

No. 1-14-1129

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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 9328
)	
TERRELL WEBB,)	Honorable
)	Thaddeus L. Wilson,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Simon and Mikva concurred in the judgment.

O R D E R

¶ 1 *Held:* Judgment following a bench trial affirmed over claim that trial counsel provided ineffective assistance by failing to object when the State presented defendant's prior conviction for delivery of cannabis within 1,000 feet of a school to impeach him despite the trial court's pretrial ruling that it would not be admitted.

¶ 2 Following a bench trial, defendant Terrell Webb was found guilty of two counts of unlawful use of a weapon by a felon (UUWF) and two counts of possession of a controlled substance (PCS). The court merged the UUWF counts and sentenced defendant to three concurrent six-year terms of imprisonment with one year of mandatory supervised release. On

appeal, defendant maintains that he received ineffective assistance of trial counsel because his attorney failed to object when the State presented his prior conviction for delivery of cannabis within 1,000 feet of a school to impeach him despite the trial court's pretrial ruling that it would not be admitted. Because we find that defendant cannot establish prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984), we affirm.

¶ 3 Defendant was charged with possession of one gram or more but less than 15 grams of heroin with the intent to deliver, possession of less than one gram of cocaine with the intent to deliver, and two counts of UUWF predicated upon his prior PCS felony conviction under case number 11 CR 16931.

¶ 4 At a pretrial conference, the State made a motion *in limine* asking that defendant's prior PCS conviction under case number 11 CR 16931 be admitted as proof of the predicate felony for the UUWF count. The State further requested that defendant's prior possession of a stolen motor vehicle conviction under case number 09 CR 08595 and his conviction for delivery of cannabis under case number 10 CR 21862 be admitted to impeach defendant pursuant to *People v. Montgomery*, 47 Ill. 2d 510 (1971), because they were less than 10 years old. Defense counsel responded that the prejudicial effect of the prior convictions that were not elements of the offense would outweigh their probative value. The trial court held that the PCS conviction charged as the predicate felony had to be admitted, and that defendant's prior possession of a stolen motor vehicle conviction was admissible, but the court denied the motion as to "the other drug offense."

¶ 5 At trial, Chicago police officer Mark Heinzl testified that he was executing a search warrant with a team of officers at 10:17 p.m. on April 15, 2013. The warrant was for the second floor unit of 7950 South Manistee Avenue in Chicago, Illinois. Some of the officers approached the residence from the rear where the second floor was accessible via a staircase leading to a landing. When the officers reached the base of the stairs, Officer Heinzl observed defendant "at the rear door," which was open. Defendant had a black object in his hand. After Officer Heinzl and the other officers yelled, "drop it, drop the gun, police, search warrant," defendant ran into the residence. As the officers pursued defendant into the residence, several people were standing in the first room, which was the kitchen, "kind of blocking [the officers'] path." Defendant continued toward the front of the residence.

¶ 6 Officers Whelan and Laureto pushed through the individuals and Officers Heinzl and Goins followed defendant past a few doors and around a corner at the living room. Defendant went down a well-lit stairwell that led directly from the living room to a door. Once the officers reached the stairs, Officer Heinzl observed a woman standing about half way between them and the door where defendant stood. There was clothing and a book bag by the door. From the top of the stairs about 12 feet away, Officer Heinzl observed defendant lift up an object and place a black object and a plastic bag underneath what he believed was a book bag. After defendant stood up and the officers said, "let's see your hands," defendant raised his hands and then walked back up the stairs where Officer Goins detained him. There was nobody else in the landing area. Officer Heinzl retrieved a loaded black .380 semi-automatic handgun, a clear plastic bag containing 11 bags of suspect cannabis, 22 blue bags of suspect heroin, and one knotted bag of

suspect cocaine. Officer Heinzl recovered the items about 15 seconds after observing defendant discard them, and he did not lose sight of defendant during that time.

¶ 7 Chicago police officer Robert Goins testified that he and a tactical unit of approximately 15 to 20 individuals were executing a warrant for the second floor of 7950 South Manistee Avenue in Chicago, Illinois on the day in question. Officer Goins and the majority of the team went to the rear of the residence. As the officers began their ascent of the rear steps, Officer Goins observed defendant, whom he recognized, "exit the rear door and step onto the back porch landing." Defendant had a black object in his hand, which Officer Goins believed was a gun. Several team members shouted "police, drop the weapon," and defendant ran back into the residence. After the officers followed defendant into the residence through the kitchen door, several other occupants impeded their pursuit. Officer Whelan became involved in an altercation with an individual.

