

No. 1-12-0455

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

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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. 10 CR 18704
	)	
DARIUS MORALES,	)	Honorable
	)	Garritt E. Howard,
Defendant-Appellant.	)	Judge Presiding.

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

**ORDER**

- ¶ 1 *Held:* Defendant's conviction and sentence are affirmed where the evidence was sufficient to prove defendant guilty of delivery of cannabis under an accountability theory. The fines, fees, and costs order is corrected.
- ¶ 2 Following a bench trial, defendant Darius Morales was convicted of delivery of cannabis and sentenced to 18 months of probation. On appeal, defendant challenges the sufficiency of the evidence. He also challenges the total amount of fines, fees, and costs. For the reasons that follow, we affirm defendant's conviction and sentence and order correction of the fines, fees, and costs order.

¶ 3 At trial, Cook County Sheriff's investigator Mizell Walls testified that on August 18, 2010, he met with nine narcotics investigating officers at the Evanston Police Department. The team of officers had gathered for a briefing and to prepare for a drug purchase. Investigator Walls called a telephone number, (312) 489-4552, and placed an order for \$100 worth of cannabis. The man with whom Investigator Walls spoke directed Walls to meet him at the intersection of Greenwood and Ewing in Skokie. Investigator Walls indicated to the man that he was headed that direction and would be there shortly.

¶ 4 Thereafter, Investigator Walls, in plain clothes, drove an unmarked undercover car to the given location and parked. Several surveillance officers were present in the vicinity. A black Ford Expedition pulled up on the driver's side of Investigator Walls' car. Two men were in the vehicle; in court, Investigator Walls identified defendant as the driver. The passenger got out of the Expedition and got into Walls' car. Investigator Walls gave the man \$100 in exchange for what appeared to be an ounce of cannabis. The man then got back into the Expedition and defendant pulled away. Investigator Walls returned to the Evanston Police Department, where the substance he received was inventoried.

¶ 5 Evanston police detective James Pillars testified that on the day in question, he set up surveillance a couple hundred feet from Investigator Walls' car. A black Ford Expedition approached Investigator Walls, passing within a few feet of Detective Pillars. Detective Pillars identified defendant as the driver of the Expedition.

¶ 6 Evanston police detective Daniel Mokos testified that on the day in question, about 5 to 10 minutes after learning that a drug transaction had taken place, he drove to the 9100 block of Bennett in Skokie. There, he saw defendant and an unknown man standing outside a Ford Expedition, which had been stopped by the Skokie police.

¶ 7 About a month later, on September 23, 2010, Detective Mokos was on duty at the Evanston Police Department when defendant was arrested and brought to the station. Detective Mokos testified that he asked defendant a series of booking questions. When he asked defendant for his telephone number, defendant gave the number (312) 489-4552.

¶ 8 The parties stipulated that the substance Investigator Walls purchased tested positive for 29.1 grams of cannabis.

¶ 9 Following closing arguments, the trial court convicted defendant of delivery of cannabis. In the course of doing so, the court found that defendant was the driver of the Ford Expedition. The court stated that if that was all the evidence the State had presented, it "would be bound to acquit the defendant of this charge." The court then stated:

"But in this case, we have a very important piece of evidence and I think the critical piece of evidence, that being that the defendant gave the very same phone number when he was booked. That in my mind convinces me that undoubtedly the defendant is there, is the driver, knowing full well what was going on. The reason for that is that phone number, which is (312) 489-4552, that's the very phone number that was given that they called to set up the drug transaction. Within a very short period of time, here the defendant shows up in a car with the guy in there that completes the drug transaction.

That's just a little bit too coincidental for me that when the defendant gets arrested a while later, he gives that same exact phone number pursuant to the booking information. Without the defendant having given that booking phone number to the officer, I

would be acquitting him right now. But with that, that convinces me beyond a reasonable doubt that the State has proven their case, so there is a finding of guilty of the delivery of cannabis charge."

