2013 IL App (5th) 110348-U

NO. 5-11-0348

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT



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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Wayne County. |
| | ) | |
| v. | ) | No. 07-CF-100 |
| | ) | |
| JUSTIN E. DeJAYNES, | ) | Honorable |
| | ) | Timothy R. Neubauer, |
| Defendant-Appellant. | ) | Judge, presiding. |

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Spomer and Justice Welch concurred in the judgment.

**ORDER**

¶ 1 *Held*: Even accepting defendant's account of events that alleges other contributing factors, his driving while intoxicated would still be a proximate cause of the death of another motorist for purposes of aggravated driving under the influence of alcohol.

¶ 2 Defendant, Justin E. DeJaynes, pled guilty to a charge of aggravated driving while under the influence (625 ILCS 5/11-501(d)(1)(F) (West 2006)) in the circuit court of Wayne County. Defendant later filed a petition under the Post-Conviction Hearing Act (725 ILCS 5/122-6 (West 2010)). After proceeding to a third-stage evidentiary hearing, the circuit court denied the petition. On appeal, defendant raises issues as to: (1) whether defendant was denied effective assistance of counsel and (2) whether the court erred by failing to appoint an accident reconstruction expert as requested by defendant in postconviction proceedings. We affirm.

¶ 3 FACTS

¶ 4 On July 3, 2007, a vehicle driven by defendant collided with a vehicle driven by Christopher Hardieck. Hardieck died as a result of injuries sustained in the accident. On July 17, 2007, indictments were returned charging defendant with aggravated DUI and reckless homicide (625 ILCS 5/11-501(d)(1)(F) (West 2006); 720 ILCS 5/9-3(a) (West 2006)). A public defender was appointed.

¶ 5 In the complaint filed by the State, Trooper Matthew Haywood described an oral statement given by defendant. In the statement, defendant stated that he had been driving south on U.S. 45 when he saw Hardieck's vehicle drive off the road to the right and correct itself back onto the highway all the way to crossing over the center line into the oncoming lane. Defendant stated that he then hit the brakes which caused his vehicle to move left. Defendant stated that he had noticed that his brakes had been pulling his vehicle hard to the left at least one week before the accident, but he could not afford to fix them. In a field report, Haywood indicated that an Illinois State Police accident reconstruction officer showed him skid and yaw marks beginning in the southbound lane crossing over into the northbound lane and a gouge in the northbound lane marking the location of initial impact.

¶ 6 This differed from an initial filed report taken by Haywood at the emergency room. In the initial field report, Haywood wrote:

> "I then asked him to explain the details of the crash to me. [Defendant] advised that his friend Mike was driving the truck. I asked him what Mike's last name was and he stated 'I don't know.' I then asked him where Mike was and he stated, 'Last time I saw Mike was earlier tonight.' 'I saw him at the house.' 'I wasn't driving the truck.' 'I don't know what the fuck happened.' "

Defense counsel filed a motion for an expert in emergency medicine seeking to suppress statements. On December 20, 2007, the court held a hearing and took the motion under

advisement.

¶ 7 On January 17, 2008, defendant entered into a plea agreement. Under the terms of the plea agreement, defendant agreed to plead guilty to the charge of aggravated driving under the influence in exchange for dismissal of the charge of reckless homicide. In the factual basis for the plea, the State indicated that a blood screen ordered by an attending physician in the emergency room indicated that defendant's blood-alcohol content was 0.242. A blood test conducted by the Illinois State Police of a sample taken from defendant at the time he was issued a citation for driving under the influence revealed a blood-alcohol content of 0.171. The court accepted the plea, ordered a presentence investigation, and set a hearing date for sentencing. Defendant was advised that any of the statutorily authorized sentences would be available and was released on bail.

¶ 8 On March 21, 2008, defendant was arrested for a separate incident of driving under the influence. On April 1, 2008, the State filed a motion to revoke bail, which the court granted. At a hearing of April 9, 2008, the amount of bail was increased.

¶ 9 On May 21, 2008, the court conducted a sentencing hearing. Defendant was sentenced to a term of 10 years' imprisonment.

¶ 10 On February 20, 2009, defendant filed a *pro se* petition for postconviction relief alleging ineffective assistance of counsel. Appointed counsel amended the petition and also filed a motion requesting appointment of an accident reconstruction expert.

