2016 IL App (1st) 112693-UB

THIRD DIVISION
May 11, 2016

No. 1-11-2693

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. 08 CR 1009 (03)
CLARENCE WILLIAMS,	)	
	)	
Defendant, Appellant.	)	The Honorable
	)	Maura Slattery Boyle
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The State's evidence did not support a reasonable inference that defendant shared a common criminal design with gang members to shoot members of a rival gang where the trial court found defendant was not a member of any gang, and where the State's evidence was otherwise too improbable or speculative to support a reasonable inference of shared criminal design. Accordingly, defendant was not accountable for the codefendant gang member's murder of a bystander during a gang dispute.

¶ 2 Following a bench trial, defendant Clarence Williams was found guilty of one count of first-degree murder based on an accountability theory. Defendant received a sentence of 23 years

in prison and an additional 20-year firearm enhancement. 730 ILCS 5/5-8-1(a)(1)(a), (a)(1)(d)(ii) (West 2006). On appeal, defendant asserts that (1) the evidence was insufficient to sustain his conviction; (2) the trial court erred by admitting gang evidence through an unqualified witness and a witness's prior consistent statement; (3) the murder was not sexually motivated and defendant should not be required to register as a sex offender; and (4) defendant's mittimus should be corrected to reflect that he was convicted of first-degree murder with a mandatory firearm enhancement, not two convictions for first-degree murder.

¶ 3 Initially, we reversed defendant's conviction for first-degree murder and remanded for sentencing on the lesser offense of aggravated discharge of a firearm. Our supreme court subsequently entered a supervisory order, however, directing us to vacate our judgment and reconsider our opinion in light of *People v. Fernandez*, 2014 IL 115527. Having done so, we find that *Fernandez* does not require a different result.

¶ 4 I. BACKGROUND

¶ 5 On October 17, 2007, 10-year-old Arthur Jones (AJ) was shot and killed during an apparent gang dispute. Defendant, whom the trial court ultimately found not to be a gang member, was charged with first-degree murder along with codefendants Lesean Jackson and Steven McCaskill. Andrew Bradley, then a 14-year-old, was subjected to juvenile delinquency proceedings.

¶ 6 Over the course of a six-day bench trial, 15 witnesses testified. Johnell Brown testified that he belonged to the Black P Stones street gang (P Stones), which "controlled" the north side of 55th Street or Garfield Boulevard. The Jet Black Stones (Jets) also occupied the area as a branch of the P Stones (collectively called the Stones). A rival street gang, the Gangsters Disciples (GD), "controlled" the south side of 55th Street. Brown testified that around 3:30 p.m.

on the day of the incident he sold cigarettes at the corner of 55th Street and Halsted Street. He also testified that he knew defendant, McCaskill and Jackson from the neighborhood and all three were members of the Jets. When a fight broke out between the Stones and the GDs in a gas station on the south side of the boulevard, Brown went over to try and "squash" the fight, but eventually got involved when he tried to rescue his friend Jimmy. Brown also saw defendant and McCaskill in the area of the gas station and then saw them leave together heading north.

¶ 7 Eventually, Brown returned to his "business," crossing over to the east side of Halsted Street, where he had hidden cigarettes and marijuana by the bus stop near the mall. While standing there, Brown saw defendant, codefendant Jackson and McCaskill walk though the mall area, but he could not recall Bradley's whereabouts. Brown also observed some high school youths hanging out in the grassy area in the middle of the boulevard. He then saw Jackson, who was standing behind the bus stop, point a semiautomatic gun toward the southwest corner of the intersection. On direct examination, Brown testified that he heard defendant tell Jackson "to wait" and then saw defendant walk toward the back of the mall. Brown then saw Jackson fire four shots into the grassy area of the boulevard. Afterward, Brown ran toward 54th Street and heard another round of shots.

¶ 8 On cross-examination, Brown, who had prior controlled substance convictions, testified that he disliked defendant and wanted to "beat his ass" because of his relationship with Brown's sister. Regarding gang membership, Brown testified that he never saw defendant get initiated into the Jets. More importantly, Brown testified, in contrast to his earlier testimony, that he did not hear defendant tell Jackson to wait before firing and he did not recall telling the detectives that.

