No. 19-8452

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

William Strickland — PETITIONER
(Your Name)

FILED
APR 07 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

People of the State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Illinois
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William Strickland
(Your Name)

P.O. Box 1000 711 Kaskaskia ST.
(Address)

Menard, Illinois 62259
(City, State, Zip Code)

N/a
(Phone Number)

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QUESTION(S) PRESENTED

1. Why The trial court did not Submit the "accomplice witness" instruction, I.P.I. 3.17, dispite the existence of probable cause to indict Danny "Black" Armstrong and Lovetta Smith for this offence?

2. Lovette Smith was arrested and charge- But changed her story to testify against William Strickland. And was released?

3. Danny "Black" Armstrong Admitted he would do the killing for money- And turned the weapon into the police for not being charged as the principle in this case?

4. Why William Strickland, was found guilty as accomplice and held accountible for other defendant- Where there is no principle defendant Charged?

5. The jury found that the State did not prove William Strickland was the one who fired the shots that killed the Victim?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Supreme Court of Illinois

Appellate Court of Illinois

Cook County Circuit Court - Chicago

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JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was JAN. 29, 2020. A copy of that decision appears at Appendix (B).

[✓] A timely petition for rehearing was thereafter denied on the following date: SEPT. 18, 2019, and a copy of the order denying rehearing appears at Appendix (A).

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

[ ] reported at APPENDIX (B); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the APPELLATE COURT OF ILLINOIS - FIRST DISTRICT court appears at Appendix A to the petition and is

[ ] reported at APPENDIX (A); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

POINTS AND AUTHORITIES

NATURE OF THE CASE

William Strickland was convicted of first degree murder after a jury trial and was sentenced to 40 years in prison.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether this Court should remand for a new trial where the trial court rejected William Strickland's proffered "accomplice witness" instruction, Illinois Pattern Instruction 3.17, even though one witness was arrested for this offense and another witness admitted at trial that he agreed to carry out murder for money, and the State even argued that Strickland could be guilty by accountability for this witness.

STATEMENT OF FACTS

William Strickland, known by his middle name Dashawn, was indicted for the first degree murder of his grandfather William Strickland. (C. 63–82) His grandmother Janet Strickland was charged as a co-defendant. They were tried simultaneously, Dashawn before a jury and Janet before the bench.[1] Dashawn was 19 years old at the time of the offense.

At trial, the State presented the testimony of civilian witnesses Edward Cleveland, Lavetta Smith, Phillamena Stitts, Danny Armstrong, and Lesley Strickland. The State also called various police personnel and a medical examiner, as well as Federal Bureau of Investigations Special Agent Joseph Raschke.

Edward Cleveland

At trial, Edward Cleveland testified that he worked for a driving service and often drove William to his dialysis appointments. (R. JJ70–71) On March 2, 2013, at about 3:30 a.m., Edward arrived at William's house at 454 East 95th to pick him up. (R. JJ72) He parked where he could see down the gangway along the house to the side door, where William always exited. (R. JJ72–73) As he waited, he heard three gunshots. (R. JJ74, JJ81) After seeing that the street was clear, he looked toward the house and saw William collapsed and a young man run out the gate and head west along the street. (R. JJ74–75) He also saw another man take a bag from William and head

[1] For clarity and consistency, this brief will refer to civilian witnesses by their first names and will use the name Dashawn for the defendant, as the witnesses did.

north toward the alley behind the house. (R. JJ75–77, JJ85–86) Edward said both of these people wore hoodies and he could not identify either of them. (R. JJ76–77)

Edward went to check on William and saw a woman whom he assumed to be William's wife step out the door. He told her to call 911. (R. JJ77–78) Later that morning, while still at the scene, he saw Dashawn—whom he did not know—come to the house. (R. JJ79, JJ90)

Officer Daniel Fava

Chicago police officer Daniel Fava and his partner responded to the scene within one minute of hearing a dispatch. (R. JJ14, JJ27) Fava went through the gangway and followed fresh footprints in the snow toward the back of the house, but found nobody. (R. JJ18)

