripped the pockets from his pants and removed everything from the pockets, including his phone, keys and cigarettes. Once they removed his property, he tried to sit up but was kicked in the face, and respondent and another person placed their feet on his throat and said, "Don't get up."

¶ 16 Brandner testified that he did not observe anyone else nearby during the attack. After the group walked away, he stood up, and followed them for a while then he decided to walk to a friend's house. However, after he exited the park, he observed a parked police vehicle and approached the vehicle instead. He informed the officers what happened and provided them with descriptions of all three individuals. He informed the officers that one individual was a little

taller than Brandner and that the other two individuals were shorter than he was. The description he provided included their clothing, appearance, and that they were Hispanic. He observed the officers completing a contact card for each assailant.

¶ 17 Brandner testified that he rode with the officers in the police vehicle as they looked for the individuals. He observed respondent and the two other assailants, three to four blocks from where the attack occurred. As the police vehicle approached, one individual ran down an alley, while the officers stopped respondent and the third person. The officer ordered the two detained individuals to place their hands on the vehicle, and the officers shone lights on them.

¶ 18 The officer then asked him if these two individuals were the ones who had attacked him, to which he responded, "Yes." He identified respondent and the other individual based on their faces, their hair, their clothing, and their body, "basically everything about them." He testified: "I saw all three individuals and remember their faces clear as day." When he identified respondent, he was wearing the same clothing he was wearing during the attack: a hoodie sweatshirt, blue jeans, and "I believe, it was a gray shirt." He later identified respondent in open court as one of his assailants.

¶ 19 Brandner testified that his face was badly beaten, bruised and bloody from the attack and he went to the emergency room of a hospital on the night of the attack. His pants "were practically ripped off," and he never recovered his cellular telephone or house keys.

¶ 20 Officer Kumiga, the arresting officer, testified that on the night of February 18, 2011, he and his partner were completing paperwork in their police vehicle at the corner of Devon and Claremont Avenues, two blocks from Warren Park. Brandner approached Officer Kumiga's

vehicle shortly after 10 p.m. and informed Kumiga that three individuals had attacked him in Warren Park. Brandner looked "like he took a real good beating." Brandner's face was swollen and red; he had a cut lip; blood smeared across his face and hands, his pants were torn; his pockets were ripped; and his shirt was disheveled. Brandner informed Kumiga that his assailants were three Hispanic males, 16 to 20 years old. Two were dressed in dark sweatshirts and dark jeans, and the third was wearing a gray jacket and dark jeans. Neither Kumiga nor his partner completed contact cards for any of the three individuals, but he did send out a flash message with the descriptions of the individuals, including ages, clothing descriptions, ethnicities, and their direction of flight.

¶ 21 Officer Kumiga testified that Brandner asked the officers to take him home, but Kumiga requested Brandner to stay and help them look for the offenders. They then drove around looking for the offenders, and they located the three individuals approximately 10 minutes after Brandner first approached his vehicle. Kumiga and his partner apprehended two of the individuals while a third individual fled through an alley. The two detained individuals were both Hispanic and wearing dark, hooded sweatshirts and dark jeans. One individual was 16 to 18 years old, while the other was approximately 20 years old.

¶ 22 Officer Kumiga testified that he checked the two individuals for weapons and then conducted a "show-up" identification with Brandner while he was seated in the rear of the police vehicle, which had tinted windows and was separated from the front seat by a partition. The two individuals were laying across the hood of the police vehicle with the passenger side spotlight on the hood of the vehicle. Kumiga opened the partition so Brandner had a clear view of the two

individuals.

¶ 23 Officer Kumiga testified that he asked Brandner if the two individuals were the ones who attacked him in the park, and Brandner immediately replied, "Yes, both of them." Brandner did not hesitate in his identification. On cross-examination, Kumiga testified that he arrested both individuals at 10:18 p.m., approximately 13 minutes after Brandner first approached his vehicle. Officer Kumiga identified respondent in court as one of the individuals he arrested that night.

¶ 24 The State rested, and the trial court denied respondent's motion for a directed finding. Respondent then called Angelica Castillo, respondent's girlfriend, as a witness.

¶ 25 Castillo testified that she was with respondent at his home on the night of February 18, 2011. She remembered being with respondent that night because the next day respondent's mother told her that the police had arrested him. That evening, she and respondent made dinner, ate, and left his home around 10 p.m. As respondent walked Castillo home, they encountered a friend of his and a few other individuals who asked them to "go smoke." She replied no and left respondent at 10:05 p.m. She knew the time because she had just checked her cellular telephone. She did not recall what respondent was wearing, and she did not know the individuals whom respondent met. After leaving respondent, she arrived home at 10:30 p.m.

¶ 26 On cross-examination the State asked Castillo if she was in court to help respondent to which she said, "Yes." Castillo testified that she did not want to be around respondent's friends, and that is why she left respondent that night.

¶ 27 Respondent then testified on his own behalf that he was with his girlfriend, Angelica Castillo, around 10 p.m. on February 18, 2011. He had just arrived home from work and was

cooking. Castillo wanted to return to her home because she had school in the morning, and her father had called several times. He agreed to walk Castillo home and, on the way, he ran into a friend and a few other individuals. At this point, Castillo left because the individuals were drunk. However, respondent stayed and walked with his friend and the group. As he was walking down the street, a police vehicle passed him, and then reversed. An officer grabbed him and later arrested him. Respondent claimed that he had not attacked anyone that night.

¶ 28 On cross-examination, respondent testified that he had never used the phrase "King Love," and that Warren Park was the middle point between his home and where he was arrested that night.

¶ 29 III. Adjudication and Sentencing

¶ 30 At the close of the evidence and after closing arguments, the trial court found respondent guilty of (1) robbery, (2) theft of person, (3) battery and (4) aggravated battery. On May 26, 2011, respondent filed a posttrial motion for a new adjudication hearing. In support of the motion, respondent attached an affidavit from his mother, Maria Medrano, which described a conversation Medrano had with the victim following the trial. The trial court continued the post-adjudication hearing based on her affidavit.

¶ 31 At respondent's post-adjudication hearing on June 16, 2011, the trial court ruled that Medrano's affidavit could stand as testimonial evidence as long as Medrano was not going to testify to anything outside the affidavit. The defense did not object or indicate that Medrano would testify to anything outside of her affidavit, but when defense counsel attempted to call Medrano as a witness, the trial court refused to allow her to testify.

¶ 32 Medrano stated in her affidavit that she worked with Kyle Brandner at Hot Rod Grill, and that Brandner had never met her son. Brandner did not know Medrano was respondent's mother. On the day of her son's court date, Medrano realized Brandner was the victim of her son's alleged robbery. The day after her son's trial her co-worker informed her that Brandner came to the restaurant looking for her. The following day, Brandner returned to the restaurant and asked her if the two could talk. She asked him to speak with her outside, but Brandner wanted to speak in the kitchen so the two conversed there.

¶ 33 Medrano's affidavit stated that Brandner asked her to forgive him for what he did. She asked Brandner if her son actually committed the crime, and Brandner informed her that he was afraid of the police because they were pressuring him to appear in court. She informed Brandner that her son could not have committed the crime because he called Medrano from home to ask her how to cook a certain dish. Brandner then informed her he did not observe her son commit any crime and that the police pressured him to testify against her son. He informed her that he wanted to move to Wisconsin so he would not have to appear in court. He informed her that the police told him he had to testify against her son because the police had already arrested her son for robbing houses. He also informed Medrano that one of their co-workers, Rodney, told him if he knew the offender was not Medrano's son he had to do something because she had been crying and it was not fair to her son. He responded that is was too late, that he was afraid, but he was sure it was not Medrano's son who attacked him.

¶ 34 Medrano's affidavit stated that Brander hugged her and informed her he was sorry, but he did not know what to do. Right before he left the restaurant he said, "I lied in court when I said

that the people who beat me up were from the gang the Latin Kings. The only reason I mentioned the Latin Kings was because the police told me what to say." He informed her that he had no idea who actually attacked him.

¶ 35 The defense did call Brandner as a witness. He testified that he worked with respondent's mother at Hot Rod Grill, but never met respondent prior to the attack. He visited Medrano at Hot Rod Grill on May 5, 2011, two days after respondent's adjudicatory hearing because he thought Medrano was upset about her son's conviction. He and Medrano talked for about 45 minutes to an hour. Medrano informed him that her son could not have attacked Brandner because he called her for a recipe on the night of the attack. He informed Medrano it was too late for him to recant his testimony because the court had already heard the case and he could not subvert his oath.

