2017 IL App (1st) 16-2824-U

THIRD DIVISION
May 10, 2017

No. 1-16-2824

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

IN THE INTEREST OF,	)	
	)	Appeal from the Circuit Court
	)	of Cook County, Illinois,
CHRISTIAN T., a minor,	)	Juvenile Justice Division.
	)	
Respondent-Appellant.	)	No. 16 JD 1521
	)	
	)	The Honorable
	)	Lana Charise Johnson,
	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Lavin and Cobbs concurred in the judgment.

ORDER

Held: The evidence adduced at the delinquency adjudicatory hearing was sufficient to prove the juvenile respondent guilty of robbery beyond a reasonable doubt.

¶ 1 Pursuant to a delinquency petition, and following a bench trial, the respondent, Christian T., was found guilty of robbery (720 ILCS 5/18-1 (West 2014)) on an accountability theory, adjudicated delinquent, and sentenced to five years' probation. On appeal, the respondent argues that the State failed to prove beyond a reasonable doubt that he was accountable for the robbery

because he did not help the co-offender take the cell phone and the robbery was complete once the co-offender had control of the phone. For the reasons that follow, we affirm

¶ 2 I. BACKGROUND

¶ 3 On July 7, 2016, the 17-year-old respondent was charged in a delinquency petition with robbery (720 ILCS 5/18-1 (West 2014)), aggravated battery (720 ILCS 5/12-3.05(c) (West 2014)), theft (720 ILCS 5/16-1(a)(3) (West 2014)), and simple battery (720 ILCS 5/12- 3(a)(2) (West 2014)). With respect to robbery, the petition charged the respondent with "knowingly" taking "property, to wit: a cell phone, from the person or presence" of the victim, Kia Ivana Anderson, "by the use of force or threatening the imminent use of force."

¶ 4 The parties proceeded with a bench trial at which the following evidence was adduced. The victim, Kia Anderson (hereinafter Anderson) testified that at about 12:30 p.m., on July 6, 2016, she was returning home from work, and exited the CTA red line train at 69th Street. As she walked westward outside the terminal near the red line CTA platform, station, Anderson used her Iphone[1] to communicate with a friend via FaceTime. As she did so, Anderson observed two minors, the respondent, whom she identified in court, and another individual (hereinafter the co-offender).

¶ 5 According to Anderson, the respondent, who was wearing a white t-shirt and khaki pants was sitting by the CTA platform. Anderson stated that she "looked him dead in the face" and saw that he had brown skin with freckles, and an Afro haircut with a few blond spots on top. Anderson testified that the co-offender was standing on the sidewalk by the CTA platform. She described him as dark-skinned with an oval face and stated that he wore black pants, a white t-shirt and a red t-shirt tied around his head.

[1] Anderson testified that the Iphone had cost her $849.99 plus tax.

¶ 6 Anderson testified that as she left the terminal, both minors ran around her. She then stated that the co-offender approaching her from the right and tried to grab her phone, but she held on to it pressing it to her chest. While she and the co-offender struggled over the phone, the respondent stood about 15 to 20 feet away. According to Anderson, during the struggle, the phone fell to the ground and the co-offender picked it up and ran towards the respondent. Anderson chased after the co-offender and saw him hand the phone to the respondent. She stated that she was only about 20 feet away when she saw the exchange, and was able to see clearly because it was a sunny day and she was wearing her contact lenses.

¶ 7 Anderson testified that she initially chased the co-offender, but once he handed the phone to the respondent, she chased the respondent. She pursued the respondent for about four blocks, down 71st Street, back eastward and then back south, and "ended up almost in the same spot" where she began. Anderson lost sight of the respondent near a liquor store on the corner of 69th State Streets. Anderson stated that she went into the store and someone from the store called the police for her.

¶ 8 Anderson averred that about two to five minutes later, the police arrived and she described the offenders to them. After receiving the description, the officers immediately drove off in their marked squad car. Anderson testified that when they returned about ten minutes later, they had two minors with them inside their car. The officers opened the door of the back seat of their marked squad car and asked Anderson if those were the minors who had robbed her. Anderson stated that she immediately recognized the respondent by the blond tops of his hair, his freckles and his pants. She stated she recognized him because she had chased him the longest. She also explained that she was standing right next to the squad car, only about a foot away, when she identified the respondent.

