

Affirmed and Memorandum Opinion filed February 24, 2011.



In The

Fourteenth Court of Appeals

NO. 14-09-00882-CR

JONATHAN EDWARD FREEMAN, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 339th District Court
Harris County, Texas
Trial Court Cause No. 1143836**

MEMORANDUM OPINION

In this appeal of his conviction for the aggravated robbery of a convenience store, Jonathan Edward Freeman argues that he was improperly convicted based solely on the uncorroborated testimony of two accomplice witnesses. Because we conclude that this testimony was corroborated by other evidence tending to connect appellant to the offense, we affirm.

I FACTUAL AND PROCEDURAL BACKGROUND

At about 10:00 p.m. on November 29, 2007, Rebecca Arredondo noticed that a gold four-door car had backed into the driveway of her duplex. As she watched, three black

male passengers exited the vehicle. The men wore hats or hooded jackets that covered their hair, and had covered part of their faces with bandanas or similar material. Arredondo saw that one of the men had a gun. The men began walking toward the nearby convenience store, and fearing that they intended to rob it, she telephoned the police.

Pasadena police officer Joseph Gonzales heard the dispatch call about a suspicious gold vehicle and drove into the convenience store's parking lot with his headlights off. He saw at least two people crouched outside the store, and when he saw the suspects hurry inside, he called for assistance to respond to a possible robbery in progress.

Store owner Abdul Seth and one employee were working at the convenience store that night when three black men with cloth covering their faces entered. While one man held the door, the other two pointed guns at Seth and the employee. After Seth complied with their demand to give them cash from the register, at least one of the men grabbed cigars and cigarettes before the three ran away. As they ran from the store, Gonzales shone a spotlight on them and saw three black males, at least two of whom were carrying guns, run past his vehicle. The men wore jeans and hooded jackets; one of the jackets was red, and the others were dark-colored. According to Gonzales, each man wore "some kind of makeshift mask covering the lower portion of the face." Gonzales followed the men in his marked vehicle as they ran past a group of duplexes, but the men ran into a densely wooded area.

Meanwhile, Arredondo, who was on the phone with police, reported that the gold car had pulled out of her driveway and was turning. Coincidentally, Gonzales, who was beginning to set up a perimeter around the wooded area, also saw the gold vehicle exit the driveway of a duplex. He pursued the car, and the driver, Alegra Coleman, was detained as she entered the driveway of the Garden View Apartments less than a half-mile from the scene of the robbery.

While Coleman was being detained and questioned, additional officers arrived at the convenience store. Searching the route the suspects had taken, they first found a

discarded baseball cap and a piece of black cloth in the convenience store's parking lot. A second piece of black cloth and a white cotton headband were found in a clearing or field between the wooded area and the fence separating the area from the Garden View Apartments. The fence had been partially cut and lifted, and the ground showed signs that someone had passed through the barrier by sliding through the mud below the cut. A third piece of black cloth, tied as if worn as a mask, was found at the fence line.

Police next went to Coleman's Garden View apartment, where there they found three black males—appellant, his brother Jarrell,¹ and Coleman's roommate Nicklaus Roberts. On the dining table was a dark hoodie, and under the table was a pair of muddy shoes. Two pairs of pants, a dark sweatshirt, and a set of coveralls were also smeared with fresh mud, a red shirt and some of the muddy clothing was found behind a panel used to access plumbing.² In the same concealed area, police found a semiautomatic pistol. And on the living room couch, police found another piece of black cloth and appellant's wallet.

DNA was obtained and analyzed from the baseball cap, the headband, and three of the four pieces of black cloth.³ Coleman was identified as a possible major contributor of the DNA recovered from the baseball cap found in the store's parking lot. Although appellant was excluded as a major contributor of the DNA recovered from the cap and one of the pieces of black cloth, he could not be excluded as a major contributor of the DNA recovered from a second piece of material. It is not clear from the record which of these two pieces of fabric was found in the store parking lot and which was found next to the

¹ Jonathan Freeman's brother, Jarrell Freeman, was also tried and convicted in connection with the same robbery. To avoid confusion, Jonathan Freeman will be referred to as "appellant," and Jarrell Freeman will be referred to by his first name or simply as appellant's brother.