¶ 36 Brandner testified that everything he testified to was true; that the police did not pressure him into identifying respondent, and that he never informed anyone that he did not actually know who attacked him.

¶ 37 In considering respondent's posttrial motion for a new adjudication hearing, the trial court found that portions of Medrano's affidavit were "totally baseless and without merit," and that Brandner's testimony was truthful and credible. The trial court denied respondent's motion and proceeded to sentencing. During sentencing, the trial court considered matters in aggravation and mitigation. The probation officer reported that respondent had been sentenced to juvenile detention in the past, and had been arrested thirteen times and convicted of two felonies. Respondent had been arrested for possession of cannabis, residential burglary, criminal defacement of property, criminal trespass, and underage possession of alcohol. Prior to

sentencing, respondent stated in mitigation that he was doing well in school and trying to change his life.

¶ 38 The trial court sentenced respondent to the Illinois Department of Juvenile Justice for an indeterminate sentence not to extend past age 21. Respondent filed a timely notice of appeal, and this direct appeal followed.

¶ 39 ANALYSIS

¶ 40 On appeal, respondent argues that: (1) his conviction was based on insufficient evidence that he was actually the perpetrator, (2) the trial court violated his due process rights by preventing him from presenting the live testimony of Medrano at his post-adjudication hearing; and (3) he is entitled to credit for time considered served, including time spent on electronic monitoring at home.

¶ 41 I. Sufficiency of Identification Evidence

¶ 42 Respondent argues that the State failed to prove his guilt beyond a reasonable doubt because the State failed to show sufficient evidence that he was actually the perpetrator.

¶ 43 A. Standard of Review

¶ 44 "When a defendant challenges the sufficiency of the evidence, the standard of review is whether, after viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. McGee*, 398 Ill. App. 3d 789, 793 (2010). ""The critical inquiry must be to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt."" *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318

(1979)).

¶ 45 "A reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *People v. Rowell*, 229 Ill. 2d 82, 98 (2008); *People v. McGee*, 398 Ill. App. 3d at 793. In a bench trial, the trial judge determines the credibility of the witnesses, gives appropriate weight to their testimony, and draws reasonable inferences from all the evidence. *People v. Spann*, 332 Ill. App. 3d 425, 445 (2002). A reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009).

¶ 46 B. Factors for Assessing Identification

¶ 47 In the case at bar, respondent argues that there was insufficient evidence to identify him as a perpetrator due to the manner in which the police presented the alleged perpetrator to the victim. Illinois courts consider five factors when determining whether a witness's identification is reliable. *People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007). These factors are commonly known as the Biggers factors, which were set forth in a United States Supreme Court case of the same name. *Piatkowski*, 225 Ill. 2d at 567 (citing *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972)). The five Biggers factors are: (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 witness's earlier description of the offender; (4) the level of certainty shown by the witness when confronting the alleged offender; and (5) the length of time between the offense and the identification confrontation. *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989); *Biggers*, 409 U.S. at 199. In addition to these five factors, courts will generally consider the totality of the circumstances

when reviewing the reliability of an identification. *Biggers*, 409 U.S. at 199; *People v. Smith*, 299 Ill. App. 3d 1056, 1062 (1998).

¶ 48 1. The Witness's Opportunity to View the Offender

¶ 49 First, courts consider the witness's opportunity to view the offender at the time of the offense. *Slim*,127 Ill. 2d at 307-308.

¶ 50 Respondent contends that the low level of the lighting in the park where the attack occurred undermines the reliability of Brandner's identification. Although lighting is an important factor for the court to consider, the Illinois Supreme Court has found there was sufficient evidence when a witness observed the offender's face for only a few seconds in a dimly lit pawnshop. *People v. Herrett*, 137 Ill. 2d 195, 200 (1990). In *Herrett*, two individuals, a white man and a black man, robbed a pawnshop. *Herrett*, 137 Ill. 2d at 200. The pawnshop clerk was able to view both offenders for a few seconds before the black man covered the clerk's eyes with duct tape and bound his hands. *Herrett*, 137 Ill. 2d at 204. The clerk was able to positively identify the white offender from photographs police provided and was 90 percent sure that the black offender was the defendant. *Herrett*, 137 Ill. 2d at 204. The Illinois Supreme Court found the clerk had sufficient time to view the offender even though the pawnshop was dimly lit, he only observed their faces for a few seconds, and he was two to three feet from the offender at the time of the offense. *Herrett*, 137 Ill. 2d at 204.

