FIRST DIVISION
February 6, 2017

No. 1-14-2711

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 20086
	)	
TREVELL PEOPLES,	)	Honorable
	)	Mary Colleen Roberts,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

O R D E R

¶ 1 *Held:* Double jeopardy did not occur when court briefly misspoke, but had not made a ruling of acquittal, before finding defendant guilty. Evidence sufficient to convict defendant of delivery of a controlled substance on an accountability basis. Mittimus corrected to properly reflect offense. Fines and fees corrected.

¶ 2 Following a 2014 bench trial, defendant Trevell Peoples was convicted of delivery of a controlled substance (1 to 15 grams of heroin) and sentenced to four years' imprisonment with fines and fees. On appeal, defendant contends that his conviction must be reversed as double jeopardy because the court found him not guilty before finding him guilty. Alternatively, he contends that the evidence was insufficient to convict him beyond a reasonable doubt. He contends that the mittimus must be corrected to reflect that he was convicted of delivery of a

controlled substance, and he challenges certain fines and fees and seeks credit against his fines for presentencing custody. For the reasons stated below, we correct the mittimus and the order assessing fines and fees, and otherwise affirm the judgment.

¶ 3 Defendant was charged by indictment with delivery of a controlled substance allegedly committed on or about September 22, 2013.

¶ 4 At the May 2014 trial, police officer Jeremiah Forsell testified that he was undercover, in civilian clothing and an unmarked car, when he went to purchase drugs in a particular neighborhood. Upon arriving, he saw defendant standing on the side of the street. Officer Forsell pulled up to defendant, who asked what he was looking for. Officer Forsell replied "D," meaning heroin, and defendant told him to pull forward and similarly motioned with his hand. After Officer Forsell did so, another person came up to his car window and asked "how many I wanted;" he replied that he wanted "three." Neither the person nor Officer Forsell specified what Officer Forsell wanted. The person produced three packets of white powder, from his waistband and handed them to Officer Forsell in exchange for three $10 bills. Officer Forsell had earlier recorded the serial numbers of those bills. After receiving the three packets, Officer Forsell drove away, informing other officers by radio. A few minutes later, he was asked by radio to return to the scene of the sale. When he did so, he saw defendant and the person who sold him the packets being detained by other officers. At the police station, Officer Forsell inventoried the three packets of powder, and another officer gave him one of the recorded bills.

¶ 5 Police sergeant Isaac Shavers testified that he observed Officer Forsell engage in the aforementioned transaction. Specifically, he saw Officer Forsell stop his car by defendant,

briefly converse with him, drive onward a short distance before stopping, briefly converse with a "juvenile" male, and exchange something hand-to-hand with the juvenile. As Officer Forsell drove away, the juvenile walked away with money in his hand. The juvenile then walked up to defendant and put money into one of defendant's pants pockets, though Sergeant Shavers could not see how much money. Sergeant Shavers informed other officers by radio, and saw officers detain defendant and the juvenile. In the interim, defendant and the juvenile stood near each other and "at least one other [person] that I can remember," a young woman. As defendant and the juvenile were detained, Sergeant Shavers saw Officer Forsell drive past, followed by the officers arresting defendant and the juvenile.

¶ 6 The parties stipulated that Officer Nicholas Duckhorn would testify to detaining defendant and "the juvenile co-offender" until Officer Forsell identified them, then arresting them. He would also have testified that the post-arrest search of defendant found $694 including a pre-recorded $10 bill. The parties stipulated that forensic chemist Tina Joyce would testify that the three inventoried items tested positive for heroin and weighed 1.2 grams.

¶ 7 Romanita Peoples, defendant's mother, testified for the defense that she gave defendant $600 on the day in question: a $300 birthday gift and $300 to have her car repaired.