¶ 11 On February 22, 2011, the court conducted an evidentiary hearing on the petition. At the hearing, defendant's trial counsel was asked if he investigated whether defendant's brakes were faulty:

> "I don't imagine I did any. I don't recall doing any. As I said, as I told him, I don't know that anybody would ever even argue that his brakes were bad. If I were prosecutor, I think that would be a good thing."

Counsel admitted defendant having faulty brakes might be a factor in mitigation at sentencing, but contended that "most of the air went out of mitigation when he got his second D.U.I." Counsel denied that defendant ever asked him to investigate whether his brakes were faulty, but explained what he told defendant:

> "No, he–told me that the–his brakes didn't work and that's why he swerved over into the lane–oncoming lane of traffic, which caused him to hit that car, and he had some notion that that was a get-out-of-jail-free card, and I tried to tell him that, you know, it really didn't make any difference whether his brakes were bad or whatever. The fact that they were bad and the fact that he was in their lane–the other guy's lane, and the fact that he was drunk as the lord made him pretty well guilty in my eyes if we had to go to trial."

¶ 12 After the evidentiary hearing, the trial court entered an order denying the petition. Defendant appeals.

¶ 13 ANALYSIS

¶ 14 Defendant appeals the denial of his petition for postconviction relief after a third-stage evidentiary hearing. 725 ILCS 5/122-6 (West 2010). The decision of the circuit court following an evidentiary hearing will not be disturbed unless it is manifestly erroneous. *People v. Morgan*, 212 Ill. 2d 148, 155, 817 N.E.2d 524, 528 (2004).

¶ 15 The standard for determining whether counsel was effective is well established. A defendant is denied effective assistance of counsel if (1) his counsel's actions "fell below an objective standard of reasonableness" and (2) absent the deficiency there exists "a reasonable probability" of a different outcome. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Counsel is deficient and falls below the standard for reasonableness if he fails to ensure that a defendant entered the plea voluntarily and intelligently. *People v. Rissley*, 206 Ill. 2d 403, 457, 795 N.E.2d 174, 204 (2003).

¶ 16 In cases where a guilty plea is challenged, the reasonable probability of a different outcome requires a showing that the defendant would have pled not guilty and demanded a trial. *People v. Hall*, 217 Ill. 2d 324, 335, 841 N.E.2d 913, 920 (2005) (citing *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). A bare allegation by the defendant that he would not have entered the plea is insufficient to display prejudice. *People v. Hughes*, 2012 IL 112817, ¶ 64, 983 N.E.2d 439. The defendant must present a claim of innocence or articulate a plausible defense. *Hughes*, 2012 IL 112817, ¶ 64, 983 N.E.2d 439. Thus, the question of whether deficient representation led a defendant to plead guilty rests largely on predicting whether the defendant likely would have been successful at trial. *Hall*, 217 Ill. 2d at 336, 841 N.E.2d at 921 (citing *Hill*, 474 U.S. at 59).

¶ 17 Defendant contends that his trial counsel was ineffective for failing to investigate whether defendant's driving was a proximate cause of the collision. Defendant asserts that two aspects of the record support a theory that his faulty brakes caused the accident. First, defendant points to a synopsis of his own statement, apparently made during hospitalization and provided by the State in compliance with discovery, that his vehicle veered into the oncoming lane because his brakes were defective and that he applied his brakes only after seeing Hardieck's vehicle go off the road and return to the road as it approached. This account, defendant contends, is bolstered by the tire marks, described in Trooper Haywood's report, leading from the southbound into the northbound lanes at the scene of the collision. Defendant asserts that it would not have been unreasonable for a fact finder to conclude that Hardieck's driving caused him to apply the brakes and that his defective brakes caused him to overcorrect. Defendant's position misconstrues the test for causation.

¶ 18 Defendant was charged with aggravated driving under the influence of alcohol (625 ILCS 5/11-501(d)(1)(F) (West 2008)). A person commits the offense of driving under the influence if he has actual physical control of a motor vehicle while his blood-alcohol content

is 0.08 or more. 625 ILCS 5/11-501(a)(1) (West 2008). Driving under the influence becomes aggravated when, in violating section 11-501(a), a driver is involved in a "motor vehicle *** accident that resulted in the death of another person, when the violation of subsection (a) was a proximate cause of the death." 625 ILCS 5/11-501(d)(1)(F) (West 2008).

