

No. 1-10-0065

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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|--------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 07 CR 6084 |
| |) | |
| JOSHUA HOSKINS, |) | Honorable |
| |) | Joseph M. Claps, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE McBride delivered the judgment of the court.
Presiding Justice Epstein and Justice J. Gordon concurred in the judgment.

ORDER

- ¶ 1 *Held:* Evidence sufficient to sustain defendant's convictions for attempted first degree murder, aggravated battery with a firearm, and armed robbery over claim that State failed to establish the *corpus delicti*; fitness for sentencing issue forfeited; judgment affirmed.
- ¶ 2 Following a bench trial, defendant Joshua Hoskins was found guilty of attempted first degree murder, aggravated battery with a firearm, armed robbery, and aggravated battery. At sentencing, the court merged defendant's aggravated battery convictions, then sentenced him to concurrent terms of 19 years' imprisonment for attempted first degree murder, aggravated battery

with a firearm, and armed robbery. On appeal, defendant contends that the State failed to establish the *corpus delicti* where no evidence independent of his statement tended to prove that he aided his companion in the commission of the armed robbery and shooting, and that the trial court violated his right to due process by failing to *sua sponte* conduct a fitness hearing despite the existence of a *bona fide* doubt as to his fitness at sentencing.

¶ 3 The record shows, in relevant part, that criminal charges were filed against Hakim Williams, Johnathon Hoskins, and defendant in connection with the armed robbery and shooting of Kevin Crain in a parking lot near 75th Street and Rhodes Avenue, in Chicago. Prior to trial, defendant moved to suppress a written statement prepared by the assistant State's Attorney which detailed his involvement in the incident, but the trial court denied the motion.

¶ 4 At trial, Crain testified that on January 14, 2007, he and two friends were driven by his brother, Corey, to "The Apartment Lounge" at 75th Street and Rhodes Avenue, in Chicago. They arrived around 2 a.m., and after spending about an hour at the club, Crain left alone and sat in his brother's Yukon Denali SUV, which was parked in a lot across the street and at a slight distance from the club.

¶ 5 About 3:30 a.m., he was in the driver's seat listening to the radio when an armed individual opened the passenger side door of the car. This activated the light inside the vehicle, which, in turn, allowed Crain to see the gunman's face. Crain testified that the gunman was a light-skinned, black individual wearing a hat, about 23 or 24 years old, and pointing a .22 caliber gun at him. The gunman said, "Don't move" and "put your money on the seat." Crain jumped out of the car, handed over about \$300 from his pocket, and the gunman shot him in the face.

¶ 6 Crain blacked out momentarily, and when he regained consciousness, he was aware of the gunman removing a white gold chain and cross that he was wearing. The gunman shot Crain two more times in the back as he walked away from the car in shock. At the time, Crain

observed two black individuals standing close together about two to three feet behind the car. They were moving their heads from right to left, and eventually entered the car and looked through it. Crain made his way back to the club where someone called for help, and he was taken to the hospital by ambulance and remained hospitalized for a week. The doctors were unable to remove the three bullets from his body, one of which had knocked out a tooth.

¶ 7 The State presented additional evidence showing that defendant was arrested on January 16, 2007, along with his brother and Hakim Williams, and that a silver Clerk .22 caliber revolver was recovered in connection with their arrests. Defendant subsequently reviewed and signed a handwritten statement prepared by the assistant State's Attorney wherein he averred, in relevant part, that on January 14, 2007, the two brothers, an individual named Chris, and Hakim (collectively, the Group) were driving around in a "hype car" and looking to do a "sting," *i.e.*, a robbery. Defendant explained that a "hype car" is rented by giving drugs to a drug user in exchange for the use of the car.

¶ 8 About 3:30 a.m., Hakim drove the hype car to 75th Street and Rhodes Avenue, an area where there were a few clubs that people would be leaving at that time. As they were driving by the intersection, Hakim called out, "I got one," meaning that he saw someone to rob, then parked the car at 7523 South Rhodes Avenue where some females that the Group knew resided. From there, the Group walked to the lot at 7502 South Rhodes Avenue, and the plan was that Hakim would perform the robbery while the others worked "S," *i.e.*, security.