Lavetta Smith

Lavetta Smith testified that she was Dashawn's girlfriend at the time of the incident. (R. JJ108) She lived with him at his grandfather's house on 95th, though William did not know this. (R. JJ108–09) She and Dashawn stayed in the basement, while William and Janet lived upstairs. (R. JJ109–10) Lavetta testified that Dashawn did not have his own phone, but borrowed Janet's instead. (R. JJ122)

Lavetta spoke with the police on March 2, 2013, but did not tell them the same story she told the jury. (R. JJ137) She explained from the witness stand that she kept quiet because Dashawn had threatened her. (R. JJ137) She did not tell police the version of events she gave at trial until March 29, 2013, after she was arrested and charged for the murder of William

Strickland and held overnight in a police station. (R. JJ138, JJ144–45) She was allowed to leave after changing her story. (R. JJ145)

Lavetta testified that sometime before March 2, 2013, while in the Strickland house, she overheard Dashawn and Janet talk about killing William. (R. JJ111–12) On February 28, 2013, she heard Dashawn tell Janet that he would get his friend "Black" to "do it," which she understood to mean to kill William. (R. JJ112–14) Dashawn said he needed a gun from Janet before the next day. (R. JJ114) Lavetta also testified that she had seen Dashawn with a gun for a month prior to the incident. He kept it under a seat in his grandfather's car. (R. JJ117–18) She identified a gun that was recovered in this case and tied to the offense as the one she had seen. (R. JJ120)

Later on February 28, Lavetta heard Dashawn tell Janet that "Black" was "playing" and he was going to have to "do it himself." Lavetta understood this to mean that "Black" did not want to kill William and that Dashawn was going to do it instead. (R. JJ115–16) According to Lavetta, Dashawn also talked with her about killing William and, when Lavetta told him not to, Dashawn said he was going to do it anyway. (R. JJ116–17)

On the evening of March 1, 2013, Dashawn drove Lavetta to pick up her friend Phillamena Stitts and then to a party. (R. JJ118–19) Dashawn dropped them off at the party and then picked them up some time later. (R. JJ119–22) Dashawn drove them and another friend to another party, and then took Phillamena home at around 11:00 p.m. to midnight. (R. JJ122–23) They all entered Phillamena's house and Lavetta fell asleep. (R. JJ124)

After about an hour, Dashawn woke Lavetta up. According to her grand jury testimony, introduced as a prior inconsistent statement, Dashawn "said that he's fittin' to go, he was going to do this." (R. JJ125) Dashawn drove her to a spot by the alley near the Strickland home. (R. JJ126) According to Lavetta, Dashawn parked the car, got out, and turned his hoodie inside-out. Dashawn then ran toward the alley carrying the gun she had seen. (R. JJ127–28)

Lavetta testified that she locked the doors and fell asleep. (R. JJ128) She awoke to Dashawn knocking on the window. She unlocked the doors and let him in. (R. JJ128) Dashawn put a bag in the backseat and drove back to Phillamena's house. (R. JJ128–29) At Phillamena's, Dashawn said he had to check with Janet and made a phone call from Phillamena's phone. She testified that she heard Dashawn ask, "Is he dead?" (R. JJ130) Lavetta testified that later that morning, after again going to the Strickland house and back to Phillamena's, Dashawn asked Phillamena to keep the gun. (R. JJ131–32)

In the days after the incident, Dashawn starting buying things for Lavetta, including a tattoo, shoes, and earrings. She said Dashawn also bought himself a phone, shoes, tatoos, and a new car. (R. JJ132–33)

On March 15, 2013, they drove together to Phillamena's birthday party at her house. They did not go in, but Phillamena brought a purse out and handed it to Dashawn. They then drove to "Black's" house. (R. JJ134–35) There, "Black" got in the car and Dashawn handed bullets and another item she could not see to "Black" from the purse. (R. JJ136–37)

Phillamena Stitts

Phillamena Stitts testified about being picked up by Lavetta and Dashawn, whom she identified in court, and going to various parties on the evening of March 1, 2013. (R JJ157–64) She testified that after the final party, they dropped her off at her home and she went in alone and turned on her alarm. (R. JJ164–65) She was later awakened by Dashawn knocking on her window. She opened her front door and let Dashawn and Lavetta in. (R. JJ166) Inside, Dashawn asked to use her phone. She heard Dashawn on the phone first say, "Why can't I come home?", and then say, "Okay. Yeah." (R. JJ167–68) He then turned to them and said, "My granddaddy got shot." (R. JJ168)

