

No. 1-13-3523

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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. 12 CR 20600
	)	
ROBERT ADAMS,	)	Honorable
	)	Noreen V. Love,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Mason and Justice Lavin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Judgment entered on defendant's conviction for armed robbery affirmed over his claim that the evidence was insufficient to prove him guilty of that offense beyond a reasonable doubt, and that he was denied his right to the effective assistance of counsel.

¶ 2 Following a bench trial with co-defendants Montrell Williams and Armond Thornton, who are not parties to this appeal<sup>1</sup>, defendant Robert Adams was found guilty of armed robbery while armed with a firearm, then sentenced to 21 years' imprisonment. On appeal, defendant contests the sufficiency of the evidence to prove him guilty of that offense beyond a reasonable

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<sup>1</sup>Co-defendant Williams separately appealed in case No. 1-13-3894, and co-defendant Thornton in case No. 1-14-0720.

doubt. He also contends that he was denied effective assistance of counsel who failed to request that his trial be severed from that of his co-defendants.

¶ 3 The record shows that the incident giving rise to the charges filed in this case occurred in Bellwood, Illinois, at 11 p.m. on September 30, 2012. At trial, Jose Espino testified through an interpreter that he was working as a taxi driver that night and was called to the 500 block of Linden Avenue where three young, black males came out from the sides of a house and entered the back seat of his taxi. They asked him to take them to a restaurant in Melrose Park, but on the way, requested that he turn around so that they could pick up a cousin.

¶ 4 When Espino parked his taxi in the 500 block of Linden Avenue, one of the occupants reached into the front seat, grabbed the keys from the ignition, and turned off the car. Espino attempted to grab the arm of that person, but he pulled his arm away, and then put a gun to Espino's head and said, "don't move." Espino knew the object placed against his temple was a gun because he could feel "cold metal" and see the gun out of the corner of his eye. He then turned around, saw the gun and the man holding the gun sitting in the rear passenger side seat, and asked, "what do you want?" The gunman replied "the money," so Espino reached into his pocket and handed him \$20.

¶ 5 Espino further testified that during this exchange the other two occupants were standing outside the taxi telling the gunman to "hurry up" and "get it done." Espino took off his seatbelt and began to exit the car, but the gunman told him not to move. Meanwhile, the two men standing outside the taxi told the gunman to "check his pockets. He has more money." Espino reached into his pocket and gave the gunman his I.D., business cards, and an additional \$20, after which the gunman started to retreat, put his gun away, and told the other two "let's move. Let's

get out of here." Espino then asked for his keys back and the gunman threw them across the street before the three men went back into the same house they had exited earlier.

¶ 6 Espino further testified that his taxi is equipped with a camera that captures pictures of each side of the back seat. The camera activates when the doors of the taxi are opened and takes still pictures, but not video. The State showed Espino five of the State's exhibits, which consisted of a DVD containing the pictures from the camera in the taxi, and four pictures that had been printed out from that DVD. Espino identified the men in the pictures as those who had robbed him because two of the individuals were wearing "hoodies" and the other was wearing a hat with a ball on it. In one of the pictures, Espino circled the gun in the gunman's hand, and identified it as a "black, automatic" handgun, but he could not identify any of the defendants because he was only paying attention to the gun.

¶ 7 On cross-examination by co-defendant Thornton's counsel, which was adopted by defendant and Williams, Espino stated that he called police after the incident and told the officers who arrived on the scene that the assailants went into the house, but the officers did not investigate the house and told him that it was the detectives' job to do so. He also stated that he did not know which hand the gunman was using to hold the gun because he was looking forward. Counsel then asked Espino: "There was no gun to your head when you were inside the cab, was there?" and Espino replied, "No." Moments later, counsel asked Espino: "And you testified that you felt a gun to your head inside the cab, is that correct?" to which Espino responded: "Inside the cab, yes." Espino also stated that he believed the taxi camera took a picture every two seconds, but he could not be sure if that was accurate. Espino finally stated that he got out of the taxi despite having a gun to his head because it was "an instinct to save [his] life."

¶ 8 Hillside Police Department detective Zachary Sienkiewicz testified that he was employed as a school liaison for Proviso West high school, and deals with criminal activities and other administrative concerns at the school. He further testified that on October 2, 2012, he spoke to Detectives Buckner and O'Neal who showed him the photographs from Espino's taxi. Detective Sienkiewicz was able to identify each of the defendants from the photographs because of his multiple interactions with them at school, then identified each defendant in open court and in the State's exhibits.

¶ 9 On cross-examination by defense counsel, Detective Sienkiewicz stated that he had at least 10 direct interactions with defendant during the past two years and would see him during the passing periods between classes. He also stated that he was a witness to multiple conversations between defendant and the dean of the high school.

