2018 IL App (1st) 160181-U

No. 1-16-0181

Order filed March 12, 2018

First Division



IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 12 CR 21385 |
| | ) | |
| JOSEPH BOBBITT, | ) | Honorable |
| | ) | Richard Denis Schwind and |
| | ) | James N. Karahalios, |
| Defendant-Appellant. | ) | Judges presiding. |

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court's denial of defendant's motion to suppress is affirmed over defendant's contention that a suggestive show-up was fatal to all other witness identifications. Defendant's conviction for armed robbery is affirmed over his contentions that his mere presence and flight were insufficient to establish his guilt beyond a reasonable doubt.

¶ 2 Following a jury trial, defendant Joseph Bobbitt was found guilty of armed robbery, and sentenced to a total of 25 years in prison. On appeal, defendant contends that the trial court erred

when it permitted certain identification testimony at trial after finding a pretrial show-up unduly suggestive because the State failed to show by clear and convincing evidence that the witnesses identified defendant based upon their "independent recollections." Defendant further contends that he was not proven guilty, beyond a reasonable doubt, of armed robbery because the evidence at trial only established that he was present and that he ran away. For the following reasons, we affirm.

¶ 3 The State charged defendant, Freddie Clemons, and Derrick Shelby with armed robbery with a firearm, armed robbery with a bludgeon, and four counts of unlawful restraint in connection with an October 23, 2012, incident at an Aldi supermarket in Streamwood. Shelby pleaded guilty to armed robbery without a firearm in exchange for a nine-year prison sentence. Defendant's case was severed from that of Clemons, and defendant proceeded to a jury trial.[1]

¶ 4 Prior to trial, defendant moved to suppress the identification testimony of Alex Valenzuela, Josefina Chavez, Corrinne Wimmer, and Ella Villaruel, Aldi employees who witnessed the armed robbery. The trial court held a combined hearing on defendant's motions to quash arrest and to suppress identifications.[2]

¶ 5 At the hearing, Streamwood police officer Franklin Moreno testified that shortly before midnight on October 23, 2012 he received a call directing him to an Aldi supermarket. Moreno identified defendant in court as being present in front of the supermarket when he arrived. Defendant was "just walking." Defendant was later taken into custody by another officer a short distance away, and Moreno transported defendant back to the supermarket in a squad car.

[1] Clemons's appeal has already been decided by this court. See *People v. Clemons*, 2017 IL App (1st) 150984-U (Dec. 26 2017).

[2] The trial court denied defendant's motion to quash arrest. Defendant makes no argument regarding that motion on appeal.

Defendant was in handcuffs and was seated in the car's rear seat, that is, "the cage." Moreno parked and then brought the four Aldi employees to the car for a show-up. Before taking each person to the car, Moreno "spoke to them as a group," stating that officers had detained a person and wanted to know if that person was the same person seen inside the store. As each person was brought to the car, Moreno "illuminated the rear seat and asked them if that was the person they saw." Each person gave a "positive confirmation." Defendant was then transported to a police station. During cross-examination, Moreno testified that when he arrived at the Aldi, defendant was pacing in front. Two men then exited the supermarket. Ultimately, defendant and one man ran away while Moreno struggled with the third man.

¶ 6 Detective Eric Pagels testified that he met the four Aldi employees in the lobby of the DuPage County jail on October 25, 2012. The group was then escorted to a waiting room. One at a time, each witness was brought into a viewing room to view the lineup. Pagels "believe[d]" that defendant chose the other people that were included in the lineup. Prior to each witness viewing the lineup, Pagels went through a "physical lineup instruction form" with that person. The form stated, *inter alia*, that the " 'person who committed the crime may or may not be in the group of people shown' " and that a witness was " 'in no way obligated to identify someone.' "

¶ 7 After viewing the lineup each witness was taken to another area, that is, once having viewed the lineup, a witness was not taken back to the area where the witnesses who had not yet viewed the lineup were located. Pagels identified a photograph of the physical lineup as it appeared in 2012, and testified that defendant was in position number three.[3] Pagels also testified that all the individuals in the lineup were wearing prison-issued orange jumpsuits. Alex

[3] This photograph is not included in the record on appeal.

