2012 IL App (1st) 111036-U

THIRD DIVISION
December 5, 2012

No. 1-11-1036

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 3512
	)	
RALPH MATA,	)	Honorable
	)	Joseph G. Kazmierski, Jr.,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Neville and Justice Steele concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment entered on defendant's conviction of robbery affirmed over his challenge to the sufficiency of the evidence.

¶ 2 Following a bench trial, defendant Ralph Mata was found guilty of robbery and sentenced as a Class X offender to seven years' imprisonment. On appeal, defendant contends that his conviction should be reduced to theft because the State failed to prove him guilty of that offense beyond a reasonable doubt where he "stealthily removed" a wallet from a backpack without using or threatening the imminent use of force.

¶ 3 The record shows, in relevant part, that about 2 p.m. on December 17, 2009, defendant entered the DePaul University Office of Student Affairs, on the 14th floor of 25 East Jackson Street, in Chicago, and removed a wallet from Katherine Long's backpack. Mary Lou O'Brien walked in on him during the act and tried to prevent him from leaving by standing in a doorway, but he escaped after making shoulder-to-shoulder contact with her that knocked her out of the doorway.

¶ 4 At trial, Katherine Long testified that on December 17, 2009, she was working as an office assistant and receptionist in the DePaul University Office of Student Affairs on the 14th floor of 25 East Jackson Street. The office suite in which she worked consisted of a large reception area behind glass doors, with two offices in the immediate vicinity, and a number of other offices in the suite.

¶ 5 Long arrived at work about 9 a.m. that day carrying a black and blue, hiking-style backpack where she kept a green leather wallet that contained two credit cards, her identification, health insurance cards, and about $30 cash. She placed the backpack underneath her desk, and removed her wallet from it when she went to lunch at approximately noon, then put the wallet in the backpack when she returned 30 minutes later.

¶ 6 Around 2 p.m., defendant entered the reception area wearing a dark jacket, a tan sweater, and dark pants, carrying papers in his hand. He asked Long to help him send a fax, and responded in the affirmative when she asked if he was a student. Long stood up, walked around her desk, and had defendant follow her down a hallway and around a corner to the fax room about 30 feet away, leaving her open backpack underneath her desk in the meantime.

¶ 7 Once they reached the fax room, Long took defendant's papers and began to fax them. The phone rang, she answered it, and defendant indicated that he had forgotten something and left the room. He returned less than a minute later followed by Mary Lou O'Brien, Long's boss,

who was asking to see his identification. Defendant responded that he was being helped, and when O'Brien stood in the doorway and asked him again for his identification, defendant responded, "I'm not going to show you a damn thing." At that point, defendant "moved toward her to exit the room, and brushed past her as she was standing in the door frame, *** made contact with her, and then left." Long stated that O'Brien was "pushed backwards out of the door frame." After defendant fled the office, Long returned to her desk, checked her backpack, and noticed that her wallet was missing. She subsequently identified defendant in a photo array and a lineup, and, at trial, she identified him in a security camera photograph.

¶ 8 On cross-examination, Long acknowledged that she never saw defendant go into her backpack, and never saw him take her wallet. She also stated that defendant never threatened the use of force against O'Brien. Long stated that defendant made contact with O'Brien by bumping his shoulder into hers, but did not push her to the ground.

¶ 9 O'Brien testified that she is employed by DePaul University as a budget manager and executive assistant to the vice president. Around 2 p.m. on December 17, 2009, she went into the hallway to fill her water bottle, then returned to the office and saw defendant bent over behind Long's desk. He came up quickly looking startled and placed something into his right pocket. O'Brien asked him if he needed help, and defendant responded, "no, he was being helped already by a woman in the back." He then "raced around" the desk and walked down the hallway.

