2012 IL App (1st) 100940-U

FIRST DIVISION
February 14, 2012

No. 1-10-0940

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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
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	No. 08 CR 22461
	)	
TERRENCE TAYLOR,	)	Honorable
	)	Bertina Lampkin
Defendant-Appellant.	)	Jorge Luis Alonso,
	)	Judges Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

O R D E R

¶ 1 ***Held*:** Defendant's convictions for armed robbery and attempted first degree murder were affirmed. The trial court did not abuse its discretion in refusing to provide the jury with a transcript to answer a fact question. The trial court's finding of great bodily harm was not erroneous.

¶ 2 Following a jury trial, defendant Terrence Taylor was found guilty of armed robbery and attempt first degree murder on theory of accountability. He was sentenced to consecutive prison

terms of 21 years for the armed robbery charge and 12 years for the attempted first degree murder charge. On appeal, defendant contends that: (1) the State failed to prove defendant guilty beyond a reasonable doubt of armed robbery and attempt first degree murder; (2) the court erred in failing to provide the jury with a portion of the trial transcript that would have answered the jury's question about how much time elapsed between the offenders' appearance and the shooting; and (3) defendant should not be required to serve 85% of his sentence for his armed robbery conviction because great bodily harm did not result from the defendant's commission of the armed robbery. For the following reasons we affirm the judgment of the trial court.

¶ 3 At trial, Pierre Garth testified on behalf of the State. Garth said that shortly before 11 p.m. on August 19, 2008, he was driving down an alley to his two-car garage outside his apartment at 109th Street in Chicago. As he drove through, he noticed a man standing in the alley with a dog. Garth pulled into his garage which was well lit from a light on the garage ceiling, a motion light from his neighbor's garage and a street lamp 15 to 20 feet away. The man with the dog, whom Garth identified as Paris Steele, was standing behind Garth's car. Garth also noticed a black car drive through the alley. Garth grabbed his cell phone, garage door opener and keys then got out of the car and walked to where Steele was standing. Steele asked Garth a question about the car.

¶ 4 Two men then "ran up" to the garage from the alley. Garth testified that one of the men was holding a silver pump-action shotgun and stood about four and a half feet away. Garth identified the man as codefendant and the other man accompanying him as defendant. Steele put his arms up. Codefendant said "you n*** know what this s*** is" once or twice. Neither

codefendant nor defendant had anything obstructing their faces, and the garage area was well lit.

¶ 5 Codefendant approached Steele, causing him to back out of the garage and out of Garth's line of sight. Garth testified that at this point he could no longer see defendant or Steele.

¶ 6 Defendant then ran into the garage toward Garth. Defendant said "[w]here is that s*** at, man? Where is the s*** at? Give it up." Garth threw his hands up and "looked to see what [defendant] had in his hand" but "didn't see anything." Garth told defendant that he did not have anything to give him but defendant kept "going at [Garth's] pockets." Defendant was so close to Garth that he could "smell [defendant's] breath." Garth heard a shotgun blast from the direction where Steele and codefendant would have been and threw his car keys, garage door opener and cell phone on top of his car. Defendant ran around the car and "kept saying, Man, I'm not playing. Where is that s*** at?" Defendant grabbed the items Garth had thrown on top of his car.

¶ 7 Garth testified that codefendant came back into the garage, still holding the shotgun. Garth stayed still with his hands up because he was "frozen." He said that during the robbery his ability to perceive was heightened and he was focused on defendants. Codefendant and defendant ran out of the garage in the same direction the black car had been driving. The entire incident lasted about 60 to 75 seconds.

¶ 8 Garth then ran out of the garage. He saw a neighbor and asked her to call 911. The police arrived about five minutes later.

¶ 9 Garth met with Detectives Livingstone and Pullappally at the police station a few hours after the incident to examine a photo array of possible suspects. Garth "tentatively" identified

codefendant and positively identified defendant as the men involved in the robbery.

¶ 10 Garth testified that a few days after the incident he was called back to the police station to view a lineup of possible suspects. He signed a form stating that he was not required to make an identification. When Garth first saw the lineup he pointed to a person and said "that's got to be [defendant] there." When the detectives asked him if he was "sure" about the identification, Garth said he "[could not] be positive it's [defendant]." Garth testified that he was initially reluctant to make an identification because a threat had been spray painted on his house three days earlier and he was scared. After taking a short break he positively identified defendant in the lineup as the man who went through his pockets on the night in question. At a subsequent lineup, Garth identified codefendant as the man with the shotgun.