Phillamena testified that later that morning, Dashawn asked her to hold his gun; she agreed. (R. JJ170–71) A few days later, Dashawn sent her a message through Facebook saying, "If the detective asks you anything you don't know nothing." (R. JJ173–74)

On March 15, 2013, Phillamena saw Dashawn and Lavetta in a car outside her house. Dashawn asked if he could get what she was holding for him, and she went inside, got a purse with the gun, and gave it to Dashawn. (R. JJ175–76) Phillamena spoke with detectives that same day and did not tell them what she knew. (R. JJ177)

Both Lavetta and Phillamena testified at trial with contempt charges pending against them for failing to appear, charges which the State withdrew after their testimony. (R. JJ146, JJ177, JJ190)

Lesley Strickland

Lesley Strickland explained that she is Dashawn's mother and William's daughter. Janet was not her biological mother but had raised her and had been with her father for more than 30 years. (R. JJ43) Lesley testified that Janet called her at around 3:30 a.m. on March 2, 2013, and told her that William was dead. She immediately drove to Chicago from Milwaukee, where she lived. (R. JJ42–44) At the house on 95th, she saw Janet, who appeared intoxicated. (R. JJ46) Janet bought food and liquor for visitors, gave away furniture, and talked about redecorating. (R. JJ47) The following day, a 60-inch flat screen television, along with a stand with a built-in fireplace and refrigerator, was delivered to the house. (R. JJ48) According to Lesley, Janet was on a fixed income and had asked to borrow money from her and her husband before. (R. JJ50) Lesley suspected Janet was involved in William's death. (R. JJ61)

On March 20, 2013, Lesley learned that Dashawn had been arrested for William's murder. She visited him in jail on April 4. When she asked what happened, Dashawn put his head down, looked up, and told her Janet had it done. (R. JJ51–52) Dashawn told her Janet had asked him if he knew anybody. (R. JJ53) In her prior grand jury testimony, Lesley added that Dashawn said he met with a guy from over east named "Black" at 2:00 a.m. to "pick up the guy, to set it up for the shooting." (R. JJ54–55)

Lesley testified that after the incident, Dashawn came into possession of a car. Dashawn told her Janet bought it for him to keep him quiet because he had information. (R. JJ54–55) Her grand jury testimony related: after Dashawn said he met with "Black" to discuss the shooting, she asked if that

was why Janet bought him the car, and Dashawn said yes. (R. JJ55)

Lesley testified that Dashawn asked her to contact Lavetta or give him her phone number because he wanted to tell her not to testify. (R JJ56) Although she had no idea if this was true, Lesley told Dashawn that his fingerprints were found on the gun. (R. JJ56) She wanted to see his reaction. (R. JJ56) Dashawn said they were not on the gun. (R. JJ61) Two weeks later, Dashawn called her and told her that Janet had paid him to take the gun out of the house. (R. JJ57)

Danny "Black" Armstrong

Danny Armstrong testified that his nickname was "Black." (R. JJ219) Throughout his trial testimony, he often could not recall certain facts or gave testimony that contradicted his previous grand jury testimony. The State introduced much of his narrative through his grand jury testimony as substantive evidence, either through his acknowledgment at trial or through stipulation. (R. JJ256–60)

In late 2012 into early 2013, Danny lived in the 7300 block of South Oglesby and had known Dashawn for about a year. (R. JJ193–94) In December of 2012, Dashawn told him his grandmother was tired of his grandfather and wanted somebody to kill him. Dashawn said his grandmother would pay someone $2,000 to do it. (R. JJ195–96) Dashawn asked if he would help, and Danny admitted that he agreed to assist in the murder. He told the jury that he did not think Dashawn was serious. (R. JJ199)

Danny admitted that in early February of 2013, Dashawn asked if

Danny was still going to do it, and Danny said yes. (R. JJ200) He was supposed to take a bag from the grandfather with $1,000 in it, and Janet would give him another $1,000 later. (R. JJ256–57) Dashawn told him that William would be leaving for dialysis around 3:00–3:30 a.m. (R. JJ204) Dashawn said a car would be there to pick up William, but Danny should just kill William, run out the gate, and meet Dashawn in the alley. (R. JJ257)

