

No. 1-13-0052

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

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

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

ORDER

¶ 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 money in his pocket before the battery that was missing afterwards.

¶ 2 Following a bench trial, defendant Luis Roman was convicted of two counts of armed robbery pursuant to sections 18-1 and 18-2(a)(1) of the Illinois Criminal Code of 1961 (Code)

(720 ILCS 5/18-1, 18-2(a)(1) (West 2010)) and sentenced to two concurrent terms of 20 years in prison. On appeal, defendant asserts the State failed to prove beyond a reasonable doubt that he committed armed robbery, because the evidence failed to establish that: (1) he took the victim's money; and (2) he intended to assist in a robbery or entered into a common design with codefendant, Marco Martinez (Martinez).¹ For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 Defendant was charged by information in two cases with attempted murder, armed robbery, and aggravated battery based on attacks of three individuals which occurred on July 23, 2011. In the first case (No. 11 CR 12494), it was alleged defendant and Martinez struck Loreano Uriostesui (Uriostesui) in the head and body with a bat, causing injuries, and knowingly took currency from Uriostesui. In the same case, it was also alleged defendant and Martinez struck another victim, Hector Silva (Silva), in the head and body with a bat, causing injuries.² In the second case (No. 11 CR 12493), it was alleged defendant and Martinez struck Juan Castillo (Castillo) in the head and body with a bat, causing injuries, and knowingly took currency from Castillo. The trial court granted the State's motion for joinder of the two cases. Defendant pleaded not guilty on all counts and elected a bench trial.

¶ 5

A. Trial

¶ 6

1. Loureano Uriostesui

¶ 7 The first victim, Loureano Uriostesui, testified to the following facts. At the time of trial he was 64 years old. On July 23, 2011, he cashed his pay check and had \$250 in his pocket. Shortly after 3 p.m., he visited with friends at 2228 North Laramie Avenue in Chicago. While in

¹ Martinez is not a party to this appeal.

² The charges related to the attack on Silva were dismissed by way of *nolle prosequi*.

the back yard consuming a beer, he observed a blue Toyota stop briefly in the alley. After the vehicle left, two individuals remained. These individuals were identified by Uriostesui as defendant and Martinez in court. Uriostesui then observed defendant and Martinez reach behind their heads and each pull out small bats. Defendant had a 12 inch wooden bat with blue tape around the handle while Martinez had an 18 inch aluminum bat. Uriostesui watched as defendant and Martinez began battering Silva with their bats. Silva was eventually able to escape by running away. Defendant and Martinez then approached Uriostesui and began beating him with their fists. They then hit him about the head and arms with the bats.

¶ 8 Immediately after the beating, Uriostesui noticed that the \$250 he had in his pants pocket before the attack was missing. He could not recall whether defendant ever touched his pockets or waist area. Fifteen minutes later, the police arrived and Uriostesui provided them with a description of the attackers. After being released from the hospital that same day, Uriostesui identified defendant and Martinez in a lineup at the police station.

¶ 9 On cross-examination, Uriostesui testified that he sometimes frequents the liquor store on the corner of Fullerton and Lockwood, but did not purchase beer there on the day of the incident.

¶ 10 2. Juan Castillo

¶ 11 The second victim, Juan Castillo, testified to the following facts. At 4 p.m. on July 23, 2011, he was walking down the alley of the 2300 block of North Lockwood Avenue in Chicago when he was hit in the head from behind with a heavy object. He turned around as two men, identified in court as the defendant and Martinez, began beating him. Martinez hit him with a 12 inch wooden bat while defendant held him in place. As Castillo tried to extricate himself from the attack, he felt defendants "going through [his] body." Castillo then escaped, but tripped while running away. Defendant and Martinez caught up to him and began kicking and hitting

him with the bat again. At this point, Castillo heard a woman yell for his attackers to stop. One of his attackers did stop beating him, but only momentarily while he yelled back at the woman. Shortly thereafter the bat broke and defendant and Martinez left. Castillo then noticed that 50 dollars he had in his right front pants pocket before the attack was missing.

¶ 12 An ambulance arrived at the scene where Castillo's injuries were preliminarily treated before being taken to the hospital. Police officers then brought defendant and Martinez to the ambulance where Castillo was being treated. Castillo identified them as his attackers. Castillo further testified that he had been drinking that day.

¶ 13 On cross-examination, Castillo testified he did not see defendant take any money from him.

