

No. 1-10-2045

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> MALIK A., a Minor)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
)	Cook County.
Petitioner-Appellee,)	
)	
v.)	No. 09 JD 4263
)	
MALIK A., a minor,)	Honorable
)	Terrence V. Sharkey,
Respondent-Appellant).)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Steele and Justice Salone concurred in the judgment.

ORDER

1. *Held:* Evidence was sufficient to prove respondent minor delinquent beyond a reasonable doubt of aggravated robbery, where, although unable to identify respondent at trial, the victim identified respondent shortly after the robbery, respondent and his accomplices were apprehended near the scene, and they were in possession of the proceeds of the robbery and the look-alike weapon used to threaten the victim.
2. Following a bench trial, respondent Malik A., a minor, was found delinquent based on the offense of aggravated robbery and sentenced to five years' probation. On appeal, respondent contends that the evidence was insufficient to prove him delinquent beyond a reasonable doubt.

1-10-2045

Respondent argues that the eyewitness identification was unreliable and that, even if he was present during the offense, there was insufficient evidence to establish accountability. We affirm.

3. At trial, the State presented the testimony of the victim, Anthony DeSignor, and the arresting officer, Michael Connolly. DeSignor testified that at approximately 8:15 p.m. on October 15, 2009, he was walking home from work. As he neared his condominium on Western Avenue in Chicago, he felt someone reach toward him from behind and take his shoulder bag. The offender said "let me get this," and DeSignor turned around. When he turned, DeSignor saw an African-American man holding a gun pointed toward his chest. When asked if he could see the individual, DeSignor responded:

"Yeah, I saw him standing in front of me. You know, I could identify, you know, height, clothing, things of that nature, but I really didn't make mental notes of people's faces and things like that. But hair and things of that nature I certain [*sic*] can remember."

DeSignor gave the offender his bag and a saw a second offender approaching him in his "peripheral." The second offender placed a hand in DeSignor's pocket and removed his smart phone. DeSignor heard someone say something unintelligible and then three men ran away from him together. The men ran north on Western Avenue.

4. When asked if the offenders were in court, DeSignor responded "From height, clothes, you know, I mean, you know just from what I can remember, I would say that those two gentleman are the young men, yes." However, when asked to point out the men and identify them by an article of clothing, DeSignor appeared to be confused by the question, and the trial court ultimately denied the State's request that the record reflect an in-court identification.

5. After the robbery, DeSignor returned to his condominium and called the police. A short time later, the police transported him to another location and asked him to identify the individuals who

1-10-2045

robbed him. DeSignor testified that he was "extremely sure" that the police had detained the correct individuals and was able to identify them immediately. The police handed him a smart phone, which he was able to identify as his own. Approximately 20 minutes later, the police returned his shoulder bag. On further examination, DeSignor testified that the area where he was robbed was "well-lit" and that only about 15 minutes elapsed before he was asked to make an identification.

6. On cross-examination, DeSignor testified that two of the individuals were wearing black "hoodies" and admitted that it was fair to say that many teenagers wear black hoodies. Defense counsel further inquired as follows:

"Q: So it would be fair to say that when the officers showed you two people in black hoodies that were African-American, you cannot say for certain that those were the two that were involved can you?"

A: By face? No."

7. On redirect examination, DeSignor testified that he based his identification on the offenders' heights, builds, skin tones, clothing, and hairstyles. He testified that he was "one hundred percent" sure that they were the same people.

8. Officer Connolly testified that he responded to the report of a robbery on October 15, 2009. He met DeSignor and asked him about the robbery. While he was speaking with DeSignor, Connolly received a radio report that other officers were chasing some individuals on foot. Connolly took DeSignor with him in a squad car and went to the location where the individuals had been detained. Two individuals had been detained along the 2300 block of West Congress. The third individual was found in a back yard hiding in some long grass approximately 30 to 60 feet away. DeSignor identified all three individuals. A smart phone was recovered at the scene. Connolly spoke to one of respondent's co-respondents, D.W., and was told where to locate the

shoulder bag. Both items were returned to DeSignor. Connolly also recovered a BB gun from the ground where D.W. was lying in the yard.

