2018 IL App (1st) 152303-U

No. 1-15-2303

Order filed February 1, 2018

Fourth Division

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 207
	)	
ROBERT ALVAREZ,	)	Honorable
	)	Stanley J. Sacks,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McBride delivered the judgment of the court.
Presiding Justice Burke and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for aggravating kidnaping over his contention the trial court abused its discretion by refusing to instruct the jury on the affirmative defense of compulsion or with his proposed "mere presence" instruction.

¶ 2 Following a jury trial, defendant Robert Alvarez was found guilty of aggravated kidnaping (720 ILCS 5/10-2(a)(6) (West 2010)) and sentenced to 30 years' imprisonment. On appeal, he argues the trial court erred when it failed to instruct the jury on the affirmative defense

of compulsion where there was some evidence to support it. Alternatively, he argues the court should have given a "mere presence" instruction as a companion to the accountability instruction. We affirm.

¶ 3 Defendant was charged by indictment with six counts of aggravated kidnaping, one count of aggravated vehicular hijacking, and two counts of aggravated battery stemming from acts occurring on December 11, 2010, in Chicago. At trial, the following evidence was presented.

¶ 4 Miguel Moya (Miguel) testified that, on the morning of December 11, 2010, he was operating his auto mechanic business at 2859 South Spaulding Avenue when he received a dispatch that a car needed to be towed.[1] Miguel proceeded to the area of 59th and Sawyer Avenue where an individual flagged him down and pointed to a white Tahoe or Suburban vehicle. Miguel pulled up to the vehicle and exited his tow truck. Two men approached him and one asked him for a light for his cigarette. After Miguel told the man he did not smoke, the man pressed a gun against Miguel's stomach. Miguel grabbed the gun, and another person hit him on the back of his head.

¶ 5 Three men then grabbed Miguel, put him in the back seat of the Tahoe, and tied his hands. The Tahoe was driven around the block and into a garage. The men removed Miguel from the vehicle and hit him. They tied his hands, arms, feet, and eyes with tape. Miguel was in the garage for about three hours until police arrived and took him to the hospital. He was not provided food, water, or access to the bathroom while inside the garage. Miguel did not know and had never seen these men before.

[1] Hereinafter, Miguel Moya will be referred to as "Moya" and his son Aldo Moya will be referred to as "Aldo."

¶ 6 Aldo Moya (Aldo) testified that, on December 11, 2010, he was employed at his father Miguel's auto mechanic business. Around 10 a.m., Aldo was at his home when he received a phone call from a man. The man stated that "they" had his father and that Aldo had to get them $90,000 or else they would kill Miguel. The man instructed Aldo to get the money and not contact the police. The man said he would call Aldo back with more details.

¶ 7 Aldo never received another phone call from the man but was later contacted by the Chicago Police Department and learned Miguel had been located. Aldo never contacted the police because he did not want his father getting hurt.

¶ 8 Chicago police sergeant John Hamilton testified that he was in a covert vehicle conducting a narcotics investigation in the area of 58th and Sawyer. Hamilton exited his vehicle and, as he approached a garage on South Sawyer, heard "thumping" and "muffled speech" coming from inside. Hamilton peeked into the garage and "another eyeball came face to face with [his] eyeball." Someone from inside the garage said, " 'Hey! Hey!' " and Hamilton took off running. Hamilton returned to his car and, approximately a minute later, observed a Hispanic man in a black hooded sweatshirt walking westbound on 58th Street towards Spaulding Avenue.

¶ 9 Hamilton contacted his fellow officers and returned to the garage approximately 30 to 45 minutes later. As they were approaching, Hamilton heard a gate slam into the garage wall and observed a man, identified in court as defendant, run from the garage towards the house. Defendant ran into a first floor apartment on South Sawyer and did not obey Hamilton's directions to stop running. Eventually, Hamilton caught up to defendant and tackled him inside the apartment. Defendant was wearing a gray hooded sweatshirt and had on latex gloves. Hamilton testified that "there was blood or red stains all over [defendant's] arms."

¶ 10 After other officers assisted in detaining defendant, Hamilton ran out of the front door to look for the man wearing a black hooded sweatshirt he had seen earlier. The man was down the block and took off running when Hamilton pointed him out to other officers. As Hamilton ran to his vehicle, he heard screaming from inside the garage and observed his fellow officers focusing on a white sports utility vehicle. He observed a man in the backseat with his hands wrapped in duct tape. Hamilton and the other officers assisted the man, later identified as Miguel, and called for an ambulance. He observed a handgun inside the garage, but did not move it because an evidence technician was on the way to process the scene. Hamilton testified he was unable to find the man in the black hooded sweatshirt and did not know whether he was ever apprehended.

