2017 IL App (1st) 150313-U

No. 1-15-0313

Order filed June 15, 2017

Fourth Division

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. 13 CR 13914
	)	
CEDRIC BOLLING,	)	Honorable
	)	Paula M. Daleo,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MCBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's armed robbery conviction is affirmed where the evidence established that he used force to enter currency exchange and take cash and transit passes while employee hid in restroom. Defendant's Class 3 felony theft conviction is reduced to a Class 4 felony conviction, and his sentence is reduced accordingly, because the State did not offer evidence as to the value of the transit passes.

¶ 2 Following a bench trial, defendant Cedric Bolling was convicted of armed robbery based on testimony that he used a sledgehammer to enter a currency exchange in Forest Park and take cash and Chicago Transit Authority (CTA) passes. Defendant was also convicted of burglary and

the Class 3 felony version of theft based on the CTA passes' value of between $500 and $10,000. Defendant was sentenced to concurrent terms of eight years in prison for the armed robbery and five years each for burglary and theft. On appeal, defendant contends his armed robbery conviction should be reduced to robbery because the State did not establish he was armed with the sledgehammer at the time he entered and took the valuables. In addition, defendant argues that because the State offered no evidence as to the monetary value of the CTA passes, his Class 3 felony theft conviction should be reduced to a Class 4 conviction and this case should be remanded for resentencing on that lesser conviction.

¶ 3 The armed robbery count in this case charged defendant with knowingly taking property from the person or presence of the currency exchange employee by the use of force or by threatening the imminent use of force and while carrying on or about his person a dangerous weapon other than a firearm, namely a sledgehammer (720 ILCS 5/18-2(a)(1) (West 2012)). The burglary count charged defendant with knowingly and without authority entering the currency exchange with the intent to commit a theft (720 ILCS 5/19-1(a) (West 2012)). The theft count charged defendant with knowingly obtaining or exerting control over CTA passes that had a value of between $500 and $10,000 intending to permanently deprive the currency exchange of the use of that property (720 ILCS 5/16-1(a)(1)(A) (West 2012)).

¶ 4 At trial, Rosalinda Ramirez testified that on June 1, 2013, she was working alone as a cashier at a currency exchange at 7207 Roosevelt Road in Forest Park. Customers entered through a front door into a lobby area. Ramirez sat behind a glass window in an office area referred to as the "cage." Employees entered the cage area through a rear secured door. Several photographs of the cage area and rear secured door were entered into evidence.

¶ 5 Ramirez testified that at about 3:30 a.m., she was sitting in the cage area and heard a loud noise. Thinking a car had struck the front of the building, Ramirez looked into the lobby. She then heard "the same loud noise but multiple times" from behind her. Defendant stood outside the rear secured door, which had a vertical glass window insert, in a small vestibule in the employee entrance. Defendant was wearing black clothing and a ski mask.

¶ 6 Ramirez testified that she asked defendant what he wanted, and he responded, "Money. Money. Money." Defendant struck a window in the vestibule with a sledgehammer. Ramirez started to call 911 as defendant began to strike the window in the rear secured door. She hung up when she saw the window insert "starting to shatter."

¶ 7 Ramirez testified she "figured he's going to come in" and that "caused me to grab my cell phone and run to the bathroom." As shown in one photograph entered into evidence, the employee bathroom was within 10 feet of the rear secured door, and Ramirez would pass the rear secured door to get to the bathroom. Ramirez closed the bathroom door and locked herself inside. She called 911 again, coming out and opening the rear secured door for police when the 911 operator told her that police had arrived. Ramirez testified she was in the bathroom for about 15 minutes.

¶ 8 Ramirez assessed the office area and told police that all of the $10, $20 and $50 bills had been removed from her cash drawer, leaving only $1 bills and coins. Ramirez also testified that a bundle of CTA passes had been removed from the drawer. Ramirez's supervisor arrived, along with the currency exchange's owner, and they compared the receipts for that night to the drawer's contents and determined that $4,462.25 in cash was taken.

