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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 06-CF-2634
	)	
PHILLIP G. MACKLIN,	)	Honorable
	)	John J. Kinsella,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justices Zenoff and Burke concurred in the judgment.

**ORDER**

*Held:* The trial judge did not abdicate his duty as factfinder in defendant's trial.

¶ 1

I. INTRODUCTION

¶ 2 Following a bench trial in the circuit court of Du Page County, defendant Phillip G. Macklin was convicted of one count of armed robbery (720 ILCS 5/18-2(a)(2), (b) (West 2006)) on an accountability theory (720 ILCS 5/5-2(c) (West 2006)). He was sentenced to 24 years' imprisonment. Defendant now appeals, arguing that the trial judge abdicated his duty as a factfinder

by not deciding between two competing versions of the facts, one of which would have rendered defendant not guilty. For the reasons that follow, we affirm.

¶ 3

## II. BACKGROUND

¶ 4 On August 28, 2006, William Chenault and Freddie Evans entered a White Hen on West Fullerton Avenue in Addison. Chenault pointed a gun at the cashier and demanded money. Evans removed money from the cash register, and the men fled the store. Shortly thereafter, an Addison police officer arrested them. On September 13, 2006, defendant was arrested as well. While initially indicting defendant on 10 counts, the prosecution *not* *prossed* nine of them. The matter proceeded to a bench trial on the armed robbery count (720 ILCS 5/18-2(a)(2), (b) (West 2006)).

¶ 5 At trial, Detective Gilhooley of the Addison police department first testified for the State. He interrogated Chenault. Chenault told Gilhooley that “Big Mo” drove him (Chenault) and Evans to the White Hen and planned to pick them up down the block after the robbery. Chenault later identified “Big Mo” as defendant. Acting on this information, Addison police arrested defendant.

¶ 6 Gilhooley testified that defendant made a statement to the police after his arrest. Defendant stated that on the night of the robbery he was planning to go bowling with Brandie Flowers (defendant’s girlfriend), Evans, and Chenault. Defendant drove the four of them in his girlfriend’s car, with Flowers in the passenger seat and Evans and Chenault in the back seat. He told police that on the way to the bowling alley one of the men in the back seat remarked, “I need some money.” Defendant replied, “If you need money, you get it on your own.” As they passed a White Hen, one of the men said they were going to “hit that one.” Defendant then told the detective that he parked his car and told the men, “You do what you do.” The men exited the car, removed duffle bags from the trunk, and proceeded to rob the White Hen. After the men left, defendant and Flowers went to

a gas station, where defendant received a call from either Evans or Chenault saying that they needed to be picked up. Defendant “did not want to leave them stranded” and went to get them, but did not pick them up because he saw police cars near the White Hen.

¶ 7 Flowers presented similar testimony at trial. She testified that on the day of the robbery, she was at defendant’s apartment, along with Evans and Chenault. She never saw defendant give Chenault anything that might have been used in the robbery, such as a gun, gloves, or bandana. The four of them left the apartment and entered her car. Flowers sat in the front seat and Evans and Chenault sat in the back. She stated that during the drive the men discussed school and “normal young guy stuff.” Defendant parked the car at another apartment complex and opened the trunk. The three men exited. They took bookbags from the trunk, and defendant told Chenault and Evans to hurry up. Flowers testified that she never saw defendant give a gun to anyone. She and defendant then went to get gas, and, while at the gas station, they heard police sirens. Defendant received a phone call, and although Flowers did not hear what was said, she noticed defendant looked surprised during the conversation. After getting gas, she testified, she and defendant went to his mother’s house.

¶ 8 In contrast to defendant’s statement and Flowers’s testimony, Evans testified that defendant was involved in the robbery. Defendant came to Evan’s home and picked up Chenault and him. They stopped at an apartment and a drugstore, and then proceeded to the White Hen. A female was in the passenger seat. Evans testified that defendant gave him gloves and a bandana to wear during the robbery. He also said that defendant gave Chenault a gun, although Evans did not observe this. Evans testified that defendant then dropped the two men off down the street from the White Hen and

planned to pick them up after the robbery. On cross-examination, Evans stated that he agreed to testify against defendant in order to have his sentence reduced.

¶ 9 Like Evans, Chenault testified that defendant was involved in the robbery. However, Chenault provided inconsistent testimony. He initially stated that the gun used in the robbery was his own, but later said that he received the gun from defendant. Moreover, at first, he did not remember how he got to the White Hen, but later remembered telling the police that “Big Mo” drove them there. According to Evans, “Big Mo” was defendant. Chenault acknowledged that he robbed the White Hen with Evans, and that Evans took the money out of the register while he pointed the gun at the cashier. Defendant was supposed to pick them up down the block after the robbery. He testified that he told the police only what they wanted to hear in exchange for a reduction of his sentence.

