2017 IL App (1st) 142739-U

Fifth Division
March 24, 2017

No. 1-14-2739

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 12523
	)	
RODNEY BOYD,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to sustain defendant's conviction for robbery; the State failed to prove defendant guilty of unlawful restraint beyond a reasonable doubt. Affirmed in part and vacated in part.

¶ 2 Following a bench trial, defendant Rodney Boyd was found guilty of robbery, aggravated battery, and unlawful restraint. Based on his criminal history, the trial court sentenced defendant as a Class X offender and imposed terms of seven years' imprisonment for robbery, five years

for aggravated battery, and three years for unlawful restraint. All of the sentences ran concurrently with each other.

¶ 3 On appeal, defendant maintains that the State did not prove him guilty of robbery beyond a reasonable doubt because his use of force was not sufficiently close to the taking in both time and space. Defendant requests that we reduce his conviction from robbery to theft. Defendant also argues that the evidence was insufficient to prove him guilty of unlawful restraint beyond a reasonable doubt and that the conviction violates one-act, one-crime principles because it is based on the same physical act as the aggravated battery. For the following reasons, we affirm defendant's conviction for robbery and vacate his conviction for unlawful restraint.

¶ 4 Defendant was charged with one count of robbery for removing U.S. currency from the person or presence of Yongjian Ouyang (Ouyang), two counts of aggravated battery toward Ouyang, and one count of unlawful restraint of Ouyang. After waiving his right to counsel and a jury trial, defendant represented himself for a portion of his bench trial.

¶ 5 At trial, Ouyang testified through an interpreter that he was a co-owner of Chi Cafe, a 24-hour restaurant located at 2160 South Archer Avenue in Chicago, Illinois. At about 6 a.m. on July 24, 2011, Ouyang heard an employee yell, "robbery, robbery" and observed defendant running out of the front door with the restaurant's tip jar, which had been sitting on the counter next to the cash register. The tip jar contained between $900 and $1,000. Ouyang instructed two employees to chase defendant out of the front door and then went to the kitchen to ask Shaofei Chen, a co-owner of the restaurant, and the chef, Qiguang Chao (Chao), for assistance.

¶ 6 As Ouyang exited the restaurant from the back door, he observed defendant crossing the parking lot and then called the police as he gave chase. When Ouyang caught up to defendant in an alley near 22nd Street and Wentworth Avenue, defendant was screaming, "don't chase me, I

am homeless, just take the money," while holding the tip jar and throwing money into the air. Ouyang tired to "control" and "catch" defendant, who was much bigger than Ouyang, by grabbing his shirt collar from behind. Defendant then put his right elbow back and used it to hit Ouyang, who felt pain and then picked up a milk crate to protect himself. Defendant also picked up a milk crate and used it to hit Ouyang on the back of his neck and the right side of his face, which knocked out one of Ouyang's teeth.

¶ 7 Ouyang testified that when Chao, who was much smaller than defendant, "finally" caught up to them in the alley, he tried to help Ouyang. Chao "got beat up" and "pushed on to the ground" by defendant, who started running away with the tip jar. As Ouyang followed him toward Alexander Street, the 911 dispatcher called Ouyang and he indicated their location. After they stopped running at a dead-end street, Chao caught up and Chen arrived in a vehicle. When the police arrived and arrested defendant, there was still some money in the tip jar. Ouyang did not recover all of the money defendant threw in the alley "because people started coming out, pedestrians, you know."

¶ 8 Qiguan Chao testified to many of the same facts as Ouyang, including that he followed Ouyang as he chased defendant, who had taken the tip jar, to the alley on 22nd Street where he saw them fighting. Chao added that when he tried to grab defendant in the alley, defendant hit him in the face and body and he fell to the ground.

¶ 9 Shaofei Chen testified that he and Ouyang owned Chi Cafe and that on the morning of July 24, 2011, the tip jar contained about $1,000, which belonged to all the employees of the restaurant. He was "in the back of the business" with Chao when Ouyang yelled that a robbery had occurred and he saw defendant running away from the restaurant with the tip jar. While Ouyang and Chao followed defendant on foot, Chen pursued him in his vehicle. Because it was a

quiet morning, he heard the commotion and located Ouyang, Chao, and defendant, who was still holding the tip jar, on Alexander Street.

