2016 IL App (1st) 140301-U

SIXTH DIVISION
Order filed: June 24, 2016

No. 1-14-0301

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 10 CR 12453
	)	
ERIC BROCKS,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court is affirmed, where the evidence was sufficient to sustain the defendant's conviction of felony murder predicated upon arson, the court's determination that he failed to make a *prima facie* showing of a *Batson* violation was not against the manifest weight of the evidence, and the sentencing statute mandating a term of life imprisonment was not unconstitutional as applied to him.

¶ 2 Following a jury trial, the defendant, Eric Brocks, was found guilty of two counts of felony murder predicated upon arson, under sections 9-1(a)(3) and 20-1(a)(2) of the Criminal

Code of 1961 (Code) (720 ILCS 5/9-1(a)(3), 20-1(a)(2) (West 2000)), and sentenced to natural life imprisonment under the multiple-murder sentencing provision of the Unified Code of Corrections (Code of Corrections) (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2000)). On appeal, he argues that (1) the evidence was insufficient to sustain his underlying conviction of arson; (2) the court erred in finding that he failed to make a *prima facie* showing of discrimination in the selection of his jury under *Batson v. Kentucky*, 476 U.S. 79 (1986); (3) the multiple-murder sentencing provision of section 5-8-1(a)(1)(c)(ii) of the Code of Corrections is unconstitutional as applied to him; and (4) his mittimus order must be corrected to accurately reflect the jury's verdict finding him guilty of felony murder, rather than intentional murder. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 The defendant was charged with, among other things, felony murder based upon arson, after he, Lemanuel Jackson, and Johnny Sims allegedly devised a plan to set fire to Mike's Food and Liquor Store in Chicago. The fire caused the deaths of two of the store's employees, Annie Reed and Hatari Smith. The defendant proceeded to a jury trial, at which the following evidence was adduced.

¶ 4 Sharon Bell testified that, around 11:30 a.m. on November 25, 2000, she was in Mike's Food and Liquor (the store) checking out at the cash register with Reed, who was one of the cashiers. Smith, who was also checking out customers, excused herself and went upstairs to the restroom. At that point, according to Bell, a young man or "little boy," wearing gloves and a ski mask, entered the store and began pouring liquid from a bucket onto the potato chip rack near the front of the store. From her vantage point of about 3 to 4 feet away, Bell described the young man as "small," approximately 5 feet 4 inches in height. Testimony of an investigating police officer later established that the defendant was 5 feet 4 inches tall, and weighed 145 pounds.

Bell stated that the man left the store briefly and then returned, struck a match to a matchbook, and threw it on the chip rack bearing the gasoline. The rack ignited, and the flames proceeded across the floor where the liquid had been spread. Bell testified that, when Reed realized that the store was on fire, she "panicked and ran up the stairs to the second level." Bell ran towards the back of the store and escaped to another store across the street where a girl named "Bird" worked. Bell told "Bird" that Reed and Smith were still in the store. Bell stated that she never saw Reed or Smith exit the store.

¶ 5 Anthony Muldrow and Bernita Laster were standing outside of the store immediately prior to the fire. According to Muldrow, there were people inside and outside of the store. Both witnesses testified that they saw a blue car drive up and park near the entrance to the store, and then saw two men exit the car with masks covering their faces. One of the men had a pail in his hands. Although neither witness could see the men's faces, Laster testified that one was visibly shorter than the other. The witnesses saw the men enter the store and then come back outside. According to Muldrow, one of the men lit a matchbook with a cigarette and threw it into the store through the front doorway. Muldrow and Laster then saw the men quickly get into the back seat of the blue car and yell to the driver to pull away from the scene. Laster testified that she heard a "boom" coming from inside the store. Both she and Muldrow stated that they then saw the store fill quickly with smoke.

¶ 6 Firefighter Michael Ridgeway was working on the day of the occurrence, and was called to the store to rescue persons inside of the building. Ridgeway testified that he was unable to see anything when he entered the store, because the building had no windows and was filled with smoke. He crawled his way to the second floor where he found two victims, later identified as Reed and Smith, lying within 5 or 6 feet of each other. Both women were nonresponsive and

were taken to the hospital by ambulance, where they were pronounced dead of carbon monoxide poisoning due to smoke inhalation. According to the testimony of medical examiner Adrienne Segovia, the manner of death for both Reed and Smith was ruled a homicide.

¶ 7 A forensic investigator detected gasoline at the scene, and gave the opinion that the fire was an incendiary fire. He further opined that the fire was caused by gasoline being poured on the potato chip rack and then ignited with an open flame.

¶ 8 Insurance adjuster William Jensen testified that he was retained by North American Specialty Insurance to adjust the fire loss at the store. On November 29, 2000, he met with Ota Isa, the building owner and general manager of the store. Jensen testified that Isa put in a claim for damage caused by the fire and for lost business income. North American Specialty ultimately paid Isa and his family $262,000 for their losses.

¶ 9 The police investigation failed to produce any suspects in the period following the fire. However, in October of 2006, an individual named Devin Williams, who had been arrested on a federal drug charge, reached out to the police and provided information about the fire. Williams testified that, in November of 2000, he was living in Oshkosh, Wisconsin with Susan Griswold. He had known the defendant for 5 or 6 years and considered him a friend. He also knew co-defendants Jackson and Sims, as all of them were from Chicago. According to Williams, the defendant contacted him at some point after November 25, 2000, and stated that he was "in trouble" and needed a place to stay. Williams invited the defendant to come to Griswold's house in Oshkosh, and he subsequently arrived along with Sims. At the house, Williams, the defendant, and Sims got into a conversation during which the defendant told Williams "what went on." According to Williams, the defendant stated that "June," later identified as co-defendant Jackson, "had some gasoline and set the place on fire." Williams testified that Sims

explained that he had driven the defendant and Jackson to the store, and had seen the defendant running back towards his car, at which time Sims saw a fire and an explosion. Sims then drove away from the scene quickly.

¶ 10 According to Williams, the defendant stayed in the Griswold home for approximately two weeks, and never went outside. This testimony was corroborated by Griswold. One night, Williams and the defendant were watching WGN news, and saw footage of firefighters putting out the fire in the store. The news report also displayed photographs of two women who had died in the fire. Williams testified that, during the footage, the defendant remarked, "it was some crazy shit [we] did," and then stated that he would not be going back to Chicago. The defendant also said that he thought the people who were in the store at the time of the fire had gotten out in time.

¶ 11 Williams testified that, in early 2001, he was in an Oshkosh clothing store named Phase One, that was owned by Jackson. According to Williams, the defendant, Jackson, and Sims were also in the store, and the defendant was upset with Jackson for having "set him up," knowing that "somebody might get hurt or killed." Jackson responded, "we ain't gonna talk about it right now." Williams also testified that he was told that the defendant had gotten paid for burning the store.

¶ 12 On cross-examination, Williams testified that, at the time he reached out to the police with information about the arson, he was facing a potential life sentence. On re-direct examination, Williams denied that he was testifying against the defendant pursuant to an agreement with the prosecution. He stated that the reason he did not come forward to authorities prior to 2006 was that the defendant was his friend.

¶ 13 Co-defendant Sims provided testimony pursuant to a plea arrangement with the State. Sims stated that, around November 2000, he resided in Menasha, Wisconsin with his girlfriend Brandi Jackson, who was the sister of co-defendant Jackson. At that time, Sims was working as a manager at Phase One. Sims testified that, in November 2000, he and Brandi drove to Chicago in a blue Pontiac Grand Am given to them by Jackson and his girlfriend. In Chicago, Sims and Brandi stayed at the home of Brandi and Jackson's mother. When Sims was ready to return to Wisconsin, he asked Jackson if he could borrow $100 for the trip. Jackson replied that he did not have the money right now but that he would give it to him later after he did a "lick." Sims testified that, when he asked what the "lick" was, Jackson stated that he planned to light a store on fire for "insurance purposes, insurance fraud." Sims stated that he told Jackson he didn't want any part of the "lick," but asked whether Jackson would still loan him the money. Jackson responded that he would give Sims the money if Sims drove him around to run a couple of errands. Sims testified that Jackson asked him to pick up some gasoline from the gas station, but Sims refused.

¶ 14 Sims testified that, the following day, Jackson instructed him to pick up the defendant and take him to purchase the gasoline. Sims had known the defendant previously through the defendant's brother, Danny. Sims picked up the defendant, and the defendant directed him to a gas station. According to Sims, the defendant purchased gasoline and put it into a container no larger than a Gatorade bottle. The defendant then put the container of gasoline between his feet on the floor of the car, and instructed Sims to drop him off at the house of Danny's girlfriend. Sims testified that the defendant took the container of gasoline with him when he left the car.

