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SIXTH DIVISION  
September 28, 2012

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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. 04 CR 4075
	)	
VERNARD CROCKETT,	)	The Honorable
	)	Maura Slattery-Boyle,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.  
Justice Palmer concurred in the judgment.  
Justice Robert E. Gordon dissented.

**ORDER**

¶ 1 *HELD:* Defendant's contention challenging the sufficiency of the evidence to support his murder conviction is not properly before this court. Defendant's confrontation clause argument also is not properly before this court and is barred by the law of the case doctrine. Defendant's sentence was not excessive.

¶ 2 This case appears before us a second time. On the initial appeal, we vacated the attempted armed robbery conviction of defendant, Vernard Crockett. During that appeal,

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defendant did not raise a sufficiency of the evidence challenge to his first degree murder conviction. His murder conviction was affirmed. We remanded the cause for resentencing of the murder conviction, finding it impossible to determine whether defendant's attempted armed robbery conviction influenced his murder sentence. On remand before a new judge, the circuit court sentenced defendant to 42 years' imprisonment for first degree murder. Defendant contends that the trial evidence failed to support his murder conviction. Defendant additionally contends the circuit court erred in admitting testimony in violation of the confrontation clause. Defendant finally contends the circuit court erred in failing to reduce his sentence. Based on the following, we affirm.

¶ 3

#### FACTS

¶ 4 Defendant has adopted the facts as provided in his initial appeal. *People v. Crockett*, No. 1-06-3578 (July 17, 2009) (unpublished order pursuant to Supreme Court Rule 23). The evidence at trial showed that, on January 20, 2004, defendant and Ronald Lamar were involved in the shooting death of defendant's girlfriend, Jazmine Robinson, who was four to six weeks pregnant at the time. Lamar pleaded guilty and refused to testify against defendant.

¶ 5 After offering two inconsistent alibis that were broken by the police, defendant provided three substantially consistent police statements in which he admitted arranging a robbery of Robinson because Lamar wanted to "hit a lick," *i.e.*, to rob someone. In his statements, defendant said he was aware that Lamar carried a handgun and believed Robinson would not release the \$650 he knew to be in her possession unless she was threatened with a weapon. Defendant said he offered to "set it up," such that he and Lamar would go to the victim's home

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the next Tuesday to look at the results of a pregnancy test. Defendant said he believed he had impregnated Robinson. According to his statements, defendant and Lamar had agreed upon a signal to begin the robbery, namely, they would proceed to the victim's basement and defendant would wink at Lamar. In one of his statements, defendant said he told Lamar to bring the gun as a threat, but not to use it to hurt the victim. Defendant stated that he examined Lamar's gun, a black .380 semi-automatic, on the Sunday prior to the arranged robbery. Defendant further said that he accompanied Lamar to Lamar's house to pick up the gun and the pair proceeded to Robinson's home on Tuesday, January 20, 2004. While at the victim's house, defendant requested something to drink and the victim poured him a glass of Bacardi. When the group went into the basement, defendant placed the glass on a freezer and asked the victim to retrieve a compact disk. The victim complied and, upon her return, she turned on music, "up real loud." Defendant then gave Lamar the signal to begin the robbery. In response, Lamar asked the victim where the money was. The victim turned toward defendant and looked at him. Lamar continued demanding the money until he shot the victim in the back. At that point, defendant fled from the home (while fleeing he heard 3 or 4 more shots) and did not report the shooting. In his interview, when asked if he was the shooter, defendant told the Assistant State's Attorney (ASA) that if he were to rob and shoot somebody, he would never admit it and "they would have to prove it."

¶ 6 Defendant testified at trial, denying that he arranged the robbery. Defendant testified that he received a phone call from his girlfriend, the victim, asking him to her house to look at the results of a pregnancy test. Defendant testified that he encountered Lamar while on the way to the victim's house and invited him to walk with him. Upon their arrival, Lamar and defendant

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entered the victim's home. Defendant requested something to drink. The group settled into the basement where defendant was given a glass of Bacardi, which he set down on top of a freezer because he did not drink Bacardi. Defendant asked the victim to retrieve a compact disk, which she did. Then, Lamar produced a handgun. Defendant testified that, up until that point, he was unaware that Lamar was armed. Defendant asked him to put the gun away. According to defendant's testimony, the victim was uncomfortable with the presence of the handgun and told Lamar to leave while threatening to call the police. When Lamar failed to comply, defendant and he engaged in a heated verbal exchange. At some point, the victim approached Lamar and pushed him from behind. In response, Lamar pushed the victim to the ground and shot her once. Defendant testified that he immediately fled the home and heard three or four gunshots while running away. Defendant admitted at trial that he did not report the incident, but claimed that it was out of fear for his and his family's safety.

¶ 7 Forensics testimony revealed that .38 caliber cartridge cases from fired bullets were recovered around the body of the victim. The cartridge cases were fired from the same semi-automatic weapon. The gun, however, was never recovered. Investigators also recovered a bottle of Bacardi in the kitchen refrigerator and a glass on the freezer chest in the basement. A positive home pregnancy test was found in a dresser drawer in the victim's bedroom.

¶ 8 The jury found defendant guilty of attempted armed robbery and first degree murder. The circuit court sentenced defendant to 42 years' imprisonment for murder and a consecutive 10-year prison term for the attempted armed robbery conviction.

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¶ 9 In his initial appeal, defendant argued that the State failed to prove the *corpus delicti* of the attempted armed robbery charge where the only evidence presented was his statement. We agreed and reversed defendant's attempted armed robbery conviction. *Crockett*, No. 1-06-3578, slip op. at 9. Defendant additionally argued that the circuit court improperly allowed the hearsay testimony of a detective regarding conversations with Lamar, which led to defendant's arrest. We found the testimony was properly admitted to demonstrate the detective's police investigatory procedure and was, therefore, not testimonial. *Id.* at 11. Finally, we remanded the cause to the circuit court for resentencing because we could not "conclude based upon our review of the record that the murder sentence was not influenced by the improper attempted armed robbery conviction." *Id.* at 12. On remand, we instructed the circuit court not to consider the end result of defendant's conduct in fashioning the sentence, or Lamar's comments when entering his guilty plea. *Id.* at 11.

