2018 IL App (1st) 152027-U

No. 1-15-2027

Order filed February 14, 2018

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County,
	)	
v.	)	No. 09 CR 7049
	)	
ROBERT LAMPLEY,	)	Honorable
	)	Neera L. Walsh,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE COBBS delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Trial counsel not ineffective for not pursuing motion to suppress defendant's postarrest statement. Mittimus corrected.

¶ 2 Following a bench trial, defendant Robert Lampley was convicted of aggravated vehicular hijacking and unlawful use of a weapon by a felon (UUWF) and sentenced to concurrent prison terms of 21 and 5 years respectively. On appeal, he contends that trial counsel was ineffective for not filing a motion to suppress his postarrest statement. He also contends, and

the State agrees, that his mittimus must be corrected. For the reasons stated below, we correct the mittimus and otherwise affirm.

¶ 3 Defendant was charged with various offenses allegedly committed on or about January 7, 2009. In October 2010, appointed counsel filed a motion to suppress statements, alleging that defendant was questioned at a police station following his arrest on January 7, 2009, without first being informed of his *Miranda* rights. The motion also alleged that defendant was incapable of understanding his *Miranda* rights, was questioned after he "elected to remain silent and/or had elected to consult with an attorney," and was questioned without counsel present after being formally charged and after counsel had formally appeared. The motion also alleged that the statement defendant sought to suppress was the result of "psychological and mental coercion," confrontation with evidence improperly obtained in some unspecified manner, and confrontation with "material misrepresentations." Defendant employed private counsel in December 2010, and the record includes no subsequent reference to the motion to suppress.

¶ 4 At trial, Curtis Williams testified that, at about 10 a.m. on January 7, 2009, a man in a black mask and black clothing took a tan Dodge Intrepid from him while he was at a gasoline station at Kilbourn Avenue and Madison Street in Chicago. Williams was seated in the Intrepid after buying gasoline when he saw a man in a black mask and black clothing, carrying a black gun-shaped object, approaching the Intrepid. Williams exited the Intrepid and saw it driving away. Williams then saw his friend Michael Hughes passing by and flagged him down. Williams and Hughes set out after the Intrepid, and they testified to finding the parked Intrepid at Lavergne Avenue and Jackson Boulevard after about 10 to 15 minutes. They flagged down the police, Williams pointed to the Intrepid, and the police chased a man on foot. Hughes added that

the man the police pursued was in black clothing and had tried to enter the Intrepid. Hughes saw the pursuit return to the Intrepid. The man in black pointed a black object at the officers, entered the Intrepid, drove up onto the sidewalk towards the officers, and then drove away. Neither Williams nor Hughes identified defendant at trial as the hijacker, and both denied making an identification on the day of the incident.

¶ 5 Chicago police officers John Thornton and Philip Paolino testified that they were at the intersection of Lavergne and Jackson when Williams and Hughes flagged them down. They pointed at a gold Intrepid and said that "the person that robbed me" was "right there." Defendant, not wearing a mask, was standing next to the Intrepid. Defendant walked away, towards 5012 West Jackson, then ran away when the officers followed him. They pursued him through the gangway of the 5012 building, to the alley, and around another building, ending up back at the Intrepid. During the chase, the officers saw a black pistol on the snowy ground in the alley behind the 5012 building. Back at the Intrepid, defendant pointed a black pistol at them. As the officers drew their weapons, defendant entered the Intrepid, drove up onto the sidewalk towards the officers, and then drove away. Thornton and Paolino pursued the Intrepid until losing sight of it, but learned that it crashed a short time later at Jackson and Kenton Avenue. Other officers pursued defendant and arrested him on Adams Street between Kenton and Kilpatrick Avenues. Thornton and Paolino identified defendant at that time as the man who pointed a gun at them and tried to run them over.

¶ 6 Officer Patrick Mulkerrin testified that he arrested defendant. After Thornton and Paolino identified defendant, he was brought to the crashed Intrepid nearby. There, Williams identified

defendant as the man who took the Intrepid and Hughes identified him as the man who pointed a dark object at Thornton and Paolino.

