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2011 IL App (3d) 100289-U

Order filed September 22, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF
ILLINOIS,

Plaintiff-Appellee,

v.

DAMEKO S. BRICKHOUSE,

Defendant-Appellant.

) Appeal from the Circuit Court
) of the 21st Judicial Circuit,
) Kankakee County, Illinois,
)
) Appeal No. 3-10-0289
) Circuit No. 08-CF-420
)
) Honorable
) Kathy S. Bradshaw-Elliott,
) Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Schmidt and Holdridge concurred in the judgement.

ORDER

¶ 1 *Held:* The evidence presented at trial was sufficient for the jury to find defendant took money from the person or presence of one complainant, and therefore defendant's conviction for armed robbery is affirmed.

¶ 2 Defendant, Dameko S. Brickhouse, was convicted of two counts of armed robbery (720 ILCS 5/18-2(a)(2) (West 2008)), and sentenced to two concurrent 30-year terms of imprisonment. Defendant appeals one of his convictions, contending that the evidence at trial conclusively established that defendant did not take any property from one complainant. We

affirm.

¶ 3

FACTS

¶ 4 On July 11, 2008, defendant was charged with two counts of armed robbery (720 ILCS 5/18-2(a)(2) (West 2008)). Count I charged that on July 1, 2008, defendant, while carrying a handgun, knowingly took money from the person or presence of Rochelle Hicks, by the use of force or by threatening the imminent use of force. Count II charged the same offense, except that defendant took money from the person or presence of Jeffrey Hicks. Defendant pled not guilty to the charged offenses, and the cause proceeded to a jury trial on May 11, 2009.

¶ 5 The evidence at trial established that on July 1, 2008, Rochelle and her husband, Jeffrey, went to the Bourbonnais Bank, where Jeffrey withdrew \$1,000 from his bank account to pay bills. The money Jeffrey withdrew came from Rochelle's Supplemental Security Income payments for her learning disability. Jeffrey received the money in his account because he was Rochelle's designated payee. After withdrawing the money, Jeffrey gave \$500 to Rochelle, and kept the remaining \$500 for himself.

¶ 6 Thereafter, Rochelle and Jeffrey went to the Oak Street Currency Exchange in Kankakee, Illinois, so Jeffrey could pay the electric bill and Rochelle could pay her telephone bill. It is in dispute whether Rochelle actually paid a telephone bill for \$50, but regardless, Rochelle testified she kept the remaining money, either \$450 or \$500. While in the currency exchange, Rochelle saw defendant and Curtis Phillips walking in front of the currency exchange. Rochelle stated she knew who defendant was, but only through her uncle. Rochelle recalled defendant wearing a white t-shirt, blue jeans, and a black White Sox hat.

¶ 7 When Rochelle and Jeffrey left the currency exchange, they started walking towards

Jeffrey's sister's house. To get there, they walked through an alley east of Washington Avenue called East Alley. The couple saw Curtis near the alley, whom Jeffrey knew. Jeffrey briefly talked to Curtis, and then Rochelle and Jeffrey continued down East Alley. Once the couple was part way down East Alley, they encountered defendant, who was holding a silver handgun. Defendant pointed the gun at Rochelle and Jeffrey, and told them to give him their money before he killed them. Jeffrey then told Rochelle to give defendant her money. Rochelle testified that she handed \$450 or \$500 directly to the defendant. Jeffrey testified that Rochelle handed her money to Jeffrey, and then he handed the money to defendant. But it was undisputed that Jeffrey did not give defendant the remaining \$500 in his possession.

¶ 8 After Rochelle gave up her money, defendant told the couple to walk away, and defendant ran in the other direction. Once Rochelle and Jeffrey arrived at Jeffrey's sister's house, Rochelle called 911 to report the armed robbery. In response, Officer Richard Brooks arrived at the house and took Rochelle around the neighborhood to look for defendant. Rochelle knew defendant's first name was "Dameko," and both Rochelle and Jeffrey described defendant as wearing a white t-shirt, blue jeans, and a black White Sox hat. After failing to locate the defendant, Officer Brooks took Rochelle and Jeffrey to the police station for a statement and to identify defendant from a photo lineup. Both Rochelle and Jeffrey identified defendant as the robber from the photo lineup.

¶ 9 Curtis was also brought to the police station to give a statement. When police officers picked Curtis up from his house, defendant and Alfred Phillips were there. Initially when Curtis was questioned, he denied being with defendant, but he soon admitted walking with defendant near the currency exchange and going in different directions after that. Once Curtis finished

giving his statement, defendant was located at Curtis's apartment and brought to the police station to give a statement. Defendant initially claimed he had been working that morning with Alfred Phillips. However, two officers testified that, after subsequent interviews, defendant admitted to having robbed Rochelle and Jeffrey, and he tried to negotiate a deal with the police to drop the charges. One officer stated defendant knew how to get the missing gun used during the robbery, and allowed defendant to call Curtis to get it back. However, Curtis testified that defendant never asked him about retrieving any gun. Curtis testified that defendant only asked him to contact Rochelle to see if she would drop the charges if he returned the money.