¶ 9 The State next introduced into evidence People's Exhibit No. 1, which was a CTA DVD video that partially captured the robbery. Anderson testified that she had viewed the video on a prior occasion and had placed her initials on it. She stated that the video was a true and accurate depiction of what had transpired on the day of the robbery. After Anderson viewed the video in court and testified to its contents, it was admitted into evidence at trial.

¶ 10 The video, which is in color, depicts the CTA platform outside of the red line train station. At the beginning of the video, a CTA bus is parked by the platform and there are commuters in the area. The video shows the respondent and the co-offender walking along the platform, looking at the commuters, then the respondent sitting on a bench facing the bus stop with the co-offender standing in front of him, and the two conversing. In the video, the co-offender has a red t-shirt on his head and is wearing a white t-shirt and dark pants. The respondent is wearing a white polo shirt and khaki pants. The video next depicts the co-offender walking away from the respondent and facing east where the commuters exit the train station. The minors remain in their positions, with the co-offender looking at commuters carrying cell phones. The video then shows Anderson walking westward down the CTA platform. She is holding her Iphone to her face as she walks past the co-offender who is standing on the sidewalk facing her. Once Anderson walks past him, the co-offender lifts his hand in the air (in an apparent signal) immediately turns around and follows her. When Anderson and the co-offender pass the respondent, the respondent stands up quickly, and joined by the co-offender, follows Anderson. When Anderson passes the bus, the co-offender approaches her form the back right side, while the respondent moves to her left side. The respondent steps down the sidewalk and moves further left into the street where he is obstructed by the bus. At the same time, the video depicts the co-offender trying to grab Anderson's Iphone from her hand, but she holds onto it. As the co-

offender grabs at the phone, he forcibly pulls Anderson to her left into the street behind the bus. The video does not show what happens afterwards.

¶ 11 Chicago Police Officer Ricardo Mendez next testified that at about 12:30 to 1 p.m., on the afternoon of July 6, 2016, together with his partner, Officer Gutierrez, he responded to a call of a robbery and proceeded to a liquor store at the corner of 69th and State Streets. Once there, they spoke to the victim, Anderson, who told them she had been robbed. According to Officer Mendez, Anderson described the perpetrators as two African American males. The officer recalled that one perpetrator was described as wearing khaki pants and a white polo shirt and having black hair with brown tips. He could not recall the description of the other perpetrator except that he wore blue jeans.

¶ 12 Officer Mendez testified that after obtaining the descriptions, he and Officer Gutierrez toured the area. About five minutes later, they observed the respondent about one block away from the location of the victim (at the 6900 block of South Wabash Avenue). The respondent, who had black hair with brown tips, was wearing khaki pants, and holding a white t-shirt in his hand. Officer Mendez testified that he detained the respondent, handcuffed him and placed him in the marked squad car.

¶ 13 According to Officer Mendez the officers then drove the respondent (and another individual) to the liquor store where they had left Anderson. Officer Mendez stopped the car about five feet from Anderson, and opened the door so she could view the suspects. According to Officer Mendez, Anderson immediately identified the respondent as one of the perpetrators. She was unable to identify the other individual in the squad car.

¶ 14 On cross-examination, Officer Mendez acknowledged that when the respondent was placed into custody he was searched but did not have an Iphone on his person.

¶ 15 After Officer Mendez's testimony, the State rested. The respondent moved for a directed finding, which was denied by the trial court. Thereafter, the respondent rested without offering any evidence.

¶ 16 In closing, the State argued that the respondent was accountable for the robbery because he had assisted the co-offender in approaching and surrounding Anderson. Once the co-offender approached her from the right side, Anderson could not then run to her left side because the respondent was there. The State also argued that the respondent did not detach himself from the incident but only ran after he had the Iphone in his hands.

¶ 17 Defense counsel, on the other hand, argued that the evidence did not establish beyond a reasonable doubt that the respondent participated in the robbery because he was 15 to 20 feet away when the robbery occurred and his actions after the taking were irrelevant because the robbery was over.

