

**CH. 1**  
**ACCOUNTABILITY**

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## §1-1

### Generally

[People v. Taylor, 164 Ill.2d 131, 646 N.E.2d 567 \(1995\)](#) A defendant may be held accountable where, with the intent to promote or facilitate an offense, he solicits, aids, abets, or attempts to aid in the commission of the offense. Mere presence or presence with knowledge that a crime will be committed is not enough. But intent may be inferred where defendant and principal shared a common criminal scheme. See also, [People v. Batchelor, 171 Ill.2d 367, 665 N.E.2d 777 \(1996\)](#).

[People v. Stanciel, 153 Ill.2d 218, 606 N.E.2d 1201 \(1992\)](#) An accomplice need not act with the specific intent to aid the principal, but rather with the intent required for the underlying crime. Thus, a specific intent crime requires specific intent on the part of the accomplice, while a general intent crime requires only general intent.

A parent can be found legally responsible for the murder of his or her child based on a failure to protect the child from a known, ongoing pattern of abuse. Though there is generally no duty to aid persons in distress, a different rule applies where there is a significant legal relationship between the parties.

[People v. Pollock, 202 Ill.2d 189, 780 N.E.2d 669 \(2002\)](#) Stanciel does not impose liability where a parent did not know of the crime or a pattern of abuse, but should have known that the child was in danger. Thus, the trial court committed reversible error in instructing the jury that defendant could be convicted as an accomplice if she should have known that the child was in danger. Because the evidence was insufficient to convict based on accountability, defendant's conviction was reversed outright.

[People v. Batchelor, 171 Ill.2d 367, 665 N.E.2d 777 \(1996\)](#) In determining whether a defendant is accountable for the acts of another, the trier of fact may consider several factors, including defendant's presence during the offense, close affiliation with other offenders after the offense, failure to report the incident to authorities, and flight from the scene. Defendant was accountable where he walked with principal after principal expressed his intent to steal a purse, remained nearby while principal approached victim, acted as a lookout for the principal, fled the scene after the offense, failed to report the incident, and later asked the principal the whereabouts of victim's purse. See also, [People v. Watts, 170 Ill.App.3d 815, 525 N.E.2d 233 \(4th Dist. 1988\)](#).

[People v. Dennis, 181 Ill.2d 87, 692 N.E.2d 325 \(1998\)](#) The trial court erred by instructing the jury that it could consider "the period of time and the activities involved in escaping to a place of safety" when determining whether defendant was accountable for armed robbery. For purposes of accountability, a criminal offense is complete once the elements of the crime have occurred, and the offense of robbery is complete once the perpetrator's use or threat of force causes the victim to part with property against his or her will. See also, [People v. Shaw, 186 Ill.2d 301, 713 N.E.2d 1161\(1998\)](#); [People v. Taylor, 186 Ill.2d 439, 712 N.E.2d 326 \(1999\)](#).

[People v. Cooper, 194 Ill.2d 419, 743 N.E.2d 32 \(2000\)](#) Gang members who fired at a rival gang were not accountable for the death of their fellow gang member, who was killed when the rival gang returned fire. The evidence did not show that defendants either solicited members of the other gang to kill the decedent or aided or abetted the killing, and so they could not be convicted under [720 ILCS 5/5-2\(c\)](#). Nor could defendants be convicted under [720 ILCS 5/5-2\(a\)](#) because there was no evidence that defendants intended rival gang members to act as their agents or sought the death of their fellow gang member.

[People v. Terry, 99 Ill.2d 508, 460 N.E.2d 746 \(1984\)](#) The accountability statute incorporates the "common-design rule." Thus, where two or more persons engage in a common criminal design or agreement, one party's acts in furtherance of the design are deemed to be the acts of all the parties to the common design.

[People v. Allen, 56 Ill.2d 536, 309 N.E.2d 544 \(1974\)](#) Defendant's act of voluntarily attaching himself to group bent on illegal acts, with knowledge of the group's illegal intent, supports an inference that he shared the common purpose.

[People v. Richardson, 32 Ill.2d 472, 207 N.E.2d 478 \(1965\)](#) A common purpose need not be proven by words of agreement between the parties, but may be found from the circumstances surrounding the commission of an act by a group. One may aid and abet without actively participating in the overt act. If defendant was present at the crime without disapproving or opposing it, this conduct, in connection with other circumstances, may prove that defendant assented to the commission of the criminal act. See also, [People v. Bunting, 104 Ill.App.3d 291, 432 N.E.2d 950 \(1st Dist. 1982\)](#).

[People v. Robinson, 59 Ill.2d 184, 319 N.E.2d 772 \(1974\)](#) An accomplice must take some part, perform some act, or owe some duty to the person in danger that makes it incumbent on him to prevent the crime.

[People v. Marquis, 24 Ill.App.3d 653, 321 N.E.2d 480 \(3d Dist. 1974\)](#) Guilt by association is a thoroughly discredited doctrine - mere presence at the commission of a crime is not culpable.

[People v. Riley, 99 Ill.App.3d 244, 424 N.E.2d 1377 \(4th Dist. 1981\)](#) A defendant charged only as a principal may be properly convicted as an accessory.

[People v. Pettit, 114 Ill.App.3d 876, 449 N.E.2d 1044 \(2d Dist. 1983\)](#) A defendant may be properly convicted by accountability even though the person for whom he is accountable has not yet been prosecuted or has been acquitted.

[People v. Shelton, 293 Ill.App.3d 747, 688 N.E.2d 831 \(1st Dist. 1997\)](#) Under the doctrine of transferred intent, if defendant shoots at one person, with the intent to kill, but actually kills an unintended victim, defendant may be convicted of the crime of murder for the death of the unintended victim. The doctrine of "transferred intent" applies to both the "shooter's bad-aim" (where the shooter fires at the intended victim but inadvertently hits an innocent bystander) and "mistaken identity" (where the shooter aims at a person whom he assumes to be the intended victim, but who turns out to be someone else).

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**Cumulative Digest Case Summaries §1-1**

[People v. Fernandez, 2014 IL 115527 \(No. 115527, 3/20/14\)](#)

1. 720 ILCS 5/5-2(c) provides that a person is legally accountable for the criminal conduct of another if 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 the other person in the planning or commission of the offense. The State may prove intent to promote or facilitate the crime by presenting evidence that the defendant shared the criminal intent of the principal or by showing that there was a common criminal design. Under the "common-design" rule, if two or more persons engage in a common criminal design or agreement, any acts which one party commits in furtherance of the common design are considered to be the acts of all of the parties to the design or agreement.

In addition, evidence that a defendant voluntarily attached himself to a group which intended to commit illegal acts, with knowledge of that intent, gives rise to an inference that defendant shared the

common purpose. That inference will support a finding that defendant is guilty by accountability for an offense committed by another member of the group.

The court rejected [People v. Phillips, 2012 IL App \(1st\) 101923](#), which held that a defendant who is part of a common design is not deemed to have intended to assist in the commission of a crime involving a firearm if he did not know that another member of the group possessed a firearm. Under the common design rule, once a defendant agrees to participate in a crime, he is liable for every criminal act committed in connection with that design, including unplanned shootings committed by a companion whom defendant did not know was armed.

2. Here, defendant was properly convicted of aggravated discharge of a firearm in the direction of a peace officer. Defendant entered into a plan to burglarize cars with a companion whom defendant did not know was armed. Defendant waited in the car while his companion burglarized a car. An off-duty police officer interrupted the offense, and gunshots were exchanged between the officer and the companion as defendant drove the companion from the scene. Defendant remained in close company with the companion for several hours until they were arrested, and not only failed to report the shooting but took steps to conceal it.

Under these circumstances, defendant was part of a common design bent on committing criminal acts. Thus, defendant was accountable for all crimes committed in furtherance of the common design, including the unplanned shooting.

3. The court distinguished [People v. Dennis, 181 IL 2d 87, 692 N.E.2d 325, \(1998\)](#) and [People v. Taylor, 186 IL 2d 439, 712 N.E.2d 326 \(1999\)](#), which involved accountability by persons who drove alleged principals from crime scenes but without knowledge of the principals' intent to commit a crime. The issue in **Dennis** and **Taylor** was whether the alleged accomplice shared the principal's intent, not whether there was a common design to commit criminal offenses. Here, by contrast, the defendant agreed to be part of the scheme to commit burglaries. Under the common design rule, he was accountable for all offenses which occurred as a part of that scheme, including aggravated discharge of a firearm in the direction of a peace officer.