¶ 9 On cross-examination, Ramirez testified that when she asked defendant what he wanted, she was walking toward the rear secured door to hide in the bathroom. Defendant was making a hole in the glass and put his hand through the hole to unlock and open the rear secured door when Ramirez went into the bathroom. While in the bathroom, she could hear defendant enter the cage area. Defendant was gone when Ramirez came out.

¶ 10 Ronald Kaine, the owner of the currency exchange, testified defendant did not have permission to enter the business that night. The rear secured door was the only way for employees to enter the cage area.

¶ 11 Forest Park police officer Tom Cannon testified that when he responded to the scene, the employee entrance door was shattered, and a window inside the employee entrance was partially broken. Officer Cannon was advised Ramirez was in the bathroom and had called 911. Officer Cannon testified the window insert in the rear secured door had been "struck with an item and actually pushed in -- partially pushed in, and it was shattered." Officer Cannon observed blood on the wall of the employee vestibule, on the rear door and on the cash drawer.

¶ 12 Forest Park police officer Richard Becker testified that the day after these events, he was dispatched to a nearby residence where he recovered a knit hat or mask, latex gloves, and a sledgehammer. He described the sledgehammer as "bigger than a regular construction type hammer with a sledge-type head on it, which would be like a big block of steel." Officer Becker testified the handle was about 12 inches long. A photograph of the sledgehammer and other items was entered into evidence.

¶ 13 Forest Park police detective Jarlath Heveran testified that defendant was arrested on June 20. Inside defendant's car, he saw "[s]everal CTA rail cards," some of which were packaged.

Defendant made a statement to police and a prosecutor on June 21 that was memorialized and read into the record; in that statement, defendant admitted breaking into the currency exchange with a sledgehammer. Defendant's description of striking the vestibule window and rear secured door was consistent with Ramirez's testimony. The parties stipulated that an analysis of defendant's DNA was conducted and that a blood sample collected from near the vestibule window and from the cash drawer matched defendant's DNA profile.

¶ 14 At the close of the State's evidence, the defense moved for a directed finding as to the armed robbery count, arguing that defendant and Ramirez were never in the same room and Ramirez did not testify that she was threatened. Counsel also asserted that defendant was not holding the sledgehammer when he entered the cage area and took the valuables. Counsel argued that although defendant used force to enter the building, he did not use force to take the valuables from Ramirez's presence, and thus, defendant's actions constituted burglary, as opposed to armed robbery. The State responded that Ramirez was threatened by defendant's actions. The trial court denied the defense motion.

¶ 15 Defendant testified he committed these offenses because he did not have a job and could not pay his bills. Defendant first broke the outer glass door of the employee entrance with the sledgehammer and stepped into the employee entrance vestibule. He struck the window in the vestibule "to see if it was going to shatter" but it did not, even after he struck it three more times.

¶ 16 Defendant then struck the window insert in the rear secured door. When he heard a voice ask what he wanted, he said "money" and saw a "body, like a silhouette *** fly past" through the cracked window. Defendant did not hear any movement inside the cage area and continued to strike the window insert until he broke a hole in it.

¶ 17 Defendant testified that upon hearing sirens, he "stepped outside with one foot, my left foot. Stepped outside of the currency exchange, dropped the sledgehammer. Came back inside." He tried to put his hand through the window insert and it "wouldn't budge at first." He then "stuck it in a little more forcefully and touched the knob, and the door opened."

¶ 18 When defendant entered the cage area, he did not see anyone. He took money and "bus cards" from a drawer and fled, taking the sledgehammer on his way out and discarding it, along with his hat and gloves, behind a garbage can at a nearby residential building. Defendant testified that at the time of this offense, he was on probation for retail theft.

¶ 19 On cross-examination, defendant said he put the sledgehammer down after opening the rear secured door and did not pick it back up until he left the currency exchange. Defendant acknowledged he did not include those facts in his statement to police. Defendant said he knew the location of the currency exchange's employee entrance because he had patronized the business previously and had seen employees using that door. The parties stipulated that defendant was convicted in 2012 of retail theft.

