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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|--------------------------------------|---|---------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 09 CR 2753 |
| |) | |
| JUAN HUERTA, |) | |
| |) | The Honorable |
| Defendant-Appellant. |) | Carol A. Kipperman, |
| |) | Judge Presiding. |

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Epstein and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for aggravated vehicular hijacking was not void as a proportionate penalties violation under *People v. Andrews*, 364 Ill. App. 3d 253 (2006). The State proved beyond a reasonable doubt that defendant was accountable for his cohort's firearm because there was a common criminal design in the commission of the offense. The trial court did not abuse its discretion in sentencing defendant. Defendant's conviction for aggravated vehicular hijacking was affirmed and his remaining convictions for vehicular hijacking and vehicular invasion were vacated as violative of the one-act, one-crime rule.

¶ 2 Following a bench trial, defendant Juan Huerta was found guilty of aggravated vehicular highjacking, vehicular hijacking and unlawful vehicle invasion, then sentenced to 27 years'

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imprisonment on each count, to be served concurrently. On appeal, defendant raises a proportionate penalties challenge to his sentence, contending it is void under *People v. Andrews*, 364 Ill. App. 3d 253 (2006). Defendant next contends that the State failed to prove beyond a reasonable doubt that he was accountable for his cohort's firearm because there was no common criminal design in the commission of the offense. Defendant also contends that his conviction for vehicular hijacking must be vacated because it is a lesser included offense of his aggravated vehicular hijacking conviction, and therefore, violates the one-act, one-crime rule. Finally, defendant contends that his 27-year sentence is manifestly disproportionate to the nature of the offense. We affirm the aggravated vehicular hijacking conviction, but vacate his remaining convictions for vehicular hijacking and vehicular invasion as violative of the one-act, one-crime rule.

¶ 3

BACKGROUND

¶ 4 Trial evidence showed that on January 1, 2009, defendant engaged in a physical altercation with Vane Robinson, then hijacked Robinson's red vehicle and crashed it into the surrounding vehicles. Robinson testified that on the day of the incident, he and his friend Michael Moore, drove to the Citgo gas station located at 58th Street and Roosevelt Road in Cicero to help his cousin with a stalled vehicle. When they failed to revive it, Robinson pushed the vehicle towards 58th Street to find a safe parking space. Robinson then observed defendant and another individual, whom defendant later identified as his friend, "Homicide," standing to the right next to a gold colored Impala. Defendant, wearing a red and blue Cubs hat, without any provocation, approached the stalled vehicle, tried to open the driver-side door, punched on the

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glass a couple of times, and yelled profanities. Defendant then walked to the driver-side door of Robinson's vehicle, opened the door, and said, "get the fuck out of the car." He punched Robinson twice in the face, started "pulling" on him and forced him out of the vehicle. Robinson then struck defendant in the face and the two tussled on the ground. Robinson heard Moore yell to him; Robinson then observed Homicide pointing a gun at him. Homicide, while wielding the gun, walked closer to Robinson, who stood up and backed away from his vehicle along with Moore, and the two walked towards the Citgo.

¶ 5 Defendant then entered Robinson's vehicle without permission and rammed it into several vehicles. Defendant finally crashed into some vehicles at the end of 58th block, then exited Robinson's vehicle and ran back towards his Impala. Robinson called the police to report the incident and later identified defendant as the perpetrator after defendant returned to the scene in his Impala.

¶ 6 Michael Moore substantially corroborated Robinson's testimony, but added that Robinson was winning the fight with defendant. Moore briefly tried to break up the fight by pulling Robinson off defendant, but Moore never struck defendant. Moore did not observe defendant exchange words or gestures with Homicide.

¶ 7 Officer Nick Drakulick, from the Cicero Police Department's gang tactical unit, was dispatched around 4 a.m. to 58th Avenue and Roosevelt Road. Following his arrest, *Miranda* warnings were given and defendant gave Cicero Police Detective Eddie Perez a signed statement, which Detective Perez read into evidence. In pertinent part, it revealed that defendant was a self-admitted Latin Count gang member. On the night of the incident, he was driving with his

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girlfriend, Amalia Mendez, and his friend, Homicide. He admitted he smoked a half ounce of marijuana. He saw two black males inside a red vehicle and another inside a green mini-van. Defendant believed that they were Players or Latin King street gang members. Defendant thought the driver (Robinson) was "disrespecting his hood," so he walked over and said "jump the fuck out of the car." Defendant then opened the door and fought with Robinson. He was not sure what Homicide was doing. He stated that "he entered the red car with the intent to crash the vehicle" because "the subjects disrespected his hood." After he entered the vehicle, he reversed and crashed into a parked vehicle that was at the 1200 block of 58th Avenue, proceeded southbound on 58th Avenue, crashed into another parked car, and abandoned Robinson's vehicle. He then entered his Impala that was parked in front of 58th Street and drove away. Defendant, however, returned to the scene because he wanted to tell his side of the story and offer to pay the owner of the red vehicle for the damages. He did not see Homicide with a gun and did not know where he went after the incident. Defendant stated that he felt sorry for taking Robinson's vehicle and crashing it.