On the evening of February 28, 2013, he spoke with Dashawn and was told to do it the morning of March 1. (R. JJ258) Danny said that he received more calls from Dashawn that night but did not answer them because he did not want to be part of this plan. (R. JJ207)

On March 1, Danny spoke with Dashawn, who said to do it "tonight, no bullshit." (R. JJ258) He was expecting a call later that night but did not get one, and explained he thought his phone was dead. (R. JJ258) On the morning of March 2, 2013, Danny saw a Facebook post by Dashawn announcing that his grandfather was dead. (R. JJ211–12) He told the grand jury that he then called Deshawn and asked what had happened, and Dashawn said he did it himself. (R. JJ259)

Danny told the grand jury that a week or so after the shooting, he asked Dashawn if he could have the gun. (R. JJ260) Dashawn gave him a gun sometime in March, 2013. (R. JJ216) Later in March, Chicago police arrested Danny. (R. JJ217) They asked him about this incident, and Danny told detectives he could get them the gun. (R. JJ218) He called a friend named K.O. and had him hide the gun in a pile of bricks from where the police could recover it. (R. JJ224, JJ230) He testified that when he called

K.O., he did not know if K.O. had the gun, he had not given K.O. the gun, and K.O. did not know where the gun was stored. He claimed he just guessed that K.O. could obtain it. (R. JJ227, JJ231)

At this point, the judge excused the jury and told Danny, "I get the distinct impression that you're fooling around," and thought he was "being purposely evasive." (R. JJ228) The judge said, "You know the answer to a lot of these questions." (R. JJ228–29) When Danny said he could not remember certain things, the judge responded, "I don't believe you," and threatened to hold him in contempt. (R. JJ229)

Danny denied committing this murder and denied meeting with Janet to get paid for the murder. (R. JJ234) He has two drug convictions from 2013 and, at the time he testified at trial, had pending case in Minnesota. (R. JJ191–92, JJ219)

Physical evidence

An assistant medical examiner testified that William died from six gunshot entrance wounds. (R. JJ1010-05)

Chicago police officer Mark Reno testified that on March 28, 2013, a detective asked him to recover a firearm from a specific location. Reno went to the spot and recovered a .25 caliber semi-automatic Beretta pistol from a rock pile. (R. KK56–58)

Lavetta, Phillamena, and Danny all identified this gun as the one they had seen Dashawn possess or they had received from Dashawn. (R. JJ120, JJ172–73, JJ217)

A firearms expert testified that, in his opinion, five fired cartridge

cases recovered from the scene and three fired bullets recovered from William by the medical examiner were fired from this weapon. (R. KK79–80) Chicago police requested fingerprint testing of the cartridge cases but then later canceled that request. (R. KK81)

On March 29, 2013, officers executed a search warrant at the Strickland house and recovered a receipt for the purchase of a car on March 20, 2013, in Dashawn's name showing $3,500 paid in cash. (R. JJ253–54; State's Exhibit 56)

Special Agent Joseph Raschke

Joseph Raschke, a special agent for the Federal Bureau of Investigations, testified as an expert in historical cell site analysis. (R. KK8–9) Historical cell site analysis is the analysis of cellular phone records to determine the approximate location of a phone at a given point in time. (R. KK6) From phone records, Raschke can identify the location of cell phone towers and determine which towers a phone connected to for listed calls. (R. KK6, KK11-12) Phones usually, but not always, connect to the closest tower. Towers often have multiple radios pointed in different directions, which can give an indication of the phone's location in relation to the tower. (R. KK11-12)

