

SIXTH DIVISION  
February 19, 2016

No. 1-14-2023

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 22758
	)	
DANIEL GARZA,	)	Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE DELORT delivered the judgment of the court.  
Justices Hoffman and Hall concurred in the judgment.

**ORDER**

¶ 1 **Held:** We affirm defendant's convictions of aggravated discharge of a firearm and aggravated fleeing or attempting to elude a peace officer because the evidence established beyond a reasonable doubt that defendant was the offender.

¶ 2 Following a bench trial, defendant Daniel Garza was convicted of aggravated discharge of a firearm and aggravated fleeing or attempting to elude a peace officer, then sentenced to concurrent, respective terms of 12 years and 6 years imprisonment. On appeal, defendant solely contends that the State failed to prove him guilty beyond a reasonable doubt because the police officer's identification of him was not credible.

¶ 3 Defendant was charged with one count of aggravated discharge of a firearm, two counts of reckless discharge of a firearm, and two counts of aggravated fleeing or attempting to elude a peace officer in connection with an incident that occurred on November 16, 2012. At trial, Chicago police officer Leonardo Prieto testified that about 9:22 that evening, he responded to a call regarding a gang disturbance in the 1800 block of West 21st Place with Sergeant Michael Miranda and Officer Kerkeres. Sergeant Miranda was driving an unmarked police car, Officer Kerkeres was in the front passenger seat, and Officer Prieto was sitting in the rear seat behind Officer Kerkeres. Sergeant Miranda stopped the car and asked a group of people standing on the sidewalk on the north side of the street if they had witnessed any gang fighting.

¶ 4 Officer Prieto testified that he then heard a gunshot fired from the south side of the street, turned his head slightly to the left, and saw a man, later identified as defendant, standing 30 to 40 feet away fire three or four more gunshots. Defendant's arm was extended in front of him and pointed toward a group of people on the north side of the street, and Officer Prieto saw flashes of light coming from the muzzle of the gun as each shot was fired. The officer further testified that defendant was standing on a stairway leading from a gangway of a home up to a vaulted sidewalk, and although he was standing below sidewalk level, Officer Prieto could see him clearly from the waist up. Officer Prieto acknowledged that there was a wrought iron fence in front of the home, but explained that the rods on the fence were far enough apart so that he still had a clear view of defendant which was not obstructed "at all."

¶ 5 Officer Prieto further testified that after firing the shots, defendant turned towards him, at which time he observed the front of defendant's face and noted that he had a long dark beard extending from his chin. Officer Prieto acknowledged that it was dark outside, but testified that "[t]he lighting is very good on that block," and that defendant was positioned between two

streetlights. He also acknowledged that defendant was wearing a black hoodie which covered his ears, but testified that he was still able to see the front of defendant's face. After turning toward the officer, defendant immediately turned back and ran down the gangway, where no one else was observed.

¶ 6 Officer Prieto testified that the three officers then exited their vehicle, and Sergeant Miranda ran to the gangway and yelled that defendant had entered a dark-colored tow truck and was driving eastbound. Officer Prieto ran eastbound, turned the corner, and saw defendant, whom he recognized as the gunman, drive the tow truck out of the alley and head southbound with a covert police vehicle following behind the truck.

¶ 7 Sergeant Miranda and Officer Kerkeres picked up Officer Prieto in the car, and when they heard over the radio that defendant was heading toward the Stevenson Expressway, they drove down Ashland Avenue and entered the southbound expressway. They caught up to other police cars in pursuit of the tow truck, which was speeding and swerving through traffic. When they caught up to the tow truck, defendant swerved from the middle lane all the way to the right and exited onto Cicero Avenue. Officer Prieto testified that it was unsafe for them to follow defendant due to the traffic, so they exited the expressway at the next exit, Central Avenue. Shortly thereafter, they learned that defendant was detained at 5245 South Knox Avenue, and when they arrived at that location, Officer Prieto recognized and identified defendant as the gunman and the driver of the tow truck. He also identified defendant in court, and identified a photograph which depicted how defendant appeared on the night of the shooting.

