SECOND DIVISION
January 13, 2015

No. 1-13-0942

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. 12 CR 14210
	)	
SHAQUITA WHITTINGTON,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment entered on aggravated arson conviction affirmed over defendant's challenge to the sufficiency of the evidence; residential arson conviction vacated under one-act, one-crime doctrine; mittimus corrected.

¶ 2 Following a bench trial, defendant Shaquita Whittington was found guilty of aggravated arson and residential arson, then sentenced to concurrent terms of six years' imprisonment. On appeal, she challenges the sufficiency of the evidence to prove her guilty beyond a reasonable

doubt, and requests that the mittimus be corrected to reflect credit for time spent in pre-sentence custody.

¶ 3 Defendant was charged with arson, aggravated arson, and residential arson in connection with the fire that was set to the front door of Charanise Anderson's home at 13203 South Ellis Avenue in Chicago, on February 28, 2012. At trial, Tyrone Campbell acknowledged his prior felony theft conviction, then testified that he has a child with defendant, and stopped dating her right before Christmas 2011. At the time of the incident, he was dating Anderson, and living with her at the South Ellis address.

¶ 4 Campbell further testified that at 7:45 p.m. on February 28, 2012, he went to the store at 131st Street and South Ellis Avenue and saw defendant's friend there. When he left the store, defendant and two of her friends got into a car and drove in the direction he was walking. Defendant then exited the car, and started walking towards him, but he kept walking in the opposite direction, and ran "a little bit" when defendant started to run after him. Defendant's friends then pulled up in the car, and she walked over to it and said, "[l]et's go to Charanise's house," before entering the car and driving off.

¶ 5 At that point, Campbell called Anderson, and told her that defendant was on her way to her home, and when he arrived there, Campbell saw that the front screen door was on fire. Campbell explained that Anderson lives in a row house with apartments on each side and one apartment below. Campbell further testified that within the year preceding this incident, Anderson had seen defendant at the store at 131st Street and South Ellis Avenue, and that the two women almost got into a fight, but he separated them.

¶ 6 Charanise Anderson testified that at 8 p.m. on February 28, 2012, she was home at 13203 South Ellis Avenue and watching television when Campbell called her and told her that defendant was on her way there. After the phone call, Anderson stayed inside watching television, and continued to do so when she heard banging on her front door. When she heard more banging a few minutes later, she walked to the door, looked out the window in it, and saw defendant standing there. She could only see defendant's face, and went back to the couch and continued watching television. A few minutes later, she heard banging on the door again, looked out the window to the side of the door and a foot away from it, and saw defendant standing there. She could not see exactly what she was doing, but when she returned to the couch, she heard more banging. She returned to the front door, and this time saw flames and called police.

¶ 7 Anderson also testified that she only saw one person outside her home, and did not tell police that there was "another female that [she] could not see yelling towards [her] house when [she] heard banging on the door." Anderson further testified that lights were on inside her home that night as well as on the front porch, and that one cannot see the television in her home from outside her apartment.

¶ 8 Anderson testified that a couple of months prior to this incident, she was on her porch with Campbell. He pointed out defendant, who was in her car outside the store at 131st Street and Ellis Avenue, and he went to talk to her that day.

¶ 9 The parties stipulated that defendant gave a statement to Detective John O'Donnell and Assistant State's Attorney Joelle Zahr. Defendant told them that she, Shauna and another girl drove to the victim's house to see if Anderson was outside so they could fight. They parked the

car and walked up to the victim's door. Defendant stated that she was planning on taking a black jacket and pouring syrup on it and stuffing it into Anderson's mailbox as well as pouring syrup on the door. Defendant wanted to just "mess" with Anderson and believed she would not get arrested for the syrup plan. When she walked onto the porch of the victim's home, she saw Shauna pour something on a jacket, which defendant thought was gasoline, and then lit it on fire with matches. Defendant stated that she did not know that Shauna had a bottle of gasoline or that the other girl and Shauna were going to start a fire, nor why they would do so because they did not know the victim. Defendant stated that she "had nothing to do with [it]," and fled after the fire started. Defendant further stated that she heard that Anderson was not home at the time of the fire, that Anderson lied when she said that she saw her from the window because she was standing off to the side and was not the one who got the gasoline and poured it onto the jacket or lit the fire.

¶ 10 Defendant noted in her statement that she carried a black jacket to the victim's house after finding it in Shauna's car. She also noted that there is video of the area near the scene of the incident which shows a person carrying a jacket, and then a person running away, but insisted that the person shown was not her because her jacket had words on the back.