9. On cross-examination, Connolly admitted that the descriptions he received from DeSignor were "general."

10. The State rested, and respondent did likewise without presenting evidence. The trial court found respondent delinquent of aggravated robbery. In doing so, the trial court indicated that it was considering the factors listed in *People v. Brooks*, 187 Ill. 2d 91 (1999). The trial court identified each of the factors and applied them to DeSignor's identification of respondent. Ultimately, the trial court concluded that DeSignor was highly credible and that the identification had an "independent basis." The trial court also held that respondent was accountable for the actions of his co-respondents, and found him delinquent of aggravated robbery. The trial court subsequently sentenced respondent to five years' probation.

11. Respondent contends that the State failed to prove him delinquent beyond a reasonable doubt. When faced with a challenge to the sufficiency of the evidence in a juvenile prosecution, a reviewing court must consider whether the evidence, viewed in a light most favorable to the prosecution, is sufficient that a reasonable trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *In re Austin M.*, 403 Ill. App. 3d 667, 686 (2010) *appeal pending* No. 111194 (citing *In re Matthew K.*, 355 Ill. App. 3d 652, 655 (2005)).

12. Respondent first argues that there was no circumstantial evidence tying him to the crime. We categorically reject this interpretation of the evidence. Respondent argues that because Connolly did not personally participate in the foot chase that led to respondent's arrest, it is possible that the officers who did so actually arrested respondent elsewhere and transported him to the 2300 block of West Congress for the show-up. Respondent also maintains that it would be "consistent" with Connolly's testimony that respondent was not even running from the police and that the chase

described by Connolly involved only the two other men charged along with respondent. Respondent's arguments quite simply misunderstand the standard by which we review a lower court's findings. We must view the evidence in a light favorable to the State. It is not our job to ferret out every possible interpretation of the evidence that might be incompatible with delinquency and elevate it to reasonable doubt. See *People v. Shevock*, 335 Ill. App. 3d 1031, 1037 (2003). Here, although it is possible to interpret Officer Connolly's testimony in a manner that would suggest respondent was not with the other offenders or near the proceeds of the crime when arrested, we need not adopt such a strained interpretation of the evidence. More importantly, the trial court rejected such an interpretation and we cannot say that no rational trier of fact would have done the same. Accordingly, we find that there was ample circumstantial evidence tying respondent to the offense.

13. Respondent, having reached the false conclusion that no circumstantial evidence tied him to the offense, maintains that the show-up identification was the only evidence tying him to the robbery. Having set up this strawman, respondent proceeds to attack in excruciating detail each of the so-called *Biggers* factors. See *Neil v. Biggers*, 409 U.S. 188 (1972). We decline respondent's invitation to follow along this path. We find that the circumstantial evidence of delinquency was strong and that any weakness in the identification is accordingly less significant. Moreover, we need not dwell on each of the *Biggers* factors, because the record clearly reflects the trial court's awareness and analysis of these factors below.¹ Nevertheless, in the interest of thoroughness we will examine the *Biggers* factors briefly.

14. The first factor examines the witness' opportunity to see the offender. *People v. Adams*, 394 Ill. App. 3d 217, 232 (2009). Here, although DeSignor testified that he observed respondent using

¹Although the trial court expressed its analysis in the terms of deciding whether the identification had an "independent basis," it nonetheless applied each of the *Biggers* factors in considering the strength of the show-up identification.

1-10-2045

his peripheral vision, he nonetheless testified that the area was well lit and he was able to make out certain details such as skin color, hair style and clothing. DeSignor nevertheless admitted that he did not take in the details of the offenders faces. Respondent concedes that DeSignor testified that the lighting was adequate, but argues that his description of the lighting conditions "vitiates" that testimony. We find no support in the record for such a conclusion. The trial court heard both DeSignor's testimony that the area was well-lit and his more detailed testimony regarding the sources of light. It was for the trial court to determine whether he had an adequate opportunity to view the offenders and the trial court did just that.

15. The second factor considers the witness' degree of attention. *Adams*, 394 Ill. App. 3d at 232. Respondent argues that DeSignor was focused on the weapon and the offender holding it and paid little or no attention to the second and third offenders. The trial court reached the opposite conclusion, finding that DeSignor's degree of attention was "very good." Again, we find nothing in the record to defeat the trial court's finding.