Valenzuela, Josefina Chavez, and Ella Villaruel, separately indentified defendant from the lineup. Corrinne Wimmer did not identify anyone.

¶ 8 After hearing argument, the trial court granted the motion to suppress identifications as to the show-up identifications. However, with regard to the lineup identifications, the trial court denied the motion. The court noted that defendant was able to choose the other people in the lineup. The court also stated, looking at a photograph of the lineup, that it did not "see any disparity in weight, [or] dress," a "[s]light disparity in height," and that the lineup contained a person that was "in the Court's opinion, *** just as darkly complected as the defendant." With regard to defendant's argument that because defendant was subject to the show-up, the lineup identifications were suggestive, the court weighed that argument against Pagels' testimony that "one of the witnesses made no identification, [which] *** kind of cuts against the grain" of that argument. Therefore, the court found that the lineup was "constitutionally adequate" and that there was "no evidence" presented that the show-up was the reason why the three Aldi employees who identified defendant in the lineup did so.

¶ 9 The matter proceeded to a jury trial. Alex Valenzuela testified that on October 23, 2012, he was working the "closing" shift as a cashier at Aldi. Around 9 p.m., he was in the store with co-workers Ella and Corrine. The manager, Josefina, had gone to the parking lot to put her purchases in her car. "[R]ight before close," three men entered the store together and then "split a little bit." One man was wearing a baseball cap, one was wearing a black hoody and the third was wearing a red shirt and khaki pants. Alex indentified defendant in court as the man wearing a red shirt and khaki pants. Defendant stood and looked around while the man in the baseball cap

went to the "chip section" and the man in the black hoody paced back and forth. Alex observed defendant "looking at the other guys he walked in with" and at the parking lot.

¶ 10 At one point the man in the black hoody approached Alex and asked for "Doritos." Alex explained that Aldi does not sell Doritos and directed the man to comparable products. At this time, defendant was standing two or three feet away, between the register and the door. The man in the hoody walked away, returned and again asked for Doritos. Alex repeated the same information. Defendant was still in the same area looking around and the man in the baseball cap was walking around the store. Defendant then went outside. Ultimately, the man in the black hoody put some items on the conveyer belt. As he placed the last item on the belt, he pulled out a gun, pointed it at Alex, and told him to get down. Alex complied. He was then grabbed by the belt and dragged between two registers. Alex turned his head toward the exit and observed defendant standing by the bar that separated the entrance and exit doors. The man in the hoody instructed Corrine to open a cash register. The man in the baseball cap came to the front of the store with Ella, who was told to get on the ground. When Josefina reentered the store, she was told to open a cash register. During this time, Alex observed defendant "outside in between the bushes." After "grabb[ing]" the money, the two men left the store. As the man in the baseball cap left, a police officer arrived and a "scuffle" ensued. At this point, Alex could not see defendant.

¶ 11 Two days later, Alex viewed a lineup and identified defendant as the "guy in the red sweatshirt and khaki pants." Alex also testified that the Aldi store had surveillance equipment in October 2012, and that certain surveillance footage truly and accurately depicted what occurred that evening. The video footage was admitted, without objection, into evidence and published to

the jury.[4] Alex identified defendant on the video. During cross-examination, Alex testified that he did not see defendant take any money or handle a gun.

¶ 12 Ella Villaruel testified that she was mopping the floor when three black men entered the store. One of the men was wearing a red shirt. She identified defendant in court as the man wearing the red shirt. She observed defendant enter the store, linger "for a moment" and then walk out. At one point, the man in the baseball cap approached her and stated that the manager wanted her. The man then stated that Ella needed to go to the front of the store and walked her there. When she got to the front of the store, she got on the ground and also observed the man in the black hoody holding a gun. After the two men left the store, Ella spoke to police officers. On October 25, 2012, Ella went to the DuPage County jail to view a lineup. She indentified defendant as the person in the red shirt who entered the store, "lingered for a moment" and then "immediately walked out."