¶ 11 The parties further stipulated that Anderson spoke with Detective O'Donnell and told him that she looked out her window towards the front door and observed defendant standing there holding what looked like a steel pole. Anderson also told him that defendant was with another female, who she could not see, but was yelling towards her house, and that she heard banging at her door.

¶ 12 At the close of evidence, the court found the victim credible, and Campbell's testimony corroborated by the credible victim. The court noted the victim's testimony about seeing defendant a couple of months before the incident, and found, based on defendant's statement, that it is clear she was present during the incident, and that she knew the victim was at home.

¶ 13 Defendant filed a motion to reconsider, which the court denied. In doing so, the court noted that defendant admitted that she was present and went to the victim's house to "mess" with her. The court stated that with the history between the two women, it was reasonable that the victim had seen defendant through the window in her door, and concluded that every element of the charge was proved at trial.

¶ 14 On appeal, defendant contends that the evidence was insufficient to prove her guilty beyond a reasonable doubt of aggravated arson. She maintains there was insufficient evidence to prove that she was the principal who started the fire or was accountable for Shauna's actions in starting it where there was no evidence that she shared the intent to aid, or abet in the arson or was part of a common plan or design to commit arson. She further contends that there is insufficient evidence to prove that she knew or reasonably should have known that someone was inside the home.

¶ 15 When defendant challenges the sufficiency of the evidence to sustain her conviction, our duty is to determine whether all of the evidence, direct and circumstantial, when viewed in the light most favorable to the prosecution, would cause a rational trier of fact to conclude that the essential elements of the offense have been proved beyond a reasonable doubt. *People v. Wiley*, 165 Ill. 2d 259, 297 (1995). A criminal conviction will be reversed only if the evidence is so

unsatisfactory or improbable that it leaves a reasonable doubt of defendant's guilt. *Wiley*, 165 Ill. 2d at 297. For the reasons that follow, we do not find this to be such a case.

¶ 16 To prove aggravated arson beyond a reasonable doubt here, the State was required to show that defendant, in the course of committing arson, knowingly damaged any building or structure, including any adjacent building or structure and that she knew or reasonably should have known that one or more persons were present therein. 720 ILCS 5/20-1.1 (West 2010). To prove defendant accountable for the criminal conduct of another, the State was required to show that either before or during the commission of an offense and with the intent to promote or facilitate such commission, defendant solicited, aided, abetted, agreed or attempted to aid, such other person in the planning or commission of the offense. 720 ILCS 5/5-2(c) (West 2010).

¶ 17 The two distinct bases for proving legal accountability are shared intent (also referred to as specific intent), and common design. *People v. Phillips*, 2014 IL App (4th) 120695, ¶46. It is well settled that, under the Illinois accountability statute, the State may prove a defendant's intent to promote or facilitate an offense by showing *either* 1) defendant shared the criminal intent of the principal, *or* 2) there was a common criminal design. (Emphasis in original.) *People v. Fernandez*, 2014 IL 115527, ¶21.

¶ 18 The evidence adduced at trial showed that the victim was familiar with defendant because she had a previous relationship with her boyfriend, Campbell, and he had pointed defendant out to her. In addition, defendant admitted to police that she went to the victim's home because she wanted to "mess" with her, and fight her, and the victim saw her at her door. The evidence thus showed that defendant voluntarily attached herself to a group bent on illegal activities with

knowledge of its design which supports an inference that she shared the common illegal purpose. *Fernandez*, 2014 IL 115527, ¶13.

¶ 19 We note that criminal conduct in the accountability statute includes *any criminal act done in the furtherance of the planned and intended act*. (Emphasis in original.) *Fernandez*, 2014 IL 115527, ¶16. Thus, once defendant decided to go to the victim's house for the announced purposes of messing and fighting with her, she was liable under section 5-2(c) of the Criminal Code of 2010 (720 ILCS 5/5-2(c) (West 2010)) for every criminal act committed in connection therewith, including the alleged unplanned arson committed by one of her companions. *Fernandez*, 2014 IL 115527, ¶16.

