

FOURTH DIVISION
November 23, 2016

No. 1-14-0137

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 12 CR 3647
)	
MUHAMMAD WILEY,)	Honorable
)	Carol M. Howard,
Defendant-Appellant.)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Ellis and Justice McBride concurred in the judgment.

O R D E R

¶ 1 *Held:* The trial court properly found defendant guilty beyond a reasonable doubt of aggravated battery with a firearm, armed robbery, and two counts of aggravated discharge of a firearm where two witnesses identified defendant as the person who held a gun to the victim's head and took certain items from the victim and the victim observed defendant with a gun immediately before suffering a gunshot wound. Defendant's claim that he was denied the effective assistance of counsel by counsel's failure to file a motion to quash arrest and suppress evidence must fail because he cannot establish a reasonable probability that the motion

would have been granted when the record reveals that probable cause to arrest defendant existed.

¶ 2 Following a bench trial, the court found defendant Muhammad Wiley guilty of aggravated battery with a firearm, armed robbery and two counts of aggravated discharge of a firearm. The trial court sentenced defendant to 13 years in prison for aggravated battery with a firearm, and to a concurrent 21-year sentence for armed robbery. On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt because the "alleged eyewitness identification" by the victim and the victim's brother "was simply an after-the-fact fabricated identification" based upon unreliable evidence acquired through Facebook and a desire to "blame" someone. Defendant further contends that he was denied the effective assistance of trial counsel by counsel's failure to file a motion to quash arrest and suppress evidence. We affirm.

¶ 3 Defendant's arrest and prosecution arose out of a January 2012 incident during which the offender put a gun to the head of the victim, Camale Brown, and took his property. The victim also suffered a gunshot wound to the shoulder.

¶ 4 At trial, the victim testified that he posted earrings for sale on Craigslist and used his cellular phone number, 312-927-9401, as the contact number in the advertisement. A person named "Tone" contacted him via cellular phone number, 773-507-8944 (the 507 number), about the earrings. During their subsequent communications to finalize the sale of the earrings, Tone sent, via the 507 number, a picture of a person "holding cash." At trial, the victim identified defendant as the person in this photograph.

¶ 5 On January 12, 2012, the victim and his brother, Jason Brown, drove to Hyde Park to meet Tone. As the victim drove, Jason contacted the 507 number and was instructed to drive to

47th Street and Langley. Once there, the victim called the 507 number and talked to Tone. The victim then drove down the block to where two individuals were standing on the sidewalk. These individuals came up to the car. The victim asked the person in front of the car door if he was Tone and this person said yes. At trial, the victim identified defendant as Tone.

¶ 6 Defendant asked the victim if he was going to get out of the car or whether defendant should get in. The victim got out of the car and handed defendant the earrings. Defendant handed the earrings to his companion. The victim then looked back at the car. When he turned around, defendant was pointing a black handgun at his head. Defendant told the victim to give him the contents of the victim's pockets. The victim complied and gave defendant a necklace and "like \$20." Defendant's companion then "ran off" and defendant followed.

¶ 7 The victim got back into his car and began to drive. He made one right turn and then another. Jason was on the phone with the police. At one point, two individuals crossed in front of the car. Although the victim continued to drive, he turned his head, observed defendant with "a gun up," and then heard a loud "boom." The glass behind the victim on the driver's side of the car shattered and the victim "felt a power hit [his] shoulder like a strong force." The victim drove to the hospital where he was treated for a "graze wound" and briefly spoke with police.

¶ 8 On January 18, 2012, the victim spoke with Detective Lee at his home and viewed a photographic array. His brother was not with him. The victim identified defendant as the person who robbed him. The victim later identified defendant in a line-up.