¶ 8 Chicago police sergeant Michael Miranda testified substantially the same as Officer Prieto regarding their arrival at 21st Place, but when he heard three or four gunshots, he did not see where they came from. Officer Prieto said that the shots came from a gangway on the south

side of the street, and he then exited their car and headed in that direction. Sergeant Miranda then exited the car, ran past Officer Prieto to the gate of the wrought iron fence, and saw defendant wearing a black hoodie running through the gangway to the alley. He never saw defendant's face, and acknowledged that he did not see him in possession of a gun, but testified that no one else was in the gangway. Sergeant Miranda saw defendant enter the driver's side of a dark-colored tow truck and drive eastbound through the alley. He yelled that information to Officer Prieto, who then ran in that direction. Sergeant Miranda returned to the car with Officer Kerkeres, and they picked up Officer Prieto.

¶ 9 Sergeant Miranda also testified similarly to Officer Prieto regarding their pursuit of the tow truck on the expressway, and added that he was driving 100 miles per hour and defendant was driving at a speed in the 90s, more than 21 miles per hour over the speed limit. Defendant drove over an embankment and exited at Cicero Avenue, and other police vehicles continued their pursuit of the tow truck. Sergeant Miranda testified that when they arrived on Knox Avenue where defendant was detained, he recognized the tow truck as the same one that was driven out of the alley on 21st Place.

¶ 10 Chicago police officer Juan Perez testified that at the time in question, he was parked in a covert police vehicle conducting surveillance at Cermak Avenue and Wood Street when he heard gunshots coming from 21st Place, then observed a tow truck speed through the intersection where he was parked. He followed the tow truck as the driver drove erratically, speeding between 90 and 100 miles per hour on Ashland Avenue, and entered onto southbound I-55. Three or four other police vehicles joined in the pursuit of the tow truck, which swerved in and out of traffic and over an embankment, then exited the expressway at Cicero Avenue. The driver

of the tow truck drove over grass on the exit ramp and made a left turn through a red light, causing several other cars to swerve, and evaded Officer Perez.

¶ 11 Chicago police officer Humberto Candelario testified that he also responded to the call about a gang disturbance on 21st Place when he heard over the radio that a vehicle chase had ensued from that location. He joined the pursuit of the tow truck on Ashland Avenue and the expressway, and followed the truck down Cicero Avenue to eastbound 43rd Street, then southbound on Knox Avenue. Defendant, who was driving the tow truck, was forced to stop at a “T” in the road around 5300 South Knox Avenue, and he and a passenger fled from the truck. Officer Candelario apprehended the passenger, Alejandro Aguilar, in an alley and brought him back to the tow truck, and his partner, Officer Ruben Romero detained defendant.

¶ 12 Chicago police officer Ruben Romero testified substantially the same as Officer Candelario regarding their pursuit of the tow truck. He added that when defendant fled from the driver’s side of the truck, he chased and cornered him at 5245 South Knox Avenue, where defendant gave up and was placed under arrest. Shortly thereafter, Officer Prieto arrived at that location and identified defendant. Officer Romero testified that he knew the passenger, Aguilar, as “Pee-Wee” from prior encounters. Officer Romero acknowledged that he never saw a weapon or other object being thrown from the tow truck, and during a custodial search, he did not recover any items from defendant. To the best of his knowledge, no gunpowder residue tests were performed on defendant or his clothing.

¶ 13 Allan Mendelson testified for the defense that he owned Car One Towing, and on November 16, 2012, defendant, who had been employed as one of his tow truck drivers for one month, was working late for him. About 6:30 or 7 p.m., Mendelson dispatched defendant to tow a car owned by a woman named Brenda at Cermak Avenue and Wood Street. Defendant called

Mendelson and said he was on his way to tow the car, and Mendelson did not hear anything further from him that night. The next morning, Mendelson arrived at work, saw that one of his trucks was missing, and learned that defendant never returned with the truck. Shortly thereafter, Mendelson learned that defendant had been arrested and the truck was impounded. Mendelson never saw defendant again until he arrived at court.

¶ 14 Brenda Trevino testified for the defense that about 7:30 p.m. on November 12 [*sic*], 2012, her car broke down at Cermak Avenue and Wood Street, and she called Car One Towing and was told that someone would come to tow her. Shortly thereafter, a man who identified himself as the tow truck driver called her and said that he was on his way to tow her car, but he never arrived. Later that evening, she heard gunshots, then saw a dark-colored tow truck speed through the intersection with another vehicle following it.

