

NOTICE  
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2012 IL App (4th) 110019-U

Filed 7/19/12

NO. 4-11-0019

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

|                                      |   |                      |
|--------------------------------------|---|----------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the      |
| Plaintiff-Appellee,                  | ) | Circuit Court of     |
| v.                                   | ) | Macon County,        |
| THOMAS D. BEASLEY,                   | ) | No. 10CF779          |
| Defendant-Appellant.                 | ) |                      |
|                                      | ) | Honorable            |
|                                      | ) | Timothy J. Steadman, |
|                                      | ) | Judge Presiding.     |

JUSTICE POPE delivered the judgment of the court.  
Justices McCullough and Cook concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court did not abuse its discretion in denying defendant's motion *in limine* where the other-crimes evidence sought to be excluded was highly probative of his identity and not unduly prejudicial.

¶ 2 (2) Defendant's trial counsel did not provide ineffective assistance where defendant was unable to prove he was prejudiced by his counsel's performance.

¶ 3 In September 2010, a jury convicted defendant, Thomas D. Beasley, of attempt (burglary) (720 ILCS 5/8-4(a), 19-1(a) (West 2010)). In November 2010, the trial court sentenced him to five years' imprisonment.

¶ 4 Defendant appeals, arguing (1) the trial court erred in allowing testimony regarding his flight from the scene and (2) his trial counsel provided ineffective assistance by failing to request a limiting instruction regarding that evidence. We affirm.

¶ 5 I. BACKGROUND

¶ 6 On May 24, 2010, the State charged defendant with attempt (burglary) (720 ILCS 5/8-4(a), 19-1(a) (West 2010)) and possession of burglary tools (720 ILCS 5/19-2 (West 2010)). Prior to trial, the trial court granted the State's motion to dismiss the possession-of-burglary-tools charge.

¶ 7 During defendant's trial, Joyce Bartek testified she and her boyfriend Alan St. Onge, with whom she lived, were home watching television just before midnight on May 19, 2010, when they heard a vehicle's "loud exhaust." According to Bartek, "you could hear the person giving [the vehicle] gas and taking off as if they were parked and then took off." Bartek testified they heard the same sound coming from the alley next to their backyard approximately 15 minutes later. Bartek looked out the window and saw a pickup truck parked along side of the alley next to their house. The truck was parked partially in her yard with the headlights off. Bartek testified she observed two individuals dressed in dark clothing get out of the truck and walk into her backyard toward her locked trailer, which contained a three-wheeler, a dirt bike, and tools.

¶ 8 According to Bartek's testimony, one man stood by a tree and the other approached the trailer. At this point, Bartek called the police. Bartek testified the man standing by the tree appeared to be "looking all around" while the other man "was trying to break into the trailer." The man by the trailer was holding the lock and making a sawing motion. Bartek heard what she thought was the sound of a lock breaking. St. Onge let their dog out, and the two men ran and jumped into the bed of the pickup truck. Bartek testified the driver of the truck "floored it" and drove down the alley. By that point, four police officers had arrived. She observed the vehicle swerve in the direction of two of the officers. Bartek then heard the sound of gunshots.

¶ 9 St. Onge testified he was watching television with Bartek shortly before midnight on May 19, 2010, when they heard a "loud exhaust vehicle." St. Onge looked out the window and observed a "two-tone Chevrolet full size pick-up, blue over white" coming down the alley. The truck stopped behind the house but then left. Approximately 10 to 15 minutes later, St. Onge again heard the loud vehicle. He looked out the window and observed the same vehicle parked on the grass. He watched two individuals, who looked like African-American males, quickly approach the side door of his trailer. St. Onge told Bartek to call the police. St. Onge testified he observed one of the men attempting to break into his trailer. The other man was standing at the corner of the house next to a group of trees. St. Onge thought he heard the lock on the trailer break so he released his dog into the yard. The two men ran and jumped into the bed of the truck, which then sped away. St. Onge testified he also chased the men and got within a foot of the truck before it sped off. St. Onge testified he heard gunshots a short time later. St. Onge testified the lock on his trailer, which had been intact the night before, was damaged and looked like someone had attempted to pry or cut it.

¶ 10 Decatur police officer Timothy Whittmer testified he was responding to the burglary call when he observed a pickup truck driving without its headlights turn directly in front of him. He turned on his emergency overhead lights and pursued the truck, which began to accelerate rapidly as it exited its turn. Whittmer testified he had to reach speeds of between 75 and 80 miles per hour to catch up with the truck. Whittmer characterized the driving of the truck as "reckless and erratic." The truck crossed the centerline several times and struck several curbs before finally stopping. Whittmer identified defendant as one of the men riding in the bed of the pickup truck. According to Whittmer, defendant was wearing a dark-colored jacket or

sweatshirt, dark-colored pants, and a stocking cap.