16. The third factor considers the accuracy of the witness' description. *Adams*, 394 Ill. App. 3d at 232. The trial court found that DeSignor's description was "not perfect" but fit the offenders. Respondent disagrees, arguing that the description of an African-American male in a black hoodie, was so general as to fit much of the city. While we agree that the description DeSignor gave was lacking in detail, we do not find it to be as deficient as respondent argues. DeSignor identified other characteristics such as skin color and hair style that he used to make his identification. Although these were not part of his description, we cannot find, as defendant urges us to, that the identification of respondent was based on such "frequently used modes of appearance" as to be wholly unreliable.

17. The fourth factor is the certainty of the witness' identification at the confrontation. *Adams*, 394 Ill. App. 3d at 232. Here, DeSignor was highly confident at the time of the show-up that he had identified the correct offenders. Respondent argues that the basis of DeSignor's identification was

so lacking that this factor should be ignored. Essentially, respondent is asking us to ignore the fourth *Biggers* factor when the third is found lacking. This is a proposition that finds no support in Illinois law.

18. The fifth factor considers the time that elapses between the offense and the confrontation. *Adams*, 394 Ill. App. 3d at 232-33. Here, this factor favors a finding that the identification was reliable, because less than 15 or 20 minutes elapsed between the robbery and the show-up identification. Respondent again argues that we should discount this factor because the third factor was lacking. Once again, we find no support for such a proposition in Illinois law.

19. Therefore, we find that although the description of the offenders somewhat lacking, it was nonetheless sufficient. Moreover, the other *Biggers* factors favor finding the identification reliable. This combined with the strong circumstantial evidence leads us to believe that the trial court was correct in finding that respondent was one of the offenders. Or, more accurately, we cannot say that the evidence was so lacking that no reasonable trier of fact could have found that respondent was one of the offenders beyond a reasonable doubt.

20. Respondent also contends that even if the evidence was sufficient to establish that the was one of the offenders, DeSignor's testimony was inadequate to determine whether he was the second or third offender and that there was inadequate evidence to establish that the third offender was accountable for the actions of the other two. We disagree. Even if we accept respondent was the third offender, we find that the State presented ample evidence to demonstrate that he was accountable for the actions of the other two.

21. A respondent is accountable for the conduct of another when “[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense.” 720 ILCS 5/5-2(c) (West 2008). Mere presence at the scene of the crime is not enough

to establish accountability, but neither evidence of express agreement nor active participation is required when a respondent shares a common criminal plan or design with the other offenders. See *People v. Gabriel*, 398 Ill. App. 3d 332 (2010) (citing *People v. Taylor*, 164 Ill. 2d 131, 140-41 (1995)). Common design can be inferred from the circumstances surrounding the perpetration of the unlawful conduct. *Taylor*, 164 Ill. 2d at 141. Factors identified by the *Taylor* court include, *inter alia*, (1) presence during the commission of the offense; (2) maintaining a close affiliation with the other offenders after the commission of the offense; (3) failure to report the crime; (4) flight from the scene. *Taylor*, 164 Ill. 2d at 141 (citing *People v. Reid*, 136 Ill. 2d 27, 62 (1990)).

22. Here, respondent was present at the scene, fled with the others, was arrested in close proximity to individuals who possessed either the look-alike weapon or the proceeds of the offense, and he never reported the offense to the police. We find that there was ample evidence for the trial court to conclude that the third offender was accountable for the actions of the other two who were directly involved in the offense by wielding the weapon and searching the victims pocket for his smart phone. We cannot say that no rational trier of fact would have found respondent accountable for the robbery.

23. Respondent takes the trial court to task for describing the third offender as a "lookout" when that term was not used by DeSignor. However, we find that rather than representing a failure to properly remember the evidence, this statement is an apt description of the third offender's role and an inescapable corollary to the conclusion that he was a part of a common criminal plan or design.

24. Respondent also argues that there was "no evidence" of accountability because the State relied on Connolly's testimony describing the offenders' arrest rather than presenting testimony from the officers directly responsible for the arrest of respondent and the others. We are mindful of this argument, and we note that the State's case would certainly have been stronger if this evidence had been presented. However, we are not called upon to grade the State's trial advocacy; the issue before

1-10-2045

us is not whether the State made the most persuasive presentation possible, but rather simply whether the evidence it did present was adequate to prove respondent delinquent beyond a reasonable doubt. As we observed above, the State did meet that minimum standard and we cannot say that no reasonable trier of fact would have reached the finding of the trial court.

25. For the reasons discussed above, we affirm the judgment of the trial court of Cook County.

26. Affirmed.