

No. 1-14-0249

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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. 13 CR 7476
)	
JAIVON RHYMES,)	Honorable
)	James M. Obbish,
Defendant-Appellant.)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

O R D E R

- ¶ 1 *Held:* The victim's trial testimony and defendant's inculpatory statement were sufficient to affirm defendant's aggravated robbery conviction based on accountability.
- ¶ 2 Following a bench trial, defendant Jaivon Rhymes was convicted of aggravated robbery and sentenced to a 30-month period of probation with six months in jail. On appeal, defendant contends he was not proven guilty based on accountability beyond a reasonable doubt where the robbery victim failed to promptly report defendant's participation in the crime and a police

detective's testimony was described as incredible by the trial court when the officer misstated the substance of defendant's alleged inculpatory statement. We affirm.

¶ 3 Defendant and codefendant Robert Dampier were charged by indictment with two counts of armed robbery and one count each of aggravated robbery and aggravated unlawful restraint arising from the robbery of a pizza deliveryman. The aggravated robbery count charged them with taking property from the person or presence of Rennie Carr by using or threatening the imminent use of force "while indicating verbally or by their actions to Rennie Carr that they were presently armed with a firearm or other dangerous weapon." They were tried on all counts in a joint but severed bench trial. The State proceeded on the theory that codefendant Dampier was the gun-wielding robber and that defendant falsely posed as one of the robbery victims but in fact was a robbery participant accountable for the actions of Dampier. At the close of the State's case in chief, Dampier's motion for a finding of not guilty was granted. At the end of the trial, the court found defendant guilty of aggravated robbery.

¶ 4 Rennie Carr testified that on September 13, 2012, he was employed as a delivery driver for a Chicago pizzeria. At about 3:50 p.m., he made a food delivery to 7150 South Eggleston. When he arrived at the apartment building at that address, he was met inside the building's vestibule by an individual who told Carr his name was Terry. At trial, Carr identified that man as defendant Rhymes. Defendant asked Carr how much money he owed him, and Carr responded. He testified that defendant "kept stalling for a minute, then he said hold on for a minute." Defendant again asked how much he owed Carr. When Carr gave him the food, defendant set it down on the stairwell and opened it up "real slowly." Defendant opened everything Carr gave

him, rib tips and two medium pizzas, and said it was not enough food. As defendant went through the food, ["he] was going real slow so at the time I was saying forget it."

¶ 5 Then a second man came from the inner door into the vestibule, displayed a gun, and announced "a stickup." The gunman ordered Carr to turn around and place his hands on the wall. At trial, Carr identified codefendant Dampier as the gunman. Carr testified that during the robbery Dampier wore a black T-shirt over his head but the shirt did not obstruct Carr's view of Dampier's face. Carr could see the front of the man's face but could not see his hair. Carr told the first responding police officer that the robber had a fade hairstyle "because I didn't see his head." He described a fade hairstyle as a short hairstyle that was kind of cut back and light on the sides. A fade hairstyle was definitely not dreadlocks. In his right hand Dampier held a silver gun with a black handle "like a 9 millimeter." Dampier told Carr to take his gym shoes off, and Carr complied. Then Dampier directed Carr to take everything out of his pockets and to lie on the floor. Carr placed his money, credit card receipts, and debit card on the floor. Dampier also instructed Carr to give him his cell phone so he could not call the police. Dampier took about \$40 from Carr's wallet and about \$520 in money and credit card receipts Carr had collected from his deliveries. Then Carr heard Dampier tell defendant to lie down, saying, "You next." After giving up his possessions, Carr left the building with his shoes in his hand; he never put them back on. The outer door closed behind Carr as he left the building, but he looked back through the window of the door into the vestibule and saw both defendant and Dampier leaving the vestibule together through the inside door and up the stairs. Carr had never seen defendant or Dampier before the robbery.

¶ 6 Carr returned to the pizzeria and called the police. A short time later two uniformed police officers, Michael Wrobel and LaDonna Simmons, arrived at the pizzeria. Carr told the officers that there were two offenders. On cross-examination, Carr denied telling the officers there was only one offender. He complained: "I told the officers there were two. You keep saying one. That's wrong." Carr also denied telling the officers that the offender fled in an unknown direction. He told them he saw both persons walking up the stairs. Carr gave a description only of defendant, the one with dreadlocks, because he could not see the head of the gunman who wore a T-shirt on his head. Carr told the officers that the gunman had a short "fade" haircut, like his own. He did not tell them it was a possible black 9-millimeter gun. He denied telling the two officers that the offender went through his pockets, taking \$200 from one pocket and \$319 from the other pocket.

¶ 7 On October 23, 2012, Carr went to the police station where he viewed a photo array and picked out defendant's photo.

¶ 8 Two weeks later, on November 7, Carr viewed a lineup which included defendant. At trial, Carr identified defendant in lineup photos as "[t]he guy who robbed me." Carr was also shown a close-up photo of defendant as he appeared at the lineup and testified it was a photo of "[t]he guy sitting over to the right of me in the brown DOC with the dreads." The record reflects that Carr pointed to defendant Rhymes. During cross-examination, defendant's counsel asked Carr: "When you say that's the man who robbed me, you never saw Mr. Rhymes with a gun, correct?" Carr replied by pointing out codefendant: "The guy *** with the gun is right there to the right of me." The court observed: "Indicating he's pointing out Dampier."

¶ 9 Also on November 7, the date of defendant's lineup, Detective Pegan¹ showed Carr another photo array of six men with dreadlocks. He identified the photograph of Dampier. On January 12, 2013, Carr viewed another lineup. At trial, Carr testified that he identified defendant in that lineup.

¶ 10 Pegan testified that he met with Carr on October 23, 2012, showed him a photo spread, and Carr identified the photo of defendant. At trial, Pegan was asked whether he saw defendant Rhymes in court. However, Pegan identified codefendant Dampier.

¶ 11 Pegan had a conversation with defendant at a police station on November 7, 2012, after advising of him of his *Miranda* rights. Defendant supplied the name of Robert Dampier and told Pegan the following: Dampier had planned the whole robbery; he was afraid of Dampier; Dampier used his cell phone to place the food delivery order; defendant saw the driver approach the building; and he (defendant) just stood there but knew that Dampier was going to commit the robbery. Pegan also testified that defendant "related that Dampier had a silver gun." No further details about the gun were elicited on direct examination. After that conversation with defendant, Pegan put together another photo array containing a photo of Dampier.

¶ 12 On that same date, Pegan asked Carr return to the police station to view a lineup. In the lineup, Carr identified defendant. Then Pegan showed Carr the second photo array, and Carr identified and circled the photo of Robert Dampier. At trial, Pegan identified codefendant Dampier as the man Carr identified in the photo array.

¶ 13 Pegan testified that on January 12, 2013, Dampier was arrested and Pegan had a conversation with him. Dampier told Pegan that he knew defendant Jaivon Rhymes, he received

¹ The record also gives the spelling of the detective's name as Pagan.

a phone call from defendant about doing a robbery, and that defendant had the gun. Dampier also told Pegan that after defendant robbed the driver, he also robbed Dampier. The court subsequently advised the parties that it had considered the statements of defendant and Dampier only against the maker of each statement, not against his codefendant. On that date Dampier wore dreadlocks. He was placed in a lineup viewed by Carr, who identified Dampier. Defendant was not in the January 12 lineup.

¶ 14 On cross-examination of Pegan by defendant's trial counsel, the following colloquy occurred:

"Q. And you just testified that Mr. Rhymes told you [D]ampier had a silver gun; correct?

A. Correct.

Q. You still filled out a supplemental report in this case; correct?

A. Detective supplemental report, clear close.

Q. In that report you put what Mr. Rhymes told you?

A. Yes.

Q. And you put Rhymes related the gun Dampier had was a silver toy gun with a red tip?

A. Yes.

Q. Because that's what was told to you?

A. Yes."

¶ 15 After the parties had completed their examinations of Detective Pegan, the trial court questioned Pegan:

"THE COURT: You took a statement from Mr. Rhymes in that statement he said that a silver toy gun was used[;] is that what [] he said?

THE WITNESS: Yes.

THE COURT: When you testified you said a silver gun.

Did anyone suggest that you leave the word toy out?

THE WITNESS: That would be my omission by mistake.

THE COURT: No one told you to do that?

THE WITNESS: No.

THE COURT: Are you aware, detective, the difference with respect to what a sentence would be of someone being convicted with a toy gun versus a real gun?

THE WITNESS: Yes.

THE COURT: It's 15 years additional.

It's a big omission, huge error.

So, please, make sure that that mistake never happens again in any of your testimony for your sake and for the sake of the criminal justice system."

¶ 16 After the State rested its case in chief, the court granted defendant's motion for a finding of not guilty as to three of the four counts of the indictment but denied the motion as to the aggravated robbery count.

¶ 17 The court granted Dampier's motion and entered a finding of not guilty on all counts. The court noted that Carr never told the police that the gunman had dreadlocks and did not provide a

description of that man. When Dampier was arrested several months later, he had dreadlocks, and the court concluded it would have taken Dampier many months to grow the length of dreadlocks shown in the photo array. The court also noted that the State alleged an identification of Dampier was made in a lineup, but no photograph of the lineup was produced as an exhibit at trial. The court observed: "[T]he most important issue probably at trial is the identification of an individual who is the perpetrator of a criminal act." As to Pegan's direct-examination testimony omitting that defendant stated the gun used in the robbery was a toy, the court commented: "That detective just doesn't have any creditability [*sic*] with respect to what he did in this particular case. *** And I can't believe detective Pegan beyond a reasonable doubt that Dampier made that oral statement." The court entered a finding of not guilty as to Dampier on all counts. The court also reprimanded the prosecutor for failing to correct the omission in Pegan's direct-examination testimony that the gun was a toy.

¶ 18 The trial resumed as to defendant. The parties proceeded by way of stipulation that, if called to the witness stand, Officer Wrobel would testify that during an interview on September 13, 2012, Carr told Wrobel: there was one offender with a faded hairstyle, using a black shirt to cover his face; the offender took from one of Carr's pockets \$200 and \$319 from the other pocket; the offender fled in an unknown direction; and Carr never told Wrobel that two offenders fled up the stairs together.

¶ 19 The court found defendant guilty of aggravated robbery. Regarding Pegan's testimony about the gun, the court stated: "I actually do not believe that the detective was intentionally lying to this Court in some attempt to have the Defendant convicted of armed robbery with a firearm for any reason, for reasons of the enhancement of the sentencing or any others." The

detective "immediately did acknowledge *** that it was a toy gun. And he wrote a report, provided to the defense, saying that Mr. Rhymes said it was a toy gun, not a real gun." *** I think it was a mistake."

¶ 20 As to the stipulated testimony of Officer Wrobel, the court noted that original responding officers are "not experienced detectives" and do not elicit "all of the details that ultimately come out during the course of the trial." The court concluded it found Carr's testimony credible. The court found that as Carr was delivering food, defendant "was stalling around, was not paying the food, was setting the stage up for the real robbery of Mr. Carr and the pretend robbery of [defendant]." The court also found that defendant told Detective Pegan "that it was Dampier who planned the robbery, that it was Dampier that had the silver toy gun, and that he, Mr. Rhymes, knew what was going down."

¶ 21 The court also observed that the evidence against codefendant Dampier was different where "[t]he identification of Mr. Dampier was not as clear and convincing to this Court as it was to Mr. Rhymes. There was the error made by the detective, which did affect his credibility, taken into consideration even as to what Mr. Rhymes said."

¶ 22 Subsequently, at the hearing on the posttrial motion and sentencing, and in response to defendant's posttrial motion, the court stated it was unable to find codefendant Dampier guilty because of "a serious question of identification" compounded by lack of photographic evidence of the lineup. The court stated: The "statement Mr. Rhymes gave was not mistestified to by the detective as he mistakenly testified as to what Dampier said on a very important point *** whether it was a toy gun or not, not that anybody put him up to saying it. He made a mistake." At this point, defendant's attorney advised the court that the misstatement was "regarding Rhymes'

statement, not Dampier's. The testimony was in my client's statement, not in the Co-Defendant's." The court responded: "Oh, I'm sorry. *** All right. You're correct. I made a mistake there. All right." After a pause in the proceedings, the court stated, "I have to rethink this." After another pause in the proceedings, the court said:

"All right. The motion is still going to be denied. I stand corrected about my statements today regarding the – the – which Defendant made the gun versus toy gun statement. It was – I do find that Rhymes made that statement that it was, in fact, a toy gun but the evidence still was, in fact, different between the two Defendants ***.

Dampier's evidence could only come from – since the identification of Mr. Dampier was very suspect then only the alleged statement Dampier made could have allowed the State to meet their burden of proof. In taking the error of the detective into question, that was the reason for his finding of not guilty.

And although the detective made the mistake with respect to what Rhymes said I do believe what Mr. Rhymes told the detective was that he was part of this scheme and that it was, in fact, a toy gun, is also corroborated by what Mr. Carr observed in seeing the Defendant Rhymes here join up with the second individual even though Mr. Rhymes pretended to be a victim. I clearly did not find him to be a victim in this particular case, I think what he did was just try to set up Mr. Carr by calling for the food order and then when Mr. Carr got there, he stalled and just set Mr. Carr up for – so that the second person could conduct the – complete the robbery process. Motion for new trial is denied."

¶ 23 The court sentenced defendant to a period of 30 months felony probation and 6 months in the Cook County Department of Corrections which was satisfied by defendant's pretrial credit.

¶ 24 On appeal, defendant contends that the evidence was insufficient to support a finding of guilty based on accountability because the only two things which potentially incriminated him were his statement that he allegedly gave to Detective Pegan, and Carr's testimony that defendant and the gunman left the robbery scene together via the stairs. Defendant asserts that Carr's credibility was impeached by inconsistencies in his testimony and the stipulated testimony of a police officer. Defendant also asserts that the trial court found the testimony of Detective Pegan totally lacked credibility after the detective gave false testimony. We find these claims are either unsupported by the record or insufficient to overturn defendant's conviction, and that his accountability for the actions of Dampier is supported by the evidence.

¶ 25 When considering a challenge to a criminal conviction based upon the sufficiency of the evidence, our inquiry is limited to "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." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Accord, *People v. Rowell*, 229 Ill. 2d 82, 98 (2008). Under this standard, a reviewing court will not substitute its judgment for that of the trier of fact on issues of the weight of evidence or the credibility of witnesses. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000). A reviewing court affords great deference to the trier of fact and does not retry the defendant on appeal. *People v. Smith*, 318 Ill. App. 3d 64, 73 (2000). This deferential standard of review is based on the reality that the trial judge is in a superior position to determine and weigh the credibility of the witnesses, observe their demeanor, and resolve conflicts in their testimony (*People v. Richardson*, 234 Ill. 2d 233, 251 (2009)), and we may not reverse the judgment

merely because we might have reached a different conclusion (*People v. Love*, 404 Ill. App. 3d 784, 787 (2010)).

¶ 26 In order to prove a charge of aggravated robbery, the State is required to prove that the accused "[took] property from the person or presence of another by the use of force or by threatening the imminent use of force while indicating verbally or by his or her actions to the victim that he or she is presently armed with a firearm or other dangerous weapon." 720 ILCS 5/18-5(a) (West 2012).

¶ 27 The accountability statute, section 5-2(c) of the Criminal Code of 2012 (720 ILCS 5/5-2(c) (West 2012)), provides in pertinent part that a person is legally accountable for the crime of another when: "(c) Either before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." Our supreme court has reaffirmed "that the underlying intent of [section 5-2(c)] is to incorporate the principle of the common-design rule." *People v. Fernandez*, 2014 IL 115527, ¶ 13. The accused may be deemed accountable for acts performed by another pursuant to a common plan or purpose. *People v. Cooper*, 194 Ill. 2d 419, 434 (2000). The "common design" rule provides that where two or more persons engage in a common criminal design or agreement, any acts in furtherance of that common design committed by one party are considered to be the acts of all parties to the design or agreement and all are equally responsible for the consequences of the further acts. *Id.* at 434-35, citing *In re W.C.*, 167 Ill. 2d 307, 337 (1995). Accountability may be established through a person's knowledge of and participation in the criminal scheme, even though there is no evidence that he directly participated in the criminal act itself. *W.C.*, 167 Ill. 2d at 338.

¶ 28 The evidence adduced at trial established beyond a reasonable doubt that defendant was guilty of aggravated robbery on the basis of accountability. Defendant's statement to Pegan revealed that he had knowledge of the robbery before it took place and the fact that the silver gun used in the robbery was a toy. Carr testified that when he arrived at the delivery address, he was met by defendant who gave Carr a false name ("Terry") and acted suspicious by stalling, repeatedly asking Carr how much money was owed and carefully examining each of the food items. Then Dampier entered the vestibule and announced a robbery while displaying what Carr described at trial as a silver gun with a black handle "like a 9 millimeter." Dampier ordered Carr to turn and put his hands on the wall, and then to place his valuables on the floor. Dampier also took Carr's cell phone and forced him to remove his shoes, to prevent Carr from promptly summoning help. As Carr was leaving, he looked back and saw defendant and Dampier leaving the robbery scene together. Defendant's actions demonstrated he had no intention of paying for the delivered food and his role in the offense was to intentionally delay until Dampier appeared and announced the robbery. The trial court found that defendant "was setting the stage up for the real robbery of Mr. Carr and the pretend robbery of [defendant]." Defendant was aware of the planned robbery, he actively participated in the robbery by delaying delivery of and payment for the food, and he and Dampier left the robbery scene together. These are circumstances from which a common design may be inferred. See *People v. Taylor*, 164 Ill. 2d 131, 141 (1995). Defendant's actions supported the trial court's conclusion that defendant was accountable in abetting the commission of the robbery.

¶ 29 Defendant contends that in assessing the evidence against him, Detective Pegan's testimony should be disregarded. Defendant argues that Pegan gave false testimony by omitting

the critical fact that defendant told him the gun Dampier used was actually a toy gun. Defendant argues that the trial court acquitted Dampier primarily on the basis of that false testimony. The record reflects, however, that the court believed that Pegan did not intentionally lie. In finding defendant guilty, the court relied on Pegan's testimony that defendant told Pegan that Dampier planned the robbery and had the silver toy gun; that defendant "knew what was going down"; and that defendant's role was to stall for time and avoid paying for the food delivery, setting the stage for the robbery. We reject defendant's assertion that Pegan's single omission about the gun being a toy should compel us to find that his entire testimony was flawed and should be rejected. Specific flaws in a police officer's testimony do not necessarily destroy the officer's credibility as a whole. *People v. Cunningham*, 212 Ill. 2d 274, 285 (2004).

¶ 30 Defendant also contends he was found guilty and codefendant Dampier was acquitted on essentially the same incredible testimony of Pegan. We note that the court stated the evidence against Dampier was "different. The identification of Mr. Dampier was not as clear and convincing to this Court as it was to [defendant]." Moreover, Dampier is not a party to this appeal. We are concerned only with the evidence as it relates to defendant.

¶ 31 Defendant further contends that his conviction must be reversed because the credibility of Carr was totally lacking. Defendant claims that Carr originally reported only one robber but that "[o]ver time, Carr came to believe that Rhymes set him up." Defendant asserts that Carr's claim that there were two robbers, not one, is unbelievable, because the first time Carr said there were two robbers "came months later, when he was speaking with Pegan." The record belies defendant's claim. Although Pegan did not testify when he was assigned to the robbery and began his investigation, by October 23, 2012, about six weeks after the crime, Pegan had

identified defendant as a suspect in the robbery and prepared a photo array containing defendant's photo, and on that date Carr identified defendant's photo as belonging to one of the robbers.

¶ 32 Defendant also asserts that Carr's testimony as to the number of robbers was impeached by the stipulated testimony of Officer Wrobel that Carr described only one offender, the gunman, who had a fade hairstyle and used a black shirt to cover his face. Wrobel would also testify that Carr reported the offender took money from Carr's pockets fled in an unknown direction, and that Carr never told Wrobel that two offenders fled up the stairs together. Defendant argues that Wrobel would have no reason to lie and, therefore, Carr's testimony was not credible. However, the trial court gave little weight to Wrobel's stipulated testimony. The court noted that initial responding officers are "not experienced detectives" and do not elicit "all of the details that ultimately come out during the course of the trial." Moreover, the court found Carr to be a credible witness. Carr was adamant in his testimony that he told Wrobel there were two robbers. At trial Carr identified both defendant and Dampier as the individuals who robbed him.

¶ 33 Defendant also points to an inconsistency in Carr's testimony: that Carr testified the last he saw of defendant, he was going up the stairs with the other robber, but that he also testified at another point that the last thing he saw defendant doing was "[l]ying on the steps." In a bench trial, the trial court, as the trier of fact, observes the witnesses and is responsible for judging their credibility, resolving any inconsistencies, determining the weight to give to their testimony, and drawing reasonable inferences from all of the evidence presented. *People v. Irvine*, 379 Ill. App. 3d 116, 132 (2008). We reject defendant's contention that the trial court was mistaken in its assessment of Carr's credibility. The trial judge was in a superior position to weigh the evidence

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and decide on the credibility of the witnesses. *People v. Love*, 404 Ill. App. 3d 784, 787 (2010).

In reviewing the evidence, we will not substitute our judgment for that of the trier of fact. *People v. Bannister*, 378 Ill. App. 3d 19, 39 (2007).

¶ 34 Viewing the evidence in the light most favorable to the State, as we must, we believe that a rational trier of fact could find defendant guilty by accountability of aggravated robbery beyond a reasonable doubt. We affirm the judgment of the circuit court of Cook County.

¶ 35 Affirmed.