

2015 IL App (1st) 132157-U
No. 1-13-2157
September 1, 2015
Modified Upon Denial of Rehearing November 10, 2015

SECOND DIVISION

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	Of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 09 CR 3581
)	
MIESHA NELSON,)	The Honorable
)	Lawrence Edward Flood,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Pierce and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held:* Where the defendant did not show that her co-defendant's defense would have suffered from any argument defendant's attorney might have raised on her behalf, and she did not show that her defense suffered any detriment due to any argument counsel could have raised on co-defendant's behalf, she did not show that her attorneys faced an actual conflict of interest due to representation of her and her co-defendant.

¶ 2 The trial court found Miesha Nelson and her co-defendants guilty of first-degree murder and armed robbery. In this appeal, we find the evidence sufficient to support the armed robbery conviction. We also find that Nelson has not shown that her attorneys faced an actual

conflict of interest when they represented one of Nelson's co-defendants at the same time as they represented Nelson. Therefore, we affirm the trial court's judgment.

¶ 3

BACKGROUND

¶ 4

On January 31, 2009, Nelson, Tiffany Cox, Roslind Ball and Carmelita Hall went to a liquor store where they bought gin. Nelson noticed Morris Wilson, whom she had known for several months. She invited Wilson to go with Ball, Hall and Cox to Cox's apartment near 82nd Street and Drexel Avenue. After 1 a.m. on February 1, 2009, Wilson got into an argument that turned into a fight. When Wilson left the apartment, Cox, Nelson, Ball and Hall followed him. The four women caught up with Wilson in the courtyard of an apartment building near 81st Street and Drexel Avenue. The ensuing commotion drew the attention of several persons nearby. All four of the women hit and kicked Wilson. Hall stabbed Wilson. The women returned to Cox's apartment.

¶ 5

Police found Wilson dead from multiple stab wounds. Police found a cell phone charger and a bag of marijuana near Wilson, and they found Wilson's jacket and a bloody knife less than a block away, near the corner of 82nd Street and Drexel Avenue. Following a trail of blood, police went to Cox's apartment. They arrested Cox in her apartment and Hall, Ball and Nelson on a stairway behind the back door to Cox's apartment.

¶ 6

All four women spoke to police about the incident. Police videorecorded the interviews. Prosecutors charged all four women with murder and armed robbery. The trial court granted the defendants' motions to sever the trials. Richard Kling of the Chicago-Kent Law Clinic represented Nelson, while Dan Coyne, also of the Chicago-Kent Law Clinic, represented

Hall. Susana Ortiz appeared once on behalf of Hall and at trial on behalf of Nelson. Kling told the trial court that he and Ortiz "practice under the supervision of Dan Coyne."

¶ 7 All four defendants elected to have bench trials. At the simultaneous trials, five eyewitnesses described what they saw. Defense counsel impeached all five witnesses with inconsistencies between their testimonies at trial and their statements made to police within a day of the stabbing. The witnesses contradicted each other on several details. However, all five witnesses saw the four women beating and kicking Wilson in the courtyard, and none saw Wilson striking the women. The witnesses also heard some of the words the women said, but no two witnesses heard any of the same words.

¶ 8 Helen Jones, who dropped off a relative across the street from the beating, testified that she saw the four women walking across the street, all underdressed for the cold weather. She divided her attention between the women pursuing the man and her relative going into her apartment.

¶ 9 Christina Roberts, who lived in the building that surrounded the courtyard where Wilson died, testified that she heard one of the women say Wilson tried to rape her. Roberts heard another women say she had blood on her hands, and she heard Wilson yell for help. Bruce Thornton, who also lived in the building, heard yelling and saw the beating, but he did not remember any words. He saw two women leave while two others continued to attack.

¶ 10 Etta Kelly, who lived in the building, testified that she heard Wilson say, "oh, you gone stab me now" while all four women stood over him, hitting him. She saw one woman stab Wilson and then pass the knife to another woman who also stabbed Wilson. No evidence

corroborated Kelly's testimony that the knife passed from one woman to another during the attack, and no evidence corroborated Kelly's testimony that two women stabbed Wilson. Kelly testified that she yelled out of her window to "stop it before somebody really [gets] hurt." One of the women told Kelly, "mind your own business." After the stabbing, Kelly saw two women rummage through Wilson's pockets and take his jacket.