¶ 8 Defendant waived his right to testify. After closing arguments, the trial court found defendant guilty of aggravated vehicular highjacking, vehicular hijacking and unlawful vehicular invasion. The trial court subsequently denied defendant's motion for a new trial and sentenced him to 27 years' imprisonment on each count, to be served concurrently, based on defendant's criminal background and several failed attempts at rehabilitation.

¶ 9

ANALYSIS

¶ 10 On appeal, defendant first raises a proportionate penalties challenge to his sentence,

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contending it is void under *People v. Andrews*, 364 Ill. App. 3d 253 (2006). The Illinois Constitution requires that criminal penalties be determined according to the seriousness of the offense. Ill. Const. 1970, art. I, § 11. A statute violates the proportionate penalties clause where two offenses have identical elements, but disparate sentencing ranges. *People v. Blair*, 2013 IL 114122, ¶ 32. In *Andrews*, the appellate court held that the defendant's sentence for aggravated vehicular hijacking with a firearm was constitutionally disproportionate to the penalty for armed violence with a category I weapon predicated on the offense of vehicular hijacking. The court noted that while the former offense carried 6 to 30 years' imprisonment with a 15 year add-on, the latter carried 15 to 30 years' imprisonment. *Andrews*, 364 Ill. App. 3d at 274-74.

¶ 11 In his brief, defendant acknowledges that following *Andrews*, the legislature enacted Public Act 95-688, which eliminated the proportionate penalties violation. Pub. Act 95-688 (eff. Oct. 23, 2007) (amending 720 ILCS 5/33A-2(a) (West 2010)). Public Act 95-688 specifically eliminated vehicular hijacking as a predicate offense and thus eliminated the proportionate penalties violation at issue in *Andrews*. Defendant, nonetheless, maintains that because *Andrews* held that the 15 year add-on rendered the aggravated vehicular hijacking statute void *ab initio*, the legislature would have had to reenact or amend the vehicular hijacking statute, itself, in order to cure the proportionate penalties defect. We disagree.

¶ 12 After the parties filed their briefs, the supreme court issued *Blair*, which disposes of this issue. *Blair*, in addressing a similar proportionate penalties violation, held the legislature may remedy a proportionate penalties violation by amending the challenged statute held unconstitutional, the comparison statute, or both statutes. *Blair*, 2013 IL 114122, ¶ 32. The

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court explained that the void *ab initio* doctrine does not mean the statute held to be unconstitutional never existed; rather, it means only that the statute was unenforceable as constitutionally infirm. As stated, here the legislature amended the comparison statute, curing the proportionate penalties violation. Under, *Blair*, the trial court correctly applied the 15 year add-on to defendant's sentence.

¶ 13 Defendant next contends that the State failed to prove beyond a reasonable doubt that defendant was accountable for his friend Homicide's use of the firearm in the commission of the vehicular hijacking. Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court 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 were demonstrated beyond a reasonable doubt. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In addition, the trier of fact determines the witnesses' credibility, the weight given to their testimony and draws reasonable inferences from the evidence. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). We will not substitute our judgment for that of the trier of fact on these matters. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009).

¶ 14 In this case, the State was required to prove that defendant (1) took a motor vehicle from a person or the immediate presence of another; (2) by use of force or by threatening the imminent use of force; and (3) carried or was otherwise armed with a firearm. See 720 ILCS 5/18-4(a)

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(West 2010); *Andrews*, 364 Ill. App. 3d at 274. Defendant does not necessarily dispute that he took the motor vehicle from Robinson by the use of force or by threatening imminent force.

Defendant contends only that he cannot be held accountable for his friend's use of the firearm, arguing there was no evidence that he solicited help from Homicide as he was committing the hijacking or that they shared a common criminal design to take the vehicle. He argues Homicide was merely defending him in a fight.

¶ 15 A person is accountable for the acts of another when, before or during the commission of the offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid the other person in the planning or commission of the offense. See *People v. Rodriguez*, 229 Ill. 2d 285, 289 (2008); 720 ILCS 5/5-2(c) (West 2010). The State must present evidence that proves beyond a reasonable doubt that either (1) the defendant shared the criminal intent of the principal, or (2) there was a common criminal design. *People v. Perez*, 189 Ill. 2d 254, 266 (2000). The common criminal design rule provides that where two or more persons engage in a common criminal design or agreement, any acts in furtherance of that common design committed by one party are considered to be the acts of all parties to the design or agreement and all are equally responsible for the consequences of the further acts. *People v. Redmond*, 341 Ill. App. 3d 498, 511 (2003).

