2016 IL App (1st) 141383-U

FIRST DIVISION
September 19, 2016

No. 1-14-1383

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. 13 CR 6041
	)	
STEVEN CRAWFORD,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Connors and Justice Simon concurred in the judgment.

O R D E R

¶ 1 *Held*: We affirm defendant's conviction for delivery of a controlled substance where counsel was not ineffective and no prejudice resulted to defendant.

¶ 2 Following a jury trial, defendant Steven Crawford was convicted of delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2012)) and sentenced to four years' imprisonment. On appeal, defendant contends that defense counsel was ineffective for failing to argue an entrapment defense and tender a jury instruction on entrapment. We affirm.

¶ 3 Defendant was charged with one count of delivery of a controlled substance. At trial, in opening statement, the State told the jury "this defendant, he reported to work *** to the street corner" because "this defendant is a drug dealer." Defense counsel responded by telling the jury in opening that defendant's coworkers are his "fellow street people," who "help each other out," sometimes by providing drugs. She told the jury defendant was "in the wrong place at the wrong time *** minding his own business" when he was asked to do a favor and he did so because he was "helping out another person who he believes to be another street person." She asked the jury to find defendant not guilty, stating that, by helping a fellow street person, "is [defendant] working for that drug dealer or is he instead helping out his coworker?"

¶ 4 Officer Melvin Ector testified that on February 23, 2013, he was working as an undercover narcotics officer as part of a 10-member police team making "controlled purchases" in high-violence and high-narcotic areas. He was dressed in street clothes and drove an unmarked "regular car." At the corner of South Michigan Avenue and 111th Street, Ector observed a man, identified in court as defendant, on the east side of the street on a bicycle. Ector rolled down his window and asked defendant "if he knew where I could find some C," explaining in court that this is street terminology for crack cocaine. Ector testified that he raised two fingers to defendant, signaling that he requested two bags. He testified he asked defendant "just once."

¶ 5 Defendant rode his bike over to Ector and placed a phone call. After hanging up, he instructed Ector to follow him. They traveled southbound on Michigan to 137 East 114th Place. Defendant entered Ector's vehicle and placed a phone call. He said on the phone that "he was outside and * * * had a guy looking for two C's." After several minutes, a man, identified as

Jamal Glover, emerged from the residence outside which Ector was parked and walked westbound. Defendant told Ector "that was his guy with the C" and demanded $20.

¶ 6 Ector handed defendant a $20 bill that came from prerecorded Chicago Police Department funds. Defendant walked over to Glover and exchanged the $20 for two orange tinted Ziploc bags which had a rock-like substance inside. Defendant got back into Ector's car, handed him the bags, and exited the vehicle. Ector drove away and notified his team members about the transaction. Defendant and Glover were detained by Officers Pittman and Bertermann. Ector went to where they were detained and made a positive identification of both men. Via radio, Ector verified with Officer Davis the serial number of the prerecorded $20 bill. The parties stipulated that the rock-like substance was sent to the Illinois crime lab for testing and analysis, where one of the bags tested positive for less than .1 gram of cocaine.

¶ 7 Officer Angela Pittman testified that, at approximately 10 a.m. on February 23, 2013, she was working as the surveillance officer on the same police team as Officers Ector and Davis. She was in a "covert car" when she observed Ector engage in a conversation with "a male on a bicycle," identified in court as defendant. Pittman observed defendant near the driver's side window of Ector's car, then briefly stepping away while on the phone before returning to the driver's side window where he spoke with Ector. Defendant then rode southbound with Ector following in his vehicle. They stopped and defendant entered Ector's vehicle. Pittman parked a little behind them.

¶ 8 Pittman saw "a male in a black coat with fur around the collar, blue jeans, and white gym shoes," later identified as Glover, walking westbound on 114th place. Defendant exited Ector's vehicle and "hand[ed] Mr. Glover USC in exchange for small items." Pittman relayed those details to team members. Pittman explained that "USC" is "a term for U.S. currency." Defendant

again entered Ector's car and then exited the vehicle. Ector relayed to Pittman a "positive signal that he had purchased narcotics." Pittman, along with Officer Bertermann, detained defendant, who had on his person two cellular telephones, no money, and no narcotics.

¶ 9 Officer James Davis testified that, on February 23, 2013, he was part of a police team assigned to "arrest any offender positively identified as a drug dealer." Davis "went to a location advised by the surveillance officer" and detained a person later identified as Glover. Davis conducted a custodial search of Glover that uncovered $20. The serial numbers on the $20 recovered from Glover matched the serial numbers of United States currency recorded on the prerecorded funds sheet he had been given "by the undercover officer."

¶ 10 Defendant testified that he lived in a rehabilitation halfway house. He worked for GMI Tax Services, for whom he advertised by carrying a sign outside their business. He had reported to work on February 23, 2013, but his boss was not there. As he was unable to work, he left to go "to 113th and Michigan to the store to go get me a couple cigarettes." On his way there, he was stopped by a man later identified as Officer Ector, who asked him if he knew where he could find cocaine or heroin. Defendant said "no" and told Ector he was on his way to work. Ector asked again and defendant said no again. Ector offered to pay defendant "a couple dollars." Defendant then "decided to help him."

