

FIRST DIVISION
August 10, 2015

No. 1-14-0561

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. 10 CR 10494
)	
DAVID MANNING,)	Honorable
)	Timothy Joseph Joyce,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

O R D E R

¶ 1 **Held:** We affirm defendant's conviction for aggravated battery with a firearm and home invasion where the evidence showed that two witnesses positively identified defendant and testified credibly.

¶ 2 Following a bench trial, defendant David Manning was convicted of aggravated battery with a firearm and home invasion. Defendant was sentenced to concurrent prison terms of 20

years and 25 years, respectively. On appeal, defendant contends that the State failed to prove his identity as the offender in view of inconsistent testimony from two eyewitnesses. We affirm.

¶ 3 The testimony at trial showed that on March 15, 2010, Louis Young was living at 1023 South Monitor in Chicago with his brothers, Clifton Coleman and Jamal Coleman, his father, Stanley Coleman, and his mother, Rita Coleman, also known as Rita Crockett. The house had a porch, a front door, and a foyer that led to a living room and bathroom. Past the living room was a dining room and stairs to an attic living space. Past the dining room was a kitchen and stairs to the basement.

¶ 4 Louis, age 23 at the time of trial, testified that at approximately 12:07 a.m. on March 15, 2010, he left the bathroom and heard a ticking sound on the glass panes of the front door. He turned on the porch light, unlocked the bolt, and stood centered behind the door but did not open it. Through the glass, he saw defendant standing on the porch. Louis knew defendant for eight years and attended high school with him, although they did not speak to each other much. According to Louis, defendant's family disliked his family but he did not dislike defendant's family and never had any problems with defendant. Their families feuded, cursed at each other, and had "altercations where nothing was resolved by talking." Louis denied involvement in the altercations.

¶ 5 Louis further testified that defendant stood with his right hand extended and his left hand closer to his chest. He thought defendant was pressing something against the door but could not see anything in his hands. Neither person spoke. Louis turned away from the door and heard "a loud boom." He felt a throbbing pain and saw his right arm bleeding and his hand dangling from his wrist. He ran toward the attic stairs, yelling "David shot me" to warn his parents and Jamal, who were upstairs, and Clifton, who was in the basement. While running, he turned and saw

defendant standing between the living room and dining room, trying to "repump" or "jam" a shotgun. Louis ran faster and reached the attic, where his father put a shirt around his arm and tied his arm with a belt. While waiting for police, Louis told his mother and Clifton that defendant shot him. After several minutes, police and paramedics arrived but Louis did not tell them about the incident in detail. At the hospital, doctors removed pellets, wood, and fibers from his hand and wrist. Louis did not see any pellets in the house and denied cleaning up any shell casings, but more than 20 pellets remained in his arm at the time of trial. Before his first surgery on the day of the incident, officers showed Louis a photo array and he identified defendant. Louis again identified defendant in a physical lineup on May 16, 2010. He denied telling detectives he had an ongoing conflict with defendant. He also denied stating that he saw defendant point a shotgun at Clifton, or that the gun did not fire but a live bullet was ejected, or that defendant picked up the bullet before leaving.

¶ 6 The State published photographs of the porch, showing a light above the front door and a hole in the door. Louis testified the light was on when he saw defendant on the porch and the hole was not present before the incident. Another photograph depicted Louis' blood in the attic stairwell. The photographs were admitted into evidence but are not included in the record on appeal.

¶ 7 Clifton Coleman, age 21 at the time of trial, testified that at approximately 12:07 a.m. on March 15, 2010, he was in the basement of the house and heard someone knocking on the front door. He got up to answer the door but turned back when he heard Louis' footsteps. He then heard "a big boom" and Louis yelling "David shot me." Clifton ran upstairs but did not see Louis. He saw defendant in the doorway of the kitchen, holding a gun approximately 12 inches long. Clifton knew defendant since 2004. They graduated from grammar school together and

attended the same high school. According to Clifton, there was bad blood between their families on the date of the incident but not at the time of trial.