¶ 18 In rebuttal closing argument, the State responded that the robbery did not occur in a vacuum in that the video showed that the respondent and the co-offender ran up to Anderson, positioned themselves on opposite side of her, which prevented her from escaping. The State also argued that the respondent's flight from the scene was evidence of his guilt.

¶ 19 After hearing closing arguments, the trial court found the respondent guilty or robbery, and adjudicated him delinquent. In doing so, the court noted that it "had the opportunity to review the DVD" which showed what transpired at the scene of the crime. The court noted that "from the DVD" it could "clearly see" Anderson walking down in a westward direction, and "two individuals, who look like they are just sitting there waiting for a victim to come by to see who they might be able to take their phone or whatever from just sitting there looking to see who might be the most vulnerable person that they can take something from." The court further noted

that the DVD shows the co-offender give some kind of signal, and start to follow Anderson. Immediately thereafter, the respondent stands up and follows behind him. According to the trial court, the DVD then shows the co-offender trying to snatch the phone from Anderson and "tugging" with her.

¶ 20 The court further noted that Anderson testified that during the struggle, the co-offender succeeded in taking the Iphone from her, and that she then observed him handing it to the respondent. The court also noted that Anderson testified that she chased after the respondent, while he ran with the Iphone in his hand.

¶ 21 Based on all of the aforementioned, the trial court found that the respondent was accountable for the robbery. As the court explained:

> "So I do believe that [the respondent] and the guy were out there waiting for a victim so they could victimize them, and they found Ms. Anderson, and she looked like the person that they could take the phone from, and they tried to do it, and they didn't get away, they didn't realize that there was tape out there.
>
> Also, the fact [the respondent] ran from Ms. Anderson—if he wasn't part of it, he could have given the phone back since she saw him being handed the phone; and the fact that he took off his shirt by the time the police officers took him into custody would seem to me that maybe he was trying not to be identified. He had his shirt off and was shirtless at the time of he was arrested."

¶ 22 Following a dispositional hearing, the trial court made the respondent a ward of the court and sentenced him to 5 years' probation with the first 18 months to be served through intensive probation services. The respondent was also ordered to serve the first 30 days in home

confinement, perform 40 hours of community service and cooperate with a TASC referral and any clinical services ordered by probation. The respondent now appeals.

¶ 23 II. ANALYSIS

¶ 24 On appeal, the respondent contends that the State failed to prove him guilty beyond a reasonable doubt under an accountability theory because he did not help the co-offender take the cell phone and the robbery was complete once the co-offender had control over the phone.

¶ 25 Before addressing the merits of the respondent's contention, we first address the applicable standard of review.

¶ 26 It is well-accepted that no person, adult or juvenile, may be convicted of a crime "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970). Supreme Court Rule 660(a) explicitly provides that adjudication appeals shall be governed by the "rules applicable to criminal cases." Ill. S. Ct. R. 660(a) (eff. Oct.1, 2001); see also *People v. Austin M.*, 2012 IL 111194, ¶ 76 ("In fact, with the exception of the right to a jury trial, the fourteenth amendment to the United States Constitution extends to delinquent minors all of the basic rights enjoyed by criminal defendants."). Therefore, when a minor respondent challenges the sufficiency of the evidence to sustain an adjudication of delinquency, the standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *In re Malcolm H.*, 373 Ill. App. 3d 891, 893 (2007); see also *People v. Flynn*, 2012 IL App (1st) 103687, ¶ 22.

¶ 27 The respondent, nonetheless, contends that the aforementioned standard of review is inapplicable to the cause at bar because his sufficiency of evidence challenge does not require any assessment of the credibility of witnesses, but rather only requires an analysis of a settled set

of facts (namely the evidence contained in the DVD). As such, the respondent argues, our review should be *de novo*. In support he cites to the decision in *In re Ryan B.*, 212 Ill. 2d 226, 288 (2004). We, however, disagree and find that case inapposite.