¶ 10 O'Brien followed defendant to the fax room and stood in the door frame. She then asked Long, who was on the phone, if she was helping defendant, and Long nodded her head to indicate that she was. When O'Brien asked to see defendant's identification, he responded that "he was not going to show me a damn thing." O'Brien sensed that defendant was "agitated," and she was "concerned that something was just not right." She thus deliberately stood in the door frame to

prevent defendant from leaving. Defendant, however, brushed past her and made shoulder-to-shoulder contact with her in the process, which moved her so that he could get out. O'Brien followed defendant as he "raced down" the hallway and out the front door, but she never caught up to him. O'Brien subsequently identified defendant in a photo array and a lineup, and at trial, she identified him in security photos taken on the first floor of the building.

¶ 11 On cross-examination, O'Brien acknowledged that defendant did not knock her down, forcibly throw her out of his way with his hands, or threaten any force against her. She also acknowledged that she did not see defendant go into Long's backpack or take her wallet.

¶ 12 The parties stipulated that Randy Shire would testify that the security photographs introduced at trial were taken from the security system at 25 East Jackson Street on the date in question. The parties also stipulated that Chicago police detective Mark Wiktorek would testify that he posted a community alert with those images on the DePaul campus, that he was contacted by Ed Kinleg, the director of security for the Union League Club, and that defendant's image was then placed in a photo array.

¶ 13 Following closing arguments, the court found defendant guilty of two counts of robbery, noting that "[t]he evidence in this case is circumstantial almost totally, but very strong," and that "the force used in this case as testified by Miss Long as to her – the defendant had to move her out of the way, is sufficient beyond a reasonable doubt to sustain the element of force." The court then merged defendant's convictions and sentenced him as a Class X offender to seven years' imprisonment for committing robbery in a school.

¶ 14 On appeal, defendant contends that the State failed to prove him guilty of robbery beyond a reasonable doubt. He claims that the State did not establish the element of force where neither witness was aware that he had taken the wallet, and the only evidence of force was his "brushing past" O'Brien and making shoulder-to-shoulder contact with her. For the foregoing reasons, he

requests that this court reduce his conviction to theft, and remand his case to the trial court for resentencing.

¶ 15 The State responds that defendant made contact with O'Brien's shoulder and pushed her out of the doorframe in order to escape with Long's wallet, and that it was the province of the trial court to draw reasonable inferences and determine that this was enough force to sustain a robbery conviction. The State also responds that the evidence of force was not so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt.

¶ 16 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court 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. *People v. Campbell*, 146 Ill. 2d 363, 374 (1992). It is the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *Campbell*, 146 Ill. 2d at 375.

¶ 17 To sustain defendant's conviction of robbery in this case, the State was required to prove that defendant took 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 2008). The State also charged that the robbery was committed in a school and was thus required to establish that fact to elevate the offense to a Class 1 felony. 720 ILCS 5/18-1(b) (West 2008).

¶ 18 Here, defendant does not challenge the sufficiency of the evidence establishing his taking of Long's property, or the fact that the incident occurred in a school. The parties also do not

dispute that defendant made shoulder-to-shoulder contact with O'Brien and knocked her out of the doorway. The only dispute is whether that contact constituted "force" for purposes of the robbery statute, and whether there was a sufficient concurrence between the taking of the victim's property and the use of that force.

¶ 19 Viewed in the light most favorable to the prosecution, the record shows that early in the afternoon of December 17, 2009, defendant entered the DePaul University Office of Student Affairs and requested Long's help in faxing some documents. Long obliged, and left her backpack sitting open underneath her desk as she walked with him down the hallway to the fax room. While in the fax room, Long answered a phone call, and defendant indicated that he had forgotten something and left the room. He then went behind Long's desk where her backpack was located, bent over, and rose up startled when O'Brien entered the office, then placed something into his right pocket. O'Brien asked him if he needed help, but defendant responded that he did not and "raced around" the desk and returned to the fax room.

