

2019 IL App (1st) 161984-U
Order filed: January 11, 2019

FIRST DISTRICT
Fifth Division

No. 1-16-1984

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. 16 CR 388
)	
JASON SMITH,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for aggravated fleeing or attempting to elude a peace officer is affirmed over his contention that the State failed to prove beyond a reasonable doubt that he was the driver of the vehicle fleeing from the police.

¶ 2 Following a bench trial, defendant-appellant, Jason Smith, was convicted of aggravated fleeing or attempting to elude a peace officer in violation of 625 ILCS 5/11-204.1(a)(4) (West 2014), and was sentenced to three years' imprisonment. On appeal, defendant contends that his aggravated fleeing or attempting to elude a peace officer conviction should be reversed because

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the State failed to prove beyond a reasonable doubt that he was the driver of the vehicle that attempted to elude the police. We affirm.¹

¶ 3 Defendant was charged by indictment with armed habitual criminal (AHC) in violation of 720 ILCS 5/24-1.7(a) (West 2014), unlawful use or possession of a weapon by a felon (UUWF) in violation of 720 ILCS 5/24-1.1(a) (West 2014), and aggravated fleeing or attempting to elude a peace officer in violation of 625 ILCS 5/11-204.1(a)(4) (West 2014). Defendant waived his right to a jury trial and the case proceeded to a bench trial.

¶ 4 At trial, Chicago police officer, Michael Mette, testified that, on December 10, 2015, he and his partner, Chicago police officer, Nick Chryssikos, were on duty, in uniform, and driving a Chicago police vehicle patrolling the 11th District. At approximately 6:42 p.m., the officers were driving northbound through an alley on Ridgeway Avenue. As the officers exited the alley, Officer Mette observed a silver Buick travelling eastbound on Ridgeway Avenue, which failed to stop at the stop sign at the intersection of Ridgeway Avenue and Thomas Street. As Officer Chryssikos pursued the Buick, it accelerated, turned east on Division Street, and failed to stop at a stop sign at the intersection of Ridgeway Avenue and Division Street. The officers activated their emergency lights and siren, and pursued the Buick. Officer Mette radioed the direction of their travel and the license plate number of the Buick. The Buick continued to gain speed and failed to stop at a number of traffic lights along Division Street. The Buick went under a viaduct and, as it was exiting on the other side, it swerved to avoid traffic, crashing into a street sign and a tree, and eventually coming to a stop on the north side of the street.

¹In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented

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¶ 5 After the crash, a passenger of the Buick exited through the front passenger door, and ran southbound on Homan Avenue. As the officers pulled up to the crash scene, Officer Mette observed defendant slide from the driver seat to the passenger side, exit the Buick, and flee from the scene of the crash. Officer Mette, who was in radio communication with other officers, radioed a description of defendant as having a “short dreads” hairstyle, and wearing a “black hoodie.” Officer Mette testified that he was not able to describe the passenger who exited the Buick because the officers “were still at a pretty good distance” from the scene when that person exited the Buick and fled. A “couple of minutes” later, Officer Mette received a radio message from Officer Sliwa that a man had been stopped on the 3400 block of West Hirsch Street, approximately two blocks away from the scene of the crash. Officer Mette proceeded to the Hirsch Street address and identified the man as the driver of the Buick by his clothing and hairstyle as the person he observed exiting the Buick from the driver side. The passenger in the Buick was arrested at 3500 West Division Street. Officer Mette described that person as having a “short almost bald” hairstyle. Officer Mette identified defendant in open court as the driver of the Buick.

¶ 6 On cross-examination, Officer Mette testified that the Buick travelled about 15 to 20 feet after hitting the tree and was facing east in the westbound lane of Division Street. Officer Mette was able to observe through the rear window of the Buick that the passenger was the first person to exit the vehicle followed by defendant, who exited “three to four seconds” later. Officer Mette described defendant as having medium length “dreads” and wearing a “black hoodie with a blue or black t-shirt.” Officer Mette was unable to see defendant’s face.

¶ 7 Chicago police officer, Nick Chryssikos, testified similarly to Officer Mette adding that, after the Buick hit the tree, two occupants exited through the passenger side of the Buick with the

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passenger exiting first, followed by defendant. Officer Chryssikos pursued defendant, who was wearing a black hoodie, dark pants, and wore his hair in “dread locks.” Defendant fled northbound on Homan Avenue from Division Street and Officer Chryssikos lost sight of him. Officer Chryssikos proceeded to 3453 West Hirsch Street when he learned that Officer Sliwa had detained an individual there. When he arrived at that address, Officer Chryssikos identified that individual as the driver of the Buick. In open court, Officer Chryssikos identified defendant as the driver of the Buick. In his estimation, “maybe ten minutes give or take,” had elapsed between the time he lost sight of defendant and when he saw him again with Officer Sliwa. Officer Chryssikos testified that the police vehicle video camera was operating during the course of the pursuit and the State entered the video footage into evidence.

