2016 IL App (1st) 150148-U

SECOND DIVISION
August 30, 2016

No. 1-15-0148

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.	)	No. 11 CR 17240
	)	
NICHOLAS REYES,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Pierce and Justice Simon concurred in the judgment.

O R D E R

¶ 1 *Held:* Trial counsel presented meaningful adversarial challenge to State's case; post-trial motion arguing ineffective assistance of trial counsel properly denied. Identifications by three eyewitnesses and a victim sufficient to convict defendant of first degree murder, attempted first degree murder, and aggravated battery with a firearm.

¶ 2 Following a jury trial, defendant Nicholas Reyes was convicted of first degree murder, attempted first degree murder, and aggravated battery with a firearm and sentenced to consecutive prison terms of 45 and 35 years and a concurrent 20-year prison term. On appeal, he

contends that trial counsel rendered ineffective assistance and failed to present a meaningful adversarial challenge to the State's trial evidence, and that his post-trial motion alleging counsel's ineffectiveness was erroneously denied. Reyes also contends that there was insufficient evidence at trial to convict him.

¶ 3 We affirm. Contrary to Reyes' position, trial counsel did subject the prosecution's case to meaningful adversarial testing. Moreover, taking the evidence in the light most favorable to the State, as we must, we conclude that a reasonable trier of fact could find Reyes guilty of the offenses.

¶ 4 Background

¶ 5 Reyes was charged with the first degree murder of Joseph Hernandez, attempted first degree murder of Ricardo Reyes (to avoid confusion we will refer to him as Ricardo), and aggravated battery of Nelson Torres, all allegedly committed by Reyes' personal discharge of a firearm on September 13, 2011.

¶ 6 Private counsel represented Reyes before and during trial. Both parties gave opening statements, with Reyes' counsel arguing that (i) no physical evidence linked Reyes to the crimes, (ii) the identification testimony by certain witnesses was not credible, (iii) other witnesses could not identify Reyes as the assailant, (iv) the incident was a "melee" so that witnesses had no opportunity to calmly observe the incident, and (v) Reyes was not identifiable on video of the incident.

¶ 7 At trial, evidence established that police officers responded to the report of a shooting and found Hernandez and Ricardo wounded. Both were taken to the hospital. Hernandez was pronounced dead later that day. His autopsy revealed that he died of three gunshot wounds to the

back of his body and right leg. There were five spent .22-caliber shell casings at the scene, and the three spent bullets from Hernandez's body were consistent with being .22-caliber bullets. Police obtained video camera recordings taken at the time of the incident. As the police investigated, Nelson Torres appeared and was taken to the hospital. A bystander gave police the license plate number of a car, mentioned several persons fleeing after the shooting, and described the shooter as a bald Hispanic man at least five foot, eight inches tall. An officer testified that video shows about seven people running. The record on appeal does not include any videos.

¶ 8 Ricardo Reyes testified that he was a member of the Latin Kings gang since 1995, and in September 2011, its rival gangs included the Spanish Lords. Ricardo knew Reyes—whom he identified at trial—to be in the Spanish Lords, though he did not know his name as of September 13. Ricardo admitted that he had convictions in 2007 for aggravated discharge of a firearm and 2012 for delivery of a controlled substance. On the morning of the incident, Ricardo met Hernandez, who he knew since childhood. Hernandez had been but was no longer in the Latin Kings. With Ricardo and Cortez Thomas (an acquaintance and Latin Kings member), Hernandez purchased a van.