¶ 19 Illinois courts have found that the felony of aggravated driving under the influence arises when a driver violates the provisions of the misdemeanor described in paragraph 11-501(a) under specified circumstances set forth in paragraph 11-501(d). *People v. Quigley*, 183 Ill. 2d 1, 10, 697 N.E.2d 735, 739 (1998). The initial issue in any prosecution for aggravated driving under the influence is whether the defendant operated a vehicle in a condition that violated the misdemeanor definition of driving under the influence. *People v. Martin*, 2011 IL 109102, ¶ 26, 955 N.E.2d 1058. If the defendant violated section 11-501(a) by driving with a blood-alcohol content in excess of the prescribed limits, then the question becomes one of whether the driving was a proximate cause. *Martin*, 2011 IL 109102, ¶ 26, 955 N.E.2d 1058.

¶ 20 The test for determining whether driving under the influence was aggravated is whether the violation was "a proximate cause" of the ensuing fatality. 625 ILCS 5/11-501(d)(1)(F) (West 2008). Illinois courts have recognized that this does not require the defendant's intoxication to be the sole cause of the accident. *People v. Merritt*, 343 Ill. App. 3d 442, 448, 797 N.E.2d 1103, 1107 (2003); *People v. Ikerman*, 2012 IL App (5th) 110299, ¶ 49, 973 N.E.2d 1008; see also *People v. Johnson*, 392 Ill. App. 3d 127, 131, 924 N.E.2d 1019, 1023 (2009) (other driver running a red light would not have removed proximate causation from defendant).

¶ 21 In *Merritt*, the defendant drove her van into a jogger. The jogger, who was wearing headphones, crossed the road in front of the defendant in the dark. The defendant argued that

the jogger's actions caused the accident. *Merritt* began by noting that the trial court had found that the defendant would have had more time to react if she had been more attentive and that the defendant's alcohol consumption impaired her ability to take prompt action. Pointing to the defendant's Breathalyzer test and police officers' description of the defendant's physical condition, *Merritt* stated that the State had "presented sufficient evidence from which the trial court could have found beyond a reasonable doubt defendant's alcohol consumption impaired her driving ability, and thus her driving while under the influence of alcohol was a proximate cause of the victim's death." *Merritt*, 343 Ill. App. 3d at 448, 797 N.E.2d at 1107.

¶ 22 In the end, *Merritt* reasoned that the defendant's culpability was not defeated by the jogger's own contribution to the accident. Any assertion that the jogger's actions were the only cause was belied by the fact that other drivers had managed to avoid colliding with the jogger "despite the conditions and surroundings." *Merritt*, 343 Ill. App. 3d at 448, 797 N.E.2d at 1107. Whether other factors might also constitute a proximate cause was irrelevant. *Merritt* concluded:

> "The fact that the victim's actions were also a proximate cause of his injuries does not warrant reversal of defendant's conviction. A person commits aggravated DUI when his or her driving under the influence 'was *a* proximate cause of the injuries' (emphasis added) (625 ILCS 5/11-501(d)(1)(C) (West 2000)), not the sole and immediate cause of the victim's injuries." *Merritt*, 343 Ill. App. 3d at 448, 797 N.E.2d at 1107.

¶ 23 *Ikerman* confirmed the principle that a defendant's intoxicated driving need not be the sole and immediate cause of a fatal accident. *Ikerman*, 2012 IL App (5th) 110299, ¶ 49, 973 N.E.2d 1008 (citing *Merritt*, 343 Ill. App. 3d at 448, 797 N.E.2d at 1107). In *Ikerman*, the defendant struck an automobile that had run out of gas in the roadway. Several witnesses

testified about the victim's improper stopping in the far right lane of a four-lane road. In particular, one driver testified that she would have hit the parked car had she not been paying attention. This witness testified that she almost hit the parked vehicle, having to swerve and slam on her brakes at the last minute.

