2011 IL App (4th) 100743-U

Filed 10/12/11

NO. 4-10-0743

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
WESLEY ALLEN FULLERLOVE,	)	No. 09CF495
Defendant-Appellant.	)	
	)	Honorable
	)	Charles G. Reynard,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* Where the State's evidence was sufficient to prove beyond a reasonable doubt defendant and his codefendant had a common design to commit a battery, the evidence was also sufficient for the jury to find defendant guilty of aggravated battery with a firearm on an accountability theory for codefendant's shooting of a person during the commission of the planned offense.

¶ 2 In June 2009, a grand jury indicted defendant with one count of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2008)), one count of aggravated battery (720 ILCS 5/12-4(b)(8) (West 2008)), and one count of unlawful restraint (720 ILCS 5/10-3(a) (West 2008)). At defendant's April 2010 jury trial, the McLean County circuit court directed a verdict of not guilty on the aggravated-battery count, and the jury found defendant guilty of the two remaining counts. Defendant filed a motion for acquittal or, in the alternative, a new trial. At a joint hearing in July 2010, the court denied defendant's posttrial motion and sentenced

defendant to concurrent prison terms of 16 years for aggravated battery with a firearm and 3 years for unlawful restraint. Defendant filed a motion to reconsider his sentence, which the court denied.

¶ 3 Defendant appeals, asserting the State failed to prove beyond a reasonable doubt he committed aggravated battery with a firearm on an accountability theory. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The grand jury indictments arose from defendant's alleged actions on June 5, 2009. The count at issue in this appeal asserted defendant, "or one for whose conduct he was legally responsible, knowingly and without legal justification, discharged a firearm which caused a gunshot wound to the leg of Dexter McCraney."

¶ 6 In April 2010, the trial court commenced a jury trial on the three indictments. The evidence relevant to the sole issue on appeal is as follows. McCraney testified he went to Fade 'em Barbershop on June 5, 2009, with his best friend Paul Washington. While he was getting his hair cut by Jamonte Stewart, three men walked into the barbershop. One of the men, whom McCraney identified as defendant, came over to the barber chair in which McCraney was sitting and put his right hand on McCraney's chest right under his neck. At the same time, a man, who was later identified as Cordell Avant by another witness, started fighting with Washington, who was standing near McCraney. McCraney could not get up from the barber chair. Avant pulled out a gun and shot it in a downward direction, striking McCraney in the leg. After the single shot, all three men ran out of the barbershop. McCraney indicated the incident all happened very fast. He had seen defendant before that day but not the shooter. He had no idea why the men would want to harm him. During the incident, no words were spoken between

the men.

¶ 7 Washington testified only two men entered the barbershop. Cassius Crittendon, one of the owners of the barbershop, greeted defendant, and defendant responded with a nod. After that, defendant went to the barber chair where McCraney was sitting and began to attack and fight McCraney. Avant approached Washington and swung at him. Washington jumped back and avoided the swing. Avant then pulled out a gun from his waistband and appeared to point it at Washington. Washington ducked for cover. After the single gun shot, Avant and defendant ran out of the barbershop. Washington also testified the men did not speak to each other during the incident.

¶ 8 Crittendon testified he greeted defendant when defendant entered the barbershop that day, but defendant did not respond. Crittendon had known defendant for years because he "hung out" with Crittendon's son. Defendant walked over to Stewart's barber chair and just stood there. Avant, whom Crittendon recognized but did not know, entered the barbershop and stood next to Crittendon's side. When Avant entered, defendant reached his arms around McCraney and grabbed him. Avant said something to Washington, and then what Crittendon thought was playing fighting began. Crittendon pushed Avant and Washington away and told them to stop. Avant pulled out a gun, and Crittendon asked him what he was doing. When Avant pulled out the gun, defendant jumped back. Crittendon told Avant to leave and stepped in front of him. Avant reached around Crittendon and fired one shot. After the shot, Avant immediately took off running, and defendant stood there for a minute and then took off behind Avant. No words were exchanged between defendant and Avant, and Crittendon had not seen them with each other before that day. Additionally, Crittendon identified photographs of the outside of the barbershop

and noted he always kept locked the only other door besides the front one.

¶ 9 Stewart testified he had known defendant since he was 12 years old and cut his hair. When defendant entered the barbershop, Crittendon greeted him, and defendant walked over to Stewart's chair. Stewart asked defendant what was up, but defendant did not respond, which was not normal. As he was talking to defendant, Stewart noticed Avant walk in the door. Avant approached Washington in a matter of seconds. When Stewart looked back at McCraney, defendant had wrapped his arms around McCraney and was restraining him. Stewart then asked defendant, " 'What the f**k are you doin'?' " Stewart saw Avant's gun six to seven seconds after he questioned defendant. During that time, Avant and Washington were fighting. Right before Avant pulled out the gun, Washington had stated, " 'This is what you guys are on down here?' " When the gun came out, defendant let go of McCraney and got out of the way. Avant pointed the gun in the vicinity of Stewart, defendant, McCraney, and Washington. Crittendon then stepped in front of him, and the gun fired. Avant ran out of the barbershop, and defendant ran out "a little after that." Stewart also did not hear defendant and Avant say anything to each other during the incident.