Raschke received records relating to phone numbers linked to Danny Armstrong's Sprint phone and the AT&T phone Dashawn borrowed from Janet. (R. KK14) His analysis showed that Dashawn and Janet's phone moved all over the south side of Chicago on the evening of March 1, 2013, into the morning of March 2, connecting to towers near the parties Lavetta

and Phillamena described and near Danny's home address. (R. KK18–29; State's Exhibit 65) Records showed that this phone called Danny's phone seven times between 7:59 p.m. on March 1 and 2:18 a.m. on March 2, 2013. (R. K24–59) This 2:18 a.m. call was the last one from the AT&T phone before the incident and it connected to a tower near the house at 454 E. 95th Street; the next call was to 911. (R. KK29, KK36, KK40) Many of these calls to Danny's phone lasted just a few seconds. (R. KK28–29) The Sprint records show that Danny's phone called the AT&T phone at 9:00 a.m. on the morning of March 2. (R. KK30–32)

Jury instructions, closing arguments, and verdict

Strickland asked the court to instruct the jury according to Illinois Pattern Instruction 3.17, "Testimony of an Accomplice." (C. 235; R. KK53) While the request was made off the record, the judge made a record of the reasons for refusing this request. (R. KK53) According to the court, it rejected this instruction because Lavetta never said she was an accomplice and nothing she testified to could lead to an indictment. (R. KK53) According to the court, this is for "flippers," and "I don't know that she is a flipper necessarily, because I don't know that she was in harm's way for the things she testified to." (R. KK53)

The court instructed the jury on accountability. (C. 214; R. KK137)

In closing, the State argued that this was an inside job by people who knew William's routine. The State theorized that Dashawn drove to parties all over the south side, as Lavetta and Phillamena described, and then dropped the phone off with Janet a little after 2:00 a.m. so she could have it

to call 911 when William got shot. (R. KK96) The State also argued that Dashawn was guilty by accountability for his participation in the plot with Janet and for recruiting Danny. (R. KK99–100, KK123) The State argued that Dashawn's statements to his mother alone—that he met with Danny to pick him up and set up the shooting—are enough to convict. (R. KK123) The State added, "That, ladies and gentlemen, is first-degree murder. Whether you believe that he's the shooter or somebody else is the shooter. That is the theory of legal responsibility. He aided or abetted or solicited. He met the guy and he set it up." (R. KK123)

The defense argued that Dashawn left the phone behind with Janet when he went to pick up Lavetta and Phillamena at one of the parties, and that, once alone, Janet called Danny to set the plan in action. (R. KK103–05) The mere fact that Janet was giving Dashawn hush money indicated his lack of involvement; if he was involved, there would be no need to buy his silence. (R. KK106–07) Dashawn had merely mentioned to Danny that his grandmother wanted his grandfather dead as part of a discussion about his crazy family life, and Danny took it upon himself to make arrangements with Janet. (R. KK108) Danny's reluctance on the witness stand backed this up; he dodged questions, denied grand jury testimony, and refused to say where he stored the gun and for a long time on the stand and denied knowing the name of the friend who produced the gun for the police. (R. KK108)

Lavetta was not trustworthy because she did not implicate Dashawn until after she was arrested for this very offense, and while she claimed that at around 3:30 a.m. on March 2, Dashawn asked on the phone, "Is he dead?",

Phillamena only heard him ask why he could not come home. (R. KK113–14) Meanwhile, Edward Cleveland saw Dashawn at the house later in the morning after the incident but failed to identify him. (R. KK111)

After sending out notes asking for grand jury testimony and Phillamena's house phone number, and asking about a comment by the prosecutor in closing about a phone call that the jury believed was not in evidence, the jury found Dashawn guilty of first degree murder. (C. 206; R. KK145–50) In response to a special interrogatory, the jury found that the State failed to prove that Dashawn personally discharged a firearm that proximately caused death. (C. 205; R. KK150)

Post-trial and sentencing

In a motion for a new trial, Dashawn argued, *inter alia*, that the court erred by rejecting the accomplice witness jury instruction where both Lavetta and Danny could have been charged in this crime. (C. 283–84) On March 23, 2016, the court denied the motion and sentenced Dashawn to 40 years in prison. (C. 280; R. MM4, MM31) The following day, the court denied Dashawn's motion to reconsider the sentence and Dashawn filed a notice of appeal. (C. 301; R. NN2)

This appeal follows.

