

2012 IL App (2d) 101321-U
No. 2-10-1321 & 2-10-1326, consol.
Order filed May 25, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.	)	No. 10-CF-1744
)	
SEAN R. PARKER, SR.,	)	Honorable
	)	Thomas E. Mueller,
Defendant-Appellant.	)	Judge, Presiding.

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.	)	No. 10-CF-1745
)	
BRIDGET A. IVANOV,	)	Honorable
	)	Thomas E. Mueller,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Jorgensen and Justice McLaren concurred in the judgment.

ORDER

Held: The evidence regarding accountability and lack of justification was sufficient to support beyond a reasonable doubt the defendants' convictions for armed violence.

¶ 1 Following a jury trial, the defendants Sean Parker, Sr., and Bridget Ivanov were convicted of armed violence, and both were sentenced to 14 years' imprisonment. Parker and Ivanov have appealed their convictions, arguing that certain aspects of the State's case against them were not proven beyond a reasonable doubt. We consolidated their appeals and now affirm.

¶ 2 BACKGROUND

¶ 3 At about 11 p.m. on July 9, 2010, near the intersection of Lincoln Avenue and Galena Boulevard in Aurora, Victorino Fuentes received five stab wounds and two lacerations. Police were called to the scene, and Parker and Ivanov were arrested less than two blocks away. Both had blood on their clothes. The blood on Parker's t-shirt was later determined to be consistent with Fuentes' DNA, and a bloody knife was found in Ivanov's purse. Both Parker and Ivanov were charged with one count of armed violence (720 ILCS 5/33A-2(a) (West 2010)), one count of attempted first-degree murder (720 ILCS 5/9-1(a)(1) (West 2010)), and two counts of aggravated battery (720 ILCS 5/12-4(a) (West 2010)). Just before trial, the State nol-prossed the two counts of aggravated battery for each defendant. The remaining charges in both cases were tried together before a jury between November 1 and 3, 2010. The following evidence was presented at trial.

¶ 4 At the time of the incident, Angelo Lopez was working at Randall Liquors near the intersection of Lincoln and Galena. The liquor store was situated along a long driveway that ran from the street (Galena) to a parking lot at the back of the store. The glass entrance and exit doors, and one window, were located on the side of the building, facing the driveway. The window was mostly covered by signs. The store was next door to a corner gas station; a fence ran along the side of the driveway separating the two businesses.

¶ 5 At about 11 p.m., Lopez was in the freezer stocking beer when he noticed a commotion and came out of the freezer to see what was going on. He went to the store doors and saw a man (Fuentes) on the floor halfway into the entrance to the store, bleeding “a lot.” He did not see what had happened to Fuentes to make him bleed. When Lopez got to the store doors, he went outside and saw a woman outside putting something into her little black purse. He later identified the woman as Ivanov. By then, someone was helping Fuentes get into his white truck, which had been parked right in front of the doors. Between 7 and 10 people had gathered. He saw Parker too, but at that point Parker was “nowhere by the liquor store”; he was down the driveway “by the sidewalk.” Parker began walking away, and Ivanov followed him and left with him. Parker was wearing a black knee brace that went from his calf to his thigh. The brace, which had metal rods and did not bend, was entered into evidence as an exhibit. Lopez admitted that he had two prior convictions, for burglary and discharge of a firearm.

¶ 6 Jose Cuacuas was the other employee working at the liquor store that night. He was at the cash register, which was right by the exit door. At about 11 p.m., he noticed that a white truck had parked outside the doors. The driver (Fuentes) got out and began talking, behind his truck, to a woman who came from the parking lot behind the liquor store. Cuacuas did not see what happened next because he was taking care of a customer. When he looked out again, a black man with something wrapped around his leg was fighting with Fuentes. They were both fighting with each other. Cuacuas called 911 to report the fight. He looked out the window again and saw the woman “on top of” Fuentes, stabbing him. Fuentes was on the ground. He then returned to tending to his customers, who were scared, and the police called back. He told them that people were fighting

outside the store and one person was bleeding, and asked them to come. Fuentes got into his truck and drove away. There were about six or seven customers in the store at this point.