¶ 7 Police detective James Adams testified to being at the crashed Intrepid when Williams and Hughes arrived. Williams identified defendant as the man who took the Intrepid and Hughes identified him as the man who pointed an object at police. Adams then went to 5012 West Jackson, where he saw a black mask on a fencepost and a .380 caliber pistol in the alley.

¶ 8 Adams questioned defendant at the police station after informing him of his *Miranda* rights. After indicating his understanding of his *Miranda* rights and agreeing to speak to the officer, defendant admitted to taking the car from Williams by showing him a gun, and to fleeing from the police. In particular, defendant admitted that he went to the gasoline station at Kilbourn and Madison, wearing a mask, because one of his customers told him that someone was selling drugs there. Defendant approached Williams, displaying his gun. Williams fled, and defendant decided to take the car. Defendant then went to 5018 West Jackson to buy marijuana. He had just done so when he saw the police. Deciding to flee because he had a .22 caliber pistol, drugs, and marijuana, he jumped back into the car, drove up onto the curb, and fled until he was caught.

¶ 9 Adams testified that defendant later gave a written statement to the same general effect. The written statement included a recitation and signed waiver of defendant's *Miranda* rights. Defendant stated that he was 25 years old and had completed grade school. In the written statement, defendant admitted that he went to the gasoline station to confront Williams for selling drugs to his customers. He approached Williams wearing a mask and holding a .380 caliber pistol. He raised the gun and rebuked Williams, who fled. Defendant intended to wreck the car he took from Williams but saw the police patrolling. He then went to buy marijuana at

5012 West Jackson. As he returned to the car from his purchase, he saw the police and ran back towards the 5012 building. As he jumped a fence in his flight, he dropped the mask and the gun he had shown Williams. Rather than return for them, he kept running until he returned to the car. He got in the car, jumped the curb, and drove away. At the end of the statement, defendant stated that the written statement was read aloud to him, and that he stopped the reading to make corrections, before initialing each correction and signing each page.

¶ 10 The parties stipulated that DNA testing showed that defendant could not be excluded as the source of the male DNA on the mask.[1]

¶ 11 Following closing argument, the court found defendant guilty of aggravated vehicular hijacking, UUWF, and aggravated unlawful use of a weapon (AUUW). The court found Williams and Hughes credible, while noting that "their testimony has changed somewhat over time," and found the police testimony credible. The court found that "the State did show that there was a carjacking that occurred, there was a weapon that was used, and *** there was a chase that ensued in which this defendant was ultimately apprehended." The court then noted defendant's statement admitting to the hijacking and to possessing a firearm, while also noting that defendant first mentioned a .22 caliber pistol and then in his written statement referred to a .380 caliber pistol.

¶ 12 Defendant's posttrial motion claiming insufficiency of the trial evidence was denied.

¶ 13 The presentencing investigation report (PSI) stated that defendant had multiple criminal convictions: three controlled substance offenses in 2006 and 2007, possession of a stolen motor vehicle in 1999, and soliciting unlawful business in 1998. It also stated that he completed grade

[1] The forensic scientist's stipulated testimony as to probabilities was 1 in 3 quadrillion white persons, 1 in 200 trillion Hispanic persons, and 1 in 38 trillion unrelated black persons.

school but never attended high school, his grades in school were "good and bad; I couldn't read that good," and he received special education for behavior and learning disorders.

¶ 14 Following a sentencing hearing on May 28, 2015, defendant was sentenced to concurrent prison terms of 21 years for aggravated vehicular hijacking and 5 years for UUWF and AUUW, with the AUUW offenses merged into UUWF. The mittimus reflects 2232 days of presentencing detention credit and lists the various AUUW counts as well as the UUWF count.

¶ 15 On appeal, defendant primarily contends that trial counsel was ineffective for not filing a motion to suppress his postarrest statement. He contends that his waiver of his *Miranda* rights was not knowing and voluntary because he did not attend high school and the *Miranda* warnings require a high-school vocabulary.

