A P P E N D I X -- A

Illinois appellate court order

2019 IL App (1st) 162778-U
No. 1-16-2778
Order filed April 11, 2019

Fourth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 10939
	)	
KEVIN DAMERON,	)	Honorable
	)	Vincent Gaughan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to prove defendant guilty of attempted first degree murder and aggravated battery beyond a reasonable doubt based on the testimony of two eyewitnesses who reliably identified him as the offender.

¶ 2 Following a bench trial, defendant Kevin Dameron was convicted of attempted first degree murder and aggravated battery, and sentenced to 26 years in prison. He appeals, arguing that the evidence was insufficient to find him guilty beyond a reasonable doubt because the eyewitness identifications implicating him were unreliable. We affirm.

¶ 3 Defendant was indicted on five counts of attempted first degree murder (720 ILCS 8-4(a), 9-1(a)(1) (West 2014)) and one count of aggravated battery (720 ILCS 5/12-3.05(e)(1) (West Supp. 2013)), arising from a shooting in Chicago on May 3, 2014. Prior to trial, the State dismissed four of the attempted murder counts, and proceeded on one count of attempted murder and one count of aggravated battery. Defendant filed motions to quash arrest and suppress identification, which the court considered simultaneously with the trial evidence.[1]

¶ 4 At trial, Devin Lockett testified that he competed in a dance contest on May 3, 2014, at a skating rink called The Rink, located at 87th Street and Greenwood Avenue. He attended the contest with his friend, Craig Wallace. At approximately 10:45 p.m., Lockett exited through the back of The Rink, walked up the alley, and stood on the sidewalk in front of the building. At this time, he was not with Wallace, but was looking for Wallace's mother, who was to give them a ride home. Lockett observed a man with "a hoodie and dreads," whom he identified in court as defendant, walk towards him. Lockett did not know defendant, but had seen him in The Rink "a couple times." When Lockett first saw defendant, he could see his nose and eyes, but defendant's face was partially covered by his hair. As defendant got closer, Lockett was able to see more of his face. When defendant was about five feet away, he pulled a firearm that looked like an "old cowboy gun" from his waistband and shot Lockett in the chest and stomach. Lockett did not see a flash, but heard the gunshots. After defendant fired two shots, Lockett fell to the ground "in so much pain." He did not see defendant again that night. Lockett was taken to Christ Hospital for treatment, where he stayed for "about two months" and underwent 13 surgeries. Lockett's left

[1] On appeal, defendant does not challenge the trial court's rulings on his motions to quash arrest and suppress identification, which were denied.

leg below the knee and the toes on his right foot were amputated, and muscle was removed from his right leg. As a result, he lacked movement in his right ankle and used a prosthetic left leg.

¶ 5 About a week after the shooting, detectives visited Lockett at the hospital in the presence of his mother, Renee Lockett.[2] He was unable to speak because he had recently had his breathing tube removed, but he was "clearheaded" and understood what the detectives said. They showed him photographs of six people and asked him if he could identify the shooter. Lockett pointed to defendant's photograph, and because he was unable to write, his mother circled it and signed the paper for him. He testified that, before he made the identification, nobody told him who had shot him, gave him any information about the shooter's identity, or told him which photograph to identify. Lockett acknowledged that he was arrested for cannabis possession while the present case was pending, although the charge was dismissed.

¶ 6 The State played part of a surveillance video from May 3, 2014, which Lockett testified accurately depicted what occurred. The video, which is included in the record on appeal, showed 87th Street and the adjacent alley where people exit The Rink. In the video, there is a crowd of people standing on the sidewalk and "a sedan" parked near the mouth of the alley. At about 10:49:50 p.m. on the video's timestamp, the crowd starts to run away, but a smaller group remains gathered around what appears to be a man lying on the ground near the front of the sedan. Lockett identified himself as that man.

¶ 7 On cross-examination, Lockett testified that he had seen defendant at The Rink once or twice before, but they had never exchanged words or bumped into each other. He saw defendant in The Rink before the shooting, but could not recall what he was wearing at the time. After

[2] We will refer to Devin Lockett as "Lockett," and Renee Lockett as "Renee."