¶ 10 At the close of the State’s case, defense counsel moved for a directed finding. In response to this motion, one of the prosecutors, Steve Knight, argued that “defendant’s very own statement, in and of itself, convicts him.” The court denied this motion, and the defense rested. In closing, Knight reiterated that the defendant was guilty based on his own statement.

¶ 11 The judge found defendant guilty of armed robbery on an accountability theory. In the course of so ruling, the judge made the following specific findings:

“I’ve considered the testimony of all the witnesses and the arguments of counsel. It’s the Court’s finding as to Count I, the charge of armed robbery, that Mr. Macklin is guilty of the charge on the theory of accountability. I would just point to statements of a number of witnesses, certainly it was evident from anyone who watched Mr. Chenault or Mr. Evans that

they certainly didn't want to be here, they didn't want to be testifying against Mr. Macklin. And I believe that that—that came out in their presentation.

I thought Mr. Evans' statement was telling in regards to this White Hen in particular, why that White Hen was picked and how he was going to get out. All right? He said he doesn't know DuPage, he doesn't know the area, and yes, he did expect to get picked up, because he had no way to get out of there. You look at Ms. Flowers' statement, Ms. Flowers backs up what Mr. Macklin said to Detective Gilhooley.

When the individual in the back seat said that he needed money and that he would commit a robbery or do a lick. What did defendant say? Defendant said, you do what you have to do. [He s]topped the car, popped open the trunk, the two co-defendants exited, and defendant stayed and waited for a phone call and went back. That reinforces Mr. Knight's argument; that reinforces the statement that Mr. Macklin gave to Detective Gilhooley.”

On November 7, 2008, defendant filed a notice of appeal; however, the appeal was dismissed for jurisdictional reasons. Defendant then filed a post-conviction petition on October 15, 2009, alleging that his counsel was ineffective for failing to file a timely notice of appeal. The parties then agreed that defendant would withdraw the motion, and they would then recommence proceedings in the trial court—thereby revesting it with jurisdiction (see *People v. Kaeding*, 98 Ill. 2d 237, 240-41 (1983)). Defendant filed a motion to reconsider sentence on January 12, 2011, and the trial judge denied the motion.

¶ 12

### III. ANALYSIS

¶ 13 On appeal, defendant raises only one issue. He argues that the trial judge failed to choose between two competing versions of events (one presented by Evans and Chenault and the other by

defendant and Flowers). He asserts that under the version presented by him and Flowers, he would have been not guilty. The trial judge, according to defendant, incorrectly believed he would have been guilty under either version. We disagree with defendant.

¶ 14 Before proceeding further, we note that the State contends that defendant forfeited this issue by failing to object at trial or include it in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant asks that we conduct plain-error review. See *People v. Averett*, 237 Ill. 2d 1, 17-18 (2010). As our supreme court has explained, “The first step of plain-error review is determining whether any error occurred. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). Because we determine that no error occurred, we need not consider whether the purported error was plain.

¶ 15 It is, of course, improper for a trial judge to abdicate his duty as a factfinder. See *People v. Bowen*, 241 Ill. App. 3d 608, 624 (2007). When this occurs, a defendant’s due process rights are violated and he is entitled to a new trial. See *People v. Bowie*, 36 Ill. App. 3d 177, 180 (1976). It has been explained that “[a] trial judge sitting as a trier of fact must consider all matters in the record before deciding the case, and where the record affirmatively shows the trial judge did not consider the crux of the defense when entering judgment, defendant did not receive a fair trial.” *Bowen*, 241 Ill. App. 3d at 624. The State suggests that we apply the sufficiency-of-the-evidence standard of review in this case; however, deciding whether the judge abdicated his duty as a fact-finder is a legal issue. See *People v. Campos*, 349 Ill. App. 3d 172, 176 (2d. Dist. 2004). Questions of law are reviewed *de novo*. *Townsend v. Sears, Roebuck & Co.*, 227 Ill. 2d 147, 154 (2007). Therefore, we will review *de novo* whether the judge abdicated his duty as a fact-finder. Under the *de novo* standard of review, this Court owes no deference to the trial court. *Id.*

¶ 16 Defendant argues that the judge abdicated his duty as a factfinder in three ways. First, he claims that the judge did not choose between two competing narratives offered at trial, under one of which he would have not been guilty. Second, he argues that the judge did not fulfill the factfinder's duty of assessing the credibility of witnesses and weighing the evidence. Third, he contends that the judge believed the prosecutor's argument that he would be guilty based solely on his statement to the police, an argument defendant asserts is legally incorrect.