¶ 9 On redirect examination, over defense counsel's objection, the judge allowed the State to read into evidence prior consistent testimony that Brown had given before a grand jury to rebut, Brown's cross-examination testimony that he did not hear defendant tell Jackson to wait. The prior testimony included the following colloquy:

"Q. Did you say anything when Lesean put up the gun?

A. Yes.

Q. What did you say?

A. I told him not to shoot, there's kids out there.

Q. Did [defendant] say anything about this?

A. Yes.

Q. Did [defendant] say anything to [Jackson] or give him instructions?

A. He say wait until they get closer, and then [Jackson] start firing."

The State did not ask that the grand jury testimony be admitted substantively.

¶ 10 Pursuant to a stipulation, defense counsel also introduced prior statements made by Brown to Chicago police. In this statement, he said "if ya'll want me to turn State evidence and that's what I'll have to do, and that's what I'll have to do but I ain't have nothing to do with it." Brown also said, "maybe they heard [defendant], it might have been [defendant] they heard say wait until they get closer." The statement also indicated, "I said what I said. It's one of the other people that could have said that, 'wait until they get closer'. Maybe [McCaskill] or [defendant] said 'wait until they get closer.'" Finally, Brown stated "I don't fuck with [defendant]. I want to beat his ass plenty of times for using my sister for her money."

¶ 11 Tierra Merchant testified that around 4 p.m., she entered the Subway restaurant at the end of the mall and saw defendant talking on his cell phone in the parking lot. When Merchant was

leaving five minutes later, she saw defendant fire a pistol at least twice in a southwest direction toward the gas service station. Defendant was not looking in the direction he fired, however. Merchant then saw defendant flee north through the parking lot.

¶ 12 Johnny Figueroa testified that at the time of the incident, he drove his vehicle through the parking lot behind the mall. He waited in the driveway to merge onto 55th Street when he heard gunshots to the right of his car. He then saw an African-American man fire multiple shots in a southwest direction at a crowd of people located in the median, but was unable to identify defendant as the shooter from a photo array.

¶ 13 Teddy Plummer, who claimed injuries and memory problems from being hit in the head by a baseball bat in an unrelated incident, testified that he used to be friends with McCaskill and Bradley from the neighborhood, but denied knowing Jackson. Plummer testified that he did not remember (1) if Bradley, McCaskill and Jackson were members of the Jets; (2) what happened on the afternoon of the incident; (3) going to the police station with his parents thereafter; (4) signing his statement claiming to have witnessed Bradley put a 9-millimeter handgun in Jackson's hoodie pocket; (5) identifying Jackson as the shooter; (6) hearing someone tell Jackson to wait before shooting; or (7) testifying in front of the grand jury to the factual account in his statement. On the second day that Plummer testified, his memory returned. Specifically, he remembered being at 55th Street and Halsted Street after school. He then witnessed Bradley pass a 9-millimeter handgun to McCaskill, who shot AJ. Plummer claimed that he told the grand jury he gave it to Jackson, rather than McCaskill, because Plummer felt bad telling on his friend McCaskill. He also told the grand jury that prior to Jackson firing someone said, "no, don't do it, don't do it, stop, wait, wait," and testified that it sounded like McCaskill. On cross-examination, Plummer claimed to have been afraid in 2007 because of his non-gang affiliation and the Jets'

code of silence. He had changed his recitation of the facts at the grand jury hearing to protect himself and McCaskill, a known gang member.

¶ 14 Bradley, whose charges were reduced as part of a plea agreement, testified that he knew defendant, Jackson and McCaskill from the neighborhood. On the day of the incident, Bradley ran into McCaskill on Bradley's way to the barbershop. McCaskill handed a black semiautomatic gun to Bradley and asked him to shoot at the GDs. When Bradley declined, McCaskill told him to hand the gun to Jackson. Bradley complied. He then walked to the barber shop on 54th Street and heard approximately three gunshots fired from the other direction. He did not recall seeing defendant before or after either round of gunshots. The State impeached Bradley with prior testimony given as part of his plea agreement that he heard a second round of shots and then saw defendant running. Bradley testified that he "may have" said that, but did not recall.