#### [People v. Chirchirillo, 393 Ill.App.3d 916, 913 N.E.2d 635 \(2d Dist. 2009\)](#)

A defendant is legally accountable for another person's criminal conduct if either before or during the commission of the offense, and while acting with the intent to promote or facilitate the offense, he or she solicits, aids, abets, agrees or attempts to aid such other person in the planning or commission of an offense. To obtain a conviction based on accountability, the State must prove that a criminal offense was in fact committed by the principal. In other words, a defendant cannot be convicted as an accomplice if the State fails to establish the principal's guilt of the underlying crime.

Thus, defendant could not be found accountable for unlawful possession of a weapon by a felon where there was no evidence that the principal was a convicted felon. Although defendant was a felon and therefore could have been convicted of the offense had she possessed the weapon, she could not be convicted as an accomplice for a crime which the principal did not commit.

The court noted, however, an accomplice may be convicted of an offense for which the principal has an affirmative defense. (See also **APPEAL**, §2-6(a)).

(Defendant was represented by Panel Attorney Lawrence Fischer, Cary.)

#### [People v. Evans, 405 Ill.App.3d 1005, 939 N.E.2d 1014 \(2d Dist. 2010\)](#)

[730 ILCS 154/1](#) *et seq.* requires that a person over the age of 17 who commits a "violent offense against youth" must register under the Child Murder and Violent Offender Against Youth Registration Act. First degree murder is a "violent offense against youth" if the victim was under 18 and the defendant was at least 17.

A person who was over the age of 17 at the time of the offense, and who is convicted as an accomplice, is required to register under the Act even if the principal was under the age of 17 and therefore

not required to register. First, the plain language of the statute contains no exception for persons convicted as accomplices. Second, although an accomplice may not be convicted if the State fails to prove that the principal committed an element of the charged offense, that rule does not apply to collateral ramifications of a criminal conviction. “For example, if an alien defendant is convicted of a crime on an accountability theory and thus is subject to deportation, he would not avoid deportation simply because the principal is a United States citizen and not subject to deportation.”

(Defendant was represented by Assistant Defender Steve Wiltgen, Elgin.)

[People v. Flynn, 2012 IL App \(1st\) 103687](#) (Nos. 1-10-3687 & 1-11-2379 cons., modified 1/22/13)

“Where one attaches himself to a group bent on illegal acts which are dangerous or homicidal in character, or which will probably or necessarily require the use of force or violence that could result in the taking of life unlawfully, he becomes accountable for any wrongdoings committed by other members of the group in furtherance of the common purpose, or as a natural or probable consequence thereof even though he did not actively participate in the overt act itself.”

Words of agreement are not necessary to establish a common purpose to commit a crime. The common design can be inferred from the circumstances surrounding the perpetration of the unlawful conduct.

Defendant planned with other gang members to return to where Collins and Taylor were playing dice to kill Collins. During the surprise attack, defendant and two other gang members pursued and killed Collins, while other gang members pursued and wounded Taylor, a potential witness against them.

There was sufficient evidence for a rational trier of fact to find defendant guilty of attempt first degree murder under an accountability theory. Defendant actively participated in an attack on Collins and Taylor and, given the nature of the orchestrated attack, he cannot credibly claim that the shooting of Taylor in addition to Collins was unexpected or unanticipated. “[I]t was reasonable for the trier of fact to conclude that defendant subscribed to an unlawful venture that used violence and firearms and, as a natural consequence, resulted in the death of Collins and the severe wounding of Taylor.”

Gordon, J., dissented. There was no common design or agreement to kill Taylor in addition to Collins. Only one gang member pursued Taylor and he had his own private motive to harm Taylor. It is pure speculation that this gang member shot at Taylor to eliminate him as a witness to the killing of Collins. Defendant could not be held accountable where he had no knowledge of any common criminal design to harm Taylor and therefore could not intentionally aid in the scheme’s commission.

(Defendant was represented by Assistant Defender Adrienne River, Chicago.)

[People v. Gibson, 403 Ill.App.3d 942, 934 N.E.2d 611 \(2d Dist. 2010\)](#)

1. 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 an offense, he solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of an offense. To prove guilt beyond a reasonable doubt of unlawful possession of a weapon by a felon, the person who possessed the weapon must be a convicted felon. Where an alleged accomplice had a prior felony conviction, but there was no evidence that either of the principals who possessed weapons were convicted felons, the State failed to prove defendant guilty as an accomplice of unlawful possession of a weapon by a felon.

2. Under [720 ILCS 5/7-13](#), the necessity defense is available if the defendant: (1) was without blame in developing a situation, and (2) reasonably believed that criminal conduct was necessary to avoid a public or private injury greater than the injury resulting from the crime. The necessity offense applies where the defendant must choose the lesser of two evils and has no other option. Thus, the defense excuses illegal conduct which is the only reasonable alternative available under the circumstances.

A defendant is entitled to a jury instruction on necessity if there is even slight evidence to support the defense.

The court acknowledged that defendant was blameless in developing the situation which led to armed robbery and aggravated kidnapping charges - defendant thought he was going to help with a moving job, but

was later told that there was going to be a robbery. Defendant also claimed that he was told that the true nature of the enterprise had been withheld from him because his associates thought he might refuse to participate.

Although defendant claimed that he participated in the offense because he feared for his safety and that of his family, the court found that defendant could not have reasonably believed that participation was necessary to avoid a greater injury. The court noted that defendant was left alone several times during the offenses but failed to flee, use his cell phone to call for help, or seek help from nearby police officers. Instead, defendant continued with the criminal enterprise and subsequently helped the principals dispose of a stolen truck and conceal stolen property.

Because there was no basis for the defense, the trial court did not err by refusing to give a necessity instruction.

(Defendant was represented by Assistant Defender Vicki Kouros, Elgin.)

**[People v. Johnson, 2013 IL App \(4th\) 120162 \(No. 4-12-0162, 4/5/13\)](#)**

It is a due process violation to allow the State to rely on an accountability theory on appeal to uphold a conviction where the State did not pursue that theory at trial by arguing or having the jury instructed on accountability.

Although the evidence was sufficient to uphold defendant's conviction on appeal on an accountability theory, the Appellate Court refused to do so because the State had not argued an accountability theory to the jury or ask to have the jury instructed on the law of accountability.

(Defendant was represented by Assistant Deputy Defender Nancy Vincent, Springfield.)

**[People v. Johnson, 2013 IL App \(1st\) 122459 \(No. 1-12-2459, 12/31/13\)](#)**

Under 720 ILCS 5/5-2(c) a person is accountable for the conduct of another if "either before or during the commission of an offense, 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." Accountability cannot be established by merely showing that the defendant knew of or consented to the commission of the offense. It also cannot be established by defendant's mere presence at the scene of the crime even if coupled with defendant's flight from the scene or his knowledge that a crime has occurred.

Here, the State's evidence showed that defendant was driving a car with his co-defendant as a passenger. At some point, co-defendant saw a man named Brandon driving another vehicle. Co-defendant identified Brandon as the "dude that shot me," and told defendant to chase him. Defendant pursued the other car and eventually stopped in front of it. Co-defendant got out of the car, pulled out a gun, and fired several shots at Brandon. Brandon tried to dive away and in the process struck defendant's car. Defendant drove down the street and while co-defendant was still firing the gun, told him to "come on or I'm going to leave you." Co-defendant ran towards defendant's car still firing his gun. Co-defendant got back in the car and defendant drove away. Brandon eventually died from the gunshots. Defendant later told an acquaintance that co-defendant had been armed, and they had "made a move" on (meaning shot) a man in another vehicle.

The Appellate Court held that this evidence failed to prove that defendant was guilty by accountability for first degree murder. Even though he drove the co-defendant to the scene of the crime and then helped him escape, there was no evidence that defendant had a prior intent to facilitate the shooting since defendant did not know the victim would be shot before the offense occurred, nor even that the co-defendant was armed. Driving someone away from the scene of the crime does not establish accountability. Nor does presence at the crime scene coupled with knowledge that a crime has occurred and subsequent flight. And there can be no common design to shoot someone if the defendant does not know his co-defendant is armed.

The fact that co-defendant identified Brandon as the man who shot him does not prove that defendant intended to help him shoot Brandon. And even though co-defendant instructed defendant to chase Brandon, there was no evidence as to why co-defendant asked him to do this. Defendants statement to an acquaintance

that co-defendant was armed and they “made a move” on Brandon were merely after-the-fact accounts of the events and do not establish what defendant’s intent was prior to the shooting. They also do not show when defendant learned that co-defendant was armed. As a result, the Appellate Court concluded that the State failed to prove beyond a reasonable doubt that defendant intended to facilitate the murder either before or during the shooting. The court therefore reversed defendant’s first degree murder conviction.

