

2017 IL App (1st) 142601-U

No. 1-14-2601

August 3, 2017

Fourth 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
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 15814
	)	
ANTWOINE HOOKER,	)	Honorable
	)	Thomas M. Davy,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Justices McBride and Burke concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm the ruling of the trial court where defense counsel was not ineffective.

¶ 2 Following a bench trial, defendant Antwoine Hooker was convicted of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2010)) and aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(1) (West 2010)) and was sentenced to concurrent terms of 15 years' imprisonment. On appeal, defendant raises multiple claims of ineffective assistance of counsel. We affirm.

¶ 3 Defendant was charged with eight counts of attempted first-degree murder, aggravated battery with a firearm, three counts of aggravated discharge of a firearm, and six counts of aggravated unlawful use of a weapon, in relation to a shooting that occurred on August 8, 2010, near 526 West 104th Street in Chicago, Illinois and a subsequent arrest on August 17, 2010.

¶ 4 Defendant retained private defense counsel. Prior to trial, following a 402 conference, defendant plead guilty to one count of AUUW and the State *nolle prossed* the remaining AUUW counts. The case proceeded as a bench trial on the remaining counts.

¶ 5 At trial, Dwayne Dates testified that he lived at 526 West 104th Street. Dates knew defendant, who lived one block away, “[f]rom the neighborhood.” Dates testified he was a member of the Black Disciples street gang and defendant was a member of the Gangster Disciples. Six weeks prior to the shooting, Dates and defendant had engaged in a fist fight in front of Dates’ home.

¶ 6 Dates testified that, on August 8, 2010, he was on his front porch with his friend Devon Boone when he heard gun shots coming from the gangway next to the house. He believed the shots were fired by his friends. Dates heard more gun shots, saw an “arm and a head coming around the gate,” and was shot in the chest. He was transported the hospital where he had surgery to stop the bleeding.

¶ 7 On August 17, 2010, Dates met with detectives who presented him a lineup. Dates testified that he identified defendant from the lineup as the shooter because the police “told [him] to pick him out because he was the only person that [Dates] knew from [his] neighborhood.” At trial, Dates could not recall who shot him. During cross-examination, Dates denied seeing defendant near his porch on the night of the shooting. Dates was confronted with a written statement he gave to the police and an assistant State’s Attorney on August 17, 2010, in which he

identified defendant as the shooter. Dates acknowledged the statement had his signature but testified he could not recall if he told the assistant State's Attorney or the detective whether defendant was the shooter or whether he signed the statement.

¶ 8 Devon Boone testified he was "cool" with both Dates and defendant. He testified that, at approximately 9:30 p.m. on August 8, 2010, he and Dates were on Dates' porch. Boone heard gunshots from the adjacent gangway, but Dates said he thought that it was their friend shooting and they remained on the porch. Boone heard "3 or 4" more shots and went into the house. Dates was struck "in the stomach, towards his side." Boone pulled Dates into the house where Dates' family called 911. Boone testified he did not know who fired the shots.

¶ 9 Officer Buglio testified that he processed the crime scene. He saw "numerous bullet holes" in the porch and the side of the house. He recovered three .380 caliber shell casings from the gangway next to Dates' house. Buglio inventoried the shell casings and submitted them to the Illinois State Police Crime Lab for analysis.

¶ 10 Detective Marc Delfavero testified that, on August 17, 2010, he conducted a lineup where Dates identified defendant as the person who shot him. Dates provided an oral statement and a signed handwritten statement identifying defendant as the shooter. During cross-examination, Delfavero testified Boone told him the shooter looked like defendant but agreed that Boone was not sure who "did the shooting."

¶ 11 Officer Ryan Sheahan testified that, on August 17, 2010, he was assigned to apprehend defendant. At 102nd Street and Normal Avenue, Sheahan saw defendant riding a bike. Sheahan called defendant's name and said "police." Defendant dropped his bike and fled westbound over fences and through yards. Sheahan observed defendant "reach in his pants pocket around his waistband and pull out a gun" and throw it to the ground. It was approximately 10:30 a.m. and

Sheahan was approximately 10 to 15 yards from defendant when he observed him discard the gun. Sheahan radioed his team and remained with the gun, a “black 380 semi-automatic handgun” loaded with eight live rounds. Sheahan was then informed via radio dispatch that defendant was in custody. Sheahan inventoried the gun and the bullets. He identified defendant in court as the man who dropped the gun he recovered on August 17, 2010.

¶ 12 The parties stipulated that Jennifer Honna would have testified as a forensic scientist expert in firearms identification that the three .380 caliber cartridges recovered on the night of the shooting were fired from the same .380 caliber firearm defendant tossed while fleeing from police. The State rested.

¶ 13 The court found defendant not guilty on all counts of attempted first degree murder, finding the State failed to prove he intended to kill either Boone or Dates. It found defendant guilty of aggravated battery with a firearm and two counts of aggravated discharge of a firearm in relation to the shooting of Dates, based on the “clear” fact that defendant “was arrested after dropping the weapon, and that weapon matched the shells that were recovered by the evidence technician” and “the statement from Mr. Dates from the 18th of August [was] more believable as to who the shooter was.”

