

FOURTH DIVISION  
February 9, 2017

No. 1-14-2540

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 05 CR 25773
	)	
WILLIE TAYLOR,	)	Honorable
	)	Domenica A. Stephenson,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Justices McBride and Burke concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Defendant was proven guilty of armed robbery pursuant to an accountability theory beyond a reasonable doubt when the evidence at trial established that defendant, codefendant and two other boys beat the victim until he fell to the ground then codefendant removed a link card from the victim's wallet. Pursuant to *People ex rel. Alvarez v. Howard*, 2016 IL 120729 (Dec. 1, 2016), an amendment to the automatic transfer provision of the Juvenile Court Act of 1987 applied retroactively to defendant's case.

¶ 2 Following a bench trial, defendant Willie Taylor was found guilty of first degree murder and armed robbery. He was sentenced to 21 years in prison for the murder conviction and to a consecutive 6-year sentence for the armed robbery. Although defendant was 15 years old at the time of the offense, he was tried and sentenced as an adult in accordance with the "automatic transfer provision" set forth in section 5-130(1) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-130(1) (West 2004)).

¶ 3 In this appeal defendant contends that the State failed to prove beyond a reasonable doubt that he was accountable for the armed robbery committed by the other offenders because there was no evidence that he shared a criminal intent with the principals or that there was a common design to commit an armed robbery.

¶ 4 Defendant also contends that he is entitled to resentencing in juvenile court in light of Public Act 99-258 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-130 (West 2014)), which amended the automatic transfer provision of the Act. Although we affirm defendant's conviction for armed robbery, we agree that the amendment to the automatic transfer provision of the Act, which raised the age of automatic transfer of a juvenile charged with first degree murder to adult court, applies retroactively to his case. Accordingly, we vacate defendant's sentences and remand for resentencing to the juvenile court, with directions that the State be permitted the opportunity to seek a discretionary transfer to adult court.

¶ 5 Defendant's arrest and prosecution arose from a June 17, 2005 incident during which the victim, Willie Green, was beaten and his "link" card was taken from his wallet. The victim died from his injuries.

¶ 6 During the incident, defendant, codefendant Deon Sails,<sup>1</sup> 14-year-old Jonathan Rucker and "A.P." allegedly beat the victim with their fists and threw a garbage can at his head. After the victim was on the ground, codefendant allegedly took the victim's wallet, removed a link card, and threw the wallet on the victim. The matter proceeded to a simultaneous, severed trial where defendant was tried by the trial court and codefendant was tried by a jury.<sup>2</sup>

¶ 7 Andre Donner testified that around 11:00 p.m. on June 17, 2005, he was "coming" from a gas station when he had been talking to Doncell "Chum" Richard. At one point, he sat on a fire hydrant. He heard a man say "ah" like "when something hurt you." It was "[r]eal loud." Donner got up and looked around the corner. He observed a "man getting beat up by four boys." At the same time, Chiquita Hicks was walking her dog on the other side of the street. Richard subsequently arrived on his bicycle.

¶ 8 At trial, Donner identified defendant and codefendant as two of the boys he observed. The other two boys were Jonathan Rucker and "some kid" named A.P. Donner knew defendant and codefendant from school and the neighborhood. Donner observed the boys punching the victim hard with their closed fists all over the victim's body. When the victim fell to the ground, codefendant picked the victim back up so that the boys could "get to punching him again." After the victim fell to the ground a second time, codefendant and Jonathan Rucker picked the victim up by the arms. Defendant then retrieved a garbage can, picked it up over his head and threw it at the victim's head. The victim fell to the ground a third time, unconscious. Codefendant then went

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<sup>1</sup> Codefendant's surname is also spelled Sales in the record.

<sup>2</sup> Codefendant Sails was convicted of first degree murder and armed robbery. He was sentenced to an aggregate prison term of 26 years. Codefendant's convictions and sentences were affirmed on direct appeal. See *People v. Sails*, No. 1-08-0968 (2010) (unpublished order under Supreme Court Rule 23).

into the victim's wallet, removed a link card and threw the wallet on the victim. The four boys walked off together. As they left, Jonathan Rucker and Richard got into a "little argument." On June 18, 2005, Donner saw codefendant and asked him "what was all that about last night." Codefendant stated that he had sold the victim "a dummy," that is, a fake bag of cocaine, and the victim wanted a refund.

