SECOND DIVISION
January 22, 2013

No. 1-11-0453

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. 09 CR 9598
	)	
KIAR BROWN,	)	Honorable
	)	Matthew Coughlan,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Connors and Simon concurred in the judgment.

O R D E R

¶ 1 *Held:* Judgment entered on defendant's conviction of first degree murder affirmed over his claim that trial counsel was ineffective for presenting alibi testimony which conflicted with his videotaped statement.

¶ 2 Following a jury trial, defendant Kiar Brown was found guilty of first degree murder, then sentenced to an aggregate term of 55 years' imprisonment, which included a 25-year firearm enhancement. On appeal, defendant contends that trial counsel was ineffective for presenting alibi testimony at trial that conflicted with his videotaped statement.

¶ 3 The record shows, in relevant part, that about 4:30 p.m. on April 25, 2009, Zachary Allmon was fatally shot near 52nd and South Carpenter Streets, in Chicago. The shooting was

witnessed by two young girls playing outside at the time (M.O. and her cousin A.M.), and by Andrell Singleton, who was eating in his car during the incident. All three witnesses identified defendant as the shooter in both a lineup and at trial.

¶ 4 M. O., who was 12 years old on the date in question, testified that about 4 p.m., she, her sister, and A.M. were playing with a dog in front of her father's house near 52nd and South Carpenter Streets, when she saw Allmon, whom she knew from the neighborhood, on the corner talking on the phone. They said "hey" to each other, then she went back to playing with the dog. She subsequently heard "a shooter," and as she was shielding her sister on the ground, she looked straight ahead, and saw defendant standing over Allmon and shooting down at him as he lay "head down" on the sidewalk. A.M. accidentally let the dog out as this occurred, and the dog began chasing defendant, who then ran to a car in the middle of the street. Defendant entered the passenger side, and the driver sped off.

¶ 5 M.O. described the shooter to police as "a light-skinned boy with box braids with beads on it," and noted that he was wearing a hat and jacket and was dressed in "all black." She had never seen him before and did not know him from the neighborhood. On May 2, 2009, M.O. viewed a lineup at Area 1 headquarters and identified defendant as the shooter.

¶ 6 On cross-examination, M.O. stated that the car defendant entered after the shooting was a light blue minivan. She also stated that she first told police that defendant had braids with clear or white beads, and that the jacket he was wearing had the brand name "Coogi" written on it.

¶ 7 A.M., who was 11 years old on the date in question, testified that about 4:30 p.m., she and her cousins were sitting on the porch of her uncle's house because it was "drizzling" out, and Allmon, whom she knew from the neighborhood, walked towards them and said "hey." They said "hey" back, then left the porch and walked to the gate on the side of the house to play with the dog. Thereafter, A.M. heard gunshots and saw someone shooting. She and M.O. shielded her cousin on the ground, then A.M. looked up and saw defendant standing over Allmon, who

had fallen onto the sidewalk, and shooting down at him. At that point, she "flew back a little bit" and leaned into the gate. The dog got out and began chasing defendant who ran to a car in the street, got in, and was driven off quickly.

¶ 8 A.M. subsequently described the shooter to police as being light-skinned, "kind of tall, and lanky," and having his hair in box braids, possibly with beads. She also told police that the shooter was wearing black clothing, a "Coogi outfit" with the word "Coogi" emblazoned on the pants, black and white shoes," a "hoodie," and a hat. A.M. testified that she did not know defendant's name at the time of the shooting, but knew who he was because he used to "hang around" with people on her block. On May 2, 2009, she viewed a lineup at Area 1 headquarters and identified defendant as the shooter.

¶ 9 On cross-examination, A.M. stated that the girls huddled about 12 feet away from where Allmon fell. She also stated that she told police and the assistant State's Attorney that the car she saw was "bluish-green," and that she described defendant to police as having braided hair with clear or white beads. She further explained that the braids in defendant's hair were "french braids, but they was boxed. They call them individual braids."

¶ 10 Andrell Singleton, who has a prior conviction for possession of a weapon, testified that he lived at 5204 South Carpenter Street in April 2009, and knows both Allmon and defendant from the neighborhood. About 4 p.m. on the day in question, he was "hanging around" with his brothers and some friends, including Allmon, in front of the house that belongs to Allmon's uncle. He and his brother then went to McDonald's, and when they returned about 4:30 p.m., he parked across the street from his house and remained in the car eating while his brother went inside. At the time, Singleton saw Allmon behind him on the corner of 52nd and Carpenter Streets, his aunt on the porch with two of her friends, and "some kids" next door.

