FIRST DIVISION
March 19, 2018

No. 1-15-2084

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 10342
	)	
MARLONE OWENS,	)	Honorable
	)	James Michael Obbish,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for attempted robbery is affirmed. Evidence was sufficient to sustain his conviction for robbery and to demonstrate both specific intent and that he took a substantial step toward the commission of the offense.

¶ 2 Defendant Marlone Owens was convicted of attempted robbery (720 ILCS 5/8-4 (West 2012); 720 ILCS 5/18-1(a) (West 2012)) and sentenced to eight years' imprisonment after a bench trial. Mr. Owens appeals, contending that the State failed to prove beyond a reasonable doubt that he specifically intended to rob the victim or to use force. Mr. Owens also argues that

the evidence did not show he took a substantial step toward committing the offense of robbery. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Mr. Owens was charged by information with one count of attempted armed robbery (720 ILCS 5/8-4 (West 2012); 720 ILCS 5/18-2(a)(2) (West 2012)) and one count of aggravated unlawful restraint (720 ILCS 5/10-3.1 (West 2012)). On January 7, 2015, Mr. Owens waived his right to a jury trial, and the case proceeded to a bench trial.

¶ 5 Michael Repel, the only complaining witness, testified that, on April 26, 2013, he was working in the basement of his apartment building located on North Monticello Avenue when he noticed, by monitoring his surveillance system, that two men had parked their car on the sidewalk in front of the building. When he went outside to tell the men to get their car off of the sidewalk, the men informed Mr. Repel that they had locked their keys inside of the car. As Mr. Repel attempted to assist the men in trying to unlock the car, a silver Nissan SUV stopped in the street next to the car.

¶ 6 Mr. Repel testified that the rear passenger-side window was lowered and the rear passenger of the SUV pointed a "12-guage shotgun" toward the men, which caused them to stop and put their hands up. The driver of the SUV, whom Mr. Repel identified in-court as Mr. Owens, looked over his shoulder and, as he parked the SUV, asked "what do you guys got for us?" Mr. Owens exited the vehicle and asked the men "what do you got for us?" Mr. Owens then approached one of the men from the car and began to go through his pockets. When the man told Mr. Owens that everything he had was locked in the car, Mr. Owens approached the second man and removed a cell phone and U.S. currency from his pockets. Mr. Owens then looked at Mr. Repel and asked him "what do you have for me?" In response, Mr. Repel showed Mr. Owens his

cell phone and turned out his pockets to show Mr. Owens that he did not have anything else. Mr. Owens did not take the cell phone and instead got back into the SUV and drove away. Mr. Repel called 9-1-1 and gave the operator the license plate number and a description of the SUV.

¶ 7 Police detectives arrived at Mr. Repel's house where Mr. Repel gave them a surveillance video from his home surveillance system. On April 27, 2013, Mr. Repel went to a police station to view a photographic line-up. After signing a photo-spread advisory form, Mr. Repel identified a picture of Mr. Owens. On May 14, 2013 Mr. Repel identified Mr. Owens from a physical line-up.

¶ 8 The State played the video from the surveillance system which showed a red car parked on the sidewalk in front of a black, wrought-iron fence. Mr. Repel is standing on the sidewalk in between the car and the fence, and two other men are standing in the road on the other side of the car. At timestamp 5:26:18, a silver SUV stops in the middle of the road, and the rear passenger-side window is rolled down. Movement can be seen through the back passenger door, and the men standing around the red car move away from the SUV. The driver of the SUV walks around the front of the vehicle and approaches the man standing near the rear driver-side door of the red car. After a few seconds of patting that man down, the driver approaches the other man, who is standing near the front driver-side door. While reaching into this man's pockets, the driver looks toward Mr. Repel, who holds his arms out to his sides. The driver then runs back to the SUV and drives away. Approximately 50 seconds elapse between the time the SUV is driven into the frame and the time that the SUV is driven out of the frame.

¶ 9 Detective Lloyd Almdale testified that he was assigned to investigate an armed robbery which occurred on April 26, 2013. Detective Almdale went to Mr. Repel's apartment and spoke with Mr. Repel, who gave him a copy of the surveillance footage of the incident. Detective

Almdale also testified that Mr. Repel came to the police station and identified a picture of Mr. Owens from a photo array and identified Mr. Owens in a physical line-up.