¶ 10 Following closing argument, the court found that Espino indicated that he could see the gun out of the corner of his eye, could feel the cold metal against his temple, and was able to identify the weapon as an automatic and not a revolver. The court also noted that Espino testified that he was able to see that the gun was being pointed at him when one of the defendants got out of the car. The court further noted that Espino was able to tell that two of them had their hoods up and one was wearing a cap with a ball on it, which the court saw in the still pictures from the taxi.

¶ 11 The court found unpersuasive defense counsel's argument that there was no gun, and this was merely a prank where one of the defendants threw Espino's keys. The court also did not believe that Espino would call police and say that he was robbed merely because someone threw his keys and then fled. The court further observed that Espino testified that the three occupants

came from the sides of the house, rather from inside the house, indicating that they did not reside there.

¶ 12 The court then addressed the cross-examination of Espino, finding that it became convoluted because counsel was asking questions in the negative, and when the questions were translated, Espino did not understand how to answer them. The court concluded, however, that it had no reason to disbelieve Espino, or that Detective Sienkiewicz could identify defendant based on his more than 20 interactions with him, even though defendant no longer attends that school.

¶ 13 The court also found that all three defendants participated in the robbery, based on one of them holding the gun, and the other two telling the gunman to hurry up and that Espino had more money. The court noted that Espino circled the gun on the State's exhibit, and, although the court may not have been able to recognize the object as a gun, Espino was there, and pointed out the dark object being pointed at Espino in the picture. The court acknowledged that no gun was recovered in this case, but given the lengthy period between the offense and the arrest, it was unlikely that a gun would be recovered, and that a conviction for armed robbery does not require that the gun be recovered. The court concluded that the State had met its burden based on the testimony of all the witnesses and found each defendant guilty of armed robbery.

¶ 14 Defendant subsequently filed a motion for a new trial, which the trial court denied. In response to defendant's arguments in that motion, the court noted that there are gaps in the pictures because it is not a video, so they don't show everything that happened. The court explained that it used Espino's testimony, which it found feasible and credible, to fill in the gaps in the photographs, and the court again recognized that Espino circled the gun in one of the exhibits, and, although the picture was not clear to the trial court, Espino was there. At the

subsequent sentencing hearing, the court considered the appropriate factors in mitigation and aggravation, and sentenced defendant to 21 years' imprisonment.

¶ 15 In this appeal from that judgment, defendant contends that the State failed to prove him guilty of armed robbery beyond a reasonable doubt where Espino's testimony was inconsistent and improbable and, consequently, insufficient to prove that he took part in the robbery or that a gun was used during the robbery. He also claims that the evidence was insufficient to prove that he was liable for the conduct of the gunman under a theory of accountability.

¶ 16 Where defendant challenges the sufficiency of the evidence to sustain his conviction, the reviewing court must consider whether, after viewing the evidence in a 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. Jordan*, 218 Ill. 2d 255, 270 (2006). This standard recognizes the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any conflicts and inconsistencies in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court must allow all reasonable inferences from the record in favor of the prosecution, and will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 17 To sustain defendant's conviction for armed robbery with a firearm in this case, the State was required to prove that he took property from another by the use of force, or threat thereof, while armed with a firearm. 720 ILCS 5/18-2(a)(2) (West 2012). Viewed in a light most favorable to the State, the evidence in this case shows that Espino was called to the 500 block of Linden Avenue where three men got into the back seat of his taxi. After he started to drive them

to their indicated destination, they asked him to return to the pickup location. When Espino parked the car there, one of them reached into the front seat and took the keys out of the ignition. Espino grabbed the man's arm, but then felt a gun being pressed against his temple and the gunman told him not to move.

¶ 18 Espino could see the gun out of the corner of his eye and felt the cold metal against his temple. When he turned to ask the gunman what he wanted, he saw the man holding the gun in the rear passenger seat. The gunman demanded money from Espino, and he gave him \$20. Meanwhile, the other two who had been in the taxi stood outside and told the gunman to hurry up and get more proceeds. When Espino asked for his keys back, the gunman threw them across the street and the three men fled. Espino circled the gun on a picture taken by the camera in his taxi, and defendant and his co-defendants were identified in pictures taken in the taxi by the liaison police officer at their high school. This evidence, and the reasonable inferences therefrom, was sufficient to allow a reasonable trier of fact to find that defendant was involved in the taking of property from another by use of force or threatening the use thereof while in possession of a firearm. 720 ILCS 5/18-2(a)(2) (West 2012); 720 ILCS 5/5-2(c) (West 2010); *Beauchamp*, 241 Ill. 2d at 8.

