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2014 IL App (3d) 120203-U

Order filed January 23, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-12-0203
	)	Circuit No. 08-CF-1728
	)	
MARTIN E. GOMEZ,	)	Honorable
	)	Richard C. Schoenstedt,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Presiding Justice Lytton and Justice Carter concur in the judgment.

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**ORDER**

- ¶ 1 *Held:* (1) The State did not commit prosecutorial misconduct before the grand jury; (2) the evidence was sufficient to prove beyond a reasonable doubt that defendant committed solicitation of murder; (3) the State did not commit a discovery violation when it did not turn over to defendant letters that defendant presented as evidence at a prior trial; and (4) the trial court did not err in admitting a recording of defendant's statements to rebut defendant's testimony characterizing those statements.
- ¶ 2 The State indicted defendant, Martin E. Gomez, for solicitation of murder. 720 ILCS 5/8-1.1(a) (West 2006). Defendant's motion to dismiss the indictment was denied. The cause

proceeded to a bench trial where a State's witness testified that defendant asked him to "get rid of" defendant's girlfriend, because defendant thought she might testify against him in a pending murder trial. Defendant testified that he was asking the witness to hide his girlfriend in a safe place, not to kill her. The trial court accepted the witness's interpretation of defendant's request and found defendant guilty. We affirm.

¶ 3

### FACTS

¶ 4 The State indicted defendant for solicitation of murder resulting from events that occurred between December 14, 2007, and December 28, 2007. 720 ILCS 5/8-1.1(a) (West 2006). Before the grand jury, the State presented testimony from Detective Denise Powers. Powers testified that defendant had been an inmate at the Will County jail. The Will County Sheriff's office used an eavesdropping device to record a conversation in which defendant arranged for another inmate to kill his girlfriend. The grand jury returned a bill of indictment.

¶ 5 Defendant filed a *pro se* motion to dismiss the indictment, arguing that Powers provided false testimony before the grand jury. Defendant argued that he was recorded requesting another inmate to "get rid of" his girlfriend; therefore Powers had presented false testimony by testifying that defendant requested the inmate to kill his girlfriend. During a hearing on defendant's motion, Powers testified that she had summarized and interpreted defendant's statements before the grand jury. The court denied defendant's motion.

¶ 6 Defendant proceeded to a bench trial *pro se*. At trial Miguel Hurtado testified that in the winter of 2007, he was serving time in the Will County jail. Defendant was also incarcerated in the jail, awaiting trial on a murder charge. When defendant learned that Hurtado was associated with the Latin Kings, he requested Hurtado's help in "getting rid of" potential witnesses in his

murder case. Trial counsel questioned what defendant's request meant:

"[STATE:] When you say getting rid of witnesses, is that what he said, getting rid of some witnesses?

[WITNESS:] Yeah. Make them disappear, yes.

[STATE:] What did you take that to mean?

[WITNESS:] Having them buried.

THE DEFENDANT: Objection, you Honor; speculating.

THE COURT: Overruled. You may answer.

[WITNESS]: Have them buried, kill them, never be found."

Defendant explained that the witnesses in question were defendant's girlfriend and her baby.

After their conversation, Hurtado reported defendant's request to the Will County Sheriff's office.

The sheriff's office requested that Hurtado wear a wire during a subsequent conversation with defendant; Hurtado agreed.

¶ 7 Hurtado testified that during the recorded conversation, defendant requested that Hurtado kill defendant's girlfriend to prevent her from testifying at defendant's murder trial. Defendant was concerned that the girlfriend may have seen him with blood on his clothes on the night of the murder. Hurtado agreed that he would arrange for his cousin on the outside to kill the girlfriend. Defendant explained that if his girlfriend's baby were present, Hurtado's cousin should get rid of the baby too. In exchange for Hurtado's work, defendant pledged his loyalty to Hurtado and agreed to conduct Latin King business for him in the future. In all, Hurtado had three or four conversations with defendant about "getting rid of" his girlfriend. Hurtado testified that in an unrecorded conversation, Hurtado explained to defendant that he would have the girlfriend

"killed."