¶ 51 In the case at bar, the victim testified that he had sufficient lighting to identify respondent as one of the offenders. While the attack occurred at night, Brandner testified there were some small lights in the park, as well as lighting from the alley behind the park, and lights from the

parking lot that illuminated his attackers' faces so he could observe who they were. Brandner was only two to three feet from the offenders during the attack and he had a conversation with the offenders for several seconds. Also, he was certain respondent was one of the attackers and positively identified respondent.

¶ 52 Respondent also contends that Brandner's identification was not reliable based on the swiftness of the attack. However, this court held that a witness's identification was reliable when she observed the offender up close, even though she observed the offender for only a few seconds. *People v. Wallace*, 210 Ill. App. 3d 325, 339 (1991). In *Wallace*, an individual robbed a tea company. . *Wallace*, 210 Ill. App. 3d at 329. A clerk for the tea company noticed a man behind the front desk who was not allowed there. *Wallace*, 210 Ill. App. 3d at 329. She caught a glimpse of his face, the offender ordered her to give him the money in the register, and she immediately turned in the opposite direction. *Wallace*, 210 Ill. App. 3d at 329. Another employee gave the offender the money from the register and the offender left. *Wallace*, 210 Ill. App. 3d at 330. The clerk later identified the defendant as the robber in open court. *Wallace*, 210 Ill. App. 3d at 329. The court found the clerk's identification sufficient because even though she observed the defendant for only a second or two, she viewed him from close range and made a positive identification. *Wallace*, 210 Ill. App. 3d at 339.

¶ 53 In the case at bar, Brandner had a conversation with respondent before the attack, was only a few feet away, and had adequate time to view respondent's face. In addition, Brandner observed each of the offenders' faces before they attacked him and he spoke with them for a few seconds. Brander also looked up and observed each offender as they kicked him, and testified

that he was able to observe their faces, "clear as day."

¶ 54 Brandner had a sufficient opportunity to view the offenders, was sure of his identification and testified that he had a clear view of them. There was no evidence that Brandner's view was obstructed during the attack or that he waivered in his identification.

¶ 55 2. The Witness's Degree of Attention

¶ 56 Second, courts will consider the witness's degree of attention at the time of the offense. *Slim*, 127 Ill. 2d at 307-308. Here, the record shows that Brandner was attentive during the attack. Specifically, he testified that, he looked up at each of the offenders during the attack and could observe each of their faces clearly. He remembered which offender hit him first, which offender hit him second and that respondent placed his foot on his throat when he attempted to get up. His account of the attack and the events before and after were consistent. Thus, we cannot say that there was a problem with the victim's degree of attention at the time of the attack.

¶ 57 3. The Witness's Earlier Description of the Offender

¶ 58 Third, courts will consider the witness's earlier description of the offender. *Slim*,127 Ill. 2d at 307-308. In the case at bar, the victim originally provided the following description of respondent: Hispanic male, 16 to 20 years old, wearing a dark hoodie sweatshirt, dark pants and a gray shirt. Respondent contends that Brandner's description was too generic to support his later identification. Respondent argues that a witness's description must be more specific than the description that Brandner provided. In support of this contention, respondent cites *Dalcollo,* where the appellate court found the victim's identification reliable, but the victim provided a

specific description. *People v. Dalcollo,* 282 Ill. App. 3d 944, 961 (1996),[1] Respondent contends that Brandner's identification was not specific enough to be reliable based on *Dalcollo*.