¶ 11 Bernetta Coker testified that she had called police from a gas station to report her own domestic disturbance. As she walked back towards 82nd Street and Drexel Avenue, she saw Wilson running and the four women running after him into the courtyard. She went up to the courtyard. She heard a neighbor yell at the women to stop, and she heard one of the women threaten to beat the neighbor. The women looked in Wilson's pockets. Coker testified that she heard Cox say, "Shit. He don't have no money anyway." No evidence corroborated Coker's testimony that Cox said Wilson had no money. Coker testified that the women took Wilson's jacket. Cox and Nelson then came up to Coker. Cox grabbed Coker's collar and asked whether Coker had seen anything. Coker said no, but pointed out an approaching police officer. Nelson told Cox to let Coker go, and Cox did. The women ran off.

¶ 12 Apart from evidence of the police investigation and forensic evidence confirming that Nelson's co-defendants had Wilson's blood on their clothes, the State presented only an officer's testimony about a statement Nelson made in the police car, and the videorecording of the interview of Nelson at the police station. According to the officer who transported Nelson, Nelson said that after Wilson smashed the gin bottle against the apartment door, Hall said she was going to get Wilson. Nelson said to Hall, "No, let's go beat him up."

¶ 13 In the videorecording, Nelson said that when Wilson started "talking crazy" at her, she and her friends told him to leave. They got him out of the apartment, but "he was trying to push back through the door." All four of the women pushed, but "he was pushing all of [them] back." Nelson picked up an empty gin bottle. Wilson backed down the stairs, away from the door. Nelson threw the bottle at Wilson, hitting him in the face. The women locked the apartment door before Wilson could get back in. Wilson smashed the bottle against the door. Nelson said to police, "[Wilson] said he was gonna beat our ass. He goin see us on the street he gonna beat our ass."

¶ 14 Nelson said that Hall then looked around and could not find a cell phone she had put on the table. Nelson thought she had seen Wilson grab something off the table. Wilson had left by the time Hall decided to follow him to retrieve her cell phone. Nelson thought Wilson might try to beat them up, so she grabbed a knife from a counter top. Hall took the knife from Nelson. Ball led the way out of the apartment and caught up to Wilson. Nelson told police that Wilson "tackled [Ball] to the ground and she be pregnant." Nelson started hitting and kicking Wilson, and the other women joined her. Only Hall stabbed Wilson. Nelson told Hall to stop. As they started to go, Wilson stood and said, "y'all stabbin me?" Hall asked where her phone was. Wilson fell. Nelson took off Wilson's jacket and went through his pockets looking for Hall's phone. She found the phone charger but no phone. She dropped the jacket on the ground when she found no phone in its pockets.

¶ 15 The four defendants and the State stipulated to evidence of Wilson's violent and aggressive behavior on prior occasions. Wilson had punched, kicked and beaten several persons in incidents over a number of years. He also threatened to shoot another person.

¶ 16 Nelson asked the court to consider Hall's statement as evidence in Nelson's case. The court granted the request. Hall told an officer that she cut her hand when she stabbed someone. The officer took Hall to a hospital where a doctor stitched Hall's hand. The doctor testified that Hall said she cut herself with a knife while using the knife to stab someone.

¶ 17 The trial court found Nelson guilty of first-degree murder and armed robbery. The court sentenced Nelson to 25 years in prison for murder and 7 years for armed robbery, with the sentences to run consecutively. Nelson now appeals.

¶ 18 ANALYSIS

¶ 19 Nelson argues that the evidence does not prove that any of the four women committed armed robbery. When a defendant challenges the sufficiency of the evidence, we must determine whether any reasonable trier of fact could find that the prosecution proved all the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Cooper*, 194 Ill. 2d 419, 424-25 (2000).

¶ 20 Our supreme court held that " 'the intent [to permanently deprive the wronged party of the property] is logically presumed in the charge of robbery.' " *People v. Jones*, 149 Ill. 2d 288, 298 (1992), quoting *People v. Romo*, 85 Ill. App. 3d 886, 894 (1980) (the *Jones* court added the bracketed language to quote from *Romo*). The women removed Wilson's jacket and

dropped it less than a block away. The women left Wilson with a phone charger and a bag of marijuana that they would presumably have taken if they intended to rob Wilson.