¶ 11 Chicago police officer John Heneghan testified that he was an evidence technician assigned to process the scene on South Sawyer. Inside the garage, Heneghan observed gray duct tape, rope, and a firearm as well as a Chevy Tahoe. The Tahoe contained blood and was transported to a police facility for further forensic testing. Heneghan later recovered a gray hooded sweatshirt from defendant, whom he identified in court, and observed blood stains on it.

¶ 12 Humberto Nunez testified that he owns the residence and garage on South Sawyer. In December 2010, Nunez rented the residence to a man named "Robert Alvarez." Nunez met with "Robert Alvarez" and another man but never saw any identification.

¶ 13 The parties stipulated that Chris Lappe, an investigator for the Cook County State's Attorney's Office, would testify that he performed a buccal swab on Miguel and delivered it to the Illinois State Police crime laboratory. The parties further stipulated that Mary Ember, an investigator for the Cook County State's Attorney's Office, would testify she performed a buccal swab on defendant and delivered it to the Illinois State Police crime laboratory.

¶ 14 Francesca Antonaci testified that she is employed as a forensic biologist at the Illinois State Police crime laboratory. She received inventoried evidence in this case, which included pieces of duct tape, rope, and a gray hooded sweatshirt. These items contained cellular material suitable for future DNA analysis. Antonaci further received buccal swabs from Miguel and defendant that she preserved for future DNA analysis.

¶ 15 Angela Kaeshamer testified that she is a forensic scientist at the Illinois State Police crime laboratory and analyzed evidence in this case. Kaeshamer determined that part of defendant's gray hooded sweatshirt contained a mixture of DNA from two people. The major DNA profile matched Miguel, and defendant "could not be excluded" from the minor DNA profile. Further, one of the pieces of rope had a mixture of DNA from at least three people. However, Kaeshamer was unable to use the DNA mixture for comparison purposes. Defendant's DNA was not found on any of the duct tape samples.

¶ 16 Assistant State's Attorney Jessie McGuire testified that she met with defendant and provided him his *Miranda* rights. Defendant stated that he understood his rights and agreed to speak with McGuire. Defendant was "very chatty and very forthcoming" to McGuire. Defendant agreed to have his statement written down but would not sign the statement. McGuire published the statement for the jury.

¶ 17 In the statement, defendant asserted that he borrowed $3,000 from "Rafa's uncle" to purchase a pick-up truck. Defendant did not use the money to purchase a truck but instead used the money going out with his girlfriend. Rafa suggested that defendant work for him and his uncle selling drugs in order to pay off the debt. However, defendant did not want to sell drugs, and Rafa told him that he could serve as a lookout for a kidnaping planned in Chicago.

¶ 18 On a Tuesday night, Rafa's uncle drove defendant from South Bend, Indiana to Chicago. Defendant stayed at the house on Sawyer prior to the kidnaping. However, defendant stayed at the Carlton Inn the night before the kidnaping with Rafa, "David," and two men both named "Carlos." The next morning, defendant, Rafa, David, and "Carlos 2" got into a white Chevy Tahoe and drove around. "Carlos 1" got into blue Suburban and drove away.

¶ 19 While they were driving, David called for a tow truck. The owner of the tow truck company owed Rafa's uncle money. They planned to confront the owner of the tow truck and try to get the money. If that did not work, they were going to kidnap him for a ransom. David drove to the house on Sawyer, and Carlos 2 went inside and returned with two guns.

¶ 20 They then drove to a parking lot at the corner of 59th and Sawyer. Defendant, Rafa, and Carlos 2 went to 59th and Kedzie Avenue to wait. A tow truck arrived and an older Hispanic man, later identified as Miguel, got out. As David was talking to Miguel, defendant, Rafa, and Carlos 2 approached. Carlos 2 grabbed Miguel, who then reached for Carlos 2's gun. David hit Miguel in the head, and defendant told Miguel to get into the Tahoe. As soon as Miguel was inside the Tahoe, Carlos 2 began tying him up. Rafa drove away in the tow truck, while David, defendant, Carlos 2, and Miguel drove in the Tahoe to the garage behind the house on Sawyer.