¶ 7 The police arrived a few minutes later, and Cuacuas told them what had happened. On cross-examination, Cuacuas was asked whether he told the police that the black man had been “sitting on” Fuentes when they were fighting. Cuacuas stated that he did not recall using that phrase but if he did he had meant “on top of” Fuentes. The black man had not been sitting on Fuentes, Fuentes was on the ground and the black man had been bending over him. Cuacuas then went with the police to a place where they were holding two people, a white woman and a black man. Cuacuas identified them as the people who had attacked Fuentes. At trial, Cuacuas identified Ivanov as one of the people involved in the attack, but he did not recall the face of the man who fought with Fuentes, only that he wore a big leg brace. Cuacuas admitted that he was not in this country legally.

¶ 8 Aurora police officer Aendri Decker testified that he was on patrol when he received a report of a person being stabbed at Randall Liquors, and a description of the two people involved in the attack. He located Parker and Ivanov at LaSalle and Galena, about a block and a half away from Randall Liquors, and approached them. Parker was wearing a leg brace. They did not attempt to flee, and were cooperative. Decker patted them down for weapons, and then asked them where they were coming from and what they had been doing. Parker had blood on his shirt, and Ivanov was carrying a small black bag with a knife in it. Decker identified a folding knife in an evidence bag as the knife found in Ivanov’s purse.

¶ 9 Aurora police officer John Shepherd arrived at Decker’s location a few minutes after Decker. He saw Decker talking with Parker and Ivanov, whom he described as intoxicated and shouting loudly. Shepherd spoke with Parker, who said that he had been drinking across the street from the

liquor store and did not see what happened when Ivanov stabbed Fuentes. After Parker and Ivanov were taken into custody, Shepherd collected various items including the bloody knife from Ivanov's purse, Parker's leg brace, and the bloody shirts that both were wearing. He placed them into evidence bags and sealed them. Parker's shirt had to be placed in a dry locker before it could be bagged, because it was wet with blood.

¶ 10 Various other Aurora police officers then testified, confirming that both Lopez and Cuacuas had been brought to the place where the police had stopped Parker and Ivanov, and they identified Parker and Ivanov as the people involved in the fight with Fuentes. Police officers took pictures at the scene (of the entrance to the liquor store, blood on the pavement outside the entrance door to the liquor store, and drops of blood on a dollar bill on the cashier's counter) and at the hospital (of Fuentes' wounds, and the blood on the passenger side door panel and on the seats of Fuentes' truck in which Martinez drove Fuentes to the hospital). In addition, the knife recovered from Ivanov's purse was photographed in the open position alongside a ruler that indicated that the blade of the knife was in excess of three inches. Another officer obtained buccal swabs from Fuentes and Parker, sealed them in bags, and sent them to the Illinois State Police forensic laboratory, along with some of the other physical evidence. Illinois State Police forensic scientists testified that they tested pieces of Parker's shirt that had blood on them and found that the DNA in the bloody shirt was consistent with Fuentes' blood, and did not match Parker's own DNA.

¶ 11 Fuentes testified that, on July 9, 2010, he came into Aurora to pay his rent to his landlord, Jesus Martinez, who was also his ex-brother-in-law. The two began drinking at about 6 p.m., and each consumed about six beers, finishing a 12-pack between them. Fuentes left, intending to get gas for his white Yukon at the gas station on the corner of Lincoln and Galena. He was stopped at a red

light at that intersection, waiting to turn left toward the gas station, when he saw two black men cross the street in front of him and turn down the sidewalk, heading the opposite direction from the direction Fuentes' truck was facing. He then saw an image in his rearview mirror as if they were crossing the street again. Then his door was pulled open and someone pulled Fuentes. Fuentes put the truck in park and ended up outside the truck. He punched the person who had pulled him out of the truck, then felt someone hit him in the ribs from behind. He jumped back into the truck and hit the gas, accelerating hard as he made a left turn onto Galena. Fearing that he was going too fast to turn into the gas station and that he might hit the fence, Fuentes turned into the next driveway, which was that of Randall Liquors. He saw people near the store and thought they might help him, although he was not really thinking at that point. He drove down the driveway to the parking lot in back, made a U-turn, and parked his truck in front of the doors of the liquor store.

¶ 12 Fuentes testified that he got out of his truck and began walking behind it to go into the store, when he saw a black man charging at him. At trial, he identified the man as Parker. The man was coming at him and Fuentes swung at the man. They ended up fighting near the passenger door to Fuentes' truck. Parker hit Fuentes a couple of times with his fist. Fuentes then heard a "girl" behind him screaming "that's what you get." Although he did not feel the wounds at the time, he did get stabbed, and he felt something wet dripping out of him. He fell down for a minute and then got back up, and he and Parker fought a little longer. Then someone from the store came and broke up the fight. He turned around toward the back of his truck and saw a woman whom he identified in court as Ivanov walking away. Fuentes got back into his truck and drove back to Martinez's house, which was "just around the corner." Martinez took him to the hospital. He had seven stab wounds, one

on the back of his head, three on the left side of his torso, one on his right arm, one on his right shoulder, and one on his right leg.