¶ 10 Following the testimony of the three occurrence witnesses, the trial court reappointed the Public Defender to represent defendant at his request.

¶ 11 Chicago police officer Renee Whittingham testified that on the morning in question, she received a dispatch call for help at 237 Alexander Place. When she arrived, defendant was sitting on a milk crate and breathing hard as if he was out of breath. Ouyang told Officer Whittingham about his injuries and showed her a tooth. When she approached defendant, he said, "I took their money." While placing defendant in custody, Officer Whittingham recovered $125.71 from his right front pocket.

¶ 12 Defendant moved for a directed finding, which the court denied.

¶ 13 Defendant testified that he entered the restaurant, which he referred to as a store during his testimony, at about 4:30 a.m. on the morning in question, and an employee said, "I don't want you N****** in my store." The employee was standing behind the cash resister when defendant explained that he had "been getting high all day," that he was "dried out," and he only came in for a Sprite. Although defendant was upset about the price when the man told him it was $2.25, defendant paid for the Sprite with cash and the man said, "F*** you, N******." When the man at the cash register refused to give defendant a receipt and started walking away, defendant "grabb[ed] the jar with the money [*sic*] it, and [he] started throwing it at customers walking out the door." The man who had been at the register turned around and said, "Hey, hey, man." Just as defendant was leaving into the "mall" and throwing money into the air, someone knocked the drink out of his hand and he pocketed $2 from the tip jar.

¶ 14 Defendant further testified that he did not leave the store with any money from the jar, and also stated that he was outside the store when someone knocked the drink out of his hand and he threw the money on the floor. When defendant was finished spilling the money out, he "threw [the tip] jar down onto the ground." After defendant walked away to an alley around one block from the store, "about two of them jumped on the back of [him]." One of "them" kicked him in the back but he "somehow came up out of it and took off running." Defendant did hit one man with a milk create in the back of the head, but not the face, and the man did not lose any teeth. After the police arrived, defendant, who "was being sarcastic," told the police "Yeah, I got their money," and defendant was taken to the hospital.

¶ 15 In finding defendant guilty on all charges, the trial court stated that the State's witnesses were very credible and that it did not believe defendant's testimony or his defense.

¶ 16 At the sentencing hearing, Sherriff's Deputy Tammy Thomas testified that she was working in Cook County jail division five on March 13, 2013. As she walked by defendant, he yelled, "[T]here's that lying b**** Ms. Thomas who lied on me in court today." When she asked him if that was a threat, defendant said it was a promise and that he would see her in the world. The State argued in aggravation that defendant was Class X mandatory based on burglary convictions from 1986 and 1988 and noted that he was most recently sentenced to four years for theft in Tennessee. The State requested a substantial sentence.

¶ 17 In mitigation, defense counsel argued that defendant was not found guilty of aggravated battery of a correctional officer for the incident involving Deputy Thomas. Defendant was indigent and homeless, only received a ninth grade education, and suffered numerous tragedies in his life, including being shot. In allocution, defendant asked to be placed under oath and then provided a lengthy account of his version of the events on the day of the tip-jar robbery.

¶ 18 In imposing sentence, the trial court stated that it reviewed the presentence investigation report, defendant's "extensive and expansive" criminal history, as well as the factors in aggravation and mitigation. The trial court sentenced defendant as a Class X offender based on his criminal background. After merging the two counts of aggravated battery, the trial court imposed sentences of seven years' imprisonment for robbery, five years for aggravated battery, and three years for unlawful restraint, all of which ran concurrently with each other.

¶ 19 On appeal, defendant first argues that the evidence was insufficient to prove him guilty of robbery beyond a reasonable doubt. Citing *People v. Smith*, 191 Ill. 2d 408, 411 (2000), defendant maintains that we should review the trial court's guilty finding *de novo* because the facts are not in dispute. We, however, disagree, viewing defendant's claim as a challenge to the sufficiency of the evidence to sustain the finding of guilt beyond a reasonable doubt. Thus, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Cardamone*, 232 Ill. 2d 504, 511 (2009). A reviewing court may not overturn a conviction based on insufficient evidence unless the proof is so unreasonable, improbable or unsatisfactory that a reasonable doubt exists. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007); *People v. Smith*, 2015 IL App (1st) 132176, ¶ 24.