¶ 8 Defendant objected when the State moved to admit into evidence the recording of the conversation. Defendant referenced a written stipulation in which the parties agreed not to introduce any evidence recovered after Hurtado became an agent of the State. The State explained that it intended for that agreement to apply to defendant's murder case but had referenced the present case number in error. The State agreed to abide by the stipulation as written because defendant had relied on it in preparing his defense. The State rested.

¶ 9 Defendant took the stand. He testified that he was introduced to Hurtado in jail by another inmate. At first, defendant and Hurtado enjoyed a good relationship because they were both Latin Kings. Defendant talked to Hurtado about finding a place for his girlfriend to hide so that she could avoid testifying against him at his murder trial. The relationship soured when Hurtado discovered that defendant had testified against a fellow Latin King in 2003. Hurtado then became aggressive toward defendant, at one point choking him and threatening to kill his family. Defendant testified that Hurtado gave him a sheet of paper containing a script and forced him to recite it while Hurtado was wearing a wire.

¶ 10 To rebut defendant's testimony that he was coerced into making the statements during the recorded conversation, the State moved to admit the recording. Defendant objected, arguing that introduction of the recording violated the parties' stipulation. The State argued that the stipulation prohibited introduction of the recording during the State's case-in-chief; here, the State was seeking to introduce the recording in rebuttal to impeach defendant's testimony. The court admitted the recording for impeachment purposes. On the recording, defendant and Hurtado are heard having a conversation that comports with Hurtado's testimony.

¶ 11 The court found defendant guilty. The court found credible Hurtado's testimony that defendant asked Hurtado to kill his girlfriend and not to help hide her to avoid testifying. The court found that defendant's use of the phrase "get rid of" was a request that Hurtado commit first degree murder. Defendant appeals.

¶ 12 ANALYSIS

¶ 13 A. Prosecutorial Misconduct

¶ 14 On appeal, defendant first argues that his motion to dismiss the indictment should have been granted because the State engaged in prosecutorial misconduct when it solicited misleading testimony from Powers before the grand jury.

¶ 15 Generally, a defendant may not attack an indictment returned by a legally constituted grand jury. *People v. Sampson*, 406 Ill. App. 3d 1054 (2011). An exception to that general rule applies when, *inter alia*, the State commits prosecutorial misconduct. *Id.* To dismiss an indictment for prosecutorial misconduct:

"[The] misconduct must rise to the level of a deprivation of due process or a miscarriage of justice. [Citations.] The due process rights of a defendant may be violated if the prosecutor deliberately or intentionally misleads the grand jury, uses known perjured or false testimony, or presents other deceptive or inaccurate evidence. \*\*\* To warrant dismissal of the indictment, defendant must therefore show that the prosecutors prevented the grand jury from returning a meaningful indictment by misleading \*\*\* it." *People v. DiVincenzo*, 183 Ill. 2d 239, 257 (1998).

¶ 16 Defendant argues that the State solicited misleading testimony from Powers in front of the grand jury. Powers testified that defendant was recorded by an eavesdropping device telling

Hurtado, in Powers' words, "[t]hat he wanted the witness, his girlfriend killed." Defendant argues that he was recorded asking Hurtado to "get rid of" his girlfriend, not to "kill" her. According to defendant, Powers therefore presented false and misleading testimony to the grand jury by mischaracterizing defendant's statements.

¶ 17 Powers' testimony was neither false, inaccurate, nor misleading. We agree with the trial court that, based upon the context of defendant's statements, Powers' interpretation of defendant's statement was accurate. The grand jury was not misled by Powers' testimony, and there was no violation of due process. See *DiVincenzo*, 183 Ill. 2d 239.

¶ 18 B. Sufficiency of the Evidence

¶ 19 Defendant claims that the State failed to provide sufficient evidence to prove him guilty beyond a reasonable doubt of solicitation of murder. Specifically, defendant argues that his recorded statements did not establish his intent to have Hurtado kill defendant's girlfriend.

¶ 20 When considering a challenge to the sufficiency of the evidence, the standard of review is whether, considering the facts in the light most favorable to the State, any rational trier of fact could have found defendant guilty beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92 (2007). It is the trier of fact's responsibility to determine the witnesses' credibility and the weight to be given their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence; we will not substitute our judgment for the trier of facts on these matters. *People v. Ortiz*, 196 Ill. 2d 236 (2001). We will reverse a conviction where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *Wheeler*, 226 Ill. 2d 92.

