

No. 1-14-0864

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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. 12 CR 12901
)	
JESUS LAGUNAS,)	Honorable
)	Anna Helen Demacopoulos,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Simon concurred in the judgment.

O R D E R

¶ 1 *Held:* Where the evidence was sufficient to prove defendant guilty beyond a reasonable doubt on the theory of accountability, his convictions for aggravated discharge of a firearm and aggravated fleeing and eluding a peace officer are affirmed; defendant's DUI conviction is reversed where the parties agree that trial counsel rendered ineffective assistance when he failed to move to dismiss that charge on a speedy trial violation; mittimus amended to correct days of sentencing credit.

¶ 2 Following a joint bench trial with codefendant Erasmo Palacios,¹ defendant Jesus Lagunas was convicted of aggravated discharge of a firearm based on a theory of accountability, aggravated fleeing and eluding a peace officer, and driving while under the influence of drugs (DUI). The trial court sentenced defendant to concurrent prison terms of 8 years, 3 years, and 364 days, respectively.

¶ 3 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt of aggravated discharge of a firearm based on a theory of accountability because the evidence did not establish that he knew that codefendant had a gun, that he shared codefendant's criminal intent, or that they shared a common criminal design. Defendant also contends, and the State agrees, that his DUI conviction must be reversed because his trial counsel rendered ineffective assistance when he failed to move to dismiss that charge based on a speedy trial violation. Finally, the parties agree that defendant is entitled to an additional 11 days of sentencing credit for time served in custody.

¶ 4 At trial, Blue Island police sergeant Jamie Schultz testified that at about 3:47 a.m. on February 26, 2012, he was sitting alone filling out a report in a marked police Ford Explorer in the parking lot of Commissioner's Park in the 12600 block of Kedzie Avenue. He was parked about 30 feet from the street on the west side of Kedzie Avenue, and was facing towards the street. The street was well lit with streetlights and additional lights at the entrances to both the park and the golf course across the street, and there was no traffic on Kedzie Avenue.

¹ Codefendant's motion to dismiss his appeal was granted. *People v. Palacios*, No. 1-13-3822 (dispositional order). He is not a party to this appeal.

¶ 5 Sergeant Schultz then observed a silver SUV-type vehicle heading north on Kedzie Avenue that "really noticeably" decreased its speed and "came to a distinct slow-down" as it approached the entrance to the golf course, which was perpendicular to where he was parked. Sergeant Schultz saw a person, later identified as codefendant, extend his forearm outside of the passenger side of the SUV and over the roof of that vehicle while holding an object in his hand that was pointed towards the sergeant. Sergeant Schultz then observed and heard four gunshots fired from that object and saw the muzzle flash with each shot. The gunshots were continuous, but not rapidly fired, and occurred one right after another, with about one second between shots. Sergeant Schultz took cover behind his steering wheel, reported "shots fired" over his police radio, and gave a description of the SUV. He then maneuvered around some medians in the parking lot and drove onto Kedzie Avenue in pursuit of that vehicle.

¶ 6 The sergeant saw one northbound vehicle on Kedzie Avenue past 123rd Street and pursued that vehicle. As he drove past 123rd Street, he noticed brake lights on a vehicle heading east on that street. Those were the only two vehicles on the road. Sergeant Schultz caught up to the northbound vehicle on Kedzie Avenue at 119th Street and realized that it was a four-door sedan rather than the SUV. He then made a U-turn, drove south on Kedzie Avenue and then east on 123rd Street, advising all of the assisting officers over the radio that the offenders had to be in the eastbound vehicle.

¶ 7 Shortly thereafter, Officer Sluzowicz radioed that he saw a vehicle matching the description turn southbound from 123rd Street onto Maple, and was in pursuit of that vehicle. Sergeant Schultz drove up behind Officer Sluzowicz, saw that the SUV was a white Nissan

Murano, and confirmed to him that it was the same vehicle from which the shots had been fired. Both officers activated their police lights to stop the Murano, which then sped away, and Sergeant Schultz took over the lead in pursuit of the Murano.

¶ 8 The driver of the Murano, later identified as defendant, sped through the streets, disobeyed a stop sign, and turned onto southbound Western Avenue. Defendant was driving over 90 miles per hour, and at 127th Street, he disobeyed a red light. The Murano then became airborne over 127th Street and landed on the other side of Western Avenue. When the Murano landed, numerous sparks were emitted from the undercarriage, and defendant lost control of the vehicle and struck a streetlight, causing a power outage on Western Avenue. Defendant then struck the pillars at the entrance of the El Ranchito Market, and the engine separated from the vehicle and launched 50 feet into the air on fire. Parts from the vehicle flew in all directions, smoke engulfed the area, and the Murano came to a stop about 100 feet further down Western Avenue.