¶ 10 After defendant's interview, police obtained permission to search defendant's bedroom. Police discovered a black White Sox hat, five \$20 bills, and a black BB gun. Police showed pictures of all three items to both Rochelle and Jeffrey, who stated that the BB gun was not the one used during the robbery.

¶ 11 After the State rested its case, defense counsel moved for a directed verdict as to count II because the State failed to prove defendant took property from Jeffrey. The trial court denied this motion, and following the court's ruling, the defense rested.

¶ 12 After deliberations, the jury found the defendant guilty on both counts of armed robbery. The trial court later sentenced defendant to two concurrent 30-year terms of imprisonment. Defendant appeals.

¶ 13 ANALYSIS

¶ 14 On appeal, defendant argues that the State did not prove him guilty beyond a reasonable doubt as to one count of armed robbery because the evidence at trial conclusively established that defendant did not take any property from Jeffrey Hicks.

¶ 15 When a defendant challenges the sufficiency of the evidence, a reviewing court must determine " ' '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. Collins*, 214 Ill. 2d 206, 217 (2005) (quoting *People v. Cox*, 195 Ill. 2d 378, 387 (2001) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979))). Upon review, the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Ross*, 229 Ill. 2d 255 (2008). We will set aside a defendant's conviction only when we find the evidence was insufficient or so improbable or unsatisfactory that a reasonable doubt exists as to defendant's guilt. *People v. Ortiz*, 196 Ill. 2d 236 (2001).

¶ 16 To sustain a charge for armed robbery, the State must prove that defendant took property from the person or presence of another by the use of force or by threatening the imminent use of force while armed with a dangerous weapon. 720 ILCS 5/18-2 (West 2008). Robbery is not limited to the taking of property from the victim's person, or from the immediate presence of the owner or custodian. *People v. Smith*, 78 Ill. 2d 298 (1980). However, a robbery is committed when the property taken was sufficiently within the possession or control of the victim, so that force or threat of force causes the victim to part with the property against his will. *People v. Braverman*, 340 Ill. 525 (1930); *People v. Kelly*, 25 Ill. App. 3d 753 (1975).

¶ 17 Viewing the evidence in the light most favorable to the State, we find the evidence sufficient for a rational trier of fact to find defendant guilty beyond a reasonable doubt of the armed robbery of Jeffrey. At trial, the jury heard testimony from both Rochelle and Jeffrey stating that defendant held a gun to both of them and demanded their money. We acknowledge

that there is contradicting testimony as to whether Rochelle handed the money directly to defendant or whether she handed it to Jeffrey. However, the evidence, when viewed in the light most favorable to the State, was sufficient for a rational jury to conclude that the money was taken from Jeffrey. See *Ross*, 229 Ill. 2d 255.

¶ 18 Moreover, the conflicting testimony does not bring into doubt defendant's guilt, because to prove armed robbery, the State must prove that defendant took property from the person or presence of Jeffrey. 720 ILCS 5/18-2 (West 2008). Therefore, even if it is found that defendant did not take money directly from Jeffrey, the money was still taken from Jeffrey's presence.

¶ 19 Additionally, under the presence test, the State is not required to prove Jeffrey actually owned the money defendant took, but that Jeffrey had sufficient control or possession of the money with rights to the money superior to that of defendant's. See *Kelly*, 25 Ill. App. 3d 753; *Braverman*, 340 Ill. 525. The evidence at trial established Jeffrey's control and superior right to the money taken, because even though the money came from Rochelle's disability payments, Jeffrey was her designated payee and also the only one with access to the account where the payments were deposited.

¶ 20 Defendant relies on *People v. Robinson*, 92 Ill. App. 3d 397 (1981), to support his contention that the evidence did not prove property was taken from Jeffrey. In *Robinson*, the court reversed one count of armed robbery because the victim herself stated no property was taken from her. *Id.* However, this case is distinguishable because the victim in *Robinson* did not have possession or control over the property that was taken in her presence. In the case at hand, even though Jeffrey did not give defendant the \$500 he had on him, the money defendant did take was under Jeffrey's control. Therefore, viewing the evidence in the light most favorable to

the State, we hold that it is not so unreasonable, improbable, or unsatisfactory that it created a reasonable doubt of the defendant's guilt on count II for the armed robbery of Jeffrey. See *Ortiz*, 196 Ill. 2d 236.

¶ 21

CONCLUSION

¶ 22 For the foregoing reasons, the judgment of the trial court of Kankakee County is affirmed.

¶ 23 Affirmed.