¶ 13 On cross-examination, Fuentes agreed that, when he was interviewed at the hospital that night, he might have told police that he was stabbed once when he was pulled out of his car at the traffic light, but he did not know if in fact he was stabbed then. He felt a sharp punch that was hard. However, he did not remember telling the police that one of the men hit him with an unknown object and he thought he had been stabbed because of a sudden increase in pain. He told the police that the two black men at the traffic light were talking s*** to him, and that he knocked one of the men down. He did not recall telling the police that he got away from the men and drove to Martinez's. In fact, he drove to the liquor store. He agreed that he told the police that one of the men who attacked him was wearing orange clothing, and that the woman had dark clothing, but denied saying that she had dark skin. Fuentes admitted that he had been drinking, but denied being intoxicated at the time of the incident. In response to questions from the defense attorney, Fuentes denied that he had gone to the liquor store to look for sex, or that he had torn Ivanov's shirt when she told him no.

¶ 14 Dr. Kevin Chorvat testified that he had been working at Provena Mercy Hospital in Aurora on July 9, 2010, when Fuentes was brought into the emergency room with multiple stab wounds. Dr. Chorvat testified about the nature of the wounds. Fuentes received a tetanus shot, antibiotics, and a CT scan to check for internal injuries. Dr. Chorvat also performed exploratory surgery in which he inserted a tiny camera into some of the wounds. None of the wounds perforated Fuentes' abdominal cavity. Fuentes was in substantial pain when he was brought in. A check of Fuentes' blood showed a serum blood alcohol level of 211 milligrams per deciliter, which Dr. Chorvat testified would translate to a blood alcohol content of .211, more than twice the .08 legal limit for

driving. Dr. Chorvat had been working in the emergency room for six and a half years. On average, they usually saw four or five drunks a night. Fairly frequently, these drunks would have a blood alcohol level of .2 or higher. This did not always mean that they were falling down drunk; he had seen people who were highly functional at that level. Aurora police officer Derrick Hight testified that he saw Fuentes at the hospital on the night of July 9, 2010. Hight testified at trial that Fuentes had been “very upset, emotional, [and] angry,” but conceded on cross-examination that he had described Fuentes in his report as extremely uncooperative, belligerent and combative with hospital staff.

¶ 15 The defense put on two witnesses. The first was Aurora police officer Edgar Gallardo. On July 10, 2010, Gallardo interviewed Fuentes in the hospital after his surgery, when he was in the recovery room. Fuentes was in visible pain. However, Gallardo testified that Fuentes seemed to understand Gallardo’s questions, and answered coherently, although during the interview Fuentes would occasionally stop and catch his breath before continuing to speak. Gallardo testified that, during the interview, Fuentes gave a different version of the previous evening’s events than the account Fuentes presented at trial. For instance, Fuentes said that, although he had been drinking on July 9, he was not intoxicated. In describing the events at the traffic light, Fuentes told Gallardo that when he fought with the two men he knocked one of the men down, and that man put his hand on the fender of the truck when the man stood back up. Fuentes also said that he thought he had been stabbed during the altercation at the traffic light, although he did not know for sure, because he felt a sudden increase in pain. Fuentes told Gallardo that, when he got out of his truck at the liquor store, a man came up to Fuentes and told him that he was bleeding. When Fuentes began fighting with another man in front of the liquor store, he again felt a sudden increase in pain and so

he thought he might have been stabbed then. Finally, according to Gallardo, Fuentes described the woman who shouted at him as having dark skin and dark clothing.