¶ 15 On cross-examination, Bradley testified that he (1) was willing to say whatever the State wanted him to say; (2) did not see defendant on the street that day or at any time before or after the shooting; and (3) did not see defendant shoot a gun. In addition, the parties stipulated that Bradley made statements to the police, claiming that Brown told Jackson to wait until the cars passed to start shooting.

¶ 16 Detective Robert Garza testified that he interviewed McCaskill on the night of the incident and received the names of defendant, Bradley, Plummer and Jackson. McCaskill also identified photographs of defendant and Jackson from a photo array. McCaskill eventually incriminated himself.

¶ 17 McCaskill, who pled guilty to first-degree murder in this case, testified that he knew defendant, Jackson and Bradley from the neighborhood. On the day of this incident, McCaskill, a member of the Jets, was not involved in the fight at the gas station, but did shop in the mall

across the street. Before the shooting, McCaskill spoke to Bradley and then went to the home of McCaskill's grandmother. He failed to remember if he retrieved a gun from her couch. In addition, McCaskill returned to the mall with Bradley, but denied giving him a gun. McCaskill also saw Jackson at the mall, but did not see Bradley give Jackson a gun, or see Jackson even holding a gun. McCaskill heard shots and ran away. Furthermore, McCaskill did not remember telling Detective Garza any of the allegations in his written statement. To impeach McCaskill, the State presented the videotape of McCaskill's conversation with Detective Garza, in which McCaskill stated that he saw defendant participate in the fight at the gas station.

¶ 18 On cross-examination, McCaskill averred that he said anything he could to get himself out of trouble. In addition, he testified that he gave the gun to Brown, who instructed him to wait until the crowd crossed the street before firing. McCaskill further testified that he (1) did not see defendant by the bus stop before the shooting; (2) did not see defendant talk to Jackson or Bradley; and (3) never made a plan with defendant to shoot anyone. Over the prosecutor's objection, defense counsel read into evidence prior statements made by McCaskill to Chicago police detectives. McCaskill claimed that Brown set the whole shooting up, told Jackson to wait before firing, and gave the command to start shooting. In addition, he testified that defendant had no involvement in the shooting.

¶ 19 The State, over defense counsel's objection, also played a video of a conversation defendant had with Assistant State's Attorney (ASA) Margaret Ogarek. Defendant claimed that he was present at the fight at the gas station, but did not participate. He was holding a gun in his pocket for a friend. After the fight, defendant saw McCaskill, who said he was going to get "something," which defendant took to mean a gun. He went to his cousin's house, but was sent back out by his aunt to look for his cousin. When defendant saw a group of GDs advancing and a

group of Stones nearby, he walked to the mall to avoid being caught up in the conflict. He was on his cell phone near the Subway restaurant when he heard gunshots. Defendant then spontaneously fired one shot up into the air out of fear and to disperse the crowd. He never intended to shoot or kill anyone. The parties also stipulated that defendant had no gang tattoos.

¶ 20 The trial judge found defendant guilty of first-degree murder and found that defendant personally discharged a firearm during the commission of the offense. After denying defendant's motion for a new trial, the court sentenced him to 23 years in prison for his conviction of first-degree murder and an additional 20 years pursuant to the statutory firearm enhancement. 730 ILCS 5/5-8-1(a)(1)(a), (a)(1)(d)(ii) (West 2006). We note that at sentencing, the court specifically stated, "Do I think that you had gang affiliation? No." Subsequently, the trial court denied defendant's motion to reconsider his sentence.

¶ 21 II. ANALYSIS

¶ 22 On appeal, defendant asserts the evidence was insufficient to sustain his conviction for first-degree murder because he did not share any common criminal intent or design with any of his codefendants. Where, as here, a 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 proven 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 the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In a bench trial, the trial judge has the responsibility to determine the credibility of the witnesses, to weigh the evidence and draw reasonable inferences. *People v. Little*, 322 Ill. App. 3d 607, 618 (2001). Nonetheless, the fact finder's decision is not

