

No. 1-15-2477

**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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In the Interest of BRANDON H., a Minor,	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 05 CR 17920
	)	
BRANDON H.,	)	
	)	
Respondent-Appellant).	)	Honorable
	)	Steven Bernstein,
	)	Judge Presiding.

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JUSTICE CUNNINGHAM delivered the judgment of the court.  
Justices Connors and Harris concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Evidence was sufficient to prove beyond a reasonable doubt that minor was guilty of robbery, where witness' identification of minor as offender was reliable.
- ¶ 2 Following a bench trial, the circuit court of Cook County adjudicated minor respondent, Brandon H. (Brandon), delinquent by finding him guilty of robbery, theft and battery of the minor victim, Thomas O. (Thomas). The theft and battery counts merged into the robbery count.

Brandon was then sentenced to five years of probation; 40 hours of community service; completion of the TASC program; mandatory school attendance; and anger management counseling. On appeal, Brandon argues that the State failed to prove his guilt beyond a reasonable doubt, claiming that the complaining witness' identification of Brandon as the offender was unreliable. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3

### BACKGROUND

¶ 4 On April 10, 2014, the State filed a petition for adjudication of wardship against Brandon, alleging that he was delinquent on the bases that he committed one count of robbery (720 ILCS 5/18-1 (West 2012)), one count of theft (720 ILCS 5/16-1(a)(1) (West 2012)), and two counts of battery (720 ILCS 5/12-3(a)(2) (West 2012)) against the victim, Thomas.

¶ 5 On January 23, 2015, a bench trial on the petition for adjudication of wardship was held. Sixteen-year-old Thomas testified for the State that at about 5 p.m. on April 1, 2014, he walked from his high school in Oak Lawn, Illinois, to a nearby McDonald's restaurant, where he ordered food and noticed Brandon and his companions present. Thomas had seen Brandon before at school, but had neither interacted with him nor had any disagreements with him in the past. At McDonald's, Brandon was wearing a "white sweatshirt with gray on it," while his companions wore something different. Thomas testified that Brandon and his friends had a similar build, but that their complexion was different. After Thomas left McDonald's, he started to walk back to school near the 9400 block of South McVicker Avenue. En route, Thomas heard footsteps behind him, turned around, and saw two people with "their hoods up and strings pulled," exposing their eyes, noses, and upper lip areas. Thomas recognized these two individuals from McDonald's. Both individuals tackled Thomas to the ground, hit him in the stomach, and took

his wallet. While Thomas was lying on his back on the ground, both individuals held him down with their hands to his chest and, as Thomas tried to get up, they pushed him down before Brandon took his wallet. Brandon was standing over Thomas about a foot away when he took Thomas' wallet. At that time, Brandon's hood had loosened around his face, and Thomas was able to see more of Brandon's face, including the outside of his eyes, his whole mouth, and details of his face. Thomas described Brandon as having "darker skin, acne." After taking Thomas' wallet, Brandon ran down Austin Avenue toward their high school. Thomas then reported the incident to the police, but could not provide them with Brandon's name because Thomas did not know his name. On April 5, 2014, Thomas, accompanied by his mother, met with Detective James Hunt (Detective Hunt) at the police station, where he viewed a photo lineup. Detective Hunt explained to Thomas that he was not required to select anyone from the photo lineup, and Thomas signed a form indicating that he understood the nature of the lineup. Detective Hunt then showed Thomas "a bunch of pictures" at once, and Thomas recognized and identified Brandon from the photo lineup as "[t]he person who jumped me." He indicated that he knew from the lineup that Brandon was the perpetrator "[b]ecause of his complexion," but did not notice anything else about him. Prior to the incident, Thomas had seen Brandon at school about five or six times. Thomas' stolen wallet contained his student identification and about \$80, which was never returned to him.

