2012 IL App (2d) 101043-U
No. 2-10-1043
Order filed October 12, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 08-CF-264
DONNELL D. GREEN,	)	Honorable Fred L. Foreman,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant was properly found guilty of murder under a theory of accountability.

¶ 2 Following a jury trial, defendant, Donnell D. Green, was convicted of two counts of first-degree murder under theories of accountability. Defendant was charged by indictment with three counts of first degree murder; count I alleged that defendant and Chappel Craigen committed the offense of first degree murder in that they "without lawful justification and with intent to kill Jimmie Lewis, shot [him] with a gun, thereby causing [his] death" (720 ILCS 5/9-1(a)(1) (West 2006));

count II alleged that they "without lawful justification shot Jimmie Lewis with a gun, thereby causing [his] death" (720 ILCS 5/9-1(a)(1) (West 2006)); and count III alleged that they "shot Lewis in the body with a gun, knowing said acts created a strong probability of death or great bodily harm to [him] thereby causing the death of Lewis" (720 ILCS 5/9-1(a)(2) (West 2006)). The jury found defendant not guilty of count I, but guilty of counts II and III. The trial court sentenced him to a total of 35 years' imprisonment. Defendant appeals, contending that the State failed to prove beyond a reasonable doubt that he was accountable for the murder because "there was no evidence that he shared the principal's intent to shoot at the decedent or knowingly participated in a common design to accomplish the shooting." For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 18, 2007, Jimmie Lewis was killed while riding as a passenger in a Cadillac driven by Danny Williams (a.k.a. "Keeko"). Lewis' death was caused by multiple gunshot wounds.

¶ 5 At trial, Tiffany Bishop testified that, on the night of the shooting, she was a passenger in the back seat of the Cadillac, seated directly behind Lewis. Williams was driving, and her friend, Alana Herrera, was in the back seat behind him. As they drove past a nursing home on 14th Street in Waukegan, multiple shots were fired that shattered the front passenger window. Bishop stated that she ducked to the floor in the back seat and called 911 from her cell phone. Williams drove immediately to the hospital, but by the time they arrived, Lewis was deceased.

¶ 6 City of Waukegan police detective Dominic Cappelluti testified that he investigated Lewis' death as a homicide. As a result of the investigation, defendant, Craigen, Harmon and Emmanuel Johnson[1], were named as suspects. Cappelluti testified that the police were unable to locate any of

[1]Johnson was never arrested; he was murdered prior to defendant's trial.

the suspects until October 26, 2007, when Craigen and Harmon were arrested in Milwaukee in connection with an unrelated incident. Defendant was not located until January 2008, when he was arrested in Clarksdale, Mississippi, for delivery of crack cocaine. On January 15, 2008, Cappelluti and his partner, detective Scott Thomas, learned through the "National Crime Investigation System" data base that defendant and Craigen were located in Clarksdale, Mississippi. Cappelluti and Thomas drove to Clarksdale to interview defendant.

¶ 7 Cappelluti testified regarding the interview that took place on January 16. After receiving *Miranda* warnings, defendant gave a statement. Defendant's video-recorded statements to the police were played for the jury.

¶ 8 According to defendant's statement, he, Craigen, Johnson, and Harmon were driving together on the night of the shooting. Craigen was driving with defendant in the passenger seat, Johnson in the back seat behind defendant, and Harmon in the back seat behind Craigen. On their way to a liquor store, they passed a Cadillac being driven by a person known to them as "Keeko." Keeko was part of a group (a street gang nicknamed "the Moes") that was involved in a recent altercation with defendant and his companions. Upon seeing the Cadillac, defendant stated that everybody in the car said "that's them, that's them" meaning "that's the Moes *** that's Keeko." Defendant's car, driven by Craigen, made a U-turn and followed the Cadillac for approximately seven city blocks. Defendant stated that everyone in the car "got excited." During the time they were following the Cadillac, defendant stated that he "grabbed the gun from the middle console *** I grabbed the gun first." When he grabbed the gun, defendant told his companions "I'll do it," meaning he would shoot at the Cadillac. However, instead of shooting, he passed the gun to Johnson, who was behind him. Johnson did not fire, but passed the gun to Harmon, seated directly behind the driver, Craigen. When

their car pulled up on the right side of the Cadillac, Harmon shot multiple times, hitting Lewis. When Harmon shot, defendant said he pulled his hood up over his head.

