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FILED
December 6, 2018
Carla Bender
4th District Appellate Court, IL

2018 IL App (4th) 160570-U

No. 4-16-0570

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Coles County
CHRISTOPHER J. MAGHETT,	)	No. 15CF497
Defendant-Appellant.	)	
	)	Honorable
	)	Teresa Kessler Righter,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court granted the office of the State Appellate Defender's motion to withdraw as appellate counsel and affirmed as no meritorious issue could be raised on appeal.

¶ 2 This appeal comes to us on a motion from the office of the State Appellate Defender (OSAD) to withdraw as appellate counsel on the ground no meritorious issue could be raised on appeal. We grant OSAD's motion and affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Amended Information

¶ 5 In December 2015, the State charged defendant, Christopher J. Maghett, by information with armed robbery (720 ILCS 5/18-2(a)(2) (West 2014)). The information was later

amended over no objection. The amended information alleged, on or about December 6, 2015, "defendant, or one for whose conduct he was legally responsible, pointed a firearm at Jordan Montz and took United State currency and his wallet from him."

¶ 6 B. Motions *in Limine*

¶ 7 Both defendant and the State filed motions *in limine* concerning the introduction of defendant's prior convictions at trial. Following a May 2016 hearing, the trial court ruled it would allow the State to introduce two of defendant's convictions for impeachment purposes.

¶ 8 C. Jury Trial

¶ 9 In June 2016, the trial court conducted a jury trial. During *voir dire*, prospective juror Justin White indicated he had gone to high school with Montz but did not know him well. White stated he had a "neutral" opinion of Montz and indicated he would view Montz's testimony equally with any other testimony he heard. White further stated his familiarity with Montz would not impede his ability to be a fair and impartial juror. White was accepted without challenge and served as a juror. At no point during *voir dire* did defendant, the State, or the court comment on the racial makeup of the jury pool.

¶ 10 Montz and Brandon Babb testified they spent the evening of December 6, 2015, in the living room of Montz's apartment, watching a movie. Around 10:30 p.m., they heard a knock on the front door. Montz answered and was confronted by a man pointing a handgun at his face.

¶ 11 Four men entered the apartment. The men forced Babb to sit on a couch in the living room and forced Montz to move back and forth between the living room and his bedroom.

The men demanded money, searched the apartment, took $380 of cash and a PlayStation 3, and left.

¶ 12 Both Montz and Babb testified one man was black and taller, one man was short and white, and two men were short and black. The taller man did not wear any disguise; however, neither Montz nor Babb had seen him before or since the incident. The other three men covered their faces with hooded sweatshirts and bandanas or masks.

¶ 13 Babb testified he was able to identify all three of the disguised men based on their voices and mannerisms. The white man was Martin Oliver, one black man was William Bailey, and the other black man was defendant. Montz testified he was only able to identify one of the short black men, whom he identified as defendant.

¶ 14 Montz called 911 after the four men left his apartment. Officer Robert Hale responded to the scene and interviewed Montz and Babb for an hour. During that time, neither Montz nor Babb told Officer Hale they recognized any of the robbers by name. Montz and Babb later identified defendant to Officer Hale. Babb testified he did not initially identify defendant because Babb was not 100% sure, and he identified defendant later when he, Babb, had become 100% sure. Montz testified he did not initially identify defendant because Montz "had no idea" at the time, and he identified defendant later when Montz had become "99 percent" sure.

¶ 15 Both Montz and Babb testified the white man and one of the short black men had handguns during the robbery. Babb testified Bailey had a handgun. Montz testified defendant had a handgun and held the gun to his head while in the bedroom.

¶ 16 Montz testified defendant wore distinctive black Nike shoes with red soles during the robbery. Detective Chad Reed testified he observed defendant wearing a pair of black Nike

shoes with red soles on December 8, 2015. Detective Reed collected the shoes and showed them to Montz. Montz testified the shoes were the ones he observed during the robbery.