¶ 6 On cross-examination, Thomas testified that a police officer arrived at the scene shortly after the incident, at which point Thomas gave a description of the two male individuals who had attacked him. Thomas described to the police officer that both offenders as "light-skinned male, black or possibly Arabic," and 5-foot-11-inches tall with a thin build. Thomas told the police officer that one offender wore "a white shirt [which] at the very bottom was black," while the

second offender wore "a black sweatshirt and jeans." Thomas also told the police officer at that time that "it would be very difficult for [him] to identify who it was because [the offenders] came up from behind"; that he probably would not be able to recognize the face, only the sweatshirt, of his attackers; and that he had \$100 in his stolen wallet. Thomas testified that while he was at McDonald's and later during the photo lineup, he recognized Brandon as someone with whom he attended school. During the photo lineup, Thomas noted that he had seen Brandon at school since the incident. However, he did not recognize the other individuals in the photo lineup as anyone who attended his school. Thomas testified that the six photographs in the lineup were presented to him simultaneously, and that "one or two" individuals depicted in the lineup were "light-skinned."

¶ 7 On redirect examination, Thomas clarified that at the time he viewed the photo lineup, he was trying to identify the person who had robbed him, not trying to identify someone that he recognized from school. In identifying Brandon in the photo lineup, Thomas informed Detective Hunt that Brandon was the offender who took his wallet. At trial, the signed form indicating the detective's admonition of the lineup procedures, as well as the photo lineup, were admitted into evidence.

¶ 8 Detective Hunt testified for the State that on April 9, 2014, he met with Brandon at his high school and then at the police station. Detective Hunt questioned Brandon as to his whereabouts on the day of the incident, to which Brandon responded that he and two friends were at McDonald's near his high school and that after leaving the restaurant, he walked through a gas station parking lot and onto Austin Avenue toward his high school.

¶ 9 Following Detective Hunt's testimony, the State rested. Defense counsel then made a motion for a directed finding, which the trial court denied.

¶ 10 Brandon testified for the defense that he was 16 years old, that he was interviewed by Detective Hunt on April 5, 2014, and that at some point Brandon gave Detective Hunt the sweatshirt he wore at McDonald's on April 1, 2014. At trial, Brandon identified a photograph of a sweatshirt that was in police possession, as the same sweatshirt he wore at McDonald's on April 1, 2014. The photograph of the sweatshirt was admitted into evidence at trial. On cross-examination, Brandon testified that on April 1, 2014, he and a friend were at the McDonald's restaurant near his high school. After leaving McDonald's, Brandon walked down McVicker Avenue toward his high school. Brandon admitted that the sweatshirt he wore on that day was a white "zip-up hoody."

¶ 11 Following closing arguments, the trial court adjudicated Brandon delinquent by finding him guilty of robbery, theft, and battery, with the theft and battery counts merging into the robbery count. On August 14, 2015, the trial court sentenced him to five years of probation; 40 hours of community service; completion of the TASC program; mandatory school attendance; and anger management counseling.

¶ 12 On September 9, 2015, Brandon filed a timely notice of appeal. Accordingly, we have jurisdiction over this appeal pursuant to Supreme Court Rules 603 (eff. Feb. 6, 2013), 606 (eff. Jan. 1, 2013), and 660 (eff. Oct. 1, 2001).

¶ 13 ANALYSIS

¶ 14 The relevant inquiry before us is whether the State proved beyond a reasonable doubt that Brandon was guilty of robbery.

¶ 15 When the sufficiency of the evidence is challenged on appeal, we must determine " '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 the reasonable doubt.' "

(Emphasis in original.) *People v. Graham*, 392 Ill. App. 3d 1001, 1008-09 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This reasonable doubt standard applies in delinquency proceedings, requiring the State to prove beyond a reasonable doubt the elements of the substantive offenses alleged in the delinquency petitions. *In re Jonathan C.B.*, 2011 IL 107750, ¶ 47. A reviewing court affords great deference to the trier of fact and does not retry the defendant on appeal. *People v. Smith*, 318 Ill. App. 3d 64, 73 (2000). It is within the province of the trier of fact "to assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence." *Graham*, 392 Ill. App. 3d at 1009. The trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009). A reviewing court will not substitute its judgment for that of the trier of fact. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court must allow all reasonable inferences from the record in favor of the State. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). A criminal conviction will not be reversed "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt." *Graham*, 392 Ill. App. 3d at 1009.