¶ 21 While we find the evidence very closely balanced, we hold that a reasonable trier of fact could find that the women intended to rob Wilson of his jacket. Coker testified that she heard Cox say, "He don't have no money anyway." Coker also pointed out the approaching officer before the women dropped the jacket near the corner of 82nd Street and Drexel Avenue. The trier of fact could infer that the women intended to keep the jacket, but they hastily tried to rid themselves of evidence of the crime when they saw the officer.

¶ 22 Nelson's statement constitutes evidence that the women only sought to retrieve from Wilson a cell phone they believed he took, and retaking one's property, even by force, does not constitute robbery. See *People v. Falkner*, 61 Ill. App. 3d 84, 89-90 (1978); *T.D.W. v. State*, 42 So. 3d 959, 960 (Fla. Dist. Ct. App. 2010). However, we cannot say that the evidence compelled the trial court to believe Nelson's statement. On the basis of Coker's testimony, the court could conclude that the women took Wilson's jacket, by force, with intent to keep it, and abandoned the jacket only when they saw a police officer coming in their direction. We find the evidence sufficient to support the conviction for armed robbery.

¶ 23 **Conflict of Interest**

¶ 24 Nelson contends that her attorneys, Kling and Ortiz, worked under a conflict of interest because their office, the Chicago-Kent Law Clinic, also represented Hall. "For purposes of conflict of interest analysis, the law considers the representation of codefendants by law partners or associates the same as the representation of codefendants by one attorney."

People v. Mahaffey, 165 Ill. 2d 445, 456 (1995). Thus, we must treat the representation of Hall and Nelson by the Chicago-Kent Law Clinic as representation of the two defendants by a single attorney.

¶ 25 Every defendant in a criminal trial has a right to counsel free from conflicting interests or inconsistent obligations. *People v. Spreitzer*, 123 Ill. 2d 1, 13-14 (1988). In order to prevail on a claim of ineffective assistance our Supreme Court explained:

"[T]he joint representation of criminal defendants by a single attorney does not, by itself, violate this right because it is always *possible* that the interests of codefendants may diverge. Thus, to prevail on a claim of ineffective assistance of counsel based on joint representation of criminal codefendants by a single attorney, where the trial court was not apprised of a potential conflict, a defendant must show an *actual* conflict of interest manifested at trial. [Citation.] In other words, to obtain reversal of the conviction, the defendant must point to some specific defect in defense counsel's strategy, tactics, or decision making attributable to the conflict." *Mahaffey*, 165 Ill. 2d at 456.

¶ 26 Nelson argues that her attorneys faced an actual conflict of interest because Nelson could have argued that Hall acted independently of the other women when she stabbed Wilson. Nelson's counsel instead argued primarily that the attack at the apartment and the act of tackling Ball justified the stabbing, or at least mitigated the offense.

¶ 27 An argument that Hall acted independently would not have affected Hall's defenses in any way. She did not deny that she stabbed Wilson. A finding that Hall's co-defendants also

bore responsibility for the crimes would not in any way lessen the crime Hall committed or help with her defense to the charges. The evidence presented on Hall's behalf, to show that she acted in defense of Ball and in response to strong provocation, had no adverse effect on Nelson's defenses. Nelson's attorneys could have argued that Hall acted independently of Nelson, under serious provocation and in defense of Ball, without adverse effect on the defenses of either Nelson or Hall. See *People v. Powers*, 260 Ill. App. 3d 163, 170-73 (1994)(the well-established rule in Illinois is that the mere availability of a strategy that would have helped one defendant at the expense of another does not create hostility between the interests of criminal defendants); *People v. Sanders*, 209 Ill. App. 3d 366, 374-75 (1991). If Nelson's counsel erred by failing to argue that Hall acted independently of Nelson, we cannot attribute the error to a conflict between the defenses of Hall and Nelson. Thus, Nelson has not shown an actual conflict between her defense and Hall's defense, and therefore, the joint representation of Hall and Nelson does not warrant reversal of Nelson's convictions.

¶ 28

CONCLUSION

¶ 29

Coker's testimony sufficiently supports the conviction for armed robbery. Nelson has not shown that her attorneys worked under an actual conflict of interest when they represented her and Hall. Accordingly, we affirm the trial court's judgment.

¶ 30

Affirmed.