¶ 9 Hernandez, Ricardo, and Thomas then went to a currency exchange at the intersection of Kimball and North and parked at a nearby coffee shop parking lot. Hernandez went into the currency exchange to obtain title and license plates for the van. Ricardo was walking across the street when he saw occupants of a green Chevrolet Trailblazer truck flashing gang signs for the Spanish Lords and against the Latin Kings at him. Ricardo responded with gang signs insulting the Spanish Lords, and the occupants of the green truck "jumped out." Ricardo ran back towards the parked van but "started fighting with two" of the Spanish Lords in the coffee shop parking

lot. When Ricardo was confronted by four assailants, he fled towards the currency exchange with the assailants in pursuit. Ricardo knocked on the window of the currency exchange to alert Hernandez and Thomas that he was being attacked, and fought with the assailants. Hernandez and Thomas joined the fight, which moved into the middle of the street. Ricardo heard someone yell that "they" were coming and saw the assailants running to their cars, so Ricardo presumed it was "my guys" arriving and the Spanish Lords fleeing. Ricardo was fighting two men with Hernandez a few feet away when he saw Reyes run towards Hernandez and fire several gunshots. Hernandez fell wounded to the ground, and Ricardo had turned to flee when he was shot. A crowd surrounded Ricardo after he fell, so he did not see where Reyes went after the shooting. The police and ambulances arrived, and Ricardo was taken to the hospital where he was treated for two gunshots to the right leg.

¶ 10 Ricardo viewed a photographic array at the police station later on the day of the shooting. He identified the photograph of Reyes as the shooter and two other men as participants in the fight. On September 19, a few days after the shooting, Ricardo viewed a lineup at the police station and identified Reyes as the shooter. At trial, Ricardo was shown video of the incident and identified when the Spanish Lords were pursuing him, when he ran to the currency exchange, when the fight moved into the street, and when the shots were fired.

¶ 11 On cross-examination, Reyes' counsel elicited that Ricardo was identifying members of the rival Spanish Lords when he identified Reyes and the two others from the array and identified Reyes from the lineup. On the day of the shooting, Ricardo was selling marijuana, but denied using marijuana that day. When Reyes' counsel asked Ricardo if he similarly sold cocaine but did not use it, Ricardo denied that he actually sold cocaine but instead was convicted

of drug conspiracy in 2012. Sometime after the shooting, Ricardo gave a written statement to an Assistant State's Attorney and testified before the grand jury. He denied telling the grand jury that he heard seven shots, but instead testified that he heard several shots.

¶ 12 Nelson Torres testified that he was 30 years old, employed, and has never been in a gang. On the morning of September 13, he was outside a restaurant at the intersection of North and Kimball when he heard a commotion followed by four or five gunshots. As the shots seemed to be coming from in front of him and headed in his general direction, Torres fled. Torres was not involved in the commotion, did not hear an argument before the commotion, and did not see who fired the gunshots. When he got home, Torres realized from blood on his shirt that a bullet struck his ear. He returned to the scene to speak with the police, who called an ambulance for him. His ear was stitched at the hospital, and later that day he gave his account of the incident to police detectives.

¶ 13 Cheryl Eschevarria-Caines testified that she was going to the currency exchange when she saw several people fighting in front of it. A black truck arrived and one of its occupants joined the fight, but then the truck left as more people arrived. Reyes—who Eschevarria-Caines identified at trial—ran past her, yelling "what's up?" Reyes then shot a man in the back and fired at another man, both of whom fell to the ground. As Reyes fled, he passed Eschevarria-Caines again. Later that day at the police station, Eschevarria-Caines viewed a photographic array without making an identification because none of the photographs looked like the shooter. She "want[ed] to see people in person." On September 19, she viewed a lineup and identified Reyes as the shooter.

¶ 14 On cross-examination, Eschevarria-Caines testified that many people were running around during the fight; she denied that there was fighting in multiple locations but admitted that people were coming and going from the fight. She admitted that the incident occurred "fast" and she was afraid of being shot.

¶ 15 Rafael DeJesus testified that he was 54 years old and employed. On the morning of September 13, he had been at a pawn shop at North and Kimball. As he drove away along North Avenue, he saw a commotion and fighting on North near the currency exchange. "Some people were fighting and running and some people were getting into cars and taking off." DeJesus believed the fight was over as people fled the scene, but Reyes then ran up to another man, drew a gun, and shot the man in the back. DeJesus identified Reyes at trial. DeJesus "ducked" when he heard several gunshots. Reyes then ran to a nearby green Toyota Camry and left; DeJesus saw Reyes' face as he ran. Later that day, DeJesus viewed a photographic array at the police station. He could not recall if he identified anyone then or when he returned to the police station on September 19 to view a lineup. In the lineup, DeJesus identified Reyes as the shooter.