¶ 16 A person commits robbery "when he or she knowingly takes property, except a motor vehicle \*\*\*, from the person or presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-1(a) (West 2014).

¶ 17 Brandon argues that the State failed to prove him guilty of robbery beyond a reasonable doubt because Thomas' identification of Brandon as one of the offenders was unreliable, arguing that Thomas told the police shortly after the incident that he would not be able to recognize the offenders; that Thomas' testimony was confusing and contradictory; that his description of the

offenders' clothing did not match what Brandon was wearing on that day; and that the photo lineup in which he identified Brandon as the culprit was suggestive.

¶ 18 The State counters that it proved Brandon's guilt beyond a reasonable doubt, where Thomas' identification of Brandon as the offender was positive, credible, reliable, and sufficient to support a finding of guilty, and the photo lineup was not biased or unduly suggestive.

¶ 19 The prosecution has the burden of proving beyond a reasonable doubt the identity of the person who committed the crime. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). An identification will not be deemed sufficient to support a conviction if it is vague or doubtful. *Id.* 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. *Id.* The reliability of a witness' identification of a defendant is a question of fact for the trier of fact. *In re Keith C.*, 378 Ill. App. 3d 252, 258 (2007). Factors used to assess the reliability of an identification include: (1) the opportunity the witness 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 witness at the identification confrontation; and (5) the length of time between the crime and the identification confrontation. *Slim*, 127 Ill. 2d at 307-08.

¶ 20 Viewing the evidence in the light most favorable to the State, we find that the trier of fact could reasonably have found that Brandon was one of the offenders who tackled the victim, Thomas, to the ground, pushed and held him down, and took his wallet. With respect to the first factor—the opportunity the witness had to view the criminal at the time of the crime—we find that it weighs in favor of the State. At trial, Thomas testified that he saw Brandon and his companions at the McDonald's restaurant shortly before the incident that Thomas noticed Brandon wearing a "white sweatshirt with gray on it," and that Thomas had seen Brandon before

at school. As Thomas heard footsteps behind him after leaving McDonald's, he turned around and saw two individuals, whom he recognized from having seen them in McDonald's only minutes earlier. Their faces were partially exposed under their sweatshirt hoods—including their eyes, noses, and upper lip areas. During the attack, Thomas lay on his back while the offenders held him down and Brandon, who was standing over Thomas only about a foot away, took his wallet. At that point, Thomas could see that Brandon's hood had loosened around his face, thus, allowing Thomas to see more details of Brandon's face. In arguing against the first factor, Brandon highlights Thomas' cross-examination testimony stating that Thomas had told the police shortly after the attack that "it would be very difficult for [him] to identify who it was because [the offenders] came up from behind." He also points out that while Thomas had described the offenders to the police after the attack as being "light-skinned black or Arabic," he described Brandon at trial as having "dark skin, acne." However, we note that the description of skin tone is not an exact exercise. Further, it is the province of the trier of fact to resolve any conflicts or inconsistencies in the evidence, to determine the appropriate weight of the testimony, and to assess the credibility of the witnesses. See *Graham*, 392 Ill. App. 3d at 1009. We decline to substitute our judgment for that of the trier of fact. Based on the evidence, the trier of fact could reasonably have found that these alleged inconsistencies did nothing to negate the fact that Thomas was able to see details of Brandon's face before and during the attack. Likewise, we reject Brandon's speculative argument that the existence of two offenders diminished the amount of time Thomas had to view each culprit. Thus, because the evidence shows that Thomas had the opportunity to view Brandon at the time of the crime, we find that the first factor weighs in favor of the State.