¶ 13 Corrinne Wimmer testified consistently with Alex and Ella that three men, two wearing black and one wearing a red shirt, walked into the store together. She did not recall the men speaking to each other. The man in red "did not stay there for long;" rather, he left "at some time." She did not get a good look at the man in the red shirt. On October 25, 2012, she viewed a lineup at the DuPage County jail. She did not identify anyone.

¶ 14 Josefina Chavez testified that as she was "backing out the exit door" on her way to her car, she observed three African-American men enter the store. One was wearing a red shirt.

[4] This surveillance video is not included in the record on appeal. However, on October 20, 2017, this court granted defendant's motion to "adopt by reference People's Exhibit 5, the video footage of the armed robbery of the Aldi's food store, pursuant to Illinois Supreme Court Rule 315(h), *** which is presently in the Record of co-defendant Freddie Clemons' appeal, No. 15-984. Said exhibit may also be considered as included in defendant's Record on appeal, pursuant to Illinois Supreme Court Rule 315(h)." This court has reviewed the video footage.

Josefina identified defendant in court as the person in the red shirt. The other men were wearing a black sweatshirt and a baseball cap respectively. As the three men walked inside, she observed them "ducking their head[s] for the camera, which was suspicious, except for the last guy." Josefina observed the men talk for a "few seconds," separate, then "come back together." She could not see where the men went when the group separated and could not hear what they were saying. At this point, Josefina called 911 because "[t]here were too many suspicions [*sic*] going on" and she "felt" the store was possibly going to get robbed. However, she hung up when she observed defendant come out of the store. Defendant stood "right after the exit door." The phone then rang and she answered it. It was 911 calling back. Josefina spoke to a 911 operator, stated that "some suspicious activity was going on," explained that she believed that the store was going to be robbed, and described the clothing worn by the three men.

¶ 15 When she reached her car, Josefina put her groceries away and emptied her pockets. When she looked back, she observed defendant looking in her direction. As she moved around the parking lot, she observed defendant continue to look in her direction. As Josefina reentered the store, she "felt" defendant move to "kind of stand behind" her. Defendant was "right on [her] back." However, defendant did not follow her into the store. Once she was inside, Josefina observed Alex on the floor. The man in the black sweatshirt, who was holding a gun, told her to put her hands up and lie down. However, once she was on the ground, he told her to get up and open her register. She complied. The man in the black sweatshirt took currency and the man in the baseball cap took coins. Then they left. Two days later, Josefina went to the DuPage County jail and viewed a lineup. She identified defendant as the man in the red shirt.

¶ 16 At trial, Josefina testified that certain surveillance video was a true and accurate depiction of the events of October 23, 2012. The video was then published without objection. Josefina testified that the video showed three men entering the store and that one of the men was wearing a red shirt. She indentified defendant as the man wearing the red shirt depicted on the video.

¶ 17 Andrew Burnham, who also worked in the shopping plaza, testified that he was collecting carts when he observed two black "guys" running "almost side by side" toward him from the Aldi's direction. One man was wearing a red hoody. Burnham observed money "flying out" from the center pocket of the red sweatshirt. He picked up the money and gave it to a police officer.

¶ 18 Streamwood police officer Franklin Moreno testified that he responded to a call regarding "suspicious subjects" at the Aldi store. He also received descriptions of the outfits worn by the "three male black subjects: one wearing a black sweater; another, taller, wearing a white T-shirt; and another wearing a red shirt." As he approached in his squad car, he observed a black man wearing a red shirt and khaki pants standing in front of the entrance to the store "shuffling back and forth." Moreno parked and approached the store.