¶ 15 Defendant recalled Officer Prieto, who then viewed photographs and identified the spot where defendant was standing in the gangway at the time of the shooting. He acknowledged that he was the only person who saw defendant fire the gunshots, and that he viewed the shooting through the front windshield of the car while sitting in the rear seat. He also acknowledged that no weapon was ever recovered, no shell casings were recovered from the gangway or alley, and no gunpowder residue tests were performed on defendant or his clothing.

¶ 16 When summarizing the evidence, the trial court noted Officer Prieto's testimony that when he saw defendant shoot the gun, he observed his distinctive long beard. The court found that even if Officer Prieto had not observed defendant, the circumstantial evidence in this case "would point to his identity in that the shooter flees to the driver's side of the truck." The court noted that Officers Candelario and Romero also identified defendant as the driver of the tow truck, and then stated:

“Under the totality of the circumstances with the identification by Prieto and by the continuing pursuit of the Defendant by the other officers, I believe that his identity has been proven beyond a reasonable doubt that he fired the weapon, that he fled, that all of the elements of the offenses have been proven.”

The court then found defendant guilty as to all five counts.

¶ 17 Defendant was represented by a different attorney for his posttrial motions and sentencing. At a hearing on defendant’s motion for a new trial, defense counsel argued that Officer Prieto’s identification of defendant lacked credibility and was insufficient to sustain the conviction. The defense called Monte Dawson, an investigative consultant hired by counsel, who testified that he investigated and took several photographs of the crime scene, which were admitted into evidence. Dawson testified that the gangway where the shooter had been standing was dark and that he was unable to see into the gangway from the street. He acknowledged that what a person can actually observe is often different than what a photograph captures.

¶ 18 The trial court reviewed the photographs and found that Dawson photographed the east side of the building, but the photographs of the gangway admitted at trial were from the west side of the building, and thus, Dawson photographed the wrong gangway. The court then stated that Officer Prieto positively identified defendant as the gunman, that he had observed defendant’s distinctive beard, and that the flashes from the gun would have helped with illumination. The court noted that other officers saw defendant enter the driver’s side of the tow truck, and several officers pursued defendant, which created “a so-called chain of custody” wherein they never lost sight of him. The court also found that defendant’s flight showed consciousness of guilt, and

that defendant could have disposed of the weapon during his flight, possibly when he drove over the Chicago River. The court stated:

“So the identification is corroborated by the defendant’s distinct features of the long beard. I think the officer had an opportunity to see that. It’s corroborated by the other officer’s testimony that the shooter jumped in the driver’s side. The defendant was in the driver’s side where the tow truck was eventually stopped.”

Based on these findings, the trial court denied defendant’s posttrial motion.

¶ 19 At sentencing, the trial court merged Counts 2 and 3 into Count 1 and sentenced defendant to 14 years’ imprisonment for aggravated discharge of a firearm. The court also merged Count 5 into Count 4 and sentenced defendant to a concurrent term of 6 years’ imprisonment for aggravated fleeing or attempting to elude a peace officer. The court subsequently granted defendant’s motion to reconsider his sentence and reduced the term for aggravated discharge of a firearm from 14 years to 12 years’ imprisonment.

¶ 20 On appeal, defendant solely contends that the State failed to prove him guilty beyond a reasonable doubt because Officer Prieto’s identification of him was not credible, and no one else identified the gunman. Defendant argues that Officer Prieto would have been unable to identify the gunman because it was dark outside, the shooting happened quickly, the gunman was wearing a hoodie, and he immediately fled into a dark gangway. Defendant also asserts that the officer’s identification is unreliable because he made his observations from the rear seat of a car 30 to 40 feet away from the gunman, who was obscured by a fence and gate, and partially obscured by the vaulted sidewalk.



¶ 21 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). “Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State.” *Baskerville*, 2012 IL 111056, ¶ 31.

¶ 22 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant’s guilt (*People v. Givens*, 237 Ill. 2d 311, 334 (2010)), nor simply because defendant claims that a witness was not credible or that the evidence was contradictory (*Siguenza-Brito*, 235 Ill. 2d at 228).