Lockett left The Rink, he stood by the curb alone and looked for Wallace, but never saw him outside. When Lockett left, there were 20 or 30 people outside, but eventually "everybody else" also came out before defendant approached him. Lockett described the shooter as a "caramel skinned" black man with "dreads and a dark colored hoodie on" his head. The dreads hung below his shoulders, and the hoodie was either black or navy blue, but it was too dark outside for Lockett to tell which color it was. The shooter was shorter than Lockett, who is six foot two inches tall. He aimed at Lockett and fired two shots. Lockett did not know why defendant shot him.

¶ 8 Lockett first spoke to police about the shooting four or five days afterwards. At that time, he did not know the name of shooter, had not been told anything about the shooter's identity, and had not seen anything on Facebook about the shooter. The police brought a photo array to the hospital before Lockett told them about the shooter's height, weight, or complexion. According to Lockett, only one of the six men in the photo array had a "caramel" complexion, and at least two of the men had dreads shorter than shoulder-length. He agreed that he had "a good observation" of defendant in the courtroom, and reiterated that defendant was the person who shot him. Lockett acknowledged that Wallace had identified a suspect for police, but stated that they did not discuss what the shooter looked like.

¶ 9 Wallace testified that he and Lockett left The Rink together at approximately 11 p.m. and waited for Wallace's mother to pick them up. Wallace "ventured off a little bit" from Lockett, but they were "[a] few feet" apart when he heard three gunshots. The shots came from his right side, which was where Lockett was standing. Wallace did not see the gunshots because he was facing the other direction, but noticed one "flash of the gun." When he heard the gunshots,

Wallace looked to his right and saw a "short" black man with dreads, whom he identified in court as defendant, holding a gun. He did not know defendant and had never seen him before the shooting. Wallace was "about 10, 15 feet away" from defendant, and he saw the right side of defendant's face. Defendant was the only person Wallace saw holding a gun that night, and neither he nor Lockett were carrying a weapon.

¶ 10 After the shooting, Wallace ran into the alley. When he returned to 87th Street minutes later, he saw Lockett lying on the ground. Wallace spoke to police at the scene, and they brought a suspect for him to identify. It was not defendant, and Wallace told the police that the suspect was not the shooter. On June 9, 2014, Wallace viewed a lineup at the police station. Before viewing the lineup, he read and signed an advisory form stating that the suspect might not be in the lineup, that he was not required to make an identification, and that he should not assume that the person administering the lineup knew whom the suspect was. Neither the police, his friends, nor anybody else told him whom to identify. Wallace identified defendant in the lineup, and stated that he was able to identify defendant because he "saw his face, and of course, his hair and body structure." The State introduced the signed advisory form and a photograph of the lineup into evidence.

¶ 11 On cross-examination, Wallace testified that he and Lockett left The Rink together and stood out front by a bus stop on 87th Street. He and Lockett "spread apart a little bit," but remained within earshot and eyesight. Some people in the crowd were "mouthing off with one another," but he did not see Lockett involved in any argument. When Wallace heard the gunshots, he was not looking at Lockett, but could see him in his peripheral vision. He took a "quick glance" in the direction of the shots, and saw that the gunman was a "very short

gentleman," who had black dreads with "brownish goldish tips" that hung below his shoulders. He did not recall the shooter wearing a hoodie, and stated that defendant's hair was exposed enough to get a "good" view of it. When Wallace returned to 87th Street, he could tell that Lockett was injured because he was lying motionless on the ground, but did not see any blood or "physical injury." Lockett told him that he had been shot.

¶ 12 Wallace told Detective John Otto that the suspect he viewed at the scene was not the shooter because, "For one, the main factor is the hair. I wouldn't just point somebody randomly out with dreads." Wallace also stated that the suspect had a different "facial stricture [*sic*]," and that his lips were larger than the shooter's. He told the police at the scene that the shooter was a short man with dreads who was wearing a jacket. Wallace spoke with Lockett at the hospital several days later, but they did not discuss the shooter's appearance or any rumors they had heard about the shooting. Renee did not tell Wallace about a person named "Noodles." During the lineup, Wallace did not identify defendant when he viewed him face-on, but did identify him once defendant turned to the side. At trial, Wallace explained that, "I did notice his dreads even though they were pulled back, I still noticed it, and I noticed the side of his face. I could just recognize the face." He acknowledged that the other lineup participants did not have dreads, and looked different than defendant. Defense counsel introduced into evidence a photograph of the men in the lineup as viewed from the side.

¶ 13 On redirect examination, Wallace stated that his lineup identification was not based solely on defendant's hair, but also his face, body type, and size. On recross-examination, Wallace testified that he recognized defendant based on his hair, face, and height. He

acknowledged that the photograph of the side view of the lineup showed that the participants did not all have the same build.