¶ 16 On cross-examination, DeJesus testified that the incident happened quickly and he was "shocked." While he "ducked," he could still see outside his car. He did not make an identification from the photographic array, telling the police that "I would like to see him in person" to be certain. On redirect examination, DeJesus viewed video of the incident and identified when Reyes passed his car and when Reyes fled in the green car.

¶ 17 Brian Ekx testified that he was 33 years old, married, and employed in beverage distribution. On the morning of September 13, while stopped for the traffic signal at Kimball, he saw two young men "shaking and jumping on" a green Chevrolet Trailblazer truck, then four

men getting out of the truck and chasing the two men. Ekx identified Reyes at trial as the shooter who ran up and fired at two men, both of whom fell to the ground. People fled after the shooting, and Ekx saw Reyes leave in a green Camry. Ekx did not initially discuss the incident with police, but came forward later that day. On September 20, Ekx viewed a lineup from which he identified Reyes. Ekx viewed the video and identified both the green truck and the green car, noting that he had a closer view of Reyes than that portrayed in the video.

¶ 18 On cross-examination Ekx testified that he did not see where Reyes came from or see Reyes in the fight before Reyes approached and fired. The incident occurred quickly, but Reyes stood out because he "was the tallest one there."

¶ 19 Officer Sean Houlihan testified that he viewed the videos and saw Ricardo being pursued by three men, including Ramon DelValle. He could not see the shooter's face. When the State asked Officer Houlihan if he had "an idea from looking at that video who that person was," trial counsel objected. The court initially sustained the objection but, after an untranscribed sidebar, directed the State to rephrase its question. Officer Houlihan testified that he could not identify the shooter from the video; however, he had "an idea who that might be from his body build and by the other persons [he] saw in the other videos." He believed the shooter to be Reyes. On cross-examination, Officer Houlihan reiterated that he did not witness the shooting but merely viewed the videos, and that none of the three men seen pursuing Ricardo was Reyes. Officer Houlihan testified that the video shows the shooter arriving in a green vehicle, but his face is not visible. Houlihan conceded that the "video is not real clear."

¶ 20 Steven Youkhana (Steven) testified that his brother Sargon, a Spanish Lords member, drove their family's green Toyota Camry on September 13. Steven was in the habit of checking

the odometer, and noted that evening that Sargon had driven farther than usual. The next day, Steven was driving the Camry when police stopped and briefly detained him. They were seeking Sargon regarding the shooting the day before. When shown video from September 13, Steven identified his family's green Camry. On cross-examination, Steven testified that the entire family of five used the Camry and there were two sets of keys.

¶ 21 Reyes' motion for a directed verdict was denied, without argument by either party.

¶ 22 Reyes' counsel told the court that Reyes would not be presenting evidence. The court admonished Reyes that "you have a right to testify, and you have a right not to testify" and that if he chose not to testify, the jury would be instructed not to hold it against him. The trial court asked Reyes if he "made this decision, yes, you do not want to testify? Is that correct?" and he replied "Yes, sir."

¶ 23 During the State's closing argument, trial counsel objected to the State's characterization that "[d]efendant showed up in rival gang territory that morning to cause trouble," which the court overruled on the basis that the State can argue inferences from the evidence. The State acknowledged that witnesses filled in "what the video doesn't show" and the videos "don't pick up the exact same thing the witnesses testified to." The State argued at one point that Ricardo identified Reyes as the shooter "immediately."