¶ 9 During cross-examination, the victim testified that he communicated with the 507 number for about a week regarding the Craigslist advertisement. When the victim asked if the price of the earrings was "affordable," the response from Tone was that "money wasn't really a

problem." During this "text" conversation Tone sent the victim the photograph of defendant holding money. The victim turned his "smart phone" over to the police following "the incident." However, the police "didn't like keep it," and the phone was returned to the victim. At the hospital, the victim did not show police officers the picture that Tone sent to the victim's phone. He never printed the photo. As of the time of trial, the victim did not have that phone "anymore." The victim had a new number and "guess[ed]" that his prior phone was "lost."

¶ 10 Jason Brown, the victim's brother, testified that the victim asked defendant whether defendant was Tone and then got out of the car. Jason stayed inside and watched as the victim showed defendant the earrings. Defendant passed the earrings to the other man and reached into his pocket. Jason "immediately" knew he was reaching for a gun. Defendant put the gun to the victim's head. The victim then handed the contents of his pockets to defendant. After defendant and his companion ran off, the victim drove away and Jason called the police. He heard a gunshot, but did not see where it came from.

¶ 11 On January 17, 2012, Jason decided to create a Yahoo account in the name of "David Touhy" in order to text the 507 number and to "figure out who the guy was that robbed" them. He texted the 507 number, and also "recovered information" about defendant from Facebook. When Jason looked at the "dregheadYMKLaf flare" Facebook page, he saw photographs of defendant. He specifically saw a photograph of defendant with some money. Jason was able to determine defendant's name by looking at certain drawings posted to that page. He also discovered where defendant attended high school. Jason then contacted Detective Lee. Detective Lee came to the Brown family home the next day. Jason looked at a photographic array and identified defendant as the "robber." Jason was separated from his brother at the time of the

identification. He later identified defendant in a line-up. Jason printed out and gave Detective Lee certain text "conversations" with the 507 number, as well as certain photographs from Facebook.

¶ 12 During cross-examination, Jason acknowledged he began his own investigation because he was frustrated with the police investigation. He made up a fake person and created a fake Yahoo account so that the person he contacted did not know his identity. Jason did not ask the person he communicated with about a robbery or a shooting; rather, he asked the person about a Facebook page. Jason later printed out certain photographs from Facebook, including one "that was the picture that my brother had explained to me that [was] sent to his phone."

¶ 13 Officer John Bozek testified that he was part of the team that arrested defendant. His custodial search of defendant recovered an iPod, earphones, a bus card, and two cellular phones. Later, after inventorying these items, Bozek called the cellular phone number, 773-507-8944, that he had received from a detective. When a phone recovered from defendant began to light up, he removed it from the inventory bag because "that phone was going to be evidence."

¶ 14 Dionne Terry, defendant's mother, testified that she was present when Detective Lee asked defendant for defendant's cellular phone number, and defendant responded that it was 773-557-9592. When Detective Lee asked which family member used the 507 number, Terry responded that it belonged to her deceased son and was her "extra phone." She had given defendant that phone "like five days" prior when defendant's phone was turned off. Terry kept her deceased son's phone in his room. Sometimes she would loan the phone to her younger children or to children that came to the house to "mourn" her deceased son.

¶ 15 Terry testified that her husband locks the deadbolts on the front and back doors of the family home "a little before" 8 p.m. Neither Terry nor the children have keys. During "that period of time," that is, January 2012, defendant was the subject of a "trespassing" case in Juvenile Court and "certain conditions" were placed upon him.

¶ 16 Detective William Lee testified that after meeting the victim and Jason at a hospital, he began an investigation. On January 17, 2012, Jason called and stated that he had identified the person who robbed the victim as Muhammad Wiley. Jason explained that he had set up a Yahoo account with a "fictitious" name and sent text messages to the 507 number. Detective Lee then put together a photographic array which included a photograph of defendant. The following day, he went to the Brown home and met with each brother individually. The victim and Jason each, separately, identified defendant in a photographic array. They later identified defendant in separate line-ups. Detective Lee asked Jason to print out the text messages with the 507 number and certain photographs from Facebook.