¶ 10 The parties stipulated that, if called, Officer Daniel Gesicki would testify that he spoke with Mr. Repel shortly after the robbery, and that Mr. Repel identified the SUV as a silver Nissan Armada with a license plate number of 8902779. The parties further stipulated that, if called, Officer Vargas would testify that he arrested Mr. Owens on May 14, 2013, and that Mr. Owens told him that he resides at 2722 West Wilcox Street in Chicago. The State then entered into evidence a certified copy of a vehicle record for a Nissan Armada with the license plate number of 8902779. The record identified Yvette Owns as the owner of the SUV and listed her address as 2722 West Wilcox Street.

¶ 11 After the State rested its case-in-chief, the trial court granted Mr. Owens's motion for a directed finding on the count that charged him with aggravated unlawful restraint. Mr. Owens then rested without presenting evidence.

¶ 12 After argument, the trial court found Mr. Owens guilty of the lesser-included offense of attempted robbery on the remaining count of attempted armed robbery. The trial court noted that, although Mr. Repel testified that a person in the back of the SUV was pointing a shotgun toward him, and that the reaction of the victims tended to corroborate his belief, a firearm could not be seen during the surveillance footage. Accordingly, the court found that the State did not prove beyond a reasonable doubt that Mr. Owens was armed with a firearm. After a hearing, the trial court sentenced Mr. Owens to eight years' imprisonment, followed by one year of mandatory supervised release.

¶ 13 II. JURISDICTION

¶ 14 Mr. Owens was sentenced on June 1, 2015, and the motion to reconsider his sentence was

denied on June 22, 2015. He timely filed his notice of appeal on June 22, 2015. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 15 III. ANALYSIS

¶ 16 On appeal, Mr. Owens argues that the State failed to prove two of the elements of the offense of attempted robbery beyond a reasonable doubt. He argues that the State failed to prove specific intent either to take property from Mr. Repel or to threaten Mr. Repel with the imminent use of force. Mr. Owens also argues that the State failed to prove that he took a substantial step toward committing a robbery of Mr. Repel. Both of these are elements of the crime since a person commits the offense of attempt when, with intent to commit a specific offense, he does any act which constitutes a substantial step toward the commission of the offense. 720 ILCS 5/8-4 (West 2012).

¶ 17 When ruling on a challenge to the sufficiency of the evidence, a reviewing court " 'is not required to search out all possible explanations consistent with innocence or be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. On the contrary, we must ask, after considering all of the evidence in the light most favorable to the prosecution, whether the * * * evidence [in the record] could reasonably support a finding of guilt beyond a reasonable doubt.' " *People v. Grant*, 2014 IL App (1st) 100174-B, ¶ 24 (quoting *People v. Wheeler*, 226 Ill. 2d 92, 116-17 (2007)). In doing so, we must draw all reasonable inferences from the record in favor of the prosecution, and " '[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.' " *People v. Lloyd*, 2013 IL 113510, ¶ 42 (quoting *People v. Collins*, 214 Ill. 2d 206, 217

(2005)).

¶ 18 We first address the evidence as to Mr. Owens's specific intent. A person commits the offense 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 (West 2012). Because of its very nature, criminal intent is usually proven through circumstantial evidence, and a conviction may be sustained on circumstantial evidence alone. *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 10; *People v. Jasoni*, 2012 IL App (2d) 110217, ¶ 20.

¶ 19 Here, we find that the evidence, construed in the light most favorable to the State, could lead a rational trier of fact to conclude that Mr. Owens intended to rob Mr. Repel and to do so with the use of force. During the incident, Mr. Owens left the SUV and asked the group of men "what do you guy have for us" while a man in the back seat of the vehicle pointed an object at the men. Mr. Repel testified that he believed the object to have been a 12-guage shotgun. Mr. Owens then searched the pockets of the man standing by the rear passenger side door of the red car. Mr. Owens next asked the second man standing by the car "what do you have for me" and proceeded to search his pockets. While he was searching the second man's pockets, Mr. Owens looked at Mr. Repel and asked "what do you have for me?" Mr. Repel testified that he turned out his pockets and showed Mr. Owens his cell phone before Mr. Owens ran back to the SUV and drove away. Mr. Owens's act of asking Mr. Repel "what do you have for me," while another man aimed what Mr. Repel believed to be a 12-guage shotgun at him, was circumstantial evidence sufficient to lead a rational trier of fact to find that Mr. Owens intended to commit the offense of robbery against Mr. Repel through the use of force.

