

No. 1-11-2923

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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. 05 CR 13777
	)	
TERRELL JONES,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAVIN delivered the judgment of the court.  
Justices Fitzgerald Smith and Epstein concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant's conviction for felony murder of his co-felon affirmed over his contention that his co-felon's death was not a foreseeable consequence of armed robbery.
- ¶ 2 Following a jury trial, defendant Terrell Jones was found guilty of two counts of first degree felony murder of Darius Williams and defendant's accomplice Larry Johnson, and one count of attempted first degree murder of Officer Hugh McCormack. Defendant was sentenced to concurrent terms of life imprisonment for the murder convictions, and a consecutive term of 60 years' imprisonment for the attempted murder conviction. These sentences were ordered to

run concurrently to a 21-year sentence he received for an unrelated armed robbery in case No. 05 CR 13776. On appeal, defendant solely contests the sufficiency of the evidence convicting him of Johnson's murder, alleging that Johnson's death was not foreseeable. We affirm.

¶ 3 The evidence showed that on March 26-27, 2005, codefendants Tameka Newson and Martha Jean, who are not parties to this appeal, lured Darius Williams and Wallace Ross to an apartment where defendant and Johnson were waiting to rob them at gunpoint. After robbing Williams and Ross, Johnson and defendant took them outside to be placed in a car and transported to a different location to kill them. On the way to the car, Williams fled and Johnson chased and shot him to death. Officer Hugh McCormack witnessed the murder and pursued Johnson, who fired at the officer, striking and wounding him. Officer Alphonsus O'Connor saw Johnson shooting at McCormack and exchanged gunfire with Johnson, ultimately striking and killing Johnson. While these events were unfolding, defendant brought Ross back to the apartment and left him there by himself. Ross escaped and told police what happened. Defendant, Newson, and Jean were subsequently arrested by police.

¶ 4 Defendant, Newson, and Jean were charged in a multi-count indictment with first degree murder, attempted murder of a peace officer, aggravated battery with a firearm, aggravated discharge of a firearm, armed robbery, and aggravated kidnaping. The count at issue charged defendant with first degree murder in that he committed a forcible felony, *i.e.*, armed robbery, during the commission of which Johnson was shot and killed.

¶ 5 At trial, Wallace Ross testified that on March 26, 2005, he spoke to Newson via a "party line," and they agreed to meet near 59th Street and Normal Boulevard in Chicago. Ross drove to the scene with his friend Darius Williams because Newson indicated a second woman would be present. When the two men reached their destination, Newson let them into an apartment where Jean was also present. They talked for about 15 minutes, and then Ross went into the bathroom.

While he was inside, defendant entered the bathroom and pointed a gun at him. Defendant escorted Ross out of the bathroom, and Ross saw Williams on the floor and Johnson pointing a gun at Williams. Defendant and Johnson undressed Ross and Williams, took about \$60 from them, tied them up, and struck them. The offenders were afraid that the victims might go to the police if released, so they discussed killing them somewhere outside of the apartment. A short time later, defendant and Johnson, who were still armed with guns, brought Ross and Williams outside. Williams attempted to run away, Johnson chased him, and defendant brought Ross back to the apartment. Defendant told Ross that it was "over with" for him. Defendant, Newson, and Jean eventually left Ross alone in the apartment. After making sure everyone had left, Ross exited the apartment and a person in the downstairs apartment let him inside, untied him, and allowed him to exit through the backdoor. Ross saw police at the scene and told them what happened.

¶ 6 On cross-examination, Ross admitted that he consumed alcohol and marijuana earlier on the day in question. Ross further testified that he did not recall saying in a deposition that defendant told him he would let him live. However, the deposition showed that Ross acknowledged defendant told him in the stairwell that if he stayed calm he would live.

¶ 7 Tameka Newson, who pled guilty to murder in this case, testified similarly to Ross. She also testified that before Ross and Williams arrived, she devised a plan with Jean, Johnson, and defendant to rob the victims at gunpoint inside of the apartment. However, the initial plan to simply rob the victims changed when they realized the victims could identify the apartment. At that point, defendant and Johnson were going to drive the victims to a different location to kill them. In preparation for taking the victims outside to a waiting car, defendant and Johnson dressed the victims, although they remained bound. The four men proceeded downstairs, but defendant and Ross returned to the apartment after Williams ran away. While they were upstairs,

defendant told Ross that it was over for him because his friend ran. Shortly thereafter, Jean left the apartment to go outside. Newson heard multiple gunshots, and when Jean returned to the apartment she stated that Johnson was shot. Newson left the apartment, but defendant and Ross remained. Jean, who also pled guilty to murder in this case, testified similarly to Newson.

¶ 8 Officer Hugh McCormack testified that in the early morning hours of March 27, 2005, he was driving his vehicle near 59th Street and Normal Boulevard when he saw Johnson shoot Williams. McCormack pursued Johnson in his vehicle, and shortly after he exited the vehicle, Johnson shot him several times. McCormack took cover and radioed for assistance.

¶ 9 Officer O'Connor testified that as he was driving to work, he witnessed Johnson fire at Officer McCormack. O'Connor exited his vehicle, announced he was a police officer, and O'Connor and Johnson exchanged gunfire. O'Connor observed that Johnson fell down after the exchange.

¶ 10 Following argument, the jury found defendant guilty of two counts of first degree felony murder of Darius Williams and Larry Johnson, and one count of attempted first degree murder of Officer Hugh McCormack.

¶ 11 On appeal, defendant contends that the evidence was insufficient to convict him of Johnson's murder. We initially note that there is no issue raised as to whether defendant committed the forcible felony of armed robbery. Instead, defendant solely asserts that Johnson's death was not a foreseeable consequence of the armed robbery, but rather, was the result of Johnson's bizarre and unpredictable actions.