[People v. Johnson, 2014 IL App \(1st\) 122459-B \(No. 1-12-2459, 12/31/14\)](#)

Under 720 ILCS 5/5-2(c) a person is accountable for the conduct of another if “either before or during the commission of an offense, 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.” Accountability cannot be established by merely showing that the defendant knew of or consented to the commission of the offense. It also cannot be established by defendant’s mere presence at the scene of the crime even if coupled with defendant’s flight from the scene or his knowledge that a crime has occurred.

Here, the State’s evidence showed that defendant was driving a car with his co-defendant as a passenger. At some point, co-defendant saw a man named Brandon driving another vehicle. Co-defendant identified Brandon as the “dude that shot me,” and told defendant to chase him. Defendant pursued the other car and eventually stopped in front of it. Co-defendant got out of the car, pulled out a gun, and fired several shots at Brandon. Brandon tried to drive away and in the process struck defendant’s car. Defendant drove down the street and while co-defendant was still firing the gun, told him to “come on or I’m going to leave you.” Co-defendant ran towards defendant’s car still firing his gun. Co-defendant got back in the car and defendant drove away. Brandon eventually died from the gunshots. Defendant later told an acquaintance that co-defendant had been armed, and they had “made a move” on (meaning shot) a man in another vehicle.

The Appellate Court held that this evidence failed to prove that defendant was guilty by accountability for first degree murder. Even though he drove the co-defendant to the scene of the crime and then helped him escape, there was no evidence that defendant was involved in any advanced planning or had a prior intent to facilitate the shooting since defendant did not even know the co-defendant before he entered the car, let alone that he was armed and intended to shoot someone.

There was also no evidence that defendant participated in a common criminal design since defendant did nothing to assist the co-defendant during the crime. Driving someone away from the scene of the crime does not establish accountability. Nor does presence at the crime scene coupled with knowledge that a crime has occurred and subsequent flight.

The fact that co-defendant identified Brandon as the man who shot him does not prove that defendant intended to help him shoot Brandon. And even though co-defendant instructed defendant to chase Brandon, there was no evidence as to why co-defendant asked him to do this. Defendant’s statement to an acquaintance that co-defendant was armed and they “made a move” on Brandon were merely after-the-fact accounts of the events and do not establish what defendant’s intent was prior to the shooting. They also do not show when defendant learned that co-defendant was armed. As a result, the Appellate Court concluded that the State failed to prove beyond a reasonable doubt that defendant intended to facilitate the murder either before or during the shooting. The court therefore reversed defendant’s first degree murder conviction.

[People v. Jones, 2016 IL App \(1st\) 141008 \(No. 1-14-1008, 10/11/16\)](#)

When the police attempted to execute a search warrant, defendant told his co-defendant to shoot the officers. Defendant wanted to argue that he acted in self-defense because he believed the police were intruders. The trial court refused to allow defendant to argue self-defense because defendant was being tried under an accountability theory and thus could not claim that his actions in telling co-defendant to shoot were taken in self-defense. Instead, the trial court held that defendant had to prove that co-defendant was acting in self-defense.

The Appellate Court disagreed. The court held that there was no reason an accomplice should not be able to assert self-defense. An accomplice who promotes a crime by another believing that self-defense

is necessary is no more culpable than a principal who believes self-defense is necessary. If the law places all the liability of the acts of the principal on the accountable defendant, the law should also afford the accountable defendant all the same protections.

On retrial (the court reversed defendant's convictions on other grounds), defendant should be allowed to argue that he acted in self-defense when he told his co-defendant to shoot.

(Defendant was represented by Assistant Defender Chris Bendik, Chicago.)

[People v. McIntyre, 2011 IL App \(2d\) 100889 \(No. 2-10-0889, 12/14/11\)](#)

To convict defendant under an accountability theory, the State must first establish a *prima facie* case against the principal.

Defendant was convicted of unlawful possession of a weapon by a felon. An essential element of that offense is that the principal is a convicted felon. Although defendant was a convicted felon, the principal was not. Because absent that evidence, the State failed to prove that the principal committed the offense of unlawful possession of a weapon by a felon, defendant could not be convicted of that offense under an accountability theory.

(Defendant was represented by Assistant Defender Sherry Silvern, Elgin.)

[People v. Phillips, 2012 IL App \(1st\) 101923 \(No. 1-10-1923, 5/15/12\)](#)

1. A person is legally accountable for the conduct of another if before or during the commission of an offense, and with the intent to promote or facilitate that offense, he solicits, aids, abets, agrees, or attempts to aid another person in the planning or commission of an offense. Mere presence of the scene of a crime does not render a person accountable for an offense, although such presence may be considered with other circumstances when determining accountability.

When two or more persons engage in a "common criminal design or agreement," acts of one party in furtherance of the common design are considered to be the acts of all of the parties to the common design. Thus, all of the parties are equally responsible for the consequences of the acts of any of the parties. Individuals can be convicted under the common design rule only if they: (1) intend to assist the principal in planning or committing the offense, (2) commit an act which assists in the planning or commission of the offense, and (3) both form the required intent and perform the required act before or during the commission of the offense. An intention or act is irrelevant for accountability purposes if it is formed or performed after the offense is completed. Crucial questions in a common design case frequently involve the points of time at which the defendant formed the intent to assist the principal or committed an act which aided the principal in planning or committing the offense.

2. Defendant was charged under the "common design" rule with being accountable for aggravated battery with a firearm and aggravated discharge of a firearm. The State argued that four factors established that defendant was guilty under the common design rule: (1) defendant transported the shooter to the scene of the offense, (2) defendant used his vehicle to force the victims' car to stop, (3) defendant positioned his car to cut off escape by the victims, and (4) defendant allowed the shooter to re-enter the vehicle after the offense.

The court found that defendant was not proven guilty under the common design rule. In [People v. Dennis, 181 Ill. 2d 87, 692 N.E.2d 325 \(1998\)](#), the Supreme Court held that for purposes of determining accountability, the duration of an offense is defined by the elements of that offense. Applying **Dennis**, the Appellate Court concluded that to prove guilt under the common design theory, the State was required to show that before or during the commission of the offense, the defendant intentionally aided or abetted the principal in conduct which constituted an element of either aggravated battery with a firearm or aggravated discharge of a firearm.

Aggravated battery with a firearm is complete when a firearm is discharged and a person is injured as a result. Aggravated discharge of a firearm is complete when a firearm is knowingly discharged in the direction of a person or vehicle. Because flight and escape are not elements of either offense, the court

concluded that defendant's act of driving the shooter away from the scene was irrelevant to whether he was accountable for the offenses.

The court noted that had the charge been felony murder, the perpetrator's escape would have been considered part of the offense. By contrast, accountability is determined by the defendant's actions before or during an offense and not by actions which occur after the offense is complete.

The court also rejected the argument that the remaining three factors indicated that the defendant was part of a common design to commit the offenses. First, the fact that defendant transported the shooter to the scene did not indicate that he participated in a common design, because there was no evidence that defendant knew that the shooter was armed. "If defendant did not know that [the shooter] had a gun, then regardless of what else defendant may have done he cannot have intended to help [the shooter] commit a crime that necessarily requires a firearm." The court added that even evidence that defendant knew the shooter was carrying a gun while he was a passenger in defendant's vehicle would not establish that defendant knew that the shooter intended to commit a crime.

Second, the evidence did not show that defendant intended to assist in the crimes by using his car to stop the victims' car. The evidence showed that defendant's car was following the victims' car, and that defendant was making a left turn when the victims' car made a sudden U-turn that may not have been preceded by a turn signal. Although the cars nearly collided, there was no evidence that defendant was responsible for the near-collision or that he acted to help the shooter commit an offense. "It is unreasonable to assume that defendant's left-hand turn under these circumstances unequivocally shows that he intentionally forced the victims' vehicle to stop."

Finally, there was at best inconclusive evidence that defendant positioned his car to block the victims' escape route. Even if defendant's car blocked access to the north when he came to a stop after the near-collision, the victims' vehicle was in the intersection and could have escaped by making either a left or right turn. "The evidence is hardly conclusive that defendant was deliberately trying to trap the victims in preparation for an ambush."

The court concluded that even construing the evidence most favorably to the State, there was insufficient evidence to establish that defendant was accountable for the shooter's actions. Defendant's convictions were reversed.