¶ 14 The court recited the evidence, finding that Dates “knew the defendant. That they were in opposite rival gangs. Mr. Dates being a BD, Mr. Hooker being a GD.” The court noted the differences between defendant’s testimony and his written statement and found that his written statement is “more believable.” It postulated that “[f]or whatever reason when Mr. Dates came into court, perhaps the gang rivalry is not as bad as it was then. Perhaps for whatever reason, he’s forgiven Mr. Hooker.”

¶ 15 After several delays and a correction to defendant's motion for a new trial, the court denied the motion. It merged the two aggravated discharge of a firearm counts and sentenced defendant to concurrent terms of 15 years' imprisonment for aggravated discharge of a firearm and aggravated battery with a firearm.

¶ 16 On appeal, defendant alleges ineffective assistance of counsel. Specifically, he argues counsel was ineffective for spotty attendance during pretrial hearings during which counsel failed to file any motions, eliciting testimony on cross-examination that identified defendant as the shooter, his abbreviated closing argument during which he was unsure as to whom Dwayne Dates was speaking when he said he did not know who shot him, failing to object to the trial court's misrepresentation of the evidence, and filing a "mockery" of a motion for a new trial. Defendant further requested this court to take notice defense counsel was suspended from the practice of law on multiple occasions, as evidenced by counsel's disciplinary record in the ARDC, and for this court to take notice that counsel was investigated by a federal grand jury in the 1990s. Defendant contends counsel's history of misconduct supports his claim that counsel's performance was deficient.

¶ 17 To prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was (1) deficient and (2) that the deficient performance prejudiced the defendant such that he was deprived of a fair trial. *Strickland v. Washington*, 466 U.S. 674, 687 (1984); *People v. Patterson*, 217 Ill. 2d 407, 438 (2005). If the defendant fails to establish either prong, his ineffective assistance claim must fail. *Strickland*, 466 U.S. at 697. Courts may therefore resolve ineffectiveness claims by reaching only the prejudice component of *Strickland*, "for lack of prejudice renders irrelevant the issue of counsel's performance." *People v. Coleman*, 183 Ill. 2d 366, 397-98 (1998).

¶ 18 We resolve defendant's claims under the prejudice prong detailed in *Strickland*. 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.*

¶ 19 The court relied on the following evidence in finding defendant guilty. Officer Sheahan testified he observed defendant discard a .380 caliber firearm while fleeing, which Sheahan subsequently recovered and inventoried. The parties stipulated to expert testimony that established the three .380 caliber firearm cartridges recovered from the porch on the night of the shooting were fired from the same gun recovered by Sheahan. Dates identified defendant in a lineup as the shooter and signed a statement averring that he saw defendant fire at him in a well-lit area.

¶ 20 Defendant's argument turns on whether, in the face such evidence, there is a reasonable probability that the result of defendant's trial would have been different if defense counsel had (1) not missed pre-trial status hearings, (2) filed unspecified pretrial motions, (3) not elicited damaging testimony during cross-examination, (4) made a longer closing argument, (5) not failed to object to the trial court's characterization of the evidence, and (6) not initially filed a flawed motion for a new trial. We find that no such probability exists here where the evidence against defendant was overwhelming.

¶ 21 Initially we note, defendant requested we take notice of counsel's history of misconduct as proof that counsel provided deficient performance while representing defendant. Defendant argued counsel's history showed he "satisfied the first prong of *Strickland*." However, no disciplinary proceedings were pending against counsel during his representation of defendant,

and defendant did not argue any of counsel's previous acts of misconduct related to counsel's representation of defendant. Defendant has failed to articulate a connection between counsel's history and counsel's performance representing defendant. Defendant failed to express any prejudicial impact resulted from counsel's history.

¶ 22 Defendant next argues counsel's ineffectiveness denied him a fair trial when counsel failed to appear at "14 of the first 38 pre-trial dates." The record shows that defense counsel was absent from numerous pretrial hearings because he was sick, had a doctor's appointment, was attending a funeral, or on trial elsewhere. Of relevance is that most of the pretrial hearings defense counsel missed were merely status calls. No hearings of substance were carried out without counsel present. Further, defendant provided no argument as to how these alleged errors prejudiced him. See *People v. Davis*, 304 Ill. App. 3d 427, 442 (1999) (no ineffective assistance of counsel where counsel's absence did not leave defendant unrepresented at substantial hearings and defendant failed to show how absence prejudiced him). Counsel's spotty attendance prior to trial, therefore, did not prejudice defendant.

