

No. 1-16-0513

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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. 12 CR 12911 (01) &
	)	12 CR 12913 (01)
	)	
DERAL WILLIS,	)	The Honorable
	)	Thomas V. Gainer, Jr.,
Defendant-Appellant.	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* In this direct appeal, we affirm the judgment of the circuit court. Defendant’s ineffective assistance of trial counsel claim fails because any motion to suppress the victims’ showup identifications would not have been meritorious, and thus defense counsel’s failure to file a motion to suppress resulted in no prejudice to defendant. Furthermore, the circuit court did not abuse its discretion in joining the two cases where the charged offenses arose out of the same comprehensive transaction and defendant was not prejudiced by the joinder.

¶ 2 Defendant Deral Williams was charged by two separate indictments following two armed robberies involving three victims. The circuit court granted the State’s motion to join the two

indictments for trial. A jury found defendant guilty of three counts of armed robbery and one count of aggravated battery with the use of a deadly weapon. In this direct appeal, defendant argues that his trial counsel was ineffective for failing to file a motion to suppress the victims' showup identifications and that the circuit court erred in granting the State's motion to join the two cases for trial. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3

### I. BACKGROUND

¶ 4 Defendant and his co-defendant Robert Davis were arrested and charged in two separate indictments. This appeal only concerns defendant. In case No. 12 CR 12911, the State charged defendant and Davis in connection with the armed robbery of Ryan Hammond and Hartley Miller, which occurred at 12:30 a.m. on June 13, 2012, at 1755 West Superior Street in Chicago. The State charged defendant and Davis with two counts of armed robbery, four counts of unlawful use or possession of a weapon by a felon (UUWF), six counts of aggravated unlawful use of a weapon (AUUW), and two counts of aggravated unlawful restraint. In case No. 12 CR 12913, the State charged defendant and Davis in connection with the armed robbery of Alexandra Young, which occurred at 12:55 a.m. on June 13, 2012, at 2252 West Hirsch Street in Chicago. The State charged defendant and Davis with one count of armed robbery, three counts of UUWF, nine counts of AUUW, one count of aggravated unlawful restraint, and one count of aggravated battery.

¶ 5 Before trial, the State moved to join case Nos. 12 CR 12911 and 12 CR 12913, arguing that the two separate robberies were part of the same "comprehensive transaction," as the robberies occurred within one hour of each other and within the same geographical area. The circuit court granted the State's motion for joinder over defendant's objection. The State then nol-prossed all of the UUWF, AUUW, and aggravated unlawful restraint counts.

¶ 6 At the jury trial, Miller and Hammond testified that on June 13, 2012, shortly after midnight, they were leaving a friend's apartment on the 1700 block of West Superior Street. As they walked to their car on a well-lit street, two men approached them from behind. Defendant, a black male with shoulder-length dreadlocks, was wearing a navy blue or dark hoodie and he stood next to Hammond, while Davis, a black male with short hair and the shorter of the two men, was wearing a red hoodie and stood next to Miller. Miller and Hammond testified that defendant pointed a gun at Hammond and demanded everything they had. Miller handed her purse to Davis and Hammond gave his wallet and cell phone to defendant. Defendant and Davis told Miller and Hammond to run. Miller and Hammond quickly walked away and hid in some bushes, from which they observed defendant and Davis drive away in a red SUV. Miller and Hammond returned to their friend's apartment and called the police. When the police officers arrived, Miller and Hammond gave a description of what happened. The officers left, returned 20 minutes later, and then asked Miller and Hammond to look at two people the police had detained. The officers took Miller and Hammond to a location near the intersection of Augusta Boulevard and Milwaukee Avenue, where officers removed two people out of separate police cars, one after another. Miller and Hammond, who were seated together in a police car, identified the two men as the people who robbed them. The police officers also showed Miller and Hammond their cell phones and Miller's purse, which they identified.