3. In dissent, Justice Quinn stated that taking the evidence most favorably to the State and applying [People v. Taylor](#), 164 Ill. 2d 131, 646 N.E.2d 567 (1995), a finding of accountability could be affirmed because defendant was present during the crime, maintained a close association with the shooter after the crime, failed to report the crime, and fled the scene.

(Defendant was represented by Assistant Defender Jonathan Steffy, Chicago.)

[People v. Slater](#), 393 Ill.App.3d 977, \_\_\_ N.E.2d \_\_\_ (4th Dist. 2009) (No. 4-07-0966, 6/26/09)

Under the "transferred intent" theory, a defendant who shoots at one person with intent to kill, but actually kills an unintended victim, may be convicted of murdering the unintended victim. The Appellate Court concluded that the doctrine should be termed "transferred mental state" rather than "transferred intent," and applies where the defendant acts with knowledge as well as intent. Thus, where the defendant fires at one person with knowledge that death or great bodily harm may occur, but strikes and kills an unintended person, a conviction of "knowing" murder is permitted.

(Defendant was represented by Assistant Defender Ryan Wilson, Springfield.)

[People v. Snowden](#), \_\_\_ Ill.App.3d \_\_\_, 956 N.E.2d 923 (1st Dist. 2011) (No. 1-09-2117, 6/10/11)

1. A defendant may be found guilty under an accountability theory even though the identity of the principal is not known. The State need only prove that defendant shared a common criminal design to commit an offense with the principal.

2. [IPI Criminal 4th No. 5.06](#) states: "A person who is legally responsible for the conduct of another may be convicted for the offense committed by the other person even though the other person, who it is

claimed committed the offense, [(has not been prosecuted) (has not been convicted) (has been convicted of a different offense) (is not amenable to justice) (has been acquitted)].”

It is not error to include the phrase “is not amenable to justice,” rather than “has not been prosecuted,” where the evidence is not clear as to the identity of the co-offender. “Amenable” means “legally answerable; liable to being brought to judgment” according to Black’s Law Dictionary. Where the evidence does not establish who was “legally answerable for the crime” because the principal remains unidentified at trial, the language “is not amenable to justice” is appropriate. Moreover, under either option, the jury is informed that a person who is legally responsible for the conduct of another can be convicted of an offense committed by the other person regardless of the legal status of the other person.

(Defendant was represented by Assistant Defender Tomas Gonzalez, Chicago.)

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### §1-2

#### Instructions

[People v. Ceja, 204 Ill.2d 332, 789 N.E.2d 1228 \(2003\)](#) State may obtain instructions on accountability theory even if the charge alleges that defendant was culpable only as a principal.

[People v. Underwood, 108 Ill.App.3d 846, 439 N.E.2d 1080 \(1st Dist. 1982\)](#) [IPI No. 5.03](#) properly advises the jury on the law of accountability. See also, [People v. Terry, 99 Ill.2d 508, 460 N.E.2d 746 \(1984\)](#); [People v. Caballero, 102 Ill.2d 23, 464 N.E.2d 223 \(1984\)](#).

[People v. Fyke, 190 Ill.App.3d 713, 546 N.E.2d 1101 \(5th Dist. 1989\)](#) It was proper to modify [IPI 5.03](#) to say "any offense," rather than "the offense."

[People v. Ellis, 93 Ill.App.3d 981, 418 N.E.2d 88 \(1st Dist. 1981\)](#) The trial judge did not err in refusing to instruct the jury on defendant's withdrawal from the criminal activity. The withdrawal provision applies if defendant terminates his conduct before the offense is committed and neutralizes the effect of his conduct. Where defendant helped tie the victim's hands and removed his wallet, there was no evidence that he sought to neutralize the conduct which led to the victim's death, even if defendant may have left the victim in good health.

[People v. Comer, 78 Ill.App.3d 914, 397 N.E.2d 929 \(3d Dist. 1979\)](#) The issues instruction was defective in that it did not include the element "with the intent to promote or facilitate the commission of the armed robbery." The jury could have believed that this mental state was not required.

[People v. Gwartney, 289 Ill.App.3d 350, 683 N.E.2d 497 \(4th Dist. 1997\)](#) No reversible error occurred where the trial court gave an accountability instruction, even if under the evidence defendant could only have been convicted as a principal.

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#### Cumulative Digest Case Summaries §1-2

[People v. Snowden, Ill.App.3d , 956 N.E.2d 923 \(1st Dist. 2011\)](#) (No. 1-09-2117, 6/10/11)

1. A defendant may be found guilty under an accountability theory even though the identity of the principal is not known. The State need only prove that defendant shared a common criminal design to commit

an offense with the principal.

2. [IPI Criminal 4th No. 5.06](#) states: “A person who is legally responsible for the conduct of another may be convicted for the offense committed by the other person even though the other person, who it is claimed committed the offense, [(has not been prosecuted) (has not been convicted) (has been convicted of a different offense) (is not amenable to justice) (has been acquitted)].”

It is not error to include the phrase “is not amenable to justice,” rather than “has not been prosecuted,” where the evidence is not clear as to the identity of the co-offender. “Amenable” means “legally answerable; liable to being brought to judgment” according to Black’s Law Dictionary. Where the evidence does not establish who was “legally answerable for the crime” because the principal remains unidentified at trial, the language “is not amenable to justice” is appropriate. Moreover, under either option, the jury is informed that a person who is legally responsible for the conduct of another can be convicted of an offense committed by the other person regardless of the legal status of the other person.

(Defendant was represented by Assistant Defender Tomas Gonzalez, Chicago.)

### [People v. Ulloa, 2015 IL App \(1st\) 131632 \(No. 1-13-1632, 6/30/15\)](#)

To prove the offense of conspiracy to deliver cocaine, the State must prove that defendant himself agreed to the delivery. 720 ILCS 570/405.1. The State cannot prove conspiracy to deliver by showing that defendant was accountable for the actions of another person who agreed to the delivery. The trial court thus committed plain error under both the closely balanced evidence and serious error prongs by instructing the jury that they could find defendant guilty of conspiracy under a theory of accountability.

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### §1-3

#### **Examples: Convictions Affirmed**

[In re W.C., 167 Ill.2d 307, 657 N.E.2d 908 \(1995\)](#) Minor was properly convicted as a principal where he both shared the criminal intent of the principal and participated in a "common criminal design." Minor's knowledge of the principal's intent to kill the decedent supported the inference that hitting the decedent with a stick was intended to physically impede him while the principal obtained a weapon. Also, the trial court could infer that minor "voluntarily joined the [principal's] design" where, although there may not have been a preconceived plan to kill the decedent, the evidence "shows the devolution of a common criminal design."

[People v. Taylor, 164 Ill.2d 131, 646 N.E.2d 567 \(1995\)](#) There was sufficient evidence to sustain convictions for murder where, although neither defendant actively participated in the offense, each gave post-arrest statements admitting that he had voluntarily remained with the principal after learning that the latter had a weapon and intended to kill the decedent. Also, neither defendant objected to the principal's plan, and both maintained close relationships with him after the offense.

[People v. Tate, 63 Ill.2d 105, 345 N.E.2d 480 \(1976\)](#) Murder conviction upheld where defendant gave his wife a gun, defendant and his wife confronted people who got their daughter drunk, and defendant's wife shot and killed two of the people.

[People v. Holmes, 67 Ill.2d 236, 367 N.E.2d 663 \(1977\)](#) There was sufficient evidence to convict defendant of murder by accountability. Defendant and others discussed killing the victim, a month later defendant drove the others to a certain bar, where defendant remained in the car, and after gunshots were fired, the

companions returned to the car saying "it's done." See also, [People v. DeValle, 182 Ill.App.3d 1, 538 N.E.2d 129 \(1st Dist. 1989\)](#) (defendant was driver of getaway car).

[People v. Morgan, 67 Ill.2d 1, 364 N.E.2d 56 \(1977\)](#) The evidence was sufficient to convict of murder by accountability where defendant was told of the plot to rob the victim, was acquainted with the participants, was present at the scene, and shared in the proceeds of the crime.

[People v. Kessler, 57 Ill.2d 493, 315 N.E.2d 29 \(1974\)](#) Where defendant had jointly planned a burglary, he was accountable for the conduct of others in the attempt murder of the store owner and a policeman. See also, [People v. Terry, 99 Ill.2d 508, 460 N.E.2d 746 \(1984\)](#) (murder by member of group which conspired to commit a battery).

