

No. 1-10-3305

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 5678
	)	
JESSIE CUNNINGHAM,	)	Honorable
	)	Noreen V. Love,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE KARNEZIS delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The evidence was sufficient to convict defendant of burglary under an accountability theory where he arrived at a crime scene in a van driven by codefendant, watched codefendant commit a vehicular burglary while remaining in the van and also looked over his shoulder and then dropped the proceeds of burglary out of the van window near the end of subsequent police chase.
- ¶ 2 Following a bench trial, defendant Jessie Cunningham was found guilty of burglary under a theory of accountability, and, as a Class X offender, sentenced to eight years in prison. On appeal, defendant contends that the evidence was insufficient to prove that he was accountable for a burglary committed by his codefendant, Johnny Taylor. We affirm.

¶ 3 Officer Daniel Pater testified that he was dispatched to a Walmart parking lot in the early evening hours of February 22, 2010 to assist a fellow officer in observing a white Dodge van. When he arrived, he saw the van travel through the lot and then stop about five feet from a black Infinity. It was dark, but the lot was lit by artificial light and the weather was clear.

¶ 4 Facing the van's passenger side, Pater parked about 30 to 35 feet away with his lights turned off and observed two occupants through the van's windows. Defendant was sitting in the passenger seat, and Johnny Taylor, a codefendant who is not a party in this appeal, was in the driver's seat. Taylor, who was dressed in a black sweatshirt and dark pants, left the van and initially "tampered with" a red truck before moving to the Infinity. He then pulled out a screwdriver, shattered the Infinity's passenger window, reached into the car and removed a black briefcase bag.

¶ 5 While Taylor was outside of the van, defendant remained in the van's passenger seat, looking over his right shoulder and in Taylor's direction. The inside of the van was unlit and Pater admitted that, from his vantage point, he could not see exactly where defendant was looking. Taylor returned to the van and drove away at a high rate of speed with Pater in pursuit. Pater notified fellow officers of the van's description, and the other officers took over the chase.

¶ 6 Officer Daniel Miller testified that after being dispatched to a burglary in progress at the Walmart parking lot, he pursued the white Dodge van. The van led Miller on a high speed chase, eventually turning down a residential street and then into an alley. At this point, Miller observed a hand extend from the van's passenger window and drop a black bag onto the ground. Miller eventually blocked the van from leaving the alley with his squad car.

¶ 7 Claude Bennett testified that he had parked his black Infinity in the Walmart parking lot earlier that day, that he owned the black briefcase bag recovered from the ground in the alley

where defendant and Taylor were arrested, and that his briefcase had been in the Infinity. Bennett had not given permission for either defendant or Taylor to enter his car or take the bag.

¶ 8 The court found defendant guilty of burglary under a theory of accountability. The court noted the evidence had shown that defendant's participation in the burglary "proceed[ed] prior to, during and even after the act [had] take[n] place," specifically stating that Officer Pater could see the direction defendant was looking during the burglary and that the evidence showed that defendant later dropped the bag out of the van's passenger window during the pursuit. The court observed that,

"[t]hese vans are not by any means small. It would be, I think, a big stretch to think that the driver could have leaned over that far to drop the bag out the window on the passenger's side."

In light of defendant's prior criminal record, the court sentenced him as a Class X offender to eight years in prison.

¶ 9 On appeal, defendant contends that the State failed to prove he was legally accountable for Taylor's actions. Defendant argues that the evidence showed that he did not participate in the burglary, did not share a common criminal design with Taylor, did not know that Taylor planned to break into a car and did not facilitate or aid Taylor.

¶ 10 When reviewing the sufficiency of evidence in a criminal case, our inquiry is 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. Sutherland*, 155 Ill. 2d 1, 17 (1992). A criminal conviction will not be reversed unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 11 The elements of a vehicular burglary are entry without authority to a vehicle with the intent to commit a felony or theft. 720 ILCS 5/19-1(a)(West 2010). The evidence indisputably showed that Taylor committed the burglary, so we must consider whether defendant was accountable for Taylor's conduct.

¶ 12 A person is accountable for conduct which is an element of an offense if the conduct is that of another and "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-1 (West 2010); 720 ILCS 5/5-2(c)(West 2010).

¶ 13 Active participation is not required to establish accountability where a defendant shares a common criminal design or agreement with a principal. *People v. Rico Taylor*, 164 Ill. 2d 131, 140 (1995); 720 ILCS 5/5-2(c) (West 2010). A defendant's presence at a crime scene, knowledge that a crime is being committed, voluntary attachment to and close affiliation with his companion before and after the crime was committed, failure to report the crime and flight from the scene are circumstances which may be considered to determine if a defendant shared a common criminal design or agreement with a principal. *Rico Taylor*, 164 Ill. 2d at 140-41.

¶ 14 Here, the evidence revealed that defendant arrived with Taylor in the van at the parking lot, and was indisputably the passenger in the van. Defendant observed as Taylor tampered, apparently unsuccessfully, with a red truck, then used a screwdriver to shatter the window of the Infinity. Defendant continued to observe as Taylor reached into the car and removed a black briefcase bag. During this time, defendant also looked out van's window and over his shoulder. It is not unreasonable to infer that defendant could have remained in the van to guard it while Taylor committed the burglary. The evidence did not conclusively refute defendant's status as a

lookout because, according to defendant, the evidence did not establish exactly where or what defendant was looking at during the burglary, which occurred a few feet from the van.

¶ 15 Contrary to defendant's argument both at trial and on appeal that he would have had to dive out of a speeding van to disavow the burglary, defendant could have left the parked van anytime after he observed Taylor tamper with the red truck or smash the window of the Infinity, but before Taylor returned the van. Instead, he voluntarily chose to maintain his close affiliation with Taylor by remaining in the passenger seat of the van until Taylor drove away and the police chase began.

¶ 16 Towards the end of the chase, defendant dropped the proceeds of the burglary, the briefcase bag, out of the window of the van, evidence which may be considered alongside the totality of the circumstances to determine defendant's intent before and during Taylor's burglary. The trier of fact rejected defendant's argument that no evidence proved that it was defendant, and not Taylor, who threw the briefcase out the window, noting that, given the size of the van, it would be a "stretch of the imagination" to entertain a theory that Taylor had leaned over to drop the bag out of the passenger window.

¶ 17 Based on the totality of the circumstances, the evidence, the permissible reasonable inferences and the trial court's findings, we cannot say that the evidence was so improbable or unsatisfactory that no rational trier of fact could have found defendant guilty beyond a reasonable doubt.

¶ 18 For the foregoing reasons, we affirm defendant's conviction for burglary under a theory of accountability.

¶ 19 Affirmed.