

SECOND DIVISION
September 1, 2015

No. 1-13-2461

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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. 09 CR 3581
)	
ROSLIND BALL,)	Honorable
)	Lawrence E. Flood,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Pierce and Justice Simon concurred in the judgment.

O R D E R

¶ 1 *Held:* Judgment entered on defendant's convictions of first degree murder and armed robbery affirmed over defendant's claim that the evidence was insufficient to establish her guilt of armed robbery based on the theory of accountability; mittimus corrected.

¶ 2 Following simultaneous but severed bench trials, the defendant, Roslind Ball, and codefendants, Tiffany Cox, Carmelita Hall and Miesha Nelson¹, were convicted of first degree murder and armed robbery based on a theory of accountability. Defendant was then sentenced to

¹ The codefendants have filed separate appeals, *People v. Cox*, No. 1-13-1363; *People v. Hall*, No. 1-13-3292; and *People v. Nelson*, No. 1-13-2157; and are not parties to this appeal.

consecutive, respective prison terms of 20 and 6 years on her convictions. On appeal, defendant contends that the State failed to prove her guilty of armed robbery beyond a reasonable doubt because it failed to show that defendants had the concurrent, specific intent necessary to promote or facilitate that offense where the removal and disposal of the victim's jacket was merely incidental to the planned offense of battery.

¶ 3 At trial, Bernetta Coker testified that shortly before 2 a.m. on February 1, 2009, she called police regarding a domestic situation and arranged to meet an officer at the corner of 82nd Street and Drexel Avenue. When she arrived at that corner, she saw a man running into the courtyard of an apartment building with four women chasing him. The man was later identified as Morris Wilson and the women were identified as the four defendants in this case. Coker stood behind a van in the street where she had a clear view of the courtyard and saw all four defendants beating Wilson with their fists. Wilson did not fight back or strike any of the women, and he reached his hand up to ring the bell for the building. Some people yelled from their apartment windows, and told the women to stop. Defendants, however, continued beating Wilson, and codefendant Cox responded to one woman "you come down and I will give you some of this beating too."

¶ 4 Coker testified that two of the defendants ran from the courtyard, then returned, and the four defendants resumed beating Wilson, who had collapsed and was lying on the ground. Coker saw all four defendants search through Wilson's pockets and remove his jacket. Codefendant Cox then said "[s]hit. He don't have no money anyway. He is broke. He don't have any money." Two of the defendants then ran from the courtyard carrying Wilson's jacket, which they left at the corner of 82nd Street and Drexel Avenue before running into a building.

¶ 5 Coker further testified that codefendants Cox and Nelson then exited the courtyard, and Cox grabbed Coker by the collar and asked her if she saw anything. Nelson told Cox to let go of Coker, and she did. Nelson then asked Coker if she wanted to buy some marijuana, and Coker declined. Coker told Cox that she did not see anything, but that a police officer was standing on the corner. Cox looked toward the officer, who was at the corner of 82nd Street and Drexel Avenue, then fled with Nelson.

¶ 6 Coker testified that she flagged down the police officer, who was responding to her domestic disturbance call. Coker told the officer that her situation was not important, but that a young man had been jumped by some girls and was lying in the courtyard, and she thought he was dead. The officer escorted Coker to her apartment to address her domestic situation, and when they reached her floor, another officer called and said that the man in the courtyard was dead. Coker then told the officer everything she saw, and he brought her back to the corner of 82nd Street and Drexel Avenue. As Coker sat inside a police car, she saw the four defendants with other officers. Shortly thereafter, a detective drove Coker to the police station where she identified Cox and Nelson in a lineup. Coker was unsure as to which of the other two defendants took Wilson's jacket because they ran quickly from the scene and she only got a glimpse of them.

¶ 7 Christina Roberts testified that about 2 a.m. on the date in question she heard several people shouting and arguing in the courtyard of her apartment building at 8545 South Drexel Avenue. She looked out the window of her third-floor apartment and saw Wilson running in the courtyard yelling for help, and four women chasing him. The four women punched and kicked Wilson, and one of them stabbed him in the chest with a knife. Roberts left the window and called police, and when she returned, Wilson was lying on the ground, calling for help and gasping for air as the women continued punching and kicking him. The women walked away and

stood at the courtyard gate, then one woman said "I'm going to get him," returned to Wilson and stabbed him again.