[People v. Tyler, 78 Ill.2d 193, 399 N.E.2d 975 \(1979\)](#) Defendant's rape conviction upheld where he and others went to the complainant's home to commit an armed robbery and, while defendant remained in living room, one of his companions raped the complainant in her bedroom. Defendant had the specific intent to promote or facilitate the offense where he knew what was happening, did nothing to disassociate himself from the crime, and gave an alarm when a car approached the house.

[People v. Fyke, 190 Ill.App.3d 713, 546 N.E.2d 1101 \(5th Dist. 1989\)](#) Defendant was properly convicted of murder, under the common design rule, where he participated in a scheme to "rough up" the victim.

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### Cumulative Digest Case Summaries §1-3

#### [People v. Fernandez, 2014 IL 115527 \(No. 115527, 3/20/14\)](#)

1. 720 ILCS 5/5-2(c) provides that a person is legally accountable for the criminal conduct of another if 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 the other person in the planning or commission of the offense. The State may prove intent to promote or facilitate the crime by presenting evidence that the defendant shared the criminal intent of the principal or by showing that there was a common criminal design. Under the "common-design" rule, if two or more persons engage in a common criminal design or agreement, any acts which one party commits in furtherance of the common design are considered to be the acts of all of the parties to the design or agreement.

In addition, evidence that a defendant voluntarily attached himself to a group which intended to commit illegal acts, with knowledge of that intent, gives rise to an inference that defendant shared the common purpose. That inference will support a finding that defendant is guilty by accountability for an offense committed by another member of the group.

The court rejected [People v. Phillips, 2012 IL App \(1st\) 101923](#), which held that a defendant who is part of a common design is not deemed to have intended to assist in the commission of a crime involving a firearm if he did not know that another member of the group possessed a firearm. Under the common design rule, once a defendant agrees to participate in a crime, he is liable for every criminal act committed in connection with that design, including unplanned shootings committed by a companion whom defendant did not know was armed.

2. Here, defendant was properly convicted of aggravated discharge of a firearm in the direction of a peace officer. Defendant entered into a plan to burglarize cars with a companion whom defendant did not know was armed. Defendant waited in the car while his companion burglarized a car. An off-duty police officer interrupted the offense, and gunshots were exchanged between the officer and the companion as defendant drove the companion from the scene. Defendant remained in close company with the companion for several hours until they were arrested, and not only failed to report the shooting but took steps to conceal

it.

Under these circumstances, defendant was part of a common design bent on committing criminal acts. Thus, defendant was accountable for all crimes committed in furtherance of the common design, including the unplanned shooting.

3. The court distinguished **People v. Dennis**, 181 IL 2d 87, 692 N.E.2d 325, (1998) and [People v. Taylor, 186 IL 2d 439, 712 N.E.2d 326 \(1999\)](#), which involved accountability by persons who drove alleged principals from crime scenes but without knowledge of the principals' intent to commit a crime. The issue in **Dennis** and **Taylor** was whether the alleged accomplice shared the principal's intent, not whether there was a common design to commit criminal offenses. Here, by contrast, the defendant agreed to be part of the scheme to commit burglaries. Under the common design rule, he was accountable for all offenses which occurred as a part of that scheme, including aggravated discharge of a firearm in the direction of a peace officer.

[People v. Flynn, 2012 IL App \(1st\) 103687](#) (Nos. 1-10-3687 & 1-11-2379 cons., modified 1/22/13)

“Where one attaches himself to a group bent on illegal acts which are dangerous or homicidal in character, or which will probably or necessarily require the use of force or violence that could result in the taking of life unlawfully, he becomes accountable for any wrongdoings committed by other members of the group in furtherance of the common purpose, or as a natural or probable consequence thereof even though he did not actively participate in the overt act itself.”

Words of agreement are not necessary to establish a common purpose to commit a crime. The common design can be inferred from the circumstances surrounding the perpetration of the unlawful conduct.

Defendant planned with other gang members to return to where Collins and Taylor were playing dice to kill Collins. During the surprise attack, defendant and two other gang members pursued and killed Collins, while other gang members pursued and wounded Taylor, a potential witness against them.

There was sufficient evidence for a rational trier of fact to find defendant guilty of attempt first degree murder under an accountability theory. Defendant actively participated in an attack on Collins and Taylor and, given the nature of the orchestrated attack, he cannot credibly claim that the shooting of Taylor in addition to Collins was unexpected or unanticipated. “[I]t was reasonable for the trier of fact to conclude that defendant subscribed to an unlawful venture that used violence and firearms and, as a natural consequence, resulted in the death of Collins and the severe wounding of Taylor.”

Gordon, J., dissented. There was no common design or agreement to kill Taylor in addition to Collins. Only one gang member pursued Taylor and he had his own private motive to harm Taylor. It is pure speculation that this gang member shot at Taylor to eliminate him as a witness to the killing of Collins. Defendant could not be held accountable where he had no knowledge of any common criminal design to harm Taylor and therefore could not intentionally aid in the scheme's commission.

(Defendant was represented by Assistant Defender Adrienne River, Chicago.)

[People v. Malcolm, 2015 IL App \(1st\) 133406](#) (No. 1-13-3406, 8/10/15)

1. A defendant is accountable for the actions of another when he intends to promote or facilitate the commission of an offense and he solicits, aids, abets, agrees or attempts to aid in the planning or commission of the offense. When two or more people engage in a common criminal design, any acts in furtherance of that design are considered to be the acts of all the parties to the design, and all parties are responsible for the consequences of those acts.

2. Defendant was walking up the street with his two co-defendants, Jones and Ayala. When they came to an alley, Jones turned on the video recorder on his cell phone, handed the phone to Ayala and said “somebody hold my phone” because, referring to a man standing near a dumpster in the alley, he was going to “knock this motherfucker out.” Ayala said he was going to “hit him next.” Defendant asked if Ayala was recording the incident and then, referring to the cell phone, said “just give it to me.” Defendant operated the cell phone and recorded the incident.

Jones, followed by Ayala and defendant, approached the man by the dumpster. Jones asked if the man had any money and the man answered Jones in Spanish. Jones yelled “Nation!”, punched the man in the head, and then yelled “Bitch!” The man fell to the ground and hit his head on the pavement. Jones laughed and ran to the end of the alley with Ayala and defendant following him. Defendant stopped video taping at that point. Jones ran back to the man, took his wallet, and gave \$20 to Ayala. The man later died from being punched and hitting his head when he fell.

The trial court found defendant guilty of first-degree murder and robbery based on accountability.

3. The Appellate Court affirmed defendant’s conviction, agreeing that he was accountable for Jones’ actions. Defendant knew that Jones was going to hit the man because Jones said he was going to “knock this motherfucker out.” Defendant also knew that Jones wanted to rob the man because Jones asked him if he had any money. Knowing this, defendant still took the cell phone and followed Jones and Ayala while recording the incident. He neither left the scene nor declined to take the video. Defendant thus shared the intent to hit and rob the man and that intent “flowed into a common criminal design.”

Defendant also aided Jones since it was clear that Jones wanted the incident recorded. By taking the cell phone, defendant accepted participation in Jones’ plan and helped him carry out his goal of attacking the man while being recorded. Defendant was thus accountable for Jones’ actions.

### [People v. Walker, 2016 IL App \(2d\) 140566 \(No. 2-14-0566, 8/17/16\)](#)

Defendant was charged by accountability with four counts of unlawful delivery of a controlled substance arising from four separate transactions. Defendant did not contest the convictions for the first three counts, which involved deliveries which occurred after defendant spoke on the telephone with an undercover police officer. However, defendant challenged the sufficiency of the evidence concerning the final transaction, which was arranged through text messaging between the undercover officer and the phone number which defendant had used for the first three transactions.

A conviction under an accountability theory requires evidence that before or during the commission of an offense, the defendant solicited, aided, abetted, or attempted to aid another in the planning or commission of the offense and did so with the intent to promote or facilitate the commission of the offense. The court rejected the argument that to obtain a conviction for a delivery arranged by text messaging, the State was required to prove that the defendant sent the text messages to the undercover officer’s phone or directed a third party to deliver the cocaine to the undercover officer.

The court found that considerable evidence established that defendant was the primary user of the phone used to send the text messages. Defendant used the telephone repeatedly to contact the undercover officer to arrange drug transactions, and the officer talked to defendant several times by calling the same number. There was no evidence that anyone other than defendant ever answered a call at that number.

