NO. 4-09-0596 Order filed 2/25/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ROBERT LUKE LAWRENCE, Defendant-Appellant. | ) Appeal from ) Circuit Court ) McLean County ) No. 07CF604 ) ) Honorable ) Charles G. Reynard, ) Judge Presiding. |

PRESIDING JUSTICE KNECHT delivered the judgment of the court.

Justices Myerscough and McCullough concurred in the judgment.

**ORDER**

*Held*: The State proved defendant guilty of burglary beyond a reasonable doubt. Imposition of fines is a judicial function beyond the authority of the circuit clerk and case must be remanded for proper imposition of fines by the trial court. See *People v. Allen*, 371 Ill. App. 3d 279, 285, 868 N.E.2d 297, 303 (2006).

Defendant, Robert Luke Lawrence, was convicted of burglary (720 ILCS 5/19-1(a) (West 2006)) and sentenced to nine years' imprisonment in the Illinois Department of Corrections. He was also assessed costs and fines including a Children's-Advocacy-Center fee and a drug-court fee, which were not mentioned at sentencing by the trial court. On appeal, defendant contends he was not proved guilty of burglary beyond a reasonable doubt and the fees for the Children's Advocacy Center and the drug court were beyond the authority of the circuit clerk to

assess. We affirm in part, vacate in part, and remand with directions.

## I. BACKGROUND

Defendant was charged with burglarizing the Von Maur store in Bloomington on June 9, 2007. On June 5, 2008, he waived his right to a jury trial. At a November 3, 2008, bench trial, the State's evidence was presented by stipulation between the parties as well as eight exhibits. The State then rested.

According to the stipulation, Von Maur loss-prevention officers Anthony Engler and David Debolt would testify on June 9, 2007, at approximately 2 p.m., they observed three individuals in the store: Amy Newnum, defendant, and defendant's brother, Matthew Lawrence. Debolt recognized defendant and would testify defendant had previously been given a no-trespass warning in regard to the Von Maur store. Engler and Debolt also recognized Matthew and Newnum from an incident on May 25, 2007, when they attempted to steal blue jeans from the store.

On June 9, 2007, Engler saw Newnum and defendant in the men's department and saw Newnum select several pairs of denim jeans, drop them behind a counter, and walk out of the store with defendant. Matthew then went to the area where the jeans were dropped, picked them up, and put them in a plastic bag. He then left the store through the same exit defendant and Newnum had used.

Debolt and Engler ran after defendant and his companions. Matthew got into the front seat of a red car driven by Newnum. Defendant was a backseat passenger. Engler reached in to the car and grabbed the bag of jeans in the front seat. The bag tore, and he retrieved one pair of jeans. The car drove away traveling south on Veteran's Parkway.

The surveillance videotape from Von Maur was entered into evidence. Engler and Debolt used the store's inventory system to create a Von Maur receipt detailing the items stolen and their cost. This exhibit was given to the Normal police department. The jeans retrieved from the ripped bag were indicated on the receipt. All the jeans were later recovered and Engler and Debolt matched them to the inventory list.

It was further stipulated Kari Palishen would testify she was driving near Von Maur and saw a man running from the store get into a red car. The car fishtailed in front of her as it left the parking lot and turned onto Veteran's Parkway. Palishen called 9-1-1 to report the vehicle and saw the car head south on Veteran's Parkway, turning east onto Clearwater.

Hailey Brownfield would testify she was working at Plato's Closet, a resale shop in Bloomington, on June 9, 2007. At approximately 2:30 p.m. she purchased five pair of jeans from a man and paid him $40. The man had come into the store with a woman. Brownfield later viewed two photo lineups and identified

Matthew as the person who sold the jeans. She was not able to identify defendant.

At least two Normal police officers were involved in investigating this case. Officer Nathan Poehlman responded to Von Maur regarding the theft of the blue jeans. He tried to locate defendant, Newnum, and Matthew but was unsuccessful. However, later that day, he heard a dispatch for an address in Normal for an apparent heroin overdose. He recognized the address as that of the three suspects. Poehlman notified officers if they found these individuals, there was probable cause to arrest them for the Von Maur incident.

Officer Shane Bachman went to the apartment in Normal with fire and rescue personnel. Upon arrival, he ascertained Matthew had apparently overdosed on heroin. Newnum and defendant were present and were arrested.

When the bench trial resumed on November 13, 2008, Matthew testified on behalf of defendant. Matthew stated on June 7, 2007, only he and Newnum discussed going to Von Maur. Although defendant went in the car with them to the store, he was not involved in the planning discussion. Defendant was not even at the house when the matter was discussed.

Matthew admitted he and Newnum went to the store to steal clothes. As they pulled into the parking lot, defendant told Matthew and Newnum not to go inside. Matthew went first to

the Target store to get a bag. He went to the clothes area where Newnum was to leave items for him to pick up. He put the clothes in the Target bag and hurried out the door.

Security pursued Matthew and when he got to the car, he told Newnum to go quickly. One of the officers reached in the door and "ripped out a pair of jeans."

