

No. 1-13-2891

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

<i>In re</i> DIONTAE B., a Minor,)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
)	Cook County.
Petitioner-Appellee,)	
)	
v.)	No. 13 JD 2522
)	
DIONTAE B., a Minor,)	Honorable
)	Stuart F. Lubin,
Respondent-Appellant).)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice Gordon and Justice Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* Respondent was adjudicated delinquent beyond a reasonable doubt under an accountability theory when the evidence established that although he did not take the victim's phone, he and the principal followed the victim and respondent effectively prevented the victim from pursuing the principal.

¶ 2 Following a bench trial, minor respondent Diontae B. was adjudicated delinquent of robbery and theft from a person under an accountability theory, and committed to the Department of Juvenile Justice. On appeal, respondent contends that he was not adjudicated delinquent beyond

a reasonable doubt because a person other than respondent (the principal) "single-handedly" committed all the elements of the offense before respondent allegedly impeded the victim from chasing the principal, and because the State failed to establish that he acted with any intent to aid the principal. We affirm.

¶ 3 In June 2013, the State filed a petition for adjudication of wardship and an amended petition alleging, *inter alia*, that the 16-year-old respondent was delinquent in that he committed the offenses of robbery and theft from a person. According to the State's theory of the case, respondent was part of a group of four individuals that worked together to snatch a cell phone from the victim. Three juveniles, respondent, Mark M. and Monet B. were charged together with theft and robbery. In a negotiated plea, Monet B. admitted committing theft. Mark M. was tried jointly with respondent, but his motion for a directed finding was granted after the victim failed to identify him in court. Respondent was ultimately found delinquent based on an accountability theory. The principal offender was never identified.

¶ 4 At the adjudicatory hearing, the victim, Adrian Hernandez, testified that he was walking home around 11:20 p.m. when he observed a group of four people "three quarters down the street." There were three males and one female. Although the lighting was dim on the street, Hernandez was able to observe the individuals' faces. When the group crossed to the victim's side of the street, he crossed to the other side in order to avoid them. He had his phone in his hand and was ready to call his parents, when respondent and the unknown principal crossed the street toward him. The principal came up, took the victim's phone, and pushed the victim in the chest. The victim stumbled back and the principal ran off. When he tried to follow the principal, respondent, who was standing in front of him, told him to "back away."

¶ 5 Respondent then rejoined his two companions and the victim ran home. He immediately contacted the police. Later, while in his brother's car, the victim observed two of the individuals from the earlier encounter and contacted the police. At the trial, he was unable to identify those two individuals in court but was able to identify the respondent. The victim later met the officers who had taken the individuals into custody. Respondent was one of the individuals taken into custody.

¶ 6 During cross-examination, the victim admitted that he told the police that three individuals were on the other side of the street, and that he could not identify them except that one was a female. However, he then clarified that a male and a female remained on the other side of the street. He also clarified that he called the police later that night because he saw the principal and one of the other individuals on the street.

¶ 7 Officer Brian Tucker testified that after receiving information regarding a robbery, he stopped respondent. He then contacted the victim, who came to his location and identified respondent as being present during the robbery and who stopped the victim from pursuing the principal. During cross-examination, Tucker testified that he believed that the victim told his partner that one person crossed the street and grabbed the phone.

¶ 8 In adjudicating respondent delinquent of robbery and theft from a person, the trial court stated that it was clear that respondent did not take the phone and that the question before the court was whether respondent was accountable for the conduct of the person who did take it. The court answered that question in the affirmative, finding respondent prevented the victim from chasing the principal. The court acknowledged that although the victim's testimony was "not very clear," the victim consistently indicated that respondent was involved and respondent was the one person that the victim identified with clarity. Specifically, the victim testified that

respondent blocked him from following the principal and told him to back away. Therefore, respondent "actively" participated in the principal's escape. At sentencing, the trial court committed respondent to the Department of Juvenile Justice.

¶ 9 On appeal, respondent contends that he was not adjudicated delinquent beyond a reasonable doubt under an accountability theory because the evidence at trial showed that the principal committed and completed the offense before he allegedly impeded the victim. He further argues that no evidence established that he intended to aid the principal.

¶ 10 The constitutional safeguard of proof beyond a reasonable doubt applies during the adjudicatory stage of a juvenile delinquency proceeding. *In re Malcolm H.*, 373 Ill. App. 3d 891, 893 (2007). When a respondent challenges the sufficiency of the evidence to sustain the court's delinquency determination, the relevant question on review is whether, after considering 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. *In re W. C.*, 167 Ill. 2d 307, 336 (1995). Generally, the trier of fact is in the best position to judge credibility because it had the opportunity to hear and see the witnesses; it is not the function of a reviewing court to retry a respondent. *People v. Austin M.*, 2012 IL 111194, ¶ 107. This court will reverse a delinquency finding only when the proof was so improbable or unsatisfactory that reasonable doubt exists as to the respondent's guilt. *In re Keith C.*, 378 Ill. App. 3d 252, 257 (2007).

