

2017 IL App (1st) 152086-U

No. 1-15-2086

Order filed September 15, 2017

Sixth 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. 14 CR 2217
	)	
DEVEREAUX ALLEN,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE DELORT delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Connors concurred in the judgment.

**ORDER**

¶ 1 **Held:** The evidence was sufficient for the circuit court to conclude that defendant was the same person named in the certified copies of prior convictions used to establish an element of the charged crimes, despite a variance in the spelling of the name.

¶ 2 Following a bench trial, defendant Devereaux Allen was convicted of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)) for knowingly possessing a handgun in 2014 while having been previously convicted of two qualifying offenses. He was sentenced to

eight years in prison. On appeal, he contends the State did not provide sufficient proof of his prior convictions because the certified copies of those convictions offered at trial bore a different spelling of his name. We affirm.

¶ 3 Defendant was charged with one count of being an armed habitual criminal for knowingly or intentionally possessing a firearm, having been previously convicted of burglary in case No. 08 CR 10028-01, and of the manufacture or delivery of cannabis in case No. 07 CR 14581-01. He also was charged with two counts of the unlawful use or possession of a weapon (UW) by a felon, having been previously been convicted of the felony of burglary in case No. 08 CR 10028-01.

¶ 4 Because defendant's sole contention on appeal is that the State did not prove the element of the prior felonies as to each of those three counts, the proceedings at trial can be briefly summarized. Chicago police officer Michael Callahan testified that at 11 a.m. on January 16, 2014, he responded to a call at 724 West 58th Street in Chicago and entered that residence with the permission of a resident, who said that defendant was in the basement. Officer Callahan and his partner went downstairs and saw defendant sitting in a chair with a weapon protruding from his clothing. Defendant was arrested.

¶ 5 In its case-in-chief, the State introduced certified copies of defendant's convictions in cases 08 CR 1002801 and 07 CR 14581-01, and those copies were entered into evidence. The copies are included in the record on appeal. The documents bear the name "Devreaux Allen."

¶ 6 When asked for any objection to those documents, defense counsel stated:

"Judge, I don't think I can object, it's subject to -- it's a certified document, a public record, so I think it certainly comes in as evidence."

¶ 7 In the defense case, two witnesses testified they were present when the police officers arrived and never saw defendant with a weapon. Defendant testified he was in the basement on the morning in question but did not have a gun.

¶ 8 After defendant's testimony, the State asked the trial court to consider defendant's prior convictions in assessing the credibility of his testimony. The following colloquy then took place:

“[Defense counsel]: We ask the Court not to use those convictions, that the name on that conviction - on those convictions does not match the name on the charges before your Honor, and that there's not been any other evidence showing that those convictions are for Mr. Allen. And so, in rebuttal, we're asking the Court not to consider that evidence.

THE COURT: State, anything further?

[Assistant State's attorney]: Judge, you've had an opportunity to look at People's Exhibits 2 and 3, and it has the name Devereaux Allen [*sic*] on them, so they match the defendant's name.”

¶ 9 After asking to see the certified copies again, the trial court ruled that defendant's prior convictions would be allowed into evidence pursuant to *People v. Montgomery*, 47 Ill. 2d 510, 517 (1971), to impeach his credibility as a witness. The court further stated:

“I take it \*\*\* the [d]efense is arguing that there's an 'E' missing from what's on the certified conviction and what's on this particular court file, but for the *Montgomery* motion purposes, there's nothing to suggest that it's not this defendant.”

¶ 10 The court noted the copies of the convictions did not list a date of birth but found “that would go to the proof beyond a reasonable doubt for the State to meet its burden to qualify these for *Montgomery* purposes.”

¶ 11 In closing argument, defense counsel argued that the certified copies presented as proof of defendant’s prior convictions did not feature any identifiers “other than a name.” Counsel asserted the State provided no additional evidence to show those copies pertained to defendant.

¶ 12 In making its ruling, the trial court stated the name spelling on the certified copies was pertinent to the weight of the evidence, not its admissibility. The court further stated:

“The Court gets criminal cases in here every day, defendants with several variations of their names in the record or misspelled either due to mistyping by police officers or by state’s attorneys or by clerks entering the name and cases into the system. That’s not uncommon.”

¶ 13 The trial court found that in four pre-trial filings by defense counsel, counsel spelled defendant’s name differently than either the spelling that appeared on the charging document or the spellings on the certified statements of conviction. The court noted that defense counsel offered no argument “that he was referring to someone different than this defendant.” Noting that “sometimes defendants even spell their names differently,” the court concluded that “given the weight of the evidence and the testimony,” defendant knowingly possessed a firearm having been previously convicted of the two qualifying felonies.

¶ 14 The trial court found defendant guilty of all three charged counts. The court merged the two counts of UUW by a felon into the armed habitual criminal count and sentenced defendant to eight years in prison.

¶ 15 On appeal, defendant contends his convictions should be reversed because the State did not prove beyond a reasonable doubt that he was convicted of the qualifying felonies, which were elements of the offense. He asserts that the certified copies of the convictions did not establish that element because they did not bear the name that he used in this case.

