

No. 1-11-3098

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In the Interest of DAQWAN W., a Minor</i>)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
)	Cook County.
Petitioner-Appellee,)	
)	
v.)	No. 10 JD 4182
)	
DAQWAN W.,)	Honorable
)	Marianne Jackson,
Defendant-Appellant).)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice McBride and Justice Palmer concurred in the judgment.

ORDER

- ¶ 1 *Held:* Respondent was adjudicated delinquent beyond a reasonable doubt under an accountability theory when the evidence at trial established that he directed officers to a location where narcotics could be purchased, went to that location, and then pointed out the dealer. Respondent's adjudication of delinquency for possession of a controlled substance must be vacated pursuant to the one-act, one-crime rule when it arose from the same physical act as his adjudication of delinquency for the delivery of a controlled substance.
- ¶ 2 Following a hearing, minor respondent Daqwan W. was adjudicated delinquent of the delivery of a controlled substance and possession of a controlled substance under an

accountability theory, and sentenced to 12 months of probation. On appeal, respondent contends that he was not adjudicated delinquent beyond a reasonable doubt because the State failed to establish the requisite intent to facilitate the commission of the offense when he only "pointed out" a drug dealer. He also contends that his adjudication of delinquency for possession of a controlled substance must be vacated because it was based on the same physical act as his adjudication of delinquency for the delivery of a controlled substance. We affirm in part and vacate in part.

¶ 3 In September 2010, the State filed a petition for adjudication of wardship and an amended petition alleging, *inter alia*, that the 16-year old respondent was delinquent in that he committed the offenses of the delivery of a controlled substance and possession of a controlled substance.

¶ 4 At the adjudicatory hearing, Officer Marie Bishop testified that she and a partner attempted an undercover "buy" around 11 a.m in the vicinity of Austin Avenue and Iowa Street. After observing respondent, they curbed their vehicle and Bishop, who was sitting in the front passenger seat, rolled the window down and asked respondent for "blows." Bishop explained that blow is the street term for heroin. Respondent, who was a few feet away from the window, instructed her to "make the block," that is "come around" to the 5900 block of Iowa. When the officers arrived at that location, Bishop saw that respondent had moved and was now standing on the sidewalk there.

¶ 5 After the car was parked, respondent instructed Bishop to exit the car. She complied and approached respondent. Respondent was standing two feet away from a female, later identified as Trinika Taylor. Respondent and Taylor were engaged in conversation. Respondent made eye contact with Bishop, pointed at Taylor, and indicated that Taylor was going to take care of Bishop. Bishop and Taylor then engaged in a narcotics transaction. As they drove away, Bishop alerted other officers and described respondent and Taylor. After respondent and Taylor were

taken into custody, Bishop identified them. During cross-examination, Bishop acknowledged that she did not indicate in her report that respondent and Taylor were involved in a conversation or how close the two were standing.

¶ 6 Officer Urban Ternoir, Bishop's partner, testified that respondent was walking in the area of Austin and Iowa, that when asked for blows respondent instructed them to "make the block," and that respondent was standing side-by-side with Taylor in the middle of the block when they arrived at that location. Respondent and Taylor were talking. When Bishop approached, respondent pointed Bishop in Taylor's direction.

¶ 7 Officer Ronald Coleman testified that when he arrived at the location, respondent and Taylor were standing two feet apart talking. When Coleman patted respondent down after taking him into custody, no money or illegal substances were recovered.

¶ 8 The parties stipulated that the items purchased by Bishop weighed .6 gram and tested positive for the presence of heroin.

¶ 9 Respondent then testified that he was on the corner of Austin and Iowa when a woman, *i.e.*, Bishop, came up and asked for blows. Respondent put his hands up in the air to signify that he had "nothing." He indicated that blows might be down the street, and pointed in that direction. Bishop said okay and drove away. Respondent then continued down the 5900 block of Iowa to the home of his friends "Pumpkin" and Tiffany. Upon his arrival at the girls' porch, he saw Bishop "pull up" to the middle of the block and get out of the car. At that time, he was talking to Taylor waiting for the girls to come outside. He told Taylor that he did not know Bishop. Bishop approached and asked "who got it." Respondent did not say anything, but pointed at Taylor and moved back.