¶ 21 With respect to factor two—the witness' degree of attention—we find that it also weighs in favor of a finding of reliable witness identification. The trier of fact heard testimony that as soon as Thomas heard footsteps behind him, he turned around and saw the offenders with their "hoods up and strings pulled," exposing their eyes, noses, and upper lip areas. Thomas immediately recognized these individuals from having seen them a few minutes earlier in McDonald's. Once Thomas was tackled to the ground and hit in the stomach, Brandon, whose hood had loosened around his face by this point, stood over Thomas while taking Thomas' wallet from the close distance of a foot away. During the robbery, Thomas was facing his attackers and thus, it could reasonably be inferred that Thomas' degree of attention was high at the time of the crime. Nonetheless, Brandon, citing findings from certain scientific studies, claims that Thomas' degree of attention and ability to observe the offenders could have been affected by the high-stress situation of the robbery, which Brandon argues weighs against a finding of reliable identification. We disagree. Although being tackled, punched, and robbed was no doubt a stressful situation, there is no evidence presented to suggest that the stress of the situation affected Thomas' degree of attention or ability to observe the offenders. Accordingly, we find that the evidence shows that the second factor weighs in favor of the State.

¶ 22 With respect to the third factor—the accuracy of the witness' prior description of the criminal—Brandon argues that this factor weighs against a finding of reliability, claiming that Thomas' descriptions of the offenders were vague, inconsistent, and did not match Brandon. Specifically, he argues that Thomas initially described both offenders as being "light-skinned" but then testified at trial that Brandon had "darker skin." Brandon also argues that Thomas had previously described the offenders' clothing as one wearing a white shirt with black on the bottom, and the other wearing a black sweatshirt with jeans, which Brandon claims did not

match the sweatshirt he wore that day at McDonald's (white sweatshirt with no black on the bottom). The State counters that Thomas' prior description of one of his attackers substantially matched the Brandon's physical description in the photo lineup. At trial, Thomas described Brandon as having "darker skin, acne," whereas shortly after the police officer arrived at the scene on the day of the incident, Thomas described his attackers as "light-skinned male, black or possibly Arabic," and 5-foot-11-inches tall with a thin build. Regardless of Thomas' testimony at trial, his prior description of his attacker as a "light-skinned" black male, substantially matched Brandon's photograph in the photo lineup, which was admitted into evidence at trial. Thomas had positively identified Brandon's photograph in the photo lineup as the person who robbed him. The clothing description of one of the offenders given by Thomas to the police on the day of the incident also substantially matched the white and black hooded sweatshirt Brandon later turned over to the police, a photograph of which was also admitted at trial. Our review of the photograph of the sweatshirt in the record confirms this. Based on the evidence, in light of the fact that Thomas' prior description of one of the offenders substantially matched Brandon's physical description in the photo lineup and substantially matched the sweatshirt that Brandon wore on the day of the incident, we find that the third factor weighs in favor of reliability.

¶ 23 With respect to the fourth factor—the level of certainty demonstrated by the witness at the identification confrontation—we find that it also weighs in favor of reliability. Brandon argues that this factor weighs against a finding of reliability because Thomas' identification of Brandon in the photo lineup was not made with much certainty since Thomas testified that he had only picked Brandon out of the lineup "because of his complexion," but did not notice anything else about him. Brandon also urges this court to give little weight to Thomas' testimony at trial identifying Brandon as the offender, which he claims contradicted Thomas' initial

