2018 IL App (2d) 170324-U
No. 2-17-0324
Order filed August 14, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiff-Appellant,	)	
	)	No. 99-CF-2060
	)	
JOHNNY M. RUFFIN,	)	Honorable
	)	Ronald J. White,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Hudson and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's decision granting a new trial based on a *Brady v. Maryland*, 373 U.S. 83 (1963), violation was manifestly erroneous; reversed and remanded with directions to reinstate defendant's convictions and sentences.

¶ 2 Following a jury trial, defendant, Johnny M. Ruffin, was convicted of one count of second-degree murder for killing Brad Plaza, and two counts of aggravated battery with a firearm for shooting Michael Vella and Christopher Cummings. The trial court sentenced defendant to consecutive terms of 25 years' imprisonment for each of the two counts of aggravated battery and 19 years' for second-degree murder. We affirmed defendant's convictions and sentences on

direct appeal. *People v. Ruffin*, No. 2-00-0336 (2001) (unpublished order under Supreme Court Rule 23) (*Ruffin I*).

¶ 3 The present appeal concerns the trial court's ruling granting defendant's postconviction petition after a third-stage hearing based on a *Brady v. Maryland*, 373 U.S. 83 (1963), violation. The State had failed to disclose a June 1997 police report regarding a misdemeanor battery that Cummings had committed in Ogle County, Illinois (the Cummings report). On appeal, the State concedes the report was not turned over to defendant but contests whether it was favorable and material. We reverse and remand the cause with directions.

¶ 4 I. BACKGROUND

¶ 5 On June 26, 1999, defendant shot and killed Plaza. Defendant also shot and injured Cummings and Vella. After shooting the victims, defendant then stole Rosie Lenza's car at gun point. The police engaged in a high-speed pursuit, which resulted in defendant crashing the car. Defendant pointed his gun at the police, who shot defendant in response. Defendant's counsel asserted self-defense at trial.

¶ 6 On February 2, 2000, following a jury trial, defendant was convicted of one count of second-degree murder and two counts of aggravated battery with a firearm. On September 21, 2001, we affirmed defendant's convictions and sentences in *Ruffin I*. The facts of the trial are set forth in *Ruffin I* and will be repeated only as needed in considering the contentions of the parties.

¶ 7 On March 9, 2014, defendant filed a third-amended petition for postconviction relief. In the only claim relevant to this appeal, defendant argued that the State committed a *Brady* violation by failing to disclose the exculpatory evidence that Cummings was charged with misdemeanor battery in 1997.

¶ 8 The matter proceeded to an evidentiary hearing on April 24, 2017. At the hearing, the State did not contest that the Cummings report was not turned over to defendant during the pendency of the original case. Rather, it argued that the failure to produce the evidence did not prejudice defendant.

¶ 9 The following evidence was presented at the hearing. Lieutenant Clint Myers, from the Ogle County Sheriff's Office, testified that he and Sergeant Kenneth Wendt were involved in a June 1997 investigation of a battery incident involving Cummings. Myers stated that neither he nor Wendt observed the actual incident, but they relied upon what they were told by others for purposes of their investigation and report. Over the State's objection to hearsay, Myers was permitted to testify regarding the Cummings report.

¶ 10 Myers stated that three individuals were arrested for battery as a result of that incident, one of whom was Cummings. Jason Keyhoe had reported that, while he was attending a bonfire party, he was "assaulted" and injured by Cummings and some of Cummings' friends. According to witnesses, Keyhoe was talking to Cummings' girlfriend, Cummings was angry about that and struck and kicked Keyhoe, and others joined Cummings in punching Keyhoe. The witnesses' statements reported that Brad Plaza (the deceased victim in the present case) pulled Cummings away from Keyhoe during the incident. Myers also testified that Cummings claimed that Keyhoe was the first aggressor in the incident and that Keyhoe was intoxicated at the time, but Cummings was not. Cummings claimed that he did not know the other people involved in the fight, but he admitted that he had struck Keyhoe. Based on his experience, Myers stated that he did not believe that Cummings was truthful.

¶ 11 Defendant testified that in 2011, he obtained the Cummings report from Ogle County under the Freedom of Information Act, which showed that Cummings received a sentence of misdemeanor supervision for the 1997 incident. Defendant was not a part of the 1997 incident.

¶ 12 One of defendant's attorneys, Judge Gary V. Pumilia,[1] also testified. He stated that Cummings was an important State witness in defendant's trial because he was shot in the leg by defendant, leading to defendant's conviction for aggravated battery with a firearm. Pumilia testified that he briefly reviewed the Cummings report before he testified and it appeared important because it contained information regarding Cummings' prior history for violence.

¶ 13 Pumila further stated that, if he had received the Cummings report prior to defendant's trial, he would have sent investigators to contact the witnesses named in the report to see if the information could be used at defendant's trial. Pumilia testified that it was "possible" he would have brought up the incident at trial if he had known about it. Pumilia stated that, on the face of it, part of the Cummings report reflected badly on Cummings, but part of it would reflect positively on Plaza. Pumilia could not definitively say whether or not he would have used the Cummings report at defendant's trial. Pumilia further testified that he would have been concerned that Cummings' battery information could have led to a mini-trial and distracted the jury.

