

No. 1-13-0412

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. TB 539988
	)	TB 539989
	)	TB 539990
	)	TB 539991
)	
MICHAEL KEHOE,	)	Honorable
	)	Susan Kennedy Sullivan,
Defendant-Appellant.	)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Judgment affirmed over defendant's contentions that the evidence was insufficient to prove him guilty beyond a reasonable doubt, that the court erred in permitting testimony related to a police report and in refusing to allow defendant to admit certain evidence, and that the court violated Rule 605(a).

¶ 2 Following a bench trial, defendant Michael Kehoe was convicted of leaving the scene of an accident and sentenced to 6 months' supervision and 60 hours of community service. On

appeal, defendant contests the sufficiency of the evidence to prove him guilty beyond a reasonable doubt. He also contends that the trial court erred in denying his motion for reconsideration, and in failing to advise him of his rights under Supreme Court Rule 605(a)(1) (eff. Oct. 1, 2001).

¶ 3 At trial, 12-year-old Nicole Ivanova testified that at 6:30 p.m. on January 27, 2012, she and her mother were driving westbound on Irving Park Road in her mother's Toyota Corrolla. She was in the front passenger seat when their car was struck on the back driver's side door at an intersection near Central Avenue. Nicole explained that there were three strikes, and that the door of their car was hit by the metal bar on the front of a Chevrolet truck. Nicole testified that the incident occurred quickly and in the dark, but that there was artificial lighting and she was able to identify defendant in court as the driver of the truck that struck her mother's vehicle.

¶ 4 Nicole further testified that defendant sped away, and her mother told her to call police as she pursued him at 60 miles per hour for 20 blocks down Irving Park Road flashing her lights. The pursuit lasted for six minutes, and defendant eventually pulled over, and exited the truck. Nicole's mother then exited her vehicle, and began to argue with defendant who swore and kicked his truck prompting Nicole to tell her mother to return to the car. Nicole further testified that as a result of the accident, her mother's car was "scratched pretty badly" with some of its paint on defendant's truck. Nicole noted that prior to the accident there was no damage on her mother's car.

¶ 5 Emiliya Ivanova, Nicole's mother, testified that at 6:27 p.m. on January 27, 2012, she was driving in the area of Central Avenue and Irving Park Road where artificial street lights were in operation. As she was crossing this intersection, her car was struck three times, and the driver, identified in court as defendant, then swerved around her, and sped ahead. She pursued him at

70 miles per hour, until defendant stopped at Cumberland Avenue. Both drivers exited their cars, and Emiliya asked defendant why he did not stop after he hit her car. Defendant swore at her, and her daughter told her to come back to the car, after which they called police. Emiliya explained that her car was new and had no damage until defendant struck it multiple times.

¶ 6 Chicago police officer Smith testified that on January 27, 2012, she investigated this traffic accident. She could not recall what time it occurred, and after her memory was exhausted, and she was shown her police report, she testified that it took place at 6:27 p.m. She further testified that when she was first assigned to investigate the accident, she was told that it occurred at 5600 West Irving Park Road, but was then instructed that the parties were at Irving Park Road and Cumberland Avenue. She eventually located them at 8300 West Irving Park Road. At that time and place, defendant told her that Emiliya struck his car a few blocks away in Niles, but that he did not know the exact location. Niles police were called, and talked to defendant at the scene. Afterwards, Officer Smith learned that the accident occurred in Chicago, and defendant became argumentative and asked for her supervisor. When her sergeant arrived, defendant told him that there was no accident. Officer Smith noted that there was damage to both vehicles, and that the victim's vehicle had a dent and scrape on the driver's side. Based on her experience in fixing her son's car, the officer believed that the damage to the victim's car was in excess of \$1,000. Officer Smith also testified that she wrote defendant several traffic citations, including, in relevant part, leaving the scene of an accident.

¶ 7 On cross-examination, defense counsel inquired about the lighting conditions at 6:27 p.m. in the area in question. Officer Smith responded that the road was illuminated with street lights.

¶ 8 Defendant testified that he is a truck driver for the City of Chicago Department of Aviation and holds a commercial driver's license (CDL). He noted that points are assessed for

every traffic infraction, and that if he acquires too many points, he can lose his CDL license.

¶ 9 Defendant further testified that on January 27, 2012, he went to the City Tap and Grill at 7320 West Irving Park Road in Norridge, Illinois. He left there at 6:23 p.m., and identified a photocopy of a receipt from his credit card which he used at the restaurant on that date. Defense counsel marked it as defense exhibit No. 1, and defendant stated that the photocopy accurately depicted the actual receipt that he signed on the night in question at 6:21 p.m. After he signed the receipt, he drove westbound on Irving Park Road in his truck, and explained that the City Tap and Grill is three miles east of 5600 West Irving Park Road.

