

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 130108-U

NO. 4-13-0108

FILED

September 16, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
STEVEN D. MONROE,)	No. 11CF511
Defendant-Appellant.)	
)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court (1) affirmed defendant's conviction for first degree murder, rejecting defendant's argument regarding the sufficiency of the evidence; (2) vacated fines imposed by the circuit clerk; and (3) remanded with directions for the trial court to impose all mandatory fines.

¶ 2 In March 2011, the State charged defendant, Steven D. Monroe, with first degree murder (720 ILCS 5/9-1(a) (West 2010)) for the death of Marcus Brown. In December 2012, a Champaign County jury found defendant guilty of first degree murder. In February 2013, the trial court sentenced defendant to 52 years' imprisonment.

¶ 3 On appeal, defendant argues the State failed to prove beyond a reasonable doubt he was accountable for the actions of another. He argues the State failed to show (1) he shared the criminal intent of the principal, and (2) a common design existed to rob Brown. The State

argues the circuit clerk improperly imposed fines, and certain mandatory fines were not imposed. We affirm in part, vacate in part, and remand with directions.

¶ 4

I. BACKGROUND

¶ 5

In March 2011, the State charged defendant with five counts of first degree murder (720 ILCS 5/9-1(a)(1), (2), (3) (West 2010)) for the death of Brown.

¶ 6

At a December 2012 jury trial, the following evidence was presented. During the evening of January 7, 2011, defendant, Roy Duckworth, Darren Mosley, and Joseph Emery set out to obtain marijuana. The group obtained a .22-caliber Ruger semiautomatic handgun. The four men drove to an apartment complex in Rantoul, where Brown lived. Brown occasionally sold small amounts of marijuana. The evidence was unclear who went into Brown's apartment, but defendant admitted he and Duckworth went into the apartment to ask Brown about purchasing marijuana. The evidence was unclear about what occurred after defendant went into Brown's apartment. The four men left the apartment complex and separated for the evening. Defendant then met up with Dennis Droughns. Defendant had the .22-caliber handgun in his pants pocket when he was getting into the backseat of Droughns' vehicle. The gun discharged and a bullet struck Droughns in the back. A test of defendant's hands did not indicate gunshot residue. Defendant left Droughns' vehicle, hid the handgun in a nearby barbecue grill, and went into another house in the neighborhood.

¶ 7

During the morning hours of January 8, 2011, police officers found the handgun in the grill. Later, police discovered Brown lying on the bedroom floor in his apartment. He had suffered a single gunshot to the head. Forensics indicated Brown was shot from a very close range and had been shot with the same .22-caliber semiautomatic handgun found in the grill.

Police also discovered a laptop computer, an Xbox 360 video game system, and a safe, in which Brown stored marijuana, missing from Brown's apartment.

¶ 8 Portions of defendant's January 13, 2011, statement to police investigators were played for the jury. Toward the beginning of the interview, defendant denied being at Brown's apartment on January 7, 2011, being involved in the shooting, and knowing who shot Brown. He admitted he had been with Duckworth, Mosley, and Emery during the evening. Later in the interview, defendant told the detectives if they wanted to find out what was going on they should call Emery because "you might get the right person" and he was going to be the "triggerman." Defendant recounted his movements throughout the night, leaving out any mention of going to Brown's apartment. He said he was sitting in a car "rappin' " when Emery told defendant he had tried to "hit a lick," Brown tried to "wrestle" with him, and Emery shot Brown in the head. Emery told defendant he had taken a video game and some marijuana. Defendant adamantly denied leaving anything out of his story.

¶ 9 Part of defendant's July 26, 2011, interview with police was played for the jury. Defendant's demeanor was very different from the earlier interview. In this interview, he admitted he, Duckworth, Mosley, and Emery went to Brown's apartment. He and Duckworth went into Brown's apartment to purchase marijuana but Brown did not have the amount they were looking to purchase. They returned to the car. Emery, as Duckworth was driving away, said he needed to use the bathroom and exited the car. After four or five minutes, Emery returned with a video game, an Xbox game system, and a laptop. Emery told the others he had robbed Brown. The four men left the apartment complex and defendant met up with Droughns. Defendant denied being in the apartment when Brown was shot.

¶ 10 Segments from defendant's December 14, 2011, statement were played for the jury. Defendant testified Mosley obtained a handgun from someone else at some point during the evening on January 7, 2011. The four men went to the apartment complex where Brown lived. Defendant and Duckworth exited the vehicle and went into Brown's apartment. They attempted to purchase an ounce of marijuana but Brown did not have an ounce to sell. They purchased three "dime bags" from Brown. Duckworth knocked on the neighbor's door and asked if she had any marijuana, which she did not. The neighbor testified she heard someone knocking on Brown's door after she spoke to Duckworth. They returned to the vehicle. As they started to drive away, Emery said he needed to use the bathroom and exited the vehicle. Defendant testified he did not see Emery carrying anything with him when he returned to the vehicle. After they arrived at their destination, Emery told the others he had robbed Brown and showed them a laptop and a video game system. Before they separated, Mosley asked defendant to hold the handgun. Defendant placed it in his pants pocket. He then met up with Droughns.

