

2019 IL App (1st) 162780-U

No. 1-16-2780

Order filed June 28, 2019

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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 14397
)	
SHAUNE HULL,)	Honorable
)	James B. Linn and
Defendant-Appellant.)	Thomas J. Byrne,
)	Judges, presiding.

JUSTICE GORDON delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's trial counsel was not ineffective for failing to file a motion to reconsider the trial court's ruling on defendant's motion to suppress where the record shows that counsel filed the motion.

¶ 2 Following a bench trial, defendant, Shaune Hull, was found guilty of possession of a controlled substance (cocaine) (720 ILCS 570/402(c) (West 2012)) and sentenced to one year in prison. On appeal, defendant argues that his trial counsel was ineffective for failing to file a

motion to reconsider the trial court's ruling on his motion to suppress and quash arrest based on the inconsistencies in the testimony of the State's sole witness. For the reasons set forth below, we affirm.

¶ 3 Defendant was charged with possession of a controlled substance following a traffic stop on April 22, 2014. Initially, defendant was represented by an assistant public defender. Counsel filed a pretrial motion to quash arrest and suppress evidence, claiming the traffic stop was improper, and the following evidence was adduced at the suppression hearing held on April 1, 2015.

¶ 4 Defendant testified that on the night of April 22, 2014, he was driving a 1999 white Chevrolet Tahoe on West 75th Street and South Union Avenue. He explained that on that night his headlights were activated, that they come on automatically, and that they are always on. He turned right into an alley to get to 76th Street. He then observed an unmarked police vehicle pull into the alley, turn on its "floodlights," and direct defendant to show his hands. One of the police officers approached defendant's vehicle and asked for his driver's license, which defendant did not have. The police then instructed defendant and his passenger, Dion Jones, to exit the vehicle. The police searched defendant's person and found cocaine. Defendant did not have a warrant out for his arrest.

¶ 5 On cross-examination, defendant testified that his license was suspended and that he did not know the last name of Dion at the time of this incident.

¶ 6 Defendant's wife, Jasmin Hull, testified that she was the owner of the Tahoe that defendant was driving. She gave defendant permission to drive the vehicle. She testified that the vehicle has daytime running lights that automatically turn on when the vehicle is started and that

those lights cannot be turned off. She drove that vehicle on April 21, 2014, and the headlights were working on that day.

¶ 7 Chicago police officer Matthew Heinen testified that on April 22, 2014, he and his partner, Officer Michael McClintock, were patrolling on 76th Street in an unmarked police vehicle. As the officers approached the alley, Heinen observed a vehicle traveling in the alley without headlights on. Heinen turned around, entered the alley, and stopped his squad car in front of the vehicle. Heinen approached the vehicle and asked for defendant's driver's license. Defendant told him that it was suspended, and Heinen asked defendant to step out of the vehicle. Defendant was placed under arrest for driving on a suspended license. McClintock searched defendant's person and recovered a clear bag containing a white rock-like substance, suspected to be crack cocaine. Heinen testified that he did not observe a passenger in the vehicle.

¶ 8 Defense counsel argued that the motion to suppress should be granted because the testimony showed that the vehicle's headlights were on and the police officers did not have a valid reason for stopping and searching defendant in violation of the Fourth Amendment. The State argued that Heinen's testimony that the vehicle's lights were not on was credible and, therefore, it was an appropriate stop. The trial court denied defendant's motion to quash arrest, specifically finding that Heinen's testimony was credible.

¶ 9 On that same day, defendant requested a conference pursuant to Illinois Supreme Court Rule 402. Ill. S. Ct. R. 402 (eff. July 1, 2012). Defendant agreed to enter a plea of guilty in exchange for one year in prison. The court then admonished defendant as to his rights and defendant acknowledged his waiver of those rights. The parties stipulated that, if called, Laneen Blount with the Illinois State Police would testify as an expert in forensic chemistry that the

substance found on defendant's person tested positive for 3.1 grams of cocaine. The evidence presented during the motion to suppress was incorporated by reference. Defendant then pleaded guilty to one count of possession of a controlled substance and was sentenced to one year in prison.