¶ 11 A person commits a 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. See 720 ILCS 5/18-1 (West 2012). A person commits theft when he knowingly obtains or exerts unauthorized control over the property of the owner and intends to deprive the owner permanently of the use or benefit of the property. See 720 ILCS 5/16-1(a)(1)(A) (West 2012).

¶ 12 To prove an intent to promote or facilitate a crime, the State must present evidence establishing beyond a reasonable doubt that an individual *either* shared the criminal intent of the principal *or* there was a common criminal design. *People v. Perez*, 189 Ill. 2d 254, 266 (2000); see also *People v. Fernandez*, 2014 IL 115527, ¶ 21. Shared intent and common design are distinct concepts which should not be conflated. *Fernandez*, 2014 IL 115527, ¶ 21.

Accountability may be established through a person's knowledge of, and participation in, a criminal scheme even when there is no evidence that he directly participated in the criminal act itself. *Perez*, 189 Ill. 2d at 267. When determining whether a person is legally accountable for the conduct of another, proof that he was present during the commission of a crime without opposing or disapproving of it, that he maintained a close affiliation with the principal afterward and that he failed to report the crime may be considered. *People v. Johns*, 345 Ill. App. 3d 237, 241-42 (2003).

¶ 13 Pursuant to the "common design" rule, when two or more people engage in a common criminal design or agreement, any act in furtherance of that common design committed by one person is considered to be the act of all parties to the agreement and all are equally responsible for the consequences of any further acts. *People v. Jones*, 364 Ill. App. 3d 740, 747 (2006).

Proof of a common design does not need to be supported by a verbal agreement, but may be concluded from the circumstances surrounding the offense. *Jones*, 364 Ill. App. 3d at 747.

"Evidence that a defendant voluntarily attached himself to a group bent on illegal acts with knowledge of its design supports an inference that he shared the common purpose and [we] will sustain his conviction for an offense committed by another." *People v. Cooper*, 194 Ill. 2d 419, 435 (2000).

¶ 14 Here, the evidence in the record, taken in the light most favorable to the State, establishes that respondent was part of a group that crossed the street to approach the victim and was one of two individuals who followed the victim back across the street. Respondent and the principal then approached the victim, and the principal grabbed the victim's phone, pushed the victim and ran away. When the victim tried to follow, respondent, who was standing in front of the victim, instructed him to "back away." This court cannot say that no rational trier of fact would have adjudicated respondent delinquent beyond a reasonable doubt pursuant to an accountability theory (*In re W.C.*, 167 Ill. 2d at 336), when respondent crossed the street with the principal, and then stood in front of the victim and told him to back away when the victim attempted to pursue the principal (see *Johns*, 345 Ill. App. 3d at 241-42).

¶ 15 Respondent, on the other hand, argues that it is "not clear" that he crossed the street with the principal. Although respondent is correct that Tucker testified that the victim told his partner that only one person crossed the street, the victim admitted that he made this statement to the police and then clarified that in fact two people, one of whom was respondent, crossed the street. It was for the trial court, as the trier of fact to determine the weight to give to each witness's testimony and to resolve any inconsistencies and conflicts in the evidence. See *In re Gino W.*, 354 Ill. App. 3d 775, 777 (2005) (it is the fact finder, rather the reviewing court, which must resolve conflicts in the evidence and decide what reasonable inferences to draw from the evidence). Here, based upon its verdict, the trial court found the victim to be credible; we will not substitute our judgment for that of the trial court on this issue. See *Austin M.*, 2012 IL 111194, ¶ 107.

¶ 16 Respondent next contends that he was not proven guilty beyond a reasonable doubt because there was no evidence that he intended to aid the principal and, at most, the State established that he facilitated the principal's escape after the completion of the offense.

¶ 17 We reject respondent's contention that he had "nothing" to do with the offense and was not "aware" that the principal intended to take the victim's phone. Although it is true that respondent did not use force to stop the victim from pursuing the principal, a person's intent to facilitate or promote a crime may be inferred from his actions and from the circumstances surrounding the commission of the crime (see *Perez*, 189 Ill. 2d at 266). Here, respondent and the principal followed the victim across the street twice, and after the principal took the victim's phone, respondent, who was standing in front of the victim, told the victim to back away when the victim attempted to pursue the principal. Proof of a common design may be drawn from the circumstances surrounding the offense (*Jones*, 364 Ill. App. 3d at 747), and while respondent correctly argues that no evidence of a verbal agreement or plan between he and the principal was introduced at trial, the circumstantial evidence presented indicated the existence of a common design. See *People v. Taylor*, 164 Ill. 2d 131, 141 (1995) (a common design can be inferred from the circumstances surrounding the unlawful conduct).