¶ 8 The defense rested and the parties made closing arguments. The court then said:

> "I heard the evidence and I thought the officers testified credibly. Actually, I believe that defendant's mother had testified credibly to the extent that there was no bias demonstrated other than the fact that she's the defendant's mother. And I heard the arguments of counsel. And while I have a hunch that the defendant participated in this

> transaction on that day, I don't believe that the evidence is fully there to convince me beyond a reasonable doubt. Specifically, the fact that there was no testimony that [recorded money] was found on the defendant."

The State then said "That was stipulated to." The court apologized, said "Strike what I just said" and proceeded: "Because [recorded money] was found on the defendant, because the defendant was seen to act in concert with the other individual who was arrested on that day, the juvenile, it is the court's unequivocal finding that the defendant is guilty beyond a reasonable doubt." After summarizing the evidence including the recorded money, the court found that "those are pieces of the puzzle that come together to convince this court beyond a reasonable doubt that the defendant is guilty of the offense of delivery of a controlled substance. He was acting in concert with the other individual and so the defendant is guilty."

¶ 9 In the post-trial motion as supplemented, defendant did not argue double jeopardy but argued, as part of his argument that the evidence was insufficient to convict beyond a reasonable doubt, that the court "relied on a 'hunch' " and found the recorded funds to be a missing element of the State's case. Following arguments, the court denied the motion and proceeded to sentencing, where defendant received four years' imprisonment with fines and fees. The mittimus describes the conviction as "MFG/DEL 1<15 GR HEROIN/ANALOG." This appeal followed.

¶ 10 On appeal, defendant first contends that his conviction must be reversed as double jeopardy because the court found him not guilty before finding him guilty. Defendant acknowledges that he did not raise a double-jeopardy challenge in the trial court, but the parties

agree that we may consider this contention under the plain-error doctrine. See *People v. Cervantes*, 2013 IL App (2d) 110191, ¶ 21.

¶ 11 The Constitutions of the United States and Illinois provide, respectively, "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb" and "[n]o person shall *** be twice put in jeopardy for the same offense." U.S. Const., amend. V; Ill. Const. 1970, art. 1, § 10. As the United States Supreme Court has stated, "the Double Jeopardy Clause bars retrial following a court-decreed acquittal, even if the acquittal is 'based upon an egregiously erroneous foundation.' [Citation.] A mistaken acquittal is an acquittal nonetheless." *Evans v. Michigan*, 133 S. Ct. 1069, 1074 (2013), quoting *Fong Foo v. United States*, 369 U.S. 141, 143 (1962).

> "Our cases have applied *Fong Foo*'s principle broadly. An acquittal is unreviewable whether a judge directs a jury to return a verdict of acquittal [citation], or forgoes that formality by entering a judgment of acquittal herself. [Citation.] And an acquittal precludes retrial even if it is premised upon an erroneous decision to exclude evidence [citation]; a mistaken understanding of what evidence would suffice to sustain a conviction [citation]; or a 'misconstruction of the statute' defining the requirements to convict [citation]. In all these circumstances, 'the fact that the acquittal may result from erroneous evidentiary rulings or erroneous interpretations of governing legal principles affects the accuracy of that determination, but it does not alter its essential character.' "
>
> "Most relevant here, our cases have defined an acquittal to encompass any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense.

> [Citation.] Thus an 'acquittal' includes 'a ruling by the court that the evidence is insufficient to convict,' a 'factual finding [that] necessarily establish[es] the criminal defendant's lack of criminal culpability,' and any other 'rulin[g] which relate[s] to the ultimate question of guilt or innocence.' [Citation.] These sorts of substantive rulings stand apart from procedural rulings that may also terminate a case midtrial, which we generally refer to as dismissals or mistrials. Procedural dismissals include rulings on questions that 'are unrelated to factual guilt or innocence,' but 'which serve other purposes,' including 'a legal judgment that a defendant, although criminally culpable, may not be punished' because of some problem like an error with the indictment." *Evans*, at 1074-75, quoting *United States v. Scott*, 437 U.S. 82, 91, 98, & n.11 (1978) (internal quotation marks and citation omitted).