¶ 59 *Dalcollo* does not support respondent's argument and thus is not persuasive. Our Illinois Supreme Court found a victim's identification sufficient when he described the offender as 28 years old, 5 feet 3 inches tall and 135 pounds, even though the victim did not notice the offender's braces or facial features when the offender was actually 22 years old, 5 feet 9 inches tall and 165 pounds. *Slim*, 127 Ill. 2d at 305-6. In *Slim*, the offender approached the victim, pointed a gun at him and ordered the victim to give him his money, wallet and keys. *Slim*, 127 Ill. 2d at 305. The police arrested the defendant ten days later and the victim positively identified the defendant as the offender in open court. *Slim*, 127 Ill. 2d at 305-6. The victim also admitted in open court that he had not noticed any of the offender's distinctive facial features. *Slim*,127 Ill. 2d at 306. The court found the victim's identification sufficient because, as a "general proposition, it can be said that discrepancies and omissions as to facial and other physical characteristics are not fatal, but simply affect the weight to be given the identification testimony." *Slim,* 127 Ill. 2d at 308-9. The court further reasoned, "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 308-9. A witness's identification can be sufficient even though the witness provided only a general description based on the overall appearance of the offender. *Slim,* 127 Ill. 2d at 308-9.

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[1] The description itself is in an unpublished portion of Dalcollo and thus cannot be cited as precedent.

¶ 60 In the case at bar, Brandner described respondent as 16 to 20 years old, Hispanic, and wearing a dark hoodie sweatshirt, dark jeans and a gray shirt. Brandner did not describe respondent's specific facial features however, based on the analysis in *Slim,* Brandner's omissions as to respondent's facial features only affected the weight that the court can give to the identification and did not totally discredit the identification. This court has held "the sufficiency of identification evidence is a question for the trier of fact and a reviewing court will not set aside a conviction unless the evidence is so unsatisfactory as to raise a reasonable doubt as to defendant's guilt." *People v. Killingsworth*, 314 Ill. App. 3d 506, 510 (2000). Therefore, it was in the purview of the trial court to weigh the sufficiency of the identification evidence.

¶ 61 While Brander's initial description of respondent was not particularly detailed, he did accurately provide the police with a description of respondent's age, ethnicity, and clothing as: 16 to 20 years old, Hispanic, and a dark hoodie sweatshirt, dark jeans and a gray shirt. He also described respondent's height, hair color, hairstyle, and body size as a little bit bigger than his. Brandner's prior description of respondent was sufficient for a rational trier of fact to find Brandner's subsequent identification reliable.

¶ 62 4. The Witness's Certainty of the Identification

¶ 63 Fourth, courts will consider a witness's certainty about his or her identification. *Slim*,127 Ill. 2d at 307-308. In the case at bar, the victim was certain about his identification, both at the initial show-up identification and later in court. Respondent contends that this court should give Brandner's certainty little weight and cites in support *State v. Long*, 721 P.2d 483, 491 (Utah 1986) and *Newsome v. McCabe*, 319 F.3d 301, 305 (7th Cir. 2003), which show that

psychological studies have shown that a witness's certainty in his or her identification does not make it more accurate. However, both of these cases are distinguishable from the case at bar. In these cases the trial court improperly barred defendant's expert's testimony regarding the dangers of eyewitness identification. *People v. Tomei*, 2013 IL App 1st 112632, ¶ 55. By contrast, in the case at bar, respondent did not attempt to present expert testimony regarding the weakness of eyewitness identification. Again, the weight of a witness's testimony is within the purview of the trier of fact. *Killingsworth*, 314 Ill. App. 3d at 510.

¶ 64 This court found a witness's identification sufficient when it was also made without hesitation. *People v. Magee*, 374 Ill. App. 3d 1024, 1032-33 (2007). In *Magee*, the offender robbed and sexually assaulted two women outside of a hair salon. *Magee*, 374 Ill. App. 3d at 1036. One of the victims immediately identified the defendant in both a photo array and a line-up. *Magee*, 374 Ill. App. 3d at 1027. She was absolutely certain the defendant was the offender both times she identified him. *Magee*, 374 Ill. App. 3d at 1027. The court found that the victim's identification was sufficient because she made it without hesitation and she was certain the defendant was the offender. *Magee*, 374 Ill. App. 3d at 1033. Here, Brandner was certain when he identified respondent. He testified: "I saw all three individuals and remember their faces clear as day." Officer Kumiga also testified that Brandner immediately identified respondent as one of his attackers and did not hesitate in his identification.

