2017 IL App (1st) 150028-U

No. 1-15-0028

Order filed September 5, 2017

First Division



IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court of |
| | ) | Cook County. |
| Plaintiff-Appellee, | ) | |
| | ) | No. 13 CR 23581 |
| v. | ) | |
| | ) | Honorable Brian K. Flaherty, |
| CARL KRENTKOWSKI, | ) | Judge presiding. |
| | ) | |
| Defendant-Appellant. | ) | |

JUSTICE SIMON delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

**ORDER**

¶ 1 *Held*: The evidence was sufficient to prove defendant guilty of attempted armed robbery beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Carl Krentkowski was convicted of attempted armed robbery (720 ILCS 5/8-4(a) (West 2012), 720 ILCS 5/18-2(a)(2) (West 2012)) under an accountability theory (720 ILCS 5/5-2(c) (West 2012)) and sentenced to six years in prison. On appeal, defendant contends that the State did not prove him guilty beyond a reasonable doubt because there was no evidence that defendant and his co-defendant, Jonathan Wilson, who is not a party to this appeal, had a plan or agreement to rob the victim, Ryan Arvanites. We affirm.

¶ 3 At trial, Ryan Arvanites testified that, on November 17, 2013, Wilson, whom Arvanites had known for about five to six months, texted him and asked him if he could buy marijuana from him. They agreed to meet at Arvanites's house for the transaction. At about 5:30 p.m. that day, Wilson and defendant, whom Arvanites did not know, arrived at Arvanites's house. Arvanites let them in the backyard gate and took them inside to the basement. Arvanites's parents, two brothers, and a brother's friend were upstairs in the house, but only Arvanites, Wilson, and defendant were in the basement.

¶ 4 Arvanites testified that Wilson and defendant wanted two ounces of marijuana, and he was going to sell it to them for around $600. Arvanites showed Wilson and defendant that he had about a quarter ounce of marijuana and "asked them to show the money, to make sure they had all the money." He wanted to see their money before he had his friend "come over" with the marijuana needed to fill their order. Defendant and Wilson showed Arvanites their money, but they did not have all of it.

¶ 5 Arvanites testified that defendant and Wilson then "started acting real shifty," "jumpy," and "you could just tell they were like acting funny." Defendant then tapped Wilson on the shoulder and said, "As a matter of fact, where is the merch at?" When defendant did that, Wilson pulled a revolver out of his pocket and pointed it at Arvanites. Arvanites grabbed for the gun and all three of them started wrestling for it. Arvanites yelled for help and his father, John Arvanites, came to the basement.[1]

¶ 6 After Arvanites told John that Wilson had a gun, John took Wilson and tried to subdue him. As defendant and Arvanites were wrestling for the gun, it went off, hitting Arvanites in the

[1] Given that complainant Ryan Arvanites and his father have the same last name, John Arvanites will be referred to as John.

finger. Eventually, Wilson and defendant were forced out of the house, and the police arrived. Arvanites spoke with a police officer and then went to the hospital. Arvanites testified that he had a prior felony conviction for possession of a "rifle or shotgun with a shortened barrel."

¶ 7 On cross-examination, Arvanites testified that he sold drugs to Wilson. Before Arvanites let defendant into his house, he searched him for weapons by having him lift his shirt. Arvanites did not see a weapon on him. Arvanites did not search Wilson because he knew him and did not observe any weapons on him. Arvanites also testified that, when Wilson initially texted him, he requested to purchase two ounces of marijuana and Arvanites only had about a quarter ounce of marijuana at his house. Before Arvanites let defendant and Wilson into his house, Arvanites knew that he did not have enough marijuana at his house for Wilson's request, and he also knew how much money Wilson and defendant had with them, as they showed Arvanites their money before they entered the house.

¶ 8 Arvanites denied that he told the police after the incident that "two unknown people" were in his house and that he did not know how they got inside. On re-direct, Arvanites testified that, at the hospital, he told the detective a "full account" of the incident, which included the drug transaction.

