

No. 1-15-0025

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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 19956
)	
WILL BOBO,)	Honorable
)	Anna Helen Demacopoulos,
Defendant-Appellant.)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 **Held:** Defendant’s convictions for aggravated discharge of a weapon are affirmed as the evidence was sufficient for any rational trier of fact to find that he was accountable for the acts of the shooter, and that his attempts to remove the gun from the shooter’s hands were insufficient to wholly detach defendant from the shooter’s conduct.

¶ 2 Following a bench trial, defendant Will Bobo was convicted of two counts of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(1), (2) (West 2010)) and sentenced to two concurrent terms of 7 years’ imprisonment. Both convictions were based on an accountability

theory. Defendant appeals his convictions, arguing that the State failed to prove beyond a reasonable doubt that he was accountable for the actions of the shooter where there was no evidence that he shared the shooter's specific intent or that he was involved in a common criminal design. Alternatively, he argues that his conduct following the initial shooting terminated his accountability for the shooter's actions. We affirm.

¶ 3 Defendant was charged in a 16-count indictment. The State nol-prossed various counts and proceeded to trial on four counts of murder of Ronnie Bobo during the commission of a forcible felony, one count of attempt murder of Officer Richard Jones, and three counts of aggravated discharge of a weapon.¹ Defendant waived his right to a jury trial, and the case proceeded to a bench trial.

¶ 4 The State first proceeded by way of stipulation. The parties stipulated that Gary Reckoner would testify that, on October 27, 2011, his family owned and operated the Little Brown Jug tavern located in Burnham, Illinois. He would state that he was familiar with the video surveillance system that was installed and operating in the Little Brown Jug that night. On the morning of October 27, 2011, Reckoner transferred video files from the surveillance system onto a flash drive and gave the flash drive to an investigator of the suburban major crimes task force. Reckoner would identify the video footage offered into evidence by the State as the footage that he transferred from the video surveillance system of the Little Brown Jug.

¶ 5 Andre Thigpen testified that he was working as a doorman at the Little Brown Jug in the early morning hours of October 27, 2011, when a shooting occurred. The shooter was subsequently identified as Ronnie Bobo. Thigpen identified himself and Bobo, whom he did not know, from the surveillance footage, which was played in open court. The video depicts

¹ Defendant Will Bobo will be referred to as defendant. Ronnie Bobo will be referred to as "Bobo."

Thigpen, who was wearing a striped red shirt and a hat, performing his duties as the doorman while Bobo, who was wearing a white jacket and a white hat, stood with a woman near the door. Defendant, who was wearing a red hat, stood nearby. Thigpen eventually turned his back to Bobo and defendant. He heard a shot ring out. Thigpen turned around, approached Bobo, and grabbed him. Bobo continued to fire shots into the bar. As Thigpen pulled Bobo toward the door, he was still trying to raise the gun into the air.

¶ 6 After defendant exited the bar, Thigpen allowed a man, who identified himself as an off-duty police officer, to exit the bar. The officer was in plain clothes but was displaying a badge. He ordered Bobo to freeze and to identify himself. Bobo began shooting into the bar from outside, and Thigpen observed pieces of glass flying through the bar. The officer then fired a shot out of the front door.

¶ 7 On cross-examination, Thigpen acknowledged a written statement he gave to police two days after the shooting which stated that he knew Bobo from high school. At trial, however, he explained that he had actually met Bobo for the first time that evening through a mutual friend who knew Bobo from high school. Thigpen also acknowledged that, at some point before the shooting, he made Bobo leave the bar because he had brought in a container of alcohol from the outside. Shortly afterward, Bobo returned to the bar. Around 3:30 a.m., Thigpen saw the defendant, Bobo, and the woman he was with leave the bar, but he was not sure how they got back into the bar. Thigpen testified that he did not see a gun being passed from one person to another and that he never saw defendant possess a gun.

¶ 8 Officer Richard Jones testified that he was employed by the Harvey police department and that, on October 27, 2011, he and a friend went to the Little Brown Jug tavern after work. He was wearing his uniform pants and a pull-over jacket which concealed his badge and his

service weapon. Jones was standing by the entrance to the restrooms when the shooting began. Jones testified that he took out his badge, which was hanging on a chain around his neck, looked at Bobo, and announced his office. In response, Bobo started shooting in Jones's direction.

