2017 IL App (1st) 163050-U

No. 1-16-3050

Third Division
November 15, 2017

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 Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 15 CR 01285(03)
BIANCA YOUNG,	)	Honorable James B. Linn, Judge, presiding.
Defendant-Appellant.	)	

PRESIDING JUSTICE COBBS delivered the judgment of the court.
Justices Fitzgerald Smith and Howse concurred in the judgment.

O R D E R

¶ 1 *Held*: Evidence was sufficient to prove defendant guilty of mob action beyond a reasonable doubt. Trial court’s comment that defendant and co-defendants had set out to “party like gangsters” did not support contention that it had improperly considered gang evidence.

¶ 2 Following a bench trial, defendant Bianca Young was found guilty of mob action and sentenced to 3 years' incarceration. On appeal, defendant asserts that the State failed to present sufficient evidence to prove her guilty beyond a reasonable doubt and that the trial

court erred in considering a photograph of her and co-defendants displaying gang signs. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Martrell Ross was killed and Credell Bowdry injured after both men were shot in an altercation outside of a Chicago nightclub on August 3, 2014. Subsequently, the State charged defendant, Arthur Walker, Javon Almond, and Deandre Hughes with numerous offenses related to the events. Defendant was charged with several counts of first degree murder, one count each of attempted murder and aggravated battery, and two counts of mob action. Prior to defendant's trial, a jury acquitted Almond of all charges. The parties stipulated that the testimony and stipulations entered into evidence at Almond's trial would be incorporated into defendant's trial.

¶ 5 At Almond's trial, Shawanda Blakes testified that she was celebrating Bowdry's birthday at a nightclub along with Ross and several others on the night of August 2, 2014. Blakes and her friends left the club at about 3:00 a.m. She and Ross stood near the front entrance, leaning on a white car, while the others walked across the street to the valet parking lot. Subsequently, defendant[1] exited the club and approached Blakes and Ross. She was "very loud", "disrespectful," and "drunk." She called them names and stated, "Why the f*** is you on my car, get off the car," and "[Y]ou don't supposed [sic] to be on mother***ers' cars." Walker had also exited the club and defendant leaned towards him whispering "something to provoke him." This prompted Walker to "get into it" with Ross. The two began "exchanging words," Walker began to "get[] violent," and a fight began. After Walker punched Ross in the face and knocked him to the ground, the fight turned into a "crowd

[1] Blakes did not know the name of defendant or any of her friends; however she later identified them in photo arrays. The parties stipulated that the witnesses would identify defendant and Walker as the individuals mentioned in court.

fight." The club's security eventually broke it up. Defendant and Walker got into the white car and defendant drove them away.

¶ 6 Following the fight, Blakes and Bowdry began to walk towards the valet parking lot. Hughes approached and asked them what had happened and they explained. At the time, Hughes was also on a phone and stated, "[H]e tripping over this b****, this b***. Damn," and "Bust a U, bust a U." Shortly thereafter, defendant, Walker, and Almond returned in the white car, which defendant parked in the middle of the street. All three "hopped out" of the car and Walker approached Ross "trying to get him to finish off *** the fight that they had." Walker taunted Ross, urging him to fight, and then led him into the valet parking lot. Defendant initially followed, but then turned around and went back to the car. In the middle of the parking lot, Walker lifted his shirt, pulled out a gun, and shot Ross. Bowdry ran to assist Ross, but Hughes hit him in the face with a gun and shot him. Walker and Ross then fled the area.

¶ 7 Bowdry testified that he left the nightclub to smoke a cigarette slightly before Blakes, Ross, and the others left. While he stood near the valet parking lot across from the club, Blakes and Ross left the club and leaned against a white car near the entrance. Defendant "came out and started yelling and screaming" at Ross. Walker, who was with defendant, hit Ross, knocking him to the ground. Subsequently, security guards broke up the fight. Following the fight, defendant, Walker, and "two to three" other people got into the white car and drove off down the street. However, it soon made a U-turn and drove back to the club. Walker exited the car and approached Ross "with his hands up like he wanted to fight." The two men walked to the parking lot. Ross "rushed" Walker, and Walker pulled out a gun and shot him three times. Bowdry went to help Ross, but Hughes came up behind him and hit

him with a gun. Bowdry turned and Hughes shot him "four to five times," hitting him in the side, arm, leg, and foot.

