2019 IL App (2d) 170463-U
No. 2-17-0463
Order filed July 18, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANDRES M. FONSECA, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kendall County. No. 16-CF-249 Honorable Timothy J. McCann, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Birkett and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of aggravated battery and robbery: although the only evidence implicating defendant was accomplice testimony, the jury was entitled to credit it.

¶ 2 Following a jury trial, defendant, Andres M. Fonseca, was convicted of aggravated battery (720 ILCS 5/12-3.05(f)(2) (West 2016)) and robbery (720 ILCS 5/18-1(a) (West 2016)) and sentenced to concurrent five-year prison terms. He appeals, contending that he was not proved guilty beyond a reasonable doubt where the only evidence linking him to the crimes was the testimony of two accomplices. We affirm.

¶ 3 At trial, Wengin Chen testified that she worked at her husband's restaurant, No. 1 China. She often took home large amounts of cash from the restaurant. She did so on the evening of January 29, 2016, when she was carrying about $5000 in her purse.

¶ 4 As she neared her house, two men approached her from the side. One of them pushed her into the bushes and took her purse. One man kicked her. She could not identify either man, because their faces were covered. The men then drove away quickly in a dark SUV. Chen said that a man had tried to rob her in November 2015, but she fought him off.

¶ 5 Christian Vega testified that he used to deliver for the restaurant and knew that Chen sometimes took cash home. On January 29, 2016, Vega drove his SUV to Chen's house, with defendant in the front seat and D'Angelo Williams in back. There was no discussion about what would happen there. Defendant and Williams got out of the car, and about a minute later Vega heard a woman scream. He looked back to see defendant and Williams running back toward the car. When they got back in the car, their faces were covered. Both men told him that they hit Chen, she fell down, and they took her purse. Later, they drove to defendant's stepfather's house and divided the money.

¶ 6 Vega testified that in November 2015 he drove Stephawn Johnson to Chen's house. He claimed that he did not think that Johnson intended to try to rob her; he thought that Johnson merely wanted to see where Chen lived.

¶ 7 Vega admitted being the driver for two other Kendall County robberies involving Williams and Milan Thomas. He had received an offer of 10 years' imprisonment for each robbery, with the sentences to run concurrently with a 7-year term for the robbery in this case and a 5-year term for the prior attempted robbery of Chen. He hoped to get a lower sentence by testifying in this case.

¶ 8 Williams testified that he was in custody on an armed-robbery charge in Will County and had two unrelated armed-robbery cases pending in Kendall County. He had received an offer of 10 years' imprisonment on each armed-robbery charge and 7 years on the current case, to run concurrently. He hoped that his cooperation in this case would decrease the 10-year offer, but he had received no promises in exchange for his testimony against defendant. He admitted being involved in two gas-station robberies with Vega and Thomas.

¶ 9 Williams admitted participating in the robbery of Chen. He said that he, defendant, and Vega had done a "dry run" earlier in the day. Later, Vega drove his SUV to Chen's house. Williams and defendant waited on the side of the house for Chen to get out of her car. Defendant, who is taller than Williams, pushed Chen into the bushes and grabbed her purse. As they ran back to the SUV, defendant threw the purse to Williams. They then went to defendant's stepfather's house and divided the money. Williams got approximately $2000.

¶ 10 Williams acknowledged that he did not implicate defendant until March 1, 2017, more than a year after the offenses. He had already received his 10-year offer from the prosecution when he implicated defendant. He hoped that, by giving an additional statement, he could reduce the length of his sentence.

¶ 11 The jury found defendant guilty and the parties agreed to a five-year sentence on each charge, to be served concurrently. Defendant timely appeals.

¶ 12 Defendant contends that he was not proved guilty beyond a reasonable doubt, because the only evidence implicating him in the crimes was the testimony of his accomplices, each of whom hoped to receive leniency by implicating defendant. Defendant notes that accomplice testimony is inherently suspect and that Vega's and Williams's testimony contained numerous inconsistencies and improbable elements.

¶ 13 Generally, we may not set aside a conviction unless the evidence was so improbable or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *People v. McLaurin*, 184 Ill. 2d 58, 79 (1998). When reviewing a challenge to the sufficiency of the evidence, we ask whether, after viewing the evidence in the light most favorable to the State, any rational factfinder could have found the essential elements of the charged crime beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007).

¶ 14 Defendant does not dispute that the State presented evidence that, if believed, proved that he committed the offenses. However, he contends that the evidence should not have been believed, because it came from his alleged accomplices, Vega and Williams. Because accomplice testimony is attended with serious infirmities, it should be accepted only with the utmost caution. *McLaurin*, 184 Ill. 2d at 79. Nevertheless, while subject to careful scrutiny, the testimony of an accomplice, whether corroborated or not, is sufficient to sustain a criminal conviction if it convinces the jury of the defendant's guilt beyond a reasonable doubt. *Id.*

¶ 15 Here, both Vega and Williams identified defendant as the third participant in the robbery. While their testimony varied on some collateral points—Vega testified that the robbery was spontaneous whereas Williams indicated that it was planned in advance—they were consistent on the salient points: that Williams and defendant got out of the car, battered Chen, and took her purse. Moreover, their description of the offenses is generally consistent with Chen's.

¶ 16 Although both witnesses to some extent attempted to minimize their conduct in this case, both admitted to committing several additional robberies. Further, they did not implicate defendant in any of the other robberies.

¶ 17 Finally, as the State points out, neither witness had a plea deal that was contingent on testifying against defendant. Thus, the witnesses had nothing tangible to gain by implicating defendant.

¶ 18 Defendant cites no case in which similar testimony has been found insufficient to support a conviction. In *People v. Williams*, 19 Ill. 2d 171 (1960), by contrast, the testimony of a single accomplice was found sufficient to support the conviction. Despite some "trivial and inconsequential" inconsistencies, the court found not "the slightest justification for us to substitute our judgment for that of the trial court." *Id.* at 176. So too here.

¶ 19 The judgment of the circuit court of Kendall County is affirmed.

¶ 20 Affirmed.