¶ 16 The other defense witness was Ivanov. Ivanov testified that Parker was her boyfriend. On the evening of July 9, 2010, she and Parker had attended a concert. After the concert, they went to Randall Liquors. Parker stayed across the street while Ivanov went to the store. She was in the parking lot behind the liquor store when she was approached by Fuentes, who was on foot. He asked her “how much?,” meaning how much would she charge for sex. He also grabbed his crotch. She told him that she was not for sale, and he became angry. He began shouting at her and she shouted back at him. Fuentes then grabbed her shirt near her left shoulder and ripped it so that her bra and breasts were showing. Ivanov stabbed Fuentes with the knife she kept in her purse, to defend herself. After Ivanov began yelling, Parker crossed the street and began fighting with Fuentes. Fuentes was hitting Parker and pushing him, and Ivanov went to defend Parker. She was striking at Fuentes, and she still had the knife in her hand. Fuentes eventually stopped fighting with Parker, and she and Parker left and walked down the street. Fuentes got into his truck and left. She noticed blood on herself and Parker, but thought it came from herself, as she had cut her finger. She did not go back to the liquor store that night. Ivanov admitted that she had been convicted of forgery twice, once in 2001 and once in 2006.

¶ 17 On cross-examination, Ivanov agreed that, when Fuentes approached her, he did not have a weapon of any kind in his hands. There were other people “everywhere” in the area because of the music festival, but she did not recall whether there were other people near her in the parking lot. After she stabbed Fuentes in the back parking lot, he left and went toward the entrance to the store. Parker came from across the street and they began fighting, and she went to where they were

fighting. She did not remember any white vehicle being near where Fuentes and Parker were fighting. She did not dispute that the fight between Parker and Fuentes occurred near the doors to the store, however. She did not recall Fuentes being down on the ground, or Parker bending over him. When the police approached her and Parker after they left the liquor store, she told them that the blood on her clothes came from the person they had fought with. She also told them that she “used to be on Craigslist,” meaning that she had worked for an escort service, but she was not doing that anymore, she was working for a landscaping company. When the police interviewed her the next day following the arrest, they told her her *Miranda* rights, and she agreed to talk to them. Among other things, she told the police that she knew that they heard about girls robbing drunk Mexicans, and that was not her. She hoped that Fuentes would not say that she tried to rob him. The police asked why, and she replied, “because that’s what Mexicans do.” She also said that Fuentes “came at me on a wrong day and I swiped back.” She did not know how many times she stabbed Fuentes.

¶ 18 The State called Lopez and Cuacuas to testify again in rebuttal. Both stated that Ivanov had come into the liquor store about five minutes after the fight, and had gone to the counter where the cash register was located. Ivanov berated Cuacuas for calling the police. As she leaned over the counter, she dripped blood on a dollar bill that a customer had left on the counter. Her blouse was not torn, nor was her bra or breast showing. On cross-examination, Cuacuas was shown Ivanov’s shirt from that night. He agreed that it was the shirt she had been wearing, and that it was now ripped, but he maintained that it had not been ripped when he saw her after the fight. The shirt was introduced into evidence. There was a tear about four-and-a-half or five inches long running from the neckline on the left side toward the armhole. There was also dried blood on the shirt.

¶ 19 In its closing, the State argued that Ivanov's version of the events did not make sense and that she was not credible, that Fuentes' version was corroborated by the testimony of Lopez and Cuacuas, and that the discrepancies in Fuentes' version were minor and came about because he was in pain, drunk, or medicated when he was interviewed. Addressing Parker's accountability for Ivanov's actions in stabbing Fuentes, the State argued that "they both worked together" to stab him. The State also argued that Parker's and Ivanov's actions were not justified by self-defense or the defense of others because, according to Ivanov, Fuentes had walked away from her after ripping her shirt and being stabbed, and thus no further force would have been necessary for self-defense. In addition, the force used was out of proportion to that which would have been necessary for Ivanov to defend herself or Parker, inasmuch as Parker was larger than Fuentes, Fuentes was unarmed, and witnesses testified that even after Fuentes was on the ground Parker and Ivanov continued to attack him. The prosecutor then said:

"Ladies and gentlemen, this is not a self-defense case. This is a case where these two defendants were going to go out and rob a drunk Mexican, and she even told you that."

The defense attorney objected, saying that there was no evidence of such a statement. Without ruling on the objection, the trial court reminded the jury to consider the evidence and not the arguments of counsel unless those arguments were supported by the evidence. The prosecutor continued, "That comes from her own statement, ladies and gentlemen." The prosecutor then asked the jury to return a guilty verdict on both counts.