conclusive and the reviewing court may not allow unreasonable inferences. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 23 To sustain a conviction for first-degree murder, the State must prove that a defendant killed an individual without lawful justification and in performing the acts which caused the death, he intended to kill or do great bodily harm or knew that his acts created a strong probability of death or great bodily harm to that individual. 720 ILCS 5/9-1(a)(1), (a)(2) (West 2006); *People v. Leach*, 405 Ill. App. 3d 297, 311 (2010). In the State's prior petition for rehearing, it argued that it did not attempt to persuade the trial judge and jury that codefendant Jackson fired the fatal shot, perhaps in an attempt to persuade this court that defendant may have been the principal. Unfortunately for the State, the record showed the State argued otherwise. The State also admitted at oral argument that its trial theory was that Jackson's bullet struck and killed AJ. See *People v. Carballido*, 2015 IL App (2d) 140760, ¶ 80, n. 2 (finding that it would be profoundly unfair for the State to raise a theory on appeal that was not presented to the trier of fact). Nonetheless, the State maintains that defendant was accountable for Jackson's actions because they shared a common design.

¶ 24 At the time of the offense, section 5-2(c) of the Criminal Code of 1961 stated that "[a] person is legally accountable for the conduct of another when: *** [e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2006). In addition, two distinct accountability theories exist. *Carballido*, 2015 IL App (2d) 140760, ¶ 80. The State may demonstrate that "either (1) the defendant shared the criminal intent of the principal, or, (2) there was a common criminal design." *Fernandez*, 2014 IL 115527, ¶ 13. The first category of accountability cases generally

arises where the defendant disowns knowledge that *any* crime is going to be committed. *Id*. ¶ 21. In shared intent cases, courts may focus on what the defendant knew about the principal's criminal intentions because one cannot share an intent to facilitate or promote the commission of a crime without knowing what crime is going to be committed. *People v. Johnson*, 2014 IL App (1st) 122459-B, ¶ 160.

¶ 25 In contrast, the common design rule applies where "the defendant intentionally sets out to promote or facilitate the commission of a crime." *Fernandez*, 2014 IL 115527, ¶ 21. That principal provides that where "two or more persons engage in a common criminal 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 design or agreement and all are equally responsible for the consequences of the further acts." (Internal quotation marks omitted.) *Id*. Accordingly, "there is no question that one can be held accountable for a crime other than the one that was planned or intended, provided it was committed in furtherance of the crime that *was* planned." *Fernandez*, 2014 IL 115527, ¶ 19. Additionally, a common plan or design may be inferred from circumstances and thus, words of agreement are unnecessary. *People v. Gabriel*, 398 Ill. App. 3d 332, 345 (2010); *People v. Grimes*, 386 Ill. App. 3d 448 (2008). Circumstances include (1) presence at the scene without disapproval; (2) flight; (3) failure to report the crime; (4) close affiliation with the codefendant afterward; (5) sharing proceedings; and disposing of evidence. *Gabriel*, 398 Ill. App. 3d at 345. With that said, this court has also held that a defendant's mere presence at the crime scene is insufficient to make a defendant accountable, even if coupled with the defendant's flight from the scene or knowledge that a crime was committed. *People v. Johnson*, 2014 IL App (1st) 122459-B, ¶ 132. Moreover, while a defendant's knowledge that the principal had a weapon might be relevant to a shared-intent theory, such knowledge is not

necessary where the theory of accountability is based on a common-design theory. *Carballido*, 2015 IL App (2d) 140760, ¶ 80, n. 2.

¶ 26 The State's supplemental brief suggests that defendant was accountable for Jackson's conduct because they shared a common design to shoot the GDs, as primarily demonstrated by evidence that defendant and Jackson both fired toward the GD. Thus, the State argues that defendant is accountable for Jackson shooting the unintended victim in furtherance of that common design. In reviewing all of the evidence once more, we are not persuaded.

¶ 27 The State presented very little evidence on the issue of accountability. Defendant's statement to ASA Ogarek indicated that after the fight at the gas station, McCaskill told defendant that McCaskill was going to go get a gun. The record does not indicate that defendant responded to McCaskill's statement, let alone encouraged the conduct. *Johnson*, 2014 IL App (1st) 122459-B, ¶ 132 (finding that consent to, or knowledge of, the commission of a crime is insufficient to show accountability). Additionally, the trial court found that the testimony of McCaskill, Plumber and Bradley placed defendant at the scene. Presence, however, is not enough.