¶ 7 Alexandra Young testified that on June 13, 2012, shortly before 1 a.m., she was riding her bicycle near the intersection of Hirsch Street and Oakley Boulevard. A red SUV was ahead of her and was stopped at a stop sign. A man, whom Young identified as defendant, exited the red SUV and walked towards her, grabbed her handlebars to stop her from riding her bike and demanded that she give him her backpack, which contained her Kindle, cell phone, wallet, bike

lock, and sunglasses. When Young refused, defendant threatened to shoot her and flashed a gun in his waistband. Young saw another person approaching from where the red SUV was parked; when she looked toward the approaching person, defendant hit her twice in the face with the gun. The other person demanded her backpack before defendant physically removed it from Young's shoulders. The assailants told Young to leave and she rode her bike to Western Avenue where she flagged down a passing police car. The officers took Young to her apartment where she unsuccessfully attempted to track her cell phone from her computer. The officers then took her to a car that she identified as the red SUV that the assailants were driving. The officers then took Young to another location and asked her to view two men who were brought out of separate police cars. Young was unable to identify the first man, but identified the second man, defendant, as the one who hit her in the face with his gun.

¶ 8 Officer Craig Davis testified that on June 13, 2012, around 12:30 a.m., he received a call about a robbery in progress. The suspects were described as two black males, one wearing a dark hoodie, the other wearing a red hoodie. Officer Davis and his partner saw two men matching that description on Western Avenue. As the officers approached the men, defendant ran down an alley and Officer Davis followed. Defendant was cradling his arm as he ran, and Officer Davis testified that he heard the sound of metal hitting the ground coming from someone's backyard. Officer Davis went to the location where he heard the sound while other officers continued to pursue defendant. Officer Davis found a black semi-automatic handgun lying in a gangway. Officer Jeffrey Kriv testified that he joined the pursuit of defendant and found him lying in a flower bed near 2317 West Cortez Street.

¶ 9 Officer Margaret Segreti testified that she responded to a call at Western Avenue and Augusta Boulevard, and that when she arrived, officers had Davis in custody. Davis was wearing

a red sweatshirt. Another officer handed Segreti a set of keys and she looked for and found a red Dodge Durango parked near 2347 West Cortez Street. Segreti used the keys to open the driver's side door and she saw three iPhones and a Kindle on the front seats of the SUV. Furthermore, Sergeant Stanley Snarkis recovered a purse containing Miller's identification card in the middle of the street near 1938 West Huron Street.

¶ 10 Sergeant Joaquin Mendoza was assigned to Young's case. He learned that Young had identified defendant at a showup identification. Mendoza did not show Young a photo array because she had already made a physical identification. Mendoza acknowledged that police guidelines state that witnesses should be separated for showups, and that once probable cause has been established through one showup, additional showups should not be conducted with additional witnesses.

¶ 11 The parties stipulated that a forensic scientist was unable to identify whether Young's DNA was on the handgun found by Officer Davis.

¶ 12 The jury found defendant guilty of three counts of armed robbery and one count of aggravated battery. The circuit court sentenced defendant, based on his criminal history, as a Class X offender, to 25 years in prison for each of the armed robbery convictions and 5 years for aggravated battery, with the sentences all running concurrently. Defendant filed a timely notice of appeal.

¶ 13

## II. ANALYSIS

¶ 14 On appeal, defendant first argues that his trial counsel provided ineffective assistance by failing to file a motion to suppress the victims' showup identifications. He contends that the showup identifications were highly suggestive, that the procedures used in conducting the showups were improper, and that the witnesses did not have an independent origin for their

identifications. Defendant argues that the identifications were inadmissible and he was therefore prejudiced by his trial counsel's failure to move to suppress the identifications. We disagree.

¶ 15 Criminal defendants have a constitutional right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 684-85 (1984); U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. A defendant is denied effective assistance where his counsel's performance fell below an objective standard of reasonableness, and absent counsel's deficient performance, there is a reasonable probability that the outcome of the trial would have been different. *Strickland*, 466 U.S. at 684-85. Where a claim of ineffective assistance of counsel is based on trial counsel's failure to file a motion to suppress, "in order to establish prejudice under *Strickland*, the defendant must demonstrate that the unargued suppression motion is meritorious, and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed." *People v. Henderson*, 2013 IL 114040, ¶ 15.

¶ 16 Where defendant's "claim of ineffectiveness is based on counsel's failure to file a suppression motion, the record will frequently be incomplete or inadequate to evaluate that claim because the record was not created for that purpose." *Id.* ¶ 22. However, we must carefully consider every ineffective assistance of counsel claim to determine whether the record is sufficient to resolve the claim on direct review. *People v. Veach*, 2017 IL 120649, ¶ 48. In this case, we believe that the record sufficiently reflects all of the testimony that would be necessary to evaluate defendant's claim that his counsel was ineffective for failing to file a motion to suppress the victims' showup identifications. We find that the record demonstrates that any motion to suppress the witness identifications would not have been meritorious.

