SECOND DIVISION
DECEMBER 11, 2012

No. 1-11-1500



IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 10 CR 17402 |
| | ) | |
| MARCO LINDO, | ) | Honorable |
| | ) | Arthur F. Hill, Jr., |
| Defendant-Appellant. | ) | Judge Presiding. |

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Harris and Justice Simon concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Evidence was sufficient to convict defendant of robbery under a theory of accountability.

¶ 2 Following a bench trial, defendant Marco Lindo was found guilty of robbery under a theory of accountability and sentenced to two years' intensive probation supervision. On appeal,

he contends the evidence was insufficient to prove he was accountable for a robbery committed by his codefendant, Reynaldo Clavaria[1], who is not a party in this appeal. We affirm.

¶ 3 At trial, Jesus Mata testified that around 3 p.m. on September 16, 2010, he was walking home alone from Kelvyn Park high school in Chicago. Near Fullerton, Mata observed an unfamiliar black Honda Civic pass him, and saw the car's passenger turn around to look at him. Mata was scared and walked faster. Near Palmer and Kostner, Mata saw the same car with two people inside. Mata observed defendant driving the car, and Clavaria riding in the passenger seat. The car stopped and Clavaria got out of the car, walking in the same direction as Mata. "To be safe," Mata attempted to walk to a store. Clavaria soon overtook Mata, however, and grabbed him from behind. Clavaria stated he was a "King" and demanded Mata's gold chain, which was engraved with the date of Mata's baptism and his first name. When Mata refused, Clavaria pulled the chain from Mata and ran to the Honda. The car drove off. Mata flagged down Officer Javier Saez and explained what had occurred. After Mata rode around with Saez for 5 to 10 minutes, the officer spotted and pulled over the Honda. Mata confirmed the identity of defendant and Clavaria, and Mata's chain was recovered from Clavaria.

¶ 4 Officer Saez corroborated Mata's account of what occurred after the robbery.

¶ 5 Defendant testified he drove his black Honda Civic and picked up Clavaria at North Grand high school around 3 p.m. on September 16. The two were heading in the car to the area of Fullerton and Cicero to get gas. Near Kostner and Armitage, Clavaria told him to turn the car around, and defendant complied, turning onto Palmer and parking. Clavaria got out of the car.

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[1] Clavaria's last name is spelled "Claveria" in portions of the briefs submitted by both parties, but we spell it as it appears in the record.

Defendant next saw Clavaria running past him into an alley. He drove in Clavaria's direction, Clavaria jumped into the vehicle and the two drove away.

¶ 6 On cross-examination, defendant admitted Clavaria told him to turn the car around when he observed a boy "gangbanging at him." Clavaria further stated he wanted to "go put that boy in check." Clavaria asked defendant to pull over and wait on Palmer, then exited and soon re-entered the car. The two drove to a gas station and for the first time defendant discovered Clavaria had a necklace with him. Clavaria had initially been wearing his high school shirt but had taken it off by the time the two were stopped by police.

¶ 7 In rebuttal, detective Eric Oswold testified defendant spoke to him after being arrested and having been read his *Miranda* rights. Defendant told Oswold he took Clavaria's statement "put the boy in check," to mean "some type of physical harm," but did not specifically know what Clavaria planned to do. When he returned to the car, Clavaria told defendant he had "checked the boy," and made Mata "throw down the crown." Defendant saw a chain in Clavaria's hands.

¶ 8 On cross-examination, Oswold testified the words "physical harm" did not appear in the general progress or supplemental reports he filled out concerning the incident. Defendant never told him he knew Clavaria planned to rob Mata.

¶ 9 The trial court found defendant's testimony on direct to be "incredible." It noted defendant on cross-examination admitted he stopped the car after Clavaria told him he planned to "put this guy in check." The court noted, "[d]oes it mean robbery? Does it mean, I am going to do something physical to him? Give him some physical harm? Whatever it is it ain't good. It ain't good." The court further stated it was "very, very clear" defendant's actions of maneuvering the vehicle, letting Clavaria out and picking him up were performed in order to "aid, to abet and to

facilitate whatever Mr. Clavaria was going to do." The court found defendant guilty of robbery and sentenced him to two years' intensive probation supervision.