¶ 8 Clifton further testified that before he reached the top of the stairs, defendant pointed the gun at him and pulled the trigger but nothing left the barrel. Clifton turned, fell down the stairs, and left by the basement door. He called the police but did not recall whether he identified defendant by name during the call. After two or three minutes, Clifton reentered the house. He saw blood on the walls of the living room and the attic stairwell and a pool of blood in an upstairs bathroom. His parents were with Louis, who was sitting in a chair and bleeding. When detectives arrived, Clifton provided defendant's name and described him as a black male, stocky, 180 to 190 pounds, with a goatee and moustache, wearing blue jeans and a white leather jacket. Clifton did not recall providing defendant's age. Clifton told the detectives that before running upstairs, he "heard a boom" and Louis yelled that David shot him. On the same day, Clifton identified defendant in a photo array. He again identified defendant in a physical lineup on May 16, 2010. He stated that defendant was seated in the lineup but that he did not see defendant seated during the incident.

¶ 9 The State published photographs of the house. Clifton identified a bullet hole in the front door that was not present before the incident. He also identified blood in photographs of the foyer, living room, dining room, and attic stairs, as well as the bloody t-shirt used to wrap Louis' arm. The photographs were admitted into evidence but are not included in the record on appeal.

¶ 10 Officer Julie Cotter testified that at approximately 12:10 a.m. on March 15, 2010, she and her partner responded to a call from 1023 South Monitor. When they arrived at 12:12 a.m., the front door was "wide open." Cotter did not observe any shotgun pellets, but saw blood on the ceiling, floors, and couches. A trail of blood led from the front door to the living room, dining

room, and attic, where Cotter encountered Louis, his parents, and Clifton. Louis' right forearm was covered in blood with the bone shattered and protruding. A t-shirt was wrapped around his arm and a belt was used as a tourniquet. Louis and Clifton each told Cotter what happened, identified defendant by name, and provided his address as 1046 South Monitor. Cotter went to that address and found the doors locked, the windows closed, and the lights off. Cotter stated that as the first officer on the scene, her duty was to "find out what happened" and that she notified detectives to interview the witnesses more thoroughly. She did not make any notes before preparing her police report, which was completed at approximately 2:30 a.m. According to Cotter, Louis claimed he was shot while opening the front door. She did not recall whether Louis claimed to see defendant through the window or whether he claimed to be standing in front of the door when he was shot. Cotter denied that Louis told her that he ran through the house yelling "David shot me" or that Clifton claimed to hear Louis say those words. Clifton instead told her that he heard a noise, went upstairs, and saw defendant with a gun in the living room. Cotter denied that anyone told her that defendant picked up a shell casing.

¶ 11 Detective Art Young testified that he arrived at 1023 South Monitor at approximately 1 a.m. on March 15, 2010. He saw a hole in the front door near the outside door knob, at least the width of his thumb, surrounded by a gray powder burn. The size of the hole and the powder burn indicated it was caused by a shotgun fired at close range. The other side of the hole contained splintered wood and debris, indicating the gun was fired from outside the house. Detective Young did not find any shotgun pellets at the scene but saw blood on the walls of the foyer and pieces of flesh stuck to the ceiling. Blood also appeared in the living room and the attic stairwell. In photographs published by the State, Detective Young identified the shotgun hole, the powder

burn, and the splattered blood and flesh. The photographs were admitted into evidence but are not included in the record on appeal.

¶ 12 Detective Young further testified that, while at the scene, he interviewed Clifton with Detective Goduto. Clifton claimed that he heard "a loud boom" and Louis shouting, but did not claim that Louis said defendant shot him or that defendant picked up a shell ejected from the gun. However, Clifton identified defendant by name, stated that he previously saw him on the block, and provided a detailed physical description. According to Detective Young, Goduto took two pages of notes, one of which included the language "[p]ossible offender, David Manning" and listed Rita Coleman and Stanley Coleman as sources. Clifton was mentioned on a different page. Detective Young provided defendant's name and address to two detectives who were preparing to visit Louis at the hospital. On May 16, 2010, he arranged a physical lineup where both Clifton and Louis identified defendant. He stated that the individuals in the lineup were seated but that no one told him the shooter was seated during the incident.

¶ 13 Detective Leonard Goduto testified that he took two pages of notes while he and Detective Young interviewed Clifton, Rita Coleman, and Stanley Coleman after the incident. One page listed Clifton's name. Another page listed the names of Rita Coleman and Stanley Coleman. According to Goduto, both pages contained information provided by Clifton.