¶ 19 Defendant, nonetheless, contends that Espino's testimony is "so shaky" and inconsistent that it cannot serve as proof of defendant's guilt. He maintains that the trial court should not have accepted Espino's testimony given his inability to identify any of the defendants in court, and his ever-changing testimony regarding his ability to see the gun. Without citation to the record, defendant claims that "Espino, the State and even the trial judge all conceded that no gun can be seen in the photos from the cab."

¶ 20 A review of the record shows that defendant's claim is unfounded. Espino did testify that he could not identify the gun in certain photographs, but identified the gun in one of the photographs and circled it on the State's exhibit. In addition, the trial court made it clear that although it might not be able to determine there was a gun in the picture, it would defer to Espino's testimony and identification because he was there. Defendant correctly states that Espino gave varying answers on cross-examination regarding his ability to see the gun and when it was drawn, but as the trial court noted, such discrepancies could be attributed to defense counsel's questioning of him in the negative leaving Espino unsure of how to respond following the translation.

¶ 21 At base, defendant is contesting the credibility determination made by the trial court on the witnesses who testified at trial. This matter is within the province of the trial court (*Sutherland*, 223 Ill. 2d at 242), and we will not substitute our judgment for that of the trial court unless the proof is so unsatisfactory that a reasonable doubt of guilt appears (*People v. Berland*, 74 Ill. 2d 286, 305-06 (1978)). We do not find this to be such a case.

¶ 22 Despite defendant's contentions to the contrary, Espino's testimony regarding the incident was clear and consistent. He testified that the gunman held the gun to the side of his head, that he saw the gun out of the corner of his eye, that when he turned around and asked the gunman what he wanted he saw the gun, and he identified the gun on one of the State's exhibits. He also testified that he could feel the cold metal of the gun against his temple and described it as a black, automatic. On cross-examination, when counsel began asking questions in the negative, Espino's answers became convoluted; however, when counsel asked direct questions, Espino's statements on cross-examination matched his testimony on direct. This is exemplified by the



following exchange which took place when defense counsel showed Espino the photographs from the State's exhibits and added:

"Q. And at no time on that clip did anyone show you a gun, is that correct?

A. Not now, but when the attorney showed me, you can see it there.

Q. In that clip during that time frame, there was no gun to your head, is that correct?

A. No, we had all gotten out.

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Q. There was no gun to your head when you were inside the cab, was there?

A. No.

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Q. And you testified that you felt a gun to your head inside the cab, is that correct?

A. Inside the cab, yes."

¶ 23 In addressing this issue, the court stated that "it becomes somewhat difficult, especially when it has to be translated that when you ask a question in a negative, most people don't understand how to answer it. They don't realize that there is a way to ask a question in a negative versus asking it straight forward [*sic*] in a positive. Because if you ask it in a negative, the answer is going to be different than if you ask it straightforward." Although Espino acknowledged that he could not see the gun in some of the pictures, the court noted that the pictures were stills, rather than a video, and that Espino's testimony, which the court found credible, was needed to fill in the gaps. The trial court thus concluded that despite the convoluted

nature of the cross-examination, Espino's testimony regarding the gun was both feasible and credible, and we find no basis for disturbing that decision on review.

¶ 24 Defendant also contends that even assuming the presence of a gun, the State failed to prove there was a shared criminal intent or common design among defendants necessary to find him guilty under a theory of accountability. He maintains that there is no evidence of his involvement in the robbery other than his presence in the back of the taxi because Espino's testimony did not establish which defendant held the gun, and who told the gunman to "hurry up" and take more money.

¶ 25 In order to prove defendant guilty of the charged offense under an accountability theory, the State must show that he shared the criminal intent of the principal or there was a common criminal design. *People v. Fernandez*, 2014 IL 115527, ¶ 13. If "two or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the design or agreement and all are equally responsible for the consequences of the further acts." *Id.* Evidence that defendant voluntarily attached himself to a group bent on illegal acts with knowledge of its design, supports an inference that he shared the common purpose and will sustain his conviction for an offense committed by another. 720 ILCS 5/5-2(c) (West 2010); *Fernandez*, 2014 IL 115527, ¶ 13.

¶ 26 The evidence adduced at trial in this case shows that the three defendants entered the taxi together and one of them held a gun to Espino's head and demanded money. Meanwhile, the other two defendants stood outside the taxi and told the gunman to "hurry up" and "get it done," and told him that Espino had more money. After the gunman threw Espino's keys across the street, the three fled together in the same direction. This evidence shows that defendant voluntarily attached himself to the group by entering the taxi with them and did not leave when

the gunman pulled out a gun and demanded money. Instead, the two outside the taxi told the gunman to hurry up and urged that Espino had more money, then fled together. Although Espino was unable to identify which defendant held the gun, and which ones were outside shouting encouragement, the evidence was such that a reasonable trier of fact could find that the three shared the same common criminal design and that defendant, who was identified as one of the three, was found guilty of the charged offense under a theory of accountability.