² The clothing was moved to make it easier to photograph, and it is not clear from the record which items were found in the living areas of the apartment and which were hidden behind the access panel.

³ Unlike the three pieces of cloth found outdoors, the cloth found on the couch with appellant's wallet does not appear to have been offered as physical evidence, but seems to have been identified at trial only in a photograph.

fence line;⁴ however, the analysis of the cloth found in the clearing between the wooded area and Garden View's fence is identified in the record. Appellant was identified as a possible major contributor of the DNA recovered from this piece of cloth. The odds that this DNA came from an unrelated, randomly-selected individual are no more than 1 in 26,390.⁵

Appellant was charged with aggravated robbery, and Coleman and Roberts, who testified as accomplice witnesses at appellant's trial, implicated him in the robbery. Appellant moved unsuccessfully for an instructed verdict on the ground that the State failed to offer evidence corroborating the accomplice-witnesses' testimony. The trial court informed the jury that Coleman and Roberts were accomplice witnesses, and explained the requirement for corroborating evidence.⁶ The jury found appellant guilty of aggravated robbery, and he was sentenced by the trial court to twenty-five years' confinement in the Texas Department of Criminal Justice—Institutional Division.

In the sole issue presented for review, appellant contends that his conviction must be reversed because it was based entirely on the uncorroborated testimony of Coleman and Roberts. He argues that when this evidence is excluded from review, there is nothing in the record tending to connect him to the charged offense.

⁴ Although the piece of cloth found in the apartment near appellant's wallet does not appear to have been offered as an exhibit at trial, it is possible that one of the DNA samples analyzed was obtained from this piece of cloth.

⁵ These are the odds when only the African-American population is sampled. Only 1 in 59,840 Hispanics and 1 in 68,960 Caucasians could have been possible major contributors of the DNA obtained from this piece of cloth.

⁶ Coleman and Roberts were indicted for their participation in the robbery for which appellant was tried and convicted; thus, they are accomplices as a matter of law. *See Burns v. State*, 703 S.W.2d 649, 651 (Tex. Crim. App. 1985) (en banc).

I. STANDARD OF REVIEW

Under Texas law, a person cannot be convicted of an offense based solely on the testimony of an accomplice. TEX. CODE CRIM. PROC. ANN. art. 38.14 (West 2005).⁷ The evidence is insufficient to support conviction unless, in addition to the accomplice-witness testimony, other evidence tends to connect the defendant to the charged offense. *Id.*

To ascertain whether the corroborating evidence is sufficient, we ignore the accomplice-witness testimony and view the remaining evidence in the light most favorable to the jury's verdict. *Malone v. State*, 253 S.W.3d 253, 257 (Tex. Crim. App. 2008); *Batts v. State*, 302 S.W.3d 419, 432–33 (Tex. App.—Houston [14th Dist.] 2009, no pet.). If there are two permissible views of the evidence, only one of which tends to connect the appellant to the charged offense, we defer to fact-finder's view of the evidence. *Simmons v. State*, 282 S.W.3d 504, 508 (Tex. Crim. App. 2009). We then ask whether a rational fact-finder could conclude that the non-accomplice evidence tends to connect the appellant to the offense. *Id.* at 509.

Because there is no precise rule as to the amount of additional evidence required, we evaluate each case on its own facts. *Dowthitt v. State*, 931 S.W.2d 244, 249 (Tex. Crim. App. 1996). Corroborating evidence must do more than show only that the offense occurred, but it need not prove a defendant's guilt beyond a reasonable doubt, *Malone*, 253 S.W.3d at 257, or provide a direct link between the defendant and the crime. *Dowthitt*, 222 S.W.3d at 249. Suspicious circumstances that would be insufficient by themselves to corroborate testimony may prove sufficient when considered with other evidence. *Gill v. State*, 873 S.W.2d 45, 49 (Tex. Crim. App. 1994) (en banc). For this reason, we look to all facts and circumstances—including otherwise insignificant incriminating circumstances—when conducting our review. *Yost v. State*, 222 S.W.3d 865, 872 (Tex.