¶ 20 Defense counsel argued in closing that there was no evidence of attempted robbery, such as an attempt to take Fuentes' money or car, and this supported Ivanov's statement that she and Parker were not trying to rob a drunk Mexican. The defense pointed out that Fuentes' blood alcohol content

was very high, and he was belligerent and combative at the hospital, so he was likely to have been acting similarly at the liquor store and when he accosted Ivanov. The defense argued that Ivanov's version of events was more credible than Fuentes' version, because it did not make sense for Fuentes to have gone to a liquor store after the attack at the traffic light, rather than a police station or the hospital. The defense attorney reminded the jury that Cuacuas testified that he had seen Fuentes speaking to a woman behind the truck shortly after he parked in front of the doors. Finally, Fuentes told Gallardo that the woman whom he saw walking away after the fight had dark skin, and Ivanov was white. In light of this evidence, the defense attorney argued, the State had not proved that the defendants had any intent to kill Fuentes, any intent to rob him, or other joint intent, and had not shown that Parker and Ivanov were not acting in their own or each other's defense. A pattern jury instruction on the use of force in defense of one's self or another was included among the instructions given to the jury.

¶ 21 The jury found both defendants guilty of armed violence and acquitted them of attempted murder. Posttrial motions were filed on behalf of both defendants, arguing *inter alia* that the State failed to prove that the defendants were not acting in their own or each other's defense when they harmed Fuentes. Parker's posttrial motion also argued that the State had not proved the predicates for him to be held accountable for Ivanov's conduct. On December 3, 2010, the trial court denied the motions and sentenced each defendant to 14 years' imprisonment. The defendants filed motions to reconsider their sentences, which the trial court denied. The defendants then filed timely notices of appeal, and we consolidated their cases on appeal.

¶ 22

ANALYSIS

¶ 23 Two arguments regarding the sufficiency of the evidence are raised on appeal. The first argument, made on behalf of both defendants, is that the State did not prove beyond a reasonable doubt that Parker and Ivanov were not acting in their own or each other's defense when they inflicted bodily harm on Fuentes. The second argument, raised only on behalf of Parker, is that the State did not prove that Parker (who was unarmed) could be held accountable for Ivanov's conduct in stabbing Fuentes, and thus there was insufficient evidence to support his conviction for armed violence. We address each argument in turn.

¶ 24 Sufficiency of the Evidence: Defense of Self or Another

¶ 25 A criminal conviction must be supported by evidence establishing guilt beyond a reasonable doubt, and this burden must be met as to every element of the offense. *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004) (citing *In re Winship*, 397 U.S. 358, 364 (1970)). In this case, the State charged that the defendants committed armed violence by committing the underlying felony of aggravated battery while armed with (or while accountable for someone armed with) a Category II weapon, a knife with a blade longer than three inches. See 720 ILCS 5/33A-2(a) (West 2010); 720 ILCS 5/33A-1(c)(2) (West 2010). Aggravated battery, in turn, required the State to prove that, without legal justification, the defendants caused great bodily harm or permanent disfigurement to Fuentes by striking him with a knife. 720 ILCS 5/12-4(a) (West 2010). In this case, the defendants asserted that they were justified in stabbing Fuentes because they were engaged in self-defense and the defense of each other. Accordingly, the State bore the burden of proving beyond a reasonable doubt that their actions were not justified by self-defense. *People v. Lee*, 213 Ill. 2d 218, 224-25 (2004).

¶ 26 In evaluating the sufficiency of the evidence, it is not the province of this court to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The relevant question 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.’ ” (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The weight to be given to the witnesses’ testimony, the determination of their credibility, and the reasonable inferences to be drawn from the evidence are all matters within the jurisdiction of the trier of fact. *People v. Smith*, 185 Ill. 2d 532, 542 (1999); *Collins*, 106 Ill. 2d at 261-62. Likewise, the resolution of any conflicts or inconsistencies in the evidence is also within the province of the fact finder. *Collins*, 106 Ill. 2d at 261-62. We will set aside a criminal conviction only “where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant’s guilt.” *Smith*, 185 Ill. 2d at 542.

¶ 27 In order to establish the defense of self-defense (or defense of others), the defendants must show that: (1) unlawful force was threatened; (2) the person threatened was not the aggressor; (3) the danger of harm to the person threatened was imminent; (4) the use of force was necessary to defend against the threatened harm; (5) the threatened person believed that a danger existed that required the degree of force used; and (6) the beliefs of the threatened person were objectively reasonable. *Lee*, 213 Ill. 2d at 225. If the State successfully negates any one of these elements, the claim of self-defense fails. *Id.*