The court concluded that defendant’s consistent use of the telephone for voice communication is compelling evidence that the cell phone belonged to the defendant and that he sent the text arranging the final delivery. In the alternative, even if someone other than defendant sent the messages, defendant would still be accountable for the delivery of cocaine if he provided the telephone to a third party and intended that it be used to set up a drug deal. Although it was conceivable that the telephone was used without defendant’s knowledge or that defendant provided the telephone to another for an innocent purpose, the trier of fact is not obligated to elevate that possibility to the status of a reasonable doubt.

(Defendant was represented by Assistant Defender Lucas Walker, Elgin.)

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## **Examples: Convictions Reversed**

[People v. Perez, 189 Ill.2d 254, 725 N.E.2d 1258 \(2000\)](#) The evidence was insufficient to convict defendant as an accomplice of murder where defendant answered when asked whether the decedent was a member of the Latin Kings, and in response the decedent was killed by members of a rival gang. Defendant testified that he answered truthfully - that the decedent had once been a Latin King but defendant did not know whether he was still a member - and that he did not realize that a truthful answer would place the decedent in danger. There was no evidence that defendant intended to assist in a crime, or even that he knew a crime was about to occur. The evidence showed that the decedent and defendant were childhood friends, and there was no evidence of any ill will between them. The Court rejected the State's argument that because defendant was a member of the same gang as the murderers, he must have known that the decedent was in danger, saying "[g]uilt by association is a thoroughly discredited doctrine." Also, despite defendant's presence at the scene of the crime, flight after the offense, continued close affiliation with the principals, and failure to report the crime, the court concluded that there was no evidence that he knew the gang members were engaged in a criminal scheme to harm the decedent. Furthermore, defendant could not have intended to aid in a scheme of which he had no knowledge.

[People v. Evans, 87 Ill.2d 77, 429 N.E.2d 520 \(1981\)](#) Evidence did not show that defendant aided and abetted the principal in shooting two victims. On the day of the shooting, defendant gave the principal bullets for the latter's gun. Later, defendant and the principal went to a party together. Defendant did not know that the principal brought his gun with him. At the party, defendant got into an argument with one of the victims. Principal then joined the argument, shot the victim in the leg and then fired several more shots, striking and killing a third party. That defendant gave the principal bullets did not prove that he aided the principal in the offense, because this occurred well before the fight between defendant and the victim. Also, the fight between defendant and the victim was not so serious to suggest that defendant enlisted the principal to shoot the victim.

[People v. Peterson, 273 Ill.App.3d 412, 652 N.E.2d 1252 \(1st Dist. 1995\)](#) 1. Evidence was insufficient to sustain defendants' convictions for aggravated battery with a firearm, arising from an incident in which defendants engaged in a shootout and a bystander was wounded; because the bullet that hit the bystander was not found, there was a reasonable doubt as to defendants' guilt and neither could be convicted as a principal.

Defendants also could not be convicted as accomplices; because each defendant was shooting at the other, neither aided the other in furtherance of an offense or common criminal design.

2. Also, the doctrine of transferred intent could not be applied absent evidence indicating which defendant committed the unintended wrong of wounding the bystander. But see, [People v. Shelton, 293 Ill.App.3d 747, 688 N.E.2d 831 \(1st Dist. 1997\)](#) (the transferred intent doctrine applies to mistaken identity cases).

3. Finally, the court rejected the State's argument that both defendants could be convicted on the theory that one of them must have shot the bystander because such reasoning overlooks the State's burden to prove each element of the offense.

[People v. Scott, 271 Ill.App.3d 307, 648 N.E.2d 86 \(1st Dist. 1994\)](#) A defendant may be convicted as an accomplice only for the criminal acts of another party. Where the only criminal action involved defendant forcing the complainant to commit acts on herself, and those acts would not have constituted crimes absent defendant's compulsion, there was no criminal activity by a third party. Thus, defendant could be convicted only as a principal.

[People v. Estrada, 243 Ill.App.3d 177, 611 N.E.2d 1063 \(1st Dist. 1993\)](#) Defendant was not accountable for murder on the basis that he engaged in a common plan or design with the principal. Defendant and his

friends were riding in a car, and exchanged opposing gang signs with some men on the street. As defendant exited the car with a tire iron, one of his friends fired two shots, which struck the deceased. Defendant chased the deceased into a building and broke a window with the tire iron. Under a common plan or design theory, the accomplice must have advance knowledge of the criminal scheme, which was lacking here. There was no evidence that defendant knew that his friend intended to shoot, and defendant would not have left the car had he known this.

[People v. Raya, 250 Ill.App.3d 795, 621 N.E.2d 222 \(3d Dist. 1993\)](#) A person who solicits drugs for personal use cannot be held accountable for the distributor's intent to deliver. Defendant's conviction reversed where he asked a friend to bring cocaine to a party so he could ingest it himself.

[People v. Taylor, 219 Ill.App.3d 47, 579 N.E.2d 383 \(3d Dist. 1991\)](#) Defendant's involuntary manslaughter conviction, based on accountability after co-defendants dropped concrete from an overpass, killing someone below, was reversed. Although defendant was present at the scene (and, according to co-defendants, remained in the car when they threw the concrete), there was no evidence that he did anything to aid or abet the offense. There was no evidence of a common criminal design, as co-defendants testified that they had no plans and were just driving around, and there was no evidence that defendant knew that his friends might drop the concrete. This is so despite one co-defendant's testimony that co-defendants had dropped rocks earlier that same night. The other co-defendant contradicted this testimony, and the uncorroborated testimony of one accomplice is insufficient to prove guilt if contradicted by the testimony of another accomplice.

[People v. Andersen, 237 Ill.App.3d 367, 604 N.E.2d 424 \(2d Dist. 1992\)](#) Defendant was not accountable for her husband's sexual assault of her younger sister. Defendant was only four and eleven months older than her sister, and the statute creating the offense required the perpetrator to be at least five years older than the victim. Under [People v. Trumbley, 252 Ill. 29 \(1911\)](#), a person cannot be convicted as an accessory where the act would not have been a crime had she committed it herself. Because defendant did not meet the statutory requirements for the offense, she could not have been convicted as a principal.

[People v. Deatherage, 122 Ill.App.3d 620, 461 N.E.2d 631 \(3d Dist. 1984\)](#) Conviction for unlawful delivery of cocaine reversed where the evidence showed only that defendant was present and may have known about the transaction. The seller's statement that he would have to "go through that guy," which the undercover agent took to mean defendant, was too vague to implicate defendant in the offense.

[People v. Williams, 140 Ill.App.3d 784, 489 N.E.2d 28 \(5th Dist. 1986\)](#) Defendant's armed robbery conviction by accountability was reversed. The victim, a police officer, testified that he saw defendant enter a restaurant and speak briefly with another man, who left the restaurant after speaking with defendant. When the officer left the restaurant, the man with whom defendant had spoken robbed him of his gun and other items. During the robbery, defendant exited the restaurant, crossed between the officer and the robbery, ran across the street, and drove away. Four days later, defendant was arrested with the officer's gun. This evidence created merely a suspicion of guilt.

[People v. Washington, 121 Ill.App.2d 174, 257 N.E.2d 190 \(1st Dist. 1970\)](#) Flight from rape scene did not prove accountability where there was no evidence defendant facilitated the commission of the offense. Mere presence, and even consent or knowledge that a crime is being committed, does not constitute accountability. See also, [People v. Banks, 28 Ill.App.3d 784, 329 N.E.2d 504 \(1st Dist. 1975\)](#) (conviction reversed where defendant stood about five to ten feet from bicycle rack while another person took a bike); [People v. Ivy, 68 Ill.App.3d 402, 386 N.E.2d 323 \(1st Dist. 1979\)](#) (evidence only showed that defendant was present at crime scene, and not that he acted as lookout or otherwise participated); [People v. Parker, 311 Ill.App.3d 80, 724 N.E.2d 203 \(1st Dist. 1999\)](#) (convictions were improper where the evidence showed that one defendant was

merely present at the scene and urged the victim to run, and a second defendant did not plan, direct or participate in the offense).

[People v. Wright, 43 Ill.App.3d 458, 357 N.E.2d 224 \(4th Dist. 1976\)](#) Defendant's theft conviction reversed. Defendant drove his car to a gas station, and remained inside his car while his friends went inside the building and took money from the cash register. At most, the State's evidence established that defendant was present at the station while the theft was committed; there was no evidence that defendant participated in, benefitted from, or had knowledge of the offense.