¶ 8 Bruce Thornton similarly testified that he heard yelling outside, looked out his second-floor apartment window into the courtyard below, and saw four women punching Wilson. Two of the women walked away, and the remaining two leaned over Wilson as he lay on the ground. The two remaining women then got up and walked towards the gate, and Thornton noticed that one of them was holding a shiny object. Later that afternoon, Thornton identified defendant and codefendant Nelson in a lineup.

¶ 9 Helen Jones testified that at 2 a.m. she was sitting in her car observing the stop sign at the corner of 82nd Street and Drexel Avenue when she saw four women cross the street in a single file line. A few minutes later, Jones was stopped in the middle of the street dropping off her cousin when she saw the same four women arguing with Wilson inside the courtyard of an apartment building. Jones turned her head to watch her cousin walk to her apartment building, and when she looked back into the courtyard, Wilson was lying on the ground in a fetal position, and the four women were kicking and punching him.

¶ 10 Etta Kelly testified that at 2 a.m. she awoke to yelling and arguing, and when she looked out her third-floor apartment window, she saw Wilson running in the courtyard being chased by four women. As Wilson attempted to enter different doors to the building, the women punched and kicked him, and he fell to the ground. The women stood over him, and Kelly heard Wilson say "oh, you gone stab me now." Kelly then observed one of the women holding what appeared to be a steak knife, and she made repeated stabbing motions in the direction of Wilson. The woman handed the object to a second woman, and the second woman then made repeated

stabbing motions at Wilson. Kelly yelled out her window and told the women to stop, and one of the women told her to mind her own business.

¶ 11 Kelly testified that she then observed two of the women search through Wilson's pockets and take his black jacket. Two of the women ran from the courtyard toward 82nd Street, and moments later, the remaining two women fled the courtyard with Wilson's jacket, heading towards 82nd Street, and dropped the jacket at the corner. When the last two women fled from the courtyard, they approached a woman who was standing in the street near a white van, spoke with her for a few seconds, then ran down the street. Kelly acknowledged that she had a history of drug addiction, and that she pled guilty to a drug charge the previous day, but testified that she was sober at the time of this incident, and that her drug use did not affect her memory.

¶ 12 Chicago police officer Cleveland Jones testified that he responded to the domestic disturbance call from Bernetta Coker, then became involved in the death investigation of Wilson. On his way to meet Coker, Officer Jones saw the four defendants walking quickly in a single file line at the corner of 82nd Street and Drexel Avenue. When he met Coker, she told him "[t]hose ladies you just passed they just beat a guy real bad down there." Officer Jones addressed Coker's domestic situation, then returned to the scene with her and left her inside his squad car. He entered the courtyard and saw Wilson lying unresponsive on the ground with blood on his face and clothing. A trail of blood led from the body out of the courtyard to the sidewalk and down the street to the corner where he previously saw the defendants walking. On the corner, the officer saw two dark colored jackets and a knife sticking up in the snow. He followed the blood trail to an apartment building at 8207 South Drexel Avenue, and saw the four defendants looking at him from a second-floor window. Officer Jones went back to the crime scene, then returned to the apartment building with additional officers. The defendants were still in the window, but as

police entered the gate to the building, they disappeared. Police detained codefendant Cox in her apartment, and defendant and the other two codefendants on the back porch.

¶ 13 The parties stipulated that deputy medical examiner Mitra Kalelkar concluded that the cause of death for Wilson was multiple stab and incise wounds, and the manner of death was homicide. They further stipulated that Wilson's blood was found on defendant's blue jeans, and that police recovered a bag of cannabis on or near Wilson's body.

¶ 14 Chicago police detective Andre Watkins testified that he and Assistant State's Attorney Scott Clark conducted a videotaped interview with defendant, which was played in court. During the interview, defendant stated that she was at Cox's apartment drinking with Cox, Hall, Nelson and Wilson when Nelson said that Wilson spat on her. Defendant heard someone else say that Wilson choked Nelson. Wilson left the apartment, and shortly thereafter, defendant and Cox went outside to go to a liquor store, and saw him standing in front of the apartment building. Defendant and Cox began arguing with Wilson, and Hall and Nelson came outside and joined them. Defendant stated that Wilson swung at one of them, and all four of them then began punching and kicking him, and he fell to the ground in front of the building. Defendant claimed that she kicked Wilson once or twice more, then told the other girls "let's go." She denied knowing how Wilson ended up in the courtyard and suggested that he walked there, then acknowledged that she entered the courtyard with the other women, and that Wilson was there. Defendant stated that she did not see anything happen in the courtyard, did not see anyone holding a knife during any part of the incident, and did not know who went through Wilson's pockets or took his coat. She claimed that she did not see anyone stab Wilson, but suggested that Nelson may have done so because he spat on her and hit her, or possibly Hall stabbed him.

