NOTICE
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2018 IL App (5th) 150109-U

NO. 5-15-0109

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | St. Clair County. |
| | ) | |
| v. | ) | No. 11-CF-683 |
| | ) | |
| DEMARCUS BARNES, | ) | Honorable |
| | ) | Robert B. Haida, |
| Defendant-Appellant. | ) | Judge, presiding. |

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JUSTICE OVERSTREET delivered the judgment of the court.
Justices Goldenhersh and Cates concurred in the judgment.

**ORDER**

¶ 1 *Held*: The circuit court's order remanding the defendant to the Department of Human Services following a discharge hearing is affirmed where the State presented sufficient evidence to prove the defendant guilty of first degree murder beyond a reasonable doubt.

¶ 2 The defendant, Demarcus Barnes, was charged with first degree murder. The circuit court found that the defendant was mentally unfit to stand trial but that there was a substantial probability that he would be able to obtain fitness within one year. The court, therefore, transferred the defendant to the custody of the Illinois Department of Human Services (Department) for treatment. The defendant remained unfit for trial for more than a year and requested a discharge hearing pursuant to section 104-25 of the Code of

Criminal Procedure of 1963 (725 ILCS 5/104-25 (West 2014)). At the discharge hearing, the State presented evidence with respect to the defendant's guilt, and the circuit court found that "the hearing did not result in an acquittal." Therefore, the circuit court entered a judgment remanding the defendant to the custody of the Department for further treatment. The defendant now appeals the circuit court's judgment remanding him to the Department. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 When a criminal defendant is found mentally unfit to stand trial, the court "may order him placed for treatment in the custody of the Department." *Id.* § 104-17(b). For criminal defendants charged with a felony, the Department has one year to provide the defendant treatment in order for the defendant to obtain fitness to stand trial. *Id.* § 104-17(e). When it is determined that there is a substantial probability that the defendant will not obtain fitness within one year, the defendant may request a discharge hearing. *Id.* § 104-23(a). At the discharge hearing, the State and the defendant may introduce evidence relevant to the question of the defendant's guilt of the crime charged. *Id.* § 104-25(a). If the evidence does not prove the defendant guilty beyond a reasonable doubt, the court shall enter a judgment of acquittal. *Id.* § 104-25(b). However, if the discharge hearing does not result in an acquittal of the charge the court may remand the defendant to the Department for further treatment. *Id.* § 104-25(d).

¶ 5 In the present case, when the circuit court found the defendant unfit to stand trial, the State had charged him with first degree murder for the death of Yoko Cullen. The State alleged that the defendant, with the intent to kill or do great bodily harm, caused

Cullen's death by setting fire to a vehicle while she was locked in the vehicle's trunk. This appeal centers on the evidence presented at the defendant's discharge hearing relevant to the defendant's guilt of this crime.

¶ 6 At the discharge hearing, the State presented evidence that, in the evening of Wednesday, May 18, 2011, Cullen, who was 85 years old, drove her 2008 Mazda 3 to the Fireman's Hall in Collinsville, Illinois, to play bingo. When Cullen did not return home, her daughter filed a missing person report on Friday, May 20, 2011. That Friday, police found Cullen's Mazda in a remote area of Falling Springs Road in East St. Louis, Illinois. Her car was burned beyond recognition, and her charred remains were inside the vehicle's trunk. She had been alive when her car was set on fire.

¶ 7 The State presented the testimony of Daquan Barnes, who had pled guilty to Cullen's murder and was serving a 60-year sentence at the time of the discharge hearing. Barnes signed a cooperation agreement in which the State agreed to dismiss two pending criminal charges, a burglary charge and a weapons charge, if he testified truthfully at the discharge hearing. Barnes testified about the defendant's involvement with Cullen's murder.

¶ 8 Barnes testified that he and the defendant, who is his cousin, were hanging out together at the "John DeShields projects" in the afternoon on May 18, 2011. Later that evening, they met up with Latosha Cunningham. Barnes explained that Cunningham drove through the housing complex, they saw her, and the defendant started talking to her. According to Barnes, he did not know Cunningham, having met her only on one other occasion. Barnes testified, "[Cunningham] wanted to rob the bingo hall, but she

didn't have no gun. So pick somebody out that came out of the bingo hall to rob." Barnes told the court that the defendant was present and participated in this conversation. The three then left in Cunningham's vehicle and drove to the Fireman's Hall in Collinsville.

