2015 IL App (1st) 142235-U

THIRD DIVISION
February 4, 2015

No. 1-14-2235

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

IN THE INTEREST OF	)	Appeal from the
	)	Circuit Court of
CHARLES G., a minor	)	Cook County.
	)	
Respondent-Appellant.	)	14 JD 00521
	)	
	)	The Honorable
	)	Andrew Berman
	)	Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Hyman and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence was sufficient to sustain respondent's robbery adjudication because the State provided ample evidence that would lead a rational trier of fact to determine that respondent took the victim's cell phone by the use of force. We affirm.

¶ 2 Following an adjudication hearing, respondent Charles G. was found guilty of robbery (720 ILCS 5/18-1(a) (West 2012)). At sentencing, the trial court ordered the finding of guilty to stand and closed the case. On appeal, respondent contends that the evidence was insufficient to

sustain his adjudication for robbery and requests that we vacate his robbery adjudication and reduce his adjudication to theft. We affirm.

¶ 3 BACKGROUND

¶ 4 On January 26, 2014, respondent took Shaniqua Kinnard's cell phone without her permission on a CTA bus in Chicago. Subsequently, the State filed a petition for adjudication of wardship charging respondent with one count of robbery and one count of armed robbery. At the adjudication hearing, Kinnard testified that when she boarded the CTA bus, she observed respondent seated in the rear section. She took a seat in the middle section near the back door, four seats in front of respondent. Approximately ten minutes later, while Kinnard was speaking to a friend on her cell phone, respondent came up behind her and "snatched" the cell phone "out of her hand." Respondent then immediately exited the bus at the back door. Kinnard then got up, stood on the back door steps, and saw respondent fall in the snow. She was going to chase after respondent, but had too many bags. Instantly following, a female unknown to Kinnard, came up from behind and said "excuse me." Kinnard turned around and the unknown female "maced [her]" in the bottom part of her face. The unknown female exited the bus and ran off with respondent. At this juncture, the bus driver stopped the bus and told Kinnard to go home and call the police. Thereafter, three Chicago Police Department (CPD) officers came to Kinnard's home, where she viewed and signed a lineup identifying respondent as the individual who took her cell phone. On cross-examination, Kinnard recalled holding her cell phone next to her ear, not out in front of her, when respondent snatched it.

¶ 5 In addition, the State presented CPD Officer Michael Baker and a video of the incident from the CTA bus. Officer Baker testified that after Kinnard identified respondent as the assailant in the photo array, he went to respondent's residence and placed respondent in custody.

Furthermore, the CTA video showed respondent enter the bus behind two females, one of which was the unknown female who sprayed mace in Kinnard's face (female one). Female one sat in the front section of the bus, while the other female (female two) followed respondent to the back section. Female two then walked to the front section of the bus and joined female one. Respondent later walked to the back door and both females followed him. After respondent took Kinnard's cell phone, which Kinnard held directly in front of her, female number two immediately exited the bus with respondent, followed by female one after she sprayed mace on Kinnard.

¶ 6 After hearing arguments, the circuit court found respondent guilty of robbery. The court noted that "[w]e've been over this many times with cell phones because we have a lot of cell phones stolen and robbed from people. Taking it out of someone's hand requires some force." At sentencing, respondent pled guilty to another case in exchange for five-years probation and 60 hours of community service. Accordingly, the court ordered the finding to stand and closed the instant case. Subsequently, respondent filed this timely appeal.

¶ 7 ANALYSIS

¶ 8 On appeal, respondent asserts the evidence was insufficient to sustain his adjudication for robbery because the State failed to prove beyond a reasonable doubt that respondent used force or threatened the imminent use of force in taking Kinnard's cell phone. Where, as here, a respondent challenges the sufficiency of the evidence to sustain his adjudication, the question for the reviewing court is 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 were proven beyond a reasonable doubt. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). An adjudication will not be set aside unless the evidence is so improbable or unsatisfactory that it

creates a reasonable doubt of the respondent's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In a bench trial, the trial judge has the responsibility to determine the credibility of the witnesses, to weigh the evidence and draw reasonable inferences from the evidence. *People v. Little*, 322 Ill. App. 3d 607, 618 (2001). We will not substitute our judgment for that of the trier of fact on these matters. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009).

