2015 IL App (1st) 141810-U

SIXTH DIVISION
NOVEMBER 6, 2015

No. 1-14-1810

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. 13 CR 23654
	)	
ANDRES BAUTISTA,	)	Honorable
	)	Michael McHale,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice ROCHFORD and Justice HOFFMAN concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Where police officers observed defendant in the driver's seat of a van that a co-offender was loading with property he was stealing from a garage, the evidence was sufficient to establish defendant's accountability for burglary. The trial court did not improperly consider defendant's failure to present evidence at trial or shift the burden of proof to defendant.

¶ 2 Following a bench trial, defendant Andres Bautista was convicted of burglary and sentenced to six years in prison. On appeal, defendant contends that the evidence was insufficient

to prove him guilty beyond a reasonable doubt. He further contends that he was denied a fair trial where the trial court improperly considered his failure to present evidence and improperly shifted the burden of proof. For the reasons that follow, we affirm.

¶ 3 At trial, Chicago police officer Korwin testified that about 7:45 p.m. on November 24, 2013, he and his partner responded to a call of a burglary in progress at 3021 West 54th Place. When they arrived in the alley at that address, Officer Korwin saw a white van parked in front of a garage. A man, identified in court as defendant, was sitting in the driver's seat, while a second man was coming out of the garage and loading a tire into the back of the van. Officer Korwin identified several photographs of the van, including one that showed tires, an air compressor, a welder, a grinder, and other objects inside the back of the van. He stated that the photographs truly and accurately depicted how the interior of the van looked when he observed it at the scene. Officer Korwin testified that upon inspection of the garage, he found that the lock on the side door was cracked off.

¶ 4 Jose Garcia testified that about 7:45 p.m. on the date in question, police officers knocked on his door and informed him that the garage behind his home was being robbed. When Garcia walked back to the garage, he saw a white van parked in the alley next to the garage. Inside the van were some tires, a welding machine, tool boxes, a grinder, and a compressor that belonged to Garcia and had been inside his garage. Garcia also testified that the lock was broken on the garage door. He was "pretty sure" the lock was not broken when he was in the garage earlier in the day. Garcia testified that he did not know defendant and had not given him permission to take any property from his garage.

¶ 5 During closing, defense counsel argued that the State's case lacked evidence that defendant took any action to aid and abet his co-offender or that he knew what his co-offender was doing. Instead, counsel twice asserted that there were "any number of reasonable hypothesis [*sic*] of innocence." The prosecutor responded that the trial court could make a reasonable inference that defendant was working together with his co-offender.

¶ 6 The trial court found defendant guilty of burglary. In the course of doing so, the court made the following statements:

> "And then the real question is knowledge. If he was picking up a lawn mower or maybe a rake it might be one thing but I find it difficult to believe that [defendant] would not have known what's going on here not with all of this property.
>
> It certainly is the State's burden. It is not the defense burden. But if the defense had some sort of reasonable explanation for him being there, I should have heard that from the defense.
>
> This is powerful circumstantial evidence based on reasonable inferences that the defendant was assisting someone in unlawfully taking equipment. I think with the huge number of property items here I don't think it's reasonable that he was unaware of what was going on.
>
> I do find him guilty based on the reasonable inference and the powerful circumstantial evidence that I heard."

¶ 7 The trial court subsequently sentenced defendant to six years in prison.

¶ 8 On appeal, defendant first contends that the State failed to prove him guilty of burglary beyond a reasonable doubt where the evidence only established that he was present at the scene of a crime. He argues that there was absolutely no evidence he had any knowledge that his co-offender had entered the victim's garage unlawfully and removed items without consent. He further argues that the court drew unreasonable inferences to find him guilty.

¶ 9 When a question as to a defendant's accountability for an offense is raised on appeal, a reviewing court must determine 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. Fernandez*, 2014 IL 115527, ¶ 13. Here, in order to prove defendant accountable for his co-offender's actions, the State was required to show that either before or during the commission of the crime, and with the intent to promote or facilitate such commission, defendant solicited, aided, abetted, agreed, or attempted to aid his co-offender in the planning or commission of the crime. 720 ILCS 5/5 2(c) (West 2012). A defendant's intent to promote or facilitate a crime may be inferred from the character of his acts and from the circumstances surrounding the commission of the crime. *People v. Perez*, 189 Ill. 2d 254, 266 (2000). A defendant will be found to have the intent to promote or facilitate a crime if he either (1) shared the criminal intent of the principal or (2) there was a common criminal design. *Id.* at 266.