¶ 20 In finding defendant guilty of armed robbery, burglary and theft, the trial court found that defendant used the sledgehammer to destroy the business's doors and windows "to accomplish his intent, which was to take money from that currency exchange and from anybody that might be in there." The court noted that defendant broke the employee entrance door into the vestibule and then started to break the window and the window insert in the rear secured door.

¶ 21 The trial court stated:

> "At that point Miss Ramirez, who is sitting by her desk, by her cash drawer, startled by the initial banging on the outer door, starts walking to where she hears the

> other noise, the noise from the defendant's hammer beating on the window in the vestibule."

¶ 22 The court noted Ramirez spoke to defendant and defendant continued his attempt to obtain money knowing she was inside. The court found Ramirez "knew she was in danger" when she fled to the bathroom as defendant continued to pound on the door and say he wanted money. The court found Ramirez was in possession of and in control of the money in the currency exchange and was "within the presence of the money that he's about to steal." The court noted the "money is within her presence whether she's in the bathroom using it, hiding in it or in the area near her desk," rejecting the notion that Ramirez "should have stood there while the defendant opened the locked door and come in." The court found that although Ramirez was "in another area," she was in control of the cage area before defendant entered with the weapon.

¶ 23 In conclusion, the trial court stated:

> "Therefore, based on the totality of the evidence I heard *** I do not believe this is just a burglary and a theft. I certainly find the defendant guilty of those crimes, but I think it's more.
>
> It would be a ridiculous finding on my part I think to discount the fact that Miss Ramirez was in this building, in this secured area threatened by the defendant who's beating down a door, who puts his arm through the door to open the door to think that we would split the crime at that point and say, oh, because she went and protected herself or tried to protect herself from this person breaking in with this hammer that I should now discount the fact that she was there and that the money was taken from her presence."

¶ 24 The trial court denied defendant's motion for a new trial. At sentencing, the defense presented testimony in mitigation from defendant's mother and her boyfriend and from defendant's sister and brother. The trial court sentenced defendant to eight years in prison for armed robbery, five years in prison for burglary and five years in prison for theft, with those sentences to be served concurrently. Defendant's motion to reconsider sentence was denied.

¶ 25 On appeal, defendant first contends his armed robbery conviction should be reduced to simple robbery because the State did not prove each element of armed robbery. He asserts that even though he used force to enter the currency exchange, the State was required to prove he was armed with the sledgehammer at the time he performed the taking, *i.e.*, when he took the cash and CTA passes.

¶ 26 When considering a challenge to the sufficiency of the evidence, 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. Bradford*, 2016 IL 118674, ¶ 12. It is the responsibility of the trier of fact, which was the trial judge in this bench trial, to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *Id*. Therefore, a reviewing court will not substitute its judgment for that of the trier of fact on questions that involve the weight of the evidence or the credibility of witnesses, and a conviction will not be overturned unless the evidence is so improbable, unsatisfactory or inconclusive that it creates a reasonable doubt as to the defendant's guilt. *Id*.

¶ 27 Defendant was convicted of armed robbery with a dangerous weapon other than a firearm. 720 ILCS 5/18-2(a)(1) (West 2012). Armed robbery is the taking of property from the

person or presence of another by the use of force or by threatening the imminent use of force, while the defendant is armed with a dangerous weapon. 720 ILCS 5/18-1, 18-2(a) (West 2012).

¶ 28 The essential elements of the offense of armed robbery are a "taking" of property, the use of force and the use of a dangerous weapon. *People v. Dennis*, 181 Ill. 2d 87, 103 (1998); *People v. Perea*, 347 Ill. App. 3d 26, 43-44 (2004). Defendant does not dispute that a sledgehammer is a dangerous weapon. Thus, we consider the State's proof as to the elements of "taking" and the use of force.