¶ 28 Unlike in the present case, where the State presented both the testimony of witnesses, (including the victim and the arresting officer), and a DVD capturing a portion of the events testified to, and corroborating that testimony, in *Ryan B.*, the parties proceeded by way of a stipulated bench trial. In the present case, unlike in *Ryan B.*, the trial court was at liberty to disregard the testimony of both the victim and the police officer if it found it to be incredible. Accordingly, under the present circumstances, we must reject the respondent's invitation to apply a *de novo* standard of review.

¶ 29 Proceeding under the manifest weight of the evidence standard, we will not reverse the respondent's adjudication unless the evidence is so "unreasonable, improbable or unsatisfactory" that it creates a reasonable doubt of the respondent's guilt. See *People v. Rowell*, 229 Ill. 2d 82, 98 (2008).

¶ 30 Turning to the merits, we note that a person commits 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 (West 2014). A person is legally accountable for the conduct of another person 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 2016).

¶ 31 While it is true that mere presence, or presence plus knowledge that a crime is being

committed, without more, are insufficient to establish accountability, "active participation has never been a requirement for the imposition of criminal guilt under an accountability theory." *People v. Taylor*, 164 Ill. 2d 131, 140 (1995).

¶ 32 It is well-settled that under the Illinois accountability statute, the State may prove a respondent's intent to promote or facilitate an offense by showing either: (1) that the respondent shared a criminal intent of the principal; or (2) that there was a common criminal design. *People v. Fernandez*, 2014 IL 115527, ¶ 13 (citing *In re W.C.*, 167 Ill. 2d 307, 337 (1995)).

¶ 33 Under the common-design rule, if "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." *Fernandez*, 2014 IL 115527, ¶ 13 (citing *W.C.*, 167 Ill. 2d at 337). Proof of the common design need not be supported by words of agreement but may be inferred from the circumstances surrounding the commission of the act. *People v. Adams*, 394 Ill. App. 3d 217, 122 (2009); see also *Fernandez*, 2014 IL 115527, ¶ 13 ("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.") (citing *W.C.*, 167 Ill. 2d at 337). Evidence that the respondent was present during the perpetration of the offense, that he fled form the scene that he maintained a close affiliation with his companions after the commission of the crime, and that he failed to report the crime are all factors that the tier of fact may consider in determining the respondent's legal accountability. *People v. Perez*, 189 Ill. 2d 254, 267 (2000).

¶ 34 In the present case, viewing the evidence at the adjudicatory hearing in the light most

favorable to the State, we conclude that there was ample evidence to find the respondent guilty beyond a reasonable doubt of robbery under the common design accountability principle. At trial, the State introduced into evidence a video, which revealed that prior to the robbery, the respondent and the co-offender stood at the CTA terminal apparently conversing. The respondent then sat down on a bench, while the co-offender walked towards the train exit, and watched the commuters leaving the station, particularly focusing on individuals holding cell phones. The video showed that as Anderson exited the terminal, the co-offender motioned to the respondent, and then immediately began approaching Anderson from the back. As Anderson and the co-offender passed the respondent, the respondent jumped up from his seat and followed right behind them. The video showed the respondent approached Anderson on her left side, and the co-offender on her right side, before the co-offender tried to grab Anderson's phone. Anderson's testimony at trial was consistent with the video. She stated that as she exited the red line terminal both the respondent and the co-offender started "running around her;" the co-offender went to her right side while the respondent veered to her left side, making it difficult for her to escape. While it is true that at trial, Anderson acknowledged that the respondent subsequently moved away from her, and did not participate while the co-offender struggled with her over her phone, the respondent also did nothing to stop the crime or help Anderson. Instead, the respondent took the phone from the co-offender and ran with it while Anderson chased him for several blocks. What is more, at the time of his arrest within an hour of the robbery, the respondent was found in the vicinity of the crime scene, with his shirt in his hands, in an apparent attempt to escape identification. Under these circumstances, and viewing the evidence in the light most favorable to the State, we find that a reasonable trier of fact could have inferred that the co-offender and the respondent acted together with a common criminal design.

Therefore, we conclude that the evidence adduced at the delinquency adjudicatory hearing was sufficient to prove the respondent guilty of robbery beyond a reasonable doubt.

