

FIRST DIVISION
March 14, 2016

No. 1-15-2987

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 JABARI C., a minor)	Appeal from the
)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Cook County.
)	
Petitioner-Appellee,)	
)	No. 15 JD 2843
v.)	
)	
JABARI C., a minor,)	Honorable
)	Cynthia Ramirez,
Respondent-Appellant).)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court
Presiding Justice Liu and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* Respondent's conviction for burglary under an accountability theory is affirmed where the evidence shows that he entered a vehicle without authorization and aided his co-respondent's commitment of theft. His conviction for criminal trespass to a motor vehicle is vacated under the one-act, one-crime rule.

¶ 2 Respondent-minor, Jabari C., appeals the judgment of the circuit court finding him guilty on a theory of accountability of burglary and criminal trespass to a motor vehicle. At

sentencing, the court found it in respondent's best interest that he be adjudged a ward of the court and sentenced him to intensive probation. On appeal, respondent contends (1) the State failed to prove him guilty of burglary beyond a reasonable doubt where he was merely standing outside of the car next to an open door; and (2) alternatively, his conviction for criminal trespass should be vacated because the charge was based on the same physical act as the burglary. Respondent does not challenge the court's disposition on appeal. For the following reasons, we affirm respondent's conviction for burglary and vacate his conviction for criminal trespass to a motor vehicle.

¶ 3

JURISDICTION

¶ 4 The trial court sentenced respondent on October 20, 2015. He filed his notice of appeal on October 22, 2015. Accordingly, this court has jurisdiction pursuant to Article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, §6) and Illinois Supreme Court Rule 660 (eff. Oct. 1, 2001), governing appeals in juvenile court proceedings; and Rule 603 (eff. Oct. 1, 2010) and Rule 606 (eff. Mar. 20, 2009), governing appeals from a final judgment of conviction in a criminal case entered below.

¶ 5

BACKGROUND

¶ 6 Respondent was charged with one count of burglary and one count of criminal trespass to a motor vehicle in connection with an incident occurring on August 28, 2015. The State filed a petition for adjudication of wardship on August 30, 2015, alleging that respondent was a delinquent minor. Respondent was tried simultaneously with his co-respondent, who is not a party to this appeal.

¶ 7

At trial, Carla Jenkins testified that on August 28, 2015, at around 9:30 to 9:40 p.m., she parked her 2010 Nissan Maxima on the street in front of her home at 10604 South Normal in

Chicago, Illinois. At the time, the interior of her car was neat, nothing was out of place, and the doors were closed with the lights off on the inside. Later that night, police officers came to her home and she went outside to look at her car. Jenkins testified that the car doors were open, the lights were on inside and "papers were strewn all over the car inside." She noticed that the glove compartment was also opened and everything inside was taken out, "all over the floor and on the seats, and the middle compartment was up and everything in it was all out." The contents of the pockets on the back of the seats were also out and "thrown everywhere." When asked if the scene was "a marked difference from" how she had left the car earlier that evening, Jenkins responded, "Yes." Jenkins stated that she did not know respondent or his co-respondent, nor did she give either of them permission to be in her car that evening.

¶ 8 Officer Jesse Careno testified that on August 28, 2015, around 10:55 p.m., he and two partners were on patrol in an unmarked vehicle near 106th Street and Normal Avenue in Chicago, Illinois. They observed a sedan parked on the corner of 106th and Normal with its doors open and the dome light on inside. Officer Careno also observed three individuals near the vehicle: respondent, who was standing between the opened front driver's side door and the door jamb; co-respondent, who was inside on the front passenger side of the vehicle; and a third person who was standing near the rear on the driver's side.

¶ 9 Officer Careno approached the three individuals for a field interview and after running the license plates of the vehicle it was discovered that Jenkins was the owner. One of his partners went to Jenkins' home and returned to the vehicle with Jenkins. After speaking with her, Officer Careno arrested the three individuals. Officer Careno testified that the vehicle "had been rummaged through, papers and miscellaneous items tossed about," and the glove compartment was open.

¶ 10 Respondent moved for a directed verdict, arguing that he could not be convicted based on a theory of accountability because his mere presence at the scene is insufficient to prove accountability. The trial court denied respondent's motion and found him guilty of burglary and criminal trespass to a motor vehicle. It found the State's witnesses credible and stated that a reasonable inference can be made "that [respondent] was standing at the door – between the open door and door jamb of – for the purposes of aiding the [co-respondent], who was actually within the vehicle. I believe that the Court can make a reasonable inference that the strewn about items within the vehicle were because the minors were attempting to burglarize the vehicle. I find the minors guilty on both counts." The trial court then adjudicated respondent delinquent for burglary and criminal trespass, and sentenced him to one year of intensive probation. Respondent filed this timely appeal.