¶ 17 The success of a suppression motion first depends on defendant "proving that the identification procedures were so unnecessarily suggestive as to give rise to a substantial

likelihood of an irreparable misidentification.” *People v. Prince*, 362 Ill. App. 3d 762, 771 (2005). A court looks to the totality of the circumstances in evaluating the claim. *Id.* The suggestiveness requirement involves inquiring into both the suggestiveness of the identification and the necessity of the suggestive identification. *People v. Follins*, 196 Ill. App. 3d 680, 688 (1990). If defendant meets his burden, the State must then show by clear and convincing evidence that the witness identifications have an independent basis of reliability. *Prince*, 362 Ill. App. 3d at 771.

¶ 18 Here, any motion to suppress the identifications would have failed because defendant cannot show that the identification procedures were so unnecessarily suggestive as to give rise to a substantial likelihood of an irreparable misidentification. Defendant relies primarily on *People v. Blumenshine*, 42 Ill. 2d 508 (1969) to argue that having Miller and Hammond seated together at the time of their identifications was improper. *Blumenshine* is distinguishable, as that case involved police officers bringing numerous witnesses from entirely separate incidents and offenses together to identify the defendant in a police station several weeks after the crime occurred. *Id.* at 509-10. Our supreme court found that the showup was impermissibly suggestive, as there were no circumstances to justify a showup three weeks after the alleged crime, and it was improper to have the defendant viewed at the same time by witnesses to several different offenses. *Id.* at 513. Here, officers had Miller and Hammond—victims of the same crime—view a showup less than 30 minutes after they were robbed and within a little over one mile from the scene of the robbery. The situation here bears little resemblance to the situation in *Blumenshine*. The fact that Miller and Hammond made their identifications together may have been slightly suggestive, but under circumstances where the victims give detailed descriptions of the height, clothing, and hair style of the offenders after having a good opportunity to view the offenders a

short time earlier, we cannot say that it so unreasonable or unnecessary as to give rise to a substantial likelihood of an irreparable misidentification. Defendant has not demonstrated that Miller and Hammond's joint identification was unnecessarily suggestive.

¶ 19 Defendant also argues that there was a "substantial risk of misidentification" based on studies—which are *dehors* the record—discussing the influence of co-witnesses on an eyewitness's memory. Defendant fails to direct our attention to any portion of Miller or Hammond's testimony that might suggest that their identifications were affected by one another. Miller and Hammond each testified that during the robbery, they were only a few feet away from the robbers and could see the robbers' faces, which were not covered. Miller and Hammond also observed the robbers' hair, height, and clothing, and both identified defendant and Davis as the men that robbed them. We find that defendant has not met his burden of proving, under the circumstances here and based on the record before us, that there was a substantial likelihood of irreparable misidentification.

¶ 20 Finally, defendant contends that the showup viewed by Young was done in violation of Chicago police department procedures, namely Special Order S062, which provides that "if probable cause for the offense in question is established through one showup, do not conduct additional showups with additional witnesses. Instead use a photo or live lineup for additional witnesses." Defendant argues that there was no reason for Young to view a showup because police already had probable cause to arrest defendant and Davis based on Miller and Hammond's identifications. We fail to see how having Young, who was robbed in a separate armed robbery, view a showup a short period of time later in order to make an identification of her assailants was improper or suggestive. Young was a victim of an armed robbery by two offenders and had been hit twice in the face with a gun by an assailant; learning whether Young could make an



identification would determine whether the officers needed to continue searching for Young's assailants. Special Order S062 appears to relate to multiple showups involving witnesses to the same offense, not for witnesses involved in separate offenses. In any event, a violation of this police department procedure in this case, if any, was not a sufficient basis from which the circuit court could have concluded that Young's showup identification of defendant was unnecessarily suggestive.

¶ 21 In sum, defendant cannot demonstrate that his trial counsel rendered ineffective assistance of counsel by failing to file a motion to suppress the victims' showup identifications. Based on the record before us, any such motion would have failed because defendant could not have proved "that the identification procedures were so unnecessarily suggestive as to give rise to a substantial likelihood of an irreparable misidentification." *Prince*, 362 Ill. App. 3d at 771. Under our supreme court's holding in *Henderson*, defendant cannot establish prejudice under *Strickland* (see *Henderson*, 2013 IL 114040, ¶ 15), and thus his ineffective assistance of counsel claim must fail.