¶ 11 Defendant phoned Glover. He testified that he knew he could get drugs from Glover as he had been involved with Glover's mother and had purchased drugs from Glover himself. Defendant told Ector to follow him. Defendant went to 114th Place, followed by Ector in his vehicle. Defendant phoned Glover a second time. Defendant entered Ector's car before he "got the money from him and got the drugs from Jamal." Ector gave defendant $20. Defendant exited the car, met with Glover across the street, and "[e]xchanged the drugs for the money." Defendant

brought the drugs back to Ector. He testified that he did not receive any additional drugs and that the only additional money he received was $2 from Ector.

¶ 12 Defendant testified that he never worked for Glover, never sold drugs for Glover, was not selling drugs that day, was not looking to sell drugs before being approached by Ector, and did not know if the drugs he gave Ector were real. After exiting Ector's car, defendant was detained by police. Defendant admitted to a previous conviction for felony assault.

¶ 13 At closing, defense counsel told the jury that defendant was not a "business man" as the State argued. He was not a drug dealer, "didn't intend to sell drugs" and "[h]e didn't want to sell drugs." Counsel told the jury Glover was the drug dealer, defendant did not work for Glover and had only been doing a favor for a "fellow drug addict." The jury found defendant guilty of delivery of a controlled substance. The court sentenced him to four years' imprisonment.

¶ 14 On appeal, defendant contends he received ineffective assistance of counsel where defense counsel conceded defendant's guilt in opening statement and elicited testimony from defendant on direct examination admitting he committed the charged offense but failed to argue an entrapment defense and tender a jury instruction on entrapment. Defendant argues that, by allowing him to admit his guilt without arguing an entrapment defense, counsel failed to subject the State's case to meaningful adversarial testing and defendant was, therefore, prejudiced.

¶ 15 A claim for ineffective assistance of counsel is evaluated under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). *People v. Henderson*, 2013 IL 114040, ¶ 11. Under this test, a defendant must demonstrate that (1) counsel's performance fell below an objective standard of reasonableness, and (2) a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id*. With respect to the first prong, the defendant must overcome the “strong presumption” that

counsel's action or inaction was the result of sound trial strategy and not of incompetence. *People v. Clendenin*, 238 Ill. 2d 302, 317 (2010). Regarding the second prong, the defendant must establish that, "but for counsel's deficient performance, there is a reasonable probability that the result of the trial court proceeding would have been different." *Id*. If, as defendant argues, counsel " '*entirely*' " failed to subject the State's case to meaningful adversarial testing, prejudice is presumed. (Emphasis in original.) *People v. Johnson*, 128 Ill. 2d 253, 266 (1989) (quoting *U.S. v. Cronic*, 466 U.S. 648, 659 (1984)). Failure to establish either prong of the *Strickland* test precludes a finding of ineffective assistance. *Clendenin* at 317-18.

¶ 16 It is not *per se* ineffective assistance of counsel whenever defense counsel concedes a client's guilt when there is overwhelming evidence of that guilt. *Johnson*, 128 Ill. 2d at 269. "[A] reviewing court will be highly deferential to trial counsel on matters of trial strategy, making every effort to evaluate counsel's performance from his perspective at the time, rather than through the lens of hindsight." *People v. Perry*, 224 Ill. 2d 312, 344 (2007). Even if trial counsel errs in a matter of trial strategy, counsel's performance is not necessarily constitutionally defective. *Id.* at 355. Rather, ineffective assistance of counsel occurs "[o]nly if counsel's trial strategy is so unsound that he entirely fails to conduct meaningful adversarial testing of the State's case." *Id*. at 355-56; *People v. Fuller*, 205 Ill. 2d 308, 331 (2002) ("the fact that another attorney might have pursued a different strategy, or that the strategy chosen by counsel has ultimately proved unsuccessful, does not establish a denial of the effective assistance of counsel").

¶ 17 Here, the evidence of defendant's guilt was overwhelming. To support the conviction for delivery of a controlled substance, the State had to establish beyond a reasonable doubt that defendant had: (1) knowledge of the presence of a controlled substance, (2) the controlled

substance within his or her immediate control, and (3) the intent to deliver it. *People v. Rivas*, 302 Ill. App. 3d 421, 429-30 (1998). Officer Ector's testimony, corroborated by that of Officers Pittman and Davis, established that, when Ector asked defendant for crack cocaine, defendant immediately made a telephone call, took Ector to the source of the drugs, took Ector's prerecorded $20 bill, brought it to Glover, the man with the crack cocaine, exchanged the prerecorded funds for the crack cocaine, and brought the crack cocaine back to Ector. An arrest was made immediately after and the prerecorded funds that were given to defendant were recovered from Glover. The evidence therefore shows defendant knew exactly where to obtain the crack cocaine, had access to it, obtained it, and delivered it to Ector at a cost of $20, thus satisfying the elements of the offense.