¶ 10 On appeal, defendant contends the State failed to prove he was legally accountable for Clavaria's actions. Defendant argues while defendant may have known Clavaria planned to place Mata "in check," and thus physically harm Mata, the evidence showed he did not share a common criminal design with Clavaria regarding the robbery.

¶ 11 When reviewing the sufficiency of evidence in a criminal case, our inquiry 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. Sutherland*, 155 Ill. 2d 1, 17 (1992). A criminal conviction will not be reversed unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 12 The elements of robbery are the taking of property from a person by use of force or by threatening the imminent use of force. 720 ILCS 5/18-1(a)(West 2010). The evidence indisputably showed Clavaria committed the robbery, so we must consider whether defendant was accountable for Clavaria's conduct.

¶ 13 A person is accountable for conduct which is an element of an offense if the conduct is that of another and "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-1 (West 2010); 720 ILCS 5/5-2(c)(West 2010).

¶ 14 Active participation is not required to establish accountability where a defendant shares a common criminal design or agreement with a principal. *People v. Taylor*, 164 Ill. 2d 131, 140

(1995); 720 ILCS 5/5-2(c) (West 2010). A defendant's presence at a crime scene, knowledge that a crime is being committed, voluntary attachment to and close affiliation with his companion before and after the crime was committed, failure to report the crime and flight from the scene are circumstances which may be considered to determine if a defendant shared a common criminal design or agreement with a principal. *Taylor*, 164 Ill. 2d at 140-41. Illinois law is clear that one can be held accountable for a crime different than the one planned. *People v. Garrett*, 401 Ill. App. 3d 238, 244 (2010).

¶ 15 Here, the evidence showed defendant knew Clavaria wanted to place Mata "in check" because Clavaria had seen Mata "gangbanging at him." After learning Clavaria's intentions, defendant followed Clavaria's instructions to turn the car around and pull over to let Clavaria out. Despite believing placing someone "in check" meant causing that person some sort of physical harm, and not having confirmed with Clavaria exactly what Clavaria intended to do, defendant did not drive away or attempt to distance himself from Clavaria's activity. Instead, defendant voluntarily waited nearby until Clavaria returned, followed him as he ran from the scene of the crime and allowed him to reenter the car.

¶ 16 Defendant saw Mata's gold chain in Clavaria's hand either immediately after he returned to the vehicle or a few minutes later, after defendant drove with Clavaria to a gas station. Regardless, defendant drove the getaway car from the scene of Clavaria's crime and maintained close affiliation with Clavaria until the two were apprehended by the police. The court found it was "very, very clear" defendant's actions were designed to "aid, to abet and to facilitate whatever Mr. Clavaria was going to do." Based on the totality of the circumstances, the permissible reasonable inferences and the trial court's findings, we cannot say that the evidence was so

improbable or unsatisfactory that no rational trier of fact could have found defendant guilty beyond a reasonable doubt.

¶ 17 *People v. Phillips*, 2012 IL App (1st) 101923, cited by defendant, does not demand a different result. In *Phillips*, we found insufficient evidence to support a defendant's conviction for aggravated discharge of a firearm and aggravated battery with a firearm under a theory of accountability where the State had not proven the defendant knew his codefendant was in possession of a firearm or planned to shoot a victim before the defendant drove the codefendant to location where the crimes took place. *Phillips*, 2012 IL App (1st) at ¶21-22. In contrast, in the present case, evidence showed defendant knew Clavaria planned to place Mata "in check," an action which defendant believed would cause Mata physical harm, then aided Clavaria by turning the car around, dropping him off, waiting until the crime was committed, then driving him from the crime scene.

¶ 18 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 19 Affirmed.