¶ 22 Defendant next argues that the circuit court abused its discretion by granting the State's motion for joinder. Defendant argues that the armed robbery of Miller and Hammond and the armed robbery and aggravated battery of Young were not part of the same comprehensive transaction, and that he was prejudiced by the joinder. We again disagree.

¶ 23 Charges against a criminal defendant may be joined if the offenses are based on two or more acts that are part of the same comprehensive transaction, unless the defendant is prejudiced by joinder of the charges. *People v. Patterson*, 245 Ill. App. 3d 586, 587 (1993). The circuit court has broad discretion in deciding whether to join or sever separate charges, and we review the circuit court's decision for an abuse of discretion. *Id.* at 588. The circuit court abuses its

discretion where its decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the circuit court. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). Here, we find no abuse of discretion.

¶ 24 When determining whether two or more acts were part of the same comprehensive transaction, the most important factors to consider include “the proximity of time and location of the various charges; the identity of evidence which would be presented to prove each charge; whether the offenses shared a common method; and whether the same or similar evidence would establish the elements of the offenses.” *People v. Jackson*, 233 Ill. App. 3d 1089, 1098 (1992). Here, the circuit court considered those factors, finding the two robberies occurred near each other both in time and in geographical location and that both offenses involved a vehicle and a weapon. The circuit court also considered defendant’s argument that the State was really attempting to introduce prejudicial “other crimes” evidence in order to show propensity. The circuit court rejected that argument, finding that the two crimes shared a *modus operandi*.

¶ 25 As to the first factor, the robberies of Miller and Hammond and Young occurred within half an hour of each other and less than one and a half miles apart. The short timeframe and small geographic area in which the two crimes occurred weighed strongly in favor of joinder.

¶ 26 The second factor asks not whether evidence of the two crimes is similar or identical, but whether the court can identify evidence linking the crimes. *People v. Walston*, 386 Ill. App. 3d 598, 605 (2008). Here, in both robberies, defendant and Davis were identified by the victims as black males wearing different color hoodies, with distinctive hairstyles, driving a red SUV and possessing a handgun. Officer Davis recovered a handgun after chasing defendant. In both cases, the victims testified that they saw the suspects in or around an SUV, and officers testified that they observed numerous items in the red Dodge Durango that matched the description of items

taken during the two robberies. There was, therefore, significant evidence linking the two crimes together. This factor weighed strongly in favor of joinder.

¶ 27 The third factor—whether the offenses shared a common method—often considers whether the offenses were part of a common scheme, with each of the offenses supplying a piece of a larger criminal endeavor. *Id.* at 607-08. Here, given the proximity in time and geographic location, the circuit court could reasonably conclude, for the purposes of joinder, that defendant and Davis were engaged in an armed robbery spree involving random victims on the street in a specific area of the city. This factor also weighed strongly in favor of joinder.

¶ 28 Finally, the fourth factor considers whether the same or similar evidence would establish the elements of the offenses. Here, all of the armed robbery offenses required the State to show that defendant had in his possession or was otherwise armed with a firearm at the time that he took the victims' property. This factor also weighed in favor of joinder, however not as strongly as the other three factors.

¶ 29 In sum, the circuit court could reasonably conclude that the joinder factors weighed in favor of joinder.

¶ 30 Defendant contends that joinder of the offenses caused him prejudice because the jury heard evidence of “other crimes”—namely, the other charged offenses for which he was being tried—that would have not been admissible had there been separate trials. Defendant contends the evidence of either armed robbery would not be admissible as other crimes evidence at the trial of the other because there was no *modus operandi*. Once again, we disagree.

¶ 31 The circuit court could reasonably conclude, given the obvious similarities between the offenses, that evidence of one armed robbery would be admissible at the trial of the other in order to establish *modus operandi*. As noted above, the two robberies occurred in the same

neighborhood and in close succession. Both robberies involved defendant and Davis approaching the victims on the street and demanding the victims' possessions. Both robberies involved a red SUV, either as the means to approach the victims or as a means to flee the scene of the robbery. In both offenses, defendant brandished a gun. Furthermore, after obtaining the victims' possessions, defendant told the victims to leave. There were more than enough similarities between the offenses that the circuit court could reasonably conclude that evidence of one robbery would be admissible at the trial of the other to establish *modus operandi*. Therefore, joinder of the offenses would not result in any prejudice to defendant, and the circuit court did not abuse its discretion in joining the offenses for trial.

¶ 32

### III. CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 34 Affirmed.