

FIFTH DIVISION
February 5, 2016

No. 1-14-0512

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 7833
)	
ANTOINE BARNES,)	Honorable
)	Allen Murphy,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held:* The evidence was sufficient to convict defendant of aggravated battery with a firearm and aggravated battery on a public way where a rational trier of fact could have found the State's only identification witness to the crime reliable and the witness' testimony was supported by other circumstantial evidence of defendant's guilt.

¶ 2 After a jury trial, defendant Antoine Barnes (defendant) was found guilty of aggravated battery with a firearm and aggravated battery on a public way. The trial court sentenced him to concurrent terms of 20 years and 5 years in the Illinois Department of Corrections (IDOC), respectively. On appeal, defendant contends that the State failed to present sufficient evidence

that he committed the crimes because the only witness identification was unreliable, the victims' description of the firearm conflicted with the firearm found by the police and there was no physical evidence establishing he fired the weapon. For the reasons that follow, we affirm.

¶ 3 Defendant's convictions arose from the April 14, 2011, shooting of Darrius McDaniel and beating of Brandon Martin. The State charged defendant with 6 counts of attempted first-degree murder, 1 count of being an armed habitual criminal, 1 count of aggravated battery with a firearm, 1 count of aggravated discharge of a firearm, 1 count of unlawful use or possession of a weapon by a felon, and 11 counts of aggravated battery. The State proceeded to trial on one count of attempted first-degree murder, one count of aggravated battery with a firearm and one count of aggravated battery.

¶ 4 At trial, Martin admitted he was currently in the custody of the Illinois Department of Corrections on a burglary conviction. On April 14, 2011, at approximately 10:30 a.m., Martin was at McDaniel's apartment on Lindenwood Drive in Matteson along with McDaniel's girlfriend, Tamara Hatchet. McDaniel and Hatchet left the apartment, and Martin remained on the apartment's front porch, smoking a cigarette. While McDaniel and Hatchet were walking, Martin observed two men, defendant and a man later identified as Ronald Robinson,¹ exit an apartment building behind McDaniel and Hatchet. The apartment building was across the street and three or four buildings away from where Martin was standing. Martin had a clear view of the two men, who began following McDaniel and Hatchet. Concerned because McDaniel and Hatchet were "[his] people," Martin ran across the street to McDaniel and Hatchet.

¹ Co-offender Robinson separately appealed in case No. 1-13-3321.

¶ 5 When Martin arrived, defendant “upped [a] pistol,” and told Martin and McDaniel not to move. Martin was “right next” to defendant. Martin and McDaniel then ran in opposite directions. Martin heard two gunshots and observed defendant shoot McDaniel. While running away, Martin tripped over a pot hole and fell to the ground. Defendant came over to Martin, and began striking him with the handgun. Robinson also hit and kicked Martin in the head. The attack lasted about three minutes. Martin conceded that during the attack, he covered his face to protect himself. He further stated, however, he could see defendant hitting him with the weapon. After defendant and Robinson finished attacking Martin, they ran back toward the apartment building from where Martin initially observed them exit. Martin ran to a Walgreens and waited for the police and paramedics to arrive. As a result of the attack, Martin sustained gashes on his head, which needed to be stapled shut.

¶ 6 Two days after the incident, Martin viewed a lineup in which defendant participated. Martin admitted that he told the police that defendant “resembled” the shooter and was not positive when identifying defendant. In court, however, Martin positively identified defendant as the shooter. Martin also identified People’s Exhibit 2 as the weapon used to hit him and shoot McDaniel.

¶ 7 McDaniel testified that he and Hatchet were walking to McDonald’s on the morning in question from his apartment on the 4100 block of Lindenwood Drive in Matteson. As they took a shortcut through the “U apartments,” Robinson yelled from an apartment building window, “you the dude from yesterday.” McDaniel recognized Robinson as someone he had seen the previous day walking down the street, threatening “to light the block up.” On the morning in question,

McDaniel told Hatchet to “keep going” down the street, fearing “something was going to happen.” A couple minutes later, Robinson and another man came up to McDaniel. The other man was African-American, light skinned, taller than 5-feet, 10-inches tall, had short hair and wore a dark hoodie underneath a dark, “leather looking” jacket. McDaniel admitted he had never seen this man before. In court, McDaniel identified People’s Exhibit 4 as a leather jacket that “look[ed] like” the one worn by the unidentified man.