¶ 10 Upon remand, the case was heard by a new judge because the original trial judge had been reassigned. After a rehearing in aggravation and mitigation, the new judge sentenced defendant to 42 years' imprisonment. In so ruling, the judge said:

"Now so that it's clear for the purpose of the record and for the Appellate Court, the Court has never heard any statements by Ronald Lamar, so the Court is unaware as to what that may have been so that the Court in making its decision into sentencing, that does not enter a factor.

The Court is aware of what the end result is in every murder, and it is a sad one, but the Court is looking at the actions, and the aggravating factors and the

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mitigating factors presented by both attorneys as well as Mr. Crockett's statement.

\* \* \*

I find it immensely sad, especially the one from your brother about how he is crying [*sic*] he was to write this letter, and about how he misses you and how good you were with children. And so to say to the Court and what the Court finds so disturbing is how you were so good with children, but yet you decide to go over and there was an unborn child and this woman, and that the actions that you then ensued or caused to happen and then the end result. The Court is not considering the end result.

And recognizing that you were 17, the Court also looks at your conduct, what you have chosen to do and how you even at a young age how you have decide to conduct your life being involved in the wrong place at the wrong time. Even at the young age of 17, there are choices that are made and there are choices that do effect us. And they are willing choices. All of these were willfully made by you.

You went over to that location with Ronald Lamar and with a gun. You thought and you planned to go over there, and you had a weapon. You had deliberately thought this out. You had decided what your actions were. You decided what your actions have been all along.

And regardless of the age of 17 or not, you as an adult, and you are an adult, and regardless of packing [*sic*] liquor, voting, or cigarettes, the choices that

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you made have decimated two families.

So it was a plea of not guilty. There was a jury that found you guilty on the charge of first degree murder, it is a finding of guilty and the Court will sentence you to 42 years Illinois Department of Corrections."

Defense counsel immediately filed a posttrial motion to reconsider the sentence. The circuit court denied the motion. This appeal followed.

¶ 11

## DECISION

¶ 12

### I. Sufficiency Of The Evidence

¶ 13 Defendant first contends the trial evidence failed to support the jury's verdict. Defendant argues that the reversal of his attempted armed robbery conviction necessarily negates his first degree murder conviction where there was no predicate felony upon which to find him guilty of felony murder. Defendant acknowledges that he was charged by indictment of first degree murder in three ways, only one of which was felony murder, and that the jury returned a general verdict. Defendant, however, argues that the evidence was insufficient to support a conviction of intentional or knowing murder where it merely established his presence at the murder scene. Defendant further acknowledges that he has raised this contention for the first time in this appeal, yet he argues that reasonable doubt challenges may be raised for the first time on appeal.

¶ 14 Waiver will be found where a defendant fails to raise an issue in his initial appeal and attempts to raise it for the first time in his second appeal. *People v. Young*, 152 Ill. App. 3d 361, 365, 504 N.E.2d 115 (1987). We recognize that waiver does not apply to reasonable doubt challenges raised on direct appeal that were not raised previously in a posttrial motion. *People*

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v. King, 151 Ill. App. 3d 644, 647, 503 N.E.2d 384 (1987); see People v. Enoch, 122 Ill. 2d 176, 190, 522 N.E.2d 1124 (1988). The facts before us, however, differ from the situation presented in King. This case is a second appeal following our remand to the circuit court for the resentencing of the murder conviction, which was affirmed on direct appeal. Defendant did not raise a sufficiency of the evidence challenge to his murder conviction in his initial appeal, despite the fact that such a challenge was a logical corollary to his challenge to the attempted armed robbery conviction. In other words, based on defendant's contention that there was no corpus delicti to support his attempted armed robbery conviction, arguably there was no underlying felony upon which to base a felony murder conviction. Where defendant contends there was no evidence to support intentional or knowing murder, it was practicable and logical to raise a contention challenging the sufficiency of the evidence supporting his murder conviction in conjunction with his challenge to his attempted armed robbery conviction.

¶ 15 Moreover, the holding in King has not been extended to provide endless opportunities for a defendant to raise a sufficiency of the evidence claim on repeated appeals. Rather, it has been established that a defendant is prohibited from "taking two bites out of the same appellate apple." People v. Partee, 125 Ill. 2d 24, 37, 530 N.E.2d 460 (1988). Finding that defendant did not waive review of his contention by not raising it in his initial appeal, when it was readily available, would threaten the finality of convictions in perpetuity. For example, considering this case at the same procedural posture of our remand for resentencing, what if an error occurred during the resentencing, such as the trial court's failure to consider mitigation evidence, and defendant properly appealed for a third time. Would he be entitled to raise a challenge to the

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sufficiency of the evidence supporting his murder conviction at that time? What if the case was sent back for a third sentencing hearing as a result of that error and another error occurred, such as the improper increase of defendant's sentence. Would defendant be entitled to challenge his murder conviction during a fourth appeal? Such a result could not be intended by King as it fails to promote judicial economy, impedes finality of judgments, and fails to protect the integrity and orderly administration of the judicial system. We, therefore, conclude that defendant waived his ability to challenge his murder conviction by failing to raise it in his initial appeal.

¶ 16 Defendant additionally argues that our order remanding the case for resentencing provided him with the right to challenge any aspect of his judgment because a conviction requires a judgment and a sentence and his sentence was no longer final. We disagree. "On remand, a trial court has no authority to act beyond the scope of the mandate." *People v. Gonzalez*, 407 Ill. App. 3d 1026, 1036, 944 N.E.2d 834 (2011). In this case, on remand, the circuit court conducted a sentencing hearing in compliance with our mandate. "It is axiomatic that in an appeal from a contested proceeding, the only errors at issue are those errors which occurred at that proceeding." *People v. Hall*, 195 Ill. 2d 1, 34, 743 N.E.2d 126 (2000) (where the matter was remanded with instructions to hold a resentencing hearing, the lower court lacked jurisdiction to consider the defendant's argument regarding his fitness to stand trial). The sufficiency of the evidence supporting defendant's first degree murder conviction was not at issue on remand and, therefore, he has no right to have us consider it. This appeal is not the proper vehicle in which to raise such an argument. Furthermore, "when an appellate court reverses and remands the cause with a specific mandate, the only proper issue on a second appeal is whether

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the trial court's order is in accord with the mandate." *Petre v. Kucich*, 356 Ill. App. 3d 57, 63, 824 N.E.2d 1117 (2005) (citing *Foster v. Kanuri*, 288 Ill. App. 3d 796, 799, 681 N.E.2d 111 (1997)); *People ex rel. Daley v. Shreier*, 92 Ill. 2d 271, 279, 442, N.E.2d 185 (1982) ("when a reviewing court issues a mandate, it vests the trial court with jurisdiction to take only such action as conforms to that mandate").