statement to the police after the incident that it would be difficult for him to identify the offenders because they had ambushed him from behind. He further argues that Thomas' trial testimony should be afforded little weight because Thomas testified on direct examination that he had \$80 in his wallet when he was robbed, but was later impeached during cross-examination that he had previously told the police that he had \$100 in his wallet at the time of the incident. The State counters that this factor weighs in favor of reliability, arguing that Thomas' initial lack of confidence in his ability to identify his attackers did not undermine the positive identification of Brandon in the photo lineup, especially in light of the fact that Brandon was able to provide the police with a detailed physical description of the attackers, including their clothing, shortly after the attack. We agree with the State. The evidence shows that, in viewing the photo lineup, Thomas recognized and positively identified Brandon's photograph as the "[t]he person who jumped [him]." No evidence was presented to suggest that Thomas hesitated or demonstrated any uncertainty in identifying Brandon during the photo lineup as the person who had robbed him. Likewise, Thomas made an unequivocal in-court identification of Brandon as the one who took his wallet. While Thomas revealed at trial that he had picked Brandon out from the photo lineup "[b]ecause of his complexion," we find that Thomas' focus on this particular physical feature, at the exclusion of any other physical characteristics, did not negate his positive identification of Brandon during the photo lineup. Further, any discrepancies between the offenders' description that Thomas gave the police shortly after the incident and the description he gave at trial, did not undermine his positive identification of Brandon during the photo lineup. See *Slim*, 127 Ill. 2d at 309 ("presence of discrepancies or omissions in a witness' description of the accused do not in and of themselves generate a reasonable doubt as long as a positive identification has been made"); *People v. Holmes*, 141 Ill. 2d 204, 240-41 (1990) (discrepancies

in a witness' description as to a suspect's physical characteristics is not fatal to the identification, but simply affect the weight to be given the identification testimony); *People v. Miller*, 30 Ill. 2d 110, 113 (1964) (precise accuracy in describing facial characteristics unnecessary where identification is positive). Here, the trier of fact heard all of the testimony and observed all of the witnesses as they testified at trial, finding Thomas and his identification of Brandon as one of the offenders to be credible and reliable. We decline to substitute our judgment for that of the trier of fact, and we certainly will not reweigh Thomas' testimony on appeal. Accordingly, we find the fourth factor weighs in favor of a finding of reliability.

¶ 24 With respect to the fifth factor—the length of time between the crime and the identification confrontation—we find that it weighs in favor of reliability. Brandon makes no argument in his opening brief about this factor, while the State argues that Thomas' photo lineup identification of Brandon was reliable because it occurred only four short days after the crime. The evidence shows that the incident occurred on April 1, 2014, and, after the police arrived on the scene, Thomas provided the police with a detailed description of the two offenders. Four days later, on April 5, 2014, Thomas met Detective Hunt at the police station, where Thomas viewed a photo lineup and positively identified Brandon as the attacker who took his wallet. We find the lapse of four days between the commission of the crime and the photo lineup to be short and insignificant. Nothing in the evidence suggests that the passage of four days undermined Thomas' memory in recalling the incident or adversely affected the identification. See *Slim*, 127 Ill. 2d at 313 (the interval of 11 days was not significant in determining whether witness' identification was reliable); *People v. Rodgers*, 53 Ill. 2d 207, 214 (1972) (upholding identifications made two years after the crime); *People v. Cox*, 377 Ill. App. 3d 690, 699 (2007) (approving two-month lapse); *People v. Wardell*, 230 Ill. App. 3d 1093, 1098 (1992) (lapse of

one month did not adversely identification); *People v. Dean*, 156 Ill. App. 3d 344, 352 (1987) (approving identification made 2½ years after crime). Therefore, we find this factor to weigh in favor of reliability. Accordingly, we find that all five factors have been satisfied to establish the reliability of Thomas' identification of Brandon as the attacker who took his wallet.

¶ 25 Nevertheless, Brandon insists that Thomas' photo lineup identification should be given little weight, arguing that the array was biased and suggestive in the following ways: (1) Brandon was the only light-skinned individual in the photo lineup, which Brandon claims meant that he was the only one who matched the description of the offenders given by Thomas to the police; (2) Brandon was the only one in the photo lineup whose face was already familiar to Thomas from before the incident; and (3) the photographs in the lineup were presented to Thomas simultaneously, rather than sequentially, which injected bias into the photo lineup procedures. The State argues that the photo lineup was not biased or unduly suggestive, where the individuals depicted in the six photographs of the array shared more similarities than differences; where no evidence was presented at trial to support the theory that Thomas identified Brandon in the photo lineup solely because he recognized Brandon from school; and where there is no reliable evidence, nor does Brandon cite any binding precedent, suggesting that the use of a simultaneous, rather than sequential, photo lineup is inherently suggestive.

