2015 IL App (1st) 131877-U

FIFTH DIVISION
APRIL 24, 2015

No. 1-13-1877

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. 12 CR 9862
	)	
BYRON SMITH,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Justices McBride and Reyes concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's aggravated robbery conviction is affirmed over his contention that the complaining witness's testimony was improbable and unbelievable.

¶ 2 Following a bench trial, defendant, Byron Smith, was convicted of aggravated robbery and burglary and sentenced to concurrent terms of six and three years in the Illinois Department of Corrections, respectively. On appeal, defendant asserts the evidence was insufficient to sustain his aggravated robbery conviction because the complainant's testimony that defendant claimed to be armed was unbelievable. For the following reasons, we affirm.

¶ 3 At trial, Pedro Garcia testified that he was sitting in his vehicle in Marquette Park in Chicago, Illinois, at approximately 10:50 p.m. on May 16, 2012. Pedro had parked on the side of the road to text message a "lady friend" about whether he was going to visit her or go home. Defendant, whom Pedro had never met, approached and asked for money and help looking for his wallet. Nobody else was in that area of the park. According to the arrest report, defendant was 6 feet tall and weighed 220 pounds.

¶ 4 Pedro exited his vehicle to assist defendant, intentionally leaving his cell phone, wallet, and keys in the vehicle as a precaution in case defendant tried to rob him. Pedro's vehicle was equipped with keyless entry. As Pedro approached defendant, defendant "reached over and snatched the chain" Pedro was wearing around his neck. Pedro described the chain as silver "with a little rectangular type of locking clip on the back." Afterward, defendant told Pedro "to give him anything else of value." Defendant said that he had a gun in his pocket and would shoot Pedro, and he stuck his hand in his pocket. Pedro felt scared that defendant was armed.

¶ 5 Defendant instructed Pedro to open his vehicle, and Pedro acted as though he had accidentally locked himself out. Defendant attempted to enter the vehicle by kicking the front driver window. When he could not gain entrance, defendant grabbed a glass bottle and tried breaking out one of the back driver's side windows. The first bottle broke, so defendant grabbed a second bottle and threw it at the back driver's side window, breaking the window. Pedro identified photographs of the broken window and glass inside the vehicle, which the trial court admitted into evidence. Defendant then unlocked the back driver's side door through the broken window and entered the backseat of the vehicle before exiting the vehicle and asking Pedro to open the front door. Pedro "jumped into the backseat of [his] car in order to jump over to the driver's seat," and defendant "jumped in the backseat" as Pedro was sitting in the driver's seat.

¶ 6 Pedro saw headlights of a police vehicle approaching, and he exited the vehicle and started to wave down the officers. The two officers stopped, and Pedro told them that defendant "had snatched [his] chain" and had broken his vehicle window and was robbing him. The officers placed handcuffs on both men and started questioning them, eventually separating and searching them. The State asked Pedro the following question: "You had initially told the police officers that the Defendant was trying to break into your vehicle, is that right?" to which Pedro responded, "Correct." The State then asked "what, if anything else," Pedro told the police officers when they stopped, and Pedro responded, "That he had snatched my chain. He had broke my window and he said he had a gun." Pedro later recovered his chain, which he was wearing during trial, at the police station. The chain was "[n]ot broken but it was latched together." Pedro acknowledged that he never observed a gun or any weapon. He signed two complaints in this matter but neither complaint mentioned a gun. On May 17, 2012, Pedro told a detective that defendant had a gun and threatened to shoot him.

¶ 7 Chicago police officer Alberto Garcia testified that as he and his partner were patrolling Marquette Park, they observed Pedro approaching and waving them down. Pedro told them that defendant had just broken his vehicle window and he needed help. Defendant exited the vehicle and told the officers that Pedro was lying. Garcia observed that Pedro's vehicle's window was broken, and he identified photographs of the broken window. The officers placed Pedro and defendant into handcuffs because they were "both extremely agitated and yelling." Garcia searched defendant and found a metal chain in his pocket but no weapons. As Garcia stepped away to run Pedro's and defendant's names, Pedro said that defendant stole his chain. Defendant stated something to the effect of "I ain't got no chain." Garcia asked Pedro to describe the chain, and the description matched the chain that Garcia found in defendant's pocket. At some point at

the scene, Pedro also told Garcia that defendant had threatened him with a gun, but Garcia could not recall when. Garcia did not include in his report that Pedro said defendant indicated he was armed.

¶ 8 The trial court found defendant guilty of aggravated robbery and burglary. At a later hearing, the court sentenced him to six years in prison for aggravated robbery and three years in prison for burglary, ordering the sentences to run concurrently. This appeal followed.

¶ 9 On appeal, defendant asserts his aggravated robbery conviction should be reduced to robbery because Pedro's testimony that defendant indicated he was armed was contrary to human experience and unworthy of belief. He observes that Pedro did not immediately tell the police officers that defendant was armed when they arrived on the scene, and Officer Garcia's report did not mention that Pedro feared defendant had a gun. Defendant thus theorizes that between the time of the incident and when Pedro spoke to the detective, Pedro created a story about defendant claiming to be armed. Defendant further contends that "no reasonable Chicagoan" who feared being robbed would exit his vehicle to help a large stranger in a secluded park at night. He speculates that Pedro and defendant were actually engaged in some other type of transaction that soured, and Pedro lied about defendant claiming to have a gun to draw attention away from himself and punish defendant for damaging his vehicle. Finally, defendant contends Pedro's testimony that defendant snatched his chain was undermined by his testimony that the chain was not damaged. We find defendant's arguments to be unpersuasive as the evidence was sufficient to sustain defendant's conviction.

