2017 IL App (2d) 170431-U
Nos. 2-17-0431
Order filed October 23, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re DASANI N., A Minor,	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 16-JD-240
	)	
(The People of the State of Illinois, Petitioner-Appellee v. Dasani N., Respondent-Appellant).	)	Honorable
	)	K. Patrick Yarbrough,
	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Hudson and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The respondent was not convicted beyond a reasonable doubt of either mob action or disorderly conduct.

¶ 2 Following a hearing, the respondent, Dasani N., was adjudicated delinquent for having committed mob action (720 ILCS 5/25-1(a)(1) (West 2014)) and disorderly conduct (720 ILCS 5/26-1(a)(1) (West 2014)). He was sentenced to 2 years of probation and ordered to complete 30 hours of community service work. On appeal, the respondent argues that his convictions should be reversed because he was not proven guilty beyond a reasonable doubt. Alternatively, he argues that he should receive a new hearing because the trial court considered improper evidence in convicting him. We reverse.

¶ 3 BACKGROUND

¶ 4 On July 25, 2016, the State filed a delinquency petition against the respondent, alleging that on May 16, 2015, he had committed the offenses of mob action (720 ILCS 5/25-1(a)(1) (West 2014)) and disorderly conduct (720 ILCS 5/26-1(a)(1) (West 2014)). On September 13, 2016, the trial court conducted an adjudicatory hearing on the State's petition.

¶ 5 K.B. testified that on May 16, 2015, she was staying at 2414 Freemont Street in Rockford. At about 11 pm, she came to the front of the house because she saw flashing lights. She saw a group of "boys" on the sidewalk across the street. Two people, one adult male and one boy, crossed the street and approached the house. The adult yelled at K.B. to come outside. He told her that if she did not, he would come in. The boy knocked on the door while the man yelled. She did not know either of the people.

¶ 6 Officer Ryan Lane of the Rockford police department testified that he responded to the incident at K.B.'s house. Over the respondent's objection, Officer Lane testified that K.B. told him that a white male followed by two black males walked up to her door. Officer Lane talked to the respondent. The respondent told him that he came to the house on Freemont Street along with Merced Marcano and several other juveniles. The respondent indicated that Merced's daughter was having a problem with someone at 2414 Freemont Street and that Merced went there that night to settle the problem. Officer Lane testified that an airsoft gun was found in the pocket of the respondent's hoodie.

¶ 7 The respondent testified that on May 16, 2015, he was at a birthday party for Merced's son, Tyquarius. After the party, Merced's daughter drove the respondent, Merced, Tyquarius, and some friends to a park to play basketball. After 10 minutes, Merced told the group that they needed to go to the gas station. After they went to the gas station, Merced's daughter drove to

2414 Fremont Street. Prior to arriving at that address, the respondent testified that he was not going to that address or given any reason for going there.

¶ 8 When they arrived at 2414 Freemont Street, Merced gave both the respondent and Tyquarius airsoft guns. Merced told both the respondent and Tyquarius to put the guns in their pockets. Merced yelled at the respondent to get out of the car. The respondent did so and stood on the sidewalk across from 2414 Freemont Street. Merced did not tell him anything else to do. Merced and Tyquarius went up to the house at 2414 Freemont Street. The respondent heard an argument between Merced, K.B., and K.B.'s mother. The respondent never crossed the street.

¶ 9 At the close of the hearing, the trial court found the respondent guilty of both mob action and disorderly conduct under a theory of accountability based on the respondent's going with Merced to 2414 Freemont Street and observing him pound on K.B.'s door at 11 pm. The trial court therefore adjudicated the respondent delinquent.

¶ 10 On May 18, 2017, the trial court sentenced the respondent to two years' probation. As part of his probation, he was ordered to complete 30 hours of community service. The respondent thereafter filed a timely notice of appeal.

¶ 11 ANALYSIS

¶ 12 In reviewing a challenge to the sufficiency of the evidence, the reviewing court must determine 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); *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Due process requires the State to prove beyond a reasonable doubt every element of the crime of which the defendant is accused. U.S. Const. Amend. XIV; Ill. Const., Art. I, §2; *In re Winship*, 397 U.S. 358, 361-64 (1970); *People v. Carpenter*, 228 Ill. 2d 250, 264 (2008). A

conviction should be set aside if the evidence is so unsatisfactory as to create a reasonable doubt regarding the defendant's guilt. *People v. Dryden*, 363 Ill. App. 3d 447, 450 (2006). Even under this standard, a reviewing court "should draw only reasonable inferences in favor of the prosecution; [the court] should not make random speculations in favor of the prosecution." *People v. Dye*, 2015 IL App (4th) 130799, ¶ 12; see also *People v. Rankin*, 2015 IL App (1st) 133409, ¶ 19 ("Although we draw all reasonable inference from the evidence of record which are favorable to the State, we will not draw unreasonable or speculative inferences."). Furthermore, simply because the fact-finder "accepted certain testimony or made certain inferences based on the evidence does not guarantee the reasonableness of its decision." *In re Gregory G.*, 396 Ill. App. 3d 923, 926 (2009).