¶ 8 Brian Story, a security guard at the nightclub, testified that there was a "little brawl" outside of the club after 3:00 a.m. on August 3, 2014. Story intervened and, with the help of other security guards, broke up the fight. After the fight, defendant, Walker, and a third individual got into a white car and drove away, but they returned to the club about five minutes later. Defendant stopped the car near Story, in the middle of the street. Walker got out and "ran through the crowd." Story chased him and saw him shoot Ross three times. Walker then ran away through an alley. Another man wearing black and blue came and fired four more shots at Ross before running after Walker. Story then heard five more shots.

¶ 9 The State also introduced surveillance footage from the club's security cameras.[2] The video showed a white car parked near the club's entrance as visitors exited the club. Blakes and Ross left the club and leaned against the white car. A minute later, defendant exited the club, walked towards them, and visibly said something to them, although the video does not contain audio. Story walked towards the car and placed himself between defendant and the others. Defendant then began to walk towards the parking lot and was joined by Walker who had just left the club. After walking several feet, Walker and defendant suddenly turned around and Walker said something to Blakes and Ross. Both Walker and defendant approached Blakes and Ross while Story attempted to separate the couples. All four individuals began walking towards the parking lot, still arguing. Blakes restrained Ross as he moved towards Walker. Eventually, other security guards ran towards the argument and a

[2] The surveillance footage shows the street and area near the club's entrance from three different angles. As the parties did in their briefs, we predominantly describe the footage taken from the camera pointing across the street towards the parking lot because it captured the majority of the events described. We also incorporate the undisputed identifications made during the witnesses' testimony.

large crowd formed. Defendant, Ross, and Walker pushed their way out of the crowd and back towards the club. Walker punched Ross in the face, knocking him to the ground. A large fight began amongst the crowd. Security guards restrained both Walker and Ross as they attempted to join the crowd. Another security guard restrained defendant and pulled her out of the crowd as the brawl was broken up. Walker, Almond, and defendant then entered the white car and drove away.

¶ 10 The video next showed Hughes running across the street towards the parking lot while using a cell phone. He stood near Blakes and Bowdry. Less than two minutes after leaving, the white car returned to the club, driving in both lanes to maneuver past other cars and stopped near the parking lot. Hughes then approached the car, leaned in, and pointed multiple times back into the parking lot. Walker exited the car and ran into the parking lot eventually disappearing behind a building. Almond and defendant also left the car and moved towards the parking lot. Defendant left the car parked in the middle of the lane with the driver's door open and the engine running. As defendant reached the entrance to the parking lot, she suddenly turned around and ran back to the car. She stood momentarily next to the open driver's side door looking back towards the parking lot. People then began to flee and Walker was briefly seen walking backwards with his arm extended in the alley behind the parking lot. There was a bright flash near his hand and he turned and fled down the alley. Defendant then quickly sat in the driver's seat and attempted to reverse, but another car blocked her path. While she waited for the other car to move, another man in the parking lot was visible with multiple flashes near his hand and then running in the same direction as Walker. Defendant slowly reversed towards the parking lot and waited momentarily before quickly driving forward and turning towards the alley the men fled down. Blakes and Bowdry walked

to the entrance of the parking lot and Bowdry collapsed on the ground. As a police vehicle arrived at the club, the white car was visible speeding through a parking lot up the street. She was stopped by Walker who entered the car. They then drove into a nearby gas station parking lot.