Ill. App. 3d 279, 290 (1st Dist. 2002). Where the trial court fails in this responsibility, a defendant is denied his due process right to a fair trial. U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, § 2; *People v. Roberts*, 75 Ill. 2d 1, 15 (1979) ("every error in the giving of an instruction impinges upon the right of a party to a fair trial"). This error also implicates a defendant's right to trial by jury because it prevents the jury from fulfilling its constitutional function. U. S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § § 8, 13; *People v. Jenkins*, 69 Ill. 2d 61, 66 (1977).

Where this constitutional issue is preserved through an objection and the post-trial motion, as here, the State bears the burden to show that the error was not harmless beyond a reasonable doubt. *People v. Hall*, 81 Ill. App. 3d 322, 326 (5th Dist. 1980); (C. 283–84; R. KK53–54).

Where there is probable cause to believe a witness was guilty of the offense as a principal or on the theory of accountability, or if the witness could have been indicted for the offense, the court should instruct the jury according to I.P.I. 3.17. *People v. Cobb*, 97 Ill. 2d 465, 475-76 (1983); *People v. Jackson*, 145 Ill. App.3d 626, 643 (1st Dist. 1986) (this instruction is "required"when an accomplice incriminates the defendant). This instruction states:

> When a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in light of the other evidence in the case.

Illinois Pattern Jury Instruction, Criminal, No. 3.17 (4th ed. 2000). The purpose of this instruction is to apprise the jury that a witness, knowing that his participation in a crime has been detected, may have a strong motivation to falsely accuse others and procure their conviction in order to shield himself from punishment. *People v. Carreon*, 162 Ill. App. 3d 990, 993 (1st Dist. 1987).

Probable cause is the presence of facts and circumstances sufficient for a reasonable person to believe that an offense has been committed. *People v. Robinson*, 62 Ill. 2d 273, 276 (1976). This requires "only the probability, and not a prima facie showing, of criminal activity." *Illinois v. Gates*, 462 U.S. 213, 271-72 (1983) (citing *Spinelli v. U.S.*, 393 U.S. 410, 419 (1969)). Even "passive" participation in a crime can satisfy probable cause for guilt by accountability. *People v. Grabbe*, 148 Ill. App. 3d 678, 687 (4th Dist. 1986). If this minimal threshold is satisfied, the defendant is entitled to an accomplice witness instruction, "even if the witness denies involvement in the crime." *People v. Lewis*, 240 Ill. App. 3d 463, 466-67 (1st Dist. 1992).

Here, there was probable cause to indict both Lavetta and Danny for the murder of William. Accordingly, the trial court should have allowed the defense's request to submit I.P.I. 3.17 to the jury.

A. Probable cause existed to believe Lavetta Smith, who was arrested for this murder, was an accomplice.

Although mere physical presence is not dispositive, an individual may be an accomplice even when playing a passive role in the commission of an offense: the willing participation and cooperation with others intending to commit a crime strongly suggests there is probable cause to indict. *Grabbe*,

148 Ill. App. 3d at 687; *People v. Winston*, 160 Ill. App. 3d 623, 631 (2d Dist. 1987).

In *People v. Cobb*, 97 Ill. 2d 465, 475-76 (1983), a witness was with the offenders before the offense, waited in the getaway car, and drove them away as they discussed the money they had obtained. She did not disclose her knowledge to police until three weeks later. *Cobb*, 97 Ill. 2d at 476. The trial court refused to give the accomplice witness instruction, and the Supreme Court held this was erroneous and reversed. *Id.* at 477476–77, 481 (finding other errors as well, but noting that a new trial would be required on "that ground alone").

In *Winston*, a witness was with the defendant while he planned a robbery, was present at the scene, met the defendant immediately after the robbery, and received a share of the proceeds. *Winston*, 160 Ill. App. 3d at 631. He did not approach the police until one week later. *Id.* The appellate court remanded for a new trial because the trial judge refused the defense request for I.P.I. 3.17. *Id.* at 631–62.

