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2012 IL App (3d) 110187-U

Order filed July 25, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court
	) of the 12th Judicial Circuit,
Plaintiff-Appellee,	) Will County, Illinois,
	)
v.	) Appeal No. 3-11-0187
	) Circuit No. 10-CF-1589
JOSHUA MINER,	)
	) Honorable
Defendant-Appellant.	) Amy Bertani-Tomczak,
	) Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justices Carter and Holdridge concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* (1) There was sufficient evidence for a rational trier of fact to find defendant guilty beyond a reasonable doubt of residential burglary based on a theory of accountability; and (2) defendant was not required to submit a DNA sample for analysis because he had already submitted a sample in connection with a prior conviction.
- ¶ 2 Defendant, Joshua Miner, was convicted at jury trial of residential burglary (720 ILCS 5/19-3(a) (West 2010)) based on a theory of accountability. 720 ILCS 5/5-2(c) (West 2010). Defendant now challenges his conviction by claiming that the State failed to prove him guilty beyond a

reasonable doubt. Defendant also challenges the part of his sentence requiring him to submit a deoxyribonucleic acid (DNA) sample and pay a \$200 DNA analysis fee because he had already provided a DNA sample following a previous conviction. We affirm in part and vacate in part.

¶ 3

### FACTS

¶ 4 Around 9 p.m. on July 31, 2010, defendant was at the Joliet mall with Joe Lucianno, Rob Johnson, and Bryce Johnston. In the mall parking lot, the four men encountered their friend, Esteban Morales, and his two roommates, Jeremy Knudsen and Sara Jones. At the time, Morales was living with Knudsen and Jones at 517 Irene Street (the residence) in Joliet. The two groups spoke briefly, and Morales told the four men that Knudsen, Jones, and he would be attending an engagement party in Plainfield that evening.

¶ 5 At the engagement party, Morales, Knudsen, and Jones saw their friend, Jason Ferguson. Ferguson made plans to meet them after the party at their residence. Ferguson left the party and traveled to the residence where he expected to meet up with them. As Ferguson drove up to the residence, he noticed a Ford Taurus parked in the driveway. Ferguson parked his car on the street near the residence, immediately after which the Taurus's headlights turned on and the car began to pull out of the driveway. The Taurus pulled up next to Ferguson, and Ferguson saw defendant driving and Johnston in the backseat. Ferguson testified that defendant asked him where Morales was. Ferguson replied that he had seen Morales earlier that night at an engagement party in Plainfield. Defendant then drove away. Ferguson waited about 20 more minutes for his friends to return. When they did not, Ferguson went home. When Morales, Knudsen, and Jones finally returned home around 1 a.m., they noticed that their front door handle had been broken and several of their electronics were missing from inside.

¶ 6 Johnson and Johnston were later arrested for burglary, and defendant was interviewed by Joliet Police Detective Shawn Filipiak. After defendant received *Miranda* warnings, he told Filipiak that after seeing Morales, Knudsen, and Jones at the mall, defendant drove with his friends to the residence. Lucianno and Johnston then got out of the car and approached the house, while defendant waited in the car. Defendant heard a "boom" come from the house and explained to Filipiak that at the time he did not want to know what was going on. During the interview with Filipiak, defendant stated multiple times that he did not want to "rat" on his friends. Defendant confirmed that he saw Ferguson at some point before leaving the residence. Defendant explained that when Lucianno and Johnston returned to the car they told defendant to "pop the trunk," which he did. Lucianno and Johnston then put some items in the trunk and got in the car. Defendant drove them to a residence at 613 Williams Street, where Lucianno and Johnston stored the items they had put in the Taurus's trunk. Defendant never told Lucianno and Johnston to stop what they were doing, nor did he report the night's events to police before being interviewed by Filipiak.

¶ 7 The contents of the interview were admitted at trial, and defendant was found guilty of residential burglary based on a theory of accountability. Defendant filed a posttrial motion claiming that the State had not established his guilt by accountability beyond a reasonable doubt. The trial court denied the motion. Defendant now appeals.

¶ 8 ANALYSIS

¶ 9 I. Sufficiency of the Evidence

¶ 10 When evaluating whether there was sufficient evidence to convict a defendant, a reviewing court does not retry the defendant. Rather, the court examines the evidence in a light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential

elements of the crime proven beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274 (2004); *People v. Collins*, 106 Ill. 2d 237 (1985).