¶ 9 John Arvanites testified that, at about 5:30 p.m., on November 17, 2013, he heard commotion made by the caged dog in the basement. He immediately went to the basement and saw Arvanites and two other individuals wrestling. Arvanites told John that they had gun so John grabbed Wilson and "subdued" him on the ground. While Arvanites and defendant continued to wrestle, John heard a gunshot. John, his sons, and his son's friend detained defendant and Wilson and eventually took them outside the house. John gave the gun to the police.

¶ 10 Defendant presented a stipulation that, if Officer Fitzgerald from the Midlothian police department was called to testify, he would testify that, on November 17, 2013, when he interviewed Arvanites after the incident, Arvanites stated that he did not know the "subjects," they entered from an unknown location, and they came to the basement, pointed a gun at him, and demanded money from him.

¶ 11 Defendant testified that, at about 5 p.m., on November 17, 2013, he went with Wilson to Arvanites's house. Arvanites let them in through the side gate and asked defendant to "reveal [his] shirt." Arvanites then opened the door and pointed them to the basement. While they were in the basement, Arvanites pulled a weapon from his waistband and pointed it at Wilson. Wilson "went for the gun" and defendant reached behind Arvanites, put him in choke hold, and dragged him to the ground. Defendant then hit Arvanites on his head and Wilson tried to get the gun. Wilson struggled for the gun and, as defendant reached for it, a gunshot went off. Defendant sustained a broken nose from the incident.

¶ 12 On cross-examination, defendant testified that he went with Wilson to Arvanites's house to buy marijuana because he was "recently released" and did not know who sold marijuana. He testified that "somebody" and "one of [his] friends" drove him to Arvanites's house but did not know the person's name. Defendant brought $680 with him to Arvanites's house to buy two ounces of marijuana, at the price Wilson had negotiated. In Arvanites's basement, when defendant saw the marijuana on the desk, he said, "Where is the rest of it. Look, bro, I got your money. This [*sic*] your money right here." He took out the money and showed Arvanites how much he had by "fanning" it. Arvanites said, "That ain't enough," and defendant responded,

"What you mean, it ain't enough." Arvanites then pulled out a gun and pointed it at Wilson. Wilson jumped for the gun and there was a struggle for it.

¶ 13 Defendant also testified that, later at the police station, he learned that he had only $200 in his pocket, although he had $680 in his pocket at Arvanites's house. He testified that neither Arvanites nor anyone else in the basement took money from his pocket.

¶ 14 In rebuttal, the State entered a stipulation between the parties that defendant had prior convictions for aggravated unlawful use of a weapon and burglary in 2012. In rebuttal, the State also called Detective Sergeant Adam Panozzo from the Midlothian police department. Panozzo testified that, on November 18, 2013, after he gave defendant his *Miranda* warnings, defendant agreed to speak with him. The State submitted the video recording of this interview into evidence and published a portion of it, in which defendant states that he did not hear the gunshot go off in the basement when he was there.

¶ 15 Following argument, the trial court found defendant not guilty of home invasion but guilty of attempted armed robbery. It explained why it did not believe defendant's version of the incident, stating:

> "The thing that struck me and the thing that the State brought out is the complaining witness, Mr. Arvanites. It seems unusual that he would actually invite someone that you're selling drugs to into your house and then you would attempt to commit an armed robbery inside that house. To me that makes no sense whatsoever."

The court denied defendant's motion to reconsider, noting that it found his "credibility to be quite lacking. I believe I also stated the reason for that in my ruling." It expressly addressed the testimony regarding Arvanites's failure to initially tell the police the full summary of the

incident, noting, "I do agree that the alleged victim initially lied to the police, *** about not knowing the individuals, but then did tell a short time later, did tell the police while at the hospital what had occurred." The court then sentenced defendant to six years in prison. This appeal followed.

