

No. 1-12-3690

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 19670
	)	
JUSTIN HUDSON,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Justices Epstein and Taylor concurred in the judgment.

**O R D E R**

¶ 1 *Held:* We reject defendant's claim of ineffective assistance of counsel. Defendant has failed to show he was prejudiced by counsel's purported mistake, which allowed the State to argue defendant had a motive to commit the aggravated battery, because the record demonstrates the trial court focused its judgment solely on the issue of identity, not motive, and the court did not rely on counsel's alleged error.

¶ 2 Following a bench trial, defendant, Justin Hudson, was convicted of aggravated battery and sentenced to 30 months' probation. Defendant appeals, asserting he received ineffective assistance of counsel because his attorney erroneously indicated that defendant and his wife

received notice of a court order favorable to the victim prior to the attack, which allowed the State to argue and the trial court to find that defendant had a motive to commit the aggravated battery. For the reasons that follow, we affirm.

¶ 3 Derrick Milton was stabbed 17 times and beaten with a board by two offenders in his apartment building at 301 North Austin in Chicago around 10 p.m. on September 17, 2010, a Friday. Milton identified defendant as one of his attackers. Defendant asserted an alibi defense, which the trial court did not believe.

¶ 4 Milton and Tameisha Hudson dated in high school and had a child together in 2005. After their relationship ended, Tameisha started dating defendant, whom she married in February 2010. Milton and defendant had known each other since high school in 2000 and maintained a cordial relationship. Milton saw defendant every other Monday when defendant would bring Milton's daughter to visitation at Chuck-E-Cheese.

¶ 5 Milton testified that in 2006, an order of protection was issued against him for Tameisha. In addition, prior to September 2010, a court order precluded him from having unsupervised visitation with his daughter until he underwent a psychological examination. However, at a September 15, 2010, hearing, the trial court granted Milton overnight visits. Tameisha and defendant were not present at the September 15 court date. The next day, Milton mailed the court order in a certified letter to Tameisha.

¶ 6 Milton testified that when he was returning to his apartment at around 10 p.m. on September 17, he saw defendant coming downstairs with another man. After Milton asked defendant why he was in his building, defendant hit him in his right eye, and Milton fell down the stairs, landing on his back in the vestibule area. Defendant continued punching Milton, and the second man began to strike Milton with a "two-by-four" piece of wood. Milton put his hands

up to block his head and noticed defendant holding a knife that was approximately three inches long. While the other man continued hitting Milton with the board, defendant stabbed Milton 17 times. Eventually, Milton heard somebody coming downstairs, and defendant and the other man departed. Paramedics later transported Milton to the hospital, where he had surgery on both hands and received staples and stitches for his wounds. Milton did not tell the treating paramedics who stabbed him but later told the police.

¶ 7 Robert Olmstead, a Chicago fire department emergency medical technician (EMT), testified that he treated Milton, who was bleeding and had a swollen hand and approximately 10 stab wounds. Although Milton did not provide the name of his attacker, Olmstead's report indicated Milton told Olmstead his attacker was "somebody he knew."

¶ 8 Tameisha testified and on direct examination, defense counsel asked her whether, two days after the September 15 court date, she received any kind of correspondence regarding a court order. Counsel then repeated his question as follows: "Did you ever receive anything in the mail concerning a court order on or about September 17, 2010?" Tameisha responded that she received the court order providing Milton with unsupervised visitation. The following colloquy then took place:

"[DEFENSE COUNSEL]: After you received that letter did you do anything?"

[TAMEISHA]: I received the letter on Saturday and I called my attorney.

THE COURT: You received the letter on what?

[TAMEISHA]: Saturday. And I called my attorney when I received the letter."

Counsel then asked Tameisha whether she went to court again "[s]ubsequent to that letter being

received September 17th[.]"

¶ 9 Joshua Haid, who represented Tameisha in the custody matter, testified that he first learned of the court's *ex parte* order when he received a voicemail from Tameisha on Saturday, September 18.

¶ 10 Anthony Bishop testified that he and defendant were sitting on Bishop's porch from around 7 p.m. to 10:30 p.m. on September 17. Defendant was acting "normal." Clarence Jordan, defendant's father-in-law and a Chicago police department evidence technician, testified that he lived with defendant and saw him return home at around 10:30 or 10:45 p.m. on September 17. Jordan did not observe anything unusual about defendant's demeanor or see blood on defendant.

¶ 11 Defendant testified that he was at "his friend Anthony's house" from around 7 p.m. until 10:15 p.m. on September 17. When he returned home, defendant saw his father-in-law. The next day, Saturday, Tameisha received a letter regarding her case with Milton, after which she called her attorney. Defendant denied ever stabbing, punching, or beating Milton. He also denied knowing where Milton lived. Defendant said that he and Milton never had any arguments, fights, or conflicts of any kind up to, and including, the year of 2010.

¶ 12 During closing arguments, the State asserted that Tameisha received the court's order "on September 17, 2010." Defendant objected, claiming that was "not the testimony," to which the State responded, "She did say that." The trial court allowed the State to continue. The State then made the following comments:

"What a huge coincidence that this same weekend that she gets that letter, is the same time the victim is attacked going into his apartment. And he's attacked, he's not robbed. Nothing is taken from him. He is attacked as he's coming into his building. It's clear

that he was attacked. What other reason would someone want to attack him in his building?

Someone who wants to attack him would be the defendant, who doesn't like the fact that the victim in this case has changed the custody agreement, gone to the court and gotten a change in visitation. He's mad. He's angry."

Later, the State argued that "Milton was snuck up on and attacked for no other reason than the defendant was mad about the child custody changing. The motive is right there. We are not required to prove motive, but it is there. That is why he was attacked."