¶ 26 The determination whether a pretrial identification confrontation in a specific instance is "so unnecessarily suggestive and conducive to irreparable mistaken identification that defendant was denied due process depends on the totality of the circumstances surrounding it." (Internal quotation marks omitted.) *People v. Simpson*, 172 Ill. 2d 117, 140 (1996). Defendant bears the burden of establishing that the identification confrontation was impermissibly suggestive. *Id.* "Individuals selected for a photo array lineup need not be physically identical." *People v. Allen*,

376 Ill. App. 3d 511, 521 (2007). " 'Differences in their appearance go to the weight of the identification, not to its admissibility.' " *Id.* (quoting *People v. Denton*, 329 Ill. App. 3d 246, 250 (2002)). The United States Supreme Court has addressed the issue of unnecessarily suggestive lineup procedures in *United States v. Wade*, 388 U.S. 218, 233 (1967), setting forth situations in which an accused may be prejudiced by the lineup procedures:

"[T]hat all in the lineup but the suspect were known to the identifying witness, that the other participants in a lineup were grossly dissimilar in appearance to the suspect, that only the suspect was required to wear distinctive clothing which the culprit allegedly wore, that the witness is told by the police that they have caught the culprit after which the defendant is brought before the witness alone or is viewed in jail, that the suspect is pointed out before or during a lineup, and that the participants in the lineup are asked to try on an article of clothing which fits only the suspect."

*Id.*

In quoting *Wade*, our supreme court has noted that "[t]he theme running through all these examples is the strength of suggestion made to the witness. Through some specific activity on the part of the police, the witness is shown an individual who is more or less spotlighted by the authorities." *People v. Johnson*, 149 Ill. 2d 118, 147 (1992).

¶ 27 We find unpersuasive Brandon's argument that the photo lineup was biased and unduly suggestive on the basis that he was the only light-skinned individual depicted in the lineup. Admitted into evidence at trial was the photo lineup viewed by Thomas, which consisted of six headshot photographs of all African-American men of the same approximate age with similar

hairstyles. Three individuals, including Brandon, wore earrings, while the other three did not. Although Brandon appears to have the lightest complexion out of the six individuals, the other five individuals had varying shades of complexion and we saw no marked differences that rendered the photo lineup unduly suggestive. See generally *People v. Shields*, 181 Ill. App. 3d 260, 266 (1989) (court did not err in not suppressing identification, despite the fact that defendant was the only person in the lineup who was in his 50s while the others were 10 to 20 years younger, he was the only individual in the lineup with gray hair, and he dressed differently than the other participants who were dressed similarly to one another); *People v. Gabriel*, 398 Ill. App. 3d 332, 348 (2010) (counsel not ineffective for failing to move to suppress the lineup identification, where, although the other men in the lineup had different colored shirts or had lighter facial hair than defendant, those factors were relevant "only within the context of the totality of circumstances" and the participants in the lineup shared many similar features). Here, the other individuals in the photo lineup could not be considered "grossly dissimilar in appearance" to Brandon under the totality of the circumstances; in fact, they shared more similarities than differences—including their similar approximate age, similar short dark hair, and same race and gender. See *People v. Faber*, 2012 IL App (1st) 093273, ¶ 57 (fact that defendant was the only person wearing a sleeveless T-shirt a witness described the offender as wearing is not sufficient to render the lineup suggestive; all participants in lineup appeared to be of similar age and weight); *Allen*, 376 Ill. App. 3d at 521 (photo array not unduly suggestive where, although defendant was the only person who was actually bald in the array, all individuals displayed in the photo array had similar general physical characteristics); *People v. Johnson*, 222 Ill. App. 3d 1, 8 (1991) (lineup was not suggestive even though defendant was the only participant wearing red trousers when witnesses described the offender as wearing red