¶ 11 Eric Ethell, a Decatur police officer, testified he observed a two-toned blue pickup truck driving without its headlights accelerating rapidly out of the alley. Ethell was standing approximately 10 feet behind Officer Sheets, who was already on the scene. The truck swerved toward Sheets, who stepped out of its way. However, the truck again swerved toward Sheets. Ethell testified it appeared the vehicle was following Sheets' movements. At that point, Sheets fired a round at the truck. Ethell testified the truck got within a foot of Sheets and two feet of Ethell. Ethell testified the bullet "went in the windshield of the vehicle."

¶ 12 Aaron Jostes, a Decatur police officer, testified the pickup truck had already been stopped when he arrived at the scene. According to Jostes, Michael Beasley, defendant's brother, and a man Jostes identified in court as defendant, were riding in the bed of the truck. Sandra Beasley, presumably related in some way to defendant, was driving the truck. A second woman was in the passenger seat. Jostes testified there were bolt cutters and an assortment of miscellaneous tools in the bed of the truck. According to Jostes, defendant was not compliant with officers' requests to get out of the vehicle. As a result, Jostes and another officer had to physically pull defendant out of the bed of the truck.

¶ 13 Scott Cline, a detective with the Decatur police department, testified he processed the scene at the victims' home. Cline testified he observed a black trailer parked in the backyard of the home. Cline testified the padlock on the left side entry door of the trailer had fresh cuts and gouges in it. Cline testified he knew the marks were fresh because the shackle of the lock was rusted and corroded whereas the gouges and cuts in the shackle were "bright and shiny." Cline testified he also observed tire impressions in the grass of the backyard. According to

Cline, those impressions were "consistent with acceleration marks, tires slipping loose in the backyard that led out of the backyard and into the gravel part of the alleyway." Cline recovered a framing hatchet approximately 10 feet from the acceleration marks. Cline searched the pickup truck and found a hammer lying on the driver's side floorboard. Cline also searched the bed of the truck and found a flashlight, a pair of bolt cutters, and a hammer.

¶ 14 Derondi Lee testified he rented a room in the victims' house but was evicted approximately 10 days prior to the burglary attempt. Lee testified he had ridden the bikes while he lived there and was aware the victims kept the bikes in their trailer at night. Tabatha Kizer, defendant's cousin, stayed with Lee while he was living at the victims' house. Lee testified both defendant and his brother had visited Lee and Kizer at the victims' house on multiple occasions. Lee testified defendant had likely seen the bikes because they were displayed in front of the house with "for sale" signs on them.

¶ 15 On September 28, 2010, the jury found defendant guilty of attempt (burglary). On October 28, 2010, defendant filed a motion for a new trial, which the trial court denied. On November 10, 2010, the court sentenced defendant to five years' imprisonment. On November 12, 2010, defendant filed a motion to reconsider sentence, which the court denied.

¶ 16 This appeal followed.

¶ 17 **II. ANALYSIS**

¶ 18 On appeal, defendant argues the trial court erred in allowing testimony regarding defendant's flight from the scene. Specifically, defendant contends the evidence of flight, the fact police fired shots at the truck, and the bullet hole in the truck's windshield were irrelevant and immaterial to the charge of attempt (burglary). Defendant also argues his trial counsel provided

ineffective assistance by failing to request a limiting instruction regarding this evidence. We disagree.

¶ 19 A. Motion *In Limine*

¶ 20 On September 27, 2010, prior to trial, defendant filed a motion *in limine* requesting the trial court bar the State from "introducing evidence of the contents of the 9-1-1 audio call regarding the vehicle chase and gunshots, as well as the squad car video and audio or any evidence from police officers regarding the vehicle chase." Defendant argued he was only charged with attempt (burglary) and any evidence pertaining to the operation of the vehicle or what occurred as police attempted to stop it was irrelevant and immaterial to the charges against him.

¶ 21 During the September 27, 2010, hearing on defendant's motion, the State argued the flight evidence was probative to show, *inter alia*, (1) defendant's consciousness of guilt and (2) defendant's identity. The State explained as follows:

"the two victims observed this defendant acting as a lookout as [his brother] attempt[ed] to enter into the shed. They can identify the two individuals that they saw, but in terms of looking at their faces, they can't identify them personally as [defendant] or [his brother]. They [saw] two individuals engaged in this burglary. They [saw] both of them jump into the pick-up truck and then police watch them as they fle[d]. So in order for the State to prove identity, we need the officers to testify that they observed the same pick-up truck that the victims observed and that they kept their eye[s] on it until a stop was made

and that this defendant was the person in the pick-up truck. So the evidence is probative as to flight \*\*\* [and] the identity of [defendant] as the individual that was involved in this crime."

¶ 22 At the conclusion of the hearing, the trial court denied defendant's motion, finding: "the occurrence witnesses relating to the attempted burglary did not provide any other information rather than it was a pick-up truck and perhaps a general description, then the only way, as I understand the representations of counsel, to prove or attempt to prove that this pick-up truck was involved is to allow in evidence relating to the shot or shots being fired. Obviously, the only way that that would make sense in any way, shape or form to the jury is to have an explanation as to how the shots were fired. So I think the probative value is so extreme here that it outweighs any prejudicial effect because virtually that's the only way to try to tie up the vehicle to the crime."