¶ 28 The State's case rested heavily, however, on Brown's testimony as to what happened next. Although the State would disagree, the record shows that Brown's testimony regarding defendant's activities was largely uncorroborated, inconsistent and self-serving. First, Brown told police that he would do whatever he could to protect himself. He also informed police that he did not like defendant based upon what he felt was an abusive relationship that defendant had with Brown's sister. During his interrogation with police, an obvious effort was made to educate this soon-to-be crucial witness on the vagaries of accountability law. Moreover, Brown's testimony that defendant told Jackson "to wait" was thoroughly decimated on cross-examination when

Brown acknowledged it could have been McCaskill (who had already pled guilty to first-degree murder) that told Jackson to wait. We further observe that Plummer testified before the grand jury that it was McCaskill who told Jackson "to wait," and that Bradley and McCaskill attributed that instruction to Brown. If anything, the evidence shows that Brown could have been charged with being accountable for Jackson's actions.

¶ 29 The State attempted to repair the damage to Brown's credibility on redirect examination by introducing his grand jury testimony that defendant said "wait until they get closer, and then [Jackson] start firing." The record suggests, however, that such testimony was brought in as a prior consistent statement to rehabilitate Brown. Thus, Brown's grand jury testimony was not introduced substantively as a prior inconsistent statement. See 725 ILCS 5/115-10.1 (West 2010).

¶ 30 We further observe that while the trial court clearly found Brown testified truthfully that he was at the scene with defendant, it is not at all clear that the court found Brown's testimony showed that defendant was aiding Jackson at the time in question. See *Johnson*, 2014 IL App (1st) 122459-B, ¶ 132 (observing that presence is insufficient to demonstrate accountability). The court found Brown's credibility was "in question" and added as follows:

> "Is Johnell Brown necessarily the lynchpin in this case or the person that is the most believable [?] I believe he did tell the truth. Whether or not what the extent of his involvement was, I don't know if he was completely forthcoming, but he did place himself there and C-Man Mr. Williams there."

Contrary to the State's suggestion, we do not agree that the trial court clearly found Brown truthfully testified that defendant told Jackson to hold his shooting until their rivals approached closer.

¶ 31 Furthermore, the testimony of Merchant conflicted with Brown's testimony regarding defendant's whereabouts at the time of the shooting. Merchant testified that five minutes before the shooting she saw defendant outside the Subway at the opposite end of the strip mall. She also testified that defendant remained there when shots were fired. *Cf. People v. Nitz*, 143 Ill. 2d 82, 104 (1991) (concluding there was no reasonable doubt of the defendant's guilt because the witnesses stated their time estimates were approximations). This stands in stark contrast to Brown's testimony suggesting that Jackson fired immediately after defendant walked away. Specifically, Brown testified that defendant told Jackson "to wait" and then walked toward the back of the mall; Brown did not testify, however, that any significant period of time passed before Jackson fired shots. In contrast to Brown's testimony suggesting that defendant was at the bus stop immediately before the shooting, Merchant testified that the opposite was true.

¶ 32 Even assuming Brown truthfully testified that defendant told Jackson "to wait" before shooting, and that Jackson fired immediately after defendant walked away, the trial court's finding that defendant was not in a gang precludes any reasonable inference that defendant's conduct shows he was assisting Jackson in what was clearly a gang shooting. Aside from gang affiliation, the State has suggested no motive for defendant to conspire in a gang-related crime. See *Cunningham*, 212 Ill. 2d at 283 (where a fact finder's judgment must be reasonable in light of considering the whole record.).