¶ 24 In his closing argument, Reyes' counsel argued that the evidence, absent the State's arguments to make inferences in its favor, was insubstantial. He argued that no firearm evidence linked Reyes to the shootings, nor did any fingerprint evidence link him to the getaway car, nor did anybody testify that Reyes was a gang member. While there were eyewitnesses to the incident, it occurred "in seconds, with people running." He argued that the lineup identifications

were tainted by witnesses first viewing the photographic array so that they were recognizing Reyes from that rather than the shooting. He urged the jury to view the videos.

> "Please, I don't know how to use the machine or I'd be showing it to you now. *** You tell me what the heck you see. Because I looked at it. I looked at it close up and personal *** in the State's Attorney's office. *** I don't see [Reyes]. I don't see him doing anything. I can't identify that he is there."

Reiterating his argument that there was no substance to the State's case, counsel urged the jury to find Reyes not guilty.

¶ 25 In its rebuttal argument, the State noted that Ricardo testified to Reyes' Spanish Lords membership. When the State argued that "Spanish Lord gang members decided to go into Latin King territory and pick a fight," trial counsel objected, but the court ruled that the State "can argue." The State acknowledged that the police could not see the shooter's face on the video but "had an idea who it might be" from the associates of the identifiable suspects. The State showed the video to the jury and argued that "the defense liked to make out that you can't see his face in this. If this was all we had, *** he'd be right. You can't see his face. But you know who that person is running, because you had four witnesses come in here and tell you that is" Reyes.

¶ 26 Following instructions, the jury deliberated and, by agreement of the court and parties, saw the videos. The jury found Reyes guilty of first degree murder, attempted first degree murder, and aggravated battery, expressly finding that he committed the first two offenses by personally discharging a firearm.

¶ 27 Reyes, through his trial counsel, filed a general post-trial motion challenging the sufficiency of the State's evidence and the introduction of the videos into evidence on the grounds that they were more prejudicial than probative.

¶ 28 New counsel appeared for Reyes in January 2014 and filed another post-trial motion, challenging the sufficiency of the evidence and raising various claims of ineffective assistance by trial counsel. Post-trial counsel claimed that trial counsel failed to subject the State's case to meaningful adversarial testing because counsel did not (i) elicit from Ricardo in cross-examination or argue that Ricardo did not identify Reyes as the shooter until the photographic array though he testified to knowing Reyes, or (ii) object to Officer Houlihan's testimony that he could not see the shooter's face on video but had "an idea" from the video that Reyes may be the shooter.

¶ 29 Post-trial counsel also claimed that trial counsel failed to present available defense evidence and allow Reyes to participate in his own defense, by:

1) Not investigating and calling Ramon DelValle as a witness, when the videos established that he was at the scene,
2) Not calling various witnesses familiar with Reyes to make negative identifications of Reyes from the videos,
3) Not showing Reyes the videos,
4) Not adequately meeting with Reyes to prepare his defense,
5) Failing to discuss Reyes testifying with him, and failing to allow him to testify,
6) Failing to discuss with Reyes his preference for a bench trial, and

7) Failing to prepare for trial when he, by his admission, did not know how to play the videos.

¶ 30 No affidavit from DelValle, nor from any attorney or investigator who interviewed DelValle, was attached to the motion. The motion was supported by Reyes' affidavit that (1) trial counsel met with him only twice or three times "throughout his representation to discuss my case;" (2) he provided trial counsel the names of witnesses, including DelValle and Esmeralda Reyes, who were then not contacted to the best of Reyes' knowledge; (3) he told counsel he wanted to testify but counsel replied that it was "not an option;" (4) he told counsel he wanted a bench trial but counsel failed to discuss this with him before trial; and (5) counsel never told him about the video evidence, so that Reyes was unaware of the videos until trial.