¶ 21 David and Carlos 2 searched Miguel and finished tying him up. As they were doing this, Miguel was pleading with them to stop. Once Miguel was tied up, David left. Defendant noticed Miguel bleeding and his eyes covered with duct tape. Defendant wiped the blood from Miguel's face with a towel he had found in the garage. Defendant and Carlos 2 waited in the garage while the others worked on getting a ransom. Occasionally, Miguel would moan, and Carlos 2 would hit him until he stopped.

¶ 22 Defendant then saw a man walking around trying to see in the garage. The man left but then came back. Carlos 2 hit the garage door and yelled at the man, causing him to run away. Carlos 2 ran after the man. Shortly after, the police came.

¶ 23 Cliff Gehrke testified that he was employed as a Chicago police detective assigned to investigate the kidnaping of Miguel. During the course of his investigation, he learned that four people had been arrested with respect to the kidnaping: defendant, Pierre Munoz, David Garcia Reyes, and Mario Rodriguez. Gehrke provided Miranda warnings to defendant, who stated that he understood them and wanted to speak about the kidnaping. Later defendant spoke with McGuire in the presence of Gehrke and allowed his statement to be written down.

¶ 24 Defendant testified that, in 2010, he met Mario Rodriguez and his uncle, "Sam," in South Bend, Indiana. Sam asked defendant to purchase vitamins for him from a pharmacy. About a week later, Sam stated that defendant owed him $3,000. Sam repeatedly asked for the money and told defendant that "if I didn't watch myself he'll get somebody to get me wherever I was at."

¶ 25 On December 8, 2010, defendant went to school and later returned home. He received a call from Sam, who asked to meet. Eventually defendant agreed to meet with Sam at a grocery store and got into the backseat of his car. There was a "big Mexican" in the front seat. Sam drove away and defendant told him he had to get back to school. Sam pulled out "a 38 special" and told defendant "sit down or we going to make you sit down, force you to sit down." Sam then drove to a house in Chicago that defendant had never been before. Defendant denied having rented the house before.

¶ 26 Sam and the "big Mexican" first tried to get in the front door but were unable to enter. They then went around to the back, and defendant followed because he had "no choice but to go

with them." Defendant later learned that Sam was armed when they entered the house through the side entrance. Sam told defendant, "you're going to pay attention or we'll going [*sic*] to kill you right here and then and leave you here."

¶ 27 Rafa, David, and both men named Carlos arrived at the house soon after. David had a silver gun and "shot the bedroom" and "shot the ceiling." He told defendant, "I'll kill you right now." They stayed at the house Wednesday night and, when defendant told them he had to go to school, they told him "you need to cooperate or we'll just leave you here and we'll stab you to death or shoot you, and no one is going to find out that you was [*sic*] even in here at all. We can stab you and no one is going to hear it."

¶ 28 Thursday night defendant and the other men went out to a Mexican restaurant. Defendant did not run away because he had not eaten all day. They told him, "if you even talk to somebody or do anything, when we come back, we're going to take care of you. We're going to stab you and leave you in this house and no one is going to find you."

¶ 29 On Friday night they stayed at a motel and gave defendant a pill. The following morning, defendant, Rafa, David, and Carlos 2 got into the white Tahoe and drove back to the house on Sawyer. Carlos 2 got out of the Tahoe, went inside, and then came back. They drove to parking lot near the Mexican restaurant where they had gone previously. David and Rafa told defendant to get out and stated, "[y]ou're going for a walk." They walked to the corner of 59th and Kedzie, and defendant saw a black tow truck pull up. Miguel got out of the tow truck and began to talk to David. Carlos 2 walked up to Miguel, pulled out a silver gun, and the two "got to wrestling for the gun." Defendant got between them and said, "don't shoot him, don't shoot him. Let him go"

¶ 30 When defendant was trying to take away the gun, David hit Miguel with a black object. Carlos 2 pushed Miguel and told him to get into the truck. They then drove back to the garage behind the house on Sawyer, and Carlos 2 and David tied up Miguel. David started pacing back and forth around the garage making phone calls. Defendant saw that Miguel was bleeding from his head and looked for something to stop the blood. He first used his sleeve and got blood on his hand. He then found a towel and applied pressure to Miguel's head. David left the garage, leaving only defendant and Carlos 2 with Miguel. Carlos 2 told defendant, "watch what you do, because you're not alone in here. I, I will shoot you myself right here and then."

