

NOTICE

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2018 IL App (4th) 150953-U

No. 4-15-0953

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 4, 2018
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
RICKEY G. McCLELLAN,)	No. 14CF1154
Defendant-Appellant.)	
)	Honorable
)	Timothy J. Steadman,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Harris and Justice Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding defendant (1) forfeited his judicial estoppel and due process arguments by failing to raise them below and (2) failed to show the evidence was insufficient to find him guilty beyond a reasonable doubt of obstructing justice.

¶ 2 Defendant, Rickey G. McClellan, appeals from a jury’s verdict finding him guilty of obstructing justice. On appeal, defendant argues his conviction should be reversed either on judicial estoppel and due process grounds or because the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Information

¶ 5 On September 19, 2014, the State charged defendant by information with two

counts of obstructing justice (720 ILCS 5/31-4(a) (West 2012)). Count I alleged, “on or about May 8, 2013, *** defendant, with the intent to obstruct the defense of Cameron Slater, knowingly furnished false information to [Detective Joe Patton] [by] advis[ing] [him] that Toby Britton was not armed with a firearm at the time [Britton] was killed, knowing that [Britton] was in fact armed with a firearm at the time [Britton] was killed.” Count II alleged, “on or about May 8, 2013, *** defendant, with the intent to obstruct the prosecution of [Slater], knowingly furnished false information to [Investigator Nathan Binkley] [by] advis[ing] [him] that [Britton] was armed with a firearm at the time [Britton] was killed, knowing that [Britton] was not in fact armed with a firearm at the time [Britton] was killed.” Count II was later amended to indicate the offense occurred on or about September 11, 2014, as opposed to May 8, 2013.

¶ 6

B. February 2015 Hearing

¶ 7

At a February 2015 hearing on defendant’s motion to reduce bond, defendant’s counsel questioned defendant if he was “a witness in the *Cameron Slater* case,” to which defendant responded affirmatively. Defense counsel also asked defendant if he was aware “[Slater] plead[ed] guilty on [September 18, 2014],” to which defendant again responded affirmatively. Defense counsel requested the trial court take judicial notice of the docket entries in Macon County case No. 13-CF-581, which involved the prosecution of Slater for Britton’s death. The court questioned defense counsel as to the specific information he desired the court to take notice, to which defense counsel stated the facts Slater pleaded guilty on September 18, 2014, and the State filed the charges against defendant on September 19, 2014. The court inquired as to the offense to which Slater pleaded guilty, to which defense counsel indicated he was unsure. The court clerk informed the court and defense counsel Slater pleaded guilty to

“Additional Count IV, Second Degree” and received an eight-year “[a]greed sentence.” The court stated: “So, basically, they figured out that this guy had a gun, and versus proceeding with the [f]irst [d]egree [m]urder charge, he plead[ed] the second for an [eight-year] sentence.” The court asked defense counsel if he agreed with its statement, to which defense counsel indicated he was unsure of the nature of the plea as he was not personally involved in Slater’s case. The court asked the State if it agreed with its statement, to which the State indicated it agreed “roughly” but acknowledged it only had “a cursory knowledge of the case.”

¶ 8 C. May 2015 Hearing

¶ 9 At a May 2015 hearing to allot the matter for a jury trial, the trial court stated: “This was the case where [defendant] allegedly changed his story at the last minute, and because of that, the State had to dismiss a murder charge.” Defense counsel responded to the court’s statement: “I think he [(Slater)] [pleaded] to a lesser charge.”

¶ 10 D. Jury Trial

¶ 11 In July 2015, the trial court held a jury trial. The following is a summary of the evidence presented.

