2017 IL App (1st) 143890-U

No. 1-14-3890

Order filed: March 10, 2017

Modified upon denial of rehearing: April 21, 2017

Sixth Division

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 14 CR 12666
	)	
JAMES LYBOLD,	)	Honorable
	)	Bridget Jane Hughes,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Judgment affirmed over the defendant's challenge to the sufficiency of the evidence to sustain his conviction for robbery of an individual over the age of 60.

¶ 2 Following a bench trial, the defendant, James Lybold, was found guilty of robbery of a victim over the age of 60. He was sentenced to five years' imprisonment, boot camp, and two years of mandatory supervised release. On appeal, the defendant maintains that the State failed to prove him guilty of robbery beyond a reasonable doubt because it did not present evidence

that he used or threatened force. The defendant requests that we reduce his conviction to theft. For the following reasons, we affirm.

¶ 3 The defendant was charged by indictment with one count of robbery for taking Allalla Perekoteyeu's purse, and two counts of possession of a controlled substance.

¶ 4 At trial, Perekoteyeu, through a Russian interpreter, testified that, at around 4:20 p.m. on June 4, 2014, when she was 66 years old, she exited a Walgreens store holding her purse in one hand and a shopping bag in the other. Her purse contained her medical cards, wallet, money, keys, and cell phone. The defendant, who was standing "across from the Walgreens," asked Perekoteyeu if he could use her cell phone to call his mother. She walked over to him and then used one hand to hold the purse and the other to search for the phone inside. As she searched, the defendant "grabbed the purse from [her] hands and ran off." The following colloquy occurred during her testimony:

> "[THE STATE]: Did he grab it with one hand or two hands?
>
> [PEREKOTEYEU]: Probably using two of his hands because he grabbed it out of mine.
>
> [THE STATE]: With what force did he grab it out of your hands?
>
> [PEREKOTEYEU]: I wasn't really holding it with any substantial force he had come to realize."

Once the defendant ran away, Perekoteyeu "[g]ot scared, [*sic*] started to cry." People in the area called the police. After the police placed the defendant in custody behind a building next door to the Walgreens, they brought Perekoteyeu to him and she identified the defendant as the man who stole her purse.

¶ 5 Mount Prospect police officer Lawrence Rosenbarski testified that, on the day in question, he was responding to a dispatch call in the area of the Walgreens when he received a radio message informing him of an incident in progress several hundred yards from the Walgreens. He arrived to find two individuals restraining a man on the ground. Perekoteyeu's purse was recovered from the scene. After Officer Rosenbarski placed the man in handcuffs, Perekoteyeu was brought to that location and she identified him as the man who stole her purse.

¶ 6 Officer Richard LaBarbera testified that he searched the defendant after he was placed under arrest and recovered several items, including: 87 whole pills and 23 broken pills of suspect Xanax; a small amount of suspect cannabis; and a tan powder which was suspect MDMA or Molly.

¶ 7 The parties stipulated that Jason George, a forensic chemist employed by the Illinois State Police Crime Lab, received suspect narcotics which tested positive for the presence of the following: 87 whole tablets of Alprazolam; 1.1 grams of MDMA; and 5.7 grams of cannabis. He also received 23 tablet fragments which he did not test.

¶ 8 The trial court found the defendant guilty of the robbery of Perekoteyeu, who was over the age of 60, and found him not guilty on the controlled substance counts.

¶ 9 The defendant filed a motion to reconsider the finding of guilt arguing that the State failed to prove him guilty of robbery because he did not use or threaten force when he took Perekoteyeu's purse. In denying the defendant's motion, the trial court explained:

> "I completely disagree with you. This is an elderly woman who was holding her purse, it wouldn't take a lot of force to grab it. Coupled with it the

> fear an elderly person would have when a person walks up and grabs the purse from her. So I disagree with the fact it is not force and is not robbery."

¶ 10 The trial court sentenced the defendant to five years' imprisonment, boot camp, and two years of mandatory supervised release.

¶ 11 On appeal, the defendant maintains that the State failed to prove him guilty of robbery beyond a reasonable doubt because it did not present evidence that he used or threatened force. The defendant contends that at most his actions constituted theft and he requests that we reduce his conviction from robbery to theft.

¶ 12 In his opening brief, the defendant asserted that our review of the trial court's guilty finding should be *de novo* because the facts are not in dispute. See *People v. Smith*, 191 Ill. 2d 408, 411 (2000). However, in his reply brief, the defendant concedes that the applicable standard of review 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 offense beyond a reasonable doubt. *People v. Cardamone*, 232 Ill. 2d 504, 511 (2009). A reviewing court may not overturn a conviction based on insufficient evidence unless the proof is so unreasonable, improbable or unsatisfactory that a reasonable doubt exists. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007); *People v. Smith*, 2015 IL App (1st) 132176, ¶ 24.

¶ 13 A defendant is guilty of robbery when he "knowingly takes property *** from the person or presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-1(a) (West 2014). Robbery is elevated from a Class 2 to a Class 1 felony when committed against a person who is over the age of 60. 720 ILCS 5/18-1(c) (West 2014). "[T]he offense of robbery is complete when force or threat of force causes the victim to part with

possession or custody of property against his will." *People v. Klebanowski*, 221 Ill. 2d 538, 550 (2006) (quoting *People v. Dennis*, 181 Ill. 2d 87, 103 (1998)). Where the article is so attached to the person or clothing as to create resistance, the force used to overcome the resistance of the person robbed satisfies the force element of robbery. *People v. Taylor*, 129 Ill. 2d 80, 87 (1989).

¶ 14 Here, Perekoteyeu's testimony that she "wasn't really holding [the purse] with any substantial force" gives rise to the reasonable inference that she was holding the purse with some force, albeit not "substantial." Thus, the trial court could reasonably conclude that her grip created some resistance which the defendant had to overcome in order to cause Perekoteyeu to part with her purse. Similarly, the reasonable inference from Perekoteyeu's testimony that when the defendant grabbed her purse he was "[p]robably using two of his hands because he grabbed it out of [hers]" is that Perekoteyeu's hold on the purse created resistance which she believed would require two hands to overcome. Accordingly, after drawing all reasonable inferences in a light most favorable to the State, we do not find that the proof was so unreasonable, improbable or unsatisfactory that no reasonable trier of fact could find the defendant guilty of robbery beyond a reasonable doubt.

¶ 15 Describing Perekoteyeu's grip as "relaxed," the defendant nevertheless maintains that the purse was not so attached to Perekoteyeu's person or clothing as to create resistance to the taking. However, whether the defendant used or threatened force was a question of fact for the trial court to resolve (see *People v. Cooksey*, 309 Ill. App. 3d 839, 849 (1999)), and a trial court is not required to consider every explanation consistent with innocence (*People v. Bull*, 185 Ill. 2d 179, 205 (1998)). Thus, the trial court was not required to accept the defendant's theory that because Perekoteyeu was not holding the purse with "substantial force," her grip created no

resistance necessitating the defendant to use force to take her purse. We are not persuaded by the defendant's argument.

¶ 16 The defendant points out that, in denying his motion to reconsider the finding of guilt, the trial court mistakenly recalled that the defendant walked up to Perekoteyeu, who actually testified that she walked over to the defendant when he asked to use her phone. We find that even without the defendant's approach, the trial court could reasonably infer from Perekoteyeu's testimony that her hold on the purse caused it to be so attached to her person as to create resistance, which required force to overcome. See *Taylor*, 129 Ill. 2d at 87.

¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.