¶ 10 The trial court subsequently sentenced defendant to 18 months of probation and assessed \$1,315 in fines, fees, and costs.

¶ 11 On appeal, defendant contends that the State's evidence in its "feeble" case against him was too tenuous and speculative to prove him guilty beyond a reasonable doubt on a theory of accountability. He asserts that the fact he drove the seller to the location of the sale proves nothing other than that he was present at the scene. Defendant further argues that the trial court erroneously inferred that he knew of and intended to facilitate the delivery simply because the telephone number he provided to the police a month after the crime was the same number Investigator Walls had called to arrange the sale. Defendant argues that the trial court's inference of knowledge and intent was unfounded, as there was no evidence that he had exclusive control over the associated telephone line at the time the sale was arranged, and there was no evidence to show who spoke with Investigator Walls, where the call was taken, or whether defendant was present for the call.

¶ 12 When reviewing 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. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). Reversal is justified only where the

evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 13 In order to prove defendant accountable for the seller's actions, the State was required to show that either before or during the commission of the crime, and with the intent to promote or facilitate such commission, he solicited, aided, abetted, agreed, or attempted to aid the seller in the planning or commission of the crime. 720 ILCS 5/5-2(c) (West 2010). A defendant's intent to promote or facilitate a crime may be inferred from the character of his acts and from the circumstances surrounding the commission of the crime. *People v. Perez*, 189 Ill. 2d 254, 266 (2000). A defendant will be found to have the intent to promote or facilitate a crime if he either (1) shared the criminal intent of the principal or (2) there was a common criminal design. *Perez*, 189 Ill. 2d at 266.

¶ 14 In the instant case, the evidence, viewed in the light most favorable to the prosecution, was sufficient to establish a common criminal design. Under the common design rule, where two or more persons engage in a common criminal design or agreement, any acts committed by one party in furtherance of that common design are considered to be the acts of all parties to the design or agreement, and all parties are responsible for the consequences of the further acts. *Perez*, 189 Ill. 2d at 267. Accountability may be proven through a defendant's knowledge of and participation in the criminal scheme; neither words of agreement nor direct participation in the criminal act itself are required. *Perez*, 189 Ill. 2d at 267. Factors to consider when determining whether a defendant is accountable include the defendant's presence during the planning of the offense, his presence during its commission, his failure to report the crime, and his continued affiliation with the other offender or offenders after the commission of the crime. *Perez*, 189 Ill. 2d at 267; *People v. Velez*, 388 Ill. App. 3d 493, 512 (2009).

¶ 15 Here, there is no dispute that defendant drove the seller to the location where the drug transaction occurred, that defendant was present in the general vicinity during the commission of the sale, or that defendant drove the seller away from the scene. In addition to these factors, the telephone number Investigator Walls called to arrange the sale was the same telephone number defendant identified as his own when he was arrested a month later. While it is possible that number, as defendant suggests, could have been assigned to a landline in his family residence or to the cellular telephone of a family member or close friend, it was not unreasonable for the trial court to infer that it was defendant's personal number. Combined, defendant's actions of driving the seller to and from the sale's location, his presence during the offense, and his identification of the telephone number used to arrange the sale as his own, support a finding that he intended to facilitate the seller's delivery of cannabis. We cannot say that the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to defendant's guilt. *Slim*, 127 Ill. 2d at 307. The evidence, viewed in the light most favorable to the prosecution, was sufficient to prove defendant guilty of delivery of cannabis.

¶ 16 Defendant next contends that the trial court miscalculated the total amount of fines, fees, and costs as \$1,315, when the correct total should be \$1,015. The State concedes the error. We accept the State's concession and accordingly order the clerk of the circuit court to enter a modified fines, fees, and costs order reflecting the correct total of \$1,015.

¶ 17 For the reasons explained above, we affirm defendant's conviction and sentence and order the clerk of the circuit court to modify the fines, fees, and costs order.

¶ 18 Affirmed as modified.