¶ 12 Paramedic Trevor Wilson testified on May 5, 2013, at approximately 9:54 p.m., he received a call to report to a residence located at 728 West Harper Avenue in Decatur for a suspected gunshot victim. Within a few minutes after receiving the call, Wilson arrived at 728 West Harper Avenue and discovered Britton alone on the ground outside the residence. Britton was unresponsive and in critical condition with two gunshot wounds to his abdomen. Wilson testified he did not see any guns or other weapons on or close to Britton. Wilson acknowledged it was not his responsibility to conduct an evidentiary search of the scene. The State presented

photographs to Wilson, which Wilson testified showed Britton as he observed him upon his arrival. The photographs were admitted into evidence and published to the jury. The photographs show Britton on the ground by a bush near the front door of the residence. Britton's left leg is buckled outwards. The photographs do not show any guns on or close to Britton. Britton was transported by ambulance to the hospital. Wilson testified he did not discover any guns or other weapons in Britton's possession when transporting him to the hospital. Britton was pronounced dead shortly after arriving at the hospital.

¶ 13 Detective Bryan Kaylor testified he was involved in the investigation into Britton's death. On May 7, 2013, Detective Kaylor conducted a recorded interview of defendant at the police department. An audio-and-video recording of the interview was entered into evidence and played for the jury. In the interview, defendant provided the following. Defendant considered Britton to be "like family." Defendant associated with Slater "around the neighborhood." While at 728 West Harper Avenue, defendant received a call from Slater, who indicated Britton sold him fake marijuana at a cost of \$8000. Slater later arrived at 728 West Harper Avenue, and defendant and Slater had a discussion. After that discussion, defendant left with a woman. Defendant later heard Britton was killed. Defendant asserted he was not on West Harper Avenue when Britton was killed.

¶ 14 Detective Joe Patton testified he was involved in the investigation into Britton's death. On May 7, 2013, Detective Patton conducted a second recorded interview of defendant at the police department. An audio-and-video recording of that interview was entered into evidence and played for the jury. In the interview, defendant provided the following. Defendant had known Slater "off and on" for a few years, and they both previously purchased drugs from each

other. While at 728 West Harper Avenue, defendant received a call from Slater concerning the marijuana Britton sold Slater. Slater and Britton later met together outside 728 West Harper Avenue, and an argument occurred about the previous drug transaction. Defendant was present during the argument. Defendant stated he did not see Britton with a gun or other weapon. Defendant asserted Britton “simply raised his voice.” Defendant observed Slater shoot Britton approximately three times. Britton was standing by the doorway to the residence by some bushes when he was shot. Defendant asserted Britton “buckled” after being shot and went to the ground. After the shooting, defendant ran away.

¶ 15 Investigator Nathan Binkley testified he conducted trial preparation witness interviews for the prosecution of Slater. On September 5, 2014, Investigator Binkley interviewed defendant at the State’s Attorney’s office. During that interview, Investigator Binkley testified defendant indicated he had a new detail he had not previously disclosed. Defendant stated Britton was armed with a 9-millimeter handgun during the argument with Slater. Defendant indicated Britton pointed the gun at him and then went to point the gun at Slater, causing Slater to shoot Britton. Defendant acknowledged speaking with Slater on multiple occasions after Slater was incarcerated as well as with Slater’s attorney. Defendant stated he provided the additional detail because his mother persuaded him to tell the truth.

¶ 16 Following defendant’s interview, Investigator Binkley conducted a search of jail phone records. Investigator Binkley discovered nine calls were made between defendant’s cell phone and Slater.

¶ 17 On September 11, 2014, Investigator Binkley conducted another trial preparation witness interview of defendant at the State’s Attorney’s office. The interview was recorded. An

hearing that same month, the court denied defendant's motion and then sentenced him to five years' imprisonment.