¶ 24 The defendant argued that the State failed to prove that his intoxication was the proximate cause of the accident. *Ikerman* stated:

> "The offense of aggravated DUI is committed when a person's driving under the influence is a proximate cause of the victim's injuries, not the sole and immediate cause of the injuries. [Citation.] 'Proximate cause includes both cause in fact and legal cause.' [Citation.] In the present case, the defendant argues the State failed to present sufficient evidence to prove cause-in-fact proximate cause. The cause-in-fact requirement of proximate cause is present when reasonable certainty exists that the defendant's actions caused the injury or damage." *Ikerman*, 2012 IL App (5th) 110299, ¶ 49, 973 N.E.2d 1008.

¶ 25 *Ikerman* rejected the defendant's assertion he was absolved because the victim had "created a dangerous situation by parking his darkly colored vehicle on the road with no headlights at night." *Ikerman*, 2012 IL App (5th) 110299, ¶ 51, 973 N.E.2d 1008. The State presented sufficient evidence that the defendant's driving was a proximate cause. *Ikerman* noted that the testimony by the witness who had almost hit the parked car cut both ways–indicating that the car was parked dangerously, but also that a sober driver had time to react and take evasive action. *Ikerman* then noted that the State's reconstruction expert testified that the defendant never took evasive action or applied his brakes. *Ikerman* concluded by pointing to the evidence in the record that the defendant had been drinking on the night of the accident. Thus, the contribution of dangerous parking to the accident did not mean that the defendant's driving was not a cause in fact for determining proximate cause.

¶ 26 Defendant misconstrues the element of being a proximate cause with a requirement that driving under the influence was the sole and immediate cause. Even if a fact finder could conclude that Hardieck's driving caused defendant to apply the brakes and that defendant's defective brakes caused him to overcorrect, the record would still lead to the conclusion that defendant's intoxicated driving was a proximate cause of the accident. The other contributing factors to the accident alleged by defendant are less imposing than those in *Merritt* and *Ikerman*. In *Merritt* and *Ikerman*, the defendants were unquestionably in their own lanes and were presented with obstacles by others who contributed to the accident–a stalled van and a jogger wearing headphones. Unlike *Merritt* and *Ikerman*, defendant here admits that the accident occurred in the oncoming lane of traffic, but claims his vehicle's brakes were defective. Moreover, defendant cannot explain how his defective brakes were a cause of an accident when he was intoxicated, but did not lead to any accidents when he was presumably sober.

¶ 27 Defendant's claim of ineffective counsel relies on the misinterpretation of proximate cause. Defendant fails to display that his plea was unintelligent or that counsel was deficient in any substantial manner. In terms of prejudice, defendant fails to establish a claim of actual innocence or a plausible defense. The circuit court properly denied defendant's postconviction petition.

¶ 28 Instead of a claim of ineffective counsel, defendant's arguments are more directed at the dismissive nature of his counsel towards the account of events defendant advances on appeal. Defendant argues that his counsel personally had no belief in defendant's account. In addition to not rising to the level of a claim of ineffective assistance, this criticism of his defense counsel ignores other aspects of the record which counter defendant's account of the accident. As the trial court found, the record overwhelmingly supports defendant's conviction. Moreover, defendant's aspersions regarding the lack of confidence displayed by

his counsel ignore the difficulties his counsel would face in establishing defendant's credibility, regardless of whether his counsel would have been successful in suppressing the defendant's prior inconsistent statements. In the end, the aspersions defendant makes regarding his counsel's lack of confidence in defendant lack substance.

¶ 29 Defendant argues, as a separate issue, that the trial court errantly failed to appoint an accident reconstruction expert. This argument fails for several reasons. Defendant asserts that the trial court applied an incorrect legal analysis when denying his request for a reconstruction expert, evaluating the motion as one arising from a claim for actual innocence based on newly discovered evidence. The trial court, however, also stated that it was exercising discretion in denying the request, pointing out that defendant repeatedly confessed to the charges and admitted to a highly detailed factual basis. In any event, defendant's justification for appointing a reconstruction expert rests on a faulty interpretation of the standard for proximate cause. Again, defendant fails to address how a reconstruction expert who supported the version of events defendant advances on appeal would support a conclusion that his driving under the influence was not a proximate cause.

¶ 30 Accordingly, the order of the circuit court of Wayne County is hereby affirmed.

¶ 31 Affirmed.