¶ 17 A recent case decided in this court, *People v. Edgecombe*, 2011 IL App (1st) 092690, would not support the proposition advanced by defendant. In *Edgecombe*, this court considered the defendant's postconviction appeal, in which he raised a challenge to the fairness of his trial where a jury note was discussed in his absence and allegedly he received ineffective assistance of trial counsel. During the course of the appeal, it became apparent that defendant's mittimus needed to be corrected to accurately reflect concurrent sentences for first degree murder with a firearm enhancement and attempted murder. In a supplemental brief, the State argued for the first time that the attempted murder conviction should also contain a firearm enhancement. Before addressing the merits of the claim, this court expressly stated that the State had forfeited its claim by failing to request a similar special verdict form as the murder conviction with the sentencing enhancement, failing to raise the enhancement at the sentencing hearing, and failing to raise the issue in posttrial motions, on direct appeal, or in the original briefs on the postconviction appeal. *Id.* at ¶19. Notwithstanding forfeiture, the court chose to address the merits of the claim, ultimately denying the requested firearm enhancement. The court then advised the defendant of his right to file an appeal after the entry of the resentencing order. *Id.* at ¶31. The court further stated that the defendant's postconviction claim as related to the jury note

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remained available. *Id.*

¶ 18 Unlike in our case, the defendant in *Edgecombe* was before this court on a postconviction petition and the issues related to his judgment had already been raised, thus, assuming the defendant wanted to follow through with those contentions after having been resentenced, the issues were preserved. Here, as repeatedly stated, there was no challenge to defendant's murder conviction raised before this court in defendant's initial appeal. Accordingly, our mandate remanding for resentencing did not provide defendant an opportunity to raise issues that had been waived.

¶ 19 Even assuming, *arguendo*, we were required to consider the merits of defendant's challenge to his murder conviction, we would find there was sufficient evidence to support the jury's verdict.

¶ 20 A challenge to the sufficiency of the evidence requires a reviewing court to determine "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 crime beyond a reasonable doubt." (Emphasis in the original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). It is not the reviewing court's function to retry the defendant or substitute its judgment for that of the trial court. *People v. Evans*, 209 Ill. 2d 194, 209, 808 N.E.2d 939 (2004). The trial court assesses the credibility of the witnesses, determines the appropriate weight of the testimony, and resolves conflicts or inconsistencies in the evidence. *Id.* at 211. In order to overturn the trial court's judgment, the evidence must be "so unsatisfactory, improbable or implausible" to raise a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307, 537 N.E.2d 317

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(1989).

¶ 21 In order to sustain a conviction under a theory of accountability, the State must prove the defendant, "either before or during the commission of the offense, intentionally aided or abetted an offender in conduct that constitutes an element of the offense." *People v. Taylor*, 186 Ill. 2d 439, 447, 712 N.E.2d 326 (1999). Accountability is established where the State proves beyond a reasonable doubt that the defendant either shared the criminal intent of the principal or there was a common criminal design. *People v. Perez*, 189 Ill. 2d 254, 266, 725 N.E.2d 1258 (2000). Intent may be inferred from the character of the defendant's acts and the circumstances surrounding the commission of the offense. *Id.* at 267. Pursuant to the common design rule, where two or more persons engage in a common criminal design or agreement, any acts in furtherance thereof committed by one party are considered to be the acts of all parties to the common design or agreement and are all equally responsible for the consequences of such further acts. *Id.* Accountability may be established through a person's knowledge of and participation in the criminal plan, even though there is no evidence that the defendant directly participated in the criminal act itself. *Id.* To establish accountability, the trier of fact may consider proof that the defendant was present during the commission of the offense, that he fled 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. *Id.*

¶ 22 When a defendant is convicted under a theory of accountability, he shares equal guilt with the principle perpetrator of the crime. *People v. Thompson*, 313 Ill. App. 3d 510, 516, 730 N.E.2d 118 (2000). The evidence need only prove that the defendant had the specific intent to

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promote or facilitate *a crime*, which need not be the actual crime for which he was charged. *People v. Miscichowski*, 143 Ill. App. 3d 646, 655, 493 N.E.2d 135 (1986) (citing *People v. Terry*, 99 Ill. 2d 508, 514, 460 N.E.2d 746 (1984)). "Once the State proved that the defendant intended to promote or facilitate *a crime*, he was responsible for *any* criminal act done in furtherance of the intended crime." (Emphasis in original. ) *Id.*

¶ 23 Assuming a verdict based on felony murder would be infirm because we found no *corpus delicti* to support defendant's attempted armed robbery conviction, the remaining elements of first degree murder require intent to kill or do great bodily harm or knowledge that such acts will cause death, or knowledge that such acts create a strong probability of death or great bodily harm. 720 ILCS 5/9-1(a)(1), (2) (West 2010); see *People v. Davis*, 233 Ill. 2d 244, 263, 909 N.E.2d 766 (2009) ("it is well settled that when an indictment alleges three forms for a single murder—intentional, knowing and felony murder—and a general verdict is returned, the net effect is that the defendant is guilty as charged in each count and there is a presumption that the jury found that the defendant committed the most serious of crimes alleged, which is intentional murder").

¶ 24 Our review of the record has revealed sufficient evidence to support the jury's verdict holding defendant accountable for the victim's murder. Defendant was actively involved before and during the commission of the victim's murder and then fled the scene and failed to report the crime. In his police statements, defendant provided details regarding the plan which he "set up" to rob his girlfriend at gunpoint. According to his statements, defendant asked Lamar to bring his handgun, which was a .38 semiautomatic. Defendant said he planned to visit the victim's

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home under the guise that he wanted to observe her pregnancy test. Defendant further provided that he would give Lamar a signal as to when to begin the robbery. When they arrived at the victim's house, the plan was put into action, such that defendant asked to see the victim's pregnancy test, obtained a glass of Bacardi alcohol that he had no intention of drinking, and encouraged the victim to loudly play music in the basement. Defendant then gave Lamar the signal to begin the robbery. Defendant remained in the basement while Lamar pushed the victim and shot her after repeatedly demanding money. Defendant then fled and failed to report the murder.