¶ 17 Montz, his girlfriend Ashley Lane, and her mother Michell Hochstedler all testified to a second incident occurring at a Save-A-Lot store during the afternoon of December 7, 2015. They were checking out when they saw defendant in the store with two other men. Hochstedler testified she confronted defendant and told him she "didn't care what he done to [Montz]," to which defendant, while making a gesture as if he was holding a gun, replied: " 'Bang bang, Bitch. I will do just as I done to him.' " In response, Hochstedler called defendant by "racist names" and told him her family had guns. She denied telling defendant her family was part of the Ku Klux Klan. Hochstedler testified defendant left the store and, once outside, walked up to the window and made additional gestures as if he had a gun. Montz and Lane testified they did not hear Hochstedler's conversation with defendant but did observe defendant make gestures as if he had a gun.

¶ 18 Montz and Lane testified on the afternoon of December 6, 2015, hours before the robbery, defendant knocked on the door to Montz's apartment. They testified defendant asked about someone's whereabouts and then left.

¶ 19 At several points during Montz's direct-examination, the State repeated Montz's prior answer before asking a follow-up question. Defense counsel objected to the State's questioning on the ground it was leading. The trial court admonished the State to rephrase its questions. At the conclusion of Montz's direct-examination, defense counsel requested a mistrial or, in the alternative, Montz's testimony be struck in its entirety based on the "leading and

repeating of questions and the duplicitous nature of the questioning." The court denied the requested relief.

¶ 20 Detective Brett Hildebrand testified he responded to Montz's 911 call and directed officers working on the investigation. When asked if he instructed an officer to dust for fingerprints at the scene, Detective Hildebrand began to testify as to what an officer advised him. Defense counsel objected on hearsay grounds. Before the trial court issued a ruling on the objection, the State asked Detective Hildebrand to simply answer whether he asked the officer to dust the apartment, to which Detective Hildebrand testified, "No."

¶ 21 Detective Reed testified he interviewed defendant on December 8, 2015. Defendant denied any involvement in the robbery but acknowledged he was at Montz's apartment earlier that day. After Detective Reed informed defendant that Montz and Babb were certain defendant and his friends robbed them, defendant made a statement indicating four robbers were involved. Detective Reed testified he had not told defendant how many robbers were involved before defendant made his statement.

¶ 22 Defendant told Detective Reed about the December 7, 2015, incident at Save-A-Lot. Detective Reed testified defendant said a woman approached him and started yelling at him about a stolen PlayStation. Defendant told the woman he did not know what she was talking about. The woman referred to him by racial slurs and said she was affiliated with the Ku Klux Klan and her family owned guns. Defendant stated he made a gesture with his hand as if he had a gun because he wanted the woman to believe he had a gun as well. Defendant indicated when he left the store he raised his fist and yelled "black power" at the woman.

¶ 23 Detective Reed testified he reviewed defendant's cell phone records for December 6, 2015. Detective Reed testified the records showed the following:

> "I noted a lot of cell phone activity up until 9:48 p.m. Then there was a gap. They didn't pick back up until five minutes after [11] p.m.[] And it went into the wee hours of 5:35 a.m., just continuous."

He indicated the records also showed defendant's phone pinged only local Charleston towers during that night.

¶ 24 Detective Reed interviewed Oliver as part of the investigation. Detective Reed testified Oliver indicated he was familiar with defendant. Defense counsel objected to this testimony on hearsay grounds and moved for a mistrial. The court denied defense's counsel motion for a mistrial but sustained the objection and directed the jury to disregard the testimony.

¶ 25 Detective Reed collected and viewed December 7, 2015, surveillance footage from Save-A-Lot. Detective Reed testified he recognized one of the men with defendant as Bailey. The defense played the surveillance footage for the jury. Defendant did not testify.

¶ 26 Based on this evidence, the jury returned a verdict finding defendant guilty.

¶ 27 D. Posttrial Motion and Sentencing

¶ 28 In August 2016, defendant filed a motion for a new trial. In support of his motion, defendant alleged, in part, the following: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) the trial court's pretrial decision to allow the State to impeach him with two of his prior convictions was in error and that ruling caused him to not testify at trial; (3) the court erred when it permitted the State to ask leading questions over his objection; (4) he was

deprived of a fair trial when the court allowed White to serve as a juror despite White's familiarity with Montz; (5) the court erred in not striking the testimony of Lane and Hochstetler as untruthful; (6) the court erred in not striking Detective Hildebrand's hearsay testimony concerning fingerprint testing; (7) the State improperly elicited hearsay testimony from Detective Reed concerning Oliver's interrogation; (8) the State improperly elicited testimony from Officer Reed regarding cell phone records without establishing he was an expert in the field; and (9) defendant was deprived of a fair and impartial jury as the jury pool did not consist of any individuals with the same race as him. Following a hearing that same month, the court denied defendant's posttrial motion and then sentenced him to nine years' imprisonment. Defendant filed a notice of appeal, and the court appointed OSAD to represent defendant on appeal.

