

2016 IL App (1st) 140866-U  
No. 1-14-0866  
December 20, 2016

SECOND DIVISION

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS, )	Appeal from the Circuit Court
)	Of Cook County.
Plaintiff-Appellee, )	
)	No. 12 CR 16234
v. )	
)	
LORENZO CLARK, )	The Honorable
)	Frank Zelezinski,
Defendant-Appellant. )	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Hyman and Justice Mason concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trier of fact may rely on evidence of the defendant's acts after another person completes the offense to determine the defendant's accountability for the offense. When a witness's testimony would not have changed the result of a trial, trial counsel's failure to find the witness does not prove ineffective assistance of counsel. Where the trial court imposes a sentence 23 years less than the maximum, and only 1 year more than the minimum, on a defendant with multiple prior felonies and only one unconstitutional conviction, the appellate court can conclude that the trial court did not rely on the unconstitutional conviction in sentencing.

¶ 2 The trial court found Lorenzo Clark guilty of aggravated battery with a firearm under a theory of accountability. In this appeal, we reject Clark's argument that the trial court should

not have considered Clark's actions after the battery as proof that the court should hold him accountable. Clark also argues that competent counsel would have presented specified testimony to rebut part of the victim's testimony. We hold that Clark failed to show a reasonable probability that the proposed testimony would have changed the result of the trial. Finally, Clark argues that we should remand for resentencing because the trial court relied on an unconstitutional prior conviction. But the trial court imposed a sentence very near the minimum it could impose, despite Clark's considerable criminal history, and therefore we find that the trial court placed no weight on the conviction for violation of an unconstitutional statute. Accordingly, we affirm the trial court's judgment.

¶ 3

#### BACKGROUND

¶ 4

After 9 p.m. on August 1, 2012, Brandy Hilliard, standing on the driveway next to her home in Markham, saw Clark's car approaching. She knew Clark for more than 10 years from the neighborhood. She hit the ground when she saw gunfire coming from the passenger window as the car rolled slowly past her home. One bullet hit the bottom of her foot, and another hit the ground very near her. She ran into her home as more shots rang out. She promptly reported the shooting to police.

¶ 5

Around 9:30 p.m. that same day, a police officer arrested Clark and his passenger, Aaron Greenwood, near Hilliard's home, still in Clark's car. Police recovered a gun from Greenwood's pocket. Ballistic tests determined that Greenwood's gun discharged the bullets found near Hilliard's home. A grand jury indicted Clark and Greenwood for aggravated battery with a firearm. The trial court tried Clark and Greenwood separately.

¶ 6 At Clark's bench trial, Hilliard testified that "a couple days" before the shooting, she was outside talking with Clark and three other persons, named Rodney, Marvin, and Jamie, when Clark threatened her. Neither party asked Hilliard exactly what Clark said, or why she construed Clark's words as a threat. She admitted on cross-examination that she did not take the words as a real threat because she had "been knowing [Clark] so long."

¶ 7 Hilliard testified that the shooting started when the car passed a vacant lot near her home. After the bullet hit her, she saw the car stop by the end of her driveway. It stopped for only "a couple of seconds," and after it started again she heard more shots.

¶ 8 Detective Dashun Walker of the Markham Police Department testified that on August 2, 2012, she interviewed Clark, who admitted that before Greenwood got into Clark's car, Clark knew that Greenwood had a gun. Clark told Walker that Greenwood fired the gun towards a vacant lot.

¶ 9 Greenwood testified that he drank a lot of liquor on August 1, 2012, and he "was heavily intoxicated" when Clark picked him up. He "[s]omewhat" remembered shooting his gun, but he did not remember where he fired the shots. He testified that he did not intend to shoot anyone. Clark did not testify.

¶ 10 The trial court found Clark guilty of aggravated battery with a firearm. Defense counsel filed a motion to reopen the trial and a motion for a new trial, claiming that the State did not disclose prior to trial that Hilliard would testify Clark stopped his car in front of her driveway. Defense counsel added, "Neither the content of the confrontation and threat, nor names of witnesses were disclosed to the defense by the State prior to trial."

¶ 11 In support of the request to reopen the trial, defense counsel presented a statement, signed by Rodney Griffin, attesting that he participated in the discussion with Clark, Hilliard, Marvin and one other person (identified by Hilliard as Jamie) about two weeks before the shooting. Rodney said:

"We were all outside pretty much just talking, playing around. Lorenzo hugged Brand[y] and Brand[y] said don't hug on her. Lorenzo laughed and said something smart that I can't remember and it was over.

\*\*\* The conversation was over as fast as it started and it wasn't even a confrontation. Lorenzo never threatened Brand[y] in any[]way."

¶ 12 During the argument on the motions, defense counsel said the prosecutor told him, before trial, that Hilliard had some kind of confrontation with Clark two days before the shooting, and "there were words exchanged." The prosecutor did not mention any threat. The police reports made no mention of threats or of the car stopping. If the court reopened the trial, Griffin would testify in accord with his statement and Clark would testify about the movement of the car.