¶ 15 The trial court gave a detailed analysis of the evidence presented and the theory of accountability, then found defendant and codefendants guilty of first degree murder and armed robbery. In subsequently denying defendant's motion for a new trial, the court rejected her claim that she was not legally accountable for the actions of her codefendants and expressly found that "there was more than sufficient evidence to hold her accountable" for the murder and armed robbery. The court then sentenced defendant to consecutive prison terms of 20 years for murder and 6 years for armed robbery.

¶ 16 On appeal, defendant first contends that the State failed to prove her guilty of armed robbery beyond a reasonable doubt because it failed to show that defendants had the concurrent, specific intent necessary to promote or facilitate that offense where the removal and disposal of Wilson's jacket was merely incidental to the planned offense of battery. Defendant argues that they never intended to rob Wilson, that the removal of his jacket was a spontaneous, unanticipated act by some members of the group, and that she did not agree to, or participate in, that act. Defendant acknowledges that there was a common plan to physically attack Wilson, but claims that because the act of taking his jacket was not done "in furtherance of" the physical attack, she cannot be held accountable for armed robbery.

¶ 17 The State responds that, based on defendant's agreement to participate in the beating of Wilson, she is legally accountable for all of the acts and conduct committed by her codefendants before and during the murder, including the armed robbery. The State asserts that the supreme court has already rejected defendant's argument and held that the State does not need to show that there was a concurrent, specific intent to commit the armed robbery.

¶ 18 When defendant claims that the evidence is insufficient to sustain her conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light

most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *Baskerville*, 2012 IL 111056, ¶ 31.

¶ 19 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt (*People v. Givens*, 237 Ill. 2d 311, 334 (2010)), nor simply because defendant claims that a witness was not credible or that the evidence was contradictory. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 20 Here, defendant focuses solely on her conviction of armed robbery under a theory of accountability. To prove defendant guilty of armed robbery in this case, the State was required to show that defendants knowingly took Wilson's jacket from his person or presence by the use of force, or by threatening the imminent use of force, while being armed with a knife. 720 ILCS 5/18-2(a)(1) (West 2008). In Illinois, a person is legally accountable for another's conduct when, either before or during the commission of an offense, and with the intent to promote or facilitate its commission, she solicits, aids, abets, agrees or attempts to aid the other person in the planning or commission of that offense. 720 ILCS 5/5-2(c) (West 2008); *People v. Fernandez*, 2014 IL 115527, ¶ 13. To prove that defendant had the intent to promote or facilitate the offense, the

State may present evidence that *either* (1) defendant shared the criminal intent of her codefendants, *or* (2) there was a common criminal design. *Fernandez*, 2014 IL 115527, ¶ 13.

¶ 21 Under the common design rule, where two or more people engage in a common criminal design or agreement, any acts in furtherance of that design by one person are considered to be the acts of all parties involved in the design or agreement, and each person is equally responsible for the consequences of the further acts. *People v. Cooper*, 194 Ill. 2d 419, 434-35. In other words, where defendant aids another in committing an offense, she is legally accountable for the conduct of the person she aids, and such conduct " 'encompasses *any criminal act done in furtherance of the planned and intended act.*' " (Emphasis in original.) *Fernandez*, 2014 IL 115527, ¶ 16, quoting *People v. Kessler*, 57 Ill. 2d 493, 497 (1974).

¶ 22 Evidence that defendant voluntarily attached herself to a group bent on illegal acts with knowledge of its design supports an inference that she shared the group's common purpose and will sustain her conviction for an offense committed by a codefendant. *Fernandez*, 2014 IL 115527, ¶ 13. Words of agreement are not necessary, and the trier of fact may infer defendant's accountability from the surrounding circumstances. *Cooper*, 194 Ill. 2d at 435. Factors the trier of fact may consider when determining defendant's accountability include her presence during the offense, her flight from the scene, her close affiliation with her companions after the offense, and her failure to report the crime. *People v. Perez*, 189 Ill. 2d 254, 267 (2000). Moreover, proof of a preconceived plan or agreement to commit the offense is not required where the evidence shows that defendant was involved in the spontaneous criminal acts of her codefendants. *Cooper*, 194 Ill. 2d at 435.