¶ 16 On appeal, defendant contends that the State did not prove him guilty of attempted armed robbery based on accountability beyond a reasonable doubt because it did not present evidence to demonstrate that defendant and Wilson had a plan or agreement to rob Arvanites or that he knew that Wilson was armed and was going to pull out a gun. He argues that his statement to Wilson about the merchandise was insufficient to establish that he intended to participate in the robbery. He also asserts that Arvanites's testimony was incredible because, *inter alia*, he testified that he let Wilson and defendant into his house even though he admitted that he knew before he let them in that they did not have enough money to purchase the marijuana. Defendant requests that we reverse his conviction.

¶ 17 As a reviewing court, when we review the sufficiency of the evidence, the question 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 beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). "Under this standard, the trier of fact remains responsible for determining the credibility of the witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence." *People v. Malone*, 2012 IL App (1st) 110517, ¶ 26. Because the trier of fact, the trial court here, had the opportunity to see and hear the witnesses, its factual determinations and credibility assessments are entitled to "great weight." *People v. Simpson*, 2015 IL App (1st) 130303, ¶ 41 (quoting *People v.*

*Wheeler*, 226 Ill. 2d 92, 115 (2007)). We will only reverse a conviction if the credibility of the witnesses is so improbable that it raises a reasonable doubt (*People v. Mays*, 81 Ill. App. 3d 1090, 1099 (1980)), or if the evidence is "so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt" (*People v. Lee*, 376 Ill. App. 3d 951, 955 (2007)).

¶ 18 To prove attempt armed robbery as charged, the State had to prove defendant did an act that constituted a substantial step toward commission of armed robbery, *i.e.*, knowingly taking property from Arvanites "by the use of force or by threatening the imminent use of force" while carrying a firearm, and that he had intent to commit armed robbery. 720 ILCS 5/8-4(a) (West 2012); 720 ILCS 5/18-2(a)(2) (West 2012); 720 ILCS 5/18-1(a) (West 2012). Intent is a question of fact for the fact finder to determine, and we will not reverse its finding "unless it is so improbable as to raise a reasonable doubt of the defendant's guilt." *People v. Terrell*, 110 Ill. App. 3d 1086, 1090 (1984). When a defendant does not make a specific demand for money, a conviction for attempted armed robbery may stand if the surrounding circumstances are sufficient to support intent. *People v. Murray*, 194 Ill. App. 3d 653, 657 (1990).

¶ 19 Because defendant did not possess the gun at Arvanites's house, defendant was convicted under an accountability theory. To prove defendant guilty of attempted armed robbery under this theory, the State had to prove that he "either before or during the commission" of the armed robbery, and "with the intent to promote or facilitate that commission," solicited, aided, abetted, agreed, or attempted to aid Wilson in the planning or commission of the armed robbery. 720 ILCS 5/5-2(c) (West 2012).

¶ 20 To prove that defendant had the intent to promote or facilitate the crime, "the State may present evidence that either (1) the defendant shared the criminal intent of the principal, or (2)

there was a common criminal design." *People v. Fernandez*, 2014 IL 115527, ¶ 13. Further, "[i]ntent may be inferred from the character of defendant's acts as well as the circumstances surrounding the commission of the offense." *People v. Perez*, 189 Ill. 2d 254, 266 (2000). To establish there was a common purpose to commit a crime, words of agreement are not necessary. *Perez*, 189 Ill. 2d at 267. The State may prove accountability and the presence of a common design by circumstantial evidence. *People v. Stevens*, 98 Ill. App. 3d 158, 161 (1981).

¶ 21 Viewing all the evidence in the light most favorable to the State, any rational trier of fact could conclude that defendant is accountable for the attempted armed robbery of Arvanites.