¶ 8 On cross-examination, Officer Chryssikos estimated that his vehicle was approximately 30 yards from where the Buick had crashed into the tree.

¶ 9 Chicago police sergeant, Matt McNicholas, testified that he had observed a damaged Buick located at 3410 West Division Street which looked like it “jumped the curb and hit a tree.” The Buick also had knocked over a small pole. The passenger side door was slightly ajar. Officer Mette asked Sergeant McNicholas to guard the car. Using a flashlight, Sergeant McNicholas looked inside the car and observed “what appeared to be a handgun,” on the driver side floorboard, between the “side of the driver’s seat and where the door would close.” Sergeant McNicholas was able to see the “slide” of the handgun. He recovered the weapon, describing it as a loaded Smith and Wesson .40 caliber handgun.

¶ 10 On cross-examination, Sergeant McNicholas acknowledged that he did not observe who placed the handgun into the vehicle.

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¶ 11 The State introduced certified copies of defendant's qualifying convictions for the AHC and UUWF charges in circuit court case Nos. 12 CR 0431 and 08 CR 12221, and a certified record from the Illinois State Police Division of Administration which showed that defendant did not have a firearm owner identification card. Defendant's motion for directed finding was denied.

¶ 12 Ultimately, the court found defendant guilty of aggravated fleeing or attempting to elude a peace officer. In doing so, the court noted that the officers were "credible and compelling witnesses." The court further found that the evidence "clearly" showed that defendant was the driver of the vehicle that was fleeing from the officers. However, given the presence of the passenger in the car, the court concluded that the State did not establish that the handgun recovered from the car belonged to defendant and, thus, found defendant not guilty as to the AHC and UUWF counts.

¶ 13 After hearing arguments in aggravation and mitigation, the court sentenced defendant to three years' imprisonment. Defendant appealed.

¶ 14 On appeal, defendant does not dispute that the State proved all the elements for the offense of aggravated fleeing or attempting to elude a peace officer beyond a reasonable doubt. Rather, he argues that the State failed to prove, beyond a reasonable doubt, that he was the driver of the vehicle that was attempting to elude the police officers. Defendant maintains that the officers' identification of him as the driver of the Buick was not reliable where the identification occurred at night while defendant was fleeing from them. Defendant also maintains that the officers: (1) had a brief opportunity to observe him; (2) were unable to see his face; and (3) gave a general description that did not include height, weight, or age.

¶ 15 The standard of review on a challenge to the sufficiency of the evidence is whether, after viewing 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. Wheeler*, 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases regardless whether the evidence is direct or circumstantial. *People v. Herring*, 324 Ill. App. 3d 458, 460 (2001). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchison*, 2013 IL App (1st) 102332, ¶ 27; *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not the reviewing court's duty to retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). A reviewing court will only reverse a criminal conviction when the evidence is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Id.*

¶ 16 After viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found beyond a reasonable doubt that defendant was the driver of the Buick. Although there was no direct physical evidence presented against defendant, there was the eyewitness identification of defendant by Officers Mette and Chryssikos as the driver of the Buick. Contrary to defendant's argument, we cannot say that the identification of defendant by Officers Mette and Chryssikos was so improbable or unsatisfactory, that a reasonable doubt exists as to defendant's guilt.

¶ 17 It is well-settled that the testimony of one identification witness, if positive and credible, is sufficient to sustain a conviction. *People v. Herron*, 2012 IL App (1st) 090663, ¶ 15; *People v. Slim*, 127 Ill. 2d 302, 307 (1989). When a conviction depends on eyewitness testimony alone, the reviewing court may find the testimony to be insufficient “only where the record evidence

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compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.” *Ortiz*, 196 Ill. 2d at 267. A reviewing court will not reverse a conviction based on eyewitness testimony unless that testimony is “improbable, unconvincing, or contrary to human experience.”

Id.

¶ 18 When assessing identification testimony, we rely upon the factors set forth in *Neil v. Biggers*, 409 U.S. 188 (1972), which are “to be considered in evaluating the likelihood of misidentification include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation.” *Id.* at 199-200.