¶ 10 Defendant later replaced his court-appointed counsel with private counsel, Thomas Ost. Defendant filed a motion to withdraw his guilty plea on May 1, 2015. The court heard evidence on this motion on October 21, 2015, and November 25, 2015.

¶ 11 Defendant testified that he was previously represented by assistant public defender Amber Klinge. He stated that he told Klinge about his passenger on the day of this incident and asked her to subpoena him for the motion to suppress. He also told Klinge that he wanted to go to trial and did not want to enter a guilty plea but Klinge pressured him into taking the plea offer and told him that he would lose at trial.

¶ 12 Defendant further testified that after he was released from custody he began researching Chevrolet Tahoes similar to the one he was driving. Defendant introduced pictures of several similar Tahoes, which showed that the lights turned on as soon as the vehicle was started. Defendant explained that in the Tahoe he was driving that night the lights would come on automatically and the only way to drive without the lights was to “[d]isconnect the main line going to the steering column.”

¶ 13 On cross-examination, defendant acknowledged that the judge told him during the Rule 402 conference that he did not have to plead guilty and he had the right to go to trial and that he indicated to the judge that he understood his rights. Defendant further testified that he responded in the negative when the judge asked him if anyone forced him to accept the plea.

¶ 14 Dion Jones testified that he was with defendant in the Tahoe on April 22, 2014. On that night, they drove through an alley off 75th and the police stopped them. Jones stated that the vehicle's headlights were on. He had previously driven that same vehicle on multiple occasions and its lights were automatic regardless of the time of day.

¶ 15 On cross-examination, he testified that defendant asked him to come to court to testify at the suppression hearing but he was unable to because he was in custody.

¶ 16 Klinge testified that she was appointed to represent defendant in this case. She testified that defendant told her the passenger's first name, Dion, but was unable to give her Dion's last name. She told defendant that she could not find Dion without his last name. Following the court's ruling on the motion to suppress, Klinge spoke with defendant about his options. She told him that "it would be very difficult to proceed at trial" following the ruling but they could move for the court to reconsider the motion within 30 days of the ruling. She stated that they also spoke about getting a date for trial. Defendant told her that he just wanted to get it over with. Klinge denied that she refused to proceed to trial on this case.

¶ 17 On cross-examination, Klinge testified that she investigated whether the lights in a Chevrolet Tahoe could be disabled. Her research informed her that the lights could be disabled by taking the fuse out or by holding the switch for the lights for some time. She testified that she wanted to test the lights on the actual vehicle but the vehicle had already been destroyed. She further testified that defendant gave her a list of questions to ask Heinen and that she reviewed them and decided which ones to ask.

¶ 18 The transcript of the suppression hearing and the Rule 402 conference was entered into evidence.

¶ 19 Defendant was recalled. He testified that he told Klinge Dion's first name and had his wife give Klinge Dion's grandmother's phone number, which would help her locate him. After he was released, defendant and his wife went onto the Illinois Department of Corrections website and located Jones by entering his first name with different last initials and viewing the individual's pictures.

¶ 20 The trial court held that defendant entered the guilty plea voluntarily and his counsel was not ineffective. However, the trial court noted that after reviewing the transcripts it became aware that it failed to sufficiently admonish him in accordance with Rule 402. Accordingly, the court granted defendant's motion to withdraw his guilty plea. The court also stated that it was not changing its ruling on the motion to suppress.

¶ 21 Defendant requested a new judge, which was granted, and defendant's case was reassigned to Judge Thomas Byrne. Counsel informed the new judge that there was a motion to reconsider the ruling on the motion to suppress. In support of this motion, the transcripts from the original hearing on the motion to suppress and from the motion to withdraw the guilty plea at which Jones testified were submitted to the court. Defendant also submitted the pictures of the various Tahoes referenced above. The State filed a motion to strike, arguing that the motion had been addressed already with the previous judge. The court denied the State's motion to strike. After hearing arguments on the motion to reconsider, the court denied the motion.

¶ 22 At trial, Heinen's testimony was the same as at the suppression hearing, except he testified that there was a passenger in the vehicle but he did not recall who it was. Defendant moved for a directed finding, which the court denied.