¶ 10 During cross-examination, respondent admitted that he pointed down the block when Bishop asked about blows, and that he pointed to Taylor as a person who could sell Bishop

drugs. He stepped back to the porch while Taylor "served" Bishop. When the transaction was complete, Taylor walked back to him and they talked. Three minutes later they were arrested.

¶ 11 During closing argument, respondent's attorney argued that simply knowing who sold narcotics in the neighborhood and pointing someone in that direction did not establish accountability. The State then argued that accountability had been established when respondent not only directed Bishop to where she could purchase narcotics, but then went to that location himself. Although the court characterized this case as not one of the strongest accountability cases the court had seen, the court did not believe respondent's testimony that he stepped back and tried to disassociate himself from the transaction; rather, the court believed that respondent was on the street helping Taylor. The court adjudicated respondent delinquent of the delivery of a controlled substance and possession of a controlled substance, and sentenced him to one year of probation.

¶ 12 On appeal, respondent contends that he was not adjudicated delinquent beyond a reasonable doubt under an accountability theory because the evidence at trial fell short of establishing the requisite intent to facilitate the commission of the offense when he merely pointed Taylor out as a drug dealer.

¶ 13 The constitutional safeguard of proof beyond a reasonable doubt applies during the adjudicatory stage of a juvenile delinquency proceeding. *In re Malcolm H.*, 373 Ill. App. 3d 891, 893 (2007). When a respondent challenges the sufficiency of the evidence to sustain the court's delinquency determination, the relevant question on review is whether, after considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *In re W. C.*, 167 Ill. 2d 307, 336 (1995); see also *In re Urbasek*, 38 Ill. 2d 535, 540 (1967) (the State must prove a charge of delinquency beyond a reasonable doubt when the alleged conduct would constitute a crime

charged against an adult). Generally, the trier of fact is in the best position to judge credibility because it had the opportunity to hear and see the witnesses; it is not the function of a reviewing court to retry a respondent. *People v. Austin M.*, 2012 111194, ¶ 107. This court will reverse a delinquency finding only when the proof was so improbable or unsatisfactory that reasonable doubt exists as to the respondent's guilt. *In re Keith C.*, 378 Ill. App. 3d 252, 257 (2007).

¶ 14 To sustain a conviction for the unlawful delivery of a controlled substance under an accountability theory, the State must establish beyond a reasonable doubt, that "(1) the defendant solicited, ordered, abetted, agreed or attempted to aid another in the planning or commission of the delivery; (2) the defendant's participation took place before or during the commission of the delivery[;] and (3) the defendant had the concurrent, specific intent to promote or facilitate the commission of the offense." *People v. Deatherage*, 122 Ill. App. 3d 620, 624 (1984). To prove an intent to promote or facilitate a crime, the State must present evidence establishing beyond a reasonable doubt that an individual shared the criminal intent of the principal or there was a common criminal design. *People v. Perez*, 189 Ill. 2d 254, 266 (2000); see also *In re W.C.*, 167 Ill. 2d at 337 (the individual must have both the mental state required for the offense, and must aid in its commission before or during the offense). Accountability may be established through a person's knowledge of, and participation in, a criminal scheme even when there is no evidence that he directly participated in the criminal act itself. *Perez*, 189 Ill. 2d at 267. When determining whether a person is legally accountable for the conduct of another, proof that he was present during the commission of a crime without opposing or disapproving of it, that he maintained a close affiliation with the principal afterward and that he failed to report the crime may be considered. *People v. Johns*, 345 Ill. App. 3d 237, 241-42 (2003). A person who arranges or promotes the sale of narcotics is as guilty of the sale as the seller. *People v. Anders*, 228 Ill. App. 3d 456, 465 (1992).

¶ 15 Here, the evidence in the record, taken in the light most favorable to the State establishes that respondent actively facilitated the drug sale between Taylor and Bishop. At trial, Bishop and Ternoir testified that upon being asked about blows, respondent directed them to the 5900 block of Iowa, and that respondent was at that location speaking with Taylor when they arrived. Bishop also testified that after respondent instructed her to exit the car, he made eye contact, pointed at Taylor, and indicated that Taylor would take care of her. Here, not only did respondent tell Bishop where to find narcotics, he then relocated to that location and was speaking to the dealer when she arrived. See *People v. Tinoco*, 185 Ill. App. 3d 816, 823 (1989) (a factfinder may infer a defendant's accountability from his approving presence at the scene of a crime and conduct showing a design on the defendant's part to aid in the offense). This court cannot say that no rational trier of fact could have adjudicated respondent delinquent pursuant to an accountability theory beyond a reasonable doubt (*In re W.C.*, 167 Ill. 2d at 336), when respondent directed Bishop to a location where she could find narcotics, went to that location himself, stood next to and spoke with the drug dealer, and pointed the dealer out to Bishop (see *Johns*, 345 Ill. App. 3d at 241-42).