[People v. Morrow, 303 Ill.App.3d 671, 708 N.E.2d 430 \(1st Dist. 1999\)](#) Defendant was improperly convicted of armed robbery as an accomplice where he came to the aid of two prostitutes who, unbeknownst to the defendant, were attempting to steal the decedent's wallet. The evidence showed that defendant normally remained close to "his" prostitute in order to protect her as she worked, approached the decedent only when one of the prostitutes called for help, and acted out of a desire to protect the prostitutes rather than to facilitate an armed robbery.

[People v. Jackson, 318 Ill.App.3d 321, 741 N.E.2d 1026 \(1st Dist. 2000\)](#) Defendant was improperly convicted, as an accomplice, of possession of a controlled substance with intent to deliver. Although a police officer saw defendant take money from an unknown person and then point to a third person, who handed an unidentified object to the unknown man, and crack cocaine was subsequently found in a paper bag that the third man dropped as police approached, there was no evidence that the unknown man was handed a controlled substance or any pattern of activity showing that defendant and the third man were involved in drug transactions.

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**Cumulative Digest Case Summaries §1-4**

[People v. Cowart, 2015 IL App \(1st\) 113085 \(No. 1-11-3085, 2/9/15\)](#)

Under the common design rule of accountability, where two or more people engage in a common criminal design, any acts in furtherance of that common design are considered to be the acts of all the members, and they are all legally responsible for the consequences of those acts. The Appellate Court reversed defendant's conviction for first degree murder holding that there was no evidence that defendant or anyone he was accountable for under a theory of common design fired the shot that killed Lee, the deceased victim.

The evidence showed that a fight broke out at a large street party attended by 100 - 200 people. During the fight, which involved numerous individuals, defendant punched a woman in the face, and later fired shots at some of the women he was fighting with. Several men associated with defendant also fired shots at the women. Many other men at the party who were not associated with defendant had guns and fired shots.

At some point during the melee, Lee was shot in the back and killed. Several people were standing near Lee and fired guns, but the person who fired the fatal shot was never identified. The State's evidence thus showed that defendant and his associates shot at the group of women they were fighting with, but did not show that any of these shots hit Lee by accident.

To establish a common criminal design resulting in murder, however, the State had to prove that Lee's unknown shooter shared defendant's common design to shoot at the women, but instead shot Lee by accident. The State failed to show this and thus failed to prove that defendant was accountable for Lee's murder.

(Defendant was represented by Assistant Defender Chris Gehrke, Chicago.)

[People v. Garrett, 401 Ill.App.3d 238, 928 N.E.2d 531 \(1st Dist. 2010\)](#)

Defendant was not proven guilty beyond a reasonable doubt of first degree murder, on an accountability theory, for acting as the getaway driver and helping to plan an armed robbery. A person is legally accountable for criminal conduct where before or during the commission of an offense, with the intent to promote or facilitate an offense, he solicits, aids, abets, agrees or attempts to aid another in the planning or commission of an offense. There was adequate evidence to conclude that defendant was involved in the planning and commission of the offense, but no evidence that the decedent's death occurred as a result of the armed robbery.

After a police officer entered the store during the robbery, the perpetrators fled. The decedent's body was found a short time later in another part of the store. Although the decedent died from a gunshot wound, a forensic analyst was unable to determine whether the bullet recovered from the corpse had been fired by the weapon taken from one of the principals in the armed robbery.

Defendant was not charged as an accomplice to armed robbery – for which he could have been convicted – but for being an accomplice to murder on a felony murder theory. Because there was “total absence of evidence proving or even suggesting who caused” the decedent's death, the conviction was reversed on reasonable doubt grounds.

[People v. Gibson, 403 Ill.App.3d 942, 934 N.E.2d 611 \(2d Dist. 2010\)](#)

1. 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 an offense, he solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of an offense. To prove guilt beyond a reasonable doubt of unlawful possession of a weapon by a felon, the person who possessed the weapon must be a convicted felon. Where an alleged accomplice had a prior felony conviction, but there was no evidence that either of the principals who possessed weapons were convicted felons, the State failed to prove defendant guilty as an accomplice of unlawful possession of a weapon by a felon.

2. Under [720 ILCS 5/7-13](#), the necessity defense is available if the defendant: (1) was without blame in developing a situation, and (2) reasonably believed that criminal conduct was necessary to avoid a public or private injury greater than the injury resulting from the crime. The necessity offense applies where the defendant must choose the lesser of two evils and has no other option. Thus, the defense excuses illegal conduct which is the only reasonable alternative available under the circumstances.

A defendant is entitled to a jury instruction on necessity if there is even slight evidence to support the defense.

The court acknowledged that defendant was blameless in developing the situation which led to armed robbery and aggravated kidnapping charges - defendant thought he was going to help with a moving job, but was later told that there was going to be a robbery. Defendant also claimed that he was told that the true nature of the enterprise had been withheld from him because his associates thought he might refuse to participate.

Although defendant claimed that he participated in the offense because he feared for his safety and that of his family, the court found that defendant could not have reasonably believed that participation was necessary to avoid a greater injury. The court noted that defendant was left alone several times during the offenses but failed to flee, use his cell phone to call for help, or seek help from nearby police officers. Instead, defendant continued with the criminal enterprise and subsequently helped the principals dispose of a stolen truck and conceal stolen property.

Because there was no basis for the defense, the trial court did not err by refusing to give a necessity instruction.

(Defendant was represented by Assistant Defender Vicki Kouros, Elgin.)

[People v. Ivy, 2015 IL App \(1st\) 130045 \(No. 1-13-0045, 8/6/15\)](#)

1. A person is legally responsible for the criminal conduct of another when he intends to promote

or facilitate the commission of an offense and he solicits, aids, abets, agrees or attempts to aid in the planning or commission of the offense. To prove that defendant had the requisite intent, the State must show either that defendant shared the criminal intent of the principal or that a common criminal design existed between defendant and the principal.

When there is a common criminal design, any acts performed in furtherance of that design are considered to be the acts of all the parties to the design, and all parties are responsible for the consequences of those acts. When a defendant attaches himself to a group bent on illegal activity and knows of its criminal design, courts will infer that defendant shared the common purpose of the group.

2. The State's evidence showed that defendant and at least two other men fired gunshots during an altercation involving numerous people. One man, Maurice Webb, was wounded during the altercation, but there was no evidence as to who fired the shot that wounded him. The trial court found defendant accountable for the attempt murder of Webb because "defendant initiated a shooting spree that devastated the neighborhood," and thus was legally responsible for the "all the carnage he started," including the shooting of Webb.

3. The Appellate Court held that the State's evidence failed to show that defendant was accountable for Webb's shooting. To be accountable, it was not enough to show that defendant initiated the shooting spree and set in motion a chain of events that led to Webb's shooting. Instead, the evidence had to show that Webb was shot "in furtherance of the common criminal design which defendant shared with his accomplices." The State did not need to prove which accomplice shot Webb, but it had to prove that an accomplice did so. If the shooter could not be narrowed down to one of the accomplices, defendant could not be found guilty by accountability.

Defendant's conviction for the attempt first degree murder of Webb was reversed.  
(Defendant was represented by Assistant Defender Kate Schwartz, Chicago.)

**[People v. Johnson, 2013 IL App \(1st\) 122459 \(No. 1-12-2459, 12/31/13\)](#)**

Under 720 ILCS 5/5-2(c) a person is accountable for the conduct of another if "either before or during the commission of an offense, 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." Accountability cannot be established by merely showing that the defendant knew of or consented to the commission of the offense. It also cannot be established by defendant's mere presence at the scene of the crime even if coupled with defendant's flight from the scene or his knowledge that a crime has occurred.

Here, the State's evidence showed that defendant was driving a car with his co-defendant as a passenger. At some point, co-defendant saw a man named Brandon driving another vehicle. Co-defendant identified Brandon as the "dude that shot me," and told defendant to chase him. Defendant pursued the other car and eventually stopped in front of it. Co-defendant got out of the car, pulled out a gun, and fired several shots at Brandon. Brandon tried to dive away and in the process struck defendant's car. Defendant drove down the street and while co-defendant was still firing the gun, told him to "come on or I'm going to leave you." Co-defendant ran towards defendant's car still firing his gun. Co-defendant got back in the car and defendant drove away. Brandon eventually died from the gunshots. Defendant later told an acquaintance that co-defendant had been armed, and they had "made a move" on (meaning shot) a man in another vehicle.

The Appellate Court held that this evidence failed to prove that defendant was guilty by accountability for first degree murder. Even though he drove the co-defendant to the scene of the crime and then helped him escape, there was no evidence that defendant had a prior intent to facilitate the shooting since defendant did not know the victim would be shot before the offense occurred, nor even that the co-defendant was armed. Driving someone away from the scene of the crime does not establish accountability. Nor does presence at the crime scene coupled with knowledge that a crime has occurred and subsequent flight. And there can be no common design to shoot someone if the defendant does not know his co-defendant is armed.