¶ 15 Sims spoke with Jackson later that night and, the following morning, Jackson arrived at his mother's home where Sims was staying. According to Sims, Jackson promised to lend him

$100 if he would drive him on more errands. Sims testified that, during one of the errands, they drove past the store, and Jackson remarked that he wanted to "light the store on fire." Jackson then instructed Sims to pick up the defendant. Sims testified that the three men drove back to the store in the blue Pontiac, at which point Jackson instructed him to park at the front curb and that he'd be right back. Jackson and the defendant then got out of the car and went into the store. Sims stated that Jackson and the defendant were in the store for less than a minute, when he heard people "hollering and screaming." Sims turned around and saw people running out of the store, and the defendant and Jackson heading toward the car. Sims testified that the defendant and Jackson jumped back into the car, and Jackson told him to "go, go, pull off." Sims drove a couple of blocks, and then dropped off the defendant and Jackson at different locations.

¶ 16 Sims testified that he encountered the defendant and Williams in Phase One not long after the fire. According to Sims, they "were starting to talk about *** the insurance fraud and that's when they stopped talking." Sims then went in the back of the store. Sims testified that he was unsure whether the defendant ever received any payment from Jackson, although he heard the defendant bragging that he had some money. Sims stated that, following the occurrence, he moved several times, eventually staying in another state and graduating from college. Following his arrest for the occurrence, Sims admitted his involvement in the arson and was charged with the two murders.

¶ 17 Timmy Williams, Williams' brother, testified that, in November 2000, he and Griswold were dating and he was living in her house. Timmy had been acquainted with both Jackson and the defendant for fifteen or sixteen years. According to Timmy, he was present when Williams and the defendant were watching the news footage of the occurrence, and recognized one of the perpetrators as Jackson. Timmy testified that, three or four months after the fire, he and the

defendant were having a "heart to heart" and the defendant told him that Jackson "did him wrong" as far as the payment. The defendant stated that he had been paid $500 for the occurrence.

¶ 18 The defendant presented the testimony of witnesses seeking to discredit Williams' testimony. Following arguments, the jury was instructed as to the predicate offense of arson as provided under section 20-1(a)(2) of the Code, which defines the offense as the intentional damage of real property "with intent to defraud an insurer." 720 ILCS 5/20-1(a)(2) (West 2000).

¶ 19 The jury found the defendant guilty of the felony murders of Smith and Reed (720 ILCS 5/9-1(a)(3) (West 2000)), as occurring during the commission of arson. The jury acquitted the defendant of intentional murder based upon conduct creating a strong probability of death or great bodily harm, under section 9-1(a)(1) of the Code. 720 ILCS 5/9-1(a)(1) (West 2000). The defendant filed a motion for a new trial, and a *pro se* motion alleging ineffective assistance of counsel, both of which were denied. The circuit court sentenced the defendant to mandatory natural life imprisonment under section 5-8-1(a) of the Code of Corrections. The instant appeal followed.

¶ 20 The defendant first argues that his conviction of felony murder must be reversed, because the State failed to prove him guilty of the predicate offense of arson beyond a reasonable doubt. He claims that, in order to prove arson as defined under section 20-1(a)(2) of the Code, the State had to show that he set the fire with the specific intention of committing insurance fraud. Instead, the evidence established that Jackson was the mastermind behind the insurance scheme, and merely recruited the defendant to help with the fire in exchange for $500. Accordingly, as there was no proof that the defendant was aware of any plan to defraud North American Specialty Insurance, his conviction must be reversed. In response, the State contends that the

evidence was sufficient to establish the defendant's guilt of arson based upon his accountability for the actions of his co-defendant, Jackson. We agree with the State.

¶ 21 In order for a person to be convicted of a criminal offense, the State must prove his guilt as to every element of that offense beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) (citing *In re Winship*, 397 U.S. 358, 364 (1970)). When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id.* (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A conviction will not be set aside on appeal unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Smith*, 141 Ill. 2d 40, 55 (1990).