¶ 9 In May of 2011, the defendant lived with Brittany Stevenson. She testified at the discharge hearing that she and the defendant were visiting at the John DeShields housing complex in East St. Louis on May 18, 2011. Stevenson remembered that, at around 5 p.m., the defendant left the housing complex with her aunt, Latosha Cunningham.

¶ 10 Barnes testified that when they left the housing complex, Cunningham drove them to the "bingo hall" in Collinsville. The defendant rode in the front passenger seat, and he rode in the back passenger seat. Barnes testified that, on the drive to the bingo hall, they talked about their intent to rob someone and that the defendant participated in this conversation. At the Fireman's Hall, Cunningham parked in the parking lot, and they waited in the car for someone to leave. Cunningham recognized Cullen as she was leaving the Fireman's Hall. Barnes testified that their plan then was to rob Cullen.

¶ 11 When Cullen drove off in her Mazda, Cunningham followed her in her vehicle. Barnes testified that they were going to follow Cullen to wherever she stopped. At some point, Cullen pulled to the side of the road and activated her hazard lights. Cunningham pulled in behind her, approached Cullen's vehicle, and asked her if anything was wrong. Cullen stated that she was having problems with her brakes. As Barnes checked Cullen's brakes, Cunningham took Cullen's keys and purse out of the Mazda and hid the purse in the trunk of her car. Barnes explained that, when Cullen started asking where her keys and purse were, "[t]hat's when [Cunningham] was like, she saw my license plate, and

stuff like that. *** She was just, we got to kill her. She saw my license plate. *** We got to kill this bitch." Barnes and the defendant grabbed Cullen and forced her into the trunk of her Mazda. She tried to fight back as Barnes and the defendant slammed the trunk lid closed.

¶ 12 Barnes drove Cullen's Mazda toward an area that he called a "back lot" in East St. Louis, Illinois. The "back lot" was a secluded area of Falling Springs Road in East St. Louis. The defendant rode in the passenger seat of Cullen's Mazda. Barnes could hear Cullen in the trunk of the car as they drove.

¶ 13 Cunningham drove her own vehicle, first leading the way and then later following Barnes. Along the way, she had a flat tire, and both vehicles pulled over. Barnes changed the flat tire on Cunningham's vehicle. Cullen remained locked in the trunk of her Mazda while Cunningham and the defendant ransacked the Mazda looking for money and valuables.

¶ 14 After arriving at the secluded area of Falling Springs Road, Barnes opened the Mazda's trunk. Cunningham "kept asking [Cullen] for [her] credit card [PIN] number." Cullen replied that she did not know the PIN and that she would have to call her daughter for it. According to Barnes, when Cullen tried to get out of the trunk, Cunningham hit her in the head two or three times with a tire iron. Barnes later testified that he and the defendant also hit Cullen with tire irons. They forced Cullen back in the trunk, closed the lid, and discussed what to do with her. Barnes told Cunningham, "Just let her go," but, according to Barnes, Cunningham "was still expressing, we got to kill her. She saw my license plate."

¶ 15 Cunningham, Barnes, and the defendant drove Cunningham's car to a nearby BP gas station to buy a gas container and gas. Barnes stated that they arrived at the gas station around "11:00, 12:00." He went inside to purchase the gas can while Cunningham and the defendant were in the back of Cunningham's car "sorting out the money."

¶ 16 Officer Josh Presson testified that he obtained surveillance video from the BP gas station. Surveillance video from inside the gas station showed Barnes purchasing a gas can in the evening on May 18, 2011. The video surveillance from outside the gas station showed Cunningham's vehicle and three people at the gas station. Officer Presson testified that the three people shown on the outside surveillance video were identified as Barnes, Cunningham, and the defendant. The State played the video for the circuit court.