¶ 9 In July 2005, Donner learned that his friend Christian Matthews had been taken into custody in connection with the beating and went to a police station to tell the police that Matthews was not involved. He later provided a handwritten statement to the police and testified before a grand jury. In 2007, Donner pled guilty to possession of a controlled substance and was sentenced to 24 months of probation.

¶ 10 During cross-examination, Donner acknowledged that he did not immediately tell the police about the conversation with codefendant. He also admitted that he told the police and the grand jury that it was defendant, rather than codefendant, who went through the victim's pockets. When asked what "jogged" his memory, Donner replied that he used to "smoke weed" and now he suffered from "memory loss." He denied smoking "weed" on the night of the victim's beating.

¶ 11 Doncell "Chum" Richard testified that he lived in the neighborhood with his mother and his sister, Chiquita Hicks. When Donner called out to him that someone was "getting beat up," he went to where Donner was located. Richard then observed an older man on the ground getting beat up. Richard saw "at least six people" standing around the man, but he did not know if "everyone was beating [the victim] up." At least "three or four" were doing something to the man. At trial, he identified defendant and codefendant as two of those people. Richard saw defendant pick the victim up by the arms. After A.P. punched the victim, the victim fell to the

ground. Richard got into an argument with Jonathan Rucker because he told the boys to "get off the block." Richard was brought to a police station for questioning about the beating on July 31, 2005. He gave a handwritten statement in October 2005, stating that he saw "Willie, Jonathan, A.P., and Deon punching the man on the ground in the head." He also identified defendant, codefendant and Jonathan Rucker in a line-up.

¶ 12 During cross-examination, Richard testified that he did not see defendant take anything from the victim's pocket or hit the victim.

¶ 13 Detective Jean Romic testified that she was initially tasked with investigating an aggravated battery, but that it became a murder investigation. In the course of her investigation, she discovered a 911 call which stated "that there were several male teens jumping on an old man." Specifically, the call indicated that seven boys were involved. On July 31, 2005, Detective Romic picked up Doncell Richard, Christian Matthews and Tyrese Carter. She intended to put on a line-up for certain witnesses, but the line-up did not take place because she could not get in touch with the witnesses. Detective Romic spoke with Donner on October 5, 2005. After that conversation, she began looking for, *inter alia*, defendant and codefendant. Richard and Hicks later identified defendant, codefendant and Jonathan Rucker in line-ups. When Detective Romic spoke to Donner, he stated that defendant checked the victim's pockets and took the victim's wallet. Donner also stated defendant hit the victim with a garbage can.

¶ 14 Chiquita Hicks, Doncell Richard's sister, testified that she was walking her dog when she saw four boys and an older man. At trial, she identified defendant and codefendant as two of those boys. She observed Jonathan Rucker hit the victim in the head with a garbage can. She also saw all four boys punch the victim with closed fists. At one point, codefendant and Jonathan

Rucker went through the victim's pockets. During cross-examination, Hicks testified that she did not see defendant pick up a garbage can and throw it, or go through the victim's pockets.

¶ 15 Defendant was ultimately found guilty of first degree murder and armed robbery. He was sentenced to 21 years in prison for the murder and to a consecutive 6-year term for the armed robbery.

¶ 16 In 2010, defendant filed a *pro se* petition for relief pursuant to the Postconviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2010)), alleging that he was denied the effective assistance of trial counsel when counsel failed to perfect his appeal. The petition was dismissed because it was not signed or notarized. In 2011, defendant filed a *pro se* petition for postconviction relief verified pursuant to section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2010)). The petition was docketed and postconviction counsel was appointed. Ultimately, the trial court granted defendant leave to file a late notice of appeal and to withdraw the postconviction petition. Defendant now appeals.

¶ 17 Defendant first contends that he was not proven guilty of armed robbery beyond a reasonable doubt pursuant to an accountability theory when there was no evidence that he shared a criminal intent with the principals or that there was a common design to commit an armed robbery. In other words, defendant contends that there was insufficient evidence to find him accountable for "the armed robbery in which he did not participate" because he was "merely present during the robbery committed by others."

¶ 18 When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v.*

*Brown*, 2013 IL 114196, ¶ 48. The trier of fact is responsible for evaluating the credibility of the witnesses, weighing witness testimony, and determining what inferences to draw from the evidence. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). This court reverses a defendant's conviction only where the evidence is so unreasonable, improbable or unsatisfactory that a reasonable doubt of his guilt remains. *Brown*, 2013 IL 114196, ¶ 48.