¶ 28 Here, the evidence would support a rational jury in determining that Ivanov and Parker fought with Fuentes at a time when there was no imminent danger of harm to themselves, and that they were not objectively required to use the degree of force against Fuentes which they did. Even if Ivanov’s

version of events were accepted as true (which we need not do in evaluating the sufficiency of the evidence), after the initial confrontation between Fuentes and Ivanov in the back parking lot, Fuentes walked away from Ivanov. There is no evidence that Fuentes planned any further attack against Ivanov after that point. However, Parker then came toward Fuentes at what all of the witnesses described as a fast clip, despite his leg brace (Ivanov described it as “hopping” and “running,” and Fuentes described it as “charging”). While Fuentes stated that he swung at Parker first when Parker reached him, there is no indication that he would have done so had Parker not come toward him. Similarly, Ivanov continued to strike at Fuentes while holding her knife during his fight with Parker. A reasonable jury could have found that this degree of force was not necessary: Fuentes was unarmed and smaller than Parker, and there is no evidence that Fuentes was getting the best of Parker, despite the leg brace. In fact, Cuacuas testified that both Parker and Ivanov continued to bend over Fuentes, attacking him, even after he was on the ground. Accordingly, there was ample evidence from which a reasonable jury could have concluded that the State had disproved at least one of the elements of self-defense and defense of others.

¶ 29 The defendants argue that much of Fuentes’ testimony was inherently incredible, and could not have been believed by any rational jury. Of course, credibility is ordinarily a matter for the jury to resolve. *Smith*, 185 Ill. 2d at 542. In this case, however, the verdict is supported even if Fuentes’ account were disbelieved. As discussed above, much of the evidence disproving the justification of self-defense came from other witnesses including Cuacuas and Ivanov herself. We therefore reject the defendants’ argument that their convictions must be overturned because there was insufficient evidence to defeat their claim that they attacked Fuentes only to defend themselves and each other.

¶ 30 Sufficiency of the Evidence: Parker’s Accountability for Ivanov’s Acts

¶ 31 The second argument raised on appeal attacks only Parker's conviction. Parker argues that the State did not prove beyond a reasonable doubt that he was accountable for Ivanov's conduct, specifically, causing Fuentes substantial bodily harm through the use of a knife.

¶ 32 In Illinois, a defendant is accountable for another person's criminal conduct when, "[e]ither before or during the commission of an offense," the defendant aids, assists, or attempts to aid the other person in the planning or commission of the offense, with the intent to "promote or facilitate" the commission of the offense. 720 ILCS 5/5-2(c) (West 2010). This intent to facilitate may be found where the defendant and the person or persons who committed the offense shared a common plan or purpose. *People v. Cooper*, 194 Ill. 2d 419, 434 (2001). "The 'common-design' rule provides that where two 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 design or agreement and all are equally responsible for the consequences of the further acts." *Id.* at 434-35. Proof of the common purpose or design may rest on the circumstances surrounding the commission of the criminal offense; it need not be a verbal agreement. *Id.* at 435. Circumstances suggesting a common design include a defendant's presence during the crime without dissociating himself from it, maintaining a close association with the perpetrator after the crime, leaving the scene of the crime, and failing to report the crime. *People v. Mullen*, 313 Ill. App. 3d 718, 725 (2000). "A conviction under accountability does not require proof of a preconceived plan if the evidence indicates involvement by the accused in the spontaneous acts" of others. *Cooper*, 194 Ill. 2d at 435. As Parker has raised a sufficiency-of-the-evidence argument as to his conviction under accountability principles, we must consider the evidence presented in the light most favorable to the State, and must affirm if any rational trier of fact could have found that the essential elements of

accountability were proven beyond a reasonable doubt. *People v. Redmond*, 341 Ill. App. 3d 498, 511 (2003).

¶ 33 Parker argues that the evidence did not show beyond a reasonable doubt that he shared Ivanov's intent to cause Fuentes substantial bodily harm. He points out that, both in the indictment and at trial, the State contended that the manner in which the substantial bodily harm was inflicted was through Ivanov's use of her knife—the State did not assert that Parker's blows to Fuentes' body caused the necessary level of harm. Parker contends that there was scant evidence that he knew, either before or during the incident, that Ivanov was carrying (or would use) a knife. Although Ivanov testified that she always carried the knife in her purse and that Parker was her boyfriend, there was no evidence that their relationship was of such a character that he could be presumed to have known that she was carrying the knife. Similarly, although Cuacuas testified that he saw Ivanov stab Fuentes while Fuentes was fighting with Parker, there was no direct evidence that Parker saw Ivanov use her knife on Fuentes. Finally, Parker points to the lack of evidence supporting the State's theory that Parker and Ivanov set out to rob Fuentes.