¶ 20 O'Brien, whose suspicions were raised, followed defendant and deliberately stood in the doorway of the fax room to prevent him from leaving. She then asked him for his identification, and he responded that "he was not going to show [her] a damn thing." At that point, defendant "brushed past" her and made shoulder-to-shoulder contact which "pushed [her] backwards out of the doorframe," and then fled the office. Thereafter Long checked her backpack and noticed that her wallet was missing. From this evidence, the trial court could reasonably conclude that defendant was proved guilty of robbery beyond a reasonable doubt. 720 ILCS 5/18-1(a) (West 2008); *People v. Hay*, 362 Ill. App. 3d 459, 466 (2005), citing *People v. Cooksey*, 309 Ill. App. 3d 839, 849 (1999).

¶ 21 Defendant initially argues that his act of "stealthily removing" Long's wallet from her backpack does not fall under one of the scenarios in *People v. Merchant*, 361 Ill. App. 3d 69

(2005) of force applied during the taking, and thus does not constitute a robbery. However, there appears to be no dispute between the parties on this point since the State concedes that "the taking was accomplished without force," and argues instead that defendant's departure was accomplished by the use of force.

¶ 22 Defendant's next and primary argument is that his "slight contact" with O'Brien does not rise to the level of force contemplated by the robbery statute. He maintains that O'Brien did not suffer any injury or struggle with him in any way, and compares the circumstances in this case to those in *People v. Patton*, 76 Ill. 2d 45 (1979) and *People v. Ryan*, 239 Ill. 410 (1909).

¶ 23 We find *Patton* and *Ryan* distinguishable from the case at bar. In *Patton*, 76 Ill. 2d at 47-48, the victim's arm was thrown back a little bit when defendant grabbed her purse from her hand, and the victim testified that the purse was gone before she realized what had happened. In *Ryan*, 239 Ill. at 411, defendant tried to remove a "stud" from the victim's necktie while he was standing on a crowded streetcar platform. The victim grabbed defendant's hand, cried out, then let go of his hand, without ever feeling that he was in danger or that any force was used against him.

¶ 24 Unlike the cited cases, defendant used his shoulder to knock O'Brien out of a doorway that she was blocking to prevent his escape. These circumstances are more akin to those in *People v. Brooks*, 202 Ill. App. 3d 164, 168 (1990), *abrogated on other grounds by People v. Williams*, 149 Ill. 2d 467 (1992), where defendant removed the victim's wallet from her purse while sitting behind her on a CTA bus, then pushed her left shoulder and ran away when the victim demanded its return. Although defendant claimed on appeal that the State failed to establish the element of force to prove him guilty of robbery, this court found that the push by defendant was sufficient to sustain his robbery conviction. *Brooks*, 202 Ill. App. 3d at 170.

¶ 25 Here, similar to *Brooks*, O'Brien walked in on defendant as he was removing Long's wallet from her backpack, and she subsequently offered resistence by standing in a doorway to prevent him from leaving. Defendant then made his escape by pushing her out of his way with his shoulder. Given the similar nature of the force applied here to that in *Brooks*, we find that the push by defendant constituted force sufficient to sustain his robbery conviction. *Brooks*, 202 Ill. App. 3d at 170.

¶ 26 Defendant further claims that there was not a sufficient concurrence between the taking of Long's wallet and his use of force because his contact with O'Brien was not in response to an accusation of theft, but rather, in response to her demand that he produce a student identification. We disagree. As this court recognized in *Brooks*, force need not transpire before or during the taking and may be used as part of a series of events constituting a single incident, such as where the perpetrator's departure is accomplished by the use of force. *Brooks*, 202 Ill. App. 3d at 170; see also *Cooksey*, 309 Ill. App. 3d at 849. Here, it was reasonable for the seasoned trial judge to infer that the push by defendant that allowed him to escape the office with Long's wallet was the culmination of a series of events which began with his taking of the wallet. *Sutherland*, 223 Ill. 2d at 242. We find no basis in the record for disturbing that finding (*Campbell*, 146 Ill. 2d at 375), and thus affirm defendant's conviction of robbery.

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

¶ 28 Affirmed.