¶ 16 Defense counsel initially stated before the trial court that it had no objection to the admission of those certified copies of the convictions, though counsel later challenged their validity based on the variance of the name spelling. Regardless, waiver cannot relieve the State of its burden to prove an element of an offense beyond a reasonable doubt. *People v. Wilson*, 215 Ill. App. 3d 966, 969-70 (1991).

¶ 17 When considering a challenge to a criminal conviction based on the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the required elements of the crime beyond a reasonable doubt. *People v. Bradford*, 2016 IL 117094, ¶ 12. On appeal from a criminal conviction, this court will not reverse the trial court's judgment unless the evidence is so unreasonable, improbable or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt. *Id.*

¶ 18 In this case, as proof of an element of the armed habitual criminal statute and the UUC by a felon, the State presented certified copies of convictions in case No. 08 CR 10028-01 and case No. 07 CR 14581-01. Both of those convictions bear the name of "Devreaux Allen." Defendant's name in the charging instrument is spelled "Devereaux Allen."

¶ 19 To prove a defendant's prior conviction as an element of the an offense, the State may offer the certified copy of the defendant's conviction. *People v. White*, 311 Ill. App. 3d 374, 380 (2000) (citing *People v. Davis*, 65 Ill. 2d 157, 164 (1976)). If the name that appears on the

certified record is the same as the name of the defendant on trial, a rebuttable presumption of identity arises. *People v. Moton*, 277 Ill. App. 3d 1010, 1012 (1996) (citing *People v. Davis*, 95 Ill. 2d 1, 31 (1983)). Therefore, when the names are the same, the State may meet its burden of proof through the certified copy of conviction and is not required to produce additional evidence that the defendant is the same person who was convicted in the prior case. See *People v. Smith*, 148 Ill. 2d 454, 465 (1992).

¶ 20 A defendant can present evidence to rebut that presumption of identity; however, where the presumption is not rebutted, a defendant is not prejudiced by a finding that the certified copy meets the State's burden of proof. *Moton*, 277 Ill. App. 3d at 1020 (citing *Smith*, 148 Ill. 2d at 465). If the presumption is rebutted, other evidence must be adduced to substantiate that the defendant is the person named in the record of conviction. *Moton*, 277 Ill. App. 3d at 1020.

¶ 21 Here, defendant contends the presumption of identity does not apply because the name "Devreaux Allen" is not the same name as "the name used by Allen throughout this proceeding," *i.e.*, Devereaux Allen. In *People v. Coleman*, 409 Ill. App. 3d 869, 873 (2011), a case with remarkably comparable facts, the State provided a certified copy of a prior conviction with an identical last name and a first name spelled similarly to the name of the defendant, and this court held the trier of fact could conclude the defendant was the same person as the individual named in the certified copy. The defendant, Jesse Coleman, was convicted of being an armed habitual criminal and UUC by a felon, and the State entered into evidence two certified copies of conviction, one of which bore the name "Jesse Coleman." *Id.* In affirming the defendant's convictions, this court found the variance between those two first names did not "defeat the initial presumption of identity." *Id.* at 876. This court further noted the defendant did not present additional evidence to the trial court to rebut the presumption. *Id.*

¶ 22 Here, as in *Coleman*, the last name on the certified copies is identical to defendant's last name, and the two first names vary by a single letter. We find those two names give rise to a presumption of identity that defendant is the same person listed in the certified copies of conviction. Compare *Moton*, 277 Ill. App. 3d at 1011-12 (defendant's conviction reversed for insufficient proof where the defendant's last name was different than the last name in the certified copy of conviction ("Morton")).

¶ 23 Defendant relies on several cases involving name variances to argue the State did not establish the presumption of identity here. However, each of those cases involved a common name or a greater difference between in the names in question. In *People v. Brown*, 325 Ill. App. 3d 733, 735 (2001), the defendant was named John E. Brown and the name on the certified copy of conviction was "John Brown," and this court found that the difference defeated the presumption of identity. *Coleman* distinguished *Brown* because the "very common" name of the defendant did not correspond with the certified copy of conviction in which an identifying middle initial was absent. *Coleman*, 409 Ill. App. 3d at 875-76.

¶ 24 In *People v. White*, 311 Ill. App. 3d 374, 381 (2000), the indictment referred to Derrick S. White. The copy of the conviction entered into evidence in that case listed the name of "Derick U.S. White" and also used the spelling "Derrick" at times. This court found no presumption of identity existed under those facts; however, the court affirmed the defendant's conviction because the State presented additional evidence to prove the defendant was the same person convicted in the prior case. *Id.* Finally, in *People v. West*, 298 Ill. App. 3d 58, 62 (1998), the name on the certified statement of conviction ("Todd McGlynn") differed from the name of the defendant, Keith West, and the trial court found them to be the same person only after the State

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presented evidence that the defendant used “Todd McGlynn” as an alias and offered a photograph for comparison with the defendant.

¶ 25 Here, as in *Coleman*, the name “Devreaux Allen” is similar enough to defendant’s uncommon name of Devereaux Allen to support the presumption of identity, and the defense presented no testimony to rebut that presumption. Viewing the evidence in the light most favorable to the State, the circuit court could have found that defendant was the person named in the certified copy of conviction and that the elements of the offense were established beyond a reasonable doubt.

¶ 26 Accordingly, we affirm the judgment of the trial court.

¶ 27 Affirmed.