¶ 11 The State also admitted a video clip from the gas station parking lot, although it is not in the record on appeal. However, defendant admits in her appellate brief that Hughes, Almond, and other individuals met defendant and Walker at the gas station and that she then drove them home. We presume that this is what was depicted on the missing video clip.[3]

¶ 12 A photograph was also entered into evidence at defendant's trial. It depicted defendant, Walker, Hughes, Almond, and two other individuals inside the night club. Three of the men are raising various bottles of alcohol or drinks while Hughes and defendant form hand signs towards the camera.

¶ 13 After the State's case in chief, defendant proceeded by way of stipulation. The parties stipulated that if called two of defendant's friends would testify that defendant's phone number at the time of the shooting was 773-956-4774. The parties also stipulated that phone records showed that the phone with the number 773-956-4774 neither made or received calls or text messages with any phone number "associated with the co-defendants in the police records" between July 1, 2014, and August 31, 2014. The parties also stipulated that a report filed by a police officer who interviewed Blakes on the night of the shooting indicated that Blakes did not mention anyone making a phone call or saying "bust a U." Blakes indicated that Hughes had said "bust a U" in an interview with a detective on August 21, 2014.

[3] Appellant bears the burden of presenting a complete record and any doubts arising from any incompleteness will be resolved against the appellant. See *People v. Lopez*, 229 Ill. 2d 322, 344 (2008), citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 14 The trial court found defendant guilty of mob action and sentenced her to three years' incarceration.

¶ 15 II. ANALYSIS

¶ 16 A. Defendant's Appellate Brief

¶ 17 Before addressing the merits of defendant's arguments, we are compelled to address several inadequacies in defendant's brief on appeal. First, she has failed to include an adequate statement of facts as required by Illinois Supreme Court Rule 341(h)(6) (eff. Jan. 1, 2016). Rule 341(h)(6) requires that all appellants' briefs include a statement of facts that "contain[s] the facts necessary to an understanding of the case, stated accurately and fully without argument or comment, and with appropriate reference to the pages of the record on appeal." Ill. S. Ct. R. 341(h)(6). Defendant's statement of facts omits relevant evidence, offers unsupported speculation as fact, and distorts or misstates evidence in the record. The rules set forth by our supreme court are mandatory, and "not mere suggestions." *In re County Treasurer*, 2015 IL App (1st) 133693, ¶ 19. However, as the inadequacies in defendant's brief do not overly hinder our review of the record and the implicated issues, we merely disregard the improper portions of her statement of facts. *Hamilton v. Conley*, 356 Ill. App. 3d 1048, 1052 (2005).

¶ 18 We further note that the section is replete with argument and commentary best suited for the argument section of her brief. Without any legal citation, defendant alludes to numerous perceived errors including possible challenges to the charging instrument and her sentence. Such conclusory and undeveloped allegations are not properly before the court, and are therefore waived. See *Campbell v. Wagner*, 303 Ill. App. 3d 609, 613 (1999) (Appellate court "is not a depository into which the burden of research may be dumped.") We therefore

confine our review to the two issues that defendant has specifically raised and supported with legal citation: the sufficiency of the evidence and the court's consideration of the photograph of defendant and her co-defendants.

¶ 19 B. Sufficiency of the Evidence

¶ 20 Defendant first contends that the State failed to present sufficient evidence to prove her guilty of mob action as charged beyond a reasonable doubt. She argues that the State failed to prove she ever assembled with her co-defendants and failed to prove that she held the requisite criminal intent.

¶ 21 The standard of review for sufficiency of the evidence claims is well settled[4]. *People v. Zirko*, 2012 IL App (1st) 092158, ¶ 54. Due process requires the State to prove each element of a criminal offense beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) (citing *In re Winship*, 397 U.S. 358, 364 (1970)). When reviewing the sufficiency of evidence, a reviewing court must decide "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, 313 (1979); See also *Cunningham*, 212 Ill. 2d at 278. A reviewing court will not overturn a guilty verdict unless the evidence is "so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005). This court may not retry a defendant on appeal (*People v. Milka*, 211 Ill. 2d 150, 178 (2004)), and must resolve all reasonable inferences in favor of the prosecution (*Cunningham*, 212 Ill. 2d at 280).