¶ 13 The trial court found defendant guilty of aggravated battery. In pronouncing its decision, the court stated as follows. "I really have to turn on one thing, and that's whether or not the defendant has, in fact, been proven as to be one of the offenders in this matter. And obviously the identity has to be proven beyond a reasonable doubt." The court further commented as follows:

"I believe that even though this is a single witness, I have listened to the testimony of the victim, I observed his demeanor while he was testifying. There is no doubt he was attacked. There is no doubt in my mind that the defendant attacked him. The question is whether or not his testimony alone is proof beyond a reasonable doubt.

Defendant does try to assert some type of an alibi. The alibi is in general times with regard to friends and his father-in-law. The wife is not awake. I don't find that that [*sic*] testimony to be

believable or credible. I don't believe the testimony of the defendant to be believable or credible.

I am the judge of the believability of the witnesses and the weight to be given to each one of them. Albeit this is a single witness, I do believe based on the totality of the circumstances here that the defendant committed the acts."

The court also stated as follows:

"While I don't believe that the state has to prove a motive in this matter, I do believe that there can be a very strong inference that the defendant is acting in response to the order that was signed. I don't know exactly when the defendant and his wife received notice of this. I don't know if it was only through the certified copy of the letter. I believe it was also testified that she received it on the 17th. But we have testimony all over the board as to whether or not she talked to her attorney that date, the next day. The attorney wasn't sure. She wasn't sure."

¶ 14 The trial court entered judgment on one count of aggravated battery and sentenced defendant to 30 months' probation in November 2012.

¶ 15 On appeal, defendant asserts he received ineffective assistance of counsel because during trial, defense counsel used September 17 as the date that Tameisha and defendant received notice of the court order, when in reality, they did not receive notice until Saturday, September 18. By using the wrong date, defendant contends, counsel allowed the State to argue and the trial court to find that defendant's receipt of the order served as his motive for attacking Milton. Defendant

asserts he suffered prejudice from counsel's mistake, contending (1) the court's comments show the court relied on the erroneous testimony to find defendant had a motive and (2) the evidence was closely balanced in that his case was a single-witness identification case and defendant presented an alibi defense.

¶ 16 We review claims of ineffective assistance of counsel under the two-part test delineated in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Bew*, 228 Ill. 2d 122, 127 (2008). Pursuant to *Strickland*, a defendant must show both that counsel's performance was deficient and that he suffered prejudice as a result of counsel's deficient performance. *Strickland*, 466 U.S. at 687. To satisfy the prejudice prong, a defendant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. A "reasonable probability that the result would have been different" is a probability that is sufficient to undermine confidence in the outcome. *People v. Houston*, 226 Ill. 2d 135, 144 (2007). If either prong of the *Strickland* test is not proven, defendant's ineffective assistance claim fails. *People v. Perry*, 224 Ill. 2d 312, 342 (2007). Accordingly, we need not consider whether counsel's performance was deficient before deciding whether the alleged deficiency so prejudiced defendant that he is entitled to a new trial. *Id.*

¶ 17 A person commits aggravated battery when he, in committing a battery, intentionally or knowingly causes great bodily harm or permanent disability or disfigurement. 720 ILCS 5/12-4(a) (West 2010). A person commits battery if he intentionally or knowingly, without legal justification, causes bodily harm to an individual or makes physical contact of an insulting or provoking nature. 720 ILCS 5/12-3(a) (West 2010). There is no dispute that Milton was the victim of an aggravated battery in light of the numerous injuries sustained during an attack. Milton's identification of defendant as an attacker was challenged.

¶ 18 Here, even assuming counsel's purported error constituted deficient performance, defendant's ineffective assistance claim fails because he cannot establish he suffered prejudice. In finding defendant guilty, the trial court focused its judgment on the sole issue of *identity*, not the question of *motive*. In its lengthy comments, the court clearly explained that the outcome of the case turned "on one thing," *i.e.*, whether defendant was proven to be one of the offenders. The court then went on to find that, although Milton was the only witness to identify defendant, it had "no doubt" after observing Milton testify that defendant attacked Milton. Milton identified defendant as one of his attackers and stated that he was lying on his back during the attack, such that he would have been able to view the attackers, and that he knew defendant from high school nearly 10 years and from seeing him regularly. It is well settled that a single eyewitness's identification can support a conviction if the witness viewed the accused under circumstances permitting a positive identification. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). Moreover, the trial court, aware of the ongoing custody issues between Milton and Tameisha and any potential motive Milton could have had to falsely identify defendant, specifically stated it believed Milton's testimony. In addition, the court rejected defendant's alibi defense, finding defendant's testimony lacked believability and credibility. It is for the trial court, as the trier of fact, to determine the credibility of witnesses. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 19 Further, the record refutes defendant's contention that the trial court relied on evidence that Tameisha received the letter on September 17. Although the court stated it believed a "very strong inference" could be drawn that defendant attacked Milton in response to receiving notice of the court's order, it also stated it did not know exactly when defendant and Tameisha received notice of the order because (1) it was not sure whether they received notice only through the

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certified copy of the letter and (2) it heard "testimony all over the board" as to whether Tameisha spoke to her attorney on September 17 or the day after.

¶ 20 In sum, defendant has not, and cannot, establish that the outcome of the trial would have changed even if defense counsel, through his questioning, or the State, by its arguments, indicated that Tameisha actually received the certified letter including the modified visitation order on September 17 (the date of the attack on Milton) rather than on September 18 (the day after the attack).

¶ 21 For the reasons stated, we affirm the trial court's judgment.

¶ 22 Affirmed.