¶ 12 In *Smith v. Massachusetts*, 543 U.S. 462 (2005), the Supreme Court examined whether a trial court may reconsider the grant of a mid-trial acquittal. A defendant who faced three charges at trial, two assault charges and a firearm-possession charge, successfully moved for a directed verdict on the firearm possession charge and then presented the defense case. After the defense rested but before the jury was instructed, the State presented additional argument for submitting the firearm-possession charge to the jury. The court reversed its previous ruling and submitted the firearm possession charge to the jury. The jury convicted the defendant on all three counts. The defendant appealed, contending that submission of the firearm-possession charge to the jury constituted double jeopardy. *Id.* The Supreme Court stated that reconsideration of a mid-trial acquittal may not prejudice a defendant if it occurred before he could have relied on it in

presenting his case, but held that the possibility of prejudice arises, and thus jeopardy attaches, once trial proceeds to the defense case. *Id*. at 471-73. However, "[d]ouble-jeopardy principles have never been thought to bar the immediate repair of a genuine error in the announcement of an acquittal, even one rendered by a jury." *Id*. at 474. "Moreover, a prosecutor can seek to persuade the court to correct its legal error before it rules, or at least before the proceedings move forward." *Id*.

¶ 13 Following *Smith*, and distinguishing *Evans* and *Fong Foo*, the Court of Appeals of Texas recently found in *Quintanilla v. State*, 496 S.W.3d 861 (Tex. App. 2016), that double jeopardy was not implicated when a trial court initially orally granted a directed verdict motion but then continued to discuss the motion at length with the parties before reversing itself and denying a directed verdict, all before the defendant presented his case. The *Quintanilla* court also rejected a contention that the trial court granted the directed verdict motion a second time when the defendant re-argued the motion as the jury deliberated. During arguments, the court remarked that "unless you have something other than that, I'm prepared to bring the jury out and charge them to bring back an instructed verdict" and further words of the same import. *Id*. However, after a recess and before the jury returned with a verdict, the court denied the directed verdict motion. "While the trial court's statements suggest an inclination to grant the motion for directed verdict, the qualifying statements to the effect that the State could 'show me something else' convey openness to additional argument. Thus, the trial court's statements do not clearly convey a final ruling on the motion." *Id.*

¶ 14 Here, we consider *Evans* inapplicable because its holding, however broad, applies to rulings by the trial court. This case is similarly distinguishable from *Cervantes*, where we found a double jeopardy violation where a trial court in a bench trial *found* a defendant not guilty of certain charges while convicting him of others, then upon further argument by the State rescinded one of the not-guilty findings, and then after further consideration found the defendant guilty on that count. See *Cervantes*, ¶ 44 ("The trial court unhesitatingly found defendant not guilty of armed violence"). We find that the court here had not yet made a final ruling when its misstatement of the evidence was pointed out by the State. The court's key remark – "while I have a hunch that the defendant participated in this transaction on that day, I don't believe that the evidence is fully there to convince me beyond a reasonable doubt" – may be an expression of the court's inclination to acquit but is not an acquittal. The court was stating the reasoning for its conclusion but had not yet stated its conclusion when the colloquy between the court and the State now at issue occurred. The *Evans* court stated that "we know the trial court acquitted Evans, not because it incanted the word 'acquit' (which it did not), but because it *acted* on its view that the prosecution had failed to prove its case." (Emphasis added.) *Evans*, 133 S. Ct. at 1078. By contrast, the court here had not yet acted on its summation of the evidence when the colloquy at issue occurred. We find no double jeopardy violation here.

¶ 15 Defendant also contends that the evidence was insufficient to convict him of delivery of a controlled substance beyond a reasonable doubt on an accountability basis.