¶ 17 Officer Presson testified that the time stamps on both videos were not accurate. Presson estimated that the time stamps were off by approximately an hour. The interior video showed Barnes walking out of the interior of the gas station at 12:43 a.m., but Presson believed that it was approximately one hour fast. Therefore, according to Officer Presson, Barnes walked out of the gas station at approximately 11:43 p.m. on May 18, 2011. The outside surveillance video showed Cunningham's car arriving at the gas pump at approximately 10:27 p.m. and driving away from the gas station at approximately 10:34 p.m. Officer Presson believed that the outside video footage was approximately an hour and nine minutes slower than actual time. Therefore, he estimated that Cunningham's car arrived at the pump around 11:36 p.m. on May 18, 2011, and drove away at approximately 11:43 p.m. He did not explain how he determined his estimations of the time differences.

¶ 18 Barnes testified that, after leaving the gas station, they drove back toward Falling Springs Road where they had left Cullen locked inside the trunk of her Mazda. Cunningham parked her car two blocks away. Barnes testified that when they returned to the Mazda, he opened the trunk. He claimed that Cullen was not breathing and had no pulse. Cunningham and the defendant stood at the rear of the car as Cunningham said, "Burn up the car. Time to burn the car up."

¶ 19 Barnes poured the gasoline inside the trunk, inside the passenger compartment, and all over the outside of the car while the defendant watched. The defendant found a white t-shirt on the ground, gave it to Barnes and said, "hold on let me get back." Barnes lit the t-shirt and used the burning t-shirt to set fire to the Mazda. Cunningham and the defendant took off toward Cunningham's car, Barnes took off in a different direction, and Cunningham and the defendant then picked up Barnes in her vehicle. A forensic investigator determined that Cullen was still alive when Barnes set her car on fire.

¶ 20 Barnes testified that he, Cunningham, and the defendant drove to Kenneth Hall Hospital where they split the money they took from Cullen and where Cunningham and the defendant tried to use Cullen's credit card at the ATM. Barnes testified that he did not go up to the ATM and that, to his knowledge, Cunningham and the defendant were not able to successfully use the card to get cash. Barnes testified that after Cunningham and the defendant unsuccessfully attempted to use the credit card at the ATM, they "[w]ent back to the projects. They dropped me off, and [we] went our separate ways."

¶ 21 Surveillance video and still photographs from security cameras in the area of the ATM located at the hospital showed that a person wearing a Florida Gators hooded

sweatshirt, hood up, walked toward and stood at the hospital ATM on May 18, 2011, shortly after 11:50 p.m. and again shortly after 12 a.m. Records from Cullen's credit card company showed five unsuccessful ATM withdrawal attempts occurred just before and just after midnight that evening at the hospital ATM. The transactions were declined because of incorrect PIN numbers.

¶ 22 Brittany Stevenson testified that she remembered the defendant wearing a Florida Gators hooded sweatshirt when he left the John DeShields housing complex with Cunningham in the evening on May 18, 2011. She also remembered that he did not return until late that night. Stevenson testified that, during the early morning hours of May 19, 2011, she rode with the defendant and Cunningham as they looked for ATMs. She explained that, as she rode in the car, she heard the defendant and Cunningham "calling the card and trying to check the pin and the balance." She also remembered that Cullen's name was on the card they were trying to use.

¶ 23 Telephone records from the bank that had issued Cullen's credit card showed that the bank received calls concerning Cullen's credit card from a cellular phone that was connected to the defendant and a person named Erica Barnes. The first call from the defendant's cell phone was placed at 4:32 a.m. on May 19, 2011. The bank also received a call from a cellular phone that was connected to Cunningham on May 19, 2011, at 3:36 a.m. These two calls, one from the defendant's phone and one from Cunningham's phone, coincided with the bank's records that showed failed attempts to withdraw money from the hospital ATM using Cullen's credit card near the times of these calls.

Surveillance video near the hospital's ATM showed two individuals attempting to use Cullen's credit card at approximately 4:15 a.m. on May 19, 2011.

¶ 24 Stevenson testified that, in the evening on May 19, 2011, Cunningham called and asked if she and the defendant needed any gas. The defendant and Stevenson drove to a BP gas station in their car. Cunningham also drove to the gas station in her car. According to Stevenson, Cunningham used Cullen's credit card for gas for her car. At some point, the gas pump indicated that they needed to see the cashier, and Stevenson observed the defendant and Cunningham calling to try to get the card's PIN number.