¶ 22 The evidence at trial established that Wilson and defendant initiated the drug transaction and that, prior to arriving at Arvanites's house, defendant and Wilson knew their request for two ounces of marijuana would cost more than $600. Despite this knowledge, they did not bring enough money to Arvanites's house to pay for the marijuana, as defendant's testimony shows that he only had $200 on him at the police station. Arvanites asked to see their money before he had his friend come over with the marijuana needed to complete the transaction. After defendant showed Arvanites the insufficient funds, defendant and Wilson acted "real shifty," "jumpy," and "funny." Then, defendant tapped Wilson on the shoulder, said, "As a matter of fact, where is the merch at?" and Wilson responded by pulling out a revolver and pointing it at Arvanites. When Wilson took the gun out and pointed it at Arvanites, he took a substantial step toward committing the armed robbery.

¶ 23 From the evidence, it is reasonable to infer that defendant had knowledge that Wilson was armed and had the intent to commit the armed robbery. He and defendant arrived together at the planned drug transaction with no intention of paying Arvanites for what they had ordered.

Instead, Wilson pulled out the gun after he was prompted by, or as a response to, defendant's question and action of tapping him on the shoulder. Accordingly, we conclude that, even though defendant did not carry the gun or point it at Arvanites, any rational trier of fact could reasonably infer, based on all the circumstantial evidence recited above, that defendant shared Wilson's criminal intent and he aided, abetted and/or agreed with Wilson when Wilson pulled out the gun and took a substantial step toward committing the armed robbery.

¶ 24 Defendant contends that Arvanites's testimony was incredible and he was not a reliable witness. However, given the trial court's guilty finding, it necessarily found Arvanites's testimony to be credible, which was its prerogative in its role as the fact finder. See *People v. Moody*, 2016 IL App (1st) 130071, ¶ 52. Defendant asserts that "the fact that Arvanites admitted to seeing the insufficient funds outside the house lends credence to [defendant's] testimony that Arvanites lured him and Wilson into the house to rob them," and that "Arvanites's claim that he was robbed at gunpoint during a drug transaction is incredible." However, the trial court chose to accept Arvanites's version of the incident over defendant's conflicting account. See *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001) ("a fact finder need not accept the defendant's version of events as among competing versions"). And, at the hearing on the motion to reconsider, it expressly stated that it found defendant's "credibility to be quite lacking."

¶ 25 Also, " '[t]estimony may be found insufficient *** only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.' " *People v. Simpson*, 2015 IL App (1st) 130303, ¶ 41 (quoting *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)). From our review of Arvanites's testimony and the record as a whole, we cannot find that his testimony was so insufficient or inconsistent that no reasonable person could

accept it beyond a reasonable doubt. Thus, we do not agree with defendant's contention that Arvanites's testimony was incredible and unreliable.

¶ 26 Finally, defendant cites *People v. Taylor*, 186 Ill. 2d 326 (2000), to support his argument that we should reverse his conviction. In *Taylor*, after a traffic incident involving two vehicles, the defendant's friend exited the vehicle driven by the defendant and shot his gun at an individual in the other vehicle. *Taylor*, 186 Ill. 2d at 327. Defendant was found guilty in the trial court of aggravated discharge of a firearm under an accountability theory. *Id.* at 326. The supreme court reversed the conviction, noting, "[t]he fact that defendant was involved in an unforeseeable, spontaneous traffic altercation militates heavily against any notion that he somehow had knowledge of [his friend's] intentions once defendant's vehicle came to a halt and [his friend] exited." *Id.* at 330.

¶ 27 Unlike in *Taylor*, the case at bar did not arise spontaneously. Rather, it occurred during a planned drug transaction, where defendant and Wilson arrived without the money necessary to purchase the drugs they had ordered and Wilson was primed to pull out his gun at defendant's cue. Thus, as the evidence supports the reasonable inference that Wilson did not pull the gun out spontaneously without defendant's knowledge, the facts in *Taylor* are distinguishable.

¶ 28 For the reasons explained above, we affirm defendant's conviction.

¶ 29 Affirmed.