¶ 65 5. The Length of Time Between the Offense and the Identification

¶ 66 Finally, courts will consider the length of time between the offense and the witness's initial identification which, in the case at bar, was very short. *Slim*,127 Ill. 2d at 307-308. Officer

Kumiga testified that only 13 minutes elapsed between the time when Brandner informed him of the attack and when respondent was apprehended. Brandner testified that the attack occurred around 10 p.m., and Kumiga testified that he arrested respondent at 10:18 p.m. Respondent fails to discuss this factor in arguing the reliability of Brandner's identification. This court has found that even when one year and four months had elapsed between the offense and the witness's initial identification of the offender the identification was still sufficient to support a finding of guilt. *People v. Malone*, 2012 IL App 1st 110517, ¶ 36.

¶ 67 In *Malone*, the offender robbed a Walgreens store. *Malone*, 2012 IL App 1st at ¶ 2. The store cashier, who was present at the time of the robbery, identified the defendant in a line-up and a photo array one year and four months after the robbery. *Malone*, 2012 IL App 1st at ¶ 7.The prosecution also had a surveillance video of the robbery and DNA evidence from clothes a police officer found in a dumpster behind the store the day after the robbery. *Malone*, 2012 IL App 1st at ¶ 20. The court found that the cashier's identification, viewed in conjunction with the surveillance video and the DNA evidence, was sufficient to find the defendant guilty. *Malone*, 2012 IL App 1st at ¶ 52. While in *Malone* the eyewitness identification was not the only evidence, the Illinois Supreme Court has held, "a single witness' identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification." *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). In the case at bar, only 18 minutes elapsed between the offense and the identification. This close proximity in time supports the reliability of the identification here, and Brandner was positive in making that identification.

¶ 68 C. Suggestiveness of the Show-Up Identification

¶ 69 Courts will also consider whether or not a show-up identification was "unnecessarily suggestive." *People v. Rodriguez*, 387 Ill. App. 3d 812, 829 (2008) (quoting *People v. Ramos*, 339 Ill. App. 3d 891, 897 (2003). The Illinois Supreme Court has held that, "prompt showups near the scene of the crime" can be proper police procedure, under certain circumstances. *People v. Lippert*, 89 Ill. 2d 171, 182 (1982). While show-up identifications are disfavored, they may be justified by circumstances, such as the need to determine (1) whether a suspect is innocent and should be released immediately; and (2) whether the police should continue searching for a fleeing culprit while the trail is still fresh. *Ramos*, 339 Ill. App. 3d at 897, quoting *People v. Hicks*, 134 Ill. App. 3d 1031, 1036 (1985).

¶ 70 For example, in *Thorne*, the offender robbed a man who was selling food from his catering truck. *People v. Thorne*, 352 Ill. App. 3d 1062, 1064 (2004). After the robbery, the offender entered a nearby building; the victim called the police and provided an officer with a description of the offender. *Thorne*, 352 Ill. App. 3d at 1065. The officer searched the building, and found an individual who matched the victim's description about ten minutes later. *Thorne*, 352 Ill. App. 3d at 1065. The victim waited outside the building while the police officer searched, and when the officer presented the defendant to the victim the victim identified the individual as the man who robbed him. *Thorne*, 352 Ill. App. 3d at 1065. The appellate court held that the show-up identification near the crime scene, a short time after the robbery occurred, was proper because the officers were "in hot pursuit." *Thorne*, 352 Ill. App. 3d at 1077.

¶ 71 In this case, Brandner's show-up identification was not unnecessarily suggestive because

the police needed to know whether they had located the perpetrators or if they should continue searching for the assailants. Since the show-up identification took place very close to the crime scene and only a few minutes after the offense occurred, the show-up identification was appropriate based on the "hot pursuit" doctrine discussed in *Thorne,* 352 Ill. App. 3d at 1077.

¶ 72 In sum, the State provided sufficient evidence with respect to each of the five Biggers factors to support the reliability of Brandner's identification, and the show-up identification was not unnecessarily suggestive.