¶ 19 When he was about 10 feet away from the man in the red shirt, they made eye contact. The man looked away and began to "shuffle" away. As he approached the "actual entrance," he observed two men exiting the store. He made eye contact with one man, who he later learned was Freddie Clemons, and asked if there was a problem. Clemons replied "no" and that "everything was cool, we're leaving." Clemons then walked in the same direction as the man in the red shirt. Moreno next made eye contact with the second man, later identified as Derrick Shelby. As he observed Shelby's eyes open wide, in his peripheral vision he saw Clemons and the man in the red shirt begin to run away. Although Moreno stated his office and told the men to

stop, they did not. Moreno and Shelby then engaged in a physical "confrontation" that ended with Shelby on the ground in handcuffs. During cross-examination, Moreno testified that the man in the red shirt did not look startled or surprised when they made eye contact and did not run away.

¶ 20 Retired police officer Michael Donahue testified that he responded to the call at the Aldi store, and observed two men running. One man was in a red sweatshirt or sweater and khaki pants and the other man was wearing a dark sweatshirt. He pursued the men by car and on foot to a townhouse at 1503 McCool. Donahue followed the men inside the townhouse and observed them run through and close the front door of the townhouse. He then went out of the back of the townhouse and relocated to the front of the building. At this point, Donahue did not see anyone. He and another officer then searched the area. About an hour later, Donahue responded to a call that a man was hiding in the bushes in front of 1505 McCool. A man wearing a red shirt and tan pants was located in the bushes. He recognized this person as the same man he saw running away from the Aldi store. Donahue identified defendant in court as the man he pulled from the bushes.

¶ 21 Detective Eric Pagels testified that after he learned that Shelby and defendant were in custody, he spoke to Alex, Ella, Corrinne and Josefina at a police station. On October 25, 2012, he met with them and conducted lineups. Alex, Ella and Josefina each identified defendant as the man in the red shirt. Corrinne did not identify anyone.

¶ 22 The jury found defendant guilty of four counts of armed robbery. The trial court merged the counts and sentenced defendant to a total of 25 years in prison consisting of 10 years for the armed robbery and an additional 15 years because a firearm was used in the commission of the offense.

¶ 23 On appeal, defendant first contends that the trial court erred when it permitted the Aldi employees to identify him at trial because the show-up identification was suggestive and the State failed "to show by clear and convincing evidence that the witnesses were identifying defendant based upon their independent recollections of the incident." In essence, defendant argues that the trial court's partial denial of his motion to suppress, *i.e.*, the trial court's denial of the motion as to the lineup identifications, was wrong because the trial court found the show-up suggestive. Defendant therefore concludes that this cause must be remanded for a new trial, or, in the alternative, for an independent origin hearing.

¶ 24 The State responds that the record contains "ample" evidence to support the trial court's denial of defendant's motion to suppress the lineup identifications. The State further argues, in the alternative, that "the record supports the legal adequacy of the show-up identification procedures" and therefore, defendant's argument that the suggestive nature of the show-up tainted the lineup identifications must fail. Because we agree with the State that the trial court properly denied defendant's motion to suppress the lineup identifications, we need not address the State's alternative argument.

¶ 25 Our review of the trial court's ruling on a motion to suppress presents questions of both fact and law. *People v. McCarty*, 223 Ill. 2d 109, 148 (2006). The circuit court's factual findings are reversed only if they are against the manifest weight of the evidence. *People v. Lawson*, 2015 IL App (1st) 120751, ¶ 28. However, the court's ultimate decision to grant or deny a motion to suppress is reviewed *de novo. Id.*