¶ 21 F. Motion to Reduce Sentence

¶ 22 In October 2015, defendant filed a *pro se* motion to reduce his sentence, which his counsel later adopted. Following a November 2015 hearing, the trial court denied defendant's motion.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 A. Motion to Supplement the Record on Appeal

¶ 26 As an initial matter, on September 22, 2017, we granted defendant's motion to supplement the record on appeal to include the transcripts from Slater's September 18, 2014, plea hearing in Macon County case No. 13-CF-581. In pertinent part, those transcripts provide the following. The State's case against Slater was scheduled to proceed to a jury trial on September 22, 2014. On September 18, 2014, the State filed an additional count charging Slater with second degree murder. At a hearing that same day, the parties indicated they reached a plea agreement where Slater would plead guilty to the additional count in exchange for the State moving to dismiss three other counts and recommending a sentence of eight years' imprisonment. As a factual basis for the plea agreement, the State indicated, in part, "an eyewitness would testify that[,] during th[e] altercation [between Slater and Britton][,] [Britton] brandished a firearm," and "[Slater] unreasonably believed at this time that his life was in danger from [Britton] so he shot [Britton] three times causing [his] death." After providing a factual

basis, the State called defendant to testify. Defendant testified he was present when the shooting occurred.

¶ 27 B. Defendant's Arguments on Appeal

¶ 28 On appeal, defendant argues judicial estoppel and due process considerations require his conviction be reversed where the State contradictorily asserted Britton was armed with a gun when prosecuting Slater and not armed with a gun when prosecuting him. Alternatively, defendant argues we should reverse his conviction because the State failed to prove him guilty beyond a reasonable doubt.

¶ 29 1. *Judicial Estoppel and Due Process*

¶ 30 Defendant argues judicial estoppel and due process considerations require his conviction be reversed where the State contradictorily asserted Britton was armed with a gun when prosecuting Slater and not armed with a gun when prosecuting him. The State contends defendant forfeited his judicial estoppel and due process arguments by failing to raise them in a posttrial motion or, alternatively, his arguments are meritless as it did not assert contradictory theories in the two prosecutions.

¶ 31 Defendant acknowledges he did not raise his judicial estoppel and due process arguments at any time in the proceedings below. See *People v. Rathbone*, 345 Ill. App. 3d 305, 309, 802 N.E.2d 333, 336-37 (2003) (issues not raised before the trial court are deemed forfeited). Defendant suggests this court should address his arguments because the evidence indicating the State took inconsistent factual positions was not available until after his trial. In support, defendant cites our September 22, 2017, order granting his motion to supplement the record on appeal with the transcripts from Slater's September 18, 2014, plea hearing. Defendant

further notes the record does not indicate his trial counsel had access to the transcripts from Slater's plea hearing nor were the transcripts tendered by the State in discovery.

¶ 32 On September 19, 2014, the State charged defendant with obstructing justice relating to the prosecution and defense of Slater. Count II of the information specifically charged defendant with obstructing justice based on his statement indicating Britton had a firearm at the time he was killed. At a February 2015 hearing on defendant's motion to reduce bond, defendant's trial counsel and defendant indicated they were aware Slater pleaded guilty in Macon County case No. 13-CF-581, and a discussion occurred as to the circumstances of that plea. During that discussion, the trial court and defendant's trial counsel learned Slater pleaded guilty to "Additional Count IV, Second Degree," to which the court suggested, and the State "roughly" agreed, "basically, [the State] figured out that this guy had a gun, and versus proceeding with the [f]irst [d]egree [m]urder charge, he plead[ed] the second for an [eight-year] sentence." Later, at a May 2015 hearing to allot the matter for a jury trial, the court stated: "This was the case where [defendant] allegedly changed his story at the last minute, and because of that, the State had to dismiss a murder charge." Defendant's trial counsel responded to the court's comment: "I think he [(Slater)] [pleaded] to a lesser charge." The record shows defendant's trial counsel, at a minimum, was on notice the State's plea agreement with Slater potentially involved a factual basis indicating Britton had a gun. The fact the record does not show defendant's trial counsel obtained transcripts of Slater's guilty plea hearing does not make the evidence unavailable. We find defendant forfeited his arguments by failing to raise them below.