¶ 14 The trial court determined that the State had committed a *Brady* violation with respect to the Cummings report and ordered a new trial. Because of the similarities of the facts in both cases and the testimony presented by defendant, the trial court found that there was a reasonable

[1] At the time of defendant's trial, Pumilia was the Winnebago County Public Defender and later became a Winnebago County judge.

probability that had the evidence been disclosed to the defense, the result of the proceedings would have been different. The State timely appeals.

¶ 15 II. ANALYSIS

¶ 16 The State challenges the judgment of the trial court granting defendant's third-amended postconviction petition, in part, after a third-stage evidentiary hearing and remanding for a new trial based on a *Brady* violation. We will not reverse the trial court's decision following a third-stage evidentiary hearing on a postconviction petition where fact finding and credibility determinations are involved unless the decision is manifestly erroneous. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). " 'Manifest error' is defined as 'error which is "clearly evident, plain, and indisputable." ' " *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009) (quoting *People v. Morgan*, 212 Ill. 2d 148, 155 (2004), quoting *People v. Johnson*, 206 Ill. 2d 348, 360 (2002)). "Thus, a decision is manifestly erroneous when the opposite conclusion is clearly evident." *People v. Coleman*, 2013 IL 113307, ¶ 98.

¶ 17 To establish a *Brady* violation, the undisclosed evidence requires a showing that: (1) the undisclosed evidence is favorable to the accused because it is either exculpatory or impeaching; (2) the evidence was suppressed by the State either willfully or inadvertently; and (3) the accused was prejudiced because the evidence is material to guilt or punishment. *People v. Beaman*, 229 Ill. 2d 56, 73-74 (2008). "Evidence is material if there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed." *Id.* at 74. The materiality inquiry " 'is not a sufficiency of the evidence test' " (*People v. Coleman*, 183 Ill. 2d 366, 393 (1998) (quoting *Kyles v. Whitley*, 514 U.S. 419, 434 (1995)), and "a showing of materiality does not require demonstration by a preponderance that disclosure would have resulted ultimately in defendant's acquittal." *Id.* "Materiality is demonstrated 'by showing

that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.' " *Id*. (quoting *Kyles*, 514 U.S. at 435).

¶ 18 In the present case, the Cummings report was favorable to defendant, as it showed Cummings' propensity to attack. On the other hand, it was unfavorable to defendant in that it showed the deceased victim, Plaza, attempted to break up the argument between Keyhoe and Cummings. Defendant's trial defense counsel, Pumilia, stated that he would have investigated the Cummings report but would not necessarily have used it. But, the mere fact that the Cummings report is partly favorable evidence to defendant may satisfy the first *Brady* requirement. See *People v. Snow*, 2012 IL App (4th) 110415, ¶ 42.

¶ 19 Regarding the second prong in our *Brady* analysis, it is undisputed that the Cummings report was not turned over to the defense prior to trial. The State concedes this point.

¶ 20 We turn our attention to the third factor in our *Brady* analysis, namely, whether the Cummings report was material to guilt or punishment. Even if the withheld evidence is itself inadmissible, it may still be material evidence under *Brady* if it would have led to the discovery of admissible evidence. *People v. Del Prete*, 2017 IL App (3d) 160535, ¶ 47. Because defendant claimed self-defense at his trial, "appropriate evidence" tending to show past acts of aggression by Cummings might have been admissible to support defendant's version of events. See *People v. Lynch*, 104 Ill. 2d 194, 199-200 (1984).

¶ 21 The State maintains that it is speculative whether the witnesses could be located and whether they would testify consistent with the Cummings report. However, even assuming that the witnesses would appear and testify consistently with the Cummings report, defendant did not satisfy his burden that there was a reasonable probability that the outcome of the trial would have been different.

¶ 22 Defendant testified at his trial that Plaza approached him aggressively. Defendant claimed that he shot Plaza because he was scared that Plaza was grabbing for his gun. Showing Cummings' 1997 commission of a misdemeanor battery would not have any bearing on Plaza's propensity toward violence. In fact, the report showed Plaza was attempting to be a peacemaker in the earlier Ogle County incident. Furthermore, the report would not have provided sufficient evidence to justify shooting Plaza twice in his back, resulting in Plaza's death.

¶ 23 While the Cummings report suggests Cummings' possible aggression, there was no evidence at trial that Cummings acted aggressively toward defendant on the night of the shootings. It was Plaza, not Cummings, who approached defendant. Any evidence of Cummings' possible aggression would have no effect on the outcome of defendant's trial where the evidence showed that, after defendant shot Plaza, he shot both Cummings and Vella while they were running away from defendant.