¶ 14 3. Margarita Couawubias

¶ 15 Margarita Couawubias (Couawubias), an eye-witness to the attack on Castillo, testified to the following facts. At 4:15 p.m. on July 23, 2011, she was outside her home, located on the 2300 block of North Lockwood Avenue in Chicago, when she heard someone screaming. She turned and observed two individuals (identified in court as defendant and Martinez) kicking Castillo and hitting him with a "stick." She informed defendant and Martinez that she was calling the police. Codefendant then approached her home and screamed at her in Spanish "to shut up because [she] didn't know anything." Defendant and codefendant kept beating Castillo while Couawubias called the police.

¶ 16 After defendant and Martinez left, Couawubias helped Castillo with his injuries. Thereafter while she was speaking with officers, Couawubias observed defendant and Martinez walking on Fullerton. She pointed out defendant and codefendant to the officers and began running toward them. The officers followed. Once at the corner of Fullerton and Lockwood,

outside of a liquor store, Couawubias identified defendant and Martinez as the individuals who attacked Castillo.

¶ 17 On cross-examination, Couawubias testified that the "stick" had "a piece of blue" on it. She further testified that Castillo had a beer with him when she went to help him.

¶ 18 **4. Officer Peter Masheimer**

¶ 19 Chicago police officer Peter Masheimer (Masheimer) testified that at approximately 4:22 p.m. on July 23, 2011, he and his partner, Officer Rich Rinella (Rinella), responded to a call at the 2300 block of North Lockwood Avenue in Chicago. When they arrived, Officer Masheimer observed Castillo, who had sustained facial, head, and arm injuries. Officer Masheimer and Officer Rinella also interviewed Couawubias, who identified defendant and Martinez as the two offenders. Officer Masheimer and Officer Rinella brought defendant and Martinez back to the ambulance where Castillo also identified them as his attackers. Officer Masheimer testified that neither he nor his partner were able to locate the weapons used in the crime.

¶ 20 On cross-examination, Officer Masheimer testified that defendant was searched, and to his knowledge no money was found on his person. In addition, Officer Masheimer testified Castillo smelled like alcohol.

¶ 21 **5. Officer Gancarczyk**

¶ 22 Officer Gancarczyk³ testified that on July 23, 2011, at approximately 4:20 p.m., he arrived at 2342 North Lockwood Avenue in Chicago and transported Martinez to the police station. Officer Gancarczyk searched Martinez and found \$28, but did not find any weapons.

¶ 23 **6. Detective Philip Brown**

¶ 24 Chicago police detective Philip Brown (Brown) testified he conducted a lineup at 9:50

³Officer Gancarczyk's first name was not included in the record on appeal.

p.m. on July 23, 2011, and Uriostesui identified defendant and Martinez as the people who struck him with a baseball bat and took his money. Detective Brown also testified that 2228 North Laramie Avenue, where Uriostesui was attacked, was approximately one and a half blocks from 2342 North Lockwood Avenue, where Castillo was attacked. On cross-examination, Officer Brown acknowledged his report indicated Uriostesui was attacked first.

¶ 25

7. Defendant

¶ 26 Defendant then testified to the following facts. On July 23, 2011, at approximately 3:35 p.m., he and Martinez were walking from the corner of Fullerton and Laramie to a liquor store located two blocks away, at the corner of Fullerton and Lockwood Avenues. Defendant had previously been at his house where he consumed five beers. According to defendant, five people approached him on the way to the liquor store and asked for money, including Uriostesui and Castillo.⁴ Defendant declined to give them money. According to defendant, one of the individuals then threw a punch and a fight ensued. The fight ended after five minutes. Defendant continued on to the liquor store where he purchased a 12-pack of beer. When he exited the liquor store, Uriostesui and Castillo approached him and pulled at the package of beer. Another fight ensued. When the police arrived, defendant was in front of the liquor store, and the individual who tried to grab his beer was in an ambulance.⁵ Defendant testified he did not have a baseball bat at any time that day. He also testified he did not take money from any of the individuals, nor

⁴On direct examination, defendant did not refer to Uriostesui and Castillo by name. On cross-examination, defendant identified the two men as the non-police personnel that testified in this case. The record reflects that Uriostesui and Castillo were the only male, non-police personnel to previously testify.

⁵Defendant's testimony does not indicate which individual was in the ambulance.

did he observe Martinez take any money.

¶ 27 On cross-examination, defendant testified that of the five men who approached him, only Uriostesui and Castillo were involved in the fight. He also testified that Castillo struck him and Uriostesui pushed him. Defendant further testified his second fight was with Castillo.

¶ 28 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 then timely filed a notice of appeal.