¶ 13 "A person commits the offense of mob action when he or she engages in any of the following: *** the knowing or reckless use of force or violence disturbing the public peace by 2 or more persons acting together and without authority of the law." 720 ILCS 5/25–1(a)(1) (West 2014). The State must prove that defendant was the one who engaged in the use of force or violence and that he did so knowingly or recklessly. *In re Dionte J.*, 2013 IL App (1st) 110700, ¶ 73. A conviction for mob action requires that the evidence show that the accused "was part of a group engaged in physical aggression reasonably capable of inspiring fear of injury or harm." *In re B.C.*, 176 Ill. 2d 536, 549 (1997). An individual's mere presence in a place where a riot or disturbance is taking place does not support a conviction of mob action. *People v. Roldan*, 54 Ill. 2d 60, 64 (1973) ("The evidence offered by the prosecution was entirely consistent with the innocent presence of the defendants on the playground."). Similarly, to sustain a mob-action conviction, the State must present evidence that the individual had the requisite mental state of having the intent to commit an unlawful act. *In re Kirby*, 50 Ill. App. 3d 915, 917–18 (1977)

(conviction reversed where there was no evidence that the defendant either threatened or touched the victim).

¶ 14 A person commits disorderly conduct when he knowingly does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace. *In re D.W.*, 150 Ill. App. 3d 729, 731 (1986).

¶ 15 To convict a defendant under the theory of accountability, the State must prove beyond a reasonable doubt that he (1) solicited, aided, abetted, or agreed or attempted to aid another person in the planning or commission of the offense; (2) did so before or during the commission of the offense; and (3) did so with the concurrent, specific intent to promote or facilitate the commission of the offense. 720 ILCS 5/5–2(c) (West 2014); *People v. Smith*, 278 Ill. App. 3d 343, 355 (1996). The law on accountability incorporates the "common design rule," which provides that, where two or more persons engage in a common criminal design, any acts in furtherance thereof committed by one party are considered to be the acts of all parties to the common design and all are equally responsible for the consequences of such further acts. *People v. Cooper*, 194 Ill. 2d 419, 434–35 (2000).

¶ 16 In determining whether a defendant shared the criminal intent of the principal and whether there was a common criminal plan, purpose or design that can be seen or inferred from the circumstances, our supreme court has enunciated five factors to consider: (1) was the defendant present during the perpetration of the crime; (2) did he maintain a close affiliation with his companions after the commission of the crime; (3) did he fail to report the crime; (4) did he flee from the scene; and (5) did he voluntarily attach himself to a group bent on illegal acts with knowledge of its design? See *People v. Taylor*, 164 Ill. 2d 131, 141 (1995).

¶ 17 Here, as the respondent had no interaction with the victim, he could only be convicted of mob action and disorderly conduct on the basis of accountability. In considering the factors set forth in *Taylor*, however, there was insufficient evidence to convict him on that basis. The evidence does not suggest that the respondent voluntarily attached himself to a group with knowledge that they intended to commit illegal acts. First, although the respondent voluntarily left with Merced to go to a park, the respondent was not given an option to go anywhere other than Freemont Street when Merced told him that they were going there. Merced then apparently told the respondent that he was going there to settle a dispute. Merced did not indicate that he wanted or needed the respondent's help. Upon arriving at Freemont Street, Merced gave the respondent an airsoft gun and told him to get out of the car. He did not tell the respondent to display the airsoft gun or do anything else that could be considered menacing. As Merced's actions do not indicate that he was planning to do anything illegal, the respondent could not have known that Merced was about to commit a crime.

¶ 18 The respondent's conduct after the police arrived also demonstrates that he was not acting in tandem with Merced and Tyquarius. There was no evidence that he attempted to flee from the alleged crime scene. Rather, he talked to police. There was also no evidence that the respondent maintained a relationship with Merced or Tyquarius following the commission of the alleged crime. As such, the only *Taylor* factor present was that the respondent was at the scene of the alleged crime. As noted earlier, however, that factor by itself is insufficient to find the respondent guilty on a theory of accountability. See *Roldan*, 54 Ill. 2d at 64.

¶ 19 In so ruling, we reject the State's argument that the trial court properly found that this case was analogous to *Taylor* and *People v. Johnston*, 267 Ill. App. 3d 526 (1994). In *Taylor*, the defendant's murder conviction was affirmed on the basis of accountability, even though he

was unarmed, and did not participate in the planning or execution of any plan to murder the victim, or provide any instruments in furtherance of that plan. *Taylor*, 164 Ill. 2d at 141. The supreme court observed that the defendant: (1) was present during the offense, approved of the offense as he knew that the shooter was armed and intended to kill the victim, and failed to prevent it from occurring; (2) fled the crime scene after the murder; (3) did not report the crime to the police; and (4) maintained a close affiliation with the shooter after the commission of the crime when he accompanied the shooter to retrieve a new weapon. *Id.* at 142–43.

¶ 20 In *Johnston*, the defendant joined with a group who was chasing after the victim and yelled, "[l]et's get the n*****s." *Johnston*, 267 Ill. App. 3d at 534. The defendant then watched the group beat the victim, did nothing to stop the beating, fled from the scene with his friends, and failed to call an ambulance for the unconscious victim. *Id.* at 534. Under these circumstances, the reviewing court held there was sufficient proof to hold the defendant accountable.

¶ 21 Here, unlike in *Taylor*, there was no evidence that the respondent knew that he was accompanying someone who intended to commit a crime. Unlike in *Johnston*, the respondent did not provide any verbal encouragement to others to commit criminal acts. Unlike either *Taylor* or *Johnston*, the defendant did not flee the alleged crime scene and did not spend additional time with the alleged perpetrators following the alleged crime. Rather, the respondent remained at the scene and talked to the police. Accordingly, neither *Taylor* nor *Johnston* supports a finding that the respondent was guilty of the charged offenses based on accountability.

¶ 22 Finally, as we have determined that the evidence presented was insufficient to convict the respondent of the charged offenses, we need not consider his argument that the trial court considered improper evidence during the hearing.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, the judgment of the circuit court of Winnebago County is reversed.

¶ 25 Reversed.