¶ 11 Paris Steele testified consistently with Garth. Steele said that on August 19, 2008, he went to his friend Linda Gant's house on 108th Street and Forest Avenue in Chicago. When Steele arrived Gant asked him to walk her dog. He walked the dog southbound on 109th Street then turned down an alley. He described the alley as "pretty lit up" from streetlights and garage lights. He saw a car drive by and pull into a garage. Steele noticed the car had a "nice paint job." About five seconds later, a black car with three or four people inside drove past him and through the alley. He could not see the faces of the people in the car. He noticed that the car turned the wrong way on the one-way street at the end of the alley but did not think anything of it at the time. Steele continued down the alley and walked to the opening of Garth's garage, where he stopped to ask him about his car. The lighting was "good," and Steele could see to the back of Garth's car in the garage.

¶ 12 As Garth began to answer Steele's questions about his car, codefendant approached Steele with a shotgun and pointed it toward him. The shotgun was silver with a black pump. Defendant was standing behind and to the left of codefendant and holding an "automatic weapon" at his side. Steele could clearly see defendants' faces. Codefendant said, "N***, you know what this is." Steele was holding the dog leash in his left hand and held up his right hand as he backed away to the edge of the garage. As codefendant was pointing the shotgun at Steele, defendant ran inside the garage. Codefendant then shot Steele in his left elbow at point blank range. Steele did not see defendant again that night. He estimated that 5 to 10 seconds elapsed between when he saw the two men to when he was shot.

¶ 13 Steele testified that he ran back to Linda Gant's house and knocked on her door after he was shot. He passed out on the grass in front of her house and next remembered being in an ambulance on his way to the hospital. As a result of his gunshot wound, Steele suffered tendon damage, nerve damage and a broken bone, had to undergo four surgeries and lost the use of his left arm.

¶ 14 On September 4, 2008, Steele went to the police station to view a lineup. He signed a form stating that he was not required to make an identification. He "instantly" identified codefendant as the man who shot him from the five persons in the lineup.

¶ 15 About one month later Steele returned to the police station to view another lineup. Again he signed a form stating that he was not required to make an identification. Steele positively identified defendant as the man who came from behind codefendant and into the garage on the night in question.

¶ 16 Detective Livingstone testified that at about 11 p.m. on August 19, 2008, he went with Detective Pullappally to investigate the crime scene. There Garth told Livingstone that one of the suspects was carrying a pump-action shotgun. Garth provided physical descriptions of the suspects and the black car he had seen in the alley. Garth described the man who went into the garage as a black male between 17 and 19 years old, 5 feet 8 inches to 5 feet 9 inches tall, 140 to 155 pounds with a medium brown complexion and braided hair. As a result of his investigation, Livingstone issued an alert to arrest defendant and codefendant.

¶ 17 On October 8, 2008, Livingstone learned that defendant had been arrested and went to speak with him at the police station. Defendant said that codefendant's sister Reva told him that codefendant "had done the robbery that [defendant] was there for." Defendant said he had never met codefendant. Defendant also said that a woman named Franchetta Jones was the mother of his child. Livingstone stopped the interview to call Jones to confirm "some facts" with her.

¶ 18 After Livingstone spoke with Jones he confronted defendant with facts she had provided. Defendant then "chang[ed] his story." Defendant told Livingstone that Jones lived in the same building as codefendant and defendant had met codefendant numerous times. Jones was best friends with codefendant's sister Reva, and Reva was the godmother of defendant and Jones' child. Codefendant's girlfriend was also residing with Jones.

¶ 19 While Livingstone was standing outside the lockup area waiting for defendant to be admitted, he heard defendant speaking out loud to himself. Defendant said something "to the extent that I shouldn't have – man, I shouldn't have gone out – I shouldn't have gone out that night and should have let him go on his own." Defendant did not sign a statement and

Livingstone did not ask defendant about what he had said.

¶ 20 On cross-examination Livingstone testified that Garth did not mention that the person who entered the garage was armed.

¶ 21 Defendant presented an alibi defense. China Taylor, defendant's sister, testified on his behalf. Taylor said she lived with defendant, her siblings and parents. She said that on August 19, 2008, it was her 14th birthday and she went to Navy Pier around 5 p.m. with her brother Terrick, her cousin and a couple of friends. She arrived back home around 10:30 p.m. or 10:45 p.m. She saw defendant in front of her house with Curtis and Kawanda. China spoke to defendant for 10 to 15 minutes then went back into the house. Defendant came into the house about five minutes later and spoke with her in her room.