Matthew and Newnum both started discussing what a stupid idea it had been to steal the jeans. Defendant asked to be let out of the car but Matthew told Newnum to keep driving. Defendant was let out of the car in the parking lot of the former K's Merchandise store and Matthew and Newnum went into Plato's Closet to sell the clothing. Defendant was not a part of the resale. After they got $40 for the jeans, Matthew and Newnum went to the bus stop, where defendant was also waiting for the bus. Matthew and Newnum abandoned their car as they knew the police were looking for it. All three individuals rode the bus to College Park. Matthew and Newnum got out near the Jewel store to buy heroin. Defendant rode the bus to the house. Matthew went home, shot up heroin, and overdosed.

Matthew pleaded guilty to burglary and was awaiting sentencing at the time he gave his testimony. He also had several prior drug and theft convictions. Matthew admitted he used heroin daily at the time of the offense and used it a couple weeks prior to his testimony. He could not recall telling the

police Newnum was not present and it had been just him and defendant, but he admitted he might have made the statement to protect Newnum. He also stated he stole from Von Maur in order to buy heroin. Newnum also used heroin with him but he did not see defendant use any.

Defendant testified on his own behalf. He stated he met his brother and Newnum at her apartment around 1 p.m. on June 7, 2007. Defendant left with them to run errands but he "had a feeling" they were going to steal. He asked what they were doing when they got to the Von Maur parking lot and they told him they were just going to run in the store. Defendant stated he repeatedly told them not to do it. Matthew left the car first. Defendant entered Von Maur with Newnum.

Inside the store, Newnum looked through the blue jeans. Defendant saw her grab jeans off the rack, and he walked out of the store after he knew what she was doing. He stated he did not want any part of the theft. Defendant stated he went back to the car followed by Newnum. He waited in the backseat and Matthew jumped into the car and locked him in. Defendant insisted he yelled at Newnum to let him out of the car. Newnum sped away as the loss-prevention officer grabbed some jeans from the car.

Defendant got out of the car in the parking lot near Plato's Closet and went into Ruby Tuesday's restaurant to call a friend for a ride. He could not get a ride and went to the bus

stop. He was joined there by Matthew and Newnum. They all rode the bus to the stop nearest Newnum's apartment. At the apartment Matthew and Newnum shot up heroin. Newnum ran out of the bedroom yelling Matthew had fallen. Defendant saw his brother had overdosed and called 9-1-1. Defendant waited for the police and emergency personnel to arrive. He and Newnum were arrested. When told he was being arrested for burglary, defendant stated he did not commit the offense, had been working for six months and just cashed a check for $475 that same day. He did not recall denying being with Newnum and Matthew that day.

Defendant stated he was on parole. He had a drug test each month and had been clean since he was released.

The trial court took the matter under advisement. The court reviewed the video produced by Engler and Debolt showing Newnum and defendant in Von Maur together. While Newnum looked through the clothing and dropped some behind a counter, defendant was near her and looking around. Despite defendant's testimony he left the store before Newnum, the videotape shows defendant following Newnum out of the store.

On December 17, 2008, the trial court entered its written order finding defendant guilty of burglary. On March 2, 2009, defendant was sentenced to an extended term of nine years' imprisonment. The court also signed an order awarding defendant $15 credit toward any fines for the three days he served in the

county jail. The court also ordered a $20 fine under the Violent Crime Victims Assistance Fund (VCVA) (725 ILCS 240/10 (West 2008)) and $709 in court costs. That same day, a notice to party was sent to defendant detailing the fines and court costs assessed against him. The total amount due was listed as $772. Included in this total was a Children's Advocacy Center fee of $15 and a drug-court fee of $10. Near the bottom of the form is stated "YOU HAVE BEEN ORDERED BY THE PRESIDING JUDGE TO **PAY THE FINE AND FAILURE TO PAY SAID AMOUNT OR APPEAR ON SAID DATE MAY RESULT IN A FORFEITURE AND/OR A WARRANT BEING ISSUED FOR YOUR ARREST**." This notice was sent by the circuit clerk.

On March 23, 2009, a *pro se* motion to reconsider sentence was filed. On June 15, 2009, defense counsel filed a posttrial motion and an amended motion to reconsider sentence. On July 27, 2009, the trial court held a hearing on the motions. The motions were denied. On August 10, 2009, defendant filed a notice of appeal.

## II. ANALYSIS

### A. Reasonable Doubt

Defendant argues the State failed to prove him guilty of burglary. He contends the proof was insufficient he entered Von Maur with intent to commit a theft. Defendant contends the evidence showed he was trying to dissuade his brother and Newnum from stealing.

The standard for reviewing the sufficiency of evidence in a criminal case is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114, 871 N.E.2d 728, 740 (2007). A reviewing court will not set aside a criminal conviction on grounds of insufficient evidence unless the proof is so improbable or unsatisfactory there exists a reasonable doubt of the defendant's guilt. *People v. Maggette*, 195 Ill. 2d 336, 353, 747 N.E.2d 339, 349 (2001).