¶ 14 Detective Healey testified that shortly after 1 a.m. on March 15, 2010, he and his partner were assigned to interview Louis at the hospital. On the way, Detective Young called to inform them about a named offender. Healey stopped at a police station and prepared a photo array that he brought to the hospital. According to Healey, Louis was coherent and claimed to have seen defendant in the house. Louis did not claim to see Clifton come up from the basement, but stated that he saw defendant point a gun at Clifton and pull the trigger. Louis stated the gun did not fire

but a bullet was ejected, which defendant picked up. Louis did not claim to see defendant try to pump the gun or that he ran through the house after he was shot, yelling "David shot me" or "David did it." Louis stated that he personally had an altercation or problem with defendant. After the interview, Louis identified defendant in the photo array.

¶ 15 The parties stipulated that an emergency call was made at 12:10 a.m. on March 15, 2010. The caller, listed as Rita Crockett [*sic*], stated that an 18-year-old male was shot in the arm inside the house. The caller stated that "[t]hey are upstairs" and that the offender might still be in the house. The caller was not sure of the offender's identity.

¶ 16 At the close of trial, the court found that Louis, Clifton, and the police testified believably. The court stated that the testimony and descriptions of physical evidence left "no question in my mind that this *** occurred in the manner in which Mr. [Louis] Young described" and that "the State's evidence does prove beyond a reasonable doubt that Mr. Manning was the person who shot Lewis [*sic*] Young." The court found defendant guilty of home invasion and aggravated battery with a firearm. Defendant was sentenced to concurrent prison terms of 25 years and 24 years, respectively. After reconsideration, the latter sentence was reduced to 20 years.

¶ 17 On appeal, defendant contends that the evidence failed to establish his identity as the offender. Defendant argues that Louis and Clifton provided contradictory testimony and made statements not supported by the physical evidence. Defendant also alleges that Louis and Clifton failed to immediately identify defendant as the offender and that they implicated him due to a family feud.

¶ 18 The standard of review on a challenge to the sufficiency of the evidence is whether, after reviewing 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. *People v. Brown*, 2013 IL 114196, ¶ 48. The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on questions involving conflicts in the testimony, the credibility of witnesses, or the weight of the evidence. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). To sustain a conviction, "it is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *Jackson*, 232 Ill. 2d at 281. A defendant's conviction will be reversed only if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 19 To sustain a conviction for aggravated battery with a firearm, the State must show that defendant knowingly or intentionally caused injury to another person by discharging a firearm. 720 ILCS 5/12-4.2(a)(1) (West 2010). To sustain a conviction for home invasion, the State must show that (1) defendant was not a police officer acting in the line of duty, (2) defendant knowingly made an unauthorized entry into the dwelling of another, (3) defendant knew or had reason to know that one or more persons were present therein, and (4) while armed with a firearm used force or threatened the imminent use of force upon any person within the place whether or not injury occurred. 720 ILCS 5/12-11(a)(3) (West 2010). On appeal, defendant does not contest the elements of the offenses but challenges the reliability of the witnesses who identified him as the offender.

¶ 20 To sustain a conviction, the State must prove the identity of the offender beyond a reasonable doubt. *People v. Lara*, 2012 IL 112370, ¶ 17. Positive identification by a single witness who had ample opportunity to observe will support a conviction if the identification is not vague or doubtful. *People v. Piatkowski*, 225 Ill. 2d 551, 566 (2007); *People v. Slim*, 127 Ill.

2d 302, 307 (1989). In evaluating the reliability of an eyewitness identification, Illinois courts apply the five factors listed by the United States Supreme Court in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972): (1) the witness' opportunity to view the criminal at the time of the offense, (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 witness when first identifying the defendant as the criminal, and (5) the length of time between the crime and the initial identification. *Slim*, 127 Ill. 2d at 307-08; *People v. Donahue*, 2014 IL App (1st) 120163, ¶ 94. Where identification is reliable, precise consistency regarding collateral matters is not required and minor inconsistencies will not destroy the credibility of a witness. *People v. Miller*, 101 Ill. App. 3d 1029, 1040 (1981). The fact that one witness contradicts another is not fatal to the credibility of either, as the finder of fact may accept or reject as much or as little of a witness' testimony as it pleases. *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 22.