¶ 8 Officer Goins followed behind Officer Heinzl as they pursued defendant through the house into the living room where he ran down stairs leading to the front door. When defendant reached the landing area, Officer Goins observed him bend down but Officer Heinzl obstructed his view and he could not see what defendant was doing as he bent down. Officer Goins detained defendant after he stood up and walked back up the stairs. Within a matter of seconds, Officer Heinzl walked down the landing and recovered a .380 semi-automatic handgun and various narcotics from the landing area. When asked, "And was there anyone else in the landing area besides the defendant, Officer Heinzl, and yourself?" Officer Goins responded, "In the landing area, no."

¶ 9 The State introduced a certified statement of defendant's February 29, 2012, conviction for PCS under case number 11 CR 16931.

¶ 10 The parties stipulated that a proper chain of custody was maintained at all times and that the recovered items tested positive for 1.1 grams of heroin, 0.1 grams of cocaine, and 2.7 grams of cannabis.

¶ 11 The State rested and the court denied defendant's motion for a directed finding.

¶ 12 Defendant called Vivian Thompson who testified that she resided at the apartment in question on April 15, 2013, when defendant and about 10 other individuals were there "kicking it" and getting ready to go out. Thompson was in the kitchen with defendant at about 11 p.m., when she asked him to take out the garbage. Defendant had a black garbage bag as he opened the door. Thompson did not notice a gun or drugs in his hands. Defendant instantly closed the door and froze, stating that the police were coming. At that point, the police came in and told everybody to get down on the floor. Some of the officers went toward the front of the house while others stayed in the back. Thompson did not see defendant go to the front of the house, and "he never did make it past [her]." Defendant was lying down right in front of her in the kitchen when the police began searching everybody and they searched defendant "right there in front of [Thompson]."

¶ 13 On cross-examination, Thompson testified that she had known defendant for over five years. Defendant was like a brother to her and she did not want to see "someone like a brother to [her] get into trouble." Defendant had dropped the garbage bag by the time the police began searching everyone.

¶ 14 Defendant testified that, on the evening in question, about nine males, including himself, and six females were "chilling" at Thompson's house getting ready to go out. When defendant opened the door to take out the garbage at Thompson's request, he saw the police officers and heard one say, "hey." Defendant then immediately closed and locked the door. After he heard, "police," defendant got down on the floor and dropped the garbage bag. Some officers subdued them in the kitchen while other officers rushed toward the front of the apartment. Defendant did not have a gun on him and he never carried drugs. The police searched defendant but did not find anything on him.

¶ 15 On cross-examination, defendant testified that he did not have anything illegal on him but that he felt he needed to close and lock the door because he was from the streets. The police "[b]ust the door in" to gain entry. The police searched defendant and everybody in the kitchen but did not find any drugs or guns. There was an altercation between the police and some of the other individuals.

¶ 16 After defendant rested, the following exchange occurred on rebuttal:

"[THE STATE]: In rebuttal, your Honor, pursuant to the defendant testifying and the previously granting of the State's motion concerning prior convictions, the State will submit two additional convictions, self-authenticating documents. The first one being under case number 09 CR 0859501 for the offense of possession of a stolen motor vehicle. * * *

* * *

And People's Exhibit Number 7, another self-authenticating document under 10 CR 218620, a conviction for manufacture delivery of cannabis, 2.5 to 10 grams within a school zone. Conviction date of January 4th, 2011. Tendering both of those to the Court, and that's People's Exhibit Number 7.

With that, your Honor, the State would rest in surrebuttal.

THE COURT: That's 10 CR 2186201?

[THE STATE]: Yes, 10 CR 2186201."

¶ 17 After argument, the trial court found defendant guilty on both counts of UUWF, and the lesser included offense of PCS on both of the charges for PCS with the intent to deliver. In announcing defendant's guilt, the trial court relied on the testimony of the officers without mentioning defendant's credibility.

¶ 18 Defendant filed a motion to reconsider and for a new trial, which the court denied stating that it had "no question with respect to the credibility of the officers."

¶ 19 The court merged the UUWF counts and sentenced defendant to three concurrent six-year terms of imprisonment with one year of mandatory supervised release.

¶ 20 On appeal, defendant maintains that he received ineffective assistance of trial counsel because his attorney failed to object when the State presented his prior conviction for delivery of cannabis within 1,000 feet of a school to impeach him despite the trial court's pretrial ruling that it would not be admitted.