¶ 9 After the shooting, defendant and his companions went to Johnson's home. Defendant thought that Johnson took the gun into the basement of his building. Defendant also stated that he and the others went to Milwaukee, where Craigen and Harmon were arrested. After that, defendant returned to Waukegan, but became concerned after several police officers came to his father's house in Zion looking for him. Defendant stated he later went to Mississippi because he "thought he was wanted for murder."

¶ 10 Officer Russell Ewert of the Milwaukee Police Department, testified that on October 26, 2007, he and his partner tried to stop a "tan" Saturn with a broken headlight. The Saturn sped off and crashed into a front yard after missing a turn. The driver and a passenger fled on foot. The officers caught up with them and, while taking them into custody, several "subjects" came out of a nearby house and confronted them. Several other police officers arrived and two of the "subjects," Craigen and Jabril Harmon, were arrested for obstructing the arrests of the occupants of the car. Ewert stated that five or six other individuals also came out of the house and were in the yard, but they were "not quite as vocal" as Craigen and Harmon. Ewert could not identify defendant as one of those individuals.

¶ 11 Detective Larry Holman of the Waukegan police department testified that on October 27, 2007, he received a call from the Milwaukee Police Department indicating that Harmon and Craigen were in custody. Holman and his partner drove to Milwaukee and returned to Waukegan with Harmon; Craigen refused to leave Milwaukee. When they arrived in Waukegan, Harmon was interviewed regarding the Jimmy Lewis murder. Craigen was not arrested at that time.

¶ 12 Corporal Joseph Wide testified that he was a narcotics investigator with the Clarksdale, Mississippi, police department. He stated that defendant was arrested on January 15, 2008, and that Craigen was arrested about a week earlier. They were both charged with drug offenses. Wide stated that the National Crime Investigation System indicated that the Waukegan police department wished to talk to him. After the Waukegan detectives interviewed defendant, he was released from the Clarksdale police department custody. Defendant was never tried on the drug charges because the "confidential informant" who was the primary witness in that case was murdered.

¶ 13 The defense presented the following witnesses.

¶ 14 Alana Herrera testified that, on October 18, 2007, she was a passenger in the back seat on the driver's side of the car Williams was driving. She stated that she saw a handgun sticking out of the driver's window of the other car. She could not tell whether it was the passenger from the back seat or the driver who was shooting.

¶ 15 Brian Gay was a resident at the nursing home on 14th Street on October 18. He testified that he was looking out of his window when he heard seven or eight gunshots, and saw flames coming from the driver's side of one of the cars outside on the street.

¶ 16 Defendant testified that in October 2007 he was living in Zion with his parents and three siblings. He knew many gang members but was never in a gang. On October 18, 2007, he was at a card party and decided to go with Craigen, Harmon and Johnson to a liquor store. Defendant was seated in the passenger seat of the car, Johnson was behind him, and Harmon was behind Craigen. He stated that Craigen turned the car around and started following an "Eldorado." Craigen pulled out a gun and put his window down. When they caught up to the "Eldorado," Craigen started shooting. Defendant pulled a hat over his head and prayed. After the shooting, Craigen drove to

Johnson's house; defendant stayed in the car while the other three went into the house. They came out after about five minutes and then defendant asked Craigen to drive him home to Zion.

¶ 17 Defendant denied ever going to Milwaukee. He denied knowing that Craigen was in Mississippi. He stated that the first time he saw Craigen was when the Clarksdale police brought him into the room with defendant. Defendant was "shocked" that Craigen was there.

¶ 18 Defendant stated that he gave two statements while talking to the Waukegan police; one was not recorded, and the other was on the video. Defendant explained that he was trying to cooperate with the police on the recorded statement. He denied saying "that's them" and he denied taking the gun out of the console and handing it to anyone, although he admitted to making statements to that effect on the videotape.