¶ 8 McDaniel asked the two men “what’s up?” By then, Martin had run to McDaniel’s aid. The unidentified man pulled a handgun out on McDaniel. From eight to ten feet away, the man pointed the firearm at McDaniel’s chest and told both Martin and McDaniel not to move. The firearm was “shiny” because of the sunlight reflecting off it, and the firearm “looked like a revolver.” McDaniel began “backing” up. The man then pointed the weapon at McDaniel’s leg and shot his left leg. McDaniel thought he heard two gunshots. After being shot, McDaniel ran to a Walgreens down the block. Meanwhile, McDaniel witnessed Martin “getting jumped” by Robinson and the unidentified man.

¶ 9 In court, McDaniel identified People’s Exhibit 2 as a black revolver that “look[ed] like” the handgun used by the shooter. McDaniel admitted that he described the handgun as “silver and shiny” to the police two days after the shooting.

¶ 10 On the morning in question, Lamonica Chambers was at her aunt’s apartment on the 4100 block of Lindenwood Drive in Matteson when she saw her aunt’s building surrounded by police vehicles. Chambers described the building as “U shape[d].” Abruptly, she heard a “strange” knock at the door. The knock was “beating real fast, like real hard.” Chambers

answered the door and saw Robinson, whom she identified as “T.Y.,” her aunt’s neighbor, and his cousin, defendant. Robinson was “[s]haking and trembling” at the door while defendant was standing in the hallway, “breathing and trembling hard.” Defendant also “peep[ed] out the window” in the hallway. Robinson tried “to force [her] to take a gun,” but she refused. Her uncle walked to the door, and he told defendant and Robinson to leave. Suddenly, Robinson dropped the weapon onto the floor, and defendant picked it up. Chambers’ older brother, Antwon Johnson, came to the door to take the garbage out and walked down the stairs in the hallway. Defendant and Robinson followed him. Chambers did not remember what defendant was wearing that day. She identified People’s Exhibit 2 as the handgun Robinson and defendant had in his possession.

¶ 11 When Johnson left the apartment to throw the garbage out, he noticed Robinson and defendant at the front door of the apartment with a handgun “wrapped up in a reddish-like cloth or a towel.” He knew from the handle that it was a handgun. Johnson also observed defendant wearing a “black leather jacket.” As Johnson walked downstairs, Robinson and defendant followed him. At the bottom of the stairs before an exit door, defendant, who had the weapon, asked Johnson “were the police outside?” Johnson knew Robinson as his aunt’s neighbor and knew defendant as Robinson’s cousin. Johnson also saw defendant’s red Toyota Camry parked outside the apartment building. He knew the vehicle belonged to defendant because he had observed defendant drive the automobile around the neighborhood. In court, Johnson identified People’s Exhibit 2 as the handgun Robinson and defendant had, recognizing the firearm’s brown handle, and he identified People’s Exhibit 4 as the jacket worn by defendant.

¶ 12 Tineshia Satchell, defendant's girlfriend on April 14, 2011, testified that she owned a red Toyota Camry on the day in question. She "believe[d]" the vehicle was in Matteson that day because the automobile needed to be "jumped" from Lindenwood Drive to her apartment's parking lot. The following day, around 1 a.m., the police came to her apartment. Defendant was also there, and he left with the police. The police came back to Satchell's apartment later in the day, and she gave them permission to search her apartment. She identified People's Exhibit 2 as a handgun found in her apartment and People's Exhibit 4 as a leather jacket found in her apartment. She did not own either.

¶ 13 Deputy Chief Michael Jones of the Matteson police department investigated the shooting. Jones determined that there were two suspects involved, Robinson and defendant. After locating defendant at Satchell's apartment, Jones searched the apartment. There, he found a "black leather jacket" located in the master bedroom closet, which matched a description Jones obtained during the investigation. He also found a loaded, black metal ".38 special revolver" with a wooden handle in the water of the toilet tank in the apartment's only bathroom. The firearm's six-chamber cylinder held five bullets. Jones also observed a red Toyota Camry at the apartment complex. Jones identified People's Exhibit 2 as the firearm he found in the toilet tank and People's Exhibit 4 as the black leather jacket he found in the apartment.

