2017 IL App (1st) 143481-U

SECOND DIVISION
July 18, 2017

No. 1-14-3481

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 13 CR 18664
	)	
JEREL MOORE,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Hyman and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence was sufficient to sustain defendant's conviction for robbery based on victim's identification of defendant coupled with other evidence from eyewitnesses and police. Defendant's ineffective assistance and *Krankel* claims rejected as lacking merit.

¶ 2 After a bench trial, defendant Jerel Moore was convicted of robbery and sentenced as a Class X offender to a six-year term of imprisonment. On appeal, he challenges the sufficiency of the evidence to convict and charges his privately retained

attorney with ineffective assistance for failing to introduce at trial evidence that Moore's brother and his friends, who had borrowed Moore's car, were the guilty parties. Moore alternatively claims that trial court should have conducted a preliminary examination pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), to determine the factual basis for Moore's ineffective assistance claim. Finding no error, we affirm.

¶ 3 The robbery occurred in the 800 block of South Central Park in Chicago around 10 p.m. on September 11, 2013. The victim, Brian Dandridge, had just left a church function and was exiting a parking lot that opened onto Central Park. Vehicles parked in the street blocked his view, so he inched out of the parking lot slowly. As Dandridge pulled into the street, his vehicle collided with a dark Cadillac heading southbound on Central Park. Dandridge braked immediately so the impact was minor. Dandridge got out of his car to see whether there was any damage to either vehicle, but did not see any. The occupants of the Cadillac, three African-American males and one African-American female, exited the car and the three men were shouting and approached Dandridge aggressively. One of the group told Dandridge, "You're going to have to pay for this some way." The driver, later identified as Moore, grabbed Dandridge's arm, pushed him back towards his car, removed Dandridge's wallet from his pocket and removed $20. Moore threw the wallet on the ground and the group re-entered the Cadillac and left.

¶ 4 The occupants of another car heading north on Central Park, Marshawn Feltus and Ashley Agnew, witnessed the incident, but could only see the assailants from the back. They both saw one of the men touch Dandridge. Feltus saw the same man reach into Dandridge's pocket and remove something. Agnew wrote down the temporary license plate of the Cadillac (847 P 381) and called police.

¶ 5 Police arrived a short time later. Officer Brian Peete spoke to Dandridge, who described the robber as having dreadlocks and tattoos on his face. Peete did not recall receiving that description, but he did get the Cadillac's license plate number and was told that there were three men and one woman in the car, information which he dispatched over the radio. A short time later, Officer Jose Pedraza and his partner spotted the car at 16th and Ridgeway, about a mile from the site of the robbery. As they attempted to curb the vehicle, one male occupant jumped out and fled and Pedraza's partner pursued him. The Cadillac then drove off with Pedraza in pursuit. The Cadillac stopped abruptly about a block later and two more males fled the vehicle. Pedraza described the males as black, about 5'7" in height, with braids and wearing white tank top shirts. Pedraza did not see the faces of the men who fled. Pedraza got out of his squad, intending to chase the men, but then noticed that a female, Tamika Johnson, was still in the vehicle in the front passenger seat, so he decided to secure the vehicle and Johnson.

¶ 6 Peete received word of the Cadillac's location and went there with his partners. He examined the Cadillac, but did not find any proceeds of the robbery. Peete did notice that the steering column and the windows were intact and there was, attached to other keys on a key ring, a key in the car's ignition. Peete returned to Dandridge and took him to view the car and Dandridge identified both the Cadillac and Johnson as being involved in the robbery.

¶ 7 Dandridge then accompanied the officers to the 10th District police station where Johnson was also taken. As Dandridge sat in an interview room, a sergeant advised him to look in the lobby because a man who claimed to own the Cadillac was coming in. As Dandridge looked in the lobby, where there were several people, he saw Moore coming

through the revolving doors. Moore was shouting profanities and yelling that his car had been stolen. Dandridge immediately identified Moore as the man who had robbed him and Moore was arrested. Moore, who is 5'7" and has dreadlocks and tattoos on his face, was wearing a dark colored t-shirt with a white tank top underneath.

¶ 8 Feltus and Agnew later viewed a lineup, but were unable to identify Moore as one of the perpetrators. Agnew did say that the hair of another man in the lineup, who happened to be sitting next to Moore, looked like the offender's hair, although that person's hair was longer than Moore's.