¶ 11 Thereafter, a sky blue station wagon pulled to a stop before the intersection at 52nd and Carpenter Streets and someone got out of the car. Singleton heard two shots, then ducked down,

looked back, and saw someone chasing and shooting at Allmon. Singleton "could tell that the bullets was hitting him because his body as [*sic*] kind of like squinching up. He was starting to fall. And as he was falling, he was still getting shot." Allmon ultimately fell to the ground in front of Singleton's house, across from where he was sitting, and Singleton saw defendant fire about five more shots into his back from three to four feet away. Defendant then put the gun into his right pocket and turned towards the car in which he arrived, at which point Singleton saw his face. Singleton testified that defendant was wearing "a black White Sox hat, a designer jacket, some blue jeans, and some gym shoes," and that he had "some braids with some beads on them." After defendant walked to the car and got in on the passenger side, the car sped southbound on Carpenter Street. Singleton subsequently spoke to police, but testified that he did not give them defendant's name because he "didn't feel like it was safe, and there was a lot of people outside so [he] didn't do it right then and there."

¶ 12 On the evening of April 27, 2009, police were called to a disturbance at the house where the mother of Singleton's children resided, and the officers placed Singleton in their car "because the sister said [he] started something, [he] broke in the house or something." Later, as he was about to be let out, Singleton asked an officer if he knew "anything about a murder that happened a couple of days ago," and the officer responded that he did not, and asked Singleton what he knew. Singleton told him "a little bit," and the officer made a call and asked him if he wanted to go to the police station to make a statement. He replied, "no problem," then voluntarily went to Area 1 headquarters where he gave a statement to detectives naming defendant as the shooter, and identifying him in a photo array. Singleton testified that he named defendant at this time because he "wasn't in front of no one that [he] knew, [he] wasn't in [his] neighborhood, so no one knew that [he] was there." On May 2, 2009, Singleton also viewed a lineup at Area 1 headquarters and, again, identified defendant as the shooter.

¶ 13 On cross-examination, Singleton acknowledged that he only gave the 911 operator a description of the shooter's vehicle, but stated that he "didn't want to say everything over the phone." He also acknowledged telling the 911 operator that he did not see the shooter, but explained that he "was trying to get emergency help over there," and "wasn't trying to even hear nothing she was saying."

¶ 14 For the defense, Tenija Ratcliffe testified that defendant lives two doors down from her grandmother's house at 934 West 50th Place, and that she considers him to be an acquaintance. She braided his hair twice in 2009, and last did so in April of that year when she put his hair into individual braids without white or clear beads. Ratcliffe testified that she braided hair for money in spring 2009, and that defendant's hairstyle was "quite the same" as the other 17-, 18-, and 19-year-olds whose hair she was braiding, *i.e.*, in individual braids.

¶ 15 On April 25, 2009, Ratcliffe saw defendant in the backyard of the house that belonged to the grandmother of her boyfriend, at 926 West 50th Street. He still had individual braids without white or clear beads, and when she returned from the grocery store about 2 p.m., he was in front of the house with James Selvie, aka "Little James," and a "couple other boys," and he helped her carry bags into the house. Ratcliffe subsequently began barbecuing, and defendant stayed at the house for about four hours watching the grill.

¶ 16 About 4:30 p.m., the partygoers heard about six or seven shots fired from around the corner. Ratcliffe testified that defendant was "standing right there flipping the burgers over" at the time, then corrected herself, stating, "Hot links – I mean chicken and hot links." Later that day, she learned that somebody had been killed at 52nd and Carpenter Streets, and about a week later, she learned that defendant had been arrested, but did not know the reason. She never went to the police station to tell them that defendant had been with her because she "didn't know where to go to" and "didn't know what he was being charged with." In June, she told defendant's father, Kevin Brown, that defendant had been with her at the time of the shooting.

¶ 17 After the defense rested, the State informed the court that it was seeking to rebut the testimony of Ratcliffe with a portion of defendant's statement to detectives on May 2, 2009, that he left the barbecue at 3:30, went to a candy store for five minutes, and was playing basketball in the street with some kids at the time of the shooting. Counsel objected that introduction of defendant's statement did not constitute proper rebuttal, but the court allowed the State to "bring in the defendant's statement that he was somewhere else playing basketball to rebut the alibi."

¶ 18 In rebuttal, Chicago police detective John Murray testified that he and Detective Tom Vovos interviewed defendant on May 2, 2009. During the interview, defendant told him that after he woke up on April 25, 2009, he attended a barbecue at "Re-Re's house," then about 3:30 p.m., he went and played basketball with an individual named Jaylyn Williams. Defendant told him that he heard shots fired in the area while he was playing basketball, but never told him that he was at a barbecue when he heard shots fired, nor that he was with Ratcliffe at that time. The State published a portion of defendant's videotaped statement which was admitted into evidence.

¶ 19 Following deliberations, the jury returned verdicts finding defendant guilty of first degree murder, and that during the commission of that offense, he personally discharged a firearm that proximately caused the death of another person. The trial court subsequently sentenced defendant to 30 years' imprisonment for first degree murder with a 25-year firearm enhancement.

¶ 20 In this appeal from that judgment, defendant does not challenge the sufficiency of the evidence to support his murder conviction. Rather, he contends that trial counsel was ineffective for presenting the alibi testimony of Ratcliffe that she was at a barbecue with him at the time of the shooting, which conflicted with his videotaped statement that he was playing basketball at that time. He claims that counsel's alleged error resulted in prejudice because the State's evidence against him rested entirely on three unreliable eyewitness identifications.