¶ 31 Defendant noticed a car parking outside and observed a man in a yellow vest get out of a blue van. Defendant and the man made eye contact. Carlos 2 then hit the garage door and walked out. Defendant did not see Carlos 2 again that day. After Carlos 2 left, defendant went to the back and forth from the garage to the house about three or four times looking for his cell phone in order to "call somebody to help this man out." Defendant kept checking on Miguel and told him that he would lock the door "so if they come back, they ain't [*sic*] going to hurt him anymore."

¶ 32 Defendant then observed several vehicles pull up behind the garage and hoped it was the police. The men told defendant that they wanted to talk to him. Defendant was startled and walked away from the men "a little faster" because he did not know they were police officers. Eventually, defendant was detained in the living room and he learned the men were police officers. Defendant was placed under arrest and was later taken to the police station.

¶ 33 Defendant recalled speaking with McGuire and Gehrke at the police station. He further testified that he was transported to the hospital "several times" because he was diabetic.

Defendant explained that he denied signing the written statement because McGuire would not take out the part that said defendant "volunteered to be there." He acknowledged that he had been convicted of burglary in 1997 in Indiana and denied willingly kidnaping or wanting to participate in the kidnaping of Miguel. Defendant explained that while he was present at the kidnaping of Miguel, he was threatened a "couple of times."

¶ 34 During the jury instruction conference, defense counsel requested a jury instruction for the defense of compulsion or, alternatively, an instruction on "mere presence" to accompany the accountability instruction. The trial court denied both instructions, noting "there's no evidence to support either one of them."

¶ 35 The jury found defendant guilty of six counts of aggravated kidnaping. Defendant filed a written motion for a new trial arguing, *inter alia*, the trial court erred in denying defendant's request for a compulsion instruction or, alternatively, for a "mere presence" instruction to accompany the accountability instruction. The trial court denied the motion for a new trial and sentenced defendant to 30 years' imprisonment. Defendant filed a timely notice of appeal.

¶ 36 On appeal, defendant argues the trial court erred in denying his request for a compulsion jury instruction. Alternatively, he argues the trial court erred in denying his requested instruction regarding "mere presence" to accompany the accountability instruction. He asks this court to reverse his conviction and remand for a new trial with the requested jury instructions.

¶ 37 Generally, the decision whether to give, or not give, a jury instruction lies within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *People v. Melecio*, 2017 IL App (1st) 141434, ¶ 41; *People v. McDonald*, 2016 IL 118882, ¶ 42. "When 'there is [any] evidence *** however slight' to support a defense, a defendant is entitled to an

instruction on that theory." *People v. Jackson*, 2016 IL App (1st) 133823, ¶ 38 (quoting *People v. Washington*, 2012 IL 110283, ¶ 43). However, where the evidence in the record does not support an instruction, the trial court should refrain from giving it. *People v. Collins*, 2016 IL App (1st) 143422, ¶ 33.

¶ 38 The affirmative defense of compulsion requires a defendant to show that (1) the conduct was performed under the threat or menace of the imminent infliction of death or great bodily harm, and (2) the defendant reasonably believed that death or great bodily harm would be inflicted on him if the conduct was not performed. 720 ILCS 5/7-11(a) (West 2010); see 720 ILCS 5/7-14 (West 2010). In order for an instruction on compulsion to be given, the "defendant must present 'some evidence' sufficient to raise an issue of fact for the jury and create reasonable doubt of defendant's guilt." *Collins*, 2016 IL App (1st) 143422, ¶ 34.

¶ 39 Compulsion is not available as a defense if the defendant had any opportunity to withdraw from the criminal enterprise but failed to do so. *People v. Orasco*, 2016 IL App (3d) 120633-B, ¶ 25. Further, a threat of future injury is not sufficient to raise compulsion as a defense, instead the threat must be imminent. *Collins*, 2016 IL App (1st) 143422, ¶ 35. Therefore, "[t]o establish compulsion, the defendant must show that he was under, 'an impending, imminent threat of great bodily harm together with a demand that the person perform the specific criminal act for which he is eventually charged.' " *Jackson*, 2016 IL App (1st) 133823, ¶ 40 (quoting *People v. Unger*, 66 Ill. 2d 333, 339 (1977)).