¶ 10 McCraney, Washington, and Stewart all had at least one felony conviction.

¶ 11 Demetrius Worlds also testified. He was currently incarcerated for home invasion. In July 2009, he requested to speak with the officers investigating the shooting at issue. He was not present at the barbershop during the shooting but had told officers he had a conversation with defendant about the incident. At defendant's trial, Worlds testified he made up the story that he told the police to help with his home-invasion charge. Worlds admitted the police had never promised him anything in his home-invasion case. Bloomington police officer

Richard R. Barkes, Jr., also testified the police made no promises to Worlds for his information in this case.

¶ 12 The State played a portion of the police interview of Worlds to the jury. Worlds told officers defendant had stated he would not have gone if he knew Avant had a gun. Defendant and Avant were just going to fight.

¶ 13 At the close of the State's case, the State agreed to a directed verdict as to the aggravated-battery charge because no evidence was presented showing McCraney had been punched. The trial court denied defendant's directed-verdict motion as to the other two charges. At the conclusion of the trial, the jury found defendant guilty of the two remaining charges.

¶ 14 In May 2010, defendant filed a motion for acquittal, or in the alternative, a new trial, asserting, *inter alia*, no objective evidence showed defendant agreed or colluded with Avant to attack or injure McCraney with a firearm. In July 2010, the trial court held a joint hearing on defendant's posttrial motion and sentencing. The court denied defendant's posttrial motion and sentenced defendant to concurrent terms of 16 years for aggravated battery with a firearm and 3 years for unlawful restraint, both of which were to run consecutive to his sentence in another case (People v. Fullerlove, No. 09-CF-403 (Cir. Ct. McLean Co.)). Defendant filed a motion to reconsider his sentence, alleging the court improperly weighed the mitigating and aggravating factors. After an August 25, 2010, hearing the court denied defendant's motion.

¶ 15 On September 22, 2010, defendant filed a notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009), and thus we have jurisdiction over defendant's convictions and sentences under Illinois Supreme Court Rule 603 (eff. July 1, 1971).

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant only argues the State failed to prove him guilty beyond a reasonable doubt of aggravated battery with a firearm on an accountability theory because its evidence was insufficient to show he aided or abetted the man who shot McCraney.

¶ 18 When presented with a challenge to the sufficiency of the evidence, a reviewing court's function is not to retry the defendant. *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010). Rather, we consider " 'whether, after 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.' " (Emphasis in original.) *People v. Davison*, 233 Ill. 2d 30, 43, 906 N.E.2d 545, 553 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Under that standard, a reviewing court must draw all reasonable inferences from the record in the prosecution's favor. *Davison*, 233 Ill. 2d at 43, 906 N.E.2d at 553. Additionally, we note a reviewing court will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Givens*, 237 Ill. 2d at 334, 934 N.E.2d at 484.

¶ 19 Under Illinois law, "a person is legally accountable for another's criminal conduct when '[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense.' " *People v. Perez*, 189 Ill. 2d 254, 266, 725 N.E.2d 1258, 1264 (2000) (quoting 720 ILCS 5/5-2(c) (West 1994)). Moreover, "one can be held accountable for a different crime other than the one that was planned." *People v. Redmond*, 341 Ill. App. 3d 498, 510, 793 N.E.2d 744, 754 (2003). To prove the defendant's intent to promote or

facilitate the crime, the State must present evidence establishing beyond a reasonable doubt either (1) the defendant shared the principal's criminal intent, or (2) a common criminal design existed. *Perez*, 189 Ill. 2d at 266, 725 N.E.2d at 1264-65. "Intent may be inferred from the character of defendant's acts as well as the circumstances surrounding the commission of the offense." *Perez*, 189 Ill. 2d at 266, 725 N.E.2d at 1265.

¶ 20 "Words of agreement are unnecessary to establish a common purpose, or design, to commit a crime, which can be inferred from the circumstances surrounding the perpetration of the unlawful conduct." *People v. Batchelor*, 171 Ill. 2d 367, 376, 665 N.E.2d 777, 780-81 (1996). However, the defendant's mere presence at the crime, even when he or she knows a crime is being committed, is alone insufficient to establish accountability. *Batchelor*, 171 Ill. 2d at 375-76, 665 N.E.2d at 780. Yet, active participation is not required as "one may aid and abet without actively participating in the overt act." *Batchelor*, 171 Ill. 2d at 376, 665 N.E.2d at 780. In determining a defendant's legal accountability, the trier of fact may consider the defendant's (1) presence during the offense's commission, (2) continued close affiliation with other offenders after the crime's commission, (3) failure to report the incident, and (4) flight from the scene. *Batchelor*, 171 Ill. 2d at 376, 665 N.E.2d at 781.