¶ 19 A person commits robbery when he takes property from the person or presence of another by the use of force or by threatening the imminent use of force. 720 ICLS 5/18-1(a) (West 2004). An armed robbery occurs when a person commits robbery while he carries on or about his person or is otherwise armed with a dangerous weapon other than a firearm. 720 ILS 5/18-2(a)(1) (West 2004). A person is legally accountable for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, or agrees or attempts to aid such other person in the planning or commission of the offense. 720 ILCS 5/5-2(c) (West 2004). A defendant may be deemed accountable for acts performed by another pursuant to a common plan or purpose. *People v. Taylor*, 164 Ill. 2d 131, 140-41 (1995).

¶ 20 The "common design" rule provides that when two or more people engage in a common criminal design or agreement, any acts in the furtherance of that design or agreement 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 those further acts. *In re W.C.*, 167 Ill. 2d 307, 337 (1995). Proof of the common design need not be supported by words of agreement but may be drawn from the circumstances surrounding the commission of the act. *Taylor*, 164 Ill. 2d at 141.

¶ 21 Here, viewing the evidence at trial in the light most favorable to the State, as we must (*Brown*, 2013 IL 114196, ¶ 48), there was sufficient evidence to find defendant guilty, beyond a reasonable doubt, of armed robbery under an accountability theory. The evidence at trial established that defendant, codefendant, Jonathan Rucker, and A.P. beat the victim until the victim was on the ground. Donner testified that once the victim was on the ground, codefendant removed a link card from the victim's wallet and then threw the wallet onto the victim's body. Chiquita Hicks also testified that she observed all four boys punch the victim with closed fists and that codefendant and Jonathan Rucker went through the victim's pockets. This court cannot say that no rational trier of fact could have found that the victim fell to the ground as a result of the beating inflicted by the four boys, that codefendant removed a link card from the victim's wallet or that defendant was accountable for codefendant's actions pursuant to the common design rule. See *Id.*

¶ 22 Defendant, however, contends that the armed robbery took place after the "completion" of the beating and, therefore, this "subsequent act" was a "new crime." We disagree.

¶ 23 *People v. Philips*, 2014 IL App (4th) 120695, is instructive. In that case, the defendant intended to hit a woman named Frazier in the eye in retaliation for injuries she gave to the mother of his children. The defendant went to Frazier's home accompanied by his friend, Shaunessy Grimes. Grimes was to identify Frazier for the defendant because the defendant did not know her. Grimes brought a rifle along in order to protect the defendant while the defendant attacked Frazier. When the men arrived at Frazier's house, however, they saw a crowd of people. The defendant changed his mind about attacking Frazier and planned to leave because he was afraid he would be attacked in turn by the crowd. Grimes then fired the rifle once. A member of



the crowd was killed. The defendant later admitted his involvement in the shooting and was convicted of first degree murder and unlawful possession of a weapon by a felon pursuant to an accountability theory.

¶ 24 On appeal, the court affirmed the defendant's murder conviction, finding that he could not escape liability for the murder merely because his original intention was only to attack Frazier. *Id.* ¶¶ 31, 34. The court concluded that "[b]y attaching himself to a group bent on illegal acts, defendant became accountable for all the crimes of his companions, including the shooting." *Id.* ¶ 34. The court also noted that to be accountable for the shooting under the common design rule, the defendant need not have shared Grimes's intent to fire the rifle; rather, "[b]y setting out to commit a crime with Grimes, defendant rendered himself legally accountable for Grimes's shooting." *Id.* ¶¶ 44, 53.

¶ 25 Similarly, here, it is undisputed that defendant, codefendant, and the other two boys took turns beating the victim. When the victim fell to the ground the last time, Donner testified that codefendant took the victim's wallet and removed a link card. Hicks also testified that codefendant and Jonathan Rucker went through the victim's pockets. Although it may be true, as defendant argues, that codefendant's act of taking the victim's link card was "spontaneous," the result of the group's actions was that the victim was beaten, a link card was taken from his wallet and the victim later died. Contrary to defendant's assertion, the State was not required to prove that defendant and codefendant shared the same intent with regard to the charged offense, *i.e.*, the armed robbery. Rather, the State needed only to prove that defendant had the intent to promote or facilitate a crime. See *Philips*, 2014 IL App (4th) 120695, ¶ 43. By attaching himself to a group "bent" on an illegal action and taking part in that action, defendant became

accountable for all the crimes of his companions, including those of codefendant. Defendant cannot "escape liability merely because his criminal intentions" did not include a desire to take the victim's property. See *Id.* ¶ 34. As our supreme court has held, "there is no question that 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." (Emphasis in original.) See *People v. Fernandez*, 2014 IL 115527, ¶ 19.