¶ 24 Additionally, at trial there was exculpatory evidence concerning Cummings presented to the jury. Cummings had two confrontations with defendant prior to the shootings. In one incident, Cummings had chased defendant. In the other incident, Cummings had confronted defendant. Impeaching evidence showed that Cummings was a narcotics addict and an alcoholic, had a 1996 residential burglary conviction, for which a petition to revoke probation was pending, and had recently pled guilty to a DUI offense. While impeachment evidence may be considered material to guilt, it must be more than merely cumulative of other evidence presented at trial. *People v. Harris*, 206 Ill. 2d 293, 311 (2002).

¶ 25 Moreover, other evidence contradicted defendant's claim of self-defense. Vella stated that none of his friends were armed and none of them, except Dresser, touched defendant.

Defendant did not wait to report to law enforcement that he was attacked by the victims and was acting in self-defense. Instead, he left the scene of the crime, stole a car at gunpoint, led the police on a high speed chase, and the police shot him after he pointed a gun at them.

¶ 26 In sum, the evidence in the Cummings report would not contradict significant aspects of defendant's guilt, and thus could not reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdicts. See *Coleman*, 183 Ill. 2d at 393.

¶ 27 Defendant claims that the information from the Cummings report would have changed the result of certain trial court rulings regarding the jury instructions. Defendant argues that the court would not have given an instruction that he was the initial aggressor. However, no such instruction was given. The court did allow an instruction regarding the justifiable use of force by one who is the initial aggressor. The trial court correctly determined that the evidence theoretically supported a finding that defendant provoked the victim's use of force. Evidence consistent with the Cummings report would not have altered this ruling.

¶ 28 Defendant argues that the trial court would not have denied the requested instructions regarding forcible felonies of aggravated battery and mob action. The trial court specifically found:

> "[A]llowing the requested language, commission of the forcible felonies of mob action and aggravated battery is, as far as the aggravated battery is concerned, redundant and would be misleading to the jury.
>
> The instruction already says and allows the use of force of [*sic*] the defendant reasonably believes it necessary to prevent great bodily harm to himself [*sic*]. That is included within the definition of the offense of aggravated battery.
>
> * * *

> The court does not find that mob action comes within the—for purposes of this case and the evidence that has been introduced herein—within the definition of a forcible felony.
>
> * * *
>
> There is evidence of a group coming together and pursuing the defendant, and the court has considered the testimony of the defendant in this matter; but, for example, if the evidence had come in that this group was armed with weapons, that would be a completely different picture."

¶ 29 The trial court further added: "Excluding the phrase 'forcible felony of mob action,' the court finds, as I can see it, would not preclude the defense from arguing the gathering and pursuit by this group of the defendant." Thus, nothing in the Cummings report contains facts that would have changed the evidence that no one, other than defendant, was armed with a weapon when the incidents at issue in this case occurred. Moreover, as stated, Cummings, Vella, and Plaza were shot as they were running away from defendant, which would negate defendant's claims that it was necessary to prevent the felony of mob action, as well as, aggravated battery.

¶ 30 We note that the State raises the argument that the trial court did not use the proper legal standard in evaluating defendant's *Brady* claim. Whether the trial court used the proper standard is a legal question that we review *de novo*. *People v. Campos*, 349 Ill. App. 3d 172, 176 (2004). The State argues that comments made by the trial court suggest that the court was not actually considering whether the Cummings report would have likely altered the outcome of the trial, as is required for finding a *Brady* violation. Specifically, the State points to the following statements made by the trial court which it argues suggest that the court used an incorrect legal standard in evaluating defendant's *Brady* claim: (1) the Cummings report was required to be turned over so that defendant's attorneys would have had the information in order

to determine "whether or not it should have been presented before the jury;" (2) the court was not going to consider certain trial testimony in relation to the Cummings report because, "[t]he only issue is should that evidence of a prior conviction in another county have been turned over to the attorneys, Mr. Light and then Mr. Pumilia, that wasn't turned over. So you're asking me to look at that and say, well, Judge [*sic*], it would not have had made any difference. That would be up to the 12 people;" and (3) the issue before the court was to determine if the jury had heard about the police report regarding Cumming's prior battery and that there was a "possibility" that the jury could have found defendant not guilty of the second-degree murder of Plaza because of self-defense.

¶ 31 Despite these confusing statements, defendant, and the State as well, note that, in ruling on the matter in defendant's favor, the court found that the evidence was "very material" and that there was a reasonable probability that had the evidence been disclosed to the defense, the result of the proceedings would have been different. Therefore, it appears that the trial court applied the proper standard in determining that there was a constitutional violation pursuant to *Brady*. Nevertheless, even if the correct standard was applied, defendant has not shown the Cummings report was material to his case.

¶ 32 In sum, we find that the trial court's decision granting a new trial based on a *Brady* violation was manifestly erroneous, as the opposite conclusion was clearly evident. See *Coleman*, 2013 IL 113307, ¶ 98.

¶ 33 III. CONCLUSION

¶ 34 For the foregoing reasons, the judgment of the circuit court of Winnebago County is reversed. Accordingly, we direct the court to reinstate defendant's convictions and sentences.

¶ 35 Reversed and remanded with directions.