¶ 11 ANALYSIS

¶ 12 Respondent first contends that the State failed to prove him guilty of burglary beyond a reasonable doubt where he was merely standing outside of the car next to an open door. In a challenge to the sufficiency of the evidence on appeal, the relevant question is "whether, after viewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Perez*, 189 Ill. 2d 254, 265-66 (2000). It is not the function of the reviewing court to retry respondent. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, it is the factfinder's responsibility to determine witness credibility and the weight given to witness testimony, and to draw reasonable inferences from the evidence. *People v. Steidl*, 142 Ill. 2d 204, 226 (1991). The factfinder need not "be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. It is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable

doubt of the defendant's guilt." *People v. Hall*, 194 Ill. 2d 305, 330 (2000). A reviewing court will not reverse a conviction unless the evidence is "so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of [respondent's] guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 13 One commits the offense of burglary when without authority he or she knowingly enters a motor vehicle, or any part thereof, with the intent to commit a felony or theft. 720 ILCS 5/19-1(a) (West 2014). "To convict a person of an offense on a theory of accountability, the State must prove beyond a reasonable doubt that: (1) the defendant solicited, aided, abetted, agreed or attempted to aid another person in the planning or commission of the offense; (2) this participation took place either before or during the commission of the offense; and (3) the defendant had the concurrent, specific intent to promote or facilitate the commission of the offense." *People v. McKinney*, 260 Ill. App. 3d 539, 547 (1994).

¶ 14 On appeal, respondent does not challenge the trial court's finding that the offense of burglary was committed and argues only that the State did not prove his guilt under the theory of accountability beyond a reasonable doubt. The evidence showed that Officer Careno and two partners were on patrol in an unmarked vehicle near 106th Street and Normal Avenue in Chicago, Illinois, when they observed a sedan parked on the corner of 106th and Normal with its doors open and the dome light on inside. Officer Careno also observed three individuals near the vehicle including respondent, who was standing between the opened front driver's side door and the door jamb, and his co-respondent, who was inside on the front passenger side of the vehicle. Officer Careno testified that the vehicle "had been rummaged through, papers and miscellaneous items tossed about," and the glove compartment was open.

¶ 15 The owner of the vehicle, Jenkins, testified that when she parked her 2010 Nissan Maxima on the street in front of her home earlier that evening, the interior of her car was neat, nothing was out of place, and the doors were closed with the lights off on the inside. Later that night, when she looked at her vehicle with the police officers, Jenkins noted that the car doors were open, the lights were on inside and "papers were strewn all over the car inside." The glove compartment was also opened and everything inside was taken out, "all over the floor and on the seats, and the middle compartment was up and everything in it was all out." The contents of the pockets on the back of the seats were also out and "thrown everywhere." Jenkins did not know respondent or his co-respondent, nor did she give either of them permission to be in her car that evening.

¶ 16 The trial court found the State's witnesses credible and determined that a reasonable inference could be made "that [respondent] was standing at the door – between the open door and door jamb of – for the purposes of aiding the [co-respondent], who was actually within the vehicle. I believe that the Court can make a reasonable inference that the strewn about items within the vehicle were because the minors were attempting to burglarize the vehicle." Intent to facilitate burglary can be inferred from the surrounding circumstances. *McKinney*, 260 Ill. App. 3d at 547; *People v. Richardson*, 104 Ill. 2d 8, 13 (1984). Viewing the evidence in the light most favorable to the State, the trial court's finding that respondent was guilty of burglary on a theory of accountability is not "so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of [respondent's] guilt." *Collins*, 214 Ill. 2d at 217.

¶ 17 Respondent disagrees, citing *People v. Taylor*, 219 Ill. App. 3d 47 (1991), as support. In *Taylor*, testimony showed that a co-defendant picked up defendant and another person and they drove with no specific destination in mind and no activities planned. *Id.* at 48. After

stopping to eat, the co-defendant drove to an overpass where defendant got out of the car to use the bathroom. When he returned, he sat in the back seat. While defendant sat in the car, the others proceeded to drop pieces of concrete off of the overpass. One piece struck a vehicle and killed an individual. Defendant was convicted of involuntary manslaughter under an accountability theory. *Id.* The reviewing court reversed defendant's conviction, finding that the evidence showed only that defendant was present at the scene and that he associated with the offenders. "No evidence was presented showing that he in any way aided or participated in the commission of the offense." *Id.* at 49.

¶ 18 Unlike the situation in *Taylor*, respondent here was not just present nearby while his co-respondent was committing the offense; rather he was standing on the front driver's side between the opened door and the door jamb of a vehicle he did not have permission to enter. Meanwhile, his co-respondent, who also did not have permission to enter the vehicle, was inside on the front passenger's side and the compartments within were opened with their contents strewn about the car's interior. The owner of the vehicle stated that she left the car parked on the street with the doors closed and the interior of the vehicle "neat." Respondent argues that the State's evidence failed to preclude the possibility that respondent "was simply looking into the oddly-open vehicle to see what was going on." However, the factfinder need not look for all possible explanations consistent with innocence and raise them to the level of reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007). The evidence, viewed in the light most favorable to the State, establishes that respondent knew of and aided his co-respondent's commitment of the offense. We affirm respondent's conviction for burglary under a theory of accountability.

¶ 19 Respondent also contends that his conviction for criminal trespass to a motor vehicle should be vacated under the one-act, one-crime doctrine. He argues that pursuant to *People v. King*, 66 Ill. 2d 551 (1977), a defendant may not be convicted of more than one offense arising from the same criminal act. In other words, when the same physical act forms the basis for the offenses charged, the court may impose only one conviction and one sentence. Here, respondent was convicted of burglary and criminal trespass based on the single act of entering Jenkins' vehicle without authorization. The State agrees that respondent's conviction for criminal pass should be vacated. Therefore, we vacate his conviction for criminal trespass to a motor vehicle.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, respondent's conviction for burglary is affirmed and his conviction for criminal trespass to a motor vehicle is vacated.

¶ 22 Affirmed in part and vacated in part.