¶ 25 The records for Cullen's credit card showed two transactions at a BP gas station in Washington Park, Illinois, on May 19, 2011. One transaction for $62.60 was approved at 10:41 p.m., and one transaction for $45 was declined at 10:46 p.m. Telephone records from the bank show that a person using the phone associated with the defendant made four calls to the bank concerning Cullen's credit card on May 19, 2011, during the time from 10:49 p.m. to 11 p.m. The bank also received three calls from the defendant's phone around midnight that night and one call from the phone at 2:37 p.m. on May 20, 2011. Stevenson did not see what happened with the credit card after it was declined at the gas station, but she remembered Cunningham later calling the defendant and telling him to get rid of the credit card.

¶ 26 According to Barnes, sometime after the murder, he got a call from Cunningham, who told him that the defendant had been "picked up by the police." She asked him whether the defendant could "hold his water," and he told her that the defendant was a grown man and "[h]e gonna do what he gonna do." Barnes testified that he was later

arrested for the robbery, kidnapping, and murder and that he admitted to his, Cunningham's, and the defendant's involvement in the crimes.

¶ 27 Investigators searched the trunk of Cunningham's vehicle and found Cullen's purse and three tire irons. Two of the tire irons had Cullen's blood on them. One of the tire irons with Cullen's blood had Barnes's fingerprints on it.

¶ 28 At the conclusion of the discharge hearing, the court found that "there's direct testimony, and there's also circumstantial evidence that could cause a reasonable fact finder to conclude that the defendant was an active participant in the chain of events that led to Ms. Cullen's death." The court, therefore, concluded that it could not find "that the defendant is actually innocent." The court added, "A different way of saying it is, I find that the State has met its burden beyond a reasonable doubt that the defendant is not not guilty and thereby remand him to the custody of the *** Department of Human Services *** for further treatment and evaluation." The defendant now appeals the circuit court's judgment remanding him to the Department.

¶ 29 ANALYSIS

¶ 30 A discharge hearing is not a criminal prosecution; it is an "innocence only" hearing that is civil in nature and "simply enables an unfit defendant to have the charges dismissed if the State does not have the evidence to prove he committed the charged offenses beyond a reasonable doubt." *People v. Waid*, 221 Ill. 2d 464, 472 (2006). "If the evidence is found to be sufficient to establish the defendant's guilt, no conviction results." *Id.* at 470. Instead, the defendant may be held for additional treatment, and a

criminal prosecution does not take place unless or until the defendant is found fit to stand trial. *Id*.

¶ 31 "If the evidence presented at the discharge hearing is sufficient to establish defendant's guilt, he is found 'not not guilty.' " *People v. Orengo*, 2012 IL App (1st) 111071, ¶ 24. The purpose of the discharge hearing is to test the sufficiency of the State's evidence, and the standard of proof is the same as that required for a criminal conviction. *Id.* ¶ 25. In order to remand the defendant to the Department for further treatment, the State's evidence must prove the defendant's guilt beyond a reasonable doubt. *Id*. On appeal, the relevant inquiry is 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. Mayo*, 2017 IL App (2d) 150390, ¶ 29. "This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). "An appellate court should not substitute its judgment for that of the trier of fact, unless the judgment at trial was inherently implausible or unreasonable." *Mayo*, 2017 IL App (2d) 150390, ¶ 30.

¶ 32 Here, the State's initial criminal complaint alleged that the defendant, with the intent to kill or do great bodily harm, caused Cullen's death by setting fire to a vehicle while she was locked in the vehicle's trunk. The State later filed notice of its intent to submit jury instructions on multiple theories of first degree murder, including intentional homicide, knowing homicide, and felony murder.

¶ 33 Section 9-1(a) of the Criminal Code of 2012 provides:

"A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:

(1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or

(2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or

(3) he is attempting or committing a forcible felony other than second degree murder." 720 ILCS 5/9-1(a) (West 2014).

¶ 34 Forcible felonies include kidnapping, arson, and robbery. *Id.* § 2-8. In addition, accountability for a crime exists when "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, [an individual] solicits, aids, abets, agrees, or attempts to aid [another] person in the planning or commission of the offense." *Id.* § 5-2(c). Also, "[w]hen 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." *Id.* § 5-2.