¶ 22 Curtis Hobson testified that he lived across the street from defendant for about four years. He said he returned home from work between 10:35 p.m. and 10:45 p.m. He saw defendant in front of defendant's house with his girlfriend Kawanda. Hobson walked over and talked to defendant for about 20 minutes. Defendant then went into his house with his girlfriend. Defendant came back out to speak with Hobson again around 11:15 p.m. for 5 to 10 minutes.

¶ 23 Terrick Taylor testified that he was defendant's younger brother. He went with China to celebrate her birthday at Navy Pier on August 19, 2008, and came back home with her at about 10:40 p.m. When he arrived home he saw defendant standing in the front of his house and talked to him for a little while before heading into the house at about 10:45 p.m. He saw defendant in the house around 11:10 p.m.

¶ 24 Kawanda Lee testified that she went to defendant's house between 10:30 p.m. and 11 p.m.

on August 19, 2008. She saw defendant outside talking with a few friends. He took her inside the house around 11 p.m and she went to watch television. Defendant went back outside to talk to his friends and came back into the house about 20 minutes later.

¶ 25 Defendant testified that on August 19, 2008, his parents asked him to wait for his sister to come home from Navy Pier. Defendant was standing outside his home, talking to Lee and Chris Brown, when his siblings returned around 10:30 p.m. He stayed outside to speak with them until 11 p.m. He took Lee into the house and went to talk to China in her room. He went back outside around 11:05 p.m. for 15 minutes. Defendant denied robbing Garth or attacking Steele and said he did not know codefendant.

¶ 26 Detective Livingstone testified in rebuttal that when he questioned defendant on October 8, 2008, defendant could not remember who he was with or what he was doing on the night of August 19, 2008. No further evidence was presented.

¶ 27 During deliberations the jury sent out a note asking, "Do you recall if there was testimony given about what period of time elapsed from the time [codefendant] is alleged to have appeared with the shotgun until the shotgun was actually fired?" In discussing how to respond to the jury's question with the State and defense council, the court said:

> "I propose that we answer, you have all the evidence; continue to deliberate. Because this question was never asked. Never. No matter how you all think about it, this particular question was never asked, the time that he appeared with the shotgun until the shotgun was fired. That was never asked.
>
> The question was asked from the time they appeared to the time they left. One

person said five to ten seconds for that thing. One question was asked how long the incident occurred. It was 60 to 90 seconds.

But this particular question was not asked. So unless somebody has something else to say, the question will – or the answer will be you have all the evidence; continue to deliberate."

¶ 28 The State said that it was "fine" with the court's response to the jury's question, but the defense argued that during Paris Steele's cross-examination, the question was posed to him. The defense suggested that the court answer that a 5- to 10-second time frame be given as the response to the jury question. The court maintained that "it's a fact question that they are asking me" and said: "the case law is clear that if there is a fact question I don't answer it. I only answer questions of law or if there is confusion about the law. So I can't answer it." There was no objection from defense counsel. The court then informed the jury: "[y]ou've heard all the evidence, please continue to deliberate."

¶ 29 The jury found defendant guilty of armed robbery, aggravated battery with a firearm and attempted first degree murder. At sentencing, Steele testified that he had lost use of his left arm since he was shot. The court merged the conviction for aggravated battery with a firearm into the conviction for attempted first degree murder. The court sentenced defendant to 21 years in prison for the armed robbery conviction and 12 years in prison for attempted first degree murder, to run consecutively. The court also made a finding of great bodily harm under section 5-4-1(c-1) of the Unified Code of Corrections (Code) (730 ILCS 5/5-4-1(c-1) (West 2008)), which required defendant to serve 85% of his sentence for the armed robbery.

¶ 30 On appeal, defendant first contends that the State failed to prove beyond a reasonable doubt that he was one of the offenders because there was no physical evidence and the victims' identifications were unreliable under the factors outlined in *People v. Slim*, 127 Ill. 2d 302 (1989).

¶ 31 The standard of review on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). It is not the function of the reviewing court to retry the defendant or substitute its judgment for that of the trier of fact. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). The trier of fact assesses the credibility of the witnesses, determines the appropriate weight of the testimony and resolves conflicts or inconsistencies in the evidence. *People v. Naylor*, 229 Ill. 2d 584, 614 (2008). The trier of fact is not required to disregard inferences that flow from the evidence or search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. McDonald*, 168 Ill. 2d 420, 447 (1995). 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. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 32 Circumstances to be considered in assessing the accuracy of an identification based on witness testimony include: (1) the opportunity of the witness 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 descriptions of the offender; (4) the level of certainty demonstrated by the witness at the

confrontation; and (5) the length of time between the crime and the confrontation. *People v. Tisdel*, 201 Ill. 2d 210, 234 (2002) (citing *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972)); *Slim*, 127 Ill. 2d at 307-08.