¶ 17 After defendant was taken into custody, Detective Lee spoke to defendant in the presence of defendant's parents. When he asked for defendant's cellular phone number, defendant responded that it was 773-557-9592. Terry then stated that defendant had a new number, 773-507-9844, and that the other number had been turned off a month prior. Terry further stated that she gave defendant the phone corresponding to the 507 number on January 1, 2012.

¶ 18 During cross-examination, Detective Lee testified that during his conversation with the victim and Jason at the hospital, he learned about the cellular phone communications between the victim and the 507 number leading up to January 12. He did not remember if he took the victim's phone and looked at the communication or documented it in any way. He was not shown

a photograph at the hospital. After Jason went onto Facebook, Detective Lee learned defendant's name and "ran" photographs for the photographic array.

¶ 19 The parties then stipulated to certain records for the victim's cellular phone, 312-927-9401, and the 507 number. The parties further stipulated that Terry, defendant's mother, was the "subscriber" for the 507 number. The parties also stipulated that if called to testify criminal research analyst Megan Misura would testify that she received electronic copies of the phone records for the victim's cellular phone and the 507 number, and that she made a chart detailing the calls between these numbers on January 12, 2012.

¶ 20 Ultimately, the trial court found defendant guilty of aggravated battery with a firearm, armed robbery and two counts of aggravated discharge of a firearm. He was sentenced to 13 years in prison for the aggravated battery with a firearm and to a concurrent 21-year sentence for the armed robbery.

¶ 21 On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt because the victim and Jason were unreliable witnesses. Defendant argues that the brothers failed to immediately tell police that the victim had a photograph of Tone on the victim's phone, to give a description of Tone, or to turn over the victim's phone. Defendant therefore concludes that the brothers fabricated their identification of defendant after the fact based upon "unreliable Facebook evidence" and a desire to blame someone for the offense.

¶ 22 When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. The trier of fact is responsible for evaluating the credibility of the

witnesses, weighing witness testimony, and determining what inferences to draw from the evidence. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). A reviewing court will not retry the defendant (*People v. Lloyd*, 2013 IL 113510, ¶ 42), or substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of witnesses (*Brown*, 2013 IL 114196, ¶ 48). This court reverses a defendant's conviction only where the evidence is so unreasonable, improbable or unsatisfactory that a reasonable doubt of his guilt remains. *Id.*

¶ 23 Here, viewing the evidence in the record in the light most favorable to the State as we must, the victim and Jason identified defendant as the person who put a gun to the victim's head, demanded the contents of the victim's pockets, and then ran off. The victim also testified that he saw defendant with a gun immediately before he was shot. The evidence at trial also established that the cellular phone with which the victim communicated about the Craigslist advertisement was registered to defendant's mother and was recovered from defendant when he was taken into custody. It was for the trial court, as the trier of fact, to determine witness credibility. Here, the trial court found the victim and his brother to be credible as evidenced by its finding; we will not substitute our judgment for that of the trial court on this issue. *Id.*

¶ 24 Defendant, however, contends that the testimony of the victim and Jason is unreasonable because they failed to immediately provide Detective Lee with a description of Tone and the photograph from the victim's phone. Defendant also challenges Jason's "investigation" arguing the victim and Jason were predisposed to identify defendant as the offender when the photograph acquired from Facebook was used in the photographic array.

¶ 25 Initially, we note that defendant's argument that a photograph from Facebook was used in the photographic array is contradicted by the record. The testimony at trial established that

Detective Lee did not receive the Facebook photograph until after he met with the victim and Jason at the Brown family home and each brother separately identified defendant in a photographic array. Specifically, Detective Lee testified that Jason called him to explain the steps Jason took to identify the person who robbed the brothers and that the offender's name was Muhammad Wiley. It was at this point that Detective Lee put together a photographic array which included a photograph of defendant. Detective Lee did not receive a copy of the Facebook photograph until after the brothers identified defendant in photographic arrays. The photographs are included in the record on appeal and are not identical.