[4] Although defendant initially argued that a "manifest weight of the evidence" standard was appropriate, she acknowledged her mistake in her reply brief.

¶ 22 A reviewing court must also give due consideration to the fact that a trier of fact is able to see and hear the witnesses. See *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001). It is for the trier of fact to resolve any inconsistencies or contradictions in the testimony of the witnesses. *People v. Bull*, 185 Ill. 2d 179, 205 (1998). Where a conviction depends on eyewitness testimony, the reviewing court may find testimony insufficient "only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *Cunningham*, 212 Ill. 2d at 279.

¶ 23 Defendant was convicted of mob action as a Class 4 felony under sections 25-1(a)(2) and (b)(3) of the Criminal Code (Code) (720 ILCS 5/25-1(a)(2), (b)(3) (West 2014)). Mob action, as charged, occurs when (1) two or more individuals knowingly assemble (2) "with the intent to commit or facilitate the commission of a felony or misdemeanor." 720 ILCS 5/25-1(a)(2) (West 2014). Section 25-1(b)(3) states that such a mob action rises to the level of a Class 4 felony where one of the participants "by violence inflicts injury to the person or property of another." 720 ILCS 5/25-1(b)(3) (West 2014).

¶ 24 The parties do not dispute that co-defendant Hughes inflicted injury on Bowdry, and multiple witnesses testified regarding that shooting. Therefore, we consider whether the evidence sufficiently proved defendant knowingly assembled with Hughes and her other co-defendants and that she did so intending "to commit or facilitate the commission of a felony or misdemeanor."

¶ 25 Much of defendant's argument regarding whether she assembled with co-defendants is in actuality an extension of her argument that she did not bear the requisite intent. The evidence is clear that she knowingly assembled with the others. To assemble means "to come or meet together in a group." *Webster's Third New International Dictionary* (1993). The testimony of

multiple witnesses and the video showed that defendant, Walker, and Almond left the nightclub together in the white car. Shortly thereafter, they returned and spoke with Hughes. They then exited the vehicle and walked towards the valet parking lot. Clearly, the evidence supports the finding that defendant performed the physical act of meeting or gathering with her co-defendants.

¶ 26 Defendant argues that she could not have assembled with co-defendants because she turned and ran back to the car, rather than following them all the way into the parking lot. This argument is unpersuasive. The video shows that defendant did not leave the area completely, but rather returned to the car watched co-defendants, a short distance away from the parking lot where the shooting took place. Moreover, after the shooting, she picked up co-defendants and fled with them. As we discuss further below, defendant's actions support a reasonable inference that she was acting in concert with the others as a getaway driver. Her minor distance from the others as the shooting progressed does not change the fact that she assembled with them.

¶ 27 Defendant primarily argues that the evidence was insufficient to show that she assembled with the others with the intent to commit or facilitate the commission of a felony or misdemeanor. Intent may be proven through circumstantial evidence. *People v. Rudd*, 2012 IL App (5th) 100528, ¶ 14. In fact, circumstantial evidence is often the only way to prove a defendant's intent. *Id.* A defendant's presence during a crime and flight from the scene are circumstantial evidence of criminal intent. See *People v. Fleming*, 2014 IL App (1st) 113004, ¶ 53.