Lavetta's participation was more than either of the witnesses in *Cobb* and *Winston*, as the facts of her potential accountability straddle both of these cases: she learned of the plan to kill William (R. JJ111–12, JJ116), she accompanied Dashawn to the crime scene (R. JJ128), she let Dashawn back into the getaway car and rode away with him (R. JJ128), she received a share of the proceeds by way of jewelry, shoes, and tattoos (R. JJ132–33), and she did not tell her story to the police implicating Dashawn until four weeks later, after she was arrested for this offense. (R. JJ138). Further, her trial

testimony was internally inconsistent, revealing possible fabrication: she testified that Dashawn asked Janet for a gun less than 48 hours before the offense, but also that she had seen Dashawn in possession of the eventual murder weapon in the month leading up to the incident and he would keep it under a seat in his grandfather's car. (R. JJ114, JJ117–18)

In fact, Lavetta satisfies all the standard factors that render one accountable for an offense:

> (1) defendant's presence during the planning of the crime; (2) defendant's presence at the scene of the crime without any negative reactions to it; (3) acceptance of illegal proceeds from the actual perpetrator; (4) flight from the scene, especially after the victim has been injured or killed; (5) failure to report the incident; and (6) defendant's continued association with the perpetrator after the criminal act.

People v. Walker, 230 Ill App. 3d 377, 396 (1st Dist. 1992). Not discussed above but fitting the second factor listed in *Walker*, Lavetta testified that she saw William return to the car with a bag that he did not have when he left and heard him ask Phillamena to store the gun after the incident, but she did not have a negative reaction to these observations. (R. JJ128–29, JJ131–32)

Based on these facts, the police themselves acted upon probable cause to believe Lavetta was responsible, arresting her for this murder. When police initially interviewed Lavetta on March 2, 2013, she did not implicate Dashawn in William's death. (R. JJ144) As she admitted, it was not until four weeks later, only after being arrested and charged for this murder, that

Lavetta implicated Dashawn. (R. JJ138) She was allowed to walk free after changing her story. (R. JJ145) The only apparent substantive circumstance that changed between Lavetta's initial interview and her subsequent statement and trial testimony was Lavetta's penal interest.

Lavetta's tainted trial testimony was exactly the malady I.P.I. 3.17 was designed to temper. The danger that this instruction mitigates is that the witness may manufacture testimony favorable to the State in the hope of obtaining lenient treatment and avoiding criminal liability. *Carreon*, 162 Ill. App. 3d at 993. Lavetta had already changed her story to implicate Dashawn to the police following her arrest and had a continued interest to avoid criminal liability at trial.

B. Probable cause existed to believe Danny "Black" Armstrong, who admitted that he agreed to kill William for $2,000, was an accomplice, especially where the State argued to the jury that Dashawn was accountable for Danny.

The existence of probable cause to indict Danny "Black" Armstrong also necessitated that the court submit I.P.I. 3.17 to the jury. Here, too, the evidence suggested Danny might manufacture testimony favorable to the State in the hope of avoiding criminal liability where he admitted that he agreed to commit this murder for money and the occurrence witness, Edward Cleveland, saw two men flee the scene. *See Carreon*, 162 Ill. App. 3d at 993.

Danny testified that he learned from Dashawn that Janet Strickland was willing to pay $2,000 to kill William. (R. JJ196-97) Danny admitted that he accepted this offer but claimed at trial that, privately, he did not think Dashawn was serious. (R. JJ198-99) Yet according to Edward Cleveland, who

was in a van outside William's residence at the time of the shooting, two med fled the scene after the gunshots. (R. JJ71, JJ75) Then, after the murder, Danny possessed the firearm used in the killing and eventually produced it for the police. (R. JJ215-16) Danny's admissions under oath combined with Edward's observations were sufficient—without more—to establish probable cause.

In addition, the court explicitly doubted Danny's credibility, further suggesting the likelihood that Danny was manufacturing his testimony. During cross-examination, the judge excused the jury and stated that he did not believe Danny was answering the attorneys' questions truthfully. (R. JJ228–29)

Danny's conduct exceeds the actions of the accomplice-witnesses in *Cobb* and *Winston*. The witnesses there all had merely passive connections to the crimes, whereas here Danny agreed to carry out a contract killing and his presence at the offense was at least partially corroborated by Edward's observation. Further, his desire to acquire a firearm that he believed to be associated with a murder suggests that he was deeply concerned with controlling evidence of the murder.