¶ 10 In resolving a challenge to the sufficiency of the evidence, we must determine whether, when viewing the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v.*

Brown, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). On review, we will not retry defendant, and the trier of fact remains responsible for determining the credibility of witnesses and the weight to be given to their testimony. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). A defendant's conviction will be reversed only "where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48. "Testimony may be found insufficient under the *Jackson* standard but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 11 A defendant commits robbery when he knowingly takes property from another by the use of force or threatening the imminent use of force. 720 ILCS 5/18-1 (West 2010). A defendant commits aggravated robbery when, while committing robbery, he indicates verbally or by his actions to the victim that he is presently armed with a firearm or other dangerous weapon. 720 ILCS 5/18-5(a) (West 2010) (now codified at 720 ILCS 5/18-1 (West 2012)). The offense of aggravated robbery is applicable even if it is later determined that a defendant did not possess a firearm or dangerous weapon while committing the robbery. 720 ILCS 5/18-5(a) (West 2010).

¶ 12 The evidence was sufficient to establish that defendant indicated to Pedro that he was armed. Pedro testified that defendant stuck his hand in his pocket and told Pedro he had a gun in his pocket and would shoot him. Pedro believed defendant was armed. After waving down Officer Garcia and his partner, Pedro at some point told them that defendant claimed to have a gun. Such testimony was corroborated by Officer Garcia, who testified that while the officers were on the scene, Pedro said defendant threatened him with a gun. Pedro also testified that he later reported to a detective that defendant claimed to be armed. Based on the foregoing, a reasonable trier of fact could have found defendant indicated to Pedro that he was armed with a

firearm. See, *e.g.*, *People v. Woods*, 373 Ill. App. 3d 171, 177 (2007) (the defendant indicated he was armed with a firearm or other dangerous weapon where he gestured to his waist and the cashier observed "something wooden" in his waistband); *People v. Hall*, 352 Ill. App. 3d 537, 544 (2004) (the defendant's conduct fell within the aggravated robbery statute's proscription where he approached a store clerk, "moved his hand to his waist in a grabbing motion two or three times," and asked the clerk if he was wearing a bullet proof vest and if he had ever been or wanted to be shot).

¶ 13 Defendant's attempts to characterize Pedro's testimony as unbelievable and contrary to human experience are not persuasive. Although Pedro's first words to the responding officers were not about defendant having a gun, the testimony of Garcia and Pedro clearly established that Pedro did inform the officers of defendant's threat at some point while the officers were still on the scene. The record thus belies defendant's theory that Pedro concocted a story about defendant threatening him with a gun in the time period before he spoke to the detective. See *People v. Brackett*, 288 Ill. App. 3d 12, 18-19 (1997) (rejecting the defendant's argument that the victim did not mention the suspected presence of the gun and was thus coached to testify at trial about the gun where the victim testified she told her manager after the robbery "exactly what happened" and "went into more detail with" the police when they arrived, and a computer sketch mentioned the defendant's left arm was possibly hiding a weapon). Defendant contends that *Brackett* is distinguishable because there, the officers did not intercede during the commission of the robbery. Nonetheless, like the defendant in *Brackett*, Pedro told the officers when reporting the crime about his belief that defendant had a gun; accordingly, as in *Brackett*, defendant's claim that Pedro changed his story after the crime fails.

¶ 14 Officer Garcia's failure to include Pedro's statement about defendant's threat in his report does not warrant a different outcome because a police report "is meant to be a summary, not a blow by blow chronology of what occurred." *People v. Reed*, 243 Ill. App. 3d 598, 608 (1993). At trial, Garcia testified that Pedro told him on the scene that defendant claimed to have a gun, and it was for the trial court to resolve any inconsistencies in the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). Likewise, the fact that Pedro's chain's clasping mechanism was not damaged does not somehow render Pedro's testimony unbelievable. The trial court heard all of Pedro's testimony and, based on its guilty finding, evidently found Pedro credible. We will not substitute our judgment for that of the trial court. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009).

¶ 15 Finally, we reject defendant's contention that Pedro's testimony was suspect because Pedro had an incentive to "dirty" him "up." Such a contention is purely speculative, particularly in light of Pedro's testimony that he had never met defendant. Even assuming, as defendant posits, that Pedro wanted to draw attention away from himself and "punish" defendant for breaking his vehicle, defendant offers no explanation for why Pedro would elect to commit perjury and embellish the events of the robbery when he could have just reported that defendant damaged his vehicle and stole his chain—crimes for which defendant would already have been "punished." Equally unpersuasive is defendant's bald assertion that "no reasonable Chicagoan" who feared being robbed would exit his vehicle to assist a stranger at night. In making such an assertion, defendant essentially asks us to reweigh the evidence and draw our own conclusion regarding Pedro's credibility, which is not our function. *Siguenza-Brito*, 235 Ill. 2d at 224-25.

¶ 16 In sum, defendant has failed to establish that Pedro's testimony was "improbable, unconvincing, or contrary to human experience." (Internal quotation marks omitted.) *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001). Accordingly, we affirm the trial court's judgment.

¶ 17 Affirmed.