SIXTH DIVISION
November 20, 2015

No. 1-14-0307

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 14732
	)	
CHRISTIAN CORREA,	)	Honorable
	)	Nicholas R. Ford,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 ***Held:*** We affirm defendant's conviction for attempted robbery because his speech and conduct established his intent to commit robbery and constituted a substantial step toward taking the victims' property by threat of imminent force.

¶ 2 Following a bench trial, defendant Christian Correa was convicted of attempted robbery and sentenced to two years' intensive probation. On appeal, defendant contends that the State failed to prove his guilt beyond a reasonable doubt because the evidence was insufficient to establish that he had the specific intent to commit robbery and took a substantial step toward taking property by the use or threat of imminent force. We affirm.

¶ 3 At trial, Felix Torres testified that he was driving home with his girlfriend, Raquel Cardenas, and their infant daughter at 11:15 p.m. on July 30, 2012. At the intersection of 23rd Street and Oakley in Chicago, Torres stopped to let defendant and another man, later identified as Richard Flores, cross the street. Defendant approached Torres's window and with his right hand drew a black, six-inch gun from his waistband. Defendant said "give me your shit" and lifted the gun toward the window. Flores told Torres to lower the back window to reveal who else was in the car. Torres complied, explaining that his daughter was in the back seat, and Cardenas began crying. Another car drove past and defendant and Flores fled. Torres told Cardenas to call 9-1-1 and followed the men on foot, staying 35 to 40 feet behind them because the street was dark and they had a gun. Torres never lost sight of defendant and did not see him discard the gun. A police car approached Torres and he directed the officers to the men. After defendant was apprehended, Torres identified him as "the one that tried to rob me."

¶ 4 On cross-examination, Torres testified that defendant and Flores spoke in English, but while he is more comfortable speaking Spanish, he could not have misunderstood their meaning because defendant spoke while drawing a gun. He denied that the men spoke about gang affiliations, and did not recall whether he told detectives the men said gang slogans. However, the parties stipulated that Torres told a detective that defendant and Flores approached the car shouting what he thought were gang slogans. The parties also stipulated that Torres told detectives he was driving to get something to eat when the incident occurred.

¶ 5 Cardenas's testimony essentially corroborated Torres's account. She stated that defendant lifted his shirt, held a gun at his hip, and ordered her and Torres to "give us our shit." Cardenas believed that defendant wanted to rob her and was demanding the car or her personal belongings. After defendant and Flores fled, she called 9-1-1 and stated that two men with a gun

had approached her vehicle. She did not recall stating that the men tried to rob her, although the parties stipulated that Cardenas reported being "threatened with a gun by two Micks." The parties also stipulated that Cardenas told detectives that she and Torres were on the way to the grocery store, although she did not remember saying this at trial.

¶ 6 Officer Sanchez testified that he spoke with Cardenas after responding to a call of a person with a gun. Afterwards, he located Torres, who pointed to two individuals who tried to rob him. Sanchez detained defendant and Flores after a brief chase, but never saw defendant with a gun and did not locate a gun in the area.

¶ 7 Defendant testified that he was walking with Flores near 22nd Place and Oakley and observed a car entering an alley. Defendant was a member of the Satan Disciples gang and thought the occupants of the car were going to shoot him, as he was injured in a drive-by shooting in May 2012. He approached the car and asked "what's up" to ascertain whether the occupants were gang members. Receiving no response, defendant looked in the window and saw Torres, Cardenas, and a baby. He walked away with Flores but Torres chased after them, demanding to fight. Defendant ran until he was stopped by police. He denied that he tried to rob the victims or that he said "give me your shit." He also denied lifting his shirt or possessing a gun, and stated that as a result of a gunshot injury to his right arm, he was unable to pull a gun or grasp items at the time of the incident.

¶ 8 The parties stipulated to the testimony of Dr. Mason Milbourne, who treated defendant for his gunshot injury. According to Milbourne, defendant's injuries made it very unlikely that he could hold a gun in his right hand on the night of the incident.

¶ 9 At the close of trial, the court stated the case "comes down to believability." The court accepted the testimony of Torres and Cardenas, noting they were "pretty much in agreement"

and "very, very, very believable." By contrast, defendant's testimony was "highly illogical and preposterous." The court found it implausible that defendant, a gang member who feared a drive-by shooting, would approach a car at night "to make sure that he wasn't going to get shot." Additionally, the court found the stipulated medical testimony to be credible but noted there was still a possibility that defendant could have manipulated a gun. The court acquitted defendant of attempted armed robbery, as the court "couldn't find where the gun went" and "didn't feel that there was any time or place where he could have gotten rid of the gun." However, the court found defendant guilty of attempted robbery, explaining that "I'm certain [defendant] said the words that were [*sic*] predicated the offense of attempting to take property from this young couple." Subsequently, the court denied defendant's motion for a new trial and sentenced him to two years' intensive probation.

