

Nos. 1-13-0346 and 1-13-1426
(CONSOLIDATED)

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	Nos. 11 CR 12493
)	11 CR 12494
)	
MARCO MARTINEZ,)	Honorable
)	William T. O'Brien,
Defendant-Appellant.)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Palmer and Justice McBride concurred in the judgment.

O R D E R

- ¶ 1 *Held:* The State's evidence was sufficient to prove defendant guilty of two counts of armed robbery where there was ample evidence that the two assailants worked in concert to batter the two separate victims and each victim testified that he had cash in his pocket before the battery that was missing afterwards.
- ¶ 2 Following a bench trial, defendant Marco Martinez was convicted of two counts of armed robbery and sentenced to two concurrent terms of 20 years in prison. On appeal, defendant challenges the sufficiency of the evidence. For the reasons that follow, we affirm.

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¶ 3 At trial, the State presented evidence that on July 23, 2011, defendant and codefendant, Luis Roman, used baseball bats to beat and rob Loureano Uriostesui and Juan Castillo in two incidents about one hour apart and less than two blocks from each other. In the first incident, defendant and codefendant entered the yard where Uriostesui was sitting, pulled out short baseball bats, threw Uriostesui to the ground, threatened to kill him, and repeatedly struck him on his legs, arms, and head with the bats. In addition, defendant squeezed Uriostesui's neck as codefendant kicked him. After defendant and codefendant stopped beating Uriostesui and left the scene, Uriostesui discovered that \$250 that had been in his pants pocket was gone.

¶ 4 In the second incident, just after Juan Castillo walked past defendant and codefendant in an alley, he felt a heavy object hit his head. When he turned around, codefendant started pushing and holding him and defendant beat his head and arms with a small bat. While Castillo "wrestled" with codefendant, codefendant's hands were all over his body. Castillo broke free and ran a short distance, but then fell as defendant and codefendant caught up to him. Defendant resumed hitting Castillo while codefendant kicked him. Margarita Couawubias, who lived nearby, heard screaming and testified that she saw codefendant hitting Castillo with a "stick" while defendant kicked him. Codefendant then passed the stick to defendant. When Couawubias said she was going to call the police, defendant screamed at her to shut up because she did not know anything and they were not afraid of the police. After continuing to hit and kick Castillo for some time, defendant and codefendant fled through the alley. Following the beating, Castillo discovered that \$50 was missing from his pants pocket.

¶ 5 When defendant and codefendant were arrested shortly thereafter in front of a nearby liquor store, codefendant had no money on his person and defendant had \$28.

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¶ 6 With regard to the case involving Uriostesui, the trial court found defendant guilty of one count of armed robbery and four counts of aggravated battery. In the case involving Castillo, the trial court found defendant guilty of one count of armed robbery and three counts of aggravated battery. At sentencing, the trial court merged the aggravated battery convictions with the armed robbery convictions and sentenced defendant to two concurrent terms of 20 years in prison. Defendant filed separate notices of appeal from his two convictions; this court consolidated the appeals on defendant's motion.

¶ 7 On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he took money from either of the victims, and thus, failed to establish that he committed armed robbery. He notes that neither victim testified he was searched for money during the incidents; that neither victim was able to say what happened to his money; that no demands for money were made during the incidents; and that upon arrest, defendant had only \$28 on his person, far less than the \$300 that the victims testified disappeared from their pockets. Defendant also calls into question the credibility of the victims because they both testified they had been drinking on the day of the incident, and one of them was inconsistent in his reports to the police regarding the order of events during his beating. Finally, defendant argues that he cannot be held accountable for codefendant's actions, as there was no evidence that he and codefendant entered into an agreement to commit a robbery at any time.

¶ 8 When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). Under this standard, a reviewing court must allow all

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reasonable inferences from the record in favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a court of review will not substitute its judgment for that of the trier of fact on these matters.

People v. Brooks, 187 Ill. 2d 91, 131 (1999). Reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 9 To prove armed robbery in the instant case, the State was required to show that defendant, while armed with a dangerous weapon other than a firearm, took property from the person or presence of the victims by the use of force or by threatening the imminent use of force. 720 ILCS 5/18-1, 18-2(a)(1) (West 2010). The elements of armed robbery, including "taking," may be proved by circumstantial evidence, so long as that evidence is of a conclusive nature and produces a reasonable and moral certainty that the offense charged was actually committed.

People v. Harris, 2012 IL App (1st) 100678, ¶¶ 84, 85.

¶ 10 Viewed in the light most favorable to the prosecution, the circumstantial evidence in this case established a taking sufficient to sustain defendant's armed robbery convictions. Uriostesui and Castillo both testified that they had money in their pants pockets before they were beaten by defendant and codefendant, and that the money was gone following the beatings. The fact that their money was not recovered is not dispositive. A conviction for armed robbery may be sustained on circumstantial evidence even where the proceeds of the armed robbery are not recovered. *People v. Goodum*, 127 Ill. App. 3d 350, 354 (1984); see also *People v. Hughes*, 259 Ill. App. 3d 172, 178 (1994) (evidence was sufficient to prove armed robbery even though the

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defendant was not in possession of a weapon or the robbery proceeds less than 20 minutes after the crime occurred). Based on Uriostesui's and Castillo's testimony regarding the timing of the disappearance of their money, it may be reasonably inferred that defendant and/or codefendant took the victims' money.

¶ 11 Assuming, *arguendo*, that codefendant was the person who took the victims' money, the evidence was sufficient to convict defendant under a theory of accountability. A person is legally accountable for the conduct of another when:

"either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense.

When 2 or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the common design or agreement and all are equally responsible for the consequences of those further acts." 720 ILCS 5/5-2(c) (West 2010).

When proceeding under a theory of accountability, the State is not required to prove that a verbal agreement existed between the parties, as the trier of fact may infer a common design from circumstantial evidence. *People v. Adams*, 394 Ill. App. 3d 217, 233 (2009).

¶ 12 Here, the evidence showed that defendant and codefendant acted in concert. Together, they entered the yard where Uriostesui was sitting and proceeded to beat him. They then left the

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yard together and promptly reappeared together in an alley about a block and a half away, where they beat Castillo. During that beating, they passed a small bat from one to the other, and again, they fled the scene together. From these circumstances, the trial court could infer that defendant and codefendant were working in concert with the common aim of beating Uriostesui and Castillo. As such, defendant and codefendant are equally responsible for any actions taken in furtherance of or as a consequence of that common design, including the robberies that occurred during the beatings. Thus, the evidence was sufficient to find defendant guilty of the armed robberies of Uriostesui and Castillo, whether it was defendant or codefendant who took the money from their pockets. Defendant's arguments fail.

¶ 13 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 14 Affirmed.