¶ 19 The jury found defendant not guilty as charged in the indictment of count I, which required proof of intent to kill. The jury found defendant guilty of counts II and III, first-degree murder under a theory of accountability. Defendant was sentenced to a total of 35 years' imprisonment.

¶ 20 Defendant timely filed this appeal.

¶ 21 II. ANALYSIS

¶ 22 A. Standard of Review

¶ 23 On appeal, defendant argues that the State did not meet its burden of proving that defendant was accountable for the murder because there was a reasonable doubt as to whether he "intentionally participated in either the principal's plan to fire a gun at the Cadillac passengers or a common design to accomplish the shooting." In his brief, defendant admits that his pretrial statement given to Cappelluti accurately identified Craigen as the driver and Harmon as the shooter, and, further, he admits that it was he who removed the gun used by Harmon from the car's console and handed to

Johnson, who was seated behind him in the car. Therefore, defendant contends, since none of the critical facts are contested, the issue is a legal question of whether the jury's finding that defendant was accountable for the shooting was supported by the evidence. Defendant cites *People v. Chirchirillo*, 393 Ill.App.3d 916, 921-922 (2009) for the following proposition: "[b]ecause the relevant facts are uncontested and the issue concerns whether these uncontested facts establish the elements of unlawful possession of a weapon by a felon under an accountability theory, we review *de novo* defendant's claim." In *Chirchirillo*, this court found that the evidence was insufficient to support a conviction for unlawful possession of a weapon by a felon under an accountability theory, where there was no evidence to establish that the principal, who possessed the weapon, was a convicted felon. *Id*. at 922.

¶ 24 The State argues, and we agree, that because at trial the relevant facts were contested, our review is not *de novo*. Defendant's trial testimony contradicted portions of his previous statement. At trial, defendant testified that, on the night of the shooting, he was in the car driven by Craigen. He stated that Craigen followed the Cadillac and when their car caught up to it Craigen pulled out a gun, rolled down the window and started shooting. Craigen drove away and they went to Johnson's house while defendant stayed in the car. Craigen then drove defendant to his home in Zion. He denied going to Milwaukee. He went to Clarksdale, Mississippi, because he had family there and was arrested on January 15, 2008, for a drug charge. When he went to Clarksdale he did not know that Craigen was there, and while there he never saw Craigen until the day of his arrest. He gave the statement to the police because he wanted to cooperate.

¶ 25 However, defendant admitted in the video statement that he was not only present in the car, but that he took the gun out of the console, saying "I'll do it." Further, he remained with the group

when they disposed of the gun, traveled to Milwaukee with the same individuals, and later fled to Mississippi when he realized the police were looking for him. Defendant had also testified at a hearing on a motion to suppress his statement that he was in Clarksdale for a month and a half before his arrest in January 2008, and that he saw Craigen every day during that time.

¶ 26 Where a defendant challenges his conviction as based on insufficient evidence, we must determine whether, after considering *all* of 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. Siguenza-Brito*, 235 Ill.2d 213, 224(2009).

¶ 27 B. Reasonable Doubt

¶ 28 For purposes of this appeal, defendant no longer disputes the following evidence adduced at trial. On the night of the shooting, defendant, Craigen, Johnson, and Harmon were driving together to a liquor store when they passed a Cadillac being driven by Keeko. Craigen was driving, defendant was in the passenger seat, Johnson was in the back seat behind defendant, and Harmon was in the back seat behind Craigen. Upon seeing the Cadillac, everyone in the car said "that's them, that's them," which, according to defendant, meant "that's the Moes *** that's Keeko"; Keeko was part of a group called "the Moes" that had recently fought with defendant and his companions. Craigen made a U-turn and began to follow the Cadillac for approximately seven blocks. Everyone in the car "got excited." During the time they were following the Cadillac, defendant grabbed a gun from the middle console and told his companions "I'll do it," meaning he would shoot at the Cadillac. However, instead of shooting, he passed the gun to Johnson, who was seated behind him. Johnson did not fire, but passed the gun to Harmon. When their car pulled up on the right side of

the Cadillac, Harmon shot multiple times, hitting Lewis. When Harmon shot, defendant pulled his hood up over his head.