¶ 21 We find the evidence was sufficient to establish that defendant was the offender. Defendant challenges Louis and Clifton's credibility, citing inconsistencies in their testimony, contradictory physical evidence, and alleged biases relating to a family feud. The record establishes that Louis and Clifton reliably identified defendant and testified credibly. Following the factors described in *Biggers*, we note that Louis had two opportunities to view defendant. On the first occasion, Louis stood centered behind the front door and saw defendant through a glass pane. The porch light was on and Louis' attention was sufficient to recognize defendant and observe his posture. On the second occasion, Louis was running and in pain after being shot but still noted defendant's location and his attempt to pump the shotgun. Further, Louis positively identified defendant to Officer Cotter, who arrived approximately five minutes after the shooting. Clifton viewed defendant once, while climbing the stairs, and he fell after defendant pointed the

shotgun at him. However, he positively identified defendant to Officer Cotter soon afterwards and also gave a detailed physical description to Detective Young and Detective Goduto, who confirmed that his notes identifying the offender reflected information provided by Clifton. Additionally, both Louis and Clifton knew defendant and identified him in photo arrays on the day of the incident and in a physical lineup several weeks later, notwithstanding that the persons in the lineup were seated rather than standing. Taken together, these factors indicate that Louis and Clifton reliably identified defendant. *People v. Howard*, 376 Ill. App. 3d 322, 325-26, 329 (2007) (identification was reliable despite inconsistencies where one witness was struck on the head and the other was shot at); *People v. Barnes*, 364 Ill. App. 3d 888, 895 (2006) (identification "was bolstered by the fact that [the witness] had encountered [defendant] on multiple occasions prior to the night of the shooting" and also identified defendant in a photo array and physical lineup).

¶ 22 Certain testimony contradicted Louis and Clifton on issues unrelated to identification but is not fatal to their credibility. This testimony included whether Louis claimed to see defendant point a gun at Clifton, pull the trigger, pump the gun, or pick up an ejected bullet, whether Louis shouted defendant's name after being shot, and whether either witness identified defendant before Rita Coleman called 911. Despite these differences, all of the witnesses testified consistently regarding the facts most pertinent to the State's case, including the time and location of the offense and the identity of defendant as the offender. *People v. Brooks*, 187 Ill. 2d 91, 112 (1999) (inconsistent testimony "is to be expected anytime several persons witness the same event under traumatic circumstances."); *People v. Temple*, 2014 IL App (1st) 111653, ¶ 90-91 (affirming conviction where "despite minor inconsistencies in the details," two witnesses "consistently and positively identified defendant as the shooter" by name, photograph, and in-

person lineup). Whether inconsistent testimony collateral to identification affected the witnesses' credibility was a question for the trier of fact and will not be disturbed on review.

¶ 23 Defendant contends that physical evidence undermined the witnesses' reliability, but this is not supported in the record. Initially, we note that physical evidence is not required to sustain a conviction where, as here, the State proffers credible witness testimony. *People v. Daheya*, 2013 IL App (1st) 122333, ¶ 76 (prosecution not required to produce weapon where victims credibly testified that they observed defendant aim and fire gun). In this case, no physical exhibits were admitted into evidence but the State published numerous photographs depicting pieces of flesh stuck to the ceiling of the foyer and a trail of blood leading to the attic. Other photographs showed a hole in the front door, which Louis and Clifton testified was not present before the shooting. Detective Young testified that the size of the hole, the powder burn, and the arrangement of debris indicated the damage was caused by a shotgun fired from close range outside the house. No shotgun pellets were discovered on the scene but more than 20 pellets were found in Louis' arm. Further, Officer Cotter and Detective Young viewed the scene and their descriptions of the damage to the house and the trail of blood corroborate the events outlined by Louis and Clifton. The trial court weighed the testimony and found there was "no question" that the incident "occurred in the manner in which [Louis] described." *People v. O'Donnell*, 2015 IL App (4th) 130358, ¶ 42 (affirming conviction where trier of fact examined photographs and "form[ed] its own conclusion as to which version of the story it believed was accurate and which witnesses it believed were credible.").

¶ 24 We reject defendant's contention that Louis and Clifton's testimony was impeached due to the feud between their family and defendant's family. Louis denied involvement in the altercations and claimed he did not tell Detective Healey about an ongoing conflict with

defendant. Clifton testified that previously there was bad blood between the families but the conflict dissipated. The trial court heard the testimony and was free to determine the credibility of the witnesses. *People v. Wheeler*, 401 Ill. App. 3d 304, 312 (2010) (declining to reverse conviction where the finder of fact "was aware of all of the evidence used to impeach the witnesses, and it was its duty to assess the witnesses' credibility in light of those impeaching factors."). The court found that Louis and Clifton testified believably. In view of the record, we cannot say the evidence was so improbable or unsatisfactory as to raise a reasonable doubt that defendant was the offender.

¶ 25 For all the foregoing reasons, we affirm the judgment of the trial court.

¶ 26 Affirmed.