¶ 26 Illinois courts employ a two-part test to determine whether an identification procedure comports with due process. "First, 'the defendant must prove that the confrontation was so

unnecessarily suggestive and conducive to irreparable misidentification that he was denied due process of law.' " *People v. Jones*, 2017 IL App (1st) 143766, ¶ 28 (quoting *People v. Moore*, 266 Ill. App. 3d 791, 797 (1994)). "Second, if the defendant establishes that the confrontation was unduly suggestive, the burden shifts to the State to demonstrate that, 'under the totality of the circumstances, the identification * * * is nonetheless reliable.' " *Id.* (quoting *Moore*, 266 Ill. App. 3d at 797). Thus, to suppress an identification, a court must find both: (1) that the confrontation was unduly suggestive, and (2) that the identification was not independently reliable. *People v. Rodriguez*, 387 Ill. App. 3d 812 (2008). When reviewing a claim of an unduly suggestive identification, a court must consider the totality of the circumstances. *Lawson*, 2015 IL App (1st) 120751, ¶ 39. A court may also consider the evidence presented at trial as well as the suppression hearing. *Id.*

¶ 27 Initially, we note that we are unable to review the lineup that defendant argues was suggestive because defendant has failed to include a photograph of the lineup in the record on appeal. Not only does defendant have the burden to establish that the pretrial identification was impermissibly suggestive (*People v. Brooks*, 187 Ill. 2d at 126 (1999)), defendant, as the appellant, bears the burden of providing this court with a record to support his claims of error, and any doubts that arise from the incomplete nature of the record will be resolved against him. See *People v. Lopez*, 229 Ill. 2d 322, 344 (2008) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). Supreme Court Rule 321 (eff. Feb. 1, 1994), provides that, absent a stipulation or court order to the contrary, "[t]he record on appeal shall consist of the judgment appealed from, the notice of appeal and the entire original common law record." The rule explains that "[t]he

common law record includes every document filed and judgment and order entered in the cause and any documentary exhibits offered and filed by any party." *Id.*

¶ 28 In denying defendant's motion to suppress the lineup identification, the trial court specifically stated that it did not see any disparity in weight or dress among the people in the lineup and only a slight disparity in height. Furthermore, the court noted that the lineup contained one other person that, in the trial court's opinion, was "just as darkly complected as the defendant" and defendant was able to choose who participated in the lineup with him. Additionally, Pagels testified at the suppression hearing that all four witnesses were told that the suspect may or may not be in the lineup and they were not required to identify anyone, that each witness viewed the lineup in turn, and that after viewing the lineup a witness was not placed in the same room with witnesses who had not yet viewed the lineup. Based on the record that defendant has provided this court, we are unable to determine that the lineup was tainted by the show up identifications and not independently reliable. Therefore, we have no basis upon which to reverse the trial court's ruling that the lineup identifications should not be suppressed. We therefore conclude that defendant has not met his burden to establish that the lineup identification was impermissibly suggestive (see *Brooks*, 187 Ill. 2d at 126), and reject his contention on appeal.

¶ 29 Even assuming *arguendo* that the lineup could have been impacted by the show up identifications and that the show up was unduly suggestive as defendant has argued, the witnesses' identification of defendant are independently reliable. In order to determine whether the identification testimony was reliable, we must look at the following factors: (1) the opportunity the witness had to view the criminal at the time of the crime; (2) the witness's degree

of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the witness at the identification confrontation; and (5) the length of time between the crime and the identification confrontation. *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972); *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989). "A single witness' identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification." *Slim*, 127 Ill. 2d at 307.

¶ 30 At trial, the Aldi employees testified regarding their observations of defendant at the time of the offense. See *People v. DeLuna*, 334 Ill. App. 3d 1, 11 (2002) (when reviewing the trial court's decision on the motion to suppress, this court may consider not only the evidence presented at the suppression hearing, but also that introduced at trial). Their testimony established they had an adequate opportunity to view defendant at the time of the crime and were paying close attention to defendant. In addition, Alex, Ella and Josefina made unwavering identifications of defendant at the lineup, which occurred shortly after the crimes, and at trial.