¶ 21 To prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that the deficient performance prejudiced the defendant

such that he was deprived of a fair trial. *Strickland*, 466 U.S. at 687; *People v. Patterson*, 217 Ill. 2d 407, 438 (2005). To establish prejudice, the defendant must show a reasonable probability that, absent counsel's alleged error, the trial's outcome would have been different. *People v. Evans*, 209 Ill.2d 194, 220 (2004). "A reasonable probability of a different result is not merely a possibility of a different result." *Id.* If the defendant fails to establish either prong, his ineffective assistance claim must fail. *Strickland*, 466 U.S. at 697. Where the facts relevant to an ineffective assistance of counsel claim are not disputed, our review is *de novo*. *People v. Bew*, 228 Ill. 2d 122, 127 (2008); *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 25.

¶ 22 In Illinois, evidence of a witness's prior conviction is admissible to attack the witness's credibility where: (1) the crime was punishable by death or imprisonment of more than one year, or the crime involved dishonesty or a false statement; (2) the conviction is less than 10 years old; and (3) the trial judge determines that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. *Montgomery*, 47 Ill. 2d at 516 (adopting the 1971 proposed draft of Rule 609 of the Federal Rules of Evidence). Absent an affirmative showing to the contrary, a reviewing court presumes that the trial court considered only competent evidence. *People v. Ticey*, 214 Ill. App. 3d 1043, 1050 (1991).

¶ 23 Here, the record reflects that the trial court's finding of guilt rested on the testimony of Officers Heinzl and Goins, which established that while the police were executing a search warrant, defendant was observed at an open door with a black object in his hand and that he closed the door despite being told by the police to drop the object. Officers Heinzl and Goins testified that defendant ran through the apartment and they pursued him until he ran down stairs

toward the landing area by the front door, where both officers observed defendant bend down. Officer Heinzl testified that he observed defendant place a black item and a plastic bag underneath some other items and that he recovered a firearm and the narcotics from that area about 15 seconds later. This testimony overwhelmingly supported defendant's guilt and the trial court had "no question with respect to the credibility of the officers." In finding defendant guilty, the trial court did not mention defendant's prior conviction for delivery of cannabis. Moreover, his prior conviction for possession of a stolen motor vehicle was relevant to his veracity as a crime involving dishonesty. See *People v. Hawkins*, 243 Ill. App. 3d 210, 224 (1993).

¶ 24 Taking the credible testimony of the officers, which overwhelmingly established defendant's guilt, in combination with defendant's prior conviction for possession of a stolen motor vehicle, a felony involving dishonesty, we cannot say that there was a reasonable probability that, but for defense counsel's alleged error, the outcome of his trial would have been different. Accordingly, defendant cannot show prejudice under the second *Strickland* prong.

¶ 25 Defendant nevertheless maintains that the importance of credibility in this case, combined with issues in the officers' testimony, show a reasonable probability that the outcome of his trial would have been different but for his counsel's failure to object. Defendant points out that: (1) Officer Heinzl testified that he observed defendant step outside the door as the officers approached the residence from the rear, while Officer Goins testified that defendant stood in the doorway; (2) Officer Heinzl did not testify, as Officer Goins did, that there was an altercation between another officer and an individual in the kitchen; (3) while Officer Heinzl testified that there was a woman standing between himself and defendant when he saw defendant on the

landing by the front door of the residence, Officer Goins testified there was no one else in the landing area; and (4) the officers' claim that defendant walked out onto the back porch while holding a gun as they executed a search warrant was highly improbable. We address defendant's contentions in turn and note, "precise consistency as to collateral matters is not required to establish guilt." *People v. Peoples*, 2015 IL App (1st) 121717, ¶ 67.

¶ 26 First, whether defendant stepped outside the door or stood in the doorway is a collateral matter where both officers testified that they saw a black object in defendant's hand and that some of the officers in the team told defendant to drop the gun. Second, Officer Goins's testimony that there was an altercation between another officer and an individual in the kitchen is collateral and unaffected by Officer's Heinzl's lack of testimony on the matter. Third, the testimony that no one else was on the landing by the front door is consistent with the testimony that a woman was standing halfway between the officers, who were at the top of the stairs, and defendant, who was at the bottom of the stairs on the landing. Fourth, defendant's contention that the officers lacked credibility because it is improbable that defendant would walk outside holding a gun is speculative and unsupported by the record. We therefore find no reason to doubt the trial court's finding that the officers were credible, and in light of the properly admitted conviction for possession of a stolen motor vehicle, we find that trial counsel's alleged error did not affect the outcome of his trial.

¶ 27 Because we find that defendant did not show prejudice, we do not address defense counsel's conduct under the first *Strickland* prong.

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

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¶ 29 Affirmed.