¶ 14 Chicago police sergeant Alvin Dimalanta testified that, at approximately 11 p.m. on May 3, 2014, he and his partner were sitting across the street from The Rink in a marked squad car when a woman knocked on the window and told them that she saw a person leaving The Rink with a gun. Dimalanta was examining the crowd for a suspicious person when he heard "several shots" and observed people running in different directions. He did not see who shot the gun, but could tell that the crowd appeared to be running from the area on 87th Street near the alley where people exit The Rink. Dimalanta requested an ambulance for a juvenile who appeared to be shot, and met with rink security, who had detained a man named Daqueal Caffey. He retained custody of Caffey until others officers arrived. He later learned that Wallace participated in "an identification procedure" with Caffey, and that Wallace did not identify him as the shooter.

¶ 15 On cross-examination, Dimalanta stated that the woman who informed him about the gunman did not provide a description. He did not observe an altercation or collect any physical evidence from the scene. "[O]ne of the juveniles on the scene" told Dimalanta that the shooter was a black man with dreads, which he radioed to dispatch and sent out via flash message. The parties stipulated that Dimalanta's radio message described the shooter in part as "male black, light complexed."

¶ 16 Lockett's mother, Renee, testified that she went to Advocate Christ Hospital on May 3, 2014, after she learned that Lockett had been shot. Nobody was allowed to visit Lockett in the hospital without Renee escorting them. The day after the shooting, she allowed a group of 15 to 20 of Lockett's friends to see him under her supervision, though he was "basically unconscious"

at the time. The group told Renee that someone nicknamed "Noodles" was the one who shot Lockett, and she told them that they needed to tell the police what they knew.[3] A few days later, she was present when the police showed Lockett a photo array. When the detectives asked him if he recognized the shooter, Lockett pointed to one of the photographs because he was unable to speak without discomfort. The police circled the photograph that Lockett pointed to, and Renee signed the photo array to confirm that they circled the proper photograph. Prior to this identification, neither Renee nor anyone else told Lockett that Noodles had shot him. The State introduced the signed photo array into evidence.

¶ 17 On cross-examination, Renee testified that someone sent her a photograph of the alleged shooter several days after the shooting. She informed the police about the photograph, and they told her that they already had it. She did not discuss the photograph with Lockett or ask him about what occurred the night of the shooting prior to him viewing the photo array.

¶ 18 Detective Patrick Ford testified that he was assigned to the investigation on May 4, 2014. By that time, defendant, whom he identified in court, was a suspect. He and his partner, Bill Meister, compiled a six-person photo array by searching a computer system for mug shots of people with "similar demographics" to defendant. On May 4, 2014, Ford took the photo array to Christ Hospital, but was unable to see Lockett because he was being prepared for surgery. About a week later, Ford and Meister showed Lockett the photo array in Renee's presence, informed him that the suspect might not be in the array, and asked him if anyone in the photographs was present during the shooting. Lockett pointed to defendant's photograph and said that he was the person who shot him. Because Lockett was unable to write, Renee initialed by the photograph

[3] The court stated that it would consider the group's statement only for defendant's motions to quash arrest and suppress identification, and not as trial evidence.

and signed the bottom of the form on his behalf. Ford and Meister also signed below the photographs. On cross-examination, Ford acknowledged that the men in the photo array did not have the exact same skin tone or hairstyle, and that none of them had multicolored hair.

¶ 19 Chicago police officer Keith Irvin testified that he was working as a school officer at Hirsch High School on June 9, 2014, when Otto informed him that defendant, then a Hirsch student, had been identified in a photo array as the offender in a shooting. At approximately 12:15 p.m., Irvin placed defendant in custody. On cross-examination, Irvin testified that he did not exchange any words with defendant when taking him into custody, other than explaining that he could not discuss the case with him.

¶ 20 Chicago police detective Donald Hill testified that he was part of a team of detectives assigned to investigate the shooting on May 4, 2014. On June 9, 2014, defendant, whom he identified in court, was in custody as a suspect. Hill assembled a physical lineup along with Detectives Otto and Lou Conley. He had all five participants wear hats because defendant was the only one with long hair. Hill conducted the lineup with Wallace, who identified defendant. On cross-examination, Hill acknowledged that, despite the hats, the side view showed that defendant was the only individual with dreads.