⁷ “A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense.”

App.—Houston [14th Dist.] pet. ref'd). Only then do we consider whether the combined weight of the non-accomplice evidence tends to connect the defendant to the offense. *Batts*, 302 S.W.3d at 433.

III. ANALYSIS

Excluding the accomplice-witness testimony of Coleman and Roberts, there is ample evidence tending to connect appellant to the robbery. The gold vehicle appears to have been observed without interruption from the time it first stopped in Arredondo's driveway until the driver, Alegra Coleman, was detained by police. Arredondo saw three black males wearing cloth masks exit the vehicle and approach the store, and Officer Gonzales not only watched the men enter the store, but also followed them as they ran away after the robbery until they entered a wooded area. Although the men were not observed between the time they entered the wooded area and the time they were detained at Coleman's apartment, they left behind them a trail of makeshift masks. The odds are remote that the DNA from the makeshift mask found in the clearing between the wooded area and Garden View's fence came from someone other than appellant. There also is evidence that the robbers slid through the mud under the fence between Garden View and the wooded area, and at Coleman's apartment, police found clothes matching descriptions of those worn by the suspects, soiled with fresh mud, and hidden with a gun. Finally, on Coleman's couch, police found yet another piece of black cloth—together with appellant's wallet.

In brief, appellant's argument that the State offered no evidence corroborating the accomplice-witnesses' testimony is not supported by the record. Appellant points out that no one other than the accomplice witnesses placed him at the crime scene, but the absence of such evidence is no barrier to conviction. *See Rios v. State*, 263 S.W.3d 1, 7–8 (Tex. App.—Houston [1st Dist.] 2005, pet. dismiss'd) (finding that accomplice testimony was sufficiently corroborated, even though no witness positively identified the defendant because the suspects wore masks). Appellant also correctly points out there is no

evidence that he wore any of the clothing collected from Coleman's apartment, but again, no such evidence is required. *See Barnes v. State*, 62 S.W.3d 288, 301 (Tex. App.—Austin 2001, pet. ref'd) (holding that the accomplice's testimony implicating defendant in a masked robbery was sufficiently corroborated by circumstantial evidence and by a discarded ski mask containing DNA matching the defendant's profile). Appellant also argues that the accomplice-witness testimony is insufficiently corroborated due to the lack of forensic evidence from the crime scene, but it is well-established that circumstantial evidence, coupled with other suspicious circumstances, may tend to connect a defendant to the crime. *See Trevino v. State*, 991 S.W.2d 849, 851–52 (Tex. Crim. App. 1999) (en banc).

Finally, appellant argues that the cloth containing DNA consistent with his own was not found at the crime scene; however, it was found within a few hundred yards of the store along the suspects' path of flight. Moreover, it resembled not only the face coverings described by three eyewitnesses, but also the cloth found near appellant's wallet in the accomplice witnesses' apartment and the makeshift mask dropped by one of the robbers in the convenience store's parking lot. Roberts, an accomplice-witness, was identified as the possible major contributor of DNA recovered from that mask, just as appellant was identified as the possible major contributor of DNA recovered from the mask found in the clearing between the store and Garden View's fence.

Viewing the evidence in the light most favorable to the jury's verdict, we are satisfied that these circumstances tend to connect appellant to the commission of the robbery. *See Gill*, 873 S.W.2d at 49 (evidence that the accused was with the accomplice close to the time of the crime, if coupled with other suspicious circumstances, can tend to connect the defendant to the commission of the offense); *Barnes*, 62 S.W.3d at 301–02 (DNA from mask and other suspicious circumstances can corroborate accomplice-witness testimony and link the defendant to the commission of aggravated robbery by a masked gunman).

We therefore overrule appellant's sole issue on appeal.

IV. CONCLUSION

Because the testimony of the accomplice-witnesses is corroborated by other evidence tending to connect appellant to the commission of the charged offense, we affirm the trial court's judgment.

/s/ Tracy Christopher
Justice

Panel consists of Justices Brown, Christopher, and Jamison.

Do Not Publish — TEX. R. APP. P. 47.2(b).