¶ 10 Defendant further testified that as he was driving in the 8000 block of west Irving Park Road, a woman started flashing her lights at him, and he pulled over thinking she might be in some trouble. He noted that it was dark out, but there was artificial lighting. Defendant asked the woman what was wrong, and she told him that he hit her car. He responded that he did not, and called the police. He noted that his cell phone log showed that he made a call to police at 6:28 p.m. When police arrived, he told them that he did not hit the woman's car.

¶ 11 Defendant further testified that he took photographs of the right front portion of his car the day after the incident to show that there was no damage. He maintained that there was no paint on his brush guard or any trace of damage to it. Defendant further testified that during rush hour it is physically impossible to drive from Central Avenue and Irving Park Road, where the incident allegedly occurred, to where he was eventually stopped, in six minutes. He maintained that one would have to drive 70 miles per hour to do so. Following defendant's testimony, the photocopy of the receipt from the restaurant was admitted into evidence without objection from the State.

¶ 12 At the close of evidence, the court found defendant guilty of leaving the scene of an accident. The court stated that it looked at the photocopy of the receipt and questioned its

authenticity given the faint line running below the date and time on the copy. The court then found that there was an accident between the parties, although it could not determine who was at fault, that Nicole was "quite credible," and her testimony was corroborated by that of her mother, Emiliya. The court also found that the officer testified credibly that an accident had been reported, and that she had responded to it, then determined that there was credible, "uncontroverted testimony that defendant first told the police officer that the mother's car hit his car," but then changed his story. The court thus found defendant incredible, noting that he has a CDL license and had a motive to avoid conviction.

¶ 13 Defendant subsequently filed a motion to reconsider, and then an amended motion, alleging, in relevant part, that the court erred in allowing a minor to testify without ascertaining if she would be a competent witness and in admitting into evidence the copy of the police report. He further alleged that the State failed to meet its burden of proof regarding property damage, and that the court erred when it did not enter into evidence a receipt from the restaurant showing that defendant was miles away when the incident occurred, thereby establishing an alibi.

¶ 14 The court denied the motion to reconsider finding, in relevant part, that every person is considered competent to testify as a witness irrespective of age unless she cannot understand her duty to tell the truth. The court noted that defendant did not challenge the competency of Nicole, and that it found her to be a "mature young lady capable of testifying." As to the property damage burden, the court found that there was testimony that the accident occurred, and it did not receive a motion *in limine* regarding whether there was property damage. With regard to the receipt, the court noted that it was not the original, and there was no reliability to it, and that no proper foundation had been laid for it.

¶ 15 On appeal, defendant first contends that the evidence was insufficient to prove him guilty of leaving the scene of the accident beyond a reasonable doubt. He maintains that the minor's

identification of him was unreliable and her testimony inconsistent.

¶ 16 When defendant challenges the sufficiency of the evidence to sustain his conviction, the proper standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). This standard recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence and to draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of guilt. *Campbell*, 146 Ill. 2d at 375. For the reasons that follow, we do not find this to be such a case.

¶ 17 To sustain defendant's conviction for leaving the scene of an accident, the State was required to prove that defendant was involved in a motor vehicle accident which resulted in damage to a vehicle, and failed to immediately stop his vehicle at the scene of the accident or as close thereto as possible. 625 ILCS 5/11-402(a) (West 2012). Defendant asserts that Nicole's identification of him as the offender was too inconsistent and unreliable to prove the elements of this offense. We find that her identification of him as the offender was reliable based on the factors in *Neil v. Biggers*, 409 U.S. 188 (1972), which include: (1) the witness' opportunity to view the offender 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 of the witness at the identification confrontation; and (5) the length of time between the crime and the identification.

¶ 18 The record shows that Nicole first saw defendant driving the truck that struck her mother's car, and six minutes later, observed defendant again when he exited his car, and was talking to her mother on the street. It is also clear from Nicole's testimony that her degree of attention to defendant was high during this incident, and that this evidence satisfied the first and

second *Neil* factors. *People v. Thomas*, 72 Ill. App. 3d 186, 195-96 (1979).

¶ 19 The record also shows that Nicole was highly certain in her identification of defendant, thus satisfying the fourth *Neil* factor, and eliminating the need for a description of the offender referenced in the third factor. Additionally, the time between the crime and her identification of him at trial was seven months, thereby satisfying the fifth *Neil* factor. *People v. Malone*, 2012 IL App (1st) 110517, ¶36. Moreover, her testimony was corroborated by her mother, Emiliya, who testified that she pursued the person who struck her car, without losing sight of him, and when he stopped, she observed defendant exit the vehicle and identified him in court as the same man who struck her car.