To prove the offense of burglary, the State must prove defendant, without authority, knowingly entered or without authority remained within a building with the intent to commit therein a felony or theft. 720 ILCS 5/19-1(a) (West 2006). Under Illinois law, a person is legally accountable for the conduct of another when either before or during the commission of an offense, and with intent to promote or facilitate the offense, he solicits, aids, abets, agrees, or attempts to aid, the other person in the planning or commission of the offense. 720 ILCS 5/5-2(c) (West 2006). To prove a defendant guilty of burglary on an accountability basis, the State is required to show the defendant, with the requisite intent, aided or abetted his companions either before or during the commission of the crime. *In re Matthew M.*, 335 Ill. App. 3d 276, 283, 780 N.E.2d 723, 729

(2002).

To prove a defendant possessed the intent to promote or facilitate the crime, the State must establish beyond a reasonable doubt either the defendant shared the criminal intent of the principal or there was a common criminal design. *In re W.C.*, 167 Ill. 2d 307, 337, 657 N.E.2d 908, 923 (1995). A defendant's intent may be inferred from the nature of his actions and the circumstances accompanying the criminal conduct. *People v. Perez*, 189 Ill. 2d 254, 266, 725 N.E.2d 1258, 1265 (2000). Although mere presence at the scene of a crime, even when combined with knowledge a crime is being committed and flight from the scene, is insufficient to establish guilt by accountability (*People v. Shaw*, 186 Ill. 2d 301, 323, 713 N.E.2d 1161, 1173 (1998)), evidence a defendant voluntarily attached himself to a group bent on illegal acts with knowledge of its design supports an inference he shared the common purpose and will sustain a conviction for an offense committed by another. *W.C.*, 167 Ill. 2d at 338, 657 N.E.2d at 924.

In determining a defendant's accountability, the trier of fact may consider the defendant's presence during the commission of the offense, close affiliation with the other offenders after the commission of the crime, defendant's failure to report the incident, and his flight from the scene. *People v. Taylor*, 164 Ill. 2d 131, 141, 646 N.E.2d 567, 571 (1995).

Matthew testified defendant disapproved of "our plan"; inferring he was aware of the plan. Defendant went into Von Maur with Newnum despite his awareness of the plan and spent time with her while she gathered jeans which were the object of the plan. The videotape of store surveillance entered into evidence shows he followed Newnum around the store for several minutes and followed her out of the store. This is inconsistent with defendant's assertion he wanted no part of the plan and left the store before Newnum.

As the trial court found, defendant's testimony is not credible. The videotape contradicts it. Additionally, his testimony he had a "feeling" they were going to engage in shoplifting is not believable in light of Matthew's testimony defendant knew what they were going to do and told them not to enter the store. Defendant's behavior in the store, not distancing himself from Newnum as she gathered jeans, did not support his assertion he was not part of the planned theft. Further, the trial court found defendant's demeanor on the witness stand did nothing to enhance his credibility.

Defendant stayed with Newnum in the store and not only got into her car again, but fled the scene with Matthew and Newnum. After the incident, he did not report the crime and went back to their apartment.

Viewing the evidence in the light most favorable to the

prosecution, we affirm the trial court's finding defendant was guilty of burglary.

B. Fines and Fees

The trial court never mentioned the mandatory fines of $10 for a drug-court fee (55 ILCS 5/5-1101(d-5) (West 2008)) and $15 for a Children's-Advocacy-Center fee (55 ILCS 5/5-1101(f-5) (West 2008)) in its sentencing order. Instead, apparently they were imposed by the circuit clerk in the notice to party sent to defendant detailing the fines and court costs assessed against him the day of his sentencing.

Imposition of a fine is a judicial act and the circuit clerk, a nonjudicial member of the court, has no power to impose sentences or levy fines, having the authority only to collect judicially imposed fines. *People v. Swank*, 344 Ill. App. 3d 738, 747-48, 800 N.E.2d 864, 871 (2003); see 730 ILCS 5/5-9-1(c) (West 2008).

Because these fines are mandatory, and the imposition of them is a judicial function beyond the authority of the clerk, we remand for proper imposition of the fines by the trial court. See *People v. Allen*, 371 Ill. App. 3d 279, 285, 868 N.E.2d 297, 303 (2007). Because we are remanding for the court to impose the fines for the Children's Advocacy Center and the drug court, the court should also reduce the $20 VCVA fine it did impose as the statute authorizing this fine allows for either a $20 or $25

assessment if no other is imposed; but if another fine is imposed, the VCVA is limited to a fine of $4 for every $40 in other fines imposed. See 725 ILCS 240/10(b), (c) (West 2008).

## III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment except we vacate fines imposed by the clerk and remand for proper imposition of the fines by the court and adjustment of the VCVA fine. As part of our judgment, we award the State its $50 statutory fine against defendant as costs of this appeal.

Affirmed in part and vacated in part; cause remanded with directions.