¶ 17 First, defendant argues that the judge abdicated his duty as a factfinder because two competing narratives were presented at trial, and, according to defendant, the judge failed to choose between them. He claims that Evans and Chenault presented one version of events and that he and Flowers presented another. Defendant argues that he was not guilty under the version of events presented by him and Flowers. By not choosing one version over another, defendant contends that the judge abdicated his duty as a factfinder. We disagree with this contention. A reading of the judge's decision indicates that he accepted the version of events to which Evans and Chenault testified. The judge explained why he found the Evans-Chenault narrative more credible:

“I thought Mr. Evans' statement was telling in regards to this White Hen in particular, why that White Hen was picked and how he was going to get out. All right? He said he doesn't know DuPage, he doesn't know the area, and yes, he did expect to get picked up, because he had no way to get out of there.”

The judge then explained why he did not find defendant's and Flowers's narrative credible. The judge did not believe defendant when he told police that he did not participate in the crime. The judge explained:

“When the individual in the back seat said that he needed money and that he would commit a robbery or do a lick. What did the defendant say? The defendant said, you do what you have to do. Stopped the car, popped open the trunk, the two co-defendants exited, and the defendant stayed and waited for a phone call and went back.”

Thus, the judge rejected defendant’s contention that he disassociated himself from Evans and Chenault’s actions. The court acknowledged defendant’s statement, “you do what you have to do.” Nevertheless, the court noted that defendant remained in the area and waited for a telephone call. Accordingly, contrary to defendant’s argument, the judge did not fail to choose between the two narratives set forth at trial to the extent that he was required to do so.

¶ 18 Second, defendant argues that the judge abdicated his duty as a factfinder because he did not assess the credibility of the witnesses and weigh the evidence. We disagree. It is the factfinder’s duty to assess the credibility of the witnesses and determine the weight to give to the evidence. *People v. Dent*, 230 Ill. App. 3d 238, 244 (1992). The judge expressly assessed the credibility of Chenault and Evans, stating, “[I]t was evident from anyone who watched Chenault or Evans that they certainly did not want to be here, they didn’t want to be testifying against [defendant].” Furthermore, contrary to defendant’s argument, the judge did weigh the evidence. The judge determined that Evans’s statement was entitled to more weight than defendant’s when he observed that Evans’s testimony was consistent with Evans not being familiar with Du Page County. As the judge noted, Evans would not have picked a store to rob in an area with which he was unfamiliar and had no apparent way to leave. He explained, “[Evans] did expect to get picked up, because he had no way to get out of there.” Thus, the trial court considered Evans’ testimony in light of the evidence and determined that it should be given more weight.

¶ 19 Third, defendant claims that the judge abdicated his duty as a factfinder by believing the prosecutor's legally incorrect argument that defendant was guilty based on his own statement. We have already determined that the trial judge found defendant guilty based on the testimony of Evans and Chenault in addition to defendant's statement. Accordingly, this contention has no merit.

¶ 20 In this case, the issue is whether defendant is guilty of armed robbery by virtue of being accountable for the acts of Evans and Chenault. Armed robbery is the taking of property from the person or presence of another by use of force or by threatening the imminent use of force, while, *inter alia*, armed with firearm. 720 ILCS 5/18-2 (West 2006). Furthermore, a defendant is legally accountable for the actions of another when:

“Either 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.” 720 ILCS 5/5-2(c) (West 2006).

Our supreme court has identified the following factors as being relevant to determining whether a defendant is accountable for the acts of another: “(1) defendant's presence during the commission of the offense; (2) defendant's continued close affiliation with other offenders after the commission of the crime; (3) defendant's failure to report the incident; and (4) defendant's flight from the scene.” *People v. Taylor*, 164 Ill. 2d 131, 151 (1995). Mere presence at a crime scene is insufficient to establish accountability. *People v. Harris*, 294 Ill. App. 3d 561, 565 (1998).

¶ 21 On appeal, we are required to review the evidence in the light most favorable to the state. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). All reasonable inferences are to be drawn in the prosecution's favor. *People v. Cardamone*, 232 Ill. 2d 504, 511 (2009). We will reverse only if no

reasonable trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v. Baez*, 206 Ill. App. 3d 410, 412 (1990).