¶ 31 The trial court held an evidentiary hearing on post-trial counsel's motion. Reyes testified that he had "no prior contact with the criminal justice system" before this case. His family hired trial counsel in October 2011. Counsel met with Reyes only "two, maybe three times" before the trial, and all of the meetings lasted about 10 to 15 minutes. He went to court about monthly during that time and had brief meetings with counsel in the lockup. Counsel told him what was in the police reports but did not review the reports with him, and Reyes did not see the reports until post-trial counsel showed them to him. Trial counsel "told me that [the videotape] really wasn't showing anybody and that it didn't matter for me to even look at it," so Reyes did not see the videos before trial. Reyes believed that Ramon DelValle would have been a useful defense witness and mentioned him to counsel, but Reyes was unaware of any investigation of DelValle. Reyes was unaware at trial that it was his choice whether or not to testify. When he mentioned testifying to counsel, counsel told him that he was not testifying, and there was no further

discussion. Reyes was also unaware at trial that it was his choice to take a bench or jury trial, and counsel simply told Reyes he would have a jury trial without discussing the merits of the decision.

¶ 32 On cross-examination, Reyes admitted that he did not have a watch or clock to time his meetings with trial counsel, but he knew what time he returned from the meetings to his cell by a clock there. Counsel discussed with Reyes that there were eyewitnesses and videos, and told him that the video was not clear enough to discern faces. Reyes agreed after seeing the videos at trial that the video was not clear enough to discern faces or to identify Reyes as the shooter. Reyes knew before trial that a bench trial was a trial by the judge rather than a jury, but maintained that counsel told them he would have a jury trial. Reyes' mother Esmeralda Reyes would have provided Reyes an alibi and Reyes told counsel so. Reyes admitted in the hearing that he did not aver in his affidavit to having an alibi for the shooting. Reyes acknowledged that the trial court asked him if he wanted to testify and he replied that he did not, but Reyes maintained that trial counsel instructed him to reply in that manner.

¶ 33 Trial counsel testified that he visited Reyes five or more times, for about 45 minutes to an hour each time, in addition to the courtroom lockup visits. He discussed with Reyes whether he wanted a bench or jury trial, and that it was Reyes' choice whether or not to testify. Counsel discussed the videos with Reyes, after counsel had viewed them. Counsel could play two of the three videos on his office computer, while he viewed the third video on two or three occasions at the State's Attorney's office. Counsel did not obtain a court order to show the videos to Reyes. Counsel read some of the police reports to Reyes, and Reyes read some for himself. Counsel was unaware of DelValle, and Reyes had not mentioned him to counsel. Counsel did not meet with

any State witnesses and did not hire an investigator. Counsel discussed an alibi with Reyes: he asked Reyes if anyone could place him somewhere other than the scene at the time of the shooting, and "to my knowledge [he] didn't have one" except for a man with a "strange sounding name" who counsel was unable to find. Counsel admitted that Reyes had no felony record for impeachment purposes if he testified, but opined that "usually it's not a good idea to put a defendant on the stand whatever his background is. That's been my experience over the years. But if a defendant insists on testifying or wants to testify, I tell him he has a right to do it."

¶ 34 On cross-examination, counsel reiterated that Reyes did not provide him an alibi, that he had discussed Reyes testifying, and that he discussed the difference between a bench and jury trial. Reyes chose a jury trial, and counsel did not tell Reyes that testifying was "not an option." Counsel recalled that Sargon Youkhana was the witness he discussed with Reyes, and counsel disclosed Sargon in discovery but then Sargon "disappeared" before trial.

¶ 35 During arguments, post-trial counsel told the court that Reyes was identified by "four people, one being Officer Houlihan;" the State objected that this was untrue, and the court ruled that post-trial counsel could argue. Following arguments, the court denied post-trial counsel's motion. The court found that the evidence of Reyes' guilt was overwhelming—he was identified by four witnesses "and one of them was a police officer"—and that was not trial counsel's fault. The court found that a bench trial would not have had a different outcome, and that no evidence of "some alibi [that] would have changed the result" had been presented. After the court denied the motion, the State noted that the four trial witnesses against Reyes did not include Officer Houlihan, who never made an identification. The court remarked that Officer Houlihan "was part of the investigation as to what happened," and the State replied that "he did a course of conduct

as to why they included [Reyes] in the photo array. That's all." The court thanked the State for its correction.