¶ 23 Viewed in the light most favorable to the State, we find that the evidence sufficiently established that the taking of Wilson's jacket was an act done in furtherance of the attack on

Wilson, and that defendant is therefore legally accountable for the armed robbery. Several witnesses testified that they observed the four defendants collectively punching and kicking Wilson as he lay on the ground in the courtyard. Coker testified that she saw all four defendants searching through Wilson's pockets and heard Cox remark that Wilson was broke and had no money. Coker also saw defendants remove Wilson's jacket, which two of the defendants carried out of the courtyard and discarded at the corner. Roberts testified that she saw one of the defendants stab Wilson with a knife while the other defendants were punching and kicking him, and that after the women walked away from Wilson, one of them said she was going to get him, and returned and stabbed him again. In addition, Kelly saw one of the women repeatedly stab Wilson with what appeared to be a steak knife, then saw that woman hand the object to a second woman, who also repeatedly stabbed Wilson. Kelly also saw two of the women search through Wilson's pockets and take his jacket before fleeing from the courtyard and dropping the jacket at the corner.

¶ 24 This evidence clearly refutes defendant's claim that the taking of Wilson's jacket was merely incidental to the physical attack and nothing more than a random act. The evidence overwhelmingly established that defendants forcibly took Wilson's jacket from him while armed with a knife, and thus, the act constituted an armed robbery. The evidence further shows that Wilson's jacket was forcibly removed from his body during the physical attack, and therefore, it was reasonable for the trial court to find that such act was done in furtherance of the planned and intended attack on him.

¶ 25 Contrary to defendant's assertion, the State did not need to show that the defendants had a concurrent, specific intent to commit the armed robbery. The State had to show *either* that defendant shared a criminal intent with her codefendants, *or* that there was a common criminal

design. *Fernandez*, 2014 IL 115527, ¶ 13. Here, the evidence showed, and defendant acknowledges, that there was a common criminal design to attack Wilson, and the trial court found that the armed robbery was in furtherance of that planned attack. Accordingly, the State was not required to establish a separate specific intent to commit the armed robbery, for once defendant agreed to participate in the physical attack on Wilson, she was legally accountable "for every criminal act committed 'in connection therewith.'" *Fernandez*, 2014 IL 115527, ¶ 16.

¶ 26 In reaching this conclusion, we reject defendant's assertion that the evidence was insufficient due to discrepancies in the witnesses' testimony regarding the number of defendants who searched Wilson's pockets, and the fact that only two witnesses testified that they saw defendants search his pockets and take his jacket. Variations in witness testimony are to be expected. *People v. Howard*, 376 Ill. App. 3d 322, 329 (2007). "It is not the role of this court to reevaluate the credibility of witnesses in light of inconsistent testimony and ostensibly retry the defendant on appeal." *Howard*, 376 Ill. App. 3d at 329, citing *People v. Milka*, 211 Ill. 2d 150, 178 (2004). As the trier of fact in this case, the trial court was in the superior position to assess the credibility of the witnesses, observe their demeanor and weigh their testimony. *People v. Austin*, 349 Ill. App. 3d 766, 769 (2004). Here, the trial court expressly found that "there was more than sufficient evidence to hold her accountable" for both the murder and the armed robbery, and we find no reason to disturb its findings.

¶ 27 Defendant next contends, and the State agrees, that her mittimus must be amended because it erroneously shows that she was convicted of five separate counts of first degree murder when there was only one victim in this case. The parties further agree, and we concur, that defendant's conviction under count 1 for the intentional murder of Wilson should stand because it is the most serious charge, and that the four remaining murder convictions should be

vacated. *People v. Cardona*, 158 Ill. 2d 403, 411 (1994). Pursuant to Rule 615(b)(1) (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999)), we vacate defendant's murder convictions under counts 2, 3, 4 and 5 (*Cardona*, 158 Ill. 2d at 411), and direct the clerk of the circuit court to amend the mittimus to reflect this modification. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 28 Accordingly, we vacate counts 2 through 5, direct the clerk of the circuit court to amend the mittimus to reflect this modification, and affirm defendant's remaining convictions and sentences in all other respects.

¶ 29 Affirmed; mittimus amended.