¶ 21 The State responds that the evidence against defendant was overwhelming, and that he therefore cannot establish prejudice. The State specifically notes that three independent, neutral

eyewitnesses provided "rock-solid" identifications of defendant as the shooter under excellent circumstances.

¶ 22 To establish a claim of ineffective assistance of counsel, defendant must first show that counsel's performance was deficient, *i.e.*, it fell below an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). Secondly, defendant must show that counsel's deficient performance resulted in prejudice to the defense, *i.e.*, a reasonable probability that, but for counsel's deficient performance, the result of the proceedings would have been different. *Strickland*, 466 U.S. at 687, 694. Both prongs of *Strickland* must be satisfied to succeed on a claim of ineffective assistance of counsel; however, where defendant's claim can be disposed of on the ground that he did not suffer prejudice, the court need not address whether counsel's performance was deficient. *People v. Flores*, 153 Ill. 2d 264, 283-84 (1992).

¶ 23 Notwithstanding counsel's introduction of alibi testimony which conflicted with defendant's post-arrest statement to police, we find that defendant cannot satisfy the prejudice prong of *Strickland* to establish his claim. The evidence presented by the State at trial included three eyewitness, 12-year-old M.O., 11-year-old A.M., and Andrell Singleton, who positively identified defendant as Allmon's killer in a lineup one week after the shooting and again at trial. Each viewed the shooting during the daytime hours at close range (M.O. and A.M. were about 12 feet away from where Allmon lay on the ground and Singleton was in a car across the street), and gave detailed descriptions of defendant's appearance at the time of the shooting, including that his hair was in braids with beads. A.M. and Singleton also knew defendant at the time of the shooting, and all three witnesses provided consistent accounts of the incident, testifying that after an initial set of shots were fired, defendant shot Allmon as he lay on the ground, then entered a blue car in the street which was driven off quickly.

¶ 24 The only evidence offered by the defense to challenge these identifications, absent the alibi testimony at issue, was Ratcliffe's testimony that in April 2009, defendant wore his hair in

individual braids without white or clear beads. Even assuming, *arguendo*, a discrepancy in the witnesses' descriptions of defendant, that alone does not generate a reasonable doubt where, as here, a positive identification has been made. *People v. Slim*, 127 Ill. 2d 302, 309 (1989). Thus, in light of the overwhelming evidence establishing defendant's identity as the shooter in this case, we cannot say there is a reasonable probability that "but for" counsel's introduction of Ratcliffe's alibi testimony, the result of the trial would have been different. *Strickland*, 466 U.S. at 687, 694; see also *People v. Beals*, 162 Ill. 2d 497, 506-07 (1994) (finding no reasonable probability of acquittal where the State's evidence against defendant was overwhelming).

¶ 25 Defendant disagrees with this conclusion, and, citing *People v. Roe*, 63 Ill. App. 2d 452 (1965), claims that Singleton's identification was inherently unreliable where Singleton did not identify him in the 911 call or to police after the shooting. He further suggests that the lineup identifications made by M.O. and A.M. were the result of an impermissibly suggestive lineup.

¶ 26 We note that defendant has not explicitly raised any issue regarding the sufficiency of the eyewitness identifications to sustain his conviction, the propriety of the lineup viewed by the minor girls, or that counsel was ineffective for failing to file a motion to suppress the lineup identification. Notwithstanding, we find his assertions to be without merit.

¶ 27 In *Roe*, 63 Ill. App. 2d at 455-56, the reviewing court found a reasonable doubt of defendant's guilt where the victim did not give police defendant's name, which he knew, when questioned two days after an alleged assault and robbery, but then identified him in a lineup 16 days later. Here, unlike *Roe*, Singleton explained to the jury why he did not give defendant's name to police after the shooting or in the 911 call. He testified that he did not give defendant's name to police because there were people around and it "didn't feel like it was safe," and that he told the 911 operator that he did not see the shooter because he "was trying to get emergency help over there." No such explanations were present in *Roe*, and additionally, the jury in this case

heard the testimony of multiple individuals who witnessed defendant shoot the victim. We thus find *Roe* readily distinguishable from the case at bar.

¶ 28 We likewise find unavailing defendant's suggestion that M.O. and A.M.'s identification of him were the product of an impermissibly suggestive lineup. Although defendant argues that he "was the only individual in the lineup with braids in his hair, when all of the witnesses had consistently described the shooter with braided hair," it is well-settled that a lineup is not impermissibly suggestive merely because defendant was the only person in it with braided hair. *People v. Love*, 377 Ill. App. 3d 306, 311 (2007). Moreover, the photograph of the lineup viewed by the girls shows a second person who appears to have braided hair, and all five individuals are of a similar age, height, and body shape. Thus, defendant's ineffective assistance of trial counsel claim necessarily fails for lack of prejudice under *Strickland* (*Flores*, 153 Ill. 2d 264, 283-84); and, we therefore affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.