¶ 9 After several continuances to obtain her testimony and the issuance of an arrest warrant for her failure to appear when subpoenaed, Johnson eventually testified for Moore. Johnson denied that Moore was in the car that night and told police so when she saw Moore at the 10th District the night of the robbery. Johnson was picked up in the Cadillac earlier that evening by a man she was dating, known to her only as "Shannon," who had two other men in the back seat. Johnson did not know either of the back seat passengers, but said both had dreadlocks and at least one of them had tattoos on his face. Although Johnson originally told police that "Shannon" took Dandridge's wallet and she later identified him from a photo array, she testified at trial that nobody in the group took anything from Dandridge and that none of the men approached Dandridge aggressively. Shannon was later identified as Shannon Langston. When Dandridge, Feltus and Agnew were unable to identify Langston as being involved, police did not pursue the investigation against him.

¶ 10 The trial court found Moore guilty of robbery. In its findings, the court stressed the credibility of Dandridge's testimony and the many reasons it found to discount

Johnson's testimony, including her reluctance to testify and the inconsistencies between her trial testimony and her statements to police. The court believed that Dandridge had given police a description of Moore that included dreadlocks and facial tattoos, which, in fact, matched Moore's appearance. The court also noted the lack of any evidence that Moore's car had been stolen given that there was no indication of a forced entry and the key was in the ignition. While the court found the circumstances of Dandridge's identification of Moore at the police station less than "ideal" because he was directed to pay attention to someone entering the station, the trial judge noted that Moore was not in custody and was apparently drawing attention to himself by uttering profanities and shouting that his car had been stolen. The court surmised that Moore realized that evening that police had information tying him to the Cadillac and potentially the robbery and decided that going to the police station to report his car stolen was the best way to deflect attention from himself.

¶ 11 Between the date of trial and his sentencing hearing, Moore wrote a letter to the trial judge in which he professed his innocence, claiming that his brother, Herron Raggs, and his friends, including Shannon Langston, had borrowed his car and committed the robbery. Moore further stated that his brother, who looked much like him, told him that evening the car had been stolen, thus prompting his visit to the station. The trial judge informed counsel for both parties of the letter, indicated that he considered it an *ex parte* communication and refused to make it a part of the record or otherwise consider its contents.

¶ 12 At his sentencing hearing, defense counsel presented a motion for a new trial and the trial court heard from Moore's mother, Vicky Moore, defense counsel and Moore

himself. Vicky identified pictures of her son Herron Raggs and said she "knew" it was Raggs, Shannon Langston and Martel Thomas in the car that evening. Vicky Moore did not say how she knew that Raggs had been in the car that evening or that he had confessed his involvement to her. Although defense counsel asked that the pictures of Raggs be admitted into evidence, they are not part of the record on appeal. With respect to Johnson's credibility, defense counsel claimed to have learned following trial that Langston had been in the courtroom during Johnson's testimony, which would explain her reluctance to implicate him. In allocution, Moore again claimed that he was innocent. Moore told that court that he had been driven to the station by police after his brother told him his car had been stolen and that an officer took his driver's license to show the victim while he waited outside the station. Moore claimed that "tapes" of the officer taking his license from him and recordings of conversations between himself and his mother while he was in the 10th District lockup would demonstrate the truth of his story. Moore told the court that his lawyer had subpoenaed information supporting his statements but did not otherwise complain about his lawyer's performance.

¶ 13 Moore's motion for a new trial was denied, he was sentenced to the minimum Class X sentence of six years' imprisonment, and he timely appealed.

¶ 14 Moore first argues that the evidence at trial was insufficient to sustain his robbery conviction due to the unreliability of Dandridge's identification. Moore argues that Dandridge had, at most, a few seconds to observe the person who took his wallet (someone he had never seen before), it was dark out and the stress of the situation affected Dandridge's abilities of perception. Moore disputes that Dandridge gave police a description of a robber with dreadlocks and facial tattoos, claiming that those details

would normally have been communicated in any flash message regarding the robbery and were only apparent to Dandridge after Moore was pointed out to him at the station as possibly being involved. Moore also contends the trial court improperly discounted Johnson's denial that Moore was in the car and asks that we "carefully consider" her testimony and not dismiss it because she "was afraid of testifying" and "gave some conflicting testimony."