¶ 26 Ultimately, this court cannot say that no rational trier of fact could have found defendant guilty of armed robbery when the evidence at trial established that defendant, codefendant, Jonathan Rucker and A.P. beat the victim until he was on the ground and ultimately codefendant took something from the victim's wallet. *Brown*, 2013 IL 114196, ¶ 48. This court reverses a defendant's conviction only where the evidence is so unreasonable or unsatisfactory that a reasonable doubt of his guilt remains (*id.*); this is not one of those cases. We therefore affirm defendant's armed robbery conviction.

¶ 27 Defendant next contends that section 5-130 of the Act (705 ILCS 405/5-130 (West 2004)), which required him to be tried as an adult because the State charged him with first degree murder, violates the constitutional principles of procedural and substantive due process.

¶ 28 In a supplemental brief defendant further contends that he is entitled to resentencing under provisions of the Act and the Unified Code of Corrections which came into effect on January 1, 2016. In pertinent part, defendant argues that the amendments to section 5-130 contained in Public Act 99-258, § 5 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-130(1)(a) (West 2014)), which raised the age of automatic transfer to adult court for a juvenile charged with first degree murder apply to his case.

¶ 29 We first address defendant's supplemental brief argument. That is because, if defendant is correct that the amendments to section 5-130 apply to him, he was not eligible for automatic transfer, and we would not need to address the constitutionality of section 5-130 prior to the amendments. See *People v. White*, 2011 IL 109689, ¶ 148 ("[I]t is a fundamental rule of judicial restraint that a court not reach constitutional questions in advance of the necessity of deciding them." (Emphasis omitted.)). Thus, we turn to the question of whether the amendments to section 5-130 of the Act apply to defendant.

¶ 30 Under the version of section 5-130(1) in effect when defendant committed the present offense, a 15-year old charged with first degree murder was expressly excluded from the jurisdiction of the juvenile court. See 705 ILCS 405/5-130(1) (West 2004).

¶ 31 The amended version of section 5-130(1) states, in relevant part:

"(1)(a) The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 16 years of age and who is charged with: (i) first degree murder, (ii) aggravated criminal sexual assault, or (iii) aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05 where the minor personally discharged a firearm as defined in Section 2-15.5 of the Criminal Code of 1961 or the Criminal Code of 2012.

These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State." Pub. Act 99-258, § 5 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-130 (West 2014)).

¶ 32 The amended version of section 5-130(1) would therefore extend the jurisdiction of the juvenile court to a 15-year old charged, as defendant was, with first degree murder. Such an offender is thereby removed from the jurisdiction of the criminal court, unless the State petitions to transfer the case from the juvenile court to the criminal court pursuant to section 5-805 of the Act. See Pub. Act 99-258, § 5 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-805 (West 2014)).

¶ 33 Our supreme court recently resolved the retroactivity of Public Act 99-258's amendment to section 5-130 in *People ex rel. Alvarez v. Howard*, 2016 IL 120729 (Dec. 1, 2016). In *Howard*, the defendant was charged with a murder he allegedly committed when he was 15 years old. *Id.* ¶¶ 3-4. At the time the defendant was charged, section 5-130 required that all juveniles 15 and older charged with first degree murder be automatically transferred to adult court. *Id.* ¶ 4. While the charges against the defendant were pending, the legislature passed Public Act 99-258, which amended section 5-130 to raise the age of automatic transfer from 15 to 16 years old. *Id.* ¶ 5. The defendant then filed a motion for a hearing on whether he should be transferred, and the trial court granted that motion. *Id.* ¶¶ 5, 7. The State subsequently sought leave to file an action for a writ of *mandamus* in our supreme court, asking for a writ compelling the trial court to keep the case in adult court. *Id.* ¶ 10.