¶ 26 Defendant also challenges the credibility of the victim and Jason because they failed to immediately provide the photograph on the victim's phone and a description of Tone to Detective Lee. Although the victim testified at trial that he did not show the photograph on his phone to police at the hospital, he testified that he gave his phone to the police and that the phone was then returned to him. Detective Lee did not remember if he took the victim's phone at the hospital, but he testified that during the initial conversation with the victim and Jason he learned about the communications between the victim and the 507 number. It was for the trial court, as trier of fact, to weigh the brothers' testimony in light of the fact that the photo and a description of Tone were not immediately given to Detective Lee. See *Ross*, 229 Ill. 2d at 272 (it is for the trier of fact to weigh witness testimony and to determine what inferences to draw from the evidence at trial).

¶ 27 Ultimately, defendant's argument that the victim and Jason falsely identified him as the offender merely because they wanted someone to blame must fail in light of the brothers' identification of defendant and the phone records establishing that one of the phones recovered from defendant corresponded to the 507 number and was used to communicate with the victim's

phone on January 12, 2012. A trier of fact is not required to disregard inferences which flow normally from the evidence or search out all possible explanations consistent with a defendant's innocence and elevate them to reasonable doubt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. This court reverses a defendant's conviction only where the evidence is so improbable or unsatisfactory that a reasonable doubt of his guilt remains (*Brown*, 2013 IL 114196, ¶ 48); this is not one of those cases. We therefore affirm defendant's convictions.

¶ 28 Defendant next contends that he was denied the effective assistance of counsel because counsel failed to file a motion to quash arrest and suppress evidence. Defendant argues that such a motion would have been successful because rather than obtaining an arrest warrant Detective Lee "took the constitutionally unjustified step of issuing an investigative alert, and the police officers who arrested [defendant] did not have probable cause to arrest [defendant] or search him incident to that arrest."

¶ 29 To establish ineffective assistance of counsel, a defendant must show: (1) that his counsel's representation fell below an objective standard of reasonableness; and (2) that this deficient representation prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). "The decision whether to bring a motion to quash arrest and suppress evidence is considered trial strategy, and trial counsel enjoys the strong presumption that failure to challenge the validity of the defendant's arrest or to move to exclude evidence was proper." *People v. Spann*, 332 Ill. App. 3d 425, 432 (2002); see also *People v. Powell*, 355 Ill. App. 3d 124, 141 (2004) ("Defendant must overcome the strong presumption that the challenged action or inaction of counsel was the product of sound trial strategy and not incompetence."). To establish prejudice with regard to not filing a motion to suppress, "the defendant must demonstrate that the unargued suppression

motion is meritorious, and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed." *People v. Henderson*, 2013 IL 114040, ¶ 15.

¶ 30 Our supreme court has recognized that in those cases where a "defendant's claim of ineffectiveness is based on counsel's failure to file a suppression motion, the record will frequently be incomplete or inadequate to evaluate that claim because the record was not created for that purpose." *Id.* ¶ 22. However, in the case at bar, Detective Lee and Officer Bozek testified as to the details of the investigation and defendant's arrest at trial. Therefore, the record is sufficiently developed for this court to address defendant's claim.

¶ 31 Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the person to be arrested has committed a crime. *People v. Wear*, 229 Ill. 2d 545, 563 (2008). When multiple officers work together, "probable cause can be established from all the information collectively received by the officers even if that information is not specifically known to the officer who makes the arrest." *People v. Maxey*, 2011 IL App (1st) 100011, ¶ 54. The determination of probable cause depends upon the totality of the circumstances at the time of the arrest, and is judged according to commonsense considerations based on the probability of criminal activity, not proof beyond a reasonable doubt. *People v. Grant*, 2013 IL 112734, ¶ 11.