¶ 35 The respondent nonetheless cites to *People v. Dennis*, 181 Ill. 2d 87 (1998) contending that he cannot be held accountable for the robbery because the robbery was already complete when the co-offender handed him the Iphone, and his facilitation in the escape (albeit, with the phone) was not evidence of an intent to facilitate the commission of any element of the underlying offense of robbery. We disagree, and find *Dennis* inapposite.

¶ 36 In *Dennis*, the defendant, his fiancée and a friend drove to an alleyway with the intent to purchase heroin. *Dennis*, 181 Ill. 2d at 91. The defendant parked his car behind a garbage truck, allowed his friend to exit the car and then made a right turn into a T-shaped alleyway because he did not want to be close to the drug house. *Dennis*, 181 Ill. 2d at 90-91. While waiting, the defendant did not see that his friend had approached another vehicle that was parked in the alleyway, and at gunpoint had robbed two victims. *Dennis*, 181 Ill. 2d at 90. The defendant only saw that his friend was being chased by an unknown male. *Dennis*, 181 Ill. 2d at 91. When his friend jumped back into the car, the defendant believed that it was a "drug bust" and sped off in his car. *Dennis*, 181 Ill. 2d at 91. It was only then that he saw that his friend was carrying a radio and a gun. *Dennis*, 181 Ill. 2d at 91.

¶ 37 In *Dennis*, the court reversed the defendant's conviction, holding that by the time the defendant aided in the escape, the commission of the armed robbery had ended because both "force and taking, the elements which constitute the offense [of armed robbery], had [already] ceased." *Dennis*, 181 Ill. 2d at 103. The court therefore held that a defendant "who forms the intent to facilitate an escape only after the forceful taking of property has occurred can neither aid nor facilitate the conduct which is an element of robbery." *Dennis*, 181 Ill. 2d at 104. As

Dennis held: "[t]hat person is less culpable than the perpetrator and his action serves merely to impede apprehension of the perpetrator." *Dennis*, 181 Ill. 2d at 104.

¶ 38 The facts in *Dennis*, however, are completely different from the present case. Unlike in *Dennis*, where the defendant had absolutely no knowledge of the robbery until after he had helped his friend escape, the respondent here, not only knew of, and witnessed the robbery, but also participated in it from the initial selection of the victim, to the final act of receiving the stolen property (*i.e.*, Iphone) and running away with it.

¶ 39 Furthermore, unlike in the present case, proof of the defendant's intent in *Dennis* was not predicated on the common-design principle. See *Fernandez*, 2014 IL 115527, ¶ 21. In *Fernandez*, our supreme court clarified its holding in *Dennis*, explaining:

> "[W]hile *** *Dennis* [is] indeed [an] accountability case[], [it] [is] not [a] common-design rule case[]. Rather, [it is a] specific intent case[]. *** *Dennis* *** involve[s] *** shared intent. In [that] case[], the evidence clearly showed that the defendant[] had no idea that any crime was going to be committed, let alone the one that actually was committed. *** Thus, in [that] case[], the court appropriately focused upon what the[] defendant[] knew about [his] passenger['s] criminal intentions, as one cannot share an intent to promote or facilitate the commission of a crime when one doesn't even know that a crime is going to be committed. However, this emphatically is not the rule in common-design rule cases, where by definition the defendant intentionally sets out to promote or facilitate the commission of a crime. In common-design rule cases, the rule is and remains *** that 'where one aids another in the planning or commission of an offense, he is legally accountable for the conduct of the person he aids; and that the word "conduct" encompasses any criminal act done in furtherance of the planned and intended act.' [Citation.]" *Fernandez*, 2014 IL 115527, ¶ 21 .

¶ 40 As already discussed above, in the present case, the evidence at the adjudicatory hearing viewed in the light most favorable to the State established that the respondent aided the co-offender in the commission of the offense, by picking out and surrounding the victim prior to the robbery as well as helping the co-offender remove and dispose of the proceeds of that robbery after it had taken place. Accordingly, the State has proven beyond a reasonable doubt that the respondent was accountable for the co-offender's conduct.

¶ 41 III. CONCLUSION

¶ 42 For the aforementioned reasons, we affirm the judgment of the circuit court.

¶ 43 Affirmed.