¶ 21 A person commits solicitation of murder when, "with the intent that the offense of first

degree murder be committed, he commands, encourages or requests another to commit that offense." 720 ILCS 5/8-1.1(a) (West 2006). A person commits first degree murder if, *inter alia*, the person "kills an individual without lawful justification \*\*\* if, in performing the acts which cause the death \*\*\* he \*\*\* intends to kill \*\*\* that individual." 720 ILCS 5/9-1(a)(1) (West 2006).

¶ 22 Defendant argues that his statement requesting Hurtado to "get rid of" his girlfriend was not a request that Hurtado kill her. We disagree. Hurtado testified that in an unrecorded conversation with defendant, Hurtado specifically used the word "killed." Hurtado also testified that defendant said about Hurtado's cousin, "[I]f he can get the baby, too, F'g get the baby, too, I don't give an F, you know, get rid of both of them[,] and "[I]f he don't feel like doing the baby, then put the baby somewhere else[.]" Hurtado testified that defendant was asking him to have the girlfriend killed, not to hide her away. The trial court made a rational factual finding that defendant's request to "get rid of" the girlfriend was a request to have the girlfriend killed. There was sufficient evidence to prove defendant guilty beyond a reasonable doubt.

¶ 23 C. Discovery Violation

¶ 24 Defendant argues that the State committed a discovery violation by failing to tender to him three letters written by defendant's girlfriend to defendant, which contained exculpatory information.

¶ 25 The three letters in question were letters sent to defendant by his girlfriend while he was in jail awaiting his murder trial. Defendant claims that the letters contained requests from his girlfriend that defendant help her avoid testifying. Defendant argues that the letters would have bolstered his defense theory that he was asking Hurtado to hide his girlfriend, not to kill her.

Defendant introduced the letters into evidence at his murder trial; at the end of the trial, the court mistakenly returned the letter-exhibits to the State rather than defendant. Defendant claims that he did not have copies of the letters and was thereby prejudiced because he could not rely on the letters in the present trial. Defendant claims that the State committed a discovery violation by not turning over the letters to defendant prior to the solicitation trial.

¶ 26 The State argues that no discovery violation occurred because defendant was already aware of the content of the letters. Defendant did not raise this issue during trial and did not cross-examine the girlfriend about the letters when she testified in the solicitation case.

¶ 27 We agree with the State. The purpose of the discovery rules is to protect the accused against "surprise, unfairness, and inadequate preparation." *People v. Heard*, 187 Ill. 2d 36, 63 (1999). Here, defendant was fully aware of the content of the letters prior to trial and presumably could have secured copies of them from his court file. Instead, defendant chose not to address the letters at trial and did not address them in his cross-examination of the girlfriend. No discovery violation occurred.

¶ 28 D. Admission of Audio Recording

¶ 29 Defendant argues that the court erred in admitting the audio recording in violation of the stipulation reached by the parties that the State would not introduce the recording in its case-in-chief. The State argues that admission of the recording was proper because it was admitted to rebut defendant's own testimony and not as part of the State's case-in-chief.

¶ 30 A trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v. Ruback*, 2013 IL App (3d) 110256. A trial court abuses its discretion when its decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would agree with the decision.

*Id.*

¶ 31 The parties agree that the stipulation prevented the State from introducing the recording during the State's case-in-chief. Black's Law Dictionary defines "case-in-chief" as "[t]he part of a trial in which a party presents evidence to support its claim or defense." Black's Law Dictionary 207 (7th ed. 1999). Here, the recording was not introduced until after the State's case-in-chief had concluded. In addition, there was a legitimate evidentiary reason for the State to introduce the recording: to impeach defendant's testimony that his statements on the recording were scripted and made under duress. Hearing the defendant speak on the recording could have helped a trier of fact determine whether the statements were made of defendant's own free will. The trial court did not abuse its discretion in introducing the recording as impeachment evidence.

¶ 32

#### CONCLUSION

¶ 33 The judgment of the circuit court of Will County is affirmed.

¶ 34 Affirmed.