¶ 34 Our supreme court denied the State's request for the writ based upon its conclusion that the amendments to section 5-130 found in Public Act 99-258 applied retroactively. *Id.* ¶¶ 28, 35. The court noted that it had adopted the United States Supreme Court's test from *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), to address the retroactivity of legislation. *Howard*, 2016 IL 120729, ¶ 19. When applying the *Landgraf* test, a court should first look to whether the legislature clearly indicated the temporal reach of the amended statute, and, if it did, then the

legislature's expression of its intent controls, absent some constitutional problem. *Id.* If the legislature did not signal its intent, then the court looks to whether application of the statute "would have a retroactive impact." *Id.* The court noted, however, that "an Illinois court will never need to go beyond step one of the *Landgraf* test because the legislature has clearly set forth the temporal reach of every amended statute." *Id.* ¶ 20. That is because section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2014)), constitutes a "general savings clause" that has been interpreted "as meaning that procedural changes to statutes will be applied retroactively, while substantive changes are prospective only." *Howard*, 2016 IL 120729, ¶ 20. That is, if the statutory amendment itself does not indicate its temporal reach, "it is provided by default in section 4." *Id.*

¶ 35 The court then applied that version of the test to the amendments to section 5-130. *Id.* ¶¶ 21, 28. The court found "nothing in the text of the amendment itself that indicates the statute's temporal reach," noting that the amendment to section 5-130 did not contain a savings clause even though other portions of Public Act 99-258 did. *Id.* ¶ 21. The court concluded that the amendments to section 5-130 were procedural, relying on precedent establishing that the decision whether to try a defendant in juvenile or adult court is a procedural one. *Id.* ¶ 28, citing *People v. Patterson*, 2014 IL 115102, ¶ 104. Because the amendments were procedural, the default legislative intent in section 4 of the Statute on Statutes applied and the amendments to section 5-130 of the Act were retroactive. *Howard*, 2016 IL 120729, ¶ 28.

¶ 36 *Howard* resolves the question of retroactivity presented in this case. We recognize that the procedural posture of this case differs slightly from the procedural posture before the court in *Howard*. Specifically, the case in *Howard* was pending before the trial court when Public Act

99-258 was passed, whereas this case was pending on appeal when the amendment was enacted. But under either circumstance, we would apply the same test. See, *e.g.*, *People v. Glisson*, 202 Ill. 2d 499, 503-04 (2002) (applying section 4 of Statute on Statutes to question of retroactivity of statutory amendment passed while case pending on direct appeal); *People v. Digirolamo*, 179 Ill. 2d 24, 49-50 (1997) (deciding retroactivity of statutory amendment passed while case pending on direct appeal). Thus, the fact that defendant's case was pending on direct appeal when Public Act 99-258 was passed does not change the controlling effect of *Howard*.

¶ 37 Having held that the amendment to section 5-130 applies retroactively, we must now discuss the impact of the amendment on defendant's case. In other cases where courts have found this same amendment to be retroactive, they have vacated the defendants' sentences and remanded to provide the State an opportunity to petition to transfer the defendant to adult court. See, *e.g.*, *People v. Ortiz*, 2016 IL App (1st) 133294, ¶ 36 (Oct. 16, 2016) (remanding case to juvenile court and giving State "an opportunity to file a petition for a transfer hearing if it so chooses"); *People v. Patterson*, 2016 IL App (1st) 101573-B, ¶ 21 (June 21, 2016) (vacating defendant's sentence and remanding case to juvenile court "to permit the State to file a motion for transfer of the case to criminal court for sentencing"). We therefore vacate defendant's sentences and remand for resentencing. On remand, the State should have an opportunity to seek to transfer defendant to adult criminal court, should it choose to do so

¶ 38 Defendant also contended that section 5-130, which required him to be automatically transferred to adult court, violated the procedural and substantive due process clauses of the United States and Illinois Constitutions. But having determined that Public Act 99-258 applies retroactively to exempt defendant from the automatic-transfer provision, we decline to address

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the constitutionality of that provision. See *White*, 2011 IL 109689, ¶ 148 ("[I]t is a fundamental rule of judicial restraint that a court not reach constitutional questions in advance of the necessity of deciding them." (Emphasis omitted.)).

¶ 39 For the reasons stated, we affirm defendant's conviction for armed robbery. We vacate his sentences and remand for resentencing. We direct the juvenile court, on resentencing, to give the State the opportunity to seek a discretionary transfer to adult criminal court, should the State choose to seek such a transfer.

¶ 40 Affirmed in part; vacated in part; remanded with directions.