Additionally, the State argued in closing that it could find Dashawn guilty by accountability *for Danny as the principal*. (R. KK99–100, KK123) The State argued that Dashawn's statements to his mother alone—that he met with Danny to pick him up and set up the shooting—are enough to convict. (R. KK123) The State added, "That, ladies and gentlemen, is first-degree murder. Whether you believe that he's the shooter or somebody else is

the shooter. That is the theory of legal responsibility. He aided or abetted or solicited. He met the guy and he set it up." (R. KK123)

Based on the totality of the evidence, and as exemplified by the State's closing argument, there is a substantial connection between Danny and the crime. If there is a chance that the jury accepted the State's argument and found Dashawn guilty by accountability for Danny, the jury should have been given the accomplice witness instruction to appropriately process Danny's testimony. This is more than mere speculation: not only was it argued to the jury, but the jury did not find that the State sufficiently proved the allegation that Dashawn personally discharged a firearm that proximately caused death. (C. 205; R. KK150)

Because there was probable cause to believe that Danny was responsible for the offense, as the State argued, the trial court abused its discretion by rejecting I.P.I. 3.17.

C. The trial court's rejection of I.P.I. 3.17 was not harmless beyond a reasonable doubt.

Dashawn properly preserved this issue for appeal by requesting the instruction and including the trial court's refusal in his motion for a new trial. (C. 235, 283-84; R. KK53) As noted above, jury instruction errors undermine a defendant's constitutional right to a fair jury trial. U.S. Const., amends. V, VI, XIV; Ill. Const. 1970, art. I, §§ 2, 8, 13; *People v. Roberts*, 75 Ill. 2d 1, 15 (1979); *People v. Jenkins*, 69 Ill. 2d 61, 66 (1977). The State bears the burden of proving a preserved constitutional error was harmless beyond a reasonable doubt; if the State fails, reversal is required. *People v. Mullins*, 242 Ill. 2d 1, 23 (2011); *People v. Hall*, 81 Ill. App. 3d 322, 326 (5th Dist.

1980) (reversing where a trial court's rejection of I.P.I. 3.17 was not harmless beyond a reasonable doubt). The State cannot make this showing here.

The trial court's failure to instruct the jury regarding I.P.I. 3.17 cannot be harmless where the State's case rests upon the credibility of the witness in question. *People v. Montgomery*, 254 Ill. App. 3d 782, 791 (1st Dist. 1993). Reversal is required where the jury may use the relevant witness's testimony to "tip the balance in favor of conviction." *People v. Winston*, 160 Ill. App. 3d 623, 632 (2nd Dist. 1987).

Here, Lavetta's and Danny's testimony more than tipped the balance in favor of conviction. Lavetta's testimony was crucial to establish a plot to kill William, Dashawn's possession of the gun linked to the offense, his statements that he was going to do it, Dashawn going to the scene just before the shooting and returning with William's bag, and Dashawn spending money freely after William's death. (R. JJ111–12, JJ115–20, JJ125–29, JJ132–33) Danny, meanwhile, established that Dashawn was a participant in the plot with Janet by seeking someone to carry out the deed, and provided the State with its theory—argued to the jury—that Dashawn was accountable for Janet and for Danny himself. (R. JJ195–96, JJ200, JJ256–5, KK99–100, KK123) Without credible testimony from these two witnesses, the State's case crumbles.

The long line of cases reversing due to a trial court's failure to include I.P.I. 3.17 in jury instructions, often even where the issue is forfeited, demonstrates the gravity of such an omission. *E.g. People v. Cobb,* 97 Ill. 2d 465, 481 (1983); *Winston,* 160 Ill. App. 3d at 631-32; *People v. Montgomery,*

REASONS FOR GRANTING THE PETITION

THE REASON For GRANTING This Petition, is the the Lower Court have Put a broad view of holding people accountable for other actions. The stretch in this case - is very broad to hold one accountable for another actions, where there is no principle Charged. Of who committed the murder. And the trial court didn't or couldn't find defendant of Actual discharge of the weapon used in the murder.

And the defendant not in the prossion of said weapon. The defendant was only 18 years of age when the offenses occured. And was co-hearest into any Statements - or involvement in this offense."

There for prays This court will grant this pitition, to insure this actions of the lower courts do not occur with other defendant or this defendant, of how state use their accountability laws in court systems.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

William Strickland

Date: 4-7-20