¶ 36 Post-trial counsel filed an amended post-trial motion in January 2015, claiming that the evidence did not support the attempted murder verdict. He argued that the evidence was insufficient that Reyes acted with the requisite intent towards Ricardo, so that the attempted murder should be reduced to aggravated battery with a firearm. On January 7, 2015, after post-trial counsel clarified that the motion was an amendment to the original post-trial motion, the court denied the original and amended post-trial motions. The court found that the jury could reasonably find that Reyes intended to kill both Hernandez and Ricardo and merely did not hit the center of his target as to Ricardo, rather than that he intended to merely shoot Ricardo in the leg.

¶ 37 The trial court immediately proceeded to a sentencing hearing. Reyes received prison terms of 45 years for murder, 30 years for attempted murder, and 20 years for aggravated battery, with the first two sentences to be served consecutively. Reyes then filed a post-sentencing motion, which was denied.

¶ 38 Analysis

¶ 39 Reyes primarily contends that trial counsel failed to present a meaningful adversarial challenge to the State's trial evidence and rendered ineffective assistance, so that his post-trial motion alleging ineffective assistance by trial counsel should have been granted.

¶ 40 A defendant proves ineffective assistance of counsel by showing that both (1) counsel's representation fell below an objective standard of reasonableness, and (2) there is a reasonable probability that the result of the proceeding would have been different absent counsel's errors.

People v. Simpson, 2015 IL 116512, ¶ 35. In determining whether counsel's conduct was objectively unreasonable, we apply a strong presumption that counsel made sound strategic decisions within the wide range of reasonable professional assistance, and we evaluate counsel's performance from his perspective at the time rather than with hindsight. *People v. Veach*, 2016 IL App (4th) 130888, ¶¶ 62-63. A reasonable probability for purposes of the second or prejudice prong is a probability sufficient to undermine confidence in the outcome. *Simpson*, ¶ 35.

¶ 41 Counsel must subject the State's case to meaningful adversarial testing, and we presume prejudice when "counsel *entirely* fails to subject the prosecution's case to meaningful adversarial testing." *People v. Holt*, 2014 IL 116989, ¶ 44, citing *United States v. Cronic*, 466 U.S. 648, 659 (1984) (emphasis added). "When a true adversarial criminal trial has been conducted—even if defense counsel may have made demonstrable errors—the kind of testing envisioned by the Sixth Amendment has occurred." *Cronic*, at 656. The defendant bears the burden of showing that counsel did not engage in meaningful adversarial testing; otherwise, the defendant is subject to the usual ineffective-assistance test whereby he or she must show prejudice from counsel's errors. *Id*. at 658, 666.

¶ 42 As a threshold matter, Reyes has failed to meet the rather high bar for showing that trial counsel failed to subject the State's case to meaningful adversarial testing. Counsel gave an opening statement and closing argument, cross-examined witnesses, and made objections during the State's evidence and argument. He made a coherent attack on the State's case, highlighting issues with the State's evidence in his cross-examination—including Ricardo's gang affiliation and criminal history, the speed and confusion of the incident, and that Reyes was not identifiable

on the videos—and arguing that the jury should therefore have reasonable doubt and find Reyes not guilty.

¶ 43 Reyes argues that there are three instances of trial counsel failing to subject the State's case to meaningful testing. The first is that he failed to impeach Ricardo as:

> "it is clear from the record that Ricardo Reyes did not identify the shooter, who was within feet of him and apparently known to him, until he saw the Defendant in a photo lineup. Rest assured, had Ricardo Reyes initially identified the Defendant as the shooter at the scene or anytime before being shown a lineup, that fact would have been prominently emphasized to the jury by the State."