The fact that co-defendant identified Brandon as the man who shot him does not prove that defendant

intended to help him shoot Brandon. And even though co-defendant instructed defendant to chase Brandon, there was no evidence as to why co-defendant asked him to do this. Defendants statement to an acquaintance that co-defendant was armed and they “made a move” on Brandon were merely after-the-fact accounts of the events and do not establish what defendant’s intent was prior to the shooting. They also do not show when defendant learned that co-defendant was armed. As a result, the Appellate Court concluded that the State failed to prove beyond a reasonable doubt that defendant intended to facilitate the murder either before or during the shooting. The court therefore reversed defendant’s first degree murder conviction.

[People v. Johnson, 2014 IL App \(1st\) 122459-B \(No. 1-12-2459, 12/31/14\)](#)

Under 720 ILCS 5/5-2(c) a person is accountable for the conduct of another if “either before or during the commission of an offense, 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.” Accountability cannot be established by merely showing that the defendant knew of or consented to the commission of the offense. It also cannot be established by defendant’s mere presence at the scene of the crime even if coupled with defendant’s flight from the scene or his knowledge that a crime has occurred.

Here, the State’s evidence showed that defendant was driving a car with his co-defendant as a passenger. At some point, co-defendant saw a man named Brandon driving another vehicle. Co-defendant identified Brandon as the “dude that shot me,” and told defendant to chase him. Defendant pursued the other car and eventually stopped in front of it. Co-defendant got out of the car, pulled out a gun, and fired several shots at Brandon. Brandon tried to drive away and in the process struck defendant’s car. Defendant drove down the street and while co-defendant was still firing the gun, told him to “come on or I’m going to leave you.” Co-defendant ran towards defendant’s car still firing his gun. Co-defendant got back in the car and defendant drove away. Brandon eventually died from the gunshots. Defendant later told an acquaintance that co-defendant had been armed, and they had “made a move” on (meaning shot) a man in another vehicle.

The Appellate Court held that this evidence failed to prove that defendant was guilty by accountability for first degree murder. Even though he drove the co-defendant to the scene of the crime and then helped him escape, there was no evidence that defendant was involved in any advanced planning or had a prior intent to facilitate the shooting since defendant did not even know the co-defendant before he entered the car, let alone that he was armed and intended to shoot someone.

There was also no evidence that defendant participated in a common criminal design since defendant did nothing to assist the co-defendant during the crime. Driving someone away from the scene of the crime does not establish accountability. Nor does presence at the crime scene coupled with knowledge that a crime has occurred and subsequent flight.

The fact that co-defendant identified Brandon as the man who shot him does not prove that defendant intended to help him shoot Brandon. And even though co-defendant instructed defendant to chase Brandon, there was no evidence as to why co-defendant asked him to do this. Defendant’s statement to an acquaintance that co-defendant was armed and they “made a move” on Brandon were merely after-the-fact accounts of the events and do not establish what defendant’s intent was prior to the shooting. They also do not show when defendant learned that co-defendant was armed. As a result, the Appellate Court concluded that the State failed to prove beyond a reasonable doubt that defendant intended to facilitate the murder either before or during the shooting. The court therefore reversed defendant’s first degree murder conviction.

[People v. McIntyre, 2011 IL App \(2d\) 100889 \(No. 2-10-0889, 12/14/11\)](#)

To convict defendant under an accountability theory, the State must first establish a *prima facie* case against the principal.

Defendant was convicted of unlawful possession of a weapon by a felon. An essential element of that offense is that the principal is a convicted felon. Although defendant was a convicted felon, the principal was not. Because absent that evidence, the State failed to prove that the principal committed the offense of unlawful possession of a weapon by a felon, defendant could not be convicted of that offense under an

accountability theory.

(Defendant was represented by Assistant Defender Sherry Silvern, Elgin.)

**People v. Phillips, 2012 IL App (1st) 101923 (No. 1-10-1923, 5/15/12)**

1. A person is legally accountable for the conduct of another if before or during the commission of an offense, and with the intent to promote or facilitate that offense, he solicits, aids, abets, agrees, or attempts to aid another person in the planning or commission of an offense. Mere presence of the scene of a crime does not render a person accountable for an offense, although such presence may be considered with other circumstances when determining accountability.

When two or more persons engage in a “common criminal design or agreement,” acts of one party in furtherance of the common design are considered to be the acts of all of the parties to the common design. Thus, all of the parties are equally responsible for the consequences of the acts of any of the parties. Individuals can be convicted under the common design rule only if they: (1) intend to assist the principal in planning or committing the offense, (2) commit an act which assists in the planning or commission of the offense, and (3) both form the required intent and perform the required act before or during the commission of the offense. An intention or act is irrelevant for accountability purposes if it is formed or performed after the offense is completed. Crucial questions in a common design case frequently involve the points of time at which the defendant formed the intent to assist the principal or committed an act which aided the principal in planning or committing the offense.

2. Defendant was charged under the “common design” rule with being accountable for aggravated battery with a firearm and aggravated discharge of a firearm. The State argued that four factors established that defendant was guilty under the common design rule: (1) defendant transported the shooter to the scene of the offense, (2) defendant used his vehicle to force the victims’ car to stop, (3) defendant positioned his car to cut off escape by the victims, and (4) defendant allowed the shooter to re-enter the vehicle after the offense.

The court found that defendant was not proven guilty under the common design rule. In **People v. Dennis, 181 Ill. 2d 87, 692 N.E.2d 325 (1998)**, the Supreme Court held that for purposes of determining accountability, the duration of an offense is defined by the elements of that offense. Applying **Dennis**, the Appellate Court concluded that to prove guilt under the common design theory, the State was required to show that before or during the commission of the offense, the defendant intentionally aided or abetted the principal in conduct which constituted an element of either aggravated battery with a firearm or aggravated discharge of a firearm.

Aggravated battery with a firearm is complete when a firearm is discharged and a person is injured as a result. Aggravated discharge of a firearm is complete when a firearm is knowingly discharged in the direction of a person or vehicle. Because flight and escape are not elements of either offense, the court concluded that defendant’s act of driving the shooter away from the scene was irrelevant to whether he was accountable for the offenses.

The court noted that had the charge been felony murder, the perpetrator’s escape would have been considered part of the offense. By contrast, accountability is determined by the defendant’s actions before or during an offense and not by actions which occur after the offense is complete.

The court also rejected the argument that the remaining three factors indicated that the defendant was part of a common design to commit the offenses. First, the fact that defendant transported the shooter to the scene did not indicate that he participated in a common design, because there was no evidence that defendant knew that the shooter was armed. “If defendant did not know that [the shooter] had a gun, then regardless of what else defendant may have done he cannot have intended to help [the shooter] commit a crime that necessarily requires a firearm.” The court added that even evidence that defendant knew the shooter was carrying a gun while he was a passenger in defendant’s vehicle would not establish that defendant knew that the shooter intended to commit a crime.

Second, the evidence did not show that defendant intended to assist in the crimes by using his car

to stop the victims' car. The evidence showed that defendant's car was following the victims' car, and that defendant was making a left turn when the victims' car made a sudden U-turn that may not have been preceded by a turn signal. Although the cars nearly collided, there was no evidence that defendant was responsible for the near-collision or that he acted to help the shooter commit an offense. "It is unreasonable to assume that defendant's left-hand turn under these circumstances unequivocally shows that he intentionally forced the victims' vehicle to stop."

Finally, there was at best inconclusive evidence that defendant positioned his car to block the victims' escape route. Even if defendant's car blocked access to the north when he came to a stop after the near-collision, the victims' vehicle was in the intersection and could have escaped by making either a left or right turn. "The evidence is hardly conclusive that defendant was deliberately trying to trap the victims in preparation for an ambush."

The court concluded that even construing the evidence most favorably to the State, there was insufficient evidence to establish that defendant was accountable for the shooter's actions. Defendant's convictions were reversed.

3. In dissent, Justice Quinn stated that taking the evidence most favorably to the State and applying [People v. Taylor, 164 Ill. 2d 131, 646 N.E.2d 567 \(1995\)](#), a finding of accountability could be affirmed because defendant was present during the crime, maintained a close association with the shooter after the crime, failed to report the crime, and fled the scene.

(Defendant was represented by Assistant Defender Jonathan Steffy, Chicago.)

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