¶ 9 Jones saw the doorman guide Bobo out of the building and lock the door. The doorman then let Jones out through the door. When Jones exited the bar, he saw Bobo fire his gun through a window into the bar area. Jones again announced his office, and when Bobo fired shots toward him, he shot Bobo and removed the gun from his hand. He described the gun as semi-automatic with an extended magazine. He then waited at the scene until Burnham and Calumet City police arrived. After he shot Bobo, Jones observed defendant running across a street.

¶ 10 On cross-examination, Jones testified that he saw defendant and Bobo outside the bar when he first arrived. He did not see defendant pass a gun to Bobo and did not see defendant with a gun in his hand. He stated that music was not playing when he first announced his office to Bobo, but that people were still screaming.

¶ 11 The State then proceeded by way of stipulation. The parties stipulated that Dr. John E. Kavanaugh would testify that he performed an autopsy on Bobo and determined that the cause of death was multiple gunshot wounds.

¶ 12 The video recordings admitted at trial show the shooting from three different angles. The first angle (camera 10) looks toward the barroom door from behind the bar. It shows Thigpen performing his duties as a bouncer, as well as Bobo, his female companion, and defendant standing to the right of the door. Defendant and Bobo are seen standing in close proximity and having a conversation. When defendant steps away from Bobo, he reaches deep inside the arm of his coat and removes a gun, which he hands to Bobo. Bobo immediately raises the gun into

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the air and fires a shot into the ceiling. Thigpen then grabs Bobo, and defendant attempts to take the gun out of Bobo's hands. When Bobo breaks away from Thigpen, he is seen pointing the gun and walking out of frame.

¶ 13 The second angle (camera 5) points toward the bar from a corner of the barroom. Bobo and the woman can be seen near the top right corner of the frame. Bobo raises his arm into the air and fires a gun into the ceiling. Thigpen then grabs Bobo. When Bobo breaks free, he walks toward the left side of the frame and points his gun toward a group of people huddled against the wall. Jones, who can be seen standing in a door frame in the top left corner of the video, points his gun toward Bobo. When Bobo sees Jones pointing a gun at him, he fires a shot toward him. Thigpen then grabs Bobo and pushes Bobo out the barroom door. Jones waits a few seconds and follows Bobo out of the door. Seconds later, shards of glass can be seen flying through the room while patrons of the bar once more drop to the ground for cover.

¶ 14 The third angle (camera 3) shows the front door and part of the parking lot of the Little Brown Jug Tavern. The video shows defendant back out of the front door and into the parking lot before Bobo walks out the door. He tugs Bobo away from the door while Bobo appears to be yelling at Thigpen. As defendant walks out of the frame and away from the front door, Bobo turns toward the building, raises the gun, and fires multiple shots through a window. As Bobo walks away from the front door, while still shooting through the window, Jones exits the front door and fires his gun at him. Jones then walks out of frame.

¶ 15 Defendant moved for a directed finding, arguing that the State failed to show that had the requisite intent to be held accountable for Bobo's actions. He also argued that the surveillance footage showed that he tried to disarm Bobo after Bobo fired into the ceiling. The trial court denied defendant's motion. After allowing both sides to argue regarding accountability and

withdrawal, the trial court found defendant guilty of aggravated discharge of a weapon in the direction of another person and aggravated discharge of a weapon into an occupied building from a place or position outside that building. 720 ILCS 5/24-1.2(a)(1), (2) (West 2010). It found defendant not guilty of all other charges. The trial court denied defendant's motion for a new trial and sentenced him to two concurrent terms of seven years' imprisonment.

¶ 16 Defendant appeals, arguing that the State failed to prove beyond a reasonable doubt that he was accountable for the actions of Bobo where there was no evidence that he intended Bobo to commit an offense or that he was a part of a common design. Alternatively, he argues that he was no longer accountable for Bobo's actions after he tried to remove the gun from Bobo's hands and pull him out of the bar.

¶ 17 When a court reviews the sufficiency of evidence, it must determine “ ‘whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.’ ” *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004) (quoting *Jackson*, 443 U.S. at 318). A reviewing court must decide 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 offense beyond a reasonable doubt. *People v. Lloyd*, 2013 IL 113510, ¶ 42. This means that we must draw all reasonable inferences from the record in favor of the prosecution, and that “ ‘[w]e will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt.’ ” *Id.* (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)).

¶ 18 Relevant to this case, a person commits the offense of aggravated discharge of a weapon when he knowingly or intentionally discharges a firearm at or into a building he knows to be occupied and the firearm is discharged from a place or position outside that building; or

discharges a firearm in the direction of another person. 720 ILCS 5/24-1.2(a)(1), (2) (West 2010). In Illinois, 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 2010).