¶ 9 Hakim approached the passenger side of a black GMC SUV where a lone individual sat listening to music, while defendant approached the driver's side of the car, and Chris and Johnathon kept a lookout by the taillights. Hakim then entered the car through the passenger side door armed with a silver .22 caliber pistol, and the music volume lowered. Hakim said, "Give me that shit," and when the man just looked at him, Hakim shot him in the face. The man

reached into his pocket and tossed some money towards Hakim, then opened the driver's side door of the car, stepped out, looked directly at defendant, and handed him the chain from around his neck. As the man was getting out of the car, Hakim shot him twice more in the back.

¶ 10 The Group fled and returned to the hype car where they split up the \$50 Hakim took from the man, with defendant and Hakim each taking \$20, Johnathon taking \$10, and Chris receiving nothing. Defendant gave the chain to either Chris or Johnathon. The Group then dropped off the hype car at 55th and State Streets near a KFC restaurant, and Hakim informed "the hype" of its location.

¶ 11 The court ultimately found that defendant's statement was corroborated by the testimony of Crain, then found defendant guilty of attempted first degree murder, aggravated battery with a firearm, armed robbery, and aggravated battery.

¶ 12 About one month later, on September 15, 2009, defense counsel informed the court that she received a call from the probation officer who had arrived to interview defendant for his presentence investigation report (PSI), and that the officer told her that it appeared that defendant was not taking his medication and refused to participate in the PSI. At counsel's request, the court ordered a fitness examination of defendant.

¶ 13 On October 6, 2009, counsel acknowledged that two separate reports indicated that defendant was fit for sentencing, and the court ordered another PSI at counsel's request. The record shows that one of the fitness reports indicated that defendant was fit for sentencing with medication, and that the second PSI was completed without incident. On November 2, 2009, counsel informed the court that she had received the PSI, reviewed it with defendant, and was not requesting any additions, corrections, or deletions, except for a typographical error.

¶ 14 At defendant's sentencing hearing on November 24, 2009, the State argued in aggravation that defendant's criminal history was "very violent in nature" and that he was "a danger to

society." In mitigation, defense counsel stated, *inter alia*, that "there is a long history of mental illness. Certainly that has been addressed during, in pretrial, even post trial, your Honor, there was a BCX performed, and he was found fit for sentencing." Counsel also noted, "I can attest to the fact that [defendant] has never been disrespectful to me." The court then offered defendant an opportunity to speak, which he declined by saying, "No, sir." After merging defendant's aggravated battery convictions, the court sentenced him to concurrent terms of 19 years' imprisonment on his attempted first degree murder, aggravated battery with a firearm, and armed robbery convictions.

¶ 15 In this appeal from that judgment, defendant first contends that the State failed to establish the *corpus delicti* as to his accountability for the offenses of which he was convicted. He maintains that the State was required to present evidence which tended to confirm that he acted as a lookout while Hakim committed the armed robbery and shooting, but that it only offered the trial testimony of Crain, which, he claims, was "wholly impeached" and inconsistent with defendant's confession. The State responds that it presented sufficient evidence independent of defendant's confession to establish the *corpus delicti*.

¶ 16 Under Illinois law, proof of an offense requires the establishment of two distinct propositions or facts beyond a reasonable doubt: (1) that a crime occurred, *i.e.*, the *corpus delicti*; and (2) that the crime was committed by the person charged. *People v. Sargent*, 239 Ill. 2d 166, 183 (2010). To establish the first of those propositions, the *corpus delicti*, the State must prove that an injury or loss occurred and that it was caused by criminal conduct. *People v. Furby*, 138 Ill. 2d 434, 446 (1990).

¶ 17 Although defendant's confession may be integral to proving the *corpus delicti*, that proof may not rest exclusively on defendant's extrajudicial confession, admission, or other statement. *Sargent*, 239 Ill. 2d at 183. Where the State seeks to use defendant's confession as part of its

proof of the *corpus delicti*, it must also present corroborating evidence independent of that statement. *Sargent*, 239 Ill. 2d at 183. If such evidence tends to prove that an offense occurred and is corroborative of the facts contained in the confession, it may be considered by the court, along with the confession, in establishing the *corpus delicti*. *People v. Willingham*, 89 Ill. 2d 352, 361 (1982).