¶ 35 The State's evidence of the defendant's guilt of Cullen's murder came largely from the testimony of Barnes, who described the defendant's involvement in the planned robbery, kidnapping, and murder of Cullen. Barnes's testimony established that the defendant was with him at the John DeShields housing complex in the evening on May

18, 2011, when they met up with Cunningham; that the defendant participated in the plot to rob someone at the Fireman's Hall in Collinsville; and that he rode with Cunningham to the Fireman's Hall where they waited until they saw Cullen exit the bingo hall. The evidence supports a finding that the defendant approached Cullen's vehicle when she pulled to the side of the road and helped force her into the trunk of her vehicle with the intent of robbing her. The evidence supports a finding that the defendant rode in Cullen's vehicle to a remote location where he assisted Barnes in setting fire to Cullen's car while she was locked in the vehicle's trunk. On appeal, the defendant does not dispute that the evidence showed that he went to the ATM at a nearby hospital on multiple occasions and unsuccessfully tried to use Cullen's credit card to make cash withdrawals.

¶ 36 Barnes's testimony alone, if believed by a trier of fact, was sufficient evidence to prove the defendant's guilt beyond a reasonable doubt. "[W]hile subject to careful scrutiny, the testimony of an accomplice, whether it is corroborated or uncorroborated, is sufficient to sustain a criminal conviction if it convinces the jury of the defendant's guilt beyond a reasonable doubt." *People v. McLaurin*, 184 Ill. 2d 58, 79 (1998). Because a reasonable jury could find the defendant guilty based on Barnes's testimony alone, the trial court ruled correctly in finding that the State presented sufficient evidence from which a reasonable jury could find that "the defendant was an active participant in the chain of events that led to Ms. Cullen's death." Under the record before us, there is no basis to reverse the circuit court's judgment remanding the defendant to the Department for further treatment.

¶ 37 Barnes's testimony was corroborated by other evidence, including the testimony of Stevenson. She testified that she was with the defendant at the John DeShields housing complex and that the defendant left the housing complex with Cunningham on May 18, 2011, at around 5 p.m. This testimony corroborates Barnes's testimony that he was with the defendant at the housing complex on May 18, 2011, and that he and the defendant left with Cunningham that evening to rob someone at the "bingo hall."

¶ 38 On appeal, the defendant argues that Barnes demonstrated hatred and bias toward the defendant during his testimony and concludes, therefore, that his testimony was not credible. Specifically, during defense counsel's cross-examination of Barnes, the following took place:

> "Q. And eventually you lit a shirt and you lit the car on fire. Correct?
>
> A. Correct.
>
> Q. All right. And then—you said that [the defendant] and Latosha then walks back—walks back to Latosha's car?
>
> A. Yes.
>
> Q. All right. And you went a different direction?
>
> A. Yes.
>
> Q. Okay. And at some point I'm assuming they're driving around because you said they picked you up.
>
> A. *You a dead man*.
>
> Q. Excuse me?
>
> A. What?

Q. I said, I'm assuming they're driving around because you—I think your words were, they picked you, is that right?

A. Yes." (Emphasis added.)

¶ 39 After the questioning of Barnes ended, Barnes stated, "*You're a dead man. Put a bullet in your head, bitch*." (Emphasis added.)

¶ 40 On appeal, the defendant highlights these two outbursts as evidence that Barnes's "hatred for [the defendant] was so intense that he could not help but threaten [the defendant's] life on two occasions during his testimony." The defendant also emphasizes that the testimony of an accomplice witness has inherent weaknesses because it is the testimony from a confessed criminal and is fraught with dangers of motives such as malice toward the accused, fear, threats, promises or hopes of lenience, or benefits from the prosecution. When Barnes's testimony is discounted, the defendant continues, there was insufficient evidence to prove that he participated in the robbery or murder of Cullen. Instead, the evidence showed only that the defendant participated in the attempted use of Cullen's credit cards after completion of the crime. We disagree with the defendant's assertion that, because of these outbursts, a rational trier of fact is required to discredit Barnes's testimony concerning the defendant's involvement with Cullen's murder.

¶ 41 Here, Barnes testified before the circuit court, and the circuit court could determine what weight, if any, to give his testimony by observing his conduct and demeanor. The circuit court witnessed the outbursts and considered them in assessing Barnes's credibility and weighing the sufficiency of the evidence. Nothing about Barnes's outbursts would require a fact finder at a criminal trial to discredit his testimony

with respect to the events that occurred leading up to Cullen's murder. Furthermore, as noted above, Stevenson corroborated an important aspect of Barnes's testimony concerning the defendant leaving the John DeShields housing complex with Cunningham hours before the murder.