¶ 73 II. Due Process Violation Regarding Live Testimony

¶ 74 The respondent claims that the trial court violated his due process rights by preventing him from presenting live testimony at his post-adjudication hearing, and thus he is entitled to a new post-adjudication hearing. We find, based on the facts before us, that the trial court did not violate the respondent's due process rights in accepting an affidavit in place of a witness's live testimony.

¶ 75 The State argues that we should not even reach this issue because respondent waived this issue by not raising it at the post-adjudication hearing or by motion following the hearing. Respondent maintains that he did not waive this issue for review, even though his trial counsel did not object to the trial court's actions at the post-adjudication hearing or in a subsequent motion.

¶ 76 Both an objection at trial and a posttrial motion raising the issue in question are required in order to preserve a claim for review. *People v. Enoch,* 122 Ill. 2d 176, 186 (1988). In the case at bar, defendant did not file a post-sentencing motion regarding the trial court's acceptance of an

affidavit in place of a witness's live testimony and has therefore waived this issue on appeal. When a defendant waives an issue on appeal we may still review the trial court's ruling for plain error. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

> "The plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurs and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurs and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *Piatkowski*, 225 Ill. 2d at 565.

¶ 77 In the case at bar, the trial court did not err in accepting respondent's mother's affidavit in place of her live testimony. In this case, the trial court asked respondent's counsel if Medrano, respondent's mother, intended to testify to anything outside of the affidavit she provided, and counsel responded in the negative. The trial court reviewed respondent's mother's affidavit, and defense counsel did not indicate any further evidence was required.

¶ 78 Even if the trial court erred in accepting Medrano's affidavit in place of her live testimony, that error does not rise to the level of plain error. In the case at bar, the error was not clear and obvious and the evidence was not so closely balanced that the error itself would have tipped the scales of justice against respondent. *Piatkowski*, 225 Ill. 2d at 565. Defense counsel did not indicate that Medrano would testify to anything outside of her affidavit; therefore it

cannot be said that her live testimony would have changed the outcome. Furthermore, the error is not so serious that it affected the fairness of respondent's trial regardless of the closeness of the evidence because defense counsel indicated that everything needed was in Medrano's affidavit. *Piatkowski*, 225 Ill. 2d at 565.

¶ 79 Finally, the trial court did not violate respondent's due process rights by accepting Medrano's affidavit in place of her live testimony. The fundamental requirements of due process are notice of the proceeding, an opportunity to present any objections, and the opportunity to tell your side of the story. *People v. Cardona*, 2013 IL 114076 ¶ 15. In the case at bar, respondent had the opportunity to object to the trial court's actions. The trial court asked respondent's counsel if Medrano, respondent's mother, intended to testify to anything outside of the affidavit she provided, and counsel responded in the negative. Counsel did not object to the trial court's decision and actually thanked the trial court for its consideration. Since defense council did not indicate that Medrano's affidavit did not tell her entire story, it cannot be said that respondent did not have the opportunity to tell his entire side of the story.

¶ 80 III. Credit for Time Served

¶ 81 Lastly, respondent argues he is entitled to credit for all the time he has served to date, including time spent on electronic monitoring at home. We conclude that the trial court's sentence was appropriate.

¶ 82 Under section 5-510 of the Juvenile Court Act of 1987, the trial court must give credit for all time spent in detention. (705 ILCS 405/5-710(1)(a)(v) (West 2010)). However, it is within the discretion of the trial court to decide whether or not to give credit for time spent on electronic

monitoring at home. *People v. Witte*, 317 Ill. App. 3d 959, 965 (2000). Thus, in the present case, the trial court had the discretion to decide whether or not to give respondent credit for time spent on electronic monitoring at home; therefore the trial court's sentence is appropriate. Furthermore, since the trial court sentenced respondent to an indeterminate term in the Illinois Department of Juvenile Justice, it is difficult to ascertain what benefit the additional credit for time spent on electronic monitoring would provide respondent. Respondent's sentence will not extend past his 21st birthday and, because the sentence is indeterminate in nature, the additional credit for time spent on electronic monitoring will not affect respondent's sentence. Respondent does not have a set number of days to serve and therefore crediting additional days will not reduce his sentence.

¶ 83 CONCLUSION

¶ 84 For the foregoing reasons, we affirm.

¶ 85 Affirmed.