¶ 33 Even if we were to excuse the forfeiture, we would find defendant failed to show his conviction should be reversed on judicial estoppel or due process grounds. Both of defendant's arguments are premised on the notion the State asserted contradictory factual theories in his and Slater's prosecutions. In the days following Britton's death, defendant made a statement indicating he observed Slater shoot an unarmed Britton. Almost a year and a half later and shortly before Slater's scheduled jury trial, defendant made a conflicting statement indicating Britton was armed. When presented with the conflicting statements from the eyewitness to the crime, the State, in its discretion, elected to pursue a plea deal with Slater to second degree murder. As a factual basis for Slater's plea, the State alleged "an eyewitness [(defendant)] would testify that[,] during th[e] altercation [between Slater and Britton][,] [Britton] brandished a firearm." The State did not, however, aver defendant's testimony indicating Britton had a firearm was undisputable fact. Rather, it presented available evidence sufficient to support the charged offense. See *People v. White*, 2011 IL 109616, ¶ 17, 953 N.E.2d 398. The State then, in its discretion, elected to pursue charges against defendant based on his conflicting statements. Only at that time was the State required to prove which of defendant's statements was false. Contrary to defendant's suggestion, we find the State did not assert contradictory factual theories in his and Slater's prosecutions.

¶ 34 *2. Sufficiency of the Evidence*

¶ 35 Defendant alternatively argues we should reverse his conviction because the State failed to prove him guilty beyond a reasonable doubt. The State disagrees.

¶ 36 "When a reviewing court considers a challenge to the sufficiency of the evidence it must determine whether, after viewing the evidence in the light most favorable to the

prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (Internal quotations, citations, and emphasis omitted.) *People v. Jophlin*, 2018 IL App (4th) 150802, ¶ 38, 99 N.E.3d 597. A reviewing court will defer to the trier of fact’s judgment “where the trier of fact determines the credibility of the witnesses, the weight to be given to the testimony, and the inferences drawn from the evidence.” *Id.* A conviction will be reversed on appeal “only where the evidence is so improbable and unsatisfactory it creates a reasonable doubt as to [the] defendant’s guilt.” *Id.*

¶ 37 “Obstruction of justice is an attempt to interfere with the administration of the courts, the judicial system, or law enforcement agencies.” *People v. Comage*, 241 Ill. 2d 139, 149, 946 N.E.2d 313, 319 (2011). As charged in this case, a person commits an obstruction of justice when he or she, “with intent to *** obstruct the prosecution *** of any person, *** knowingly *** furnishes false information.” 720 ILCS 5/31-4(a)(1) (West 2012). The only element defendant asserts the State failed to prove beyond a reasonable doubt is whether he furnished false information. That is, defendant contends the State failed to prove beyond a reasonable doubt his September 11, 2014, statement indicating Britton had a gun was false.

¶ 38 Defendant’s September 11, 2014, statement indicating Britton had a gun directly conflicted with his May 7, 2013, statement indicating Britton did not have a gun. After being presented with the conflicting statements, the jury was tasked with determining which statement was false. To assist in its determination, the jury had the opportunity to listen to defendant give both statements to compare the conflicting statements to defendant’s admittedly false statement from his first interview on May 7, 2013, indicating he was not present when Britton was killed. The jury further learned of the circumstances surrounding the conflicting statements.

Defendant's statement indicating Britton did not have a gun was given within days after Britton's death. Defendant's statement indicating Britton did have a gun was given approximately a year and a half after Britton's death while the State was preparing witnesses for Slater's trial and after defendant spoke with Slater on multiple occasions. The jury was also presented with evidence as to whether a gun was found at the scene. The jury heard paramedic Wilson, who responded to the scene within a few minutes after receiving a call reporting a suspected gunshot victim, testify he did not observe a gun on or close to Britton. Photographs of the scene also did not show the presence of a gun on or close to Britton. The State presented sufficient evidence whereby the jury could conclude beyond a reasonable doubt defendant's September 11, 2014, statement was false. Defendant has failed to persuade the evidence was insufficient to find him guilty beyond a reasonable doubt of obstructing justice.

¶ 39

III. CONCLUSION

¶ 40 We affirm the trial court's judgment. As part of our judgment, we award the State its \$75 statutory assessment as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2016).

¶ 41 Affirmed.