¶ 10 In the instant case, the evidence, viewed in the light most favorable to the prosecution, was sufficient to establish a common criminal design. Under the common design rule, where two or more persons engage in a common criminal design or agreement, any acts committed by one party in furtherance of that common design are considered to be the acts of all parties to the

design or agreement, and all parties are responsible for the consequences of the further acts. *Perez*, 189 Ill. 2d at 267. Accountability may be proven through a defendant's knowledge of and participation in the criminal scheme; neither words of agreement nor direct participation in the criminal act itself are required. *Perez*, 189 Ill. 2d at 267. Factors to consider when determining whether a defendant is accountable include the defendant's presence during the planning of the offense, his presence during its commission, his failure to report the crime, and his continued affiliation with the other offender or offenders after the commission of the crime. *Perez*, 189 Ill. 2d at 267; *People v. Velez*, 388 Ill. App. 3d 493, 512 (2009).

¶ 11 Here, there is no dispute that defendant was sitting in the driver's seat of a van while his co-offender loaded items from the victim's garage into the back of the van. In addition, there is no dispute that the lock to the side door of the garage was broken and that numerous large items from the garage were found in the van, including tires, a welding machine, tool boxes, a grinder, and a compressor. We cannot agree with defendant that he was merely present at the scene of a crime. Rather, he was literally sitting in the driver's seat during the commission of the burglary. It was not unreasonable for the trial court to infer from the circumstances that defendant had driven his co-offender to the garage, that defendant was aware of his co-offender's actions while he loaded numerous large items into the van, or that defendant was to have acted as the getaway driver once the burglary was complete. The evidence presented by the State supports a finding that defendant intended to facilitate his co-offender's burglary of the victim's garage. We cannot say that the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). The evidence, viewed

in the light most favorable to the prosecution, was sufficient to prove defendant guilty of burglary.

¶ 12 Defendant's second contention on appeal is that he was denied a fair trial where the trial court improperly considered his failure to present evidence and improperly shifted the burden of proof to him. Specifically, defendant takes issue with the trial court's statement that "if the defense had some sort of reasonable explanation for [defendant] being there, I should have heard that from the defense." Defendant asserts that his conviction must be reversed because the trial court expressly considered his failure to present evidence.

¶ 13 Due process requires that the State bear the burden of proving all of the elements of a charged offense beyond a reasonable doubt. *People v. Howery*, 178 Ill. 2d 1, 32 (1997). The burden of proof remains on the State throughout the entire trial and never shifts to the defendant. *Id*. The defendant is presumed innocent throughout the course of the trial and does not have to testify or present any evidence. *People v. Cameron*, 2012 IL App (3d) 110020, ¶ 27.

¶ 14 A presumption exists that the trial court knows the law regarding the burden of proof and will apply it properly. *Id*. ¶ 28. This presumption is rebutted only where the record contains "strong affirmative evidence" that the trial court incorrectly allocated the burden of proof to the defendant. *Howery*, 178 Ill. 2d at 32-33. A trial court's efforts to test, support, or sustain a theory of defense cannot be viewed as improperly diluting the State's burden of proof or as improperly shifting the burden of proof to the defendant. *Cameron*, 2012 IL App (3d) 110020, ¶ 28. Moreover, the trial court may comment on the implausibility of the defense's theories, as long as it is clear from the record that the court applied the proper burden of proof in finding the defendant guilty. *Id*.

¶ 15 In the instant case, we find that the record does not contain strong affirmative proof that the trial court erroneously diluted the State's burden of proof or shifted the burden of proof to defendant. The trial court specifically stated that the burden of proof rested with the State, and not defendant. The court then commented that if the defense had a reasonable explanation for defendant "being there," it should have heard that explanation from the defense. In our view, this comment was a response to defense counsel's repeated assertion during closing argument that there were "any number of reasonable hypothesis [*sic*] of innocence." The trial court's remark indicates that it considered, tested, and tried to sustain the defense theory that defendant's actions were innocent, but found that theory wanting. When the court's remark is viewed in the larger context of its statements on the powerful circumstantial evidence of defendant's guilt, we cannot find that the court improperly shifted the burden of proof to defendant. The record makes clear that the trial court knew and properly applied the burden of proof. Accordingly, we reject defendant's contention that the trial court improperly considered his failure to present evidence and erroneously shifted the burden of proof to him.

¶ 16 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 17 Affirmed.