¶ 21 In this case, the evidence viewed in the light most favorable to the State showed defendant entered the single door of the barbershop right before Avant and went straight to Stewart's barber chair where he restrained McCraney, who was getting his hair cut by Stewart. Avant walked in behind defendant and started fighting McCraney's best friend Washington, who was standing between Stewart's and Crittendon's barber chairs. Defendant was a regular customer of Stewart but did not respond to Stewart's greeting and said nothing to Stewart. After

what Stewart described as six to seven seconds of fighting, Avant pulled a gun out and pointed it in the direction of Stewart, defendant, McCraney, and Washington. Avant shot the gun once, striking McCraney in the leg. After the shot was fired, Avant and defendant ran out of the barbershop. Defendant told Worlds they were going to the barbershop to fight and would not have gone if he knew Avant had a gun.

¶ 22 A jury could find beyond a reasonable doubt the aforementioned evidence showed a common design to commit a battery of Washington. Defendant entered the barbershop right before Avant and restrained Washington's best friend while Avant attacked Washington. Defendant did not respond to Stewart's greeting or say anything to him, which Stewart described as abnormal. Moreover, the testimony of all the eyewitness indicates defendant approached McCraney before Avant attacked Washington, which shows defendant was not merely trying to keep McCraney out of the fight. Further, the fact defendant and Avant did not talk to each other does not mean they did not know each other. Defendant did not talk to Stewart, whom he had known for six years, or Crittendon, who he also knew through Crittendon's son. Additionally, defendant's and Avant's actions took place quickly and were in concert, showing they had planned the attack on Washington before entering the barbershop. Both McCraney and Washington testified defendant and Avant ran out of the barbershop after the shot was fired. No evidence was presented that defendant reported the shooting to the police.

¶ 23 "Once an underlying common design to commit a planned offense is established, no *additional* common designs need be established for all of the individual acts committed during the commission of the planned offense." (Emphasis in original.) *People v. McClain*, 269 Ill. App. 3d 500, 505, 645 N.E.2d 585, 589 (1995), *overruled on other grounds by People v.*

Woods, 193 Ill. 2d 483, 489, 739 N.E.2d 493, 496 (2000). Thus, once the common design was established between defendant and Avant to commit the offense against Washington, the State did not need to establish additional common designs for each individual act committed by Avant during the commission of the planned offense. Defendant was accountable for Avant's acts during the commission of the planned offense, regardless of whether Avant had a separate or independent motive in committing those acts. See *McClain*, 269 Ill. App. 3d at 505, 645 N.E.2d at 589. Accordingly, the fact defendant did not know Avant had a gun or intended to shoot McCraney is irrelevant to finding him accountable for Avant's shooting of McCraney. For the purposes of determining legal accountability, a crime is not complete until the offender has escaped from the scene. *McClain*, 269 Ill. App. 3d at 505, 645 N.E.2d at 589. Thus, the commission of the planned battery of Washington was ongoing when Avant shot McCraney in the leg. Since the State's evidence is sufficient to show a common design between defendant and Avant to commit a battery against Washington, that evidence is sufficient to hold defendant accountable of the shooting of McCraney, which is the basis of defendant's aggravated-battery-with-a-firearm conviction.

¶ 24 We note the facts of this case are distinguishable from *People v. Estrada*, 243 Ill. App. 3d 177, 185, 611 N.E.2d 1063, 1068-69 (1993), where the reviewing court reversed the defendant's first degree murder conviction that was based on an accountability theory. There, the defendant rode in a car with three fellow gang members with the knowledge one of them was carrying a firearm. *Estrada*, 243 Ill. App. 3d at 178, 611 N.E.2d at 1064. They pulled up to a street corner and exchanged gang signs with members of an opposing gang. *Estrada*, 243 Ill. App. 3d at 180, 611 N.E.2d at 1066. After defendant exited the car with a tire iron, another

person in the car fired two shots, striking the victim. *Estrada*, 243 Ill. App. 3d at 180, 611 N.E.2d at 1066. Defendant chased the opposing gang members and shattered a window of the building where the victim had entered. *Estrada*, 243 Ill. App. 3d at 180, 611 N.E.2d at 1066. The reviewing court held the defendant was not accountable for the murder of the individual killed by the gunfire because when the defendant left the car brandishing a tire iron, he was unaware one of his companions would shoot the gun. *Estrada*, 243 Ill. App. 3d at 185, 611 N.E.2d at 1068. Moreover, the court noted it was less likely the defendant would have left the car to pursue the victim if he knew one of the other gang members intended to shoot the victim. *Estrada*, 243 Ill. App. 3d at 185, 611 N.E.2d at 1068-69.

¶ 25 In *Estrada*, the evidence did not show the defendant and his fellow gang members were in concert with respect to their thoughts or actions as the defendant exited the car brandishing a tire iron shortly before the shots were fired from the car. Here, as explained earlier, the evidence showed defendant and Avant were acting in concert with respect to both their thoughts and actions when they entered the barbershop and executed the plan to commit an offense against Washington. The fact defendant may not have known about the gun that was later used by Avant does not relieve defendant of accountability for Avant's shooting of McCraney because the shooting occurred during the planned offense.

¶ 26 Accordingly, we find the State's evidence was sufficient for a jury to find defendant guilty beyond a reasonable doubt of aggravated battery with a firearm on an accountability theory.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the McLean County circuit court's judgment. As

part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 29 Affirmed.