¶ 33 Applying these factors here, we believe that the jury was entitled to find Garth and Steele's testimony sufficiently reliable to support defendant's conviction. As to the first factor, the victims testified that the scene of the crime was well lit from a light in the garage ceiling, a motion light from a neighbor's garage and a nearby street lamp. Both victims testified that nothing was covering or obstructing defendant's face. When defendant ran up to Garth to go through his pockets, he was so close that Garth could "smell his breath." While the incident may have been brief, there was ample opportunity for the victims to view defendant at the time of the crime.

¶ 34 As to the witness's degree of attention, Garth said that during the robbery he stayed still because he was "frozen," his ability to perceive was heightened and he was focused on defendants. Both victims testified they heard codefendant say something to the effect of "you know what this is" while holding the shotgun.

¶ 35 As to the fourth and fifth factors, Garth positively identified defendant in a photo lineup only hours after the offense was committed as the man who was trying to get into his pockets. After defendant was arrested, Garth went to view a lineup and immediately pointed to defendant as the man from his garage, but then said he "[could not] be positive it's [defendant]." Garth explained that he was initially reluctant to make an identification because a threat had been spray painted on his house and he was scared. After taking a short break at the police station, Garth

positively identified defendant in the lineup as the man who robbed him. Steele viewed a lineup on October 9 after recovering from his injuries and positively identified defendant as the man who came from behind codefendant and into the garage on the night in question.

¶ 36 In assessing the above factors, we find the victims' identifications of defendant sufficiently reliable to allow the jury to find beyond a reasonable doubt that defendant was one of the offenders in this case.

¶ 37 Next, defendant argues that, in the alternative, his conviction for attempted first degree murder should be reversed because the State failed to prove beyond a reasonable doubt that defendant was accountable for the attempted first degree murder committed by codefendant.

¶ 38 A defendant is legally accountable for the criminal conduct of another when either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he solicits, aids, abets, agrees or attempts to aid that other person in the planning or commission of the offense. 720 ILCS 5/5-2(c) (West 2008); *People v. Rodriguez*, 229 Ill. 2d 285, 289 (2008).

¶ 39 To prove a defendant's intent to promote or facilitate the crime, the State must present evidence establishing beyond a reasonable doubt that: (1) the defendant shared the criminal intent of the principal; or (2) there was a common criminal design. *People v. Perez*, 189 Ill. 2d 254, 266 (2000). Accountability may be established through a defendant's knowledge of and participation in a criminal scheme, even if there is no evidence he directly participated in the criminal act himself. *Perez*, 189 Ill. 2d at 267. A defendant's mere presence at the scene of a crime does not render him or her accountable for an offense. *Perez*, 189 Ill. 2d at 268.

¶ 40 When 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 common design or agreement, and all the parties are equally responsible for the consequences of those further acts. 720 ILCS 5/5-2(c) (West 2008); *People v. Cooper*, 194 Ill. 2d 419, 435 (2000).

¶ 41 Here, the evidence shows that defendant intended to commit armed robbery and is accountable for the attempted murder of Steele. The evidence showed defendant and codefendant approached Garth and Steele at the same time. Defendant told Detective Livingstone that he knew codefendant, and that codefendant's girlfriend was residing with the mother of defendant's child. The victims testified that codefendant asked them if they "kn[e]w what this s*** is" when he held up a loaded shotgun with a silver or chrome barrel. As codefendant walked toward Steele, defendant came from behind and ran into the garage toward Garth. Defendant demanded that Garth "[g]ive it up" and went through Garth's pockets as codefendant pointed the shotgun at Steele outside the garage. After codefendant shot Steele, defendant said, "man I'm not playing. Where is that s*** at?" and took the time to complete the robbery by gathering up the belongings Garth had thrown on his car. Defendant and codefendant then fled together in the same direction the victims had seen a black car driving moments before.

¶ 42 There is no question defendant intended to commit armed robbery and the attempted murder of Steele was a foreseeable consequence of defendant's decision to engage in the robbery while codefendant was armed. The jury was entitled to find defendant guilty of attempted murder under an accountability theory.