¶ 18 Ultimately, while the trial court characterized the victim's testimony as "not very clear," the victim consistently identified respondent as the person who accompanied the principal across the street and told him to back away, effectively preventing him from pursuing the principal, the court was not required to disregard inferences which naturally flow from the evidence or search for all possible explanations consistent with respondent's claim of innocence and raise them to the level of reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). Because this court reverses a delinquency finding only when the proof is so improbable or unsatisfactory

that reasonable doubt exists as to the respondent's guilt (*In re Keith C.*, 378 Ill. App. 3d at 257), we therefore affirm respondent's adjudication of delinquency pursuant to an accountability theory.

¶ 19 We find respondent's reliance on *People v. Dennis*, 181 Ill. 2d 87 (1998) misplaced. In *Dennis*, the defendant unquestioningly aided the escape of his codefendant from the scene of an armed robbery. The question facing the jury was whether *during* the robbery the defendant aided or abetted the codefendant. In response to jury questions regarding when the offense was complete the trial court informed the jury that "you may consider the period of time and the activities involved in escaping to a place of safety." Our supreme court held that this instruction was incorrect and that escape was not an element of the offense of robbery. *Dennis*, 181 Ill. 2d at 107. Respondent argues that because escape is not an element of the offense the trial court erred when it considered respondent's actions after the offense, *i.e.*, blocking the victim's path and telling him to back off, to determine whether respondent was accountable for the principal's crime. Respondent's interpretation of *Dennis* stretches its holding too far. First, unlike the supreme court in *Dennis*, we are not faced with a clear misstatement of the law; the trial court never expressly held that escape was an element of the offense. To the contrary, in the absence of an affirmative showing otherwise, we must presume that the trial knew and accurately applied the law of accountability and escape. See, *e.g.*, *People v. Hernandez*, 2012 IL App (1st) 092841, ¶ 41. Second, and more importantly, we find nothing in the language of *Dennis* to suggest that, simply because escape is not an element of robbery, a defendant's conduct in aiding escape cannot be used as *evidence* of his intent to aid or abet an element of the offense earlier. Intent is seldom the subject of direct evidence and usually must be inferred from the surrounding circumstances (see, *e.g.* *People v. Weeks*, 2012 IL App (1st) 102613, ¶ 35), and courts have

routinely considered a defendant's actions *after* the commission of an offense as evidence of his intent to aid or abet a principal *during* its commission (see, e.g. *People v. Perez*, 189 Ill. 2d 254, 267 (2000)). For example, *Perez* identifies several acts, none of which could occur before or during the commission of a crime, as evidence of intent which would support a finding of accountability: flight from the scene; failure to report the crime; and maintaining a close affiliation with the offender after the commission of the crime. *Id.* Furthermore, as our supreme court recently noted in *Fernandez, Dennis* involved accountability based on a shared intent theory and, therefore, the case provides little guidance to courts considering accountability based on a common design theory. *Fernandez*, 2014 IL 115527, ¶ 21. Accordingly, we find that the trial court could properly consider respondent's actions after the robbery was complete when attempting to infer whether respondent shared a common purpose with the principal before or during the commission of the robbery.

¶ 20 We likewise find respondent's reliance on *People v. Johnson*, 2013 IL App (1st) 122459 *pet. for leave to appeal pending* No. 117292 (filed Feb. 4, 2014), not persuasive. In *Johnson*, the defendant was convicted on an accountability theory for first degree murder. There was evidence that the defendant drove the shooter to the scene, stopped next to the victim's vehicle, and drove the shooter away after he killed the victim. However, this court found that there was no evidence presented that the defendant knew the shooter was armed or intended to kill the victim prior to the commission of the offense. *Id.* at ¶ 159. Accordingly this court reversed the defendant's conviction. *Id.* Here, however, there was some evidence that respondent intended to aid or abet the principal prior to the robbery. Respondent crossed the street and approached the victim, then followed the victim across the street as he attempted to distance himself from respondent, the principal, and their associates. All of this activity occurred prior to the

commission of the robbery and provides evidence of intent independent of respondent's actions in preventing the victim from following the principal. Accordingly, we find that respondent's focus on his actions after the robbery distorts the facts. Therefore, we do not find the facts of *Johnson* to be so closely aligned with the instant case that a similar result is required.

¶ 21 Finally, we note that respondent's citation to *Rosemond v. United States*, ___ U.S. ___, 134 S. Ct. 1240 (2014) adds little to our analysis. The fact pattern is completely different, where it was clear the defendant agreed to participate in a drug sale, but the defendant denied using, or agreeing to the use of, a firearm. The issue before the Supreme Court was the propriety of the jury instructions and whether they adequately conveyed the principle that an accomplice must intend to facilitate the principal's offense prior to its commission. Here, we are faced not with an erroneous jury instruction, but rather a question of fact, *i.e.*, did respondent's actions *before* the commission of the offense support a finding that he shared a common design with the principal. Although, *Rosemond* sets forth some basic principles of common law accountability, we find that those principles are no different than the ones properly applied by the trial court in our case. Therefore, we find that respondent's citation to *Rosemond* does not change our analysis of the factual issue presented in the instant case.

¶ 22 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.