¶ 23 During trial, the State then sought to admit a number of exhibits, including a picture of the bullet hole in the front windshield of the pickup truck. Defendant's trial counsel renewed his objection, arguing it was not relevant to the charged offense. The trial court overruled the objection, finding the identification of defendant made the bullet hole relevant. The court explained "there is virtually no other way to identify this pick-up truck with the occurrence at the residence in question except for the fact that there is a bullet hole present."

¶ 24 In *People v. Spyres*, 359 Ill. App. 3d 1108, 1112, 835 N.E.2d 974, 977 (2005), this court discussed the admissibility of other-crimes evidence as follows:

"The term 'other-crimes evidence' encompasses misconduct or criminal acts that occurred either before or after the allegedly criminal conduct for which the defendant is standing trial. [Citations.] Generally, other-crimes evidence is inadmissible if it is relevant only to demonstrate a defendant's propensity to engage in criminal activity. [Citation.] Such evidence may be admissible, however, when it is relevant to show motive, intent, identity, absence of mistake or accident, *modus operandi*, or the existence of a common plan or design. [Citation.] Indeed, other-crimes evidence is admissible to prove any material fact other than propensity that is relevant to the case. [Citation.] However, even when relevant for a permissible purpose, the trial court may exclude other-crimes evidence 'if its prejudicial effect substantially outweighs its probative value.' [Citation.]"

¶ 25 As stated, the victims were not able to specifically identify defendant as one of the individuals they saw on their lawn that night. The victims, however, testified to seeing both individuals jump into the bed of a pickup truck, which the police chased and shot. When police stopped the truck, defendant was found in the bed. The officer identified the truck as the same one that sped away from the victims' house and the one they shot, by the bullet hole in the windshield. Under the facts of this case, the other-crimes evidence was highly probative of, and admissible to show, defendant's identity as one of the individuals who attempted to burglarize Bartek and St. Onge's trailer. See *Spyres*, 359 Ill. App. 3d at 1112, 835 N.E.2d at 977

(other-crimes evidence admissible when it is relevant to show identity or bolster a victim's identification of the perpetrator).

¶ 26 We note evidence of other crimes is also admissible to show the circumstances surrounding a defendant's arrest. See *People v. Coleman*, 158 Ill. 2d 319, 335-36, 633 N.E.2d 654, 663 (1994) (evidence of other crimes may be admissible to show the context of defendant's arrest). The flight and shots fired were directly intertwined with the crime itself. In addition, the evidence of defendant's flight from the scene was also highly probative of his consciousness of guilt. See *People v. Newborn*, 379 Ill. App. 3d 240, 247, 883 N.E.2d 603, 608 (2008).

¶ 27 Here, the trial court was in the best position to weigh the prejudicial impact of the other-crimes evidence in the context of the entire case. The court made a detailed finding, which indicated it considered the prejudicial impact of the evidence. The court concluded the probative nature of the evidence outweighed any potential prejudice. We agree. The trial court did not abuse its discretion in denying defendant's motion *in limine*.

¶ 28 B. Ineffective-Assistance Claim

¶ 29 Defendant argues his trial counsel provided ineffective assistance by failing to request a limiting instruction regarding the evidence surrounding his flight from the scene. We disagree.

¶ 30 To establish ineffective assistance of trial counsel, a defendant must prove (1) the conduct of counsel fell below an objective standard of reasonableness, and (2) the deficient performance prejudiced the defendant such that a reasonable probability exists that the result would have been different but for the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-694 (1984). The *Strickland* Court noted when a case is more easily decided on the

ground of lack of sufficient prejudice rather than the deficiency of representation, the court should do so. *Strickland*, 466 U.S. at 697.

¶ 31 In this case, even if we were to find counsel's failure to request a limiting instruction rendered his performance deficient, defendant is still unable to show prejudice as the evidence against him was overwhelming. The victims testified they observed two individuals get out of a pickup truck and head straight for their trailer where they stored, *inter alia*, motorbikes. One individual acted as the lookout and evidence indicated the other was attempting to gain entry into the trailer. When the victims let their dog out, they observed the individuals jump into the bed of the pickup truck, which then sped away. Police observed a pickup truck speeding away from the victims' house and shot a hole in its windshield after it swerved toward one of the officers. Police then pulled over a truck with a bullet hole in its windshield. They discovered two men in the bed wearing clothing similar to what the victims described the individuals in their yard were wearing. Officers identified one of the individuals as defendant. Defendant had previously visited Kizer and Lee at the victims' house. Lee knew the victims kept bikes inside the trailer at night. According to Officer Jostes, defendant was not compliant with officers' requests to get out of the vehicle. As a result, officers had to physically remove defendant from the bed of the truck. Police recovered a pair of bolt cutters, a flashlight, and a hammer from the truck bed. Thus, even if a limiting instruction had been given, there is no reasonable probability the jury would have found defendant not guilty as the evidence of defendant's guilt was overwhelming. Accordingly, defendant's ineffective-assistance claim fails.

¶ 32

### III. CONCLUSION

¶ 33 For the reasons stated, we affirm the trial court's judgment. As part of our

judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 34           Affirmed.