But, Ricardo did not know Reyes by name on the day of the shooting, so he could not name Reyes to the police at the scene. Moreover, Ricardo was taken from the scene by ambulance for treatment of his gunshot wounds, and he made his photo-array identification on the day of the shooting after leaving the hospital. Though Reyes disputes it, Ricardo made his first identification of Reyes as close to "immediately" after the shooting as practicable.

¶ 44 Reyes' second instance is that trial counsel failed to object to Officer Houlihan's identification. But, Officer Houlihan testified repeatedly, including on trial counsel's cross-examination, that he did not see the shooter's face on the video. When the State tried to elicit from Officer Houlihan his "idea" or guess of who the shooter might be, trial counsel objected. Reyes' briefs do not at any point, either in the original or reply brief, in his statement of facts or arguments, acknowledge in any way that this objection was made and ruled on.

¶ 45 After an untranscribed sidebar, the trial court directed the State to rephrase its question, prompting the State and Officer Houlihan to clarify that his idea that Reyes was the shooter was

based on the shooter's body type relative to other persons on video. The jury thus heard what Officer Houlihan's "idea" was and was not. Moreover, the jury itself viewed the videos, and the State repeatedly admitted in closing arguments that Reyes' face is not visible on video. The record does not bear out either that trial counsel failed to object to Officer Houlihan's guess or that the jury was misled by it. Reyes puts great weight on the judge's confusion in the post-trial hearing—expressing a belief that Officer Houlihan identified Reyes as the shooter from the video—and imputes that confusion to the jury. Nearly a year passed between trial, when the jury heard the evidence and issued its verdicts, and the hearing where the judge misstated the evidence. We will not presume from the judge's misunderstanding of the evidence nearly a year after hearing it implies the jury misunderstood the evidence when it had just heard it.

¶ 46 Reyes' third instance is that trial counsel failed to prepare for review of the security video based on his closing-argument remark: "Please, I don't even know how to use the [video] machine or I'd be showing it to you now." Counsel's inability to operate the courtroom video machine does not imply his inability to view the videos on another machine before trial as preparation. Indeed, he said in his closing argument, and testified in the post-trial evidentiary hearing, that he viewed the videos before trial and discussed their contents with Reyes. As to not showing video to the jury during argument, the jury viewed the videos during its deliberations, after trial counsel urged it to view the videos while keeping in mind that Reyes was not identifiable in them. Under the circumstances, trial counsel's inability to play segments of video during his closing argument is a slender reed that does not bear the weight of the grave allegation that he did not subject the State's case to adversarial testing.

¶ 47 Reyes also contends that his post-trial motion alleging ineffective assistance of counsel was erroneously denied.

¶ 48 The purpose of a post-trial motion is to bring to the trial court's attention changes in the law, errors in the court's previous application of existing law, and newly-discovered evidence not available at the time of trial. *People v. Arze*, 2016 IL App (1st) 131959, ¶ 85. A post-trial motion is a matter for the court's discretion, and we will not disturb the denial of such a motion absent an abuse of discretion. *Id.*, ¶ 86. A court abuses its discretion when its decision is arbitrary, fanciful or unreasonable, or when no reasonable person would take the view adopted by the court. *Id*.

¶ 49 The decision whether to call a particular witness is a matter of trial strategy. *People v. Hotwagner*, 2015 IL App (5th) 130525, ¶ 48, citing *People v. Banks*, 237 Ill. 2d 154, 215 (2010). It is a sound strategy to not call a witness whose testimony would be of questionable value or could potentially harm the defendant's case, and defense counsel may properly choose not to interview or call a witness who could be subject to severe impeachment. *Hotwanger*, ¶¶ 48, 50, citing *People v. Guest*, 166 Ill. 2d 381, 400 (1995).