¶ 31 Alex was working the "closing" shift as a cashier at Aldi. Alex testified that three men entered the store and described what they were wearing. Alex indentified defendant in court as the man wearing a red shirt and khaki pants. Alex stated that defendant stood and looked around while the man in the baseball cap went to the "chip section" and observed defendant "looking at the other guys he walked in with" and at the parking lot. Defendant went outside shortly thereafter. After one of the other men pulled out a gun, Alex turned his head toward the exit and observed defendant standing by the bar that separated the entrance and exit doors and then observed defendant "outside in between the bushes." Two days later, Alex viewed a lineup and

identified defendant as the "guy in the red sweatshirt and khaki pants." Alex also identified defendant in open court and on the video surveillance from Aldi.

¶ 32 Ella testified that she was mopping the floor when three black men entered the store. One of the men was wearing a red shirt. She identified defendant in court as the man wearing the red shirt. She observed defendant enter the store, linger "for a moment" and then walk out. On October 25, 2012, Ella went to the DuPage County jail to view a lineup. She indentified defendant as the person in the red shirt who entered the store, "lingered for a moment" and then "immediately walked out." Corrine testified consistently with Alex and Ella that three men, two wearing black and one wearing a red shirt, walked into the store together. She did not recall the men speaking to each other. The man in red "did not stay there for long;" rather, he left "at some time."

¶ 33 Josefina testified that as she was "backing out the exit door" on her way to her car, and observed three African-American men enter the store. One was wearing a red shirt. Josefina identified defendant in court as the person in the red shirt. The other men were wearing a black sweatshirt and a baseball cap respectively. As the three men walked inside, she observed them "ducking their head[s] for the camera, which was suspicious, except for the last guy." Josefina observed the men talk for a "few seconds," separate, then "come back together." Josefina called 911 because "[t]here were too many suspicions [*sic*] going on" and she "felt" the store was possibly going to get robbed. However, she hung up when she observed defendant come out of the store. Defendant stood "right after the exit door." The phone then rang and she answered it. It was 911 calling back. Josefina spoke to a 911 operator, stated that "some suspicious activity was

going on," explained that she believed that the store was going to be robbed, and described the clothing worn by the three men.

¶ 34 When she reached her car, Josefina put her groceries away and emptied her pockets. When she looked back, she observed defendant looking in her direction. As she moved around the parking lot, she observed defendant continue to look in her direction. As Josefina reentered the store, she "felt" defendant move to "kind of stand behind" her. Defendant was "right on [her] back." However, defendant did not follow her into the store. Two days later, Josefina went to the DuPage County jail and viewed a lineup. She identified defendant as the man in the red shirt. Josefina also testified as to the video surveillance from Aldi that the video showed three men entering the store and that one of the men was wearing a red shirt. She indentified defendant as the man wearing the red shirt depicted on the video.

¶ 35 An assessment of the necessary factors clearly shows that the majority of the factors weigh in favor of the reliability of the identifications. Consequently, the State has met its burden to establish that the witnesses' identifications were independently reliable. Therefore, we reject defendant's argument that the trial court erred in denying his motion to suppress the lineup identifications.

¶ 36 Defendant next contends that he was not proven guilty, beyond a reasonable doubt, of armed robbery because the only evidence of his involvement in the robbery was that he was present at the store and later ran away.

¶ 37 When considering a challenge to the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v.*

*Bradford*, 2016 IL 118674, ¶ 12. It is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence and to draw reasonable inferences from the facts. *Id.* It is not the role of a reviewing court to retry the defendant when the sufficiency of the evidence is challenged. *People v. Lloyd*, 2013 IL 113510, ¶ 42. Therefore, a reviewing court will not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of witnesses, and a conviction will not be overturned unless the evidence is so improbable, unsatisfactory or inconclusive that it creates a reasonable doubt as to a defendant's guilt. *Bradford,* 2016 IL 118674, ¶ 12.