¶ 20 As to the impact of the age of Nicole, her ability to recall the events that occurred, and the inconsistencies in her testimony regarding whether she could see that defendant was wearing jeans while he was in the truck, we note that these are matters which fall within the purview of the trier of fact which had the superior opportunity to observe the witnesses as they testified. *People v. Berland*, 74 Ill. 2d 286, 305-06 (1978). Here, in determining whether defendant was proved guilty beyond a reasonable doubt, the trial court explicitly found Nicole, Emiliya, and the officer credible, and defendant incredible. *People v. Daheya*, 2013 IL App (1st) 122333, ¶65. In reaching its credibility determination, the trial court was not required to believe defendant's self-serving testimony that he did not hit the car (*People v. Moreira*, 378 Ill. App. 3d 120, 130 (2007)) over the testimony of Nicole and Emiliya, or the officer's report of the statements made by defendant regarding whether an accident actually occurred (*People v. Borys*, 2013 IL App (1st) 111629, ¶43). There was also no indication that Nicole's age undermined her credibility as a witness to the events that transpired, and her accounting of events was corroborated by her mother, as well as the responding officer. *People v. Williams*, 185 Ill. App. 3d 840, 857-58 (1989). Accordingly, we find no basis for disturbing the credibility determinations made by the

trial court (*Berland*, 74 Ill. 2d at 306-07), nor its finding of guilt (*People v. Bofman*, 283 Ill. App. 3d 546, 553 (1996)).

¶ 21 In reaching that conclusion, we find this case distinguishable from *People v. Williams*, 383 Ill. App. 3d 596, 637-38 (2008), cited by defendant, in which the only evidence linking defendant to the crime was the testimony of two minors, ages 9 and 11, who were impeached, given leading questions, and testified inconsistently, vaguely, and hesitantly. Here, by contrast, the 12-year-old witness, whose competency was not raised by defendant at trial, testified consistently, and confidently regarding the events that unfolded in the early evening of January 27, 2012, and her testimony was corroborated by the testimony of her mother who also identified defendant as the offender.

¶ 22 Defendant, nonetheless, contends that his conviction should be overturned because there was no proof of property damage in excess of \$1,000. We initially observe that there is no requirement that the court find damage to the vehicle in excess of \$1,000 for there to be a conviction for leaving the scene of an accident under section 11-401 of the Illinois Vehicle Code. 625 ILCS 5/11-402(a) (West 2012). The finding regarding that amount of damage is relevant to determining whether a statement of such finding shall be reported to the Secretary of State so that it may suspend the offender's driver's license (625 ILCS 5/11-402(b) (West 2012)), which is not at issue in this case. What is required to sustain the conviction for leaving the scene of the accident is proof that there was damage. 625 ILCS 5/11-402(a) (West 2012). Here, Emiliya testified that her car was brand new and was damaged by the incident. The police officer testified that she noted that the car was dented and scratched, and that based on her experience with similar repairs, she estimated that there was more than \$1,000 in damages. Thus, there was evidence of damage to the car based on the impact which was sufficient to satisfy the damage element of the offense of leaving the scene of an accident.

¶ 23 Defendant next contends that his conviction should be reversed because the trial court erred in allowing the police report into evidence. We observe that the police report was not admitted into evidence, and was only used to refresh the officer's recollection as to the time of the incident (*People v. Shatner*, 174 Ill. 2d 133, 153 (1996)), which defendant then used during cross-examination. In addition, defendant did not object to its use at trial, and, accordingly, he has forfeited this issue for review. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 24 Defendant further contends that the court erred in failing to admit the copy of the credit card receipt from the restaurant into evidence, which he maintains was his alibi evidence, and in declining to consider it. Our review shows, however, that the receipt was admitted into evidence and that the trial court referenced it in entering its decision, and in denying his motion to reconsider. The court noted its admission, but questioned its authenticity, and gave it, little if any, weight. The court thus considered the admitted evidence, but found it wanting, and his allegation that the trial court erred in refusing to admit it into evidence, or consider it is contradicted by the record.

¶ 25 Defendant further contends that the trial court erred in denying his motion to reconsider. We find defendant's argument duplicative of the issues already addressed and rejected by this court above, and accordingly, we need not reiterate our reasons for that decision.

¶ 26 Finally, defendant contends that the court's failure to admonish him of his rights under Rule 605(a) amounts to reversible error. Defendant forfeited this claim where he did not raise this objection at trial or in his post-trial motion. *Enoch*, 122 Ill. 2d at 186. Moreover, defendant has not shown that he was prejudiced or denied real justice from the failure to adequately advise him, since he filed a timely post-trial motion and an appeal from the judgment entered. *People v. Henderson*, 217 Ill. 2d 449, 466-69 (2005).

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¶ 27 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.