¶ 18 Here, defendant was convicted of the attempted first degree murder, aggravated battery with a firearm, and armed robbery of Crain under an accountability theory. His convictions were based on his confession that he acted as security for Hakim Williams who actually committed the armed robbery and shooting, and also on the testimony of Crain, which the State offered at trial to corroborate that confession. The two accounts were consistent on the following facts. About 3:30 a.m. on January 14, 2007, Crain was sitting in a SUV in a parking lot near 75th Street and Rhodes Avenue and listening to the radio when an individual armed with a .22 caliber gun entered the car through the passenger side door and demanded money. In the moments that followed, Crain handed over the money, was shot in the face by the gunman, and got out of his vehicle, at which point someone took the chain that he was wearing around his neck. The gunman then shot Crain two more times in the back while two males stood at the rear of the car. In these respects, the independent evidence offered by the State at trial showed that an offense occurred and corroborated the facts in defendant's confession to establish the *corpus delicti*. *Willingham*, 89 Ill. 2d at 363.

¶ 19 Defendant, nonetheless, claims that the State was required, but failed, to present independent evidence tending to prove that he aided Hakim in the commission of the offense, *i.e.*, that he was accountable. He maintains that the testimony of Crain was insufficient corroboration of his confession in that regard because Crain was impeached on cross-examination and provided testimony that was factually inconsistent with the confession. We

note that the independent evidence offered by the State is not required to correspond in every particular with the details of defendant's confession, and need only tend to inspire belief in the confession. *People v. Harris*, 389 Ill. App. 3d 107, 129 (2009), and cases cited therein. The independent evidence here established the shooting and the robbery which corroborated the details of defendant's confession and inspired belief in it. *Harris*, 389 Ill. App. 3d at 130.

¶ 20 Notwithstanding, defendant argues that the State was required to present independent corroborating evidence as to his accountability for the crimes. Although he relies on a statement made by the supreme court in *Sargent*, 239 Ill. 2d at 185, that the State must present independent corroborating evidence relating "to the specific events on which the prosecution is predicated," that statement was made in the context of a situation where there were "separate acts which gave rise to separate charges" of predatory criminal sexual assault and aggravated criminal sexual abuse. In that same case, the supreme court noted that where defendant confesses to multiple offenses, there must be independent corroborating evidence tending to show that he committed each of the offenses of which he was convicted. *Sargent*, 239 Ill. 2d at 184-85.

¶ 21 Here, accountability was not an offense of which defendant was convicted, but rather, the theory under which he was convicted. *People v. Groves*, 294 Ill. App. 3d 570, 580 (1998), citing *People v. Holmes*, 67 Ill. 2d 236 (1977). As such, the State was not required to present independent evidence tending to connect defendant to the crime, but only proof that an injury had occurred and that it was caused by criminal conduct. *Groves*, 294 Ill. App. 3d at 580, citing *Holmes*, 67 Ill. 2d at 239-40. We therefore find defendant's reliance on *Sargent* misplaced, and conclude that the State properly established the *corpus delicti* of the crimes charged.

¶ 22 Defendant next contends that his right to due process was violated when the trial court failed to *sua sponte* conduct a fitness hearing at sentencing. He claims that there was a *bona fide* doubt as to his fitness where he had been found fit to stand trial only with medication, and the

trial court learned prior to sentencing that he had stopped taking his medication, became disruptive and combative in jail, and refused to cooperate with a probation officer while he was interviewed for his PSI. He also maintains that the proper remedy is for this court to vacate his sentence and remand the cause for a new sentencing hearing.

¶ 23 The State responds that defendant has waived this issue by failing to raise it in a motion to reconsider. *People v. Reed*, 177 Ill. 2d 389, 390 (1997). The State further claims that because there was no *bona fide* doubt as to his fitness at sentencing, and thus no error, the procedural default of his claim should be honored.

¶ 24 Our review of the record confirms that defendant failed to challenge his fitness at sentencing in a motion to reconsider sentence, as required. As such, he has forfeited this claim. *People v. Hillier*, 237 Ill. 2d 539, 544-45 (2010). Defendant has also forfeited plain error review by failing to argue for it, and thereby rendering him unable to meet his burden of persuasion on how either of the two prongs of the plain-error doctrine is satisfied. *Hillier*, 237 Ill. 2d at 545-46.

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

¶ 26 Affirmed.