¶ 23 In this case, the identity of the gunman was the paramount issue, and was resolved here in favor of the State’s witnesses. Identification of defendant by a single witness is sufficient to sustain a conviction where the witness viewed defendant under circumstances that permitted a positive identification. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Such identification is sufficient even where defendant presents contradictory testimony, as long as the witness had an adequate opportunity to view the offender and provided a positive and credible identification in court. *Id.*

¶ 24 In assessing identification testimony, the court considers: (1) the witness's opportunity to view the offender at the time of the offense; (2) his degree of attention; (3) the accuracy of the witness's prior description of the offender; (4) the witness's level of certainty at the identification confrontation; and (5) the length of time between the offense and the identification confrontation. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995).

¶ 25 Here, the record reveals that Officer Prieto positively identified defendant as the gunman and the driver of the tow truck in this case. Officer Prieto testified that he was sitting in the back seat of the police car when he heard a gunshot fired from the south side of the street, and when he turned his head slightly to the left, he saw a man standing 30 to 40 feet away fire three or four more gunshots. The gunman's arm was extended in front of him and pointed toward a group of people on the north side of the street, and Officer Prieto saw flashes of light coming from the muzzle of the gun as each shot was fired. The officer further testified that the gunman was standing on a stairway leading from a gangway of a home up to the vaulted sidewalk, and although he was below sidewalk level, Officer Prieto could see him clearly from the waist up. Officer Prieto acknowledged that there was a wrought iron fence in front of the home, but explained that the rods on the fence were far enough apart that he still had a clear view of defendant which was not obstructed "at all."

¶ 26 Officer Prieto further testified that after firing the shots, the gunman turned towards him, at which time he observed the front of defendant's face and noted that defendant had a long dark beard extending from his chin. Officer Prieto acknowledged that it was dark outside, but testified that "[t]he lighting is very good on that block," and that defendant was positioned between two streetlights. He also acknowledged that defendant was wearing a black hoodie which covered his ears, but testified that he was still able to see the front of defendant's face.

The officer identified defendant in court, and also identified a photograph which depicted how defendant appeared on the night of the shooting. Moreover, when the tow truck emerged from the alley, Officer Prieto recognized the driver of the truck, defendant, as the gunman, and after defendant was arrested on Knox Avenue, Officer Prieto identified him at the scene as the gunman and man he saw driving the tow truck.

¶ 27 The record thus shows that Officer Prieto had sufficient opportunity to view defendant at the time of the offense, that his degree of attention on defendant was high, that there was a short period of time between the shooting and his identification of defendant on Knox Avenue, and that he was absolutely certain that defendant was the gunman and the driver of the tow truck. *Lewis*, 165 Ill. 2d at 356. Although none of the other police officers were able to identify defendant as the gunman, Officer Prieto's testimony alone was sufficient to sustain the convictions as the circumstances in this case allowed him to make a positive identification. *Slim*, 127 Ill. 2d at 307.

¶ 28 In addition, the trial court found that, even without Officer Prieto's identification, the circumstantial evidence in this case pointed to defendant as the gunman and the driver of the tow truck. Defendant was the man in the black hoodie who was observed firing multiple gunshots, and who then fled into the gangway and was seen jumping into the driver's side of the tow truck. Defendant then led numerous police officers on a high-speed chase down Ashland Avenue, onto the expressway, and down Cicero and Knox Avenues, eluding some of the officers in the process. Defendant was forced to stop the truck on Knox Avenue, then fled from the truck and ran until cornered by Officer Romero and placed under arrest. The trial court found that the testimony from the officers created "a so-called chain of custody" wherein they never lost sight of defendant, and thereby established his identity as the offender.

¶ 29 Defendant's assertion that the evidence was insufficient because no weapon was recovered and no gunshot residue tests were performed on him or his clothing does not raise a reasonable doubt of his identity as the gunman. The State was not required to produce any physical evidence to establish defendant's guilt because the credible testimony of a single witness is sufficient to support a conviction (*People v. Barnes*, 364 Ill. App. 3d 888, 895 (2006)), and physical evidence connecting a defendant to an offense, including ballistics evidence, has never been required to prove his guilt (*People v. Williams*, 182 Ill. 2d 171, 192 (1998)).

¶ 30 Based on the record before us, we conclude that the evidence was sufficient to support the trial court's determination that defendant's identity as the perpetrator of the charged offenses was proved beyond a reasonable doubt. Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 31 Affirmed.