¶ 15 We have carefully considered the record in this case, including the testimony of all witnesses, and find that the State sustained its burden to prove Moore guilty beyond a reasonable doubt. *People v. Jordan*, 218 Ill. 2d 255, 269-70 (2006) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (reviewing court must determine " 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' "). It is well settled that the positive identification of a defendant by a single witness is sufficient to sustain a conviction. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009); *People v. McCullough*, 2015 IL App (2d) 121364, ¶ 80. While we are mindful of the *Biggers*[1] factors for assessing the reliability of eyewitness identifications and of recent studies that question reliance on such testimony, an extended discussion of those factors here would add nothing to the analysis of this issue given that, fundamentally, the result

[1] See *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972), adopted in *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989) (relevant factors include (i) the witness's opportunity to view the offender, (ii) the witness's degree of attention, (iii) the accuracy of the witness's prior description of the offender, (iv) the level of certainty at the time of the identification, and (v) the length of time between the offense and the identification).

in this case was driven by the trial court's credibility determinations. A trier of fact may accept or reject all or part of a witness's testimony (*People v. McCarter*, 2011 IL App (1st) 092864, ¶ 22) and "is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt." *Siguenza-Brito*, 235 Ill. 2d at 229. A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006); *People v. Anderson*, 2017 Il App (1st) 122640, ¶ 39; *People v. Balfour*, 2015 IL App (1st) 122325, ¶ 57 (citing *People v. Howard*, 376 Ill. App. 3d 322, 329 (2007)) ("[i]t is not the role of this court to reevaluate the credibility of witnesses in light of inconsistent testimony and ostensibly retry the defendant on appeal").

¶ 16 There is nothing inherently incredible about Dandridge's identification of Moore. Dandridge had an adequate opportunity to view the individual going through his pockets and noticed details—dreadlocks and facial tattoos—consistent with Moore's appearance that evening. The court could have believed that Dandridge did not give those details to police because Peete did not recall them and they were not included in the broadcast message. Or the court could just as likely have believed that those details were given but were not important to the immediate effort to locate the Cadillac and its occupants and so were omitted. Further, Predraza's description of the two fleeing males (one of which was necessarily the driver)—5'7", braids and white tank tops—was again consistent with Moore's appearance that night. And nothing required the trial court to (i) accept at face value Johnson's claim that her many failures to appear were because she was "afraid" to give testimony that would exonerate Moore or (ii) discount the significant inconsistencies

between her trial testimony and statements to police. In short, we find nothing in the record that causes us to second-guess the experienced trial judge's credibility determinations, which formed the basis of the finding of guilt.

¶ 17 Moore's focus on what he labels a suggestive "show-up" at the police station is misguided. Certainly, as the trial court recognized, it would have been ideal if police had simply asked Dandridge to look in the lobby and say whether anyone looked familiar, rather than drawing his attention to the person entering the lobby and associating that person with the Cadillac. But Moore was not in custody, he entered the station voluntarily and he inevitably drew attention to himself by his conduct. Dandridge's immediate identification of Moore as the robber is not undermined by the circumstances under which it was made. See *People v. Rodriguez*, 387 Ill. App. 3d 812, 831 (2008) (show-up not invalidated because police told victim in advance that they had found a suspect).

¶ 18 Likewise without merit is Moore's claim that his counsel was ineffective for failing to present evidence revealed to the court by Moore after trial. " 'The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.' " *People v. Albanese*, 104 Ill. 2d 504, 525 (1984) (quoting *Strickland v. Washington*, 466 U.S. 668, 686 (1984)). Claims of ineffective assistance premised on strategic decisions made by trial counsel must be fairly assessed making every effort "to eliminate the distorting effects of hindsight." *Strickland*, 466 U.S. at 689; see also *People v. Fuller*, 205 Ill. 2d 308, 331 (2002) (issues of trial strategy must be viewed, not in hindsight, but from the time of counsel's conduct and with great deference to counsel's decisions). "[S]trategic choices made after a thorough

investigation of law and facts relevant to plausible options are virtually unchallengeable ***." *Strickland*, 466 U.S at 695. "[N]either mistakes in strategy nor the fact that another attorney with the benefit of hindsight would have handled the case differently indicates the trial lawyer was incompetent. [Citation.] The defendant must overcome a 'strong presumption that counsel's complained-of action or inaction was merely trial strategy.' " *People v. Vera*, 277 Ill. App. 3d 130, 138 (1995) (quoting *People v. Medrano*, 271 Ill. App. 3d 97, 100 (1995)).

