STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1306

State of Minnesota,
Respondent,

vs.

Justin Kariakis Valencia,
Appellant

Filed June 12, 2017
Affirmed
Reyes, Judge

Ramsey County District Court
File No. 62-CR-15-9313

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

REYES, Judge

In this direct appeal, appellant argues that there was insufficient evidence to prove beyond a reasonable doubt that he aided and abetted aggravated robbery and committed second-degree assault. We affirm.

FACTS

Appellant Justin Kariakis Valencia was convicted of aiding and abetting first-degree aggravated robbery pursuant to Minn. Stat. § 609.245, subd. 1 (2014) and second-degree assault pursuant to Minn. Stat. § 609.222, subd. 1 (2014). These convictions stem from a drug-deal-gone-bad inside T.D.'s home.

On October 8, 2015, while T.D. was returning home with one of his sons, T.D.P., he received a text message from Darius Brown about buying marijuana. T.D. did not know Darius Brown. Brown obtained T.D.'s number from C.D., T.D.'s stepson, who was Brown's former high-school classmate. T.D. grew and sold marijuana. Brown expressed interest in buying one quarter pound of marijuana from T.D., and they agreed to meet at T.D.'s home.

Brown arrived at T.D.'s home in a black sport-utility vehicle (SUV), accompanied by appellant. Appellant and Brown went into the house and discussed buying various amounts of marijuana with T.D. with T.D.P. present. Also home were T.D.'s other son, J.D., T.D.'s nephew, and T.D.'s ex-wife. After agreeing to the purchase of one pound of marijuana, appellant and Brown stated that they would come back with the money. According to appellant, this meeting lasted approximately 20 minutes.

A couple of hours later, Brown and appellant returned to T.D.'s home with a third individual, later identified as Anthony Gilmore. T.D. brought out the marijuana and placed it on the dining-room table. T.D.P. was present for this interaction as well, occasionally walking into the kitchen. After a brief interaction, appellant, Brown, and Gilmore each pulled out guns, pointed them at the people in the house, and yelled threats at T.D. and his family. Brown pointed his gun at T.D.'s head while T.D. was on his knees. Gilmore walked over to the living room and hit T.D.'s other son, who was sleeping on the couch, in his face with the butt of a gun. Appellant went to the kitchen, pointed his gun at T.D.P.'s head, and threatened to kill him and his family. T.D.P. attempted to wrestle the gun out of appellant's hand by grabbing the gun and bringing it forward. A struggle ensued and a shot went off near T.D.P.'s head, piercing the kitchen floor. T.D.P. attempted to wrestle the gun out of appellant's grip, appellant then hit T.D.P. with the gun, causing a laceration to his head. Appellant, Brown, and Gilmore ran out of the house with all the marijuana that was on the table.

T.D. and T.D.P. ran outside and saw one of the individuals getting into the black SUV in which the assailants arrived. T.D.'s ex-wife called the police, who responded promptly.

Sergeant Hamblin was the first to interview T.D. and T.D.P. about the incident. Hamblin noted that, when he arrived, T.D. seemed normal in temperament but T.D.P. was visibly upset, agitated, and was pacing back and forth.[1] T.D. described the assailants

[1] T.D. and T.D.P. were in police custody during this time as a result of their arrests for incriminating evidence that was recovered from T.D.'s home.

to Hamblin, noting that one of the males was over six feet tall, heavy set, and had facial hair; another male had a light complexion and wore a "hoodie"; and the third male had short hair, looked younger than the other two, and C.D. knew him from high school.

The following day, both T.D. and T.D.P. separately identified Brown, via a photographic lineup, as one of the assailants. During T.D.P.'s identification of Brown, he noted that Brown was the individual who assaulted him in the kitchen. T.D. did not yet know appellant's name but described him as a light-skinned black male, in his late 20's or early 30's, and said he was not sure what his hair looked like but that it was "kind of done up in tiny dreads or something or [sic] hoodie on or something." T.D. informed the officer that it was the "light-skinned" male who assaulted T.D.P.

A few weeks later, T.D. and T.D.P. were separately shown two sequential photographic lineups, one containing a photograph of appellant and the other of Gilmore. Upon seeing appellant's photograph, both T.D. and T.D.P. identified appellant as one of the individuals involved in the robbery and the one who shot his gun at T.D.P. while they were in the kitchen.

At trial, appellant testified in his own defense. He admitted going to T.D.'s house with Brown to purchase marijuana with fake money, smoking weed, and being there for approximately 20 minutes.

The jury found appellant guilty of both counts. The district court entered judgment of conviction against appellant and sentenced him to a presumptive sentence of 81 months for the robbery conviction and 46 months for the assault conviction, to be served consecutively. This appeal follows.

D E C I S I O N

Appellant argues that the identification evidence presented at trial was insufficient to support the convictions. We disagree.

When reviewing a claim of insufficient evidence, we view the evidence in the light most favorable to the verdict and "assume the jury believed the state's witnesses and disbelieved contrary evidence." *State v. Robinson*, 539 N.W.2d 231, 238 (Minn. 1995). An appellate court will not disturb the jury's verdict "if, giving due regard to the presumption of innocence and to the state's burden of proving the defendant's guilt beyond a reasonable doubt, the jury could reasonably have found the defendant guilty." *State v. Quick*, 659 N.W.2d 701, 709-10 (Minn. 2003).