¶ 13 In response to a question from the court, defense counsel admitted that he did not attempt to interview Hilliard before trial. The court said that after Hilliard testified, "[i]f the defense needed time to further investigate the matter, this was a bench trial, it could have been requested of the Court, and I would have given it to them \*\*\*, but that did not occur, either." The court denied the motion to reopen the proofs and the motion for a new trial.

¶ 14 The presentence investigation report showed prior misdemeanor convictions for marijuana possession in 1995, driving under the influence in 2000, criminal trespass to a

vehicle in 2001, and resisting arrest in 2004. Clark also had prior felony convictions for residential burglary in 1995, aggravated robbery in 1997, aggravated unlawful use of a weapon (AUUW) in 2004, and unlawful use of a weapon by a felon (UUWF) in 2005.

¶ 15 The trial court acknowledged that defense counsel produced mitigating evidence, including Clark's work history, evidence that Clark acted responsibly raising his daughters, and evidence from family members of Clark's good conduct. In aggravation, the court emphasized Clark's criminal history. The court said:

"[T]here are two aggravated unlawful use of a weapon convictions \*\*\*. One in 2004 and \*\*\* another in 2005 \*\*\*.

This case again involves a gun despite that there was almost ten years since he was arrested on the last one of these \*\*\* weapons type of violations."

¶ 16 The trial court sentenced Clark to seven years in prison. Clark now appeals.

¶ 17 ANALYSIS

¶ 18 On appeal, Clark argues (i) the court should not have considered any evidence concerning Clark's conduct after the bullet struck Hilliard; (ii) he received ineffective assistance of counsel; and (iii) the court improperly relied on a void conviction in sentencing.

¶ 19 Post-Battery Evidence

¶ 20 The trial court found Clark accountable for the shooting in part because Clark stopped his car at the end of Hilliard's driveway after Greenwood fired the shot that hit Hilliard. Clark argues that because Greenwood had already completed the aggravated battery before Clark stopped the car, the trial court could not rely on the stop as evidence that Clark sought to aid

Greenwood with shooting Hilliard. In effect, Clark argues that the court should have stricken as irrelevant testimony that Clark stopped the car at the end of Hilliard's driveway.

¶ 21 We review the trial court's evidentiary rulings for abuse of discretion. *People v. Caffey*, 205 Ill. 2d 52, 89 (2001). "A person is legally accountable for another's criminal conduct when '[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense.' 720 ILCS 5/5-2(c) [(West 1992)]." *People v. Dennis*, 181 Ill. 2d 87, 96 (1998).

¶ 22 Clark relies on *Dennis* as authority for barring evidence of any of Clark's acts after the completion of the battery, when the bullet hit Hilliard. In *Dennis*, Dennis testified that he drove Jones to an alley and gave Jones money to buy narcotics for Dennis. Jones got out of the car and returned a few minutes later, chased by a man Dennis did not recognize. Jones jumped into the car and told Dennis to go. Dennis sped off. Jones then showed Dennis that he had a gun and told Dennis he had robbed the men chasing him. Dennis dropped Jones at Jones's home and decided not to report the robbery. Prosecutors charged Dennis as one accountable for the armed robbery. During deliberations, the jury asked, "When is the commission of the offense complete?" *Dennis*, 181 Ill. 2d at 92. The court instructed the jurors that they could "consider the period of time and the activities involved in escaping to a place of safety." *Dennis*, 181 Ill. 2d at 92. The jury followed the court's instruction and found that Dennis had aided Jones during the commission of the robbery.

¶ 23 On appeal, the *Dennis* court said, "for purposes of accountability, the duration of the commission of an offense is defined by the elements of the offense. In this case, we

necessarily consider those elements which constitute the offense of armed robbery. Consistent with our accountability statute, a defendant may be held accountable for the commission of armed robbery if, either before or during the commission of the offense, he aided or abetted Jones in [ ]conduct which is an element of [the] offense." *Dennis*, 181 Ill. 2d at 101. The *Dennis* court held that the trial court erred in its response to the jury's question, because Jones completed the armed robbery before he returned to Dennis's car. *Dennis*, 181 Ill. 2d at 107. The court further held that if the jurors believed Dennis's testimony, they could find that the State did not prove him accountable for the crime. Notably, the *Dennis* court did not hold that the court erred by admitting into evidence testimony about Dennis's conduct after the robbery. Nor did the *Dennis* court hold that the jurors could not consider Dennis's conduct after the robbery as evidence of his intent to aid Jones. Nothing in *Dennis* contradicts the principle stated in *People v. Perez*, 189 Ill. 2d 254, 267 (2000), that "[p]roof that the defendant was present during the perpetration of the offense, that he fled from the scene, that he maintained a close affiliation with his companions after the commission of the crime, and that he failed to report the crime are all factors that the trier of fact may consider in determining the defendant's legal accountability."