¶ 16 On a claim of insufficiency of the evidence, we must determine whether, taking 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. *In re Q.P.*, 2015 IL 118569, ¶ 24. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and it is better equipped than this court to do so as it heard the evidence. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. We do not retry the defendant – we do not substitute our judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses – and we accept all reasonable inferences from the record in favor of the State. *Q.P.*, ¶ 24. As witness credibility is a matter for the trier of fact, it may accept or reject as much or little of a witness's testimony as it chooses, and we need not reverse a conviction merely because of conflicting evidence. *People v. White*, 2015 IL App (1st) 131111, ¶ 19. The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Jonathon C.B.*, ¶ 60. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt, nor to find a witness was not credible merely because the defendant says so. *Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Q.P.*, ¶ 24.

¶ 17 In criminal cases, a "person is legally accountable for the conduct of another 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 (West 2014).

> "When 2 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 common design or agreement and all are equally responsible for the consequences of those further acts. Mere presence at the scene of a crime does not render a person accountable for an offense; a person's presence at the scene of a crime, however, may be considered with other circumstances by the trier of fact when determining accountability." 720 ILCS 5/5-2 (West 2014).

Common design may be inferred from the circumstances. *People v. Doolan*, 2016 IL App (1st) 141780, ¶ 43. A defendant may be convicted on an accountability basis even if the other person was unprosecuted, acquitted, or convicted of a different offense. 720 ILCS 5/5-3 (West 2014).

¶ 18 Here, taking the evidence in the light most favorable to the State as we must, we cannot find that no rational trier of fact would agree with the trial court that defendant was guilty of delivery of a controlled substance on an accountability basis. Officer Forsell told defendant that he wanted "D" or heroin, and defendant told him to drive forward. Upon arriving there, the juvenile asked him what he wanted, and he replied "three," without either needing to state what the object of this conversation was. It is reasonable to infer that defendant directed Officer Forsell to where defendant knew the heroin seller to be. Immediately after the juvenile sold Officer Forsell heroin for $30, Sergeant Shavers saw the juvenile give defendant money, which turned out to be $10 of that $30. Under such circumstances, we are not required to elevate to reasonable doubt the possibility that the juvenile gave $10 in drug-sales proceeds to defendant for some reason unrelated to the transaction that defendant had just facilitated. In sum, it is

reasonable to conclude from defendant sharing in the acts and proceeds of the heroin sale to Officer Forsell that defendant and the juvenile had a common design to sell heroin, and thus to find defendant accountable for the juvenile's delivery of heroin to Officer Forsell.

¶ 19 Defendant seeks to correct the mittimus to reflect that he was convicted of delivery of a controlled substance rather than "MFG/DEL." While the State does not agree, a conviction for delivery of a controlled substance is reflected on the mittimus not as "MFG/DEL" but as delivery of a controlled substance. See *People v. Wade*, 2013 IL App (1st) 112547, ¶ 40. We so order.

¶ 20 Turning lastly to fines and fees, we agree with the parties on all three points raised. The $20 probable cause hearing fee does not apply because defendant was charged by indictment and did not have a probable cause hearing. 55 ILCS 5/4-2002.1(a) (West 2014); *People v. Smith*, 236 Ill. 2d 162 (2010). The $5 electronic citation fee must be vacated because delivery of a controlled substance is a felony but the fee applies only in traffic, misdemeanor, municipal ordinance and conservation cases. 705 ILCS 105/27.3e (West 2014). Defendant's 335 days of presentencing custody entitle him to $1,675 credit against his fines, which exceed that amount. 725 ILCS 5/110-14(a) (West 2014)($5 credit against fines for each day of presentencing custody).

¶ 21 In sum, pursuant to our authority under Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the circuit court to correct (1) the mittimus to reflect a conviction for delivery of a controlled substance, and (2) the fines and fees order to reflect $1,675 credit and our vacatur of the $20 probable cause hearing fee and the $5 electronic citation fee. We affirm the judgment of the circuit court in all other respects.

¶ 22 Affirmed in part, vacated in part, mittimus and order corrected.