¶ 20 A defendant is guilty of robbery when he "knowingly takes 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 2010). " '[T]he offense of robbery is complete when force or threat of force causes the victim to part with possession or custody of property against his will.' " *People v. Klebanowski*, 221 Ill. 2d 538, 550 (2006) (quoting *People v. Dennis*, 181 Ill. 2d 87, 103 (1998)). Although there must be "some concurrence" between the defendant's use of force and

the taking of the property (*People v. Lewis*, 165 Ill. 2d 305, 339 (1995)), the State is not required to prove that the force occurred before or during the time of the taking (*People v. Merchant*, 361 Ill. App. 3d 69, 74 (2005)). As such, it is sufficient when the defendant uses force as "part of a series of events that constitute a single incident or occurrence." *Dennis*, 181 Ill. 2d at 102; see also *People v. Runge*, 346 Ill. App. 3d 500, 505 (2004).

¶ 21 Here, Ouyang testified that when he heard an employee yell, "robbery, robbery," he observed defendant running out of the restaurant with the tip jar. After asking Chao and Chen for assistance, Ouyang ran out of the back door and caught sight of defendant as he fled across the parking lot. Ouyang chased defendant and caught up with him in a nearby alley where defendant, with the tip jar still in his possession, elbowed and hit Ouyang with a milk crate, knocked out one of Ouyang's teeth, and then continued his escape down the alley. Drawing all reasonable inferences in a light most favorable to the State, we conclude that any reasonable trier of fact could find that defendant used force in attempting to escape from the scene of the tip-jar taking. Accordingly, the evidence was sufficient to sustain defendant's conviction beyond a reasonable doubt and we affirm his conviction for robbery.

¶ 22 Defendant nevertheless maintains that the taking and his use of force, at least three streets away from the restaurant, did not occur in a "single series of continuous acts." To support his argument, defendant notes that before he used force, Ouyang solicited assistance from Chen and Chao, called the police, pursued him to an alley, and grabbed defendant's collar. We disagree with defendant's position that Ouyang's actions transformed his own conduct into two separate incidents.

¶ 23 Our supreme court has recognized that, "In many instances, flight or an escape is effectuated by use of force." *Dennis*, 181 Ill. 2d at 102, 103 (agreeing with appellate court cases

construing the element of force to "include not only the force used in the taking, but also the force used to effectuate the defendant's departure"). Thus, this court has upheld convictions for robbery where the defendant's " 'departure [was] accomplished by the use of force.' " *Merchant*, 361 Ill. App. 3d at 74 (quoting *People v. Brooks*, 202 Ill. App. 3d 164, 170 (1990)). Here, defendant used force during his escape. Accordingly, we are not persuaded by defendant's argument that Ouyang's actions precluded any reasonable trier of fact from finding that the taking and the force were "part of a series of events that constitute a single incident or occurrence." *Dennis*, 181 Ill. 2d at 102.

¶ 24 Defendant next maintains, the State concedes, and we agree that defendant was not proven guilty of unlawful restraint. To obtain a conviction for unlawful restraint, the State must establish that the defendant "knowingly without legal authority detains another." 720 ILCS 5/10-3(a) (West 2010). Here, defendant was charged with the unlawful detention of Ouyang, but there was no testimony that he detained anyone, only that he knocked Chao to the ground. See *People v. Kittle*, 140 Ill. App. 3d 951, 956 (1986) ("The gist of unlawful restraint is the detention of a person by some conduct which prevents him from moving from one place to another."). Accordingly, we vacate defendant's conviction for unlawful restraint based on insufficient evidence and we need not address defendant's alternative argument that the conviction violated one-act, one-crime principles.

¶ 25 We vacate defendant's conviction for unlawful restraint and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 26 Affirmed in part and vacated in part.