¶ 42 The defendant argues that Barnes's testimony conflicts with the video surveillance evidence. Specifically, the video showed the defendant, Barnes, and Cunningham leaving the BP gas station at 11:43 p.m. Barnes testified that they left the gas station and went to Falling Springs Road to set Cullen's car on fire. The surveillance video of the hospital ATM, however, shows the defendant in the Florida Gators hooded sweatshirt at the hospital ATM at 11:51 p.m., less than 10 minutes after the threesome left the gas station. The defendant concludes, therefore, that it was physically impossible for the defendant to have been with Barnes at the time the car was set on fire.

¶ 43 The State correctly notes that the time stamps on the surveillance videos from the gas station were inaccurate and that Officer Presson's estimations of the time differences were also objectively inaccurate. The State notes that "when comparing the times between the two surveillance videos after recreating Officer Presson's timing calculations, it becomes clear that the time differences of one hour and nine minutes behind (outdoor video) and approximately one hour ahead (indoor video) do not match up." Officer Presson did not explain how he determined the time differences, and the record does not otherwise establish the exact time in which the defendant, Barnes, and Cunningham actually left the gas station in the evening on May 18, 2011, after buying gas to burn Cullen's vehicle.

¶ 44 Furthermore, a reasonable jury could also conclude that, although the substance of Barnes's testimony was accurate with respect to the evening's specific events, he was mistaken about the sequence of the events after leaving the gas station and perhaps the trio went to the hospital ATM to try Cullen's credit card prior to returning to Falling Springs Road to set Cullen's car on fire.

¶ 45 Also, as noted above, Stevenson's testimony corroborates Barnes's testimony with respect to the defendant's involvement at the very beginning of the robbery; she testified that the defendant left the housing complex with Cunningham at 5 p.m. that evening. The surveillance video from the gas station showed that the defendant was still present with Cunningham when the materials used to murder Cullen (gas can and gas) were purchased. The surveillance video, therefore, supports the trial court's finding that the State presented sufficient evidence from which a reasonable fact finder could conclude that the defendant was an active participant in the chain of events that led to Ms. Cullen's death.

¶ 46 The defendant also argues that there were several phone calls between the defendant's phone and Cunningham's phone on the night of the murder "giving rise to the inference they were not together that night." Specifically, a call was made from the defendant's phone to Cunningham's phone at 7:25 p.m. on May 18, 2011, that lasted 20 seconds. Another call between the two phones was made at 7:40 p.m. that lasted approximately 12 minutes. There were also calls placed from Cunningham's phone to the defendant's phone at 8:09 p.m. and 10:29 p.m. Nothing in the record establishes who placed these calls or where the phones were located when the calls were made. In

addition, a reasonable jury could conclude that the calls at or near the time of Cullen's abduction were placed while the defendant rode in Cullen's car and Cunningham drove separately in her own vehicle. These phone calls fall far short of establishing that the State's evidence was insufficient to prove the defendant's guilt beyond a reasonable doubt in light of all of the evidence presented at the hearing.

¶ 47 The evidence presented at the discharge hearing was sufficient to prove that the defendant, Barnes, and Cunningham planned to rob someone leaving the Fireman's Hall in Collinsville on the evening of May 18, 2011; that the defendant actively participated in the planning and execution of the robbery and kidnapping of Cullen when she left the Fireman's Hall that evening; and that the defendant assisted Barnes in setting fire to Cullen's car while she was still alive in the vehicle's trunk. In addition to Barnes's testimony, Stevenson's testimony established the defendant's presence with Cunningham prior to the robbery, kidnapping, and murder, and the video surveillance evidence established the defendant's presence with Barnes and Cunningham during the course of the robbery, kidnapping, and murder on May 18, 2011, as well as his attempts to use her credit card after her death. The circuit court's finding of "not not guilty" at the discharge hearing is affirmed.

¶ 48 CONCLUSION

¶ 49 For the foregoing reasons, the judgment of the circuit court that remanded the defendant to the Department for further treatment is hereby affirmed.

¶ 50 Affirmed.