¶ 29 After the shooting, defendant and his companions went to Johnson's home. Defendant thought Johnson took the gun into the basement of his building. Subsequently, Craigen and Harmon were located in Milwaukee and arrested there. Harmon was returned to Illinois on charges related to this incident.

¶ 30 Defendant argues that these events do not constitute proof beyond a reasonable doubt that defendant knowingly participated in the shooting. Defendant asserts that his removal of the gun from the car's console and handing it to another passenger did not render him accountable for the shooting committed by Harmon because this did not prove intentional participation in the crime. He argues that, although he pulled out the gun and said "I'll do it," he was not accountable because, according to the evidence, neither he nor the person to whom he handed the gun actually shot.

¶ 31 Under Illinois law, a person is legally accountable for another's criminal conduct when "[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense. (720 ILCS 5/5-2(c) (West 2006))." *People v. Gibson*, 403 Ill.App.3d 942, 950 (2010). While mere presence or negative acquiescence is not enough to establish that a person is a principal, one may aid and abet without actively participating in the overt act, but "if the proof shows that a person was present at the commission of the crime without disapproving or opposing it, it is competent for the trier of fact to consider this conduct in connection with other circumstances and thereby reach a conclusion that such person assented to the commission of the crime, lent to it his countenance and approval and was thereby aiding and abetting the crime."

People v. Kessler, 57 Ill. 2d 493, 498-499 (1974). In other words, circumstances may show there is a common design to do an unlawful act to which all assent, and whatever is done in furtherance of the design is the act of all, making each person guilty of the crime. *Id.* "Under accountability, the common design rule provides that an act by one in furtherance of the crime is the act of all." *People v. Jackson*, 333 Ill. App. 3d 962, 968 (2002). "Among the factors the jury may consider in determining whether a defendant is legally accountable for another person's acts are: (1) proof that the defendant was present when the crime was perpetrated; (2) proof that he maintained a close affiliation with his companion after the crime was committed; (3) whether the defendant reported the crime to the police; and (4) whether the defendant fled the scene." *People v. Reeves*, 385 Ill.App.3d 716, 727 (2008).

¶ 32 We reject defendant's argument that, "at the worst," the State proved that defendant "briefly considered firing the gun but abandoned that notion and passed the gun to Johnson without any awareness of what might next be done with it." The evidence established that defendant was not only present at the time of the shooting, he acted by taking the gun out of the console and announcing "I'll do it." Defendant maintained a close relationship with the others in the car. He was present when the gun was disposed of. He did not report the crime and he fled from the area because he "knew the police were after him." We find that defendant's voluntary and continued association with Craigen, Harmon and Johnson supports the inference that they shared a common purpose. There need not be evidence of words of agreement to establish a common purpose; a common design can be inferred from the circumstances. *Reeves*, 385 Ill. App. 3d at 727. We believe there is sufficient evidence relating to the factors set forth in *Reeves* to determine that defendant is guilty by accountability.

¶ 33 Finally, we address defendant's argument that guilt by association is a "thoroughly discredited doctrine" (*People v. Perez*, 189 Ill. 2d 254, 296 (2000)) and that evidence that defendant's "circle of friends" included gang members did not give rise to a legitimate inference that he shared in any criminal intent or that he participated in a common design. Defendant's testimony that he knew "a numerous amount" of gang members but was never in a gang himself is superfluous. Defendant ignores that the evidence presented went far beyond a mere association with known gang members. In this case, defendant was properly found accountable for murder because the inference of guilt was drawn from his participation in the events of the night of October 18, not from his association with gang members.

¶ 34 Therefore, we hold that defendant was proven guilty beyond a reasonable doubt of murder under an accountability theory.

¶ 35 III. CONCLUSION

¶ 36 The judgment of the circuit court of Lake County is affirmed.

¶ 37 Affirmed.