trousers). Thus, we do not find the photo array to be biased or unduly suggestive on this basis. In arguing that Thomas' photo lineup identification should be given little weight, Brandon points out that his lighter complexion made him stand out amongst the others in the photo lineup, that this physical trait was part of Thomas' prior description of the offenders to the police, and that this was the sole distinguishing feature that allowed Thomas to identify Brandon in the photo lineup. We find Brandon's argument to be nothing more than an attempt to ask this court to essentially reweigh the evidence and substitute our judgment for that of the trier of fact. We decline to do so. See *Sutherland*, 223 Ill. 2d at 242. Thus, Brandon's argument on this basis must fail.

¶ 28 Likewise, we reject Brandon's argument that the photo lineup was biased and unduly suggestive, on the basis that Brandon was the only one in the photo lineup whose face was already familiar to Thomas from before the incident. Citing a phenomenon labeled by social scientists as "unconscious transference" that is supposedly a process by which eyewitnesses pick out familiar faces rather than unfamiliar ones even if the familiarity did not arise from the criminal incident they observed, Brandon claims that because Thomas had recognized him as someone who attended his high school and as someone who was at McDonald's just before the incident, it was "possible that that [Thomas] identified him solely because he looked familiar to [Thomas] from McDonald's or school, rather than because [Thomas] recognized him as one of the offenders." We decline to speculate whether "unconscious transference" occurred in this case and then somehow make a finding that the photo lineup was suggestive or that Thomas' identification was unreliable based on that conjecture. Indeed, Thomas testified on redirect examination at trial that in viewing the photo lineup, he was trying to identify the person who had robbed him, not trying to identify someone that he recognized from school. The trier of fact



could reasonably have found Thomas' testimony to be credible. Therefore, we reject Brandon's argument on this basis as being without merit.

¶ 29 Brandon further argues that because Detective Hunt showed the six photographs of the lineup to Thomas simultaneously, rather than sequentially, this "introduced bias into the procedure and makes a false identification more likely." On this basis, Brandon argues that the reliability of Thomas' photo lineup identification was undermined, and that Thomas' in-court identification of Brandon as his attacker "should not be given any weight either" because "it is reasonable to conclude that [Thomas] identified him in court because he had already identified him once before." We reject this contention. As the State correctly notes, Brandon cites no binding legal precedent seriously questioning the use of the simultaneous photo lineup method, nor does he point to any circumstances rendering the simultaneous photo lineup method used in the case at bar to be unduly and unnecessarily suggestive. Moreover, Brandon has not presented any scientific research or any other evidence at trial demonstrating the superiority of the sequential photo lineup method. See generally *People v. Lee*, 256 Ill. App. 3d 856, 863 (1993) ("[j]udicial notice may be taken of scientific principles and authoritative treatises that are generally known and accepted or readily verifiable from sources of indisputable accuracy"). Again, Brandon's argument in essence attempts to ask this court to reweigh the evidence in order to find Thomas' photo lineup and in-court identification of Brandon unreliable, which we decline to do. Thus, we reject all of Brandon's arguments that Thomas' identification of Brandon in the photo lineup should be given little weight because the photo lineup was biased and unduly suggestive. Therefore, we find that it was reasonable for the trier of fact to conclude that the State proved beyond a reasonable doubt that Thomas's identification of Brandon was reliable and that Brandon was one of the attackers who tackled Thomas to the ground and took his wallet by

force. See 720 ILCS 5/18-1(a) (West 2014) (a person commits robbery when he knowingly takes property from the person or presence of another by the use of force or by threatening the imminent use of force). Accordingly, Brandon's conviction for robbery must be sustained.

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 31 Affirmed.