¶ 18 To defend against this overwhelming evidence, counsel elicited from defendant that, although he had phoned Glover and facilitated the drug transaction, he did not want to sell drugs, did not intend to sell drugs, was hesitant to get involved, only participated in the transaction after refusing to do so twice, and only "help[ed]" because he would earn $2. Her trial strategy is clear from her opening statement and closing argument, when she categorized the transaction as "a favor." Counsel told the jury in opening: "Mr. Crawford is helping out another person who he believes to be another street person." She argued in closing: "[h]e didn't intend to sell drugs," "[h]e didn't want to sell drugs," and he had only been doing a "favor for a fellow street person." Counsel's strategy was to garner the jury's sympathy by framing the transaction as one that was a spontaneous gesture of assistance rather than a premeditated business transaction as asserted by the State.

¶ 19 In the face of the overwhelming evidence of defendant's guilt, counsel's strategy was to argue jury nullification by appealing to the jurors' sympathy and sense of fairness. " '[I]t is not

necessarily *per se* ineffective assistance for a defense attorney to advance a nonlegal defense, such as a plea for jury nullification * * * when the circumstances of the case render other defensive strategies unavailable.' " *People v. Gilbert*, 2013 IL App (1st) 103055, ¶ 28 (quoting *People v. Morris*, 209 Ill. 2d 137, 183 (2004) *overruled on other grounds* by *People v. Pitman*, 211 Ill. 2d 502 (2004)). Although defense counsel could not argue that the jurors should ignore the law, she could "present a defense evoking the 'empathy, compassion or understanding and sympathy' of the jurors." *Id*. (quoting *People v. Ganus*, 148 Ill. 2d 466, 473-74 (1992)). Given the overwhelming amount of evidence against defendant, counsel's trial strategy was entirely reasonable, subjecting the State's case to meaningful adversarial testing.

¶ 20 Defendant argues, however, that there was enough evidence to establish entrapment and that defense counsel was ineffective by failing to (1) argue a defense of entrapment or (2) tender a jury instruction on entrapment. Under the defense of entrapment:

> "A person is not guilty of an offense if his *** conduct is incited or induced by a public officer *** for the purpose of obtaining evidence for the prosecution of that person. However, this Section is inapplicable if the person was pre-disposed to commit the offense and the public officer *** merely affords to that person the opportunity of facility for committing an offense." 720 ILCS 5/7-12 (West 2012).

Defendant argues that the evidence shows he was not actually soliciting drug buyers when Ector saw him, he was reluctant to assist Ector, and no drugs or money was found on him showing he did not profit from the transaction. He contends that this evidence established that his conduct was incited or induced by a public officer, thus warranting an entrapment defense and jury instruction.

¶ 21 Even if counsel had raised an entrapment defense or requested an entrapment instruction, defendant cannot show a reasonable probability that the outcome of the trial would have been any different. As discussed above, the evidence against defendant was overwhelming, demonstrating categorically that he had knowledge of the presence of the crack cocaine, the cocaine was within his immediate control through Glover, and he had the intent to deliver it. Further, to establish entrapment, defendant must show that he was induced to commit the offense and was not otherwise predisposed to commit the crime. *People v. Anderson*, 2013 IL App (2d) 111183, ¶ 60. He cannot make that showing here.

¶ 22 Predisposition is generally established by proof that the defendant was ready and willing to commit the crime without persuasion and before his initial exposure to government agents. *People v. Criss*, 307 Ill. App. 3d 888, 897 (1999). In assessing predisposition in drug cases, factors to be considered include the defendant's initial reluctance or willingness to commit the crime, his familiarity with drugs, his willingness to accommodate the needs of drugs users, his willingness to profit from the offense, his current or prior drug use, and his ready access to a supply of drugs. *People v. Glenn*, 363 Ill. App. 3d 170, 173 (2006).

¶ 23 Here, Officers Ector and Pittman's testimony establishes that defendant was predisposed to commit the crime. Ector testified he approached defendant and asked him a single time if he knew where he could find crack cocaine. Defendant then immediately proceeded to initiate the transaction without any further inquiry, persuasion, or hesitation, showing his willingness to commit the crime and to accommodate the needs of drug users. Further, defendant knew where to obtain drugs, was familiar with drugs having been a drug user himself, and had ready access to drugs through Glover. The evidence demonstrates he had a predisposition to commit delivery of a controlled substance and was, therefore, not induced to commit the crime.

¶ 24 While defendant testified he turned down Ector's inquiries multiple times and had no intent to sell drugs, his testimony was impeached by his previous felony conviction. Further, the credibility of witnesses and conflicts in testimony is for the trier of fact, here the jury, to determine. *People v. Bradford*, 2016 IL 118674, ¶ 12. Given the jury's guilty finding, it clearly did not believe defendant's assertion that he was reluctant to provide the drugs, was not selling drugs that day and did not know whether the drugs he gave Ector were real. Accordingly, even if counsel had raised an entrapment defense or requested an entrapment instruction, the result of the trial would not have been any different. Defendant therefore cannot show he was prejudiced by counsel's alleged deficient performance and we conclude trial counsel was not ineffective.

¶ 25 For the foregoing reasons, we affirm the ruling of the trial court.

¶ 26 Affirmed.