¶ 23 Jones testified that he was with defendant on the night of April 22, 2014, as a passenger in the Tahoe. He stated that as they were driving through an alley a police vehicle entered the alley in front of them and stopped them. He testified that defendant's headlights lights were on when the officers approached the vehicle. The officers ordered them out of the vehicle. After the officers ran their names, defendant was handcuffed and searched. Jones stated that the officers mentioned defendant having cocaine and defendant was placed in the police car. The officers let Jones go after giving him money for the bus. Jones could not recall whether he was also handcuffed at any point.

¶ 24 On cross-examination, Jones testified that he had a 2014 felony conviction for possession of a weapon and a 2012 conviction for possession of a stolen vehicle.

¶ 25 The trial court found defendant guilty of possession of a controlled substance. Defendant filed a motion for a new trial. In that motion, counsel argued that Heinen was not a credible witness where he testified differently at the suppression hearing and trial as to whether there were any passengers in the vehicle when he conducted the traffic stop on defendant. Counsel argued that Heinen's inconsistent testimony also undermined his credibility as to whether the vehicle's lights were on. Counsel maintained that without Heinen's credibility, "the motion [to quash] should have been denied," and he asked the court to "reconsider that motion and grant the motion and then subsequently enter a judgment of acquittal." In denying defendant's motion for a new trial, the court noted that its ruling "on the [defendant's] motion to reconsider was proper." After reviewing the presentence investigation report and hearing the parties' arguments, the court sentenced defendant to one year in prison, time considered served.

¶ 26 On appeal, defendant contends that his trial counsel was ineffective for failing to move for the trial court to reconsider its ruling on his motion to suppress evidence because Heinen's testimony at trial was inconsistent with his testimony at the suppression hearing. Defendant states that Heinen's credibility was undermined following his trial testimony because he testified at the suppression hearing that defendant did not have a passenger in the vehicle and he testified at trial that defendant did have a passenger. Because of this credibility issue, defendant argues that "a renewed suppression motion likely would have won," and without a lawful traffic stop, the subsequent arrest and search of defendant would have violated the Fourth Amendment and the cocaine would have constituted fruit of the poisonous tree. Thus, as defendant claims, the State would not have had any evidence with which to prosecute him. For that reason, defendant asserts that counsel's deficiency prejudiced him.

¶ 27 The standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504 (1984), governs claims of ineffective assistance of counsel. To establish such a claim, a defendant must show that (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defendant. *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010). However, counsel's decision as to whether to file a motion to suppress, or in this case a motion to reconsider, is generally a matter of trial strategy that is entitled to great deference. *People v. White*, 221 Ill. 2d 1, 21 (2006). In order to establish prejudice resulting from failure to file a motion to reconsider a motion to suppress, a defendant must show that the motion to reconsider was meritorious and would have altered the court's suppression ruling 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.

¶ 28 Here, defendant cannot satisfy either prong of the ineffective assistance of counsel analysis where the record shows that counsel did, in fact, move for the trial court to reconsider its ruling on the motion to suppress following Heinen's trial testimony and the court denied the motion. In the written motion for a new trial, counsel argued that the trial court should reconsider its suppression ruling in light of Heinen's testimony. Counsel specifically requested that the court "reconsider the earlier Motions to Quash Arrest and Suppress Evidence *** then enter a Judgment of Acquittal in light of that ruling that the evidence should have been suppressed." Moreover, counsel argued before the trial court that the suppression ruling should be reversed based on Heinen's trial testimony and its effect on his credibility as to whether defendant's vehicle's lights were on. The trial court considered counsel's argument, upheld its prior suppression ruling, and denied the motion for a new trial. Thus, defendant cannot show that counsel's performance was deficient.

¶ 29 In his reply brief, defendant claims that counsel's motion to reconsider following the trial was untimely and it should have been raised directly following Heinen's inconsistent trial testimony. However, even if counsel's motion was untimely, the trial court considered the motion and, notwithstanding Heinen's trial testimony, upheld its prior ruling as proper. This necessarily defeats defendant's argument that he was prejudiced by counsel's ineffectiveness, *i.e.*, the trial court did not grant the motion and would not have granted it had it been made during trial, which defendant argues was the proper time. Accordingly, defendant's claim of ineffective assistance of counsel fails.

¶ 30 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 31 Affirmed.