¶ 16 The trial court noted that there was "sufficient evidence of accountability" in that both defendant and Homicide got out of defendant's Impala together. In addition, during the fight, "Homicide pointed the gun while the struggle was ensuing," which "would be in furtherance of hijacking." Although defendant claims Homicide was simply rescuing defendant from being beat

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up, the record suggests that he was losing the fight and would not have been able to hijack Robinson's vehicle without Homicide's assistance with the firearm. The moment Homicide pointed his gun at Robinson, Robinson backed away from his vehicle and defendant was able to accomplish his criminal act. Proof of the common purpose or design need not be supported by words of agreement, but may be drawn from the circumstances surrounding the commission of the unlawful conduct. See *People v. Cooper*, 194 Ill.2d 419, 435 (2000). We find nothing in the record to give us pause to dispute the trial court's finding of accountability and will not substitute our judgment for that of the trier of fact.

¶ 17 In addition, the record shows that defendant, and Homicide, were Latin Court gang members and believed Robinson, Moore and Walker were rival Players or Latin King street gang members. Evidence that a defendant voluntarily attached himself to a group bent on criminal acts with knowledge of its design supports an inference that he shared the common purpose and his conviction for an offense committed by another will be sustained. *Cooper*, 194 Ill. 2d at 419. The record suggests defendant and Homicide were retaliating against a rival gang in their scheme to protect their "hood" by hijacking Robinson's vehicle. Based on the foregoing, we conclude the evidence was sufficient for the trier of fact to find defendant guilty beyond a reasonable doubt.

¶ 18 Defendant next contends that his conviction for vehicular hijacking must be vacated because it is a lesser included offense of aggravated vehicular hijacking, and therefore, violates the one-act, one-crime rule. The State, in turn, agrees and contends that the offense of vehicular invasion must also be vacated. The application of the one-act, one-crime rule is a question of law, which we review *de novo*. *People v. Brexton*, 2012 IL App (2d) 110606, ¶ 27. Under that

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rule, multiple convictions based on the same physical act are improper. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). If a defendant is convicted of multiple offenses based on the same physical act, the conviction for the less serious offenses must be vacated. *Id.* In this case, and as the State observes, we need not reach the issue of whether Count 3 and Count 4 are lesser-included offenses of Count 1 because the convictions are based upon the same act, that is the hijacking of Robinson's vehicle. See *People v. Sucic*, 401 Ill. App. 3d 492, 507 (2010). We therefore vacate the less serious offenses, Count 3 and Count 4, vehicular hijacking and vehicular invasion.

¶ 19 Lastly, defendant contends that his 27-year sentence is manifestly disproportionate to the nature of the offense and must be reduced. The applicable standard of review is whether the trial court has committed an abuse of discretion in sentencing a defendant. *People v. Bailey*, 409 Ill. App. 3d 574, 591 (2011). An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable or where no reasonable person would take the view adopted by the trial court. *People v. Johnson*, 347 Ill. App. 3d 570, 574 (2004). The sentencing judge is in a much better position to fashion an appropriate sentence and we will not substitute our judgment when a sentence is within the statutory guidelines unless a sentence is greatly disproportionate to the nature of the offense. *Id.*

¶ 20 Defendant was convicted of aggravated vehicular hijacking, a Class X felony. 720 ILCS 5/18-4(b) (West 2010). The trial court also found that defendant was accountable for the use of a firearm during the commission of the offense, and therefore, was subject to the statutorily-mandated 15-year firearm enhancement. Thus, defendant faced a sentencing range of 21 to 45 years' imprisonment and was sentenced to 27 years' imprisonment, well within the statutory limits. Given defendant's criminal history and "total disregard" for the law, the trial court found the minimum sentence was inappropriate. Defendant's sentence, however, was only six years

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above the minimum and well under the statutory maximum of 45 years requested by the State.

Nothing in the record suggests that the trial court abused its discretion and defendant fails to raise anything persuasive here. We therefore find no abuse of discretion.

¶ 21 CONCLUSION

¶ 22 Based on the foregoing, we vacate defendant's conviction for vehicular hijacking and vehicular invasion (Count 3 and Count 4), and we order the clerk of the circuit court to correct the mittimus accordingly. We affirm the judgment of the circuit court in all other respects.

¶ 23 Affirmed, in part; vacated, in part; mittimus modified.