¶ 12 When a defendant challenges the sufficiency of the evidence to sustain his conviction the proper standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278-79 (2004). This standard

recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence and to draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of guilt. *Campbell*, 146 Ill. 2d at 375. For the reasons stated below, we find this not to be such a case.

¶ 13 Here, defendant was convicted of first degree murder arising from the commission of a forcible felony, armed robbery, in violation of section 9-1(a)(3) of the Criminal Code of 1961 (720 ILCS 5/9-1(a)(3) (West 2004)). The felony murder statute provides that a defendant who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death, he is attempting to or committing a forcible felony, other than second degree murder. *People v. Sims*, 374 Ill. App. 3d 231, 250 (2007); 720 ILCS 5/9-1(a)(3) (West 2004).

¶ 14 Illinois law follows the proximate cause theory of liability for felony murder. *People v. Dekens*, 182 Ill. 2d 247, 249 (1998). The focus of the proximate cause theory of liability is whether the defendant's actions "set in motion a chain of events [which were or should have been within defendant's contemplation] that ultimately caused the death of decedent." *People v. Lowery*, 178 Ill. 2d 462, 473 (1997). The State need not prove that the defendant's acts constituted the sole and immediate cause of death (*People v. Martin*, 112 Ill. App. 3d 486, 499 (1983)), but rather must show that the defendant's acts were a contributing cause of death, such that death did not result from a source unconnected with or independent of those acts (*People v. Fuller*, 141 Ill. App. 3d 737, 748 (1986)). Moreover, if the defendant's acts precipitated the events, he is responsible for the consequences. This is true even if he did not anticipate the precise sequence of events that followed upon his initial unlawful conduct. *Lowery*, 178 Ill. 2d at 470. Under the proximate cause theory, the fact that the victim is a co-felon is immaterial, and

application of the felony murder doctrine does not depend on the guilt or innocence of the person killed during the felony or on the identity of the person whose act caused the decedent's death.

*Dekens*, 182 Ill. 2d at 252.

¶ 15 We find *People v. Burnom*, 338 Ill. App. 3d 495 (2003), relied on by the State, instructive. In *Burnom*, the defendant, a high ranking gang member, arranged a weapons/drugs transaction with Joseph Vicario, a police informant. Hopkins and Brown, who were also gang members, met with Vicario in a parking lot and told him that the defendant was on his way. Hopkins and Brown drove to a nearby gas station, spoke with the defendant, and then drove back to the parking lot, where Brown pulled his weapon on Vicario. Undercover police officers converged on the scene, Brown shot at Vicario, and police fired at Brown and Hopkins, resulting in Hopkins' death. Meanwhile, the defendant took up a position in a nearby alley where he was able to view the proceedings, and when the shooting broke out, he ran to his car, ignored an officer's command to stop, and attempted to flee. The defendant was arrested and ultimately found guilty of the felony murder of Hopkins. *Burnom*, 338 Ill. App. 3d at 505-07.

¶ 16 On appeal, the defendant in *Burnom* maintained that the police officers' excessive use of force against Hopkins operated as an intervening cause of Hopkins' death, thereby breaking the chain of proximate cause and relieving the defendant of liability. We found, however, that the defendant's actions were the proximate cause of Hopkins' death where he was engaged in a common criminal design with his fellow gang members to rob Vicario by force, and the officers' resistance was in direct response to the attempted armed robbery set in motion by the defendant. *Burnom*, 338 Ill. App. 3d at 507.

¶ 17 As in *Burnom*, defendant's actions in this case were the proximate cause of Johnson's death where they set in motion a chain of events that resulted in Johnson being shot to death by police. After robbing Ross and Williams at gunpoint inside an apartment, defendant and his

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accomplices decided to kill the victims to avoid being reported and identified. They undertook to remove the victims from the apartment, place them in a vehicle, and transport them to a different location to kill them. While bringing the victims downstairs, Williams ran and Johnson pursued him, ultimately shooting Williams to death. Williams' murder was witnessed by Officer McCormack, and an exchange of gunfire ensued, causing McCormack to be shot multiple times. The exchange between McCormack and Johnson was witnessed by Officer O'Connor, and another exchange of gunfire occurred, resulting in Johnson being shot to death. Meanwhile, defendant returned Ross to the apartment and left him there alone. Based on the above evidence, the officers' resistance to Johnson's acts was in direct response to the armed robbery set in motion by defendant and his accomplices, and thus did not break the causal chain between defendant's acts and Johnson's death.

¶ 18 In reaching this conclusion, we find unpersuasive defendant's assertion that Johnson broke the causal chain between defendant's actions and Johnson's death because Johnson had a "death wish" and behaved irrationally when he got into a gun fight with two police officers. Despite defendant's contentions to the contrary, the evidence does not show that Johnson committed "suicide by police officer," but instead demonstrates that he was attempting to flee the scene and obtain a place of safety after police witnessed him chasing and killing Williams. See *People v. Klebanowski*, 221 Ill. 2d 538, 546 (2006) (stating that "[i]t has long been the rule in Illinois that a defendant may be held responsible for a death that occurs during an escape following the commission of a forcible felony"). The commission of the armed robbery, coupled with the offenders' attempts to relocate the victims to kill them, set in motion Williams' flight, Johnson's pursuit and murder of Williams, the pursuit of armed police officers who witnessed the killing, and Johnson's attempt to escape by shooting at police. Therefore, the shots by O'Connor that killed the fleeing Johnson were a direct and foreseeable consequence of defendant's actions.

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

¶ 20 Affirmed.