¶ 21 Defendant testified that he was hanging out with friends on May 3, 2014, when one of them, China Carson, suggested going to The Rink because it was "going to be the trend" on social media that night. Defendant received numerous messages on his Facebook account encouraging him to attend, so he told his friends to clean up and meet there. Because his friends were taking too long, he took the bus to The Rink by himself. He wore a shirt with "red sleeves, white chest area, American flag blue jeans, and all white Nikes." He did not wear a hood because

he wanted to stand out by the "light gold-ish patch" of hair in front of his head. He stated that as he entered The Rink, security used a metal-detecting wand on him and made him pass through a metal detector. His friends and brother eventually came to The Rink, and they socialized, danced, and talked to girls. He stayed until the DJ announced that it was five minutes to closing time, which defendant testified was usually around 11 p.m. He exited with his brother, but told him that he wanted to stay and socialize longer. His brother went to his car, while defendant went to the bus stop in front of The Rink and talked to some girls whose names he did not know. Carson came to the bus stop and joined the conversation. Defendant noticed that two nearby groups of men were arguing, but he did not see Lockett, whom he did not know at the time, participating in the argument.

¶ 22 As defendant was conversing with Carson and the other girls, he saw a man in front of him unzip his jacket "like they was going to fight," and heard gunshots a few seconds later. The shots that he heard were the ones that struck Lockett, and they were the only shots fired in the area that evening. One of the girls defendant was talking with was also shot. After the shooting, defendant ran about 15 feet away. He heard someone call his nickname, "Noodles," from the area where the shots were fired. When he returned to the scene, he saw multiple police officers. Lockett was lying on the ground, holding his stomach. Police detained a man, who screamed, "[T]hat's my homie, that's my friend, I ain't shoot him, you all got the wrong person." Defendant testified that "we" called an ambulance for the girl who was shot. He then walked about 10 blocks to 87th and Cottage Grove Avenue, where he met his brother, who drove him home.

¶ 23 At home, defendant checked his Facebook account and saw that he had "a lot of friend requests, a lot of inboxes, and a lot of notifications." He posted on his Facebook page that "I did not shoot anyone, and everyone seen me out there in the rink that day, and I didn't do anything." He continued to attend skating rinks until he was arrested on June 9, 2014, and taken to a police station. He was transported to another police station and placed in a lineup. At the lineup, he kept his hair pulled back with a rubber band and wore a hat that the detective gave him. His hair was not visible from the front view, but could be seen when he turned to the side. He did not notice anyone else in the lineup that had dreads or shoulder-length hair. Defendant denied having a gun, shooting anyone, or robbing anyone. He did not know Lockett, did not talk to Lockett, and had no motive to shoot him.

¶ 24 On cross-examination, defendant testified that he became friends with Carson a "year or two" before the shooting, but had never dated her. They were still friends at the time of trial. He explained that Carson never made it inside The Rink, and that he did not see her until she walked up to him at the bus stop. He was outside for six or seven minutes before the shooting occurred, and was close enough to the gunshots that they caused ringing in his ears. Defendant described the man who took off his jacket before the shooting as "very dark-skinned" with dreads down to his ears. He never told the police about the man.

¶ 25 Carson testified that she has been friends with defendant for three or four years, but had never dated him. She called defendant "Noodles," and he went by the moniker "Dread Head Noodles" on Facebook. She was hanging out with defendant on May 3, 2014, when they decided to go to The Rink that night because it was "trending" on social media. Defendant and his friends began walking to The Rink without her while she waited for her sister to pick her up. By the time

Carson arrived at The Rink, everybody was already outside. Defendant had his hair exposed with his "blonde patch" visible. As she talked to defendant outside, she could hear people arguing behind her. Carson saw three men named Carrie, Devin, and Lloyd, whom she recognized from social media. They were arguing with other people, but she could not hear what they said. Gunshots went off, and she and defendant ran separate ways.

¶ 26 Later that night, Carson sent defendant a Facebook message of a photograph that "they was sending around on Facebook," that claimed defendant was the shooter. Carson told defendant that she knew he was not the gunman because she was standing next to him during the shooting. Defense counsel introduced into evidence a photograph of defendant from Facebook with the caption "this who shot bro huh? let *Devin Lockett* not [*sic*] inbox me tomorrow morning on some playing shit..." (Emphasis in original.). Carson testified that the photograph appeared on Lockett's Facebook page and circulated around Facebook for "some weeks." She denied having "any major conversations" with defendant after his arrest on June 9, 2014. She did not owe defendant anything, he was not paying her to testify, and he had not promised her anything in exchange for her testimony. Rather, she decided to testify because "he isn't the shooter."