¶ 38 "[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 [or she] solicits, aids, abets, agrees or attempts to aid, such other person in planning or commission of the offense.' " *People v. Fernandez*, 2014 IL 115527, ¶ 13 (quoting 720 ILCS 5/5-2(c) (West 2008)). In order "to prove that a defendant possessed the intent to promote or facilitate the crime, the State may present evidence that either (1) the defendant shared the criminal intent of the principal, or (2) there was a common criminal design." *Id.*

¶ 39 Under the common design rule, where two or more persons engage in a common criminal design or agreement, any acts in 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. *In re W.C.*, 167 Ill. 2d 307, 337-38 (1995). A common design may be inferred from the circumstances surrounding the perpetration of the unlawful conduct. *People v. Johnson*, 2014 IL App (1st) 120701, ¶ 22. Evidence that a defendant voluntarily attached himself to a group bent on illegal acts with knowledge of its design supports

an inference that he shared the common purpose and will sustain his conviction for an offense committed by another person. *People v. Cooper*, 194 Ill. 2d 419, 435 (2000).

¶ 40 Although mere presence at the crime scene with knowledge that a crime was being committed is by itself insufficient to establish accountability (*In re W.C.*, 167 Ill. 2d at 338), active participation has never been a requirement for guilt under an accountability theory (*People v. Taylor*, 164 Ill. 2d 131, 140 (1995)). A defendant may "aid and abet without actively participating in the overt act." *Id.* Words of agreement are unnecessary to establish a common purpose to commit an offense and accountability may be established through a person's knowledge of, and participation in, the criminal scheme, even when there is no evidence that he directly participated in the criminal act itself. *People v. Perez*, 189 Ill. 2d 254, 267 (2000). "In determining a defendant's legal accountability, the trier of fact may consider the defendant's presence during the commission of the offense, the defendant's continued close affiliation with other offenders after the commission of the crime, the defendant's failure to report the incident, and the defendant's flight from the scene." *People v. Batchelor*, 171 Ill. 2d 367, 376 (1996).

¶ 41 After viewing the evidence in the light most favorable to the State, we conclude that there was sufficient evidence for a rational trier of fact to find defendant guilty of armed robbery despite the fact that, as defendant correctly argues, no one testified that he had a gun or reached into a register. At trial, Alex, Ella, and Josefina testified that defendant entered the store with the man in the black sweatshirt and the man in the baseball cap and that defendant stood outside the store while the man in the black sweatshirt pulled out a gun. See *Johnson*, 2014 IL App (1st) 120701, ¶ 22 (a common design may be inferred from the circumstances surrounding the unlawful conduct). Additionally, Josefina testified that she watched the three men enter the store

and observed that the men in the baseball cap and the black sweatshirt ducked their heads to avoid the surveillance camera, which she found suspicious and that defendant watched her as she moved around the parking lot and stood behind her as she reentered the store.

¶ 42 A reasonable inference from this evidence is that defendant was acting as a lookout while his associates robbed the store. Officer Moreno testified that defendant was initially standing outside the store, began to "shuffle" away after making eye contact, and ultimately ran away with the man in the black sweatshirt. See *Batchelor*, 171 Ill. 2d at 376 ("the trier of fact may consider the defendant's presence during the commission of the offense, the defendant's continued close affiliation with other offenders after the commission of the crime, *** and the defendant's flight from the scene"). Furthermore, Burnham testified that two men ran toward him from the direction of the Aldi and that money was "flying out" of a pocket of a red sweatshirt. This evidence, and the reasonable inferences therefrom, was sufficient to prove beyond a reasonable doubt that defendant shared a common criminal design with the man in the black sweatshirt and the man in the baseball cap and, thus, supports his conviction under a theory of accountability. See *Fernandez*, 2014 IL 115527, ¶ 13.

¶ 43 A trier of fact is not required to disregard the inferences that flow from the evidence or search out all possible explanations consistent with defendant's innocence and raise them to a level of reasonable doubt. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. This court reverses a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt (*Bradford*, 2016 IL 118674, ¶ 12); this is not one of those cases. Accordingly, we affirm defendant's conviction for armed robbery.

¶ 44 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 45 Affirmed.