¶ 9 Sergeant Schultz ran to the Murano, which was completely filled with smoke, and when he did not see anyone inside the car, he presumed that they had been ejected from the vehicle. He then ran back to El Ranchito, saw that the store's front window was broken, and about 30 feet inside the store, saw defendant laying on his back seriously injured. Defendant was transported by ambulance to Christ Hospital. Codefendant was found inside the Murano sitting in the middle of the back seat, and the front passenger seat was broken and reclined back with the seat belt still fastened. Police determined that codefendant had been sitting on the passenger side of the vehicle. Sergeant Schultz testified that a video recorded by the red light camera at 127th Street

and Western Avenue truly and accurately depicted the Murano traveling through that intersection with the police cars in pursuit.

¶ 10 Blue Island police officer Kaczanowski testified that he responded to Sergeant Schultz's radio call of shots fired, and shortly thereafter, joined in the pursuit of the Murano behind Sergeant Schultz. Officer Kaczanowski testified substantially the same as Sergeant Schultz regarding the high-speed pursuit of the Murano down Western Avenue and the crash into the El Ranchito Market. Following the crash, Officer Kaczanowski looked inside the Murano, and due to the thick smoke and deployed air bags, he initially did not see anyone. When he could not find anyone outside the vehicle, he took a closer look inside the Murano and found codefendant in the center of the rear seat facing the front of the vehicle with his right foot on the passenger's front seat underneath the fastened seat belt.

¶ 11 Blue Island police Corporal Bernadine Rzab testified that she administered a gunshot residue kit to codefendant's hands and recovered his clothing, including a red sweatshirt, which was submitted to the Illinois State Police for gunshot residue testing. She later decided not to administer a gunshot residue kit to defendant's hands because they were covered in blood, and thus, contaminated. She recovered defendant's clothes, including a black jacket, which was sent to the Illinois State Police for gunshot residue testing. From defendant's pants pocket, she recovered cannabis and five small knotted clear plastic bags which each contained a white powdered substance. Corporal Rzab acknowledged that she did not find any spent bullet casings at the scene of the shooting.

¶ 12 Blue Island police detective Anthony Delgadillo testified he and Officer Kuzaloff of the Riverdale police department collected evidence at the crash scene and recovered a firearm from the middle of the floorboard in the back seat of the Murano. The firearm was a Glock 17 9-millimeter semi-automatic handgun loaded with nine rounds in the magazine and one round in the chamber. The magazine held 17 rounds of ammunition. They also recovered three live rounds of ammunition inside the Murano – one on the front passenger floorboard, one on the driver's side by the brake pedal, and one on the floorboard in the back seat. No discharged cartridge cases were found inside the Murano.

¶ 13 Blue Island police sergeant Ishmael Haro testified that he investigated the shooting and crash scenes with Corporal Rzab, and did not find any spent bullet casings on Kedzie Avenue. He subsequently recovered video from the red light cameras at 127th Street and Kedzie Avenue, and 127th Street and Western Avenue, as well as surveillance video from El Ranchito Market. The videos were published to the court.

¶ 14 Mary Wong, a forensic scientist with the Illinois State Police specializing in gunshot residue analysis, testified that she analyzed the gunshot residue kit that had been administered to codefendant's hands, and opined that his left hand may have discharged a firearm, been in the environment of a discharged firearm, made contact with an item that had gunshot residue, or received gunshot residue particles from an environmental source. The test results were negative as to codefendant's right hand. Wong further opined that the right cuff of codefendant's jacket may have been in the environment of a discharged firearm, come in contact with an item that had gunshot residue, or may have received gunshot residue particles from the environment. The

jacket recovered from defendant tested negative for gunshot residue. Wong acknowledged that it is possible for a person to fire a gun without any gunshot residue being deposited, which may occur if someone fires a gun from a moving car.

¶ 15 The parties stipulated that forensic chemist Alan Greep of the Illinois State Police Crime Laboratory tested the five plastic bags of white substance recovered from defendant's pants pocket and found them positive for 2.0 grams of cocaine. The parties further stipulated that Dr. David McElmeel, emergency room physician at Christ Hospital, found that blood and urine samples collected from defendant in the course of his treatment tested positive for .03 grams per deciliter of alcohol in the serum portion of his blood, which converts to a whole blood result of .025 grams per deciliter. The samples also tested positive for cannabinoids and opiates.