¶ 22 Under the Code, a person commits first degree murder if, in performing the acts which cause the death, "he is attempting or committing a forcible felony other than second degree murder." 720 ILCS 5/9-1(a)(3) (West 2000). Arson is expressly included as a forcible felony (720 ILCS 5/2-8 (West 2000)), and may therefore serve as the predicate offense for felony murder. See generally *People v. Hobley*, 159 Ill. 2d 272, 314-15 (1994). A defendant may be deemed responsible for the death of a victim in the course of a forcible felony even if that defendant did not specifically intend or contemplate that his actions would result in death. *People v. Causey*, 341 Ill. App. 3d 759, 769 (2003). The test is whether the victim's death was a "direct and foreseeable consequence" of the forcible felony. *People v. Hudson*, 354 Ill. App. 3d 648, 653 (2004) (citing *People v. Lowery*, 178 Ill. 2d 462, 469-70 (1997)).

¶ 23 Under the version of section 5-2 in effect at the time of the offense in this case, a person is legally accountable for the criminal conduct of another if, "[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 (West 2000). Our supreme court has "long recognized that the underlying intent of this statute is to incorporate the principle of the common-design rule." *People v. Fernandez*, 2014 IL 115527, ¶ 13 (citing *People v. Terry*, 99 Ill. 2d 508, 515 (1984)). Under this rule, where two or more individuals engage in a common criminal design, any acts committed by one individual in furtherance of it are deemed to be "the acts of all parties to the design," and "all are equally responsible" for any consequences or crimes resulting from those further acts. *Id.* (citing *In re W.C.*, 167 Ill. 2d 307, 337 (1995)); accord, *People v. Kessler*, 57 Ill. 2d 493, 497 (1974); *People v. Tarver*, 381 Ill. 411, 416 (1942). Stated another way, where a defendant's participation in common design has been established, he will be responsible for any crimes resulting in furtherance of the offense, regardless of whether he claims he did not plan or foresee those crimes. See *Fernandez*, 2014 IL 115527, ¶ 12; *People v. Phillips*, 2014 IL App (4th) 120695, ¶ 27.

¶ 24 Here, there can be no question that the defendant participated in events in furtherance of a criminal design to burn the store in order to collect insurance proceeds. The day before the fire, the defendant directed Sims to drive him to a gas station, where the defendant purchased gasoline and put it into a bottle. The following morning, the defendant entered the store and, according to the testimony of Bell, poured the gasoline over the potato chip rack, and then threw a lit match into the store to ignite the gasoline. Finally, it was undisputed that he collected $500 from Jackson or some other source for his participation in the fire. Although the defendant claims to have been unaware of Jackson's plan to obtain insurance proceeds as a result of the fire, this is of no consequence under the law of accountability. See *People v. Redmond*, 341 Ill. App. 3d 498,

515 (2003). Once he agreed to participate in the scheme to set fire to the store and committed acts in furtherance thereof, he became accountable for the ensuing criminal act that was the end result of that scheme. He is therefore criminally responsible for Jackson's fraudulent procurement of insurance proceeds based upon the fire that he helped set.

¶ 25 The defendant acknowledges that, under the common design rule, the State need only prove that he had the specific intent to promote or facilitate "a crime" in order to be held accountable for the offense ultimately committed as part of the scheme. He argues, however, that burning down a building with the consent of the owner is, in and of itself, not a crime or a criminal scheme. His argument is without merit.

¶ 26 The defendant entered the store on the morning of the fire wearing a face mask, dark clothing and gloves to conceal his identity. He and Jackson set fire to the store during working hours, when there were potential victims both inside and outside of the premises. Immediately after tossing a lit match into the store, the defendant and Jackson ran to a waiting car and fled the scene. The following day, he escaped to Griswold's home in Oshkosh, where he remained hidden for two weeks. This evidence is more than sufficient to give rise to an inference of criminal motivation on the defendant's part. Accordingly, his argument that he was not proven guilty of arson under section 20-1(a)(2) of the Code must fail.

¶ 27 Next, the defendant argues that the circuit court erred in finding that he failed to make a *prima facie* showing under *Batson*, 476 U.S. 79, that the State illicitly used peremptory challenges to exclude African-Americans from the prospective jury pool.

¶ 28 During *voir dire*, the defendant raised a *Batson* objection, claiming that the State had used peremptory challenges to excuse two out of the three African-Americans from the initial pool of prospective jurors. The court stated that it was unable to conclude that those two

peremptory strikes, standing alone, constituted a *prima facie* showing of a *Batson* violation, but that it would revisit the issue after jury selection was completed. Upon the completion of jury selection, the defense renewed its objection based upon the original two exclusions, arguing that "two of three African Americans that were then on the panel for consideration were stricken by the State." The court noted that "[t]here are black people on the jury," and that the State had used 6 of its 7 challenges as follows: "two of them were for black women, there were three for one of the black Hispanic woman (*sic*), and one white woman. I don't see any pattern whatsoever that he had racial discrimination." The court then concluded that no *prima facie* case had been made. The defendant now argues that this ruling was in error.