¶ 20 Mr. Owens nevertheless argues that the State failed to prove that he intended to take property from Mr. Repel because he never approached Mr. Repel and did not search Mr. Repel's

pockets. He maintains that "[Mr.] Repel freely and voluntarily turned his own pockets inside out." Mr. Owens also argues that the State did not prove specific intent to rob Mr. Repel because his question "what do you have for me" never mentioned money or property. We find these arguments unpersuasive. Mr. Repel's decision to turn-out his pockets was compelled by Mr. Owens's question "what do you have for me" and his belief that the man in the SUV was pointing a shotgun at him. This evidence, considered collectively, was sufficient for the trial court to conclude that Mr. Owens intended to take property from Mr. Repel through the use of force.

¶ 21 We are not persuaded by Mr. Owens's argument that he did not intend to use or threaten to use force on Mr. Repel because "[o]nce the court eliminated the gun, there was no evidence supporting a finding that Owens used force or threatened the imminent use of force" and "it is the duty of courts *** to resolve *** doubts in favor of the accused." See *Hall v. People*, 171 Ill. 540, 543 (1898). We note that whether a defendant uses force or threatens the use of force is a question for the trier of fact. *People v. Garner*, 248 Ill. App. 3d 985, 993-94 (1993). That the trial court found Mr. Owens not guilty of attempted armed robbery with a firearm demonstrates that it was resolving doubts about the existence of a firearm in favor of Mr. Owens. It does not follow, however, that the trial court's ruling is inconsistent with the finding that Mr. Owens threatened the use of force. Mr. Repel's testimony that he believed that the passenger of the SUV was pointing what appeared to be a 12-gauge shotgun at him, along with the surveillance video showing the men moving away from the rolled-down window of the silver SUV is sufficient to prove beyond a reasonable doubt that Mr. Owens intended to use some kind of force or threaten the use of some kind of imminent force against Mr. Repel.

¶ 22 Mr. Owens also questions whether the State proved beyond a reasonable doubt that he

took a substantial step towards the commission of the offense of robbery. What constitutes a "substantial step" must be determined by evaluating the unique facts and circumstances in each particular case. *People v. Perkins*, 408 Ill. App. 3d 752, 758 (2011). Although the defendant need not complete the "last proximate act" to be convicted of attempt, our supreme court has held that mere preparation to commit an offense is not sufficient to sustain a conviction for attempt. *People v. Terrell*, 99 Ill. 2d 427, 433 (1984). Rather, a substantial step should put the accused in a "dangerous proximity to success." *Perkins*, 408 Ill. App. 3d at 758.

¶ 23 After taking property from one of the men in the red car, Mr. Owens focused his attention on Mr. Repel and asked him "what do you have for me?" This compelled Mr. Repel to turn-out his pockets. These actions put Mr. Owens in "dangerous proximity" to committing the offense of robbery. Accordingly, we find that the evidence was sufficient to support the trial court's finding that Mr. Owens took a substantial step toward the commission of robbery of Mr. Repel.

¶ 24 IV. CONCLUSION

¶ 25 In sum, after viewing the record evidence in the light most favorable to the prosecution and drawing all reasonable inferences in its favor, we find that the evidence presented could lead a rational trier of fact to find Mr. Owens guilty of the charged offense beyond a reasonable doubt. See *Grant*, 2014 IL App (1st) 100174-B, ¶ 24. As noted, we reverse a defendant's conviction only where the evidence is so improbable, unsatisfactory, or inconclusive that a reasonable doubt of his guilt remains *Lloyd*, 2013 IL 113510, ¶ 42. This is not one of those cases. Therefore, we affirm Mr. Owens's conviction for attempted robbery.

¶ 26 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 27 Affirmed.