¶ 16 The trial court summarized Sergeant Schultz's testimony, and noted that he was parked in his vehicle when he observed a vehicle slowing down, and as that vehicle slowed down, he saw an arm come up from the passenger side window, and observed and heard four gunshots. The court found the sergeant's testimony "very credible," and found that the firearm and gunshot residue evidence was consistent with codefendant actually firing or being in the vicinity of a fired weapon. Based on those findings, the court found both defendants guilty of aggravated discharge of a firearm in the direction of another individual. The court found, however, that the State did not prove that the defendants knew that they were firing at a police officer. In addition, the court found that defendant was proven guilty beyond a reasonable doubt of aggravated fleeing or attempting to elude a peace officer, possession of a controlled substance, and DUI.

¶ 17 In his posttrial motion, defendant argued that he was not proven accountable for the aggravated discharge of a firearm offense. The trial court stated that it found that defendant was the driver of the car, and that his encounter with Sergeant Schultz was not accidental. The court further stated that, although the evidence was insufficient to prove that defendant knew that the person in the parked vehicle was a police officer, the evidence did show that defendant intentionally slowed down the vehicle he was driving, at which time codefendant reached out over the top of the vehicle and discharged the weapon. The court expressly stated that it found that defendant's actions before and during the commission of the offense facilitated codefendant's ability to discharge the weapon. Accordingly, the trial court denied defendant's posttrial motion.

¶ 18 The court then sentenced defendant to eight years' imprisonment for aggravated discharge of a firearm and three years' imprisonment for aggravated fleeing and eluding a peace officer. The court found that because defendant was in possession of the cocaine while he was fleeing the police, the drug offense was part of the same act as his fleeing, and therefore, merged the drug conviction into the fleeing conviction. The court also sentenced defendant to 364 days for the misdemeanor DUI, time actually served.

¶ 19 On appeal, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt of aggravated discharge of a firearm based on the theory of accountability because there was no evidence that he shared codefendant's criminal intent, or that they shared a common criminal design. Defendant argues that the evidence did not establish that he knew that codefendant had a gun or that codefendant planned to shoot at an occupied vehicle. Defendant acknowledges that the trial court found that he facilitated codefendant's ability to shoot the gun

by intentionally slowing down the vehicle he was driving, but asserts that his act of slowing down was a natural response to seeing the marked police vehicle. He further asserts that his act of fleeing the scene did not show that he intended to assist codefendant in committing the offense, and could have been because he was frightened and panicked.

¶ 20 The State responds that defendant was proven guilty beyond a reasonable doubt where his actions prior to, during and after the crime supported the finding that he was accountable for codefendant's actions. The State argues that defendant deliberately and substantially slowed his vehicle, facilitating codefendant's ability to fire four gunshots at the parked vehicle, then drove aggressively while fleeing the scene and attempting to evade police with codefendant.

¶ 21 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *Baskerville*, 2012 IL 111056, ¶ 31.

¶ 22 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from the testimony and evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). "[T]he trier of fact is not required to disregard inferences which flow normally from the

evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt.' " *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007), quoting *People v. Hall*, 194 Ill. 2d 305, 332 (2000). On review, we will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 23 Here, defendant challenges the sufficiency of the evidence to sustain his conviction of aggravated discharge of a firearm under a theory of accountability. To prove defendant guilty on the theory of accountability in this case, the State was required to show that the defendants knowingly discharged a firearm in the direction of a vehicle that they knew or should have known was occupied by a person. 720 ILCS 5/24-1.2(a)(2) (West 2012). A person is legally accountable for another's conduct when, either before or during the commission of an offense, and with the intent to promote or facilitate its commission, he solicits, aids, abets, agrees or attempts to aid the other person in the planning or commission of that offense. 720 ILCS 5/5-2(c) (West 2012); *People v. Fernandez*, 2014 IL 115527, ¶ 13. To prove that defendant had the intent to promote or facilitate the aggravated discharge of a firearm offense, the State was required to present evidence that either (1) defendant shared the criminal intent of his codefendant, or (2) there was a common criminal design. *Id.* Shared intent and common design are two distinct accountability schemes which should not be conflated. *Id.* at ¶ 21.

¶ 24 Defendant's intent may be inferred from the *character* of his acts as well as the circumstances surrounding the commission of the offense, and words of agreement are not necessary. (Emphasis added.) *People v. Perez*, 189 Ill. 2d 254, 266-67 (2000). Factors the trier of

fact may consider when determining defendant's accountability include his presence during the offense, his flight from the scene, his close affiliation with his companion after the offense, and his failure to report the crime. *Id.* at 267. Although mere presence at the scene, even when combined with flight from the scene, may not establish accountability, where the evidence shows that defendant intentionally aided in the commission of the offense, he is accountable. *Id.* at 268; *People v. Taylor*, 186 Ill. 2d 439, 446-49 (1999).

