2018 IL App (1st) 160169-U

No. 1-16-0169

September 24, 2018

First 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. 14 CR 15522
	)	
CHRISTOPHER EVANS,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WALKER delivered the judgment of the court.
Presiding Justice Mikva and Justice Griffin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for possession of a controlled substance (cocaine) with intent to deliver over his contention that his trial counsel was ineffective for failing to request a limiting jury instruction regarding other crimes evidence.

¶ 2 Following a jury trial, defendant Christopher Evans was convicted of possession of a controlled substance (cocaine) with intent to deliver (720 ILCS 570/401(c)(2) (West 2014)) and sentenced to eight years' imprisonment. On appeal, he contends his trial counsel was ineffective

for failing to request a limiting jury instruction on the use of other crimes evidence. He also contends his mittimus should be corrected to accurately reflect the offense of which he was convicted. We affirm.

¶ 3 BACKGROUND

¶ 4 Defendant was charged by information with possession of more than 1 but less than 15 grams of cocaine with intent to deliver (720 ILCS 570/401(c)(2) (West 2014)). Prior to trial, defendant moved to quash his arrest and suppress evidence, which the court denied. The case then proceeded to a jury trial.

¶ 5 At trial, Chicago police officers Victor Razo and Lee Caldwell testified for the State. Their testimony showed that on July 31, 2014, the two officers, along with Officer Medina, were traveling in an unmarked vehicle near the area of 84th Street and Essex Avenue. Both officers observed the car in front of them, a Chevrolet Impala, was traveling at a high rate of speed. When the Impala approached an intersection, it failed to come to a complete stop before turning east on 83rd Street. Razo, the driver of the unmarked vehicle, followed the Impala and made the same eastbound turn on 83rd Street. The officers saw the Impala speeding southbound on Kingston Avenue, where it again failed to stop at a stop sign. Razo activated the emergency lights and siren. The Impala turned west on 84th Street and ultimately came to a stop in an alley between Essex and Kingston.

¶ 6 The driver of the Impala, whom the officers identified as defendant, exited the car, looked in the officers' direction, and then threw two objects over a nearby fence. Caldwell testified he saw that the items were plastic bags. Razo exited his vehicle, drew his weapon, and ordered defendant to the ground. Defendant complied and told the officers "all [I had] was

weed." Caldwell climbed the fence and recovered the two plastic bags that defendant had thrown. One of the bags contained suspect crack cocaine, and the other contained suspect marijuana. The first bag was a "medium sized sandwich bag" that contained eleven smaller bags. Ten of the smaller bags each contained ten individually wrapped bags of suspect crack cocaine, whereas the eleventh smaller bag contained five individually wrapped bags of suspect crack cocaine. In total, the bag contained 105 smaller bags of suspect crack cocaine. Razo explained that based on his experience participating in approximately 500 narcotics arrests, this packaging is known as a "jab" and is used to distribute narcotics for sale. Caldwell testified that in his experience, the bag containing suspect marijuana was typical for personal use. After a custodial search of defendant, officers recovered $2,540 from his front pocket. His car was also searched and three cellular phones were recovered.

¶ 7 The parties stipulated, if called, forensic chemist Lenetta Watson would testify she tested and weighed 59 of the smaller bags of suspect crack cocaine. All 59 bags tested positive for the presence of cocaine, and their actual weight was 5.3 grams. Watson would estimate the remaining 46 bags weighed 4.1 grams.

¶ 8 Prior to closing arguments, the court and parties discussed the proposed jury instructions. Neither party proposed an instruction limiting the purposes for which other crimes evidence could be considered, nor was any such instruction tendered to the jury.

¶ 9 After deliberation, the jury found defendant guilty of possession of a controlled substance with intent to deliver. Defendant moved for a new trial, alleging, *inter alia*, the court erred in not *sua sponte* giving Illinois Pattern Jury Instruction Criminal 4th No. 3.14 (IPI 3.14), which instructs jurors that when evidence of a defendant's other crimes or wrongs is admitted, it may

only be considered for certain purposes. Specifically, defendant argued a limiting instruction was necessary after the State presented evidence that defendant possessed marijuana, a crime for which he was not charged. The court denied defendant's motion, stating "the mere fact that there was not a limiting instruction with regard to the marijuana" did not justify a new trial "in light of all the evidence against defendant." The court then sentenced defendant to eight years' imprisonment.

¶ 10 ANALYSIS

¶ 11 On appeal, defendant first contends his counsel was ineffective for failing to request IPI 3.14. Alternatively, he argues the trial court abused its discretion by not *sua sponte* giving the limiting instruction.

¶ 12 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 counsel's performance was deficient by showing "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 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.

¶ 13 Here, we find defendant cannot show he was prejudiced by counsel's failure to request IPI 3.14. Stated differently, there is no reasonable probability the outcome of defendant's trial would have been different had his counsel requested, and the court given, IPI 3.14. The evidence at trial showed that defendant, after committing several traffic violations, did not immediately stop when officers activated their emergency lights. When he did eventually come to a stop, he immediately exited the vehicle, looked in the officers' direction, and tossed two plastic bags over a nearby fence. After defendant was detained, Caldwell climbed the fence and recovered the two items. One of the recovered items was a bag containing 105 smaller bags, 59 of which tested positive for crack cocaine. Razo testified, based on his experience, the cocaine was packaged to be sold. Additionally, defendant also had over $2,500 in his pocket and three cellular phones. See *People v. Robinson*, 167 Ill. 2d 397, 408 (1995) (listing factors that courts have found probative of intent to deliver, including possession of a quantity of narcotics too large for personal use, the manner in which the narcotics is packaged, possession of large amounts of cash, and possession of cellular phones). Given the overwhelming evidence of defendant's guilt, there was no reasonable probability that, but for counsel's failure to request IPI 3.14, the outcome of trial would have been different. Accordingly, because defendant cannot show that he was prejudiced by counsel's performance his ineffective assistance of counsel claim fails.

¶ 14 Defendant alternatively argues that the trial court erred by failing to issue IPI 3.14 *sua sponte*. Contrary to defendant's argument, "the circuit court itself does not have a duty to *sua sponte* deliver [IPI 3.14]." *People v. Maya*, 2017 IL App (3d) 150079, ¶ 94 (citing *People v. Mullen*, 80 Ill. App. 3d 369, 375 (1980)). As such, the court did not abuse its discretion by failing to, *sua sponte*, deliver IPI 3.14.

¶ 15 Defendant also contends his mittimus should be corrected to accurately reflect the offense of which he was convicted. The State responds defendant's mittimus need not be amended where it properly identifies the offense. We agree with the State.

¶ 16 Defendant was convicted of possession of cocaine with intent to deliver under section 401(c)(1) of the Illinois Controlled Substances Act (720 ILCS 570/401(c)(2) (West 2014)). The title of that offense is "Manufacture or delivery unauthorized by Act," and the offense is defined as follows: "it is unlawful for any person knowingly to manufacture or deliver, or possess with intent to manufacture or deliver, a controlled substance * * *." 720 ILCS 570/401 (West 2014). Defendant's mittimus identifies the offense as "MFG/DEL 1<15 GR COCAINE/ANLG," referring to the aforementioned title of the offense of which he was convicted. Given that defendant's mittimus properly identifies the offense, we conclude the mittimus does not need to be amended.

¶ 17 Affirmed.