¶ 29 First, such a "taking" occurs when the property is in the possession or control of the victim and the defendant uses violence or fear of violence as the means to take the property. *Id*. "As long as there is some concurrence between the defendant's threat and the taking of the victim's property, a conviction for armed robbery is proper." *People v. Lewis*, 165 Ill. 2d 305, 339 (1995). A "taking" does not require that the property be removed from the victim's person or the immediate presence of the property's owner, possessor or custodian. *People v. Blake*, 144 Ill. 2d 314, 319 (1991); *People v. Smith*, 78 Ill. 2d 298, 302 (1980).

¶ 30 The facts here are remarkably similar to those in *People v. Carpenter*, 95 Ill. App. 3d 722 (1981). In *Carpenter*, two defendants were convicted of armed robbery after taking cash from a retail store while an employee locked himself in the restroom. *Id*. at 723. In affirming the defendants' armed robbery convictions, this court rejected the contention that no taking occurred from the person or presence of the employee. *Id*. at 726-27. The court found the "crucial fact is that each victim would not have left the room from which property was taken except for the use of force or the threat of imminent use of force." *Id*. at 727.

¶ 31 Here, as in *Carpenter*, although Ramirez fled to the bathroom, defendant used force to take the valuables from Ramirez's presence. While defendant asserts he did not threaten Ramirez with the sledgehammer or strike her, we do not find that negates or minimizes defendant's actions. In conclusion on this point, the State proved the element of taking of property from the victim's presence.

¶ 32 Defendant next contends his actions did not rise to the level of an armed robbery because the State failed to prove he was armed with a dangerous weapon at the time he committed the taking. He asserts that although he used the sledgehammer to enter the building and the cage area, he did not take the sledgehammer inside when he took the cash and CTA passes from the drawer, pointing to his testimony that he dropped the tool after shattering the glass and opening the door.

¶ 33 As noted above, armed robbery involves the taking of property by the use or threat of force while armed with a dangerous weapon (720 ILCS 5/18-1, 18-2(a) (West 2012)); however, the statute does not require that the offender must be holding the weapon at the precise time of the taking or that the offender use the weapon directly against the victim at the point the property is taken. Defendant does not direct us to any authority supporting those positions.

¶ 34 The State, in support of its proof as to this element, cites *Perea*, which rejects defendant's contention in this case. There, this court noted that the use of a dangerous weapon at any point of a robbery constitutes armed robbery "so long as it can reasonably be said to be part of a single occurrence or incident." *Perea*, 347 Ill. App. 3d at 44 (quoting and citing *People v. Olmos*, 67 Ill. App. 3d 281, 290 (1978)). In *Perea*, the defendants were charged with armed robbery for throwing a concrete block at the victim's head after taking his shoes and sweater, and the trial

court found those acts were contemporaneous. *Perea*, 347 Ill. App. 3d at 31-33. On appeal, this court affirmed, stating that the defendants committed "one continuous act" by beating the victim, taking his belongings, striking him with the block, kicking him and then fleeing. *Id*. at 44.

¶ 35 Here, defendant's use of the sledgehammer and his taking of the valuables were part of a single occurrence. Even accepting as true defendant's testimony that he left the sledgehammer outside while he committed the robbery, defendant used that dangerous weapon to gain entrance to the currency exchange and the cage area and take the valuables in a single occurrence. Ramirez testified that defendant struck the window insert in the rear secured door and, in response to her question, stated that he wanted money. Defendant continued to strike the window insert with the sledgehammer until it began to shatter.

¶ 36 At that point, Ramirez fled to the bathroom because she "figured he's going to come in" and defendant's actions caused her to run into the bathroom with her cell phone. As in *Carpenter*, defendant's act of force caused Ramirez to leave the area from which he took the robbery proceeds. As in *Perea*, defendant's use of the sledgehammer was part of his continuous act of entering the cage and area and taking the money and CTA passes. It was not necessary for the State to establish that defendant carried the sledgehammer inside the cage area and threatened Ramirez with it. Indeed, because Ramirez had already fled to the bathroom by the time he shattered the window and door and entered the area, defendant did not need to bring the sledgehammer inside to use against Ramirez. However, defendant had already used the sledgehammer to enter the area and take the valuables by exercising force. Viewing the evidence in the light most favorable to the prosecution, the trial court could have found the elements of

armed robbery were established beyond a reasonable doubt. Accordingly, defendant's armed robbery conviction is affirmed.