¶ 19 In considering the *Biggers* factors in relation to the officers' identification of defendant at the time he fled from the crash, we conclude that they weigh in the State's favor. First, the record demonstrates that both officers had sufficient opportunity to view defendant fleeing from the vehicle. Officer Mette testified that he observed defendant exit the passenger side and was able to give a clothing and hairstyle description of defendant over the police radio. Officer Mette explained that he was able to see through the rear window of the Buick and that the passenger was the first person to exit the vehicle, followed by defendant, who exited “three to four seconds” later. Officer Chryssikos testified that he also observed defendant exit from the passenger side of the vehicle and gave a similar description of defendant as Officer Mette. Officer Chryssikos had further opportunity to observe defendant as he pursued him. *People v. Barnes*, 364 Ill. App. 3d 888, 894 (2006) (citing *People v. Parks*, 50 Ill. App. 3d 929, 930 (1977) (“[A]n encounter as abbreviated as ‘five to ten seconds’ *** [is] sufficient to support a

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conviction.”)). Thus, the first *Biggers* factor weighs in favor of the officers’ identification of defendant.

¶ 20 The second factor, the degree of attention of Officers Mette and Chryssikos, also weighs in favor of a reliable identification. Officers Mette and Chryssikos were on patrol when they observed a Buick run through a stop sign. The officers proceeded to pursue the vehicle when it ran through another stop sign. Officer Chryssikos activated his emergency equipment and the Buick sped away. The officers pursued the Buick as it drove through two red lights without stopping. The vehicle eventually crashed, and defendant and a passenger exited the vehicle with the officers giving chase. This court has previously found that, when a police officer is responding to a call, his degree of attention is high “and in all likelihood greater than that of an average citizen witnessing a crime or being victimized by a crime.” See *People v. Stanley*, 397 Ill. App. 3d 598, 611 (2009).

¶ 21 Third, the accuracy of the witness’s prior description of the offender also supports the reliability of the identification of defendant by Officers Mette and Chryssikos. The record shows that, when defendant fled on foot from the Buick, Officer Mette immediately radioed a description of him as wearing dread locks and a black “hoody.” Officer Chryssikos gave a similar description, adding that defendant was wearing dark colored pants. Defendant did not challenge the officers’ description during trial. Here, defendant argues that the officers’ description of him was general and could have been a description for many people. However, “a witness’s identification can be sufficient even though the witness provided only a general description based on the overall appearance of the offender.” *Slim*, 127 Ill. 2d at 308-09.

¶ 22 Finally, the last two *Biggers* factors—the level of certainty demonstrated by the witness at the identification confrontation and the length of time between the crime and the identification

confrontation—further support the reliability of the officers’ identification of defendant. The record shows that Officer Chryssikos identified defendant within approximately 10 minutes from the time defendant exited the vehicle, to the time he was detained by Officer Sliwa. Officer Mette also identified defendant when he was with Officer Sliwa. We note that significantly greater lengths of time have not rendered identifications as unreliable. See *People v. Malone*, 2012 IL. App. (1st) 110517, ¶ 36 (16 month delay between crime and positive identification). Both Officers Mette and Chryssikos made positive in-court identifications of defendant as the driver of the Buick. See *People v. Magee*, 374 Ill. App. 3d 1024, 1032-33 (2007) (a witness’s identification was sufficient when it was made without hesitation).

¶ 23 In sum, we cannot say that, neither Officer Mette’s nor Officer Chryssikos’ identification of defendant was so unreliable, that there exists a reasonable doubt as to defendant’s guilt. Therefore, we will not disturb the trial court’s finding that defendant was guilty of aggravated fleeing or attempting to elude a peace officer.

¶ 24 In reaching this conclusion, we are not persuaded by defendant’s argument that the evidence was insufficient to sustain his conviction because the State did not present any physical evidence, such as fingerprints or a vehicle identification number, to corroborate the identification of defendant by Officers Mette and Chryssikos thereby connecting him to the Buick. As mentioned, the officers positively identified defendant as the driver of the Buick. See *Herron*, 2012 IL. App. (1st) 090663, ¶ 23 (where eyewitness testimony is credible, the State is not required to produce physical evidence).

¶ 25 Lastly, we note that it is the responsibility of the trier of fact to determine the weight to be given to the testimony of the officers, to determine their credibility, and to resolve any inconsistencies or conflicts with the evidence. See *Hutchinson*, 2013 IL App (1st) 102332, ¶ 27;

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Ortiz, 196 Ill. 2d at 259. As noted by the trial court in announcing its ruling, it found the officers “to be credible and compelling witnesses,” and we will not reverse a conviction simply because defendant claims that a witness was not credible. *People v. Evans*, 209 Ill. 2d 194, 211-12 (2004).

¶ 26 For the aforementioned reasons, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.