¶ 33 We further observe that the trial court indicated that it relied more heavily on the testimony of Merchant and Figueroa than it did on the testimony of Brown. Specifically, the trial court relied on Merchant's testimony that she saw defendant shoot toward the gas station. The court did not expressly acknowledge, however, Merchant's testimony that defendant was not looking in the direction he was firing. Additionally, the trial court relied on Figueroa's testimony

that he saw an African-American man standing in the same area firing a weapon in the same direction. Figueroa, however, did not testify whether the individual was looking in the direction he was firing. Furthermore, the trial court relied on defendant's own admission that he fired his weapon, albeit into the air.[1] Under these unique circumstances, neither the testimony of Merchant, Figueroa, nor defendant support a reasonable inference that defendant deliberately fired a weapon at the crowd for the purpose of helping Jackson shoot GDs. *Cf. People v. Adams,* 394 Ill. App. 3d 217, 234 (2009) (where the defendant and his two codefendants fired shots at the same individual, and where the defendant fled in the same direction as one of his codefendants, the evidence permitted an inference that they were working together); *People v. Curtis*, 296 Ill. App. 3d 991, 996, 1002 (1998) (where the defendant and his codefendant brother were firing weapons from the same car, credible evidence showed they shared a common criminal design or intent). Even assuming that defendant deliberately fired a weapon into a crowd, that does not support a reasonable inference here that he was acting in furtherance of codefendant's gang-related, criminal design, rather than his own.

¶ 34 Finally, our supreme court's decision in *Fernandez* does not change the result. There, it was undisputed that the defendant entered into a plan to commit burglary with a companion but the defendant denied knowing that his companion was armed. During the burglary, the companion shot at a person who unexpectedly happened upon the scene. Both offenders fled. Subsequently, the defendant not only failed to report the shooting, but helped to conceal it. The supreme court found those details were all relevant to deciding whether the defendant shared a common criminal design with the principal. *Fernandez*, 2014 IL 115527, ¶ 17. Because the defendant conceded that he had aided the principal in his planning and commission of the

[1] While we must view the evidence in the light most favorable to the State, we merely note that defendant's account was corroborated by McCaskill, Plummer and Bradley, who all testified that defendant had no knowledge of the planned shooting against the GD.

burglary, however, the defendant was legally accountable for any criminal act the principal committed in furtherance of that burglary, including his companion's act of shooting the victim. *Id*. ¶ 18.

¶ 35 In reaching that conclusion, *Fernandez* overruled an appellate court decision which we previously cited in defendant's case, *People v. Phillips*, 2012 IL App (1st) 101923. In *Phillips*, the reviewing court found that if the defendant did not know the codefendant had a firearm, the defendant did not intend to help him commit a crime that required a firearm, regardless of what else the defendant had done. *Phillips*, 2012 IL App (1st) 101923, ¶ 22. Our supreme court categorically rejected *Phillips*' determination, stating, "there is no question that one can be held accountable for a crime other than the one that was planned or intended, provided it was committed in furtherance of the crime that *was* planned." *Fernandez*, 2014 IL 115527, ¶ 19.

¶ 36 If the State here had proven that defendant and Jackson had a common design to commit some crime, there is no doubt that defendant would be accountable for a murder committed by Jackson, regardless of whether defendant knew Jackson had a gun. The State did not do so, however. Instead, the State presented an extraordinary amount of conflicting evidence regarding defendant's guilt and attempted to demonstrate that defendant, who the trial court found was not a member of a gang, shared a common design with a gang member to shoot at a rival gang. Although the trial court inferred from the evidence presented that defendant shared a common design with Jackson, that inference was unreasonable under these unique circumstances. When viewed in the light most favorable to the prosecution, the evidence was so unreasonable and unsatisfactory as to raise a reasonable doubt of the defendant's guilt under the theories suggested by the prosecution.

¶ 37 III. CONCLUSION

¶ 38 The evidence was insufficient to demonstrate that defendant was accountable for the murder of AJ. In addition, the State does not dispute defendant's assertion that he should be sentenced for aggravated discharge of a firearm. Accordingly, we reverse defendant's conviction for first-degree murder and remand for the trial court to sentence defendant for aggravated discharge of a firearm. In light of our determination, we need not address the parties' other contentions but we once more direct the trial court to conform to the requirements of the Sex Offender Registration Act (730 ILCS 150/1 (West 2006)) before requiring defendant to register as a sex offender for a seemingly non-sexual crime.

¶ 39 For the foregoing reasons, we reverse the trial court's judgment and remand for sentencing on the lesser offense of aggravated discharge of a firearm.

¶ 40 Reversed and remanded for sentencing.