¶ 40 The State argues that, in order for the affirmative defense of compulsion to be applicable, a defendant must first admit the acts charged and then assume the burden he acted under compulsion, citing *People v. Stover*, 92 Ill. App. 3d 542, 545 (1980). The State further notes that

compulsion's "companion" affirmative defense, entrapment, requires a defendant to admit the charged acts. See, *e.g.*, *People v. Gillespie*, 136 Ill. 2d 496, 501 (1990); *People v. Fleming*, 50 Ill. 2d 141, 144 (1971). Defendant, in his reply brief, argues that in the 37 years since *Stover* was decided, numerous cases have based their analyses on whether there is "some evidence" to support the instruction, not whether the defendant has admitted the charged acts.

¶ 41 However, none of the cases cited by defendant involved the defendant denying the criminal act while also asserting an affirmative defense. See, *e.g.*, *People v. Everette*, 141 Ill. 2d 147, 156-57 (1990) (the defendant admitted to accidently killing the victim but testified he did so in self-defense); *People v. Kucavik*, 367 Ill. App. 3d 176, 179-80 (2006) (the defendant admitted driving while under the influence of alcohol but testified she did so by necessity); *People v. Serrano*, 286 Ill. App. 3d 485, 492 (1997) (the defendant admitted taking part in the robbery but he testified he did so under compulsion); *People v. Pegram*, 124 Ill. 2d 166, 172-73 (the defendant testified he assisted the robbers but did so under compulsion).

¶ 42 We further note that no case expressly questions or overrules *Stover*. "An affirmative defense has the legal effect of admitting that the acts occurred, but denying legal responsibility for them." *People v. Freneey*, 2016 IL App (1st) 140328, ¶ 32 (finding there was a "logical problem" with the defendant's self-defense claim where he argued he accidentally, rather than intentionally, struck the police officer). As compulsion is an affirmative defense, defendant must have admitted to the criminal acts in order to be entitled to a compulsion jury instruction. See *Stover*, 92 Ill. App. 3d at 545.

¶ 43 Here, the evidence presented at trial, specifically defendant's testimony, was insufficient to warrant an instruction on compulsion. Defendant explicitly denied participating in the

kidnaping. Rather, he testified that, at times during the kidnaping, he tried to help Miguel by breaking up the struggle between Carlos 2 and Miguel and stating not to shoot. He further testified he wiped blood from Miguel's face, kept checking on him, and told him he would lock the door "so if they come back, they ain't [*sic*] going to hurt [Miguel] anymore."

¶ 44 Therefore, according to defendant's testimony, there was no conduct giving rise to accountability for kidnaping, which was "perform[ed] under the compulsion of threat or menace of the imminent infliction of death or great bodily harm." Even if we were to assume there was a threat or menace of the imminent infliction of death or great bodily harm directed at defendant, it was not done in order for him to perform any conduct. "The defense of compulsion is a defense only with respect to the conduct demanded by the compeller." *People v. Scherzer*, 179 Ill. App. 3d 624, 644 (1989); accord *People v. Johns*, 387 Ill. App. 3d 8, 15 (2008). As defendant denied participating in the kidnaping, he certainly did not establish that his participation was secured by way of compulsion.

¶ 45 Even if we were to disregard defendant's denial of his participation in the kidnaping, he still cannot show the trial court abused its discretion in rejecting the compulsion jury instruction. He argues several interactions with the men constitute some evidence of compulsion. Specifically, he points to Sam forcing him to continue from South Bend to Chicago by pulling out a gun and telling him to sit down, and later telling him to "pay attention" or the men would kill him. Defendant highlights David's actions of shooting the gun and saying he will kill defendant. He also points to when the men threatened, on two separate occasions, to stab defendant if he did not cooperate.

¶ 46 However, these incidents occurred days before the kidnaping took place. As we have noted, there must be an impending, imminent threat of great bodily harm together with a demand to perform the specific criminal act for which the defendant is ultimately charged. See *Jackson*, 2016 IL App (1st) 133823, ¶ 40. Because these incidents happened days before the kidnaping, there was no imminent threat with a demand to perform a specific criminal act. See *Collins*, 2016 IL App (1st) 143422, ¶ 37 (finding that, where a threat was made hours before the criminal activity, the evidence did not support the defendant's contention that the threat of death or great bodily harm was imminent).

