

2018 IL App (1st) 152430-U

No. 1-15-2430

Order filed June 15, 2018

Fifth 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).

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. 14 CR 4612
)	
MAURICE BOBO,)	Honorable
)	Alfredo Maldonado,
Defendant-Appellant.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for delivery of a controlled substance is affirmed over his contention that trial counsel was ineffective for failing to object to the State's improper comments during closing argument.

¶ 2 Following a jury trial, defendant Maurice Bobo was convicted of delivery of a controlled substance (heroin) (720 ILCS 570/401(d) (West 2014)), and sentenced to eight years' imprisonment. Defendant appeals, arguing that his trial counsel was ineffective for failing to object to improper comments made by the prosecutor during closing argument. We affirm.

¶ 3 Defendant was charged by indictment with delivery of a controlled substance (720 ILCS 570/401(d) (West 2014)), and delivery of a controlled substance within 1000 feet of a place of worship (720 ILCS 570/407(b)(2) (West 2014)). The State moved to *nolle prosequi* the delivery within 1000 feet of a place of worship count and the case proceeded to a jury trial.

¶ 4 At trial, Chicago police officer Jose Rojas testified that, on February 21, 2014, he was the “buy” officer for an undercover narcotics investigation. Rojas had \$30 in prerecorded 1505 funds with which he planned to purchase narcotics. Prior to the transaction, Rojas recorded the serial numbers of the bills by initialing them on his funds sheet. After parking his undercover car, Rojas rode a bicycle westbound on Chicago Avenue before turning southbound on to St. Louis Avenue. As he turned, defendant yelled to him “Yo, yo, over here. What you need?” Rojas believed that defendant was attempting to sell him narcotics. He rode to defendant and told him that he wanted “three blows,” which was street terminology for heroin. Defendant reached into his front right jacket pocket and removed three clear Ziplock bags containing a white powdered substance that Rojas believed to be heroin. Rojas gave defendant the \$30 in prerecorded 1505 funds in exchange for the suspect heroin.

¶ 5 Rojas returned to his undercover car where he radioed a brief description and location of defendant to the enforcement and surveillance officers. After the other officers radioed back that they had detained defendant, Rojas proceeded to the 700 block of North St. Louis Avenue where he positively identified defendant as the individual who sold him the narcotics. Rojas returned to the station where he inventoried the narcotics and prepared a supplementary report, which indicated the serial numbers of the prerecorded 1505 funds that he used to complete the purchase. Rojas admitted that his report mistakenly stated that he saw defendant on North

Trumbull Avenue instead of North St. Louis Avenue. Rojas also admitted that he initialed the wrong serial number for the \$20 dollar bill on his 1505 prerecorded funds sheet. He explained that he mistakenly initialed the serial number directly above the number of the \$20 bill that he used in the transaction. He maintained that the serial numbers he listed in the supplemental report were correct.

¶ 6 Chicago police officer William Lepine testified that he was the surveillance officer for the undercover narcotics investigation team. He and his partner, Officer Hubert, were in a “covert vehicle” parked on Chicago Avenue, facing eastbound. Lepine estimated that defendant was standing 30 to 50 feet away from his car. When Rojas rode his bicycle into the area, Lepine heard defendant yell in Rojas’s direction. He then saw Rojas move toward defendant, engage in a transaction, and ride away on his bicycle. Lepine received a radio communication from Rojas describing defendant and the area where the narcotics transaction had occurred. After the communication from Rojas, Lepine saw enforcement officers arrive on the scene and arrest defendant. Lepine returned to the police station where his partner prepared a surveillance report. Lepine admitted that Hubert’s report mistakenly identified “Murray Edwards” as the person from whom the narcotics were recovered. He explained that a supplemental report was a “basic thing” that officers followed and it was “possible that a different name was used from before [and] never got erased or switched out.”

¶ 7 On cross-examination, Lepine acknowledged that he did not utilize any video or audio equipment to record the hand-to-hand transaction between Rojas and defendant.

¶ 8 Chicago police officer Patrick Wherfel testified that he was the enforcement officer for the undercover narcotics investigation. He stated that, after receiving a radio communication

from Rojas, he approached defendant and detained him. A minute later, Rojas drove by and radioed a positive identification. Wherfel placed defendant in custody and transported him to the police station where he was processed and searched. During the search, officers recovered the prerecorded 1505 funds and an additional \$94 in United States currency.

