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DISTRICT I

December 27, 2017

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You are hereby notified that the Court has entered the following opinion and order:

2016AP914-CR State of Wisconsin v. Mario Dwayne Robinson
(L.C. # 2013CF4054)

Before Brennan, P.J., Brash and Dugan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Mario Dwayne Robinson appeals a judgment entered after a jury found him guilty of armed robbery as a party to the crime. He raises a single issue: whether the evidence presented at trial was sufficient to support his conviction. Upon our review of the briefs and record, we

conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).[1] We summarily affirm.

When we review the sufficiency of the evidence to support a conviction, we may not substitute our judgment for that of the jury "unless the evidence, viewed most favorably to the [S]tate and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). We will uphold the verdict if any possibility exists that the jury could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt.[2] *See* ***id.***

At trial, A.P. testified that on July 17, 2013, he went out for the evening at approximately 10:00 p.m. He said he drank beer and wine, consuming "around" four drinks, "maybe five," before returning to his home shortly after 1:45 a.m. When he arrived, his premises were well lit by the lights attached to his garage. He parked his car and headed towards the side entrance of the residence, but three men accosted him. Each of the three men had a gun in his hand and a bandana or a shirt covering his mouth. In the courtroom, A.P. identified Robinson and a second defendant, Yoshida Tate, as two of the armed men. A.P. said that Robinson did all the talking and commanded A.P. to put up his hands. Tate took A.P.'s wristwatch, and Robinson rifled

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[2] The transcripts in this matter reflect that the State offered forty-nine exhibits at trial. None of those trial exhibits is part of the appellate record. When an appeal is brought upon an incomplete record, this court will assume that every fact essential to sustain the ruling under review is supported by the missing material. *See* ***State v. Provo***, 2004 WI App 97, ¶19, 272 Wis. 2d 837, 681 N.W.2d 272. For this reason alone, we could reject Robinson's claim of insufficient evidence. We have elected, however, to review the record before us to assess whether it reflects sufficient evidence to sustain Robinson's conviction.

through A.P.'s pockets for additional property. A.P. said that the robbery lasted several minutes, and he "paid attention to all three suspects."

A.P. further described viewing a police line-up approximately fourteen days after the armed robbery and identifying Tate as one of the robbers. A.P. said police subsequently showed him a photographic array, and he picked Robinson as another of the robbers.

Several police officers described executing a search warrant at Tate's home after the robbery. In the home, police found A.P.'s keys and driver's license. Police also found evidence that Tate and Robinson were acquainted, including a photograph of Tate and Robinson together.

On appeal, Robinson does not dispute that the evidence was sufficient to show that A.P. was robbed at gunpoint on July 18, 2013, nor does Robinson dispute that "credible evidence points to the guilt of Y[o]shida Tate." Robinson challenges only the sufficiency of the evidence that he was one of the robbers.

Robinson emphasizes that "the only evidence pointing towards Mr. Robinson was the testimony of the victim." This does not undermine the sufficiency of the evidence. The uncorroborated testimony of a victim is alone sufficient to sustain a conviction. *See* ***Hemauer v. State***, 64 Wis. 2d 62, 77, 218 N.W.2d 342 (1974).

Robinson next says, in effect, that the jury should not have believed A.P. when he identified Robinson. According to Robinson, "the circumstances ... made it incredible that the victim could have identified [] Robinson in any way, shape or form." In support, Robinson

points to the testimony that A.P. consumed alcohol before he encountered the robbers, the lateness of the hour during which the robbery took place, the brevity of the robbers' interaction with A.P., and the fact that the robbers' faces were partially covered. We are not persuaded.

A.P. testified that he did not feel impaired at the time he was robbed, the lights around his garage were lit throughout the duration of the incident, and he had "paid attention" to the three robbers. The weight and credibility of evidence is for the fact finder to determine. *See* ***State v. Daniels***, 117 Wis. 2d 9, 17, 343 N.W.2d 411 (Ct. App. 1983). Although we will reject a jury's verdict if the jury has relied on evidence that is "inherently or patently incredible," *see* ***Day v. State***, 92 Wis. 2d 392, 400, 284 N.W.2d 666 (1979), we will not conclude that evidence is inherently or patently incredible unless it is '"in conflict with nature or fully established or conceded facts,'" *see* ***id.*** (citation omitted). A.P.'s testimony describing the robbery and his subsequent identification of Robinson do not meet this standard. Indeed, the record shows that A.P. identified not only Robinson as a suspect in the robbery but also Tate, and, as Robinson concedes, significant corroborating evidence tied Tate to the crime. A.P.'s identification of Tate shows that the circumstances of the crime did not prevent A.P. from accurately identifying the perpetrators.

Robinson asserts, however, that A.P. inaccurately estimated Robinson's height and weight when A.P. first spoke to police, and therefore his later identification of Robinson was necessarily incredible. Specifically, A.P. told police that the robber who did the talking was five feet ten inches tall and weighed 150 pounds, but Robinson testified at trial that he was five feet six inches tall and weighed 140 pounds at the time of the incident. Although A.P.'s initial

description may have been imperfect,[3] differences of a few inches and ten pounds between the description of a person and the person's actual size are hardly significant. *See* ***Walton v. Lane***, 852 F.2d 268, 274 (7th Cir. 1988) (describing as "accurate" a victim's description of a robber that varied from the defendant's physical makeup by two to three inches and approximately twenty pounds). Moreover, "[a]n average citizen is not to be held to estimating age, weight or height with the degree of accuracy expected of a weight-guesser on a carnival midway." ***Dozie v. State***, 49 Wis. 2d 209, 216, 181 N.W.2d 369 (1970). Any discrepancy between Robinson's physical characteristics and the description A.P. initially gave to the police goes to the credibility of the identification and was for the jury to assess. *See* ***id.***

In sum, A.P. picked Tate out of a line-up and Robinson out of a photographic array, and A.P. said that the suspects he picked during those procedures were two of the men who together robbed him at gunpoint. Additional evidence corroborated A.P.'s identifications: police executed a search warrant at Tate's home and found A.P.'s property as well as evidence that Tate and Robinson knew each other. The evidence was plainly sufficient to support the jury's conclusion that Robinson was guilty beyond a reasonable doubt of armed robbery as a party to the crime.

Accordingly,

IT IS ORDERED that the judgment of conviction is summarily affirmed.

[3] Robinson does not point to anything in the record that corroborates his testimony regarding his height and weight.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals