THIRD DIVISION
July 27, 2016

No. 1-14-1011

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 5907
	)	
DARIUS BELL,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held*: We affirm the judgment of the trial court where the evidence was sufficient to convict defendant of robbery as the State successfully proved all elements of the offense beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Darius Bell was convicted of robbery (720 ILCS 5/18-1(a) (West 2012)) on a theory of accountability (720 ILCS 5/5-2 (West 2012)) and sentenced to 18 years in prison. On appeal, Bell contends that the State failed to prove he intended to assist in a robbery or, alternatively, that the State failed to prove that he entered into a common design with his co-defendants. Finding the evidence sufficient to sustain Bell's conviction, we affirm.

¶ 3 Bell's conviction arose from the March 5, 2012 gunpoint robbery of the victim, Gabriel Marshall, in the area of Lake Street and Laramie Avenue in Chicago. Bell, along with co-defendants David Williams and Diamond Chew, was charged with (1) armed robbery with a firearm and (2) aggravated unlawful restraint.

¶ 4 Around 9:00 a.m. on March 5, 2012, Marshall and several other individuals stood a short distance from a Chicago Transit Authority (CTA) Green Line station at Laramie. A silver Nissan Altima pulled up by the station and Marshall saw an individual, later identified as David Williams, struggling to get out of the vehicle because it stopped so close to the CTA stairs. Marshall then felt someone tapping on his shoulder and he turned to see Williams with a gun. Marshall saw the firearm and testified that it was a black and silver semi-automatic. Williams told Marshall to "Give me what you got," and Marshall handed Williams his Pelle leather coat.

¶ 5 During the confrontation between Marshall and Williams, the Nissan Altima had driven forward and pulled to a stop immediately in front of Marshall so he could not run. The vehicle was right next to Marshall, who was "face to face" with the passenger side of the car, with Williams on his left. Marshall heard the front seat passenger in the car, who he identified in court as Bell, instruct him, "[d]on't move." Upon hearing the command, Marshall turned and saw Bell open the front passenger-side door and swing his legs out of the car while his hand was inside his shirt. Marshall then heard the driver, identified in court as co-defendant Chew, yell "Lights out," as a police vehicle was approaching. Williams got back into the Altima with Marshall's coat and its contents. The vehicle drove off traveling southbound on Laramie. The entire encounter was captured on a CTA security camera.

¶ 6 Some bystanders flagged down the police and Marshall ran into the middle of the street pointing in the direction the Altima had driven. The people who flagged down the police van told Officer Jeffrey Bertrand and his partner that a robbery had taken place and a sliver car containing the offenders, one of whom had a gun, was heading southbound. Bertrand saw the Altima and sent out a "flash message" regarding the incident over the police radio. Bertrand began pursuing the vehicle, but ended his pursuit when he lost sight of the Altima.

¶ 7 Officer Darlene Thomas and her partner responded to the message and curbed the Altima about 10 blocks from the scene of the robbery. They detained Chew and Bell, but Williams fled. Officers apprehended Williams about one block away where a loaded gun and a separate loaded magazine were later recovered.

¶ 8 Approximately 15 to 20 minutes after the robbery, police brought Marshall to the location where the three suspects were detained. Each suspect was in a different police vehicle. Marshall identified Williams to police as the man with the black and silver firearm and Chew as the driver of the Altima. He identified Bell as the passenger in the Altima who instructed him not to move during the commission of the robbery. Marshall also identified his coat recovered from the vehicle.

¶ 9 Bell presented no witnesses, but proffered a stipulation that had Detective Turner been called to testify, he would state that he interviewed Marshall on the day of the robbery and that Marshall made no mention of Bell swinging his legs from the front passenger seat while holding his hand underneath his shirt.

¶ 10 The trial court found Bell guilty of armed robbery with a dangerous weapon other than a firearm.[1] In response to Bell's motion for a new trial, in which he argued that the evidence did not support the offense of which he was convicted, the court entered a conviction for the lesser included offense of robbery. The court "thought the testimony of the victim was very credible when he said that it was Bell who said * * * don't move," that "the impeachment * * * by the defense was not of such a significant nature as to [require] an acquittal" and "without a question, the State has met their burden of proof." The court found that Marshall's testimony, coupled with the "pivotal" security footage demonstrating how the vehicle approached the victim, demonstrated to the court "much, much more * * * with respect to accountability, step by step by step." The court noted the video footage not only corroborated Marshall's testimony, but also showed "the car point by point creeping along to establish accountability with every move of the wheel * * *." The court imposed an 18-year prison term as Bell's felony background mandated he be sentenced as a Class X offender.

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[1] In a companion case involving co-defendant Chew, *People v. Chew*, 2016 IL App (1st) 141494, ¶ 12, we make the following observation:

> [W]e note that the evidence is undisputed that the only weapon any of the offenders was armed with was a gun. Thus, the basis of the trial court's determination that Chew was armed with any other type of dangerous weapon is contrary to the record. The practice of some trial courts, in cases involving firearms, to find defendants guilty of the charged offense, but without a firearm, has not escaped notice by our supreme court. See *People v. Clark*, 2016 IL 118845, ¶ 26, fn. 2. The consequences of enhancements for offenses committed with a firearm are severe (see, *e.g.*, 720 ILCS 5/18-4(b) (West 2014) (15-20-25-to-life enhancement for aggravated vehicular hijacking); 720 ILCS 5/19-6(c) (West 2014) (home invasion); 720 ILCS 5/18-2(b) (West 2014) (armed robbery)), as this court has recognized in the context of juvenile sentencing (see, *e.g.*, *People v. Cavazos*, 2015 IL App (2d) 120444, ¶ 90; *People v. Gipson*, 2015 IL App (1st) 122451, ¶¶ 76, 80)). But the remedy for the effects of such sentencing schemes lies with the Illinois legislature and is not advanced by a trial judge's refusal to convict a defendant of an offense supported by the evidence at trial. This is particularly true where the unenhanced offense on which the conviction is entered is itself not supported by any evidence, a result that undermines the public's confidence in the judiciary's commitment to honor the rule of law.

These comments apply with equal force in this case.

¶ 11 On appeal, Bell contends that the court erred in finding him accountable for the robbery as the evidence failed to establish that he had the requisite intent to assist in the robbery or that he entered into a common design with Chew and Williams to commit the offense.

¶ 12 When a defendant challenges the sufficiency of the evidence on appeal, we consider 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. Evans*, 209 Ill. 2d 194, 209 (2004). In a bench trial, the trial court, as the trier of fact, assesses the credibility of the witnesses, determines the appropriate weight of the testimony, and resolves conflicts or inconsistencies in the evidence. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000). We will not substitute our judgment for that of the trier of fact on issues of weight of evidence or credibility of witnesses. *Id.*

¶ 13 To sustain a conviction for robbery, the State must prove beyond a reasonable doubt that defendant knowingly took property from the person or presence of another by use of force or by threatening the imminent use of force. 720 ILCS 5/18-1(a) (West 2012). Under Illinois' accountability statute, a person is legally accountable for the conduct of another when, "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2008).

¶ 14 To prove the defendant had the intent to promote or facilitate the crime, the State must present evidence that establishes, beyond a reasonable doubt, that (1) the defendant shared the criminal intent of the principal or (2) there was a common criminal design. *In re W.C.*, 167 Ill. 2d 307, 337 (1995). Under the common design rule, "where 'two or more persons engage in a

common criminal design or agreement, any acts in the 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.' " *People v. Perez*, 189 Ill. 2d 254, 267 (2000).

¶ 15 Active participation is not a requirement for liability under an accountability theory. *People v. Batchelor*, 171 Ill. 2d 367, 376 (1996). Instead, accountability may be established through a person's knowledge of and participation in the criminal plan, even though there is no evidence that he directly participated in the criminal act itself. *Perez*, 189 Ill. 2d at 267. The trier of fact may consider the defendant's presence during its commission, continued close association with other offenders after its commission, failure to report the crime, and flight from the scene. *People v. Taylor*, 164 Ill. 2d 131, 141 (1995). "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 will sustain his conviction for an offense committed by another." *In re W.C.*, 167 Ill. 2d at 338.

¶ 16 "Absent other circumstances indicating a common design, presence at the scene and flight therefrom do not constitute *prima facie* evidence of accountability; however, they do constitute circumstantial evidence which may tend to prove and establish a defendant's guilt." *People v. Foster*, 198 Ill. App. 3d 986, 993 (1990). Nor are words of agreement required to prove a common design or purpose between codefendants. *Batchelor*, 171 Ill. 2d at 376. Rather, a common design may be inferred from the circumstances surrounding the crime. *Id*. We will not set aside the trial court's finding that defendant was legally accountable for the robbery unless the evidence, when viewed in the light most favorable to the State, is "so improbable or

unsatisfactory" that a reasonable doubt regarding defendant's guilt exists. *People v. Cooks*, 253 Ill. App. 3d 184, 189 (1993).

¶ 17 Bell does not dispute that Marshall was robbed by Williams or that Williams was a passenger in the vehicle along with him. He acknowledges the evidence that shows he was in the vehicle before, during, and after the robbery. But he argues there was no evidence he knew anything about a plan to commit a robbery or he ever intended to assist or facilitate a robbery. We disagree. Marshall's testimony that Bell opened his door, swung his legs out of the vehicle with his hand underneath his shirt and instructed Marshall "don't move" established that Bell actively participated in the robbery. *People v. Slim*, 127 Ill. 2d 302, 319 (1989) ("A single witness' identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification").

¶ 18 Bell argues Marshall's testimony was impeached through the stipulated testimony of Detective Turner and, thus, unbelievable. The credibility of and weight to be accorded to Marshall's testimony regarding Bell's actions was for the trial court to determine. *Cooper*, 194 Ill. 2d at 431. The trial court found "the impeachment * * * by the defense was not of such a significant nature as to [require] an acquittal" and that Marshall was "very credible." We will not substitute our judgment for that of the trial court on those determinations. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002).

¶ 19 Bell challenges Marshall's contention that it was he who said "don't move," pointing to Marshall's testimony that he "really didn't pay attention to" the person instructing him not to move as he was concentrating on the man with the gun. Marshall stated he did not turn around and look at the man in the vehicle until after he heard "don't move." Bell therefore claims that, as

Marshall did not see who made the statement, it could have been Chew. But given that Marshall was, in his words, "face to face" with the passenger's side of the vehicle where Bell was sitting, he could clearly discern who issued the command. The trial court "thought the testimony of the victim was very credible when he said that it was Bell who said * * * don't move, " a determination we will not second guess.

¶ 20 Bell further argues he was not proven accountable for the robbery as he was merely in the car when Williams robbed Marshall, he complied with police, and the stolen property was not found on his person. Yet, Bell arrived at the scene with co-defendants when his armed companion exited the vehicle and approached Marshall. He remained in the vehicle as it slowly pulled up, blocking Marshall's escape. Bell postured to Marshall as if he too was armed and instructed Marshall not to move. Bell then fled with co-defendants and was apprehended with them. At no point did he take any actions to withdraw from the commission of the offense even after it became apparent that Williams was robbing Marshall. Finally, the stolen property was recovered in the vehicle with him.

¶ 21 From the circumstances surrounding the crime, we may infer a common design. *Batchelor*, 171 Ill. 2d at 376. Bell's presence during commission of the robbery, his continued close association with the other offenders after its commission, his failure to report the crime, flight from the scene, and his active participation in the crime by ordering Marshall not to move all support an inference that he shared a common purpose to commit the crime and are sufficient to sustain his conviction for a robbery committed by his co-defendant. *In re W.C.*, 167 Ill. 2d at 338; *Taylor*, 164 Ill. 2d at 141. Consequently, we affirm Bell's conviction and the judgment of the trial court.

¶ 23 Affirmed.