¶ 24

Here, a police officer testified that Clark said he knew Greenwood had a gun when Clark picked him up. Clark drove slowly past Hilliard's home as Greenwood fired gunshots out of the passenger window of Clark's car. Clark briefly stopped at the end of Hilliard's driveway, and as he drove off Greenwood fired more shots. Hilliard helped Greenwood leave the scene and he failed to report the shooting. The evidence supports the inference that Clark intentionally aided Greenwood in shooting Hilliard. The trial court did not abuse its

discretion when it allowed Hilliard to testify that the car stopped for "a couple of seconds" at the end of Hilliard's driveway. See *Perez*, 189 Ill. 2d at 267.

¶ 25 Ineffective Assistance of Counsel

¶ 26 To show ineffective assistance of counsel, Clark must allege facts which show that "his attorney's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *People v. Patterson*, 192 Ill. 2d 93, 107 (2000). Clark argues that his attorney's conduct fell below an objective standard of reasonableness when counsel failed to interview Hilliard before trial, and when he failed to request a continuance during trial in response to Hilliard's unexpected testimony that Clark threatened her a few days before the shooting. Clark claims that if counsel had not acted negligently, he would have presented Griffin as a witness at trial, and he would have adduced from Griffin testimony in accord with the statement Griffin signed.

¶ 27 Griffin's written statement indicates that if counsel called him as a witness, Griffin would have testified that the encounter occurred two weeks, not "a couple days," before the shooting, and that Clark and Hilliard were just "playing around" when Clark said "something smart" that Griffin did not remember, and Clark did not threaten Hilliard. Griffin's statement does not much differ from Hilliard's testimony. Neither recited the words Clark used. Hilliard characterized the words as a threat, but she admitted that, at the time of the conversation, she did not take Clark's remark as a real threat. Hilliard thought of the words differently after she saw Clark's car pass her home, with shots fired in her direction from the car. Griffin did not remember the words Clark used, so he could not directly contradict



Hilliard's testimony that in light of the shooting, one might regard the words as a threat, and not just "something smart." Griffin specifically recalled that Clark hugged Hilliard and Hilliard told Clark not to hug her, supporting an inference that a feeling of rejection may have induced Clark's smart remark. Because we find no reasonable probability that Griffin's testimony would have changed the result of the trial, Clark has not shown that he received ineffective assistance of counsel. *Patterson*, 192 Ill. 2d at 107.

¶ 28

### Sentencing

¶ 29

When the court sentenced Clark, the court noted Clark's prior conviction for AUUW in 2004. Clark argues that the court erred by considering in aggravation the conviction for violation of an unconstitutional statute. See *People v. Aguilar*, 2013 IL 112116. Clark acknowledges that he forfeited the issue by failing to file a motion to reconsider the sentence. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). He argues that we should review the issue for plain error. In *People v. Whitney*, 297 Ill. App. 3d 965, 969 (1998), the trial court "took into consideration a prior conviction which did not exist." Although Whitney failed to file a motion to reconsider the sentence, the *Whitney* court addressed the issue as plain error because "a defendant has a right not to be sentenced based upon improper factors in aggravation, and a trial judge's reliance upon an improper factor in sentencing impinges upon a defendant's 'fundamental right to liberty.' *People v. Martin*, 119 Ill. 2d 453, 458 (1988)." *Whitney*, 297 Ill. App. 3d at 969. We will address Clark's sentencing argument under the doctrine of plain error.

¶ 30

The trial court must not consider a conviction for violation of an unconstitutional statute in aggravation at sentencing. *People v. Smith*, 2016 IL App (2d) 130997, ¶¶ 15-16; *People v.*

*Billups*, 2016 IL App (1st) 134006, ¶ 15. However, "[a] trial court's reliance upon an improper factor does not always necessitate remandment for resentencing; where it can be determined from the record that the weight placed upon the improperly considered aggravating factor was insignificant and that it did not lead to a greater sentence, remandment is not required." *People v. Voit*, 355 Ill. App. 3d 1015, 1028 (2004). Here, the trial court sentenced Clark to only 7 years in prison, when the statute permitted a sentence anywhere between 6 and 30 years. 720 ILCS 5/12-3.05(e)(1), (h) (West 2012); 730 ILCS 5/5-4.5-25(a) (West 2012). In view of Clark's criminal history, including three prior felonies, we find that the trial court placed no weight on the unconstitutional conviction, and that it did not lead to a greater sentence than the court would have imposed without that conviction. Accordingly, we find no plain error in sentencing, See *People v. Beals*, 162 Ill. 2d 497, 509-10 (1994).

¶ 31

#### CONCLUSION

¶ 32

The trial court correctly took into account evidence that Clark stopped his car at the end of Hilliard's driveway in support of finding Clark accountable for Greenwood's conduct. Clark did not show ineffective assistance of counsel, as he did not show a reasonable probability that he would have achieved a better result if counsel had presented Griffin as a witness. Because the trial court imposed a sentence 23 years less than the maximum, and only 1 year more than the minimum available, despite Clark's criminal history, we find that the trial court in sentencing placed no weight on Clark's unconstitutional conviction for AUUW. Accordingly, we affirm the trial court's judgment.

¶ 33

Affirmed.