¶ 11 A defendant is criminally accountable for the conduct of a codefendant when "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." 720 ILCS 5/5-2(c) (West 2010). Mere presence by the defendant at the scene of the crime with knowledge that a crime is occurring is not enough to establish accountability. *People v. Taylor*, 164 Ill. 2d 131 (1995). But active participation by the defendant in the overt criminal act is not required. Rather, to be found guilty on an accountability theory, a defendant need not act affirmatively so long as there is a common plan or purpose. *Id.* A shared criminal purpose is indicated when a defendant accompanies a codefendant to the scene with knowledge of the commission of a crime with any affirmative contact between the defendant and the codefendant. *People v. Turner*, 375 Ill. App. 3d 1101 (2007). Affirmative action by the defendant taken solely after the criminal conduct has occurred is not sufficient to establish accountability. *People v. Phillips*, 2012 IL App (1st) 101923.

¶ 12 In the present case, defendant's actions and knowledge constitute a common criminal purpose sufficient to establish his accountability beyond a reasonable doubt. Based upon the meeting at the Joliet mall, defendant was aware that none of the three residents would be home the night of July 31. Knowing this information, defendant drove his accomplices to the house and waited in the car while Lucianno and Johnston collected possessions from the home. A reasonable jury could have found that defendant was aware of the burglary plan at the time he drove to the residence.

¶ 13 While defendant waited in the car, he heard a loud boom come from the home and later told

Filipiak that he didn't want to know what was going on. This statement implies that, whether or not defendant *wanted* to know, he in fact *did know* that a burglary was occurring and chose to continue his participation in its completion. His knowledge of the burglary was further established by his repeated statements to Filipiak that he did not want to rat on his friends.

¶ 14 Defendant's attempt to conceal the burglary from Ferguson establishes defendant's criminal purpose. When Ferguson stumbled upon the burglary, defendant attempted to cover up what was happening. He immediately turned on the car's headlights and began to drive out of the driveway. He then asked Ferguson about Morales's whereabouts, fully aware that Morales was attending an engagement party in Plainfield. A reasonable jury could find that defendant knew the home was being burglarized and was attempting to hide that fact from Ferguson by pretending to be looking for Morales.

¶ 15 Defendant also engaged in actions that aided in the burglary's commission. When Lucianno and Johnston returned to the car with possessions from the home, defendant complied with their request to "pop the trunk." Defendant then drove the two men to the Williams Street residence where Lucianno and Johnston unloaded the goods. Having knowledge of the burglary, defendant never attempted to stop or impede its progress. After the burglary's commission, defendant did not inform law enforcement until he was being interviewed as a suspect.

¶ 16 These facts were sufficient for a rational trier of fact to have found defendant guilty beyond reasonable doubt of residential burglary on an accountability theory.

¶ 17 II. \$200 DNA Analysis Fee

¶ 18 Defendant asks this court to vacate the portion of the trial court's sentencing order that required him to submit to DNA testing and pay a \$200 DNA analysis fee. In support of his

argument, defendant notes that he was currently registered in the DNA database in relation to a prior felony conviction. The State concedes that defendant is entitled to relief. We vacate the portion of the sentencing order requiring a DNA analysis and fee.

¶ 19 Section 5-4-3 of the Unified Code of Corrections requires that all individuals convicted of a felony submit to DNA testing, analysis, and indexing, and pay a \$200 analysis fee. 730 ILCS 5/5-4-3(a), (j) (West 2010). However, defendants need not submit to a DNA analysis if they are currently registered in the database. *People v. Marshall*, 242 Ill. 2d 285 (2011). Here, defendant was already registered in the State's DNA database as a result of a prior conviction. Therefore, he was not required to submit a new DNA sample or pay the analysis fee.

¶ 20 The portion of the sentencing order requiring defendant to submit to DNA testing and pay a \$200 DNA analysis fee is vacated, and defendant's conviction and sentence are otherwise affirmed.

¶ 21 **CONCLUSION**

¶ 22 The judgment of the circuit court of Will County is affirmed in part and vacated in part.

¶ 23 Affirmed in part and vacated in part.