¶ 14 Jones acknowledged that the police did not find any shell casings at the scene and that the weapon did not have any fingerprints marks. He commented that because the weapon was found in water, it was "unlikely for it to keep prints." Jones also conceded that the police were not able to compare any of the bullets found in the handgun to the bullet that hit McDaniel because the

bullet “was not able to be recovered.” McDaniel had bullet fragments still inside of him.

Additionally, no gunshot residue tests were performed on defendant or the black leather jacket found at Satchell’s apartment. Jones stated that about 14-15 hours passed after the crime allegedly occurred until he arrested defendant. He explained that such delays can prevent the detection of gunshot residue because “people can wash their hands.” However, he conceded gunshot residue can remain on clothing for a number of days.

¶ 15 The State admitted its exhibits into evidence and rested. Defendant moved for a directed verdict, but the court denied the motion. Defendant did not testify or present any evidence on his behalf.

¶ 16 After argument, the jury found defendant guilty of aggravated battery with a firearm and aggravated battery on a public way. However, the jury found defendant not guilty of attempted first-degree murder. The trial court subsequently sentenced defendant to concurrent terms of 20 years in IDOC for aggravated battery with a firearm and 5 years for aggravated battery on a public way. This appeal followed.

¶ 17 On appeal, defendant does not question that two aggravated batteries were committed, but rather challenges the sufficiency of the evidence to establish that he was the perpetrator of the crimes. Specifically, defendant argues there was no physical evidence establishing he fired a weapon and the State’s only identification witness provided a “vague and doubtful” identification of defendant. Furthermore, defendant asserts that the firearm found at the apartment of defendant’s girlfriend was different from the victims’ description of the weapon.

¶ 18 Where a defendant challenges his conviction based upon the sufficiency of the evidence presented against him, we must ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find all the elements of the crime proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). All reasonable inferences must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. While we must carefully examine the evidence before us, we must recognize that credibility issues, resolving conflicting or inconsistent evidence, weighing the evidence and making reasonable inferences from the evidence are all reserved for the trier of fact. *Brown*, 2013 IL 114196, ¶ 48. We will not overturn a conviction unless the evidence is “so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant’s guilt.” *Id.*

¶ 19 Where identification is the main issue, the State must prove beyond a reasonable doubt the identity of the individual who committed the charged crime. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). Identification testimony that is “vague or doubtful” does not satisfy the requisite burden of proof. *People v. Stanley*, 397 Ill. App. 3d 598, 610-11 (2009). In assessing identification testimony, Illinois courts utilize a five-factor test established in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). See *Lewis*, 165 Ill. 2d at 356. The factors are:

- “(1) the opportunity the victim had to view the criminal at the time of the crime;
- (2) the witness’ degree of attention;
- (3) the accuracy of the witness’ prior description of the criminal;
- (4) the level of certainty demonstrated by the victim at the identification confrontation;

and

(5) the length of time between the crime and the identification confrontation.” *Id.* citing *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989).

The *Biggers* factors must be considered in light of the totality of the circumstances. *People v. Dereadt*, 2013 IL App (2d) 120323, ¶ 24.

¶ 20 In arguing the *Biggers* factors render Brandon Martin’s identification of defendant unreliable, defendant asserts that Martin’s opportunity to identify the shooter was “extremely limited.” Defendant posits that when the shooter attacked Martin with the handgun, Martin was focusing his attention on “self-preservation rather than identifying his assailant.” Furthermore, defendant argues that Martin’s identification of him in a lineup two days after the incident was “uncertain” because Martin admitted defendant only resembled the shooter. Additionally, defendant notes that Martin’s in-court identification was “dubious at best” because he only selected defendant, who was sitting between two female defense attorneys. The State argues the *Biggers* factors weigh in its favor because Martin had multiple opportunities to observe defendant, identified him in a lineup two days after the incident and identified him at trial.

¶ 21 Regarding the first *Biggers* factor, Martin testified that he had a clear view of defendant as defendant exited the apartment building. Once Martin ran over to the aid of Darrius McDaniel, Martin was “right next” to defendant. After trying to run away from defendant, Robinson along with defendant attacked Martin for approximately three minutes while he was lying on the ground. The crime also occurred in broad daylight. See *People v. Herrett*, 137 Ill. 2d 195, 200, 204 (1990) (finding a victim had a sufficient opportunity to see the defendant where he observed

the defendant's face for "several seconds" in a dimly lit store). Here, where Martin had the opportunity to observe his attacker's face for not mere seconds, but rather minutes, the record reveals a favorable opportunity to view his attacker.