¶ 29 It is well-settled that the State's use of a peremptory challenge to exclude a prospective juror based solely upon her race is a violation of the defendant's constitutional right to equal protection of the laws. *Batson*, 476 U.S. at 84. The exclusion of even one juror on this basis constitutes a violation of the *Batson* rule. *People v. Davis*, 231 Ill. 2d 349, 360 (2008). In *Batson*, the Court outlined a three-step process for evaluating claims that the State used peremptory challenges in a manner violating the defendant's constitutional rights. First, defendant must make a *prima facie* showing that the State exercised peremptory challenges on the basis of race. *Batson*, 476 U.S. at 96. Second, if the requisite showing has been made, the burden shifts to the State to articulate a race-neutral reason for striking the jurors in question. *Id.* at 97-98. Finally, the circuit court must determine whether the defendant has carried his burden of proving purposeful discrimination. *Id.* at 98. Our analysis in this case is confined to whether the defendant satisfied the first step in *Batson*.

¶ 30 Our supreme court has emphasized that, in determining whether a *prima facie* case of a *Batson* violation has been proven, a court must consider “the totality of the relevant facts” and

"all relevant circumstances" surrounding the peremptory strike to see if they reveal a discriminatory purpose. *Davis*, 231 Ill. 2d at 360 (citing *Batson*, 476 U.S. at 93–94, 96–97). The threshold for such a showing is not high, and merely requires sufficient evidence to permit the trial judge to draw an inference that discrimination has occurred. *Davis*, 231 Ill. 2d at 360. In determining whether a *prima facie* showing has been made, the trial court considers the following relevant factors: (1) the racial identity between the party exercising the peremptory challenge and the excluded venire members; (2) a pattern of strikes against African–Americans on the venire; (3) a disproportionate use of peremptory challenges against African–Americans; (4) the level of African–American representation in the venire compared to the jury; (5) the prosecutor's questions and statements of the challenging party during *voir dire* examination and while exercising peremptory challenges; (6) whether the excluded venire members were a heterogeneous group sharing race as their only common characteristic; and (7) the race of the defendant, victim and witnesses. *Davis*, 231 Ill. 2d at 362; see also *People v. Rivera*, 221 Ill. 2d 481, 501 (2006). The court's ruling on the sufficiency of a *prima facie* case of purposeful discrimination is a question of fact that will not be disturbed by this court unless it is against the manifest weight of the evidence. *Rivera*, 221 Ill. 2d at 502.

¶ 31 As a basis for the contention that he satisfied the first element under *Batson*, the defendant reiterates his assertion that, in the initial group of prospective jurors, the State exercised two of its peremptory challenges against African-Americans. However, as observed by the trial court, this fact alone does not amount to a *prima facie* case. The mere fact of a peremptory challenge of a venire member who is the same race as the defendant, or the mere number of African-American venire members peremptorily challenged, without more, will not establish a *prima facie* case of discrimination. *Davis*, 231 Ill. 2d at 361 (citing *Rivera*, 221 Ill. 2d

at 512 (the number of jurors struck becomes significant only when coupled with other information, such as the *voir dire* responses of those who were struck compared to the responses of those who were not struck)).

¶ 32 In this case, we know only that the defendant was African-American and that the State exercised 2 out of its 6 eventual peremptory challenges to exclude African-Americans. As the party raising the *Batson* challenge, the defendant bore the burden of pointing to additional proof suggesting a discriminatory motive by the State, such as a disproportionate use of all of its challenges against African-Americans; a low level of African-American presence on the jury as a whole; and dialog or questioning by the State suggesting that the jurors were eliminated for no reason other than their race. The defendant has pointed to no such proof.

¶ 33 In fact, we have been provided with nothing indicating the race of the venire members or the final jury panel. Again, it was the defendant's burden to preserve a sufficient record to enable this court to analyze his allegation of a *Batson* violation. In the absence of such a record, we are compelled to construe any ambiguities against him, and in favor of the trial court's determination. *Rivera*, 221 Ill. 2d at 512. Based upon the above analysis and the incompleteness of the record, we are unable to conclude that the trial court's determination on this issue was against the manifest weight of the evidence.