¶ 27 Nonetheless, defendant contends that Espino's testimony does not establish that he said or did anything because Espino testified that "they" said to "hurry up" and "they" were standing outside the car, rather than individually identifying defendant, which indicates that the other defendant outside the car may have been speaking, while defendant did not participate. Espino's testimony is clear, however, that one defendant held the gun while the other two urged him to hurry and take more money.

"Q. What were the other two saying, if anything, when this happened?

A. They were telling him, "Hurry up. Rush it."

Q. Was one of them saying it or were both of them saying it?

A. The other two were telling him to hurry up, to move.

Q. When you say hurry up, to move, what did they say about movement?

A. That he should get things done in a hurry.

Q. And was that again one or both of the other guys?

A. Both of them were saying, "Hurry up. Get it done. Move."

Thus, Espino's testimony, which the trial court found credible, shows that the three defendants were involved in the armed robbery, and engaged in acts in furtherance of the common design to rob the taxi driver. *Fernandez*, 2014 IL 115527, ¶ 13. Defendant's assertion, therefore, that

"they," as used in Espino's testimony, does not include both defendants who were outside the car is rebutted by the record.

¶ 28 Defendant finally contends that he was denied effective assistance of counsel because counsel failed to request that his case be severed from his co-defendants, thus allowing the "damaging hearsay statements" of co-defendant Thornton to be considered against him.

Defendant specifically identifies the statements Thornton made to Detective O'Neal and an ASA that the photo from the taxi looked like him (Thornton), that he was in the taxi that night, and that he grabbed the keys from Espino.

¶ 29 Claims of ineffective assistance of counsel are examined under the two-prong test set forth in *Strickland v. Washington*, 446 U.S. 668 (1984). In order to prevail on a claim of ineffective assistance of counsel, defendant must show that his counsel's performance fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for counsel's performance, the result of the proceeding would have been different. *Id.* at 694. In considering whether counsel's performance was deficient, there is a strong presumption that counsel's actions were the result of sound trial strategy. *People v. Mercado*, 397 Ill. App. 3d 622, 634 (2009).

¶ 30 Although the general rule is that defendants jointly indicted be tried together, fairness may require separate trials in order to avoid prejudice. *People v. Jackson*, 150 Ill. App. 3d 1, 4 (1986), citing *People v. Daugherty*, 102 Ill. 2d 533, 540-41 (1984). Prejudice may occur when a co-defendant makes hearsay admissions that implicate defendant, or when the defenses are so antagonistic that a severance is required to ensure a fair trial. *Id.* Here, defendant does not contend that his defense was antagonistic to that of his co-defendants, but asserts that Thornton's hearsay admission implicated him in the robbery, thereby prejudicing his defense.

¶ 31 Detective O'Neal testified to Thornton's admission after he was arrested and waived his *Miranda* rights. Detective O'Neal testified that Thornton eventually acknowledged that he was in the taxi that night, but repeatedly stated that he did not know the other two occupants. He did not identify defendant in the pictures from the taxi, or indicate in any way that defendant was involved in the robbery. In fact, he stated that he took the keys from the ignition and threw them, thereby implicating himself, but not his co-defendants. Defendant's contention that Thornton's statement prejudiced him by implicating him in the robbery is therefore belied by the record.

¶ 32 Moreover, we presume that the trial court knows and follows the law unless the record indicates otherwise. *People v. Robinson*, 386 Ill. App. 3d 963, 976 (2006), citing *People v. Gaultney*, 174 Ill. 2d 410,420 (1996). The trial court is presumed to have considered only admissible evidence, and that presumption may be overcome only if it affirmatively appears from the record that the court considered improper evidence. *People v. Dobbs*, 353 Ill. App. 3d 817, 824 (2004).

¶ 33 Here, the record shows that in determining whether defendant was one of the assailants despite Espino's inability to identify him, the court relied on Detective Sienkiewicz's identification, rather than on Thornton's statement. The court specifically stated that it had no reason not to believe that Detective Sienkiewicz could identify defendant in the pictures from the taxi based on his multiple interactions with him even though defendant no longer attended the school. Accordingly, defendant cannot establish sufficient prejudice accruing to him from counsel's alleged omission, and his ineffective assistance claim fails. *Strickland*, 446 U.S. at 694.

¶ 34 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 35 Affirmed.