¶ 16 Respondent, on the other hand, contends that his unimpeached testimony established that he was on the block visiting friends, not selling drugs. However, the trial court stated that it did not believe respondent's testimony that he tried to dissociate himself from the transaction, and concluded that respondent was on the street helping Taylor. See *People v. Larson*, 379 Ill. App. 3d 642, 655 (2008) (when a defendant testifies, the trier of fact is not required to believe his testimony). It was for the trial court, as the trier of fact, to determine a witness's credibility; this court will not substitute our judgment for that of the trial court on this issue. See *Austin M.*, 2012 111194, ¶ 107. In reaching this conclusion, this court finds no merit in respondent's assertion that the trial court erred in recalling the evidence at trial, as we do not find the distinction

between standing on a corner and walking near a corner to be of sufficient import to change our view of the trial court's role in weighing evidence and making credibility determinations. See *In re Gino W.*, 354 Ill. App. 3d 775, 777 (2005) (it is the fact finder, rather the reviewing court, which must resolve conflicts in the evidence and decide what reasonable inferences to draw from the evidence).

¶ 17 This court is unpersuaded by respondent's reliance on *People v. Deatherage*, 122 Ill. App. 3d 620 (1984). In that case, the evidence at trial established that although defendant was present in a home during a narcotics transaction and was knowledgeable about the local drug trade, he was not present at two earlier meetings with undercover officers. There, the court concluded that the defendant was not proven guilty beyond a reasonable doubt under an accountability theory because, although he was present, he did not participate in the transaction and it was possible he was merely an innocent bystander. *Deatherage*, 122 Ill. App. 3d at 624.

¶ 18 In the case at bar, however, respondent was more than merely present. He directed Bishop to a location where narcotics could be purchased, relocated to that spot himself, and then pointed out Taylor as the person who could sell Bishop narcotics.

¶ 19 Ultimately, viewing the evidence in the light most favorable to the State, we cannot say that no rational trier of fact could have found that respondent aided Taylor in selling narcotics to Bishop. *In re W. C.*, 167 Ill. 2d at 336-37. Because this court reverses a delinquency finding only when the proof is so improbable or unsatisfactory that reasonable doubt exists as to the respondent's guilt (*In re Keith C.*, 378 Ill. App. 3d at 257), we therefore affirm respondent's adjudication of delinquency pursuant to an accountability theory.

¶ 20 Respondent next contends that his adjudication of delinquency for possession of a controlled substance is a violation of the one-act, one-crime rule and must be vacated when it is based upon the same physical act as his adjudication of delinquency for the delivery of a

controlled substance. Respondent acknowledges that his failure to raise this issue before the trial court has resulted in its forfeiture on appeal, but requests that this court review the issue for plain error. See *In re Samantha V.*, 234 Ill. 2d 359, 378-79 (2009) ("it is well established that a one-act, one-crime violation affects the integrity of the judicial process, thus satisfying the second prong of the plain-error test").

¶ 21 The State concedes, and we agree, that both adjudications are based upon the same physical act. Our supreme court has held that "[p]rejudice results to the defendant * * * in those instances where more than one offense is carved from the same physical act." *People v. King*, 66 Ill. 2d 551, 566 (1977). The one-act, one-crime doctrine applies to juvenile proceedings. *In re Samantha V.*, 234 Ill. 2d at 375. Therefore, because adjudications for more than one offense cannot be carved from the same criminal act (*King*, 66 Ill. 2d at 551), we vacate respondent's adjudication of delinquency for possession of a controlled substance. See *In re Samantha V.*, 234 Ill. 2d at 375, 379 (when offenses violate the one-act, one-crime rule, then "the less serious offense should be vacated").

¶ 22 Accordingly, we vacate the adjudication of delinquency for possession of a controlled substance and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 23 Affirmed in part and vacated in part.