¶ 25 At trial, defendant recanted his statement to the extent that he planned the robbery. Defendant, however, testified that he went to the victim's home to witness the results of her pregnancy test. While in route, he invited Lamar to join him. Once inside, defendant requested something to drink. When the victim gave defendant a glass of Bacardi alcohol, he placed it on the basement freezer. Defendant encouraged the victim to play music. Then, when Lamar produced a handgun and became aggressive, defendant remained in the basement until at least one gunshot was fired at the victim. Defendant fled and failed to report the crime.

¶ 26 To the extent defendant's statements and trial testimony conflicted, it was the jury's duty to resolve those conflicts, assess the credibility of the witnesses, and assign weight to the testimony. *Evans*, 209 Ill. 2d at 211.

¶ 27 Additionally, evidence found at the scene corroborates the jury's verdict of guilty. Forensics technicians recovered .38 caliber bullet casings fired from a semiautomatic weapon, the same type of gun defendant told the police and the ASA that Lamar brought with him.

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Technicians also recovered a bottle of Bacardi, a glass on the basement freezer, and a positive pregnancy test, all items defendant mentioned in the statements he gave.

¶ 28 Considering it in a light most favorable to the State, the evidence established that defendant had the intent to promote or facilitate the commission of armed robbery when he knowingly aided and attempted to aid Lamar in the planning and commission of the victim's armed robbery. Defendant was, therefore, accountable under the common design rule for the victim's murder.

¶ 29 II. Confrontation Clause

¶ 30 Defendant next contends that his confrontation rights were violated by the admission of the detective's testimony that "[a]t that point I told the Defendant that, you know, after speaking with Mr. Lamar that we believe that he had been present and actually killed Jasmine Robinson on the date in question." On direct appeal, we considered the same contention and found the testimony was properly admitted as nonhearsay to demonstrate police investigatory procedure. *Crockett*, No. 1-06-3578, slip op. at 11. Defendant's contention exceeds the limited mandate issued by this court on remand. *Gonzalez*, 407 Ill. App. 3d at 1036. The circuit court, therefore, did not have the authority to consider this issue. *Petre*, 356 Ill. App. 3d at 63. Moreover, consideration of the contention is barred by the law of the case doctrine. "Under the law of the case doctrine, issues presented and disposed of by a reviewing court in a prior appeal are binding upon remand to the trial court and on subsequent appeal to the reviewing court unless the facts presented are so different as to require a different interpretation or a higher court has changed the law." *People v. Sutton*, 375 Ill. App. 3d 889, 894, 874 N.E.2d 212 (2007). The facts are not

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different and the law has not changed. We will not reconsider the contention.

¶ 31 III. Excessive Sentence

¶ 32 Defendant finally contends the circuit court imposed an excessive sentence on remand. Defendant argues that the circuit court did not give serious consideration to the mandate instructions and simply "rubber stamped" the prior sentence.

¶ 33 A circuit court's sentence is entitled to great deference. *People v. Illgen*, 145 Ill. 2d 353, 379, 583 N.E.2d 515 (1991). A sentence that is within the statutory limits should be disturbed only if the circuit court has abused its discretion. *People v. Perrequet*, 68 Ill. 2d 149, 153, 368 N.E.2d 882 (1977). So long as the circuit court "does not consider incompetent evidence, improper aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the statutory range prescribed for the offense." *People v. Hernandez*, 204 Ill. App. 3d 732, 740, 562 N.E.2d 219 (1990). The seriousness of the offense is an appropriate consideration that is often referred to as the most important factor in imposing a sentence. *Id.*

¶ 34 Our review of the record reveals the circuit court did not abuse its discretion in resentencing defendant to a 42-year prison term. We recognize that the sentence is the same as that issued following the initial sentencing hearing. On direct appeal, we determined that the cause required resentencing only because we could not be sure the first degree murder sentence was not influenced by the attempted armed robbery sentence that we reversed. In our mandate, we instructed the circuit court not to consider the end result of defendant's conduct or the comments of codefendant, Lamar. In its ruling on remand, the circuit court stated that it was

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unaware of any comments made by Lamar and repeatedly stated that the end result of defendant's actions had not been considered. The circuit court conducted a resentencing hearing with arguments in mitigation and aggravation. After considering those arguments, the circuit judge, who was different than the judge who issued the initial sentence, determined that the seriousness of the offense called for a 42-year prison term. The sentence was within the prescribed statutory limits for first degree murder. 730 ILCS 5/5-4.5-20(a) (West 2004) (the sentencing range for first degree murder is not less than 20 years and not more than 60 years). Based on the foregoing, we conclude the circuit court did not abuse its discretion in resentencing defendant.

¶ 35

#### CONCLUSION

¶ 36 We affirm defendant's murder conviction and sentence.

¶ 37 Affirmed.

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¶ 38 JUSTICE ROBERT E. GORDON, dissenting.

¶ 39 I must respectfully dissent. First, defendant's reasonable doubt challenge was not waived, even though it was raised for the first time on appeal. Defendant could not have waived an argument, which was based on an event that had not yet occurred. Once we vacated defendant's attempted armed robbery charge, the basis for felony murder was eliminated, which, defendant claims, was the only possible basis for the jury's general verdict. It was our act in vacating the attempted robbery charge, which rendered the evidence insufficient to uphold defendant's first degree murder conviction.

¶ 40 BACKGROUND

¶ 41 Since I do not find the issue waived and therefore must discuss the sufficiency of the evidence, I provide a detailed statement of the facts here. On January 20, 2004, Jazmine Robinson was found shot to death in the basement of her home by her mother, Lisa Redmond, around 11:30 p.m. Jazmine was four to six weeks pregnant at the time of her death. On January 22, 2004, police officers received an anonymous call, which they followed up by interviewing Ronald Lamar. Lamar was ultimately charged as defendant's accomplice in the homicide of Jazmine. Lamar entered a plea of guilty, but refused to testify against defendant.

¶ 42 Assistant State's Attorney (ASA) Tim Carter testified that defendant gave an alibi, which the police investigated and proved unfounded. ASA Carter testified that, when defendant was confronted with his unfounded alibi, he told ASA Carter that he wanted to be truthful and that he would tell Carter what happened. Defendant gave an oral statement; however, he declined to give a court reported or videotaped statement.