¶ 20 Although defendant insisted to police that there was no way that the victim could have seen her through the window in the door because she was standing to the side, her presence there for the announced purpose was established by the evidence presented at trial, including her own statement. Under well-settled law, when defendant decides to explain her presence, she must give a reasonable story or be judged by its improbabilities. *People v. Hart*, 214 Ill. 2d 490, 520 (2005). Here, defendant's activities before and during the incident coupled with her actions after the fire was set, *i.e.*, immediately fleeing the scene, not reporting the incident, then lying to police about her involvement, further support the determination that there was a common criminal design among the participants that was shared by defendant. *Fernandez*, 2014 IL 115527, ¶17. Accordingly, we find that the evidence establishes defendant's conviction for aggravated arson by accountability. *Fernandez*, 2014 IL 115527, ¶18.

¶ 21 Notwithstanding, defendant maintains that her case is similar to *People v. Phillips*, 2012 IL App (1st) 101923, *People v. Johnson*, 2013 IL App (1st) 122459, and *People v. Estrada*, 243 Ill. App. 3d 177, 178-80 (1993). We observe that in *Phillips*, 2012 IL App (1st) 101923, the reviewing court's ruling that a defendant is legally accountable only for crimes that he specifically intends to help his cohort commit, was overruled by the supreme court in *Fernandez*, 2014 IL 115527, ¶¶19, 21, where the court held that shared intent is not an element of the common-design rule, and, instead, shared intent and common design are two separate bases upon which the State can prove legal accountability. *Phillips*, 2014 IL App (4th) 120695, ¶48. The decision in *Johnson* was also vacated and remanded to the appellate court for reconsideration in light of *Fernandez*, 2014 IL 115527. *People v. Johnson*, No. 117292 (May 28, 2014).

¶ 22 As for *Estrada*, the record showed that defendant had planned to intimidate opposing gang members, and performed actions in furtherance of that plan when he exited a car with a tire iron and approached the opposing gang while his codefendant shot at them, and defendant then pursued one of them. *Estrada*, 243 Ill. App. 3d at 180, 185. This court found that defendant was not accountable for the murder of the victim because in addition to being present at the scene of the crime, the accountable party must also have some advance knowledge of the criminal plan or scheme, and must commit an affirmative act of assisting, abetting or encouraging the act. *Estrada*, 243 Ill. App. 3d at 184-85. After *Fernandez*, that decision is questionable because the supreme court has ruled that the accountable party does not have to have prior knowledge of the actual crime committed by the other party; rather, there must be an intended criminal act, and any action taken by the other party in furtherance of the planned and intended act, renders

defendant accountable for the other person's actions. *Fernandez*, 2014 IL 115527, ¶19. In any event, we find *Estrada* factually distinguishable from the case at bar where defendant went to the victim's home with the intent to cause her harm, and therefore, was responsible for the actions of those with her who committed acts in furtherance of the planned and intended act of doing so. *Fernandez*, 2014 IL 115527, ¶19.

¶ 23 Defendant, nonetheless, contends that there was insufficient evidence that she knew or reasonably should have known that someone was home in the victim's apartment. We disagree.

¶ 24 This knowledge may be inferred from the surrounding facts and circumstances (*People v. Stewart*, 406 Ill. App. 3d 518, 526 (2010)), and this case is no exception. The record shows that defendant told police she went to the victim's home to fight her, and when she arrived, the lights were on inside the house. Although she could not see the television, it was playing in the background, and defendant banged on the door several times. The trial court was not required to search out all possible explanations consistent with innocence and raise them to the level of a reasonable doubt (*People v. Moore*, 394 Ill. App. 3d 361, 364-65 (2009)), and here, defendant's knowledge that this was the residential home of the intended target, along with signs of present habitation encountered there, were sufficient to support the inference that defendant knew or should have known that someone was home to satisfy the knowledge element of the offense (*People v. Burrett*, 216 Ill. App. 3d 185, 190 (1991)).

¶ 25 Defendant next contends, the State concedes, and we agree that her conviction for residential arson should be vacated because it is in violation of the one-act, one-crime doctrine. *People v. Lee*, 2012 IL App (1st) 101851, ¶51. The lesser offense of residential arson, which is a

Class 1 felony as opposed to aggravated arson, which is a Class X felony, is vacated. *People v. Williams*, 2013 IL App (4th) 120313, ¶13; 720 ILCS 5/20-1.1(b), 1.2(b) (West 2010).

¶ 26 Finally, defendant contends, the State concedes, and we agree that her presentence custody credit should be 231 days as opposed to 228 days. We, accordingly, correct the mittimus as indicated. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 27 In light of the foregoing, we vacate the judgment entered on the residential arson conviction, correct the mittimus as indicated, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 28 Affirmed in part; vacated in part; mittimus corrected.