¶ 19 “[T]o prove that a defendant possessed the intent to promote or facilitate the crime, the State may present evidence that either (1) the defendant shared the criminal intent of the principal, or (2) there was a common criminal design.” *People v. Fernandez*, 2014 IL 115527, ¶ 13. “Words of agreement are not required to prove a common design or purpose between codefendants; a common design may be inferred from the circumstances surrounding the crime.” *People v. Fleming*, 2014 IL App (1st) 113004, ¶ 53. When two or more persons engage in a common criminal design or agreement, any acts committed by one party in furtherance of that common design are considered to be the acts of all parties to the common design and all parties are equally responsible for the consequences of those further acts. 720 ILCS 5/5-2(c) (West 2010).

¶ 20 Here, the surveillance video of the shooting provides direct evidence of a common criminal design. The video shows Bobo standing against a machine while defendant stands off to the side and looks around the bar. Eventually, Bobo taps defendant on the back and indicates that he wants to talk to him. The two have a conversation in close proximity, after which defendant places his right hand into his jacket to retrieve an item. After a brief exchange of words, defendant hands a gun to Bobo. Bobo immediately lifts the gun into the air and fires shots into the ceiling. This evidence, when viewed in the light most favorable to the State, could lead any rational trier of fact to find that defendant and Bobo engaged in a common criminal

design to commit a criminal offense with the gun. Defendant was as responsible as Bobo for any consequences that followed from this design. See *People v. Floyd*, 2014 IL 115527, ¶ 13. Here, these consequences included Bobo discharging the firearm in Jones's direction and again through the front window into the occupied bar. Accordingly, defendant is accountable for Bobo's aggravated discharge of a firearm offenses.

¶ 21 Defendant argues that the State failed to prove beyond a reasonable doubt that he was accountable for Bobo's conduct where he made an attempt to withdraw his efforts to promote Bobo's conduct. He contends that he tried to prevent Bobo from firing additional shots and thus terminated his accountability before Bobo committed the aggravated discharge of a firearm offenses.

¶ 22 A defendant's membership in a common criminal enterprise is presumed to continue until he detaches himself from it. *People v. Jones*, 376 Ill. App. 3d 372, 386 (2007) A defendant will not be held accountable for the conduct of another if:

“before the commission of the offense, he or she terminates his or her effort to promote or facilitate that commission and * * * (i) wholly deprives his or her prior efforts of effectiveness in that commission, (ii) gives timely warning to the proper law enforcement authorities, or (iii) otherwise makes proper effort to prevent the commission of the offense.” 720 ILCS 5/5-2(c)(3) (West 2010).

In determining whether a defendant withdrew from a criminal enterprise, “ “[t]he trier of fact must be able to find that the accused wholly and effectively detached himself from the criminal enterprise before the crime is in the process of consummation or has become so inevitable that it cannot reasonably be stayed.’ ” *Jones*, 376 Ill. App. 3d at 386 (quoting *People v. Gilbert*, 194 Ill. App. 3d 184, 189 (1990)).

¶ 23 Defendant contends that he withdrew his efforts to promote Bobo's conduct by attempting to control Bobo's hand that was holding the gun and pushing him out of the bar to prevent him from firing more shots. The surveillance video does show defendant grab Bobo's hand in an apparent attempt to take the gun away. Indeed, even the trial court recognized that defendant "attempted to stop or at least grab the arms of [Bobo]." However, whatever defendant attempted, and whatever he intended while making the attempt, the trial court could reasonably find that defendant did not make efforts sufficient to relieve him of accountability for Bobo's conduct. After Bobo breaks away from the grip of both defendant and the doorman, defendant's resistance to Bobo's actions appears to dissipate. The video shows that he resigns himself to holding the barroom door open while the doorman continues to expend effort in attempting to remove Bobo from the bar. While defendant holds the door open, Bobo fires his gun in the direction of Jones. Defendant is later seen gently tugging Bobo out of the front door but, after Bobo and defendant exit the building, defendant walks away and makes no further attempt to take the gun from Bobo. Bobo then fires his gun into the building.

¶ 24 When viewed in the light most favorable to the State, defendant's actions did not wholly deprive his prior action of handing the gun to Bobo of its effectiveness. They were not proper efforts to prevent the commission of the offense. There was, therefore, no withdrawal from the common criminal enterprise. See *People v. Nunn*, 184 Ill. App. 3d 253, 272 (1989) (no withdrawal found where, despite their assertion that they stopped one codefendant from attacking the victim, defendants walked away from the scene while other codefendants continued to attack the victim). As such, we will not disturb the determination of the trial court.

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.