¶ 34 The defendant next contends that the statutory scheme under which he was sentenced was unconstitutional as applied to him. The multiple-murder sentencing statute in effect at the time of the occurrence in this case provides, in pertinent part, as follows:

> "(a) Except as otherwise provided in the statute defining the offense, a sentence of imprisonment for a felony shall be a determinate sentence set by the court under this Section, according to the following limitations:

> (1) for first degree murder,
>
> ***
>
> (c) the court shall sentence the defendant to a term of natural life imprisonment when the death penalty is not imposed if the defendant,
>
> ***
>
> (ii) is a person who, *** irrespective of the defendant's age at the time of the commission of the offense, is found guilty of murdering more than one victim." 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2000).

¶ 35 The defendant argues that, when construed in conjunction with the accountability statute (720 ILCS 5/5-1 (West 2000)), the above section compelled the trial judge to impose a mandatory life sentence upon him without regard to his age, which was 18 at the time of the crime, his limited degree of participation in the crime, or his potential for rehabilitation. As such, he claims that the statute, as applied to him, violates the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11), and the prohibition against cruel and unusual punishment under the United States Constitution (U.S. Const., amend. VIII). We disagree.

¶ 36 We initially note that our supreme court has upheld the constitutionality of section 5-8-1(a)(1)(c) as applied to adults and adult accomplices, as well as juvenile offenders where the juvenile was the principal in the crime. *People v. Miller*, 202 Ill. 2d 328, 337 (2002) (citing People *v. Taylor*, 102 Ill. 2d 201, 210 (1984)); see, e.g., *People v. Winters*, 349 Ill. App. 3d 747, 750-51 (2004); *People v. McCoy*, 337 Ill. App. 3d 518, 523 (2003) (upholding section 5-8-

1(a)(1)(c)(ii) against constitutional challenges by adult defendants convicted under a theory of accountability). The defendant does not dispute the effect of these cases or the fact that he was an adult at the time of the crime. However, in an effort to distinguish his case from those upholding the validity of the statute, the defendant points to the fact that he had no prior violent criminal history, and that he may have been convicted solely based upon the actions of Jackson, as the evidence suggests he did not "personally light or set the fire." He refers us to the recent case of *People v. House*, 2015 IL App (1st) 110580, in support of this position.

¶ 37 In *House*, a 19-year-old defendant with no violent criminal history was convicted of multiple murders under a theory of accountability, and sentenced to natural life imprisonment under section 5-8-1(a)(1)(c)(ii). *House* 2015 IL App. (1st) 110580, ¶¶ 82-83. Citing evidence that the defendant acted merely as a lookout in the murders as opposed to the co-defendant "who pulled the trigger and took more than one life," we concluded that the defendant's sentence violated the proportionate penalties clause of the Illinois constitution, as applied to him. *Id.*, ¶¶ 102-03. In making this decision, we explained:

> "While clearly no longer a juvenile, [the] defendant, at age 19 years and 2 months, was barely a legal adult and still a teenager. His youthfulness is relevant when considered alongside his participation in the actual shootings. * * * Given [his] age, his family background, his actions as a lookout as opposed to being the actual shooter, and lack of any prior violent convictions, we find that [the] defendant's mandatory sentence of natural life shocks the moral sense of the community." *Id.*, ¶ 101.

¶ 38 We find the instant case to be readily distinguishable from *House*. Contrary to the defendant's argument, the evidence here demonstrated that he purchased gasoline and then brought it into the store during working hours with employees and customers in close proximity.

Either he or Jackson then spread the gasoline in the store and ignited it, at which point they both fled the scene as the fire and smoke spread. Although he disputes the fact that he actually ignited the fire, his participation in the crime far exceeded that of a mere lookout. For this reason, *House* is unavailing.

¶ 39 As a final point, the defendant requests that we correct the mittimus because it erroneously reflects a conviction of intentional murder under section 9-1(a)(1) of the Code rather than felony murder under section 9-1(a)(3). As the State concedes this issue, we grant the defendant's request.

¶ 40 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County. We order that the mittimus be corrected to reflect a conviction of felony murder rather than intentional murder.

¶ 41 Judgment affirmed; mittimus corrected.