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¶ 43 ASA Carter testified that, in this statement, defendant stated that a few days before the murder, Lamar had come over to his house and told defendant that he wanted to rob someone. Defendant suggested that they rob Jazmine Robinson, who defendant knew was “holding \$650 for some guys.” Defendant stated that he told Lamar that he would “set it up.” Defendant and Lamar planned to go to Jazmine’s house to look at a pregnancy test that she had taken. Defendant stated that he had received an anonymous tip earlier in the week that Jazmine was pregnant and that he might be the father of the child. Defendant stated that he had called Jazmine and told her to take a pregnancy test and that he would come over to look at the results. Defendant stated that the two planned to go to the basement, and when defendant winked at Lamar, Lamar would rob Jazmine. Defendant knew Lamar had a gun for protection and believed that Jazmine would not give them the money unless she was threatened with a gun. Defendant stated that, on the morning of the murder, Lamar came to defendant’s house, and the two then walked to Lamar’s house to retrieve the gun. After obtaining the gun, defendant and Lamar walked to Jazmine’s house, and entered through the back door of the house after Jazmine let them inside. Defendant stated that he, Lamar, and Jazmine were in the basement when Lamar began to demand the money from Jazmine. When Jazmine did not give the money to Lamar, Lamar shot her one time in the back. At this point, defendant stated that he became scared and ran out of the house. While he was running, he heard three or four more shots.

¶ 44 At the jury trial, defendant chose to testify on his own behalf. He testified that, on January 23, 2004, around 9 a.m., he was taken to the police station but was allowed to return home around 4:30 p.m. After interviewing Lamar, police returned to defendant’s home and

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brought him back to the police station. Defendant testified that the police told him that, after speaking to Lamar, they believed he had been involved in the shooting and death of Jazmine Robinson. Defendant denied setting up the robbery. Defendant testified that he was on his way to Jazmine's house to look at the pregnancy test, believing that he could have been the father of the child. Defendant explained that, on the way to her house, he encountered Lamar, who he knew from the neighborhood, and asked Lamar to walk with him to Jazmine's house. Defendant testified that Jazmine let defendant and Lamar into the house, and, while they were in the basement of the house, Lamar produced a gun. Defendant testified that he and Jazmine told Lamar to put the gun away. Jazmine told Lamar that he needed to leave or she was going to call the police. Defendant testified that he became hostile with Lamar and that he pleaded with Lamar to put the gun away. Defendant further testified that Jazmine pushed Lamar from behind, that Lamar pushed her back. Jazmine fell from Lamar's push, and when she fell, "Lamar shot her once." Defendant testified that at that point, he started to run away but heard three to four more shots as he was running. Defendant testified that he told his cousin what had happened that morning, but defendant did not report the incident to the police because he did not know what Lamar's intentions were after the incident and feared for his life.

¶ 45 On August 10, 2006, the jury found defendant guilty of first degree murder and attempted armed robbery. On September 27, 2006, the trial court sentenced defendant to serve 42 years for the first degree murder conviction and a consecutive 10-year sentence for the attempted armed robbery conviction. On the initial direct appeal, we affirmed defendant's first degree murder conviction but vacated the attempted armed robbery conviction because the State failed to prove

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the corpus delicti, or that a crime had actually taken place. *People v. Sargent*, 239 Ill. 2d 166, 183 (2010). We remanded the case for resentencing of the murder conviction, finding that we could not conclude that the murder sentence was not influenced by the improper attempted armed robbery conviction. On remand, the trial court again sentenced defendant to 42 years in the Illinois Department of Corrections. Defendant immediately filed a posttrial motion to reconsider the sentence; however, the trial court denied that motion.

¶ 46

#### ANALYSIS

¶ 47 Defendant was charged by indictment of first degree murder in three ways: (1) intentional or knowing murder, (2) “knowing with a strong probability of death or great bodily harm” murder (“knowing murder”), (3) or felony murder. 720 ILCS 5/9–1(a) (West 2006). At trial, the jury returned a general verdict. On this second appeal, defendant argues that the reversal of his attempted robbery conviction prevents him from being convicted of first degree murder based on the theory of felony murder. Additionally, defendant argues that the evidence presented at trial was insufficient to support a conviction of either intentional or knowing first degree murder where it merely established his presence at the murder scene.

¶ 48

#### I. Waiver

¶ 49 Unlike the majority, I find that waiver does not apply.

¶ 50 Although defendant raises this sufficiency of the evidence argument for the first time on this appeal, waiver does not apply to reasonable doubt challenges raised on appeal that were not raised previously in a posttrial motion. *People v. King*, 151 Ill. App. 3d 644, 647 (1987).<sup>1</sup> The

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<sup>1</sup>The majority also cites in support *People v. Young*, 152 Ill. App. 3d 361, 365 (1987).

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majority finds that, because the sufficiency of the evidence supporting defendant's first degree murder conviction was not at issue on remand, this court cannot consider the issue and can only reconsider the sentence. *Petre v. Kucich*, 356 Ill. App. 3d 57, 63 (2005) (citing *Foster v. Kanuri*, 288 Ill. App. 3d 796, 799 (1997)) ("When an appellate court reverses and remands the cause with a specific mandate, the only proper issue on a second appeal is whether the trial court's order is in accord with the mandate."). The majority finds that the holding in *King* was limited to its facts and does not provide defendants the opportunity to raise sufficiency of the evidence claims on repeated appeals. However, the court's decision in *King* does not limit a defendant's ability to raise a sufficiency of the evidence claim strictly to the initial appeal but allows the question to be raised for the first time on review or appeal generally. *King*, 151 Ill. App. 3d at 647; see also *People v. Walker*, 7 Ill. 2d 158, 160 (1955) (holding that a material allegation of an indictment beyond a reasonable doubt is fatal to a judgment of conviction and that the question may be

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However in *People v. Askew*, 273 Ill. App. 3d 798, 807 (1995), we observed that a subsequent supreme court case had "implicitly overrule[d] *Young*." The majority also cites *People v. Partee*, 125 Ill. 2d 24, 37 (1988), for the proposition that a defendant should not allowed to take "two bites" out of the same "apple." However, in the case at bar, this is not the same "apple" but an entirely different claim that has not been raised before. That is why, when our supreme court recently cited *Partee*, it observed that the doctrines that would prevent "two bites" were the "doctrines of *res judicata*, collateral estoppel, and law of the case" but not waiver, which is the point for which the majority is citing it here. *People v. Ortiz*, 235 Ill. 2d 319, 332 (2009) (quoting *People v. Tenner*, 206 Ill. 2d 381, 395 (2002) (quoting *Partee*, 125 Ill. 2d at 37)).

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raised for the first time on review).