¶ 11 The jury was provided with Illinois Pattern Jury Instruction, Criminal, No. 5.03 (4th ed. 2000), the accountability instruction. The jury found defendant guilty of first degree murder. The jury found the allegation defendant was armed with a firearm during the murder was not proved.

¶ 12 In January 2013, defendant filed a motion for new trial, arguing the evidence was insufficient. In February 2013, the trial court held a hearing on the motion for new trial. The court denied the motion and immediately thereafter held a sentencing hearing. The court sentenced defendant to 52 years' imprisonment, to run concurrently with the 30-year prison sentence in Champaign County case No. 11-CF-49. In February 2013, the court entered a

written sentencing judgment which ordered defendant to "[p]ay all fines, fees and costs as authorized by statute."

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Defendant argues the State failed to prove beyond a reasonable doubt he was accountable for the actions of another. He argues the State failed to show (1) he shared the criminal intent of the principal, and (2) a common design existed to rob Brown. The State argues the circuit clerk improperly imposed fines and certain mandatory fines were not imposed. We address the parties' arguments in turn.

¶ 16 A. Standard of Review

¶ 17 In reviewing a challenge to the sufficiency of the evidence supporting defendant's accountability for the offense, "we must determine 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." *People v. Fernandez*, 2014 IL 115527, ¶ 13, 6 N.E.3d 145.

¶ 18 B. Legal Accountability, Generally

¶ 19 Section 5-2 of the Criminal Code of 1961 (720 ILCS 5/5-2 (West 2010)), in relevant part, states:

"A person is legally accountable for the conduct of another when:

(a) having a mental state described by the statute defining the offense, he or she causes another to perform the conduct, and the other person in fact or by reason of legal incapacity lacks such

a mental state;

(b) the statute defining the offense makes him or her so accountable; or

(c) either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense."

¶ 20 In *Fernandez*, the supreme court recently reiterated "to prove that a defendant possessed the intent to promote or facilitate the crime, the State may present evidence that either (1) the defendant shared the criminal intent of the principal, *or* (2) there was a common criminal design." (Emphasis added.) *Fernandez*, 2014 IL 115527, ¶ 13, 6 N.E.3d 145.

¶ 21 C. Merits of Defendant's Claim

¶ 22 Defendant first argues the State failed to establish he was accountable because the evidence did not show he shared the criminal intent of the principal. Defendant asserts the evidence did not show he "went to Brown's apartment with the intent to commit or facilitate a crime." This is difficult to reconcile with the very next sentence, which states the evidence "established [he] intended to buy cannabis from Brown." It is a crime to possess marijuana. See 720 ILCS 550/4 (West 2010). Defendant then argues the evidence does not establish he shared Emery's intent to commit robbery or murder because he did not (1) know Mosley gave Emery the gun, and (2) learn of Emery's criminal conduct until after the murder. These arguments are repeated in defendant's argument the evidence did not show a common design to commit robbery and are addressed below. Moreover, the State need not prove defendant shared Emery's criminal

intent to establish accountability if it can show a common design.

¶ 23 Defendant asserts the evidence failed to show a common design because it did not show he knew of the principal's intent to commit the murder or intended "to promote or facilitate Emery's commission" of the murder. Defendant relies substantially on *People v. Phillips*, 2012 IL App (1st) 101923, 972 N.E.2d 724, to assert the evidence must show he shared Emery's criminal intent or intended to aid or abet Emery in the planning or commission of the crime. In *Phillips*, the defendant and Dontrell Sanders were driving in Chicago when their vehicle nearly collided with another vehicle. Sanders exited the vehicle and started shooting at the other vehicle. *Id.* ¶¶ 3-5, 972 N.E.2d 724. The *Phillips* court concluded the defendant could not be held accountable for Sanders' actions because the evidence did not show he knew Sanders had a gun before the shooting started and thus he could not have intended to help Sanders commit the offenses, which required the use of a firearm. *Id.* ¶ 22, 972 N.E.2d 724. Defendant's reliance on *Phillips* is misplaced as it misunderstands the common-design rule.