¶ 29 ANALYSIS

¶ 30 On appeal, defendant does not contest the findings of guilt for aggravated battery, but instead argues the State failed to prove him guilty of armed robbery as to either victim. He asserts the evidence did not prove that: (1) he took the victims' money; and (2) he intended to assist in a robbery or entered into a common design with Martinez. Regarding the lack of proof that he took the victims' money, defendant observes neither victim was able to say what happened to his money and no money was found on his person upon arrest. Accordingly, defendant maintains his convictions for armed robbery should be reversed.

¶ 31 When reviewing the sufficiency of the evidence, the relevant standard of review 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); *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). Under this standard, a reviewing court must allow all reasonable inferences from the

record in favor of the prosecution. *Cunningham*, 212 Ill. 2d at 280. 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, 132 (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).

¶ 32 In order to prove the offense of armed robbery, the State was required to establish that defendant, while armed with a dangerous weapon other than a firearm, knowingly 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. 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 defendant was not in possession of a weapon or the robbery proceeds less than 20 minutes after the crime occurred).

¶ 33 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 Martinez and that the money was gone following the beatings. Based on

Uriostesui's and Castillo's testimony regarding the timing of the disappearance of their money, it may be reasonably inferred that defendant took the victims' money. See *People v. Wiley*, 165 Ill. 2d 259, 297 (1995) ("A defendant's taking of property may be inferred from the circumstance that money or property is no longer in the place where it is habitually placed."). In addition, the fact that no proceeds were recovered from defendant does not raise reasonable doubt that he did not commit armed robbery. A conviction for armed robbery may be sustained on circumstantial evidence even where the proceeds of the armed robbery are not recovered. *Goodum*, 127 Ill. App. 3d at 354; *Hughes*, 259 Ill. App. 3d at 178. Based on the testimony and evidence presented at trial, it may reasonably be inferred that defendant or Martinez took the victims' money.

¶ 34 Defendant next contends that the evidence was insufficient to establish his guilt under an accountability theory. Specifically, defendant asserts there was no evidence presented that he and Martinez entered into an agreement to commit robbery, but rather the evidence demonstrated that Martinez independently took money from the victims.

¶ 35 The State may prove accountability "by showing *either* (1) that the defendant shared the criminal intent of the principal, *or* (2) that there was a common criminal design." (Emphasis in original.) *People v. Fernandez*, 2014 IL 115527, ¶ 21 (citing *In re W.C.*, 167 Ill. 2d 307, 337 (1995)). When one aids another in planning or committing a crime, he is criminally liable for the conduct of the person he aids. *Fernandez*, 2014 IL 115527, ¶ 21. "The State need not prove a verbal agreement between the parties; the trier of fact can infer a common design from the circumstantial evidence." *People v. Adams*, 394 Ill. App. 3d 217, 233 (2009) (citing *People v. Reeves*, 385 Ill. App. 3d 716, 727 (2008)); see *People v. Taylor*, 164 Ill. 2d 131, 141 (1995) (the common design can be inferred from the circumstances surrounding the perpetration of the unlawful conduct). Factors in determining accountability include: (1) failure to report the crime;

(2) proof that the defendant was present during the perpetration of the offense; (3) that the defendant fled from the scene; and (4) that the defendant maintained a close affiliation with other offenders after the commission of the crime. *People v. Perez*, 189 Ill. 2d 254, 267 (2000).

¶ 36 In this case, the evidence demonstrated that defendant and Martinez acted in concert to batter defendant. Together, they entered the yard where Uriostesui was sitting and attacked him. They both fled through the alley, and later attacked Castillo in an alley a block and a half away. During the beating of Castillo, defendant and Martinez passed a bat between them. Defendant and Martinez also fled the scene together and were apprehended together by the police. From these circumstances, the trial court could reasonably infer that defendant and Martinez were working in concert with the common aim of beating Uriostesui and Castillo.

¶ 37 Accordingly, a reasonable trier of fact could conclude defendant and Martinez were equally responsible for any actions taken in furtherance or as a consequence of that common design, including the robberies that occurred during the beatings. See, e.g., *People v. Eubanks*, 283 Ill. App. 3d 12, 19 (1996) (holding the defendant accountable for armed robbery where "he punched [the victim], stood by and remained with the group after the coat was taken, was present at and fled from the scene after the shooting, and never reported the crime to the police."). Thus, the evidence was sufficient to find defendant guilty of the armed robberies of Uriostesui and Castillo, whether it was defendant or Martinez who took the money from their pockets. See *id.* Accordingly, we find a rational trier of fact could have found the essential elements of an armed robbery beyond a reasonable doubt. *Cunningham*, 212 Ill. 2d at 278.

¶ 38 CONCLUSION

¶ 39 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 40 Affirmed.