¶ 37 In defendant's remaining contention on appeal, he argues his conviction for Class 3 felony theft should be reduced to the Class 4 felony version of that offense because the State did not offer evidence of the value of the CTA passes taken from the currency exchange. He asserts that this case be remanded for sentencing on a Class 4 felony theft conviction.

¶ 38 The theft count, as charged against defendant, alleged that he knowingly obtained or exerted control over the CTA passes that were between $500 and $10,000 in value; that offense is a Class 3 felony. 720 ILCS 5/16-1(a)(1)(A), (b)(4) (West 2012). That count required the State to prove that the CTA passes had a value of between $500 and $10,000, and the State concedes no such proof of their value was offered at trial.

¶ 39 The State agrees with defendant that, absent evidence as to the passes' value, defendant's theft conviction must be reduced to the Class 4 felony version of theft pursuant to the sentencing provision for recidivist theft offenders (720 ILCS 5/16-1(b)(2) (West 2012)) ("[a] person who has been convicted of theft of property not from the person and not exceeding $500 in value who has been previously convicted of any type of theft, robbery *** is guilty of a Class 4 felony"). That statute applies here because defendant had a prior conviction for retail theft, as adduced at trial.

¶ 40 Pursuant to Illinois Supreme Court Rule 615(b)(3) (eff. Jan. 1, 1967), this court may reduce the degree of offense of which the appellant was convicted. Therefore, defendant's theft conviction is reduced from the Class 3 felony version to the Class 4 felony version.

¶ 41 In addition to reducing the degree of the offense, this court may also, pursuant to Illinois Supreme Court Rule 615(b)(4) (eff. Jan. 1, 1967), reduce the punishment imposed by the trial court. The rule itself does not contain direction as to the "scope of this power or the circumstances under which it should be exercised." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000). For example, this court has exercised its power under Rule 615(b)(4), where an extended-term sentence was improperly imposed, to reduce a defendant's sentence to the maximum non-extended term. *People v. Taylor*, 368 Ill. App. 3d 703, 709 (2006).

¶ 42 The State contends that while a conviction can be entered on the Class 4 felony version of theft, this court need not remand for resentencing by the trial court on that conviction. The State points out that defendant's sentences were ordered to run concurrently and his total prison term would be unaffected by the length of his sentence on the Class 4 felony conviction.

¶ 43 A Class 3 felony conviction is subject to a sentencing range of between 2 and 5 years in prison. 730 ILCS 5/5-4.5-40 (West 2012). Here, the trial court sentenced defendant to 5 years for his Class 3 felony theft conviction, which was the maximum term in that range. A Class 4 felony conviction is subject to a sentencing range of between 1 and 3 years in prison. 730 ILCS 5/5-4.5-45 (West 2012).

¶ 44 The State asserts that because the trial court imposed the maximum term of five years for the Class 3 felony theft conviction, this court should reduce his sentence to the corresponding maximum term of three years for a Class 4 felony theft conviction. Although the record does not contain specific statements made by the trial court in sentencing defendant to the maximum Class 3 felony term, we agree with the State that the imposition of the maximum term reflects the trial court's original intention to impose the most severe punishment possible as to that offense.

Therefore, given that sentence and the concurrent nature of defendant's three terms, remand for resentencing as to the Class 4 felony conviction is unnecessary.

¶ 45 Accordingly, pursuant to Supreme Court Rules 615(b)(3) and (b)(4), defendant's conviction for the Class 3 felony version of theft is reduced to the Class 4 felony version of that offense, and defendant's sentence for theft is reduced from five years to three years. For the reasons stated above, the judgment of the trial court is affirmed in all other respects.

¶ 46 Affirmed as modified.