¶ 23 Defendant next argues that defense counsel failed to file any pre-trial motions. He does not, however, specify what motions counsel should have filed or how any such motions would have changed the outcome of the trial. Further, the evidence on which the court relied in convicting defendant (that the fired cartridges recovered from the gangway were fired from the same weapon discarded by defendant and recovered by Officer Sheahan), came in through Sheahan's admissible first-hand, eye-witness testimony that he saw defendant discard the firearm and expert testimony stipulated to by the parties. No pretrial motion would have suppressed such evidence, and counsel is not ineffective for declining to file frivolous motions. See *People v. Wallace*, 2015 IL App (3d) 130489, ¶ 41 (Because a motion to quash defendant's arrest would

have been denied, counsel's decision not to file said motion was reasonable and therefore not indicative of deficient counsel). Defendant has thus not shown how he was prejudiced by defense counsel's declining to file a pre-trial motion.

¶ 24 Next, defendant complains that defense counsel "undermined" defendant's case during the following cross examination of Detective Delfavero:

"DEFENSE COUNSEL: Was Mr. Boone the person who pulled the victim into the house?

DELFAVERO: Yes.

DEFENSE COUNSEL: And he testified he saw the shooting?

DELFAVERO: That - - yes, that he was out there when the shooting had occurred; yes.

DEFENSE COUNSEL: And then did he identify who the shooter was?

DELFAVERO: He said that the shooter looked like Antwoine Hooker.

DEFENSE COUNSEL: He wasn't sure as to who it was that did the shooting?

DELFAVERO: Correct. He said it looked like Antwoine Hooker."

Defendant argues that counsel eliciting this improper hearsay implicating him constitutes ineffective assistance. It is true that, when a defense counsel elicits damaging hearsay testimony on cross-examination that disadvantages the defendant's case, counsel's actions cannot be viewed as mere "trial strategy." *People v. Phillips*, 227 Ill. App. 3d 581, 590 (1992). However, given the wealth of evidence against defendant, we find that there was no probability that defendant would have been acquitted but for Delfavero's testimony elicited by defense counsel during cross examination. Defendant was therefore not prejudiced by counsel's cross examination.



¶ 25 Turning to defendant's claim that counsel was ineffective for arguing an "inadequate and inaccurate" closing argument, we again find defendant cannot establish that he was prejudiced. Defendant complains that counsel's closing argument was too short and crucially included the following assertions:

"DEFENSE COUNSEL: [T]here was a statement taken from the victim by – he was talking to either an Assistant State's Attorney or police officer, I am not sure which one it was. I believe it was an Assistant State's Attorney. And he reiterated again that he did not see and did not know who shot him."

¶ 26 Defendant argues that counsel's comments during closing, and the fact that the entire argument was "less than two transcript pages long," demonstrated counsel was "unprepared," which led to a failure to question suspicious aspects of the investigation. A brief closing argument is not in itself ineffective, and this court has found that forgoing a closing argument entirely does not amount to ineffective assistance of counsel. See *People v. Conley*, 118 Ill. App. 3d 122, 127 (1983) (and cases cited therein). Further, defendant fails to rebut the fact that the trial court convicted him in large part based on the "clear" fact that defendant "was arrested after dropping the weapon, and that weapon matched the shells that were recovered by the evidence technician," as well as Dates' statements to police and the assistant state's attorney that defendant shot him. In light of all the evidence before the trial court, defendant cannot demonstrate that the outcome of his bench trial would have been different had defense counsel presented a longer or different closing argument.

¶ 27 Next, defendant complains he was prejudiced by defense counsel's failure to object during the trial court's ruling. Defendant argues that counsel should have objected to the trial court's statement that Dates and defendant were members of "opposite, rival gangs." We find

defendant was not prejudiced by the absence of an objection during the trial court's recitation of the facts prior to ruling. Defendant does not specify how an objection would have benefitted him. Furthermore, the testimony at trial established that Dates and defendant did belong to different gangs and had fought six weeks earlier. Defendant argues that the evidence only shows that he and Dates belonged to "different" gangs, not "opposite, rival" gangs. However, the trial court is afforded discretion to determine reasonable inferences from the testimony at trial (*People v. Siguenza-Brito*, 235 Ill. 2d 213, 235 (2009)), and it is a reasonable inference here that the gangs were rivals. As defendant has failed to show that an objection to the inference made by the trial court would have been meritorious or how it would have helped in his case, we find no prejudice in this regard.

¶ 28 Finally, defendant argues that defense counsel filed a "mockery" of a motion for a new trial after numerous delays. However, counsel filed two motions for a new trial. Defendant challenges only the first motion. The record shows that counsel subsequently filed and argued a "corrected" motion. Defendant does not challenge the adequacy of the corrected motion. As the trial court did not consider the initial motion, defendant suffered no prejudice from the inadequacy of that first motion.

¶ 29 In sum, even if counsel's performance was deficient, defendant has not set forth an arguable claim of prejudice with any of his claims. *People v. Coleman*, 2011 IL App (1st) 091005, ¶ 12 (to prove prejudice, defendant must show reasonable probability that but for counsel's errors, the results of the proceedings would have been different). Given the evidence of defendant's guilt presented at trial, there is no reasonable probability that defendant would have been acquitted but for defense counsel's shortcomings. Therefore, defendant was not arguably

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prejudiced by any of counsel's alleged deficiencies and counsel was not ineffective in representing defendant.

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

¶ 31 Affirmed.