¶ 28 Blakes testified that defendant loudly and disrespectfully accosted her and Ross while they were leaning against the car outside of the nightclub. When Walker angrily approached,

defendant whispered to him and provoked him. The video corroborates the angry brawl that followed. Although this interchange was broken up, it does provide circumstantial evidence of anger and disdain between defendant and Walker and Blakes and Ross. After defendant had driven away, Blakes overheard Hughes yell into his phone to make a U-turn, and less than two minutes later, defendant returned. Although there was evidence that defendant herself received no phone calls, the video corroborates that Hughes was using a cell phone and defendant's quick return supports an inference that someone in the car had received Hughes direction to turn around. Next the video showed Hughes excitedly approach the vehicle and point towards the direction Ross had gone and the occupants of the car immediately set off in that direction. Given this energetic pursuit of Ross following the very recent argument and fight, a rational fact-finder could reasonably infer that Walker, defendant, and the other co-defendants intended to do Ross harm.

¶ 29 Moreover, this inference of the group's intent is strengthened by the result of that pursuit: Walker immediately attempted to continue his fight with Ross and then shot him. Prior to the shooting, defendant, was clearly seen on the video watching the altercation between Walker and Ross. She stood next to the open driver's side door, with the car parked in the middle of the street and its lights still on, supporting an inference that the car was running. Once the shooting occurred, instead of fleeing like most of the other bystanders visible on the video, defendant quickly got into her car and then reversed towards the parking lot where she waited. When no one approached the car, she sped off in the direction that Walker and Hughes had fled, and ultimately picked the men up and drove them away from the scene. Taking all of this evidence in the light most favorable to the prosecution, a rational fact-finder could infer that defendant had left her vehicle prepared for a fast exit, stood watching

co-defendants ready to quickly drive them away from the scene, and actually did aid in their escape from responding police officers. Defendant's preparation for and actions as a getaway driver for co-defendants support a finding that she knew of and shared their intent to harm Ross, at the very least by committing a misdemeanor battery or likely a more serious crime. As such, a rational fact-finder could find beyond a reasonable doubt that defendant assembled with co-defendants with the intent to commit or facilitate the commission of a felony or misdemeanor.

¶ 30 Defendant analogizes her case to *In Interest of Kirby*, 50 Ill. App. 3d 915 (1977), in which a panel of the appellate court reversed a juvenile's finding of delinquency for mob action. The only relevant evidence in *Kirby* was that the female respondent had left a car, chased two individuals, and been present when another individual committed a battery. *Id.* at 917. She was acquitted of a charge of battery. *Id.* The reviewing court held that presence alone was insufficient to convict and that the respondent's acquittal on the charge of battery foreclosed a finding of mob action based upon an intent to commit violence. *Id.* at 917-18. We find *Kirby* distinguishable because here, defendant was involved in the altercation before the shooting and facilitated her co-defendants' escape, providing circumstantial evidence of her intent. Moreover, we note that *Kirby* was decided before the proliferation of the current standard of review in challenges to the sufficiency of the evidence, and thus its continued viability is questionable.

¶ 31 Defendant also cites *People v. Kent*, 2016 IL App (2d) 140340, in which the appellate court reversed a defendant's conviction for mob action. There, the defendant was convicted of mob action under section 25-1(a)(1) of the Code. *Id.* ¶ 4. As the defendant in *Kent* was

charged with mob action under a different section of the code, with different elements of proof, we find the case inapposite.

¶ 32 Defendant asserts, without any relevant legal support, that the State was required to prove that she and the others intended to harm Bowdry and not Ross, because she was charged with mob action that inflicted injury on Bowdry. This is incorrect. Mob action as charged merely requires an intent to perform or facilitate a felony or misdemeanor[5]. 720 ILCS 5/25-1(a)(2) (West 2014). Although the injury to Bowdry elevates mob action from a Class C misdemeanor to a Class 4 felony (720 ILCS 5/25-1(b) (West 2014)), there is nothing in the statute that indicates that the misdemeanor or felony mentioned by section 25-1(a)(2) must be the same action as the injury described in the separate section 25-1(b)(3). 720 ILCS 5/25-1 (West 2014).