¶ 34 We agree with Parker that the evidence, even viewed in the light most favorable to the State, did not support an inference that Parker and Ivanov shared a criminal intent to rob Fuentes. There was no evidence that Parker or Ivanov was involved in the attack at the traffic light that Fuentes described. Ivanov's comments to the police about hoping that Fuentes did not accuse her of robbery suggested that she was worried about that possibility, but standing alone they did not show that she indeed intended to rob Fuentes. Moreover, the suggestion of a scheme to rob Fuentes was undermined by the fact that the defendants did not attempt to take anything from him—not his wallet, his keys, or his truck—although, according to Cuacuas and Lopez, the defendants' attack had

disabled Fuentes to the point where the defendants potentially could have taken these items from him.

¶ 35 Nevertheless, we cannot accept Parker's argument that the evidence did not show that he and Ivanov shared a common design or purpose. Under Illinois law, a defendant may be held accountable for a crime other than the one he intended to assist in committing. *Redmond*, 341 Ill. App. 3d at 510. So long as there was a shared intent to commit an offense, and the crime for which the defendant is held accountable came about during the course of committing the planned offense, the defendant may be found accountable. *Id.* at 510-11 (citing *People v. Kessler*, 57 Ill. 2d 493 (1974) and Illinois Pattern Jury Instructions, Criminal, No. 5.03 (3d ed. 1992), Committee Notes).

¶ 36 Here, the evidence indicates that Parker and Ivanov shared a common intent to commit battery against Fuentes. According to Ivanov, after she stabbed Fuentes during the confrontation in the back parking lot, he was walking away from her when Parker came toward him. When Parker and Fuentes began fighting, Ivanov joined in. At that point, Fuentes had already been stabbed once by Ivanov and (according to her own testimony) she was still holding the knife in her hand. Even if Parker did not know prior to that point that Ivanov had pulled a knife and stabbed Fuentes, a reasonable jury could find that, once he and Ivanov began to fight with Fuentes, he became aware that Ivanov was holding a knife, intended to use it, and in fact was using it against Fuentes.

¶ 37 Fuentes ultimately sustained seven knife wounds that evening. Even if the jury found that he had been stabbed once during the attack at the traffic light and once by Ivanov before Parker began fighting with him, the jury could rationally have found that Ivanov gave him an additional five knife wounds during Parker and Ivanov's joint fight with Fuentes. In *People v. Jones*, 364 Ill. App. 3d 740, 748 (2006), the court found that the defendant driver shared in the criminal intent of the

shooters in his car where, even if the defendant did not know when the first shots were fired that his passengers had guns and intended to shoot at the victims, he knew those facts when he circled the block to allow a second round of shooting. Similarly, the number of knife wounds here gives rise to the inference that Parker knew during the fight that Ivanov was stabbing Fuentes repeatedly. Parker had Fuentes' blood on his shirt following the fight—blood that must have come from the knife wounds inflicted by Ivanov, as there was no evidence of any other type of wounds to Fuentes.

¶ 38 There was no evidence that Parker attempted to discourage Ivanov from using the knife on Fuentes. Further, when the fight was over, Parker did not dissociate himself from Ivanov: they left the scene together, and Parker did not report the Ivanov's stabbing of Fuentes to police. All of the above factors support a finding that Parker and Ivanov shared a common design to injure Fuentes. *Mullen*, 313 Ill. App. 3d at 725; see also *People v. Terry*, 99 Ill. 2d 508, 514-516 (1984) (tracing the development of the common-design rule and affirming that defendants were properly held accountable for victim's murder which occurred in the course of the planned battery, although the common design shared by the defendants and others contemplated only battery, a misdemeanor). Accordingly, the State proved beyond a reasonable doubt that Parker had the intent necessary to be held accountable for Ivanov's stabbing of Fuentes.