¶ 50 Reyes' counsel testified that Reyes did not disclose either his mother Esmeralda or DelValle as potential witnesses and that Reyes did not inform him of an alibi. The latter was corroborated by Reyes' affidavit insofar as he did not aver that he had an alibi. Moreover, DelValle is of questionable value as a defense witness: if he were to testify (as asserted by Reyes) that Reyes was not the shooter, he would be subject to severe impeachment as a fellow Spanish Lord who was not merely at the scene of the shooting but participated in the chase of and fight with Ricardo that preceded the shooting. Reyes' mother is also of questionable value as

a witness. Reyes argues that his counsel should have presented witnesses familiar with him who could testify that the shooter in the videos is not him. But, the jury viewed the videos for itself at trial and during deliberation. Moreover, it is undisputed that the shooter's face is not identifiable on the video, so the basis for these purported witness opinions is questionable at best.

¶ 51 As to counsel not showing the videos to Reyes, the testimony of both Reyes and trial counsel firmly belies the assertion that "[c]ounsel did not disclose the *existence* of these surveillance videos to the Defendant" (emphasis added) but told him correctly that the shooter was not identifiable on the videos. See *People v. Hobson*, 386 Ill. App. 3d 221, 240 (2008) ("We need not here decide *** whether an attorney has an unqualified duty to provide his client with discovery materials upon a client's request, because in either event, counsel's failure to provide his client with any such materials would have to be examined under the prejudice prong *** and in the present case, defendant cannot establish that prong"). Trial counsel testified that he discussed with Reyes both his right to a bench or jury trial and his right to testify or not testify. Lastly, counsel testified that he discussed the case with Reyes five times for about an hour each time rather than twice for about 15 minutes each time. In light of the fact that the trial court heard and weighed the testimony of Reyes and trial counsel, and that the evidence of Reyes' guilt was overwhelming as discussed below, we cannot conclude that the court abused its discretion in denying Reyes' post-trial motion raising ineffectiveness claims.

¶ 52 Reyes lastly contends that there was insufficient evidence at trial to convict him.

¶ 53 On a claim of insufficiency of the evidence, we must determine whether, taking the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *In re Q.P.*, 2015 IL 118569, ¶ 24. It is

the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and it is better equipped than this court to do so as it heard the evidence. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. As witness credibility is a matter for the trier of fact, it may accept or reject as much or little of a witness's testimony as it chooses. *People v. White*, 2015 IL App (1st) 131111, ¶ 19. The fact that there are contradictions or conflicts between the accounts of State witnesses does not render their testimony incredible. *Id*. The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Jonathon C.B.*, ¶ 60. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt, nor to find a witness was not credible merely because the defendant says so. *Id*. A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Q.P.*, ¶ 24.

¶ 54 In assessing the reliability of a witness identification, we consider (1) the witness's opportunity to view the offender during the offense, (2) the witness's degree of attention at the time of the offense, (3) the accuracy of the witness's prior descriptions of the offender, (4) the witness's level of certainty at the subsequent identification, and (5) the length of time between the offense and the identification. *People v. Moore*, 2015 IL App (1st) 141451, ¶ 22, citing *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989). "It has consistently been held that a witness is not expected or required to distinguish individual and separate features of a suspect in making an identification. Instead, a witness' positive identification can be sufficient even though the witness

gives only a general description based on the total impression the accused's appearance made." *Slim*, at 308-09.

¶ 55 Taking the evidence in the light most favorable to the State, we find that a reasonable trier of fact could find Reyes guilty of each of the offenses. Reyes was identified as the shooter not only by Ricardo, the victim, but three eyewitnesses—Eschevarria-Caines, DeJesus, and Ekx—all with no apparent gang connection. The four witnesses had ample opportunity to see the shooter from different perspectives, and ample reason to pay attention to a fleeing armed man who just shot two men (in Ricardo's instance, himself). While two eyewitnesses refrained from making an identification from a photographic array on the day of the shooting, they identified Reyes in a lineup about a week later, as did other two witnesses. The conclusion that Reyes was the shooter who killed Hernandez and wounded Ricardo and Torres is not so improbable or unsatisfactory as to leave us a reasonable doubt of Reyes' guilt.

¶ 56 Accordingly, the judgment of the circuit court is affirmed.

¶ 57 Affirmed.