¶ 27 On cross-examination, Carson acknowledged that she considered defendant a "play brother," which is "more than just a regular friend," and "almost family." She talked to defendant and told him about the Facebook photograph approximately 20 or 30 minutes after the shooting. She never told the police that she knew defendant was innocent.

¶ 28 On redirect examination, Carson stated that she does not know anyone in defendant's family, except for his brother. She agreed that the term "play brother" is "just some phrase that teenagers use all the time." She talked to defendant one time while he was in custody.

¶ 29 The defense recalled Lockett, who testified that he waited at the bus stop by himself after leaving The Rink. He denied seeing anyone named Carrie or Lloyd on the night of the shooting. Lockett did not remember what he wore that evening, and was not aware of any argument that occurred before the shooting. He stated that the shooter had "blondish and black" dreads that hung over his face.

¶ 30 By stipulation, defense counsel read an incident report that Otto wrote after interviewing Wallace. According to the report, Wallace stated that he and Lockett left The Rink together at 11 p.m. and an "unknown guy" started to argue with Lockett. A few moments later, Wallace said a "small" black man with braids shot Lockett. The defense then rested.

¶ 31 After closing arguments, the court denied defendant's motions to quash arrest and suppress identification, noting that "there's no showing that the police did use undue influence to get the identification and violate due process and [defendant's] rights." The court found defendant guilty of attempted first degree murder and aggravated battery with a firearm. In announcing its findings of guilt, the court stated, "I've listened to the evidence, observed the demeanor of the witnesses while testifying, and listened to the closing arguments of the attorneys," and that there were "inconsistencies on both the defense and prosecution, but [I] resolved the inconsistencies in that the State has proved each and every element of" the charges beyond a reasonable doubt. Defendant filed a motion for new trial, which the court denied.

¶ 32 Following a sentencing hearing, the court merged the aggravated battery count into the attempted murder count, and sentenced defendant to 26 years in prison. The court denied defendant's motion to reconsider sentence.

¶ 33 On appeal, defendant argues that the evidence was insufficient to prove him guilty of attempted murder and aggravated battery beyond a reasonable doubt. In particular, he argues that Lockett and Wallace's identifications were unreliable because they had limited ability to observe him, were unduly influenced by social media, and gave "completely inconsistent" accounts of the night of the shooting. Defendant further contends that he and Carson gave a consistent and more believable explanation of the events on that night. The State responds that the eyewitness identifications of defendant were reliable, and that we should reject defendant's alternative theory of events in favor of the trial court's credibility determinations.

¶ 34 On a claim of insufficient evidence, a reviewing court determines whether any rational trier of fact could have found that the State proved the elements of the charges beyond a reasonable doubt. *People v. Harris*, 2018 IL 121932, ¶ 26. A reviewing court must view the evidence in the light most favorable to the State and draw all reasonable inferences in the State's favor. *Id.* It remains the trier of fact's responsibility to weigh the evidence, resolve any conflicts in the testimony, and draw reasonable inferences from the facts; a reviewing court does not retry the defendant. *Id.* A conviction is reversed on appeal only where "the evidence is so improbable or unsatisfactory that a reasonable doubt remains as to the defendant's guilt." *Id.*

¶ 35 Relevant here, a person commits attempted first degree murder when he takes a "substantial step" towards the intentional, unjustified killing of another. 720 ILCS 8-4(a), 9-1(a)(1) (West 2014). A person commits aggravated battery when, in the course of committing a battery, he knowingly discharges a firearm and injures another. 720 ILCS 5/12-3.05(e)(1) (West Supp. 2013). A person commits battery when he knowingly causes bodily harm to or makes insulting or provoking physical contact with another. 720 ILCS 5/12-3(a) (West 2014).

¶ 36 Defendant acknowledges that Lockett was shot twice outside The Rink on May 3, 2014, but maintains that he was not proven to be the gunman because Lockett and Wallace's identifications were not reliable. Illinois courts evaluate the reliability of an eyewitness identification under the five factors announced by the United States Supreme Court in *Neil v. Biggers*, 409 U.S. 188 (1972): (1) the witness's opportunity to view the offender during the crime; (2) the degree of the witness's attention; (3) the accuracy of the witness's prior descriptions; (4) the witness's degree of certainty; and (5) the length of time between the crime and the identification. *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989). While the *Biggers* factors provide guidance, no single factor is dispositive, and the reliability of an identification is based on the totality of the circumstances. *People v. Simmons*, 2016 IL App (1st) 131300, ¶ 89. Whether a witness's identification is reliable is a question for the trier of fact. *Id.* ¶ 88.