¶ 39 In support of his argument that he lacked the intent required for conviction on an accountability theory, Parker relies almost wholly on *People v. Perez*, 189 Ill. 2d 254 (2000). In *Perez*, the defendant came up to a gathering of people that included Anthony Rivera (a stranger to the defendant), Luis Nieves (a friend of Rivera's and, like Rivera, a member of the Maniac Latin Disciples street gang), Pedro Gonzalez, and others. The defendant wanted to see Nieves about some money that Nieves owed him. No one was displaying any weapons. After the defendant came over,

either Gonzalez or Rivera asked the defendant to verify whether Gonzalez was a member of the Latin Kings street gang, a rival to the Maniac Latin Disciples. The defendant knew and liked Gonzalez, who had befriended him when the defendant first moved to the area. The defendant told Rivera either that Gonzalez was a Latin King (according to Gonzalez's brother) or that Gonzalez used to be a Latin King but the defendant did not know if he still was one (according to the defendant). Gonzalez began to walk or run away, and Rivera pulled out a gun and shot several times, killing Gonzalez. At trial, the defendant testified that he did not know Rivera and did not know Rivera was armed, that he was not a member of either gang, and that he did not know Gonzalez was in danger when he answered the question. *Perez*, 198 Ill. 2d at 257-63. However, he was found guilty of first degree murder on an accountability theory. The supreme court reversed, holding that the defendant could not be found guilty where there was no evidence that he intentionally aided or encouraged Rivera in committing the crime. The supreme court emphasized that mere presence at the scene of a crime, coupled with knowledge that a crime had been committed and flight from the scene, was not sufficient to show accountability beyond a reasonable doubt where there was no evidence that the defendant intended to assist in or facilitate the commission of the offense. *Id.* at 268.

¶ 40 Parker argues that, under *Perez*, he should not have been found accountable for Ivanov's conduct, because just as in *Perez*, he was simply present at the scene, knew that a crime had been committed, and left the scene of the crime. However, the facts of *Perez* are different from the situation here. Parker was not only present at the scene of the stabbing, he participated in the fight during which Fuentes was stabbed. Indeed, on the evidence presented here, a rational jury could even find that Parker knocked Fuentes down and kept Fuentes busy so that Ivanov could stab him. Additionally, in *Perez* there was no evidence that the defendant had any motive for wishing harm

on Gonzalez. Here, by contrast, Ivanov testified that she yelled when Fuentes attempted to assault her, causing her boyfriend Parker to come over to Fuentes in order to protect her. Thus, a reasonable jury could find that Parker fought with Fuentes in retaliation for Fuentes' alleged assault on Ivanov, and that he had a motive to share in Ivanov's desire to harm Fuentes by stabbing him. In light of these factual differences, *Perez* is inapposite.

¶ 41 Shortly before the oral argument in this case, Parker asked to cite as additional *People v. Washington*, 375 Ill. App. 1012 (2007), and we granted that motion. However, *Washington* does not assist Parker. In *Washington*, the defendant had been convicted of attempted first degree murder, mob action, and other offenses, arising out of an incident in which the defendant and some friends had been driving around and someone in the van eventually shot the victim. The State had argued that the defendant was either a shooter or that he was the driver of the van containing the shooter and therefore was accountable for the shooting. *Id.* at 1024. On review, a majority of this court found that there was insufficient evidence to support either of these propositions, because the testimony of the witnesses was inconsistent. For instance, although two of the alleged accomplices identified the defendant as the shooter, they contradicted each other regarding who was driving the van, and two accomplices who agreed that the defendant was the driver disagreed as to whether he was also the shooter. Viewing the testimony as a whole, the majority concluded that "there was no remotely consistent account of the events that occurred" on the night of the incident, and reversed the defendant's conviction. *Id.* at 1029. Parker argues that, just as in *Washington*, here the accounts of what happened on the night of the incident are so inconsistent that no rational trier of fact could conclude that he shared a common criminal intent with Ivanov.

¶ 42 We reject Parker's argument. Although there are discrepancies between the various accounts of the events in question, the inconsistencies do not preclude the possibility of finding Parker accountable for Ivanov's knife attacks on Fuentes. Ivanov, Parker's alleged accomplice in the events, testified that Parker came at Fuentes in response to Ivanov's yelling. Although the testimony of the victim, Fuentes, focused on Parker as the main attacker during the fight in front of the liquor store and he did not see Ivanov attack him during the fight, he testified that he heard Ivanov behind him and felt wetness from his knife wounds. Thus, his testimony does not contradict the testimony of Cuacuas and Ivanov herself, both of whom testified that Ivanov joined Parker in fighting with Fuentes, and that Ivanov repeatedly used a knife during that fight. Accordingly, we find that *Washington* is distinguishable and does not support a reversal of Parker's conviction.

¶ 43 CONCLUSION

¶ 44 For all of the foregoing reasons, we affirm.

¶ 45 Affirmed.