¶ 43 Defendant next contends that the court abused its discretion by failing to provide the jury with a portion of the transcript that would have answered the jury's question about how much time elapsed between the offenders' appearance and the shooting. Defendant argues that the law in Illinois should be changed so that the "trial court's decision to provide transcripts of testimony to the jury is not subject only to abuse of discretion," and that if a jury has forgotten testimony, the trial judge should provide the relevant transcripts to the jury. Defendant concedes that he failed to preserve this issue below but asks that we consider it under the plain-error doctrine.

¶ 44 It is within the sound discretion of the trial court to allow or refuse a jury's request to review witness testimony. *People v. Williams*, 173 Ill. 2d 48, 87 (1996). Unless the trial court abuses its discretion, the trial court's determination will not be disturbed on review. *Williams*, 173 Ill. 2d at 87. While the trial court generally has a duty to answer questions regarding points of law, it may properly decline to answer a jury's inquiry involving a question of fact. *People v. Childs*, 159 Ill. 2d 217, 228-29 (1994).

¶ 45 The plain-error doctrine allows a reviewing court to consider unpreserved error when: (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence. *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005); Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999). Before invoking plain error, courts must determine whether error occurred. *People v. Walker*, 232 Ill. 2d 113, 124-25 (2009). The burden of persuasion rests with the defendant. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 46 We believe that the trial court did not abuse its discretion and see no reason to depart from our current abuse of discretion standard. The record shows that after receiving the jury's

question, the court proposed an answer and invited arguments and objections from both parties. The court listened to arguments and determined that because the jury's question was one of fact rather then law, the court was not required to answer it. The court exercised its discretion by informing the jury: "You've heard all the evidence, please continue to deliberate." The jury's question was one of fact, rather than law, and there is nothing in the record to indicate the trial judge abused her discretion in denying the jury's request. See *Williams*, 173 Ill. 2d at 88. The court properly exercised its discretion in refusing to answer the jury's question.

¶ 47 Finally, defendant contends that he should be eligible for day-for-day good-conduct credit on his armed robbery sentence because great bodily harm did not result from his commission of armed robbery. Defendant explains that "the only infliction of great bodily harm occurred during codefendant's commission of attempt first-degree murder and not during the separate offense of armed robbery in which the victim was not even slightly harmed." Therefore, as the attempt first-degree murder did not lead to defendant's conviction for armed robbery, the trial court erred in making a finding of great bodily harm.

¶ 48 Defendant concedes that he failed to object to the finding of great bodily harm but urges us to consider this issue under plain error. To preserve a claim of sentencing error, a defendant must object to the error at the sentencing hearing and raise the objection in a postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). If the error is not preserved, as in this case, it is forfeited. *Hillier*, 237 Ill. 2d at 544.

¶ 49 Forfeited issues relating to sentencing may be reviewed for plain error. *Hillier*, 237 Ill. 2d at 545. To establish plain error, a defendant must show either that: "(1) the evidence at the

sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *Hillier*, 237 Ill. 2d at 545. Defendant bears the burden of persuasion under either prong of the plain error rule. *Hillier*, 237 Ill. 2d at 545.

¶ 50 Before we can determine whether defendant has met his burden under either prong of plain error, we must first decide whether a clear or obvious error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 51 Again, defendant argues that the trial court erred in making a finding that the armed robbery resulted in great bodily harm under section 5-4-1(c-1) of the Code. Specifically, defendant argues that the only great bodily harm inflicted was a result of codefendant's shooting of Paris Steele, which was the basis for defendant's conviction, on the basis of accountability, for attempt first degree murder. Attempt first degree murder is not one of the triggering offenses enumerated in the statute. The State responds that defendant's conduct in shooting Paris Steele, for which defendant was accountable and which led to the infliction of great bodily harm, was conduct that led toward the commission of the armed robbery of Pierre Garth.

¶ 52 Section 5-4-1(c-1) of the Code provides that in imposing a sentence for certain offenses, "the trial judge shall make a finding as to whether the *conduct leading to conviction* for the offense resulted in great bodily harm to a victim, and shall enter that finding and the basis for that finding in the record." (Emphasis added.) 730 ILCS 5/5-4-1(c-1) (West 2008). The enumerated offenses are aggravated kidnaping for ransom, home invasion, armed robbery, aggravated vehicular hijacking, aggravated discharge of a firearm, or armed violence with a category I or II weapon. 730 ILCS 5/5-4-1(c-1) (West 2008).