¶ 22 Applying these principles of review, we note the following. Defendant admits in his statement to police that while he was driving with Evans and Chenault, they stated that they needed money. Defendant said, “If you need money, you get it on your own.” They passed a White Hen and he heard one of them say, “let’s hit that one,” and defendant replied, “You do what you do.” He admits that he stopped near the White Hen so Evans and Chenault could get out of the car, and he tried to return after the crime to pick them up. However, when he saw police cars near the White Hen, he did not do so.

¶ 23 The defendant’s statement, in addition to the other evidence as noted above, is sufficient to find that defendant acted with intent to promote or facilitate the armed robbery. If a defendant acts with the intent to promote or facilitate an armed robbery, he may be found guilty under the law of accountability for that offense. 720 ILCS 5/5-2(c) (West 2006). Drawing inferences in the State’s favor, as we are required to do, we note that defendant stopped the car shortly after Evans and Chenault stated they wanted to rob the White Hen. From this, the trial court could infer that defendant stopped in an area that would enable the two men to enter the White Hen. Defendant remained in the area while the crime was committed, a factor recognized in *Taylor* as favoring a finding of accountability. See *Taylor*, 164 Ill. 2d at 151 (citing the “defendant's presence during the commission of the offense” a consideration supporting accountability). The *Taylor* court also cited a “defendant's continued close affiliation with other offenders after the commission of the crime” as a relevant factor. *Id.* Here, defendant was going to pick up Evans and Chenault, so the only reason defendant did not continue to affiliate with them was their apprehension. This, too, militates

in favor of finding defendant accountable for their conduct. Additionally, the *Taylor* court identified “flight from the scene” as a valid consideration. *Id.* We note that, though defendant did not literally flee the scene, he reported that, upon observing the police, he ceased his attempt to pick up Evans and Chenault. From this, the trial court could infer that defendant was avoiding contact with the police, which evinces a consciousness of guilt. *People v. Henderson*, 39 Ill. App. 3d 502, 507 (1976) (“The accused must be attempting to avoid arrest or detection, actions which imply a consciousness of guilt.”).

¶ 24 Nevertheless, defendant argues that he, at worst, acquiesced to the robbery. As noted above, mere presence at or acquiescence to the commission of an armed robbery will not sustain a conviction for armed robbery based on accountability. *See People v. Taylor*, 186 Ill. 2d 439, 445 (1999). Defendant claims that while he may have known the robbery was going to take place, he did not participate, and instead merely allowed Evans and Chenault to commit the crime. He claims that his remarks, “you do what you do” and “if you need money, you get it on your own,” are proof of that he did not participate in the planning or commission of the crime, and instead show that Evans and Chenault committed the crime on their own. We note that the trier of fact need not accept all or none of a witness’s testimony. *People v. Jaffe*, 145 Ill. App. 3d 840, 861 (1986). Thus, the trier of fact could have simply discounted the exculpatory portions of defendant’s statement, particularly since they are inconsistent with his conduct, as discussed in the preceding paragraph. Indeed, when these statements are viewed in conjunction with defendant’s actions, it is clear that he did more than merely acquiesce to the crime.

¶ 25 Defendant also contends that his statement made him, at worst, an accessory-after-the-fact. In this state, accountability cannot be based on conduct that would, under traditional standards, make

one an accessory-after-the-fact. *People v. Clark*, 221 Ill. App. 3d 303, 308 (1991). Rather, such conduct is criminalized under section 31-5 of the Criminal Code of 1961 (720 ILCS 5/31-5 (2006)), which is not at issue here. As explained above, an individual is accountable for the acts of another where, “[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.” 720 ILCS 5/5-2(c) (West 2006). Defendant’s statement contains evidence of accountability, on his part, when considered in the context of his actions. For example, after making the above statement, defendant stopped the car and allowed Evans and Chenault to exit in an area that would allow them to commit the robbery. Moreover, defendant performed this action after Evans and Chenault announced their intent to rob the White Hen.

¶ 26 In sum, as we explained initially, the trial court based its finding of guilt on its acceptance of the testimony of Evans and Chenault, in addition to defendant’s statement and Flower’s testimony.

¶ 27 IV. CONCLUSION

¶ 28 In light of the foregoing, we conclude that the trial judge did not abdicate his duty as a factfinder. Therefore, we affirm the judgment of the circuit court of Du Page County finding defendant guilty of armed robbery, based on an accountability theory.

¶ 29 Affirmed.