¶ 51 Most importantly, defendant's right to appeal is governed by statute. Thus, to determine whether defendant has a right to appeal, we need only to interpret and apply the words of the governing statute. Quoted here in full, the statute provides that: "The defendant has the right of appeal in all cases from sentences entered on conviction of first degree murder or any other Class of felony." 730 ILCS 5/5-5-4.1 (West 2008).

¶ 52 The rules of statutory interpretation are familiar and often repeated. Interpreting a statute is a question of law, which we review de novo. *People v. Carter*, 213 Ill. 2d 295, 301 (2004); *People v. Davis*, 199 Ill. 2d 130, 135 (2002). If the statute's language is plain and ambiguous, it must be read exactly as written. *Carter*, 213 Ill. 2d at 301; *Davis*, 199 Ill. 2d at 135. "It is a cardinal rule of statutory construction that we cannot rewrite a statute and depart from its plain language, by reading into it exceptions, limitations or conditions not expressed by the legislature." *People ex. rel. Birkett v. Dockery*, 235 Ill. 2d 73 (2009) (citing *In re Michelle J.*, 209 Ill. 2d 428, 437 (2004)). See also *Carter*, 213 Ill. 2d at 301 (" ' The most reliable indicator of legislative intent is the language of the statute, which if plain and unambiguous, must be read without exception, limitation or other condition.' " (quoting *Davis*, 199 Ill. 2d at 135)).

¶ 53 "Criminal or penal statutes must be strictly construed in the defendant's favor, 'and nothing should be taken by intendment or implication beyond the obvious or literal meaning of the statute.' " *Carter*, 213 Ill. 2d at 301 (quoting *Davis*, 199 Ill. 2d at 135). "Where a criminal statute is capable of two or more constructions, courts must adopt the construction that operates in favor of the accused." *Carter*, 213 Ill. 2d at 302.

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¶ 54 In the case at bar, the statute does not state that there is a limited right to appeal in certain cases. It says there is a right and the right exists "in all cases." 730 ILCS 5/5-5-4.1 (West 2008). The statute does not provide any limits or qualifications to the reach or content of the "appeal" to which defendant has a right. 730 ILCS 5/5-5-4.1 (West 2008). The statute states that a defendant has this unlimited and unqualified right to appeal "from sentences entered on conviction." 730 ILCS 5/5-5-4.1 (West 2008). In the case at bar, there is no dispute that defendant is appealing from a sentence entered on a conviction. Adopting – as we must – the construction that operates in favor of the accused, I find that the plain and unambiguous language of the statute gives defendant the right to appeal the verdict as well as the sentence.

¶ 55 Interpreting the plain language of this same statute, this division recently held, "[s]ince a defendant has the right to file a direct appeal 'from sentences entered on conviction,' defendant may file a direct appeal after the entry of the new sentencing order, if he so chooses." *People v. Edgecombe*, 2011 IL App (1st) 92690, ¶ 31 (quoting 730 ILCS 5/5-5-4.1 (West 2010) ("The defendant has the right of appeal in all cases from sentences entered on conviction" in felony cases) and citing *People v. Lopez*, 129 Ill. App. 3d 488, 491 (1984) ("Final judgment in a criminal case is not entered until the imposition of the sentence. The final judgment in a criminal case is the sentence.")). See also 730 ILCS 5/5-1-12 (West 2010) (" 'Judgment' means an adjudication by the court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.").

¶ 56 In *Edgecombe*, 2011 IL App (1st) 92690, this court held that a defendant had the right to file a full, direct appeal after a resentencing. *Edgecombe*, 2011 IL App (1st) 92690, ¶ 31.

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Specifically, we held that, on any subsequent direct appeal, defendant could raise claims concerning not only the new sentencing order, but also any claims concerning his conviction, such as his claim about the handling of a jury note. *Edgecombe*, 2011 IL App (1st) 92690, ¶ 31.

In *Edgecombe*, we explained:

"Since a defendant has the right to file a direct appeal 'from sentences entered on conviction,' " defendant may file a direct appeal after the entry of the new sentencing order, if he so chooses. [Citations omitted.] Our action today [in remanding for resentencing] does not affect the claims that defendant made concerning the jury note. Since defendant may decide not to pursue these claims depending on the outcome of his resentencing, it is in the interest of judicial economy for us not to address these claims prematurely." *Edgecombe*, 2011 IL App (1st) 92690, ¶ 31.

¶ 57 Thus, following this court's recent holding in *Edgecombe*, I would find that defendant can appeal his first degree murder conviction in this case, and the issue is not waived.

¶ 58 The majority attempts to distinguish *Edgecombe* by stating that we gave the *Edgecombe* defendant permission to raise his claim again in a subsequent appeal, because he had already raised it once before us. However, that reason was neither stated nor intended in *Edgecombe*. *Edgecombe*, 2011 IL App (1st) 92690, ¶ 31. *Edgecombe* was nothing more than a straightforward interpretation of a plain statute.

¶ 59 Our holding in *Edgecombe* is also supported by the appellate court's holding in *People v. Holmes*, 405 Ill. App. 3d 179, 186 (2010), where we held that defendant's conviction did not

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occur until the date of his sentencing. The issue in *Holmes* was whether a trial court had statutory authority to issue an extended-term sentence. *Holmes*, 405 Ill. App. 3d at 184. This authority existed only if a second qualifying conviction occurred prior to the commission of the current offense. *Holmes*, 405 Ill. App. 3d at 184. Although defendant pled guilty before the current offense, he was sentenced after it. *Holmes*, 405 Ill. App. 3d at 184. As a result, defendant argued that his "conviction" occurred at the later sentencing, while the State claimed that the "conviction" occurred at the earlier guilty plea. *Holmes*, 405 Ill. App. 3d at 184. The *Holmes* court concluded that, "[e]ven if one views defendant's plea as an adjudication by the court that defendant is guilty, that adjudication does not meet the statutory definition of a 'judgment' until 'sentence [is] pronounced by the court.'" (Brackets in original.) *Holmes*, 405 Ill. App. 3d at 186 (quoting 730 ILCS 5/5-1-12 (West 2008)). Applying the logic of *Holmes* to the case at bar, I would find that, since the judgment itself did not occur until sentencing, defendant has the right to appeal it.