¶ 53 Section 3-6-3(a)(2)(iii) of the Code provides that, when the court has made the above finding under section 5-4-1(c-1), the prisoner shall receive no more than 4.5 days of good-conduct credit for each month of his sentence of imprisonment. 730 ILCS 5/3-6-3(a)(2)(iii) (West 2008). This means that the defendant must serve at least 85% of his or her sentence and does not receive normal day-for-day good-conduct credit. *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 556 (2002).

¶ 54 Our decision in this case turns on our interpretation of section 5-4-1(c-1). We review issues of statutory construction *de novo*. *People v. Whitney*, 188 Ill. 2d 91, 98 (1999). This court's primary function is to give effect to the legislature's intent, and the best indicator of such intent is the plain and ordinary meaning of the statute's language. *Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 332 (2008). When the statutory language is clear, it will be given effect without resorting to other aids for construction. *People v. Boykin*, 94 Ill. 2d 138, 141 (1983).

¶ 55 In reviewing the plain and ordinary meaning of section 5-4-1(c-1) of the Code, we believe the trial court did not err in making a finding that the armed robbery resulted in great bodily harm. Section 5-4-1(c-1) of the Code specifically states that in determining whether great bodily harm occurred, the trial judge shall consider whether the *conduct leading to conviction* for the offense, in this case armed robbery, resulted in great bodily harm to *a victim.* Clearly, defendant's conduct, going with codefendant who was armed with a weapon to rob Steele and Garth, and codefendant shooting Steele in the arm, resulted in great bodily harm being inflicted on "a victim."

¶ 56 We find *People v. Salley*, 373 Ill. App. 3d 106 (2007), supports our determination. In

Salley, the defendant and codefendant entered the drive-through window of a Krispy Kreme store. The defendant approached Raymond Jackson, an employee of the store, and told him to put up his hands. When Jackson refused, the defendant struck him in the head multiple times with a pipe. Both defendants then ordered Michelle Flanagan, another employee, to open the store safe. The defendant took money out of the safe and several cash registers, and both defendants fled.

¶ 57 The defendant was charged by indictment with robbery, armed robbery, aggravated robbery and aggravated battery. He pled guilty to armed robbery, and the other charges were dismissed. At the defendant's sentencing hearing the trial court made a finding of great bodily harm and ordered defendant to serve 85% of his 11-year sentence pursuant to section 3-6-3 of the Code (730 ILCS 5/3-6-3 (a)(2)(iii) (West 2006)). *Salley*, 373 Ill. App. 3d at 108.

¶ 58 On appeal, the defendant argued that the court erred in applying section 3-6-3 of the Code to his sentence because the only victim named in his indictment for armed robbery was Flanagan, who was uninjured during the robbery. While the defendant conceded that Jackson was injured during the incident, he contended that the sentencing enhancement should not apply because Jackson was named as a victim only in the aggravated battery charge, which was dismissed.

¶ 59 This court rejected the defendant's claims and held that the trial court correctly found section 3-6-3 applied to his sentence because the statute "unambiguously encompasses anyone who is injured by the defendant's conduct during the offense in question." *Salley*, 373 Ill. App. 3d at 110. We noted that while armed robbery does not require that the person against whom it is committed necessarily suffer great bodily harm, Jackson sustained his injuries through the

defendant's unlawful use of force during the course of the armed robbery. *Salley*, 373 Ill. App. 3d at 110-12.

¶ 60 While the defendant in *Sally* actually injured a victim with a pipe, *Salley* is still applicable here where defendant engaged in conduct that resulted in Paris Steele being shot. Defendant and co-defendant went to Garth's garage, armed with weapons, to forcibly remove personal belongings. In the process of that armed robbery, co-defendant, for whose actions defendant was legally accountable, shot and seriously injured Steele. After codefendant shot Steele, defendant said, "man I'm not playing. Where is that s*** at?" and took the time to complete the robbery by removing Garth's belongings from the top of the car. We refuse to adopt defendant's proposition that section 3-6-3 of the Code should not apply to a defendant's sentence where "a victim" is seriously injured by a codefendant during the commission of an armed robbery, when the triggering offense was clearly committed as part of a common design. To do so would be to obviate the theories of common design and accountability. We therefore find that the trial court did not err when it made a finding of great bodily harm under section 5-4-1(c-1) of the Code. Consequently, plain error analysis is unnecessary.

¶ 61 For the aforementioned reasons, we affirm defendant's convictions and sentences for armed robbery and attempted first degree murder.

¶ 62 Affirmed.