¶ 47 Defendant further contends his interaction in the garage where Carlos 2 tells him, "watch what you do, because you're not alone in here. I, I will shoot you myself right here and then" constitutes some evidence of compulsion. We disagree. At this point, all the elements constituting the kidnaping of Miguel had already been performed. Therefore, any conduct for which defendant was ultimately charged, *i.e.* the kidnaping, could not have been accomplished by way of compulsion. See *Scherzer*, 179 Ill. App. 3d at 644 (noting that the codefendant's "threats subsequent to the commission of the armed robbery clearly cannot be viewed as evidence raising the defense of compulsion to it").

¶ 48 The trial court did not abuse its discretion in denying defendant's request for a jury instruction where he denied participation in the kidnaping. Further, the statements and interactions defendant points to as some evidence of compulsion occurred either days before, or subsequent to, the kidnaping of Miguel. There was no imminent threat of death or great bodily harm coupled with a demand to perform the specific criminal acts giving rise to defendant's

charges for kidnaping. Accordingly, the trial court did not abuse its discretion in denying defendant's requested jury instruction regarding compulsion.

¶ 49 Defendant next argues the trial court erred in failing to give a "mere presence" instruction along with the accountability instruction. Illinois Supreme Court Rule 451(a) (eff. April 8, 2013) provides that, when the Illinois Pattern Jury Instructions (IPI) contain an applicable instruction on a subject which the court decides that the jury should be instructed, the court must use the IPI instruction "unless the court determines that is does not accurately state the law." The decision to give a nonpattern jury instruction is reviewed for an abuse of discretion, which "will depend on whether the nonpattern instruction is an accurate, simple, brief, impartial, and nonargumentative statement of law." *People v. Bannister*, 232 Ill. 2d 52, 81 (2008).

¶ 50 The record indicates that the court gave the jury Illinois Pattern Jury Instruction Criminal No. 5.03, entitled "Accountability." This instruction states:

> "A person is legally responsible for the conduct of another person when, either before or during the commission of the offense, and with the intent to promote or facilitate the commission of the offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of the offense."

¶ 51 The defense then requested a non-IPI defining "mere presence" to accompany the accountability instruction. The defense offered four variations of "mere presence," which generally instructed that mere presence at the scene of the crime does not make a person legally accountable for the offense. Defendant argues the trial court's failure to provide this instruction was error. Specifically, he asserts a "mere presence" instruction was necessary to make the accountability instruction "more just and understandable, and consistent with case law."

¶ 52 Viewing the record, we disagree with defendant's contention that a "mere presence" instruction to accompany the accountability instruction was necessary. We first note that this court has previously addressed and rejected the argument that a defendant is entitled to a non-IPI jury instruction regarding "mere presence" as it applies to accountability. *People v. Nutall*, 312 Ill. App. 3d 620, 634 (2000) (and cases cited therein).

¶ 53 Further, the jury was provided the IPI instructions on the presumption of innocence, the burden of proof, the elements of aggravated kidnaping, and the proof required to find defendant guilty under an accountability theory. See *id.* We find that the instructions given to the jury accurately communicated the correct principles of law in light of the evidence presented and allowed the jury to reach a proper conclusion. See *id.* at 634-35.

¶ 54 We recognize, as defendant notes, that the legislature amended section 5-2(c) of the Criminal Code of 1961 (720 ILCS 5/5-2(c) (West 2010)), to include language that mere presence at the scene of a crime does not render a person accountable for an offense. See Pub. Act 96-710, § 25 (eff. Jan. 1, 2010). However, our supreme court has long recognized that an individual's mere presence at the scene of a crime does not make that person accountable for the offense. See, *e.g.*, *People v. Thicksten*, 14 Ill. 2d 132, 134-35 (1958); *People v. Washington*, 26 Ill. 2d 207, 209 (1962); *People v. Taylor*, 164 Ill. 2d 131, 140 (1995); *People v. Perez*, 189 Ill. 2d 254, 268 (2000). As the legislature did not alter existing law, we disagree with defendant's contention that the accountability instruction, IPI 5.03, was insufficient without an accompanying "mere presence" instruction because the change in the statute did not require a change in the instruction. See *People v. Wilson*, 257 Ill. App. 3d 670, 697-98 (1993) ("the standard I.P.I. accountability instruction contains the essence of the 'mere presence' instruction").

¶ 55 Accordingly, the jury was properly instructed as to accountability and was aware from the instructions given that defendant's "mere presence" was insufficient to give rise to a conviction. The trial court therefore did not abuse its discretion in refusing to tender a jury instruction regarding "mere presence" to accompany the accountability instruction.

¶ 56 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 57 Affirmed.