¶ 9 To sustain an adjudication for robbery, the State must prove that the respondent took property "from the person or presence of another by the use of force or by threatening the use of force." 720 ILCS 5/18-1(a) (West 2012); *People v. Hay*, 362 Ill. App. 3d 459, 465 (2005). A person commits theft when he or she knowingly obtains or exerts unauthorized control over property of the owner with the intent to deprive the owner permanently of the use or benefit of the property. 720 ILCS 5/16–1(a)(1) (West 2012); *People v. Moneyham*, 323 Ill. App. 3d 680, 684 (2001). The gravamen of robbery is the use of force or threat of the imminent use of force, which differentiates robbery from theft. *Hay*, 362 Ill. App. 3d at 465. An act may constitute robbery where a struggle ensues, the victim is injured in the taking, or the property is so attached to the victim's person or clothing as to create resistance to the taking. *People v. Merchant*, 361 Ill. App. 3d 69, 73 (2005). While the mere act of swiftly taking property from a victim's hands does not constitute robbery, when the slightest degree of force is used the act may constitute robbery. *People v. Lewis*, 285 Ill. App. 3d 653, 659-60 (1996). Furthermore, the offense of robbery can be committed even though the initial taking is accomplished without force if the departure is accomplished by the use of force or the force is used as part of a series of events. *People v. Cooksey*, 309 Ill. App. 3d 839, 849 (1999). Therefore, a reviewing court can affirm a finding of robbery even if a respondent initially obtained another's property without employing force. *People v. Brooks*, 202 Ill. App. 3d 164, 169-70 (1990).

¶ 10 We cannot say that the evidence was insufficient to sustain respondent's robbery adjudication. We agree with the circuit court that taking a cell phone out of an individual's hand requires at least a modicum amount of force, as opposed to unknowingly taking something out of an individual's pocket or off the seat next to them. See *Houston*, 151 Ill. App. 3d 718, 721 (1986) (while the mere act of swiftly taking property from a victim's hands does not constitute robbery, when the slightest degree of force is used the act may constitute robbery); *cf People v. Patton*, 76 Ill. 2d 45, 52 (1979) (the court found the use of force used did not constitute a robbery when the defendant took a purse from the fingertips of its unsuspecting possessor). While we acknowledge that some courts might find this degree of force insufficient, the circuit court determined, based on Kinnard's testimony and the CTA video, that respondent used enough force to sustain a robbery adjudication and we will not substitute our judgment for the trier of fact on this matter. See *People v. Baugh*, 358 Ill. App. 3d 718, 736 (2005) (it is the function of the trier of fact to determine the inferences to be drawn from the evidence, assess the credibility of the witnesses, decide the weight to be given their testimony, and resolve any evidentiary conflicts).

¶ 11 In addition, Illinois law is clear that the force or threatened use of force need not transpire before or during the time the property is taken, but may be used as part of a series of events constituting a single incident. See *Merchant*, 361 Ill. App. 3d at 74-75 (the court concluded that when the defendant pushed the victim against a window after initially taking money from his hand without force, this elevated what would have been mere theft to robbery); *Brooks*, 202 Ill. App. 3d at 170 (the court found that force was used as part of a series of events when after the defendant removed the victim's wallet from her purse, the defendant pushed the victim to accomplish his departure). Here, after respondent snatched Kinnard's cell phone and was in the process of fleeing the scene, respondent's alleged female cohort immediately sprayed mace in

Kinnard's face and fled the scene with respondent. The whole incident took place in a matter of seconds and respondent was still in Kinnard's presence in possession of her cell phone the entire time. Thus, the record suggests that female one worked in concert with respondent to help effectuate his escape as part of a series of events. See *Cooksey*, 309 Ill. App. 3d at 849 (even if the initial taking occurs without force, the offense constitutes robbery where force is used to effectuate the offender's escape); *Houston*, 151 Ill. App. 3d at 721 (the court found that the defendant pushing against the victim when she resisted his attempt to escape was force sufficient to support the robbery conviction even though the victim's wallet was taken without force). Accordingly, based on the evidence as a whole, taken in the light most favorable to the State as we must, a reasonable finder of fact could conclude that the evidence was sufficient to sustain respondent's robbery adjudication.

¶ 12 CONCLUSION

¶ 13 Based on the foregoing, we affirm the decision of the Circuit Court.

¶ 14 Affirmed.