It is well established that "a conviction may rest on the testimony of a single credible witness" and that identification testimony is sufficient if a witness testifies that the defendant is the person he or she saw commit the crime. *State v. Miles*, 585 N.W.2d 368, 373 (Minn. 1998). However, if a "single witness'[s] identification of a defendant is made after only fleeting or limited observation, corroboration is required if the conviction is to be sustained." *State v. Walker*, 310 N.W.2d 89, 90 (Minn. 1981). "The trustworthiness of an identification must necessarily be judged by the opportunity the witness has had for a deliberate and accurate observation of the accused while in his presence." *State v. Gluff*, 285 Minn. 148, 151, 172 N.W.2d 63, 65 (1969).

In this case, the district court instructed the jury on the five *Burch* factors that it was to consider in assessing the eyewitness testimony: (1) the witness's opportunity to observe the defendant at the time the crime was committed, (2) the length of time the

witness was able to view the defendant, (3) the stress the witness was under, (4) the period of time between the crime and the witness's identification of the defendant, and (5) the effect of the officer's procedures on testing the witness's identification or merely reinforcing the identification. *See State v. Burch*, 284 Minn. 300, 315-16, 170 N.W.2d 543, 553-54 (1969). Appellant argues that we must review each of the *Burch* factors in evaluating T.D.'s and T.D.P.'s eyewitness testimony. But, our caselaw does not require such an analysis.

"Identification is a question of fact for the jury to determine." *Miles*, 585 N.W.2d at 373; *see also Manson v. Brathwaite*, 432 U.S. 98, 116, 97 S. Ct. 2243, 2254 (1977) (stating that, absent "a very substantial likelihood of irreparable misidentification," identification testimony is for the jury to weigh (quotation omitted)). Additionally, Minnesota law is clear that "[t]he factors affecting the reliability of eyewitness testimony . . . go to the weight to be accorded the testimony." *Burch*, 284 Minn. at 313, 170 N.W.2d at 552. Accordingly, we are not required to analyze each of the *Burch* factors; instead, they are used by the factfinder to determine how much weight and credibility to give the eyewitness testimony. *See State v. Thomas*, 890 N.W.2d 413, 420 (Minn. App. 2017) ("The jury, not the reviewing court, is responsible for weighing the credibility of eyewitness testimony; thus, the positive and uncontradicted testimony of a victim may be sufficient by itself to support a conviction." (quotation omitted)), *review denied* (Minn. Mar. 28, 2017).

Here, the jury gave due weight to T.D.'s and T.D.P.'s testimony that appellant was one of the individuals who committed the robbery and the individual who assaulted

T.D.P. in the kitchen. Furthermore, we assume that the jury, which was well aware of the circumstances of the witnesses' identifications and received instructions on the *Burch* factors, found both T.D.'s and T.D.P.'s eyewitness testimony to be reliable. *See State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989) (stating that we assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary"). As a result, there exists sufficient evidence to support the jury's finding.

We are unpersuaded by appellant's contention that T.D. and T.D.P. were under acute and extreme stress that prevented them from making an accurate identification. T.D. and T.D.P. had the opportunity to view the appellant on two different occasions. During the first interaction, appellant and Brown discussed buying various amounts of marijuana with T.D. and T.D.P. both present. T.D. testified that appellant told him that appellant wanted to buy a pound of marijuana. Throughout their first interaction with appellant, neither T.D. nor T.D.P. was under any acute stress that would distract from his observations of appellant.

Additionally, while T.D.P. initially identified Brown as being the person who assaulted him and attempted to shoot him, both T.D. and T.D.P. testified at trial that the person in the kitchen with T.D.P. was, in fact, appellant. Furthermore, T.D. and T.D.P. both testified that they were certain that appellant returned with Brown to T.D.'s house. *Cf. Miles*, 585 N.W.2d at 373 ("Identification testimony need not be absolutely certain; it is sufficient if the witness expresses a belief that she or he saw the defendant commit the crime.") We also note that both T.D. and T.D.P. were able to recall most of the incident with specificity. *See State v. Capers*, 451 N.W.2d 367, 370 (Minn. App. 1990), *review*

denied (Minn. Apr. 25, 1990) (explaining that, "when the eyewitness report included numerous details, neither brevity of observation nor stress precluded the accuracy of eyewitness identification"). Based on this record, we conclude that T.D.'s and T.D.P.'s initial observations of appellant were sufficiently reliable. *Cf. Gluff*, 285 Minn. at 151-53, 172 N.W.2d at 65-66 (reversing conviction on grounds that victim's initial observations of defendant for approximately 30 seconds was not trustworthy due, in part, to stress of incident.)

Appellant next asserts that the photographic lineup was faulty because T.D., on his own initiative, searched for appellant on Facebook prior to the police-arranged identification. But, appellant's argument misses the point. Appellant has not alleged any facts that indicate that the officer's method of identification via photographic lineup was suggestive or unfair, which would cast doubt on the reliability of the photographic identifications. Indeed, the record reflects that the separate identifications of appellant by T.D. and T.D.P. were performed in accordance with police protocol.

Appellant further argues, relying on *State v. Johnson*, 568 N.W.2d 426, 435-36 (Minn. 1997), that the state failed to meet its burden of proof because there was no independent corroboration of appellant's participation in the crime. But, *Johnson* makes clear that corroboration is required in situations where the eyewitnesses only had a fleeting or limited opportunity to view the assailant. 568 N.W.2d at 435. The supreme court in *Johnson* noted that a single credible eyewitness's testimony is sufficient to uphold a conviction. *Id.* Here, both T.D. and T.D.P. had more than just a fleeting opportunity to view appellant. Furthermore, a defendant's own admission that he was at

the scene of the crime, as appellant did here, is sufficient to corroborate any eyewitness testimony. *Id.* Accordingly, we conclude that the jury's finding was reasonable and the evidence was sufficient to uphold appellant's conviction.

Affirmed.