¶ 10 On appeal, defendant contends that the State failed to prove him guilty of attempted robbery beyond a reasonable doubt. Defendant argues the trial court found that he did not possess a gun, and, therefore, no evidence showed that he intended to take property from the victims by the use or threat of force. Without evidence that he intended or threatened to use force, defendant urges that he did not take any substantial step toward committing robbery. Defendant observes that the evidence did not show that he made preparations to rob the victims, and further claims that the phrase "give me your shit" may represent a "taking" but not a "taking by force."

¶ 11 When a defendant challenges the sufficiency of the evidence, as defendant does here, the reviewing court must consider all the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. The reviewing court will

not retry the defendant or substitute its judgment for that of the trier of fact on questions involving the credibility of witnesses or the weight of the evidence. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). Moreover, the trier of fact is not required to disregard inferences that flow normally from the evidence or to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). Rather, a conviction will be reversed only if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Siguenza-Brito*, 235 Ill. 2d at 225.

¶ 12 To sustain a conviction for attempted robbery, the State must prove the defendant, with the intent to commit robbery, performed any act constituting a substantial step toward taking property from the person or presence of another by the use of force or by threatening the imminent use of force. 720 ILCS 5/8-4(a), 18-1(a) (West 2010). Intent is a question for the trier of fact and may be inferred from the character of the defendant's actions and the circumstances surrounding the commission of the offense. *People v. Foster*, 168 Ill. 2d 465, 484 (1995); *People v. Jones*, 334 Ill. App. 3d 420, 424 (2002). What constitutes a substantial step toward committing robbery is determined by the facts and circumstances of each case, but generally represents conduct that puts the defendant in "dangerous proximity to success." *People v. Terrell*, 99 Ill. 2d 427, 433-34 (1984). Actual possession of a weapon is unnecessary to establish a threat of imminent force where the defendant indicates, through speech and conduct, that he or she is armed and robbing the victim. *People v. Grengler*, 247 Ill. App. 3d 1006, 1012 (1993).

¶ 13 We find the evidence was sufficient to establish that defendant intended to rob the victims and took a substantial step toward committing robbery by threatening the imminent use of force. Defendant's intent was established where he approached Torres's and Cardenas's

vehicle on a dark street late at night, stood by the driver's window, lifted his shirt, and ordered the victims to "give me your shit." *People v. Turner*, 108 Ill. App. 2d 132, 138 (1969) (circumstantial evidence may establish intent although defendant neither demands specific items nor attempts to take property). Moreover, defendant led both victims to believe they were being robbed, induced Torres to remain at the intersection rather than drive away, and stood nearby when Flores ordered Torres to lower the back window. *People v. Hicks*, 2015 IL App (1st) 120035, ¶ 29 (discerning threat of imminent force where defendant's conduct induces such fear as to overpower victim's will). While defendant fled without taking property, a reasonable trier of fact could conclude from these circumstances that defendant's conduct constituted a substantial step toward committing robbery. *Terrell*, 99 Ill. 2d at 433 (defendant need not complete last proximate act to be convicted of attempt).

¶ 14 Notably, defendant argues that because the trial court found that he did not possess a gun, there could have been no threat of force sufficient to sustain a conviction. We reject this argument because the record merely shows the court concluded that the presence a gun was never proven beyond a reasonable doubt. As the court explained, defendant was acquitted of attempted armed robbery because the court "couldn't find where the gun went" and "didn't feel that there was any time or place where he could have gotten rid of the gun." A finding that the State has not proven a fact beyond a reasonable doubt is not necessarily equivalent to a finding that the opposite is true. However, even if we interpret the trial court's comments as a finding that defendant did not possess a gun, the outcome would not be different. Defendant's speech and conduct, taken together, threatened the victims with imminent force by intimating that defendant was armed. *Grengler*, 247 Ill. App. 3d at 1013 (defendant's demand for property, in conjunction with a gesture suggesting he was armed, "was both an announcement of the robbery

and a threat of force"). The victims credibly testified that they believed defendant was armed and was threatening the use of force. Viewed in the light most favorable to the State, this evidence was sufficient to find defendant guilty of attempted robbery beyond a reasonable doubt.

¶ 15 For all the foregoing reasons, we affirm the judgment of the trial court.

¶ 16 Affirmed.