¶ 29 E. Motion for Leave to Withdraw as Counsel

¶ 30 On June 5, 2018, OSAD filed a motion for leave to withdraw as counsel, asserting no meritorious claim could be raised on appeal. This court allowed defendant leave to file a response to OSAD's motion by July 10, 2018. Defendant has not done so.

¶ 31 II. ANALYSIS

¶ 32 In its motion for leave to withdraw as counsel, OSAD contends it considered raising the nine issues addressed in defendant's posttrial motion but concluded each of those issues would be without merit.

¶ 33 A. Sufficiency of the Evidence

¶ 34 OSAD asserts no reasonable argument could be made to challenge the sufficiency of the evidence to sustain defendant's conviction.

¶ 35 "Due process requires that to sustain a conviction of a criminal offense, the State

must prove a defendant guilty beyond a reasonable doubt of the existence of every element of the offense." *People v. Lucas*, 231 Ill. 2d 169, 178, 897 N.E.2d 778, 784 (2008). When considering a challenge to the sufficiency of the evidence, a reviewing court 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 offense beyond a reasonable doubt." (Internal quotation marks omitted.) *People v. Hardman*, 2017 IL 121453, ¶ 37, 104 N.E.3d 372.

¶ 36 To prove defendant guilty of armed robbery with a firearm, the State was required to establish defendant, or someone he was accountable for, "knowingly [took] property *** from the person or presence of another by the use of force or by threatening the imminent use of force" and that he, or someone he was accountable for, "carrie[d] on or about his or her person or [was] otherwise armed with a firearm." 720 ILCS 5/18-1(a), 18-2(a)(2) (West 2014). The only issue disputed at trial was whether defendant was one of the four men who entered Montz's apartment and forcefully took United States currency from Montz while armed with handguns.

¶ 37 Both Montz and Babb testified they were certain defendant was one of the four men involved in the armed robbery. Montz identified a robber as having distinctive black Nike shoes with red soles. During defendant's interview, he was wearing black Nike shoes with red soles and mentioned there were four robbers without having been told that fact. Horchstedler testified when she confronted defendant at Save-A-Lot he responded in a manner effectively admitting his guilt. Based on this evidence, we agree with OSAD and find no reasonable argument could be made suggesting the State failed to prove defendant guilty of armed robbery beyond a reasonable doubt.

¶ 38 B. Evidence of Prior Convictions for Impeachment Purposes

¶ 39 OSAD asserts no reasonable argument could be made to challenge the trial court's pretrial decision to allow the State to introduce evidence of two of defendant's prior convictions for impeachment purposes.

¶ 40 A defendant cannot complain about a ruling allowing for impeachment with a prior conviction if he or she did not testify at trial. *People v. Patrick*, 233 Ill. 2d 62, 79, 908 N.E.2d 1, 11 (2009). Defendant did not testify. We agree with OSAD and find no reasonable argument could be made to challenge the trial court's pretrial decision to allow the State to introduce evidence of two of defendant's prior convictions for impeachment purposes.

¶ 41 C. State's Direct-Examination of Montz

¶ 42 OSAD asserts no reasonable argument could be made to suggest the trial court erred by allowing the State to ask leading questions.

¶ 43 "The test of a leading question is whether it suggests the words or thought of the answer." *People v. Schuldt*, 217 Ill. App. 3d 534, 542, 577 N.E.2d 870, 876 (1991). At several points in Montz's direct-examination, the State repeated a prior answer by Montz before asking a follow-up question. The State's questions were not leading but rather attempts to focus Montz's testimony to the issues at hand. We agree with OSAD and find no reasonable argument could be made to suggest the trial court erred by allowing the State to ask leading questions.

¶ 44 D. Juror White

¶ 45 OSAD asserts no reasonable argument could be made to suggest the trial court committed plain error by allowing White to serve on the jury despite his familiarity with Montz.