¶ 33 Finally, defendant asserts that the trial court's findings were not supported by the evidence because the court applied an erroneous "but-for" standard instead of finding guilt beyond a reasonable doubt. She bases this argument on the trial court's repeated statements that defendant started the initial altercation with Ross and Blakes and its conclusion that "but for [defendant] and the way she was conducting herself in the rude and crude manner that she did" the violence would not have happened. Despite defendant's contention, nothing in the record supports a finding that the trial court applied an incorrect legal standard in finding defendant guilty. In making its finding, the trial court explicitly referenced the reasonable doubt standard, noting that some of the inferences required to find defendant guilty on all the counts charged would be reasonable, but would still not be beyond a reasonable doubt. Noting that it had considered all the evidence, the court stated that it found defendant guilty

---

[5] Although defendant explicitly alleged in her opening appellate brief that the State violated due process by failing to specify what felony or misdemeanor she intended to perform or facilitate in her indictment, she expressly disavowed this allegation in her reply brief. As such we do not address it.

of mob action, but would "give her the benefit of the doubt and acquit her of the other charges." The trial court's explanation that it found defendant's actions to be the originating cause for the altercation that ended in Ross's death does not alter the fact that it applied the proper legal standard in finding defendant guilty, nor does it alter our finding that taking the evidence presented in the light most favorable to the prosecution, a rational fact-finder could find defendant guilty of mob action beyond a reasonable doubt.

¶ 34 C. Improper Consideration of Gang Evidence

¶ 35 Defendant next contends that the trial court erroneously allowed the admission of the prejudicial photograph of her and co-defendants in the club and improperly found that she was a gang member based upon the photograph.

¶ 36 Prior to trial, defendant filed a motion to reduce bail, which the trial court denied. In explaining its decision, the trial court referenced the photograph in which defendant was "flashing *** Gangster Disciple gang signs, which I take judicial notice of." Subsequently, defendant filed a motion *in limine* to bar references or argument alleging that she was involved in gang activity. The State did not object, stating that it would not make a gang argument in the case. The trial court denied the motion, stating that it would consider the photograph and gang sign as "evidence that [defendants] were together, closely together, doing intimate-type things together in a party fashion prior to the event." Following the presentation of evidence, the trial court noted that it was clear from the photograph that defendant "and the people with her were there out to party like gangsters, throwing up gang signs, celebrating the fact that they were drinking."

¶ 37 Relevant evidence may be excluded if its prejudicial effect substantially outweighs its probative value. *People v. Dabbs*, 239 Ill. 2d 277, 289-90 (2010). We will not reverse a trial

court's decision to admit evidence absent an abuse of discretion. See *People v. Donoho*, 204 Ill. 2d 159, 182 (2003).

¶ 38 We cannot find that the trial court abused its discretion in admitting the photograph as evidence that the group was "closely together" prior to the event. The picture of the individuals posing together had obvious probative value where the question of whether the group had assembled was an element of the crime. Moreover, it is hard to identify what further prejudice could be found in admitting the photograph where the trial court had already viewed it.

¶ 39 Defendant also argues that the photograph was insufficient to support the trial court's finding that she was a gangster or gang member. This argument misapprehends the record. The trial court never found that defendant was a gang member. It stated, "It was clear from the [photograph] that the Court has received into evidence that [defendant] and the people with her were there out to party like gangsters, throwing up gang signs, celebrating the fact that they were drinking *** and partying hard at the club." The natural reading of the court's statement that the individuals were acting "like gangsters" is that the court believed defendant and her friends were emulating gang members and not that they actually were gang members. The court was commenting on the group's state of mind before the fight and shooting took place, an issue relevant to the question of their criminal intent. Notably, defendant does not contest that both she and Hughes were forming gang signs. The trial court did not abuse its discretion in considering the photograph and the group's posturing when it determined their mental state during the subsequent altercation.

¶ 40 III. CONCLUSION

¶ 41 For the foregoing reasons, we find that the State presented sufficient evidence to prove defendant guilty of mob action beyond a reasonable doubt and the trial court did not abuse its discretion in considering a photograph of defendant forming a gang sign. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 42 Affirmed.