¶ 25 In this case, we are required to view the evidence in the light most favorable to the State. We find that the evidence was sufficient for the trial court to find defendant guilty of aggravated discharge of a firearm under the theory of accountability. Sergeant Schultz testified that as he sat inside his marked police vehicle in the parking lot, he observed an SUV-type vehicle, later identified as the Murano driven by defendant, heading northbound on Kedzie Avenue. He further testified that defendant "really noticeably" decreased the speed of the Murano and "came to a distinct slow-down" when he was almost perpendicular to the location where the sergeant was parked. Sergeant Schultz then saw codefendant extend his forearm outside of the passenger side of the Murano and over the roof of that vehicle, and saw him fire four gunshots in the sergeant's direction.

¶ 26 The evidence further shows that defendant drove away from the scene of the shooting with codefendant, and when the police caught up to them and activated their lights to stop the Murano, defendant drove away at a high rate of speed. Sergeant Schultz and Officer Kaczanowski testified that defendant then drove through the streets of Blue Island at a speed of

over 90 miles per hour, disobeyed a stop sign and a red light, became airborne, lost control of the Murano, struck a streetlight, and then crashed into the entrance of the El Ranchito Market.

¶ 27 We find that this testimony was sufficient to support the trial court's finding that defendant intentionally slowed down the Murano to facilitate codefendant's ability to discharge the firearm at the vehicle occupied by Sergeant Schultz. The circumstances in this case show that defendant's act of bringing the Murano to a "distinct slow-down" at that particular location enabled his codefendant to extend his forearm outside of the Murano and over the top of that vehicle so that he could fire the gunshots at the vehicle occupied by the witness. Furthermore, defendant's intent to facilitate the shooting can be inferred from the character of his actions in fleeing the scene, during which he drove erratically in excess of 90 miles per hour and disobeyed multiple traffic signals. These acts do not suggest an inference that defendant fled because he was frightened and panicked, but instead, that he made an aggressive attempt to elude the police with codefendant. Accordingly, the record shows that defendant intended to facilitate the commission of the offense, and thus, he is guilty of aggravated discharge of a firearm based on the theory of accountability.

¶ 28 Defendant next contends, and the State agrees, that his DUI conviction must be reversed because his trial counsel rendered ineffective assistance when he failed to move to dismiss that charge based on a speedy trial violation. The record shows that defendant was arrested on June 21, 2012, and charged with several offenses, including misdemeanor DUI. On the next court date, July 13, 2012, defendant demanded trial on those charges. The prosecutor then stated that the case had been superseded by indictment with an arraignment date of July 17, 2012. The

arraignment was continued to July 20, 2012, at which time defendant was arraigned, pursuant to the indictment, on three counts of aggravated discharge of a firearm, one count of reckless discharge of a firearm, four counts of aggravated fleeing or attempting to elude a peace officer, and one count of possession of a controlled substance. The case proceeded to trial on August 27, 2013, more than a year after defendant had demanded trial on the misdemeanor DUI charge, and well beyond the 120-day statutory period during which a defendant in custody must be tried, unless the delay was attributable to him. 725 ILCS 5/103-5(a) (West 2012). Immediately before trial began, the State said that a misdemeanor DUI charge had been "buried in the file," and it then amended that charge and said that it was proceeding on the DUI charge along with the nine counts in the indictment. Defense counsel stated that he had no objection.

¶ 29 The parties agree that the delay between defendant's demand for trial on the DUI charge and trial was not attributable to defendant, and thus, had defense counsel moved to dismiss the DUI charge based on the speedy trial violation, that motion would have been granted. We concur, and accordingly, reverse and vacate the DUI conviction. See *People v. Boyd*, 363 Ill. App. 3d 1027, 1038-39 (2006) (violation of speedy trial statute requires reversal of conviction).

¶ 30 In a related issue, in his opening brief, defendant also initially contended that he did not validly waive his right to a jury trial on the DUI charge; however, in his reply brief, he agrees with the State's assessment that this issue is now moot because the DUI conviction is being reversed. We agree, and therefore, need not address this contention.

¶ 31 Finally, defendant contends, and the State agrees, that he is entitled to sentencing credit for 511 days served in custody, rather than 500, and that his mittimus should be amended to

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reflect the correct number. Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)), we direct the clerk of the circuit court to correct the mittimus to reflect that defendant is to receive 511 days of credit for time served.

¶ 32 For these reasons, we reverse and vacate defendant's DUI conviction, affirm the judgment of the circuit court of Cook County in all other respects, and correct the mittimus.

¶ 33 Affirmed in part; reversed in part; mittimus corrected.