¶ 22 As to the second *Biggers* factor, the record also demonstrates a high degree of attention by Martin. He testified to being concerned when defendant and Robinson began following his friends. Later, defendant pointed a firearm at Martin while they were face to face, and he eventually attacked Martin with the weapon. See *People v. Mister*, 2015 IL App (4th) 130180, ¶ 100 (finding a victim had a high degree of attention when "his attention was directed to [the] defendant when he quickly approached him, pointed a gun in his face, and demanded 'the bread.'"). Although Martin shielded his face during the attack, he testified that he could see defendant hitting him with the weapon. See *People v. Brazziel*, 406 Ill. App. 3d 412, 423, (2010) (finding an identification witness reliable where the witness testified that "she clearly saw [the] defendant when he raised his revolver" despite the defendant's argument that the witness was unreliable because "a person in a similar situation would have 'at least instinctively covered her face' " to protect herself from a gunshot).

¶ 23 Concerning the third *Biggers* factor, we note that the record does not reveal how Martin described defendant to the police. Therefore, this factor is neutral in application.

¶ 24 In regard to the fourth *Biggers* factor, Martin admitted when he viewed the lineup, he thought defendant "resembled" the shooter. While Martin was not completely positive that defendant was his attacker, this court has found less-than-positive identifications still on the whole reliable especially when there was a positive identification at the time of trial which

occurred here. See *Mister*, 2015 IL App (4th) 130180, ¶ 102 (finding identification evidence reliable where the victim was “80% to 85% certain” that the defendant was the offender while viewing a photo array); *People v. Vasquez*, 313 Ill. App. 3d 82, 103 (2000) (finding identification evidence reliable where a witness identified the defendant in the lineup as “ ‘look[ing] just like the guy’ ” and that he “may have been the shooter”). Therefore, although Martin’s lack of certainty in identifying defendant in the lineup as his attacker weighs in favor of defendant, it does not render the identification conclusively unreliable.

¶ 25 Finally, concerning the fifth *Biggers* factor, Martin identified defendant in a lineup two days after the incident. Thus, the period of time between the crime and the identification was short. See *People v. Simpson*, 172 Ill. 2d 117, 141 (1996) (finding an identification made less than six days after a crime occurred weighed in favor of the State); *People v. Starks*, 2014 IL App (1st) 121169, ¶ 50 (finding an identification made just over two weeks after a crime occurred weighed in favor of the State).

¶ 26 In sum, after weighing the *Biggers* factors in light of the totality of the circumstances and viewing Martin’s testimony in the light most favorable to the State, we find a rational trier of fact could have found Martin’s identification of defendant as the shooter reliable.

¶ 27 Moreover, although the single, credible testimony of a witness can be sufficient by itself to convict (see *People v. Smith*, 185 Ill. 2d 532, 541 (1999)), the State did not rely solely on Martin’s testimony. Instead, the State supported his identification with circumstantial evidence of defendant’s guilt. Lamonica Chambers testified that defendant was outside her apartment’s door the morning in question “breathing and trembling hard.” He also “peep[ed] out the

window” near some stairs in the hallway. Robinson, whom defendant was with, tried to give Chambers a handgun. He, too, was nervous and shaking. Antwon Johnson similarly testified that he saw defendant and Robinson with a firearm “wrapped up in a reddish-like cloth or towel.” When defendant and Robinson followed Johnson downstairs, defendant asked Johnson if the police were outside. A jury could reasonably infer defendant’s consciousness of guilt from his and Robinson’s behavior.

¶ 28 Additionally, defendant’s clothing connected him to the crime. While McDaniel never identified defendant as his shooter, McDaniel said his shooter wore a “leather-looking jacket.” Johnson stated on the morning in question, defendant wore a “black leather jacket.” When the police searched the apartment of defendant’s girlfriend, they recovered a black leather jacket. At trial, McDaniel identified the recovered leather jacket as the one worn by his shooter, and Johnson identified the jacket as the one worn by defendant. Furthermore, from the same apartment, the police also recovered a revolver, which Chambers, Johnson, McDaniel and Martin all identified as the weapon either used by defendant or seen in his possession.