¶ 24 In *Fernandez*, the supreme court expressly overruled *Phillips*'s erroneous conclusion "a defendant may *never* be held accountable for a crime that he did not specifically intend to promote or facilitate." (Emphasis in original.) *Fernandez*, 2014 IL 115527, ¶ 21, 6 N.E.3d 145. The supreme court found the *Phillips* court misunderstood *People v. Dennis*, 181 Ill. 2d 87, 692 N.E.2d 325 (1998), and *People v. Taylor*, 186 Ill. 2d 439, 712 N.E.2d 326 (1999), to establish "a blanket principle that a person cannot be held accountable for a crime that he or she did not know would occur and therefore could not have intended to facilitate." *Fernandez*, 2014 IL 115527, ¶ 20, 6 N.E.3d 145. However, *Taylor* and *Dennis* were shared-intent cases and not common-design rule cases, and *Phillips* conflated the two accountability schemes in applying

their analysis to a common-design case. *Id.* ¶ 21, 6 N.E.3d 145. The common-design rule is a distinct theory. "Under the common-design rule, if '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 design or agreement and all are equally responsible for the consequences of the further acts.' " *Id.* ¶ 13, 6 N.E.3d 145 (quoting *In re W.C.*, 167 Ill. 2d 307, 337, 657 N.E.2d 908, 923-24 (1995)). In *Fernandez*, the supreme court reiterated "one can be held accountable for a crime other than the one that was planned or intended, provided it was committed in furtherance of the crime that *was* planned or intended" (*id.* ¶ 19, 6 N.E.3d 145 (emphasis in original)) and " 'where one aids another in the planning or commission of an offense, he is legally accountable for the conduct of the person he aids; and that the word 'conduct' encompasses any criminal act done in furtherance of the planned and intended act' " (*id.* (quoting *People v. Kessler*, 57 Ill. 2d 493, 497, 315 N.E.2d 29, 32 (1974))).

¶ 25 A "common design can be inferred from the circumstances surrounding the perpetration of the unlawful conduct." *People v. Taylor*, 164 Ill. 2d 131, 141, 646 N.E.2d 567, 571 (1995). "The following nonexhaustive circumstances may be considered by the factfinder when determining a defendant's legal accountability: (1) his presence at the scene without disapproval; (2) flight from the scene; (3) failure to report the crime; (4) his close affiliation with the codefendant after the crime is committed; (5) the sharing of any proceeds from the criminal act; and (6) the destroying or disposing of evidence." *People v. Grimes*, 386 Ill. App. 3d 448, 455-56, 898 N.E.2d 768, 775 (2008). Further, "[a] false exculpatory statement is 'probative of a defendant's consciousness of guilt.' " *People v. Milka*, 211 Ill. 2d 150, 181, 810 N.E.2d 33, 51 (2004) (quoting *People v. Shaw*, 278 Ill. App. 3d 939, 951, 664 N.E.2d 97, 105 (1996)).

¶ 26 In his first statement to police, defendant vehemently denied any knowledge of or involvement with Brown's death. Later in the same statement and his second statement, defendant admitted knowing details about who was responsible and attempted to explain his involvement. He gave various versions of what occurred on January 7, 2011, such as when he learned of the robbery and murder, when he saw Emery with the robbery's proceeds, and what Emery said when he returned to the vehicle. Defendant omitted any explanation of (1) why or when Mosley gave Emery the gun; (2) how Emery knew which apartment Brown lived in; (3) how Emery could carry all the items from Brown's apartment by himself; and (4) why he would take possession of a gun he knew had just been used in a murder. It was for the jury to weigh defendant's credibility, resolve these inconsistencies and omissions, and make reasonable inferences based on the evidence. See *Id.* at 178, 810 N.E.2d at 49. It was also for the jury to determine whether defendant's statements were attempts to shift the blame solely onto Emery.

¶ 27 Based on the evidence, the jury could reasonably conclude defendant gave various accounts of the events and made certain omissions because he was involved in robbing Brown. Further, by his own statements he admitted he (1) set out with others to obtain marijuana, (2) knew someone in the group had a gun suggesting defendant and the others set out to obtain marijuana by force if necessary, (3) knew Brown sold marijuana, (4) travelled with three others to Brown's apartment, (5) went into Brown's apartment to obtain marijuana, (6) left the scene after learning of the robbery and murder, (7) failed to report the robbery and murder, (8) took possession of the gun used to shoot Brown, and (9) attempted to hide the gun. These are all facts supporting a conclusion defendant was involved in a common design to commit robbery. See *Fernandez*, 2014 IL 115527, ¶ 17, 6 N.E.3d 145 (quoting *People v. Perez*, 189 Ill. 2d 254,

267, 725 N.E.2d 1258, 1265 (2000)). After reviewing the evidence in the light most favorable to the State, we conclude the evidence is sufficient to permit a rational jury to find defendant guilty of first degree murder under an accountability theory premised on the common-design rule.

¶ 28 We note defendant filed his brief *after* the supreme court issued its opinion in *Fernandez* and rejected the analysis in *Phillips*. Recently, in *People v. Phillips*, 2014 IL App (4th) 120695, ¶¶ 53-54, this court noted the supreme court has consistently rejected shared intent as an element of the common-design rule for nearly 160 years, but such arguments keep appearing. It is bold for defendant to rely on *Phillips* and conflate the two accountability theories so soon in the wake of *Fernandez*. Bold but futile.