¶ 60 Finally, this case illustrates the wisdom of permitting an appeal from both the judgment and the sentence. Once we vacated defendant's attempted armed robbery charge, the basis for felony murder was eliminated, which, defendant claims, was the only possible basis for the jury's general verdict. It was our act in vacating the attempted robbery charge, which rendered the evidence insufficient to uphold defendant's first degree murder conviction. For these reasons, I cannot find the issue waived.

¶ 61 II. Sufficiency of the Evidence

¶ 62 Furthermore, the evidence in this case was insufficient to support defendant's conviction

of first degree murder. “When a defendant challenges the sufficiency of the evidence, the relevant inquiry is 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 crime beyond a reasonable doubt.” *People v. Mocaby*, 378 Ill. App. 3d 1095, 1097 (2008) (quoting *People v. Woods*, 214 Ill. 2d 455, 470 (2005)). This standard applies to all criminal cases, “regardless of the nature of the evidence.” *People v. Mocaby*, 378 Ill. App. 3d 1095, 1097 (2008); *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). In a challenge to the sufficiency of evidence, a reviewing court will not retry the defendant, substitute its judgment for that of the trier of fact, or reverse a conviction if any rational trier of fact could have reached the same conclusion based on the evidence viewed in the light most favorable to the prosecution. *People v. Adair*, 406 Ill. App. 3d 133, 137 (2010); *People v. Ross*, 229 Ill. 2d 255, 272 (2008); *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). The function of the reviewing court is to determine whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *People v. Ross*, 229 Ill. 2d 255, 272 (2008) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard reflects the proposition that it is the jury's function to determine the credibility of witnesses, assign weight to their testimony, and resolve conflicts in the evidence. *People v. Fountain*, 2011 IL App (1st) 083459-B; *Ross*, 229 Ill. 2d at 272.

¶ 63 While great deference is given to the findings of the jury, a criminal conviction cannot be upheld if the evidence is so improbable or unsatisfactory as to give rise to reasonable doubt regarding an essential element of the offense that the defendant has been found guilty of committing. *People v. Adair*, 406 Ill. App. 3d 133, 137 (2010); *People v. Clinton*, 397 Ill. App.

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3d 215, 222 (2009); *People v. Mocaby*, 378 Ill. App. 3d 1095, 1097 (2008) (quoting *People v. Smith*, 185 Ill.2d 532, 542 (1999)) (If “the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt,” the conviction must be reversed). Reasonable doubt exists as a matter of law when the State fails to prove an essential element of the offense. *People v. Fountain*, 2011 IL App (1st) 083459-B, ¶ 12.

¶ 64 In this case, defendant was charged by an indictment of first degree murder in three ways, and at trial, the jury returned a general verdict. In Illinois, the offense of first degree murder is set forth in section 5/9–1(a) of the Illinois Criminal Code of 1961, which states:

“(a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death: (1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or (3) he is attempting or committing a forcible felony other than second degree murder.” 720 ILCS 5/9–1(a) (West 2006); *People v. Slater*, 393 Ill. App. 3d 977, 982-83 (2009).

¶ 65 Our supreme court recently stated, “While our statute describes three ‘types’ of murder, first degree murder is a single offense\*\*\*[T]he different theories embodied in the first degree murder statute are merely different ways to commit the same crime.” *People v. Slater*, 393 Ill. App. 3d 977, 983 (2009) (quoting *People v. Smith*, 233 Ill. 2d 1, 16 (2009)). The difference between the three theories set forth in the statute is the mental state or conduct that accompany

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the acts that cause the death. *People v. Slater*, 393 Ill. App. 3d 977, 983 (2009). “An intentional murder involves a more culpable mental state than knowing or felony murder.” *Slater*, 393 Ill. App. 3d at 983 (quoting *People v. Fuller*, 205 Ill. 2d 308, 346–47 (2002)). Additionally, under the theory of “knowing murder,” a person who is aware that his acts create a strong probability of death to another may be found guilty of first-degree murder under section 9–1(a)(2) even if the victim's death was caused unintentionally. *Slater*, 393 Ill. App. 3d at 983-84. “In order to prove murder, it is not necessary to show that the defendant had a specific intent to kill or do great bodily harm or that he knows with certainty that his acts will achieve murderous results. \*\*\* It is sufficient to show that the defendant voluntarily and willfully committed an act, the natural tendency of which was to destroy another's life.” *Slater*, 393 Ill. App. 3d at 984 (quoting *People v. Howery*, 178 Ill. 2d 1, 42 (1997)).

¶ 66 Because this court vacated defendant’s attempted armed robbery conviction, a first degree murder conviction based on the theory of felony murder cannot stand. 720 ILCS 5/9–1(a)(3) (West 2006). In order to uphold the conviction, there must be evidence that defendant satisfied the conduct and mental state requirements set forth by either section 5/9–1(a)(1) or section 5/9–1(a)(2) of the Illinois Criminal Code. 720 ILCS 5/9–1(a)(1)-(2) (West 2006). There is no evidence in the record that defendant had the intention to kill or do great bodily harm to Jazmine, that he performed any act which he knew would cause her death, or that he committed any act the natural tendency of which was to destroy life of another. There is no evidence that defendant came into physical contact with Jazmine, that he came into contact with Lamar’s gun or any other form of weapon, or that he had any sort of altercation with Jazmine on the morning of the

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murder. Defendant testified that he became hostile with Lamar when Lamar pulled out the gun and pleaded with Lamar to put the gun away. Defendant's statements and testimony establish only his presence at the scene of the murder and that he was in the company of another individual, who was carrying a gun and ultimately pulled its trigger. This is not sufficient to prove beyond a reasonable doubt that defendant satisfied the requisite conduct or mental state elements of a first degree murder offense. *People v. Bloden*, 59 Ill. App. 3d 441, 450 (1978); *People v. Mitchell*, 59 Ill. App. 3d 367, 369 (1978) (mere presence at the scene and flight is insufficient to establish proof beyond a reasonable doubt).

¶ 67

### III. Accountability

¶ 68 The majority finds sufficient evidence to support defendant's first degree murder conviction solely under a theory of accountability.

¶ 69 Like defendant's right to appeal, accountability is also governed by statute. The accountability statute is divided into three sections, and it provides only three ways in which a defendant may be held accountable. 720 ILCS 5/5-2 (West 2008). The introductory lines of the statute state: "When accountability exists. A person is legally accountable for the conduct of another when: \*\*\*." (Emphasis added.) 720 ILCS 5/5-2 (West 2008). These introductory lines are then followed by three subsections, each labeled "a," "b" and "c" which denote the three different ways that a person may be held accountable. 720 ILCS 5/5-2 (West 2008). The first way, which is described in section a, occurs when a person causes someone without legal incapacity to act. 720 ILCS 5/5-2(a) (West 2008). The second way, which is described in section b, is when the particular statute governing an offense makes the person accountable. 720 ILCS

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5/5-2(b) (West 2008).