¶ 29 Finally, the red Toyota Camry placed defendant near the scene of the crime. Johnson testified that he knew the vehicle belonged to defendant and saw the automobile parked outside his aunt’s apartment building, located on Lindenwood Drive, the morning in question. Additionally, Tineshia Satchell, defendant’s girlfriend at the time, “believe[d]” the car was on Lindenwood Drive that day because the vehicle needed to be “jumped” from that location. McDaniel also lived on Lindenwood Drive, and the attack occurred near his apartment.

¶ 30 Nevertheless, beyond arguing Martin's testimony was unreliable, defendant raises additional arguments supporting his contention that the State failed to present sufficient evidence. First, defendant places much emphasis on the inconsistent evidence surrounding the firearm. He argues McDaniel identified People's Exhibit 2 as the handgun used by the shooter, but noted the handgun in the exhibit was black. However, McDaniel described the weapon to police shortly after the shooting as "silver and shiny." While a discrepancy exists here, it was for the jury to reconcile, not the reviewing court. See *Brown*, 2013 IL 114196, ¶ 48. Moreover, all four civilian witnesses – Martin, McDaniel, Chambers and Johnson – identified People's Exhibit 2 as the firearm they saw in defendant's possession the morning in question. Additionally, defendant points out that both McDaniel and Martin heard two gunshots but when the police found the firearm at Satchell's apartment, there were five bullets in the six-chamber cylinder. Here, defendant essentially asks this court to make an inference from the evidence, a function likewise reserved for the jury. See *People v. Bonaparte*, 2014 IL App (1st) 112209, ¶ 41. Furthermore, during argument, defense counsel highlighted this very point to the jury who implicitly rejected the argument by finding defendant guilty. See *People v. Baugh*, 358 Ill. App. 3d 718, 737 (2005) (finding a defendant's sufficiency of the evidence claim unpersuasive where his arguments on appeal about the weaknesses of the State's evidence were presented to and rejected by the trier of fact).

¶ 31 Defendant also argues that no physical evidence proved he had fired a weapon, such as ballistic tests or gunshot residue tests. However, the State need not prove with physical evidence that defendant fired the weapon. See *People v. Kaszuba*, 375 Ill. App. 3d 262, 265-67 (2007)

(finding sufficient evidence to convict a defendant of first-degree murder despite no positive gunshot residue test because other evidence demonstrated that the defendant fired the weapon). Here, while there were no ballistic or gunshot residue tests performed, there was other evidence demonstrating defendant fired the weapon, including Martin's testimony, and the recovery of the handgun and jacket from the apartment of defendant's girlfriend.

¶ 32 We also find unpersuasive defendant's argument that the testimony of "Chambers and *** Johnson, which failed to place [defendant] at the scene of the crimes, was also insufficient to sustain his convictions." The State never relied on Chambers and Johnson as the sole occurrence witnesses, rather their testimony buttressed the identification by Martin and the inferences created by the recovery of the firearm and jacket from Satchell's apartment. While Chambers and Johnson's testimony did not place defendant *at* the scene of the crime, their testimony did place defendant *near* the scene of the crime. Their testimony also demonstrated that defendant and Robinson were acting suspiciously the morning in question.

¶ 33 Finally, we reject defendant's argument that the lack of a motive for defendant to shoot McDaniel and attack Martin undercuts the evidence presented at trial. Motive is not an element of either aggravated battery with a firearm or aggravated battery on a public way. See 720 ILCS 5/12-4(b)(8) (West 2010) (aggravated battery on a public way); 720 ILCS 5/12-4.2(a)(1) (West 2010) (aggravated battery with a firearm). Therefore, the lack of a clear motive does not give us reason to disregard the jury's finding of guilt.

¶ 34 Despite the alleged weaknesses in the State's case, which defendant highlights, we cannot say the evidence is "so unreasonable, improbable, or unsatisfactory as to justify a reasonable

doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48. Accordingly, when the evidence is viewed in the light most favorable to the State, a rational trier of fact could have found defendant was the individual who committed the aggravated batteries.

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

¶ 36 Affirmed.