¶ 37 In regard to the first *Biggers* factor, the opportunity to view the perpetrator, defendant argues that Lockett had a "limited opportunity" to observe the offender because the offender's face was partially covered by his dreads, it was dark outside, and Lockett was in a "highly stressful situation." However, Lockett testified that he watched defendant approach him and stop directly in front of him, about five feet away. Lockett could see defendant's dreads, nose, and eyes at all times, and as defendant drew closer, he could see more of defendant's face. He had also seen defendant "a couple times" before the night of the shooting, and had seen him in The Rink earlier that night. Although Lockett testified that it was too dark outside to tell whether defendant's hoodie was black or navy blue, the evidence showed that Lockett had no problem seeing defendant's face. We also note that, while being shot is no doubt "stressful," Lockett observed defendant's face before he saw a gun and before he was unexpectedly shot. Although

Wallace only saw the side of defendant's face briefly, the evidence showed that he viewed defendant from about 10 to 15 feet away and was able to observe defendant's face, hair, and stature. Consequently, we find that the witnesses' opportunity to view defendant weighs in the State's favor.

¶ 38 With respect to the degree of the witnesses' attention, we are unpersuaded by defendant's contention that Lockett suffered from "weapon focus," and we note that his ability to describe defendant's gun could reasonably support the credibility of his overall observations. See *People v. Middleton*, 2018 IL App (1st) 152040, ¶ 23 n.2 (rejecting the defendant's "weapon focus" argument, and stating that a witness's degree of attention was "high" where he quickly noticed the type of gun the defendant was carrying). Wallace's degree of attention may have been lower, as he testified that he was not looking in the direction of the shots and only took a "quick glance" at defendant before running away. However, this factor alone does not render his identification unreliable. Rather, the reliability of Wallace's identification must be evaluated under the totality of the circumstances.

¶ 39 The third factor, the accuracy of prior descriptions, is largely inapplicable here. Lockett did not provide a description to police before viewing the photo array. Similarly, the only description Wallace gave to police before identifying defendant was the rather general statement that the shooter was a short man with dreads, which defendant does not argue is inaccurate.

¶ 40 The fourth *Biggers* factor, the witness's certainty, supports the reliability of the identifications made in this case. Nothing in the record suggests that Lockett and Wallace were uncertain or wavered in their identification, even though both were told that the suspect might not be present. Indeed, each man positively identified defendant again at trial. Wallace also

unequivocally told Otto that another suspect in custody was not the shooter after viewing a show-up at the scene. The fact that Wallace did not initially identify defendant when he viewed the lineup face-on does not mean that he was not confident in his identification. See *People v. McTush*, 81 Ill. 2d 513, 522 (1980) (finding that the impact of a witness's failure to identify the defendant at a lineup was reduced where the witness gave a plausible explanation for his failure and later identified the defendant with certainty). Rather, Wallace positively identified defendant when he saw his face in profile, which he explained was the perspective from which he saw defendant immediately after the shooting.

¶ 41 The final factor, the length of time between the offense and the identification, also weighs in favor of reliability. Lockett identified defendant in a photo array approximately one week after the shooting, and Wallace identified defendant in a lineup about five weeks after the shooting. Despite defendant's unsupported contention that a "week of extraordinary anguish" may have "confused or blotted [Lockett's] memory and left him susceptible to suggestion," a rational trier of fact could have found that the proximity of the shooting and the identifications in this case support their reliability. See *People v. Malone*, 2012 IL App (1st) 110517, ¶ 36 (finding that a length of 16 months did not make an identification unreliable). In sum, viewing the *Biggers* factors and the totality of the circumstances in the light most favorable to the State, a rational trier of fact could have determined that Lockett and Wallace reliably identified defendant as the gunman.