¶ 16 On a claim of ineffective assistance of counsel, a defendant must show that (1) counsel's representation fell below an objective standard of reasonableness, and (2) a reasonable probability exists that, but for counsel's errors, the result of the proceeding would have been different, with reasonable probability being a probability sufficient to undermine confidence in the outcome of the proceeding. *People v. Peterson*, 2017 IL 120331, ¶ 79. We apply a strong presumption that counsel's decision whether to pursue a motion to suppress was a matter of sound trial strategy. *People v. Bew*, 228 Ill. 2d 122, 128 (2008); *People v. Ramsey*, 2017 IL App (1st) 160977, ¶ 40. In *Ramsey*, pretrial counsel filed a motion to suppress a defendant's postarrest statements but trial counsel did not pursue the motion, and we held that "[g]iven counsel's *** vigorous defense of Ramsey at trial, we must presume that his decision to withdraw the motion to suppress statements filed by another lawyer was sound trial strategy." *Ramsey*, ¶ 40.

¶ 17 Here, defendant asks us to overcome that strong presumption of trial strategy, and to conclude that a motion to suppress would probably have succeeded, based on the facts that defendant's education ended with grade school and that he received special education for behavioral and learning issues. Setting aside defendant's discussion of *Miranda* comprehension in intellectually disabled or mentally retarded suspects, as there is no evidence on this record that defendant is in that class, defendant argues categorically that his grade-school education "was inadequate for understanding *Miranda* warnings" based on a law review article opining that (as defendant summarizes in his brief) "some of the *Miranda* warnings require an education level higher than seventh grade." Defendant cites no judicial opinion holding that *Miranda* warnings are incomprehensible to any person who has not completed a certain grade level in school, and we are unaware of any such case. Indeed, this court has repeatedly found that defendants who had not completed or attended high school gave their statements voluntarily, which refutes defendant's categorical proposition. See *People v. Macias*, 2015 IL App (1st) 132039, ¶ 58, citing *People v. Payne*, 336 Ill. App. 3d 154, 165 (2002) and cases cited therein. We find that a single law review article is a slender reed upon which to rest the weighty proposition that counsel not pursuing a motion to suppress defendant's statement was objectively unreasonable despite the strong presumption of reasonable trial strategy. We shall not adopt that proposition.

¶ 18 We also find that defendant has failed to show ineffective assistance because he was not prejudiced by the admission of his statement. The court expressly found Williams and Hughes credible in that a hijacking indeed occurred. The trial court expressly found the police testimony credible, and Thornton and Paolino testified to pursuing an unmasked defendant from the Intrepid after Williams and Hughes indicated that he was the hijacker. While Williams and

Hughes denied at trial that they made an identification, Mulkerrin and Adams both testified that, after defendant's arrest, Williams identified him as the hijacker and Hughes identified him as the man who pointed a black object at Thornton and Paolino. Defendant's mask and gun – the mask was linked to defendant by his DNA – were found near each other along the pursuit route. While the court referenced defendant's statement in its findings, it also remarked on a significant discrepancy between his written statement and his earlier account. After reviewing the court's findings, we do not conclude that the court "relied" upon defendant's statement as he argues, and our confidence in his convictions is not undermined. Stated another way, we do not find a reasonable probability that the result of defendant's trial would have been different had his statement been suppressed.

¶ 19 Defendant also contends, and the State agrees, that his mittimus must be corrected to reflect a single weapons offense, UUWF, and to properly reflect his credit for presentencing detention. We agree with the parties. Defendant was arrested on January 7, 2009, and sentenced on May 28, 2015, which is 2332 days. However, the mittimus reflects a credit of only 2232 days. Defendant was charged with and convicted of both UUWF and multiple counts of AUUW. While the mittimus states that the AUUW counts are merged into UUWF, it also lists them individually with concurrent five-year sentences.

¶ 20 Accordingly, we direct the clerk of the circuit court to correct the mittimus to reflect (1) a single weapons conviction for UUWF, concurrent to the aggravated vehicular hijacking conviction, and (2) 2332 days of presentencing detention credit. The judgment of the circuit court is otherwise affirmed.

¶ 21 Affirmed, mittimus corrected.