¶ 32 Here, defendant argues that there was no probable cause to arrest him because the arresting officers, who were acting based upon on an investigative alert, "had no knowledge of the underlying facts and circumstances of the case." However, at trial Detective Lee testified that he issued the investigative alert after both the victim and Jason identified defendant in photographic arrays as the person who held a gun to the victim's head and took certain items and

Bozek testified that he received the 507 number from a detective. Accordingly, the facts known to officers, collectively, at the time of defendant's arrest were enough to lead a reasonably cautious person to believe defendant had committed a crime when two eyewitnesses had identified defendant as the person who pulled out a gun and took certain items from the victim. See *Wear*, 229 Ill. 2d at 563 (probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the person to be arrested has committed a crime). Based on the record before us, the police did have probable cause to arrest defendant. See *Grant*, 2013 IL 112734, ¶ 11 (determination of probable cause depends upon the totality of the circumstances at the time of the arrest, and is judged according to commonsense considerations based on the probability of criminal activity).

¶ 33 We are unpersuaded by defendant's reliance on *People v. Hyland*, 2012 IL App (1st) 110966. In that case, officers took the defendant into custody and performed a search based upon an investigative alert. A firearm was recovered from the defendant's waistband. At the hearing on the motion to suppress, officers testified that the defendant was the subject of an investigative alert because he had violated an order of protection. The trial court denied the defendant's motion to suppress, and a jury later found him guilty of unlawful use of a weapon by a felon and unlawful possession of a firearm by a street gang member. On appeal, the defendant contended that the trial court erred in denying his motion to quash his arrest and suppress evidence because the State failed to meet its burden at the suppression hearing when none of the arresting officers had personal knowledge of the facts supporting probable cause and the State did not call an officer who did.

¶ 34 The trial court determined that the testimony of the officers at the hearing on the motion to suppress established that they approached the defendant on the basis of an investigative alert. *Id.* ¶ 23 However, neither arresting officer testified to any personal knowledge of the facts underlying the issuance of the investigative alert. *Id.* The court concluded that because the State did not present evidence from either the officer who issued the investigative alert or from the person whose protective order was violated to establish that the underlying facts of the investigative alert established probable cause to arrest defendant, the trial court erred in denying the motion to quash arrest and suppress evidence. *Id.* ¶¶ 25-26.

¶ 35 Contrary to defendant's argument that the facts of this case and *Hyland* are identical, in the case at bar no hearing on a motion to quash arrest and suppress evidence was held as no such motion was filed. Therefore, defendant can only speculate as to what such a hearing would reveal regarding the personal knowledge of the arresting officers. Furthermore, at trial, the State presented the testimony of Detective Lee, who explained why he issued the investigative alert in this case, *i.e.*, two witness had identified defendant as the person who held a gun to the victim's head and took certain items.

¶ 36 Because we have determined that probable cause to arrest defendant existed at the time of his arrest, defendant has failed to demonstrate that there was a reasonable probability that the trial court would have granted a motion to quash arrest and suppress evidence and, consequently, he has failed to establish prejudice. *Henderson*, 2013 IL 114040, ¶ 15 ("in order to establish prejudice under *Strickland*, the defendant must demonstrate that the unargued suppression motion is meritorious, and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed"). Because the failure to file a futile motion

does not constitute ineffective assistance of counsel, defendant's claim that he was denied the effective assistance of counsel must fail. *People v. Givens*, 237 Ill. 2d 311, 331 (2010) ("the failure to file a motion to suppress or the withdrawal of such a motion prior to trial does not establish incompetent representation when it turns out that the motion would have been futile").

¶ 37 Because there was probable cause to arrest defendant at the time of his arrest, we need not address defendant's argument that arrests based upon investigative alerts are unconstitutional. See *In re E.H.*, 224 Ill. 2d 172, 178 (2006) (constitutional issues should be reached "only as a last resort").

¶ 38 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 39 Affirmed.