¶ 42 Defendant next argues that the trial court erred in crediting Wallace's testimony because it was inconsistent with parts of Lockett's testimony and Otto's account of Wallace's pretrial statements. In addressing this argument, we first note that Wallace and Lockett's testimony is not

as inconsistent as defendant contends. While it is true that Lockett testified that he exited The Rink and stood outside alone, and that Wallace testified that he and Lockett left together and "kind of ventured off" from each other before the shooting, the trier of fact was not required to discredit either one of them entirely. See *People v. Gray*, 2017 IL 120958, ¶ 47 ("where inconsistencies in testimony relate to collateral matters, they need not render the testimony of the witness as to material questions incredible or improbable"). Similarly, although Otto stated that Wallace told him that Lockett was in an argument before the shooting and that the shooter had "braids" rather than dreads, it was the trier of fact's role to evaluate the testimony, resolve discrepancies in the evidence, and determine credibility. *Id.* We also note that defendant mischaracterizes Lockett's testimony that he did not see Wallace outside The Rink on the night of the shooting. Contrary to defendant's claim that, according to Lockett, "Wallace could not have seen any of the events that he testified to," the trial evidence showed that he was only a few feet away from Lockett when the shooting occurred, and that he turned to see defendant holding a gun approximately 10 to 15 feet away. The fact that Lockett did not see Wallace in the crowd does not mean that Wallace could not have seen the events he described. In short, viewing the evidence in the light most favorable to the State, we cannot say that no rational trier of fact could have believed Wallace to be credible on the material issue of the shooter's identity.

¶ 43 Additionally, we find that the trial court was not required to find defendant or his friend, Carson, credible merely because the State did not establish a motive for the shooting or because he claims that his version of events is more "cogent" and believable than the State's. Although defendant and Carson both testified that an unknown gunman opened fire after an argument erupted outside The Rink, it is the province of the trier of fact to choose between conflicting

testimony. *Harris*, 2018 IL 121932, ¶ 26; see also *People v. Agnew-Downs*, 404 Ill. App. 3d 218, 228 (2010) (the State is not required to prove motive).

¶ 44 The trier of fact was also not obliged to discount otherwise credible testimony because defendant claimed that the State's witnesses were unduly convinced of defendant's guilt by rumors circulated on social media. Defendant posits that he was blamed for this shooting because someone in the crowd heard his nickname, "Noodles," and circulated his photograph on Facebook. However, no testimony established that either Lockett or Wallace identified defendant because of anything they saw on Facebook or because they heard somebody call out "Noodles" in the aftermath of the shooting. To the contrary, both Lockett and Wallace denied having heard the social media rumors or being told who the offender was before they identified defendant. Renee testified that nobody visited Lockett in the hospital outside of her presence, and that neither she nor anybody else told him anything about the shooter's identity before he viewed the photo array. It was the trial court's role, as trier of fact, to hear the testimony and decide the witness's credibility, and we will not substitute our own evaluation here. *Harris*, 2018 IL 121932, ¶ 26. Defendant's theories on appeal are nothing more than speculation, and do not give rise to a reasonable doubt of his guilt. See *People v. Phillips*, 215 Ill. 2d 554, 574 (2005) ("mere possibilities or speculation are insufficient to raise reasonable doubt").

¶ 45 Finally, we note that defendant's appellate briefs contain citations to numerous studies and articles regarding his theory of "prosecution by social media" and the fallibility of eyewitness identifications that were not presented to the trial court. Accordingly, we do not consider these sources in determining whether the trial court erred. *People v. Mehlberg*, 249 Ill. App. 3d 499, 531-32 (1993) (declining to consider studies presented for the first time on appeal

because they constituted "an attempt to interject expert-opinion evidence into the record" that was immune from cross-examination by the State and was not considered by the trial court).

¶ 46 For the foregoing reasons, the judgment of circuit court is affirmed.

¶ 47 Affirmed.

A P P E N D I X -- B

Illinois supreme court opinion

Neutral
As of: November 20, 2019 8:25 PM Z

People v. Dameron

Supreme Court of Illinois

September 25, 2019, Decided

125004

Reporter
2019 Ill. LEXIS 896 *; 132 N.E.3d 286; 2019 WL 4696338

People State of Illinois, respondent, v. Kevin Dameron, petitioner.

Notice: DECISION WITHOUT PUBLISHED OPINION

Prior History: **[*1]** Leave to appeal, Appellate Court, First District. 1-16-2778.

People v. Dameron, 2019 IL App (1st) 162778-U, 2019 Ill. App. Unpub. LEXIS 635 (Apr. 11, 2019)

Opinion

Petition for Leave to Appeal Denied.

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