¶ 46 A trial court has no duty "to *sua sponte* excuse a juror for cause in the absence of a defendant's challenge for cause or exercise of a peremptory challenge." *People v. Metcalfe*,

202 Ill. 2d 544, 555, 782 N.E.2d 263, 271 (2002). Moreover, White's answers during *voir dire* made clear he would not allow his familiarity with Montz to affect his judgment. We agree with OSAD and find no reasonable argument could be made to suggest the court committed plain error by allowing White to serve on the jury despite his familiarity with Montz.

¶ 47 E. The Testimony of Lane and Horchstedler

¶ 48 OSAD asserts no reasonable argument could be made to suggest the trial court committed reversible error by failing to strike the testimony of Lane and Horchstedler as untruthful.

¶ 49 "It is the trier of fact's responsibility to determine the witnesses' credibility and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence." *People v. Brooks*, 187 Ill. 2d 91, 132, 718 N.E.2d 88, 111 (1999). It is not the responsibility of a trial court to strike relevant testimony from a mentally-fit eyewitness. We agree with OSAD and find no reasonable argument could be made to suggest the court committed reversible error by failing to strike the testimony of Lane and Horchstedler as untruthful.

¶ 50 F. Fingerprint Testing

¶ 51 OSAD asserts no reasonable argument could be made to suggest the trial court committed error by not striking Detective Hildebrand's testimony concerning fingerprint testing.

¶ 52 A police officer can testify to statements he or she heard that prompted certain actions in an investigation. *People v. Banks*, 237 Ill. 2d 154, 181, 934 N.E.2d 435, 449-50 (2010). Detective Hildebrand's testimony as to the basis for why he did not order fingerprint testing was proper. We agree with OSAD and find no reasonable argument could be made to

suggest the trial court committed error by not striking Detective Hildebrand's testimony concerning fingerprint testing.

¶ 53 G. Oliver's Familiarity with Defendant

¶ 54 OSAD asserts no reasonable argument could be made to suggest reversible error occurred when Detective Reed testified Oliver had expressed familiarity with defendant.

¶ 55 The introduction of improper testimony will generally be cured by a trial court sustaining an objection and instructing the jury to disregard that testimony. *People v. Hall*, 194 Ill. 2d 305, 345-46, 743 N.E.2d 521, 544 (2000). The court sustained defense counsel's objection to Detective Reed's testimony indicating Oliver had expressed familiarity with defendant and then directed the jury to disregard the testimony. The testimony was not so prejudicial that the jury could not disregard it. See *People v. Carlson*, 79 Ill. 2d 564, 577, 404 N.E.2d 233, 239 (1980). We agree with OSAD and find no reasonable argument could be made to suggest reversible error occurred when Detective Reed testified Oliver had expressed familiarity with defendant.

¶ 56 H. Cell Phone Records

¶ 57 OSAD asserts no reasonable argument could be made to suggest the trial court committed reversible error by allowing Detective Reed to give testimony concerning defendant's cell phone records.

¶ 58 Detective Reed testified to what the cell phone activity logs showed, which we note defense counsel did not challenge. The trier of fact could have similarly reviewed and interpreted the cell phone records without the need of expert assistance. See *People v. Torruella*, 2015 IL App (2d) 141001, ¶ 30, 38 N.E.3d 602 (appellate court reading and interpreting

documents to determine if they established their own foundation for admission). To the extent defense counsel failed to object to Detective Reed's testimony on the ground it violated the best evidence rule and was hearsay, it cannot be argued counsel rendered ineffective assistance as the record on appeal does not contain the cell phone records. We agree with OSAD and find no reasonable argument could be made to suggest the trial court committed reversible error by allowing Detective Reed to give testimony concerning defendant's cell phone records.

¶ 59 I. Racial Makeup of the Jury Pool

¶ 60 OSAD asserts no reasonable argument could be made to suggest any issue was preserved concerning the racial makeup of the jury pool.

¶ 61 An objection to the composition of a jury pool must be made at the outset of *voir dire*. 725 ILCS 5/114-3(a) (West 2014). At no point during *voir dire* did defendant, the State, or the trial court comment on the racial makeup of the jury pool. We agree with OSAD and find no reasonable argument could be made to suggest any issue was preserved concerning the racial makeup of the jury pool.

¶ 62 III. CONCLUSION

¶ 63 We grant OSAD's motion to withdraw as counsel and affirm.

¶ 64 Affirmed.