¶ 19 Underlying Moore's argument on this issue is the assertion that his counsel was ineffective for failing to investigate and present available testimony and evidence that Moore's brother and his friends were the real perpetrators. The simplest answer to this claim is that the record shows that Moore's counsel was, in fact, aware of this narrative during trial and, therefore, we must presume that he made the strategic decision not to use it. Moore claimed, both in his *ex parte* letter to the court and during his sentencing hearing, that after police drove him to the station so he could report the theft of his car, an officer took his license to show it to Dandridge. During trial, Moore's counsel asked Dandridge on cross-examination whether he recalled an officer showing him Moore's license before Moore entered the station. (Dandridge had no recollection of that fact.) Had Moore not shared with his lawyer before trial the story he told the court after trial, his counsel would have had no reason to ask that question. Thus, it is apparent that Moore's counsel was aware of the contention that Moore only went to the station to report his car stolen and that his brother was responsible for the theft, but chose not to pursue this defense during trial.

¶ 20 The strategy to undermine Dandridge's identification of Moore by arguing that the encounter was brief and stressful, it was dark, no other witness identified Moore and another witness who was in the car affirmatively denied Moore was present was an eminently reasonable and straightforward trial strategy. In his *ex parte* letter, Moore informed the court that his attorney had subpoenaed the evidence Moore claimed would back up his story and given the vigorous defense counsel mounted at trial, there is no basis to presume that Moore's lawyer deliberately ignored evidence that would have helped his client. And, of course, once Moore took it upon himself to relay his story to the trial court after trial, his lawyer had no choice but to pursue that issue in his motion for a new trial. We find that Moore was not denied the effective assistance of counsel.

¶ 21 Moore's related *Krankel* claim fares no better. We review this issue *de novo. People v. Jolly,* 2014 IL 11742, ¶ 28. When a defendant, in communicating to the court, expresses dissatisfaction with his lawyer's performance, the court must make a preliminary inquiry into the factual basis for the assertion. *People v. Moore,* 207 Ill. 2d 68, 77-78 (2003). Nowhere in his *ex parte* letter to the court or in his statement in allocution did Moore express any dissatisfaction with his lawyer's performance and Moore concedes as much. Moore mentioned that his attorney had subpoenaed "tapes" from the 10th District, but did not fault his lawyer for failing to present those "tapes" or other evidence at trial**.** See *People v. Taylor*, 237 Ill. 2d 68, 77 (2010) (*Krankel* hearing not required where "there is nothing in defendant's statement specifically informing the court that defendant is complaining about his attorney's performance") (citing *People v. Grant*, 71 Ill. 2d 551, 557-58 (1978) ("If a defendant does not articulate his theory *** he cannot reasonably expect the trial court, unaided, to divine his intent")). Assuming

Krankel applies to privately retained counsel (see *Taylor*, 237 Ill. 2d at 77 (declining to resolve the issue)), the fact that Moore was represented by retained counsel necessarily required the trial court to tread lightly so as not to impinge on Moore's right to counsel of his choice. See *People v. Pecoraro*, 144 Ill. 2d 1, 15 (1991) ("It was not within a trial court's rubric of authority to advise or exercise any influence or control over the selection of counsel by defendant, who was able to, and did, choose counsel on his own accord."). Even though Moore's *ex parte* letter set forth all of the evidence he claimed existed that would show his innocence, he nonetheless chose to have trial counsel argue his posttrial motion. *Id.* (noting defendant could have retained other counsel to represent him prior to the hearing of his posttrial motions). Under these circumstances, because Moore articulated no explicit or implicit criticism of his attorney's performance and chose to continue to have his counsel of choice represent him, the trial court was not obligated to conduct a preliminary *Krankel* hearing.

¶ 22 We reject Moore's challenge to the sufficiency of the evidence as it would require us to second-guess the trial court's credibility determinations. Moore's further claims premised on his lawyer's failure to introduce evidence at trial that Moore's brother was guilty of the robbery are likewise without merit. The judgment of the circuit court of Cook County is, therefore, affirmed.

¶ 23 Affirmed.