¶ 9 Hasnain Hamyat, an employee with the Illinois State Police Forensic Science Center, testified that the powder recovered by the officers during the narcotics investigation tested positive for 0.2 grams of heroin.

¶ 10 Defendant testified that, as he exited a corner store at the intersection of Chicago Avenue and St. Louis Avenue with his friend, he was stopped by Wherfel and another officer. Wherfel told defendant to come toward his car and defendant complied. Wherfel searched defendant and took his wallet and cellular phone. The officers then walked to a nearby alley where they had a conversation that defendant did not hear. The officers returned and arrested defendant.

¶ 11 Lepine testified in rebuttal that he did not see defendant enter a corner store at any point during the surveillance. He also testified that defendant was alone when enforcement officers detained him.

¶ 12 During closing arguments, defense counsel argued that the discrepancies between the officers' testimony and their reports called into question their credibility. Specifically, counsel argued that the officers rely on their contemporaneous reports when testifying to "something that happened a really long time ago," and, given the admitted mistakes in these reports, the officers could not be trusted.

¶ 13 In rebuttal argument, the State contended that it was not asking the jury to rely on the police reports because the reports "are not evidence." The State explained that, in lieu of police

reports, a trial consists of “live witnesses,” whose credibility a jury can determine after being able to “look [the witnesses] in the eye.” The State then made the following remarks:

“So when you go back into the jury room, and inevitably somebody says, Yeah, but what about those reports, move on to another topic. Reports aren’t evidence. Don’t ask for them because the judge can’t give them to you. You have the evidence. The evidence is the live testimony, it’s the bags of drugs, and it’s the photograph that all the witnesses got to see and mark. That’s real evidence. And that, ladies and gentlemen, is evidence that you can base your conviction on in this case.”

¶ 14 After deliberation, the jury found defendant guilty of delivery of a controlled substance. Defendant filed a motion for a new trial. The court denied his motion and sentenced him to eight years’ imprisonment.

¶ 15 On appeal, defendant contends that his trial counsel was ineffective for failing to object to several of the prosecutor’s statements during rebuttal. Specifically, he argues that his counsel should have objected to the prosecutor’s statements that police reports were not “real evidence” and the jurors should “move on” to another topic if a juror brought up the discrepancies in the police reports.

¶ 16 We evaluate claims of ineffective assistance of counsel under the two-prong approach set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Givens*, 237 Ill. 2d 311, 330-31 (2010). To prevail on a claim of ineffective assistance, a defendant must first demonstrate that counsel’s performance was deficient by showing that “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland*, 466 U.S. at 687; see also *People v. Coleman*, 183 Ill. 2d 366, 397

(1998). In so doing, the defendant “must overcome the strong presumption that the challenged action or inaction of counsel was the product of sound trial strategy and not of incompetence.” *Coleman*, 183 Ill. 2d at 397. Second, the defendant must show he was prejudiced by counsel’s deficient performance, which means that there must be a reasonable probability that, but for defense counsel’s deficient performance, the result of the proceeding would have been different. *People v. Brown*, 2015 IL App (1st) 122940, ¶ 47. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* Failure to establish either prong precludes a finding of ineffective assistance of counsel. *People v. Henderson*, 2013 IL 114040, ¶ 11. A reviewing court need not examine counsel’s performance where it may dispose of defendant’s claim based on lack of prejudice. *People v. Brown*, 2017 IL App (1st) 142877, ¶ 55.

¶ 17 Here, we find that counsel did not render ineffective assistance because, in light of the evidence presented at trial, defendant cannot show that he was prejudiced by counsel’s failure to object to the prosecutor’s remarks. Stated differently, defendant cannot show a reasonable probability that, but for counsel’s decision not to object to the remarks, he would have been acquitted. The evidence showed that Rojas bought \$30 worth of heroin from defendant with prerecorded 1505 funds, after which he returned to his vehicle and relayed a description of defendant to other officers. Lepine, the surveillance officer working with Rojas, testified that he saw the entire transaction from a distance of 30 to 50 feet. Both Rojas and Lepine identified defendant as the person who sold heroin to Rojas. After defendant was arrested, a search of his person revealed that he possessed the prerecorded 1505 funds used by Rojas. Therefore, even assuming, *arguendo*, that counsel was deficient for failing to object to the prosecutor’s

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comments, defendant was not prejudiced by counsel's actions where the evidence of defendant's guilt was overwhelming.

¶ 18 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 19 Affirmed.