¶ 29 D. Fines and Fees

¶ 30 The State argues the record does not show the trial court imposed defendant's fines and the fines are void. Additionally, the State argues certain mandatory fines were not imposed and the sentencing judgment should be clarified to specify defendant is only entitled to credit toward his fines. Defendant did not respond to this argument in his reply brief. Because the State's voidness argument is not barred by the limits on the State's right to appeal and this court has an independent duty to vacate void orders, we will address the State's argument. See *People v. Arna*, 168 Ill. 2d 107, 113, 658 N.E.2d 445, 448 (1995); *People v. Thompson*, 209 Ill. 2d 19, 27, 805 N.E.2d 1200, 1205 (2004); *People v. Warren*, 2014 IL App (4th) 120721, ¶ 152.

¶ 31 In the February 4, 2013, written sentencing judgment, the trial court ordered defendant to "[p]ay all fines, fees and costs as authorized by statute" and entered no other order imposing fines. In *Warren*, this court found such language "improperly delegate[s] the trial court's] power to impose a sentence to the circuit clerk." *Warren*, 2014 IL App (4th) 120721,

¶ 82. Therefore, we must vacate the fines imposed by the circuit clerk and remand for imposition of the mandatory fines and fees.

¶ 32 The State asserts the \$30 juvenile-expungement fine (730 ILCS 5/5-9-1.17 (West 2010)) was not imposed. As in *Warren*, the Champaign County circuit clerk's printout lists this assessment as three separate \$10 assessments for the State Police Services Fund, State's Attorney's Office Fund, and Circuit Clerk Operations and Administrative Fund. *Warren*, 2014 IL App (4th) 120721, ¶ 127; see also *People v. Smith*, 2014 IL App (4th) 121118, ¶ 62 (same).

¶ 33 In sum, we vacate all fines imposed by the circuit clerk, which includes (1) the \$50 court-finance fine (55 ILCS 5/5-1101(c) (West 2010); *Smith*, 2014 IL App (4th) 121118, ¶ 55); (2) the \$10 arrestee's medical fine (730 ILCS 125/17 (West 2010); *Warren*, 2014 IL App (4th) 120721, ¶ 112); (3) the \$30 juvenile-expungement fine (730 ILCS 5/5-9-1.17 (West 2010); *Warren*, 2014 IL App (4th) 120721, ¶ 127); (4) the \$100 Violent Crimes Victims Assistance fine (725 ILCS 240/10(b) (West 2010); *Warren*, 2014 IL App (4th) 120721, ¶ 135); and (5) the \$10 State Police operations fine (705 ILCS 105/27.3a(1.5) (West 2010); *Warren*, 2014 IL App (4th) 120721, ¶ 140).

¶ 34 On remand, the trial court is to impose all mandatory fines effective at the time of the offense (January 7, 2011), including (1) the \$50 court-finance fine (55 ILCS 5/5-1101(c) (West 2010)); (2) the \$10 arrestee's medical fine (730 ILCS 125/17 (West 2010)); (3) the \$30 juvenile-expungement fine (730 ILCS 5/5-9-1.17 (West 2010)); (4) the "lump sum" surcharge (730 ILCS 5/5-9-1(c) (West 2010)); (5) the applicable Violent Crimes Victims Assistance fine (725 ILCS 240/10(b) (West 2010)); and (6) the \$10 State Police operations fine (705 ILCS 105/27.3a(1.5) (West 2010)).

¶ 35 The State also points out the written sentencing judgment states defendant is to "[r]eceive a \$3,385 credit towards all fines for 677 days spent in custody," which is incorrect. Defendant is only entitled to receive credit toward *creditable* fines. The reference sheet this court provided in *People v. Williams*, 2013 IL App (4th) 120313, 991 N.E.2d 914, reflects some such creditable fines and *Warren* provides further discussion of which fines are creditable.

¶ 36 We again "emphasize the tremendous amount of appellate resources expended in this case and many others just like it to correctly determine and assess the myriad of fines and fees our legislature has created." *Id.* ¶ 25, 991 N.E.2d 914; *People v. Montag*, 2014 IL App (4th) 120993, ¶ 38, 5 N.E.3d 246. The expense and frustration created by this labyrinthine world of fines and fees is only worsened in a case such as this, where the criminal defendant is impoverished and will spend the next five decades in prison.

¶ 37 III. CONCLUSION

¶ 38 We affirm the trial court's judgment in part and vacate in part, and we remand with directions. We vacate the circuit clerk's imposition of fines and remand with directions for the trial court to impose all mandatory fines effective at the time of the offense (January 7, 2011). As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

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