¶ 70 The third way, which is the only section at issue here, provides that "a person is legally accountable for the conduct of another when \*\*\* (c) 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." (Emphasis added.) 720 ILCS 5/5-2(c) (West 2008). As stated before, we are governed by the plain language of the statute. Carter, 213 Ill. 2d at 301; Davis, 199 Ill. 2d at 135. The plain language of section c concerns only one offense that was intended, planned and committed. As section c provides, accountability occurs when, before or during the commission of "an" offense and with the intent to promote "that" offense, the offender aids another in the planning or commission of "the" offense. (Emphasis added.) 720 ILCS 5/5-2(c) (West 2008). People v. Stanciel, 153 Ill. 2d 218, 233 (1992) ("Accountability, tied as it is to the crime charged, must comport with the requirements of that crime.")

¶ 71 After providing the three ways that accountability may occur, the accountability statute also states, in an unlettered paragraph, that:

"When 2 or more persons engage in a common 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 common design or agreement and all are equally responsible for the consequences of those further acts." 720 ILCS 5/5-2(c) (West 2008).

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¶ 72 When interpreting a statute, courts must consider a statute " 'in its entirety.' " Davis, 199 Ill. 2d at 135. "Since all provisions of a statutory enactment are viewed as a whole, words and phrases should not be construed in isolation, but should be interpreted in light of other relevant provisions of the statute." Crittenden v. Cook County Comm'n on Human Rights, 2012 IL App (1st) 112437, ¶ 81 (citing People v. Lieberman, 201 Ill. 2d 300, 308 (2002)). The structure of the statute indicates that "common design" was not intended as a fourth or additional way for accountability to occur. Thus, the common design paragraph must be read in harmony with the paragraphs above it.

¶ 73 When read in harmony with subsection c which immediately precedes it, the common design paragraph means that, when two or more people engage in a common criminal design or agreement to commit "an" offense, any acts in the furtherance of that common design for "that" offense are considered to be the acts of all parties to the common design or agreement for "the" offense. (Emphasis added.) 720 ILCS 5/5-2(c) (West 2008).

¶ 74 The majority finds that, where a defendant intended to promote one crime, namely, armed robbery, he can be held liable for a completely different crime, namely, first degree murder. I cannot agree. People v. Perez, 189 Ill. 2d 254, 268-69 (2000) ("Without knowledge of any common criminal design to harm [the victim], defendant could not intentionally aid in the scheme's commission" and defendant could not be held accountable for the victim's murder) (citing People v. Estrada, 243 Ill. App. 3d 177 (1993) (in the absence of any evidence that defendant was aware that his companion intended to shoot the victim or direct evidence tying defendant to a common design to shoot the victim, defendant's murder conviction on a theory of

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accountability was reversed)).

¶ 75 In essence, the majority is transforming the accountability statute into the felony degree murder statute. Unlike accountability which involves only one crime, felony murder does involve two crimes. If you commit a felony (one crime) and someone is killed, then you can be held liable for a second crime, namely, first-degree murder.

¶ 76 However, in the case at bar, we have already found that defendant cannot be found guilty of felony murder, so the majority is attempting to use the accountability statute to accomplish the same result.

¶ 77 Felony murder and accountability are not the same thing; they are not interchangeable. Our supreme court has repeatedly emphasized that the felony murder statute and the accountability statute have different purposes and serve different goals. In *People v. Klebanowski*, 221 Ill. 2d 538, 551-52 (2006), our supreme court stated: "As explained by the court in *People v. Dennis*, felony murder and accountability have theoretically different underpinnings:

'Felony murder seeks to deter persons from committing forcible felonies by holding them responsible for murder if a death results. [Citation.] Because of the extremely violent nature of felony murder, we seek the broadest bounds for the attachment of criminal liability. For that reason, in felony murder, a defendant's liability is not limited to his culpability for commission of the underlying felony. A defendant may be found guilty of felony murder regardless of a lack of either intent to commit murder [citation], or even connivance with a codefendant

[citation]. Our continued adherence to a proximate cause approach is further exemplary of how broadly we seek to extend the reaches of criminal liability in the case of felony murder.

Unlike felony murder, accountability focuses on the degree of culpability of the offender and seeks to deter persons from intentionally aiding or encouraging the commission of offenses. Holding a defendant who neither intends to participate in the commission of an offense nor has knowledge that an offense has been committed accountable does not serve the rule's deterrent effect. Further, the attachment of liability in such situations contravenes the general concepts of criminal liability.' " People v. Klebanowski, 221 Ill. 2d 538, 551-52 (2006) (quoting People v. Dennis, 181 Ill. 2d 87, 105-106 (1998)).

¶ 78 If we find that because a defendant intended to promote armed robbery, he can also be found liable for murder, then we are conflating the two statutes. That would, in essence, turn the accountability statute into the felony murder statute, and render the felony murder statute superfluous. Crittenden, 2012 IL App (1st) 112487 at ¶ 81 (if possible, we should avoid an interpretation that renders a provision "superfluous") (citing Lieberman, 201 Ill. 2d at 308). If we find accountability here, then what is the difference between accountability and felony murder?

¶ 79 Since I cannot concur with the rewriting of the accountability statute from "the" offense to "any" offense, I must dissent here. Any ambiguities in a penal statute must be resolved in favor of the accused. Carter, 213 Ill. 2d at 302.

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¶ 80 In addition, the accountability statute is stretched even further on the facts before us. In the case at bar, we held that defendant could not even be held accountable for attempted armed robbery. In essence, the majority is holding that, since defendant could have been held accountable for attempted armed robbery – if the attempted armed robbery could have been proved through something other than his confession – then he is also liable for the murder which he did not plan or intend -- but not under the felony murder statute. I cannot find a statute that justifies this holding, and thus I must dissent.

¶ 81 Conclusion

¶ 82 For the foregoing reasons, I find, first, that the issue of the sufficiency of the evidence was not waived and, second, that there was a lack of sufficient evidence to prove the essential elements of the crime for first-degree murder beyond a reasonable doubt. Therefore, I would reverse and I must respectfully dissent.